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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company)
of Wisconsin)

Project No. 2475-006

ORDER ISSUING SUBSEQUENT LICENSE
(Minor Project)

FEB - 5 1997

INTRODUCTION

Northern States Power Company of Wisconsin (Northern States) filed an application for subsequent license under Part I of the Federal Power Act (FPA)^{1/} to continue to operate and maintain the 1,400-kilowatt (kW) Thornapple Project (FERC No. 2475), located on the Flambeau River, in Rusk County, Wisconsin.^{2/} The Flambeau River is a navigable waterway of the United States. The Commission issued the original license for the project on April 22, 1965. The original license expired on December 31, 1993. Since then, Northern States has operated the project under annual license.^{3/}

BACKGROUND

Notice of the application has been published. No protests were filed in this proceeding and no agency objected to issuance of this license. Comments received from interested agencies and individuals have been fully considered in determining whether to issue this license.

Motions to intervene were filed on July 8, 1992, by the Wisconsin Department of Natural Resources (Wisconsin DNR) on October 11, 1994, by the Dairyland Power Cooperative (Dairyland Power), and on September 10, 1993, by the U.S. Department of the

^{1/} 16 U.S.C. §§791(a)-823(b).

^{2/} Contingent upon Commission approval of: (a) the pending merger between Northern States Power Company and Wisconsin Electric Power Company [Wisconsin Electric Power Company, Northern States Power Company (Minnesota), Wisconsin Electric Power Company (Wisconsin), and Cenerprise, Inc., Docket No. EC95-16-000 (60 Fed. Reg. 37430 (July 20, 1995))]; and (b) the license transfer application filed on August 15, 1996, the Thornapple Project would be transferred from Northern States Power Company (Wisconsin) to Wisconsin Electric Power Company.

^{3/} See 33 FPC 1067 (1965). Section 23(b)(1) of the FPA, 16 U.S.C. §817(1), requires the project to be licensed.

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Interior (Interior). None of the intervenors object to issuance of a subsequent license.

The Commission's staff issued the Flambeau River Final Environmental Impact Statement (FEIS) for this project and five other projects seeking relicensing.^{4/} The staff also prepared a Safety and Design Assessment (S&DA). The FEIS and S&DA are available in the Commission's public file for this project.

PROJECT DESCRIPTION

The existing project consists of a 530-foot-long dam, a reservoir with a surface area of 295 acres, a powerhouse containing two generating units with a total installed capacity of 1,400 kW, and appurtenant facilities. A more detailed project description can be found in ordering paragraph B(2) and in the FEIS.

WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act, 33 U.S.C. §1341(a)(1), the Commission may not issue a license for a hydroelectric project unless the state certifying agency has either issued water quality certification (WQC) for the project or has waived certification by failing to act on a request for certification within a reasonable time, not to exceed one year.^{5/} Northern States applied for a WQC for the Thornapple Project by letter dated August 30, 1990. Although the Wisconsin DNR waived certification by failing to act on Northern State's request for a WQC within one year, the Wisconsin DNR affirmatively waived the requirement for a WQC for Northern States' Thornapple Project in a letter dated November 7, 1991, from William H. Clark, Wisconsin DNR to Lloyd Everhart, Northern States Power Company.

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- ^{4/} I am today issuing new or subsequent licenses for the following projects on the Flambeau River: P-2640, P-2421, P-2395, P-2473, and P-2390. The cumulative environmental effects have been evaluated in the FEIS (September 1996).
- ^{5/} Section 401(a)(1) requires an applicant for a federal license or permit to conduct any activity which may result in any discharge into navigable waters to obtain from the state in which the discharge originates certification that any such discharge will comply with applicable state water quality standards.

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SECTION 18 - AUTHORITY TO PRESCRIBE FISHWAYS

Section 18 of the FPA 6/ states that the Commission shall require construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of Commerce or Interior. Interior, by letter dated September 9, 1993, requests that its authority to prescribe the construction, operation, and maintenance of fishways pursuant to Section 18 of the FPA be reserved for any project licensed.

Consistent with Commission practice, Article 408 of this license reserves authority to the Commission to require the licensee to construct, operate, and maintain such fishways as may be prescribed by Interior pursuant to Section 18 of the FPA. 7/

APPLICANT'S PLANS AND CAPABILITIES

Staff evaluated Northern States' record as a licensee in the areas of conservation efforts and compliance history and ability to comply with the subsequent license. I accept the staff's findings as discussed below.

Here are the findings:

A. Conservation Efforts (Section 10(a)(2)(C))

The Public Service Commission of Wisconsin (PSCW) has statutory and regulatory authority regarding least cost planning and energy conservation in the state of Wisconsin. Northern States promotes electric conservation among its member systems in compliance with the requirements and policies of the PSCW.

Northern States' plans and activities to promote and achieve conservation of electric energy and to reduce the peak demand for generating capacity include: (1) installation of automated control systems, (2) direct air-conditioning load control, (3) implementation of demand-side management programs, (4) energy-efficient technologies, (5) weatherization, and (6) bill-stuffing of conservation information to its customers.

Therefore, Northern States is making a good faith effort to conserve electricity in compliance with the requirements of the PSCW.

6/ 16 U.S.C. §811.

7/ The Commission has specifically sanctioned the reservation of fishway prescription authority at relicensing. See Wisconsin Public Service Corporation, 62 FERC ¶ 61,095 (1993); aff'd, Wisconsin Public Service Corporation v. FERC, 32 F.3d 1165 (1994).

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B. Compliance History Pursuant to Section 15(a)(3)(A) of the Federal Power Act

We have reviewed Northern States' compliance with the terms and conditions of the existing license. We find that Northern States' overall record of making timely filings and compliance with its license is satisfactory.

RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES

Section 10(j)(1) of the FPA requires the Commission, when issuing a license, to include license conditions, based on recommendations of Federal and state fish and wildlife agencies. The recommendations are submitted pursuant to the Fish and Wildlife Coordination Act and are intended to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project.

A. Final Determinations Under FPA Section 10(j)(2)(A) and (B)

In determining whether to accept or reject recommendations of fish and wildlife agencies under Section 10(j), the Commission first determines whether each recommendation is supported by substantial evidence in the record; if not, the recommendation is inconsistent with the requirement of Section 313(b) of the FPA that Commission orders be supported by substantial evidence. 8/

Second, the Commission determines whether a substantiated recommendation is inconsistent with the FPA or other applicable law. Any such inconsistency is usually with the Commission's determinations under the equal consideration/comprehensive development standards of FPA sections 4(e) and 10(a)(1), in that the recommendation conflicts unduly with another project purpose or value.

Third, the Commission must show how the fish and wildlife conditions that are adopted will "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project.

Because implementing all of the agencies' recommendations taken together would have substantial adverse effects on project purposes, as discussed in Section 6 of the FEIS, staff looked at each individual recommendation made by the resource agencies and other entities to determine whether the benefits to the environment would justify the cost of implementing the measure.

8/ See IV FERC Statutes and Regulations, supra ¶ 30,921 at p. 30,157.

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For reasons discussed in the following subsections, staff determined the following recommendations to be inconsistent with Sections 4(e) and 10(a) of the FPA and either partially adopted or did not adopt them.

If the Commission believes that any such recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, Section 10(j)(2) requires the Commission and the agencies to attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission then does not adopt a recommendation, it must explain how the recommendation is inconsistent with applicable law and how the conditions selected by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife.

The staff recommended adoption of, and this license contains, conditions consistent with Interior's and Wisconsin DNR's recommendations that Northern States:

1) develop and implement a plan to monitor water quality in the Thornapple Project impoundment (Article 406);

2) evaluate the feasibility of implementing fish protection measures to minimize entrainment or develop a fishery resource mitigation plan (Article 409);

3) follow Federal and state bald eagle (*Haliaeetus leucocephalus*) management guidelines (Article 412)

For those fish and wildlife agency recommendations that the staff found in the draft environmental impact statement (DEIS) to be inconsistent with the FPA or other applicable law, staff and the resource agencies held a meeting on March 12 and 13, 1996, in Park Falls, Wisconsin to attempt to resolve inconsistencies. Inconsistencies on the following measures were resolved.

The licensee should:

1) develop and implement a reservoir drawdown management plan with specified parameters;

2) use stream flow gages to determine operational compliance;

3) implement recommended run-of-river operation at the Thornapple Project; and

4) implement agency-specified ramping rates.

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Here's how the inconsistencies were resolved:

1) Reservoir drawdown management plan

Staff explained in the DEIS that it agreed with the resource agencies on the elements necessary for a reservoir drawdown management plan (Section 5). However, staff concluded that determining the specifics of each element at this time would provide less flexibility and result in unnecessary adverse impacts, such as unnecessarily prolonging the duration of a drawdown. As an alternative, staff recommended requiring consultation with the agencies prior to initiating any reservoir drawdown. Staff's alternative would address the agencies' concerns regarding resource impacts and public notification, while addressing concerns regarding flexibility and the potential for unnecessary adverse impacts. The Wisconsin DNR agreed with staff's alternative. Article 405 requires Northern States to develop, prior to any reservoir drawdown for maintenance purposes a reservoir drawdown plan to determine: drawdown objectives, drawdown timing, rate of drawdown and refill, impoundment elevations, duration of drawdown, and minimum flows to be maintained during the drawdown and refill period.

2) Stream flow gages to determine operational compliance

Staff explained its reasons for concluding in the DEIS that stream flow gages would not effectively document project compliance with the recommended operating mode (see Operation of the Thornapple Project, below). Because staff recommended that the Thornapple Project be operated in a "modified" run-of-river mode with a minimum flow requirement, and that operational compliance should be based on headpond elevation, gaging stream flow entering the project would not provide the information necessary to determine compliance with a minimum headpond elevation. The resource agencies agreed with staff's analysis; therefore, I'm not requiring the installation of stream flow gages upstream of the Thornapple Project. I am, however, requiring Northern States to fund the operation and maintenance of the existing stream flow gage located downstream of the Thornapple Project and to develop a plan to monitor minimum flows and project operation (Article 402 and 403).

3) Operation of the Thornapple Project

As stated above, staff did not recommend operating the Thornapple Project in a run-of-river mode (Section 5). Rather, staff recommended that the Thornapple Project operate as it has in the past and maintain a minimum flow of 500 cubic feet per second (cfs). Staff concluded that operating the Thornapple Project in a "modified" run-of-river mode provided partial re-regulation of fluctuating flows resulting from the operation of the upstream Dairyland Project (FERC Project No. 1960). The

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current operation of the Thornapple Project with a 500-cfs minimum flow reduces downstream flow fluctuation, thus partially ameliorating adverse impacts to downstream aquatic resources.

Staff, in an attempt to resolve its differences regarding the operation of the Thornapple Project with the resource agencies, also proposed, as an alternative, that the resource agencies attempt to secure from Dairyland Power (the licensee for the upstream Dairyland Project) an agreement to release additional flows (approximately 300 cfs), in excess of the flows presently released from the Dairyland Project. If such an agreement were filed with the Commission on or before June 30, 1996, staff agreed to modify its recommendation for the operation of the Thornapple Project in the FEIS to accommodate such an agreement. No such agreement has been filed.

