UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

104 FERC ¶ 62,134

Rhinelander Paper Company — Project No. 2161-006
Wisconsin

ORDER ISSUING NEW LICENSE
(August 20, 2003)

INTRODUCTION

1. On June 26, 1998, pursuant to Sections 15 and 4(e) of the Federal Power Act (FPA),[1] Rhinelander Paper Company (Rhinelander) filed an application for a license to continue to operate and maintain the 2,120-kilowatt (kW) Rhinelander Hydroelectric Project No. 2161. The Rhinelander Project is located on the upper Wisconsin River at river mile 357, in Tomahawk, Newbold, Pine Lake, and Pelican townships, Oneida County, Wisconsin.[2] Rhinelander proposes no new capacity at the project. The project occupies 28.5 acres of federally-owned lands.

BACKGROUND

2. The original license was issued on April 11, 1955, effective for the period January 1, 1938, to June 30, 1970.[3] A new license for the project was issued on January 23, 1981,[4] for a period ending June 30, 2000. Since then, Rhinelander has operated the project under an annual license pending the disposition of its application for a new license.

3. A scoping process was conducted for the project, entailing a scoping document, a site visit, and scoping meetings in the project vicinity in April 1999. Notice of the application was issued on November 5, 1999, setting a deadline for the submittal of

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[1] 16 U.S.C. §§ 797(e) and 808.

[2] The Wisconsin River at the project site is a navigable waterway of the United States. See Consolidated Water Power Company, 17 FPC 108 (1957).

[3] 14 FPC 653 (1955).

[4] 14 FERC ¶ 62,064 (1981).

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comments, motions to intervene, recommendations, and terms and conditions. Motions to intervene were filed by American Whitewater Affiliation, the U.S. Department of the Interior, and the Wisconsin Department of Natural Resources (Wisconsin DNR).

4. On December 28, 2001, the Commission staff issued a draft environmental assessment (draft EA) for public comment . The draft EA recommended that the project be licensed with certain environmental measures, and found that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment. Comments were filed in response to the Draft EA, and those comments were fully considered and addressed in the final EA issued on March 20, 2003.

5. The motions to intervene and comments received from interested agencies and individuals throughout the proceeding have been fully considered and addressed in this order in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

6. The Rhinelander Project consists of a main dam; an 8.5-mile-long, 3,576-acre impoundment; a 965-foot-long power canal; a powerhouse containing three horizontal Francis turbine units for a total installed capacity of 2,120 kW; and appurtenant facilities. A more detailed project description is contained in ordering paragraph (B)(2).

WATER QUALITY CERTIFICATION

7. Under Section 401(a)(1) of the Clean Water Act (CWA),[5] the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the state certification shall become a condition on any federal license or permit that is issued.[6]

8. Wisconsin DNR timely issued certification for the Rhinelander Project on October 27, 1998. Pursuant to a settlement agreement resolving Rhinelander's appeal of the certification, Wisconsin DNR reissued certification on December 22, 1999. The

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[5] 33 U.S.C. § 1341(a)(1).

[6] 33 U.S.C. § 1341(d).

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conditions of this certification are set forth in Appendix A of this order[7] and are incorporated in the license at ordering paragraph D.

FISHWAYS PRESCRIPTIONS

9. Section 18 of the FPA provides that the Commission shall require a licensee, at its own expense, to construct, operate, and maintain such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.[8] By letter dated January 3, 2000, Interior requested reservation of its authority to prescribe fishways at the Rhinelander Project. Consistent with the Commission's policy, Article 405 reserves the Commission's authority to require such fishways that may be prescribed by Interior for the project.

THREATENED AND ENDANGERED SPECIES

10. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)[9] 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 designated critical habitat.

11. The federally listed (threatened) bald eagle (*Haliaeetus leucocephalus*) and the (endangered) gray wolf (*Canis lupis*) are known to occur in the project area. FWS concluded that if the licensee implements protection measures proposed in the license application, the continued operation of the Rhinelander Project would not affect federally-listed threatened and endangered species.[10] I have included these protection measures in Article 407 of the license; therefore, no further action is required under the ESA.

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[7]While the Commission cannot alter or delete the conditions of the water quality certification, nothing in the conditions shall be viewed as restricting the Commission's ability or the licensee's obligation, under the FPA, to take timely action necessary to protect human life or the environment.

[8]16 U.S.C. § 811.

[9]16 U.S.C. § 1536(a).

