

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

Wisconsin Electric Power Company

Project Nos. 1759-036, 1980-009,
2072-008, 2073-008, 2074-007,
2131-020, 2471-005, 11830-000,
and 11831-000

ORDER ON OFFER OF SETTLEMENT
AND ISSUING NEW LICENSE

(Issued January 12, 2001)

Wisconsin Electric Power Company (Wisconsin Electric) has filed an application for a new license, pursuant to Sections 15 and 4(e) of the Federal Power Act (FPA),¹ for the continued operation and maintenance of the 1,800-kilowatt (kW) Way Dam and Michigamme Reservoir Project No. 1759, located on the Michigamme River² in Iron and Dickinson Counties, Michigan. The project occupies 31.47 acres of federal lands.³ This order grants the project a new license.

Wisconsin Electric's application for Project No. 1759 is one of eight applications it filed to relicense eight hydropower projects.⁴ As originally licensed, Project No. 1759 included three developments: Way Dam and Michigamme Reservoir (Way Dam), Peavy Falls, and Twin Falls. Wisconsin Electric has filed a separate relicense application for each of these developments. The applications for Peavy Falls and Twin Falls have been

¹ 16 U.S.C. §§ 808 and 797(e).

² The Michigamme and Menominee Rivers are navigable waterways of the United States. 3 FPC 449 (1943).

³ See n. 51, *infra*.

⁴ Wisconsin Electric also filed relicense applications for the Hemlock Falls Project No. 2074, Lower Paint Project No. 2072, Michigamme Falls Project No. 2073, and Kingsford Project No. 2131. The applications were filed on October 1, 1999, except for the application for the Big Quinnesec Falls Project, which, because of its license's earlier expiration date, was filed on February 26, 1996.

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designated Project Nos. 11830 and 11831, respectively.⁵ The company has also filed an application to surrender the license of a ninth project.⁶ We are concurrently issuing eight orders granting new licenses for the eight Upper Menominee Projects,⁷ and a ninth order proposing issuance of a non-power license for the Sturgeon Project.⁸

I. THE MULTI-PROJECT PROCEEDING

PROJECT DESCRIPTIONS

All nine projects under discussion are located in the Upper Menominee River Basin, in Wisconsin and Michigan. The 118-mile-long Menominee River originates at the confluence of the Michigamme and Brule Rivers and flows southeasterly as the boundary between Wisconsin and Michigan's Upper Peninsula, emptying into Green Bay at the twin cities of Marinette, Wisconsin, and Menominee, Michigan. The Michigamme, Brule, Paint, and Sturgeon Rivers are major tributaries of the upper Menominee River. As described below, four of the projects are located on the Michigamme River, one on the Paint River, three on the Menominee, and one on the Sturgeon River.⁹ Most of the Basin is forested and sparsely populated. The region's economy depends primary on recreational tourism and timber-based industries.

⁵Under both the existing licenses and the new licenses we issue today, the Way, Twin Falls, and Peavy Projects constitute a single unit of development (see Wisconsin Michigan Power Company, 5 FPC 590 (1946)), a unit which also includes the Lower Paint Project No. 2072, Michigamme Falls Project No. 2073, and Hemlock Falls Project No. 2074 (see Wisconsin Michigan Power Company, 52 FPC 1201, 1204 (1974)).

⁶Wisconsin Electric filed its to surrender application for the Sturgeon Project No. 2471 on October 1, 1999.

⁷See Wisconsin Electric Company, 94 FERC ¶¶ 61,____; 61, ____; 61,____; 61,____; 61,____; 61,____; 61,____, and 61,____.

⁸See Wisconsin Electric Company, 94 FERC ¶ 61,____.

⁹ There are 56 dams within the Menominee River Basin, of which 19 are used to generate hydroelectric power. Wisconsin Electric owns and operates 13 of these hydroelectric projects.

As noted, the eight projects for which relicensing is being sought were originally authorized under six licenses. Five of the six original licenses will expire in 2001.¹⁰ The sixth license, for the Big Quinnesec Project, expired in 1998, and the project has been operating under annual licenses.

The eight Upper Menominee projects have a combined installed capacity of 61.1 megawatts (MW) and dependable capacity of about 52 MW, with annual generation of 275,500 megawatt-hours. Two of the projects (Way Dam and Peavy Falls) function as seasonal storage reservoirs. Four of the eight projects (Michigamme Falls, Twin Falls, Kingsford, and Big Quinnesec Falls) have been operated to provide peak energy and capacity to the regional grid.

Four of the eight projects are located in Michigan on the Michigamme River:

(1) farthest upstream, at river mile 23, the 1.8-megawatt (MW) Way Dam and Michigamme Reservoir Project No. 1759 (Way Dam Project), located in Iron and Dickinson Counties;¹¹

(2) at river mile 19, the 2.8-MW Hemlock Falls Hydroelectric Project No. 2074, located in Iron County;¹²

(3) at river mile 4.2, the 12-MW Peavy Falls Hydroelectric Project No. 11830, located in Iron County;¹³ and

¹⁰The existing licenses for Project Nos. 2073, 2074, and 2131 expire at the end of October 31, 2001, and those for Project Nos. 1759 and 2072 expire at the end of December 31, 2001. (In order to facilitate a coordinated relicensing review of projects in the Menominee River Basin, the Commission granted Wisconsin Electric's application to accelerate the termination date of the license for the Kingsford Project No. 2131 from June 30, 2004, to October 31, 2001. 75 FERC ¶ 62,086 (1996).)

¹¹52 FPC 1201 (1974).

¹²10 FPC 1437 (1951).

¹³52 FPC 1201 (1974).

(4) just above the mouth of the river, at river mile 0.1, the 9.6-MW Michigamme Falls Hydroelectric Project No. 2073, located in Iron County.¹⁴

The 100-kilowatt (kW) Lower Paint Hydroelectric Project No. 2072 is located on the Paint River in Iron County, Michigan, six miles upstream from the Paint's confluence with the Brule River.¹⁵

Three of the projects are located on the Menominee River, in both Michigan and Wisconsin:

(1) about eleven miles below the confluence of the Michigamme and Brule Rivers, at river mile 106.6, the 6.1-MW Twin Falls Hydroelectric Project No. 11831, located in Dickinson County, Michigan, and Florence County, Wisconsin;¹⁶

(2) about four miles below the Twin Falls Project, at river mile 100.2, the 7.2-MW Kingsford Hydroelectric Project No. 2131, located in Dickinson County, Michigan, and Florence County, Wisconsin;¹⁷ and

(3) about six miles below the Kingsford Project, at river mile 94.8, the 21.5-MW Big Quinnesec Falls Hydroelectric Project No. 1980, located on in Dickinson County, Michigan, and Florence and Marinette Counties, Wisconsin.¹⁸

The ninth project in these proceedings is Wisconsin Electric's 800-kilowatt Sturgeon Project No. 2471, located on the Sturgeon River eight miles above its confluence with the Menominee River in Dickinson County, Michigan. The original license for Project No. 2471 was issued in 1966¹⁹ and expired on December 31, 1993. Wisconsin Electric did not apply to relicense this project, despite its earlier notice of

¹⁴10 FPC 1413 (1951).

¹⁵10 FPC 1558 (1952).

¹⁶52 FPC 1201 (1974).

¹⁷6 FERC ¶ 61,069 (1979).

¹⁸7 FPC 544 (1948).

¹⁹36 FPC 869 (1966).

intent to do so. Therefore, pursuant to the Commission's relicensing regulations,²⁰ the Commission solicited applications from potential applicants other than the existing licensee. When no applications were received, Wisconsin Electric applied to surrender the project license.²¹

BACKGROUND

On May 15, 1997, Wisconsin Electric submitted a "Wilderness Shore Settlement Agreement" (Agreement) addressing issues pertaining to its Upper Menominee River Basin Projects.²² With its relicense applications filed on October 1, 1999, Wisconsin Electric submitted a collaboratively-prepared draft environmental assessment (APEA),²³ and a number of resource management, mitigation, and enhancement plans required by the Agreement. The Agreement is described below.

