

UNITED STATES OF AMERICA 102 ferc ¶ 62,129
FEDERAL ENERGY REGULATORY COMMISSION

Oconto Electric Cooperative

Project No.1981-010

ORDER ISSUING NEW LICENSE
(Minor Project)

(February 26, 2003)

INTRODUCTION

1. On February 25, 1998, Oconto Electric Cooperative (OEC) filed with the Federal Energy Regulatory Commission (Commission) an application for a subsequent license under Part I of the Federal Power Act (FPA)¹ for the continued operation and maintenance of the existing 1,000-kilowatt (kW) Stiles Hydroelectric Project No. 1981. The project is located on the Oconto River, a navigable waterway of the United States, in Oconto County, Wisconsin.² The project does not occupy any federally-owned lands. For the reasons discussed below, I will issue a new license for a minor project to OEC.

BACKGROUND

2. OEC was issued a 50-year license on March 13, 1950, with an effective date of March 1, 1950.³

3. Notice of the application for the subsequent license was published on January 21, 2000. Motions to intervene were filed in this proceeding by the River Alliance of Wisconsin and the Wisconsin Department of Natural Resources (Wisconsin DNR). No agency objected to issuance of this license. Scoping was conducted to identify any issues related to the relicensing of the Stiles Project, and to determine the scope of issues to be addressed in the staff's environmental analysis. Comments received from the Federal and state resource agencies and non-governmental organizations have been considered in

¹16 U.S.C. § 797(f) *et seq.*

²Oconto Electric Cooperative, 5 FPC 489 (1946).

³The license itself was unpublished, but an order authorizing issuance of the license was published at 7 FPC 747 (1948).

Project No. 1981-010

-2-

determining whether and under what conditions to issue this license.

4. On December 7, 2000, the Commission staff issued a draft environmental assessment (EA) with a 45-day comment period. The U.S. Fish and Wildlife Service (FWS), Great River Council of Federation of Fly Fishers, OEC, and Wisconsin DNR filed comments on the draft EA. These comments were addressed in the final EA, which was issued on September 9, 2002.

PROJECT DESCRIPTION

5. The existing Stiles Project consists of: (a) a 30-foot-high and 2,160-foot-long earthen embankment dam; (b) a 463-acre impoundment (Machickanee Flowage); (c) an integral, 66-foot-long, concrete powerhouse containing two vertical Kaplan turbine generating units with a total installed capacity of 1,000 kW; (d) a Taintor gate spillway containing three bays, each occupied by a Taintor gate, 20 feet wide by 15 feet high; (e) a substation; and (f) appurtenant facilities. See ordering paragraph (B)(2).

6. Currently, the project operates in a limited peaking mode. OEC proposes to operate the project in a run-of-river mode beginning 3 years from license issuance.

WATER QUALITY CERTIFICATION

7. Under Section 401(a)(1) of the Clean Water Act (CWA),⁴ the Commission may not issue a license for a hydroelectric project unless either the licensee obtains water quality certification (WQC) from the certifying agency of the state in which the project discharge will originate, or the certifying agency waives certification. Section 401(a)(1) states that certification is deemed waived if the certifying agency fails to act on a water quality certification request within a reasonable period of time, not to exceed one year. Section 401(d)⁵ provides that state certification shall set forth conditions necessary to ensure that licensees comply with specific portions of the CWA and with appropriate requirements of State law. Only a reviewing court can revise or delete these conditions.⁶

8. On February 17, 1998, OEC applied to the Wisconsin DNR for water quality certification for the Stiles Hydroelectric Project. Wisconsin DNR issued a WQC for the

⁴ 33 U.S.C. § 1341(a)(1).

⁵ 33 U.S.C. § 1341(d).

⁶ See *American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

Project No. 1981-010

-3-

Stiles Project on June 17, 1998, which OEC appealed. Negotiations between OEC and Wisconsin DNR ensued, with the FWS as a participant. On July 30, 2001, OEC filed an agreement for the Stiles Project that resolved the environmental issues between OEC and Wisconsin DNR. On November 30, 2001, the Wisconsin DNR reissued the WQC, with conditions, that reflect the agreement. These conditions are attached to this order as Appendix A, and are made part of this license. See ordering paragraph (E).

COASTAL ZONE MANAGEMENT

9. The Stiles Project is located within the Wisconsin State coastal zone. On June 23, 1998, OEC submitted to Wisconsin Department of Administration (WDA) certification that the project, as proposed, would be conducted in a manner consistent with the State's program. On December 18, 1998, WDA notified OEC that additional information was needed to complete the consistency certification. By letter dated July 26, 2000, OEC provided that information. Pursuant to the Coastal Zone Management Act,⁷ if a state does not concur with or object to a certification within 6 months of its receipt of a certification, its concurrence with the certification is conclusively presumed. Because WDA provided no further response to the certification, I conclude that it concurs with the certification.

