

148 FERC ¶ 62,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Department of Water Resources

Project No. 14579-000

ORDER GRANTING EXEMPTION FROM LICENSING (CONDUIT)

(Issued September 30, 2014)

1. On January 15, 2014, and supplemented on April 22, and May 30, 2014, the California Department of Water Resources (applicant or exemptee) filed an application to exempt the existing 17,000-kilowatt (kW) Alamo Powerplant Project No. 14579 (Alamo Powerplant Project) from the licensing requirements set forth in Part I of the Federal Power Act (FPA).¹ This small conduit hydropower project is located on applicant's water distribution system in Los Angeles County, California. The project would not occupy any federal lands.
2. As discussed below, a conduit exemption is being issued for the project. A related non-capacity license amendment and conduit exemption are granted in separate orders.²

¹ Under Part I of the FPA, 16 U.S.C. §§ 792-823 (2012), the Commission issues licenses to non-federal interests authorizing the construction, operation, and maintenance of water power projects on navigable waters of the United States, on federal lands, and on streams subject to Congress' jurisdiction. Pursuant to section 30 of the FPA, the Commission is authorized to exempt from the licensing requirements of Part I of the FPA any facility (not including a dam or other impoundment) that is constructed, operated, or maintained for the generation of electric power and uses for generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity. 16 U.S.C. § 823a(b) (2012), *amended by, Hydropower Regulatory Efficiency Act of 2013*, Pub. L. No. 113-23, § 4, 127 Stat. 493 (2013).

² *Cal. Dep't of Water Res.*, 148 FERC ¶ 62,235 (2014) (*Cal. DWR*) (amending license for the South SWP Project to remove the Alamo Power Drop and Mojave Siphon Developments); *Cal. DWR*, 148 FERC ¶ 62,237 (2014) (granting conduit exemption for the Mojave Siphon Powerplant Project No. 14580).

Background

3. The Alamo Powerplant Project is currently a licensed development of the South SWP Hydropower Project No. 2426 (South SWP Project).³ The applicant concurrently filed an application to amend the license for the South SWP Project to remove the Alamo Power Drop and Mojave Siphon Developments from the license.⁴

Project Description

4. The Alamo Powerplant Project would consist of: (1) the existing Alamo Powerplant containing one existing generating unit with an installed capacity of 17,000 kilowatts; and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 83.751 gigawatt-hours.

5. The project is located on applicant's existing water distribution system. The applicant receives water from the California State Water Project and discharges back into the State Water Project for conveyance downstream. The State Water Project is a concrete-lined, open water canal. The proposed project would not change the timing, location, or amount of water distributed to the applicant's customers.

Public Notice

6. On June 12, 2014, Commission staff published a notice in the *Federal Register* accepting applicant's application for a conduit exemption and soliciting motions to intervene and protests, indicating that the application was ready for environmental analysis, and soliciting comments, recommendations, and terms and conditions.⁵ The

³ *Cal. Dep't of Water Res. and City of Los Angeles Dep't of Water and Power*, 2 FERC ¶ 61,258 (1978); 136 FERC ¶ 62,017 (2011) (amending license to change the project name from "California Aqueduct Pump Storage Project" to "South SWP Hydropower Project"). The Alamo Powerplant was originally referred to as the Cottonwood Power Drop, and the name was then changed to the Alamo Power Drop. *Cal. Dep't of Water Res.*, 75 FERC ¶ 62, 216 (1996).

⁴ *See*, Final Application for Non-Capacity Amendment of License filed on January 15, 2014, under Project No. 2426-218.

⁵ 79 Fed. Reg. 33,749-50 (2014). In the prior year DWR provided the U.S. Fish and Wildlife Service (FWS) with a copy of the Initial Consultation Document on June 7, 2013, and requested comments by September 9, 2013. The document included the non-capacity license amendment application and the conduit exemption applications for the Alamo Powerplant Project and Mojave Siphon Powerplant Project. DWR did not receive any comments from FWS on the ICD.

notice established August 5, 2014, as the deadline for filing comments and motions to intervene. The California State Water Resources Control Board filed a timely, unopposed notice of intervention.⁶ Kenneth Kules and the Metropolitan Water District of Southern California filed timely, unopposed motions to intervene.⁷ None of the intervenors oppose the amendment. Both Kenneth Kules and the Los Angeles Department of Water and Power filed timely comments in support of the applicant's proposal. The U.S. Department of the Interior stated that it had no comments.

Section 30(c) Conditions

7. Section 30(c) of the FPA⁸ requires the Commission to include in its conduit exemptions such terms and conditions as may be prescribed by federal and state fish and wildlife agencies to prevent loss of, or damage to, fish and wildlife resources and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act.⁹ Standard Article 2 of this exemption requires compliance with the terms and conditions prepared by federal or state fish and wildlife agencies to protect fish and wildlife resources. No federal or state fish and wildlife agency submitted terms and conditions for this exemption.

Environmental Assessment

8. Pursuant to section 380.4(a)(14) of the Commission's regulations,¹⁰ Commission staff is not required to prepare an environmental assessment or an environmental impact statement for conduit exemption applications. Nonetheless, I have considered the environmental information in the exemption application and other pertinent information, and find the issuance of this order is not a major federal action significantly affecting the quality of the human environment.

⁶ Timely notices of intervention filed by any state fish and wildlife, water quality certification, or water rights agency are granted by operation of Rule 214(a)(2) of the Commission's regulations. 18 C.F.R. § 385.214(a)(2) (2014).

