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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company—
Wisconsin

Project No. 2587-002
Wisconsin/Michigan

ORDER ISSUING NEW LICENSE
(Major Project)
JAN 19 1995

Northern States Power Company—Wisconsin (Northern States) filed an application for a new license under Part I of the Federal Power Act (FPA) to continue to operate and maintain the 1.65-megawatt (MW) Superior Falls Hydroelectric Project, located on the Montreal River in Iron County, Wisconsin, and Gogebic County, Michigan. The project would affect the interests of interstate commerce. 1/

BACKGROUND

Notice of the application was published on May 8, 1992. On July 2, 1992, the Wisconsin Department of Natural Resources (Wisconsin DNR) filed a motion to intervene in the proceedings. On July 10, 1992, the Michigan Department of Natural Resources (Michigan DNR) filed a motion to intervene in the proceedings. No organization or individual filed a motion to intervene in opposition to the project. All comments received have been fully considered in determining whether and under what conditions to issue this license. 2/

The Commission's staff issued a draft Environmental Assessment (EA) for this project on May 25, 1994. The final

- 1/ By order issued October 9, 1968 (40 FPC 1023), the Commission found that the project affects the interests of interstate commerce and, in the absence in the record of any project construction commencing after the 1935 amendment of the FPA, granted a license with an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting licensing authority over Taum Sauk Project No. 2277 (381 U.S. 90), and a termination date of December 31, 1993.
- 2/ The only other comments received besides those from the Wisconsin DNR and the Michigan DNR, were from the U.S. Department of the Interior Fish and Wildlife Service (Interior or FWS).

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EA is attached to and made part of this license order. Staff also prepared a Safety and Design Assessment (SDA), which is available in the Commission's public file for this project.

PROJECT DESCRIPTION

The existing project consists of a 24-foot-high concrete dam with a gated spillway section, a reservoir with a surface area of 16.9 acres, a powerhouse containing two generating units with a total rated capacity of 1.65 MW, a substation, a 2.4-kilovolt (kV) transmission line, and appurtenant facilities. It is operated in the run-of-river mode. Northern States proposes no new capacity and no new construction. A more detailed project description can be found in ordering paragraph B(2).

APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10 and 15 of the FPA, the staff evaluated Northern States' record as a Licensee for these areas: (1) conservation efforts; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission line improvements; (7) project modifications; and (8) compliance record. I accept the staff's finding in each of these areas.

Here are the findings:

1. Section 10(a)(2)(C): Conservation Efforts

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.

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

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2. Section 15(a)(2)(A): Compliance History and Ability to Comply with the New License

Northern States' license application shows that it has the ability to comply with the articles, terms, and conditions of any license issued, and with other applicable provisions of this part of the FPA.

Northern States has or can acquire the resources and expertise necessary to carry out its plans and comply with all articles, terms and conditions of a new license.

3. Section 15(a)(2)(B): Safe Management, Operation, and Maintenance of the Project

The Commission classifies the Superior Falls dam as having low hazard potential because there are no residences bordering the tailrace, it is located 1 mile above Lake Superior, and the river channel between the dam and the lake has steep slopes. In addition, there has been no new development in the project area to warrant changing the low hazard classification.

Northern States has continuously operated the plant safely. The Commission issued an exemption from the filing requirements for an Emergency Action Plan for this project. Safety features at the project site include a warning system at the dam and in the tailwater area to alert recreational users of changes in water levels. The system includes a siren and strobe lights on the dam and powerhouse that are automatically activated before turbine or gate operations. Readily visible explanation signs are posted nearby to advise users of the functions of the system. Security fences are stationed around the powerhouse, spillway area, and substation area to prevent public contact with dangerous electrical devices.

The plant operator visits the plant daily to check water levels and equipment operation. The project supervisor and operator visually inspect the project structures weekly and record their observations in a logbook. The project administrator inspects the project quarterly to assure proper maintenance of the project.

The project is safe for continued use and operation.

4. Section 15(a)(2)(C): Ability to Provide Efficient and Reliable Electric Service

The project's generating units are operated and maintained in a manner to provide the most efficient service.

The project derives maximum energy benefit from the river flow. Northern States is operating in an efficient and reliable manner.

5. Section 15(a)(2)(D): Need for Power

Northern States' need for the electricity produced by the project is addressed in the attached final EA. Based on the discussion in the EA, Northern States' short- and long-term need for power exists to justify licensing the Superior Falls Project.

6. Section 15(a)(2)(E): Transmission Line Improvements

Northern States proposes no new development at the project but wants to continue to use the low-cost energy in its system.

The transmission and distribution systems are designed to function with the project out-of-service, such that no operational or circuit loading impacts would occur.

The existing transmission system is sufficient, and no changes to the service affected by the project operation would be necessary whether the Commission issues a new license for the project or not.

7. Section 15(a)(2)(F): Project Modifications

Northern States plans to implement a \$600,000 rehabilitation program at the project. The repairs are expected to include:

- rehabilitation of deteriorated concrete;
- replacement of modification of the wooden Taintor gates;
- probable modification of the rollway portion of the dam; and
- addition of mass concrete and/or post-tensioning to increase dam stability.

Northern States doesn't propose any additional generating capacity for the project. The project, as presently constructed and as Northern States proposes to operate it, fully develops and uses the economical hydropower potential of the site.

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8. Section 15(a)(3)(A) and (B): Compliance Record

Northern States has satisfactorily complied with the terms and conditions of the existing license and has made timely filings with the Commission.