SECTION 18 FISHWAY PRESCRIPTIONS

10. Section 18 of the FPA⁸ provides that the Commission shall require a licensee to construct, operate, and maintain such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. Pursuant to Section 18, the U.S. Department of the Interior (Interior) filed with the Commission, by letter dated March 16, 2000, a request that the Commission reserve its authority to require such fishways as Interior may prescribe, including measures to evaluate the need for fishways, and to determine, ensure, or improve the effectiveness of such fishways.

11. The Commission recognizes that future fish passage needs and management objectives cannot always be determined at the time of project licensing. Under these circumstances, and upon receiving a specific request from Interior, the Commission's practice has been to include a license article that reserves the Secretary of the Interior's

⁷ 16 U.S.C. § 1456(c)(3)(A).

⁸ 16 U.S.C. § 811.

Project No. 1981-010

-4-

authority to prescribe fishways.⁹ Consistent with Commission practice, Article 405 of this license reserves the Commission's authority to require the licensee to construct, operate, and maintain such fishways as may be prescribed by the Secretary of the Interior.

THREATENED AND ENDANGERED SPECIES

12. 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 designated critical habitat. In a letter dated December 21, 2000, the FWS states that the federally-listed threatened bald eagle (*Haliaeetus leucocephalus*) and endangered Karner blue butterfly (*Lycaeides melissa samuelis*) may occur in the project area. The staff determined that the Stiles Project, as conditioned, would not be likely to adversely affect the bald eagle. Surveys conducted indicate that the Karner blue butterfly does not occur in the vicinity of the Stiles Project. The FWS concurred with the staff's determination. No further consultation pursuant to the ESA is needed.¹¹ I am including the staff's recommended measure to protect the bald eagle and its habitat in Article 408.

HISTORIC PROPERTIES

13. On December 30, 1993, the Commission entered into a Programmatic Agreement (PA) with the State Historic Preservation Officers of the States of Wisconsin and Michigan, and the Advisory Council on Historic Preservation (Advisory Council) for managing Historic Properties that may be affected by continued operation of existing hydroelectric facilities. As an applicant for a subsequent license to continue operating and maintaining the existing Stiles Project located in Wisconsin, OEC agrees to comply with the stipulations of the PA. This served to satisfy the Commission's responsibilities under Section 106 of the National Historic Preservation Act.¹² I am including the staff's recommended measure to protect Historic Properties in Article 412.

⁹ See Wisconsin Public Service Corporation, 62 FERC ¶ 61,095 (1993); affirmed, Wisconsin Public Service Corporation v. FERC 32 F. 3d 1165 (1994).

¹⁰ 16 U.S.C. § 1536(a).

¹¹ See letter from Janet M. Smith, Field Supervisor, U.S. Fish and Wildlife Service, Green Bay, Wisconsin, to the Commission, dated December 21, 2000.

¹² 16 U.S.C. § 470s.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES UNDER SECTION 10 (j) OF THE FPA

14. Section 10(j)(1) of the FPA¹³ requires the Commission, when issuing a license, to include license conditions for the protection, mitigation of damage to, and enhancement of fish and wildlife resources based on the recommendations of Federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹⁴ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project, unless it believes that the recommendations are inconsistent with Part I of the FPA or other applicable law. In those instances where the Commission believes an inconsistency exists, the agencies and the Commission will try to resolve the inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

15. Wisconsin DNR on March 6, 2000, and Interior on March 16, 2000, filed recommendations under Section 10(j) of the FPA for the project.

16. In the draft EA, the Commission staff made an initial determination, pursuant to Section 10(j) of the FPA, that Interior's and Wisconsin DNR's recommendations to: (a) install and maintain a U.S. Geological Survey (USGS) gage upstream of the impoundment; (b) conduct periodic water quality monitoring; (c) develop a plan for downstream fish passage; and (d) develop a plan for upstream fish passage may be inconsistent with the requirements of the FPA.

17. On February 28, 2001, the Commission staff convened a telephone conference with representatives from the Wisconsin DNR and the FWS in an attempt to resolve the apparent inconsistencies of their recommendations with the FPA. The FWS and Wisconsin DNR agreed that the installation and maintenance of a USGS gage upstream of the impoundment was no longer necessary. The Commission staff and the resource agencies resolved the water quality monitoring issue. I am requiring, therefore, the licensee to develop a plan to conduct water quality monitoring (Article 404).

18. Although the issue of fish protection and passage was not resolved during the telephone conference, the staff was informed by OEC, Wisconsin DNR, and the FWS

¹³ 16 U.S.C. § 803 (j)(1).

