

147 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Christopher M. Anthony

Project No. 6618-007

ORDER REVOKING EXEMPTION FROM LICENSING

(Issued May 15, 2014)

1. This order revokes the exemption from licensing for the 400-kilowatt (kW) Frankfort Hydroelectric Project No. 6618 pursuant to section 31(b) of the Federal Power Act (FPA).¹ As discussed below, we revoke the exemption from licensing for the Frankfort Project because for over a year, Christopher M. Anthony (exemptee) failed to properly implement fish passage measures that would protect endangered species, as required by standard article 2 of his exemption and a Compliance Order issued on January 30, 2013.²

I. Background

2. On September 20, 1982, the Commission granted Quinn Hydrotech Corporation an exemption from the licensing requirements of Part I of the FPA for the Frankfort Project, located on Marsh Stream in Waldo County, Maine.³ Christopher M. Anthony

¹ 16 U.S.C. § 823b(b) (2012). Section 31(b) provides that after notice and an opportunity for an evidentiary hearing, the Commission may issue an order revoking an exemption, where the exemptee is found by the Commission to have knowingly violated a final order after having been given reasonable time to comply fully with that order.

² *Christopher M. Anthony*, 142 FERC ¶ 62,074 (2013).

³ *Quinn Hydrotech Corporation*, 20 FERC ¶ 62,498 (1982), *order amending exemption*, 70 FERC ¶ 62,191 (1995) (correcting installed capacity of the project from 550 kilowatts (kW) to 400 kW).

has held the exemption since 1997.⁴ The project consists of a 14-foot-high, 250-foot-long stone masonry dam that creates a small impoundment with a surface area of approximately 20 acres. The dam is owned by the Town of Frankfort, Maine, and leased to the exemptee. Located immediately adjacent to the dam is the powerhouse, which contains one 400-kW generating unit with a hydraulic capacity of 440 cubic feet per second. The project also includes a Denil-style fish ladder to provide fish passage around the dam. The project's average annual generation is approximately 1,930 megawatt-hours.

3. Under the Frankfort Project's exemption, the exemptee must comply with certain standard articles.⁵ Through standard article 2 of the exemption,⁶ the U.S. Fish and Wildlife Service (FWS), the Maine Department of Inland Fisheries and Wildlife (Maine DIFW), and the Maine Department of Marine Resources (Maine DMR) required the exemptee to design, construct, and operate upstream and downstream fish passage

⁴ On August 17, 1988, the Commission received notice that the exemption was transferred from Quinn Hydrotech Corporation to Express Hydro Services, Inc. Subsequently, on February 26, 1997, Christopher M. Anthony notified the Commission that he had purchased the project from Express Hydro Services, Inc. Unlike a license, the transfer of an exemption does not require prior Commission approval. *See Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects With an Installed Capacity of Five Megawatts or Less*, Order No. 106, 45 Fed. Reg. 76,115, 76,121 (November 18, 1980), FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,204, at 31,369 (1980) (cross-referenced at 13 FERC ¶ 61,116 (1980)).

⁵ *See* 20 FERC ¶ 62,498 (requiring the exemptee to comply with the standard articles set forth in section 4.111 of the Commission's regulations, 18 C.F.R. § 4.111 (1982)). Section 4.111 of the regulations was rescinded in 1987; however, the rescission did not affect any exemptions issued prior to that time. *See Exemption from Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less*, Order No. 482, 52 Fed. Reg. 39,628, 39,629 (October 23, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,771 (1987) (cross-referenced at 41 FERC ¶ 61,041 (1987)).

⁶ Standard article 2 provides that the "construction, operation, and maintenance of the exempt project must comply with migratory fish restoration measures, ...prescribed by any fish and wildlife agency during the pre-exemption consultation" 18 C.F.R. § 4.111(a)(2) (1982).

facilities after receiving design approval from FWS and the Maine agencies.⁷ In 1986, Quinn Hydrotech, the then-exemptee, constructed the fish passage facilities without obtaining full approval of the design from FWS or the Maine fish and wildlife agencies.

4. The fish passage facilities consist of a three-foot-wide Denil ladder that provides for the passage of upstream-migrating fish around the project's dam. The fishway entrance is located downstream of the dam, in the tailrace area, which is in tidal waters. Fish that enter the fishway swim up through the ladder, which is composed of concrete and wooden sections with a series of baffles, to the fishway exit. The exit is located adjacent to, and in line with, the turbine intake trashracks. From there, fish enter the project reservoir and continue their upstream migration. The fishway is also designed to pass downstream-migrating fish during periods of outmigration. During these periods, fish enter the upstream section of the ladder from the reservoir and travel through a gate that is opened in the ladder's upstream section. After entering the gate, the fish pass directly downstream through spill to the tailrace area and tidal waters.

