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EXEMPTION OF SMALL HYDROELECTRIC POWER PROJECTS

GOVERNMENT

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HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES EIGHTY-SEVENTH CONGRESS SECOND SESSION

ON

H.R. 6951

A BILL TO AUTHORIZE THE FEDERAL POWER COMMISSION TO EXEMPT SMALL HYDROELECTRIC PROJECTS FROM CERTAIN OF THE LICENSING PROVISIONS OF THE FEDERAL POWER ACT

S. 1606

AN ACT TO AUTHORIZE THE FEDERAL POWER COMMISSION TO EXEMPT SMALL HYDROELECTRIC PROJECTS FROM CERTAIN OF THE LICENSING PROVISIONS OF THE FEDERAL POWER ACT

JUNE 14, 1962

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Committee on Interstate and Foreign Commerce



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Committee on Interstate and Foreign Commerce



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EXEMPTION OF SMALL HYDROELECTRIC POWER PROJECTS

THURSDAY, JUNE 14, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS
AND POWER OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1333, New House Office Building, Hon. Walter Rogers of Texas presiding.

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for the consideration of pending business.

The bills under consideration this morning are H.R. 6951 and S. 1606. These are identical bills amending section 10 of the Federal Power Act to increase from 100 to 2,000 horsepower the size of small hydroelectric projects which may be exempted from certain of the licensing provisions of the act. The amendment proposed in these bills is sponsored by the Federal Power Commission and has been before Congress in some form or other during the past 15 years.

Without objection the bill H.R. 6951 will be considered and will be printed in the record at this point, the proper reference being made to S. 1606.

(H.R. 6951 follows:)

[H.R. 6951, 87th Cong., 1st sess.]

A BILL To authorize the Federal Power Commission to exempt small hydroelectric projects from certain of the licensing provisions of the Federal Power Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (b), (e), and (i) of section 10 of the Federal Power Act, as amended (16 U.S.C. 803(b), 803(e), 803(i)), is amended by striking out the words "one hundred horsepower" in each such subsection and inserting in lieu thereof the words "two thousand horsepower".

Mr. ROGERS of Texas. The Bureau of the Budget report will be included immediately following the legislation in the record.

(The Bureau of the Budget report is as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 13, 1962.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of May 15, 1961, for the views of the Bureau of the Budget on H. R. 6951, a bill to authorize the Federal Power Commission to exempt small hydroelectric projects from certain of the licensing provisions of the Federal Power Act.

The Federal Power Commission now has discretionary authority to waive certain conditions, provisions, and requirements of the Federal Power Act for

2 EXEMPTION OF SMALL HYDROELECTRIC POWER PROJECTS

hydroelectric projects of less than 100 horsepower installed capacity. This bill would amend the act to give the Commission such authority for projects of less than 2,000 horsepower.

Enactment of the bill would reduce the burden of regulatory action on minor projects that are often of no consequence for some of the purposes of the Federal Power Act. Consequently, the Bureau of the Budget would favor enactment of this legislation.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Mr. ROGERS of Texas. Our first witness this morning is Hon. Joseph C. Swidler, Chairman of the Federal Power Commission.

Mr. Swidler, we are happy to have you before us this morning.

STATEMENT OF HON. JOSEPH C. SWIDLER, CHAIRMAN, FEDERAL POWER COMMISSION

Mr. SWIDLER. Thank you, Mr. Chairman. I have a brief statement I would like to read and then I will answer any questions.

Mr. ROGERS of Texas. You may proceed, Mr. Swidler.

Mr. SWIDLER. As this committee is well aware, the Commission's oldest function is that of licensing hydroelectric developments on the waters of the United States over which Congress has jurisdiction. The projects licensed vary in size from just a few horsepower to over 2 million. The original Federal Water Power Act in 1920 recognized that all of the requirements for licensing a large hydroelectric project were not necessary for small projects. The dividing line between a major and a minor project was drawn at 100 horsepower in 1920. The Commission was given authority in section 10(i) of the act to waive all of the licensing requirements for projects of not more than 100 horsepower except the 50-year license period and annual charges for the use of Indian tribal lands. Section 10(b) of the act permits the Commission also to waive approval of plans for changes in a project of not more than 100 horsepower and section 10(e) permits waiver of the annual charges for such projects except those on Indian tribal lands.

The bill which is the subject of this hearing would simply change the dividing line between a major project and a minor project from 100 horsepower to 2,000 horsepower.

The need for this legislation is clear. The dividing line of 100 horsepower made sense in 1920 when plants of that size were a part of many utility systems. However, today, when power companies are adding individual units as large as 1 million kilowatts of capacity to their systems, plants of 2,000 horsepower (1,500 kilowatts) or less are not an important part of any power system and thus have a negligible impact on the cost of power to consumers. In fact, many plants of 1,500 kilowatts or less are being retired from service because increased operating costs are making them uneconomical to operate.

The amendment we propose today would permit the Commission to waive the licensing requirements which are only necessary for projects that have a real bearing on the cost of electricity to consumers. The amendment would permit us to waive the detailed requirements relating to the determination of the original cost of the project, the annual charges, the establishment of amortization reserves and depreciation reserves, and other accounting matters which are unnecessary for these small plants, which are expensive for the

licensees to comply with, and expensive for the Commission to administer. It is only necessary for the Commission to have sufficient information to insure the safety of these small structures and to make sure that they are compatible with the comprehensive development of the resources of the stream in which they exist, including, I might say, Mr. Chairman, the fishery resources of the stream.

The amendment will permit us to obtain the information we need to perform these essential functions but will eliminate the necessity of obtaining elaborate information which is not needed for these small projects.

As of the first of 1962 there were 68 plants between 100 horsepower and 2,000 horsepower which are under Commission license and would therefore be affected by this amendment. However, an additional 700 plants of comparable size are still unlicensed. The Commission is engaged in a vigorous program of bringing existing unlicensed projects, large and small, under the licensing provisions of the Federal Power Act. This amendment will permit the Commission to concentrate on the major projects where regulation will be meaningful to utility consumers and not be distracted by the necessity of requiring elaborate data from minor projects of less than 1,500 kilowatts.

Our staff estimates that a minor license requires only 20 percent of the man-hours required for processing an uncontested major project application. Similar savings, of course, result to the applicant because the data they are required to supply are only a fraction of that required for a major project.

The Commission has recommended this legislation since 1954 and it has now passed the Senate. The amendment will be beneficial to the Commission and to the owners of small projects and will in no way sacrifice the Commission's control over these projects in the public interest. The Commission therefore strongly recommends its enactment.

A predecessor bill, S. 2263 in the 86th Congress, was the subject of hearings in the Senate. The bill at that time was uncontested and at the hearings, in addition to endorsements by the Government agencies, it was endorsed by the National Association of Railroad and Utility Commissioners, and by the Northwest Public Power Association.

Mr. ROGERS of Texas. Does that conclude your statement?

Mr. SWIDLER. Yes, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Moss, do you have any statements?

Mr. MOSS. Not at the moment, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Sibal?

Mr. SIBAL. No, sir.

Mr. ROGERS of Texas. Mr. Thomson?

Mr. THOMSON. No, sir.

Mr. ROGERS of Texas. With regard to your statement about 700 plants of comparable size that are still unlicensed, to get my own mind clear on that, why are they unlicensed?

Mr. SWIDLER. They are unlicensed for several reasons. One of them is that for a long time there was uncertainty as to whether they were required to have a license because these projects were either on navigable streams or streams which affected navigation. There was uncertainty as to the facts, which were not clear in each situation. There was also uncertainty as to the standards that were used in

determining navigability. It wasn't until 1943, for example, that the Commission ruled that a history of logging on a stream was a basis for determining navigability.