¹⁴ 16 U.S.C. § 661 *et seq.*

Project No. 1981-010

-6-

that the parties had reached agreement on the issue. OEC filed the agreement on July 30, 2001, thus resolving the issue of fish protection and downstream passage among the parties. On February 7, 2002, OEC deposited the first of five annual payments of \$40,000 each, earmarked specifically for fish protection (for a total contribution of \$200,000) ending in the year 2006. However, the staff found that fish protection is not necessary at the Stiles Project. Because the staff concludes that entrainment and turbine mortality does not have an appreciable effect on the fishery of the Oconto River, I am not including contribution to the fish protection fund as a requirement of this license. Further I note that monetary contributions to resource enhancement funds are not considered recommendations pursuant to Section 10(j) of the FPA.¹⁵ However, an inconsistency remains regarding facilities to minimize fish entrainment.

19. In accordance with Section 10(j)(2) of the FPA, if the Commission, after attempting to resolve the inconsistencies, does not adopt a recommendation of a fish and wildlife agency, the Commission is required to publish findings that: (a) an agency recommendation is inconsistent with the purposes and requirements of Part I of the FPA or other applicable law [Section 10(j)(2)(A)]; and (b) conditions selected by the Commission comply with the requirements of Section 10(j)(1) of the FPA (*i.e.*, that the license conditions will adequately and equitably protect, mitigate damages to, and enhance fish and wildlife) [Section 10(j)(2)(B)]. Our findings are as follows.

20. As is discussed in the final EA, there is no evidence that fish entrainment at the Stiles Project is having an adverse effect on the fishery of the Oconto River. In addition, there is no evidence that providing downstream passage for fish currently known to occur in the impoundment would enhance the fishery of the tailwaters. The downstream fish protection measures recommended by Interior and Wisconsin DNR would have an annual cost of \$30,500, which includes the licensee's contributions (\$200,000) for the fish protection and enhancement fund.

In light of the above, I concur with the staff's determination in the final EA and find that Interior's and Wisconsin DNR's recommendations are inconsistent with the comprehensive planning standard of Section 10(a) of the FPA and the substantial evidence standard of Section 313(b) of the FPA. The cost of providing fish protection measures would not justify the benefits to fishery resources.

21. Pursuant to Section 10(j)(2)(B), I find that the conditions included in this license comply with the requirements of Section 10(j)(1).

¹⁵ See Nekoosa Papers, Inc., 76 FERC ¶ 61,053 (1996).

Project No. 1981-010

-7-

This license requires the licensee to: (a) operate the project in a run-of-river mode beginning 3 years from the effective date of the license (Article 401); (b) schedule maintenance drawdowns in order to protect near-shore fish spawning and nursery activities (Article 402); and (c) sluice woody debris and other nature organic material to increase habitat diversity for fish and aquatic invertebrates (Article 406). These protection measures would ensure that the fishery resources are only minimally affected by the operation of the Stiles Project.

Thus I conclude that our recommendations adequately and equitably protect, mitigate damage to, and enhance fish and wildlife resources affected by the project.

I conclude that the fish and wildlife measures required in this license comply with the requirements of Section 10(j) of the FPA.

22. Wisconsin DNR and Interior recommend that a retirement fund should be established to cover the cost of retiring the Stiles Project. The staff considered this recommendation under Section 10(a) of the FPA. Should the licensee decide to surrender its license, the Commission would establish the terms of the license surrender in a separate proceeding. Therefore, I will not include a retirement fund as a requirement of the license.

23. I am also adopting, pursuant to Section 10(a) of the FPA, the staff's recommendation that the licensee develop and implement a final Recreation Plan to enhance recreation opportunities in the project area and river basin (Article 410), and the staff's recommendation that the licensee implement its Land Management Plan (Article 409) to protect the environmental and recreation resources.

STATE AND FEDERAL COMPREHENSIVE PLANS

24. Section 10(a)(2) of the FPA ¹⁶ 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. Under Section 10(a)(2), Federal and state agencies filed 69 plans that address various resources in Wisconsin. Of these, the staff identified and reviewed nine plans relevant to the Stiles

¹⁶ 16 U.S.C. § 803(a)(2)(A).

Project No. 1981-010

-8-

Project.¹⁷ No inconsistencies were found.

APPLICANT'S PLANS AND CAPABILITIES

25. In accordance with Sections 10 and 15 of the FPA, the staff evaluated OEC's record as a licensee for these areas: (a) compliance history; (b) safe management, operation, and maintenance of the project; (c) need for power; and (d) ancillary services. I accept the staff's findings in each of these areas.

a. Compliance History

The staff reviewed OEC's compliance with the terms and conditions of the existing license and finds its overall record of making timely filings and compliance with its license is satisfactory.

b. Plans and Abilities of the Applicant to Manage, Operate and Maintain the Project Safely

The staff reviewed the safety of the project for purposes of relicensing. It is the staff's conclusion that the project structures are safe and there is no reason to deny issuance of the license based on the owner's record of managing, operating, and maintaining the facilities.

c. Need of the Applicant for the Electricity Generated by the Project to Serve Its Customers

The project is an integral part of OEC's power system, in fact, the Stiles Project is the only generating facility owned by OEC. The rest of the power, up to about an

¹⁷ Wisconsin Department of Natural Resources: (1) Upper Green Bay Basin water quality management plan, January 1993; (2) Wisconsin's biodiversity as a management issue, May 1995; (3) Fisheries management plan for the Lower Oconto River, 1989; (4) Wisconsin's best management practices for water quality, March 1995; (5) Statewide Comprehensive Outdoor Recreation Plan, 1991-96, October 1991; (6) Wisconsin water quality assessment report to Congress, April 1992.

