

**139 FERC ¶ 62,035**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Konohiki Hydro Power, LLC  
Clean River Power 16, LLC

Project No. 14069-000  
Project No. 13875-000

ORDER GRANTING EXEMPTION FROM LICENSING (CONDUIT) AND  
DISMISSING PRELIMINARY PERMIT APPLICATION

(Issued April 12, 2012)

**Introduction**

1. On May 9, 2011, and supplemented July 29, 2011, Konohiki Hydro Power, LLC (Konohiki Hydro or exemptee) filed an application to exempt the proposed 5.3-megawatt (MW) Puu Lua Hydropower Project from the licensing requirements set forth in Part I of the Federal Power Act (FPA).<sup>1</sup> The small conduit hydropower project would be located on the Koke'e Ditch Irrigation System (Koke'e Ditch) in Kauai County, Hawaii. The project would not occupy any federal lands.

2. The application for the Puu Lua Hydropower Project was filed in competition with Clean River Power 16, LLC's (Clean River Power) preliminary permit application for the Kitano Water Power Project No. 13875-000. As discussed below, a conduit exemption for the Puu Lua Hydropower Project is being issued and the preliminary permit for the Kitano Water Power Project is being dismissed with prejudice.

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<sup>1</sup> Under Part I of the FPA, 16 U.S.C. §§ 792-823 (2006), 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, 16 U.S.C. § 823 (2006), 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 is located on non-federal lands 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).

### **Project Description**

3. The proposed Puu Lua Hydropower Project would consist of two hydropower developments: the Upper Puu Lua Development (Upper Development) and the Lower Puu Lua Development (Lower Development). The Upper Development would include a proposed powerhouse, containing one generating unit with an installed capacity of 2 MW and appurtenant facilities. The Lower Development would include a proposed powerhouse, containing one generating unit with an installed capacity of 3.3 MW and appurtenant facilities. Konohiki Hydro estimates the project would have an average annual generation of 32.49 gigawatt-hours.

4. The Puu Lua Hydropower Project would be located on the State of Hawaii's Agribusiness Development Corporation's Koke'e Ditch in Kauai County, Hawaii.<sup>2</sup> The irrigation system diverts water from the Waimea River and its tributaries through 7.1 miles of tunnels to the Puu Lua Reservoir. From the reservoir, water travels through an 18-mile open ditch system and a 10-mile closed, pressurized system, which includes small reservoirs, pumping stations, siltation ponds, and wells. Approximately two miles downstream of the Puu Lua Reservoir, water passes by the Puu Moe Intake as it continues on the Koke'e Ditch.<sup>3</sup> Currently, the Koke'e Ditch is being upgraded from an open ditch system to a closed, 24-inch-diameter pressurized irrigation system. This upgrade is being done for irrigation purposes.

5. The proposed Puu Lua Hydropower Project's Upper Development would involve the construction of a new powerhouse on the Koke'e Ditch, approximately 3.6 miles below the Puu Moe Intake. The Upper Development powerhouse would enclose a segment of the irrigation system and contain a new 2-MW turbine generating unit. Water would continue approximately 3.4 miles in the above-ground pressurized pipeline to the Lower Development. The Lower Development would involve the construction of a new powerhouse that would also enclose a segment of the irrigation system and contain a new 3.3-MW turbine generating unit. From the Lower Development the pressurized irrigation system delivers water to existing irrigation customers. The proposed project would not change the timing, location, or amount of water delivered to the existing irrigation system.

6. Konohiki Hydro has a lease from the Agribusiness Development Corporation to develop and operate the proposed Puu Lua Hydropower Project.

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<sup>2</sup> Operation and maintenance of the Koke'e Ditch has been delegated to the Kekaha Agricultural Association.

<sup>3</sup> The Puu Moe Intake diverts a portion of the water from the Koke'e Ditch to another irrigation district.

