

132 FERC ¶ 62,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Charlie Hotchkin and Claire Fay

Project No. 13565-000

ORDER GRANTING EXEMPTION FROM LICENSING

(July 13, 2010)

**INTRODUCTION**

1. On August 4, 2009, as supplemented on December 23, 2009, and January 13, 2010, Charlie Hotchkin and Claire Fay (Hotchkin and Fay) filed an application to exempt their proposed 7-kilowatt (kW) Alder Brook Mini-Hydro Project (Alder Brook Project) from the requirements of Part I of the Federal Power Act (FPA).<sup>1</sup> The proposed project would be located on Alder Brook, near the town of Richford, in Franklin County, Vermont. As discussed below, I am issuing an exemption from licensing for the project.

**BACKGROUND**

2. On January 15, 2010, the Commission issued a public notice accepting the application and soliciting motions to intervene and protests. The notice further stated that the application is ready for environmental analysis and requested final comments, recommendations, prescriptions, and terms and conditions with a filing deadline of March 16, 2010. On March 16, 2010, Vermont Agency of Natural Resources (Vermont ANR) filed a motion to intervene. On March 20, 2010, Charlotte H. Rosshandler filed comments on the proposed project.

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<sup>1</sup> The Commission is authorized to exempt from the licensing requirements of Part I of the FPA small hydroelectric projects with an installed capacity of 5 megawatts (MW) or less that use for the generation of electricity either an existing dam (*i.e.*, one in existence on or before July 22, 2005) or a “natural water feature” without the need for any dam or impoundment. *See* sections 405 and 408 of the Public Utility Regulatory Policies Act (PURPA) of 1978, 16 U.S.C. §§ 2705 and 2708 (2006). The application, and supplemental information filed on January 13, 2010, contained documentation that shows Hotchkin and Fay have the necessary property rights to develop and operate the project.

3. An Environmental Assessment (EA) was prepared by Commission staff and is being issued concurrently with this order. The EA contains background information, analysis of impacts, and support for the related exemption articles. I conclude that based on the record of the proceeding, including the EA, granting an exemption for the Alder Brook Mini-Hydro Project will not constitute a major federal action significantly affecting the quality of the human environment.

4. I have fully considered the record of this proceeding in determining whether, and under what conditions, to issue this exemption.

### **PROJECT DESCRIPTION**

5. The Alder Brook Project will capture the natural flows below the Town of Richford's culvert on Alder Brook with a new 4-foot-wide by 8-foot-long by 3-foot-high drop inlet structure.<sup>2</sup> Flows from the inlet will go through a new 12-inch-diameter, 250-foot-long penstock to a new shed containing one turbine generating unit with a total installed generating capacity of 7.0 kW. The water will be discharged through a new 50-foot-long tailrace into Alder Brook. In addition, a new 170-foot-long transmission line will run from the shed to Hotchkin and Fay's existing barn.<sup>3</sup> The project would have an average annual generation of 37,621 kilowatt-hours (kWh). The proposed Exhibit G drawing filed January 13, 2010, includes a project boundary that encloses all of the Alder Brook Project facilities described above.

6. The applicant proposes to operate the Alder Brook Project in a run-of-river mode with a screened intake, located below the Town of Richford's culvert on Alder Brook, to prevent debris and fish from entering the penstock and turbine unit; and to release a minimum flow of 1.7 cubic-feet-per-second (cfs), or inflow if less, to the 250-foot-long bypassed reach at all times.

### **WATER QUALITY CERTIFICATION**

7. On March 16, 2010, Vermont ANR issued a water quality certification for the Alder Brook Project (see Appendix B).

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<sup>2</sup> A drop inlet is an intake structure in which water falls into a box and is guided into a pipe that directs the flow to a use elsewhere.

<sup>3</sup> The barn is not a proposed project facility, but project power would be transmitted to the regional grid via the electrical interconnect at the barn.

**SECTION 30(c) CONDITIONS**

8. Pursuant to section 405 of the Public Utility Regulatory Policies Act (PURPA),<sup>4</sup> exemptions for projects of 5 megawatts (MW) or less must include any fish and wildlife conditions submitted by federal and state fish and wildlife agencies pursuant to section 30(c) of the FPA.<sup>5</sup> Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources.