WATER QUALITY CERTIFICATION

Section 401(a)(1) of the Clean Water Act (CWA) requires that an applicant for a federal license or permit for any activity that may result in a discharge into navigable waters of the United States provide to the licensing or permitting agency a certification from the state in which the discharge originates that such discharge will comply with certain sections of the CWA. Section 401(d) of the CWA provides that state certifications shall set forth conditions necessary to ensure that applicants comply with specific portions of the CWA and with appropriate requirements of state law. Section 4.38(f)(7)(ii) of the Commission's regulations stipulates that if a state fails to act on a request for certification within 1 year, the certification requirement is waived.

Water is discharged through the powerhouse on the Michigan shore of the Montreal River; thus, since the point of discharge is in the State of Michigan, the State has authority under Section 401 of the CWA to issue water quality certification. On November 13, 1991, Northern States applied to Michigan DNR for Section 401 water quality certification. Michigan DNR received the request on November 15, 1991, and subsequently referenced the data supplied by Northern States in its motion to intervene. Because Michigan DNR did not act on the applicant's request for certification within 1 year of receipt of the request, the need for certification is deemed waived according to Section 4.38(f)(7)(ii) of the Commission's regulations.

COASTAL ZONE MANAGEMENT ACT

Under Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

By letter dated October 19, 1993, the Wisconsin Department of Administration waived certification of the project for consistency with the Wisconsin Coastal Management

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Program. The State of Michigan affirmed by letter dated March 28, 1994, that the project as proposed will be consistent with the Michigan Coastal Zone Management Program.

SECTION 18 OF THE FPA

Section 18 of the FPA authorizes the Secretary of the Interior to prescribe fishways at Commission-licensed projects. ^{3/} Interior, by letter dated December 10, 1993, requests that its authority to prescribe the construction, operation, and maintenance of fishways pursuant to Section 18 be reserved at this project.

Although fish passage facilities may not be prescribed by Interior at the time of project licensing, the Commission's practice has been to include a license article which reserves Interior's authority to prescribe facilities for fish passage. Therefore, Article 406 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.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA requires the inclusion in each license issued, conditions for the protection, mitigation, and enhancement of fish and wildlife based on recommendations from state and federal fish and wildlife agencies, unless the Commission believes that the recommendations are inconsistent with the FPA or other applicable law. In those instances where the Commission believes an inconsistency exists, the agencies and the Commission will attempt to resolve the inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies.

Commission staff made a preliminary determination by letter dated May 25, 1994, that certain Michigan DNR recommendations were inconsistent with the purpose and requirements of Part I of the FPA and other applicable law, and conflicted with the comprehensive planning standards of Section 10(a) of the FPA. Staff also made a preliminary

^{3/} Section 18 of the FPA states:

The Commission shall require construction, maintenance, and operation by a licensee at its own expense of ... such fishways as may be prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate.

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determination that certain Wisconsin DNR and Michigan DNR recommendations were outside the scope of Section 10(j) and that they should be considered under Section 10(a) of the FPA. 4/

In response to the determinations, Commission staff received comment letters from Michigan DNR, Wisconsin DNR, and Northern States. The Michigan DNR requested, and subsequently attended, a negotiation meeting with Commission staff on September 2, 1994, in Green Bay, Wisconsin, to resolve inconsistent issues under Section 10(j) of the FPA. Other participants at the meeting represented Wisconsin DNR, FWS, and Northern States. All fish and wildlife concerns and other concerns presented in the comment letters were addressed at the Section 10(j) meeting, and are briefly summarized below.

In addition, Michigan DNR filed late comments and additional information subsequent to the 10(j) meeting. These comments contained in Michigan DNR's October 7, 1994 letter and its October 4, 1994 additional information were considered under Section 10(a) of the FPA. These comments and information are addressed in the EA.

Pond level fluctuation

In the draft EA, staff recommended a reservoir operating range of 739.5 to 740.5 feet above mean sea level. Wisconsin DNR recommends the same operating level. However, Michigan DNR initially recommended in its letter dated April 4, 1994, an operating range of 739.5 to 740.0 feet to prevent peaking, but it agreed to allow operation outside that range for conditions beyond the control of the Licensee.

I am accepting Michigan DNR's 10(j) recommendation. Article 402 of this license requires a reservoir operating range of 739.5 to 740.0 feet above mean sea level with allowance for conditions beyond the Licensee's control (e.g., flood and ice conditions). 5/

Gaging

Michigan DNR requested reinstating USGS gage No. 04030000 down-stream of the Saxon Falls project (about 3 miles up-stream of Superior Falls), as well as a staff gage visible to the public and a tailwater elevation gage.

4/ See EA section IX.

5/ See EA section VI.B.2.a.

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Michigan DNR contended that a tailwater gage was necessary to ensure that the Licensee did not operate the project in a peaking mode. Staff pointed out that the revised recommendations concerning operating levels in the headwater reservoir would ensure that the project is not operated in a peaking mode. Michigan DNR then agreed to withdraw the request for a tailwater elevation gage.

Articles 402 and 404 of this license require a staff gage in the project reservoir visible to the public and a method of continuously gaging or monitoring compliance with flow releases to the bypass reach. 6/

Reinstating USGS gage No. 04030000 is not being required. Northern States currently cooperates with USGS to measure and report stream flow at Northern State's Saxon Falls project. USGS publishes these data as USGS gage No. 04029990. Establishing another gage just down-stream of Saxon Falls would provide no additional useful information relating to project compliance or operations at Superior Falls. Thus, the \$15,000 to \$30,000 costs incurred by Northern States to reinstate the gage would not be balanced by any environmental or operational benefit. The recommendation therefore is inconsistent with the comprehensive development standard of Section 10(a) of the FPA.

