

UNITED STATES OF AMERICA 113 FERC ¶62,016  
FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company

Project No. 1864-040

ORDER APPROVING THREATENED AND ENDANGERED SPECIES  
PROTECTION AND ENHANCEMENT PLAN  
PURSUANT TO ARTICLE 415

(Issued October 06, 2005)

On August 20, 2004, Upper Peninsula Power Company (licensee) filed a Threatened and Endangered Species Protection and Enhancement Plan, pursuant to article 415 of the license<sup>1</sup> 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 415 of the project license states that within twelve months after the issuance of a new license, the licensee shall file with the Commission, for approval, a Threatened and Endangered Species Protection and Enhancement Plan (plan) for all project lands. The plan shall be consistent with the Buffer Zone Plan described in Article 413, as well as with specific measures implemented under the Mitigation and Enhancement Fund described in Section 7 of the Settlement. The plan shall include, but not be limited to, the following provisions and specific measures:

(1) Protection of threatened and endangered species from timber harvesting, and associated activities, on project lands.

(2) Consistency with U.S. Fish and Wildlife Service (FWS), U.S. Forest Service (USFS), and Wisconsin Department of Natural Resources (WDNR) bald eagle management guidelines, along with any future Michigan Department of Natural Resources (MDNR) bald eagle management guidelines, as appropriate.

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<sup>1</sup> See 104 FERC ¶62,135 Order Approving Settlement and Issuing New License issued August 20, 2003

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(3) Reimbursement of either MDNR or WDNR, as determined by the Implementation Team, for up to 50 percent of the costs of annual airplane flights to identify the location of bald eagle nests in the project area.

(4) Consistency with the MDNR wolf management guidelines and the Ottawa National Forest Land Management Plan guidelines for the protection of gray wolf den sites, and with any future FWS or WDNR wolf management guidelines, as appropriate, including consultation with the resource agencies on the construction of new roads on licensee-owned project lands.

(5) Annual consultations with the resource agencies on: the status of threatened and endangered species populations within the project boundaries; measures to protect and enhance threatened and endangered species populations; planned timber harvest; and land management issues that may impact threatened and endangered species. The meetings should be scheduled to occur not later than 45 days after the resource agencies have received updated information from the annual bald eagle nest surveys. The meetings should address, among other issues, the implementation of the threatened and endangered species management guidelines during the following year.

The licensee shall implement any direct measures identified by the plan, or the annual review, that the Bond Falls Project Implementation Team (Implementation Team) determines to be appropriate, for the study, protection, or enhancement of threatened and endangered species. All direct measures identified through the plan shall be funded by the Mitigation Enhancement Fund described in Section 7 of the Settlement.

The licensee shall consult with the resource agencies, and other members of the Implementation Team, prior to filing the plan with the Commission. The plan shall include an implementation schedule, documentation of agency consultation, copies of agency comments and recommendations, and specific descriptions of how the agency comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the Parties to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval, the licensee shall implement the plan according to the approved schedule, including any changes required by the Commission.

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## DESCRIPTION OF THE PLAN

The plan consists of a description of the project lands, proposed methods for Bald Eagle management, gray wolf management, and Osprey management. The plan also includes proposed measures for the protection of threatened and endangered species from timber harvest and associated activities, documentation of agency consultation, and a proposed time schedule for implementing the plan.

To enhance and protect Bald Eagles within the project, the plan proposes to incorporate Bald Eagle management into the overall land management for the project. The project lands that will be established as Bald Eagle management areas include the following:

- (1) Existing use- including existing nesting, roosting and feeding areas;
- (2) Potential use- including land located adjacent to the project flowage and river areas;
- (3) Vegetation- project areas included are characterized by super- canopy trees resulting in suitable habitat for future nesting sites (with the exception of the tailwater feeding area)

