

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 No. 2072-008

ORDER ISSUING NEW LICENSE

(Issued January 12, 2001)

Wisconsin Electric Power Company (Wisconsin Electric) has filed an application for subsequent license¹ pursuant to Sections 15 and 4(e) of the Federal Power Act (FPA),² for the continued operation and maintenance of the 100-kilowatt (kW) Lower Paint Project, located on the Paint River,³ in Iron County, Michigan. The project occupies federal lands.

Wisconsin Electric's application for Project No. 2072 is one of eight applications it filed to relicense eight hydropower projects in the Upper Menominee River Basin.⁴ The

¹Wisconsin Electric's application requests a subsequent license, which is a license for a project issued under Part I of the Federal Power Act (FPA) after the expiration of a minor license that is not subject to FPA Sections 14 and 15. See 18 CFR 16.2(d) (2000). However, the original license now in effect for the Lower Paint Project is a major license, and as such does not waive FPA Sections 14 and 15 of the FPA. See Wisconsin Michigan Power Co., 10 FPC 1558, 1560 (1951).

²16 U.S.C. §§ 808 and 797(e).

³The Paint River, in a reach including the project site, is a navigable waterway of the United States. 10 FPC at 1559.

⁴Wisconsin Electric also filed relicense applications for the Big Quinnesec Project No. 1980, Way Dam and Michigamme Reservoir Project No. 1759, Peavy Falls Project No. 11830, Twin Falls Project No. 11831, Kingsford Project No. 2131, Hemlock Falls Project No. 2074, and Michigamme Falls Project No. 2073. The applications were filed
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company has also filed an application to surrender the license of a ninth project.⁵ We are concurrently issuing eight orders granting new licenses for the eight Upper Menominee Projects,⁶ and a ninth order proposing to issue a nonpower license for the Sturgeon Project.⁷

BACKGROUND

On May 15, 1997, Wisconsin Electric submitted a "Wilderness Shore Settlement Agreement" (Agreement) addressing issues pertaining to its Upper Menominee River Basin Projects.⁸ With its relicense applications filed on October 1, 1999, Wisconsin Electric submitted a collaboratively-prepared draft environmental assessment (APEA),⁹

⁴(...continued)

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 27, 1996.

⁵Wisconsin Electric filed its surrender application for the Sturgeon Project No. 2471 on October 1, 1999.

⁶See Wisconsin Electric Company, 94 FERC ¶¶ 61,___; 61, ___; 61,___; 61,___; 61,___; 61,___; 61,___, and 61,___.

The Lower Paint Project is part of a unit of development consisting of the Way Dam and Michigamme Reservoir Project No. 1759, Peavy Falls Project No. 11830, Twin Falls Project No. 11831, Michigamme Falls Project No. 2073, and Hemlock Falls Project No. 2074. See Wisconsin Michigan Power Co., 5 FPC 590 (1946); and Wisconsin Michigan Power Co., 52 FPC 1201, 1204 (1974). Because we are today issuing for these other projects new major licenses, to which Sections 14 and 15 of the FPA apply, we will also issue a major license for the Lower Paint Project to ensure that the entire unit of development remains subject to Sections 14 and 15. See Kennebec Water District, 88 FERC ¶ 61,117 n. 30 (1999).

⁷See Wisconsin Electric Company, 94 FERC ¶ 61,___.

⁸The Agreement was executed on February 10, 1997.

⁹The 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.

and a number of resource management, mitigation, and enhancement plans required by the Agreement.

Parties to the Agreement are: Wisconsin Electric, the Wisconsin Department of Natural Resources (Wisconsin DNR), Wisconsin Department of Administration, Michigan Department of Natural Resources (Michigan DNR), Michigan Department of Environmental Quality (Michigan DEQ), Michigan Attorney General, U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), River Alliance of Wisconsin, and Michigan Hydro Relicensing Coalition. The Agreement sets forth, for each of the eight projects, proposed changes to basic operational modes, minimum flow releases, rates of changes in flow releases (ramping rates), and reservoir elevations. In addition, the Agreement contains proposals for water quality maintenance, upstream and downstream fish passage, land use management, fish and wildlife protection and enhancement, woody debris management, and recreation. These measures are described in detail in the order on the Agreement and issuing a new license for the Way Dam and Michigamme Reservoir Project No. 1759 (lead order), one of the eight relicensing orders issued today for the Upper Menominee projects.¹⁰

Notice was issued of the Agreement and of each license application. Timely motions to intervene in the multi-project proceeding were filed by FWS; the River Alliance of Wisconsin; 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.¹¹ The intervenors support the Agreement and the issuance of the eight relicensings consistent with its terms.¹²

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

¹⁰94 FERC ¶ 61, . Cites herein to the lead order will refer to the pertinent section of the order, rather than to a specific page number.

¹¹The 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).