Not until just this year did the Commission formulate a standard as to how these projects, many or perhaps most of which were constructed before 1935 when license requirements became mandatory, should be treated for licensing purposes.

Another difficulty, frankly, Mr. Chairman, is the complexity of the applications which are required. A lot of these projects are owned either by very small power companies, or in many cases by resort owners, industries, and owners of one kind or another which have trouble grappling either with legal problems or with the requirements for filling out application forms.

The Commission, since deciding how these unlicensed projects should be treated for licensing purposes in the *Androscoggin* decision, issued April 25, 1962, is initiating a program to bring all unlicensed projects for which licenses are required within the act. It would facilitate our efforts to straighten out this anomalous situation where there are 700 projects in effect operating in violation of the law. If we could have this amendment it would make it much more feasible to ask these people to come in and make it possible for them to come in without a great deal of expense, frequently disproportionate to the importance of the transaction.

With your consent, Mr. Chairman, I should like to have put into the record the Commission's recent opinion and order in the *Androscoggin* licensing case in which the standards which we would apply as to terms of license are set forth, and the history of licensing problems is also described.

Mr. ROGERS of Texas. Does that opinion, Mr. Swidler, have to do with the question of navigability too?

Mr. SWIDLER. It has to do with the question of the standards of determining navigability, yes, sir.

(The information mentioned follows herewith:)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward

Public Service Company of New Hampshire. Project No. 2288

OPINION No. 357

OPINION AND ORDER ISSUING LICENSE (MAJOR)

(Issued April 25, 1962)

Ross: Commissioner.

On December 27, 1960, Public Service Company of New Hampshire (Applicant) filed application for a license under Section 4(e) of the Federal Power Act (hereinafter referred to as "the Act") for its constructed Project No. 2288, known as the Gorham Project, located on the Androscoggin River in the town of Gorham, Coos County, New Hampshire. The application recites that the first generating plant and original dam at the Gorham site were constructed in 1894. The dam was rebuilt in 1903, 1927, and 1928. Two 400-kw generating units were installed in 1917 and the turbines replaced in 1937. Two 675-kw generating units were installed in 1923. The three sections of the powerhouse were constructed in 1909, 1917, and 1923, respectively, and have remained substantially unchanged since 1923. These early installations and changes were made by predecessors of Applicant, which acquired the facilities on December 12, 1943. In 1958 and 1959,

Applicant removed the old timber-cribbed dam and built a new one, also timber-cribbed.

In its order issued July 24, 1958,¹ the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis for this finding was that the Androscoggin is presently, and for more than a century has been, used for the transportation of logs and other forest products by water.

This application raises again a question which has perplexed the Commission for many years, i.e., the appropriate license term to be accorded a project constructed prior to the 1935 amendments to the Act² and operated thereafter in navigable waters without requisite federal authorization. The resolution of this question calls for the exercise of sound discretion, for while Section 6 of the Act fixes a 50-year ceiling on license terms, it evidently contemplates that the Commission may prescribe a shorter period if circumstances so warrant. After evaluating all relevant factors, we propose to issue Applicant a license effective as of July 1, 1958, and terminating December 31, 1993. Since the reasons which lead us to prescribe the above license term will also guide the action we shall take upon pending and future applications involving other pre-1935 projects, it is important that those reasons be fully explained.

Section 23(b) of the Act declares it unlawful to construct, *operate* or *maintain* hydroelectric works in navigable waters of the United States except under an FPC license or appropriate pre-1920 federal permit. This provision, one of several amendments enacted as part of the Public Utilities Act of 1935,³ was intended as a concise restatement of a prohibition deemed by the draftsmen to be embodied already in Section 9 of the River and Harbor Act of 1899, when read together with Section 4(d) of the Federal Water Power Act of 1920.⁴ While the relationship between the 1899 and 1920 statutes was not explicitly defined in either act, any uncertainty there might have been as to the legal status of an unlicensed power project occupying a navigable stream vanished with the adoption of Section 23(b) in 1935. From that point on, if not earlier, a license from this Commission was clearly mandatory. Unfortunately, the Commission has lacked sufficient funds or man power to enforce general compliance with the statute, and as a result a large number of projects, including the one involved in this application, have continued to operate without licenses. If a company whose project has enjoyed three or more decades of unregulated operation were granted a full 50-year license term from date of issuance, it would reap a substantial windfall from its prolonged delay in filing. Equally important, it would obtain an unmerited advantage over those companies which complied at an earlier date, inasmuch as projects of the latter will be subject to federal recapture well within the next 50 years. To the extent feasible, it is the burden of a sound licensing policy to minimize such inequities.

The above considerations might well justify the issuance of a license effective as of August 26, 1935 (or even earlier) and terminating August 26, 1985, as well as the imposition of annual charges for that entire period. We are persuaded, however, to allow for the fact that the concept of navigability has evolved only gradually and did not attain its present dimensions until 1943. Prior to that date, it might have been reasonable for a company to assume that the Commission would not assert jurisdiction over a project situated in a stream in which virtually the sole traffic had been the driving of logs. From 1920 to 1930, the Commission disclaimed jurisdiction in a majority of the cases in which declarations of intention were submitted to it. In 22 instances, rivers—many of which, including the

¹ New Hampshire Water Resources Board, Docket No. E-6807, 20 FPC 99-101.

² The construction of any project works *subsequent* to the enactment of Section 23(b) of the Act in 1935 without the concurrent filing of a license application or declaration of intention plainly violates that section. There is little room for dispute that licenses for such projects should be made effective not later than the date of construction of such project works.

³ By Title II of the Public Utility Act of 1935, the original Federal Water Power Act of 1920, 41 Stat. 1063, was made Part I of the Federal Power Act and Parts II and III were added.

⁴ H. Rept. No. 1318, House Committee on Interstate and Foreign Commerce 26, 74th Cong., 1st sess. (1935); S. Rept. No. 2796, Senate Committee on Interstate and Foreign Commerce 47, 74th Cong., 1st sess. (1935).

Section 9 of the River and Harbor Act of 1899, 33 U.S.C. § 401, declared it unlawful to construct certain kinds of structures, including dams, over any navigable water of the United States without the consent of Congress and the approval of plans by the Chief of Engineers and the Secretary of War. Section 4(d) of the Federal Water Power Act, 41 Stat. 1065, the forerunner of the present Section 4(e) of the Federal Power Act, authorized the Commission to issue licenses for hydroelectric project works situated on navigable waters of the United States, provided that no license affecting navigable capacity should be issued until plans for the contemplated structures had been approved by the Chief of Engineers and the Secretary of War.

Androscoggin, have subsequently been determined navigable—were found not to be navigable at project site even though they were known to have been used for the transportation of forest products. During that period the Commission apparently employed an extremely pragmatic criterion, namely, whether or not any actual or probable navigation was in fact likely to be endangered by the proposed hydroelectric project. From 1931 until 1942, the Commission accepted jurisdiction in 14 of the 39 declaration-of-intention cases which it acted upon but in only one such case made a finding of navigability at site. In 1940, the Supreme Court held in *United States v. Appalachian Power Co.*, 311 U.S. 377, that a stretch of river may be navigable in law even though improvements may be necessary to make it so in fact. While the *Appalachian* case was a major landmark in the development of the Commission's jurisdiction, it did not deal with a river which had been used chiefly for logging operations. In 1943, however, three Commission decisions based findings of navigability primarily upon evidence of log driving and rafting.⁵ One of these decisions, involving the Tomahawk project on the Wisconsin River, was affirmed in 1945 by the Court of Appeals for the Seventh Circuit,⁶ which concluded (at 147 F. 2d 748) that " * * * the evidence as shown by this record, establishes a long, regular and commercially successful use of the stream for the transportation of logs and rafts, and forms a reasonable basis in law for the conclusion that the Wisconsin River was and is a navigable water of the United States."

