

UNITED STATES OF AMERICA 111 FERC ¶ 62,033
FEDERAL ENERGY REGULATORY COMMISSION

Mosinee Paper Corporation

Project No. 2207-009

ORDER ISSUING NEW LICENSE

(April 7, 2005)

INTRODUCTION

1. On December 18, 2002, Mosinee Paper Corporation (Mosinee) filed an application for a new license pursuant to Sections 4(e) and 15 of the Federal Power Act (FPA)¹ to continue operation and maintenance of the 3.05-megawatt (MW) Mosinee Hydroelectric Project No. 1979. The project is located on the Wisconsin River, a navigable waterway of the United States,² in the town of Mosinee, Marathon County, Wisconsin. The project does not occupy any federal lands. As discussed below, I am issuing a new license for the project. Issuing a new license is in the public interest because it would allow the project to continue generating electric energy to serve growing regional demand while protecting and enhancing environmental, recreational and cultural resources.

BACKGROUND

2. The current license for the project was issued on January 5, 1982,³ and expired on December 31, 2004. Project operation has continued pursuant to annual licenses, pending disposition of Mosinee's application for a new license.

3. Public notice of the license application was issued on March 9, 2004. A motion to intervene was filed by the Wisconsin Department of Natural Resources (WDNR).⁴

4. The March 9, 2004, public notice also indicated that the project was ready for environmental analysis and solicited comments, recommendations, and terms and

¹ 16 U.S.C. §§ 797(e) and 808.

² See *Wisconsin Public Service Corp. v. Federal Power Commission*, 147 F. 2d 743, cert. denied 325 U.S. 880.

³ 18 FERC ¶ 62,004 (1982).

⁴ The motion, which was timely and unopposed, was granted automatically pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure.

conditions. Responding to this notice, by letters filed May 21, 2004, and April 30, 2004, the U.S. Department of the Interior (Interior) and the U.S. Environmental Protection Agency (EPA) stated they had no comments.

5. On October 28, 2004, the Commission staff issued for public comment an environmental assessment (EA). Mosinee and WDNR filed comments on the EA, on November 24, and 29, 2004, respectively. EPA reiterated that they had no comments by letter filed December 17, 2004. All motions to intervene and comments have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

6. The Mosinee Project consists of: three dam sections spanning bedrock islands; a 1,377-acre reservoir at normal pool elevation of 1,137.75 feet mean sea level (msl); an 850-foot-long power canal that diverts Wisconsin River (bypassed reach) flows to two powerhouses with a total installed capacity of 3,050-kilowatts; two 2,000-foot-long, 5-kilovolt transmission lines; and appurtenant facilities. A more detailed project description is contained in ordering paragraph (B)(2).

7. The Mosinee Project is operated in a run-of-river mode. Mosinee does not propose any significant new construction or additional capacity at the project. They do, however, propose to replace the existing flashboard system.

WATER QUALITY CERTIFICATION

8. Under Section 401(a)(1) of the Clean Water Act (CWA)⁵ the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency either has issued a water quality certification (WQC) for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed 1 year. Section 401(d) of the CWA provides that state certification shall become a condition on any federal license or permit that is issued.⁶ Only a reviewing court can revise or delete these conditions.⁷

⁵ 33 U.S.C. § 1341(a)(1).

⁶ 33 U.S.C. § 1341(d).

⁷ *See American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

9. Mosinee requested a WQC for the project from the WDNR on December 2, 2002. On April 8, 2003, WDNR issued a WQC for the Mosinee Project that contained conditions that Mosinee found unacceptable. Mosinee petitioned for an administrative hearing and, by letter dated May 5, 2003, WDNR granted that request. A settlement agreement (agreement) was reached between Mosinee and WDNR on December 15, 2003. A revised WQC, which incorporated terms of the agreement, was issued for the Mosinee Project on January 7, 2004.

10. The conditions of the WQC, set forth in Appendix A, are incorporated in the license by ordering paragraph D. The WQC includes requirements for water level management and monitoring, operating mode, woody debris management, fish entrainment, a strengthened flashboard system, and various administrative measures. The WQC also requires the licensee to operate the project with specific requirements, and implement programs and report the results of monitoring. Articles 401 and 402 contain provisions enabling the Commission to enforce the certification conditions.

