

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr.,  
Charles R. Ross, David S. Black, and Carl E. Bagge.

Village of Gresham

Project No. 2464

OPINION NO. 466

OPINION AND ORDER ADOPTING INITIAL  
DECISION OF PRESIDING EXAMINER

(Issued July 13, 1965)

O'CONNOR, Commissioner:

This proceeding involves an application filed by the Village of Gresham, Wisconsin, a municipal corporation under Wisconsin law (Applicant or Gresham) for a license to construct a hydro-electric project to be known as the Weed Dam, on the Red River, a tributary of the Wolf River, in Shawano County, Wisconsin. Applicant presently operates an existing hydro-electric project known as the Gresham Dam, located in the Village of Gresham, approximately one and one-half miles upstream from the proposed Weed Dam. The application for license was opposed by the Isaac Walton League, the State Conservation Commission of Wisconsin, and several local property owners. 1/

Pursuant to our order of July 20, 1964, a hearing was held in Shawano, Wisconsin, on August 18, 19 and 20, 1964. Presiding Examiner William C. Levy, in his decision issued on December 7, 1964, recommended granting a 50-year license to the applicant subject to certain conditions. The proceeding is before us upon exceptions to the Examiner's decision filed by Harry Schmidt, Charles Brown, Jack Brown and Ed Branson (Intervenors). Other than these few landowners, no party has filed exceptions to the Examiner's decision. A brief opposing exceptions and urging adoption of the Examiner's decision was filed by the Commission Staff. 2/

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1/ Intervention was granted these petitioners by the Commission's Orders of July 20, 1964 and August 14, 1964.

2/ Exceptions to the Examiner's decision on behalf of the Intervenors were mailed by counsel on the date they should have been filed in the Commission offices, and were consequently received several days late. However, under the delegation of authority contained in Section 3.5 of the Commission's Rules of Practice and Procedure the exceptions were properly accepted by the Secretary for filing.

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The Weed Dam Project, a run of the river plant, would consist of a concrete center section approximately 105 feet long with a 64-foot spillway section, flanked on either side by two earth dikes, each approximately 700 feet long. The reservoir created by the dam would have a surface area of approximately 235 acres and would provide a gross head of 25 feet for power generation. The reservoir would extend upstream approximately one and one-half miles to the existing Gresham hydro-electric and diesel plant which is presently operated by the Applicant. Two units having a total of 800 horse power will be installed; one having a capability of 120 kilowatts, and the other 350 kilowatts. The design and location of the powerhouse and spillway is such that water passing through the powerhouse by-passes approximately 700 feet of the original stream bed below the spillway section.

Applicant estimates its cost between \$250,000.00 and \$260,000.00. Staff derived a figure of \$269,000.00 by using Applicant's cost figures and adding the cost of engineering. By giving a first lien on its existing project, Applicant has obtained a bond issue in the amount of \$250,000.00 at an interest rate varying from three to four and one-quarter percent. The bonds are for a term of 20 years. The first payment of interest is due in 1965, and the first payment of principal and interest will be due in 1966. Applicant has already expended approximately \$74,880.00 for equipment, land, flowage rights, clearance of land, and engineering expenses.

The Gresham electrical system includes service to the Village itself and approximately 87 miles of lines serving the town of Red Springs and parts of the towns of Herman, Seneca and Richmond. The existing powerhouse, built in 1929, has an installed capacity of 275 kilowatts comprised of two units; one rated 100 kilowatts and the other at 175 kilowatts. The present reservoir covers 240 acres with a gross head of 38 feet. In view of the anticipated growth of the Village and the cost of purchasing power from Wisconsin Power and Light Company or diesel generation, Gresham seeks to obtain additional hydro-generation to supply its needs at a lower cost than its other two sources of power can presently provide.

Generation of the Gresham hydro-plant in 1961, 1962 and 1963 was 2,158,100 kilowatt hours, 2,178,900 kilowatt hours, 1,858,000 kilowatt hours, respectively, at an estimated cost per kilowatt hour of 6.0 mills. In 1963 its diesel installation, having an aggregate capacity of 657 kilowatts generated 309,620 kilowatt hours at a cost of approximately 2 cents per kilowatt hour and Gresham purchased 2,093,280 kilowatt hours from Wisconsin Power and Light Company at a cost of approximately 1.61 cents per kilowatt hour. During 1963, the demand furnished by the Wisconsin Power and Light Company was 672 kilowatts. A new 69-kv line is presently being constructed by Wisconsin Power and Light to serve the Village and there is a provision for the sale of dump power from Gresham's hydro-installation at 4 mills per kilowatt hour.