¹²Certain local residents and organizations filed comments in the Sturgeon Project surrender proceeding opposing the proposal to remove the Sturgeon Project dam. Those concerns are addressed in the Sturgeon Project order also issued today.

surrender (including dam removal) for the Sturgeon Project, as proposed in the Wisconsin Electric's applications and the Agreement.¹³ 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 nonpower license for the ninth project.

PROJECT DESCRIPTION

The Lower Paint Project was originally licensed in 1951 to Wisconsin Electric's predecessor, Wisconsin Michigan Power Company.¹⁴ The license expires at the end of December 31, 2001. The project occupies federal lands.¹⁵

The Lower Paint Project is on the Paint River, about 6 miles upstream from the confluence of the Paint and Brule Rivers. The project consists of: a 128-foot-long, 6-foot-high earth embankments; a 316-foot-long, 17-foot-high right earth embankment; a 101-foot-long spillway with three taintor gates; another spillway, 150 feet long; a 340-acre reservoir; a powerhouse integral to the dam and containing a single generating unit rated at 100 kW; and a 1.4-mile-long, 89-foot-wide diversion canal.¹⁶ Wisconsin Electric plans to continue using the electricity generated by the project for its customers.

As currently licensed, the project releases an 85-cubic-feet-per-second (cfs) minimum flow downstream of the Lower Paint Project either through the project's powerhouse or through two of the projects taintor gates located on the spillway. Flow in excess of the minimum flow is diverted from the Lower Paint impoundment through the project's remaining taintor gate and flows into the project's 1.4-mile-long diversion canal and carried to the Peavy Falls Project's reservoir on the Michigamme River. (The Peavy

¹³On the same day, Commission staff issued an EA evaluating the impacts of decommissioning the Sturgeon Project No. 2471.

¹⁴10 FPC 1558.

¹⁵*Id.* at 1561. The federal lands are two unsurveyed islands within the project's reservoir, one located at a point where the line between sections 2 and 11, T42N, R32W, intersects the Paint River, and the other within NE1/4 of Section 33, T43N, R3W. They are managed by the U.S. Bureau of Land Management (BLM), and the original license imposed an annual charge of \$14 for their use, 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)..

¹⁶A more detailed project description is contained in ordering paragraph B(2).

Falls Project, as does the Way Dam and Michigamme Reservoir Project, functions as a seasonal storage reservoir for peaking operations at the Upper Menominee River Projects.)

The project as proposed under the Agreement will release much higher minimum flows into the Paint River. The current year-round 85 cfs minimum flow will increase to between 175 and 350 cfs, depending on the season. The increased flow will significantly increase available aquatic habitat in the Paint River,¹⁷ and during the summer months will serve to enhance white-water recreation at Horseshoe Rapids, approximately one mile downstream from the project.¹⁸

Currently, there is one public recreation area at the project, which is located immediately above the Lower Paint Dam. Existing facilities include three campsites and a graveled boat launch. Under the Agreement a shoreline fishing area is planned for development near the project's diversion canal. The Agreement also provides for maintaining a canoe portage route with put-in and take-out locations at the Lower Paint Project.

¹⁷See the EA, at p. 87. Wisconsin Electric proposes to construct an additional powerhouse containing two, 100-kW generating units, which would use the project's increase in minimum flows to generate electricity. However, as noted in the EA, p. 112, n. 20, Wisconsin Electric has only begun evaluating the feasibility of installing the additional generating capacity at the project. Moreover, the application states, at p. A-1, that the type of generating units has not yet been selected and, at p. A-2, that "[a] plan to pass minimum flows that incorporates the use of the new powerhouse and generating unit will be developed at a later date." The proposal for increasing capacity is too speculative and general to support findings that the increased capacity is best adapted to a comprehensive plan for development of the waterway in question, as required by Section 10(a)(1) of the FPA. However, Wisconsin Electric may file an application to amend the license issued in this order when it completes its proposal for increased capacity.

¹⁸See the Agreement, Appendix 8, Section 8.4 and the Preliminary Recreation Plan contained in the "Proposed Post License Compliance Plans," filed with the applications and dated September 29, 1999, at p. 13.

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),¹⁹ 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),²⁰ 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.²¹ 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),²² the Commission cannot issue a license for a hydropower project within or affecting a coastal 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.²³

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

¹⁹33 U.S.C. §1341(a)(1).

²⁰33 U.S.C. § 1341(d).

²¹As 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.

²²16 U.S.C. § 1456(c)(3)(A).

²³The CZMA certification provisions apply to coastal zones in the Great Lakes Region. See CZMA Section 304(1), 16 U.S.C. § 1453(1).

license issued herein is consistent with the Agreement, Project No. 2072 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.²⁴ 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)²⁵ 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 federally-listed threatened and endangered species.²⁶ The relicense issued by this order for Project No. 2072 includes such conditions.