11. Condition F of the WQC requires the licensee to design, construct, operate, and maintain a fish barrier net to prevent fish from entering the project's turbines. However, in lieu of these requirements, Condition F permits the licensee to instead contribute \$6,000 per year for the term of the license to a collective fund that would be used for recreational improvements and aquatic habitat enhancements.

12. The EA (p. 97) did not recommend the barrier net or fund contribution measures, finding that there is nothing in the record to indicate how much or even if entrainment and mortality of fish are adversely affecting fishery resources in the project area, and that the aquatic community in the project area appears to be healthy, productive, and diverse. It is well-established that the Commission cannot require funding of compensatory mitigation, or any remedy for fish protection, where, as here, it has not been shown by substantial evidence that entrainment mortality has had a significant adverse effect on the fishery population.⁸ However, as noted, under section 401(d) of the CWA, WQC conditions are mandatory license conditions and therefore Condition F must be included in the Mosinee license.

⁸ See *City of New Martinsville, WV v. FERC*, 102 F.3d 567 (D.C. Cir. 1996), and *Allegheny Energy Supply Company, LLC.*, 109 ¶ 61,028 (2004).

SECTION 18 FISHWAY PRESCRIPTIONS

13. Section 18 of the FPA⁹ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. No fishway prescription for this project has been filed, nor has there been any reservation of authority requested.

THREATENED AND ENDANGERED SPECIES

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

15. The threatened bald eagle may use project lands, and Mosinee proposes to implement a bald eagle management plan. In the EA, staff recommended that certain additional measures be included in a revised bald eagle management plan, and determined that the project with the staff-recommended measures would not be likely to adversely affect the bald eagle.

16. In a letter dated October 29, 2004, staff requested concurrence from the FWS on its effects determination. The FWS concurred in a letter filed March 8, 2005. Article 407 requires the revised bald eagle management plan.

⁹ 16 U.S.C. § 811.

¹⁰ 16 U.S.C. § 1536(a).

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

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

COMMENTS ON THE EA

18. Mosinee and WDNR filed comments on the EA; noting certain minor corrections. Mosinee stated their objections to certain recommendations. The objections are discussed below.

Compliance Monitoring Plan

19. Mosinee proposes to continue to operate run-of-river and to continue providing a minimum bypass flow of about 140 cubic feet per second via leakage. The EA recommends a monitoring plan for the project to document compliance with run-of-river operation and the minimum bypass flow. Mosinee questions the need to prepare a compliance monitoring plan to document a system that is already operational and specified in the WQC (WQC condition E). They object on the grounds that: (1) a monitoring plan, which Mosinee is obligated to implement, is already specified in the WQC; and (2) preparation of a new plan is unnecessary and burdensome.

20. The WQC requires that Mosinee cooperate with Wisconsin Valley Improvement Company (WVIC) to gather headwater and tailwater elevation data from automatic sensors that are owned and maintained by WVIC. The EA-recommended plan would establish how these data are to be used as well as the frequency of required maintenance or calibration of these sensors, and procedures for releasing flows during emergency shutdowns. A compliance monitoring plan would improve the Commission and the agencies' ability to document compliance with the operational requirements of the license. Therefore, Article 403 requires a compliance monitoring plan.

¹¹ 16 U.S.C. § 803(j)(1).

¹² 16 U.S.C. § 661 et seq.

Reservoir Drawdown Plan

21. The EA recommends a reservoir drawdown plan for the project. Mosinee states that, rather than requiring a “generic drawdown plan”, a more realistic requirement would be to implement a specific drawdown plan in consultation with the WDNR and FWS at least six months prior to any plan of drawdown.

22. Drawdowns are a necessary component of project maintenance in many cases and can also be a means of dealing with certain emergencies beyond the control of the licensee. Having a reservoir drawdown plan in place can avoid potential adverse environmental effects related to emergency drawdowns. The EA-recommended drawdown plan would include planning considerations to protect environmental resources during both planned and emergency reservoir drawdowns. Accordingly, Article 404 requires a reservoir drawdown plan.

Invasive Species

23. Mosinee objects to the recommendation in the EA for an invasive species monitoring and control plan. It objects on the grounds that: (1) project operation does not affect the presence of invasive species; and (2) it is overly burdensome on them to be solely responsible for the eradication of these invasive species.