Notice was issued of the Agreement and of each license application. Timely motions to intervene in the multi-project proceeding were filed by the U. S. Department of the Interior, Fish and Wildlife Service (FWS); the River Alliance of Wisconsin; the Wisconsin Department of Natural Resources (Wisconsin DNR); the Chicago Whitewater Association; and jointly by the Anglers of the Ausable, Inc.; the Great Lakes Council, Inc., of the Federation of Fly Fishers, Inc.; the Michigan United Conservation Clubs; and the Michigan Council of Trout Unlimited.²⁴ The intervenors support the Agreement and the issuance of the eight relicenses consistent with its terms.²⁵

²⁰ 18 CFR 16.20 (2000).

²¹ See 73 FERC ¶ 61,208 (1995).

²² The Agreement was executed on February 10, 1997.

²³ The Commission's regulations require that relicense applications include an Exhibit E (environmental report). The APEA is a substitute for the Exhibit E. See 18 CFR 4.51(f) and 16.8(f). The Agreement was included as Appendix A in volume 2 of the APEA.

²⁴ The motions were timely and unopposed, and therefore automatically granted, pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 CFR 385.214(c)(1).

²⁵ Certain local residents and organizations filed comments in the Sturgeon Project surrender proceeding opposing the proposal to remove the Sturgeon Project dam. Those
(continued...)

On November 9, 2000, Commission staff issued an Environmental Assessment (EA) that evaluates the potential impacts of the eight projects pending relicensing and recommends issuance of new licenses for the eight Upper Menominee Projects and surrender (including dam removal) for the Sturgeon Project, as proposed in the Wisconsin Electric's applications and the Agreement.²⁶ Michigan DNR filed comments in support of the EA. The Commission has considered all the motions and comments filed in this proceeding in determining whether, and under what conditions, to issue the eight relicenses and propose issuance of a non-power license for the ninth project.

THE MULTI-PROJECT SETTLEMENT AGREEMENT

The Agreement was reached among Wisconsin Electric, Wisconsin DNR, Wisconsin Department of Administration, Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), Michigan Attorney General, FWS, National Park Service (NPS), River Alliance of Wisconsin, and Michigan Hydro Relicensing Coalition (collectively, the Collaborative Team).

A. Project Operations and Water Quality

The Agreement sets forth, for each of the eight developments to be relicensed, proposed changes to basic operational modes, minimum flow releases, rates of changes in flow releases, and reservoir elevations.²⁷ These changes include reduced winter reservoir drawdowns, increased minimum flows, reduced impoundment fluctuations, and spring time run-of-river operations.

Under the Agreement, the Way and Hemlock Falls plants will no longer be used for daily peaking, and the Michigamme Falls, Twin Falls, Kingsford, and Big Quinnesec Falls peaking operations will be modified to reduce daily changes in river flows. During the spring spawning periods, the latter three projects will operate in a run-of-river mode. Wisconsin Electric will operate the Michigamme Falls Project to re-regulate flow from

²⁵(...continued)
concerns are addressed in the Sturgeon Project order also issued today.

²⁶On the same day, Commission staff issued an EA evaluating the impacts of decommissioning the Sturgeon Project No. 2471.

²⁷Agreement, section 3.

the upstream Peavy Falls Project, and will operate the other two projects with greater minimum flows. The Hemlock Falls Project will operate in a run-of-river mode year-round, passing the minimum flows from Way Dam. The Lower Paint Project will continue to divert flows in excess of the required minimum flows and up to the hydraulic capacity of the diversion canal from the Paint River into Peavy Pond. The Agreement proposes increased minimum instream flows from the Lower Paint River Dam. The Agreement also provides that Wisconsin Electric will develop and implement for each project operations testing and compliance plans and plans to draw down reservoirs for routine maintenance and emergency repair.²⁸ Wisconsin Electric submitted these plans with its license applications.

The Agreement provides that Wisconsin Electric's projects shall meet specified water temperature and dissolved oxygen standards, and shall develop and implement a plan to monitor these parameters, as well as impoundment stratification and selected chemicals in fish and sediment behind the dams.²⁹ On April 12, 2000, Wisconsin Electric submitted its water quality monitoring plan.

B. Fish Passage

Upon the state fishery agencies' preparation of a fish/watershed plan providing the biological justification for upstream fish passage, Wisconsin Electric commits to develop and (with Commission approval) operate upstream fish passage structures at the Way, Lower Paint, Hemlock Falls, and Kingsford Projects.³⁰ The state agencies agree not to pursue fish passage at the other four projects, which are located at natural barriers (waterfalls).³¹

²⁸Id.

²⁹Id., section 4.

³⁰Id., section 4.2.

³¹Id., section 4.2.1.

Wisconsin Electric will provide a total of \$3.4 million³² to design and (with Commission approval) operate downstream fish protection devices at all the projects, as well as develop performance evaluation plans therefor.³³

For its part, Interior reserves its authority, pursuant to FPA Section 18,³⁴ to prescribe upstream and downstream fishways at any of the eight projects.³⁵

C. Land Use and Fish and Wildlife Protection and Enhancement

The Agreement divides its land use management provisions into proposals for "project lands" --lands within FERC project boundaries and jurisdiction³⁶ -- and non-project lands, over which the Commission exercises no jurisdiction.³⁷ With respect to project lands, Wisconsin Electric commits to develop for each project a comprehensive land use management plan that includes riparian buffer zones managed for old growth forest, wildlife enhancements, bald eagle protection, and nuisance plant control.³⁸

³²Id., section 4.3.1. The \$3.4 million will be provided over the terms of the licenses, adjusted annually for changes in the Consumer Price Index. The Agreement does not seek to involve the Commission in the funding process.

³³Id., sections 4.3.2. through 4.3.5.

³⁴16 U.S.C. § 811.

³⁵Agreement, section 4.2.2.7.

³⁶Although the Lower Paint Project has an installed capacity of only 100 kW, it received a major license, and has a project boundary. See 10 FPC 1558. Its new license, issued today, is also for a major project.

³⁷The Agreement states at the outset (section 2.3.4.) that any Agreement conditions the Commission deems beyond its jurisdiction will be enforceable by the parties in a court of appropriate jurisdiction.

The Agreement has provisions for the use, management, and disposition of certain of Wisconsin Electric's real estate holdings. Agreement, section 5.2. The use, management, and disposition of licensee holdings not required to be within the project boundary are matters beyond the Commission's jurisdiction.

³⁸Agreement, section 5.1.4.

Wisconsin Electric submitted with its relicense applications a Terrestrial-Based Natural Resources Management Plan that includes the required provisions.

Wisconsin Electric also agrees to provide \$145,000 (indexed) annually throughout the license terms, to fund Commission-approved studies in the Upper Menominee River Basin, such as aquatic research and enhancements to water quality and terrestrial habitat beyond that required by the license.³⁹

D. Woody Debris Management

The Agreement provides for Wisconsin Electric to file for Commission approval a plan to improve aquatic habitat by increasing the amount of large woody debris and vegetative material at each of the projects.⁴⁰ Wisconsin Electric submitted its woody debris plan with its license applications. The plan calls for Wisconsin Electric to pass accumulated woody debris downstream, unless passing such debris would create a navigation hazard or other such public safety hazard. The plan further requires Wisconsin Electric to consult with the resource agencies regarding any future proposal to place fish habitat structures in the project impoundment.

E. Recreation

Wisconsin Electric will file for Commission approval a comprehensive plan for recreation at the projects, incorporating recreational facilities agreed to by the signatories, and delegating to the Collaborative Team certain operational and oversight functions.⁴¹ The proposed recreational development includes construction of new boat launches, fishing areas, and canoe portages, and continued maintenance of existing camping areas.

F. Dam Removal

As noted above, we required Wisconsin Electric to surrender its license for the Sturgeon Project, inasmuch as neither it nor anyone else applied to continue to operate it.

³⁹Id., section 4.4.

⁴⁰Id., section 4.5. Woody debris is an important habitat feature in aquatic ecosystems. See EA at 106.

⁴¹Of course, a licensee bears ultimate responsibility for the construction, operation, and maintenance of recreational facilities required by its license. See, e.g., Smith Falls Hydropower, 56 FERC ¶ 61,279 (1991).

The Agreement provides for removal of project structures sufficient to at a minimum allow free passage by fish and restore a high-gradient river reach. The Agreement also provides that, if the resource agencies⁴² still wish it, Wisconsin Electric will, some time after 2020, apply to the Commission to surrender its license for the Pine Project No. 2486 and remove the project works at the end of that project's current license term (2025).

