

76 FERC ¶ 61,058

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Wisconsin Public Service Corporation) Project No. 2476-001

ORDER ISSUING SUBSEQUENT LICENSE

((Issued July 18, 1996))

I. INTRODUCTION

Pursuant to Part I of the Federal Power Act (FPA), 16 U.S.C. § 791 et seq., applications for new and subsequent licenses were filed with the Commission for the continued operation and maintenance of nine existing hydroelectric projects and one existing headwaters project, all located within the Wisconsin River Basin. ^{1/} The Commission's staff identified and evaluated in an Environmental Impact Statement (EIS) environmental resource issues that were jointly related and relevant to the continued operation of each of the projects, including fish entrainment, endangered species, recreation resources, purple loosestrife control, soil erosion control, and cumulative impacts on water quality, fish, flooding, hydrologic flow regulation, and vegetation. The EIS analyzed the effects associated with the issuance of a new or subsequent license for each of the projects and recommended a variety of measures to protect and enhance the environmental resources, which we adopt.

Concurrently with this order, an Order Granting Applications for License (Master Order) is being issued, which addresses matters which are of concern in all of the Wisconsin River project proceedings. That order is incorporated by reference

1/ The projects and license applicants are as follows:

Wausau Project No. 1999-004 and Jersey Project No. 2476-001, Wisconsin Public Service Company; Wisconsin River Headwaters Project No. 2113-022, Wisconsin Valley Improvement Company; Rothschild Project No. 2212-001, Weyerhaeuser Company; Kings Dam Project No. 2239-004, Tomahawk Power and Pulp Company; Wisconsin River Division Project No. 2590-001 and Wisconsin Rapids Project No. 2256-001, Consolidated Water Power Company; Centralia Project No. 2255-003, Port Edwards Project No. 2291-001, and Nekoosa Project No. 2292-001, Nekoosa Papers, Inc.

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herein. We find that the Wisconsin River projects as licensed will be best adapted to the comprehensive development of the Wisconsin River Basin. The following discussion pertains to the Jersey River Project No. 2476.

On December 19, 1991, Wisconsin Public Service Corporation (Wisconsin Public) filed an application for a subsequent license pursuant to Part I of the FPA, 16 U.S.C. § 797(f), for the continued operation and maintenance of the 512-kilowatt (kW) Jersey Hydroelectric Project, located on the Tomahawk River in Lincoln County, Wisconsin. Wisconsin Public proposes no new capacity and no new construction, and it proposes to continue to operate the project in a run-of-river mode.

The Commission issued the original license for the project to Wisconsin Public on August 9, 1966, 2/ under its jurisdiction over constructed projects affecting the interests of interstate commerce. 3/ The license expired on December 31, 1993. For the reasons discussed below, we will issue a subsequent license 4/ to Wisconsin Public.

II. BACKGROUND

Notice of the application was published, and comments have been received from interested federal, state, and local agencies. Motions to intervene in this proceeding were filed by the U.S. Department of the Interior (Interior), the Wisconsin Department of Natural Resources (Wisconsin DNR), and the Izaak Walton League of America (Izaak Walton), and were granted. None of the commenting agencies or intervenors expressed opposition to relicensing the project.

2/ 36 FPC 413 (1966).

3/ In November 1995, the Commission made a determination that the pertinent portion of the Tomahawk River, from Tomahawk and Squirrel lakes, in Oneida County, to the Wisconsin River, is a navigable waterway of the United States. See Navigation Status Report -- Tomahawk River, 1995. Section 23(b) of the FPA, 16 U.S.C. § 817(b), therefore requires that the project be licensed.

4/ A subsequent license is a license issued for a project after the expiration of a minor or minor part license for which Sections 14 and 15 of the FPA were waived. See 18 C.F.R. § 16.2(d) (1996). The original minor license issued for this project waived the application of Sections 14 and 15. See 36 FPC 413 (1966).

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The Commission's staff issued the draft EIS for the ten projects in the Wisconsin River Basin, including the Jersey Project, on February 24, 1995. Numerous comments on the draft EIS were filed, and the Commission's staff considered these comments in preparing the EIS, which was issued on July 5, 1996. The staff also prepared a Safety and Design Assessment, which is available in the Commission's public file for this project.