9. On March 16, 2010, Vermont ANR filed 13 conditions for the Alder Brook Project. The section 30(c) conditions include requirements for: operating the project in a run-of-river mode; releasing all flows into the bypassed reach when the project is not operating; releasing a minimum flow of 1.7 cfs, or inflow if less, into the bypassed reach at all times; developing a final intake design, in consultation with Vermont ANR and the U.S. Fish and Wildlife Service, and subject to Vermont ANR approval, which will ensure compliance with the bypassed flow requirement and will not impede the downstream movement of fish; inspecting the project's intake structure daily and removing debris or ice as necessary; maintaining a log of daily inspection and debris removal activities to be provided to Vermont ANR upon request; developing a debris disposal plan, in consultation with Vermont ANR; and developing and implementing erosion control measures as necessary to address erosion occurring as a result of project development or operation.

10. Additionally, the section 30(c) conditions require that the exemptee obtain Vermont ANR approval prior to implementing any proposals for project maintenance or repair, performing any modifications to the culvert, or implementing any change that would have a significant or material effect on the findings, conclusions, or conditions of the exemption. Other section 30(c) conditions include notifying Vermont ANR of project completion and commencement, providing Vermont ANR with as-built plans, allowing Vermont ANR access for project inspections, specifying conditions for project removal if the project does not generate for more than one year, and reserving Vermont ANR's right to alter or amend the section 30(c) conditions. The section 30(c) conditions are set forth in Appendix A of this order and incorporated into the exemption by Ordering Paragraph (A).

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<sup>4</sup> 16 U.S.C. § 2705(b) (2006).

<sup>5</sup> 16 U.S.C. § 823a(c) (2006). Section 30(c) applies to conduit exemptions, but PURPA section 405 made that section a requirement for 5-MW exemptions as well.

## THREATENED AND ENDANGERED SPECIES

11. Section 7 of the Endangered Species Act (ESA)<sup>6</sup> requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species.

12. In the EA, staff concluded that issuing an exemption from licensing for the project as proposed by Hotchkin and Fay would have no effect on any federally listed threatened or endangered species or critical habitat because no federally listed threatened or endangered species is known to inhabit the project area.<sup>7</sup> Therefore, no further consultation under section 7 of the ESA is required.

## NATIONAL HISTORIC PRESERVATION ACT

13. Under section 106 of the National Historic Preservation Act<sup>8</sup> and its implementing regulations,<sup>9</sup> federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

14. By letter filed September 30, 2009, the Vermont SHPO stated that a review of the proposed project plans indicated that the project would not impact any known historic sites or archaeologically sensitive areas that are listed on or potentially eligible for the State or National Registers of Historic Places. Accordingly, the SHPO concluded that a finding of no historic properties affected is warranted for this undertaking.

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<sup>6</sup> 16 U.S.C. § 1536(a) (2006).

<sup>7</sup> See EA at 11. In a letter filed March 16, 2010, the Vermont ANR indicated that there are no federally listed threatened or endangered species known to inhabit the project area.

<sup>8</sup> 16 U.S.C. § 470 (2006) *et seq.*

<sup>9</sup> 36 C.F.R. Part 800 (2009).

**OTHER ISSUES**Adjacent landowner concerns

15. Ms. Rosshandler owns property adjacent to Hotchkin and Fay on the east side of Alder Brook (the opposite side of the brook from the proposed project). Ms. Rosshandler is concerned that the proposed project would adversely affect the aesthetics of Alder Brook, create noise, and lower her property value. Additionally, Ms. Rosshandler claims that the project would not be adequately maintained and would not generate enough electricity to justify the costs. Lastly, Ms. Rosshandler indicates that she has not authorized use of her property for construction or operation of the project.

16. The EA addressed Ms. Rosshandler's aesthetic concerns and determined that none of the project facilities would be heard from Ms. Rosshandler's house or the swimming hole, since the heavily wooded ravine and brook screen and buffer any sound from the generator unit. Additionally, the turbine shed will be insulated, providing additional soundproofing.<sup>10</sup> The turbine shed would be located approximately 300 feet from Ms. Rosshandler's house and approximately 225 feet from the swimming hole in a ravine away from Alder Brook and behind a large rock outcropping. The proposed project facilities would not be visible from Ms. Rosshandler's house. The only project facility that would be visible from the swimming hole is the end of the tailrace (a 12-inch-diameter pipe), which returns water to the stream approximately 30 feet downstream of the swimming hole.<sup>11</sup> Further, the 1.7-cfs minimum flow would ensure that flows continue over the waterfalls and maintain the aesthetic qualities of the falls when the project would be operating. Because there would be no significant adverse effects on aesthetics, noise levels, or any other characteristics of Ms. Rosshandler's property, construction and operation of the project will have no effect on Ms. Rosshandler's property value.