Considering that, at this time, requiring the Thornapple Project to operate in a run-of-river mode would result in adverse environmental effects downstream of the Thornapple Project, because of daily fluctuating inflows, I am not requiring Northern States to operate the Thornapple Project in a run-of-river mode.

Because the issue regarding flows in the Lower Flambeau River cannot be resolved at this time due to the fact that the upstream Dairyland Project continues to operate in a peaking mode, I'm including in this license a re-opener article (Article 203) to enable the Commission to address any cumulative effects caused by the operation of the Thornapple Project should the need arise due to future licensing action regarding the Dairyland Project. In addition, the issue regarding the need for, or benefits of, gaging inflows to the Thornapple Project impoundment, in order to determine operational compliance, should be addressed concurrent with any future analysis of the operation of the Thornapple Project, during relicensing proceedings at the Dairyland Project.

4) Ramping rates

The Wisconsin DNR recommended that Northern States maintain specific ramping rates during decreases in project discharge in order to minimize the potential for fish stranding on the downstream cobble shoals. Staff in the FEIS determined that the ramping rates recommended by the Wisconsin DNR would result in either downstream flow surges of 1,125 cfs as the Thornapple Project decreased flows from 1,050 to 850 cfs, or a period of time in which flows would drop to 425 cfs because achieving a flow of 850 cfs requires both turbines at the Thornapple Project to operate at a very low load (Section 5). Rapidly increasing or decreasing flows would defeat the purposes for which the ramping rates were recommended. Staff determined that the ramping rates Northern States proposed in response to the Wisconsin DNR's recommendation, would avoid the previously discussed flow effects and largely accomplish the goals of minimizing the potential for

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fish stranding on the downstream cobble shoals. As discussed at the Section 10(j) meeting, Wisconsin DNR agreed with staff's determination. Article 404 requires staff's recommended ramping rates.

At the 10(j) meeting, staff and the resource agencies failed to resolve inconsistencies regarding the following recommendations.

The licensee should:

- 1) cooperate with the U.S Fish and Wildlife Service (FWS) and Wisconsin DNR in implementing a plan to control the spread of purple loosestrife;
- 2) develop and implement a spill containment plan; and
- 3) develop a wildlife management plan for lands that may be incorporated into the project boundary in the future and that might have potential wildlife management benefits.

Here are my conclusions:

- 1) Purple loosestrife

Staff did not adopt Interior's recommendation for Northern States to cooperate with the FWS and Wisconsin DNR in implementing a plan to control the spread of purple loosestrife. As discussed in the FEIS, purple loosestrife is not found in the Thornapple Project impoundment or vicinity (Section 4). Therefore, staff concluded that it is premature to develop a plan to eliminate or control purple loosestrife.

I conclude, based on staff's analysis, that there is not substantial evidence that such a plan is needed. As an alternative, staff recommends that the licensee monitor the project impoundment for the presence of purple loosestrife. In addition, if purple loosestrife is detected in the project impoundment or vicinity, the licensee should cooperate with the resource agencies when an effective and biologically safe method of control or eradication is developed by the resource agencies and the agencies deem elimination or control necessary. I have included staff's recommendation as Article 410 of the license.

- 2) Spill containment plan

Staff did not adopt Wisconsin DNR's recommendation that Northern States develop a spill containment plan. Staff determined that Northern States already has developed a Environmental Protection Agency (EPA) approved spill containment plan. In addition, only small amount of lubricants, motor fuel, paints, and detergents are used and stored on site. Considering

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the small amounts of materials involved, and the existing EPA approved plan, I conclude that there is not substantial evidence that a Commission approved plan is necessary.

3) Wildlife management on lands acquired in the future

Staff did not adopt the resource agencies' recommendation to develop a wildlife management plan for lands having wildlife management potential which may be incorporated into the project boundary in the future. The record provides no indication that additional lands will be incorporated within the project boundary within the foreseeable future. Development of a wildlife management plan requires identification of the types of lands incorporated and species for which those lands would be managed. In addition, lands acquired for project purposes post-licensing would require Commission approval and would permit resource agency consultation. Therefore, staff determined that a license article requiring the licensee to develop a wildlife management plan for lands which may be acquired in the future is not necessary, because the cost of developing such plans, which may or may not ever be implemented, outweigh the perceived benefit to wildlife. However, if such lands were acquired in the future, the licensee would be required to amend the project license. At such time the resource agencies would have the opportunity to provide comments and recommendations regarding a wildlife management plan for those lands. Therefore, adequate procedural safeguards exist should lands be included in the project boundary in the future. I concur with staff and, therefore, have not included a license article requiring the development of a wildlife management plan on lands acquired in the future.

Pursuant to Section 10(j)(2)(B), I conclude that developing a plan to monitor the impoundment for purple loosestrife and the procedural safeguards inherent in the license regarding the development of wildlife management plans, in addition to the other fish and wildlife conditions required in this license, adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources affected by the Thornapple Project.

The following recommendations made by the resource agencies (and not adopted in the FEIS) are outside the scope of section 10(j) in that they do not provide specific measures for the protection, mitigation of damages to, and enhancement of fish and wildlife resources affected by the Thornapple Project.