## **Background**

7. On August 16, 2011, public notice accepting the application was issued, establishing September 15, 2011, as the deadline for filing comments and motions to intervene. Timely motions to intervene were filed by the Kekaha Agriculture Association, the Agribusiness Development Corporation, Clean River Power, and the Department of Hawaiian Home Lands.<sup>4</sup> Comments were filed by the United States Department of the Interior (Interior), Mr. Punilei Manini, the Kekaha Agriculture Association, and the Department of Hawaiian Homelands. Konohiki Hydro submitted reply comments to the issues raised by Interior, Mr. Manini, the Agribusiness Development Corporation, and the Department of Hawaiian Home Lands. The issues raised in the comments and motions to intervene are addressed below.

## **Section 30(c) Conditions**

8. Section 30(c) of the FPA<sup>5</sup> 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.<sup>6</sup> 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**

9. Pursuant to section 380.4(a)(14) of the Commission's regulations,<sup>7</sup> Commission staff is not required to prepare an environmental assessment or an environmental impact statement for conduit exemption applications. Nonetheless, the environmental information in the exemption application and other public comments have been considered, and I find that issuance of this order is not a major federal action significantly affecting the quality of the human environment.

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<sup>4</sup> Timely, unopposed motions to intervene were granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2011).

<sup>5</sup> 16 U.S.C. § 823a(c) (2006).

<sup>6</sup> 16 U.S.C. §§ 661-667e (2006).

<sup>7</sup> 18 C.F.R. § 380.4(a)(14) (2011).

10. On September 14, 2011, Interior stated that it does not support the conduit exemption because it believes the environmental analysis in the application is inadequate. Interior stated that the environmental analysis should include effects to the entire irrigation system, including the irrigation diversion structure on the Puu Lua Reservoir. In response, Konohiki Hydro stated that an environmental analysis of the entire irrigation system is outside of the scope of a conduit exemption. Further, Konohiki Hydro asserted that it will only use the existing irrigation flows and will not increase any diversions for the purposes of hydropower production.

11. The scope of a conduit exemption is narrow; it only includes those facilities that are constructed and operated for hydroelectric purposes, and excludes the associated transmission line and the conduit on which the project is located.<sup>8</sup> Therefore, the environmental analysis for a conduit exemption is limited to the potential effects of the facilities to be authorized under this exemption, specifically the footprint of the two separate powerhouses, containing turbine generating units. The proposed project will not affect the rate or volume of water flow; it will use only the amount of flow available for irrigation operations.

## **Other Issues**

### **A. Competing Application**

12. The Puu Lua Hydropower Project application was filed in competition with Clean River Power's preliminary permit application for the Kitano Water Power Project No. 13875.<sup>9</sup> On October 21, 2011, Clean River Power's application was dismissed without prejudice to being reinstated in the event that Konohiki Hydro's exemption was subsequently dismissed, denied, or withdrawn.<sup>10</sup> Since an exemption is being issued in this order, Clean River Power's preliminary permit application will be dismissed with prejudice.

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<sup>8</sup> See 18 C.F.R. § 4.30(b)(28) (2011).

<sup>9</sup> The application for the Kitano Water Power Project was filed on October 22, 2010. On November 8, 2010, public notice accepting the application was issued, establishing January 7, 2011, as the deadline for filing comments, motions to intervene, and competing development applications. On January 7, 2011, Konohiki Hydro filed a timely notice of intent to file a conduit exemption application; and on May 9, 2011, filed its timely exemption application for the Puu Lua Hydropower Project No. 14069.

<sup>10</sup> *Clean River Power 16, LLC*, 137 FERC ¶ 62,068 (2011). The dismissal was pursuant to the Commission's policy established in *Dennis v. McGrew*, 32 FERC ¶ 61,229 (1985).

13. On September 15, 2011, the Agribusiness Development Corporation requested that the Commission defer any decisions regarding Konohiki Hydro's exemption application and Clean River Power's preliminary permit application, until it could determine which proposal would be best suited for the irrigation facilities.<sup>11</sup> Section 4.37(d)(1) of the Commission's regulations provides that the Commission will favor applicants for license or exemption, over preliminary permit applicants proposing to develop the same water resource.<sup>12</sup> The Commission's policy is to dismiss preliminary permit applications that compete with development proposals (such as an exemption application) when, as is the case here, the preliminary permit application fails to substantiate the technical, environmental, and economic aspects of the proposed project.<sup>13</sup> Therefore, it is contrary to Commission policy to suggest that Clean River Power's preliminary permit application should be given preference over Konohiki Hydro's conduit exemption application.