Federal: (7) U.S. Fish and Wildlife Service, Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service, undated; (8) U.S. Fish and Wildlife Service and Canadian Wildlife Service, North American Waterfowl Management Plan, May 1986; and (9) National Park Service, the nationwide rivers inventory, January 1982.

Project No. 1981-010

-9-

additional 90,000 megawatt-hours per year, is purchased from others, including Wisconsin Public Service Company and Wisconsin Electric Power Company. The hydroelectric facility power is generated during peak demand times to help reduce OEC's reliance on power generated by the burning of fossil fuels, which enables OEC to maintain lower rates for its cooperative members.

d. Ancillary Services

In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the utility system (ancillary benefits). These benefits include their value as instantaneous load-following response to dampen voltage and frequency instability on the transmission system, correct any system-power-fuel generating stations to get back on-line following a major utility system or regional blackout.

Ancillary benefits are now mostly priced at rates that recover only the cost of providing the electric service at issue, which does 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 projects.

COMPREHENSIVE DEVELOPMENT

26. Sections 4(e) and 10(a) of the FPA, 16 U.S.C. § § 797(e) and 803(a)(1), respectively, 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.

27. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, pursuant to Section 10(a)(1) of the FPA, the Commission considers several public interest factors, including the economic benefits of project power.

28. Under the Commission's approach to evaluating the economics of a hydropower

project, as articulated in Mead Corporation, Publishing Paper Division,¹⁸ 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 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.

29. The staff performed an economic analysis for the relicensing of the Stiles Project. Based on the staff's assumptions for economic analysis and the summary of costs of the applicant's proposed measures for the Stiles Project, the annual generation of the project would be 5,728 megawatt-hours, with a corresponding power value of \$164,980 [28.80 mills/kilowatt-hours (kWh)].¹⁹

30. Under the applicant's proposal, the annual cost resulting from OEC's proposed measures would be \$235,380 (41.09 mills/kWh). The net annual benefit would be the difference between the annual power value and the annual cost or -\$70,400 (-12.29 mills/kWh).

31. The proposed project with the additional staff-recommended measures (with an annual cost of \$4,050) would produce the same annual generation (5,728 megawatt-hours), but the annual cost would decrease to \$208,930 (36.5 mills/kWh). The resulting net annual benefit would be -\$43,950 (-7.7 mills/kWh). The difference in net benefits between the applicant's proposed project and the staff alternative is due to staff's conclusion that entrainment and turbine mortality does not appreciably affect the fishery of the Oconto River, and therefore monetary contributions to the fish protection fund is not required as part of this license.

32. Our evaluation of the economics of the no-action and the proposed action shows in each analysis, that project energy would cost more than alternative energy. However, project economics is only one of the many public interest factors that is considered in determining whether or not to issue a license, and operation may be desirable for other reasons. For example, other public interest factors are to: (a) diversify the mix of energy sources in the area; (b) promote local employment; and (c) provide a fixed-cost source of

¹⁸ 72 FERC ¶ 61,027 (1995).

¹⁹ The power value is based on information provided by the Energy Information Administration and is explained in the Developmental Analysis Section of the EA.

Project No. 1981-010

-11-

power and reduce contract needs.

33. Based on the staff's independent review and evaluation of the Stiles Hydroelectric Project as proposed by the licensee, the agreement between OEC and the Wisconsin DNR, recommendations from the Federal and state resource agencies and NGOs, and no-action, as documented in the final EA, I have selected the proposed action, with provisions of the agreement contained in the WQC, discussed above, and with additional staff-recommended measures, as the preferred alternative.

34. I selected this alternative because: (a) issuance of a new license would provide a beneficial, dependable, and inexpensive source of electric energy; (b) the electricity generated at the Stiles Hydroelectric Project from the renewable resource would continue to offset the use of the fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution; and (c) the required environmental measures would protect or enhance water quality, terrestrial resources, improve public use of recreation facilities and access, and protect cultural resources.

The preferred alternative includes the following measures:

- (a) operate the Stiles Hydroelectric Project in a run-of-river mode starting three years from the effective date of the new license (Article 401);
- (b) coordinate with Wisconsin DNR, FWS, and Machickanee Flowage Advancement Association on planned impoundment drawdowns (Article 402);
- (c) develop a plan to monitor run-of-river compliance (Article 403);
- (d) develop a plan to conduct periodic water quality monitoring (Article 404);
- (e) reserve authority for the Secretary of the Interior to prescribe the construction, operation, and maintenance of fishways (Article 405);
- (f) sluice woody debris (Article 406);
- (g) implement the Exotic Species Control Plan (Article 407);
- (h) implement the Bald Eagle Protection Plan (Article 408);
- (i) implement the Land Management Plan (Article 409);

Project No. 1981-010

-12-

- (j) implement the recreational facilities improvements (Article 410), and monitor recreation use (Article 411); and,
- (k) develop and implement a Historic Resources Management Plan (Article 412).

