

UNITED STATES OF AMERICA 111 FERC ¶ 62, 212
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company

Project No. 2181-014

ORDER ON OFFER OF SETTLEMENT AND ISSUING NEW LICENSE

May 25, 2005

INTRODUCTION

1. On February 10, 2003, Northern States Power Company (d/b/a Xcel Energy), filed an application for a new major license pursuant to sections 4(e) and 15 of the Federal Power Act (FPA)¹ to continue operation and maintenance of the existing 5.4-megawatt (MW) Menomonie Project, No. 2181. The project is located on the Red Cedar River in Dunn County, Wisconsin.² The project does not occupy any federal lands.

2. Xcel's application included an Offer of Settlement (Settlement) with provisions to protect and enhance fish, wildlife, and recreation resources.³ As discussed below, I am issuing a new license for the project. Issuing a new license is in the public interest because it would allow the project to continue generating electrical energy to serve a growing regional demand, while protecting and enhancing environmental, recreational, and cultural resources in the Red Cedar River Basin.

¹ 16 U.S.C §§ 797(e) and 808, respectively.

² The Menomonie Project is located on a stretch of the Red Cedar River found to be a navigable waterway of the United States. 15 FPC 1304 (1956).

³ In addition to Xcel, the Settlement was signed by the following entities: the Wisconsin Department of Natural Resources (WDNR); the U.S. Fish and Wildlife Service (FWS); the National Park Service (NPS); city of Menomonie; Dunn County Fish and Game Club; Tainter Lake Sportsmen's Club; Tainter/Menomine Lake Improvement Association; Lower Chippewa Restoration Coalition, Inc.; and a Tainter Lake resident, James Carnitz.

BACKGROUND

3. The original license for the project was issued on April 17, 1956.⁴ The license expired on March 31, 2005.⁵ Since then, Xcel has operated the project operation under an annual license pending the disposition of its new license application.

4. Public notice of the license application was issued on August 29, 2003, setting October 29, 2003, as the deadline for filing motions to intervene. A timely motion to intervene was filed by the Wisconsin Department of Natural Resources. The timely motion to intervene was automatically granted under 18 C.F.R. § 385.214(c)(1)(2004) because it was unopposed.

5. The Commission issued a public notice on January 28, 2004, indicating the project was ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions. Responding to this notice, the U.S. Department of the Interior (Interior) filed a letter on March 29, 2004, supporting the Settlement.

6. On December 21, 2004, Commission staff made available for public comment an environmental assessment (EA). By letter filed on January 20, 2005, Interior provided comments on the EA. By letter filed on January 27, 2005, the U.S. Environmental Protection Agency stated they had no significant concerns meriting comment. All motions to intervene and comments have been fully considered in determining whether, and under what conditions, to issue this new license.

PROJECT DESCRIPTION

7. The Menomonie Project consists of the following existing facilities: (1) a 624-foot-long dam topped with five Taintor gates and an integral powerhouse; (2) a 1,405-acre reservoir (Lake Menomin) with a normal maximum water surface elevation of 814.2 feet above mean sea level (msl); (3) a powerhouse containing two generating units with a total installed capacity of 5.4 MW; and (4) appurtenant facilities. The project boundary encloses the dam, reservoir, and powerhouse. The project is described in greater detail in ordering paragraph (B) (2).

⁴ 15 FPC 1304 (1956).

⁵ The original license was issued to Northern States Power Company for a period of 50 years, effective as of April 1, 1955 and expiring March 31, 2005.

8. The Menomonie Project is operated in a peaking mode, within the constraints of reservoir drawdown limits and minimum flow requirements. During high flow conditions, flows are passed through the turbines up to their hydraulic capacity and excess flows are passed through the spillway gates. Typical operation of the project is to maximize generation during peak demand periods, and reduce generation at night to allow the reservoir to refill. The current license has a minimum flow release requirement below the powerhouse of 450 cubic feet per second (cfs).⁶ The normal full pool water surface elevation of the reservoir in the summer is 814.2 feet msl, and in the winter 814.0 feet msl. The current license limits the project reservoir drawdown to 812.5 feet msl. The reservoir fluctuates about 0.5 foot daily, from 813.7 feet to 814.2 feet msl in the summer and from 813.5 feet to 814.0 feet msl in the winter.

9. Xcel proposes to change project operation to include more strict reservoir fluctuation limits, release additional minimum downstream flows, and construct new recreational facilities according to the Settlement, which is discussed below. No other construction is proposed, nor is any additional capacity proposed for the project.

OFFER OF SETTLEMENT (SETTLEMENT)

10. The parties to the Settlement request that the Commission incorporate the provisions of the Settlement as license terms and conditions. The water quality certification (WQC) for the project includes provisions for project operation as well as the measures in sections 3.0 and 4.0 of the Settlement. Therefore, except as noted below, the provisions of the Settlement are included in this license by ordering paragraph D, which requires the licensee to comply with the conditions of the WQC.

