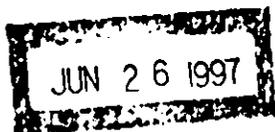


79 FERC ¶ 62,218

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wisconsin Public Service Corporation) Project No. 2560-001

ORDER ISSUING SUBSEQUENT LICENSE
(Minor Project)



INTRODUCTION

On December 19, 1991, Wisconsin Public Service Corporation (Public Service or licensee) filed an application under Part I of the Federal Power Act (FPA) for a subsequent license to continue to operate and maintain the existing 1.4-megawatt (MW) Potato Rapids Hydroelectric Project, located on the Peshtigo River, in Marinette County, Wisconsin. The project occupies 2 acres of U.S. lands administered by the Bureau of Land Management. 1/ The project as proposed by the licensee would produce about 5.4 gigawatthours (GWh) of electricity annually. The current license for this project expired on December 31, 1993. 2/ Since then, Public Service has operated the Potato Rapids Project under the same terms and conditions as the current license.

Concurrently with this order, I am issuing an Order Granting Applications for New License (Master Order), which discusses issues common to Public Service's six hydroelectric projects on the Peshtigo River. That order is incorporated by reference herein. The following discussion pertains to the Potato Rapids Hydroelectric Project.

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- 1/ The Peshtigo River is a navigable river (55 F.P.C. 78 (1976)) and the project occupies U.S. lands. Section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), therefore requires the project to be licensed.
 - 2/ The Commission issued the original license for the Potato Rapids Project in 1968 (40 FPC 343).

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Project No. 2560-001

-2-

BACKGROUND

The Commission issued a public notice on August 28, 1992, that the application was accepted and soliciting motions to intervene. Three entities filed motions to intervene on the following dates: U.S. Department of the Interior (Interior), November 3, 1992; Wisconsin Department of Natural Resources (Wisconsin DNR), September 11, 1992; and River Alliance of Wisconsin (River Alliance), August 19, 1996. Interior, Wisconsin DNR, and River Alliance did not provide specific issues for consideration as part of their motions to intervene. No agency, organization, or individual filed a motion to intervene in opposition to the project.

The Commission issued a public notice on August 14, 1995, indicating that the application was ready for environmental analysis. Two fish and wildlife agencies provided comments and recommended terms and conditions pursuant to Section 10(j) of the FPA: Interior on October 6, 1995; and Wisconsin DNR on October 10, 1995.

On June 27, 1996, the Commission issued a draft multiple-project Environmental Impact Statement (EIS) for six projects on the Peshtigo River--Caldron Falls Project No. 2525, High Falls Project, No. 2595; Johnson Falls Project, No. 2522; Sandstone Rapids Project, No. 2546; Potato Rapids Project, No. 2560; and Peshtigo Project, No. 2581. Commission staff addressed all comments on the draft EIS in the final EIS (FEIS), issued on March 28, 1997.

I have fully considered the motions and comments received in this proceeding in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

The Potato Rapids Project consists of a dam and spillway, a reservoir, a powerhouse, a substation, and appurtenant

Project No. 2560-001

-3-

facilities. At the normal pool elevation of 621.5 feet NGVD 3/, the reservoir surface area is 350 acres, and the storage volume is 2,800 acre-feet. Public Service owns 749 acres of land surrounding the reservoir and powerhouse areas. Public Service operates the project in a run-of-river mode and historically produced about 5.7 GWh of electricity annually. A more detailed project description can be found in ordering paragraph B(2):

APPLICANT'S PLANS AND CAPABILITIES

In accordance with Section 10(a)(2)(C) of the FPA, 4/ staff evaluated Public Service's record as a licensee in the areas of conservation and compliance.

1. Conservation Efforts

Public Service is making a good faith effort to conserve electric energy by: (1) implementing least cost plans that meet the requirements of the Public Service Commission of Wisconsin; (2) conducting on-site energy audit services; and (3) offering a financial assistance program that includes a combination of moderate interest loans, rebates, and shared savings. This efficiency program is augmented by a rate program that has all customers over 200 kilowatts (kW) on time-of-use/demand rates, and it also offers these rates to 90 percent of the remaining customers.

2. Compliance Record

Staff reviewed Public Service's compliance with the terms and conditions of the existing license. They found that Public Service's overall record of making timely filings and compliance with its license is satisfactory.

Public Service has, or can acquire, the resources and expertise necessary to carry out and comply with all articles,

3/ All elevations are referenced to National Geodetic Vertical Datum (NGVD).

4/ 16 U.S.C. §§ 803(a)(2)(C).

Project No. 2560-001

-4-

terms, and conditions of a new license.

COASTAL ZONE MANAGEMENT ACT

Under Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the CZMA agency concurs with the applicant's certification of consistency with the state's CZMA program. Marinette County is a state-designated coastal zone under Wisconsin's Coastal Management Program. The Wisconsin Department of Administration (Wisconsin DOA) is the state agency responsible for administering the state's CZMA program. On October 1, 1993, Public Service requested review of the Peshtigo River projects for certification under the state's program. By letter dated October 19, 1993, the Wisconsin DOA waived the review of Public Service's application for consistency with the state's CZMA program.

WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act (CWA), 5/ the Commission may not issue a license for a hydroelectric project unless either the licensee obtains water quality certification from the certifying agency of the state in which the project discharge will originate, or the certifying agency waives certification. Section 401(a)(1) states that certification is deemed waived if the certifying agency fails to act on a water quality certification request within a reasonable period of time, not to exceed one year. 6/ Section 401(d) of the CWA 7/ provides that state certifications shall set forth conditions necessary to

5/ 33 U.S.C. § 1341(a)(1).

6/ Section 401(a)(1) requires an applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters to obtain from the state in which the discharge originates certification that any such discharge will comply with applicable water quality standards.

7/ 33 U.S.C § 1341(d).

Project No. 2560-001

-5-

ensure that licensees comply with specific portions of the CWA and with appropriate requirements of state law.

Public Service, on July 22, 1991, requested water quality certification for the Potato Rapids Project from Wisconsin DNR. On May 13, 1992, Wisconsin DNR waived issuance of the Section 401 water quality certification.

SECTION 18 OF THE FPA - FISHWAY PRESCRIPTION

Section 18 of the FPA 8/ authorizes the Secretary of the Interior or the Secretary of Commerce to prescribe fishways at Commission-licensed projects. 9/

In its letter dated October 6, 1995, Interior requested that the Commission reserve its authority to prescribe the construction, operation, and maintenance of fishways at the Potato Rapids Project pursuant to Section 18 of the FPA.

The Commission recognizes that future fish passage needs cannot always be determined at the time of project licensing. The Commission's practice has been to include a license article that reserves the Secretary of the Interior's authority to prescribe facilities for fish passage. 10/ Therefore, consistent with Commission practice, Article 407 of this license reserves the Commission's authority to require the licensee to construct, operate, and maintain such fishways as may be prescribed by the

8/ 16 U.S.C. § 811.

9/ Section 18 of the FPA states: "The Commission shall require the construction, maintenance, and operation by a licensee at its own expense...such fishways as may be prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate."

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

Project No. 2560-001

-6-

Secretary of the Interior pursuant to Section 18 of the FPA.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA 11/ requires the Commission, when issuing a license, to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project. Wisconsin DNR and Interior submitted a total of 38 recommendations of which 16 are subject to the provisions of Section 10(j). 12/

The new license issued herein contains conditions consistent with the following 10 recommendations submitted by Wisconsin DNR and Interior that are subject to the provisions of Section 10(j):

- (1) operate the project in a run-of-river mode (Article 401);
- (2) maintain a reservoir surface elevation between 621.0 and 621.15 feet NGVD as measured immediately upstream of the project dam (Article 401);
- (3) install a staff gage in the project spillway channel (Article 404);
- (4) implement a gaging and compliance plan (except for definition of run-of-river compliance which is discussed below) (Article 403);
- (5) provide flow continuation after plant shutdown (Article 401);

11/ 16 U.S.C. § 803(j)(1).

12/ Twenty-two of the recommendations are outside the scope of Section 10(j); these were instead considered under Section 10(a)(1), pursuant to which the Commission considers all aspects of the public interest.

Project No. 2560-001

-7-

(6) do not draw down the project reservoir during fall, winter, or spring to protect the Blanding's turtle and its habitat (Article 405);

(7) sluice downstream all large woody debris through the project (Article 408);

(8) protect bald eagles and their nest trees from human disturbance (Article 409);

(9) address timber management impacts on threatened and endangered species (Article 409); and

(10) establish a 200-foot-wide zone along riparian areas and do not allow timber harvesting in this zone (Article 409).

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

In the draft EIS, staff determined that the following six agency recommendations were potentially inconsistent with the FPA or other applicable law:

(1) determine run-of-river compliance by allowing no more than \pm 5 percent difference between inflow and outflow;

(2) release a minimum flow of 95 cubic feet per second (cfs) into the spillway channel year-round;

(3) do not allow changes in spillway flows to exceed 10 percent in a 24-hour period;

(4) maintain and monitor for state water quality standards;

Project No. 2560-001

-8-

(5) develop and implement a fish protection plan (except for payments for lost fish, which are considered under Section 10(a) below); and

(6) fund and implement a program for monitoring and controlling purple loosestrife, Eurasian milfoil, and zebra mussels.

In response to these preliminary determinations, Wisconsin DNR and Interior filed comment letters on the draft EIS. On September 4, 1996, representatives from Wisconsin DNR, and the U.S. Fish and Wildlife Service (FWS) met with Commission staff to attempt to resolve the aforementioned inconsistencies. Public Service was also present at the meeting.

During the Section 10(j) meeting, Commission staff and the agencies agreed that water quality monitoring at the Potato Rapids Project would occur once every 5 years. The agencies also agreed at the meeting that Public Service would cooperate with the agencies in controlling purple loosestrife, Eurasian milfoil, and zebra mussels.

Pursuant to Section 10(j), Commission staff determined that the recommendations for the agencies' definition of run-of-river operation, a minimum flow release to the spillway channel, ramping rates in the spillway channel, and a fish protection plan are not justified for this project. The following paragraphs briefly explain why I am not adopting these recommendations. As discussed in the Master Order, I conclude that the conditions I am imposing regarding these issues will provide adequate protection and enhancement of fish and wildlife resources.

