

UNITED STATES OF AMERICA 110 FERC ¶ 62,100
FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company

Project No. 1864-027

ORDER MODIFYING AND APPROVING WILDLIFE AND LAND MANAGEMENT
PLAN PURSUANT TO ARTICLE 414

(Issued February 4, 2005)

On August 20, 2004, Upper Peninsula Power Company (licensee), filed a Wildlife and Land Management Plan (plan) pursuant to article 414 of the project license¹ for the Bond Falls Project (FERC No. 1864). The project is located on the Ontonagon River in Ontonagon and Gogebic Counties, Michigan, and Vilas County, Wisconsin, partially on lands within the Ottawa National Forest.²

BACKGROUND

Article 414 of the project license requires that within a year of license issuance, the licensee shall file with the Commission, for approval, a Wildlife and Land Management Plan (plan). The filed plan must be consistent with the Buffer Zone Plan required by article 413, the Threatened and Endangered Species Protection and Enhancement Plan required by article 415, along with the measures described in Section 7 of the project Settlement,³ to be implemented under the Mitigation and Enhancement Fund. The plan shall provide for the following provisions:

- (1) Use the State of Michigan Best Management Practices (BMPs) for timber management within the Bond Falls Project boundaries to the extent practicable.
- (2) Measures for the protection of the common loon shall include, limiting camping to designated areas to enhance loon nesting potential, as well as the development of contour maps for two loon nesting structures at the Bond Falls Flowage and one loon nesting structure at the Victoria Reservoir. Campers and boaters shall be provided with information

¹ 104 FERC ¶ 62,135 (2003).

² Bond Falls occupies 73.5 acres of land within the Ottawa National Forest.

³ The Settlement was filed on July 11, 2000.

including signage, regarding islands not open to camping, protection of nesting loons, and penalties for disturbing and harassing loons. Camping violations must be reported promptly to the local law enforcement personnel.

- (3) The plan shall be consistent with U.S. Forest Service (FS) osprey management guidelines, as well as any future guidelines from the Wisconsin Department on Natural Resources (WDNR) or Michigan Department of Natural Resources (MDNR), and requires the installation of one osprey nesting platform on the Bond Falls Flowage, Lake Gogebic, and Victoria Reservoir.
- (4) Use native seed in revegetation efforts, to the extent practicable.
- (5) The restoration and enhancement on wild rice in Bond Falls Flowage, Cisco Lake, Lake Gogebic, and Victoria Reservoir, shall be implemented to the extent deemed feasible and desirable by the Bond Falls Project Implementation Team (Team).
- (6) Consult annually with the WDNR, MDNR, FS, Michigan Department of Environmental Quality (MDEQ), U.S. Fish and Wildlife Service (FWS), and Keweenaw Bay Indian Community (KBIC),⁴ regarding the status of wildlife populations within the project boundaries, measures to protect and enhance wildlife populations, planned timber harvest, implementation of the threatened and endangered species management guidelines during the following year and other issues that may impact wildlife populations. The consultation meetings shall occur no later than 45 days after the resource agencies have received updated information from the annual bald eagle nest surveys.

The licensee shall implement the direct measures identified by the plan,⁵ or the annual review, that the Team deems appropriate for the study, mitigation, or enhancement of fish and wildlife resources. After consulting with the resource agencies and other members of the Team, the licensee shall file the plan with the Commission. Parties shall be allowed a minimum of 30 days to make recommendations and comment on the plan.⁶ The licensee's filing shall contain an implementation schedule,

⁴ Collectively referred to as "resource agencies".

⁵ All direct measures identified through the plan shall be funded by the Mitigation Enhancement Fund.

⁶ These "parties" include the aforementioned resource agencies in addition to the Michigan Department of Attorney General, Upper Peninsula Power Company, the Michigan Hydro Relicensing Coalition (MHRC), American Rivers and American

documentation of agency consultation, copies of the agency comments and recommendations, along with specific descriptions of how agency comments are accommodated by the plan. If the licensee does not adopt agency recommendations, the licensee's reasons must be included in the filing based on project specific information.

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

DESCRIPTION OF PLAN

The plan addresses the requirements of Article 414 by proposing the following:

- (1) The creation of a 200-foot wide buffer zone around the reservoirs on lands held in fee by the licensee, where commercial timber harvesting will be prohibited, to achieve an area with old growth forest characteristics.
- (2) Forest inventories were taken on the Victoria and Bond Falls lands to establish a system of forest management on these areas. Active forest management of the Cisco and Bergland areas is not projected for the next 10 years therefore an inventory was not done on those areas.
- (3) The silvicultural techniques to be applied to the project lands include uneven-aged, even-aged, salvage harvests and passive management.
- (4) Existing roads will be used whenever possible, however, if new logging roads or landings need to be constructed, construction will be conducted according to the Michigan BMPs.
- (5) Over the next ten years, management of project lands may include harvest of about 200 acres or aspen, pine and northern hardwoods outside the buffer zone. These areas include acreage where recreational and aesthetic improvements need to be established.
- (6) Wetlands will be managed to minimize any harmful impacts of project operation. Vital wetlands will remain under the licensee's ownership when loss of such control would risk degradation, and the MDNR and FWS will be consulted when project operations will impact wetlands.
- (7) Designated campsites on the Bond Falls and Victoria Reservoirs will be developed to protect the habitat of the common loon. A total of three nesting structures will be provided, one on the Victoria Reservoir and two on the Bond Falls Flowage. The licensee will request assistance from the resource agencies regarding where to place the nesting structures.
- (8) Nesting platforms for osprey will be provided on the Bond Falls Flowage, Lake Gogebic, and Victoria Reservoir within three years of plan approval.