The licensee should:

1) establish a trust fund to cover the cost of retiring any of the projects;

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2) evaluate the feasibility of upstream fish passage (Outside of 10(j) because this is a study and not a specific measure or facility);

3) conduct contaminated sediment studies;

4) cooperate, through the provision of funds, manpower, and equipment, with the Wisconsin DNR on all fishery management practices within the vicinity of the Thornapple Project (Outside of 10(j) because no specific management practices or facilities are identified); and

5) design and conduct studies to determine the status of state and Federal threatened, endangered, watch, and special concern species associated with the Thornapple Project (Outside of 10(j) because this is a study and not a specific measure or facility).

Staff considered these recommendations in the attached FEIS for the Flambeau River Projects under Section 10(a)(1) of the FPA and their disposition follows.

1) Decommissioning trust fund

Staff did not adopt Interior's and Wisconsin DNR's recommendation to establish a trust fund to cover the cost of retiring the Flambeau River Projects. In its policy statement on project decommissioning (RM93-23-000), FERC Statutes and Regulations, Regulations Preambles, ¶ 31,011 at pp. 31,233-34 (1994), the Commission found that the licensee is responsible for project decommissioning, but declined to impose a generic decommissioning requirement. Instead, the Commission decided to address the issue on a case-by-case basis and found that there may be particular facts on the record in individual cases that would justify license conditions requiring the establishment of decommissioning cost trust funds in order to ensure the availability of funding when decommissioning occurs.

The Commission stated that it would consider, for example, whether there are factors suggesting that the life of the project may end within the license term, and whether the financial viability of the licensee indicates that the licensee would be unable to meet likely levels of expenditures without some form of advanced planning. I find no indication that would suggest that the Thornapple Project would near the end of its usefulness during the license term. In addition, the licensee is a public corporation that appears to be financially stable and capable of meeting decommissioning expenses when and if they arise during the license term.

As part of the Wisconsin DNR's justification for a decommissioning fund, it cited the possibility of a license being

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transferred to an entity that may be unable to meet decommissioning obligations. In regards to licensees transferring marginal projects to entities which may be unable to meet a decommissioning obligation should it become an issue, the Commission's Policy Statement on Project Decommissioning at Relicensing states: "While the Commission is aware of no widespread problems on this score, it agrees the transfer applications should be scrutinized to foreclose this sort of situation..." The Commission has, also stated that it will scrutinize license transfers to ensure that transferees have the financial capacity to carry out the requirements of the license or, if foreseeable, decommission the project in an appropriate manner.

I conclude that implementation of a decommissioning fund is not necessary because the licensee has the financial resources to decommission the project, if that ever becomes necessary, and the Commission will scrutinize transferees to preclude the transfer to entities lacking the resources to carry out the terms and responsibilities of the license. However, in order to address the resource agencies' concerns in this regard, I will include Article 416, requiring Northern States (or its successors) to give notice to the agencies of any proposed license transfers. ^{2/}

2) Upstream fish passage feasibility study

Staff did not adopt the Wisconsin DNR's recommendation that Northern States prepare an upstream fish passage evaluation plan. In the FEIS, staff concluded that the record contained insufficient information with which to recommend an evaluation of fish passage facilities (Section 5). I concur with staff's determination. I find that the record provides no indication that the benefit of evaluating the feasibility of upstream fish passage at the Thornapple Project is justified given the cost of such a feasibility study. The resource agencies can, however, recommend or require that fish passage facilities be installed in the future either through the standard reopener clause included in a license or through Interior's Section 18 authority.

3) Study of Contaminated Sediments

Wisconsin DNR recommended that the licensee cooperate with other hydropower operators in conducting an ecological assessment of contaminated sediments in the Flambeau River system, then prepare a sediment management plan for the approval of Wisconsin DNR, and implement the measures specified in the approved plan.

^{2/} See Wisconsin Electric Power Co., 73 FERC ¶ 61,346 at p. 62,007 (1995).

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Staff noted that the applicants had completed studies of the sediments at the project impoundments, and identified the presence of contaminants, including mercury. However, since industrial releases have been cleaned up in recent years, the contamination problem is associated with the older, deeper sediments. The staff suggested that the potential disturbance of impoundment sediments should be the focus of concern. Therefore, the issue might best be considered in conjunction with the drawdown management plans for the projects. The focus of this approach for contaminated sediments would be on defining preventative measures to avoid disturbance of the sediments rather than conducting additional sediment studies at this time.

Wisconsin DNR did not object to the staff's suggested approach to the issue.

4) Cooperate with the Wisconsin DNR on implementing all fishery management practices

Staff did not adopt the Wisconsin DNR's recommendation because the Wisconsin DNR did not identify specific management practices, and therefore the recommendation was considered too open-ended to include in a license. However, during the Section 10(j) meeting, Commission staff, Wisconsin DNR staff, and representatives of Flambeau Paper agreed to specific language being placed in the license to meet Wisconsin DNR's concerns. Article 407 reflects this agreement.

5) Conduct threatened and endangered species studies

Staff did not adopt the Wisconsin DNR's recommendation because Northern States had already completed extensive studies for threatened and endangered species. During the Section 10(j) meeting, Commission staff, Wisconsin DNR staff, and representatives of Northern States agreed to specific language being placed in the license to meet Wisconsin DNR's concerns. Article 411 reflects this agreement.

COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with Federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. ^{10/} Under Section 10(a)(2) of the FPA, Federal and state agencies filed 68 comprehensive plans that address various resources in

^{10/} Comprehensive plans for this purpose are defined at 18 C.F.R. §2.19 (1996).

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Wisconsin. Of these, staff identified and reviewed ten plans relevant to this project. ^{11/} No conflicts were found.

COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE

Sections 4(e) and 10(a)(1) of the FPA require the Commission to consider all uses of the waterway on which a project is located. When the Commission reviews a project, the environment, recreation, fish and wildlife, and other nondevelopmental values of the involved waterway are considered equally with power and other developmental values. In determining whether, and under what conditions, a hydropower license should be issued, the Commission must weigh the various economic and environmental values involved in the decision.