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Staff estimated the average annual flow in the Red River at the proposed site to be 150 cfs, and computed a figure of 2,230,000 kilowatt hours as the average annual energy output. The annual cost of operating the project would be \$23,600. Based on these figures the annual cost of power would be 1.058 cents per kilowatt hour. From computations of Gresham's predicted load for 1970, Staff estimated that the annual cost of purchasing power from Wisconsin Power and Light in lieu of the Weed Project would be 1.44 cents per kilowatt hour. Even if the national average reduction predicted by the National Power Survey Report were realized, the annual costs of power would, at best, equal the cost of power from the project. In any event, based on the cost of producing power at the project, plus the cost of additional purchases to the year 1970, the total cost per kilowatt hour would be 1.315 cents, or an immediate 8.7 percent decrease in total power costs to the Village to be realized over the entire period. Gresham also proposes to install a third small 10 kilowatt unit for the purpose of generating power from water to be released to the by-passed section of the river, thus a slightly higher average annual energy output would be derived, particularly at low flows. Gresham intends to operate the proposed project by remote control from its existing powerhouse and to coordinate the operation of both projects so as to absorb peak loads and reduce the demand charges for purchased power. Such operation could provide more uniform flows below the Weed Dam. Combined available capacity of the existing Gresham plant and the proposed Weed Project is estimated at a monthly range of 513 to 770 kilowatts; 300 kilowatts from the existing plant and 470 kilowatts from the proposed Weed Project.

The Examiner, noting that the proposed project had been approved by the Wisconsin Public Service Commission as well as the Village of Gresham, concluded that adequate financing had been arranged. Further, he determined that the project expands the existing Gresham system and that its economic feasibility depends upon coordinated use of the two plants for peaking operations. The Examiner, assuming operating of the Gresham projects to obtain maximum benefits, found that the project, while marginal, is economically feasible and that net benefits will exceed costs. The benefit/cost ratio, based on Staff estimates, is 1.17 which compares favorably with many other licensed projects. While trout fishing in a limited area may be adversely affected, he found overall fishing and recreational facilities would probably be improved by the proposed project. Accordingly, the Examiner recommended issuance of a license subject to certain conditions designed to assure comprehensive development pursuant to Section 10 (a) of the Federal Power Act.

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Upon review of the record presented at the hearing, the parties' briefs, the Examiner's decision, and the exceptions thereto, it is our judgment that a license should be issued to the Applicant upon the conditions recommended by the Examiner. Subject to these conditions, we find the Applicant's proposed Weed Dam project to be best adapted to a comprehensive plan for the development of the river as required by Section 10 (a) of the Act.<sup>3/</sup> We adopt the Examiner's decision.

The dissenting opinion, while agreeing that the present project will be of immediate benefit to Gresham, apparently would deny it on the grounds that Gresham's power supplier, Wisconsin Power and Light, whose present rates are admittedly higher than those of Gresham, could over a period of time put in more efficient generating plant than that contemplated by Gresham and that, extrapolating costs to about 1980 the contemplated dam at that period might be a relatively high cost component in the Village's overall power supply. However, we are not passing upon whether a project of this size and degree of efficiency would make economic sense for Wisconsin Power in the light of its much greater service responsibilities and financial resources. The applicant is Gresham. It is proposing an expansion of its system which would admittedly be of immediate benefit to it and of continuing benefit for at least the next fifteen or twenty years. Certainly the National Power Survey does not suggest that a small distributor, owning a generating plant which makes a significant contribution to its total power supply, should nevertheless be required to refrain from improving its own generating capacity in the hope that the major supplier will take the necessary steps which in the distant future might make the immediate gains less significant. For Gresham's purposes the power from Weed Project is not "relatively high cost." Furthermore, all other factors being equal, we shall continue to accord an applicant the right to finance and build if it can make a proper showing of market feasibility. Clearly, the interests of the regulatory process are best served by a flexible posture with respect to specific applications and the individual problems each may present.