Whitewater Affiliation, according to the Section 1.1.2. in Appendix A of Order Approving Settlement and Issuing New License.

- (9) When feasible, the use of native seed will be used for revegetation and restoration efforts.
- (10) A site evaluation will be conducted on the reservoirs, and the Team will be consulted to determine if wild rice restoration is feasible or desirable within three years of plan approval.

The licensee will at minimum hold an annual meeting with the Team to discuss the management activities of the previous and upcoming year. The topics of discussion will include timber harvest, wild rice restoration and other land management activities. The status of bald eagle, osprey and other wildlife habitat will also be included.

AGENCY CONSULTATION

The plan was distributed to the appropriate agencies by letter dated on June 28, 2004. Comments were received from the MDNR, FS, FWS and the MHRC.

Both the FS and the MDNR provided some editorial comments to correct some technical problems with the draft plan and submitted similar concerns. Both agencies state that contour maps should be used along with on-site consultation regarding the placement of the common loon nesting structures. They also agree that the osprey platforms and wild rice restoration should be implemented within one year of plan approval as opposed to three. The FWS also supports the installation of the osprey nesting platforms within a year.

The licensee was unable to locate a contour map of the Victoria Reservoir and responds that the expertise of the resource agencies and the availability of marine depth finders/fish locators should alleviate their necessity. Funding for the osprey platforms and the wild rice restoration project shall be provided by the Mitigation Enhancement Fund. Assuming that water quality monitoring, recreational improvements and erosion control project take precedent over these actions, the licensee suggested a longer period of time to complete these enhancements. If funding is available and the Team determines both improvements to be a priority, the platform installation and wild rice restoration may be completed within a year of plan approval.

The FWS recommended that native seeds be used exclusively for project restoration and revegetation. The MDNR, FS, and the MHRC agreed that the use of native seeds is important and should be used whenever possible, though other non-invasive plants could be used. The licensee plans to consult with the Team prior to restoration activities and proposes to use native seed as long as it is practical and desirable.

DISCUSSION AND CONCLUSION

The filed wildlife and land management plan adequately addresses the requirements of article 414. The plan identifies various techniques that should be used to cultivate timber outside of the 200-acre buffer zone. The licensee will ensure that the Michigan BMP's are followed during timber harvesting activities and any related road construction.

After reviewing the comments of the FS and MDNR and the licensee's response, of the plan, Commission staff finds that contour maps should not be required to place the common loon nesting structures. While we agree that contour maps would be helpful, the methods suggested by the licensee appear to be sufficient to properly place and document the location of these structures.

The nesting structures need to be monitored for success, though this issue was not addressed in the plan. Staff recommends that the licensee develop a monitoring report for the success of the common loon nesting structures and the osprey platforms. Monitoring should occur once a year, and coincide with the summer monitoring required as part of the Nuisance Plant Control Plan⁷. The licensee should provide monitoring results to the Team during annual meetings.

Commission staff agrees that native seeds should be used whenever feasible in the revegetation of project lands, however, alternatives should only be used if native seeds are unavailable. The non-native seeds should be non-persistent in nature and the resource agencies should be consulted prior to their use. This action will avoid the introduction of invasive species that could overcome the presence of native plants on the project lands.

The licensee's wildlife and land management plan, as modified by Commission staff, provides the appropriate measures for protection of land and wildlife resources. With the changes and conditions discussed above, the plan should be approved.

The Director's orders:

(A) The revised wildlife and land management plan filed August 20, 2004, pursuant to article 414 of the project license, as modified by ordering paragraphs (B) and (C), is approved.

(B) The licensee shall monitor the use of common loon nesting structures and osprey platforms every year following their installation. A report including the monitoring survey results shall be provided to the Bond Falls Implementation Team each

⁷ As required by license article 411 of the Order Approving Settlement and Issuing New License.

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year at the scheduled annual meeting. The Commission reserves the right to require changes to these monitoring practices as necessary.

(C) In cases where native seeds are unavailable for revegetation, non-native seeds that are non-persistent in nature may be used. The resource agencies shall be consulted prior to the use of non-native seeds.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of this order, pursuant to 18 C.F.R. § 385.713.

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Division of Hydropower Administration
and Compliance