In the FEIS staff independently analyzed the following alternatives for the Thornapple Project: (1) Northern States' project proposal; (2) the proposed project with staff's supplemental environmental recommendations; and (3) the no-action alternative. I have selected the proposed project with staff's recommended environmental measures as the preferred alternative because: (1) the required measures would protect and enhance water quality, the resident fishery, terrestrial resources and the threatened bald eagle, recreational boating and other recreational activities, cultural resources, and aesthetics; (2) the electricity generated from a renewable resource would be beneficial because it would continue to replace the use of fossil-fueled, steam-electric generating plants, thereby, conserving nonrenewable energy resources and reducing atmospheric pollution; and (3) the preferred alternative would be best

^{11/} Upper Chippewa River Basin area wide water quality management plan, Wisconsin Department of Natural Resources, 1980; Wisconsin water quality assessment report to Congress, Wisconsin Department of Natural Resources, April 1992; Wisconsin statewide comprehensive outdoor recreation plan for 1991-1996, Wisconsin Department of Natural Resources, October 1991; Wisconsin peregrine falcon recovery plan, Wisconsin Department of Natural Resources, January 1987; Wisconsin's forestry best management practices for water quality, Wisconsin Department of Natural Resources, March 1995; Wisconsin's biodiversity as a management issue, Wisconsin Department of Natural Resources, May 1995; Upper Chippewa River basin water quality management plan, Wisconsin Department of Natural Resources, February 1996; Fisheries USA; the recreational fisheries policy of the U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, undated; The nationwide rivers inventory, National Park Service, January 1982; and The North American waterfowl management plan, U.S. Fish and Wildlife Service, May 1986.

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adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses.

The environmental conditions of this license require the licensee to: (1) file a detailed plan for any specific future scheduled maintenance drawdown (Article 405); (2) formulate a water quality monitoring plan (Article 406); (3) operate the project in a modified run-of-river/re-regulation mode (Article 401) with specific ramping rates (Article 404) and an appropriate minimum flow release downstream of the project (Article 402); (4) prepare plans to ensure continued project operation in case of power outage and to document operational compliance (Article 403); (5) evaluate the feasibility of implementing downstream fish protection measures (Article 409); (6) cooperate with the Wisconsin DNR on reasonable fishery management practices (Article 407); (7) prepare a monitoring plan for purple loosestrife (Article 410); (8) follow Federal and state bald eagle management guidelines (Article 412); (9) cooperate with the Wisconsin DNR during agency-sponsored threatened and endangered species studies (Article 411); (10) provide improved canoe portage and related facilities and develop and improve recreation access facilities (Article 414); (11) establish a shoreline protection zone on applicant-owned shore lands (Article 413); (12) remove tree stumps and debris in high use areas to improve boater safety (Article 414); (13) implement provisions of the state-wide programmatic agreement (Article 415); and (14) provide vegetative screening to improve the viewshed and scenic character in the vicinity of recreational developments and implement bank cleanup at all public access sites (Article 414). Additionally, this license reserves Interior's authority to prescribe future fish passage facilities (Article 408);

I find that the costs associated with these environmental measures would be worth the nondevelopmental benefits provided. I also find that the measures are commensurate with the project's developmental objectives, based on the relative importance of all competing resource interests and concerns.

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

Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in Mead Corporation, Publishing Paper Division, 12/ 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

12/ 72 FERC ¶ 61,027 (1995).

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future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

In addition, certain economic factors related to project decommissioning impinge on the decision to issue a new license that are not present in the licensing of original projects. If an existing project is not issued a new license, or if the licensee declines to accept the new license, the project probably will have to be retired in one form or another. This could range from simple measures, such as removing the generator at the project to major environmental restoration measures which could include dam removal.

Based on current economic conditions, without future escalation or inflation, the Thornapple Project as the applicant proposes and with additional environmental measures, would produce about 10,190 megawatthours (MWh) of energy at an annual cost of about \$384,000 (or 37.7 mills/kWh). This is about \$96,000 (or 9.4 mills/kWh) more than currently available equivalent alternative power.

Although we find that continued operation of the project would be marginally more costly than currently available equivalent alternative power in the region, Northern States is ultimately responsible and best able to determine whether continued operation of the existing project is a reasonable decision in these circumstances. We conclude that it is in the public interest to issue the license, with conditions needed to meet the equal consideration/comprehensive development standards of FPA Sections 4(e) and 10(a)(1), and leave to Northern States the judgement of whether or not to continue to operate the project as so conditioned.

CUMULATIVE EFFECTS OF TURTLE-FLAMBEAU AND REST LAKE RESERVOIRS

By separate order issued today, the Turtle-Flambeau and Rest Lake Reservoirs, two unlicensed storage reservoirs upstream of this project, are found to be subject to the Commission's jurisdiction and are, therefore, required to be licensed (FERC Docket No. UL96-17-001 and UL96-16-002). Within the next few years, the cumulative impacts of the operation of these reservoirs will be the subject of analysis in a Commission licensing proceeding. It is appropriate to include a special article (Article 202) in the Thornapple Project license with respect to the upstream storage reservoirs. The Turtle-Flambeau and Rest Lake Reservoirs play a cumulative role in the Flambeau River basin. Rather than wait to relicense the Thornapple

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Project until after an in-depth study of cumulative impacts, the specific reopener article I am including in this license reserves the Commission's authority to require the licensee to take such measures as are determined necessary and appropriate, after notice and opportunity for comment, to mitigate for cumulative impacts as may be identified in any proceeding involving the licensing of the Turtle-Flambeau and Rest Lake Reservoirs. In this manner, the Commission can meet its obligations to examine and address cumulative impacts, and also move forward with issuing a subsequent license for the Thornapple Project with terms and conditions significantly more beneficial to environmental values than currently in effect.