[10]Letter from M. Chezik, Regional Field Office, FWS, Philadelphia, PA, to D. Boergers, Secretary, FERC, January 3, 2000).

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RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

12. Section 10(j) of the FPA[11] requires the Commission, when issuing a license, to include license conditions based on the recommendations of the federal and state fish and wildlife agencies, submitted pursuant to the Fish and Wildlife Coordination Act,[12] to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project. If the Commission believes that any such recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, FPA Section 10(j)(2)[13] requires the Commission and the agencies to attempt to resolve such inconsistencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

13. FWS filed numerous recommendations pursuant to Section (10)(j). This license contains conditions consistent with recommendations for: (1) a run-of-river operation mode (Article 401); (2) limitations on reservoir surface elevation fluctuations (Article 402); (3) bypassed reach minimum flows (Article 404); (4) a plan to monitor exotic species (Article 406); and (5) a threatened and endangered species management plan (Article 407).

14. Commission staff made an initial determination that some of FWS' recommendations were inconsistent with the substantial evidence standard of FPA Section 313(b) and the comprehensive planning and public interest standards of FPA Sections 4(e) and 10(a)(1).[14] By letter dated January 9, 2002, Commission staff advised FWS of its preliminary determinations and attempted to resolve the apparent inconsistencies. FWS' response by letter filed February 12, 2002, resolved all the apparent inconsistencies regarding specific measures for the protection of fish and wildlife resources affected by the operation of the project.

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[11] 16 U.S.C. § 803(j).

[12] 16 U.S.C. § 661 et seq.

[13] 16 U.S.C. § 803(j)(2).

[14] 16 U.S.C. § 803(j)(2).

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15. Staff identified one recommendation, for a Fish Protection Fund, as not being within the scope of Section 10(j), in that it does not constitute a specific measure to protect fish and wildlife. This recommendation is therefore considered under under the comprehensive planning requirement of FPA Section 10(a)(1). In that context, staff concluded that the record evidence did not justify the Fish Protection Fund. Staff determined that the installation of protective measures to reduce fish losses due to entrainment is costly and would not provide fishery benefits commensurate with those costs, inasmuch as there is no record evidence that entrainment mortality is adversely affecting fisheries in the project impoundment.[15] I agree with this analysis.

PROJECT BOUNDARY

16. Rhinelander proposes to remove 2,478.5 acres of land from its current license project boundary. As to those lands remaining within the project boundary, Rhinelander proposes to protect undeveloped project lands, establish a "no wake" boat zone, and continue to cooperate with state and federal agencies to manage for threatened and endangered species.

17. I agree with Rhinelander's proposal for managing project lands and waters, and with staff's recommendation that the licensee be required to prepare and implement a threatened and endangered species plan (Article 407) and a land management plan (Article 410). However, its proposal to remove nearly 2,500 acres from the project boundary is not adequately supported.

18. The project as currently licensed includes 6,347 acres. Rhinelander proposes to retain in the project boundary all lands in the reservoir below the normal water surface elevation of 1,555.45 msl; 292.5 acres along the reservoir shoreline near the powerhouse; and island areas in the reservoir.[16]

19. Of the 2,478.5 acres proposed to be removed, Rhinelander states that 1,225 acres are being designated for residential use, but it does not identify the proposed use of the

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[15]See final EA, Section V.C.3.b.

[16]The 1981 relicense order stated that Rhinelander owned in fee about 325 acres of project land above the normal reservoir elevation.

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remaining 1,253.5 acres, nor does it identify the location of any of the land proposed for removal. [17]

20. FWS recommends that the project boundary remain unchanged until there has been a clear identification of the land proposed to be removed from the boundary,[18] and that any proposal to withdraw lands from the boundary be reviewed by the relevant resource agencies. FWS also asserts that there should be public access to project lands, except in environmentally sensitive areas.

21. I conclude that in order to ensure adequate public recreational access to the reservoir, the project boundary may need to be above the normal water surface elevation. Indeed, Article 409 of this license order requires Rhinelander to monitor recreation use at the project to determine whether existing recreation facilities are meeting recreation needs.