17. Ms. Rosshandler suggests that the project would not be adequately maintained because the project area is difficult to access and Mr. Hotchkin is absent from the project area for approximately 6 months each year. To ensure that the project is adequately maintained, Article 13 of this order states that the Commission may revoke this exemption if the project is abandoned or good faith project operation or maintenance is discontinued. Additionally, Ordering Paragraph (A) makes the project subject to the conditions submitted by the Vermont ANR, under section 30(c) of the FPA, which specify that on each day the project operates, the exemptee shall inspect the intake

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<sup>10</sup> See EA at 19.

<sup>11</sup> *Id.*

structure and culvert, remove debris or ice as necessary, and maintain a log of daily inspection and maintenance activities.

18. Ms. Rosshandler suggests that the project would not generate as much electricity as predicted by Hotchkin and Fay. In their application, Hotchkin and Fay estimate that the project will generate 37,621 kWh each year. The EA does not include any analysis of the predicted generation or project economics because exemptions are not subject to the licensing requirements of the FPA, including the comprehensive development standards required by sections 4(e) and 10(a)(1) of the FPA.<sup>12</sup> However, because the maximum annual generation for a 7-kW turbine would be 61,320 kWh, Hotchkin and Fay's estimate, which is significantly less than the maximum amount, appears reasonable.

19. Lastly, Ms. Rosshandler indicates that she has not given permission to Hotchkin and Fay to use any part of her property for construction and operation of this project. As required by section 4.31 of the Commission's regulations,<sup>13</sup> the application and supplemental information filed on January 13, 2010, demonstrate that Hotchkin and Fay have the necessary property rights to develop and operate the project; and that the project would not use, occupy, or encroach on any land owned by Ms. Rosshandler.<sup>14</sup> Further, Article 15 of this order states that the exemptee must maintain sufficient property rights in the land necessary to develop, operate, and maintain the project.

#### Public Access

20. Hotchkin and Fay currently allow public access to the project area for the purpose of recreation (i.e., fishing and swimming) and propose to continue to do so. Hotchkin and Fay's proposal would adequately provide for recreational use in the project area. To ensure access for recreation, Article 18 requires the exemptee to allow public access to the project lands for utilization of public resources, subject to reasonable safety and liability limitations.

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<sup>12</sup> 16 U.S.C. §§ 797(e) and 803(a)(1) (2006). See *City of Centralia v. FERC*, 799 F.2d 475, 483-84 (9<sup>th</sup> Cir. 1986).

<sup>13</sup> See 18 C.F.R. § 4.31(c)(2)(ii) (2010). See also 18 C.F.R. § 4.107(a) (2010).

<sup>14</sup> An unsubstantiated challenge to ownership will not defeat an exemption application if the Commission's inspection of the application reveals that the applicant possesses the necessary rights. See *City of Centralia v. FERC*, 799 F.2d 475, 485 (9<sup>th</sup> Cir. 1986); *Hydro Development Group, Inc.*, 19 FERC ¶ 61,229, at 61,450 (1982).

## ADMINISTRATIVE PROVISIONS

21. All projects exempted from licensing under Part I of the FPA are subject to standard terms and conditions. These terms and conditions are included as standard articles 1 through 9. We include special articles 10 through 17, which provide for administration of the license exemption and dam safety.

### 1. Annual Charges

22. The Commission collects annual charges from the exemptee for the administration of its hydropower program.<sup>15</sup> As explained in Article 10, under the regulations currently in effect, projects with an installed capacity of 1,500 kW or less, like this project, are not assessed administrative annual charges.

### 2. Start of Construction

23. Standard Article 3 provides that the Commission may revoke the exemption if any proposed construction of the generating facilities has not begun in two years or is not completed within four years of the date this exemption is issued. I am including Article 11, which states that the Commission may also revoke the exemption if any construction of other project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.