A. Section 1.0 Background Information

11. Section 1.0 introduces the Settlement, the parties to the Settlement, and its purpose.

B. Section 2.0 General Provisions

12. Section 2.0 is the general agreement of the parties, which includes a statement that the Settlement resolves all issues identified for the project. Subsection 2.3.3 describes the Settlement's effective date, which would occur after the Commission issues an order approving the Settlement. Subsection 2.3.7 stipulates that Xcel will prepare a schedule for implementing the studies, plans, and actions identified in the Settlement. The

⁶ Article 20 of the original license required an 80 cfs minimum flow below the project's dam. Article 20 was amended to require a minimum flow of 450 cfs or inflow, whichever is less, be released from the project 27 FERC ¶ 62, 227 (1984).

implementation schedule will specify the initiation date and a progress report and completion date for each study, plan, or activity, as well as milestones for major activities and is to be submitted to the Commission for approval (subsection 2.3.7). Article 402 requires the Implementation Schedule.

C. Section 3.0 Project Operation and Compliance

13. Under subsection 3.1.2, Xcel will operate the Menomonie Project such that: (a) from April 1 to May 31 the project reservoir elevation (Lake Menomin) may range from 813.9 feet to 814.2 feet msl, and from June 1 to March 31 the elevation may range from 813.7 feet to 814.2 feet msl; (b) the project will operate in a modified run-of-river mode from April 1 through June 15 with a discharge from the powerhouse and or dam that approximates inflow plus or minus 15 percent; (c) from June 16 through March 31, flow from the project's powerhouse and or dam will be based on inflow such that when inflow is less than 750 cfs, the project will operate in the modified run-of-river mode, when inflow is greater than 2,500 cfs, the project will operate run-of-river, and when inflow is between 750 and 2,500 cfs, the project will release between 750 and 1,000 cfs. The EA recommends the project be operated as stipulated in the Settlement. These operating requirements are included in conditions C.1., C.2., and D. of the WQC (Appendix A of this order). Article 302 requires a report to be submitted to the Commission describing the effects of limiting reservoir drawdowns on local flooding and the spillway adequacy of the project dam. The licensee shall not limit reservoir drawdowns as stipulated in the WQC until the Commission has approved the filing required in Article 302 (see ordering paragraph F).

14. Subsection 3.1.3 provides contingencies for low flow periods when the minimum flows and lake elevations stipulated in subsection 3.1.2 cannot be maintained. If this situation occurs, Xcel, the WDNR, and the FWS will consult and determine an appropriate operating scenario for the project that balances power and non-power interests. This operating requirement is stipulated in conditions C.2. and D. of the WQC. Article 401 requires Commission notification in the event minimum flows and lake elevations cannot be maintained during such low flow periods.

15. Subsection 3.1.4 allows for the modification of the flow and lake elevation provisions due to operating emergencies beyond the control of Xcel. The applicable response procedures, monitoring equipment, and alarms needed during an electrical outage are described in a Plant Outage Plan, which Xcel is implementing according to Appendix B of the Settlement. The provision to implement this plan is required by condition D of the WQC, and is included in Article 401.

16. Subsection 3.2.1 stipulates that Xcel will prepare and implement an Operations Testing Plan to determine Xcel's ability to operate the project in accordance with the

provisions of Section 3 of the Settlement. Xcel would notify the Commission if any operational changes are determined to be needed after the tests are completed and request that any needed changes be incorporated into the project license. The provision to develop and implement this plan is required by condition D of the WQC, and is included in Article 401.

17. Subsection 3.2.2 states that Xcel will implement an Operational Compliance Monitoring Plan (Appendix C of the Settlement). This plan details how project lake levels and stream flows will be monitored during project operation. The plan also describes how monitoring records will be maintained and distributed by the licensee, and requires Xcel to notify the Commission if changes in project operations occur. Condition D of the WQC requires this plan to be implemented.

18. Subsection 3.2.3 stipulates that Xcel will implement a Drawdown Management Plan (Appendix D of the Settlement) which describes the requirements that are binding on Xcel during any drawdown of Lake Menomin. Condition D of the WQC requires this plan to be implemented.

D. Section 4.0 Natural Resource Management Issues

19. Subsection 4.1 of the Settlement discusses a Red Cedar River Enhancement Fund (Fund) that Xcel would establish to be used in the Lower Red Cedar River Basin for biological studies in the project reservoir, aquatic habitat improvements, shoreline restoration, educational activities, and other such environmental measures that may be determined appropriate by an implementation team. Condition D of the WQC requires the Fund and Fund stipulations identified below, and all of the measures in Section 4 not specifically noted elsewhere in the WQC.

20. Under subsection 4.1.3, Xcel is to file with the Commission a plan for an investment and spending strategy for the Fund. Condition D of the WQC requires the Fund, and Article 401 requires Xcel to file this investment and funding plan for Commission approval.

21. Subsection 4.1.4 requires Xcel to file with the Commission a Resource Management Plan and Implementation Schedule developed by an implementation team, which will describe specific activities to be undertaken and funded. Condition D of the WQC requires this plan, and Article 401 requires that Xcel file this plan and schedule with the Commission for approval.

22. Subsection 4.2 of the Settlement stipulates that the Secretary of Interior reserves the authority to prescribe the construction, operation, and maintenance of fishways as

deemed needed at the Menomonie Project. Article 403 reserves the Commission's authority to require fishways that may be prescribed by Interior.

