

UNITED STATES OF AMERICA 113 FERC ¶62,159
FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company

Project No. 1864-030

ORDER MODIFYING AND APPROVING RECREATION PLAN
PURSUANT TO ARTICLE 416

(Issued November 29, 2005)

On August 20, 2004, Upper Peninsula Power Company (licensee) filed a Recreation Plan (Plan), pursuant to article 416 of the license¹ for the Bond Falls Hydroelectric 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.

BACKGROUND

Article 416 of the license requires that, within twelve months after license issuance, the licensee shall file with the Commission for approval, a Recreation Plan, for implementing all recreational enhancements at the Bond Falls Project. This Plan shall be consistent with the Buffer Zone Plan described in article 413 and the Threatened and Endangered Species Protection and Enhancement Plan described in article 415. The licensee shall prepare the Plan in consultation with the Bond Falls Project Implementation Team (Implementation Team), and shall implement the Plan after approval by the Commission. The Plan shall provide full access to licensee-owned facilities.

The Plan shall provide for the following recreational enhancements at the project:

- 1) One accessible boat launching facility on the Victoria Reservoir. This facility shall include an 18-foot-wide concrete ramp, a skid pier, proper parking with designated sites near the ramp, signage, hardened paths and a vault toilet.

¹ See 104 FERC ¶ 62,135 Order Approving Settlement and Issuing New License issued August 20, 2003.

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- 2) A shoreline fishing access area adjacent to the boat launch on the Victoria Reservoir. This facility shall include five accessible fishing flatouts with connecting trails and picnic tables.
- 3) Walk-in access to the tailwater of the Victoria Powerhouse. This shall include an access trail, stairs and a vault toilet.
- 4) A marked canoe portage route with put-in and take-out sites at the Victoria Development.
- 5) Designation and maintenance of the existing dispersed boat-in campsites on the Victoria Reservoir, with no restroom facilities, trash receptacles or other high-maintenance facilities to be provided at these campsites.
- 6) An accessible tailwater fishing and canoe launching area at the Bergland Dam. This facility shall include an accessible trail, parking, vault toilet, and a canoe put-in or take-out area. In addition, two flatouts for accessible fishing shall be developed at Lake Gogebic; one adjacent to Bergland Dam and one in the Bergland Dam tailwater.
- 7) One accessible boat launching facility on the Bond Falls Flowage. This shall include an 18-foot- wide concrete ramp, a skid pier, proper parking with designated sites, signage, hardened paths and a vault toilet or equivalent. Other existing gravel boat launching ramps shall be maintained in good condition, using the same or similar materials as currently exists at these sites.
- 8) Continued operation of existing campgrounds at the Bond Falls Development, except as may be required for wildlife enhancement plans, including threatened and endangered species.
- 9) Designation and development of dispersed camping sites at the Bond Falls Development on selected islands in Bond Falls Flowage, with no restroom facilities, trash receptacles or other high-maintenance facilities to be provided at these campsites. Camping on Bond Falls Flowage shall be limited to formal campgrounds or designated dispersed sites only.
- 10) Maintenance of a canoe portage route, with take-out facility, at the Bond Falls Dam.
- 11) Provision of a toll-free telephone number with information on projected flow releases from Bond Falls Project developments, and river flow information for the West Branch, Cisco Branch, South Branch, and Middle Branch of the Ontonagon River.

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The Plan shall include, at a minimum, the following: (1) final site plans for the recreational facilities described above; (2) design drawings of the directional signs to the project recreational facilities, and a description of where they will be located; (3) erosion and sediment control measures required in Article 410, which shall be implemented during construction, and which shall minimize destruction of the area's natural vegetation, and provide for revegetation, stabilization, and landscaping of new construction areas and slopes damaged by erosion; and (4) an implementation schedule.

The licensee shall prepare the Plan after consultation with the Implementation Team. The licensee shall include with the Plan, documentation of agency consultation, copies of agency comments and recommendations on the draft Plan, 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 prior to filing the Plan with the Commission for approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

DESCRIPTION OF THE PLAN

The Plan consists of a description of the project and its four developments, current recreational facilities, and license prescribed improvements including directional signage and construction and maintenance of facilities. The Plan also includes general location maps and maps illustrating existing recreational features.

The licensee's recreation plan for the project is outlined according to each individual development, and proposes the following measures:

Bond Falls

1. Develop two designated camp site locations near the boat launches of the Bond Falls Reservoir, with one on the east side and one on the west side;
2. Relocate the current camp sites between the two designated locations to replace campsites dispersed along the shoreline of the reservoir;
3. Install vault toilets at the new campsites and remove the old facilities dispersed around the reservoir;
4. Upgrade one existing gravel boat launch to include an 18-foot-wide concrete launch with a skid pier;
5. Designate dispersed boat-in camp sites to the five islands which currently have camp sites within the development;

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6. Include signage at the boat launches indicating which islands are open to camping;
7. Provide fire rings and wilderness style latrines on each island if it is determined to be desirable by the Implementation Team;
8. Install gates around existing roads to camp sites to limit human disturbance after the development of designated camp sites;
9. Continue to allow walk-in public access within the buffer zone; and
10. Develop a canoe take out area near the main dam with directional signage to Agate Falls.