Water quality monitoring

Michigan DNR recommended the following water quality monitoring at the project:

- continuous dissolved oxygen (DO) monitoring in the tailwater from May to October each year (this is a modification of the Michigan DNR's position as stated in its December 13, 1993 letter; previously Michigan DNR recommended year-round monitoring);
- continuous temperature monitoring in the headwater and tailwater year-round;
- periodic water/sediment/fish monitoring for select parameters; and
- review of temperature and DO monitoring frequency after 3 years.

Michigan DNR also requested that its state water quality standards for temperature and DO be included in the license.

6/ See EA sections VI.B.2 and VI.B.5.

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Evidence to date shows that project operations do not affect water quality adversely. The project is compliant with state standards except for temperature variance during some spring and summer months. This variance occurs up-stream and down-stream of the project. The project meets temperature standards during critical periods such as the fall spawning season. Due to the small size and shallowness of the project reservoir, Northern States has no ability to modify its operation to enhance water quality conditions. I reject Michigan DNR's 10(j) recommendation in part because a full \$26,000 water quality monitoring program is not warranted and is inconsistent with the comprehensive development standards of Section 10(a) of the FPA.

I am partially adopting Michigan DNR's 10(j) recommendation. Because tailwater DO data are not currently available, Article 415 requires that Northern States monitor the tailwater for temperature and dissolved oxygen during the fall fish spawning period (September through November) for 3 years. 7/

Fish entrainment

The Michigan DNR requested, as a minimum, the installation of a barrier net at the project to prevent entrainment and then compensation for any residual fish losses after the installation of the barrier net, using restitution values instead of replacement values. Wisconsin DNR did not request that the Commission take any action regarding entrainment at this project because the fishery in the reservoir is limited by natural conditions and different from that down-stream (warmwater fishery versus coldwater fishery). The down-stream fishery is not dependent on movement or passage of fish from the reservoir and up-stream movement is precluded by the waterfall.

Natural conditions at the project (frazil ice, small reservoir volume) act to limit fishery resources. The bar spacing on the existing trash racks is small (1 inch) and the approach velocity is low, thus minimizing entrainment. Entrainment does not significantly affect the fishery. Installation of a barrier net is not warranted. Michigan DNR's recommendation is therefore inconsistent with Section 10(a) of the FPA. Commission staff attempted to resolve this conflict with Michigan DNR at the 10(j) meeting but was unable to develop a mutually acceptable position.

7/ See EA section VI.B.2.d.

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Article 412 requires that the Licensee earmark \$2,400 per year, based on replacement value of the fish Commission staff estimated would be lost at the project, to fund fishery enhancements in the basin. 8/ Using the replacement value of fish is an appropriate means to estimate the value of the enhancement fund, since the fish lost could be replaced by stocking without notable losses to the quality of the fishery.

Fish passage

Michigan originally recommended that a fish passage plan be developed. At the 10(j) meeting Michigan DNR withdrew this 10(j) request and requested a special reopener clause or language in this order regarding conditions which would trigger Commission review of fish passage at this project.

Accordingly, if Michigan DNR determines in the future that fish passage facilities are warranted at the Superior Falls project, Michigan DNR's request for fish passage, including supporting documentation, should be submitted to the Commission for consideration under the fish and wildlife reopener clause as provided for in Article 15 of L-form 10 and Article 406 of this license. The Commission would consider such facilities at that time. Michigan DNR may also seek fish passage through Interior. 9/ With the provision of this language, Michigan withdraws its request for a special fish passage reopener.

Wildlife enhancement

In the draft EA, staff recommended a wildlife management plan that did not adopt Michigan DNR's request for bluebird boxes. At the 10(j) meeting, Michigan DNR withdrew its April 4, 1994, request to include bluebird boxes in the wildlife management plan.

Threatened and endangered species

Michigan DNR expressed concern that staff's recommendation on threatened and endangered species in the draft EA only considered federally listed species and not state listed species. This recommendation is within the scope of Section 10(j), and the final EA specifically includes state

8/ See EA section VI.B.3.a and appendix B.

9/ Article 405 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.

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listed threatened and endangered species in the management plan required by Article 411 of this license. 10/

Purple loosestrife control

Michigan DNR requested that the license state that the Licensee is responsible for eradicating purple loosestrife and eurasian milfoil and that the state agencies will provide technical assistance. This recommendation is outside the scope of Section 10(j).

There is still no proven technique for eradication, therefore, Article 409 of this license requires only that the Licensee cooperate with agencies to eradicate purple loosestrife and eurasian milfoil when an effective eradication method becomes available. 11/

Aesthetic Waterfall

To enhance an aesthetic waterfall, Michigan DNR requested that Northern States release 20 cfs during daylight hours from May 1 to October 15 (Michigan DNR previously requested that the release be provided 24-hours a day). Michigan DNR also suggested that Northern States provide press releases as to when flow releases will occur. Wisconsin DNR requested that the Licensee release 20 cfs during daylight hours and 8 cfs at other times from May 1 to October 15. These recommendations are outside the scope of Section 10(j).

Based on balancing considerations between energy generation and aesthetics, Articles 404 and 405 of this license require a 20-cfs flow release during daylight hours on weekends and holidays between Memorial Day weekend and October 15 and 8 cfs otherwise during that period. 12/

Recreation Facilities-Americans with Disabilities Act

Michigan DNR requested that Northern States be required to construct a boat landing so that it meets Americans with Disabilities Act (Pub. L. No. 101-336, 104 Stat. 327, 43 U.S.C. §§ 12101 et seq. (1991)) (ADA) standards. This recommendation is outside the scope of Section 10(j). Michigan DNR claimed that the Commission would violate the ADA if it did not require this handicapped accessible facility.

10/ See EA section VI.B.4.e.