In the FEIS, staff does not recommend that run-of-river operation be defined as no more than a 5 percent difference between inflows and outflows, because there are difficulties when comparing measured or calculated inflows to measured or calculated outflows. ^{13/} The 5 percent difference recommended by the agencies is too narrow of a range for practical operation. Run-of-river operation that serves the purpose of staff's

^{13/} See FEIS at section 4.2.2.2.

Project No. 2560-001

-9-

recommendation will still be achieved with greater differences between measured inflow and outflow from a project. I concur with staff's determination in the FEIS, and find that Wisconsin DNR's and Interior's recommendation is inconsistent with the provisions of Sections 10(a) and 4(e) of the FPA.

In the FEIS, staff does not recommend a year-round minimum flow release of 95 cfs into the spillway channel. Instead, staff recommends, and I am requiring, a minimum flow release of 95 cfs from April 15 through May 31, and a minimum flow release of 35 cfs for the remainder of the year. 14/ I concur with staff's determination that the required flow releases adequately protect walleye spawning at a cost of about 40 percent less than the agencies' recommended year-round flow of 95 cfs. Therefore, I find that Wisconsin DNR's and Interior's recommendation is inconsistent with the provisions of Sections 10(a) and 4(e) of the FPA.

In the FEIS, staff does not recommend limiting changes in flow releases to the spillway channel to no more than 10 percent per 24 hours. Instead, staff recommends, and I am requiring, a maximum flow reduction rate of 50 percent per 24 hours for down-ramping only. 15/ I concur with staff's determination in the FEIS and find that Wisconsin DNR's and Interior's recommendation is inconsistent with the provisions of Sections 10(a) and 4(e) of the FPA.

In the FEIS, staff found no evidence suggesting that entrainment mortality is causing adverse effects on the fish populations of the project waters. 16/ I concur with staff's determination in the FEIS, and find that Wisconsin DNR's and Interior's recommendation for a fish protection plan is inconsistent with the provisions of Section 10(a) and 4(e) of the FPA. Since entrainment mortality is not having a significant adverse effect on the fish resources at the Potato Rapids

14/ See FEIS at sections 4.2.3.3. and 5.6.6.1.

15/ See FEIS at sections 4.2.3.4 and 5.6.6.2.

16/ See FEIS at section 4.2.3.5.

Project No. 2560-001

-10-

Project, I find that there is no demonstrable need to install costly fish exclusion systems.

The following 22 recommendations made by Wisconsin DNR and Interior are outside the scope of Section 10(j) in that they involve studies that could have been performed prior to licensing, or do not otherwise qualify as measures to protect, mitigate damages to, or enhance fish and wildlife: 17/

- (1) coordinate with agencies on reservoir drawdowns;
- (2) pay an amount annually to Wisconsin DNR for the value of fish lost to entrainment mortality;
- (3) develop an upstream fish passage plan;
- (4) include a long-term fish and wildlife protection reopener article;
- (5) reserve Section 18 authority;
- (6) finalize existing comprehensive land management plan (CLMP);
- (7) provide for public use of project lands and consult with agencies about wildlife management;
- (8) keep all project lands within the project boundary;
- (9) continue operation and maintenance of existing recreation sites;
- (10) make project tailwater accessible and provide at least one barrier-free access site on the reservoir;

17/ See 18 C.F.R. § 4.30(b)(9)(ii) (1994), and Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters, 56 Fed. Reg. 23,108 (May 20, 1991), III FERC Statutes and Regulations 30,921 (May 8, 1991) (Order No. 533) at pp. 31, 108-10.

Project No. 2560-001

-11-

- (11) improve canoe portage;
- (12) develop a designated canoe route;
- (13) provide and maintain rest room facilities at highly used sites;
- (14) install and maintain trash receptacles at each recreation site;
- (15) complete an intensive recreation use survey every five years;
- (16) implement measures recommended by resource agencies and local entities to protect and enhance recreational use of fish and wildlife;
- (17) designate a parking space for handicapped use only at the powerhouse recreation site;
- (18) install signage on State Highway 64 to direct people to the powerhouse recreation site;
- (19) develop a day-use picnic area on the upper end of the project reservoir;
- (20) develop a wetland interpretive display kiosk;
- (21) include a license article requiring compliance with Chapters 30 and 31 of the Wisconsin Statutes; and
- (22) establish a project retirement fund.

The following conclusions were reached with respect to the issues considered under Section 10(a)(1).

- (1) Article 405 requires Public Service to develop a drawdown plan that includes measures to coordinate with the agencies on reservoir drawdowns.
- (2) I am not requiring Public Service to make annual payments to Wisconsin DNR to compensate for the value of

Project No. 2560-001

-12-

fish lost through entrainment and turbine mortality, as discussed in the Master Order.