23. Subsection 4.3 stipulates that even though stranding of aquatic organisms has not been a documented concern in the tailwaters of the Menomonie Project, if such incidents should arise during the term of the new license, Xcel will work with an implementation team to develop and implement corrective measures. Article 402 requires that if stranding of aquatic organisms occurs in the future in the tailwaters of the Menomonie Project, Xcel will file a schedule for developing and implementing corrective measures for Commission approval.

24. Subsection 4.4.1 of the Settlement requires that Xcel implement a Trash/Woody Debris Management Plan (Appendix E of the Settlement) which includes procedures for handling trashrack debris and passing woody debris downstream to enhance aquatic habitat. Article 402 requires that Xcel file a schedule for implementing this plan with the Commission for approval.

25. Subsection 4.4.2 of the Settlement notes several potential future enhancement measures that may be funded through the Fund.

26. Subsection 4.5 of the Settlement requires that Xcel implement a Threatened and Endangered Species Plan (Appendix F of the Settlement) and if bald eagles nest on Xcel-owned land over the term of the license, then Xcel will develop a Bald Eagle Management Plan. Also, Xcel, in consultation with FWS and WDNR, is to review the status of federally- and state-listed threatened and endangered species and those species proposed to be listed, every two years to determine if listed or proposed species occur on Xcel-owned lands and implement the Threatened and Endangered Species Plan if any future federally-listed or proposed species are found to reside on Xcel-owned project land. Article 402 requires that Xcel file a schedule for implementing this plan with the Commission for approval.

27. Subsection 4.6 stipulates that the Fund may be used to conduct post-licensing effectiveness studies to assess the response of aquatic biota to modified tailwater flow regimes and reduced lake level fluctuations. This subsection also stipulates that the Fund may be used to assess the effectiveness of habitat enhancement projects or other remedial measures.

28. Subsection 4.7 stipulates that the Fund may be used to monitor water quality at the project. Furthermore, the Settlement requires that Xcel implement and pay the cost of any reasonable water quality remediation efforts that are deemed appropriate by the implementation team, if the need for remediation is determined to be caused by or exacerbated by a project-related activity or operation.

29. Subsection 4.8 of the Settlement requires that Xcel implement an Exotics Control Plan (Appendix G of the Settlement), which requires Xcel to: (1) monitor for purple loosestrife and eradicate any plants found; (2) provide funding for installing signage to educate visitors on the dangers of spreading exotics such as Eurasian milfoil and zebra mussels; and (3) inspect and clean maintenance equipment used at Lake Menomin. Article 402 requires that Xcel file a schedule for implementing this plan with the Commission for approval.

E. Section 5.0 Land Management

30. Section 5.1 requires that Xcel implement the Menomonie Land Management Plan (Appendix I of the Settlement), which includes measures to maintain and enhance the shorelands of Lake Menomin while allowing public use. This plan is approved in ordering paragraph E. Article 404 requires Xcel to implement this plan.

F. Section 6.0 Recreational Facilities and Opportunities

31. There are 10 public recreational access sites for project lands and waters owned and operated by various entities including: the City of Menomonie (six sites), Dunn County Fish and Game Club (two sites), WDNR (one site), and Xcel (one site). Subsections 6.1 and 6.2 of the Settlement require Xcel to implement a Menomonie Recreational Improvements Plan (Appendix K of the Settlement), which includes: Xcel funding the replacement of concrete boat launch pads at a boat launch on the impoundment and repairing a barrier-free launch pier. The Recreational Improvement Plan also requires four enhancement measures⁷ that I am not including in this license because it is unclear how these measures address access to project lands or waters and because adequate recreational access is provided at the project by existing recreational facilities. Therefore, the plan (Appendix K of the Settlement) is approved with the exception of these four measures in ordering paragraph E. Article 405 requires that Xcel implement this plan without the four measures noted.

⁷ Four recreational enhancement measures in Appendix K of the Settlement are outside the Menomonie Project boundary: (1) cooperate with the City of Menomonie in developing a bike trail spur across Xcel's property that would connect North Menomonie and the Red Cedar River Trail located over a mile downstream of the project; (2) replace concrete boat launch pads at the boat landing upstream of the State Highway 29 bridge, owned by the City of Menomonie and located about a mile downstream of the project; (3) provide funding to the City of Menomonie for the installation of two barrier-free fishing stations at Riverside Park about a mile downstream of the project; and (4) provide any outfitter the opportunity to provide for and maintain a take-out on the east side of the river at the County Highway D bridge, located about 4 miles downstream of the project.

G. Section 8.0 Implementation Team

32. Section 8.0 of the Settlement requires the establishment of an implementation team to coordinate and implement the provisions of the Settlement; establishes a protocol for review, consultation, and concurrence of submittals to the Commission; and establishes a dispute resolution protocol and agreement if a dispute arises regarding implementation of the Settlement or for any action taken to implement the Settlement. Article 407 requires Xcel to comply with the procedural requirements of this section of the Settlement.

EXCEPTIONS TO THE SETTLEMENT

Future Dam Responsibility

33. Section 7.0 of the Settlement requires implementation of a Future Dam Responsibility Plan (Appendix L of the Settlement) that addresses Xcel's commitments should they decide to sell the project or surrender the license. The plan would ensure that any future action on the project would be conducted by an entity with the financial capability to complete the action, thereby ensuring that the project's lands and waters are maintained or in the event of decommissioning, sufficient funding is available to pay for any mitigative or restorative measures. These provisions are meant to satisfy state, not Commission, requirements should the license decide to sell or decommission the project. If Xcel decides to sell the project, the license conditions would convey with the license transfer. The Commission, in its December 14, 1994, policy statement on project retirement (RM93-23-000), declined to impose generic project retirement conditions and instead decided to address the issue on a case-by-case basis. We anticipate that Xcel would have the resources available to satisfy any requirements that could be included in a Commission order on an application to surrender the license. Therefore, this license does not include the Future Dam Responsibility Plan.