5. In 2009, Atlantic salmon that use Marsh Stream were listed as an endangered species under the Endangered Species Act.⁸ On April 19, 2012, FWS informed the Commission that there are a number of problems with the construction, operation, and maintenance of the Frankfort Project's fish passage facilities that prevent the upstream and downstream passage of the endangered Atlantic salmon,⁹ river herring, and American eel. FWS stated that upstream-migrating fish cannot access the fish passage entrance during periods of low tide because the entrance was not constructed to accommodate the tidal range that occurs immediately downstream of the project. Additionally, downstream-migrating salmon smolts and smaller migrant fish species can be entrained in the project's turbine trashracks before they enter the passage facility, because the bar spacing on the turbine trashracks is too large (3.25 inches) to block their entry. FWS stated that the fish ladder also has problems with: insufficient attraction flows at its entrance; missing, broken, and improperly spaced baffles that prevent the upstream

⁷ 18 C.F.R. § 4.111(a)(2) (1982). See exemptee's *Notice of Exemption of Small Hydroelectric Power Project from Licensing* at 8-14, filed on August 19, 1982 (containing copies of the terms and conditions filed by FWS, Maine DIFW, and Maine DMR).

⁸ 16 U.S.C. § 1536(a) (2013).

⁹ Atlantic salmon must be able to move upstream from tidal waters into Marsh Stream to spawn, and then move back downstream as juveniles (smolts) to complete their life cycle. In addition, adults move back downstream to tidal waters after spawning and may return to spawn again in following years.

passage of fish; leakage along deteriorating sections of the ladder; and the times of year that the exemptee operates the facilities for upstream or downstream fish passage.

6. On May 15, 2012, Commission staff directed the exemptee to file, by June 14, 2012, a plan and schedule for addressing the problems identified by FWS. The exemptee did not respond to Commission staff's letter.

7. On July 23, 2012, Commission staff sent a second letter to the exemptee directing that he file a plan and schedule to address the problems identified by FWS so that he could bring the project into compliance with the exemption.

8. On August 6, 2012, the exemptee responded to staff's letter; however, the exemptee did not provide the requested plan and schedule or respond to FWS' concerns. The exemptee stated that he planned to repair leakage at the facility and install a weir at the lower end of the fish ladder in the fall of 2012.¹⁰ Additionally, he stated that he would address FWS' remaining concerns within the next year.

9. On August 15, 2012, the Atlantic Salmon Federation, Penobscot Indian Nation, Maine Rivers, Natural Resources Council of Maine, and Trout Unlimited, Maine Council (Penobscot Nation and NGOs), jointly, filed a letter supporting FWS' April 12, 2012 request to compel the exemptee to repair the fish passage facilities for the passage of Atlantic salmon and other fish.

10. On August 30, 2012, National Marine Fisheries Service (NMFS) also filed a letter in support of FWS' April 12, 2012 request. NMFS stated that it was working to remove barriers for upstream fish passage in Marsh Stream. NMFS explained that once fish, including Atlantic salmon, can successfully pass the Frankfort Project, they will have access to approximately 85 miles of riverine habitat upstream of the project.

11. On September 7, 2012, Commission staff for the third time directed the exemptee to file a plan and schedule for addressing the problems identified by FWS.

12. On October 31, 2012, the exemptee filed a plan and schedule for repairing the fish passage facilities. The exemptee proposed: (1) to begin in the summer of 2013, installation of powerhouse intake trashracks or removable overlay screens; (2) by the spring of 2013, to install a tide gate and lower the entrance of the fishway; (3) by the fall or winter of 2012, repair leakage in the upper section of the fishway. As for broken or missing baffles, the exemptee explained that he had made those repairs.

¹⁰ The exemptee planned to install the weir to raise the water level at the fishway intake during low tides.