Victoria Development

1. Install a vault toilet, or equivalent, at the parking lot near the Victoria Dam boat launch and near the powerhouse tailrace;
2. Develop five fishing flatouts near the boat launch on the Victoria Reservoir, with a hardened path connecting them;
3. Provide three picnic tables adjacent to the boat launch and flatouts;
4. Widen the concrete ramp to 18 feet;
5. Designate two dispersed boat-in camping sites on the reservoir;
6. Place signage at the boat launch designating the location of the sites, indicating that the sites are primitive boat-in access only; and
7. Provide fire rings and wilderness style latrines at boat-in camp sites.

Bergland Development

1. Install a fishing pier in the tailrace area;
2. Install an ADA-accessible vault toilet, or equivalent, and a hardened path from a nearby recreational trail to the tailwater fishing pier/ canoe put in area;
3. Contact the appropriate agency to determine if the access road can be widened near where the road intersects the old railroad grade to create additional parking;

The plan also incorporates best management practices for erosion control and sedimentation control measures, including silt fencing, straw bales or diversion structures, and permanent stabilization through mulching and seeding. The plan also states that UPPCO hydro operation staff or contractors will conduct all maintenance of recreational facilities. Lastly, the plan proposes that directional signage be installed within one year of the plan's approval, and that a toll-free telephone number with river flow information for the West, Cisco, South, and Middle branches of the Ontonagon River be established.

Recreational improvements for the Bond Falls development do not include the development of a hardened path to the boat launches, as the sites currently consist of gravel or mowed grass. Proposed improvements for the Bergland development include a fishing pier in the tailrace area only, as the area above the Bergland Dam is considered a wetland. Final site drawings for recreational enhancements were not included in the plan. The licensee proposed that these drawings be submitted to FERC within 90 days of completion of the improvements. An implementation schedule was also not included in the plan. The licensee states that the reason for this is because capital costs for new or improved recreation facilities are funded by the Michigan enhancement fund. Because the fund provides the resources to implement many aspects of several plans, priorities for project implementation are to be decided as a team. All of the improvements described in the plan will occur within 5 years of the plan approval, or as soon as possible, as determined by the Implementation team.

AGENCY CONSULTATION

The recreation plan was distributed to appropriate agencies including the Michigan Department of Natural Resources (MDNR), the U.S. Forest Service (Ottawa National Forest), the Michigan Hydro Relicensing Coalition, and the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service did not comment on the proposed recreation plan. The licensee incorporated the comments and suggestions from these agencies into the plan, with the exception of the following items, which are addressed in the Discussion and Conclusion section of this order.

1. The MDNR, U.S. Forest Service and the Michigan Hydro Relicensing Coalition stated that there was a need for a proposed implementation schedule, final site plans, and a projected date for the flow release and advertisement service.
2. The Michigan Hydro Relicensing Coalition submitted comments in a letter dated July 22, 2004, noting that they disagreed with the proposed construction of five fishing flatouts, and suggested that at least two fishing piers be constructed at a location furthest away from the boat launch at the Victoria development to allow anglers to gain access to deeper water for fishing.
3. On August 10, 2005, the MDNR submitted additional comments regarding the plan. Specifically, these comments pertained to the proposed consolidation of designated campgrounds at the Bond Falls development. Upon initial review of the proposed recreation plan submitted August 20, 2004, the MDNR indicated they did not foresee any problems with this consolidation and removal of dispersed shoreline camping. In the comments submitted on August 10, 2005, however, the MDNR states that it had come to their attention that there is a

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high recreational value associated with the dispersed shoreline camping, and that the plan to remove these sites would be contrary to the Bond Falls Settlement Agreement and License conditions. These conditions state that current campgrounds shall continue to be operated, except as may be required for wildlife enhancement plans including the plan addressing threatened and endangered species. The MDNR also concluded that the current configuration of dispersed camp sites only assumes a minor portion of the available shoreline and does not impair wildlife.

DISCUSSION AND CONCLUSION

The following addresses the comments and suggestions from the Federal, state, and local agencies that were not incorporated into the proposed recreation plan for the project.

(1) Proposed implementation schedule, final site plans, and a projected date for the flow release and advertisement service

The comments from the MDNR and the U.S. Forest Service stated that there was a need for a proposed implementation schedule and final site plans. The licensee stated that the recreation plan was designed to be consistent with the Buffer Zone Plan, the Wildlife and Land Management Plan, and also the objectives of the Threatened and Endangered Species Protection and Enhancement Plan submitted to the Commission pursuant to articles 413, 414, and 415, respectively. The licensee included drawings of current recreational facilities available, and states they will submit final site plans (as built) for each development within 90 days of the completion of the improvements. The Commission finds that the proposal to provide final site plans is sufficient, as the licensee will coordinate with the Implementation Team in providing the required recreational improvements and all improvements will be completed within five years of the issuance of this order. The licensee should file as-built drawings within 90 days of completing construction of recreational improvements and within 5 years of the issuance of this order. The drawings should show the location and text of all signage. The licensee is expected to coordinate with the Implementation Team in determining the appropriate actions to provide the required recreational resources at the project. The licensee should establish the telephone number and advertise it on local newspapers according to priorities set by the Implementation Team and within 5 years of the issue date of this order.