The Pine Project, which is not a subject of the instant relicensing proceedings, is a 3.6-MW facility located on the Pine River in Florence County, Wisconsin. It was issued a new license in 1995.⁴³ The issue of whether the project should be deauthorized and removed is not before us at this time, and we render no opinion thereon. The Agreement (at section 8.3) sets forth the circumstances under which, some 20 years hence, Wisconsin Electric would file an application to surrender the project license and to remove the project works. If and when the Commission receives such an application, it will at that time perform the appropriate environmental and other reviews and make a public interest determination.

G. Dispute Resolution

Section 9.1 of the Agreement provides for a Settlement Implementation Team that will coordinate and implement the Agreement.⁴⁴ Section 9.3 of the Agreement provides a

⁴²"Resource agencies" is defined in the Agreement (at section 2.1.2.) as the Wisconsin DNR, Michigan DNR, Michigan DEQ, FWS, and National Park Service.

⁴³Wisconsin Electric Power Co., 73 FERC ¶ 61,346 (1995). Wisconsin Electric has also agreed to remove the state-authorized Woods Creek Dam, in the Town of Fern, Florence County, within two years of issuance of new licenses for the eight projects at issue herein. Agreement, section 8.1. This is a matter beyond the Commission's jurisdiction.

Wisconsin Electric has in addition committed to the other signatories that, during the 40-year term of the Agreement (which is essentially coterminous with the relicensing terms established in this order and the seven companion relicensing orders) if it decides to sell its projects to a non-affiliated entity, it will sell them only as a group; will pre-qualify the bidders to ensure their financial ability to meet a license's responsibilities; and may require performance bonds or other insurance to cover the cost of project retirement. (Agreement, section 7). This, too, is not a matter for inclusion in a Commission license.

⁴⁴The Settlement Implementation Team is comprised of representatives of
(continued...)

dispute-resolution mechanism for conflicts that arise among members of the Implementation Team. The team members are required to engage in good-faith negotiations for a minimum of 90 days, and if agreement is not reached by then, the team is required to engage the services of a neutral third party (such as an arbitrator) to resolve the dispute. If the third party is unsuccessful, the team will then refer the dispute to the "appropriate authority" for resolution.

DISCUSSION

The Agreement provides for increased minimum flows, limited reservoir drawdowns, maintenance of water quality standards, installation of downstream fish protection devices, management of woody debris and riparian buffer zones, protection of the bald eagle and its habitat, and nuisance plant control. These measures will protect and enhance the projects' fish, wildlife, and aquatic resources. For example, reductions in the depth of winter drawdowns should benefit the walleye population by increasing recruitment of young-of-year walleye and increasing the amount of over-winter habitat within the reservoir which may discourage predators and downstream movement of fish.⁴⁵ Increased minimum flows will benefit fish species in riverine reaches downstream of the projects by reducing downstream discharge fluctuations, thus providing increased habitat stability. Increased habitat stability will increase productivity and elicit positive changes in fish abundance and diversity within the riverine reaches, while springtime run-of-river operations will increase spawning success.⁴⁶

In addition, riparian buffer zones, bald eagle protection measures, and nuisance plant control will enhance habitat for all wildlife at the projects, including threatened and endangered species, by for example minimizing habitat fragmentation. The Agreement further provides for protection of cultural resources affected by the project, and for enhanced recreational resources in the project vicinity.

As noted, Wisconsin Electric submitted (1) operation compliance plans; (2) reservoir drawdown plans; (3) a water quality monitoring plan; and (4) a woody

⁴⁴(...continued)

Wisconsin Electric, Michigan DNR, Wisconsin DNR, FWS, NPS, and "ex-officio members" (currently, the River Alliance of Wisconsin and the Michigan Hydro Relicensing Coalition). Agreement, section 2.1.2 and Appendix 9.

⁴⁵ See EA at 84-85.

⁴⁶Id. at 87-89.

debris plan. We have reviewed these plans, and find them to be reasonable and appropriate. We are modifying the woody debris plan to require Wisconsin Electric to submit for our approval any proposal prepared in consultation with the agencies to place fish habitat structures in the project impoundment. With this modification, we approve these plans and will include appropriate conditions in the eight licenses. Wisconsin Electric also submitted a terrestrial-based natural resources management plan that implements the Agreement as it pertains to management of project lands, specifically riparian buffer zones, wildlife enhancements, protection of the bald eagle and its habitat, and nuisance plant control. We have reviewed these provisions of the plan, and find them to be reasonable and appropriate. We are modifying the bald eagle protection measures to include a provision of the Agreement⁴⁷ requiring the licensee to reimburse Michigan DNR up to \$1,000 per year (adjusted annually) for airplane flights over the project to identify bald eagle nest locations and collect data. With this modification, we approve the specified provisions of the terrestrial-based natural resources management plan and will include an appropriate conditions in each of the eight licenses.

For these reasons, we conclude that the eight licenses, conditioned as discussed above, will satisfy the comprehensive development/public interest standards of Sections 4(e) and 10(a)(1) of the FPA.⁴⁸

As we have recently reiterated, we generally consider project-related dispute resolution procedures agreed to by a licensee and one or more third parties to fall beyond the ambit of the Commission's oversight role.⁴⁹ For this reason, we are not adopting the dispute resolution section (9.3) of the Agreement (described above) as a license term. That section does not in any event appear to rely on its inclusion in the licenses, and as noted earlier the Agreement provides, in section 2.3.4., for the parties to pursue in other fora the enforcement of provisions not included in the Commission license.

II. THE PROJECT NO. 1759 PROCEEDING

BACKGROUND AND RELICENSING PROPOSAL

The Way Dam and Michigamme Reservoir Project (Way Dam Project) was originally licensed in 1946 to Wisconsin Electric's predecessor, Wisconsin Michigan

⁴⁷Agreement, section 4.6.3.

⁴⁸16 U.S.C. §§ 797(e) and 803(a)(1), respectively.

⁴⁹See Avista Corp., 93 FERC ¶ 61,116 at p. ____ (2000).

Power Company,⁵⁰ and was relicensed in 1974, with a term expiring at the end of December 31, 2001.⁵¹

The Way Dam Project is on the Michigamme River about 23 miles above its confluence with the Brule River, and constitutes the major seasonal water storage facility for the entire Upper Menominee River Basin system of hydroelectric projects. The project consists of a 256-foot-long, 50-foot-high dam; an 87.5-foot-long, 26-foot-high concrete spillway; a 40-foot long, 47-foot-wide powerhouse containing an 1,800-kW generating unit; and a 6,400-acre reservoir.⁵² Wisconsin Electric plans to continue using the electricity generated by the project for its customers.

As currently licensed, the project's reservoir is drawn down 25 feet each winter between November and February of the following year, and 5 feet in the summer between June and September. The winter drawdown facilitates the capture and storage of snow melt and spring rain for release into the river during the summer months to augment lower summer flows.

As proposed in the Agreement, the maximum winter drawdown of the Michigamme Reservoir will be reduced from 25 to 15 feet. The resulting increase in reservoir volume over winter should benefit the walleye population of Michigamme Reservoir by increasing the amount of over-winter habitat within the reservoir, which may increase recruitment of young-of-year walleye by reducing winter predation and discourage downstream movement of fish.⁵³ In addition, minimum flow releases from Michigamme Reservoir would increase from 125 cubic feet per second (cfs) to 250, 300, or 400 cfs, depending on the time of year.

⁵⁰5 FPC 590.

⁵¹52 FPC 1201. Project No. 1759 occupies 31.47 acres of federal lands managed by the U.S. Bureau of Land Management (BLM). These lands are in portions of T44N, R31W, Section 21, Lot 3, and Section 23, Lots 8 and 11. The licensee pays annual land use charges therefor pursuant to Section 10(e) of the FPA, 16 U.S.C. § 803(e). Nothing in the record of this proceeding suggests that these federal lands are "reservations," as defined in FPA Section 3(2), 16 U.S.C. § 794(2).

⁵²A more detailed project description is contained in ordering paragraph B(2).

⁵³See EA at 84-85.

