

Appendix B.6

Jackman FERC Order

8TH ITEM of Level 1 printed in FULL format.

Public Service of New Hampshire

Docket No. EL87-6-000

FEDERAL ENERGY REGULATORY COMMISSION - Office Director

43 F.E.R.C. P62,227; 1988 FERC LEXIS 1357

Order Ruling on Declaration of Intention and Finding No
Licensing Required

May 26, 1988

CORE TERMS: licensing, navigation, navigable, dam, Federal Power Act, federal government, surplus water, status report, public lands, transmission, water-power, constructed, reservations, licensed, occupy, water

PANEL:
[*1]

Fred E. Springer, Director, Office of Hydropower Licensing.

OPINION:

On November 10, 1986, Public Service of New Hampshire filed a Declaration of Intention for its existing Jackman Project and raised the question of whether licensing is required pursuant to Part I of the Federal Power Act (Act). n1

n1 16 U.S.C. @@ 791(a)-825(r).

Project Description

The existing project is located on the North Branch of the Contoocook River, in Hillsborough County, near Hillsboro, New Hampshire. The Jackman Project is sated as a peaking facility and consists of: (1) a 1,870-foot-long and ot-high dam; (2) a 130-foot-long concrete gravity spillway/intake with two ing earth fill dikes; (3) an impoundment with a surface area of 519 acres; (4) a 7 1/2-foot-diameter 6,208-foot-long penstock; (5) a 225,000 gallon differential surge tank; (6) a powerhouse with a 3.2 MW generating unit; and (7) other appurtenances.

Generated energy is fed into Public Service of New Hampshire's (PSNH) transmission and distribution system and sold to its customers. Public notice of the Declaration of Intention was issued May 21, 1987. Protests, comments and petitions to intervene were to be filed on [*2] or before July 2, 1987. The Army Corps of Engineers furnished comments on the project stating that the Jackman project does not involve any federally owned land utilized for water resource purposes under Corps jurisdiction or affect Corps of Engineers flood control activities; the North Branch of the Contoocook River has not been declared to be a navigable waterway of the United States for the purposes of sections 9 and 10 of the River and Harbor Act of 1899.

Jurisdiction

Section 23(b) of the Federal Power Act requires that water power projects be licensed if they are located on navigable waters of the United States, occupy

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any part of the public lands or reservations of the United States, use surplus water or water-power from a federal government dam, or, if constructed after August 26, 1935, are located on any part of a non-navigable water subject to Congress' jurisdiction under the commerce clause and affect the interests of interstate or foreign commerce.

A navigation status report entitled "Navigability of the North Branch, Contoocook River (Jackman Hydropower Project) Hillsborough County, New Hampshire", prepared on March 11, 1988, indicates that the North Branch of [*3] the Contoocook River is not navigable. The Director of the Office of Hydropower Licensing adopts the navigation findings contained in the report. The navigation status report may be obtained from the Office of Public Information.

The project does not occupy any public lands or reservations of the United States and does not use surplus water or water-power from a federal government dam. The project, constructed in 1926, provides power, on demand, to the New England Electric Power transmission grid system. There is no evidence, however, of modification to the project that would constitute post-1935 construction. Consequently, section 23(b) does not require licensing of the Jackman facility.

The Director orders:

(A) Public Service of New Hampshire's petition for an order declaring its Jackman Project is not required by section 23(b) of the Federal Power Act to be licensed is granted on the basis of the information currently available. This order is without prejudice to any future determination, upon new or additional evidence, that licensing is required.

(B) This order is issued under authority delegated to the Director by the Commission. You may challenge this order's [*4] finding that your project is subject to the mandatory licensing jurisdiction of the Commission, or any other provision of the order, by filing an appeal with the Commission within 30 days of the date of this order. See 18 C.F.R. @ 385.1902 (1987).