At least as early as the 1943 decisions, the owner of every project located in a stream capable of being used for the transportation of logs was placed on notice of the perils of further unlicensed operation. Such perils must have been particularly apparent to the present Applicant, for logging has been a continuing and conspicuous activity on the Androscoggin down to the present day. For the reasons stated, it is in our view appropriate that the license tendered herein be for a term ending December 31, 1993.

The same reasoning which commends the adoption of December 31, 1993, as a termination date would also warrant us in making the license effective as of January 1, 1944. Were we to do so, Applicant would be liable for annual charges commencing on such effective date and would be required as of January 1, 1964, to establish the amortization reserves provided for in Section 10(d) of the Act. While such retrospective treatment would be a legitimate exercise of our discretion, we are satisfied that under present circumstances the advancement of the termination date in the manner above described gives adequate weight to the unlicensed history of the Gorham project prior to July 1, 1958. Our discretion, however, should not be so exercised as to ignore either of the more flagrant breaches of statutory duty committed by Applicant in 1958 when it (a) failed to apply for a license even after our determination of jurisdiction over the Androscoggin in Docket No. E-6807; and (b) replaced its dam without filing either a license application or a declaration of intention, one or the other of which submission was required by Section 23(b) whether the Androscoggin was navigable or not. In the latter connection, it should be pointed out that if Applicant, subsequent to 1935, had built an entirely new project without securing the requisite authorization, we would not hesitate to adopt the date of such construction as the effective date of its license. We see no reason for different treatment merely because the unauthorized construction took the form of a replacement of an existing facility. Since the application now before us does not indicate the precise date upon which the construction was commenced, we are content to make the license effective as of July 1, 1958, the first day of the month in which we determined jurisdiction in Docket No. E-6807. In future cases which do not involve a prior finding of navigability as to the subject river, an unauthorized construction subsequent to 1935 or other unusual circumstances (e.g., the incurrence by the Commission of substantial administrative, investigative, or litigative expenses directly attributable to the applicant's recalcitrance) our policy will be to tender licenses effective as of the beginning of the month in which the present order is issued, i.e., April 1, 1962. Our reason for not making future licenses effective as of the date of their issuance is that to do so might encourage still further delay in filing the license applications which the law requires.

In deciding not to impose retrospective charges for the period prior to July 1, 1958, we have given some weight to the possibility that imposition of such charges might seriously deter potential applicants from coming forward to comply with the statute. If, however, our experience during the next twelve months indicates

⁵ *City of Spooner, Wisconsin*, 3 FPC 986 (April 20, 1943) *Wisconsin Michigan Power Company*, 3 FPC 449 (July 27, 1943); *Wisconsin Public Service Corporation (Tomahawk)*, 3 FPC 495 (July 30, 1943).

⁶ *Wisconsin Public Service Corporation v. F.P.C.*, 147 F. 2d 743 (7th Cir. 1945), cert. den., 325 U.S. 880.

that voluntary cooperation will in any event not be forthcoming, we may well wish to reconsider the position we now take on the question of backdating.

In prescribing a license terms which takes into account the prior unlicensed operation of the project, we revive a policy repeatedly employed by the Commission from 1942 until 1957. During that period it was the Commission's practice to issue licenses effective as of January 1, 1938, and terminating either on June 30, 1970, the fiftieth anniversary of the adoption of the Federal Water Power Act of 1920,⁷ or, in the case of projects constructed later than 1920, 50 years from the date of such construction. January 1, 1938, was utilized as the effective date, from which annual charges were computed, in order that each licensee might bear its fair share of the expenses incurred by the Commission in connection with a general investigation of unlicensed projects which it had initiated by order of December 23, 1937. The basis for the prescribed termination dates was spelled out in the following passage from the Commission's opinion in *Metropolitan Edison Company*, 6 FPC 189 (1947) (at 191-192):

"The applicant also requests that the license cover a longer period than merely to June 30, 1970, as prescribed in the order of November 7, 1944. Except in cases where an earlier date is appropriate, June 30, 1970, is the termination date prescribed by the Commission since 1938 in all licenses for constructed projects operating without prior Federal authority. The York Haven plant was first placed in operation in 1904 and a license should have been obtained as early as 1920 when the original Power Act became law. The obligation to obtain a license rests upon the owner of each hydroelectric project operating without appropriate Federal authority in streams subject to the jurisdiction of Congress. If a company could willfully violate the law and fail to obtain a license for 26 years as this applicant has done, and then receive a 50-year license from the date on which it filed the application, its license would run for 26 years more than if it had obtained the requisite authority in 1920. To grant this request of the applicant would be to accord it a special privilege not accorded to companies which applied for appropriate authority at an earlier date and not contemplated by the Congress in the statute limiting the license period to 50 years. Hence in this, as in other similar cases, the Commission has limited the term to June 30, 1970, and the request should be refused."

While the specific termination and effective dates previously utilized by the Commission are no longer desirable, and while, as mentioned earlier, we do not find it necessary to decide whether a license should have been obtained as early as 1920, we do subscribe to the basic reasoning set forth in the paragraph quoted above.

In *Carolina Aluminum Company*, Project No. 2197 and *Carolina Power and Light Company*, Project No. 2206, 19 FPC 704, consolidated cases decided in 1958, the Commission discarded its long established backdating policy and repudiated the logic of *Metropolitan Edison*. The position it took is that the Act does not require any company to apply for a license until such time as an authoritative determination has been made that the stream in which the company operates is navigable. Pursuant to this view, the Commission adopted a policy of issuing 50 year licenses effective as of the date on which its jurisdiction over the river in question was determined.⁸ We find no basis, however, either in the language of the Act or its legislative history, for the conclusion that a river does not become "navigable," or a license necessary, until the Commission or some other authority has so ruled. On the contrary, Section 23(b) flatly proscribes the unlicensed operation of a power project in "navigable waters," and Section 3 (8), which defines "navigable waters," is addressed directly to the project owners no less than to the Commission. The effect of our present order is to abandon the premises enunciated in the *Carolina Aluminum* case and to return to what we conceive to be the sounder principles of *Metropolitan Edison*.

Reference should be made to two aspects of the present application which might perhaps be thought to except it from the general rules discussed above. First, the Androscoggin River, as noted earlier, was one of several streams originally determined by the Commission to be nonnavigable despite its use for logging purposes. It could be argued that by virtue of this determination, made in 1925

⁷ The Federal Water Power Act was approved on June 10, 1920, 41 Stat. 1063.

⁸ See, e.g., *Duke Power Company*, Project No. 2232, 20 FPC 360 (September 17, 1958); *Marathon Corporation*, Project No. 2212 (April 28, 1959), (unreported); *Wisconsin Valley Improvement Company*, Project No. 2113, 21 FPC 785 (May 28, 1959); *Tomahawk Power Company*, Project No. 2239, 22 FPC 1 (July 1, 1959); *Nekoosa-Edwards Paper Company*, Project No. 2255, 22 FPC 473 (September 1, 1959); *Consolidated Water Power Company*, Project No. 2256, 22 FPC 638 (October 5, 1959). This policy was foreshadowed by the Commission's decision in *Montana Power Company*, 15 FPC 1330 (April 23, 1956). That decision, however, which involved a proposed unit as well as existing structures, was based on the desirability of a uniform license term for all units of a single development rather than upon the doctrine expounded in *Carolina Aluminum*, and was not necessarily inconsistent with *Metropolitan Edison*.

in response to a declaration of intention by the Dummer Power Company,⁹ it was not unlawful for Applicant and its predecessors to operate the Gorham project without a license prior to the Commission's 1958 redetermination of the status of the river. We cannot accept that proposition. After 1943, the navigable character of the Androscoggin under then prevailing standards was no less obvious than that of other rivers which were similarly used for logging, but for which no prior determination had been made. Once it became clear that the narrow jurisdictional criteria formerly employed by the Commission had been superseded, Applicant had no greater right to rely upon the Dummer decision than upon any of the other decisions rendered on the basis of the outmoded criteria of the 1920's.¹⁰

The second noteworthy feature is that in 1958 and 1959, Applicant removed its old dam and built a new one. The contention might be made that, having invested additional funds in the Gorham project, Applicant should be granted a 50-year license term from the date of this partial reconstruction. In a case where construction results in the replacement of substantially all existing facilities and the material enlargement of the scale of the project, there might conceivably be some basis for prescribing a license term ending 50 years from the date of such improvements. The replacement of one timber-cribbed dam by another, however, does not warrant such treatment. Had the Gorham project already been under license as to the commencement of new construction, we would amend the license to include the new dam, not issue a new 50-year license for the entire project. It would be anomalous to establish a later termination date merely because Applicant had failed to comply with the statute.