22. I agree with FWS that the record in this proceeding does not contain sufficient information on which I can make an informed decision with respect to Rhinelander's proposal to reduce amount of land within the project boundary. Rhinelander has not demonstrated that the lands at issue are not needed for project purposes, such as for a shoreline buffer zone, public recreational access, or the preservation of habitat necessary for threatened or endangered species. Consequently, I must at this time deny the proposal to remove land from the project boundary. After Rhinelander has filed the land management plan required by Article 410, and the Commission has approved the plan, Rhinelander may file an application to amend the license to remove the lands in question, accompanied by information adequate to address the issues identified above.

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[17]In its January 19, 1999 revisions to its license application, Rhinelander stated that the project does not occupy any federal lands. However, its prior license, issued in 1981, states that the project occupies lands of the United States, and requires (at Article 41) that the licensee annually recompense the United States for the use, occupancy, and enjoyment of 28.50 acres of federal lands. Moreover, an August 22, 2001 Project Boundary Worksheet map submitted by Rhinelander's consultants shows that federally jurisdictional wetlands are located within the project boundary.

[18]FWS letter dated January 3, 2000.

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COMPREHENSIVE PLANS

23. Section 10(a)(2)(A) of the FPA[19] 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.[20] I have identified and reviewed 10 plans relevant to the project.[21] No inconsistencies were found.

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[19]16 U.S.C. § 803(a)(2)(A).

[20]Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2003).

[21]**Wisconsin**: (1) Wisconsin Department of Natural Resources. 1985. *Wisconsin statewide comprehensive outdoor recreation plan, 1986-1991*. Madison, Wisconsin. September 1985. Nine volumes; (2) Wisconsin Department of Natural Resources. 1991. *Wisconsin statewide comprehensive outdoor recreation plan for 1991-1996*. Madison, Wisconsin. October 1991. 312 pp. and survey form; (3) Wisconsin Department of Natural Resources. 1994. *Wisconsin Water Quality Assessment Report to Congress*. Madison, Wisconsin. August 1994; (4) Wisconsin Department of Natural Resources. 1995. *Wisconsin's biodiversity as a management issue*. Madison, Wisconsin. May 1995; (5) Wisconsin Department of Natural Resources. 1995. *Wisconsin's Forestry Best Management Practices for Water Quality*. Madison, Wisconsin. March 1995; (6) Wisconsin Department of Natural Resources. 1992. *Upper Wisconsin River Southern Sub-basin water quality management plan*. Madison, Wisconsin. June 1992. (7) Wisconsin Department of Natural Resources. 1991. *Upper Wisconsin River Northern Sub-basin water quality management plan*. Madison, Wisconsin. May 1991.

Federal: (1) FWS and Canadian Wildlife Service. 1986. *North American Waterfowl Management Plan*. May 1986; (2) FWS. Undated. *Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service*. Washington, D.C. 11 pp; (3) National Park Service. 1982. *The nationwide rivers inventory*. Department of the Interior, Washington, D.C. January 1982. 432 pp.

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24. I have also reviewed 2 state plans which are relevant to the project, but are not listed as a Commission-approved comprehensive plan.[22] No inconsistencies with these plans were found.

APPLICANT'S PLANS AND CAPABILITIES

25. In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,[23] I have evaluated Rhinelander'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 services; (G) cost effectiveness of plans; and (H) actions affecting the public.

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

26. Section 10(a)(2)(C) of the FPA requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. Rhinelander uses all energy generated by the project at their mill facilities.

27. Staff concludes that Rhinelander complied with and, is likely to continue to comply with section 10(a)(2)C) of the FPA.

B. Compliance History and Ability to Comply with the New License (Sections 15(a)(2)(A) and 15(a)(3)(A))

28. Staff reviewed the relicense application and Rhinelander's compliance with the terms and conditions of the existing license. Staff finds that Rhinelander's overall record of making timely filings and compliance with its license is satisfactory.

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[22](1)Wisconsin Department of Natural Resources. 1986. *Wisconsin Osprey Recovery Plan, Report 23*. C.M. Gieck; (2) Wisconsin Department of Natural Resources. 1999. *Wisconsin Statewide Karner Blue Butterfly Habitat Conservation Plan. Volume 1: Statewide Habitat Conservation Plan*. March 1999.

[23]16 U.S.C. §§ 803(a)(2)(C) and 808(a).

