

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.

Weyerhaeuser Company ) Project No. 2212-001

ORDER ISSUING NEW 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 that are of concern to all of the Wisconsin River projects. That order is incorporated by reference herein. We find that the Wisconsin River projects will be best adapted to

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.

Project No. 2212-001

-2-

the comprehensive development of the Wisconsin River Basin. The following discussion pertains to the Rothschild Project No. 2212.

## II. BACKGROUND

Weyerhaeuser Company (Weyerhaeuser) filed an application for a new license pursuant to section 15 of the Federal Power Act (FPA), 16 U.S.C. § 807, for the continued operation and maintenance of the 3,708-kilowatt (kW) Rothschild Hydroelectric Project, located on the Wisconsin River in Marathon County, Wisconsin.

The Commission issued the original license for the project to American Can Company on April 28, 1959, 2/ under its jurisdiction over constructed projects situated on navigable waters of the United States. 3/ The Commission transferred the license to Weyerhaeuser on May 13, 1974. 4/ The license expired on July 31, 1993, and since then Weyerhaeuser has operated the project under annual license. 5/

Notice of the application was published, and comments have been received from interested federal, state, and local agencies. Motions to intervene were filed by the U.S. Department of the Interior (Interior), the Wisconsin Department of Natural Resources (Wisconsin DNR), and Izaak Walton League of America (Izaak Walton), and were granted. 6/ None of the commenting agencies or intervenors expressed opposition to relicensing the project.

The Commission's staff issued a draft environmental impact statement (EIS) for ten projects in the Wisconsin River Basin, including the Rothschild 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

2/ 21 FPC 584 (1959).

3/ The pertinent portion of the Wisconsin River, from its source in Lac Vieux Desert to its confluence with the Mississippi River, is a navigable waterway of the United States. Section 23(b) of the FPA, 16 U.S.C. § 817(b), therefore requires that the project be licensed.

4/ 51 FPC 1520 (1974).

5/ See Section 15(a)(1) of the FPA, 16 U.S.C. § 808(a)(1).

6/ Izaak Walton filed a late motion to intervene on May 9, 1994.

Project No. 2212-001

-3-

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 830-foot dam with a fish ladder, Lake Wausau which is the reservoir for the Rothschild dam with a surface area of 1,604 acres at normal pool elevation, a powerhouse containing seven generating units with a total installed capacity of 3,708 kW, and appurtenant facilities. A more detailed project description is contained in ordering paragraph B(2). Weyerhaeuser proposes no new capacity and no new construction.

### IV. APPLICANT'S PLANS AND CAPABILITIES

In accordance with sections 10 and 15 of the FPA, 7/ we have evaluated Weyerhaeuser's record as a licensee for these areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost-effectiveness of plans; and (H) actions affecting the public.

#### A. Consumption 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.

Weyerhaeuser consumes 100 percent of the power generated at the project in its paper manufacturing facilities. Weyerhaeuser's internal conservation programs include the use of high-efficiency lighting; high-efficiency motors; steam trap maintenance; and a steam, condensate, and compressed air leak repair program. A group of Weyerhaeuser's personnel monitor energy conservation measures. Based on this information, we conclude that Weyerhaeuser is making a good faith effort to conserve electric energy.

7/ 16 U.S.C. §§ 803(a)(2)(C) and 808 (a).

Project No. 2212-001

-4-

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

Weyerhaeuser's overall record of making timely filings and compliance with its license is satisfactory. Weyerhaeuser has or can acquire the resources and expertise necessary to carry out its plans and comply with all terms and conditions of the new license and orders issued thereunder.

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

Weyerhaeuser has historically operated the project in a safe manner. The Commission's Chicago Regional Office inspects the project periodically and prepares operation reports describing its inspection findings. Weyerhaeuser's application provides for the continuation of its current management, operation, and maintenance methods.

Weyerhaeuser's plans are adequate to manage, operate, and maintain the project safely. 8/

D. Ability to Provide Efficient and Reliable Electric Service

During normal operation, Weyerhaeuser operates the project with a computer-based automatic control system. Plant personnel periodically monitor the control system 24 hours a day. If the automatic control system should fail, plant personnel can operate the plant manually. Weyerhaeuser coordinates with up-stream and down-stream projects through the Wisconsin Valley Improvement Company operating database and through steps outlined in the emergency action plan. Weyerhaeuser also employs a preventive maintenance program to increase the reliability of the mechanical and electrical components of the system.