11/ See EA section VI.B.4.b.

12/ See EA section VI.B.5.

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Northern States proposes limited barrier-free improvements and stated at the 10(j) meeting that site conditions (e.g., excessively steep terrain) constrain its ability to cost-effectively comply with ADA standards for other recreation facilities at the project.

Article 408 of this license requires that Northern States develop a recreation plan in consultation with Michigan DNR, Wisconsin DNR, and National Park Service to develop the waterfall overlook and a reservoir boat launch consistent with the ADA. ^{13/}

Gile reservoir

In its comments on the draft EA, Wisconsin WDNR requested that the Superior Falls EA analyze the potential cumulative effects of Gile reservoir on fishery resources in the river basin. This is within the scope of Section 10(j). Gile reservoir is an unlicensed headwater reservoir on the Montreal River owned and operated by Northern States Power Company. At the 10(j) meeting Wisconsin DNR discussed the results of its fish study on the reservoir that it filed with the Commission July 5, 1994. Wisconsin DNR said that it would like to initiate a long-term study on the effects of reservoir draw-down on resident fish population in the reservoir with the cooperation of Northern States.

Michigan DNR requested that in the future all projects on the Montreal River (i.e., Superior Falls, Saxon Falls, and Gile reservoir) be relicensed simultaneously to facilitate analysis of cumulative impacts. This request is outside the scope of Section 10(j).

13/ See EA section VI.B.7. Outdoor recreation facilities provided by private utilities licensed under the FPA are private entities which must meet the requirements of Title III of the ADA. In accord with Section 36.304 of the ADA regulations, public accommodations provided by private entities must remove architectural barriers in existing facilities where such removal is "readily achievable, i.e., easily accomplished and able to be carried out without much difficulty or expense." In accord with Section 36.401(c), full compliance with the requirements for new construction is not required "where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features."

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Northern States states that Gile reservoir is operated for the purpose of providing generating flows to down-stream Saxon Falls and Superior Falls. If these flows are significant, the operation of unlicensed Gile reservoir, and any potential change in its operation, may significantly affect Superior Falls and Saxon Falls.

In the EA, staff evaluated project operation and compliance issues for the Superior Falls project such as reservoir fluctuation, gaging, minimum flows, and fisheries resources within the context of available data. However, we did not include Gile reservoir in our cumulative analysis for several reasons. First, the detailed information and studies needed to do an adequate NEPA analysis could be obtained only during the processing of any future license application that might be filed for Gile reservoir. Assuming our determination of whether Gile reservoir is jurisdictional were to take 1 year and Gile reservoir was found to be jurisdictional, it would likely take an additional 3 to 5 years before an acceptable license application could be filed and determined to be ready for environmental analysis. The environmental analysis could take an additional 1 to 2 years before final action could be taken on the license application. We don't believe that a 5 to 7 year delay in relicensing the Superior Falls project and a corresponding delay in implementation of the associated recommended enhancements measures is warranted.

Secondly, because the Superior Falls project is located 23 miles down-stream of Gile reservoir, it is unlikely that operation of the Superior Falls project could have any effect on the fishery associated with Gile reservoir.

Lastly, the conditions contained in this license will assure that operations of the Superior Falls project can be modified in the future, if subsequent cumulative analyses of the other projects in the basin determine such modification to be necessary to mitigate any cumulative impacts. 14/

The Commission staff will:

- conduct a jurisdictional analysis of Gile reservoir;

14/ The Commission discusses the use of reopener articles to ameliorate unanticipated cumulative effects in greater detail in its September 15, 1993, Notice of Proposed Policy Statement, Use of Reserved Authority in Hydropower Licensing to Ameliorate Cumulative Impacts (Docket No. RM93-25-00). See also the Commission's discussion of such reopener articles in Public Service Commission of New Hampshire, 68 FERC ¶ 61,177 at p. 61,865 (1994).

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- if the Gile reservoir is found to be jurisdictional, recommend that the Commission require Northern States to file a license application;
- conduct an environmental analysis as part of the licensing process;
- recommend whether the Saxon Falls and/or the Superior Falls licenses should be reopened to address any cumulative impacts that may be identified; and
- recommend that any license issued for the Gile Reservoir expire as close as possible to the expiration dates of the Superior Falls and Saxon Falls licenses so that these projects may be licensed simultaneously in the future.

In addition, this license order includes Article 202 that would allow the subsequent imposition of license conditions that recognize possible cumulative effects within the basin.

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. Under Section 10(a)(2), 59 plans were filed by various federal and state agencies that address various resources in Wisconsin. Of those we identified seven relevant to the project. ^{15/} No conflicts were found.

COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA, 16 U.S.C. §§ 797(e) and 803(a)(1), require the Commission, in acting on applications for license, to give equal consideration to the

^{15/} Wisconsin's Statewide Comprehensive Outdoor Recreation Plan, 1986-91 and 1991-96, WDNR, Madison, Wisconsin; Lake Superior Basin Areawide Water Quality Management Plan, 1979, WDNR, Madison, Wisconsin; Lake Superior Fisheries Management Plan, 1988-98, WDNR, Madison, Wisconsin; Wisconsin Water Quality Assessment Report to Congress, 1986 and 1992, WDNR, Madison, Wisconsin; Montreal River Canyon: A Management Plan, Wisconsin Coastal Management Program, Saxon, Wisconsin; Building Michigan's Recreation Future: The 1985-90 Michigan Recreation Plan, MDNR, Lansing, Michigan.

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power and development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgement will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration. For the reasons discussed below, the Superior Falls project does not conflict with any planned or authorized development and is best adapted to comprehensive development of the waterway for beneficial public uses.