13. On December 13, 2012, Commission staff issued an order modifying and approving the exemptee's plan and schedule.¹¹ The order required that the exemptee: (1) by the summer of 2013, install powerhouse intake trashracks or removable overlay screens with clear bar spacing of no more than one inch; (2) by the spring of 2013, modify the entrance of the fish ladder and install a tide gate that ensures the entrance can be adequately accessed by fish; and (3) operate, repair, maintain, and clean the fish passage facilities, as needed. The order further required that, if downstream passage facilities or sufficient flows for downstream passage operation are not available during the downstream passage season, the exemptee must pass all project inflow over the project spillway.¹²

14. In addition, the December 2012 order stated that the exemptee must consult with FWS and NMFS on the design and installation of the trashracks and tide gate and file for Commission approval final drawings that have been approved by those agencies. Finally, the order required the exemptee to file progress reports, by the 15th of each month, that included: (1) a detailed description of progress in designing and completing the measures; (2) summaries of consultations with FWS, NMFS, and other resource agencies; and (3) identification of any problems that may interfere with the scheduled completion of the measures.¹³ The order required the exemptee to file copies of the monthly progress reports with FWS, NMFS, Maine DIFW, and Maine DMR.

15. The exemptee failed to file his first progress report, which was due by January 15, 2013. On January 24, 2013, NMFS informed Commission staff that the exemptee had not yet begun the consultation required by the December 2012 Order.¹⁴

¹¹ *Christopher M. Anthony*, 141 FERC ¶ 62,188 (2012) (December 2012 Order).

¹² The exemptee had also provided a plan and proposed schedule for installing a dedicated downstream passage flume and for replacing and modifying the bar spacing at the fish ladder exit. The order did not require the exemptee to complete these modifications, finding that they are not requirements of the exemption, but encouraged the exemptee to work with FWS and NMFS to address the agencies' concerns.

¹³ The progress reports were to also include descriptions of any interim measures taken to pass fish and protect Atlantic salmon, any sightings of Atlantic salmon, and copies of any communications with NMFS regarding the need for consultation under section 7 of the Endangered Species Act.

¹⁴ Email from Jeff Murphy, NMFS, to Peter Yarrington, Commission staff, filed on January 25, 2013.

16. On January 30, 2013, Commission staff issued a Compliance Order, finding that the exemptee was in violation of standard article 2 of the exemption for failure to provide adequate upstream and downstream fish passage.¹⁵ The Compliance Order required the exemptee to file the overdue progress report by February 14, 2013, addressing the items required by the December 2012 Order, including evidence of consultation with FWS and NMFS, and evidence that the exemptee could complete the measures required by the December 2012 Order within the timeframes specified by that order (spring and summer 2013). The Compliance Order warned the exemptee that failure to comply could result in the imposition of civil penalties or revocation of the exemption pursuant to section 31 of the FPA.

17. On February 20, 2013, the exemptee filed the overdue progress report. The report stated that the entrance of the fish passage facilities would be lowered to accommodate the tide gate, and proposed to use a chain curtain in place of a narrow-spaced intake trashrack, as required by the December 2012 Order. The report: (1) showed that the exemptee only initiated consultation with FWS and NMFS on February 17, 2013, the same day on which the report was written; and (2) merely asserted, without supporting evidence, that the necessary work could be completed within the required timeframes.

18. On February 26, 2013, Commission staff responded to the exemptee's progress report, stating that the exemptee must consult with FWS and NMFS and gain agency approval before making any repairs to the fish passage facilities. Commission staff stated that the exemptee was still in violation of standard article 2. Staff reminded the exemptee to timely file the next monthly progress report, which was due by March 15, 2013.

19. On March 11, 2013, Commission staff held a teleconference with the exemptee, FWS, and NMFS to review the exemptee's noncompliance and the resulting potential impacts to federally-listed Atlantic salmon. Commission staff, FWS, and NMFS agreed that the exemptee was significantly behind on repairing the fish passage facilities. The exemptee agreed to provide the agencies with plans reflecting the agencies' requested design elements. The exemptee also stated that the plans would include drawings for the installation of a tide gate at the fish passage entrance to allow upstream-migrating fish to enter the facilities at different tidal stages.

¹⁵ *Christopher M. Anthony*, 142 FERC ¶ 62,074 (2013).