(3) I am not requiring Public Service to develop an upstream fish passage plan, as discussed in the Master Order. Any future request for fish passage by Wisconsin DNR, including supporting documentation, should be submitted to the Commission for consideration under the provisions provided for in Article 11 of Standard Form L-18 attached to this license. 18/

(4) Article 11 of Standard Form L-18 attached to this license provides a reopener for long-term fish and wildlife protection.

(5) Article 407 reserves Interior's Section 18 authority.

(6) Article 409 requires Public Service to develop a comprehensive land and wildlife management plan (CLWMP) that includes the existing CLMP, but does not include Wisconsin DNR's recommendation for full-time staff or comprehensive annual surveys, because the cost of these measures is not commensurate with their benefits.

(7) Article 409 requires Public Service to develop a CLWMP that provides for public use of project lands and consultation with agencies about wildlife management.

(8) Public Service must file for Commission approval before it can remove from the project boundary any public lands that are not covered by the "minor conveyances" provisions of Article 413. The filing must include copies of agency consultation; therefore, I am not including a separate license article requiring Public Service to keep all lands within the project boundary and consult with the agencies on any proposed changes.

18/ Wisconsin DNR may also request fish passage through the Secretary of Interior's Section 18 reservation of authority, provided in Article 407.

(9) Article 410 requires Public Service to develop a recreation plan that includes continued operation and maintenance of the existing recreation sites.

(10) The tailwater area at the Potato Rapids Project is currently accessible to the public and includes barrier-free fishing access on the reservoir. Article 410 requires Public Service to continue to maintain these existing recreation sites.

(11) Article 410 requires Public Service to maintain the existing canoe portage.

(12) Article 410 requires Public Service to develop a canoe route along the Peshtigo River.

(13) Article 410 requires Public Service to provide a public toilet at the tailwater recreation site, during the summer months.

(14) I am only requiring trash receptacles at highly used sites. Other sites can be maintained using a pack-it-in and pack-it-out approach.

(15) Article 411 requires Public Service to complete a recreation use survey in consultation with the resource agencies, as part of the Commission's Form No. 80 report.

(16) Article 410 requires Public Service to implement specific recreation measures that have been recommended by resource agencies and local entities.

(17) Article 410 requires Public Service to designate a parking space for handicapped use only at the powerhouse recreation site.

(18) Article 410 requires Public Service to install signage on State Highway 64 to direct people to the tailwater/powerhouse recreation site.

(19) I am not requiring the development of a day-use picnic area on the upper end of the project reservoir, because

Project No. 2560-001

- 14 -

there is no evidence of current need for an additional picnic area.

(20) Article 410 requires Public Service to recommended procedures for updating and enhancing public recreation information, including interpretive or educational information.

(21) I am not requiring a license article for project compliance with Chapters 30 and 31 of the Wisconsin Statutes as the Commission's dam safety and construction rules are preemptive at licensed projects.

(22) I am not requiring Public Service to establish a retirement trust fund; however, Article 203 requires Public Service to serve a copy of any transfer application on the Wisconsin DNR and FWS, as discussed in the Master Order.

COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. 19/ Of the comprehensive plans filed with the Commission, the Commission staff identified nine that are relevant to the Potato Rapids Project. 20/ Staff found no

19/ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1995).

20/ National Forest Land and Resource Management Plan, Forest Service, 1986; Upper Green Bay Basin Water Quality Management Plan, Wisconsin Department of Natural Resources, 1993; Water Quality Modeling of the Peshtigo River for Wasteload Allocation Development, Wisconsin Department of Natural Resources, 1986; Reverification of the Peshtigo River Wasteload Allocation, Wisconsin Department of Natural Resources, 1989; State Comprehensive Outdoor Recreation Plan, 1985 and 1991, Wisconsin Department of Natural Resources; Wisconsin Water Quality: Report to Congress, 1986

Project No. 2560-001

-15-

inconsistencies.

COMPREHENSIVE DEVELOPMENT

In making the comprehensive development determinations under Sections 4(e) and 10(a)(1) of the FPA, the Commission considers the project both with Public Service's proposed enhancement measures and with the Commission staff's recommendations. Based on current economic conditions, without future escalation or inflation, the Potato Rapids Project, if licensed as Public Service proposes, would produce an average of 5.4 GWh of energy, at an annual cost of about \$29,400 (5.49 mills/kWh) more than currently available alternative power. ^{21/} If licensed in accordance with the conditions adopted herein, the project would produce an average 5.3 GWh of energy at an annual cost of \$46,200 (8.63 mills/kWh) more than currently available alternative power.

The FEIS analyzes the effects associated with the issuance of a new license for the Potato Rapids Project. The FEIS recommends a variety of measures to protect and enhance the environmental resources, which I adopt, as discussed herein. Staff's recommended enhancement measures were developed after the consideration of the license terms and conditions submitted by Interior and Wisconsin DNR.

Based on review and evaluation of the project as proposed by the licensee, and with the additional enhancement measures I am requiring, I conclude that operating and maintaining the project

and 1992, Wisconsin Department of Natural Resources; North American Waterfowl Plan, 1986, Interior and Canadian Wildlife Service; Fisheries USA: The Recreational Fisheries Policy of the U.S. Fish and Wildlife Service, Interior, undated; and The Nationwide Rivers Inventory, National Park Service, 1982.

