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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Menominee Company)

Project No. 2744-001

ORDER ISSUING LICENSE (MAJOR)

(Issued March 11, 1985)

The Menominee Company (Applicant) has filed an application for license under Part I of the Federal Power Act (Act) for the continued operation and maintenance of a constructed water power project known as the Menominee and Park Mill Project, FERC No. 2744. 1/ The project is located on the Menominee River, a navigable waterway of the United States, in Marinette County, Wisconsin, and Menominee County, Michigan. 2/

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. All protests that have been submitted, motions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this license. No party or agency commenting on the application objected to the issuance of the license.

Project History and Description

The existing project was constructed between 1920 and 1924 to generate power for the Menominee Paper Mill, which is presently called the Scott Paper Company's Marinette Paper Mill. No further development of the Menominee and Park Mill Project is contemplated by the Applicant.

1/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.314 of the Commission's regulations, 49 Fed. Reg. 29,369 (1984)(Errata issued July 27, 1984)(to be codified at 18 C.F.R. §375.314). This action may be appealed to the Commission by any party within 30 days of the issuance date of this order pursuant to Rule 1902, 18 C.F.R. §385.1902 (1984). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal 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 directed by the Commission.

2/ Wisconsin Michigan Power Company, 3 FPC 449 (1943).

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The existing run-of-river project consists of the Menominee and Park Mill Developments. The Menominee Development consists of: (1) the 26-foot-high and 456-foot-long Menominee Dam located approximately 3 miles above the river's confluence with Green Bay (Lake Michigan); (2) a 143-acre reservoir; (3) a powerhouse with an installed capacity of 2,240 kW; (4) a substation; (5) a 1-mile-long 4.16-kV transmission line; and (6) appurtenant facilities. The Park Mill Development consists of: (1) the 22-foot-high and 538-foot-long Park Mill Dam located approximately 1 mile upstream of the Menominee Dam; (2) a 539-acre reservoir; (3) a 2,400-foot-long headrace canal; (4) a powerhouse with an installed capacity of 1,724 kW; and (5) appurtenant facilities. The two developments have a total generating capacity of 3,964 kW and an average annual generation of 20,265 MWh. 3/

A more detailed project description is contained in ordering paragraph (B).

Safety and Adequacy

All project structures, machinery, and appurtenant facilities were analyzed and inspected by the Commission's staff for safety and adequacy.

The Park Mill and Menominee dams are classified as high hazard dams and would be overtopped and fail during a Probable Maximum Flood (PMF). Because of the potential overtopping of the dams, Article 32 requires the Licensee to file a detailed study within 1 year of issuance of the order on the downstream consequences of dam failure during periods of extreme flood conditions at the two dams.

The U. S. Army Corps of Engineers' National Dam Safety Program Inspection Reports on the Menominee Dam and Powerhouse, and the Park Mill Dam, noted evidence of scouring of the bedrock foundation at the toes of the dams. Since the last soundings of the river in this area were made in 1938, Article 33 requires that new soundings must be taken in the river immediately below the dams, and a visual inspection of the Park Mill and Menominee Dam toes be made to determine erosion.

It is concluded that the project, under the conditions of this license, is safe and adequate.

3/ Continued operation of this project utilizing a renewable resource would save the equivalent of approximately 33,280 barrels of oil or 9,390 tons of coal per year.

Comprehensive Development

In light of the significantly changed economic conditions, particularly the escalating costs of non-renewable fuels, the installation of additional generating capacity at the project may now be feasible. Staff has determined that only the Park Mill Dam site has a potential for additional energy production. A preliminary analysis indicates that additional energy could be developed at a cost comparable to the cost of purchased power from commercial suppliers. Accordingly, Article 29 requires the Licensee to submit a feasibility study for installing additional generating capacity at the Park Mill Dam site. Under Article 9 of this license, the Commission retains the authority to require the Licensee to install additional capacity that may be economically feasible.

It is concluded that the Menominee and Park Mill Project makes adequate use of the flow and head of the Menominee River, is not in conflict with any known plan of development and will be best adapted to the comprehensive development of the Menominee River under the terms and conditions of the license.

Environmental Considerations

(a) Water Resources

Water quality certification, as required by Section 401 of the Clean Water Act, was granted for the Menominee Project by the Michigan Department of Natural Resources (DNR) on July 18, 1984. The Wisconsin DNR granted water quality certification for the proposed project on August 4, 1981.