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<sup>3/</sup> Section 10 (a) of the Federal Power Act provides in pertinent part that all licenses issued shall be subject to the following conditions: That the project adopted . . . shall be such that in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial uses, including recreational purposes; . . .

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The Intervenor's in their exceptions essentially argue that the facts in the instant proceeding are parallel to the facts in Namekagon Hydro Company v. Federal Power Commission, 216 F. 2d 509, (C.A.7, 1954) and that the Examiner's decision is contrary to the findings in the Namekagon case.

The Intervenor's basic argument is not persuasive. In Namekagon, construction of the Namekagon project with a reservoir some six miles in length would have caused considerable loss within the project area of compelling features having unique recreational values, particularly scenery and canoeing activity. The Namekagon case held that, where such unique and special types of recreation are present, even though of only local or regional interest, the Commission will preserve those recreational values in the public interest at the cost of loss of power pursuant to Section 10 (a) of the Federal Power Act. Consequently, a license was denied. Here the one and one-half mile reservoir to be formed by the Weed Dam would inundate approximately 230 acres of land, most of which are low and marshy and where fishing is meager. A small falls just above the project site would be inundated. Until recently, when it was purchased by the Applicant, this land was privately owned. In our opinion the recreational values afforded by the proposal themselves outweigh any potential damage to fish and any adverse impact upon the aesthetic values involved in the inundation of such small falls. The record in this proceeding indicates that the project will provide an ideal site for a reservoir which will furnish sites for an estimated 300 privately owned shoreline cottages. More importantly, however, we are impressed with the fact that the city itself has already acquired sites at the reservoir for such public recreational facilities as boating, swimming, wading, parking area, and camping sites. These are concrete public values which must be given recognition in evaluating this proposal. On the whole public recreational facilities will be improved and enlarged by the project.

Intervenor's contend that the Examiner's decision does not take the objections of downstream property owners into consideration. These objections are primarily based on fluctuations in flow and increase in water temperature attributed to the existing hydro-electric development. The record reveals that witnesses offered no basis for their assumptions that fluctuations in flow and increases in water temperature would be amplified with the building of another hydro-electric project. We agree with the Examiner that, in fact, better stream regulation is possible with the coordinated operation of the two projects, and the probability is that the stream flow will actually be improved.

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The Intervenor's argue that trout spawning grounds would be ruined by the proposed project. This argument must be rejected. The only evidence of trout spawning in the project area is in the short stretch of the stream from the dam site to the small falls, a distance of approximately 300 to 400 yards. Most trout fishing in Mill Creek takes place in the rapids area above the proposed project reservoir. This is one of the areas stocked by the State Conservation Commission of Wisconsin. In 1964, the following legal size trout were planted; 3,000 Brook, 3,000 Brown and 3,000 Rainbow. In view of the extensive trout stocking operations in this vicinity we conclude that loss of this limited spawning area will not inflict any substantial damage to fishing activities in this area.

The Intervenor's maintain that deleterious effects will take place as a result of the effluent which is discharged from the Gresham sewage system. The Examiner had adequately answered this contention. In Article 31 of the license, the Examiner would require the licensee to take corrective measures any time the discharge from the sewage system has a harmful effect on the use of the reservoir for recreational purposes and the license issued herein will so provide.

After examining all uses of the resources involved and recognizing the various benefits to the region to be derived from the project, we conclude that it will be consistent with the public interest to grant a 50-year license to the Applicant. Gresham has shown that it can finance its proposed project. The power to be generated is to be used on system loads. Economic feasibility depends upon coordinating use of the existing Gresham plant and the proposed Weed Project for peaking operations. The method of operation proposed by the Applicant can be achieved while, concurrently, sound planning can improve stream flow conditions below the dam site over those presently existing with the operation of a single dam and reservoir. Development of the water resource involved will provide public benefits, including benefits for recreation, consistent with the requirements for its comprehensive development under Section 10 (a) of the Federal Power Act.

The Commission finds:

(1) The Red River in Wisconsin is navigable from its confluence with the Wolf River upstream through the project site to a point beyond the Village of Gresham, Wisconsin.

(2) The Red River has historically been used to transport logs, some of which passed into interstate commerce, and is still used for canoeing.