20. On March 22, 2013, the exemptee submitted a second monthly progress report.¹⁶ The report included general drawings of a tide gate at the fish passage entrance. The report also: (1) briefly described the exemptee's consultation with FWS and NMFS through two teleconferences; and (2) asserted, without supporting evidence, that the exemptee could complete the tide gate and intake trashrack installations by May 2013, within the timeframes in the approved plan and schedule. FWS and NMFS commented on the exemptee's report, stating that that the exemptee's tide gate drawings did not incorporate their recommendations.¹⁷
21. On April 11, 2013, Commission staff issued a letter to the exemptee reviewing the March 11, 2013 teleconference and the deficiencies in the second progress report. Staff reminded the exemptee that the next progress report must address all of the Compliance Order's requirements, including the six monthly reporting requirements, and reiterated that failure to submit the materials could result in the imposition of civil penalties or revocation of the project exemption.
22. On April 22, 2013, the exemptee filed the third progress report. In the report, the exemptee discussed only the tide gate design for the fish passage entrance and disagreed with the agencies' comments on his design. The exemptee failed to address any of the Compliance Order's requirements.
23. On May 14, 2013, Commission staff, including staff from the Commission's Office of Enforcement, held a teleconference with the exemptee to review noncompliance with the requirements of his exemption and the Compliance Order. Staff agreed to extend the deadline for the next progress report until May 30, 2013. The exemptee did not file the May 2013 report.
24. On June 11, 2013, FWS reported that it had met with the exemptee and NMFS to review and provide guidance on the exemptee's tide gate design. The agencies stated that the exemptee could perform a test installation of the tide gate, if he monitored and evaluated the gate's function. The agencies requested that the exemptee provide them with biweekly monitoring and evaluation results. The agencies also reserved the right to

¹⁶ The exemptee sent the report to Peter Yarrington, Commission staff, via facsimile on March 22, 2013, and staff filed the report with the Commission on the same day. The exemptee later filed a copy of the same report on April 4, 2013.

¹⁷ Letter from Laury Zicari, FWS, to the Secretary of the Commission filed March 26, 2013, and email from Jeff Murphy, NMFS, to Peter Yarrington filed on March 26, 2013.

reject the design if the tide gate did not operate as intended.¹⁸ The exemptee never provided the agencies with the requested biweekly reports.

25. On June 26, 2013, Commission staff issued a letter reviewing the exemptee's noncompliance with the project exemption and the Compliance Order. Again, Commission staff stated that failure to achieve compliance could result in the imposition of civil penalties or revocation of the project's exemption. The exemptee did not file any more progress reports with the Commission.

26. On August 13, 2013, the Commission issued a "Notice of Termination of Exemption by Implied Surrender" based on the exemptee's failure to comply with the exemption and the Compliance Order.¹⁹ The notice established September 12, 2013, as the deadline for filing comments. Comments in favor of termination were filed by NMFS; the U.S. Department of the Interior (Interior), on behalf of the FWS; Maine DMR; and Clinton B. Townsend, on behalf of the Penobscot Nation and NGOs. Interior, NMFS, and the Penobscot Nation and NGOs supported termination of the exemption, because fish passage facilities are needed at the project to support endangered Atlantic salmon, as well as river herring and American eel. NMFS explained that the exemptee's failure to meet the terms and conditions of the project exemption resulted in unacceptable impacts to fisheries and impeded NMFS' efforts to restore anadromous fish to Marsh Stream. FWS, NMFS, and the Penobscot Nation and NGOs stated that, following termination of the exemption, they would work with the Town of Frankfort, the dam's owner, to resolve fish passage issues at the dam.

27. On September 16, 2013, the exemptee filed comments stating that, due to health issues, he was unable to complete the modifications to the fish passage facilities at the project by the spring of 2013, as required under his approved plan and schedule. The exemptee stated that the tide gate was constructed and that he would install the tide gate on the fish passage entrance. Once installation of the tide gate was complete, the exemptee said that he would file a report with the Commission. The exemptee's comments did not otherwise address the August 13, 2013 termination notice.

28. On September 17, 2013, Commission staff asked the exemptee to include photographs of the tide gate installation and operation in his next filing.

¹⁸ Letter from Steven Shepard, FWS, to the Secretary of the Commission filed June 11, 2013.

¹⁹ 78 Fed. Reg. 50,411 (August 19, 2013).