WATER QUALITY CERTIFICATION

34. Under Section 401(a) (1) of the Clean Water Act (CWA),⁸ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued a water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed 1 year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.⁹

⁸ 33 U.S.C. § 1341(a) (1).

⁹ 33 U.S.C. § 1341(d).

35. Xcel requested a water quality certificate (WQC) for the Menomonie Project from the WDNR on September 26, 2002, and on October 21, 2002, WDNR issued a WQC that includes conditions consistent with the Settlement. The WQC includes requirements for minimum flows, limiting impoundment fluctuations, and compliance with the provisions of sections 3.0 and 4.0 of the Settlement. The conditions of the WQC are set forth in Appendix A of this order, and are incorporated in the license by ordering paragraph (D).

36. The WQC includes requirements for minimum flows and limiting impoundment fluctuations that are identical to the measures included in the Settlement. The WQC also requires compliance with the other provisions of the Settlement related to project operation and resource management detailed in sections 3 and 4 of the Settlement and includes the development and implementation of various plans described above. Article 401 requires the licensee to file the plans for Commission approval or to document completion of the WQC requirements.

SECTION 18 FISHWAY PRESCRIPTIONS

37. Section 18 of the FPA, 16 U.S.C. § 811, provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce. Section 4.2 of the Settlement notes that the Secretary of the Interior, as delegated to the FWS, exercises its authority under section 18 of the FPA, by reserving the authority to prescribe the construction, operation, and maintenance of such fishways as deemed necessary, including measures to evaluate the need for fishways, and to determine, ensure, or improve the effectiveness of such fishways. As Interior is a signatory to the Settlement, and consistent with the Commission's policy, Article 403 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Menomonie Project.

THREATENED AND ENDANGERED SPECIES

38. Section 7(a) of the Endangered Species Act of 1973 (ESA)¹⁰ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

39. The bald eagle is the only federally listed (threatened) species known to occur at the project. Section 4.5.1 of the Settlement and the WQC require that Xcel implement

¹⁰ 16 U.S.C. § 1536(a).

their Threatened and Endangered Species Plan (Appendix F of the Settlement) and if bald eagles nest on Xcel-owned land at the project over the term of the license, then Xcel will develop a Bald Eagle Management Plan. In the EA, staff recommended implementing the Threatened and Endangered Species Plan. Staff determined that the project, if licensed with these measures, is not likely to adversely affect the bald eagle.

40. In a letter dated December 23, 2004, staff requested concurrence from the FWS on its effects determination. FWS concurred in a letter filed February 8, 2005. Ordering paragraph D makes the license subject to the conditions of the WQC. Article 402 requires that Xcel file with the Commission, for approval, an Implementation Schedule for the Threatened and Endangered Plan and a Bald Eagle Management Plan, if needed.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

41. Section 10(j) of the FPA¹¹ requires the Commission, when issuing a license, to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹² for protection and enhancement of fish and wildlife and their habitat affected by the project. Neither Interior nor WDNR filed section 10(j) recommendations for the project.

CULTURAL RESOURCES

42. On December 30, 1993, the Wisconsin State Historic Preservation Officer, the Michigan State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission, executed a Programmatic Agreement (PA) for managing historic properties that may be affected by relicensing projects in the state of Wisconsin and adjacent portions of Michigan. Article 406 requires the PA to be implemented. This satisfies the Commission's responsibilities under section 106 of the National Historic Preservation Act.¹³

¹¹ 16 U.S.C. § 803(j)(1).

¹² 16 U.S.C. § 661 *et seq.*

¹³ 16 U.S.C. § 470(f).

ADMINISTRATIVE CONDITIONS

A. Annual Charges

43. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA.

B. Exhibit F and G Drawings

44. The Exhibit G drawings that were filed with the license application and subsequently revised,¹⁴ do not meet the current Commission requirements for project boundary maps because a project boundary map must: (1) enclose all the principal project works necessary for operation and maintenance of the project within the project boundary line; (2) provide the project boundary data in a geo-referenced electronic format; (3) have three control points with latitude and longitude or state plane coordinates; and (4) be stamped by a Registered Land Surveyor. Article 301 requires the licensee to file revised Exhibit G drawings with the above requirements pursuant to 18 CFR sections 4.39 and 4.41. Further, the Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.

C. Amortization Reserve

45. The Commission requires that for new major licenses, licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 requires the establishment of the account.

D. Headwater Benefits

46. Some projects directly benefit from headwater improvements that were constructed by other licensees, by the United States, or by permittees. Article 204 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

¹⁴ On January 26, 2004, the applicant filed revised Exhibit G drawings to note that elevations incorrectly referenced as National Geodetic Vertical Datum should be referenced to feet above mean sea level.