Currently, there are nine public recreation areas on the reservoir and a tenth on the Michigamme River just below the project dam. Nine of the areas have boat launches, eight have camping facilities, and three provide drinking water. Pursuant to the Agreement, one recreation area (with a boat launch) will be closed, camp sites will be closed in one area and redeveloped in another, and a new day use facility with fishing access will be developed. Wisconsin Electric will continue to maintain other existing boat launches and camping facilities.⁵⁴

WATER QUALITY CERTIFICATION

On May 14, 1998, the Michigan Department of Environmental Quality (Michigan DEQ) issued, pursuant to Section 401(a)(1) of the Clean Water Act (CWA),⁵⁵ a blanket water quality certification for the eight Upper Menominee developments proposed to be relicensed. The certification includes fourteen conditions, applicable to all eight projects, which are attached to this order as Appendix A and, pursuant to CWA Section 401(d),⁵⁶ are conditions of this license.

Twelve of the conditions incorporate by reference various sections of the Agreement pertaining to project operation, water quality, compliance monitoring, woody debris management, erosion control, upstream fish passage, and downstream fish protection and passage.⁵⁷ The thirteenth (Condition 8.0) reserves to the state the right to seek civil or criminal penalties, and the fourteenth (Condition 9.0) pertains to local permits and approvals.

COASTAL ZONE MANAGEMENT ACT

Under Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),⁵⁸ the Commission cannot issue a license for a hydropower project within or affecting a coastal

⁵⁴ Agreement, section 6.1.

⁵⁵ 33 U.S.C. § 1341(a)(1).

⁵⁶ 33 U.S.C. § 1341(d).

⁵⁷ As these conditions merely incorporate by reference certain sections of the Agreement, we have as appropriate included special license articles that specify the requirements for each project.

⁵⁸ 16 U.S.C. § 1456(c)(3)(A).

zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's federally-approved CZMA program, or unless the state waives such concurrence.⁵⁹

On August 14, 1997, Michigan DEQ issued a finding that the eight proposed projects are consistent with the state's CZMA program, provided that any new licenses issued for the projects are consistent with the provisions of the Agreement. Because the license issued herein is consistent with the Agreement, Project No. 1759 will be consistent with Michigan's CZMA program.

HISTORIC PROPERTIES

On June 30, 1999, the Michigan State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission executed a Programmatic Agreement for managing historic properties that may be affected by relicensing of the five Wisconsin Electric plants located entirely in Michigan (the Way Dam, Hemlock Falls, Lower Paint, Peavy Falls, and Michigamme Falls Projects) and the decommissioning of the Sturgeon Project. This served to satisfy the Commission's responsibilities under Section 106 of the National Historic Preservation Act.⁶⁰ Wisconsin Electric signed the Programmatic Agreement as a concurring party.

THREATENED AND ENDANGERED SPECIES

Section 7(a) of the Endangered Species Act of 1973 (ESA)⁶¹ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally-listed threatened and endangered species, or result in the destruction or adverse modification of their critical habitat. The threatened bald eagle and the endangered eastern timber wolf are known to occur within the boundaries of the proposed project. FWS has concluded that, if Wisconsin Electric implements the protection measures detailed in the Agreement and the APEA, the continued operation of the Upper Menominee projects included in the Agreement will not adversely affect

⁵⁹The CZMA certification provisions apply to coastal zones in the Great Lakes Region. See CZMA Section 304(1), 16 U.S.C. § 1453(1).

⁶⁰16 U.S.C. § 470s.

⁶¹16 U.S.C. § 1536(a).

federally-listed threatened and endangered species.⁶² The relicense issued by this order for Project No. 1759 includes such conditions.

SECTION 18 FISHWAY PRESCRIPTIONS

Section 18 of the FPA⁶³ provides that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as the Secretaries of Commerce or the Interior may prescribe. Interior timely asked the Commission to reserve in the Project No. 1759 license Interior's authority to prescribe fishways.⁶⁴ Consistent with our policy,⁶⁵ we do so in license Article 4121.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j)(1) of the FPA⁶⁶ requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act⁶⁷ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by a project.

On February 3, 2000, FWS submitted recommendations under FPA Section 10(j), stating that adoption in the license of all the provisions of the Agreement that are within the Commission's jurisdiction would "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources and associated public use of the Upper

⁶²See letter dated February 2, 2000, from Interior's Office of the Secretary to the Commission Secretary, filed February 3, 2000.

⁶³16 U.S.C. § 811.

⁶⁴See Agreement, section 4.2.2.7.

⁶⁵See *Wisconsin Public Service Corp.*, 62 FERC ¶ 61,095 (1993), aff'd, *Wisconsin Public Corp. v. FERC*, 32 F.3d 1165 (7th Cir. 1994).

⁶⁶16 U.S.C. § 803(j)(1).

⁶⁷16 U.S.C. § 661 et seq.

Menominee River Basin."⁶⁸ Some of the provisions of the Agreement do not relate to fish and wildlife resources and thus are not within the scope of Section 10(j).⁶⁹ However, the license orders in any event adopt those provisions of the Agreement that are within our jurisdiction.

COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA⁷⁰ requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. Federal agencies filed nine comprehensive plans, and the State of Michigan filed 55 comprehensive plans. Of these, we identified and reviewed eight plans relevant to the project, and found no conflicts.⁷¹

APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,⁷² we have evaluated Wisconsin Electric's record as a licensee with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to

⁶⁸See letter, n. 62, supra.

⁶⁹See 18 CFR 4.30(b)(9)(ii); and Wisconsin Public Service Corp., 76 FERC ¶ 61,054 at p.61,307 n. 37 (1996). For example, the Agreement's recreation provisions, section 6.1, and the annual funding requirements, section 4.4, are not Section 10(j) fish and wildlife recommendations.

⁷⁰16 U.S.C. § 803(a)(2)(A).

⁷¹Building Michigan's Recreation Future: the 1985-90 Michigan Recreation Plan, 1985, Michigan; 1991-1996 Michigan Recreation Plan, 1990; Fisheries Division Strategic Plan, 1994, Michigan; Menominee River Fisheries Plan, 1992, Michigan; Wisconsin Lower Menominee River Remedial Action Plan, 1990; North American Waterfowl Management Plan, Interior and Canadian Wildlife Service, 1986; Fisheries USA: The Recreational Fisheries Policy of the U.S. Fish and Wildlife Service, undated; The Nationwide Rivers Inventory, National Park Service, 1982.

⁷²16 U.S.C. §§ 803(a)(2)(C) and 808(a).

provide efficient and reliable electric service; (E) need for power; (F) transmission service; (G) cost effectiveness of plans; and (H) actions affecting the public.

A. Conservation Efforts

Conservation and load management programs are integral elements of Wisconsin Electric's plan for meeting the growing needs of its customers. In 1994, it was projected that Wisconsin Electric would benefit from 540 MW of demand reduction from customers who participated in demand-side management programs initiated prior to 1994. These customers' annual energy requirements will have been reduced by 1,184 GWh.

B and C. Ability to Comply with the New License and Safe Management, Operation, and Maintenance of the Project

We have reviewed the relicense application and Wisconsin Electric's record of compliance with the terms and conditions of the existing license. We find that Wisconsin Electric's overall record of making timely filings and compliance with its license is satisfactory, and that it should thus be able to comply with the terms and conditions of the license issued herein. In addition, Wisconsin Electric has the capacity to operate the project safely during the license term, if it operates the project in a manner consistent with the Commission's regulations, the license conditions, and sound engineering practices.

D. Ability to Provide Efficient and Reliable Electric Service

We have reviewed Wisconsin Electric's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Wisconsin Electric has been operating the project in an efficient manner within the constraints of the existing license, and we conclude that it would continue to provide efficient and reliable electric service in the future.

E. Need for Power

The Way Dam Project's 50-year operating and power sales history, together with the projected compound annual growth rates for summer and winter season peak-hour demands, supports the applicant's short- and long-term needs for the electricity generated by the project.

F. Transmission Service

Wisconsin Electric proposes no changes or additions to its transmission facilities. If it were to not receive a license for the project, it would continue to supply power to its customers by purchasing replacement power, which would have no detrimental effects on line loading, line losses, or requirements of new construction of transmission facilities or upgrading of existing facilities.