24. Purple loosestrife and Eurasian milfoil occur within the project impoundment and are invasive species that displace native wetland vegetation and degrade wildlife habitat. The EA recommends that Mosinee develop and implement an invasive species monitoring and control plan that includes consultation with Interior and WDNR in the preparation of the plan and does not specify eradication as a requisite measure. The need for control measures would be determined in consultation with the agencies, subject to Commission approval.

25. An invasive species monitoring and control plan would help prevent these and other invasive species from colonizing and disrupting the environment within the project area throughout the license term. Accordingly, Article 408 requires an invasive species monitoring plan, including species control when deemed appropriate.

OTHER ISSUES

Flashboard Management Plan

26. In order to reduce the frequency of flashboard failures, Mosinee proposes, as

required by WQC condition N, to replace the existing flashboards at the project within one year of license issuance with a strengthened flashboard system designed to fail at the four-year flood event (approximately 36,000 cfs) and maintain the system for the term of the license.

27. The EA recommends a flashboard management plan. Such a plan would include the design, methods and schedule for the initial installation of the new flashboard system, and a plan for reinstalling the flashboards should they fail. The plan would be developed in consultation with the agencies and would help ensure that flashboard installation is conducted in a manner that protects environmental resources. Accordingly, Article 405 requires a flashboard management plan. In addition, Articles 301 through 303 are included for the administration of dam safety and compliance for the flashboard construction. Article 301 requires cofferdam construction drawings; Article 302 requires plans and specifications along with a supporting design report; and Article 303 requires as-built drawings.

Woody Debris Management Plan

28. Mosinee proposes, as required by WQC condition L, to pass woody debris downstream of the project in a reasonably safe manner. Although WQC condition L requires that WPSC pass woody debris downstream of the project in a reasonably safe manner, it does not specify the method or frequency of this action.

29. The EA recommends a woody debris management plan that specifies the frequency and methods used to pass the woody debris downstream of the project, which would ensure that the debris is handled in a safe, effective manner. Accordingly, Article 406 requires a woody debris management plan.

Cultural Resources

30. On December 30, 1993, the Wisconsin State Historic Preservation Officer, the Michigan State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission, executed a Programmatic Agreement (PA) for managing historic properties that may be affected by relicensing projects in the state of Wisconsin and adjacent portions of Michigan. Article 409 requires the PA to be implemented. This satisfies the Commission's responsibilities under Section 106 of the National Historic Preservation Act.¹³

¹³ 16 U.S.C. § 470(f).

Recreation Plan

31. The two primary public recreational access areas at the project (a tailwater boat launch and a linear park on the impoundment) are provided by the City of Mosinee, parts of which border the project impoundment and tailwaters. As part of their agreement with WDNR¹⁴, Mosinee would: (1) convey certain land on the west bank of the project tailwaters to the City of Mosinee for the purpose of public recreation; (2) convey a recreational easement on the east bank of the project impoundment to the City of Mosinee for a boat launch; (3) support the City of Mosinee's efforts to secure access to an area known as Miller's bottom on the east bank of the project impoundment; (4) allow public access to certain project waters via Little Bull Island; and (5) prepare a brochure with a bathymetric map showing recreation facilities, navigation hazards, and recreation opportunities in the vicinity.¹⁵ Implementing these measures would enhance recreational use of the project. However, the agreement does not specify when these measures are to be implemented. Therefore, Article 410 requires Mosinee to file a schedule for implementing these measures and reports with the Commission when any additional project access facilities are added.

ADMINISTRATIVE CONDITIONS

A. Annual Charges

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

B. Exhibit G Drawings

33. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.

¹⁴ The recreation measures are referenced in condition J of the water quality certificate.

¹⁵ The locations of the proposed recreation access areas are shown on project boundary maps filed as Appendix G to additional information Mosinee filed on June 29, 2004.

C. Amortization Reserve

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

D. Headwater Benefits

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

E. Use and Occupancy of Project Lands and Waters

36. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 411 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

COMPREHENSIVE PLANS

37. Section 10(a)(2)(A) of the FPA¹⁶ requires the Commission to consider the extent to which a hydroelectric project is consistent with federal and state comprehensive plans for improving, developing, or conserving waterways affected by the project.¹⁷ Under section 10(a)(2)(A), federal and state agencies filed a total of 66 qualifying comprehensive plans of which staff identified ten plans to be applicable.¹⁸ No conflicts were found.