^{21/} The staff valued the project power at Public Service's cost to purchase equivalent alternative power at wholesale prices in the region at 1996 levels. Public Service's 1996 energy costs were \$20.425/MWh for peak, and \$12.091/MWh for off-peak, energy, and the cost of capacity was \$31.34/kW-year.

Project No. 2560-001

-16-

in the manner required by the license will protect and enhance fish and wildlife resources, water quality, recreational resources, and cultural resources. The electricity generated from renewable water power resources will be beneficial because it will continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution. I, therefore, find that the Potato Rapids Project, with the required environmental enhancement measures, is best adapted to a comprehensive plan for the use, conservation, and development of the waterway for beneficial public purposes.

I am requiring the licensee to implement at the Potato Rapids Project the enhancement measures summarized below:

(1) operate the project in run-of-river mode year-round and maintain a reservoir surface elevation between 621.0 and 621.5 feet NGVD (Article 401);

(2) release a minimum flow of 95 cfs from April 15 through May 31, and 35 cfs for the remainder of the year to the spillway channel (Article 402);

(3) develop an operating and compliance plan including a 3-year test period (Article 403) and a flow monitoring and recording plan, including installation of a staff gage in the spillway channel (Article 404);

(4) develop a reservoir drawdown plan including notification of resource agencies in the event of emergency and scheduled drawdowns, and limiting planned drawdowns to summer to protect the Blanding's turtle and its habitat (Article 405);

(5) maintain state water quality standards for temperature and dissolved oxygen (DO), and develop a water quality monitoring plan (Article 406);

(6) reserve the Commission's authority to require the licensee to construct, maintain, and operate fishways as prescribed by the Secretary of the Interior pursuant to Section 18 of the FPA (Article 407);

Project No. 2560-001

-17-

(7) develop a plan to sluice large woody debris downstream (Article 408);

(8) revise the existing CLMP into one CLWMP for the Potato Rapids Project, and for five other Public Service-owned and -operated hydroelectric projects on the Peshtigo River, including: implementation of a no timber-harvest zone in riparian areas; a bald eagle protection plan; and a monitoring and control program for purple loosestrife, Eurasian milfoil, and zebra mussels (Article 409);

(9) file a final recreation plan to include recreation enhancements (Article 410);

(10) consult with the appropriate agencies regarding recreation use and needs at the project, as part of the Commission's Form 80 Report (Article 411); and

(11) implement the Programmatic Agreement to protect cultural resources (Article 412).

TERM OF LICENSE

As discussed in the Master Order, the term of license is set at 40 years.

SUMMARY OF FINDINGS

The FEIS issued for this project includes background information, analysis of impacts, and support for related license articles.

The Commission's Division of Dam Safety and Inspections, pursuant to Part 12 of the Commission's regulations and Engineering Guidelines, evaluated the Potato Rapids Project for the purpose of issuing a new license and concluded that the dam and other project works are safe. The design of this project is consistent with engineering safety standards. The project will be safe if operated and maintained in accordance with the requirements of this license.

I conclude that the Potato Rapids Project does not conflict

Project No. 2560-001

-18-

with any planned or authorized development, and is best adapted to the comprehensive development of the Peshtigo River for beneficial public uses.

The Director orders:

(A) This license is issued to Wisconsin Public Service Corporation for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Potato Rapids Hydroelectric Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations that the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, shown by exhibit G, filed on December 19, 1991.

<u>Exhibit</u>	<u>FERC No. 2560-001</u>	<u>Showing</u>
G (Sheet 1)	1004	Project location
G (Sheet 2)	1005	Project boundary

(2) The project works consisting of: (1) a reservoir with a surface area of 350 acres, a maximum depth of 20 feet, and a volume of 2,800 acre-feet at elevation 621.5 feet NGVD; (2) three earth dikes with a combined length of 4,134 feet and a crest elevation of 625 feet NGVD; (3) a concrete gated spillway section with (a) 225-foot-long conventional concrete gravity section, (b) three 15-foot-high by 26-foot-wide radial gates; © four 6.5-foot-high and 20-foot-wide radial gates; (4) a 217-foot-long nonoverflow concrete gravity dam with a vertical upstream face and crest elevation of 623.7 feet NGVD; (5) an 8-foot-wide trash sluiceway adjacent to the powerhouse; (6) a 56-foot-wide power intake with three gates; and (7) a powerhouse consisting of (a) a 34-foot-wide by 56-foot-long by 31-foot-high concrete structure; (b) one 3-phase, 60-cycle Allis-Chalmers umbrella type generator rated at 500 kW directly connected to © one Leffel vertical shaft 780 hp turbine operating at 128.5 rpm, and (d) two 3-phase, 60-cycle

Project No. 2560-001

-19-

General Electric umbrella type generators rated at 440 kW directly connected to (e) two Morgan Smith vertical shaft 676 hp turbines operating at 128.5 rpm.

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

Exhibit A. The following sections of exhibit A filed December 19, 1991:

The dam, spillways, head works, dike, penstocks, reservoir, powerhouse, generating equipment, and appurtenant facilities as described on pages A-1 through A-6.