G. Cost-Effectiveness of Plans

Wisconsin Electric proposes environmental and recreational resource enhancements to the project, the need for, usefulness, and economic impact of which are discussed above in this order and in the EA for the Upper Menominee River Basin Projects. We conclude that the project, as proposed by the applicant and so configured and operated, would fully develop and use the economical hydroelectric potential of the site.

H. Actions Affecting the Public

We have no reason to doubt that Wisconsin Electric will implement the various environmental and recreational enhancement measures proposed in the Agreement and approved in this license. These measures, discussed elsewhere herein and in the EA, as well as the power to be generated by the project, will benefit the public.

COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA⁷³ require the Commission, in acting on license applications, to give equal consideration to the developmental and environmental uses of the waterway on which a project is located. Any license issued shall be such as in the Commission's judgment 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.

In determining whether a proposed project will be in the public interest, the Commission considers the economic benefits of project power. As was articulated in

⁷³16 U.S.C. §§ 797(e) and 803(a)(1).

Mead Corp.,⁷⁴ we employ an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the analysis is to provide general estimates of the potential power benefits and costs of a project, and reasonable alternatives to project power. The Commission considers the project power benefits both with the applicant's proposed mitigation and enhancement measures and with the Commission's modifications and additions to the applicant's proposal.

The mitigation and enhancement measures for the eight license applications in this proceeding were developed as a package. Since at this point not all of the enhancement costs can be attributed to specific projects, we have calculated the project cost estimates as a group. Taking into account Wisconsin Electric's relicensing proposals, including the estimated costs of the Agreement's enhancement measures, the projects taken together would produce a total average of 254.4 gigawatt-hours (GWh) of energy annually at an annual cost of about \$5,583,600, or 21.95 mills per kilowatt-hour (mills/kWh). Based on the cost of replacing the projects' power with combined-cycle gas turbines, which we considers the most likely alternative power source for these projects, the current annual value of the projects' power would be about \$ 6,931,900 (about 27.25 mills/kWh). To determine whether the proposed projects are currently economically beneficial, we subtract the projects' cost from the value of the power they produce. Based on current costs, the projects as a group would have economic benefits over their new 40-year license terms, costing about \$1,348,300 (5.30 mills/kWh) less than the current cost of alternative power.

LICENSE TERM

Pursuant to Section 15(e) of the FPA,⁷⁵ relicensing terms shall not be less than 30 years nor more than 50 years from the date on which the license is issued. Our general policy is to establish 30, 40, or 50-year terms for projects with, respectively, little, moderate, or extensive redevelopment, new construction, new capacity, or additional environmental measures.⁷⁶ It is also our policy to coordinate to a reasonable extent the

⁷⁴72 FERC ¶ 61,207 (1995).

⁷⁵16 U.S.C. § 808(e).

⁷⁶See Consumers Power Company, 68 FERC ¶ 61,077 at pp. 61,383-84 (1994).

license expiration dates of projects in a river basin, in order that subsequent relicensing proceedings can also be coordinated.⁷⁷

The amount of proposed new investment in environmental measures at the eight projects at issue here is relatively modest. However, the new license we issued in 1996 for Wisconsin Electric's Brule Project No. 2431, located on the Brule River, a headwater of the Menominee, was given a 45-year term, for the specific purpose of facilitating the Commission's future coordinated treatment of Brule and the eight developments we are relicensing today. In that order we stated that, "if the other eight projects were to receive new 40-year licenses, their license terms could be adjusted in order that all nine project licenses would expire at approximately the same time."⁷⁸ We must also take into account that the effectiveness of seven of the eight new licenses must await the expiration of five existing licenses. The existing licenses for Project Nos. 2073, 2074, and 2131 expire at the end of October 31, 2001, and those for Project Nos. 1759 and 2072 expire at the end of December 31, 2001.⁷⁹ Consequently, we will issue these licenses with terms that will all expire at the end of July 31, 2040. For the Way Dam Project No. 1759, this results in a license term commencing January 1, 2002, and extending 38 years and seven months.

SUMMARY OF FINDINGS

The EA includes background information, analysis of impacts, discussion of enhancement measures, and support for related license articles. The project will not result in any major, long-term adverse environmental impacts.

⁷⁷See 18 CFR 2.23 (2000).

⁷⁸See Wisconsin Electric Power Company, 76 FERC ¶61,183 at p. 62,020 (1996). Neither the eight relicensing applications before us nor the Agreement that accompanied them proposes a specific license term for the new licenses. The Agreement itself has a term of 40 years, effective upon Commission issuance of final orders compatible with the Agreement (including as the parties might amend the Agreement in light of such orders). However, the Agreement will terminate at "the earlier of the expiration of a new license (plus the term of any annual license) issued by FERC or the effective date of any FERC order approving surrender of a project . . ." See Agreement, sections 2.3.3. and 2.5.

⁷⁹The only way to obtain an earlier effective date would be for the licensee to apply to amend the licenses to accelerate their termination dates to coincide with the issuance date of the new licenses. See, e.g., Bangor Hydro-Electric Company, 27 FERC ¶ 61,467 at p. 61,882 n. 3 (1984).

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.

Based on our review of the agency and public comments, and our evaluation of the environmental and economic effects of the proposed project and its alternatives, we find that the Way Dam and Michigamme Reservoir Project No. 1759, with the conditions set forth below, will be best adapted to the comprehensive development of the Michigamme River for beneficial public uses.

The Commission orders:

(A) The settlement is approved, except as otherwise noted, and this license is issued to Wisconsin Electric Power Company (licensee) for a period of 38 years and 7 months, to operate and maintain the Way Dam and Michigamme Reservoir Project. The license is effective January 1, 2002, and will expire at the end of July 31, 2040. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by exhibit G filed October 1, 1999:

<u>Exhibit G Drawing</u>	<u>FERC No.</u>	<u>Description</u>
G-1	1759-1010	Way Dam Project Boundary

(2) Project works consisting of: (a) a 256-foot-long, 50-foot-high dam flanked by six earthen embankments; (b) a 40-foot-long, 47-foot-wide powerhouse containing a single generating unit rated at 1,800 kilowatts; (c) Michigamme Reservoir, with a 6,400-acre surface area and a 100,600-acre-foot storage capacity at a normal full summer pool elevation of 1,374.3 feet National Geodetic Vertical Datum; (d) an 87.5-foot-long, 26-foot-high concrete spillway; (e) a step-up transformer; and (f) 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 Exhibit A sections, filed on October 1, 1999:

Section 1 entitled The number of generating units, including auxiliary units, the capacity of each unit, and provisions, if any for future units.

Section 2 entitled The type of hydraulic turbines.

Exhibit F: The following Exhibit F drawings, filed on October 1, 1999:

<u>Exhibit F-</u>	<u>FERC No. 1759-</u>	<u>Showing</u>
1	1001	General Map and Layout
2	1002	Cross Section of Plant and Intake
3	1003	General Layout and Plant Details
4	1004	Plant Details
5	1005	Arch Dam and Right Abutment
6	1006	Spillway and Left Abutment
7	1007	Dike Details
8	1008	Details of Dikes "B" and "C"
9	1009	Fuse Plug Plan and Sections

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, 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 plans are approved and made a part of this license:

(1) Way Dam Operation Compliance Plan, Appendix 2 to relicense application, filed October 1, 1999;

(2) Way Dam Reservoir Drawdown Plan, Appendix 3 to relicense application, filed October 1, 1999;

(3) Water Quality Monitoring Plan, filed April 12, 2000;

(4) Way Dam Woody Debris Management Plan, Appendix 4 to relicense application, filed October 1, 1999;

(5) the following portions of the Terrestrial-Based Resources Management Plan, contained in Upper Menominee River Basin Hydroelectric Projects, Proposed Post License Compliance Plans, filed October 1, 1999:

(a) Riparian Buffer Zones section;

(b) Nuisance Plant Control section;

(c) Wildlife Management section, pp. 24-27 (through Accessways subsection); and pp. 28 (beginning with Bald Eagle subsection) through 32.

(E) This license is subject to the conditions submitted by the State of Michigan Department of Environmental Quality under Section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(F) This license is subject to the articles set forth in Form L-5 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," and the following additional articles.