¹⁶ 16 U.S.C. § 803(a)(2)(A).

¹⁷ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2004).

¹⁸ Wisconsin: (1) Wisconsin Department of Natural Resources. 1985. *Wisconsin statewide comprehensive outdoor recreation plan, 1986-1991*. Madison, Wisconsin. September 1985. Nine volumes; (2) Wisconsin Department of Natural Resources. 1991. *Wisconsin statewide comprehensive outdoor recreation plan for 1991-1996*. Madison, Wisconsin. October 1991. 312 pp. and survey form; (3) Wisconsin Department of Natural Resources. 1994. *Wisconsin Water Quality Assessment Report to Congress*.

APPLICANT'S PLANS AND CAPABILITIES

38. In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA, Commission staff have evaluated Mosinee's record as a licensee with respect to the following: (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. I accept the staff's findings in each of the following areas.

A. Conservation Efforts

39. Section 10(a)(2)(C) of the FPA requires the Commission to consider the extent of electricity consumption efficiency improvement programs in the case of license applicants primarily engaged in the generation or sale of electric power. Mosinee uses all of its energy generated at their mill facilities. Staff concludes that Mosinee complied with and is likely to continue to comply with Section 10(a)(2)(C) of the FPA.

Madison, Wisconsin. August 1994; (4) Wisconsin Department of Natural Resources. 1995. *Wisconsin's biodiversity as a management issue*. Madison, Wisconsin. May 1995; (5) Wisconsin Department of Natural Resources. 1995. *Wisconsin's Forestry Best Management Practices for Water Quality*. Madison, Wisconsin. March 1995; (6) Wisconsin Department of Natural Resources. 1992. *Upper Wisconsin River Southern Sub-basin water quality management plan*. Madison, Wisconsin. June 1992. (7) Wisconsin Department of Natural Resources. 1991. *Upper Wisconsin River Northern Sub-basin water quality management plan*. Madison, Wisconsin. May 1991.

Federal: (1) FWS and Canadian Wildlife Service. 1986. *North American Waterfowl Management Plan*. May 1986; (2) FWS. Undated. *Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service*. Washington, D.C. 11 pp; (3) National Park Service. 1982. *The nationwide rivers inventory*. Department of the Interior, Washington, D.C. January 1982. 432. pp.

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

40. Based on a review of Mosinee's compliance with the terms and conditions of the existing license, the staff finds that Mosinee's overall record of making timely filings and compliance with its license is satisfactory. Therefore, we believe Mosinee can satisfy the conditions of a new license.

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

41. Mosinee owns and operates the Mosinee Project. The project dam and appurtenant facilities are subject to Part 12 of the Commission's regulations concerning project safety. The staff reviewed Mosinee's management, operation, and maintenance of the project pursuant to the requirements of Part 12 and the associated Engineering Guidelines, including all applicable safety requirements such as warning signs and boat barriers, the Emergency Action Plan, and the Independent Consultant's Safety Inspection Reports. The applicant's record of managing, operating, and maintaining the facilities present no reason not to issue a new license.

D. Ability to Provide Efficient and Reliable Electric Service

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

E. Need for Power

43. The Mosinee Project generates about 23,680 megawatt-hours (MWh) of electricity annually. Without the Mosinee Project, Mosinee would have to purchase power from the Wisconsin Public Service Corporation. The staff concludes that if Mosinee does not receive a new license for the project, replacement energy would have to be purchased from Wisconsin Public Service Corporation. The present and future use of the projects' power, its displacement of nonrenewable fossil-fired generation, and contribution to a resource diversified generation mix, support a finding that the power from the project would help meet both the short- and long-term need for power.

F. Transmission Services

44. Mosinee does not have a transmission system. Mosinee uses all of the energy

generated at the project in their mill facilities.

G. Cost-Effectiveness of Plans

45. Mosinee proposes no significant new construction or changes in project operation. The project, under a new license, would continue to operate in a RUN-OF-RIVER mode, and would continue to be a very valuable source of economical electric power. If licensed as proposed with staff's recommended measures, the project would produce about 23,680 MWh of power annually. Staff concludes that the plans of Mosinee would be achieved, to the extent possible, in a cost effective manner.

H. Actions Affecting the Public

46. The Mosinee Project generates electricity that is used at its mill facilities. Mosinee pays taxes annually to local and state governments, and the project provides employment opportunities and attracts those interested in various forms of available recreation.