Recommended Alternative

The final EA analyzes the effects of Northern State's Superior Falls Project as proposed by Northern States, the project with staff's recommended environmental measures, and the no action alternative. I selected issuing a new license with staff's recommended measures as the preferred alternative because overall, these measures along with the standard articles would protect or enhance fish resources, water quality, aesthetic resources, recreational resources, and cultural resources. Also, the electricity generated from the project would continue to offset the use of fossil-fueled, electrical generating plants, conserve non-renewable energy resources, and reduce atmospheric pollution.

The measures included in this license require the Licensee to:

- provide a minimum flow release from the dam of 8 cfs continuously from the Saturday of Memorial Day weekend to October 15 to enhance waterfall aesthetics. On weekends and holidays during that period, provide a minimum flow release of 20 cfs from 8 a.m. to 8 p.m.
- provide a recreation plan and recreational facilities, to include a small boat landing and parking area on the west side of the reservoir, a smooth access trail to the scenic overlook of Superior Falls to make it more accessible to the disabled, and a sign on Michigan Highway 505 informing visitors of the location of the driveway and parking area near the falls.
- operate the project generally to maintain headwater elevations between 739.5 and 740.0 feet.

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- modify the staff gage at the dam to show the project's operating range.
- implement the Northern States-prepared draw-down management plan during nonemergency draw-downs. Do not lower the pond more than 2 inches every 4 hours for the first 48 hours or more than 6 inches per 24 hours after that.
- monitor tailwater temperature and dissolved oxygen continuously during the fall fish spawning period.
- provide payment of \$2,400 annually for the enhancement of fishery resources in the Montreal River Basin. This annual amount should be adjusted to reflect changes in the Consumer Price Index (CPI).
- prepare an erosion control plan before performing any land-disturbing activities and monitor annually for shoreline erosion.
- maintain project land in a natural state for aesthetic purposes, notwithstanding the "minor conveyances" article (see Section V.B.5).
- monitor for purple loosestrife and eurasian milfoil. If found, notify Wisconsin DNR and Michigan DNR within 30 days. Cooperate with Wisconsin DNR and Michigan DNR to eradicate purple loosestrife and eurasian milfoil when an effective eradication method is developed.
- develop a wildlife management plan including construction and maintenance of wood duck and mallard nesting boxes. Consult with Wisconsin DNR and Michigan DNR regarding the design and placement of the nesting boxes.
- prepare a management plan outlining steps to enhance habitat and protect threatened and endangered species if they become established within the project boundary in the future.

The above measures would adequately protect or enhance aquatic resources as well as recreational fishing, and their costs are included in the economic evaluation of the project.

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Developmental and Nondevelopmental Uses of the Waterway

A project would be economically beneficial, so long as its projected levelized cost is less than the levelized cost of alternative energy and capacity.

The Superior Falls project, including Northern State's planned dam rehabilitation cost of \$600,000 and recreation facilities, would provide a levelized annual net benefit of \$283,000 or 23.5 mills/kWh, for a 30-year license period. With Northern States' proposed aesthetic flow release and boat landing, the annual benefit would be reduced by \$10,000 providing a levelized annual net benefit of \$273,000 or \$23.0 mills/kWh.

I am requiring several additional environmental enhancements to the Superior Falls project. The aesthetic flow release, fishery enhancement payment, and water quality monitoring requirements would reduce the annual net benefit by \$26,000 providing a levelized annual net benefit of \$261,000 or 21.9 mills/kWh.

The levelized annual cost of Northern States' proposed project would be 21.4 mills/kWh. With the required additional environmental enhancements, the levelized annual cost would increase to 22.5 mills/kWh. Staff estimates that the cost of alternative power in the region is 41.8 mills/kWh.

I conclude that with the required enhancement measures for a 30-year license, the existing project would continue to produce power at a cost significantly below the cost of alternative power in the region.

PROJECT RETIREMENT

In its Section 10(j) recommendations, Michigan DNR requested that the Licensee establish a trust fund to pay for project retirement. This recommendation is outside the scope of Section 10(j). In its December 14, 1994, Policy Statement on project decommissioning (RM93-23000), the Commission stated that:

In light of the practical problems involved in trying to deal with events far in the future, and because in many cases the time horizon and general financial strength of the licensee may be such that there is no substantial need for a pre-retirement funding program, the Commission will not act generically to impose such programs on all licensees. . . . There may be particular facts on the record in individual cases, however, that will justify license conditions requiring the

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establishment of decommissioning cost trust funds in order to assure the availability of funding when decommissioning occurs. . . . While the Commission has decided not to adopt any generic funding requirements, licensees should not view the Commission's decision as an impediment to ordering whatever decommissioning steps it deems appropriate when the time for decommissioning a particular project arrives. The licensee has the responsibility for project retirement. ^{16/}

The Superior Falls project is economically and physically sound, and the project would have no significant adverse environmental impacts if operated in a manner consistent with the articles of this license. I find any requirement for the licensee to establish a pre-retirement trust fund not warranted in the circumstances of this case.

LICENSE TERM

Section 15 of the FPA specifies that any license issued shall be for a term that the Commission determines to be in the public interest but is not less than 30 years or more than 50 years. The Commission's policy; which establishes 30-year terms for projects that propose little or no redevelopment, new construction, new capacity, or enhancement; 40-year terms for projects that propose moderate redevelopment, new construction, new capacity, or enhancement; and 50-year terms for projects that propose extensive redevelopment, new construction, new capacity, or enhancement; is consistent with the FPA as modified by the Electric Consumers Protection Act (ECPA).

Northern States proposes no new construction nor are we requiring enhancement measures that would justify a longer license term. Accordingly, the license for the Superior Falls project will be for a term of 30 years.