29. On October 2, 2013, the Penobscot Nation and NGOs filed supplemental comments urging the Commission to promptly terminate the exemption.
30. On October 7, 2013, NMFS filed a report on an inspection it conducted at the project on September 30, 2013, stating that the tide gate had not been installed. NMFS included photographs with its report showing that the exemptee had only installed gate guides for the fish passage entrance.
31. On October 7, 2013, the exemptee filed a report dated September 30, 2013, indicating that he had installed and adjusted the tide gate and was planning to begin other fish passage improvements. The report failed to include photographs of the tide gate as requested by Commission staff in its September 17, 2013 letter. The exemptee stated that he would work on downstream passage facilities at the project in cooperation with FWS and NMFS, but did not provide a plan or schedule for that work.
32. On October 18, 2013, the exemptee filed a report stating that the tide gate began operation on October 2, 2013. The report included photographs of the tide gate installation and operation.
33. On November 25, 2013, NMFS filed comments stating that the exemptee's newly installed tide gate is inadequate and the fish passage facilities are still in need of additional maintenance for proper operation. NMFS stated that, as designed, the facilities will not safely pass fish. NMFS stressed that the exemptee's failure in providing the required fish passage at the project, which is the lowermost project on Marsh Stream, uniquely affects an entire sub-watershed used by the Gulf of Maine Distinct Population Segment of Atlantic salmon. NMFS explained that the lack of proper fish passage facilities prevents migrating fish from accessing upstream habitat improvements.
34. On December 6, 2013, FWS also filed additional comments. FWS stated that it inspected the exemptee's installed tide gate and found that it hinders the passage of fish. In addition, FWS expressed frustration with the exemptee's failure to consult with the agencies and meet the established schedules for fixing the fish passage facilities and supplying a functional tide gate.
35. On February 7, 2014, the Commission issued a "Notice of Revocation of Exemption Under Section 31(b) of the Federal Power Act and Soliciting Comments and Interventions," establishing March 10, 2014, as the deadline to file comments and motions to intervene.²⁰ The notice also provided the exemptee with an opportunity to

²⁰ 79 Fed. Reg. 8963 (February 14, 2014).

request an evidentiary hearing before an Administrative Law Judge.²¹ Timely notices of intervention were filed by Interior, on behalf of itself, FWS, and the Bureau of Indian Affairs (BIA); NMFS; and Maine DMR.²² A timely, unopposed motion to intervene was filed by American Rivers.²³

36. Clinton B. Townsend, on behalf of the Penobscot Nation and NGOs, filed a notice of intervention, which was dismissed on April 21, 2014, for failure to comply with the requirements of Rule 214(a) of the Commission's Rules of Practice and Procedure.²⁴ Subsequently, on April 23, 2014, Clinton B. Townsend, on behalf of the Penobscot Nation and NGOs, filed a late motion to intervene in the proceeding. Pursuant to Rule 214,²⁵ the motion to intervene filed by Clinton B. Townsend, on behalf of the Penobscot Nation and NGOs, is granted.

37. In response to the revocation notice, Interior, NMFS, Maine DMR, and Penobscot Nation and NGOs reiterated their comments filed in support of the earlier notice of termination. BIA stated that it supports revocation of the exemption because the exemptee's noncompliance is likely to affect federally-listed Atlantic salmon. BIA asserts that many agencies have expended a tremendous effort to restore Atlantic salmon in the project area, and that revocation of the exemption would aid in the restoration. In addition, American Rivers supports revocation because the exemptee's inability to comply with the terms and conditions of the exemption affects federally-listed Atlantic salmon.

²¹ 16 U.S.C. § 823b(b) (2012).

²² Under Rule 214(a) of the Commission's Rules of Practice and Procedure, Interior, FWS, BIA, NMFS, and Maine DMR became parties to this proceeding upon the timely filing of their notices of intervention. 18 C.F.R. § 385.214(a) (2013).

²³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(b) (2013).

²⁴ 18 C.F.R. § 385.214(a) (2013). The regulations provide that Indian tribes with authority to issue water quality certifications may file notices of intervention, rather than motions to intervene. The Penobscot Nation has not been granted water quality certification authority by the Environmental Protection Agency, the entity that can make such grants.

²⁵ 18 C.F.R. ¶ 385.214(b) (2013).

38. On March 28, 2014, Lucas S. Anthony filed comments stating that he was writing on behalf of the exemptee, who is his father, and that he was trying to assume control of the day-to-day operations of the project, due to the exemptee's declining health. Mr. Anthony stated that he was not aware of the notice of revocation until March 20, 2014. He stated that his father was unable to make repairs to the fish passage facilities due to his poor health and that he intends to repair and modify the fish passage facilities according to the Commission's orders, but cannot do so until late spring of 2014, due to ice flows and seasonal high water levels. Mr. Anthony requests that the Commission afford him an opportunity to bring the facilities into compliance and delay the revocation proceeding until August 2014.