E. Use and Occupancy of Project Lands and Waters

47. Requiring a licensee to obtain prior Commission approval for every use or occupancy of the project land would be unduly burdensome. Therefore, Article 408 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

COMPREHENSIVE PLANS

48. Section 10(a)(2)(A) of the FPA¹⁵ requires the Commission to consider the extent to which a hydroelectric project is consistent with federal and state comprehensive plans for improving, developing, or conserving waterways affected by the project.¹⁶ Under section 10(a)(2)(A), federal and state agencies filed 15 plans that address various resources relevant to Menomonie Project.¹⁷ No conflicts were found.

¹⁵ 16 U.S.C. § 803(a)(2)(A).

¹⁶ Comprehensive plans for this purpose are defined at 18 CFR §2.19 (2004).

¹⁷ (1) FWS and Canadian Wildlife Service. 1986. North American Waterfowl Management Plan. May. (2) FWS. Undated. Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service. Washington, DC. 11 pp. (3) National Park Service. 1982. The nationwide rivers inventory. Department of the Interior, Washington, DC. January. 432 pp. (4) Upper Mississippi River Basin Commission. 1980. Comprehensive master plan for the management of the Upper Mississippi River system - environmental report. Minneapolis, MN. September. 340 pp. (5) Wisconsin Department of Natural Resources. 1985. Wisconsin statewide comprehensive outdoor recreation plan, 1986-1991. Madison, WI. September. Nine volumes. (6) Wisconsin Department of Natural Resources. 1991. Wisconsin statewide comprehensive outdoor recreation plan for 1991-1996. Madison, WI. October. 312 pp. and survey form. (7) Wisconsin Department of Natural Resources. 1992. Wisconsin water quality assessment report to Congress. Madison, WI. April. 220 pp. and appendices. (8) Wisconsin Department of Natural Resources. 1994. Wisconsin Water Quality Assessment Report to Congress. Madison, WI. August. (9) Wisconsin Department of Natural Resources. 1995. Wisconsin's biodiversity as a management issue. Madison, WI. May. (10) Wisconsin Department of Natural Resources. 1995. Wisconsin's Forestry Best Management Practices for Water Quality. Madison, WI. March. (11) Wisconsin Department of Natural Resources. 1978. Lower Chippewa River Basin area wide water quality management plan and river basin report. Madison, WI. March. 54 pp. and

APPLICANT'S PLANS AND CAPABILITIES

49. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,¹⁸ staff have evaluated Xcel's record as a licensee with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. I accept the staff's findings in each of the following areas.

A. Conservation Efforts

50. Section 10(a)(2)(C) of the FPA requires the Commission to consider the extent of electricity consumption efficiency improvement programs in the case of license applicants primarily engaged in the generation or sale of electric power, like Xcel. Periodically, Xcel completes a comprehensive analysis of future load growth and the need for new resources, including customer efficiency programs, to meet its customer demands. Demand side management actions and goals listed in the license application indicate Xcel promotes demand side load management practices for both residential and commercial customers and has undertaken programs to improve efficiency and promote energy conservation at its own plants. These programs show that Xcel is making an effort to conserve electricity and has made a satisfactory good faith effort to comply with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

51. Staff has reviewed Xcel's compliance with the terms and conditions of the existing license. Staff finds that Xcel's overall record of making timely filings and compliance with its license is satisfactory. The staff concludes that Xcel has or can acquire the resources and expertise necessary to carry out its plans and comply with the articles, terms, and conditions of a new license.

appendices. (12) Wisconsin Department of Natural Resources. 1987. Wisconsin Peregrine Falcon recovery plan. Madison, WI. January. 38 pp. (13) Wisconsin Department of Natural Resources. 1988. Wisconsin Red-necked Grebe recovery plan. Madison, WI. June. 13 pp. and appendices. (14) Wisconsin Department of Natural Resources. 1988. Wisconsin Common Tern recovery plan. Madison, WI. June. 74 pp. (15) Wisconsin Department of Natural Resources. 1988. Wisconsin Forster's Tern recovery plan. Madison, WI. June. 102 pp.

¹⁸ 16 U.S.C. §§ 803(a)(2)(C) and 808(a).

C. Safe Management, Operation, and Maintenance of the Project

52. Staff has reviewed Xcel's management, operation, and maintenance of the project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines, as well as, all applicable safety requirements, such as its Public safety Plan and Emergency Action Plan, and periodic Independent Consultant's Safety Inspection Reports. The staff concludes that the dam and project works at Menomonie are safe, and we have no reason to believe that Xcel cannot continue to safely manage, operate, and maintain the project facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

53. Staff has reviewed Xcel's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Xcel has been operating the project in an efficient manner within the constraints of the existing license. The staff concludes that Xcel is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

54. To assess the need for power, we looked at the need in the operating region in which the project is located. The Menomonie Project is located in the Mid-Continent Area Power Pool (MAPP) region of the North American Electric Reliability Council (NERC). NERC annually forecasts electrical supply and demand in the nation and the region for a ten-year period. NERC's recent forecast projected summer peak demands to grow at an annual compound rate of 1.8 percent from 2003 through 2012. Projected resource capacity margins (generating capacity in excess of demand) are expected to decline from 17.9 to 8.5 percent by 2012. The staff concludes that the projects' power, low cost, displacement of non-renewable fossil-fueled generation, and contribution to the region's diversified generation mix, will help meet the need for power in the region.