Weyerhaeuser's plans and abilities are adequate to operate and maintain the project in a manner that would likely provide efficient and reliable electric service to its customers.

E. Need for Power

To assess the need for power, we reviewed Weyerhaeuser's use of the project power to date and in the future, together with that of the operating region in which the project is located.

The Rothschild Project is located in the Midcontinent Area Power Pool (MAPP) region of the North American Electric

8/ See Safety and Design Assessment for the Rothschild Project.

♀

Reliability Council (NERC). NERC annually forecasts electrical supply and demand in the nation and the region for a 10-year period. NERC's most recent report 9/ on annual supply and demand projections indicates that for the period 1995-2004, loads in the MAPP area will grow faster than planned capacity additions, resulting in decreased reserve margins.

The Rothschild Project has historically generated an annual average of 24,362 megawatt-hours (MWh) of power. The project power has been and will continue to be used at Weyerhaeuser's mill. In addition, the project displaces nonrenewable fossil-fired generation and contributes to diversification of the generation mix in the MAPP area. We conclude that past and present use of the project's power, its displacement of nonrenewable fossil-fired generation and contribution to a diversified generation mix, and the likelihood of shrinking reserve margins support a finding that the power from the Rothschild Project will help meet a need for power in the MAPP area in the short and long-terms.

F. Transmission Service

All power generated by the project is used in Weyerhaeuser's paper manufacturing facilities. If denied a license to operate the Rothschild Project, Weyerhaeuser would most likely buy additional power from Wisconsin Public Service Corporation. Weyerhaeuser could operate with purchased power with no detrimental effects on line loading or losses and without constructing new lines. There are no plans to modify the existing transmission system.

G. Cost-Effectiveness of Plans

Weyerhaeuser plans to continue to operate the dam in a run-of-river mode and to implement various other environmental modifications. In addition, Weyerhaeuser plans to use the project power to meet some of the needs of its manufacturing process. These plans can be achieved in a cost-effective manner.

H. Actions Affecting the Public

Environmental enhancement measures included in this license will result in beneficial changes to the environmental quality of the project area, including aquatic resources, and to public recreation.

9/ Electric Supply and Demand 1995-2004, Summary of Electric Utility Supply and Demand Projections (1995).

♀

V. WATER QUALITY CERTIFICATION

Under section 401(a)(1) of the Clean Water Act (CWA), 10/ 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. 11/ On April 18, 1991, Weyerhaeuser applied to the Wisconsin DNR for water quality certification. By letter dated May 17, 1991, the Wisconsin DNR waived the requirement for certification for the continued operation of the Rothschild Project.

VI. SECTION 18 FISHWAY PRESCRIPTION

Section 18 of the FPA 12/ 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 June 24, 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 practice has been to include a license article that reserves the Secretary's authority to prescribe facilities for fish passage. 13/ 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.

10/ 33 U. S. C. § 1341(a)(1).

11/ 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.

12/ 16 U. S. C. § 811.

13/ 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).

♀

Rothchild - License 07-18-1996  
WILDLIFE AGENCIES

Section 10(j)(1) of the FPA 14/ requires the Commission, when issuing a license, to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project. Section 10(j) is further discussed in the Master Order. The Wisconsin DNR and Interior filed fish and wildlife recommendations.

The license contains conditions consistent with eight recommendations submitted by the Wisconsin DNR and Interior that are subject to the provisions of Section 10(j): (1) providing run-of-river operations; (2) prohibiting operation at both the low and high ends of the operating range on a daily basis; (3) modifying run-of-river operation temporarily in case of emergency and coordinating scheduled drawdowns; (4) installing automatic water level recorders; (5) maintaining a daily record of operations; (6) installing a staff gage on the up-stream side of the dam; (7) providing flow continuation during power outages; and (8) providing protection for endangered species.

