

38 FERC ¶ 62,225

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

North American Hydro, Inc. and  
Renaissance Hydro Associates

Project No. 9782-000

Carl and Elaine Hitchcock

Project No. 10078-000

**ORDER GRANTING EXEMPTION FROM LICENSING (5 MW OR LESS)  
AND DISMISSING PRELIMINARY PERMIT APPLICATION WITH PREJUDICE**

(Issued March 10, 1987)

On September 5, 1986, Carl and Elaine Hitchcock filed an application to exempt the Eau Galle Hydro Project from the licensing requirements set forth in Part I of the Federal Power Act. The proposed small hydropower project is described in the attached public notice. The comments of interested agencies and individuals, including the U.S. Fish and Wildlife Service and the state fish and wildlife agency, have been fully considered in determining whether to issue this exemption from licensing.

Competing Preliminary Permit Application

The exemption application was filed in competition with a preliminary permit application filed by North American Hydro, Inc. and Renaissance Hydro Associates for Project No. 9782-000. The permit applicant failed to substantiate the technical, environmental, and economic aspects of its proposal and was therefore dismissed without prejudice so that it could be automatically reinstated if the competing development application were subsequently denied. See Dennis V. McGrew, 32 FERC ¶61,229 (1985). The exemption applicant has met the statutory regulatory license requirements, including demonstrating its ability to carry out its plans. The preliminary permit application is therefore dismissed with prejudice.

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. These mandatory terms and conditions are contained in the attached letters commenting on the exemption application. If contested, the Commission will determine whether any mandatory term or condition is outside the scope of article 2.

After considering the mandatory terms and conditions designed to protect fish and wildlife resources, the environmental information in the exemption application, the staff's independent

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assessment <sup>1/</sup>, and other public comments, the Director finds that issuance of this order is not a major federal action significantly affecting the quality of the human environment.

The Director orders:

(A) The Eau Galle Hydro Project is exempted from the licensing requirements of Part I of the Federal Power Act, subject to the attached standard articles. See section 4.106 of the Commission's regulations.

Article 10. Before commencing any ground-disturbing or spoil-producing activities, the Exemptee, in consultation and cooperation with the appropriate Federal, state, and local agencies (including the Soil Conservation Service and any Federal agency with managerial authority over any part of the project lands), shall prepare a plan to control erosion and dust, stabilize slopes, and minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project. The plan shall identify critical areas, include functional design drawings and map locations of control measures, and establish schedules for implementation, monitoring, maintenance, and periodic review.

The Exemptee may commence ground-disturbing or spoil-producing activities 30 days after submitting the final plan to the consulted agencies, or sooner if the plan is approved by the Soil Conservation Service and any Federal agency with managerial authority over any part of project lands. Any consulted agency that objects to the Exemptee's final plan should notify the Commission, specify the objection, and recommend alternative measures. The Commission reserves the right to modify the final plan.

(B) Article 2 of this exemption is amended to include the National Marine Fisheries Service as a fish and wildlife agency that can provide terms and conditions.

(C) The Commission reserves the right to assess the exemptee fees pursuant to section 30(e) of the Federal Power Act.

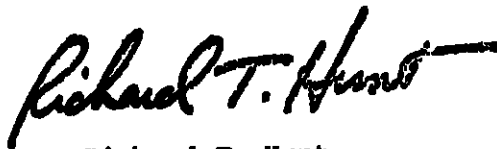
(D) The application for preliminary permit for Project No. 9782 filed by North American Hydro, Inc. and Renaissance Hydro Associates on December 30, 1985, is hereby dismissed with prejudice .

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<sup>1/</sup> Environmental Assessment, Carl and Elaine Hitchcock, FERC Project No. 10078-000, Federal Energy Regulatory Commission, February 24, 1987. This document is available in the Commission's public file associated with this proceeding.

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(E) This order is issued under authority delegated to the Director and is final unless appealed to the Commission within 30 days from the date of this order.

A handwritten signature in black ink, reading "Richard T. Hunt". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Richard T. Hunt  
Director, Office of  
Hydropower Licensing

E-10078-000

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission  
(November 3, 1986)

This notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

- a. Type of Application: Exemption (SMA or Lema)
- b. Project No: 10078-000
- c. Date Filed: September 5, 1986
- d. Applicant: Carl and Elaine Mitchell
- e. Name of Project: Fox Falls Hydro Project
- f. Location: On the Fox Falls River near Fox Falls, Iron County, Wisconsin
- g. Filed Pursuant to: Section 480 of the Energy Security Act of 1980, 16 U.S.C. 532705 and 2706 as amended.
- h. Contact Person: Carl E. Mitchell  
423 Green Tree Road  
Kohler, WI 53044  
(414) 452-2524
- i. Comment Date: SEE 1.586
- j. Description of Project: The proposed project would consist of: (1) an existing concrete dam approximately 170 feet long and 32 feet high; (2) an existing 35-acre reservoir having a storage capacity of 2,078 acre-feet at an elevation of 757 msl; (3) a proposed powerhouse integral with the dam, located on the east side of the river, housing two 150-hp generators for a total installed capacity of 300 hp; (4) a new tailrace for a proposed short 12.7-kv transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 1.03 Gwh. The Applicant holds all real estate interests necessary to develop and operate the proposed project.
- k. Purpose of Project: All project energy produced would be sold to Northern States Power Company.
- l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