Exhibit F. The following exhibit F drawings filed December 19, 1991:

<u>Exhibit</u>	<u>FERC No. 2560-001</u>	<u>Showing</u>
F (Sheet 1)	1001	Project site layout
F (Sheet 2)	1002	Plan and sections of dam
F (Sheet 3)	1003	Plan of powerhouse

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

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

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

4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the FPA that are waived here; 10(c), insofar as it relates to depreciation reserves;

Project No. 2560-001

-20-

10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(E) This license is subject to the articles set forth in Form L-18 (October 1975), entitled "Terms and Conditions of License for Constructed Minor 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 issued:

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 1,380 kilowatts. Under regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts are not assessed an annual administrative charge.

For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 2 acres of its lands, other than for transmission line right of way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 202. If the licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

Project No. 2560-001

.21-

Article 203. Any application to transfer this license shall include proof of service of a copy of that application on the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service.

Article 204. Within 45 days of the date of the issuance date of the license, the licensee shall file an original set and two duplicate sets of aperture cards of the approved drawings. The set of originals must be reproduced on silver or gelatin 35 mm microfilm. The duplicate sets are copies of the originals made on diazo-type microfilm. All microfilm must be mounted on type D (3-1/4" x 7-3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number must be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license must be typed on the upper left corner of each aperture card.

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

Article 401. The licensee shall operate the Potato Rapids Project in a run-of-river mode for the protection of fish and riparian vegetation upstream and downstream of the dam. The licensee shall at all times act to minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured at the U.S. Geological Survey (USGS) streamflow gage to be located upstream of the Sandstone Rapids Project No. 2546 reservoir, approximate outflows from the Peshtigo Project No. 2581 as measured at USGS Gage No. 04069500, taking into account time of travel and accretion.

To ensure run-of-river operation, the licensee shall maintain a reservoir water surface elevation between 621.0 and 621.5 feet National Geodetic Vertical Datum as measured immediately upstream from the project dam.

Project No. 2560-001

-22-

Run-of-river operation and reservoir water surface elevation may be temporarily modified, if required by operating emergencies beyond the control of the licensee, including flood and ice conditions, and for short periods, upon mutual agreement among the licensee, Wisconsin Department of Natural Resources, (Wisconsin DNR), and U.S. Fish and Wildlife Service. If project operation or reservoir water surface elevation is temporarily modified, the licensee shall notify the Commission and the Wisconsin DNR as soon as possible, but no later than 10 days after each such incident.

Article 402. The licensee shall release from the project dam into the spillway channel a continuous minimum flow of 95 cubic feet per second (cfs) from April 15 through May 31 to protect and enhance walleye spawning habitat. From June 1 through April 14, the licensee shall release from the project dam into the spillway channel a continuous minimum flow of 35 cfs to enhance aquatic habitat. When changing between minimum flow releases, the licensee shall not change flows by more than 50 percent every 24 hours.

The minimum flow release and ramping rate 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, the Wisconsin Department of Natural Resources (Wisconsin DNR), and the U.S. Fish and Wildlife Service. If the flow or ramping rate is so modified, the licensee shall notify the Commission and the Wisconsin DNR as soon as possible, but no later than 10 days after each such incident. The licensee may propose alternative ramping rates, subject to agency and Commission approval, as part of its operating plan (Article 403).

Article 403. Within one year of license issuance, the licensee shall file with the Commission, for approval, a plan to operate the project in compliance with Articles 401 and 402. The plan also shall include descriptions of procedures the licensee will implement during drought periods. Flow monitoring for determining drought periods shall be done using flows measured at the U.S. Geological Survey streamflow gage to be located upstream of the Caldron Falls Project No. 2525 reservoir.

The plan shall include a description of, and a schedule for,

Project No. 2560-001

-23-

a 3-year test period to determine the ability of the licensee to maintain the compliance standards developed in the operating plan. Results of the compliance maintenance test shall be filed with the Commission within 60 days of its completion.

The licensee shall prepare the plan after consultation with the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service. The licensee shall include with the plan documentation of consultation with the resource 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 reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission. The Commission also reserves the right to require changes in project operation to satisfy the operating requirements of this license.

Article 404. Within one year of license issuance, the licensee shall file with the Commission, for approval, a plan to monitor and record streamflows, reservoir levels, and generation at the project in order to verify compliance with Articles 401, 402, and 403.

The plan shall include, but not be limited to: (1) the current or proposed location, design, calibration, and maintenance of automatic water level sensors that continuously record headwater and tailwater elevations; (2) a staff gage in the project headwater with the prescribed operating range clearly marked on the gage; and (3) a staff gage in the project spillway adequate to monitor compliance with minimum flow releases required in Article 402.

The plan also shall describe the licensee's methods to maintain hourly records of turbine operations, headwater elevations, tailwater elevations, and flow releases, and provide

Project No. 2560-001

-24-

these records to the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS) upon request.