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2014).

⁸ 16 U.S.C. § 823a(c) (2012).

⁹ 16 U.S.C. §§ 661-667e (2012).

¹⁰ 18 C.F.R. § 380.4(a)(14) (2014).

Administrative Conditions

A. Annual Charges

9. The Commission collects annual charges from exemptees for the administration of its hydropower program. Article 7 provides for the collection of such funds.

B. Exhibit F and G Drawings

10. The applicant filed six Exhibit F drawings and one Exhibit G drawing. The drawings accurately show the project features and project boundary and conform to the Commission's regulations.¹¹ Although the Exhibit F and G drawings listed in ordering paragraph (B), filed January 15, 2014, are being approved, the Commission requires exemptees to file sets of approved project drawings in electronic file format. Article 8 requires the exemptee to file the Exhibit F and G drawings approved in Ordering Paragraph (C) in electronic file format.

C. Operation and Maintenance

11. Ensuring that the exempted project is fit for use is an important public interest function of the Commission. Article 9 states that if the exemptee causes or allows essential project property to be removed or destroyed or to become unfit for use without adequate replacement, the Commission will deem it the intent of the exemptee to surrender the exemption.

D. Exemptee Liability

12. 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"¹² To clarify that exemptees would be similarly liable, Article 10 states that the exemptee is liable for damages to the property of others.

E. Property Rights

13. Pursuant to section 4.31(b)(2) of the Commission's regulations 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

¹¹ Exhibit F-6 is not being approved because it is an electrical one-line diagram, and the Commission no longer approves this type of drawing.

¹² 16 U.S.C. § 803(c) (2012).

and operation of the project.¹³ The application contains documentation that the applicant has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, Article 11 reserves the Commission's authority to terminate the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

The Director orders:

(A) Effective the date this order is issued, the Alamo Powerplant Project No. 14579 is exempted from the licensing requirements of Part I of the Federal Power Act, subject to 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 Exhibit G-1 filed on January 15, 2014.

(2) The following project works: 1) the existing Alamo Powerplant containing one existing generating unit with an installed capacity of 17,000 kilowatts; and (2) appurtenant facilities. The project works generally described above are more specifically shown and described by those portions of Exhibits A, F, and G below:

Exhibit A: Exhibit A, filed on January 15, 2014.

Exhibit F: The following Exhibit F drawings filed on January 15, 2014.

Exhibit No.	FERC Drawing No.	Drawing Title
F-1	P-14579-1	Site Plan
F-2	P-14579-2	Plan – Elev. 2984
F-3	P-14579-3	Plan – Elev. 2968
F-4	P-14579-4	Plan – Elev. 2929
F-5	P-14579-5	Section

Exhibit G: The following Exhibit G drawing filed on January 15, 2014.

Exhibit No.	FERC Drawing No.	Drawing Title
G-1	P-14579-6	Boundary Map

¹³ 18 C.F.R. § 4.31(b)(2) (2014).

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, 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-1 entitled "Standard Terms and Conditions of Exemption from Licensing" (attached), and the following additional articles:

Article 7. *Administrative Annual Charges.* The exemptee shall pay the United States annual charges, effective the date this order is issued, 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 17,000 kilowatts.

Article 8. *Exhibit Drawings.* Within 45 days of the date of issuance of this order the exemptee shall file two sets of the following information in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

a) Digital images of the approved exhibit drawings shall be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-14579-1, P-14579-2, etc.) shall be shown in the margin below the title block of the approved drawing. 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 order, and file extension in the following format [P-14579-1, F-1, Site Plan, MM-DD-YYYY.TIF].

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 georeferencing 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. All digital images of the exhibit drawings shall meet the following format specification:

IMAGERY:	black & white raster file
FILE TYPE:	Tagged Image File Format, (TIFF) CCITT T.6 (CCITT Group 4 fax encoding)
RESOLUTION:	300 dpi desired, (All drawing fonts must be legible)
SIZE FORMAT:	22" x 34" (min), 24" x 36" (max)
FILE SIZE:	less than 1 MB desired

b) The licensee shall file two separate sets of the project boundary GIS data on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC. The data shall be in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format). The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The georeferenced electronic boundary data file must be positionally accurate to ± 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 order, and file extension in the following format [P-14579, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced 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 order, and file extension in the following format [P-14579, project boundary metadata, MM-DD-YYYY.TXT].

Article 9. *Operation and Maintenance.* The Commission may determine that the exemptee has impliedly surrendered 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 10. *Liability.* The exemptee shall be liable for all damages occasioned to the property of others by the construction, operation, or maintenance of the project works or works appurtenant or accessory thereto, constructed under this exemption and in no event shall the United States be liable therefore.

Article 11. *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 terminate this exemption if, at any time, the

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exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

(E) This order is issued under authority delegated to the Director and 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 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or any of its requirements. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Kelly Houff
Chief, Engineering Resources Branch
Division of Hydropower Administration
and Compliance

Standard Terms and Conditions of Exemption from Licensing
18 C.F.R. § 4.94 (2014)

Any exemption granted under § 4.93 of the Commission's regulations, 18 C.F.R. § 4.93 (2014), for a small conduit hydroelectric facility 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 facility. 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 and wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

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 effective date of this 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 or a notice of exemption from licensing for the same project within two years of the revocation.

Article 4. 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 5. 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 6. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

Document Content(s)

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