The Menominee and Park Mill Project currently operates in a run-of-river mode with surface elevations of the two reservoirs fluctuating less than 1 foot. Applicant proposes to operate the project in the same manner. The water quality certification from the Michigan DNR requires that the project be operated continuously so that the instantaneous discharges from the dams equal the instantaneous inflow to the reservoirs. Michigan DNR states that natural flows and flow velocities in the river and reservoirs are required for the protection of wildlife, fish and other aquatic resources, recreation and riparian rights. Further, the project should be operated in an instantaneous run-of-river mode so that water fluctuations are minimized, thereby affording protection to the fish and wildlife resources in the Menominee River. Accordingly, Article 37 requires the Licensee to operate the project in an instantaneous run-of-river mode.

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(b) Threatened and Endangered Plant and Animal Species

Presently, bald eagles feed in the upper reaches of the Park Mill Reservoir in the winter and during migration; there is no record of bald eagle nesting in the area. The U. S. Department of the Interior (Interior) states that the project's continued operation will cause no appreciable adverse impact on threatened or endangered species.

(c) Cultural Resources

The State Historic Preservation Officers of Michigan and Wisconsin have determined that licensing of the Menominee and Park Mill Project will have no effect on any cultural resource either eligible for or listed on the National Register of Historic Places at this time. Accordingly, Article 35 requires the Licensee to ensure cultural resource protection in the event of future development at the project.

(d) Fish and Wildlife

The Applicant's Report on Fish, Wildlife, and Botanical Resources generally complies with the Commission's regulations. Since no measures to enhance fish and wildlife resources were proposed, this report will not be approved.

An anadromous fish plan has not been developed for the Menominee River system. The Michigan DNR states that future local and regional demands will require that the fish passage facilities at the dams become operable; therefore, it recommends that the Licensee be required to cooperate in any future efforts to establish anadromous fish runs in the Menominee River. Accordingly, under Article 15 of this license, the Commission may order the Licensee to modify project structures or operation for the conservation and development of fish and wildlife resources, upon the recommendation of Interior or either Michigan DNR or Wisconsin DNR.

(e) Public Access and Recreation

The Michigan DNR recommends that safe, signed portages be provided around both project dams, particularly above the Menominee Dam where river currents can be hazardous. The Applicant reports that signed portages for canoeists exist at both project dams.

The Recreational Resource Report and Exhibit R drawing, filed as part of the license application, show that there is a public boat landing operated by a local sportsmen's club on the Michigan side of the Park Mill Reservoir, and another on the Wisconsin side owned and operated by the Wisconsin DNR. Also, below the Menominee Dam, the City of Menominee maintains a fishermen's access area, on lands leased from the Applicant. The report and drawing are being approved herein.

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Interior and the Michigan and Wisconsin DNRs express concern about the need for additional public access at the project, especially on the Michigan side of the Menominee Reservoir. The Applicant states that none of its landholdings are suitable for boat access, and that it considers existing access facilities adequate.

Since the existing public facilities are on the Park Mill Reservoir, further consideration should be given to determining the need and feasibility of developing public access at the Menominee Reservoir. Article 34 requires the Licensee to conduct a study, after consultation with the Michigan and Wisconsin DNRs and local agencies and interests, to determine the need and feasibility of providing public access at the Menominee Reservoir. Further, the Licensee shall be required to file a report on the study with the Commission, and for Commission approval an amendment of the approved Exhibit R, describing any public access development.

(f) Environmental Impacts

Issuance of this license will permit continued project operation, which began over 60 years ago. The impacts of continued operation were discussed earlier in this order. On the basis of the record, including agency comments and staff's independent analysis, it is concluded that issuance of a license for this project, as conditioned, is not a major Federal action significantly affecting the quality of the human environment.

License Term and Effective Date of Annual Charges

For projects having no valid (pre-1920) Federal Permit, located on a navigable stream, and at which there has been no post-1935 construction, Commission policy has been to issue a license to be effective as of the date the stream was first found navigable or April 1, 1962, whichever is earlier ^{4/}, with the license period ending 50 years hence. In this particular case, the Menominee River was first found navigable on July 27, 1943 by the Commission. The Director in a letter by direction of the Commission dated June 6, 1980, advised the Applicant in an effort to enlist its cooperation in the licensing of this project, that, as a matter of policy, any license issued for the project would be for a term of 30 years from the date of issuance of the license, instead of the normal license period. Additionally, the Director stated that one half of the back annual charges that otherwise would have been due would be forgiven by the Commission. Accordingly, this license is issued for a period of 30 years effective the first day of the month of issuance of the license. In order to place the Applicant, as nearly as possible, in the position it

^{4/} See Public Service Company of New Hampshire, 27 FPC 826 (1962).