TERM OF LICENSE

Any license issued shall be for a term which the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years from the date on which the license is issued. The Commission policy is to relate the term of the license to the amount of redevelopment, new construction, new capacity, or environmental mitigative and enhancement measures that are authorized or required. The Commission issues a 30-year license for projects with little or no such activities, a 40-year license for projects with a moderate amount of such activities, and a 50-year license for projects with extensive activities of this kind.^{13/}

In the Commission's policy statement on Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts, ^{14/} the Commission stated that, "[i]n issuing new and original licenses, the Commission will coordinate the expiration dates of licenses to the maximum extent possible, to maximize future considerations of cumulative impacts at the same time in contemporaneous proceedings at relicensing". There is one licensed project, the Dairyland Project (FERC No. 1961), on the Flambeau River whose license expires in 2001. In addition, the two unlicensed Turtle-Flambeau and Rest Lake headwater storage reservoirs, discussed above, will be required to file an application with the Commission.

In order to facilitate the Commission's future coordinated treatment of the Thornapple Project and other projects on the Flambeau River, I will grant the Thornapple Project a 40-year license term. Thus, if the Dairyland Project and the Turtle-Flambeau and Rest Lake Reservoirs were to receive new or original licenses, their license terms could be adjusted in order that all

^{13/} See, e.g., Consumers Powers Company, 68 FERC ¶ 61,077 at pp. 61,383-84 (1984).

^{14/} 69 FERC ¶ 61,337 (1994).

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eight project licenses on the Flambeau River would expire at about the same time. ^{15/} If, however, the Dairyland Project or the Turtle-Flambeau and Rest Lake Reservoirs receive license terms shorter than 40 years, then the standard articles and article 202 in the Project No. 2475 license will allow the Commission to address any significant cumulative impact issues that may arise during the years between any subsequent relicensing of the Dairyland Project or licensing of the Turtle-Flambeau and Rest Lake Reservoirs and any subsequent relicensing of Project No. 2475.

SUMMARY OF FINDINGS

Background information, analysis of impacts and support for related license articles are contained in the FEIS.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Dam Design Assessment. ^{16/}

I conclude that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Director orders:

(A) This license is issued to Northern States Power Company (the licensee), for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Thornapple Project (FERC No. 2475). 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.

^{15/} See, e.g., Northern States Power Company, 75 FERC ¶ 61,136 (1996).

^{16/} A Safety and Design Assessment was prepared for the Thornapple Project (FERC No. 2475) and is available in the Commission's public file for this project.

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(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands shown by exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 2475-006</u>	<u>Showing</u>
1	1003	Project Map

(2) Project works consisting of: (1) an existing reservoir with a surface area of 295 acres and a gross storage capacity of 1,000 acre-feet at the normal maximum surface elevation of 1,081 feet (NGVD); (2) an existing 530-foot-long dam consisting of (a) a 160-foot-long powerhouse section which acts as a water retaining structure, and (b) a 370-foot-long rock-filled timber crib spillway section capped with concrete and containing 23 Taintor gates measuring 14 feet wide by about 5.25 feet high mounted on its crest; (3) a concrete and brick powerhouse containing two generating units with a combined nameplate rating of 1,400 kW; (4) a training wall, constructed of sheet pile and stone, that separates the powerhouse tailrace from the main stem of the river; (5) a small substation northwest of the powerhouse; and (6) appurtenant facilities.

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

Exhibit A - The following sections of Exhibit A filed December 18, 1991:

The generators as described in Section 1.1, page 7; the turbines as described in Section 2.0, page 7; the transmission facilities as described in Section 10.0, page 13; and the additional mechanical and electrical equipment as described throughout the exhibit A, pages 7 through 13.

Exhibit F - The following Exhibit F drawings, filed on December 18, 1991:

<u>Exhibit</u>	<u>FERC No.</u> <u>2475-006</u>	<u>Showing</u>
F-1	1001	Principal Project Works Plan Elevation, and Sections
F-2	1002	Principal Project Works Floor Plan of Powerhouse

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(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project area, all portable property that may be employed in connection with the project and located within or outside the project area, 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.

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

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

(E) This license is subject to the articles set forth in Form L-9, 54 FPC 1817 (October 1975), entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States", and the following additional articles:

Article 201. The licensee shall pay the United States an annual charge, effective as of the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the cost of administration of Part I of the FPA, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1,400 kilowatts (kW). Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW are not assessed an annual charge.

Article 202. The Commission reserves authority, in the context of any licensing, relicensing, or license or exemption amendment proceeding involving the Dairyland Project (FERC No. 1960) and/or the unlicensed Turtle-Flambeau and Rest Lake Reservoirs (FERC Docket No. UL96-17-001 and UL96-16-002) to require the licensee, in a proceeding specific to this license, to conduct studies, modify minimum flow releases, or otherwise make reasonable provisions for modifying project facilities or operation as necessary to mitigate or avoid adverse cumulative effects identified in environmental analyses of these projects.

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Article 301. Within 45 days from the date of issuance of this license, the licensee shall file an original set and two duplicate sets of aperture cards of the approved drawings. The set of originals must be reproduced on silver or gelatin 35 mm microfilm. The duplicate sets are copies of the originals made on diazo-type microfilm. All microfilm must be mounted on type D (3-1/4" x 7-3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number (2475-1001, 1002, etc.) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number, must 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 must be typed on the upper left corner of each aperture card.