C. Plans and Abilities of the Applicant to Manage, Operate, and Maintain the Project Safely (Section 15(a)(2)(B))

29. Rhinelander owns and operates the Rhinelander Project. The project dam and appurtenant facilities are subject to Part 12 of the Commission's regulations concerning project safety. Staff reviewed Rhinelander's management, operation, and maintenance of the project pursuant to the requirements of Part 12 and the associated Engineering Guidelines, including all applicable safety requirements such as warning signs and boat barriers, Emergency Action Plan, and Independent Consultant's Safety Inspection Reports. Rhinelander's record of managing, operating, and maintaining these facilities presents no reason not to issue a new license.

30. Staff concludes that the dam and other project works are safe, and that the applicant's record of managing, operating, and maintaining these facilities is adequate.

D. Plans and Abilities of the Applicant to Operate and Maintain the Project in a Manner Most Likely to Provide Efficient and Reliable Electric Service (Section 15(a)(2)C))

31. Staff reviewed the project's past operational record, as well as Rhinelander's plans and abilities to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. In the 5 years prior to filing their application, there was 1 unscheduled outage at the project, which resulted in a loss of one unit's generation for approximately 50 days, due to bearing failure. Staff concludes that Rhinelander has been operating the project in an efficient manner, within the constraints of the existing license, and is likely to continue to do so under a new license.

E. Need of the Applicant Over the Short and Long Term for the Electricity Generated by the Project to Serve Its Customers (Section 15(a)(2)(D))

32. Power generated by the Rhinelander Project is used on site at its paper mill. While the Rhinelander Project represents only a portion of Rhinelander's need at the paper mill, the project provides a source of low-cost, dependable generation that displaces non-renewable fossil-fuel generation. The project’s power also contributes to a diversified generation mix and helps meet power needs in the Mid-continent Area Power Pool region.

33. We conclude that power from the Rhinelander Project would help meet a need for power and ancillary services in both the short and long term. The project provides low-

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cost power that displaces non-renewable, fossil-fired generation and contributes to a diversified generation mix. Displacing the operation of fossil-fueled facilities avoids some power plant emissions and creates an environmental benefit.

F. The Impact of Receiving or Not Receiving the Project License on the Operation, Planning and Stability of Applicant's Transmission System (Section 15(a)(2)(E))

34. Rhinelander does not have a transmission system. Staff concludes that if Rhinelander does not receive a new license for the project, replacement energy would have to be purchased from Wisconsin Public Service Corporation.

G. Whether the Plans of the Applicant Will be Achieved, to the Greatest Extent Possible, in a Cost Effective Manner (Section 15(a)(2)(F))

35. Rhinelander proposes no new construction or changes in project operation. The project, under a new license, would continue to operate in a run-of-river mode, and would continue to be a very valuable source of economical electric power. The project, with the proposed and additional staff recommended measures included as part of this license, would produce about 10.014 GWh of power annually, at a cost of about 36.57 mills per kilowatt-hour. Staff concludes that the plans of the applicant would be achieved, to the extent possible, in a cost-effective manner.

H. Actions Affecting the Public (Section 15(a)(3)(B))

36. The Rhinelander Project generates electricity used to serve the needs of the public. Rhinelander Paper Company provides project lands and access sites for public and civic groups recreation usage, and also provides public safety measures at Boom Lake dam. Environmental measures included in the license will generally improve environmental quality, and will have a beneficial effect on public use of project facilities for recreational purposes.

ANCILLARY SERVICE BENEFITS

37. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of

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power available to help in quickly putting fossil-fuel-based generating stations back on line following a major utility system or regional blackout.

38. Ancillary benefits are now mostly priced at rates that recover only the cost of providing the electric service at issue, which doesn't resemble the prices that would occur in competitive markets. In the competitive northeast market, the ability of hydropower projects to provide ancillary services to the system can increase the benefits derived from the project.

COMPREHENSIVE DEVELOPMENT

39. Sections 4(e) and 10(a)(1) of the FPA[24] require the Commission to give equal consideration to developmental and environmental values, including the development of electric energy, energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgement would be best adapted to a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

40. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in Mead Corp.,[25] staff employs an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts for potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. In making its decision, the Commission considers the project power benefits both with Rhinelander's proposed measures, and Rhinelander's proposed measures with additional staff-recommended measures.

41. As proposed by Rhinelander, staff estimates that the annual cost of the project would be about $360,900 (36.04 mills/kWh). The annual power benefit, for the

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[24] 16 U.S.C. §§ 797(e) and 803(a)(1).

[25] 72 FERC ¶ 61,027 (1995).