(2) Proposed construction of five fishing flatouts

The Michigan Hydro Relicensing Coalition disagreed with the proposal to construct five fishing flatouts, and suggested that at least two fishing piers be constructed at a location furthest away from the boat launch at the Victoria development to allow anglers to gain access to deeper water for fishing. Article 416 of the project license requires five accessible fishing flatouts with connecting trails and picnic tables at the Victoria Development. Therefore, the proposed plan is consistent with the project license terms and conditions.

(3) Proposed consolidation of designated campgrounds

The comments from the MDNR submitted on August 10, 2005 indicate that they have reconsidered their decision to support the removal of dispersed camping within the shoreline buffer zone. The MDNR states that the dispersed camp sites serve as the main attraction for people camping at the Bond Falls project. In response to these comments from the MDNR, the licensee filed a letter with the Commission on August 15, 2005 stating that there are thirty-one camping areas covering approximately one half of the available shoreline, and provided a map illustrating the location of these sites. The licensee also cited article 414 of the license, which calls for the protection and enhancement of loons, and states that the land management plan shall limit camping to designated locations on Bond Falls Project lands. In addition, the licensee stated that the principle management objective of the Buffer Zone Management plan required by article 413 of the license is to achieve old growth forest characteristics. Lastly, the licensee stated that the campground minimizes the opportunity for wild rice restoration and enhancement on the Bond Falls reservoir as it is currently arranged, and that this arrangement is inconsistent with the wild rice restoration and enhancement objectives of the Wildlife and Land Management Plan under part 5 of article 414 of the project license. The licensee requested the Commission approve the campground changes as proposed in the plan.

The Commission finds that article 413 of the project license states that the principal management objective for the Buffer Zone Plan is to achieve old growth forest characteristics, as well as be consistent with the Threatened and Endangered Species Protection and Enhancement Plan described in article 415 of the license. Additionally, article 414 of the project license specifically calls for the protection and enhancement of loons, and states that the Wildlife and Land Management Plan shall limit camping to designated locations on Bond Falls Project lands. Article 414 also states that the Wildlife and Land Management Plan must be consistent with the Buffer Zone Plan described in Article 413, and the Threatened and Endangered Species Protection and Enhancement

Plan described in Article 415. The MDNR points out that section 3.8.3.4.2 under the Final Terms and Conditions of the project license states that current campgrounds shall continue to be operated, except as may be required for wildlife enhancement plans including threatened and endangered species. The Recreation Plan, Buffer Zone Plan, and the Wildlife and Land Management Plan were submitted by the licensee on August 20, 2004. These approved plans were consistent with one another in providing for old growth forest characteristics and wildlife habitat enhancement measures along the shoreline buffer zone².

Lastly, section 3.8.3.4.3 of the project license's final terms and conditions states that designated dispersed camping sites shall be marked and developed on selected islands in Bond Falls Flowage. No restroom facilities, trash receptacles or other high-maintenance facilities shall be provided on the islands. The Recreation Plan is consistent with these requirements in providing dispersed boat-in camp sites at the five islands.

Because the proposed recreation plan offers dispersed camping sites on selected islands, as well as designated campgrounds, it is consistent with the terms and conditions of the project license and meets the requirements of article 416. In addition, the plan is consistent with the approved Buffer Zone, Wildlife and Land Management, and Endangered Species plans in providing for old growth forest characteristics and wildlife habitat enhancement measures along the shoreline. The recreation plan should be approved. The facilities will provide access for the public and will be monitored to determine if changes are necessary. Article 17 of the Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States³ states that the licensee shall comply with reasonable modifications of recreational resources at the project, as may be prescribed by the Commission during the term of the license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing. Therefore, the Commission can evaluate any future needs in expanding the two designated camp sites or determine if there is a need for additional dispersed camp sites at the Bond Falls development during the term of the project license.

² See 110 FERC ¶62,165 (2005), 110 FERC ¶62,100 (2005), and 113 FERC ¶62,016 (2005)

³ See FPC Form L-1 (revised October 1975)

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The Director orders:

(A) The recreation plan for the Bond Falls Project, filed on August 20, 2004, is approved.

(B) The licensee shall file for Commission approval as-built drawings showing the facilities and access areas in relation to project features and boundary within 90 days of completing construction of recreational improvements and within 5 years of the issuance of this order. The location and text of all signage should be included on the drawings.

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

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and Compliance