LICENSE TERM

35. Pursuant to Section 15(e) of the FPA,²⁰ license terms shall not be less than 30 years nor more than 50 years from the date on which the license is issued. Generally, the Commission's policy is to establish 30-year terms for projects with no new construction, little or no redevelopment, power-generating expansion, or enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive redevelopment, new construction, new capacity, or enhancement measures.

36. This new license authorizes a relatively minor amount of new environmental measures, encompassing a change in project operation from limited peaking mode to run-of-river mode, and development and implementation of plans to protect and enhance environmental, recreation, and cultural resources. Accordingly, the term of this license will be for 30 years.

TYPE OF LICENSE

37. OEC applied for a subsequent license. Section 16.2 (d) of the Commission's regulations²¹ provides that a subsequent license is a license issued after a minor or minor part license that is not subject to Sections 14 and 15 of the FPA. The original license issued to OEC in 1950 was authorized by the Commission in a 1948 order as a major license, to cover the total generation capacity that OEC then anticipated installing.²²

²⁰ 16 U.S.C. 808(e).

²¹ 18 CFR 16.2(d) (2002).

²² 7 FPC 747. At the time, OEC proposed to install two generation units, having a capacity of 750 horsepower each, with space for an extension to house a third unit. The order authorized installed capacity of 2,250 horsepower (1.6875 megawatts). 7 FPC at p. 749.

Project No. 1981-010

-13-

Therefore, although the Stiles Project is a minor project,²³ it has operated under a major license, for which Sections 14 and 15 were not waived. Consequently, I cannot issue a subsequent license to OEC. I will, however, issue OEC a new license for a minor project.

SUMMARY OF FINDINGS

38. The final EA, issued September 9, 2002, contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any significant adverse environmental impacts. The design of this project is consistent with the engineering standards governing dam safety. The project will be safe, if operated and maintained in accordance with the requirements of this license.

39. Based on the staff's review of the Federal and State resource agencies and public comments and evaluation of the environmental and economic effects of the proposed project and its alternatives, I find that the Stiles Hydroelectric Project, with the conditions set forth below, will be best adapted to the comprehensive development of the Oconto River for beneficial public uses.

The Director Orders:

(A) This license is issued to Oconto Electric Cooperative (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 Stiles Hydroelectric Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The projects consists of:

(1) all lands, to the extent of the licensee's interest in those lands, enclosed by the project boundary shown by Exhibit G included in the application for subsequent license for the Stiles Hydroelectric Project filed by Oconto Electric Cooperative, on February 25, 1998 and revised September 29, 1998:

²³ Section 4.30(b)(17) of the Commission's regulations, 18 CFR 4.30(b)(17) (2002), defines a minor project as a project that would have a total installed generation capacity of 2,000 horsepower (1.5 megawatts) or less.

Project No. 1981-010

-14-

| <u>Exhibit G Drawing</u> | <u>FERC No.1981 -</u> | <u>Showing</u> |
|--------------------------|-----------------------|----------------------------|
| G-1 | 1001 | Reservoir and Location Map |
| G-2 | 1002 | Land Ownership Map |

(2) Project works consisting of: (a) a 30-foot-high and 2,160-foot-long earthen embankment dam; (b) a 463-acre impoundment (Machickanee Flowage) with a storage capacity of 2,300 acre-feet at normal pool elevation; (c) a concrete spillway controlled by three Taintor gates measuring 20-feet-wide by 15-feet-high; (d) an integral, 66-foot-long, concrete powerhouse containing two vertical Kaplan turbine generating units with a total capacity of 1,000 kW; (e) a substation; and (f) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A: The following Exhibit A sections, filed on February 25, 1998:

Page A-4, entitled "Dam, Powerhouse, and Related Project works".

Exhibit F: The following Exhibit F drawings, filed on February 25, 1998, and revised September 29, 1998:

| <u>Exhibit F Drawing</u> | <u>FERC No.1981 -</u> | <u>Showing</u> |
|--------------------------|-----------------------|---------------------------------------|
| F-1 | 1003 | Site Plan and Dam Section View |
| F-2 | 1004 | Spillway and Powerhouse Plan |
| F-3 | 1005 | Section Through Taintor Gate Spillway |
| F-4 | 1006 | Section Through Powerhouse |

(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 located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

Project No. 1981-010

-15-

(C) The Exhibits A, F, and G as designated in ordering paragraph (B) above are approved and made part of the license.