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estimated annual generation of 10.014 GWh, would be $265,500 (26.51 mills/kWh). The resulting annual net benefit would be negative $95,400 (-9.53 mills/kWh). The proposed action with additional staff-recommended measures would increase the annual cost about $5,270 to $366,170 (36.57 mills/kWh) for the same generation, so the annual net benefit would decrease by the amount of the cost increase to negative $100,670 (-10.05).

42. Our evaluation of the economics of the proposed action and the proposed action with additional staff-recommended measures shows in each analysis that project energy would cost more than alternative energy. However, project economics is only one of the many public interest factors that is considered in determining whether or not to issue a license, and operation may be desirable for other reasons. For example, other public interest factors are to: (a) diversify the mix of energy sources in the area; (b) promote local employment; and (c) provide a fixed-cost source of power and reduce contract needs.

43. Based on this independent review and evaluation of the Rhinelander Project, as proposed by Rhinelander, as proposed with additional staff-recommended measures, and no-action, as documented in the final EA, I have selected the Rhinelander Project, as proposed with additional staff-recommended measures, as the preferred alternative. I selected this alternative because: (1) issuance of the license would allow Rhinelander to continue to operate the project as a beneficial, dependable, and inexpensive source of electric energy; (2) continued operation of the 2,120 kW project would avoid the need for an equivalent amount of fossil-fueled fired electric generation and capacity, continuing to help conserve these non-renewable energy resources and reduce atmospheric pollution; and (3) the recommended environmental measures would improve water quality and recreation, as well as protect and enhance fisheries, terrestrial and cultural resources at the project.

44. The preferred alternative includes the following measures:

(1) operate the project in a run-of-river mode such that a constant reservoir elevation of 1,555.45 feet mean sea level (msl) (within a 0.6 foot band width) is maintained, except for periodic maintenance related drawdowns (Articles 401 and 402);

(2) develop and implement an operations compliance monitoring plan (Article 403);

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(3) Provide a continuous minimum flow of 25 cubic feet per second (cfs) in the project's bypassed reach year round (Article 404);

(4) reserve the Commission's authority to require fishways that may be prescribed by Interior (Article 405);

(5) develop and implement a exotic species control plan, in consultation with FWS and Wisconsin DNR, to monitor invasive species, and implement measures as appropriate, on project lands within the project boundary (Article 406);

(6) develop and implement a threatened and endangered species management plan (Article 407);

(7) develop and implement a final recreation plan (Article 408);

(8) develop and implement a monitoring report on recreation use (Article 409);

(9) develop and implement a final land management plan (Article 410);

(10) implement the existing Programmatic Agreement, including development of an Historic Resources Management Plan (Article 411).

LICENSE TERM

45. Pursuant to Section 15(e) of the FPA,[26] a new license term shall not be less than 30 years nor more than 50 years from the date on which the license is issued. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental protection, mitigation, and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.[27]

46. This license will have a term of 30 years, because there is no new development and there are no extensive mitigatiion or enhancement measures.

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[26] 16 U.S.C. § 808(e).

[27] See Consumers Power Company, 68 FERC ¶ 61,077 at 61,383-84 (1994).

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SUMMARY OF FINDINGS

47. The final EA for the Rhinelander Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The design of this project is consistent with the engineering standards governing dam safety. The project would be safe if operated and maintained in accordance with the requirements of this license.

48. Based on the review and evaluation of the project, as proposed by Rhinelander, with additional staff-recommended measures, I conclude that the continued operation and maintenance of the project in the manner required by this license, will protect and enhance fish and wildlife resources, water quality, recreational, and cultural resources in the Wisconsin River Basin. The electricity generated from this renewable water power resource will be beneficial, because it will continue to offset the use of fossil-fuel generating stations, thereby conserving non-renewable resources. In sum, I conclude that the Rhinelander Project, with the conditions and other special license articles set forth below, will be best adapted to the comprehensive development of the Wisconsin River for beneficial public purposes.