SUMMARY OF FINDINGS

An EA was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

^{16/} Project Decommissioning at Relicensing; Policy Statement, RM93-23000, slip op. cit. pp. 33-34, issued December 14, 1994.

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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 Design Assessment. ^{17/}

Based upon a review of the agency and public comments filed on the project, and on staff's independent analysis pursuant to Sections 4(e), 10(a)(1), and 10(a)(2) of the FPA, I conclude that issuing a license for the Superior Falls project, with the required enhancement measures and other special license conditions, 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-Wisconsin (Licensee), for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Superior Falls Hydroelectric Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

- (1) All lands, to the extent of the Licensee's interests in those lands, shown by Exhibit G, filed on December 18, 1994:

<u>Exhibit</u>	<u>FERC No. 2587-</u>	<u>Showing</u>
G (Sheet 1)	5	Project Map

- (2) Project works consisting of (1) two concrete gravity nonoverflow sections, roughly 105 feet long (total), with an intake structure for a conduit including a metal trashrack and a mechanically operated timber headgate; (2) a concrete gravity gated spillway section about 90 feet long containing two steel Taintor gates roughly 16 feet long by 18 feet high, and three timber Taintor gates roughly 12 feet long by 9 feet high; (3) a concrete gravity overflow weir

^{17/} A Safety and Design Assessment was prepared for the Superior Falls project, FERC No. 2587, and is available in the Commission's public file.

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section about 45 feet long, containing three concrete bulkheaded overflow weir bays; (4) a reservoir with a surface area of 16.9 acres and a total storage volume of 80.9 acre-feet at the normal maximum surface elevation of 740.0 feet above mean sea level; 18/ (5) an 84-inch-diameter reinforced concrete pipe conduit roughly 1,697 feet long, conveying water from the intake structure to the surge tank; (6) a 28-foot-diameter surge tank with a concrete base and lower section (13 feet high) and a steel upper section extending 28 feet above the concrete; (7) two 54-inch-diameter steel penstocks, each 190 feet long; (8) a reinforced concrete powerhouse roughly 32 feet by 62 feet, containing two horizontal Francis turbines with a combined plant hydraulic capacity of 220 cubic feet per second (cfs) manufactured by Allis-Chalmers and rated at 1,240 horsepower (hp) each, and two General Electric generators rated at 825 kilowatts (kW) each, providing a combined plant rating of 1.65 MW; (9) a 200-foot-long 2.4-kilovolt (kV) transmission line; and (10) 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:

Section 1, page 8, entitled "Number of generating units, their capacities, and provisions for future units;" Section 2, pages 8 through 9, entitled "Type of hydraulic turbines;" and Section 8, pages 11 through 14, entitled "Sizes, capacities, and construction materials of project components."

Exhibit F—The following exhibit F drawings filed December 18, 1994:

<u>Exhibit</u>	<u>FERC No. 2587-</u>	<u>Showing</u>
F (sheet 1)	1	Plan, elevation—dam
F (sheet 2)	2	Sections—dam, intake
F (sheet 3)	3	Plan, elevation—powerhouse
F (sheet 4)	4	Floor plan—powerhouse

18/ All elevations are given as feet above mean sea level.

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

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

(D) This license is subject to the articles set forth in Form L-10 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting the Interests of Interstate or Foreign Commerce," and the following additional articles:

Article 201. The Licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the cost of administration of Part I of the Act, as determined by the Commission. The authorized installed capacity for that purpose is 2,200 horsepower.

Article 202. The Commission reserves authority, in the context of any licensing, relicensing, or license or exemption amendment proceeding involving the up-stream Montreal River Basin projects located at Gile reservoir or Saxon Falls Project No. 2610, to require the Licensee, in a proceeding specific to this license, to conduct studies, modify reservoir levels, or otherwise make reasonable provisions for modifying project facilities or operation as necessary to mitigate or avoid cumulative effects identified in environmental analyses of these up-stream projects.

Article 203. Pursuant to Section 10(d) of the FPA, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The Licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the Licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The Licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve

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account. The Licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

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

Article 401. At least 90 days before the start of any land-disturbing or land-clearing activities, the Licensee shall file with the Commission, for approval, a plan to control erosion, to control slope instability, and to minimize the quantity of sediment resulting from project construction and operation.

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

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

The Licensee shall prepare the plan after consultation with appropriate Commission regional staff; federal and state soil conservation, water quality, fish and wildlife agencies; and each federal agency having managerial authority over any part of project lands. The Licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific

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descriptions of how the agencies' comments are accommodated by the plan. The Licensee shall allow at least 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on geological, soil, and groundwater conditions at the site.

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

The Licensee shall inspect the reservoir shoreline annually for erosion during the period of open water. The Licensee shall report the results of the inspection to the Wisconsin DNR and Michigan DNR. The Licensee shall cooperate with the resource agencies to minimize the effects of any identified shoreline erosion.

Article 402. The Licensee shall operate the project in a run-of-river mode for the protection of fish spawning in the project impoundment, riparian vegetation above and below the project, and recreational opportunities in the project impoundment on the Montreal River. The Licensee shall at all times act to minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the project reservoir.

To ensure run-of-river operation, the Licensee shall maintain a reservoir water surface elevation between a minimum of 739.5 feet and a maximum of 740.0 feet above mean sea level as measured immediately up-stream from the project dam. The Licensee shall not operate over full range on a daily basis for the purpose of power system load-following.

In order to monitor run-of-river operation, the Licensee shall measure water surface elevations on the project reservoir. The Licensee shall maintain records of the headwater elevations in the form of daily operator logs and continuous circular chart recordings. Such records shall be provided to the Wisconsin DNR and Michigan DNR within 30 days upon request. The Licensee shall maintain a staff gage in the project reservoir visible to the public with the prescribed operating levels clearly marked.