14. However, to ensure that construction of Konohiki Hydro's proposed project will not affect the operation or integrity of the irrigation canal system, Article 14 requires the exemptee to consult with the Agribusiness Development Corporation and its operator, the Kekaha Agriculture Association, in the preparation of the project's plans and specifications to be filed with the Commission for approval before the start of any construction. Construction and operation of the proposed hydroelectric project shall be secondary to irrigation activities.

## **B. Water Use**

15. On September 15, 2011, the Department of Hawaiian Homelands requested further information regarding the project's effects to the flow and quality of water from the Koke'e Ditch. Specifically, the Department of Hawaiian Homelands wanted to ensure that the proposed project would not interfere with its right to use surplus water from the Waimea River tributary system, including the Koke'e Ditch. In reply comments, filed on October 17, 2011, Konohiki Hydro stated that it will use the existing flows in the Koke'e Ditch to generate electricity; it will not divert or otherwise disrupt the flow or volume of water in the irrigation system or in the Waimea River.

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<sup>11</sup> The Agribusiness Development Corporation characterized Konohiki Hydro's proposal as a preliminary permit. In reply comments filed on October 17, 2011, Konohiki Hydro clarified that it was not seeking a preliminary permit in competition with Clean River Power, rather it seeks a conduit exemption.

<sup>12</sup> 18 C.F.R. § 4.37(d)(1) (2011).

<sup>13</sup> See *Dennis v. McGrew*, 32 FERC ¶ 61,229 (1985).

16. As discussed above, the nature of a conduit exemption is such that it will not change the timing, location, or amount of water delivered to the existing irrigation system. Therefore, the proposed project will not affect the Department of Hawaiian Homelands' right to use surplus water from the Waimea River tributary system, including the Koke'e Ditch.

### **B. Property Ownership**

17. On September 15, 2011, Mr. Punilei Manini asserted that he possesses an ownership right to the lands on which the project will be located. Mr. Manini claims that the land was conveyed to his ancestors by King Kamehameha III and was passed to him through joint tenancy. In reply, on October 17, 2011, Konohiki Hydro stated that the project lands are not owned by Mr. Manini, rather the State of Hawaii possesses title to the lands,<sup>14</sup> which are managed by the Agribusiness Development Corporation.<sup>15</sup> Further, as shown in its application and July 29, 2011 supplement, Konohiki Hydro demonstrated that it possesses a lease from the Agribusiness Development Corporation to develop and operate the proposed Puu Lua Hydropower Project.

18. Mr. Manini's claim is not persuasive. He has not demonstrated sufficient evidence to overcome Konohiki Hydro's proof that it possesses sufficient property rights to construct, operate, and maintain the proposed project. As stated above, the State of Hawaii transferred the control and management of the project property to the Agribusiness Development Corporation, who issued a valid lease to Konohiki Hydro for the development and operation of the proposed project.<sup>16</sup> Therefore, Konohiki Hydro has demonstrated that it possesses a valid property interest in the subject lands as contemplated by section 4.30(b)(26) of the Commission's regulations.<sup>17</sup>

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<sup>14</sup> In 1898, the Republic of Hawaii ceded and transferred to the United States absolute fee and ownership of all public, Government, or Crown lands. *See* the Newlands Resolution, 30 Stat. 750 (1898) ("crown lands" were lands formally held by the Hawaiian monarchy). In 1959, Congress admitted Hawaii to the United States and granted Hawaii the United States' title to all the public lands and other public property within the boundaries of the State of Hawaii. *See* the Admission Act, Pub. L. 86-3, 73 Stat. 4 (1959).

<sup>15</sup> *See* the State of Hawaii Governor's Executive Order No. 4007, Haw. Rev. Stat. 163D, *et seq.* (2011). *See also* Konohiki Hydro's October 17, 2011 reply comments at 6-9.

<sup>16</sup> *See* Application at 2 and July 29, 2011 supplement at Appendix 1.