(D) The following plans²⁴ are approved and made a part of this license:

(1) Exotic Species Control Plan, filed May 5, 2000, and consisting of pages 6 through 8;

(2) Bald Eagle (*Haliaeetus leucocephalus*) Protection Plan, filed May 5, 2000, and consisting of pages 8 and 9; and,

(3) Land Management Plan, Appendix E.6.7-1 to subsequent license application, filed February 25, 1998.

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

(F) The following sections of the FPA are waived and excluded from the license for this minor license:

4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the FPA that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(G) This license is subject to the Articles set forth in Form L-9 (October 1975), entitled "Constructed minor project affecting navigable waters of the United States", and the following additional Articles:

Article 201. The licensee shall pay the United States the following annual charges as determined by the Commission, effective the first day of the month in which this license is issued for the purpose of reimbursing the United States for the cost of

²⁴ The licensee included the plans in its letter filed May 5, 2000, and entitled "Reply Comments for Section 10(j) and Section 10(a) Terms and Conditions, and Section 18 Prescription, Stiles Hydroelectric Project (FERC No. 1981)".

Project No. 1981-010

-16-

administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 1,000 kilowatts (kW). Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW will not be assessed an annual charge.

Article 202. If the licensee's project is directly benefitted by the construction work of another licensee, a permittee, or of the United States on a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed. The benefits shall be assessed in accordance with Subpart B of the Commission's regulations.

Article 203. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 204. Within 45 days of the effective date of the license, the licensee shall file three sets of aperture cards of the approved exhibit drawings. The set of originals shall be reproduced on silver or gelatin 35 mm microfilm. All microfilm shall be mounted on type D (3-1/4" x 7-3/8") aperture cards. The licensee shall submit one copy of FORM-587 with the aperture cards.

Prior to microfilming, the FERC Drawing Number (1981-1001, -1002, etc.) 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 of aperture cards shall be filed with the Commission's Chicago Regional Office.

Article 401. The licensee shall operate the Stiles Hydroelectric Project in a limited peaking mode for a period of 3 years from the effective date of the license under the minimum flow regime established in the July 26, 1991, Order Amending License (56 FERC ¶ 61,148). At the conclusion of this 3-year period the licensee shall operate the

Project No. 1981-010

-17-

project in a run-of-river mode for the protection of water quality and aquatic resources.

Beginning 3 years from the effective date of the license, the licensee shall at all times act to minimize the fluctuation of the impoundment surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the project impoundment. Under run-of-river operation, the target elevation of the impoundment water level shall be 623.4 feet National Geodetic Vertical Datum (NGVD). Any fluctuations from the target elevation shall be no greater than 0.2 feet (between elevations 623.2 and 623.6 feet NGVD), unless inflow to the project exceeds the hydraulic capacity of the turbines, or except in the event of emergencies beyond the control of the licensee.

Run-of-river mode of operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, including flood and ice conditions, and for short periods upon mutual agreement between the licensee and Wisconsin DNR. If the operation is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident, and shall provide the reason for the modified project operation.

Article 402. The licensee's scheduled maintenance impoundment drawdowns below the minimum elevations specified in Article 401 (elevation 623.2 feet National Geodetic Vertical Datum) shall not occur during April, May, and June to protect near-shore fish spawning and nursery activities. Scheduled maintenance drawdowns outside of this 3-month period shall not occur unless the Wisconsin Department of Natural Resources (Wisconsin DNR), U.S. Fish and Wildlife Service (FWS), and Machickanee Flowage Advancement Association (MFAA) are consulted at least 2 months prior to the drawdown. The licensee shall implement such measures as may be specified by the Wisconsin DNR and FWS, and upon Commission approval, to minimize the effects of the drawdown on the aquatic resources. If the licensee does not adopt a recommendation regarding a planned drawdown, the licensee shall file with the Commission its reason.

Impoundment drawdown limitations may also be temporarily exceeded if required by operating emergencies beyond the control of the licensee. If the normal drawdown limitation is so modified, the licensee shall notify the Wisconsin DNR, FWS, MFAA, and the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Within 2 years of the effective date of the license, the licensee shall file for Commission approval a plan to document compliance with run-of-river mode of

Project No. 1981-010

-18-

operation required by Article 401.

The plan, at a minimum, shall include the following: (1) the location of a staff gage that shall be visible to the public, and have the target water elevation and operating band specified in Article 401 clearly marked; (2) specification of the data recording intervals that shall be implemented at the existing automatic impoundment water level sensor and the tailwater discharge sensor; (3) specific measures to ensure that flows from the project are maintained, or resumed within a few minutes of a power outage at the project; (4) provisions for maintaining records of turbine operation, headwater elevations, tailwater elevations, and flow releases through the powerhouse updated on an hourly basis; (5) the specific years that stage-discharge verification of the tailwater discharge sensor shall occur (which shall be calibrated at 5 year intervals); and (6) the schedule for the submittal of a report to the Commission based on the data collected in item (4) that documents compliance with run-of-river operations after the first 3 years of operating in this mode.