We have fully considered the motions and comments received from interested agencies and individuals in determining whether, and under what conditions, to issue this license.

III. PROJECT DESCRIPTION

The existing project consists of an 800-foot-long dam, a reservoir with a surface area of 709 acres at normal pool elevation, a powerhouse containing three generating units with a total installed capacity of 512 kW, and appurtenant facilities. A more detailed project description is contained in ordering paragraph B(2).

IV. APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C), 5/ we have evaluated Wisconsin Public's record as a licensee in the areas of conservation and compliance.

A. Consumption Efficiency Improvement Program

Section 10(a)(2)(C) of the FPA requires the Commission, in acting on a license application such as this, to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities.

Wisconsin Public submitted an Advance Plan (facility plan for the years 1991 to 2010) to the Public Service Commission of Wisconsin for public review. The plan included several measures to increase consumption efficiency. The consumption efficiency programs include coordination of home air conditioner operation, expansion of rebate incentives for purchasing high-efficiency products, and implementation of cogeneration at two industrial sites. Based on this information, we believe Wisconsin Public is making a good faith effort to conserve electricity and promote energy conservation by its customers.

5/ 16 U.S.C. §§ 803(a)(2)(C) and 808(a).

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B. Record of Compliance

We have reviewed Wisconsin Public's license application in order to evaluate its ability to comply with the terms and conditions of a new license. Wisconsin Public has complied with the terms and conditions of the existing license. Wisconsin Public's overall record of making timely filings and compliance with its license is satisfactory. Therefore, and in consideration of the requirements of the new license, we conclude that Wisconsin Public will be able to provide the resources and expertise necessary to carry out its plans and comply with all terms and conditions of the new license and of orders issued thereunder.

V. WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act (CWA), 6/ the Commission may not issue a license for a hydroelectric project unless the state certifying agency has either issued water quality certification for the project or has waived certification. 7/ On July 22, 1991, pursuant to Section 401, Wisconsin Public applied to the Wisconsin DNR for water quality certification. By letter dated October 15, 1991, Wisconsin DNR waived the requirement for certification for the continued operation of the Jersey Project.

VI. SECTION 18 FISHWAY PRESCRIPTION

Section 18 of the FPA 8/ provides that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. Interior, by letter dated July 27, 1993, requests that its authority to prescribe the construction, operation, and maintenance of fishways pursuant to Section 18 be reserved at this project.

We recognize that future fish passage needs cannot always be determined at the time of project licensing. The Commission's

6/ 33 U.S.C. § 1341(a)(1).

7/ Section 401(a)(1) requires an applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters to obtain from the state in which the discharge originates certification that any such discharge will comply with applicable water quality standards.

8/ 16 U.S.C. § 811.

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practice has been to include a license article that reserves the Secretary's authority to prescribe facilities for fish passage. ^{9/} Therefore, Article 405 of this license reserves authority to the Commission to require the licensee to construct, operate, and maintain such fishways as the Secretary of the Interior may prescribe pursuant to Section 18 of the FPA.

VII. RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA ^{10/} requires the Commission to include license conditions, based on the recommendations of federal and state fish and wildlife agencies, for the protection, mitigation of adverse impacts to, and enhancement of fish and wildlife resources, unless the Commission finds that those recommendations are inconsistent with applicable law.

Numerous recommendations were filed by Interior and the Wisconsin DNR pursuant to Section 10(j), and the subsequent license issued herein contains conditions consistent with Interior's and Wisconsin DNR's recommendations that Wisconsin Public: (1) provide run-of-river operation; (2) provide flow continuation during power outages; (3) install a staff gage on the upstream side of the project dam; (4) install automatic water level recorders; (5) maintain a daily record of project operation; (6) provide long-term fish and wildlife protection; and (7) participate in a six-year review and update of its recreation plan.