<sup>17</sup> 18 C.F.R. § 4.30(b)(26) (2011) (a real property interest for the purposes of the  
(continued)

## **Administrative Conditions**

### **1. Annual Charges**

19. The Commission collects annual charges from exemptees for the administration of its hydropower program. In accordance with the Commission's regulations, the effective date of the annual charge is the date of commencement of project construction. Article 7 provides for the collection of funds for the administration of the Commission's hydropower program.

### **2. Start of Construction**

20. Standard Article 3 provides that the Commission may revoke the exemption if construction of the generating facilities has not begun in two years or is not completed within four years of the date this exemption is issued. Article 8 is included, which states that the Commission may terminate the exemption if construction of the project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.<sup>18</sup>

### **3. Exhibit F and G Drawings**

21. Although the Exhibit F and G drawings filed on May 9, 2011, will be approved, the Commission requires exemptees to file sets of approved project drawings on microfilm and electronic file formats. Article 9 requires the exemptee to file the Exhibit F and G drawings approved in Ordering Paragraph (C) in microfilm and electronic file formats.

22. Under Article 10, the exemptee is required, within 90 days of completion of construction of the project facilities, to file revised Exhibit F and G drawings showing the as-built conditions.

### **4. Operation and Maintenance**

23. Ensuring that the exempted project is fit for use is an important public interest function of the Commission. Article 11 states that if the exemptee causes or allows

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provisions governing conduit exemptions includes ownership in fee, rights-of-way, easements, or leaseholds).

<sup>18</sup> The start-of-construction deadline in standard Article 3 (contained in the attached E-1) refers to the project's generating facilities. The deadline in special Article 8 applies to on-the-ground construction of other project facilities.

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.

## **5. Exemptee Liability**

24. 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 ... .”<sup>19</sup> To clarify that exemptees would be similarly liable, Article 12 states that the exemptee is liable for damages to the property of others.

## **6. Property Rights**

25. Pursuant to section 4.31(b)(2) (2011) 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 and operation of the project. The application filed on May 9, 2011, and supplemented on July 29, 2011, contains documentation that Konohiki Hydro has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, Article 13 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.

## **7. Review of Final Plans and Specifications**

26. To ensure that the exemptee is constructing and operating a safe and adequate project, Article 14 requires the exemptee to file final contract drawings and specifications for the pertinent features of the project for Commission approval prior to commencing construction.

### The Director orders:

(A) The Puu Lua Hydropower Project is exempted from the licensing requirements of Part I of the Federal Power Act, and 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 Exhibits G-1, G-2, and G-3 filed on July 29, 2011.

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<sup>19</sup> 16 U.S.C. § 803(c) (2006).



(2) The following project works: (1) a powerhouse at the Upper Puu Lua Development, containing one generating unit with an installed capacity of 2 megawatts and appurtenant facilities; and (2) a powerhouse at the Lower Puu Lua Development, containing one generating unit with an installed capacity of 3.3 megawatts and 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, pages 9 though 25 filed on May 9, 2011.

Exhibit F: The following Exhibit F drawings filed on May 9, 2011.

Exhibit No.	FERC Drawing No.	Drawing Title
F-1	P-14069-1	Upper Powerhouse Plan
F-2	P-14069-2	Lower Powerhouse Plan

Exhibit G: The following Exhibit G drawings filed on May 9, 2011.

Exhibit No.	FERC Drawing No.	Drawing Title
G-1	P-14069-3	Project Location Map
G-2	P-14069-4	Project Boundary Map Upper Powerhouse
G-3	P-14069-5	Project Boundary Map Lower Powerhouse

(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.