The licensee shall provide operational data specified in item (4) to the Wisconsin Department of Natural Resources (Wisconsin DNR) and U.S. Fish and Wildlife Service (FWS) upon request.

The licensee shall prepare the compliance monitoring plan after consultation with the Wisconsin DNR, FWS, and U.S. Geological Survey. The licensee shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. 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 plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 404. Within 6 months of the effective date of the license, the licensee shall file for Commission approval a plan to monitor water quality (*i.e.*, temperature and dissolved oxygen [DO]) at the Stiles Hydroelectric Project, at 5 year intervals. The purpose of this monitoring plan is to ensure that applicable state water quality standards are being met in project waters and if not, whether or not violations are project-related. The plan shall include: (1) the location of the temperature and DO monitoring sensors;

Project No. 1981-010

-19-

(2) the frequency that measurements shall be recorded and the months when monitoring shall occur; (3) the specific instruments that shall be used to record the monitoring results and provisions for calibrating the instruments; (4) provisions for reporting the monitoring results to the Wisconsin Department of Natural Resources (Wisconsin DNR) and U.S. Fish and Wildlife Service (FWS) including: (a) data presentation format; (b) documentation of instrument calibration; (c) any violations of applicable water quality standards; (d) whether or not any violations are project-related; (e), if so, proposed measures to remediate the conditions that led to non-compliance; and (f) proposed follow-up actions if remediation is implemented; and (5) a schedule that specifies the years that monitoring shall occur and the date when the monitoring reports shall be submitted to Wisconsin DNR and FWS.

The licensee shall prepare the plan after consultation with the Wisconsin DNR and FWS. The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. 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 plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior pursuant to Section 18 of the Federal Power Act.

Article 406. The licensee shall sluice woody debris and other natural organic material that accumulate on the Stiles Hydroelectric Project trashracks to the project tailwaters. The licensee shall remove and properly dispose of all other materials collected on the trashracks. Deposition of natural organic debris in the tailwaters shall be done in a manner that facilitates its downstream dispersal, such as during periods of high flow. The licensee shall sluice woody debris in order to increase habitat diversity for fish and aquatic invertebrates and enhance the downstream aquatic ecosystem.

Article 407. The licensee shall implement the Exotic Species Control Plan approved in ordering paragraph (D) to control/eliminate exotic species, such as purple

Project No. 1981-010

-20-

loosestrife (*Lythrum salicaria*), in the Stiles Hydroelectric Project area. The plan, developed in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and U.S. Fish and Wildlife Service (FWS), includes: (1) a description of the monitoring method; (2) frequency of monitoring; (3) documentation of providing the monitoring results to the Wisconsin DNR, FWS, and Machickanee Flowage Advancement Association; (4) procedures for obtaining technical assistance and input from the Wisconsin DNR, FWS, or other appropriate agencies, (5) information on how the licensee shall cooperate with the agencies to control/eliminate the exotic species; and (6) posting of signs at recreation facilities on the licensee's project property that describes the exotic species, and information on the control of such species.

The Commission reserves the right to require changes to the Exotic Species Control Plan to ensure adequate monitoring and control of exotic plant species.

Article 408. The licensee shall implement the Bald Eagle (*Haliaeetus leucocephalus*) Protection Plan approved in ordering paragraph (D) to protect the bald eagle and its habitat. The plan, developed in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and U.S. Fish and Wildlife Service (FWS), includes: (1) the preservation of super canopy trees that currently serve as perch sites; (2) obtaining current bald eagle nest information on an annual basis by coordinating with the Wisconsin DNR and FWS; (3) maintaining bald eagle nest information on project maps and used by the licensee in planning any project-related land disturbing activity; and (4) conducting annual inspections of project lands to observe any bald eagle nesting activity, and if found, reporting the observations to the Wisconsin DNR and FWS.

The Commission reserves the right to require changes to the Bald Eagle Protection Plan to ensure adequate protection of the bald eagle and associated habitat.

Article 409. The licensee shall implement the Land Management Plan approved in ordering paragraph (D) to protect and enhance the project's scenic, recreational, or other environmental resources. The plan, developed in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and U.S. Fish and Wildlife Service, provides for the licensee to: (1) retain 14 acres of land within the project boundary; (2) continue public access to project land and waters; and (3) utilize Wisconsin DNR Best Management Practices for forest management.

The Commission reserves the right to require changes to the Land Management Plan to ensure adequate protection of the environmental and recreational resources of the project area.

Project No. 1981-010

-21-

Article 410. Within two years of the effective date of the license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources, U.S. Fish and Wildlife Service, and Oconto County, file for Commission approval a final Recreation Plan for the Stiles Hydroelectric Project to enhance the recreation resources at the project. The plan, at a minimum, shall include the following: the proposed recreational measures specified in the licensee's filing of May 5, 2000, and consisting of pages 10 and 11, relating to: (1) improvement of the canoe portage trail; (2) improvement of access for people with disabilities by resurfacing certain areas and designating a parking area; (3) installation of a foot bridge; (4) installation of informational signs; and (5) development of a brochure that identifies recreational opportunities.