Wisconsin DNR and Interior also recommended that Wisconsin Public: (1) help to finance and implement the United States Geological Survey (USGS) basin-wide flow monitoring system; (2) establish a project retirement fund; (3) develop and implement a downstream fish protection plan, including an entrainment mortality study; (4) retain all lands within the project boundary for the life of the license; (5) cooperate with the agencies on the control of purple loosestrife; and (6) provide specific recreation enhancements, including improvement of an existing boat launch area below Rice reservoir dam, improvement of a bank fishing area below the dam, provision of a barrier-free fishing pier on the upstream side of the west dike, and provision of directional signs to recreation

^{9/} The Commission has specifically sanctioned the reservation of fishway prescription authority at relicensing. 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. § 803(j)(1).

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facilities. Pursuant to Section 10(j), the Commission staff made a preliminary determination that these recommendations were inconsistent with, or outside the scope of, Section 10(j).

During a meeting that was held on November 2 and 3, 1995, to resolve any inconsistencies, the agencies agreed that: (1) with respect to the USGS' basin-wide flow monitoring system, Wisconsin Valley, licensee for the Wisconsin headwaters project, should cost-share funding of ten project-related USGS gages in the basin; (2) the Commission's standard land-use articles and regulations would provide necessary protection instead of imposing a requirement that all lands be retained within the project boundary; (3) Wisconsin Public should cooperate with the agencies on the control of purple loosestrife; (4) Wisconsin Public should not be required to upgrade the existing boat launch area because of potentially dangerous conditions for boaters; and (5) Wisconsin Public should block access to the boat launch area in light of the safety concerns.

As discussed in the Master Order, we conclude that the recommendations for a project retirement fund and a downstream fish protection plan are not within the purview of Section 10(j), and that a project retirement fund is not justified for this project. We have, however, considered the recommendation for a downstream fish protection plan pursuant to our authority under Section 10(a)(1) of the FPA and, for the reasons discussed in our master order, have concluded that Wisconsin Public should contribute up to \$1,100 annually (in 1995 dollars) to fund measures for fishery resources affected by the project.

VIII. COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. ^{11/} Under Section 10(a)(2)(A), federal and state agencies filed 59 comprehensive plans that address various resources in Wisconsin. Of these, the Commission staff identified and reviewed four plans that are relevant to the

^{11/} Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1995).

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Jersey Project. ^{12/} The project does not conflict with any of these comprehensive plans.

IX. COMPREHENSIVE DEVELOPMENT

In making our comprehensive determinations under Sections 4(e) and 10(a)(1) of the FPA, we considered the project both with the applicant's mitigative proposals and with the Commission's mitigative proposals. Based on current economic conditions, without future escalation or inflation, the Jersey Project, if licensed as Wisconsin Public proposes, would provide an installed capacity of 512 kW and produce an average of about 2.9 Gigawatt-hours (GWh) of energy, at an annual cost of about \$33,000 (11.08 mills/kWh). This is about \$23,000 (7.98 mills/kWh) less than the current cost of an equivalent amount of capacity and energy using alternative power sources, which would cost about \$56,000 annually (19.06 mills/kWh). If licensed in accordance with the conditions adopted herein, the project would produce the same amount of energy and capacity, at an annual cost of about \$34,000 (11.45 mills/kWh), or about \$22,000 (7.61 mills/kWh) less than the cost of alternative power sources.

The EIS analyzed the effects associated with the issuance of a subsequent license for Project No. 2476. It recommends a number of measures to protect and enhance environmental resources, which we adopt, as discussed herein. These measures include: operating the project in a run-of-river mode (Article 402); installing automatic water level recorders and maintaining daily records of operation (Article 403); installing a staff gage on the upstream wall of the dam (Article 403); contributing \$1,100, in 1995 dollars, to be adjusted annually by the previous year's Consumer Price Index, for fisheries enhancement (Article 406); cooperating with agencies on purple loosestrife control (Article 407); and submitting a recreation plan to include provisions for implementing recreation enhancements and conducting six-year recreation reviews with agencies (Article 409).

Based on our review of the agency and public comments filed on the project, our review of the environmental and economic effects of the proposed project and its alternatives, and our analysis pursuant to Sections 4(e) and 10(a)(1), we find that the Jersey Project, with our mitigative and enhancement measures,

^{12/} State Comprehensive Outdoor Recreation Plan, 1985 and 1991, Wisconsin DNR; Wisconsin Water Quality: Report to Congress, 1986 and 1992, Wisconsin DNR; Upper Wisconsin River Northern Sub-Basin Water Quality Management Plan, 1992, Wisconsin DNR; and North American Waterfowl Plan, 1986, Interior and Canadian Wildlife Service.