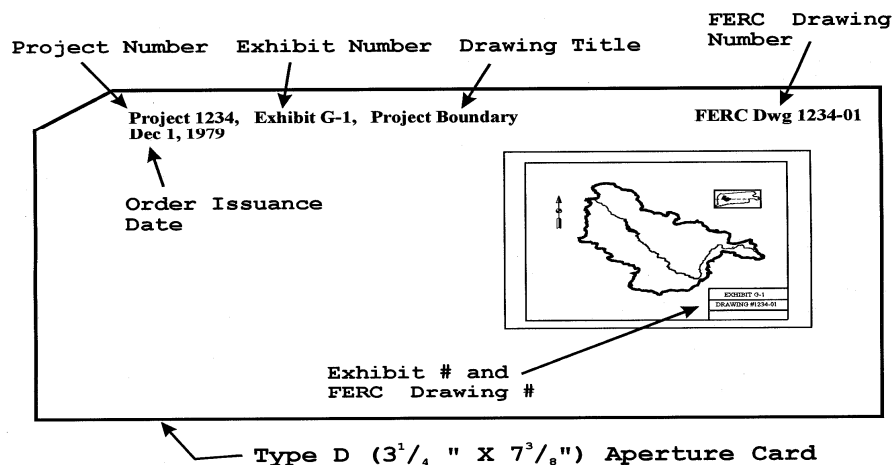
(D) This exemption is also subject to the articles set forth in Form E-1 entitled "Standard Terms and Conditions of Exemption from Licensing" (attached), and the following additional articles:

**Article 7. Annual Charges.** The exemptee shall pay the United States the following annual charges, effective the date of commencement of project construction, 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 5.3 megawatts.

**Article 8. Start of Construction.** The Commission may terminate this exemption if actual construction of any project works has not begun within two years or has not been completed within four years from the issuance date of the exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

**Article 9. Exhibit Drawings.** Within 90 days of the date of issuance of this order, the exemptee shall file the approved exhibit drawings in aperture card and electronic file formats, as described below.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e. P-14069-1 through P-14069-5) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., G-1, etc.), Drawing Title, and date of this exemption shall be typed on the upper left corner of each aperture card. See Figure 1.



**Figure 1 Sample Aperture Card Format**

Two of the sets of aperture cards shall be filed with the Secretary of the

Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections San Francisco Regional Office.

(b) The exemptee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections San Francisco Regional Office. 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 exemption, and file extension in the following format [e.g., P-14069-3, G-1, Location Map, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file  
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4  
RESOLUTION – 300 dpi desired, (200 dpi min)  
DRAWING SIZE FORMAT – 24" X 36" (min), 28" X 40" (max)  
FILE SIZE – less than 1 MB desired

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.

(c) The exemptee shall file two separate sets of the project boundary data in a georeferenced electronic file format (such as Arc View shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. A single electronic boundary polygon data file is required for the project boundary. Depending on the electronic file format, the polygon and point data can be included in a single file with multiple layers. The georeferenced electronic boundary data file must be positionally accurate to  $\pm 40$  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 exemption, and file extension in the following format [P-14069, boundary polygon/or point data, MM-DD-YYYY.SHP]. The data 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 exemption, and file extension in the following format [P-14069, project boundary metadata, MM-DD-YYYY.TXT].

**Article 10.** *Exhibit F and G Drawings.* The exemptee shall file, within 90 days from completion of construction of the subject facilities, revised Exhibit F and G drawings showing the as-built conditions.

**Article 11.** *Operation and Maintenance.* The Commission will deem it the intent of the exemptee to surrender 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 12.** *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 13.** *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 exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

**Article 14.** *Contract Drawings and Specifications.* The exemptee shall, at least 60 days prior to the start of construction, submit one copy to the Commission's San Francisco Regional Office Director and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the final contract drawings and specifications, prepared in consultation with the Agribusiness Development Corporation and the Kekaha Agriculture Association. The Commission may require changes in the plans and specifications to assure a safe and adequate project. The exemptee shall not start any construction activities before getting a prior authorization from the Commission's San Francisco Regional Office.

(E) Clean River Power 16, LLC's preliminary permit application for the Kitano Water Power Project No. 13875-000 is dismissed with prejudice.

(F) 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.

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§ 825 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). 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.

William Y. Guey-Lee  
Chief, Engineering Resources Branch  
Division of Hydropower Administration  
and Compliance

E-1 Form

**Standard Terms and Conditions of Exemption from Licensing**  
18 C.F.R. § 4.94 (2011)

Any exemption granted under § 4.93 of the Commission's regulations, 18 C.F.R. § 4.93 (2011), 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)

P-14069-000.DOC.....1-14