The plan also outlines proposed guidelines that will be applied to all Bald Eagle nesting locations within the project boundary, with nesting territories divided into primary and secondary management areas. These guidelines state that the boundary of the primary nesting area will not be less than 330 feet from the nest, and the nesting size area will be adjusted by the actual use of the area around the nesting tree. Major land uses such as commercial logging, building of roads, other non-project facility-related construction or mining will not occur within the primary nesting area. The use of chemicals toxic to Bald Eagles will not be used within the primary nesting area. In addition, the licensee will restrict human entry into the primary nesting area, company low-level aircraft operations, major project facility-related construction activities not associated with dam safety, or the development of recreational facilities during the period between February 1 and July 31 of any given year. The plan also states that if Bald Eagles choose to establish a new nest in an area already receiving human use resulting from project operation or recreational facilities, the human activities will continue, but will not be expanded, and will not be restricted during the critical period of February 1 to July 31.

Secondary nesting sites are proposed to lie outside the primary nesting area and be circular within a minimum boundary of 660 feet from the nest, and can extend up to a quarter mile in any direction. Human activities not permitted to occur within these areas include new development, the building of roads and trails facilitating access to the nest, and the use of chemicals toxic to Bald Eagles. Other activities such as commercial logging, mining, low level aircraft operations, use of firearms, or camping will be avoided in these areas during the period between February 1 and July 31.

The plan also proposes to preserve suitable habitat in addition to that, which is presently being used within the project lands by maintaining areas with super-canopy trees that have a high potential for nesting. Management for old growth forest characteristics around project reservoirs will be conducted through the activities outlined in the Buffer Zone plan, which was also filed with the Commission on August 20, 2003<sup>2</sup>. The plan also proposes to refrain from removing old standing nest trees within project lands.

Additionally, the plan proposes to institute the following measures to minimize human disturbance and enhance habitat in feeding areas on project lands:

- (1) Old growth management will occur within 200 feet of the shoreline, as described in the Buffer Zone Plan.
- (2) Additional construction of buildings along the shoreline will not occur in feeding areas unless required for project operations or enhancement and maintenance of existing public use areas.

The plan also states that timber management prescriptions will be modified to protect and develop roosting sites for Bald Eagles by leaving three to five old growth perch trees within a quarter mile radius of nesting sites. Specific management practices for communal roosting areas will be similar to those for nesting management. The licensee also plans to conduct aerial surveys to obtain an accurate understanding of Bald Eagle activity and population, and will contribute \$500 annually to the resource agency conducting Bald Eagle surveys on project lands. Upon receiving data from the resource agencies conducting surveys, the licensee will create a map of the project lands illustrating active and inactive nesting sites.

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<sup>2</sup> 110 FERC ¶62,165, Order Approving Buffer Zone Plan Pursuant to Article 413

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To enhance and protect the gray wolf within the project, the plan states that project lands will be managed consistently with MDNR wolf management guidelines and the Ottawa National Forest Threatened and Endangered Species guidelines for the protection of gray wolf den sites, and any future FWS or WDNR wolf management guidelines. The licensee also plans to close temporary roads used for timber harvest.

To enhance and protect Osprey habitat within the project lands, the plan proposes to follow the activities described in the Wildlife and Land Management<sup>3</sup> and Buffer Zone Plans, and will consult with the resource agencies on an annual basis to discuss new management guidelines.

To protect threatened and endangered species from timber harvest and associated activities on project lands, the plan states that surveys will be conducted to monitor for the presence of Bald Eagles and Ospreys located on proposed timber harvest lands. Additionally, the licensee will follow management guidelines outlined in the FWS publication, "Bald Eagle Management Guidelines." Commercial timber harvesting will be prohibited within the 200 foot buffer zone, as outlined in the Buffer Zone Plan. Additionally, the licensee proposes to designate and relocate camping sites on the Bond falls and Victoria reservoirs to enhance threatened and endangered species habitat.

The licensee will consult with resources agencies on an annual basis to discuss the status of threatened and endangered species populations within project lands, the measures to protect and enhance these populations, any planned timber harvest activities, and the land management issues that may impact threatened and endangered species. Implementation of the proposed plan will begin within one year of plan approval. At that time, the licensee will update the Bald Eagle inventory database. Additionally, the licensee states that the sale of the Cisco Dam Development is under evaluation, and in the event the development is removed from the project the licensee will be relieved of the requirement to maintain threatened and endangered species protection and enhancement within this development.