The Director orders:

(A) This license is issued to Rhinelander Paper Company (licensee), effective the first day of the month in which this order is issued, for a period of 30 years, to continue to operate and maintain the Rhinelander Hydroelectric Project. 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 on June 26, 1998:

Exhibit G Drawing	FERC No. 2161-	Showing
G-1	1004	Project Boundary
G-2	1005	Project Boundary

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(2) The project works consisting of: (1) a main dam comprised of 370 feet of earth embankments, in two sections to the left and right of a spillway section containing two 10.7-foot-wide steel roller gates; (2) an 8.5-mile-long, 3,576-acre impoundment with a normal water surface elevation of 1,555.45 feet above msl, and a normal storage capacity of 21,500 acre-feet; (3) a 965-foot-long power canal, with a single 36-foot-wide Taintor gate spillway structure located downstream of a 14-gate canal inlet structure, adjacent to the right embankment of the dam; (4) a brick powerhouse located at the downstream end of the power canal, containing three horizontal Francis turbine units for a total installed capacity of 2,120 kilowatts (kW); (5) switchgear connections with the adjacent paper mill; and (6) appurtenant facilities.

The project works generally described above are more specifically described in Exhibit A of the application (pages A-1 to A-3) and shown by Exhibit F drawings, filed as revised January 19, 1999:

Exhibit F Drawing	FERC No. 2161-	Description
Sheet-1	1001	General Plans and Sections
Sheet-2	1002	Powerhouse Plan and Sections
Sheet-3	1003	Spillway Plans and Sections

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation and maintenance of 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, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation and maintenance of the project.

(C) Exhibits A, F, and G, listed above, are approved and made part of this license.

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

(E) This license is subject to the articles set forth in Form L-5 (revised 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.

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Article 201. The licensee shall pay the United States the following annual charges, effective the issuance date of this license:

(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 2,120 kilowatts.

(b) Recompensing the United States for the use, occupancy and enjoyment of 28.5 acres of its lands, other than for transmission line right-of-way.

Article 202. Within 45 days of the date of issuance of the license, the licensee shall file three sets of aperture cards of the approved exhibit drawings. The sets must be reproduced on silver or gelatin 35mm microfilm.

Prior to microfilming, the FERC Drawing Number (2161-1001 through 2161-1005) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall 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 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Chicago Regional Office.

Article 203. The licensee shall clear and keep clear to an adequate width all 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 result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 204. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The Licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in

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excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the Licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The Licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The Licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

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

Article 205. If the licensee's project is directly benefitted by the construction work of another licensee, a permittee, or of the United States of 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 Subpart B of the Commission's regulations.

Article 401. Upon approval of the plan required in Article 403, the licensee shall operate the project in a run-of-river mode for the protection of aquatic resources in the Wisconsin River. The licensee shall at all times act to minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream of the project tailrace, approximate the sum of inflows to the project reservoir.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods of time upon mutual agreement between the licensee, Wisconsin Department of Natural Resources (Wisconsin DNR), and the U.S. Fish and Wildlife Service (FWS). If the flow is so modified, the licensee shall notify the Commission, the Wisconsin DNR, and the FWS as soon as possible, but no later than 10 days after each such incident.

Article 402. Upon approval of the plan required in Article 403, the licensee shall maintain a reservoir surface elevation of 1,555.45 ± 0.3 ft. msl for the protection of fish and wildlife resources.

This target reservoir surface elevation may be temporarily modified if required by operating emergencies beyond the control of the licensee or 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 (FWS). If the reservoir water surface elevation is so modified, the licensee shall notify the Commission, the Wisconsin DNR, and the FWS as soon as possible, but no later than 10 days after each such incident.

Article 403. Within 6 months of the issuance date of this license, in order to monitor the operating mode and impoundment elevations required in Articles 401 and 402, respectively, the licensee shall develop, in consultation with the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service, an operations compliance monitoring plan, and file for Commission approval. This plan shall include, but is not limited to, an implementation schedule and provisions to: (1) install and maintain staff gages visible to the public on or near Boom Lake dam; (2) maintain water level sensors to continuously record the headpond and tailwater elevations; (3) record and maintain daily operating records, including headpond and tailwater elevations, hourly powerhouse and spillway discharge, and turbine operations. Provide these monitoring data to the Wisconsin Department of Natural Resources, U.S. Fish and Wildlife Service, and the Commission within 30 days of receiving a written request for such information.

The licensee shall include with the operational compliance monitoring 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 operational compliance monitoring plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No ground-disturbing or land-clearing activities for installing the staff gages 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, according to the approved schedule.

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Article 404. The licensee shall release from the Rhinelander Project dam into the bypassed reach of the Wisconsin River a minimum flow of 25 cubic feet per second (cfs) or inflow to the project impoundment, whichever is less, for the protection of aquatic resources in the bypassed reach of the Wisconsin River.