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(3) The Red River is suitable and capable of continuous and uninterrupted use for transportation of products in interstate commerce through the Wolf River, through Lake Poygan, Lake Winnoconne, Lake Winnebago, and then to points in other states through the Fox River into Lake Michigan, and is a navigable waterway of the United States within the meaning of Section 3 (8) of the Federal Power Act.

(4) Under the provisions of Section 23 (b) of the Federal Power Act the Applicant, the Village of Gresham may not construct, operate or maintain a project at the proposed site until a license shall be obtained therefor pursuant to this Act.

(5) Public notice of these proceedings has been given as required by the Act.

(6) The Applicant is a Municipality organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the proposed project.

(7) The proposed project does not affect a Government dam, nor will the issuance of a license therefore affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) The proposed Project No. 2464, also known as the Weed Dam would be located just West of a point where a town road crosses the Red River about a mile and a half East of the Village of Gresham.

(9) The proposed project would consist of a dam consisting of a concrete center section flanked by two earth dikes, and would form a reservoir of approximately 230 acres with a gross power head of about 25 feet developing a total capacity of 470 kilowatts from two turbines having a total rating of 800 horsepower.

(10) The project structures proposed by the Applicant would be safe and stable if constructed pursuant to usual engineering methods and practices.

(11) Subject to the terms and conditions set forth below, the plans of the Applicant to develop the Weed site are best adapted to conserve and utilize in the public interest the water resources involved for the use or benefit of interstate commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes under Section 10 (a) of the Federal Power Act.

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(12) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(13) The Applicant shall make provision for release of fresh water into the section of the Red River by-passed by the tailrace for the benefit of fish life.

(14) The Applicant shall take any measures necessary to prevent the discharge of its sewage treatment plant from having a harmful effect on the use of the reservoir for recreational purposes.

(15) The Applicant shall devise a method of operation to prevent fluctuations in flow below the Weed Dam from endangering life and property.

(16) It will be in the public interest to waive pursuant to Section 10 (i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4 (b), except the second sentence thereof; 4 (e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10 (c), insofar as it relates to depreciation reserves; 10 (d); 10 (f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23 (a), insofar as it relates to the determination of fair value.

(17) The exhibits designated and described in paragraph (B) below, which were included as part of Exhibit 2 of the hearing record, substantially conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to the Village of Gresham, Wisconsin under Sections 4 (e) and 10 (i) of the Act, for a period of 50 years effective as of the first day of the month in which the Commission acts on the application for license for the continued operation and maintenance of Project No. 2464, located on the Red River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

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(B) Project No. 2464 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a combination concrete gravity and earth dam about 1,505 feet long; two penstocks extending from the intake at the dam to a powerhouse containing two units, one rated 120 kw and one rated 350 kw, operating under a normal head of about 25 feet; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all right and interests therein, the possession of which is necessary in the maintenance and operation of the project. The location, nature, and character of the project structures are more specifically shown and described by the exhibits which formed part of Exhibit 2 of the hearing record and which are designated and described as follows:

<u>Exhibit</u>	<u>FPC No.</u> 2464	<u>Applicant's</u> <u>Dwg. No.</u>	<u>Showing</u>
L - 1	3	W106-C4.1	Project Layout
L - 2	4	W106-C5.1	General Plan
L - 3	5	W106-C6.1	Spillway & Walls

(C) The Licensee is also subject to the terms and conditions of the following articles, which terms and conditions, designated as Articles 1 through 31 are made a part hereof:

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 6. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 7. The United States specifically retains and safeguards the right to the water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purpose of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 8. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 9. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 10. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

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Article 11. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 12. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 13. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 14. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 15. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 16. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

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Article 18. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from the construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 19. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 20. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variation in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statement shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 21. The Licensee shall furnish to the Commission within 60 days from the effective date of this license, tracings of the Exhibit L drawings listed herein under paragraph (B)(ii).

Article 22. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

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Article 23. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 24. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 25. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 26. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly waived in the license.

Article 27. The Licensee shall pay to the United States the following annual charge:

- (1) For the purpose of reimbursing the United States for the costs of Administration of Part I of the Act \$31.30.

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Article 28. Licensee shall make provision to supply initially, a continuous flow of not less than 7 cu. feet per second for the benefit of fish in the by-passed 700-foot stretch of river located between the Weed dam and the end of the tailrace and shall submit the plans to the Commission before construction of the project commences. Licensee shall, after construction of the project, undertake a study with the Wisconsin Conservation Department to determine whether greater flows are necessary to prevent fish kill in this stretch of river.