While the license term prescribed in the instant case will serve as a model for future Commission action, it should not be viewed as a rigid formula to be followed mechanically in all cases involving pre-1935 projects on streams used for logging. There may well be circumstances in which the adoption of December 31, 1993, as a termination date or April 1, 1962, as an effective date would be unwise or inappropriate. Specifically, we decline to anticipate the approach we will take when presented with a license application embracing proposed as well as existing project works.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures insofar as the interests of navigation are concerned.

An Assistant Secretary of the Interior, in reporting on the application, recommended for inclusion in any license issued certain conditions in the interests of fish life.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New Hampshire 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 project.

(2) The project consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2288-1) General Map of Project Area; and

Exhibit K: (FPC Nos. 2288-2 and -3) Detail Map of Project Area.

(b) Project works consisting of: An "L" shaped dam comprised of three sections, (1) a rock-filled timbercrib section faced with steel piling and normally surmounted by flashboards, (2) a rock-filled timbercrib section faced with wood planking and normally surmounted by hinged wood flashboards, and (3) a concrete gravity section normally surmounted with flashboards and including a gated log sluice-way; a reservoir with normal water surface at elevation 773.52 feet (USGS datum); a canal used as a forebay extending to the powerhouse intake section; a powerhouse containing two 583-horsepower turbines connected to 400-kilowatt generators and two 1000-horsepower turbines connected to 675-kilowatt generators; a 2.4-KV transmission line extending to the Gorham substation; remote control operating equipment; and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed

⁹ Fifth Annual Report of the Federal Power Commission, p. 57.

¹⁰ We express no opinion as to how the matter might stand if Applicant, rather than the Dummer Power Company, had been the party which obtained the prior favorable determination. In the present case, at least, there is no question of collateral estoppel or res judicata.

part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings.

FPC No.	Sheet No.	Description
2288-4	1	Plan of dam.
2288-6	3	Dam—Plan of timber section.
2288-7	4	Dam—Sections of timber section.
2288-8	5	Generator floor plan—Unit No. 1 and 2.
2288-9	6	Powerhouse—Transverse and longitudinal sections—Units Nos. 1 and 2.
2288-10	7	Generator floor plan—Units Nos. 3 and 4.
2288-14	11	Powerhouse—Longitudinal section.
2288-15	12	Powerhouse—Transverse section.

Exhibit M: Sixteen typewritten pages, "General Description of Mechanical and Electrical Equipment", filed in the Commission December 27, 1960.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(3) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests have been received.

(4) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project is best adapted to a comprehensive plan for improving and developing the Androscoggin River for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The following described transmission and electrical facilities are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided:

- (a) the 2.4-KV line to the Gorham substation
- (b) the 2.4/33-KV transformers in the Gorham substation
- (c) the 2.4-KV switching facilities
- (d) switching facilities necessary to connect the 2.4/33-KV transformers to the 33-KV bus at the Gorham substation

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,900 horsepower.

(8) 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.

(9) The energy generated by the constructed project is distributed and sold by Applicant for public utility purposes.

(10) The exhibits designated and described in finding (2) above conform to the Commission's rules and regulations and should be approved as part of the license for the project as hereinafter provided.

The Commission orders:

(A) This license is issued to Public Service Company of New Hampshire under Section 4(e) of the Act for a period effective July 1, 1958, and terminating December 31, 1993, for the continued operation and maintenance of the Gorham Project No. 2288, located on the Androscoggin River, a navigable water of the United States, in the town of Gorham, Coos County, State of New Hampshire, subject to the terms and conditions of the Act which 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.

(B) This license is also subject to the terms and conditions set forth in Form L-3, December 15, 1953, entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" (17

FPC 385-389) which terms and conditions, designated as Articles 1 through 17, are attached hereto and made a part hereof, except for the last sentence of Article 11; and subject to the following special conditions set forth herein as additional articles:

Article 18. The Licensee shall pay to the United States the following annual charges, effective as of April 1, 1958:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (2,900 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made.

Article 19. 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 20. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of artificial propagation facilities and such other permanent fish facilities and protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided, that such modifications shall be reasonably consistent with the primary purpose of the project and not unduly impair the power value of the project, as may be prescribed hereafter by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the New Hampshire Fish and Game Department, after notice and opportunity for hearing and upon a finding based on substantial evidence that such modifications are necessary and desirable, and consistent with the provisions of the Act.

Article 21. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling 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, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling 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 handling facilities or to relieve the Licensee of any obligation under this license.

Article 22. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 23. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project with such other power systems as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

(C) The exhibits designated and described in finding (2) above are approved as part of this license.

(D) 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.

By the Commission.

JOSEPH H. GUTRIDE, *Secretary.*

IN TESTIMONY of its acknowledgment of acceptance of all of the provisions, terms and conditions of this license, Public Service Company of New Hampshire, this _____ day of _____, 19____, has caused its corporate name to be signed hereto by _____, its _____ President, and its corporate seal to be affixed hereto and attested by _____, its _____ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 19____, a certified copy of the record of which is attached hereto.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE,

By _____
President.

Attest:

Secretary.

Mr. ROGERS of Texas. Now, as I understand it, with this legislation you would then be in a position to issue these licenses to these 700 unlicensed organizations so that they could operate within the law, and there would be no gray area insofar as the question of navigability of the stream is concerned, or other matters that were causing this to be more or less in suspended animation?

Mr. SWIDLER. That puts it very well, Mr. Chairman.

Mr. ROGERS of Texas. Let me ask you this question about it. On the question of navigability how far—I am sorry, I haven't read this opinion—how far does this opinion go with relation to the adoption of the basic theory of navigation—of a stream being a navigable stream—such as the general philosophy that was kicked around that if a stream contributes to the flow of a stream, it becomes a navigable stream: then it becomes a component part of the system to the extent that it, as an essential part, becomes also navigable under the theory of Federal jurisdiction?

Mr. SWIDLER. This case does not in itself undertake to prescribe the standards for determination of navigability, but merely recites the history of the development of that legal theory, and refers to the 1943 decision in which the Commission concluded that a history of logging was an adequate basis for determining navigability.

Most streams have such a history. So that that decision in 1943 brought most hydroelectric projects within the jurisdiction of the Commission. In addition to all navigability, the Federal jurisdiction can also be based upon the effect upon navigation which is the element I think that you were referring to. In this case, in the *Androscoogin* case, I believe there is a history of actual navigation.

Mr. ROGERS of Texas. But this opinion more or less records the history of the whole situation?

Mr. SWIDLER. Yes, sir.