Article 201. The licensee shall pay the United States the following annual charges, effective as of the first day of the month in which this license is effective:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act, 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 1,800 kilowatts.

(b) Recompensing the United States for the use, occupancy and enjoyment of 31.47 acres of its lands, other than for transmission line right-of-way.

Article 202. Within 180 days after completion of construction of the facilities authorized by this license (e.g., recreation and access facilities), the licensee shall submit, for Commission approval, revised Exhibits A, F, and G to show those project facilities as built. The licensee shall file six copies to the Commission, one copy to the Commission's Chicago Regional Director, and one copy to the Director, Division of Hydropower Administration and Compliance, Office of Energy Projects.

Article 203. Within 45 days of the effective date of the license, the licensee shall file three original sets of aperture cards of the approved exhibit drawings. The drawings

must be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. The licensee shall submit one copy of Form FERC-587 with the aperture cards.

Prior to microfilming, the FERC Drawing Number 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 shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set of aperture cards shall be filed with the Commission's Chicago Regional Office.

Article 204. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

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

Article 205. If the licensee's project is directly benefitted by the construction works of another licensee, a permittee, or of the United States on a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater

improvement for those benefits, at such time as they are assessed. The benefits will be assessed in accordance with Part 11, Subpart B of the Commission's regulations.

Article 206. Within one year after issuance of the license, the licensee shall submit, for Commission approval, eight copies of the revised exhibit G describing the size and location of Federal lands within the project. The licensee shall submit six copies to the Commission, one copy to the Commission's Regional Director, and one to the Director, Division of Hydropower Administration and Compliance.

Article 401. Within eighteen months of the effective date of the license, the licensee shall, after consultation with the U.S. Fish and Wildlife Service, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, and the National Park Service, file with the Commission for approval a soil erosion plan to monitor and control stream and impoundment shoreline erosion at the project. The plan shall include, but not be limited to, the following (see Wilderness Shores Settlement Agreement, section 5.1.5., filed May 15, 1997): (1) a determination of the area(s) that may be subject to erosion; (2) an erosion site inventory; (3) measures proposed to control soil erosion and an assessment of such measures; (4) a specific implementation schedule and details for monitoring; and (5) periodic future shoreline erosion inventories and remediation, if necessary.

The licensee shall include with the plan documentation of agency 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 conditions at the site.

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

Article 402. As required by the water quality certification issued by the Michigan Department of Environmental Quality pursuant to Section 401 of the Clean Water Act, the licensee shall operate the project to maintain a minimum reservoir surface elevation of 1369.3 feet National Geodetic Vertical Datum (NGVD) and a maximum surface elevation of 1374.3 feet NGVD for the protection and enhancement of the reservoir's aquatic resources from June 1 through January 14 (see Wilderness Shores Settlement Agreement (Agreement), section 3.1.1.4., filed May 15, 1997). From January 15 through May 31, the licensee shall maintain the reservoir surface elevation between 1359.3 and 1374.3 feet NGVD (see Agreement, section 3.1.1.5). The licensee shall limit downstream flow

changes, as measured immediately downstream from Way Dam, to no more than 20 percent of the current flow release within any 2 hour period or to no more than 50 percent within any 24 hour period with the following exceptions: 1) if the natural rate of flow increases to the project reservoir exceed 20 percent of the current reservoir inflow within any 2 hour period or 50 percent within any 24 hour period; 2) the reservoir surface elevation is between 1373.8 and 1374.3 feet NGVD; and 3) flow changes from Way Dam are necessary to restore flow releases at the downstream Hemlock Falls Dam (see Agreement, section 3.1.1.6.). Under no circumstance shall the licensee operate in a daily peaking mode (see Agreement, section 3.1.1.2.).

These ramping rates and water surface elevation requirements may be temporarily modified, if required by operating emergencies beyond the control of the licensee and for short periods, upon mutual agreement among the licensee, Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), and U.S. Fish and Wildlife Service (FWS). If the flows are so modified, the licensee shall notify the Commission, and the agencies as soon as possible, but no later than 10 days after each such incident.

Article 403. As required by the water quality certification issued by the Michigan Department of Environmental Quality pursuant to Section 401 of the Clean Water Act, the licensee shall release from Way Dam a minimum flow, as measured at USGS Gage No. 04062500 located downstream of the Hemlock Falls Project (FERC Project No. 2074), of 250 cubic feet per second (cfs) from August 1 through April 30, 400 cfs from May 1 through June 30, and 300 cfs from July 1 through July 31 for the protection and enhancement of aquatic resources in the Michigan River downstream of the Way Project (see Wilderness Shores Settlement Agreement (Agreement), section 3.1.1.1., filed May 15, 1997). In the event of a power outage or automatic plant shutdown, the licensee shall restore the required minimum flow within 30 minutes of such occurrence (see Agreement, section 3.1.1.8.).

Flows may be temporarily modified, if required by operating emergencies beyond the control of the licensee and for short periods, upon mutual agreement among the licensee, Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), and U.S. Fish and Wildlife Service (FWS). If the flows are so modified, the licensee shall notify the Commission, and the agencies as soon as possible, but no later than 10 days after each such incident.

Article 404. Within one year of the effective date of the license, the licensee shall prepare and file for Commission approval a drought operations plan for making adjustments to the minimum flows and reservoir level in the event of drought conditions. (See Agreement, section 3.1.1.3.).

The licensee shall prepare the plan after consultation with the Michigan Department of Natural Resources, Michigan Department of Environmental Quality, and U.S. Fish and Wildlife Service. 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 may require changes to the plan. Upon Commission approval, the licensee shall implement the plan.

Article 405. The licensee shall implement the project operations compliance plan, approved in ordering paragraph (D), including but not limited to the following measures:

(1) maintenance of a staff gage, which shall be visible to the public and installed at a boat launch located on the project reservoir. The staff gage shall indicate in red elevations greater than the summer maximum reservoir surface elevation of 1374.3 feet (NGVD) and the summer minimum reservoir surface elevation of 1369.3 feet NGVD.

(2) maintenance of an automatic water level sensor. The reservoir surface elevation shall be checked manually once a week and compared to the automatic water level sensor reading. If the manual reading and the automatic reading differ by 0.3 feet, the automatic water level sensor shall be re-calibrated within 14 days of discovering such deviation.

(3) maintenance of the telemetered USGS Gage No. 04062500 located downstream of the Hemlock Falls Project (FERC Project No. 2074).

(4) maintenance of an operations log that shall consist of hourly recordings of: a) reservoir surface elevation; b) tailwater elevation; c) net head to the nearest 0.1 foot, d) unit discharge; e) spillway discharge; and f) generator output to the nearest 0.1 of a megawatt. When requested by the Commission, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, or U.S. Fish and Wildlife Service, operation log records shall be available as provided in the plan.

Article 406. Within one year of the effective date of the license, the licensee shall file for Commission approval a three-year operations testing plan to evaluate the licensee's ability to coordinate the operations of the Way Project with the operations of the Hemlock Falls Project (FERC Project No. 2074), Lower Paint Project (FERC Project

No. 2072), Michigamme Falls Project (FERC Project No. 2073), Peavy Falls Project (FERC Project No. 11830), Twin Falls Project (FERC Project No. 11831), Kingsford Project (FERC Project No. 2131), Big Quinnesec Falls Project (FERC Project No. 1980), and Sturgeon Falls Project (FERC Project No. 2720) (see Wilderness Shores Settlement Agreement, section 3.2., filed May 15, 1997).

The plan shall include but not be limited to the test methodology and provisions for consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) during the testing period on interim test results and whether there is a need for operational changes.

The licensee shall prepare the plan after consultation with the Wisconsin DNR, Michigan DNR, Michigan DEQ, FWS, and NPS. 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 may require changes to the plan. Upon Commission approval, the licensee shall implement the plan.

Within 6 months of completion of the 3-year test, the licensee shall file for Commission approval a report detailing the results of the testing and any recommended operational changes. The Commission may require changes to the report.

Article 407. The licensee shall conduct any drawdowns of Michigamme Reservoir beyond normal operating limits in accordance with the provisions of the reservoir drawdown plan approved in ordering paragraph (D).