The following recommendations made by the Wisconsin DNR and Interior are outside of the scope of Section 10(j) of the FPA, in that they involve studies that could have been performed prior to licensing, or do not otherwise qualify as measures to protect, mitigate damages to, or enhance fish and wildlife: 15/  
(1) helping to finance and implement the United States Geological Survey (USGS) basin-wide flow monitoring system; (2) establishing a project retirement fund; (3) developing and implementing a down-stream fish protection plan; (4) cooperating with the agencies on control of purple loosestrife; (5) providing long-term fish and wildlife protection; (6) contributing \$500 annually for five years to the Wisconsin DNR for waterfowl surveys; (7) providing funds to the Wisconsin DNR for planting wild rice at Lake Wausau; (8) providing \$1,500 to the Wisconsin DNR to construct osprey and tern nesting platforms; (9) implementing recreation enhancements; (10) constructing a boat launch downstream of the dam; (11) providing recreation review and

14/ 16 U. S. C. § 803(j)(1).

15/ See 18 C. F. R. § 4.30(b)(9)(ii) (1995), and Regulations Governing Submittal of Proposed Hydropower License Conditions and other Matters, 56 Fed. Reg. 23,108 (May 20, 1991), 111 FERC Statutes and Regulations 30,921 (May 8, 1991) (Order No. 533) at pp. 31, 108-10.

♀

Project No. 2212-001

-8-

consultation every ten years; and (12) retaining all lands within the project boundary for the life of the license. We have, however, considered these recommendations under Section 10(a)(1)

of the FPA.

The Commission staff made a preliminary determination that all of the resource agencies' recommendations that are subject to the provisions of Section 10(j) are consistent with the purposes and requirements of Part I of the FPA, and recommended adoption of all of these Section 10(j) recommendations. However, Commission staff concluded that several section 10(a)(1) recommendations should not be adopted.

In response to this determination, comment letters were received from the Wisconsin DNR and Interior. On November 2 and 3, 1995, representatives from the Wisconsin DNR, Interior, and Weyerhaeuser met with Commission staff to resolve Section 10(j) and Section 10(a) inconsistencies for the Wisconsin River projects in this proceeding.

With respect to environmental issues outside the scope of Section 10(j), the following conclusions were reached either in the draft EIS or discussed and resolved at the Section 10(j) meeting.

(1) We are not requiring that Weyerhaeuser provide funds for basin-wide flow gaging, because the agencies have agreed that Wisconsin Valley Improvement Company (Wisconsin Valley) will maintain a gaging system as part of its headwaters operations. 16/

(2) We find that establishment of a pre-retirement trust fund for this project is not warranted. 17/

(3) We conclude that the recommendation for a downstream fish protection plan is inconsistent with Sections 313(b) and 10(a) of the FPA. However, because we believe that it is appropriate that the Commission consider reasonable resource enhancement measures for these projects, we are requiring that Weyerhaeuser make an annual expenditure of up to \$7,000 per year (in 1995 dollars), with appropriate consumer price index adjustment, to fund enhancement activities for fishery resources affected by the project. 18/

16/ See Section IV.E. of the Master Order.

17/ See Section IV.I. of the Master Order.

18/ See Section IV.A. of the Master Order.

♀

(4) We are not requiring Weyerhaeuser to retain all lands it owns within the project boundary for the life of the license and always consult with resource agencies prior to modifying the project boundary. We find that the Commission's standard land use articles and regulations, which require agency consultation



before any substantial modification of project lands, provide the necessary protection and flexibility. The agencies agreed with this approach at the Section 10(j) meeting. 19/

(5) We conclude that there would be beneficial effects of adopting the agencies' recommendations regarding providing funds to the Wisconsin DNR for wildlife enhancements (five year waterfowl surveys, wild rice seedling planting, and construction of nesting platforms), cooperating on purple loosestrife control, and providing long-term fish and wildlife protection. Therefore, we will require these measures. 20/

(6) Regarding the agencies' recreation-related recommendations (specific facility enhancements in the reservoir, construction of a downstream boat launch, and recreation review and consultation), Commission staff concluded in the draft EIS that all recreation facilities except, because of opposition to its location, the downstream boat launch should be implemented. At the Section 10(j) meeting, Weyerhaeuser stated that it had reinitiated consultation for development of a boat launch downstream of the dam, based on overwhelming public support expressed at the draft EIS public hearing. Community officials, resource agencies, and Weyerhaeuser have subsequently reached an agreement for development of a facility downstream of the dam. The boat launch will be located on Weyerhaeuser property that is presently outside of the established project boundary. Accordingly, we are requiring Weyerhaeuser to develop the recreation facility, as well as to modify its project boundary to include this recreation site. We conclude that there will be beneficial effects associated with the development and incorporation of these enhancement measures. 21/ Therefore, we are requiring the development and implementation of a final recreation plan that incorporates the downstream facility.