The original and one duplicate set of aperture cards must be filed with the Secretary of the Commission. The remaining duplicate set of aperture cards shall be filed with the Commission's Chicago Regional Office.

Article 401. Except as temporarily modified by approved maintenance activities, inflows to the project impoundment, or operating emergencies beyond the licensee's control, the licensee shall maintain a minimum impoundment surface elevation of 1,179.5 ft. National Geodetic Vertical Datum (NGVD).

Article 402. Upon approval of the plan required in Article 403, the licensee shall maintain a 500 cubic feet per second (cfs) minimum flow, or impoundment inflow whichever is less, from the Thornapple Project as measured in the Flambeau River immediately downstream from the Thornapple Project. This minimum flow may be temporarily modified if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement between the licensee, the U.S. Fish and Wildlife Service (FWS), and the Wisconsin Department of Natural Resources (Wisconsin DNR). If the minimum flow is so modified, the licensee shall notify the Commission, the FWS, and the Wisconsin DNR as soon as possible, but no later than 10 days after each such incident.

Article 403. Within 180 days from the date of issuance of this license, in order to monitor the minimum impoundment elevation required by Article 401 and the minimum flow required by Article 402, the licensee shall develop, after consultation with the U.S. Fish and Wildlife Service (FWS) and the Wisconsin Department of Natural Resources (Wisconsin DNR), a plan, for Commission approval, to: (1) install, calibrate, and maintain staff gages in the project impoundment; (2) maintain automatic water level sensors to continuously record the elevation of the Thornapple Project's impoundment; (3) maintain a log of the elevations of the Thornapple Project's impoundment and turbine

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operation; (4) develop a generating capacity rating curve that relates generation in kilowatts to generation flow in cubic feet per second (cfs) for each turbine; (5) and ensure minimum flows in the event of a black plant outage. The licensee shall provide impoundment elevation and turbine operation data to the FWS and the Wisconsin DNR upon receiving a written request for such information.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 404. Within 180 days from the date of issuance of this license, the licensee shall develop, after consultation with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources, a plan, for Commission approval, to implement the following ramping rates to be maintained downstream of the Thornapple Project:

Decrease discharge flows slowly from 6,000 cubic feet per seconds (cfs) to 5,500 cfs until the tailwater elevation is less than the elevation of the breakwall located between the tailrace and the spillway channel.

When decreasing discharge flows from 1,400 cfs to 700 cfs, maintain a discharge of 1,050 cfs for fifteen minutes.

When decreasing discharge flows from 700 cfs to 500 cfs, maintain a discharge flow of 600 cfs for fifteen minutes.

The purpose of these ramping rates is to minimize fish stranding on the breakwall located between the tailrace and spillway channel and on the cobble shoal located immediately downstream of the Thornapple Project. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's

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reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. At least 60 days prior to any scheduled reservoir drawdown, the licensee shall, after consultation with the U.S. Fish and Wildlife Service (FWS) and the Wisconsin Department of Natural Resources (Wisconsin DNR), file with the Commission, for approval, a reservoir drawdown plan. The purpose of the drawdown plan is to minimize the impact of any project maintenance, requiring a reservoir drawdown which would result in an impoundment elevation below 1,1178.5 ft. National Geodetic Vertical Datum (NGVD), on aquatic resources in the project impoundment and downstream of the project.

The plan shall provide for consultation with the FWS and Wisconsin DNR concerning: (1) the objectives of the drawdown; (2) initiation and completion dates of the drawdown; (3) rates of drawdown and refill; (4) minimum reservoir elevation to be maintained; (5) minimum flows to be maintained during drawdown and refill; (6) public notification; and (7) procedures for minimizing the suspension or mobilization of contaminated sediments in the Thornapple Project impoundment.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 406. Within 180 days from the date of issuance of this license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), file with the Commission, for approval, a plan to monitor: (1) water clarity; (2) phosphorus; (3) chlorophyll a; (4) water temperature; and (5) dissolved oxygen in the Thornapple Project impoundment monthly from June 1 through August 31.

The monitoring plan shall include a schedule for: (1) implementation of the program; (2) consultation with the Wisconsin DNR concerning the results of the monitoring; and (3) filing the results, agency comments, and licensee's response to agency comments with the Commission.

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The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agency, and specific descriptions of how the agency comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agency to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. The licensee shall, in consultation and cooperation with the U. S. Fish and Wildlife Service (FWS) and the Wisconsin Department of Natural Resources (Wisconsin DNR) implement those reasonable fishery management practices mutually agreed upon by the licensee, the FWS, and the Wisconsin DNR. Nothing in the article, however, shall be construed to relieve the licensee of any Commission requirement.

Article 408. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior pursuant to Section 18 of the Federal Power Act.

Article 409. Within one year from the date of issuance of this license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS), file with the Commission for approval, an evaluation of entrainment protective devices. The purpose of this evaluation is to determine the applicability of cost effective devices to minimize the entrainment of fish at the Thornapple Project.