Mr. ROGERS of Texas. Now, let me ask you this, Mr. Swidler. If the Congress should pass this bill, in your opinion would it create any history as to the intent of Congress with relation to the question of

navigability as it affects water rights or power rights, or, let's say, Federal jurisdiction on this whole subject?

Mr. SWIDLER. No, sir; it isn't intended to have any impact on that at all. It is only intended, with respect to whatever projects come within our jurisdiction, to enable us to waive the great mass of procedural requirements that are applicable to large projects. It enables us to waive fees in cases where the determination of the fees and the cost of making the determination is as much as the money we may receive. In a 2,000-horsepower project, for example, the annual fee would be about \$200.

Mr. ROGERS of Texas. And it is not the intention of the Federal Power Commission or anyone associated with the legislation so far as you know, to do anything except to change this on a horsepower basis. If the Federal Government had jurisdiction of a project, then whether or not it was exempt would be determined by whether or not it was over 100 horsepower.

And what you are doing now is simply saying that if you had Federal jurisdiction, then it is exempt from these licensing procedures that have become burdensome if it is less than 2,000 horsepower.

Mr. SWIDLER. Yes, sir. The only qualification to that is that it authorizes the Commission to make the exemption, and the Commission could waive some provisions and not waive others, depending on the circumstances.

For example, we would not plan to waive the requirements with respect to protection of the fish resources at these projects.

Mr. ROGERS of Texas. That is the thing I was coming to next. Insofar as this legislation is concerned, it doesn't just give a blanket exemption to the project simply because it is less than 2,000 horsepower, but it places in the Commission the discretion as to the requirements that can be had. In other words, even under this legislation or under a situation where you presently have 100 horsepower, do I understand correctly that if you have some fears about certain things that are going on, you can make requirements of showings by those people under the 100 horsepower, or you can waive those?

Mr. SWIDLER. That is exactly right, Mr. Chairman.

Mr. ROGERS of Texas. But if they are over 100 horsepower, then you must require everything?

Mr. SWIDLER. That is exactly right. This would simply give us the authorization by Congress to waive requirements in projects up to 2,000 horsepower. Above that level we would have no authority to waive these requirements, which are very stringent. The requirements were put in so that they would cover everything up to the very largest, such as Hells Canyon or Nez Perce. Some of these requirements which were most appropriate for very large projects are burdensome with respect to the very small ones.

Mr. ROGERS of Texas. What does the Commission have in mind as to the procedures administratively, should this bill be passed?

Mr. SWIDLER. Should this bill be passed, we would then advise the 700 owners of projects of less than 2,000 horsepower that they might apply for minor licenses, and we would make clear the relatively relaxed procedural requirements in that connection, and we think this would facilitate getting compliance with the provisions of the Federal Power Act which require them to secure licenses.

Mr. ROGERS of Texas. Do you feel that under your rulemaking powers that you could lay down broad guidelines or broad rules or broad policies to cope with this situation, or would you have to treat each case separately?

Mr. SWIDLER. No, sir; Congress has given us authority to prescribe rules and regulations to fill in the details of procedural requirements.

Mr. ROGERS of Texas. But what I am thinking about is this: insofar as this is concerned, do you anticipate that that can be handled, that this situation can probably be handled by an all-encompassing rule on all matters, we will say all of the 700, or do you feel that orders would have to be made in each case?

Mr. SWIDLER. We would issue a license in each case. We do now. Major project licenses are short and simple, but they do retain whatever elements of Federal control are still necessary.

Mr. ROGERS of Texas. Now, Mr. Swidler, I notice in the Federal Power Act—this is what I have in mind—the power of the Commission to waive—let me just read this, section 10, subdivision (i):

In issuing licenses for a minor part only of the complete project or for a complete project of not more than 100 horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this part, except the license period of 50 years as it may deem to be to the public interest to waive under the circumstances.

Now, my concern has to do with your determination of what is the public interest, whether or not you can lay down a broad rule as to the public interest with relation to all plants of installed capacity of less than 2,000 horsepower, or whether or not you would have to do that with regard to each particular case.

Mr. SWIDLER. I think we would have a general rule which would apply to all, but as each application came in we might make special provisions. For example, each license might have different provisions with respect to safety, and to the protection of fisheries. There would be a variation from license to license, but the form of application would be the same, and most of the major terms would be the same.

In the form of minor license, there are three pages of text referring to particular documents and plans and drawings, which will vary from case to case which is followed by two or three pages of what you might call boilerplate, standard provisions.

So that there would be some standard provisions and some provisions which would vary, depending upon the plans and the designs and the fish problems, and so forth.

Mr. ROGERS of Texas. And once you make these rules, or by the exercise of your rulemaking power, compliance of that, of course, would be a bar to any discretionary action on the part of the Commission unless you change that by subsequent action of your rulemaking power?

Mr. SWIDLER. As we saw changes necessary we would make them. But of course this is a procedure that has been tested now for a period of many years. The form of the minor licenses and the handling of them is well established. This legislation would only increase the area in which we were free to issue the minor licenses.

Mr. ROGERS of Texas. Thank you, sir.

Are there any further questions? Mr. Younger.

Mr. YOUNGER. Mr. Chairman, there are two things I would like to inquire of. One, pertaining to this bill, why do you exempt the Indian tribal land?

Mr. SWIDLER. The statute requires us to, Mr. Younger. If you will notice the part of section 10 that the chairman just read, there is a proviso at the end of 10(i) providing "that the provisions hereof shall not apply for annual charges for use of lands within Indian reservations." The Congress has had special solicitude for Indian rights and provided some exemptions.

Mr. YOUNGER. The other question is a little aside from this, but what progress are you making toward setting up a schedule of fees for licensees which would tend toward paying the entire cost of the Commission operation?

Mr. SWIDLER. I am not sure I understand the question. Let me answer it as best I understand it—

Mr. YOUNGER. As you know, in the previous administration there was a request that these regulatory agencies bring a schedule of fees for the licensing and supervision that would tend to more nearly compensate the Government for the operation of the regulatory agency. And this applies to all of them. And this administration has followed along the same line.

And I was wondering what progress you are making in setting up a schedule of fees.

Mr. SWIDLER. We have under consideration such a schedule for early submission to the Bureau of the Budget. This is a fairly complex thing under the circumstances.

Mr. YOUNGER. I know it is. But I am hopeful that progress will be made in that field.

Mr. SWIDLER. You probably know that with respect to hydro licensing fees are prescribed, and that we receive over \$2 million a year from hydro licensing. But there are other areas of activity where we do not charge fees, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Any further questions?

Mr. THOMSON. Mr. Chairman, I would like to inquire, Mr. Swidler, does your Commission insist on taking jurisdiction solely on the basis of the navigability of the stream involved?

Mr. SWIDLER. We take jurisdiction wherever a project is located on a navigable stream, yes, sir.

Mr. THOMSON. Are there any other elements that are considered besides navigability which would in effect prevent your Commission from taking jurisdiction and issuing a license? We had some problems on the Namekagon in Wisconsin and the Flambeaux River and the State was very anxious to preserve the stream in its natural state because of the bureau of the area, because it was a white water stream, and because there hadn't been any navigation of the stream by the French pioneers in their bateaus 60 years ago.

Mr. SWIDLER. I think I understand your question, Mr. Thomson. While we take jurisdiction we don't automatically issue a license to every applicant. Our standard is the best use of the water resources which are under our jurisdiction. If the best use in a particular case should prove to be for recreational purposes or fish purposes, or some other use which precluded a dam, we would not license the project. Our standard is the highest and best development of our water resources, which doesn't necessarily mean a hydroelectric dam at every site. But so far as jurisdiction is concerned, this is a statutory

question, and a constitutional question and we would assert jurisdiction at every navigable site.

Mr. ROGERS of Texas. Any further questions?