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will be best adapted to the comprehensive development of the Wisconsin River for all beneficial public uses.

X. SUMMARY

The EIS includes background information, analysis of impacts, and support for related license articles.

The design of this project is consistent with engineering safety standards. The project will be safe if operated and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment prepared for this project.

The Commission orders:

(A) This license is issued to Wisconsin Public Service Corporation, for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Jersey 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 that the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, shown by Exhibit G, filed on December 19, 1991:

<u>Exhibit</u>	<u>FERC No. 2476-</u>	<u>Showing</u>
G (Sheet 1)	1	Project reservoir
G (Sheet 2)	2	Project reservoir
G (Sheet 3)	3	Hydroelectric plant

(2) The project works consisting of: (1) a 801-foot-long, 34-foot-high dam that comprises (a) a 148-foot-long concrete sluiceway and radial gate section consisting of four, 30-foot by 12-foot steel gates, (b) a 330-foot-long earth dike, (c) a 261-foot-long earth dike, and (d) a 62-foot-long concrete powerhouse section; (2) a reservoir with a surface area of 709 acres and a total storage capacity of 1,794 acre-feet; (3) a powerhouse containing (a) three vertical S. Morgan Smith hydraulic turbines rated at 262, 250, and 180 horsepower and (b) three generators rated at 200, 192, and 120 kilowatts (kW); (4) an outdoor substation consisting of three 333-kVA 2.4/14.4-kV pole-mounted transformers; and (5) appurtenant facilities.

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

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Exhibit A--The following sections of Exhibit A filed December 19, 1991:

The dam, spillway, powerhouse, project reservoir, generating equipment, and additional appurtenant equipment as described on pages A-1 through A-5.

Exhibit F--The following Exhibit F drawings filed December 19, 1991:

<u>Exhibit</u>	<u>FERC No. 2476-</u>	<u>Showing</u>
F (Sheet 1)	1	Site layout
F (Sheet 2)	2	Dam plan and section
F (Sheet 3)	3	Powerhouse plan
F (Sheet 4)	4	Powerhouse elevation

(3) All 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 necessary or appropriate in the operation or maintenance of the project.

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

(D) This license is subject to the articles set forth in Form L-9 (October 1975), entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States," and the following additional articles:

Article 201. The Licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the costs of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 512 kilowatts. Under regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts are not assessed an annual administrative charge.

Article 202. If the Licensee's project was directly benefitted 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

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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.

Article 401. At least 90 days before the scheduled start of any land-disturbing or land-clearing activities, the Licensee shall file with the Commission, for approval, a plan to control dust and erosion, to stabilize slopes, and to minimize the quantity of sediment and other potential air or water pollutants likely to result from site access, project construction, spoil disposal, and project operation.

The erosion control plan(s) shall be based on actual-site geological, soil, and groundwater conditions and on project design, and shall include, at a minimum, the following four items:

- (1) a description of the actual site conditions;
- (2) measures proposed to control erosion, to prevent slope instability, and to minimize the quantity of sediment resulting from project construction and operation;
- (3) detailed descriptions, functional design drawings, and specific topographic locations of all control measures; and
- (4) a specific implementation schedule and details for monitoring and maintenance programs for project construction and operation.

The Licensee shall prepare the plan(s) after consultation with the U.S. Fish and Wildlife Service, the Wisconsin Department of Natural Resources, and appropriate federal and state soil conservation agencies, and each federal agency having managerial authority over any part of project lands. 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 geological, soil, and groundwater conditions at the site.

The Commission reserves the right to require changes to the plan. No land-disturbing or land-clearing activities shall begin

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until the Licensee is notified by the Commission that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 402. The Licensee shall operate the project in a run-of-river mode for the protection of fish spawning in the project impoundment, riparian vegetation below the project, and recreational opportunities in the project impoundment on the Wisconsin River. The Licensee shall at all times act to minimize the fluctuation of the reservoir 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 reservoir.