F. Transmission Services

55. The Menomonie Project does not have a primary transmission line that carries electric power generated from the project to the regional grid. The project's power flows from the project substation directly into Northern States Power Company's regional grid. No changes are recommended or proposed that would affect the capability of the project to connect to the regional grid to continue to serve delivery to the region.

G. Cost-Effectiveness of Plans

56. Xcel is proposing operational modifications and enhancement measures for natural resources and recreational opportunities. Based on Xcel's record as an existing licensee the staff concludes that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

57. Xcel pays taxes annually to local and state governments, and the project provides employment opportunities and attracts those interested in various forms of available recreation. The staff concludes that the various environmental and recreational enhancement measures approved in this license would benefit the public.

PROJECT ECONOMICS

58. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power.

59. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,¹⁹ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

60. As proposal by Xcel, including the terms of the Settlement, the annual cost of the project would be about \$299,760 (12.92 mills/kWh). The annual power value, for the estimated annual generation of 23,210 MWh would be \$1,155,600 (49.79 mills/kWh).²⁰ To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the project's power. Therefore, in the first year of operation, the project would cost \$855,840 (36.87 mills/kWh) less than the likely alternative cost of power.

¹⁹ 72 FERC ¶ 61,027 (1995).

²⁰ The value of power was estimated from the Energy Information Administration, Supplement to the Annual Energy Outlook 2004 at www.eia.doe.gov.

61. If licensed as proposed by Xcel, including the mandatory water quality certification conditions, and with the staff-recommended measure not to include the four recreational sites, the annual cost of the project would be about \$298,850 (12.88 mills/kWh). The Menomonie project would produce the same estimated annual generation, and have the same power value as Xcel's proposal. Therefore, in the first year of operation, the project would cost \$856,750 or 36.91 mills/kWh less than the likely alternative cost of power.

62. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

63. Ancillary services are now mostly priced at rates that recover only the cost of providing the electric service at issue, which do not resemble the prices that would occur in competitive markets. As competitive markets for ancillary services begin to develop, the ability of hydro projects to provide ancillary services to the system will increase the benefits of the project. The Menomonie project is located in the region served by Midwest Independent Service Operator (Midwest ISO). Midwest ISO serves the electrical transmission needs of much of the Midwest, but does not yet operate centralized spot markets for energy or ancillary services.

COMPREHENSIVE DEVELOPMENT

64. Sections 4(e) and 10(a) of the FPA,²¹ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

65. The EA for the Menomonie Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will

²¹ 16 U.S.C. §§ 797(e) and 803(a)(1).

not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of the license.

66. Based on my independent review and evaluation of the Menomonie Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, I have selected the Menomonie Project, with the WQC conditions, Settlement provisions, and with additional staff-recommended measures, and find that it is best adapted to a comprehensive plan for improving or developing the Red Cedar River.

67. I selected this alternative because: (1) issuance of a new license would serve to maintain a beneficial, dependable, and an inexpensive source of electric energy; (2) the required environmental measures would protect and enhance fish and wildlife resources, water quality, recreational resources and historic properties; and (3) the 5.4 MW of electric energy generated from this renewable resource would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

68. Section 15(e) of the FPA,²² provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.

69. Section 2.4.4 of the Settlement contains a provision requesting the issuance of a 30-year license term. The amount of proposed new investment in environmental measures for this project is relatively modest. Consequently, and because the term of the license was likely an important element in the negotiations that led to the Settlement, I will issue the license for a term of 30 years.

The Director orders:

(A) This license is issued to Northern States Power Company d/b/a/ Xcel (licensee) for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Menomonie Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this

²² 16 U.S.C. § 808(e).

license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) The following sections of Exhibit F filed on February 10, 2003:

| <u>Exhibit F Drawings</u> | <u>FERC No. 2181-</u> | <u>Showing</u> |
|---------------------------|-----------------------|---|
| Sheet No. 1 of 3 | 1001 | Dam and Powerhouse Plan and Elevation |
| Sheet No. 2 of 3 | 1002 | Typical Spillway Section, Concrete Dam Section, and Sub-Station Section |
| Sheet No. 3 of 3 | 1003 | Regulating Gate Section and Section of Powerhouse Generating Unit |

(2) Project works consisting of: (1) a 624-foot-long by about 40-foot-high dam, topped with five 40-foot-wide by 19-foot-high and one 9-foot-high by 25-foot-wide steel Taintor gates; (2) a 1,405-acre reservoir (Lake Menomin) with a gross storage capacity of about 15,000 acre-feet, at the normal maximum water surface elevation of 814.2 feet msl; (3) a powerhouse containing two generating units with a total installed capacity of 5.4 MW; and (4) appurtenant facilities.

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

Exhibit A: Pages A-1 through A-6 filed on February 10, 2003.

(C) The Exhibits A and F described above are approved and made part of this license.

(D) This license is subject to the conditions submitted by the Wisconsin Department of Natural Resources (WDNR) pursuant to section 401 of the Clean Water Act (CWA), as those conditions are set forth in Appendix A to this order.

(E) The following plans are approved and made a part of this license:

(1) Menomonie Land Management Plan, Appendix I of the Settlement; and

(2) Recreational Facilities Improvement Plan, Appendix K of the Settlement without the four recreational facilities cited in footnote number 7.