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Run-of-river operation and reservoir water surface elevations may be temporarily modified if required by operating emergencies beyond the control of the Licensee, including flood and ice conditions, and for short periods, including droughts, upon mutual agreement between the Licensee, the Wisconsin DNR, and the Michigan DNR. If the operation is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident. If run-of-river operation and reservoir water surface elevations are modified during an emergency, the Licensee shall notify the Commission, the Wisconsin DNR and the Michigan DNR within 24 hours.

Within 1 year of the issuance date of this license, the Licensee shall file with the Commission, for approval, a plan for notifying the Wisconsin DNR and Michigan DNR of events when the reservoir elevation is outside the specified range.

The Licensee shall prepare the plan after consultation with the Wisconsin DNR and Michigan DNR. 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.

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 403. At least 90 days before any nonemergency draw-down, the Licensee shall submit to the Wisconsin DNR and Michigan DNR, for approval, a draw-down management plan. The Licensee shall manage nonemergency draw-downs so that the project reservoir draw-down rate does not exceed 12 inches per 24 hours for the first 48 hours and 6 inches per 24 hours after that. The draw-down shall be evenly spread such that a 12-inch-per-24-hour draw-down rate occurs at 2 inches every 4 hours. The maximum rate of change may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods for project maintenance purposes, upon mutual agreement between the Licensee, the Wisconsin DNR, and the Michigan DNR. If the reservoir draw-down rate is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

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Article 404. The Licensee shall release from the Superior Falls dam to the Montreal River bypassed reach a minimum flow of 8 cubic feet per second, between the Saturday before Memorial Day and October 15, for the enhancement of aesthetic resources. The Licensee shall release from the Superior Falls dam to the Montreal River bypassed reach a minimum flow of 20 cubic feet per second on weekends and holidays between the hours of 8 a.m. and 8 p.m., from the Saturday before Memorial Day to October 15, for the enhancement of aesthetic resources in the bypassed reach of the Montreal River.

This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods upon agreement between the Licensee, the Wisconsin DNR, and the Michigan DNR. If the flow is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 405. Within 180 days of the issuance of this license, the Licensee shall submit a plan to continuously monitor aesthetic flow releases from the dam. The intent of the plan is to provide a reliable and accurate means to determine compliance with the flow releases required in Article 404, and could include methods such as calibration of Taintor gates or installation of a flow gage in the bypass reach.

The Licensee shall prepare the plan after consultation with the Wisconsin DNR and Michigan DNR. 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.

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. The Commission reserves the authority to require the Licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior.

Article 407. Before the commencement of any construction or development of any project works or other facilities at the

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project, the Licensee shall consult and cooperate with the Wisconsin and Michigan State Historic Preservation Officers (SHPOs) to determine the need for, and extent of, any archaeological or historic resource surveys and any mitigating measures that may be necessary. The Licensee shall provide funds in a reasonable amount for such activity. If any previously unrecorded archaeological or historic sites are discovered during the course of construction, construction activity in the vicinity shall be halted, a qualified archaeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPOs to develop a mitigation plan for the protection of significant archaeological or historic resources. If the Licensee and the SHPOs cannot agree on the amount of money to be expended on archaeological or historic 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.

In addition, the Licensee shall periodically search all eroded shoreline areas of the reservoir for any visible traces of artifacts, objects, or remains of potential archaeological significance. The surveys shall be completed 5 and 10 years after license issuance and the results forwarded to the SHPOs for review within 3 months of survey completion. After the 10-year survey, the Licensee and the SHPOs shall evaluate the need to continue the periodic surveys. Should any artifacts, objects, or remains of potential archaeological significance be discovered, the Licensee shall employ the services of a professional archaeologist to survey the site and evaluate its significance pursuant to 36 CFR 800.4(c). Upon recommendation by the SHPOs, the Licensee shall take steps to protect, recover, or relocate any historic property that may be adversely affected by project operations.

Article 408. Within 2 years of the issuance date of this license, the Licensee shall submit a recreation plan to construct and provide for the operation and maintenance of a trail to the Superior Falls scenic overlook; a boat landing on the west side of the reservoir including four parking spaces, a turnaround area, and a concrete boat ramp; and a sign on Michigan Highway 505 indicating the location of the driveway and parking area near the powerhouse.

The Licensee shall construct the facilities after consultation with the Wisconsin DNR, Michigan DNR, and National Park Service. The Licensee shall file a report to the Commission with the as-built drawings, which shall include the entity responsible for operation and maintenance of the facilities, documentation of consultation, copies of comments and recommendations on the report after it has been prepared and provided to the agencies, and specific descriptions of how

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the agencies' comments are accommodated by the report. The Licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission.

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

Article 409. The Licensee shall monitor the project area for purple loosestrife (*Lythrum salicaria* and *L. virgatum*) and eurasian milfoil (*Myriophyllum spicatum*). If identified, the Licensee shall contact the Wisconsin DNR and Michigan DNR within 30 days. The Licensee shall cooperate with the state resource agencies to eradicate purple loosestrife and eurasian milfoil when an effective eradication method is developed.

Article 410. Within 2 years of the issuance date of this license, the Licensee shall file with the Commission, for approval, a wildlife management plan. The plan shall provide for the construction and maintenance of 10 wood duck nesting boxes and additional mallard nesting boxes.

The Licensee shall prepare the plan after consultation with the Wisconsin DNR and Michigan DNR. 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.