PROJECT ECONOMICS

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

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

49. As proposed by Mosinee, the annual cost of the project would be about \$605,000 (25.57 mills/kWh). The annual power value,²⁰ for the estimated annual generation of

¹⁹ 72 FERC ¶ 61,027 (1995).

²⁰ Our estimate of the cost of alternative power is based on the Energy Information Administration's (EIA) reference case estimate of average real fossil fuel costs for electric utilities, as published by EIA in their Annual Energy Outlook for 2004 and its

23,680 MWh, would be \$978,000 (41.28 mills/kWh). To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the power the project produces. The resulting annual net benefit would be \$373,000 (15.72 mills/kWh).

50. If licensed as proposed by Mosinee, and with additional staff-recommended measures, the Mosinee Project would produce an average of 23,680 MWh of energy annually at a cost of about \$609,000 or 25.74 mills/kWh. The annual value of the project's power would be about \$978,000 or 41.30 mills/kWh. Thus, the project's power would cost about \$369,000 or 15.57 mills/kWh less than currently available alternative power.²¹

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

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

supplemental data on the EIA Internet Homepage.

²¹ The economics have been revised to include the additional cost of the WQC conditions.

COMPREHENSIVE DEVELOPMENT

53. Sections 4(e) and 10(a) of the FPA²² require the Commission to give equal consideration to power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment would be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

54. The EA for the Mosinee Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of this license.

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

56. I selected this alternative because: (1) issuance of a new license would serve to maintain a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures would protect and enhance fish and wildlife resources, water quality, recreational resources and historic properties; and (3) the 3.05 MW of electric energy generated from renewable resources would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

57. Section 15(e) of the FPA,²³ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for

²² 16 U.S.C. §§ 797(e) and 803(a)(1).

²³ 16 U.S.C. § 808(e).

projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.²⁴

58. This license will have a term of 30 years, because there is no new development and there are no extensive mitigation or enhancement measures.

The Director orders:

(A) This license is issued to Mosinee Paper Corporation (licensee), effective the first day of the month in which this order is issued, for a period of 30 years, to operate and maintain the Mosinee Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by revised Exhibit G filed on January 29, 2004:

<u>Exhibit G Drawings</u>	<u>FERC No. 2207-</u>	<u>Description</u>
G-1	1001	Project Boundary
G-2	1002	Project Boundary

(2) Project works consisting of: (1) three dam sections spanning bedrock islands described from east to west side as comprised of; (a) a 392-foot-long concrete-capped overflow spillway dam, with flashboards; (b) a middle concrete-capped overflow spillway dam; (c) the western most dam section called a guardhouse with 9 lift gates and 4 stop log sections; (2) a 1,377-acre reservoir at normal pool elevation of 1,137.75 feet msl; (3) an 850-foot-long power canal; (4) two powerhouses at the end of the power canal with a

²⁴ See Consumers Power Company, 68 FERC ¶ 61,077 at 61,383-84 (1994).

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total installed capacity of 3,050-kilowatts; (5) two 18-foot-wide, 9-foot-high Taintor gates; (6) two 2,000-foot-long, 5-kilovolt transmission lines; and (7) 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: Pages A-1 to A-3 filed on December 18, 2002.

Exhibit F: The following Exhibit F filed December 18, 2002, and partially revised January 29, 2004:

<u>Exhibit F Drawings</u>	<u>FERC No. 2207-</u>	<u>Description</u>
Sheet 1	1003	General Plan
Sheet 2	1004	Guard Lock and Control Structure
Sheet 3	1005	East Spillway Profile & Sections
Sheet 4	1006	Powerhouse Structures
Sheet 5	1007	Powerhouse Sections
Sheet 6	1008	Control Building Sections

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

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

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

(E) 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", and the following additional articles:

Article 201. *Administrative Annual Charges.* The licensee shall pay the United States annual charges, effective the first day of the month in which the license is issued, for the purposes of reimbursing the United States for the cost of administration of Part I of the Federal Power Act, as determined in accordance with provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 3,050 kilowatts.