(No response.)

Mr. ROGERS of Texas. Mr. Swidler, let me ask one further question. Now, would the passage of this bill in any way affect the provisions of section 2 of the Fish and Wildlife Coordination Act where you are of course required to consult with the Department of Interior and the State agencies?

Mr. SWIDLER. No, sir, it would not, Mr. Chairman.

Mr. ROGERS of Texas. Have you consulted with the Department of the Interior?

Mr. SWIDLER. It is our uniform practice to consult with the Department of the Interior.

Mr. ROGERS of Texas. And what is their position on this bill, do you know?

Mr. SWIDLER. I think their position on the bill, as I understand it, is that they want to be sure that this bill does not affect our practice of cooperation under section 2 of the act to which you referred, and so far as I know, there is no difference between us on that point.

Mr. ROGERS of Texas. What about the State agencies; have you had any information from them on this subject matter?

Mr. SWIDLER. No. And as I recall, they did not participate in the hearings on the predecessor bill. I believe it is also our practice to secure the views of the States.

Mr. ROGERS of Texas. In other words, your position is that this bill would not change your responsibility to confer with the heads of the State agencies?

Mr. SWIDLER. Yes, sir. It would not.

Mr. ROGERS of Texas. But this actually is confined simply to a change in the yardstick of the amount of power being produced?

Mr. SWIDLER. That is right, sir.

Mr. ROGERS of Texas. Mr. Kornegay, any questions?

Mr. KORNEGAY. No, sir.

Mr. ROGERS of Texas. Thank you very much, Mr. Swidler.

Mr. Swidler seems to be the first and the last witness.

At this point in the record we will insert any material received in the next few days.

(The following material was received for the record:)

[Telegram]

SACRAMENTO, CALIF., June 13, 1962

HON. OREN HARRIS,
Chairman Subcommittee on Communications and Power,
House of Representatives, Washington, D.C.

Regret inability to appear or to provide detailed presentation at your subcommittee's hearing on H.R. 6951 and S. 1606 re FPC exemption small hydroelectric projects from certain provisions. At the present time all power projects falling within the jurisdiction of the Federal Power Commission are referred to the U.S. Fish and Wildlife Service and the appropriate State agency for review in regard to project effects on fish and wildlife. This action results from both the Federal Power Act (sec. 18) and the Wildlife Coordination Act (Public Law 85-624). Those provisions by Congress were designed to assure the Service and State agency the opportunity to provide recommendations for protection of fish and wildlife in connection with power developments. The present bill, as written, could eliminate application of the Coordination Act and section 18 of the Federal Power Act. We consider it highly desirable to have the opportunity to review

and comment on projects over 100 horsepower. Accordingly, we believe the bill should contain provisions for review of such projects by the U.S. Fish and Wildlife Service and the State fish and game agency. We further believe that a proviso should be added to insure that relevant sections of the Federal Power Act are not waived where the Service or State agency has a significant interest in the project.

W. T. SHANNON, *Director.*

THE NEW ENGLAND COUNCIL FOR ECONOMIC DEVELOPMENT,
Boston, Mass., June 11, 1962.

HON. MORGAN M. MOULDER,
Chairman, Subcommittee on Communications and Power, Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE MOULDER: The New England Council strongly supports H.R. 6951 and urges its passage at this session of Congress.

The purpose of the bill is to redefine a "small" water power project, for which simplified licensing procedures are available under the Federal Water Power Act (now pt. I of the Federal Power Act). As written in 1920, a "small" plant was defined to be one of 100-horsepower capacity. H.R. 6951 amends this definition to 2,000-horsepower capacity.

This is a matter of particular interest to New England industries, which traditionally have been built around small water power developments. Many of the original water power developments are now electrified, and may therefore be subject to the licensing provisions of the Federal Water Power Act. We estimate that in New England there are approximately 170 small water power developments within the range of 100- to 2,000-horsepower capacity, to which this bill would apply.

In present-day terms, a power supply of less than 2,000 horsepower (equivalent to approximately 1,500 kilowatts of electricity) is insufficient to serve the needs of a major manufacturing establishment, and is of only marginal value to an electric utility.

Extending the Federal Power Commission's simplified licensing procedures to plants of this size would reduce a very substantial burden of regulatory work for the owners of these water power developments, and would similarly reduce an unnecessary burden of administrative work for the Federal Power Commission and its staff. The substance of this amendment has been repeatedly urged by the Federal Power Commission under both Democratic and Republican administrations, and a companion bill, S. 1606, has already been passed by the Senate at this session.

It is apparent that no issue of national policy is involved, but merely updating a definition which has become outmoded by technological developments in the course of the past 40 years. It should be emphasized that the bill does not exempt these plants from the Federal Power Commission's jurisdiction, but merely makes it possible for the Commission to process them on the basis of a simplified licensing procedure.

In view of the noncontroversial nature of the amendment, and the Senate's prior action, we strongly urge favorable House action during the present session.

Sincerely yours,

GARDNER A. CAVERLY.

[Federal Power Commission Release No. 11,988]

FPC ADVISES OWNERS OF APPROXIMATELY 500 UNLICENSED HYDROELECTRIC POWER PROJECTS OF NEW POLICIES IN ISSUING LICENSES FOR DEVELOPMENTS BUILT PRIOR TO 1935

WASHINGTON, D.C., May 8, 1962.—The Federal Power Commission has sent letters to 196 owners or operators of approximately 500 unlicensed hydroelectric power projects in 37 States asking them whether they propose to file applications for licenses.

The Commission on April 25 issued an opinion spelling out the policies it will follow in issuing licenses for non-Federal projects built prior to the 1935 amendments to the Federal Power Act which made it unlawful to construct, operate, or maintain hydroelectric project works on navigable waters of the United States without an FPC license or other Federal permit.

The Commission's letter said "If you are operating and maintaining a water power development without a valid Federal permit issued therefor prior to June

10, 1920, and without a license issued under the Federal Power Act, it is requested that you advise the Commission whether you propose to file application for license."

The FPC's April 25 Opinion No. 357 concluded that—

Projects built prior to 1935 and still operating without license should not be given the benefit of the maximum 50-year licenses allowed under the Federal Power Act, dating from time of issuance, after nearly three decades of unregulated operations.

Licenses for these pre-1935 projects should terminate December 31, 1993, or 50 years from the time the FPC's concept of navigability was settled in 1943.

In future cases not involving a prior finding of navigability, unauthorized construction since 1935, or other unusual circumstances, the 50-year license term for these projects will be computed from 1943, with a termination date of December 31, 1993, and an effective date of April 1, 1962, regardless of when filed. The projects thus will not be subject to retroactive annual charges, which the FPC said might "seriously deter" potential applications.

The Commission's opinion called for voluntary cooperation by owners of unlicensed projects in coming forward with applications. The FPC said that if its experience during the next 12 months indicates that voluntary cooperation will not be forthcoming, "we may well wish to reconsider the position we now take on the question of backdating."

FEDERAL POWER COMMISSION,
Washington, D.C., May 4, 1962.

Docket No. IT-5501

GENTLEMEN: There are enclosed for your information one copy each of the Commission's April 25, 1962, (1) opinion (No. 357) and order issuing a license for constructed major project No. 2288 to Public Service Co. of New Hampshire; (2) order issuing a license for constructed major project No. 2287 to Public Service Co. of New Hampshire; and (3) press release relating to the opinion and order.

If you are operating and maintaining a waterpower development without a valid Federal permit issued therefor prior to June 10, 1920, and without a license issued under the Federal Power Act, it is requested that you advise the Commission whether you propose to file application for license.

By direction of the Commission.

JOSEPH H. GUTRIDE, *Secretary*.