SECTION 18 FISHWAY PRESCRIPTIONS

Section 18 of the FPA²⁷ 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

²⁴16 U.S.C. § 470s.

²⁵16 U.S.C. § 1536(a).

²⁶See letter dated February 2, 2000, from Interior's Office of the Secretary to the Commission Secretary, filed February 3, 2000.

²⁷16 U.S.C. § 811.

Commission to reserve in the Project No. 2072 license Interior's authority to prescribe fishways.²⁸ Consistent with our policy,²⁹ we do so in license Article 409.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j)(1) of the FPA³⁰ 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 Act³¹ 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 Menominee River Basin."³² 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).³³ However, the license orders in any event adopt those provisions of the Agreement that are within our jurisdiction.

²⁸See Agreement, section 4.2.2.7.

²⁹See *Wisconsin Public Service Corp.*, 62 FERC ¶ 61,095 (1993), aff'd, *Wisconsin Public Corp. v. FERC*, 32 F.3d 1165 (7th Cir. 1994).

³⁰16 U.S.C. § 803(j)(1).

³¹16 U.S.C. § 661 et seq.

³²See letter, n. 26, supra.

³³See 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.

COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA ³⁴ 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, the State of Michigan filed 55 comprehensive plans. Of these plans, we identified and reviewed 8 plans relevant to the Upper Menominee River Basin Projects. No conflicts were found.³⁵

APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,³⁶ 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 provide efficient and reliable electric service; (E) need for power; (F) transmission service; (G) cost effectiveness of plans; and (H) actions affecting the public.³⁷

³⁴16 U.S.C. § 803(a)(2)(A).

³⁵Building 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.

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

³⁷In Order No. 513, the Commission's relicensing rulemaking, the Commission exempted licensees of minor projects (installed capacity of 1.5 megawatts or less, see 18 CFR § 4.30(b)(17)) whose licenses waive Sections 14 and 15 of the FPA, from the information requirements in 18 CFR § 16.10 of the Commission's relicensing regulations, which correspond to the information requirements of Sections 10 and 15 of the FPA. As noted, even though the Lower Paint Project has an installed capacity of only 100 kW, the Commission issued a major original license for the project, which did not waive Sections 14 and 15 of the FPA. See 10 FPC at p.1560. Accordingly, we have reviewed the application under the information requirements of Section 16.10.

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 Lower Paint 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 FPA³⁸ 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.

As explained in the lead order,³⁹ the measures contained in the Agreement that are within the Commission's jurisdiction will protect and enhance the projects' fish, wildlife, and aquatic resources. 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 debris plan. We are modifying the woody debris plan to require Wisconsin Electric to

³⁸16 U.S.C. §§ 797(e) and 803(a)(1).

³⁹Lead order, Discussion section.

submit for our approval any proposal prepared in consultation with the agencies to place fish habitat structures in the project impoundment. 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 are modifying the bald eagle protection measures to include a provision of the Agreement⁴⁰ 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. We have reviewed the provisions of these plans as modified, and find them to be reasonable and appropriate.

For the reasons discussed in the EA and the lead order, we conclude that the Lower Paint Project, conditioned as discussed above,⁴¹ will satisfy the comprehensive development/public interest standards of Sections 4(e) and 10(a)(1) of the FPA.

In determining whether a proposed project will be in the public interest, the Commission considers the economic benefits of project power.⁴² 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. The estimated average cost of power from these projects is 21.95 mills per kWh, compared to an estimated average cost of alternative power of 27.25 mills per kWh.

LICENSE TERM

Section 15(e) of the FPA specifies that any new license issued shall be for a term that we determine to be in the public interest, but the term may not be less than 30 years or more than 50 years. As discussed in the lead order,⁴³ we will coordinate the terms of the Upper Menominee projects that we relicense today with the term of the license for the

⁴⁰Agreement, section 4.6.3.

⁴¹As explained in the lead order (Discussion section), we are not adopting the dispute resolution section (9.3) of the Agreement as a license term.

⁴²See lead order, Comprehensive Development section.

⁴³See lead order, License Term section.

Brule Project No. 2431.⁴⁴ Accordingly, the term of this license will be for 38 years and 7 months. The license will be effective January 1, 2002, and will expire at the end of July 31, 2040.

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.

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 Lower Paint Project No. 2072, with the conditions set forth below, will be best adapted to the comprehensive development of the Paint River for beneficial public uses.

The Commission orders:

(A) This license is issued to Wisconsin Electric Power Company (licensee), for a period of 38 years and 7 months, to operate and maintain the Lower Paint Project No. 2072. The license will be 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	2072-1008	Lower Paint Project Boundary

⁴⁴72 FERC ¶ 62,190 (1995).