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

a) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-1234-1001 through P-1234-####) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Chicago Regional Office. The remaining set of aperture cards and a copy of Form FERC-587 shall be filed with the Bureau of Land Management office at the following address:

State Director
Bureau of Land Management
City, State Zip
ATTN: FERC Withdrawal Recordation

b) The licensee shall file two separate sets of exhibit drawings in electronic raster

format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Chicago Regional Office. Exhibit F drawings must be identified as (CEII) material under 18 CFR §388.113(c). Exhibit G drawings must be identified as (NIP) material under 18 CFR §388.112. Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-1234-####, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

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

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points, arranged in a triangular format for GIS georeferencing to vector data. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing. In addition, each project boundary drawing must be stamped by a registered land surveyor.

c) The licensee shall file three separate sets of the project boundary data in a georeferenced vector electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-1234, boundary vector data, MM-DD-YYYY.SHP]. The georeferenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-1234, project boundary metadata, MM-DD-YYYY.TXT].

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

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

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

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

Article 301. *Cofferdam Construction Drawings.* Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of cofferdams and deep excavations is

consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensee shall submit one copy to the Commission's Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 302. Contract Plans and Specifications. At least 60 days prior to the start of any construction related to the Flashboard Management Plan, the Licensee shall submit one copy of its plans and specifications along with a supporting design document that includes the following: 1) Stability analysis demonstrating that the dam meets the Commission's Engineering Guidelines, 2) Revised spillway rating curves with and without the flashboards, and 3) Operating plan for flashboard that includes procedures to replace the flashboards following a flood event. The above information is to be submitted to the Commission's Division of Inspections Chicago Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections). The licensee may not begin construction until the Regional Engineer has approved in writing the plans and specifications and determined that all preconstruction requirements have been satisfied. The submittal to the Regional Engineer must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan.

Article 303. As-built Drawings. Within 90 days of completion of construction of the facilities authorized by this license, the licensee shall file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's D2SI-Chicago Regional Engineer, the Director, D2SI, and the Director, DHAC.

Article 401. Commission Reporting.

(a) Requirement to File Reports

The Wisconsin Department of Natural Resources water quality certification (Appendix A to this order) requires the licensee to file reports. The licensee shall also file with the Commission reports of completion of the following water quality certification conditions.

WQC Condition No. (Appendix A)	Report Name	Due Date
F	Barrier net design report/Fish fund	Within one year of license issuance
I	Scheduled changes to normal operation report	30 days prior to changes

Article 402. Water Levels. The licensee shall maintain the water level in the project reservoir as specified in conditions C and D of the water quality certification (Appendix A to this order), and provide a minimum instream flow of 140 cfs to the bypassed reach. The reservoir level and minimum flow may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods for project maintenance purposes, upon mutual agreement between the licensee and the Wisconsin Department of Natural Resources. If the reservoir level or continuous flow release is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Compliance Monitoring Plan. Within six months of license issuance, the licensee shall file for Commission approval, a plan to monitor reservoir water surface elevations specified in water quality certification condition C and the minimum flow release specified in Article 402. The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources (WDNR) and the U.S. Fish and Wildlife Service (FWS).

The compliance monitoring plan shall include provisions to monitor: (1) reservoir water surface elevations, according to the water quality certification condition C (Appendix A to this order); and (2) the minimum flow. The plan shall detail the mechanisms and structures that would be used, including any periodic maintenance and calibration necessary for any installed devices or gages, to ensure that the devices work properly, and shall specify how often reservoir and minimum flows will be recorded and reported to the WDNR. The plan shall include: (1) the location of the headwater and tailwater sensors; (2) the frequency of required maintenance or calibration of these sensors; (3) the frequency of reporting of water levels to WDNR and FWS; (4) procedures for releasing flows during emergency shutdowns; (5) provisions to file annual reports of all summary data which shall also be provided to the WDNR and FWS, and a procedure to submit all data to the WDNR and FWS, upon request; (6) procedures for releasing flows during planned and emergency shut-downs including limits on planned

outages in the spring; and (7) a schedule for implementing the monitoring plan after approval by the Commission.

The licensee shall include with the compliance monitoring plan documentation of agency consultations, including copies of agency comments and recommendations on the draft plan, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations, before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The final compliance monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

Article 404. Reservoir Drawdown Plan. Within six months of license issuance, the licensee shall file for Commission approval a plan for emergency and planned drawdowns. The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service.