The licensee shall include with the evaluation documentation of consultation, copies of comments and recommendations on the completed evaluation after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are addressed by the evaluation. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the evaluation with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

If the evaluation of entrainment protective devices indicates that cost-effective devices to minimize the entrainment of fish do not exist, the licensee, after

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consultation with the Wisconsin DNR and the FWS, shall file for Commission approval of a fisheries resource enhancement plan and implementation schedule. The purpose of this plan is to address turbine-induced impacts on fish at the Thornapple Project. The plan shall describe specific activities to be undertaken and contain provisions to monitor the success of these measures. The licensee shall allow at least 30 days for the agencies to comment and make recommendations prior to filing the plan with the Commission. The plan shall include any comments received from the consulted agencies on the proposed plan, and a description of how the agencies' comments are accommodated by the developed plan. The Commission reserves the right to modify the proposed plan and schedule. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

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

Article 410. Within 180 days from the date of issuance of this license, the licensee shall, in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS), develop a plan to monitor purple loosestrife (*Lythrum salicaria*) in project waters. The plan shall include, but is not limited to: (1) the method of monitoring, (2) the frequency of monitoring, (3) documentation of transmission of monitoring data to the Wisconsin DNR and FWS, (4) procedures for obtaining technical assistance and input from the Wisconsin DNR, and (5) specific information on how the licensee would cooperate with the agencies to control/eliminate purple loosestrife.

If at any time during the term of the license, the Wisconsin DNR or FWS deem it necessary to control/eliminate purple loosestrife, the licensee shall cooperate in this measure.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall

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include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

Article 411. The licensee shall, when requested by the Wisconsin Department of Natural Resources (Wisconsin DNR), cooperate, in a mutually agreeable manner, with the Wisconsin DNR in conducting agency-sponsored threatened and endangered species surveys for species that: (1) have a high likelihood of occurring on project lands, (2) are likely to be impacted by project operations, and (3) have management potential. Nothing in this article, however, shall be construed to relieve the licensee of any Commission requirement.

Article 412. The licensee shall in operation and maintenance activities associated with the Thornapple Project follow Federal and state guidelines, such as the U.S. Fish and Wildlife Service's "Northern States Bald Eagle Recovery Plan", and the Wisconsin Department of Natural Resources' "Bald Eagles in Wisconsin: A Management Guideline for Landowners" in order to protect and enhance bald eagles (*Haliaeetus leucocephalus*) and their associated habitat in the project vicinity.

Article 413. Within one year from the date of issuance of this license, the licensee shall, in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), the U.S. Fish and Wildlife Service (FWS), and Rusk County, prepare and file for Commission approval, a plan to establish and maintain a shoreline buffer zone at its landholdings adjacent to the Thornapple Project impoundment and along the Flambeau River in the project tailrace area. The plan shall include the following components: (1) a description of the location of all shoreland areas that the licensee owns in fee, including drawings, where a buffer zone would be established; (2) an explanation of the proposed width of the shoreline buffer zone in each area, based on resource-specific criteria (using 200 feet as a rule of thumb); and (3) an outline of the land management practices that would be implemented in these areas, including the land uses that would be allowed and prohibited.

The licensee shall include evidence of consultation with the Wisconsin DNR, the FWS, and Rusk County, including copies of the agencies' comments and recommendations on the plan, and specific descriptions of how the agencies' comments are accommodated in 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 an agency

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recommendation, the plan shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

Article 414. Within 180 days from the date of issuance of this license, the licensee shall, in consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), the U.S. Fish and Wildlife Service (FWS), and the Natural Resources Conservation Service (NRCS), prepare and file for Commission approval, a revised project recreation plan that includes: (1) the portage improvements recommended by the resource agencies, including a redesigned trail, signs, trash receptacles, and a further evaluation of the take-out and put-in facilities, based on site-specific criteria; and (2) the expanded recreational improvements recommended by the resource agencies in the project tailwaters at the east shore boat access and the west side fishing access, including: (i) lighting and parking for at least 10 vehicles with trailers and a further evaluation of a boat launching facility at the east shore site, and (ii) in a cooperative development with the Wisconsin DNR, a day-use picnic area at the west side area, including at least three tables, waste disposal facilities, a designated parking area, and a further evaluation of a fishing dock or pier.

In addition, the revised project recreation plan shall describe: (1) how the modified facilities plan would accommodate use by the disabled, (2) planned measures for cleaning up accumulated debris and removing navigation hazards from areas of high boat traffic on the project impoundment, and (3) additional landscaping measures planned in the west side access area.

The licensee shall include evidence of consultation with the Wisconsin DNR, the FWS, and the NRCS on the revised project recreation plan, including copies of comments and recommendations on the plan after it has been provided to the agencies, and specific descriptions of how the agencies' comments are accommodated in the plan. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the revised plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

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Article 415. 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, for Managing Historic Properties Affected By New and Amended Licenses Issuing For the Continued Operation of Existing Hydroelectric Projects in the State of Wisconsin" executed on December 30, 1993, including but not limited to, the Historic Resources Management Plan for the project. If the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved Historic Resources Management Plan. The Commission reserves the authority to require changes to the Historic Resources Management Plan at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the Historic Resources Management Plan, the licensee shall obtain Commission approval before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

Article 416. Any application to transfer this license shall include proof of service of a copy of that application on the Wisconsin Department of Natural Resources and the U.S. Department of the Interior.

Article 417. (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.

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(b) The type 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) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; 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 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 and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) nonproject overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69 kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the

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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 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 submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, 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

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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 insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(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.

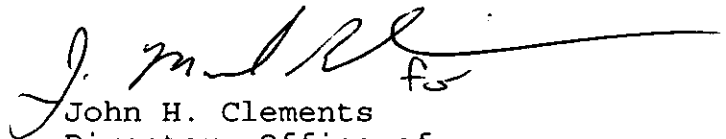
(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion 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 that filing. Proof of service on these entities must accompany the filing with the Commission.

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(G) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.813 (1996). The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this license.


John H. Clements
Director, Office of
Hydropower Licensing

Document Content(s)

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