(2) The project works consisting of: (a) a 128-foot-long, 6-foot-high left earth embankment; (b) a 316-foot-long, 17-foot-high right earth embankment; (c) a 101-foot-long concrete gated spillway with three 27-foot-long by 15-foot-high taintor gates; (d) a 150-foot-long, 25-foot-high uncontrolled concrete gravity spillway; (e) an impoundment with a 340-acre surface area at a normal full pool elevation of 1,285.5 feet National Geodetic Vertical Datum; (f) a 4-mile-long, 89-foot-wide, 1,700 cubic feet per second capacity diversion canal; (g) a powerhouse containing a single generating unit rated at 100 kW; and 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. 2072-</u>	<u>Showing</u>
1	1001	General Layout
2	1002	Diversion Canal
3	1003	Details of Uncontrolled Spillway
4	1004	Right Dike Abutment Details
5	1005	Dike Details
6	1006	Canal Sections and Separation Wall
7	1007	Canal Bridge Details

(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) Lower Paint Operation Compliance Plan, Appendix 3 to relicense application, filed October 1, 1999;

(2) Lower Paint Reservoir Drawdown Plan, Appendix 4 to relicense application, filed October 1, 1999;

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

(4) Lower Paint 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 purposes of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 100 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW will not be assessed an annual charge.

(b) Recompensing the United States for the use, occupancy and enjoyment of 7 acres of its lands, other than for transmission line right-of-way.

Article 202. 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 203. 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 submit 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 204. 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 205. 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 206. 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 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 release from the Lower Paint dam a minimum flow, as measured at USGS Gauge No. 04062000 located downstream of the Lower Paint Project, of 350 cubic feet per second (cfs) from April 1 through May 15, 300 cfs from May 16 through June 5, 275 cfs from June 16 through June 30, 250 cfs July 1 through November 30, and 175 cfs from December 1 through March 31 for the protection and enhancement of aquatic resources in the Paint River downstream of the Lower Paint Project (see Wilderness Shores Settlement Agreement, section 3.1.3.1., filed May 15, 1997).

These 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 403. The licensee shall implement the project operations compliance plan approved in this order, approved in ordering paragraph (D), including but not limited to the following measures:

(1) maintenance of the telemetered USGS Gage No. 04062000 located downstream of the Lower Paint Project.

(2) maintenance of an operations log that shall consist of hourly recordings of: a) unit discharge; b) spillway discharge; and c) 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 404. 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 Lower Paint Project with the operations of the Hemlock Falls Project (FERC Project No. 2074), Way Project (FERC Project No. 1759), 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 405. The licensee shall conduct any drawdowns of Paint River Pond beyond normal operating limits in accordance with the provisions of the reservoir drawdown plan approved in ordering paragraph (D).

Article 406. 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 Paint River, as measured immediately downstream of Lower Paint Dam, by more than 5°F above the water temperature measured upstream of Paint River Pond impoundment.

Article 407. 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 406, 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 Paint River Pond 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 Paint River Pond 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 Paint River Pond may be pooled with fish from the Michigamme Reservoir, Michigamme Falls impoundment, Hemlock Falls impoundment, and Peavy 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 408. 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 Paint River Pond. 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 409. 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 410. 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 411. Except as provided below, the licensee shall manage project lands (see Wilderness Shores Settlement Agreement, section 5.1.4., filed May 15, 1997 (Agreement)) 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 the licensee shall reimburse the Michigan DNR up to \$1,000 per year (adjusting annually for changes in the Consumer Price Index) for flight time over the Lower Paint Project to identify bald eagle nest locations and collect data (see Agreement, section 4.6.3., filed May 15, 1997).

Article 412. 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 Lower Paint Project, as specified in Section 6.1. of the Wilderness Shores Settlement Agreement:

- (1) maintain Recreation Site 22 as a gravel launch ramp, with future launch improvements, if deemed necessary;
- (2) develop shoreline fishing areas either above or below the Lower Paint Diversion;

- (3) maintain a canoe portage route with put-in and take-out facilities;
- (4) develop a put-in and primitive camping site at Horse-race Rapids, but shall not be responsible for the operation and maintenance of the facilities; maintain a take-out location at the existing Horse-race Rapids site with a vault toilet; and,
- (5) maintain the three primitive campsites at Recreation Site 22.

The plan shall include, for the Lower Paint Project, a construction schedule, costs for the construction and yearly maintenance of each facility, appropriate soil erosion and sediment control and 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.

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

Article 413. 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 414. 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 415. 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), 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 416. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(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.

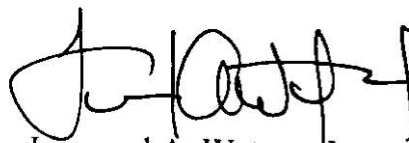
(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(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.

(S E A L)



Linwood A. Watson, Jr.,
Acting 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 Management

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