The reservoir drawdown plan shall include considerations to protect environmental resources during scheduled and emergency drawdowns of the project reservoir. The plan shall include, at a minimum, the timing, duration, and rate of drawdown and measures to minimize effects on water quality, recreation, and fish and wildlife resources.

The licensee shall include with the reservoir drawdown plan documentation of agency consultation, including copies of agency comments and recommendations on the draft plan, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations, before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The reservoir drawdown plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

Article 405. *Flashboard Management Plan.* Within six months of license issuance, the licensee shall file for Commission approval a flashboard management plan. The licensee shall prepare the plan after consultation with the Wisconsin Department of Natural Resources and U.S. Fish and Wildlife Service. The plan shall include a schedule for installing new flashboards according to water quality condition N (Appendix A to this order), and procedures for reinstalling the flashboards after failures.

The licensee shall include with the flashboard management 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 should 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 406. *Woody Debris Management Plan.* Within six months of license issuance, the licensee shall file for Commission approval a plan to pass woody debris according to water quality certification condition L (Appendix A to this order). The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources and specify the frequency and methods for woody debris management.

The licensee shall include with the woody debris management plan documentation of agency consultation, including copies of agency comments and recommendations on the draft plan, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations, before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The woody debris management plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

Article 407. Bald Eagle Management Plan. Within six months of license issuance, the licensee shall file for Commission approval a revised bald eagle management plan. The plan shall include, at a minimum, the measures provided in the licensee-proposed bald eagle protection plan (Final Application pages E32 - 34). The plan shall also include, at a minimum, the following measures to protect bald eagle and any other threatened and endangered species and their habitat at the project:

1. agency-recommended measures to protect bald eagle and any other threatened or endangered species and their habitat at the project;
2. procedures for obtaining and documenting up-to-date bald eagle nesting activity on an annual basis, and for maintaining the information on project maps for use when planning land-disturbing activities such as vegetation control or recreation facility development; and
3. licensee consultation with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources prior to conducting land disturbing activities that could affect bald eagle and any other threatened or endangered species using project land.

The licensee shall include with the bald eagle management plan documentation of agency consultation, including copies of agency comments and recommendations on the draft plan, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations, before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The bald eagle management plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

Article 408. Invasive Species. Within six months of license issuance, the licensee shall file for Commission approval a plan to monitor and control invasive species in project waters. The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources (WDNR) and the U.S. Fish and Wildlife Service

(FWS).

The plan shall include, at a minimum:

1. the criteria used to determine and list which invasive plant species are at the project;
2. the results of baseline field surveys (data should be logged, mapped, and photographed) to determine the presence/absence of invasive species;
3. follow-up methods of monitoring (e.g., field survey, aerial photographs) and the frequency (e.g., annually) and schedule (e.g. July 1-30) for monitoring invasive species;
4. a description of the specific measures the licensee will implement (e.g., informational signs posted along property or brochures issued) to increase public awareness of invasive species;
5. a description of management practices the licensee will implement (i.e., rinsing trucks, and mowing equipment before and after use) to help prevent the spread of invasive species;
6. a description of the criteria that will be used to determine when control measures are needed and a description of the specific control measures that the licensee will implement to control/eliminate each nuisance species found at the site (i.e., manual pulling, chemical application, biological controls);
7. recommended procedures for obtaining technical assistance from the WDNR, FWS and others; and
8. a schedule for filing monitoring reports with the WDNR, FWS, and the Commission for review.

If at any time during the term of license, the agencies and the Commission deem it necessary to control/eliminate nuisance species, the licensee shall work with the resource agencies to successfully control the nuisance species. The licensee shall include with the plan documentation of agency consultation on the draft plan, copies of all agency comments and verification on 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 and all subsequent monitoring reports 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. The invasive plant monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

Article 409. Programmatic Agreement. Upon the issuance date of this license, the licensee shall implement the "*Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the State of Wisconsin, State Historic Preservation Officer, and the State of Michigan, State Historic Preservation Officer, For Managing Historic Properties That May Be Affected By New and Amended Licenses Issuing For The Continued Operation Of Existing Hydroelectric Projects in the State of Wisconsin and Adjacent Portions Of The State of Michigan*", executed on December 30, 1993, including but not limited to filing, within one year of the effective date of this license, the Historic Resources Management Plan (HRMP) for the project. In the event that the Programmatic Agreement (PA) is terminated, the licensee shall continue to implement the provisions of its approved HRMP. The Commission reserves the authority to require changes to the HRMP at any time during the term of the license.