39. On March 31, 2014, the Penobscot Nation and NGOs responded to Mr. Anthony's comments and asked the Commission to deny his request to delay revocation proceedings. The Penobscot Nation and NGOs contend that the exemptee has not made a good faith effort to restore the fish passage facilities at the project and is out of compliance with two Commission orders. The Penobscot Nation and NGOs state that, because of the exemptee's inability to meet his obligations, federally-listed Atlantic salmon will be unable to access upstream spawning habitats in the spring of 2014.

II. Discussion

40. Under section 31(b) of the FPA,²⁶ we may issue an order revoking an exemption, if we find that the exemptee knowingly violated a final compliance order and was given a reasonable time to comply with that order before the revocation proceeding was commenced.

41. Commission staff issued the Compliance Order on January 30, 2013, setting out specific parameters for the exemptee to achieve compliance with standard article 2 of his exemption. The Compliance Order required the exemptee to: (1) make repairs to the fish passage facilities according to the plan and schedule approved in the December 13, 2012 order; (2) provide evidence that he consulted with FWS and NMFS; and (3) file monthly progress reports.

42. For the past year, the exemptee has failed to fulfill, or make any significant progress towards fulfilling, the requirements of the Compliance Order. First, the exemptee has not made repairs to the fish passage facilities according to the plan and schedule approved in the December 2012 Order. The approved plan and schedule required the exemptee, in consultation with FWS and NMFS, to complete installation of a tide gate by the spring of 2013 and to install powerhouse intake trashracks by the

²⁶ 16 U.S.C. § 823b(b) (2012).

summer of 2013. To date, the exemptee has not installed intake trashracks or a functional tide gate that allows the passage of fish around the project. Second, the exemptee only minimally consulted with FWS and NMFS, and has failed to follow the agencies' guidance. As a result, the exemptee has not received the agencies' approval of designs for the tide gate or any intake trashrack facilities. Finally, of the fifteen monthly progress reports that have been due since issuance of the December 2012 Order, the exemptee has filed only three, all of them untimely, and the reports failed to provide all the required information.

43. The exemptee for the Frankfort Project has failed to comply with the standard article 2 of the project's exemption from licensing and the Compliance Order for over a year. Such continued failure will likely result in effects to federally-listed Atlantic salmon. On the other hand, FWS, NMFS, Maine DMR, and the Penobscot Tribe and NGOs indicate that they are working with the Town of Frankfort to resolve fish passage issues at the dam after the project is no longer under Commission jurisdiction. Thus, revocation of the exemption will allow these entities to work towards providing effective passage for federally-listed Atlantic salmon, river herring, and American eel at the Town of Frankfort's dam so that these species can access restored habitat upstream in Marsh Stream. Thus, we find revocation of the exemption to be in the public interest. We do not find Mr. Lucas Anthony's assurance that the fish passage facilities will be designed, constructed, and operated with agency concurrence by August 2014 to be persuasive, given the history of non-compliance at the project. Consequently, we deny the request to delay the revocation proceedings until August 2014.

44. Upon issuance of this order, the exemptee must cease generation and permanently disable all generating equipment. Public safety would not be affected by revoking the exemption. The project is classified as Low Hazard by the Commission's Division of Dam Safety and Inspections (Dam Safety), based on the dam's low height and small impoundment. An inspection of the project on June 13, 2012, by the Commission's Office of Energy Projects, Division of Dam Safety, found that the structures associated with the project were in generally good condition, and did not find any significant deficiencies requiring immediate action. Following revocation of the exemption, authority over the site will pass to the State of Maine's dam regulatory authorities.

The Commission orders:

(A) The exemption for the Frankfort Project No. 6618 is revoked, effective upon issuance of this order.

(B) Upon issuance of this order, Christopher M. Anthony, exemptee, shall cease generation at the Frankfort Project and, within 10 days of issuance of this order, permanently disable the project's generating equipment.

(C) The late motion to intervene filed by Clinton B. Townsend, on behalf of the Atlantic Salmon Federation; Penobscot Indian Nation; Maine Rivers; Natural Resources Council of Maine; and Trout Unlimited, Maine Council, on April 23, 2014, is granted.

(D) This order constitutes final agency action. Requests for rehearing of this order may be filed by any party within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2013). The filing of a request for rehearing does not operate as a stay of the effective date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.