DOCKET NO. IT-5501. INVESTIGATION OF OCCUPANCY OF STREAMS SUBJECT TO FEDERAL JURISDICTION

Memorandum to files.—The attached letter with enclosures was sent to the following:

New York:

- Central Hudson Gas & Electric Corp., South Road, Poughkeepsie, N.Y.
- Rockland Light & Power Co., 10 North Broadway, Nyack, N.Y.
- Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, N.Y.
- New York State Department of Public Works, State Office Building, Albany, N.Y.
- West Virginia Pulp & Paper Co., 230 Park Avenue, New York 17, N.Y.
- Finch Pruyn & Co., Inc., Glen Falls, N.Y.
- Moreau Manufacturing Corp., 126 State Street, Albany, N.Y.
- International Paper Co., 200 East 42d Street, New York, N.Y.
- New York State Electric & Gas Corp., 108 East Green Street, Ithaca, N.Y.
- The Wm. H. Miner Foundation, care of Heart's Delight Farm, Parker D. Hurlbut, Manager, Chazy, N.Y.
- Paul Smiths Electric Light & Power Co., 2 Main Street, Saranac Lake, N.Y.
- Vanity Fair Paper Mills, Plattsburgh, N.Y.
- Newton Falls Paper Mill, Newton Falls, N.Y.
- Dexter Hydro Electric Corp., Post Office Box 15, Dexter, N.Y.
- Beebe Island Corp., 748 Starbuck Avenue, Watertown, N.Y.
- Watertown Municipal Electric Department, City Hall, Watertown, N.Y.
- J. P. Lewis Co., Beaver Falls, N.Y.
- Oswego Falls Corp., Fulton, N.Y.
- Rochester Gas & Electric Corp., 89 East Avenue, Rochester, N.Y.

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Indiana & Michigan Electric Co., 2 Broadway, New York 8, N.Y.
Allegheny Power System Inc., 320 Park, N.Y.
Appalachian Power Co., 2 Broadway, Post Office Box 136, New York 8, N.Y.
Board of Hudson River-Black River Regulating District, 11 North Pearl Street, Albany 7, N.Y.
Nekoosa Edwards Paper Co., Potsdam, N.Y.
Beaver River Power Co., Beaver Falls, N.Y.
Gould Paper Co., Lyons Falls, N.Y.

Connecticut:

The Connecticut Light & Power Co., Post Office Box 2010, Hartford, Conn.
Ponemah Mills, Taftville, Conn.
Baltic Mills Co., 33 Railroad Street, Baltic, Conn.
American Thread Co., 260 West Broadway, New York, N.Y.
Farmington River Power Co., 195 Lake Street, New Britain, Conn.
Collins Co., Collinsville, Conn.
The Hartford Electric Light Co., Post Office Box 2370, Hartford, Conn.

Ohio:

Bendix Corp., Fisher Building, Detroit 2, Mich.
Ohio Edison Co., 47 North Main Street, Akron, Ohio.
The Ohio Power Co., 2 Broadway, New York 8, N.Y.
The Toledo Edison Co., Madison at Superior Street, Toledo, Ohio.

Michigan:

The Detroit Edison Co., 2000 Second Avenue, Detroit, Mich.
Ford Motor Co., 3674 Shaefer Road, Dearborn, Mich.
Wolverine Power Co., 210 Phoenix Building, Bay City, Mich.
Consumers Power Co., 212 West Michigan Avenue, Jackson, Mich.
Alpena Power Co., 227 North Second Avenue, Alpena, Mich.
Carbide Power Co., 30 East 42d Street, New York, N.Y.
City of Norway, 915 Brown Street, Norway, Mich.
Cleveland Cliffs Iron Co., 1460 Union Commerce Building, Cleveland, Ohio.
City of Marquette Light & Power Department, Marquette, Mich.
Upper Peninsula Power Co., 616 Shelden Avenue, Houghton, Mich.

New Hampshire:

Brown Co., Berlin, N.H.
Mine Falls Development, Nashua, N.H.
Suncook Mills, Suncook, N.H.

Minnesota:

Minnesota Power & Light Co., 30 West Superior Street, Duluth, Minn.
Northwest Paper Co., Cloquet, Minn.
Otter Tail Power Co., 215 Cascade Street South, Fergus Falls, Minn.
Minnesota Ontario Paper Co., 500 Baker Arcade Building, Minneapolis, Minn.
City of Rochester, Rochester, Minn.
Northern States Power Co. (Minnesota), 15 South Fifth Street, Minneapolis, Minn.
General Mills, Inc., 9200 Wayzata Boulevard, Minneapolis 26, Minn.
St. Regis Paper Co., 150 East 42d Street, New York 17, N.Y.
Blandin Paper Co., Grand Rapids, Mich.

Illinois:

Illinois Power Co., 500 South 27th Street, Decatur, Ill.
Sanitary District of Chicago, Chicago, Ill.
Sears Water Power Co., 114½ West 17th Street, Rock Island, Ill.
Commonwealth Edison Co., 72 West Adams Street, Chicago, Ill.

Iowa:

Interstate Power Co., 1000 Main Street, Dubuque, Iowa.
Iowa-Illinois Gas & Electric Co., 206 East Second Street, Davenport, Iowa.

Maine:

Maine Public Service Co., 209 State Street, Presque Isle, Maine.
St. Croix Paper Co., Woodland, Maine.
Bangor Hydro Electric Co., 33 State Street, Bangor, Maine.
Great Northern Paper Co., 6 State Street, Bangor, Maine.
Bates Manufacturing Co., 9 Greene Street, Augusta, Maine.
Central Maine Power Co., 9 Greene Street, Augusta, Maine.
Scott Paper Co., Chester, Pa.
Rumford Falls Power Co., 49 Congress Street, Rumford, Maine.
S. D. Warren Co., 89 Broad Street, Boston, Mass.
Milstar Manufacturing Corp., Bridge and Water Streets, Waterville, Maine.
Kennebec River Pulp & Paper Co., Anson, Maine.
Powdrell & Alexander, Inc., Lewiston, Maine.

North Carolina:

Rocky Mount Mills, Rocky Mount, N.C.
 City of Durham, Durham, N.C.
 Carolina Power & Light Co., Box 1551, Raleigh, N.C.
 Sellers Manufacturing Co., Saxapahaw, N.C.
 Burlington Industries, Inc., High Shoals, N.C.
 Duke Power Co., Box 2178, Charlotte, N.C.
 Carolina Mountain Power Co., 100 West 10th Street, Wilmington, Del.

South Carolina:

Startex Mill, Startex, S.C.
 Union Manufacturing & Power Co., Union, S.C.
 Paolet Manufacturing Co., Paolet, S.C.
 Clifton Manufacturing Co., Clifton, S.C.
 Riegel Textile Co., 260 Madison Avenue, New York 16, N.Y.
 Belton Light & Power Co., 310 Main Street, Belton, S.C.
 Piedmont Manufacturing Co., Piedmont, S.C.
 Abbeville Water & Electric Plant, Abbeville, S.C.
 South Carolina Electric & Gas Co., 328 Main Street, Columbia, S.C.

Georgia:

Graniteville Co., Graniteville, S.C.
 Georgia Power Co., Post Office Box 4545, Atlanta 2, Ga.
 Bibb Manufacturing Co., 235 Main Street, Macon, Ga.
 Eagle & Phenix Mills, Columbus, Ga.
 Habersham Mills, Habersham, Ga.

Florida:

Florida Power Corp., 101 South Fifth Street, St. Petersburg, Fla.

Alabama:

Mount Vernon Mills, Mercantile Trust Building, Baltimore, Md.
 Alabama Power Co., 600 North 18th Street, Birmingham 2, Ala.