To ensure run-of-river operation, the Licensee shall maintain a reservoir water surface elevation between a minimum of 1,449.95 feet and a maximum of 1,450.55 feet National Geodetic Vertical Datum (NGVD) as measured immediately upstream from the project dam.

Run-of-river operation and reservoir water surface elevations 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 among the Licensee, Wisconsin DNR, and the U.S. Fish and Wildlife Service. 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. If run-of-river operation and reservoir water surface elevation are modified due to an emergency, the Licensee shall notify the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service within 24 hours. In the case of project shut-down, the Licensee shall pass river inflow through the project instantaneously, or within a few minutes.

Article 403. Within 90 days of license issuance, the Licensee shall file with the Commission, for approval, an operational compliance plan to document compliance with the run-of-river operation and reservoir elevation range specified by Article 402. The plan, at a minimum, shall include these measures:

- (1) install, calibrate, and maintain a staff gage in the project impoundment with the prescribed operating levels clearly marked;
- (2) install, calibrate, and maintain automatic water level sensors to record continuous headwater and tailwater elevation;

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- (3) maintain records of turbine operations, including turbine start-up and shut-down times;
- (4) maintain records of hourly headwater and tailwater elevations;
- (5) maintain records of hourly flow releases from the powerhouse and spillway; and
- (6) document frequency of reporting, emergency procedures, procedures during power outages, and maintenance schedules.

The Licensee shall provide these data to the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources upon receiving a written request for such information.

The Licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources. 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 make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall state 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. At least 90 days before reservoir drawdown, the Licensee shall file with the Commission, for approval, a reservoir drawdown plan. The purpose of the drawdown plan is to minimize the impact of any project maintenance requiring a reservoir drawdown on aquatic resources in the project impoundment and downstream of the project. The plan shall include: (1) a schedule for implementation; (2) documentation of consultation concerning the development and implementation of the plan; (3) documentation on planned reservoir drawdowns; and (4) agency comments and the Licensee's response to agency comments.

The Licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources. The Licensee shall include with the plan copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and

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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. The Commission reserves the authority 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 U.S. Department of the Interior.

Article 406. The Licensee, after consulting with the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service, shall develop fisheries resource plans and implementation schedules to address turbine-induced impacts on fish at the Jersey Project, using the funds described in the following paragraph. Within 180 days from the date of issuance of this license, and every ten years thereafter, the Licensee shall file a fisheries resource plan and implementation schedule for Commission approval. The plan shall describe specific activities to be undertaken and contain provisions to monitor the success of these measures. The Licensee shall allow at least 30 days for agencies' comments prior to filing plan with the Commission. The plan shall include any comments received from the consulted agencies on the proposed plan, and a description of how the agency comments are accommodated by the developed plan. The Commission reserves the right to modify the proposed plan and schedule. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

By January 1 of each year following the issuance of this license, the Licensee shall provide up to \$1,100 in 1995 dollars, adjusted annually by the previous year's consumer price index (CPI), to finance fisheries resource plans.

The Commission reserves the right to: (1) require the Licensee to assess the applicability of new technology regarding cost-effective measures for reducing turbine-induced mortality or injury at the Jersey Project; (2) require the installation of fish protection at the Jersey Project in lieu of other proposed measures, should fish protection be feasible; and (3) after notice and opportunity for comment, modify or eliminate the compensatory measures and their funding, should it be necessary or appropriate.

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Article 407. Within 180 days after the date of issuance of this license, the Licensee shall, in consultation with the U.S. Fish and Wildlife Service (FWS), and the Wisconsin Department of Natural Resources (WDNR), develop a plan to monitor purple loosestrife (Lythrum salicaria) in project waters. The plan shall include, but is not limited to: (a) the method of monitoring; (b) the frequency of monitoring, and (c) documentation of transmission of monitoring data to the FWS and the WDNR. The plan shall be filed with the Commission for approval. If at any time during the period of the license, the FWS and the WDNR deem it necessary to control or eliminate purple loosestrife, the Licensee shall cooperate in this measure. The Commission reserves the right to require changes in the plan.