### 3. Exhibit F and G Drawings

24. The Commission requires the exemptee to file sets of approved project drawings (Exhibits F and G) on microfilm and in electronic file format. The Exhibit F drawings filed on December 23, 2009 and the revised Exhibit G drawing filed on January 13, 2010, are approved and made part of this exemption. Article 12 requires the filing of the Exhibit F and G drawings in aperture card and electronic file format. The Exhibit F and G drawings being filed must meet the requirements of sections 4.39 and 4.41 of the Commission's regulations.<sup>16</sup>

### 4. Operation and Maintenance

25. Ensuring that the exempted project is fit for use is an important public interest function of the Commission. I am including Article 13, which states that if the exemptee

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<sup>15</sup> See 18 C.F.R. § 11.1(b)(2) (2010).

<sup>16</sup> 18 C.F.R. §§ 4.39 and 4.41(g)-(h) (2010).

causes or allows essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, the Commission may revoke the exemption.

## **5. Exemptee Liability**

26. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for “damages occasioned to the property of others by the construction, maintenance, or operation of the project works. . . .”<sup>17</sup> To clarify that the exemptee would be similarly liable, I am including Article 14, which states that the exemptee is liable for damages to the property of others.

## **6. Property Rights**

27. Pursuant to 18 C.F.R. § 4.31(c)(2)(ii), an applicant for exemption is required to demonstrate that, at the time it files its exemption application, it has sufficient rights to any non-federal land and facilities required for the construction and operation of the project. However, because an exemption is issued in perpetuity, I am including Article 15, which reserves the Commission’s authority to revoke the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

## **7. Consultation on Resource Plans**

28. The section 30(c) conditions (Appendix A of this order) require that plans be prepared for debris disposal and erosion control. However, the conditions do not require the plans to be filed with the Commission for approval. Therefore, Article 17(a) requires the exemptee to file the plans with the Commission for approval. In addition, Article 17(b) requires the exemptee to file documentation of completion or notification when certain events occur.

## **8. Project Safety**

29. To ensure that the exemptee has constructed and is operating a safe and adequate project, I am including Article 16 which will require the exemptee to provide the New York Regional Office, for its review and approval, as-built drawings, within 90 days of completion of project construction. As stated above, I am also including Article 17, which requires the exemptee to submit for Commission approval all plans or reports required under Vermont ANR’s conditions.

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<sup>17</sup> 16 U.S.C. § 803(c) (2006).

The Director orders:

(A) Effective the date this order is issued, the Alder Brook Mini-Hydro Project is exempted from Part I of the FPA, subject to the conditions submitted by the Vermont Agency of Natural Resources, under section 30(c) of the FPA, as those conditions are set forth in Appendix A to this order and the articles specified below.

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in those lands, enclosed by the project boundary shown by the Exhibit G drawing filed January 13, 2010:

<u>Exhibit G Map</u>	<u>FERC No. 13565-</u>	<u>Description</u>
G-1	7	Project Boundary around all project facilities.

(2) The following project works: (a) a new 4-foot-wide by 8-foot-long by 3-foot-high drop inlet structure to be located below the Town of Richford's culvert on Alder Brook; (b) a new 12-inch-diameter, 250-foot-long penstock; (c) a new shed containing one turbine generating unit with total installed generating capacity of 7.0 kilowatts (kW); (d) a new 50-foot-long tailrace; and (e) a new 170-foot-long transmission line from the shed to an existing barn.

The project works generally described above are more specifically shown and described by those portions of exhibits A and F shown below:

Exhibit A: Exhibit A, pages 1 to 3, filed on August 4, 2009.

Exhibit F: The following Exhibit F drawings filed on December 23, 2009:

<u>Exhibit F Drawings</u>	<u>FERC No. 13565-</u>	<u>Description</u>
F-1	1	Drop Inlet Front and Profile
F-2	2	Drop Inlet Side Profile and Elevation
F-3	3	Drop Inlet 3 Dimensional Cross Section
F-4	4	Support for Drop Inlet
F-5	5	Side Elevation
F-6	6	Cross Section of Turbine Shed and Tailrace

(3) All of the structures, fixtures, equipment, or facilities used to operate or

maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibits A, F, and G described above are approved and made part of the exemption.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled, "Standard Terms and Conditions of Exemption from Licensing" (attached), and the following additional articles:

Article 10. *Administrative Annual Charges.* The exemptee shall pay the United States annual charges, effective as of the start of project construction, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of the Commission's hydropower program. The authorized installed capacity for that purpose is 7 kilowatts. Under the regulations currently in effect, projects with an authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed annual charges.