## AGENCY CONSULTATION

The Threatened and Endangered Species Protection and Enhancement Plan was distributed to appropriate agencies and comments regarding the plan were received from

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<sup>3</sup> 110 FERC ¶ 62,100, Order Modifying and Approving Wildlife and Land Management Plan Pursuant to Article 414

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the MDNR, the U.S. Forest Service (Ottawa National Forest), the Michigan Hydro Relicensing Coalition (MHRC), and the FWS. The MDNR provided comments to the plan in a letter dated July 28, 2004, and the U.S. Forest Service provided comments in a letter dated July 22, 2004. Both the MDNR and the U.S. Forest Service stated that management for old growth characteristics in potential nesting areas for Bald Eagles should involve the retention of damaged and/or deformed trees in the 200-foot buffer zone. The licensee amended the plan accordingly. Both agencies also commented on the need for clarification on the goal to retain three to five old-growth perch trees within a quarter mile radius of nesting sites, and the need to manage road densities so that vehicular access is minimized in the buffer zone at the Bond Falls reservoir. The licensee incorporated these suggestions into the plan. The MHRC requested, however, that all old-growth trees be retained around nesting sites. In response to this comment, the licensee states that as the MHRC is an ex-officio advisory member, the licensee is not required to address or adopt any comments or suggestion to the plan.

All agencies, as well as the MHRC, commented on the appropriate use of wording for the type of management in Bald Eagle feeding areas, emphasizing that the plan should state the principle objective as management of old growth characteristics of the area. The licensee amended the plan accordingly. The FWS provided appropriate wording for primary nesting areas and gray wolf management as it pertains to timber harvest activities, which was incorporated into the plan. The FWS also noted that road building associated with logging will have a negative affect on the wolf population. The licensee disagreed with this comment, and cited MDNR recommendations that vehicle use associated with logging roads should be managed to minimize any impacts on wolves. The MDNR also requested the licensee coordinate with their wildlife division to ensure they can accompany Bald Eagle flight surveys.

## DISCUSSION AND CONCLUSION

The MHRC requested that all old-growth trees be retained around nesting sites, while resource agencies agreed with the plan's goal to retain three to five old-growth perch trees within a quarter mile radius of Bald Eagle roosting areas during timber harvesting operations, and to retain damaged and/or deformed trees in the 200-foot buffer zone.

The licensee's detailed protection measures proposed in this plan, in conjunction with the already approved Buffer Zone Plan, should provide comprehensive protection and enhancement of Bald Eagle nesting at the project. One of the objectives of the Buffer Zone Plan is the enhancement of the old growth characteristics of the reservoir shoreline, which should retain potential nesting sites adjacent to the reservoir. The licensee has

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consulted with the appropriate resource agencies and incorporated their recommendations concerning Bald Eagle habitat into the plan. Further, the plan is consistent with the agencies' Bald Eagle management guidelines as requested by Article 413.

FWS noted that road building and the activities associated with logging could have negative affects on gray wolf populations. The licensee responded that road building associated with logging, if properly managed, would not adversely affect gray wolf populations. The licensee intends, whenever possible, to close temporary logging roads to vehicular traffic by using an earthen berm or barrier. Unnecessary roads that have been previously constructed will also be blocked to vehicles where possible. Given these measures, any road building should not negatively affect gray wolves.

The Threatened and Endangered Species Protection and Enhancement Plan for the Bond Falls project meets the requirements of article 415. Approval of the plan should help enhance resources at the Bond Falls project for threatened and endangered species. The plan would also compliment other project land-based plans such as the Wildlife and Land Management Plan and the Buffer Zone Management Plan by providing for increased protection and enhancement of habitat. The plan should be approved.

The Director orders:

(A) The Threatened and Endangered Species Protection and Enhancement Plan for the Bond Falls project, filed on August 20, 2004, is approved.

(B) 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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Division of Hydropower Administration  
and Compliance