Article 408. As required by the water quality certification issued by the Michigan Department of Environmental Quality pursuant to Section 401 of the Clean Water Act, the licensee shall ensure that project operation shall not result in the discharge of water with a dissolved oxygen (DO) concentration of less than 5.0 milligrams per liter (mg/l) or a temperature exceeding the following maximum monthly temperatures when flows in the Michigamme River are greater than or equal to the 95 percent exceedance flow:

January, February --	38 F
March -----	41 F
April -----	56 F
May -----	70 F
June -----	80 F
July -----	83 F
August -----	81 F
September -----	74 F
October -----	64 F
November -----	49 F
December -----	39 F

The licensee shall not warm the Michigamme River, as measured immediately downstream of Hemlock Dam, by more than 5°F above the water temperature measured upstream of the Michigamme Reservoir.

Article 409. The licensee shall implement the water quality monitoring plan approved in ordering paragraph (D) to measure water temperature and dissolved oxygen (DO), chemicals, sediments, and fish contaminants. The licensee shall monitor temperature and DO, at the location and for the time periods specified in the plan. The licensee shall prepare a report summarizing the results of the temperature and DO monitoring for the previous year. The report shall include, but not be limited to: 1) a determination of daily minimum, daily maximum, and daily average DO concentration and temperature; 2) a comparison between upstream and downstream DO concentrations and temperature; 3) the frequency and magnitude of any values that exceed or violate the limits set forth above; 4) an evaluation between any DO and temperature value exceeding the limits set forth above and any environmental factors, such as stream flow, time of day, and project operating characteristics; and, 5) all quality assurance or quality control data. By January 1 of each year, the licensee shall provide a copy of the report to the Commission and the Chief of the Surface Water Quality Division of the Michigan Department of Environmental Quality (Michigan DEQ Division Chief), or its successor.

In the event that DO concentrations or water temperature violate or exceed the limits set forth in Article 408, the licensee shall file, within 24 hours of such event, a report with the Commission and the Michigan DEQ Division Chief, or its successor, describing the circumstances of each event. At all other times, the licensee shall provide DO concentration and water temperature data to the Commission and the Michigan DEQ Division Chief, or its successor, within 5 working days of receiving such request.

Within one year of the effective date of the license, and every five years thereafter, the licensee shall sample, on a quarterly basis, the Michigamee Reservoir water column

as specified in the plan. The samples shall be analyzed for the parameters listed in the plan. The licensee shall prepare a report summarizing the data. By January 1 of the year following the sampling, the licensee shall provide a copy of the report to the Commission and the Michigan DEQ Division Chief, or its successor.

Twenty years from the effective date of the license, the licensee shall sample Michigamme Reservoir sediments as provided in the plan. The sediments shall be analyzed for the presence of the chemicals and contaminants specified in the plan. The licensee shall prepare a report summarizing the data. By January 1 of the year following the sampling, the licensee shall provide a copy of the report to the Commission and the Michigan DEQ Division Chief, or its successor.

As provided in the plan, within 3 years of issuance of this license and every 10 years thereafter, the licensee shall sample fish fillets for mercury. Fish fillets from the Michigamme Reservoir may be pooled with fish from the Michigamme Falls impoundment, Hemlock Falls impoundment, Peavy Pond, and Paint River Pond. Fillets shall be from the species and be of the size described in Table A-1 of the plan. After each sampling year, the licensee shall prepare a report summarizing the results of its monitoring. By January 1 of the year following the sampling year, the licensee shall provide a copy of the report to the Commission and the Michigan DEQ Division Chief, or its successor.

Article 410. Except as provided below, the licensee shall manage woody debris at the project as specified in the woody debris management plan approved in ordering paragraph (D). The licensee shall consult with the Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), and the U.S. Fish and Wildlife Service (FWS) prior to developing any plan for the placement of any habitat improvement structure in the Michigamme Reservoir. The plan shall include 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 may require changes to the plan. Upon Commission approval, the licensee shall implement the plan.

Article 411. 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 412. Within one year of the effective date of the license, the licensee shall submit for Commission approval a plan for installing and maintaining a downstream fish protection facility at the project. (See Wilderness Shores Settlement Agreement, section 4.3., filed May 15, 1997.) The plan shall be prepared in consultation with the Michigan Department of Natural Resources and the U.S. Fish and Wildlife Service and shall include, but not be limited to, a description of the facility to be installed and an installation and maintenance schedule, documentation of consultation with the agencies, 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 may require changes to the plan. Upon Commission approval, the licensee shall implement the schedule.

Article 413. Except as provided below, the licensee shall manage project lands (see Wilderness Shores Settlement Agreement, section 5.1.4., filed May 15, 1997) as specified in the portions of the terrestrial-based natural resources management plan approved in ordering paragraph (D): riparian buffer zones, wildlife management, and nuisance plant control.

As long as the bald eagle (*Haliaeetus leucocephalus*) is federally-listed as threatened or endangered reimburse the Michigan DNR up to \$1,000 per year (adjusting annually for changes in the Consumer Price Index) for flight time over the Way Dam Project to identify bald eagle nest locations and collect data (see Wilderness Shores Settlement Agreement, section 4.6.3., filed May 15, 1997).

Article 414. Within one year of the effective date of the license, the licensee shall file for Commission approval a comprehensive recreation plan for the Upper Menominee River Basin Projects. The plan shall include, but not be limited to, provisions for the Way Dam Project, as specified in Section 6.1 of the Wilderness Shores Settlement Agreement (filed May 15, 1997):

(1) maintain accessible launch facilities with concrete ramps at Recreation Sites 19 and 20, and maintain launch facilities with gravel ramps at Recreation Sites 14, 16, 17, and 29;

- (2) close Recreation Site 18;
- (3) provide an impoundment fishing area, if feasible;
- (4) provide a day-use facility and a tailwater launch area at Recreation Site 26, and open for angler access the bridge below the dam and the lower half of the island that the powerhouse is situated on;
- (5) maintain a canoe portage route with put-in and take-out facilities; and
- (6) maintain the existing 40 campsites at the project; redevelop Recreation Site 19 and close Recreation Sites 17 and 18; and maintain the existing Mountain Lake Group Campground.

The licensee shall construct the facilities after consultation with the U.S. Fish and Wildlife Service, Michigan Department of Natural Resources, and the National Park Service. The facilities shall be shown on as-built drawings filed pursuant to this license.

The plan shall include, for the Way Dam Project, a construction schedule, costs for the construction and yearly maintenance of each facility, appropriate soil erosion and sediment control measures, provisions for revegetating disturbed areas, documentation of agency consultation, copies of comments and recommendations on the plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments and recommendations are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

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

Article 415. The licensee shall monitor recreation use of the project area to determine whether existing recreation facilities are meeting recreation needs. Concurrent with the filing of FERC Form 80, required by Section 8 of the Commission's Regulations (18 CFR 8.11), the licensee shall file a report with the Commission on the monitoring results. This report, which shall be prepared in consultation with the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, and the National Park Service, shall include:

- (1) annual recreation use figures;
- (2) a discussion of the adequacy of the licensee's recreation facilities at the project site to meet recreation demand;
- (3) a description of the methodology used to collect all study data;
- (4) if there is a need for additional facilities, a recreation plan proposed by the licensee to accommodate recreation needs in the project area;
- (5) documentation of agency consultation and agency comments on the report after it has been prepared and provided to the agencies; and
- (6) specific descriptions of how the agencies' comments are accommodated by the report.

The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the report with the Commission. The Commission reserves the right to require changes to the report.

Article 416. The licensee shall implement the "Programmatic Agreement Among The Federal Energy Regulatory Commission, The Advisory Council On Historic Preservation, And The Michigan State Historic Preservation Officer, For Managing Historic Properties That May Be Affected By New And Subsequent Licenses Issuing To Wisconsin Electric Power Company For The Continued Operation And Maintenance Of Five Existing Hydroelectric Projects In The Upper Menominee River Basin, Michigan," executed on June 30, 1999, including but not limited to the Historic Resources Management Plan (HRMP) for the Project. In the event that the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved HRMP. The Commission reserves the authority to require changes to the HRMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the HRMP, 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 417. As described in section 4.4.1 of the Wilderness Shores Settlement Agreement (Agreement), filed May 15, 1997, the licensee shall establish a fund for the implementation of resource enhancement and adaptive management measures in the upper Menominee River Basin and its tributaries, upstream of river mile 81 on the Menominee River. On January 1 of each year, the licensee shall contribute the amount specified in section 4.4.1. of the Agreement.