Article 11. *Start of Construction.* The Commission may revoke this exemption if actual construction of any proposed or required project works has not begun within two years or has not been completed within four years from the issuance date of the exemption. 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 for the same project within two years of the revocation.

Article 12. *Exhibit Drawings.* Within 45 days of the date of issuance of this exemption, the exemptee shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-13565-1 through P-13565-7) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, G-1, etc.), Drawing Title, and date of this exemption shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office.

(b) The exemptee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office. Exhibit F drawings must be segregated from other project exhibits and identified as (CEII) material under 18 C.F.R. § 388.113(c). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this exemption, and file extension in the following format [P-13565-7, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file

FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4

RESOLUTION – 300 dpi desired, (200 dpi min)

DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)

FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS geo-referencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor.

(c) The exemptee shall file two separate sets of the project boundary data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. A single electronic boundary polygon data file is required for the project boundary. Depending on the electronic file format, the polygon and point data can be included in a single file with multiple layers. The geo-referenced electronic boundary data file must be positionally accurate to  $\pm 40$  feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this exemption, and file extension in the following format [P-13565, boundary polygon/or point data, MM-DD-YYYY.SHP]. The data must be accompanied by a separate text file describing the spatial reference for the geo-referenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc.), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this exemption, and file extension in the following format [P-13565, project boundary metadata, MM-DD-YYYY.TXT].

Article 13. Operation and Maintenance. The Commission may revoke this exemption if essential project property is removed or destroyed or becomes unfit for use without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if the exemptee refuses or neglects to comply with the terms of the exemption and the lawful orders of the Commission.

Article 14. Liability. The exemptee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under this exemption and in no event shall the United States be liable therefore.

Article 15. Property Rights. The Commission reserves the right to require the exemptee to gain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may revoke this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

Article 16. As-built Drawings. Within 90 days of completion of any construction, the exemptee shall file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and show those project facilities as built. Courtesy copies shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer; the Director of D2SI; and the Director of the Division of Hydropower Administration and Compliance.

Article 17. Commission Approval and Reporting.

(a) Requirement to File Plans or Reports for Commission Approval

Various measures in the Vermont Agency of Natural Resources (Vermont ANR) conditions issued pursuant to section 30(c) of the Federal Power Act (Appendix A) require the exemptee to prepare plans or reports in consultation with state and federal agencies to implement specific measures without prior Commission review and approval. Each such plan shall also be submitted to the Commission for approval. The exemptee shall not implement these plans unless notified by the Commission that the plans are approved. The plans are listed below.

Condition Letter	Plan Name	Date Due to Commission
4	Debris Disposal	At least 60 days prior to the commencement of project operation
7	Erosion Control Plan*	At least 60 days prior to beginning any construction activities

\* Any erosion control measures proposed by Vermont ANR shall be included with this plan.

The exemptee shall submit to the Commission documentation of consultation with the Vermont ANR and U.S. Fish and Wildlife Service, copies of comments and recommendations by consulted entities made in connection with each plan and a description of how each plan accommodates the comments and recommendations. The exemptee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the exemptee does not adopt a recommendation, the filing shall include the exemptee's reasons, based on project-specific information. The Commission reserves the right to make changes to any plan or recommendation submitted. Upon Commission approval, each plan or recommended measure becomes a requirement of the exemption, and the exemptee shall implement the plan or measure.

(b) Requirement to File Notification with the Commission

The exemptee shall also file with the Commission notification of the following activities.

Condition Letter	Exemption Requirement	Date Due to Commission
2	Intake Design	At least 60 days prior to beginning any construction activities
3	Intake Monitoring Log	Upon request

Article 18. Recreation Access. The exemptee shall allow public access to the project lands for utilization of public resources, subject to reasonable safety and liability limitations. The exemptee may reserve for public access such portions of the project as may be necessary for the protection of life, health, and property. Access may be restricted without prior approval when an immediate threat to public safety exists. If the restriction is to be long term or permanent, the exemptee must request approval from the Commission within 14 days of the restriction of access. Prior to requesting Commission approval, the exemptee shall consult with the Vermont Department of Environmental Conservation regarding any limitations of access to State waters.