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. Within 1 year of the issuance date of this license, the Licensee shall file with the Commission, for approval, a plan to protect state and federally listed threatened or endangered species and their critical habitat. The plan shall include the following:

- (1) a monitoring plan to identify when listed species establish themselves in the project boundary;
- (2) measures to protect listed species; and
- (3) an implementation schedule for protective measures.

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

The Commission reserves the right to require changes to the plan. No land-disturbing activities shall begin at the project until the Licensee is notified by the Commission that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 412. The Licensee shall earmark the replacement value of \$2,400 annually to fund resource-based activities in the Montreal River Basin. To ensure that future payments accurately reflect the effects of inflation, the required annual payment shall be adjusted to reflect changes in the Consumer Price Index. The Licensee shall finance the enhancement measures annually, until and unless the Commission determines otherwise.

The Licensee shall be responsible for developing and implementing the specific measures the annual payment will finance. The monies paid by the Licensee shall be allocated specifically for resource-based enhancement activities in the Montreal River Basin. Enhancement activities may include, but are not limited to, such activities as fish stocking and habitat improvement projects. Resource enhancement plans outlining the specific uses of all funds shall be developed by the Licensee following consultation with the Michigan DNR and Wisconsin DNR.

Upon agreement among the Licensee, the Michigan DNR, and the Wisconsin DNR, the Licensee may alternatively file an agreement for either state resource agency to allocate the funds at the agency's discretion for fisheries enhancement within the basin. If this option is chosen to decrease administrative costs for this enhancement measure, such an agreement must be filed at the Commission within 90 days from the date of issuance of this license.

Annual resource enhancement status reports shall be submitted by the Licensee or the administering resource agency

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for Commission review. The Commission reserves the right to intercede in the fisheries enhancement program as necessary.

Article 413. Within 9 months of the issuance date of this license, the Licensee shall file with the Commission, for approval, a plan to avoid or minimize disturbances to the quality of the existing visual resources of the project area. The intent of the plan is to retain the natural character and visual qualities of the approximately 354 acres of project lands.

The plan, at a minimum, shall:

- (1) identify all natural areas and their uses within the project boundary that warrant protection under this plan;
- (2) establish management methods, procedures, and practices for maintaining the visual qualities of lands identified in item (1);
- (3) describe the standards, guidelines, or procedures to be used to protect the visual quality of the project when implementing Section (b) of Article 416;
- (4) describe standards, guidelines, or procedures for blending the project works into the existing landscape character;
- (5) describe management methods and procedures for revegetating, stabilizing, and landscaping new construction areas and areas immediately adjacent to the project site disturbed by previous construction or that presently affect the visual resources of the surrounding area; and
- (6) describe guidelines and procedures for grading, planting grasses, repairing slopes damaged by erosion, and preventing future erosion.

The plan also shall include (1) an implementation schedule; (2) monitoring and maintenance programs for project recreation facilities and utility construction and operation; and (3) provisions for the plan's periodic review and revision.

The Licensee shall prepare the plan after consultation with the Michigan and Wisconsin DNRs. 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

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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 visual and landscape conditions at the site.

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

Article 414. The Licensee shall sample and analyze each source of ash used to "cinder" the spillway gates annually. The analysis shall be for bulk chemistry of contaminants. The Licensee shall submit the results of the analysis to the Wisconsin DNR and the Michigan DNR FERC Coordination Unit.

Article 415. Within 180 days of the issuance of this license, the Licensee shall file with the Commission, for approval, a plan to monitor dissolved oxygen levels and temperature of the Montreal River down-stream in the project tailrace area for the months of September, October, and November. The monitoring shall continue for at least 3 years.

The monitoring plan shall include a schedule for

- (1) implementation of the program;
- (2) consultation with the appropriate federal and state agencies concerning the results of the monitoring; and
- (3) filing the results, agency comments, and Licensee's response to agency comments with the Commission.

The Licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the Wisconsin DNR, and the Michigan DNR. 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 at least 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the Licensee does not adopt

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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. After the third year of monitoring, the Licensee and the agencies shall evaluate the need for additional monitoring. The Licensee shall provide the results of that evaluation, including all monitoring data and appropriate summaries, to the Commission for consideration. The Commission shall determine at that time if additional monitoring shall be required.

Article 416. (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.

See Article 413 of this license concerning a Visual Management Plan.

(b) The type of use and occupancy of project lands and water for which the Licensee may grant permission without prior Commission approval are:

- (1) landscape plantings;

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- (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings;
- (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and
- (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall:

- (1) inspect the site of the proposed construction;
- (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and
- (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project 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:

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- (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained;
- (2) storm drains and water mains;
- (3) sewers that do not discharge into project waters;
- (4) minor access roads;
- (5) telephone, gas, and electric utility distribution lines;
- (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary;
- (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and
- (8) water intake or pumping facilities that do not extract more than 1,000,000 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. If no conveyance was made during the prior calendar year, the Licensee shall so inform the Commission and the Regional Director in writing no later than January 31 of each year.

(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;

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- (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 (measured over project waters) from any other private or public marina;
- (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and
- (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit 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

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recreation agencies, as appropriate, and the State Historic Preservation Officer.

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

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(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.

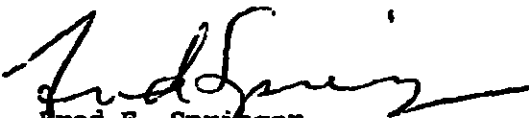
Article 501. If the Licensee's project was directly benefitted by the construction work of another Licensee, a

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permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

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

(F) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of this order, pursuant to 18 C.F.R. § 385.713. The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a request for rehearing shall constitute acceptance of this order.


Fred E. Springer
Director, Office of
Hydropower Licensing

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