(7) We are requiring Weyerhaeuser to initiate consultation and update its recreation plan as necessary every six years, consistent with the Commission's Form 80 review cycle. At the Section 10(j) meeting, the agencies agreed with this approach.

19/ See EIS Section 5.1.2.

20/ See EIS Section 5.1.2., Table 5-16.

21/ Id.

♀

#### VIII. COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA 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. 22/ Of the comprehensive plans filed with the

Rothchild - License 07-18-1996

Commission, the Commission staff identified four that are relevant to the Rothschild Project. 23/ The project does not conflict with any of these comprehensive plans.

IX. COMPREHENSIVE DEVELOPMENT

In making our comprehensive development determinations under Sections 4(e) and 10(a)(1) of the FPA, we considered the project both with Weyerhaeuser's mitigative proposals and with the Commission's mitigative proposals. Based on current economic conditions, the project, if licensed as Weyerhaeuser proposes, would produce 23.1 gigawatt-hours (GWh) of energy, at an annual cost of \$14,000 (0.59 mill/kWh) less than currently available alternative power. If licensed with the Commission's required enhancement measures, the project will produce 23.1 GWh of energy, at an annual cost of \$9,000 (0.39 mill/kWh) less than currently available alternative power.

The EIS analyzed the effects associated with the issuance of the new license for Project No. 2212. 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); maintaining automatic water level recorders and a daily record of operation (Article 403); installing a staff gage on the up-stream wall of the dam (Article 403); contributing \$7,000 (in 1995 dollars), adjusted annually by the previous year's Consumer Price Index, for fisheries enhancements (Article 406); providing funding to the Wisconsin DNR for wildlife enhancements in Lake Wausau (Article 408); cooperating with agencies on purple loosetrite control (Article 407); implementing recreational enhancements, including construction of a boat launch downstream of the dam and two barrier-free fishing piers on Lake Wausau (Article 410); and

22/ Comprehensive plans for this purpose are defined at 18 C. F. R. § 2.19 (1995).

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

♀

Project No. 2212-001

-11-

submitting a revised recreational plan to include provisions for construction and maintenance of the boat launch downstream of the project, and provisions for conducting six year recreation reviews with agencies (Article 410).

Based on our review and evaluation of the existing Rothschild Project, agency recommendations, and the no-action alternative as documented in the EIS prepared in this proceeding, we find that the Rothschild Project, with our mitigative and

Rothchild - License 07-18-1996

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

X. SUMMARY

The EIS issued for this project 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 Weyerhaeuser Company, for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Rothschild 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 July 29, 1991:

Exhibit G (Sheet 1)	FERC No. 2212- 1	Showing Project boundary
------------------------	---------------------	-----------------------------

(2) The project works consisting of: (1) a 830-foot-long dam that comprises (a) a 167-foot-long powerhouse; (b) a 255-foot-long concrete dam containing 10, 20-foot-wide by 13.75-foot-high radial gates and a fish ladder/trash sluice section; (c) a 100-foot-long overflow spillway; and (d) a 276-foot-long timber crib section containing 17 stoplog bays; (2) a reservoir with a surface area of 1,604 acres at the normal pond elevation of 1,160.7 feet National Geodetic Vertical Datum (NGVD) and a total storage capacity of 13,900 acre-feet; (3) a powerhouse containing (a) six

±

Project No. 2212-001

-12-

horizontal James Leffel turbines rated at 800 horsepower (hp) and (b) one General Electric vertical turbine rated at 1,200 hp; and (4) 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 sections of Exhibit A filed July 29, 1991:

Rothchild - License 07-18-1996

The dam, spillway, powerhouse, project reservoir, generating equipment, and additional appurtenant equipment as described on pages A-1, A-2, and A-12 through A-20.

Exhibit F--The following Exhibit F drawings filed July 29, 1991:

Exhibit	FERC No. 2212-	Showing
F (Sheet 1)	1	General layout
F (Sheet 2)	2	Dam section
F (Sheet 3)	3	Sluiceway section
F (Sheet 4)	4	Dam section
F (Sheet 5)	5	Sections
F (Sheet 6)	6	Turbine section
F (Sheet 7)	7	Turbine section
F (Sheet 8)	8	Fish ladder section
F (Sheet 9)	9	Powerhouse section
F (Sheet 10)	10	Powerhouse section

(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-3 (October 1975), entitled Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States, and the following additional articles:

Article 201. 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 purposes 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 3,708 kilowatts.