(E) The exemptee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2010). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Jeff C. Wright  
Director  
Office of Energy Projects

## FEDERAL ENERGY REGULATORY COMMISSION

## Section 4.106 of the Commission's regulations, 18 C.F.R. § 4.106 (2010) - 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:

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.

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 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.

Article 3. The Commission may revoke this exemption if actual construction of 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.

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.

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 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.

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.

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.

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 C.F.R. § 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 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. 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 C.F.R. 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.

Article 9. 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 prior exemption holder must inform the Commission of the identity and address of the transferee.

## APPENDIX A

## Conditions filed by the Vermont Agency of Natural Resources Pursuant to section 30(c) of the Federal Power Act, for the exemption for Project No. 13565-000

Conditions of Exemption: The Agency of Natural Resources (VANR) concludes that the following conditions are necessary to prevent loss or damage to fish and wildlife resources; to protect the quality of the water resource; to avoid or mitigate adverse environmental impacts; and to better conserve and develop the water resources of the region to serve the public good:

1. The facility shall be operated in a true run-of-the-river mode. When the facility is not operating, all flows shall be released to the bypass. A flow of 1.7 cfs, or inflow if less, shall be released into the bypass at all times.
2. Prior to construction, the exemptee shall develop a final intake design that will ensure compliance with the bypass flow requirement and that will not impede the downstream movement of fish. The design shall be developed in consultation with the Vermont Agency of Natural Resources (VANR) and the U.S. Fish and Wildlife Service. The design shall be subject to VANR review and approval. VANR reserves the right of review and approval of any material changes made to the design over the life of the project.
3. On each day when the project operates, the exemptee shall inspect the intake structure and culvert for evidence of debris or ice accumulation and remove debris or ice as necessary to ensure that the bypass flow requirement is met. The exemptee shall maintain a log of daily inspection and maintenance activities and provide the records to VANR upon request.
4. The exemptee shall develop a plan for proper disposal of debris associated with project operation, including bedload and other debris deposited in and around the intake structure. The plan shall be developed in consultation with VANR, and a draft shall be submitted to VANR for review at least 60 days prior to commencement of project operation. The final plan shall be subject to VANR approval. VANR reserves the right of review and approval of any material changes made to the plan at any time.
5. Any proposals for project maintenance or repair work shall be filed with VANR for prior review and approval, if said work may have a material adverse effect on water quality or cause less-than-full support of a designated use of State waters.
6. If any modifications are made to the Wightman Hill Road Culvert, the exemptee shall submit to VANR an analysis of the resulting flow path and its effect on compliance with the bypass flow requirement. The analysis shall include, if necessary, a plan to modify the intake so that bypass flow requirements are met. The plan for modifications shall be subject to review and approval by VANR prior to its implementation.

7. Upon a written request by VANR, the exemptee shall design and implement erosion control measures as necessary to address erosion occurring as a result of project development or operation. Any work that exceeds minor maintenance shall be subject to prior approval by VANR.
8. The exemptee must notify VANR within two weeks of project completion and commencement of operation.
9. The exemptee shall provide VANR with a set of as-built plans for the record within one year of the completion of construction.
10. The exemptee shall allow VANR to inspect the project area at any time to monitor compliance with certification conditions.
11. Any change to the project that would have a significant or material effect on the findings, conclusions or conditions of the exemption, including project operation, must be submitted to VANR for prior review and written approval where appropriate and authorized by law and only as related to the change proposed.
12. If the project does not generate energy for a period of one year, VANR may require the exemptee to remove all civil works and restore the site to its pre-project condition. Infrastructure removal will be subject to a plan and schedule developed by the exemptee. The final plan shall be subject to VANR approval.
13. VANR reserves the right to alter or amend this certification over the life of the project when such action is necessary to assure compliance with Vermont Water Quality Standards and to respond to any changes in classification or management objectives for the affected waters.

## Appendix B

## Water Quality Certification

The Vermont Department of Environmental Conservation has examined the project application and bases its decision in this certification upon an evaluation of the information contained therein that is relevant to the Department's responsibilities under Section 401 of the federal Clean Water Act and has examined other pertinent information deemed relevant by the Department, sufficient to permit the Department to certify that there is reasonable assurance that operation and maintenance of the Alder Brook Mini Hydro Project as proposed by the applicant and in accordance with the following conditions will not cause a violation of Vermont Water Quality Standards and will be in compliance with sections 301, 302, 303, 306, and 307 of the Federal Clean Water Act, 33 U.S.C. §1251 et seq., as amended, and other appropriate requirements of state law.