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**C. Filing and Service of Response Comments - Any filings must bear in all capital letters the title "COMMENTS - SUBJECT OF INTENT TO FILE COMPETING APPLICATION". "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the project name of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's Regulatory to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 125 North Capitol Street N.E., Washington, D.C. 20425. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 303-08, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.**

**A3. Development Application -- Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.**

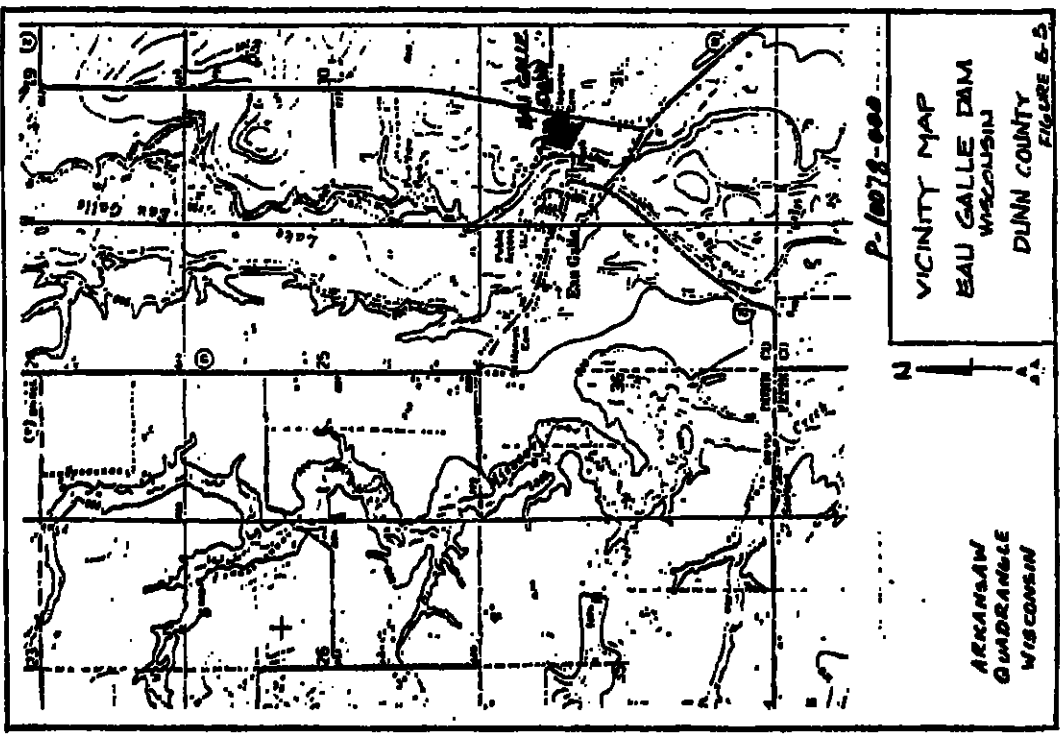
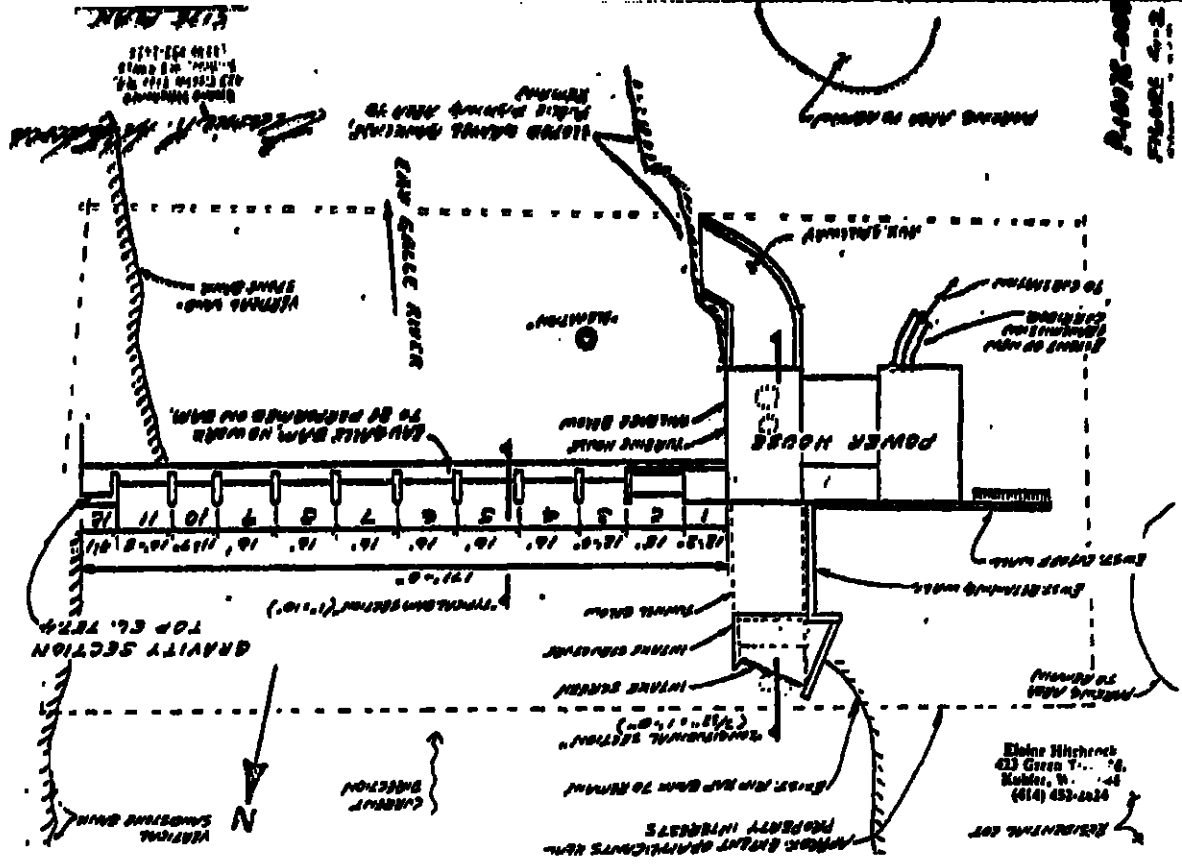
**A9. Notice of Intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant. Include an unequivocal statement of intent to submit. If such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.**