Article 29. Licensee shall submit a plan for the protection of life and property downstream of the project for those periods when operation of the powerhouse is expected to cause substantial streamflow fluctuations and shall submit such plan to the Commission for approval.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and Local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Licensee shall take corrective measures at any time the discharge of effluent from its sewage treatment plant has a harmful effect on the use of the reservoir for recreational purposes.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license.

(E) The terms and conditions of the Act, which it has found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(G) All material exceptions, arguments and objections not discussed herein have been considered but are without substantial support in the record or a reasonable basis in law and are denied. The Presiding Examiner's initial decision issued December 7, 1964, will be adopted by the Commission as of the date of issuance of this order, to constitute with this order its decision in this proceeding.

By the Commission. **Chairman Swidler and Commissioner Ross dissenting, filed a separate statement appended hereto.**

  
**Joseph H. Gutride,**  
**Secretary.**

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IN TESTIMONY of its acknowledgment of acceptance of all of the provisions, terms and conditions of this license, The Village of Gresham, Wisconsin, a municipal corporation of the State of Wisconsin, this 19 day of July, 1965, has caused its corporate name to be signed hereto by Gervase Elert its \_\_\_\_\_ Village President, and its official seal to be affixed hereto and attested by Robert D. Traeger, its \_\_\_\_\_ Village Secretary, pursuant to a resolution of its Village Board duly adopted on the 19 day of July, 1965, a certified copy of the record of which is attached hereto.

VILLAGE OF GRESHAM, WISCONSIN

By Gervase Elert  
 Village President

Attest:

Robert D. Traeger  
 Village Clerk

(Executed in quadruplicate)

*SH*  
 8/2/65  
*SH*  
 8/24/65

Village of Gresham, Wisconsin ) Project No. 2464

Swidler, Chairman and Ross, Commissioner, dissenting:

(Issued July 13, 1965)

We dissent because we do not believe this project will contribute to low-cost power supply for the people of the Village of Gresham and that no adequate justification has been demonstrated for impairing the recreational values which the site possesses in its natural state.

Applicant intends to operate the proposed Weed Project by remote control from the existing Gresham powerhouse and to coordinate the operation of both projects so as to absorb the Village's peak loads, reduce the demand charges for purchased power, and maintain more uniform flows below the Weed Dam. Assuming operation of the Village projects to obtain maximum benefits, the examiner concluded that the project, while marginal, is economically feasible and that net benefits will exceed costs.

Because the electric power industry is inherently capital intensive, small systems are at an economic disadvantage in the production of power. This does not mean that small systems should necessarily purchase all of their power requirements from larger entities, but it does require that they carefully scrutinize the long range economic effect of the addition of small increments, such as the 470 kw installation proposed here. Such small and inefficient projects are being abandoned throughout the country and, in fact, the record shows that Wisconsin Power and Light Company is abandoning similar projects in the same area. The record also indicates that the applicant intends to install used turbines which were abandoned elsewhere. Construction and operation of such a project with the resulting relatively high cost power is an anachronism.

The proposed Weed Dam is an incremental project which realizes substantial cost-saving benefits from the existing operation. Nevertheless, operation of the project will saddle the Village with relatively high-cost power for years to come. Even assuming the most favorable operation of the project and projecting the Village's load to 1970, project power will still cost about 1.058 cents per Kwh to produce.

Village of Gresham,  
Wisconsin

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In order to test the economic feasibility of the proposed project the examiner compared the annual cost for the proposed project with the cost of purchasing the additional power to meet the Village's future loads from Wisconsin Power and Light, since this was the lowest cost alternative source of power. The examiner found that power purchased from the Company cost the Village 1.76 cents in 1962 and 1.61 cents per kwh in 1963. Projecting its load to 1970, it is estimated that purchased power will cost about 1.44 cents per kwh.

It is apparent that the economic feasibility of the proposed project is made possible by the present high cost of alternative sources of power. It is reasonable to expect that the cost of purchased power will drop in the future while the cost of project power will remain at about the same level or possibly increase. Our prediction in the National Power Survey of a reduction of 42 percent in the price of electricity in the North Central Region by 1980 would mean that purchased power would be available for about 0.84 cents. True, this is a prediction and not a promise, but the prediction is based on solid evidence of the trend toward lower cost power.