Indiana:

Public Service Co. of Indiana, 1000 East Main Street, Plainfield, Ind.
 Northern Indiana Public Service Co., 5265 Hohman Avenue, Hammond, Ind.

Massachusetts:

Merrimack Manufacturing Co., Lowell, Mass.
 Lowell Industrial Development Co., 95 Bridge Street, Lowell, Mass.
 Pacific Mills, 140 Federal Street, Boston, Mass.
 Boott Mills, John Street, Lowell, Mass.
 St. Regis Paper Co., 150 East 42d Street, New York 17, N.Y.
 Metropolitan District Commission, 20 Somerset Street, Boston, Mass.
 Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Mass.
 Ludlow Manufacturing Co., Ludlow, Mass.
 New England Power Service Co., 441 Stuart Street, Boston 16, Mass.
 Penobscot Chemical Fibre Co., 211 Congress Street, Boston 10, Mass.
 Holyoke Gas & Electric Department, Holyoke, Mass.
 Standard Packaging Corp., Foot, Jackson Street, Holyoke, Mass.
 American Writing Paper Corp., Holyoke, Mass.
 Strathmore Paper Co., Main Street, Woronoco, Mass.

Rhode Island:

City of Providence, City Hall, Providence, R.I.
 Tupper Corp., North Springfield, R.I.

New Jersey:

City of Paterson, City Hall, Paterson, N.J.
 Passaic Valley Water Commission, 137 Ellison Street, Paterson, N.J.

Vermont:

Gilman Paper Co., 630 Fifth Avenue, New York, N.Y.
 Village of Swanton, 13 York Street, Swanton, Vt.
 Missisquoi Corp., Sheldon Springs, Vt.
 Central Vermont Public Service Corp., 77 Grove Street, Rutland, Vt.
 Village of Morrisville, 16 Portland Street, Morrisville, Vt.
 Green Mountain Power Corp., 1 Main Street, Burlington, Vt.
 Vermont Marble Co., 61 Main Street, Proctor, Vt.

Pennsylvania:

Nantahala Power & Light Co., 1501 Alcoa Building, Pittsburgh, Pa.
 Pennsylvania Electric Co., 222 Levergood Street, Johnstown, Pa.

20 EXEMPTION OF SMALL HYDROELECTRIC POWER PROJECTS

West Virginia:

Potomac Light & Power Co., 200 East Patrick Street, Frederick, Md.
Union Carbide Corp., 270 Park Avenue, New York 17, N.Y.

Virginia:

Northern Virginia Power Co., 55 East Washington Street, Hagerstown, Md.
Virginia Electric & Power Co., 700 East Franklin Street, Richmond, Va.
Allied Chemical & Dye Co., 61 Broadway, New York, N.Y.
Richmond Department of Public Utilities, Richmond, Va.
Danville Water, Gas & Electric Department, City of Danville, Danville, Va.
Dan River Mills, Inc., Danville, Va.
Washington Mills Co., Mayodan, N.C.

Texas:

City of Austin, City Hall, Austin, Tex.
Texas Hydro Electric Corp., 114 North Austin Street, Seguin, Tex.
Texas Power Corp., Post Office Box 587, Seguin, Tex.
Central Power & Light Co., Box 2121, Corpus Christi, Tex.

Arizona:

Salt River Project Agricultural Improvement District, Second Avenue and
Van Buren Street, Phoenix, Ariz.

Idaho:

Idaho Power Co., 1220 Idaho Street, Boise, Idaho.
City of Idaho Falls, Idaho Falls, Idaho.
Fall River Rural Electric Coop., Ashton, Idaho.

Oregon:

Pacific Power & Light Co., 920 Southwest Sixth Avenue, Portland, Oreg.
Portland General Electric Co., 621 Southwest Alder Street, Portland, Oreg.
City of Eugene, Post Office Box 1112, Eugene, Oreg.

Missouri:

Sho Me Power Corp., Marshfield, Mo.
Missouri Public Service Co., Kansas City 38, Mo.
Union Electric Co., Post Office Box 149, St. Louis, 66, Mo.
The Empire District Electric Co., 602 Joplin Street, Joplin, Mo.

Nebraska:

Nebraska Public Power System, Columbus, Nebr.
Consumers Public Power District, Columbus, Nebr.

Colorado:

Public Service Co. of Colorado, 550 15th Street, Denver, Colo.
City of Colorado Springs, Colorado Springs, Colo.
Western Power & Gas Co., 144 South 12th Street, Lincoln, Nebr.

South Dakota:

Black Hills Power & Light Co., 621 Sixth Street, Rapid City, S. Dak.

Montana:

The Montana Power Co., 40 East Broadway, Butte, Mont.
Montana Power & Light Co., Troy, Mont.

Kansas: Bowersock Mills & Power Co., 546 Massachusetts Avenue, Lawrence,
Kans.

California:

Imperial Irrigation District, Imperial, Calif.
Los Angeles Department of Water and Power, Box 3669 Terminal Annex,
Los Angeles, Calif.
California Electric Power Co., 2885 Foothill Boulevard, San Bernardino,
Calif.
Pacific Gas & Electric Co., 245 Market Street, San Francisco, Calif.
Turlock-Modesto Irrigation District, Modesto, Calif.
San Francisco Utilities Commission, City Hall, San Francisco, Calif.
Southern California Edison Co., 601 West Fifth Street, Los Angeles 53, Calif.

Nevada:

Sierra Pacific Power Co., 21 East First Street, Reno, Nev.
Truckee Carson Irrigation District, 152 North Main Street, Fallon, Nev.

Utah:

Utah Power & Light Co., Post Office Box 899, Salt Lake City 10, Utah.
City of Murray, 5471 South State Street, Murray 7, Utah.

Wisconsin:

Kaukauna Electric Water Department, 101 Main Avenue, Kaukauna, Wis.
 Kimberly Clark Corp, Neenah, Wis.
 Wisconsin Public Service Corp., Post Office Box 420, Oshkosh, Wis.
 Wisconsin Michigan Power Co., 807 South Oneida, Appleton, Wis.
 Wisconsin Power & Light Co., 122 West Washington Avenue, Madison, Wis.
 Nekoosa Edwards Paper Co., Port Edwards, Wis.
 Northern States Power Co. (Wisconsin), Eau Claire, Wis.
 Cornell Wood Products Co., Cornell, Wis.
 Dairyland Power Co-op., 2615 East Avenue South, La Crosse, Wis.
 Lake Superior District Power Co., 101 West Second Street, Ashland, Wis.
 Kansas City Star Co., Kansas City, Mo.

Washington:

Superior Portland Cement Co., Seaboard Building, Seattle, Wash.
 Seattle Department of Lighting, Seattle, Wash.
 Puget Sound Power & Light Co., Post Office Box 38, Seattle 71, Wash.
 Tacoma Department of Public Utilities, Tacoma, Wash.
 Crown Zellerbach Corp., Camas, Wash.
 Wapato Irrigation District, Wapato, Wash.
 Chelan County Public Utility District No. 1, Wenatchee, Wash.
 Okanogan County Public Utility District No. 1, Okanogan, Wash.
 The Washington Water Power Co., 825 Trent Avenue West, Spokane 6,
 Wash.
 City of Spokane Water Division, Spokane, Wash.

South Carolina (addition):

Lockhart Power Co., Lockhart, S.C.

Mr. ROGERS of Texas. The subcommittee will stand adjourned.
 (Whereupon, at 11:40 a.m., the subcommittee adjourned.)



CHAPTER I

THE DISCOVERY OF AMERICA

IN 1492

CRISTOPHER COLUMBUS

DISCOVERED THE

NEW WORLD

ON HIS FIRST VOYAGE

ACROSS THE ATLANTIC OCEAN

FROM SPAIN TO THE

WEST INDIES

IN 1492