The licensee shall prepare the monitoring plan after consultation with the Wisconsin DNR, the FWS, and the U.S. Geological Survey. The licensee shall include with the plan documentation of consultation with the resource 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 reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Within one year of license issuance, the licensee shall file with the Commission, for approval, a reservoir drawdown plan. The purpose of the drawdown plan is to minimize the impact of any project maintenance activity requiring a reservoir drawdown on aquatic resources in the project impoundment and downstream of the project. For the protection of Blanding's turtle (*Emydoidea blandingi*) and its habitat, the licensee shall not perform any planned reservoir drawdowns from September 15 through April 15.

The plan shall include descriptions of the following:

(1) procedure for notification of the Wisconsin Department of Natural Resources (Wisconsin DNR), the U.S. Fish and Wildlife Service (FWS), and the Commission after the initiation of any emergency reservoir drawdown needed to prevent dam failure or imminent risk to public health and safety, with notification no later than 24 hours for the Wisconsin DNR and FWS and no later than 10 days for the Commission; (2) consultation with Wisconsin DNR and FWS, if possible, in determining appropriate response measures for emergency drawdowns, and proposed remedial action and reservoir level restoration; (3) consultation with Wisconsin

Project No. 2560-001

-25-

DNR and FWS on proposed reservoir drawdowns and refills for maintenance purposes; (4) notification of Wisconsin DNR and FWS at least 60 days in advance of proposed maintenance drawdowns; and (5) consultation with Wisconsin DNR and FWS on measures to protect the Blanding's turtles and its habitat in the project reservoir.

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

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

Article 406. Within one year of license issuance, the licensee shall file with the Commission, for approval, a plan to monitor dissolved oxygen (DO), water temperature, and pH of the Peshtigo River upstream and downstream of the Potato Rapids dam.

The purpose of the plan is to ensure that flow releases from the project, as measured immediately downstream from the dam, maintain the following standards, except when natural conditions prohibit attainment of the standards: (1) DO concentrations shall not be less than 5.0 milligrams per liter (mg/L) at any time; (2) water temperature shall not exceed 89 degrees Fahrenheit; and (3) the pH shall be within the range of 6.0 to 9.0, with no change greater than 0.5 unit outside the estimated natural seasonal maximum and minimum.

The plan shall include provisions for: (1) monitoring during one year out of every 5; (2) monitoring upstream and downstream of the Potato Rapids dam, with sensor locations and monitoring frequency determined in consultation with the Wisconsin

Project No. 2560-001

-26-

Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS); and (3) operating procedures, developed in consultation with the Wisconsin DNR and the FWS, to address actions to be taken if water quality deviates from the above limits.

The plan shall include schedules for: (1) implementation of the monitoring program within 24 months from the date of license issuance; (2) review of the monitoring results with the Wisconsin DNR and the FWS; and (3) filing the results, agency comments, and licensee's response to agency comments with the Commission.

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

Article 407. 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 408. Within 180 days of license issuance, the licensee shall file with the Commission, for approval, a plan for the passage of large woody debris that collects near the project intake into the reach of river below the project dam to improve fish habitat downstream of the project dam.

The licensee shall prepare the plan after consultation with

Project No. 2560-001

-27-

the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources.

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 site-specific information.

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

Article 409. Within one year of license issuance, the licensee shall file with the Commission, for approval, a comprehensive land and wildlife management plan (CLWMP) for all licensee-owned lands within the project boundary.

The CLWMP may be consolidated into a single plan for the Caldron Falls Hydroelectric Project (Project No. 2525), High Falls Hydroelectric Project (Project No. 2595), Johnson Falls Hydroelectric Project (Project No. 2522), Sandstone Rapids Hydroelectric Project (Project No. 2546), Potato Rapids Hydroelectric Project (Project No. 2560), and Peshtigo Hydroelectric Project (Project No. 2581).

The intent of the plan is to maintain project lands in a manner that protects environmentally sensitive habitat and ensures that land use is compatible with wildlife management.

The plan shall include, at a minimum:

- (1) maps showing all licensee-owned lands in the project area;
- (2) land management categories and allowable uses and activities within each category, including public

Project No. 2560-001

-28-

recreational use of project lands;

- (3) a shoreline development policy, including lease policies and other conveyances of land use rights;
- (4) incorporation of a 200-foot, no-timber-harvest zone policy for the landward side of all riparian areas within the project boundary;
- (5) a plan to monitor zebra mussels (*Dreissena polymorpha*) in project waters, including, but not limited to:
 - (a) the method of monitoring, (b) the frequency of monitoring, and (c) documentation of transmission of monitoring data to the Wisconsin Department of Natural Resources (Wisconsin DNR), U.S. Fish and Wildlife Service (FWS), and the University of Wisconsin Sea Grant Institute; and if deemed necessary by the Wisconsin DNR and FWS, cooperate with the agencies to control/eliminate zebra mussels;
- (6) a plan to monitor purple loosestrife (*Lythrum salicaria*) and Eurasian milfoil (*Myriophyllum spicatum*) in project waters, including, but not limited to:
 - (a) the method of monitoring; (b) the frequency of monitoring; and (c) documentation of transmission of monitoring data to Wisconsin DNR and FWS; and if deemed necessary by the Wisconsin DNR and FWS, cooperate with the agencies to control/eliminate purple loosestrife and Eurasian milfoil;
- (7) a final plan to protect the bald eagle (*Haliaeetus leucocephalus*) in the project area, including, but not limited to: (a) measures to protect existing habitat in the project area, including protection of necessary supercanopy trees; (b) plans to control public access to project lands if eagle nesting begins; (c) measures to protect winter roosting or feeding sites identified in the future from adverse human disturbance; (d) measures to limit the use of herbicides and pesticides on project lands; (e) measures to cooperate with the Wisconsin DNR and FWS on any baseline inventory studies; and (f) a schedule for implementing the plan;