The plan shall include a construction schedule; the entity responsible for operation and maintenance of the facilities; costs for the construction and annual maintenance of each facility; measures to control soil erosion, to prevent slope instability, and re-vegetate disturbed areas; documentation of agency consultation; copies of comments and recommendations on the plan after it has been prepared and provided to the agencies; and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the plan with the Commission. 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 plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 411. The licensee, after consultation with the Wisconsin Department of Natural Resources and Oconto County, shall monitor recreation use of the Stiles Hydroelectric Project area to determine whether existing recreation facilities are meeting recreation needs. Concurrent with the filing of FERC Form-80, required by Section 8 of the Commission's Regulations (18 CFR 8.11), the licensee shall file a report with the Commission on the monitoring results. This report shall include: (1) annual recreation use figures; (2) a discussion of the adequacy of the licensee's recreation facilities at the project site to meet recreation demand; (3) a description of the methodology used to collect all monitoring data; (4) if there is a need for additional facilities, amend its recreation plan to accommodate recreation needs in the project area; (5) documentation of agency consultation and agency comments on the report after it has been prepared and provided to the agencies; and (6) specific descriptions of how the agencies' comments are accommodated by the report.

Project No. 1981-010

-22-

The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the report with the Commission. 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 report.

Article 412. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, 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 License 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, including but not limited to the Historic Resources Management Plan (HRMP) for the project. In the event that the Programmatic Agreement (PA) is terminated, the licensee shall implement the provisions of its approved HRMP. The Commission reserves the authority to require changes to the HRMP at any time during the term of the license. If the PA is terminated prior to Commission approval of the HRMP, the licensee shall obtain Commission approval before engaging in any ground disturbing activities or taking any other action that may affect any Historic Properties within the project's Area of Potential Effect.

Article 413. (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 occupancies 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.

Project No. 1981-010

-23-

(b) The types of use and occupancy of project lands and water 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 water craft 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 enhancement.

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 reservoir 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 federal 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 reservoir. 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

Project No. 1981-010

-24-

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 federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal 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 federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft 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 5.0 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 paragraph (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

Project No. 1981-010

-25-

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 will occur in a manner that will 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 boundary 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 will 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 that filing. Proof of service on these entities must accompany the filing with the Commission.

(I) This order is final unless a request for rehearing is filed within 30 days of the date of its issuance, as provided in Section 313 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 shall constitute acceptance of this order.

Project No. 1981-010

-26-

J. Mark Robinson
Director
Office of Energy Projects

Project No. 1981-010

-27-

APPENDIX A

Water Quality Certification Conditions for the Stiles Hydroelectric Project Reissued November 30, 2001, under Section 401 of the Federal Clean Water Act by the State of Wisconsin Department of Natural Resources.

- A. The applicant shall comply with all Federal, state, and local permit requirements.
- B. The applicant shall meet State of Wisconsin water quality standards applying to this project. As with all other affected operations, the applicant is required to meet any revised state water quality standards.
- C. The applicant must operate the Stiles Project in a run-of-river mode starting three years from the date of the new license in accordance with the Stiles Project Settlement Agreement. Upon which time the applicant shall at all times act to minimize the fluctuation of the reservoir surface elevation by maintaining discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the project reservoir.
- D. The applicant must continue to maintain the automatic water level sensors that continuously monitor and record headwater and tailwater elevation. A large visible to the public staff gage shall be maintained by the applicant in the project reservoir with the prescribed operating range clearly marked or notched on it. The applicant shall also continue to maintain a daily record (log) of operation and provide any pertinent information to the Department upon request, including turbine operation, headwater and tailwater elevations, and flow releases through the powerhouse updated on an hourly basis. Existing compliance monitoring system should be sufficient to monitor compliance with the flow regime specified in the new license. OEC currently calibrates its tailwater discharge gage every 5 years using the same transect used to establish the stage discharge relationship of a former USGS gage located nearby. This, coupled with impoundment water surface elevation monitoring and the new USGS gage that was recently installed downstream at the County Highway J crossing of the Oconto River will determine compliance with run-of-river.
- E. Any proposals for project maintenance or repair work involving the river, including reservoir drawdowns to facilitate repair/maintenance work shall be filed with FERC after consultation with the Department.
- F. The applicant shall allow the Department to inspect the project area at any time upon reasonable notification to monitor compliance with certification conditions.

Project No. 1981-010

-28-

G. Any changes to the project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, including project operation, must be submitted to the Department for prior review and written approval.

H. The Department may request, at any time, that FERC reopen the license to consider modifications to the license necessary to assure compliance with Wisconsin water quality standards.