Article 410. Recreation Measures. Within six months of the issuance date of the license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (WDNR) and the National Park Service (NPS), file for Commission approval, a plan and schedule for implementing the recreation measures included in Section 2.2 of the "Settlement Agreement Between Wausau Mosinee Paper and WDNR" included as Appendix J of additional information filed January 29, 2004. The implementation plan shall include documentation of agency consultation, copies of comments and recommendations on the plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments and recommendations are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the implementation plan. No ground-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.

Additionally, if any additional public access facilities are installed at the project as a result of these measures, the licensee shall, within one month of their installation, file a report with the Commission that discusses the design and capacity of these facilities, the entity responsible for operation and maintenance, costs for yearly maintenance of each facility, and a discussion of how the needs of the disabled were considered in the planning and design of the facilities.

Article 411. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy 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 non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the

licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or

public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved exhibit R or approved report on recreational resources of an exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 5 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 file a letter with the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

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

J. Mark Robinson
Director
Office of Energy Projects

APPENDIX A

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

- A. The applicant shall comply with all federal, state, and local permit requirements.
- B. The applicant must meet the most current State Water Quality Standards that apply to this project. As with all other affected operations, the applicant would be required to meet any revised state water quality standards.
- C. The applicant must operate the Mosinee Project in a run-of-river mode at a target reservoir elevation of 1137.75 National Geodetic Vertical Datum (NGVD).
- D. The parties acknowledge that water level fluctuations occur in the Mosinee flowage as the consequence of the limited hydraulic capacity of the MHP in comparison to the flow of the Wisconsin River in combination with the relatively small storage volume of the Mosinee Flowage. The applicant must act at all times to minimize such fluctuations so as to return to the target elevation as soon as possible considering current and foreseeable hydrological conditions. No operating band width will be established.
- E. WVIC owns and maintains automatic headwater and tailwater level sensors. The applicant has cooperated with WVIC to gather headwater and tailwater elevation data. The applicant shall continue to cooperate with WVIC to gather headwater and tailwater elevation data for so long as WVIC continues to maintain its equipment during the term of the applicant's license.
- F. The Department has evaluated the need for fish passage at the Mosinee Project and has determined that fish passage will not be recommended at this time. We reserve the right to revisit this decision if in the future a NR 331 analysis process determines that fish passage may be necessary at this project. The applicant will design, construct, operate and maintain a fish

barrier net to prevent fish from entering the turbines where they might be injured or killed. Within one year of license issuance a barrier net design, prepared in consultation with the Department and the USFWS, shall be submitted to the Department for review and comment. In lieu of the forgoing provisions of this condition F, the applicant shall contribute the sum of \$6,000 per year for the term of the FERC license for which application is pending, (e.g., \$180,000 assuming a 30 year license) to the Mosinee Flowage Trust Fund” as set forth in section 2.4 of the Final Settlement Agreement Between the State of Wisconsin and Wausau-Mosinee Paper Corporation of even date with this water quality certification.

- G. The applicant agrees to communicate with and inform the WDNR prior to or contemporaneously with filing proposals with the FERC for project maintenance or repair work involving the river.
- H. The applicant agrees to allow, upon reasonable notice under the then-existing circumstances, inspection of the project area to monitor compliance with the conditions set forth in this water quality certification.
- I. Any change to the project that would have a significant or material effect on the findings, conclusions, or conditions of the revised water quality certification, including project operation, must be submitted to the Department for prior review.
- J. The applicant agrees to perform the recreational obligations set forth in Section 2.3(a)-(f) of the Final Settlement Agreement Between the State of Wisconsin and Wausau-Mosinee Paper Corporation of even date with this water quality certification.
- K. The applicant shall abide by the terms of its FERC license, WPDES permit, Tier I Stormwater Plan, and this water quality certification.
- L. The applicant shall pass all large woody debris downstream that may be done so in a reasonably safe manner.
- N. River conditions permitting, no later than one (1) year from the date of issuance of the FERC license, the application for which is currently

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pending, the applicant will replace the existing flashboards with a strengthened flashboard system designed to fail at the four year flood event (approximately 36,000 cfs) and will maintain said system, or replace it with a similar system, for the term of said license.