Project No. 2560-001

-29-

and

- (8) provision for consultation with the Wisconsin DNR for input regarding decisions affecting wildlife management, and cooperation with the Wisconsin DNR in conducting wildlife surveys on project lands.

The plan shall be prepared after consultation with Wisconsin DNR, FWS, and Marinette County Land & Water Conservation Department (Marinette County). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

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

The licensee shall review and update the CLWMP every 6 years, after consultation with Wisconsin DNR, FWS, and Marinette County. The licensee shall file the updated plan with the Commission for approval.

Article 410. Within one year after issuance of this license, the licensee shall file with the Commission, for approval, a final recreation plan to construct, operate, and maintain the following facilities at the Potato Rapids Project:

- (1) all existing public recreation and public access sites within the project boundary;
- (2) at least one parking space reserved for handicapped use near the existing barrier-free fishing pier at the powerhouse;
- (3) directional signs for the tailwater access area,

Project No. 2560-001

-30-

including coordination with the Wisconsin Department of Transportation to locate a sign on State Highway 64;

- (4) a public toilet at the tailwater recreation site, during the summer months; and
- (5) a canoe portage at the dam and a designated canoe route.

The plan, at a minimum, shall include:

- (1) the name(s) of entity (entities) responsible for operating and maintaining the facilities;
- (2) erosion and sediment control measures, designed in consultation with the Natural Resources Conservation Service (NRCS), which shall be implemented during construction;
- (3) a schedule and costs for installing the facilities; and
- (4) recommended procedures for updating and enhancing public recreation information, including an update of the Public Service publication *Guide Map to Wild Shores and Recreation*, with information to include:
 - (a) portage location;
 - (b) canoeing time and distance between reservoirs;
 - (c) campsite locations;
 - (d) safety warnings;
 - (e) information on special use areas; and
 - (f) interpretive or educational information, where appropriate.

The licensee shall prepare the plan after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), the National Park Service, NRCS, and the Marinette County Parks and Recreation Department.

For documentation purposes, elements of the Potato Rapids Project recreation plan may be consolidated with similar plans required for the Caldron Falls Hydroelectric Project (Project No. 2525), High Falls Hydroelectric Project (Project No. 2595), Johnson Falls Hydroelectric Project (Project No. 2522), Sandstone Rapids Hydroelectric Project (Project No. 2546), and Peshtigo

Project No. 2560-001

-31-

Hydroelectric Project (Project No. 2581).

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 an agency's recommendation, the filing shall state the licensee's reasons, based on project-specific information.

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

Article 411. The licensee shall consult with the Wisconsin Department of Natural Resources, the National Park Service, and the Marinette County Parks and Recreation Department regarding recreation use and needs at the project, as part of the Form 80 reporting cycle, for the term of the license, pursuant to Part 8 of the Commission's regulations.

Article 412. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, the State of Wisconsin, State Historic Preservation Officer, and the State of Michigan, State Historic Preservation Officer, for Managing Historic Properties That May Be Affected by New and Amended Licenses Issuing for the Continued Operation of Existing Hydroelectric Projects in the State of Wisconsin and Adjacent Portions of the State of Michigan," executed on December 30, 1993, including but not limited to the Historic Resources Management Plan for the project. If the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved Historic Resources Management Plan. The Commission reserves the authority to require changes to the Historic Resources Management Plan at any time during the term of the

license. If the Programmatic Agreement is terminated prior to Commission approval of the Historic Resources Management Plan, the licensee shall obtain Commission approval before engaging in any ground-disturbing activities or taking any other actions that may affect any historic properties within the Project's area of potential effect.

Article 413. (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 water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time 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.

Project No. 2560-001

-33-

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-kilovolt or less); and (8) water intake or pumping facilities that do not extract more than 1 million gallons per day from a project reservoir.

Project No. 2560-001

- 34 -

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 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina;
- (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and
- (7) other uses, if:
 - (i) the amount of land conveyed for a particular use is 5 acres or less;
 - (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and
 - (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that

Project No. 2560-001

-35-

period.

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

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

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

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

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

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not

Project No. 2560-001

-36-

necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.

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

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

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



Kevin P. Madden
Acting Director, Office of
Hydropower Licensing

L-18
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MINOR PROJECT AFFECTING NAVIGABLE WATERS
AND LANDS OF THE UNITED STATES**

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

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

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

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

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they

become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 8. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and

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

Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 11. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 12. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon the request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 16. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the

maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 17. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 18. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 19. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 20. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 21. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 22. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 23. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 24. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the

transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 25. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 26. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 27. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.