In issuing a license for a hydroelectric project, Section 10(a) of the Federal Power Act requires the Commission to consider, among other things, the effect of the facility upon the scenic and recreational values of the area. As we read the testimony this project will flood out a waterfall and will impair the use of the downstream area for canoeing and fishing. The record indicates that some trout spawning and fish life will be lost as a result of the inundation of the portion of the Red River and Mill Creek and the by-passing of a 700-foot section of the Red River. While the applicant proposes to divert 7 cfs of water to the by-passed section of the river, there was apparently no fish study made to determine the number of fish involved or whether 7 cfs of water would be sufficient to sustain fish life. Furthermore, while the Department of the Interior and the Wisconsin Conservation Commission expressed concern over the warming effect of the water in the proposed reservoir on downstream fish and game, no

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Wisconsin

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complete temperature studies were available and the examiner was unable to make a finding as to whether the net effect on fish life would be adverse or beneficial. While the examiner concluded that the project would enhance the recreational values of the area, we believe the record is inadequate to support this finding.

The project is strongly opposed by the Wisconsin Conservation Commission and by many residents of the area who regard the fishing and boating opportunities as among their principal pleasures in life. If it made a clear-cut contribution to the power economy of the area, perhaps the benefits would outweigh the impairment of these local recreational opportunities. In the circumstances of this case there is little to show by way of advantage to the public interest.

There is testimony in the record that the lake which would be formed by the project would provide attractive homesites and indeed it is inferable from the record that enhancement of real estate values at the expense of power consumers may be the real motivation for the project. We find the record in this matter too sparse to draw any conclusions, even assuming that the provision of homesites and enhancement of land values are objectives which the Commission may consider in exercising its licensing jurisdiction.

  
\_\_\_\_\_  
Joseph C. Swidler, Chairman

  
\_\_\_\_\_  
Charles R. Ross, Commissioner

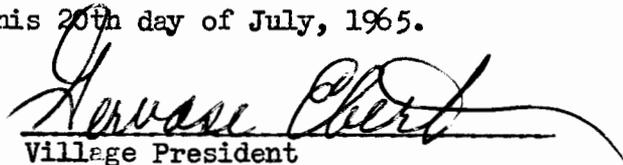
**GRESHAM  
MUNICIPAL WATER POWER AND ELECTRIC PLANT  
GRESHAM, WISCONSIN**

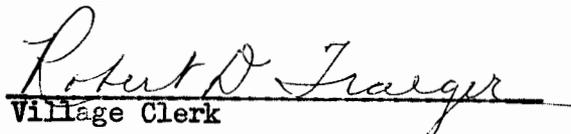
At a special meeting of the Village Board of the Village of Gresham on Monday, July 19, 1965, it appearing that Commissioner L. J. O'Connor, Jr. having made and filed his Findings of Fact, Conclusions of Law and Decision in the matter of the application of the Village of Gresham for a permit to build a dam on the Red River at a point about a mile and one-half south and east of the Village of Gresham at a site known as the Weed Dam Site, the number of the application being Project Number 2464.

And the Commissioner of the FPC having on the 13th Day of July, 1965, entered an order granting said license by adopting the Presiding Examiners initial decision issued December 7, 1964 and adopted by the Commission as the date of this order, to constitute with its order its decision in this proceeding.

BE IT RESOLVED that the Village Board, after due consideration of the Findings and Order hereby accepts the license under the terms and conditions as set forth in the decision, and it further authorizes the Village President and the Clerk to sign this resolution and mail the same to Joseph H. Gutride, Secretary, Federal Power Commission, Washington, D. C. 20426.

Dated at Gresham, Wisconsin, this 20th day of July, 1965.

  
Village President

  
Village Clerk

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Village of Gresham,  
Wisconsin

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OPINION NO. 466

APPEARANCES

E. L. Aschenbrenner and Adolph P. Lehner for Village of Gresham

Orville S. Luckenbach for Jack Brown, Charles, Harry Schmidt,  
and Ed Branson

James F. Bakken for State Conservation Commission of Wisconsin

Donald A. Sander for Staff of the Federal Power Commission

Document Content(s)

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