(F) The licensee shall not limit reservoir drawdown as stipulated in the WQC until the Commission has approved the filings required in Article 302.

(G) This license is subject to the articles set forth in Form L-3 (Revised October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States," and the following additional articles:

Article 201. Administrative Annual Charges. The licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued for the purposes of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 5,400 kilowatts.

Article 202. Exhibit Drawings. Within 45 days of the date of issuance of the license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

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 Drawing Number (e.g., P-1234-1001 through P-1234-####) 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 (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

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 Chicago Regional Office.

b) The licensee 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 Chicago Regional Office. Exhibit F drawings must be identified as (CEII) material under 18 CFR § 388.113(c). Exhibit G drawings must be identified as (NIP) material under 18 CFR § 388.112. 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 license and file extension [e.g., P-1234-####, G-1, Project Boundary, 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, arranged in a triangular format. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing. Each Exhibit G drawing must be stamped by a Registered Land Surveyor.

c) The licensee shall file three separate sets of the project boundary vector data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this license, and file extension [e.g., P-1234, boundary vector data, MM-DD-YYYY.SHP]. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the 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 license, and file extension [e.g., P-1234, project boundary metadata, MM-DD-YYYY.TXT].

Article 203. Amortization Reserve. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one-half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.

To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that

deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 204. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. Exhibit G Drawings. Within 45 days of license issuance, the licensee shall file for Commission approval, revised Exhibit G drawings enclosing all the principal project works necessary for operation and maintenance of the project within the project boundary line, including the project boundary data in a geo-referenced electronic format, have three control points with latitude and longitude or state plane coordinates, and be stamped by a Registered Land Surveyor pursuant to 18 CFR sections 4.39 and 4.41.

Article 302. Safety Report. Within 60 days of the date of this license, the licensee shall submit one copy to the Division of Dam Safety and Inspections – Chicago Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of a report describing the effects of limiting reservoir drawdowns on local flooding and spillway adequacy of the project dam.

The report should include a flood routing study that evaluates the ability of the project to safely pass flows up to the Inflow Design Flood. The frequency that the non-overflow structures would be overtopped under the historical and limited drawdowns

should be compared. The report should discuss if there would be an increased likelihood of low-lying structures located upstream and downstream of the reservoir being flooded under the new operating scenario. If necessary, the report should include a plan and schedule for performing any remedial measures necessary to ensure the continued safe operation of the project during high flows.

The licensee shall not implement the revised reservoir operation plan for the project until the Division of Dam Safety and Inspections' Chicago Regional Engineer determines that these altered project operations have no adverse impact of project safety and issues a letter indicating such.

Article 401. Commission Approval and Reporting.

(a) Requirement to File Plans for Commission Approval

The Wisconsin Department of Natural Resources (WDNR) water quality certification (WQC) (Appendix A to this order) requires the licensee to develop certain plans without prior Commission approval. Each such plan shall be submitted to the Commission for approval. These plans are listed below.

| WDNR Condition No. (Appendix A) | Settlement | Plan Name | Due Date |
|---------------------------------|------------------|--|-------------------------------------|
| D | Subsection 3.2.1 | Operations Testing Plan | Within 9 months of license issuance |
| D | Subsection 4.1.3 | Fund Investment Plan | Within 9 months of license issuance |
| D | Subsection 4.1.4 | Resource Management Plan and Implementation Schedule | Within 9 months of license issuance |

As to each plan, the licensee shall submit to the Commission documentation of its consultation with the WDNR and the U.S. Department of the Interior, copies of comments and recommendations made in connection with the plan, and a description of how the plan accommodates the comments or recommendations. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to make changes to the plan.

Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(b) Requirement to Notify the Commission

The licensee shall also include Commission notification for the following Settlement activities as appropriate.

| WDNR Condition No. (Appendix A) | Settlement | Plan Name | Due Date |
|---------------------------------|------------------|-----------------------------------|---------------------------------|
| D | Subsection 3.1.3 | Low Flow Contingency Notification | Within 10 days of each incident |
| D | Subsection 3.1.4 | Electrical Outage Notification | Within 10 days of each incident |

Article 402. Implementation Schedule. Within six months of license issuance, the licensee shall file for Commission approval a schedule for implementing the studies, plans, and actions identified in the Settlement and required by Condition D of the water quality certificate. The schedule shall include provisions for filing plans with the Commission for approval, and filing study results with the Commission.

The licensee shall include with the implementation schedule documentation of consultation with the Wisconsin Department of Natural Resources and the U.S. Department of the Interior, copies of comments and recommendations received on the draft Implementation Schedule, and descriptions of how the schedule accommodates the comments or recommendations. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the Implementation Schedule. Upon Commission approval, the Implementation Schedule becomes a requirement of the license, and the licensee shall implement the schedule and any related changes in project operations or facilities, including any changes required by the Commission.

Article 403. Reservation of Authority to Prescribe Fishways. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for construction, operation, and maintenance of, such fish passage facilities as

may be prescribed by the Secretary of the U.S. Department of the Interior under section 18 of the Federal Power Act.

Article 404. Land Management Plan. Within three months of license issuance, the licensee shall implement its land management plan and file documentation with the Commission that the plan has been implemented (Exhibit I of the Settlement).