The Licensee shall include documentation of consultation with the FWS and the WDNR before preparing the plan, copies of the agencies' 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 were accommodated by the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to 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 408. 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 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, including, but not limited to, the Historic Resources Management Plan for the project. In the event the Programmatic Agreement is terminated, the Licensee shall implement the provisions of its approved Historic Resources Management Plan. The Commission reserves the authority to require changes to the Historic Resources Management Plan at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the Historic Resources Management Plan, 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.

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Article 409. Within one year of license issuance, the Licensee shall file with the Commission, for approval, a Recreation Plan describing existing recreation facilities, evaluating whether the existing recreation facilities are meeting public recreation needs, and proposing specific recreation improvements to address the need for new public recreation facilities and improvements at the project. The Recreation Plan shall provide for implementing specific new recreation facilities and improvements as already agreed to by the Licensee in consultation with federal and state fish and wildlife agencies and other interested entities. These specific agreed-upon recreation facilities and improvements are described below. The Recreation Plan shall be consistent with the protection of federal and state-listed threatened and endangered species.

The Licensee shall also file with the Commission, for approval, reports updating the Recreation Plan consistent with the every sixth year due date in the Form 80 reporting cycle, for the term of the license, pursuant to Part 8 of the Commission's regulations. The first such update report will be due April 1, 2003. The update reports shall identify changes to the Recreation Plan.

The Recreation Plan and update reports shall include, at a minimum, the following:

- (1) the type and estimated amount of public and private recreation use at the project;
- (2) a discussion of the adequacy of existing recreation improvements to meet existing and future public recreation demand;
- (3) final site plans for proposed new recreation facilities, if any, to be funded in part or in whole by the Licensee;
- (4) a discussion of how existing and proposed facilities consider the needs of persons with disabilities;
- (5) an identification of the entity or entities responsible for the construction, operation, and maintenance of existing or proposed facilities and, if this is not the Licensee, documentation of the Licensee's construction, operation, and maintenance agreement with the entity or entities;
- (6) the implementation schedule for proposed new recreation improvements; and
- (7) documentation of consultation.

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The Licensee shall prepare the Recreation Plan and update reports in consultation with the Wisconsin Department of Natural Resources, the U.S. Fish and Wildlife Service, affected citizens organizations, and local agencies having land management or planning/zoning authority in the area. The Licensee shall make the Recreation Plan and update reports available to consulting entities for comment at least 30 days prior to filing the Recreation Plan and update reports with the Commission for approval. The Licensee's documentation of consultation shall include copies of the consulted entities' comments and recommendations on the completed plan or plan updates and a discussion of how the entities' comments are specifically accommodated by the Recreation Plan or update reports. If the Licensee does not adopt a recommendation made by any of the consulted entities, the Licensee shall include the Licensee's reasons, based on project-specific information.

The Recreation Plan filed pursuant to this article shall provide for implementing the specific recreation facilities and improvements described below:

- (1) improvement of the east side bank fishing area in the tailrace below the dam;
- (2) development of a barrier-free pier on the west side of the reservoir;
- (3) cooperation with the Wisconsin Valley Improvement Company in closing the existing boat launch facility below Rice dam (in the Jersey flowage);
- (4) development of a brochure describing the recreational facilities and opportunities available at the project reservoir; and
- (5) consultation with government officials (local, county, or state) with oversight over roadway signage issues to determine appropriate locations for installing directional signage to project facilities.

The Commission reserves the right to require changes to the Recreation Plan and update reports. No land-disturbing or land-clearing activities for recreational facilities shall begin until the Licensee is notified that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Within 90 days of completion of construction, the Licensee shall file as-built drawings of the recreation facilities with the Commission.

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Article 410. (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 is 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 noncomplying structures and facilities.

(b) The type 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) noncommercial 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 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

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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) nonproject 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 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) nonproject 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 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 five 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

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a letter to the Director, Office of Hydropower Licensing, 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 or K 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 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 boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K 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

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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 or K 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.

(E) 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.

(F) This order is final unless a request for rehearing is filed within 30 days of the date of this order, 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 shall constitute acceptance of this order.

By the Commission.

(S E A L)

Lois D. Cashell
Lois D. Cashell,
Secretary.

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