

135 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Jonathan and Jayne Chase

Project No. 13381-002

ORDER GRANTING REHEARING

(Issued May 19, 2011)

1. On March 4, 2011, the Director of the Office of Energy Projects, Division of Hydropower Licensing (Division Director), issued a letter order dismissing Jonathan and Jayne Chase's (applicants) exemption application for the 850-kilowatt (kW) Troy Hydroelectric Project No. 13381, proposed to be located on the Missisquoi River, in the Town of Troy, Orleans County, Vermont, because the project did not qualify for an exemption from the licensing requirements of Part I of the Federal Power Act (FPA).<sup>1</sup> On April 4, 2011, the applicants filed a timely request for rehearing of the dismissal. For the reasons discussed below, we grant rehearing and reinstate the Chases' exemption application.

**Background**

2. The Public Utility Regulatory Policies Act of 1978 (PURPA) authorizes the Commission to exempt from the licensing requirements of Part I of the FPA any small hydroelectric project with an installed capacity of 5 megawatt (MW) or less: (1) "which is located at the site of any existing dam [and] which uses the water power potential of such dam..." or (2) would use for the generation of electricity a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for any dam or manmade impoundment.<sup>2</sup> As pertinent here, the Commission's regulations

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<sup>1</sup> See letter from Ann Miles to Jonathan and Jayne Chase (March 4, 2011).

<sup>2</sup> See sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. §§ 2705 and 2708 (2006).

define small hydroelectric power projects described in (1) above as those that would use “for electric power generation the water power potential of an existing dam....”<sup>3</sup>

3. On July 23, 2010, as supplemented on December 20, 2010, and February 10, 2011, the applicants filed an exemption application for the proposed project. The project would include the following existing facilities: (1) a 6.9-acre impoundment with a normal water surface elevation of 739.4 feet above mean sea level (msl); (2) Bakers Falls dam, which is 180 feet long and 20.5 feet high and has a spillway, an intake structure, and a wastegate; (3) a 250-foot-long, 6.5-foot-diameter penstock leading to a powerhouse; and (4) a transmission line. The powerhouse would contain a new 850-kW generating unit. Water would be discharged through the tailrace into the Missisquoi River about 250 feet downstream of the dam.

4. The proposed project would generate about 1,500 megawatt-hours annually using a combination of the 20.5-foot-high dam and the gradient of the 250-foot-long penstock to develop 57 feet of gross head. Approximately 64 percent of the head would come from the length and fall of the penstock, and the rest of the head (approximately 36 percent) would come from the dam.<sup>4</sup>

5. On March 4, 2011, the Division Director dismissed the exemption application, concluding that the project did not qualify for an exemption because it “would primarily use the gradient of the proposed penstock to generate electricity, rather than the water power potential of the existing dam” as required by PURPA and our regulations.

6. On April 4, 2011, the applicants filed a request for rehearing of the dismissal of their exemption application.

### **Discussion**

7. On rehearing, the applicants argue that the Division Director misinterpreted the requirement that a project must use the “water power potential of an existing dam.” The applicants claim that there is no basis for reading that provision to disqualify a project

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<sup>3</sup> 18 C.F.R. § 4.30(b)(29) (2010).

<sup>4</sup> The exemption application (at 13) states that the gross head is 55.7 feet. However, the Exhibit F drawings (F-7, F-10, and F-11) show the dam’s spillway elevation (i.e. the reservoir water surface elevation) at 739.4 feet msl, and a normal tailwater elevation at the powerhouse at 682.4 feet msl. Subtracting the tailwater elevation from the spillway elevation shows that the project would develop 57.0 feet of gross head.

that proposes to use both the water power potential created by a dam and the gradient of the penstock.

8. We agree, and grant rehearing. While we find the condition that a project must use the water power potential of an existing dam to qualify for an exemption to be ambiguous, we see no basis in either PURPA or its legislative history for interpreting that language to require a project to use “*only* the water power potential of an existing dam.” On the contrary, we find that such an interpretation would be inconsistent with PURPA’s goal of encouraging and expediting small hydropower projects, as it would severely restrict the number of projects eligible for an exemption.

9. At the same time, we find that interpreting the language to permit exemptions for project that use “*any amount* of the water power potential of an existing dam, no matter how little the amount” would conflict with what appears to be Congress’ intent to encourage small hydropower projects that have relatively modest environmental impacts. Thus, we find it relevant that Congress permitted exemptions only for projects that are “located at the site of any existing dam” (because such projects are likely to require bypassing only a small reach of a waterway) and that “do[ ] not require any construction or enlargement of impoundment structures . . . .”<sup>5</sup>

10. Consequently, we find it reasonable to interpret PURPA as permitting exemptions for projects that use a *significant* amount of the water power potential created by a dam, even if they also rely in part on the gradient of the penstock, and that are located in relatively close proximity to a dam, and so do not create a lengthy bypassed reach. We find that such projects are the type of projects Congress intended to allow the Commission to exempt.

11. In our experience, projects with powerhouses located no further than 500 feet from the dam with which they are associated generally derive a substantial percentage of head<sup>6</sup> from those dams and, as a general rule, do not have significant, unmitigable impacts on the waterways on which they are located. Therefore, on a prospective basis, we conclude that projects where the powerhouse is located no further than 500 feet from the project dam and which derive a significant portion of head from the dam will qualify for a 5-MW exemption.

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<sup>5</sup> 16 U.S.C. § 2708(a)(1) and (6) (2006).

<sup>6</sup> We use the term “head” here to refer to the difference between the water surface elevations upstream of the dam and in the tailrace downstream of the proposed powerhouse.

12. In the case at hand, approximately 36 percent of the power generation of the proposed project would come from the head created by the existing dam. The project tailrace would be located about 250 feet below the dam. Consequently, we find that Project No. 13381 qualifies for a 5-MW exemption and we reinstate the exemption application.

The Commission orders:

(A) Jonathan and Jayne Chase's request for rehearing filed on April 4, 2011, in Project No. 13381, is granted.

(B) The exemption application for the Troy Hydroelectric Project No. 13381, filed on July 23, 2010 by Jonathan and Jayne Chase, is reinstated.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.