Article 405. Recreation Plan. Within three months of license issuance, the licensee shall implement its recreation plan (Exhibit K of the Settlement) with the exception of the four conditions noted in footnote number 7 of this order, and file documentation with the Commission that the plan has been implemented.

Article 406. Programmatic Agreement. Within one year of license issuance, the licensee shall file with the Commission an historic properties management plan (HPMP) for the project, prepared in accordance with the “Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the State of Wisconsin, State Historic Preservation Officer, and the State of Michigan, State Historic Preservation Officer, For Managing Historic Properties That May Be Affected By New And Amended Licenses Issuing For The Continued Operation Of Existing Hydroelectric Projects in the State of Wisconsin and Adjacent Portions Of The State of Michigan”, executed on December 30, 1993. In the event that the Programmatic Agreement (PA) is terminated, the licensee shall implement the provisions of the HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license. If the PA is terminated prior to SHPO approval of the HPMP, the licensee shall obtain approval before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project Area of Potential Effect.

Article 407. Implementation Team. The licensee shall establish an implementation team to coordinate and implement the provisions of the Settlement and comply with the procedural requirements of section 8.0 of the Settlement.

Article 408. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters, and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy are consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancy for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If

a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are:

(1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancements. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project

impoundment. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of, project lands for: (1) construction of new bridges or roads for which all necessary state and approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 5 acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with Federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands shall occur in a manner that shall protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article shall be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(H) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to the filing. Proof of service on these entities must accompany the filing with the Commission

(I) This order is issued under authority delegated to the Director and is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing of this order shall constitute acceptance of this license.

J. Mark Robinson
Director
Office of Energy Projects

APPENDIX A

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
WATER QUALITY CERTIFICATION UNDER
SECTION 401 OF THE CLEAN WATER ACT

On October 21, 2002, the Wisconsin Department of Natural Resources (WDNR) granted water quality certification (WQC) under section 401 of the Clean Water Act to Northern States Power Company, a Wisconsin Company, d/b/a Xcel Energy, for the Menomonie Hydroelectric Project with the following conditions:

- A.** The applicant shall comply with all federal, state and local permit requirements.
- B.** For the full term of the FERC (re) license, the applicant must meet the most current water quality standards that apply to this project. As with all other affected operations, the applicant would be required to meet any revised state water quality standards.
- C.** To protect aquatic habitat, allow for reasonable and quality public recreation use and otherwise protect public interest values throughout the term of the FERC (re) license, the applicant shall operate the Menomonie project in a peaking mode to the extent allowable by the following defined discharge limits and reservoir operating elevation limits.
 - 1.) The applicant shall maintain the surface water elevation¹ of the Project's impoundment, Lake Menomin, within the following seasonal limits.

April 1 to May 31 Elev. 813.9 to 814.2 ft

June 1 to March 31 Elev. 813.7 to 814.2 ft

- 2.) The applicant may operate the Menomonie hydro project in a daily peaking mode providing that the following seasonal minimum and maximum flow discharge limits are maintained in the Red Cedar River, immediately downstream from the Project's dam and powerhouse.

¹ All elevations cited refer to feet above mean sea level, unless otherwise specified.

April 1 through June 15: Discharge from the Menomonie powerhouse and/or dam shall at all times, approximate run-of-river (+/- 15% from inflow), except during extreme hydraulic conditions² when operator judgment may be used to release flows that simulate run-of-river (ROR).

June 16 through March 31:

| IF INFLOW IS: | MINIMUM FLOW SHALL EQUAL OR EXCEED: | MAXIMUM FLOW³ SHALL NOT EXCEED: |
|-----------------------------------|--|---|
| < 750 cubic feet per second (cfs) | Run-of-river (ROR) (+/-15% of inflow) | ROR (+15% of inflow) |
| 750 to 1,250 cfs | 750 cfs | No more than double minimum flow, except during power demand contingencies ⁴ |
| 1,250 to 2,500 cfs | 1,000 cfs | Full-gate operation of the plant's two hydroturbines |
| > 2,500 cfs | ROR | ROR |

² "Extreme hydrologic conditions" means the occurrence of events beyond the licensee's control, such as but not limited to, abnormally high precipitation, extreme runoff, flood conditions, ice conditions, or other similar hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the project.

³ The licensee may deviate from the daily maximum flow limit under the following circumstances:

- During extreme hydrologic conditions as defined in footnote number 2.
- During power demand contingencies as defined in footnote number 4.

⁴ Power demand contingencies include the following conditions or events: (1) Any emergency condition on licensee's electrical system where Red Cedar River hydropower generation is necessary to prevent a system brown-out or black-out; and (2) for 400 hours per year, based on a 12-month rolling average, that may be used at licensee's discretion. The power demand contingency applies to minimum and maximum flows that are to be discharged from the Menomonie Hydro Plant, provided that minimum flows are not reduced below 750 cfs or inflow ($\pm 15\%$), whichever is less. All hours where minimum flows are not achieved and where maximum flows are exceeded will be counted as contingency hours.

D. The applicant shall comply will all agreements from Sections 3.0 and 4.0 as detailed in the Red Cedar River Settlement Agreement in relationship to the Menomonie hydroelectric project that are not highlighted in section **A**, **B**, and **C** of this certification.