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would have been in had it carefully followed the licensing requirements of the Federal Power Act, a payment in lieu of annual charges is being assessed between July 27, 1943, and this license's effective date. ^{5/} However, as stated in the June 6, 1980, letter, this payment shall be limited to one-half the back annual charges that ordinarily would be due in this instance.

It is ordered that:

(A) This license is issued to the Menominee Company (Licensee), under Part I of the Federal Power Act (Act), for a period of 30 years, effective the first day of the month in which this order is issued, for the continued operation and maintenance of the Menominee and Park Mill Project No. 2744, located in Marinette County, Wisconsin, and Menominee County, Michigan on the Menominee River, a navigable water of the United States. This license is subject to the terms and conditions of the Act, which are incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Menominee and Park Mill Project No. 2744 consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

<u>Exhibit G-</u>	<u>FERC No. 2744-</u>	<u>Title</u>
1	10	Project Boundary
2	11	" "
3	12	" "
4	13	" "
5	14	" "
6	15	" "
7	16	Project Boundary

^{5/} See Idaho Power Company, 16 FERC \$61,071 (1981).

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(2) Project works for the Menominee and Park Mill Project:**A. The Menominee Development consisting of:**

(1) a concrete gravity dam structure approximately 26 feet high and 456 feet long with a normal operating head of 12 feet; (2) a reservoir with a normal elevation of 594 feet (m.s.l.) and a surface area of approximately 143 acres; (3) a spillway section consisting of twelve, 20-foot-wide by 11-foot-high Taintor gates and a 150-foot-long overflow spillway; (4) a 13-foot-long concrete gravity closed dam and a 20-foot-long earth embankment with concrete core wall at the south end of the spillway; (5) a concrete powerhouse housing two 458-kW generators and two 662-kW generators for a total installed capacity of 2,240 kW; (6) three 500-kVA single-phase 480/4, 160-V step-up transformers; (7) generator leads; (8) a 1-mile-long 4.16-kV transmission line connected to the Park Mill Powerhouse; and (9) appurtenant facilities.

B. The Park Mill Development consisting of:

(1) a concrete gravity dam structure approximately 22 feet high and 538 feet long with a normal operating head of 16 feet; (2) a reservoir with a normal elevation of 610 feet (m.s.l.) and a surface area of approximately 539 acres; (3) an intake headrace canal approximately 2,400 feet long; (4) a spillway section consisting of seven, 20-foot wide by 11-foot-high Taintor gates and 350 feet of overflow spillway with flashboards; (5) a brick and concrete powerhouse housing one 218-kW generators, one 234-kW generator, one 400-kW generator, and two 436-kW generators for a total installed capacity of 1,724 kW; (6) four three-phase 1-MVA 480/4, 160-V step-up transformer; (7) generator leads; and (8) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits and reports that also form part of the application for license and that are designated and described as:

<u>Exhibit F-</u>	<u>FERC No. 2744-</u>	<u>Title</u>
1	17	Park Mill Dam - Spillway and Guard Locks
2	18	Menominee Dam - Dam and Spillway
3	19	Menominee Dam - Powerhouse

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<u>Exhibit F-</u>	<u>FERC No. 2744-</u>	<u>Title</u>
4	20	Menominee - Dam and Spillway
5	21	Park Mill - Floor Plan
6	22	Park Mill - Section Thru Powerhouse

Exhibit E:

The Recreational Resources Report filed on December 5, 1980, consisting of: (1) three pages of text entitled "Recreational Resources" (pages 7-9 in Exhibit E); and (2) the drawing entitled "Recreation Facilities" (FERC No. 2744-23).

Exhibit A:

Page 5 of 6, Generating Equipment, and the drawing entitled "Hydro-generation" filed June 18, 1982.

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

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

(D) This license is also subject to Articles 1 through 28 set forth in Form L-3 (revised October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States", attached to and made a part of this license. The license is also subject to the following additional articles:

Article 29. The Licensee shall, within 1 year from the date of issuance of this license, prepare and submit to the Director, Office of Hydropower Licensing, a feasibility analysis of installing additional generating capacity at the project, taking into account, to the extent reasonable, all benefits including any contribution to the conservation of non-renewable energy resources. If the study shows additional capacity to be economically feasible, the Licensee shall simultaneously submit a plan and schedule and an application to amend its license to install that capacity.