Within 120 days of the effective date of the license, the licensee shall file for Commission approval a plan, as described in sections 4.4.1. and 4.4.3., describing the investment, funding rollover, and accounting procedures for the fund.

The licensee shall develop and file for Commission approval annual resource enhancement plans and implementation schedules as described in section 4.4.2 of the Agreement. The plan shall detail the specific enhancement activities to be undertaken by the licensee to enhance the natural resources of the upper Menominee River. The plan shall be developed in coordination with similar plans required in the licenses for the Big Quinnesec Project (FERC Project No. 1980), Way Dam Project (FERC Project No. 1759), Lower Paint Project (FERC Project No. 2072), Hemlock Falls Project (FERC Project No. 2074), Peavy Falls Project (FERC Project No. 11830), Michigamme Falls Project (FERC Project No. 2073), Twin Falls Project (FERC Project No. 11831), and Kingsford Project (FERC Project No. 2131).

The licensee shall include in the plan documentation of its consultation on the plan, copies of comments and recommendations on the completed plan, and specific descriptions of how any comments and recommendations are accommodated by the plan. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission may require changes to the plan. Upon Commission approval, the licensee shall implement the plan.

Article 418. Within one year of the effective date of the license, the licensee shall prepare and file for Commission approval a plan and schedule to identify flow release methods for addressing periodic low dissolved oxygen concentrations in the Way Dam tailrace occurring during low flow periods.

The licensee shall prepare the plan after consultation with the Michigan Department of Natural Resources, Michigan Department of Environmental Quality, and U.S. Fish and Wildlife Service. 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 may require changes to the plan. Upon Commission approval, the licensee shall implement the plan.

Article 419. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The 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) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 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 Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

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

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G 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 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.

(G) 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.

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

By the Commission. Commissioner Massey dissented with a separate statement attached.

(S E A L)


David P. Boergers,
Secretary.

Appendix A

Michigan Department of Environmental Quality
Certification Under Section 401 of the
Federal Clean Water Act

In the matter of: Wisconsin Electric Power Company
333 Everett Street
Milwaukee, WI 53203

This Certification covers the following hydroelectric power projects located on the Menominee River and its tributaries in Michigan:

Federal Energy Regulatory Commission (FERC) Project	FERC Number
Way Dam and Michigamme Reservoir	1759
Hemlock Falls	2074
Lower Paint Plant, Dam and Diversion Canal	2072
Peavy Falls Plant and Peavy Pond	1759
Michigamme Falls	2073
Twin Falls	1759
Kingsford	2131
Big Quinnesec Falls	1980

The Michigan Department of Environmental Quality (MDEQ) certifies that Way Dam and Michigamme Reservoir, Hemlock Falls, Lower Paint Plant, Dam and Diversion Canal, Peavy Falls and Peavy Pond, Michigamme Falls, Twin Falls, Kingsford, and Big Quinnesec Falls will comply with Section 401(a) of the Federal Clean Water Act and the Michigan Water Quality Standards, provided the conditions set forth in this Certification are met.

This Certification is based on the Wilderness Shores Settlement Agreement (WSSA) dated February 10, 1997, Wisconsin Electric Company's (WE) 401 Certification request letters dated October 1, 1997 and August 20, 1997, and other information contained in the official files of the MDEQ Surface Water Quality Division (SWQD) and the Michigan Department of Natural Resources (MDNR).

Certification Conditions:

1.0 Operation Requirements

1.1 WE shall maintain impoundment elevations in accordance with WSSA Paragraphs 3.1.1.4 and 3.1.1.5 (Michigamme Reservoir), 3.1.2.2 (Hemlock Falls Impoundment), 3.1.4.1 and 3.1.4.2 (Peavy Falls and Lower Paint Impoundments), 3.1.5.1 (Michigamme Falls Impoundment), 3.1.6.1 (Twin Falls Impoundment), 3.1.7.1 (Kingsford Impoundment), and 3.1.8.1 (Big Quinnesec Falls Impoundment).

1.2 WE shall operate the projects in accordance with WSSA Paragraphs 3.1.1.1 through 3.1.1.3, 3.1.1.6, and 3.1.1.8 (Way Dam), 3.1.2.1 (Hemlock Falls Dam), 3.1.3.1 and 3.1.3.2 (Lower Paint Dam), 3.1.4.3 (Peavy Falls Dam), 3.1.5.2 through 3.1.5.4 (Michigamme Falls Dam), 3.1.6.2 through 3.1.6.4 (Twin Falls Dam), 3.1.7.2 through 3.1.7.4 (Kingsford Dam), and 3.1.8.2 through 3.1.8.4 (Big Quinnesec Falls Dam). WE shall arrange for the re-regulation of the upstream peaking flows as stated in Paragraphs 3.1.9.1 through 3.1.9.4 and 3.1.9.6.

1.3 WE shall provide for compliance monitoring of the projects' operations including impoundment elevations and powerhouse discharges as stated in WSSA Paragraphs 3.1.1.7 (Way Dam and Michigamme Reservoir), 3.1.2.3 (Hemlock Falls Dam and Impoundment), 3.1.3.3 (Lower Paint Dam), 3.1.4.4 (Peavy Falls Dam and Impoundment), 3.1.5.5 and 3.1.5.6 (Michigamme Falls Dam and Impoundment), 3.1.6.5 and 3.1.6.6 (Twin Falls Dam and Impoundment), 3.1.7.5 and 3.1.7.6 (Kingsford Dam and Impoundment), and 3.1.8.5 and 3.1.8.6 (Big Quinnesec Falls Dam and Impoundment).

1.4 WE shall develop and implement an operations testing plan in accordance with WSSA Section 3.2.

1.5 WE shall develop and implement an impoundment drawdown plan which addresses all impoundment drawdown situations in accordance with WSSA Paragraphs 3.3.1 through 3.3.4.4.

2.0 Water Quality Limitations

2.1 WE shall not discharge water that exceeds the temperature and dissolved oxygen requirements specified in WSSA Paragraphs 4.1.2, 4.1.3, and 4.1.5.

2.2 In the event that any of the Water Quality Standards listed in WSSA Paragraphs 4.1.2, 4.1.3, and 4.1.5 are not met, WE shall follow the procedure listed in WSSA Paragraph 4.1.6.

3.0 Water Quality Monitoring and Reporting

3.1 WE shall monitor and report water quality in accordance with WSSA Paragraphs 4.1.4 and 4.1.7 through 4.1.14.

4.0 Woody Debris Transport and Mangement

4.1 WE shall provide for woody debris transport and management in accordance with WSSA Paragraph 4.5.1.

5.0 Erosion Control

5.1 WE shall develop and implement a plan to remediate stream and impoundment shoreline erosion sites caused by the operation of the projects in accordance with WSSA Paragraph 5.1.5.

6.0 Upstream Fish Passage

6.1 WE shall provide for upstream fish passage in accordance with WSSA Paragraphs 4.2.2 through 4.2.2.6.

7.0 Downstream Fish Protection and Passage

7.1 WE shall provide for downstream fish protection and passage in accordance with WSSA Paragraphs 4.3.1 through 4.3.5.

8.0 Natural Resources Damages and Penalties:

8.1 The state reserves the right to seek civil or criminal penalties and liabilities under applicable law.

9.0 Permits and Approvals:

9.1 Nothing herein shall relieve WE from the requirement to obtain any other necessary permits, licenses, or approvals from other federal or state departments or agencies.

10.0 The addresses or contact points for consultations, approvals, and submittals of plans and reports as referred to in this document are as follows:

MDEQ Chief, Surface Water Quality Division
 P.O. Box 30273
 Lansing, Michigan 48909

MDNR FERC Coordination Unit
 Fisheries Division
 P.O. Box 30028
 Lansing, Michigan 48909

Issued this 14th day of May 1998, by the MDEQ SWQD and shall expire 40 years after date of the issuance of a FERC license.

James Grant, Chief
Great Lakes and Environmental Assessment Section
Surface Water Quality Division
Michigan Department of Environmental Quality