The minimum flows may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee, the U.S. Fish and Wildlife Service (FWS), and the Wisconsin Department of Natural Resources (Wisconsin DNR). If the flow is so modified, the licensee shall notify the Commission, the Wisconsin DNR, and the FWS as soon as possible, but no later than 10 days after each such incident.

Article 405. 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 406. Within one year of the issuance date of the license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS), file for Commission approval an exotic species control plan to monitor invasive species, such as purple loosestrife (*Lythrum salicaria*) and Eurasian water-milfoil (*Myriophyllum spicatum*), at the Rhinelander Hydroelectric Project. The plan shall include, but not be limited to, the following: (1) a description of the monitoring method; (2) frequency of monitoring; (3) documentation of providing the monitoring results to the Wisconsin DNR and FWS; and (4) a description of and implementation schedule for providing public information about the species.

The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the plan after it has been developed 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.

If at any time during the term of the license, the Wisconsin DNR and FWS demonstrate the purple loosestrife or Eurasian water-milfoil is significantly affecting fish and wildlife populations at the project and that control measures are needed, and the

Commission agrees with those determinations, the Commission may require the licensee to cooperate with the Wisconsin DNR and FWS to undertake reasonable measures to control or eliminate the invasive species in project area. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. Within one year of the issuance date of the license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS), file for Commission approval a threatened and endangered species plan to protect the federally-listed bald eagle (*Haliaeetus leucocephalus*) and gray wolf (*Canis lupus lycaon*), and the State-listed osprey (*Pandion haliaetus*) and wood turtle (*Clemmys insculpta*) and associated habitats at the Rhinelander Hydroelectric Project.

The threatened and endangered species plan shall include, but not be limited to, the following provisions for the lands within the project boundary: (1) identify and protect mature trees, such as white pines, that have the potential to serve as bald eagle and/or osprey perch and/or nest sites; timber harvest shall not occur within 330 feet from the nest (primary zone) and within 660 feet (secondary zone) during the nesting season (February 15 to August 15); (2) a schedule of the threatened and endangered species breeding season that shall limit human activity (such as, recreation opportunities) on project lands (such as, existing Parcel 2 a forested bog that provides bald eagle suitable nest habitat from February through August); (3) cooperate with Wisconsin DNR to survey annually for any new or active bald eagle nests that occur on project lands within the project boundary; (4) cooperate with Wisconsin DNR and FWS to construct and monitor the use of osprey nest platform(s); (5) maintain wilderness areas to protect the wood turtle; (6) maintain semi-wilderness areas to protect the gray wolf; and (7) a description of the method for monitoring the results of any implemented measures.

The licensee shall include with the plan 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 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. No ground-disturbing or land-clearing activities for protecting threatened and endangered species shall begin until the licensee is notified by the Commission that the plan is approved.

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Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 408. Within one year of the issuance date of the license, the licensee shall, after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR), the National Park Service (NPS), and Northern Paddle & Trail, file for Commission approval a recreation plan for providing recreation facilities and public access at the Rhinelander Hydroelectric Project. The plan shall include, but not be limited to, the following, as specified in Condition J of the water quality certification, and in the licensee's Application for New License, filed June 26, 1998: (1) provide public access to the east channel of the Wisconsin River (bypassed reach) for the safety and convenience of recreational boaters; (2) provide a marked canoe portage trail, including a landing area for canoes/kayaks to allow boat exit and safe passage from the river; (3) provide signs to enhance safety, provide interpretive information, and direct users to recreational facilities; (4) cooperate with Northern Paddle & Trail for installing put-in and take-out facilities; (5) cooperate with Wisconsin DNR or appropriate entity for regulating recreational boating to establish a "no-wake" zone to protect the wild rice beds of Munninghoff Marsh; (6) maintain and operate any barriers, signs, lights, sirens, or other devices to warn the public of fluctuations in flow from the project and to protect the public in its recreational use of project lands and waters; and (7) explain the absence of fishing piers from the FERC Form 80, filed March 27, 2003.

The plan shall also include, a construction schedule, the entity responsible for operation and maintenance of the facilities, costs for the construction and yearly maintenance of each facility, proposed measures to control soil erosion and an assessment of such measures, a discussion of how the needs of the disabled were considered in the planning and design of recreation facilities.