- A. Compliance with Conditions.** The applicant shall construct, operate and maintain this project consistent with the findings and conditions of this certification, where those findings and conditions relate to protection of water quality and support of designated and existing uses under Vermont Water Quality Standards and other appropriate requirements of state law.
- B. Flow and Water Level Management.** The facility shall be operated in a true run-of-the river mode. When the facility is not operating, all flows shall be released to the bypass. A flow of 1.7 cfs, or inflow if less, shall be released into the bypass at all times.
- C. Intake Design.** Prior to construction, the applicant shall develop a final intake design that will ensure compliance with the bypass flow requirement and that will not impede the downstream movement of fish. The design shall be developed in consultation with the Department, the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The design shall be subject to Department review and approval. The Department reserves the right of review and approval of any material changes made to the design over the life of the project.
- D. Monitoring.** On each day when the project operates, the applicant shall inspect the intake structure and culvert for evidence of debris or ice accumulation and remove debris or ice as necessary to ensure that the bypass flow requirement is met. The applicant shall maintain a log of daily inspection and maintenance activities and provide the records to the Department upon request.
- E. Debris Disposal.** The applicant shall develop a plan for proper disposal of debris associated with project operation, including bedload and other debris deposited in and around the intake structure. The plan shall be developed in consultation with the Department, and a draft shall be submitted to the Department for review at least 60 days

prior to commencement of project operation. The final plan shall be subject to Department approval. The Department reserves the right of review and approval of any material changes made to the plan at any time.

**F. Maintenance and Repair Work.** Any proposals for project maintenance or repair work shall be filed with the Department for prior review and approval, if said work may have a material adverse effect on water quality or cause less-than-full support of a designated use of State waters.

**G. Wightman Hill Road Culvert Modifications.** If any modifications are made to the Wightman Hill Road Culvert, the applicant shall submit to the Department an analysis of the resulting flow path and its effect on compliance with the bypass flow requirement. The analysis shall include, if necessary, a plan to modify the intake so that bypass flow requirements are met. The plan for modifications shall be subject to review and approval by the Department prior to its implementation.

**H. Public Access.** The applicant shall allow public access to the project lands for utilization of public resources, subject to reasonable safety and liability limitations. Any proposed limitations of access to State waters to be imposed by the applicant shall first be subject to written approval by the Department. Access may be restricted without prior approval when an immediate threat to public safety exists. In those cases, the applicant shall so notify the Department and shall file a request for, approval, if the restriction is to be permanent or long term, within 14 days of the restriction of access.

**I. Erosion Control.** Upon a written request by the Department, the applicant shall design and implement erosion control measures as necessary to address erosion occurring as a result of project development or operation. Any work that exceeds minor maintenance shall be subject to prior approval by the Department and FERC.

**J. Commencement of Operation.** The applicant shall notify the Department within two weeks of project completion and commencement of operation.

**K. Record Drawings.** The applicant shall provide the Department with a set of as-built plans for the record within one year of the completion of construction.

**L. Compliance Inspection by Department.** The applicant shall allow the Department to inspect the project area at any time to monitor compliance with certification conditions.

**M. Posting of Certification.** A copy of this certification shall be prominently posted within the project powerhouse.

**N. Approval of Project Changes.** Any change to the project that would have a significant or material effect on the findings, conclusions or conditions of this

certification, including project operation, must be submitted to the Department for prior review and written approval where appropriate and authorized by law and only as related to the change proposed.

**O. Reopening of Exemption.** The Department may request, at any time, that FERC reopen FERC's exemption for this project to consider modifications necessary to assure compliance with Vermont Water Quality Standards.

**P. Project Decommissioning.** If the project does not generate energy for a period of one year, the Department may require the applicant to remove all civil works and restore the site to its pre-project condition. Infrastructure removal will be subject to a plan and schedule developed by the applicant. The final plan shall be subject to Department approval.

**Q. Continuing Jurisdiction.** The Department reserves the right to alter or amend this certification over the life of the project when such action is necessary to assure compliance with Vermont Water Quality Standards and to respond to any changes in classification or management objectives for the affected waters.

Document Content(s)

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