Article 30. The Licensee shall pay the United States the following annual charges, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of Part I of the Act:

(1) For the period from July 27, 1943, through the day prior to the effective date of the license one-half the annual charges ordinarily due in accordance with the Commission's regulations.

(2) From the effective date of the license, the full annual charge computed in accordance with the Commission's regulations

The authorized installed capacity for this purpose is 5,310 horsepower.

Article 31. The Licensee shall, within 90 days from the date of issuance of this license, file with the Commission, in accordance with the provisions of §11.20(a)(4) of the Commission's regulations, a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing July 27, 1943, and ending January 31, 1985.

Article 32. The Licensee shall, within 1 year from the date of issuance of this license, file for approval by the Director, Office of Hydropower Licensing, a report to demonstrate that failure of the dam would not present a hazard to human life or cause significant property damage. The report shall fully document all reconnaissance and studies performed to determine the impact that failure of the dam will present to human life and property under all flow conditions up to the probable maximum flood (PMF). If the reconnaissance of the area downstream of the dam is inconclusive in determining the hazard potential of the dam, a dam break analysis shall be performed and the results furnished in the report. The dam break analysis shall consider dam failure under normal operating conditions and flood flows up to and including either the PMF or the flood flow where dam failure would cause no significant increase in hazard to downstream life and property. An inundation map and water surface profiles should be developed and furnished for the flow condition which results in the greatest potential for loss of life and property damage. The methodology and assumptions utilized in the dam break analysis shall be fully documented. The inundation map and water surface profiles should delineate the affected areas and water surface elevations prior to and after the assumed failure. The map and profiles should also show the travel time of the flood wave at critical points downstream of the dam. In the event that dam failure would be a hazard to human life or a significant hazard to downstream property, then the Licensee shall simultaneously file a plan and schedule to modify the project to make it safe.

Article 33. The Licensee shall submit to the Director, Office of Hydropower Licensing, and the Chicago Regional Office, within 1 year from the issuance date of this license, the result of river soundings and visual inspections of the foundation conditions to determine the extent of foundation scour occurring below the Menominee Dam and Powerhouse and the Park Mill Dam.

Article 34. The Licensee shall, after consultation with the Michigan and Wisconsin Departments of Natural Resources and appropriate local agencies and interests, conduct a study to determine the need for, and feasibility of, developing public access on the Menominee Reservoir. Within 1 year from the date of issuance of this license, the Licensee shall file with the Commission a report outlining the results of the study, documentation of consultation with the above-named agencies, and, if necessary, an application for amendment to the approved Recreational Resources Report. Any amendment filed shall include a construction schedule and a drawing showing the type and location of the proposed development.

Article 35. The Licensee shall, prior to the commencement of any future construction at the project, consult with the State Historic Preservation Officers (SHPO) of Michigan and Wisconsin about the need for any cultural resource survey and salvage work. The Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 36. Pursuant to Section 10(d) of the Act, during the first 20 years of operation of the project under license, 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. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20

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years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs 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 or the year in question plus four percentage points (400 basis points).

Article 37. Licensee shall operate the Menominee and Park Mill Project in an instantaneous run-of-river mode for the protection of fish and wildlife resources in the Menominee River. Licensee, in operating the project in an instantaneous run-of-river mode, shall at all times act to minimize the fluctuations of the surface elevations of the two reservoirs, i.e., to maintain discharge from the project so that flow in the Menominee River, as measured immediately downstream from the project tailrace, approximates the instantaneous sum of inflow to the project reservoirs. Instantaneous run-of-river operation may be temporarily modified only if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between Licensee and the Michigan Department of Natural Resources, or the Wisconsin Department of Natural Resources.

Article 38. (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 other 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 uses and occupancies for which it grants permission, and to monitor the use of, and to ensure compliance with the

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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, cancelling 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 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. 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 uses 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 and roads for which all necessary State and Federal approvals have been obtained; (2) storm drain 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

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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 titles 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 certificates 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 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum 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 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

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

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(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 covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (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.

(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.

(E) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgement of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.



Quentin A. Edson
Director, Office of
Hydropower Licensing

Project No. 2744-001

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Menominee Company this _____ day of _____, 19____, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the day of _____, 19____, a certified copy of the record of which is attached hereto.

Menominee Company

By _____
President

Attest:

Secretary

(Executed in quadruplicate)

Form L-3
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE
WATERS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

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Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant

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to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location

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of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits

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provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and

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opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be

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reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting; Provided, that the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

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Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

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Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

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Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

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