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 for those benefits, at such time as they are assessed, in the

Rothchild - License 07-18-1996

same manner as for benefits received during the term of this new license.

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

To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the Licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The Licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The Licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly includible in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus 4 percentage points (400 basis points).

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

♀

Project No. 2212-001

-14-

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

Rothchild - License 07-18-1996  
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 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 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

♀

Project No. 2212-001

-15-

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 1,160.6 feet and a maximum of 1,160.8 feet National Geodetic Vertical Datum (NGVD) when operating in automatic mode and between a minimum of 1,160.4 feet and a maximum of 1,161.0 feet NGVD when operating in manual mode as measured immediately upstream from the project dam.

Rothchild - License 07-18-1996

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, the Wisconsin Department of Natural Resources, and 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 ten 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 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;
- (3) maintain records of turbine operations, including turbine start-up and shut-down times;
- (4) maintain records of hourly headwater and tailwater elevations;

♀

Project No. 2212-001

-16-

- (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

Rothchild - License 07-18-1996

comment and make recommendations before filing the plan with the Commission. If the Licensee does not adopt an agency's 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 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.

♀

Project No. 2212-001

-17-

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, maintain, and operate or to provide for the construction, maintenance, and operation 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 Rothschild 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



Rothchild - License 07-18-1996

days for agency comment prior to filing the 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 \$7,000 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 Rothschild Project; (2) require the installation of fish protection at the Rothschild 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.

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, and the Wisconsin Department of Natural Resources, 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

†

Project No. 2212-001

-18-

monitoring data to the U.S. Fish and Wildlife Service, and to the Wisconsin Department of Natural Resources. The plan shall be filed with the Commission for approval. If at any time during the period of the license, the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources 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 U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources 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

Rothchild - License 07-18-1996

plan including any changes required by the Commission.

Article 408. Within one year of license issuance, the Licensee shall file with the Commission, for approval, a Wildlife Management Plan.

The plan shall include, but not be limited to, the following:

- (1) descriptions of the specific wildlife enhancement activities to be implemented on Lake Wausau in cooperation with the Wisconsin Department of Natural Resources, with the Licensee to provide funds as follows (in 1995 dollars): (a) \$560 per year for the first five years for waterfowl surveys; (b) \$1,000 for one experimental planting of wild rice seedlings; and (c) \$1,700 for construction of osprey and tern nesting platforms;
- (2) procedures for consulting with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources concerning: (a) possible bald eagle nesting on project lands; (b) other federally threatened or endangered species on project lands; and (c) any proposed or ongoing measures to protect threatened or endangered species; and
- (3) implementation schedules.

♀

Project No. 2212-001

-19-

The Licensee shall prepare the Wildlife Management Plan in 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 and recommendations 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 409. 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

Rothchild - License 07-18-1996

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 that 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.

Article 410. 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 include specific new recreation facilities and improvements

†

Project No. 2212-001

-20-

as 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 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;

Rothchild - License 07-18-1996

- (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.

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, other providers of public recreation at the project, 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

♀

Project No. 2212-001

-21-

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 one 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) construction of a boat launch downstream of the dam and modification of Exhibit G to include the recreation site within the project boundary;
- (2) construction of two barrier-free fishing piers, one at Everest Park and one at Liberty Park;
- (3) improvements to the canoe portage, including improving the path, implementing bank stabilization measures and installing timber steps at the take-out and put-in locations;
- (4) development of a brochure describing the recreational facilities and opportunities available at the project reservoir, and placement of uniform signage at recreation facilities; and
- (5) consultation with government officials (local, county, or state) with oversight over roadway signage issues.

Rothchild - License 07-18-1996  
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 and improvements as described below.

Article 411. (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

♀

Project No. 2212-001

-22-

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

Rothchild - License 07-18-1996

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.

†

Project No. 2212-001

-23-

(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 or telephone distribution cables or major or 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

Rothchild - License 07-18-1996

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 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,

♀

Project No. 2212-001

-24-

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 insure 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.

Rothchild - License 07-18-1996

(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 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 No. 2212-001

-25-

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 by the Commission 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 order 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,  
Secretary.

♀