**B. Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§305.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.**

**D3a. Agency Comments - The U.S. Fish and Wildlife Service and the State Fish and Game agencies are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate forms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Conservation Act. General comments concerning the project and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. In other than oral requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.**

Kenneth F. Plumb  
Secretary

Figure 5-2



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**§ 4.106 Standard terms and conditions of exemption from licensing**

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) Article 3. The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years, or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

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(f) Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(g) Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) Article 8. Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR Part 222, is subject to the following provisions of 18 CFR Part 12, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

(i) Article 9. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.





**State of Wisconsin / DEPARTMENT OF NATURAL RESOURCES**

West Central District Headquarters  
1300 West Clairmont Avenue  
Call Box 4001  
Eau Claire, WI 54702-4001

*DNA*  
Carol B. Seedy  
Secretary

December 8, 1986

File Ref: 1640-6

Mr. Kenneth F. Plumb, Secretary  
Federal Energy Regulatory Commission  
825 North Capitol Street, N.E.  
Washington, D.C. 20426

Dear Mr. Plumb:

Re: Notice of Application for Exemption, Project #10078,  
Hitchcock and Associates, Eau Galle River, Dunn County,  
Wisconsin

The Department has reviewed the subject exemption application and public notice. The applicant has conducted reasonable and productive pre-application consultation with this agency.

Based on our review, the Department recommends the following terms and conditions, which have been cooperatively developed with the USFWS, be prescribed articles to any exemption issued by FERC:

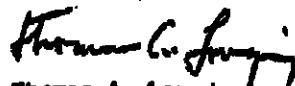
1. The project shall be operated as run-of-the-river such that instantaneous impoundment inflow equals instantaneous outflow released from either the powerhouse or dam.
2. To sustain a consistent run-of-the-river mode of operation, the intake gates to the turbine equipment shall be controlled by an automated system, rather than manually operated.
3. Two staff gauges of standard design shall be installed in appropriate locations, one upstream and one downstream from Eau Galle Dam, to verify compliance with a run-of-the-river mode of operation. The staff gauges shall be calibrated to indicate equitable reservoir and tailwater stage relationships to allow for prompt monitoring by Wisconsin Department of Natural Resources (DNR) field personnel.
4. For water quality and aesthetic purposes, a minimum one-inch depth of flow (approximately 10 cfs) shall be released over the spillway at all times when total inflow to the reservoir is 10 cfs or more.
5. Applicant shall install flow gauging equipment in the powerhouse or other appropriate location to record total river and powerhouse discharges throughout the life of the project. The flow data shall be submitted to the Wisconsin DNR and USFWS upon request.

Mr. Kenneth F. Plumb - December 8, 1986

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The Department appreciates the opportunity to review and comment on your public notice.

Sincerely,



Thomas A. Lovejoy  
Environmental Impact Coordinator

TLSS

cc: James Linsack

BEAR/6

J. Fossum - USFWS, Green Bay

Carl and Elaine Hitchcock, Hitchcock Associates, 423 Green Tree  
Road, Kohler, WI 53044

James Sigg, P.E., Vice President, W. H. Lewis and Associates,  
740 5th Street, Box 1383, Portsmouth, Ohio 45652

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