Furthermore, the licensee shall release flows for whitewater boating into the project bypassed reach, as stipulated in the "East Channel Water Release Agreement" filed December 29, 1999, and specified in Condition K of the water quality certification. These flows may be temporarily modified, if required by operating emergencies beyond the control of the licensee, or for short periods upon mutual agreement between the licensee, the U.S. Fish and Wildlife Service, Wisconsin DNR, NPS, and Northern Paddle & Trail. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

The licensee shall include with the plan 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

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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. No ground-disturbing or land-clearing activities for providing recreation facilities 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 409. The licensee, after consultation with the Wisconsin Department of Natural Resources and the National Park Service, shall monitor recreation use at the Rhinelander Hydroelectric Project area to determine whether existing recreation facilities are meeting recreation needs.

During the term of the license, concurrent with filing 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 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, measures 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. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

Article 410. Within one year of the issuance date of the license, the licensee shall, in consultation with the U.S. Fish and Wildlife Service, Bureau of Land Management, and Wisconsin Department of Natural Resources, develop and file for Commission approval a final Land Management Plan for the Rhinelander Project. The licensee shall utilize its Land Management Plan, filed June 26, 1998, Volume III, Appendix E.2 of its license application, for finalizing the plan.

The plan shall include, but not be limited to, the following: (1) establishment of appropriate buffer zones; (2) a detailed map that clearly identifies the Rhinelander

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Project boundary, Federal lands, lands designated residential use, undesignated lands, areas of special concern, such as an identified forested wetland; (3) describe the environmental and recreational effects from removing the 28.5 acres of Federal land from the project boundary; (4) describe the existing or future use of all the proposed land to be removed from the project boundary; (5) describe the timber management practices to benefit wildlife and protect other important resources; (6) identify designated public access for recreational use of project lands, except in areas where restricted access is necessary; and (7) an implementation schedule.

The plan shall include 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, including any changes required by the Commission.

Article 411. 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 (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 412. (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

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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 plants; (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.

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(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 or K map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on 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 or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

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

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

(G) This order is issued under authority delegated to the Director and is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) 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 of this order shall constitute acceptance of this license.

J. Mark Robinson
Director
Office of Energy Projects

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APPENDIX A

Water Quality Certification Conditions for the Rhinelander Hydroelectric Project No. 2161 Issued by State of Wisconsin Department of Natural Resources under Section 401 of the Clean Water Act.

A. The applicant shall comply with all federal, state and local permit requirements.

B. The applicant must meet the most current State Water Quality Standards that apply to this project. If State Water Quality Standards are revised in the future, the applicant of the State may apply to FERC under sec. 18 or other appropriate provisions, for a modification of the license issued to Rhinelander Paper Company, of which this water quality certification will become a part.

C. The applicant must operate the Rhinelander Project in a run-of-river mode with no peaking. The target reservoir elevation shall be 1555.45 feet plus or minus 0.3 feet National Geodetic Vertical Datum (NGVD). Instantaneous run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the applicant. The applicant must make all reasonable attempts to return to run-of-river operation as soon as possible. If an emergency occurs that affects water levels and flow releases, the applicant shall notify the Department's office in Rhinelander, Wisconsin, so they can be prepared to repond to public inquiries. See Section 2.5 of the settlement agreement.

D. The applicant must continue to maintain the automatic water level sensors that continuously monitor and record headwater elevation. The applicant shall also continue to maintain a daily record (log) of operation and provide any pertinent information to the Department upon request, including turbine operation, headwater elevations and flow releases through the powerhouse and spillway, updated on an hourly basis.

E. Fish protection - See Sec. 2.3 of the Settlement Agreement.

F. Water quality - See Sec. 2.4 of the Settlement Agreement.

G. Wild rice beds - See Sec. 2.6 of the Settlement Agreement.

H. The applicant shall allow the Department to inspect the project area at any time to monitor compliance with certification conditions.

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I. The applicant shall divert a minimum of 25 cfs to the east bypass channel (the original Wisconsin River Channel) 24 hours per day, 365 days per year to restore, maintain and enhance fish and wildlife habitat in the formerly dewatered bypass reach and to insure at least 5 mg/l dissolved oxygen in the Wisconsin River below Phillips Street.

J. The applicant shall provide: (1) access to the east channel of the Wisconsin River (bypass reach) for the safety and convenience of recreational boaters; (2) adequate portage; and (3) necessary signage to enhance safety and provide interpretive information, and direct users to recreational facilities.

K. Recreational flows agreement - See Exhibit B of the Settlement Agreement. Dated at Rhinelander, WI: December 22, 1999.