

158 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Upper Peninsula Power Company

Project No. 1864-164

ORDER FINDING LICENSING NOT REQUIRED IN PART, AMENDING LICENSE,
AND REVISING ANNUAL CHARGES

(Issued January 19, 2017)

1. On June 14, 2012, Upper Peninsula Power Company (UPPCO) filed an application to amend its license for the 12-megawatt (MW) Bond Falls Hydroelectric Project No. 1864 (Bond Falls Project) to remove the Cisco development.¹ The project is located on the Ontonagon River in Ontonagon and Gogebic Counties, Michigan, and Vilas County, Wisconsin, and is partially located on federal lands within the Ottawa National Forest administered by the U.S. Forest Service (Forest Service).
2. For the reasons discussed below, this order finds licensing not required for the Cisco development and amends the license to exclude the development and associated facilities.

Background

A. Project Description

3. The Bond Falls Project consists of four developments, Victoria, Bond Falls, Bergland, and Cisco, which are located on the West, Middle, and Cisco Branches of the Ontonagon River in northeastern Wisconsin and the western Upper Peninsula of Michigan. The Bond Falls and Bergland developments do not have generating facilities but provide seasonal reservoir storage for the Victoria development, where all project generation occurs. The Cisco development similarly does not have generating facilities, and provides nominal storage for the Victoria development.

¹ UPPCO made supplemental filings on July 9, September 26, December 4, 2012, and April 11, August 15, October 9, and December 10, 2013.

4. The Victoria development, located on the West Branch of the Ontonagon River, includes a 301-foot-long, 118-foot-high dam; the 250-acre Victoria reservoir; and a powerhouse housing two 6-MW turbine generator units. The Victoria development occupies 1.86 acres of national forest lands downstream of the dam.²
5. The Bond Falls development, located on the Middle Branch of the Ontonagon River, includes a 45-foot-high, 900-foot-long main dam; the 2,160-acre Bond Falls reservoir; and a 7,500-foot-long canal. UPPCO operates the Bond Falls development to store water and divert river flow from the Middle Branch to the South Branch through the canal. The South Branch flows into the West Branch where river flows are used for hydroelectric generation at the Victoria development. The Bond Falls development occupies 69.3 acres of national forest lands, some of which are adjacent to the reservoir and partially inundated at certain reservoir elevations.³ Neither the development's dam nor canal occupies national forest land.
6. The Bergland development, located on the West Branch of the Ontonagon River upstream of the Victoria development, consists of a 4-foot-high, 179-foot-long dam and the 276,000-acre Lake Gogebic, a natural lake. Throughout the year, UPPCO maintains target water level elevations in Lake Gogebic between the maximum normal water level of 1,296.2 feet mean sea level (msl) and 1,294.2 feet msl. The Bergland development occupies 20.37 acres of national forest land, which are adjacent to the reservoir and partially inundated at certain reservoir elevations.⁴ National forest land does not underlie the development's dam.
7. The Cisco development, located in the headwaters of the Cisco Branch of the Ontonagon River on the downstream end of 15 interconnected lakes (Cisco Chain of Lakes), includes an 11-foot-high, 21-foot-long dam and the 4,025-acre Cisco Lake. UPPCO controls the development by manually raising or lowering fused stoplogs in two concrete bays, and operates the development at or above 1,683.0 feet msl at all times, with a target elevation between 1,683.4 and 1,683.9 feet msl. Releases from the Cisco development flow into the Cisco Branch that flows into the South Branch. Flows in the South Branch then flow into the West Branch, and are used for hydroelectric generation at the Victoria development. The Cisco development occupies 157.59 acres of national forest land, some of which are under its constituent lakes and some of which are adjacent

² *Upper Peninsula Power Co.*, 113 FERC ¶ 62,216 (2005).

³ *Id.*

⁴ *Id.*

to the lakes and partially inundated at certain lake elevations.⁵ National forest land does not underlie the Cisco Dam.

8. UPPCO operates the Victoria reservoir, Bond Falls reservoir, and Lake Gogebic primarily to power the generating facilities at the Victoria development. During the winter, UPPCO draws down the Victoria reservoir no more than 3 feet, Bond Falls reservoir no more than 6 feet, and Lake Gogebic no more than 2 feet. In contrast, UPPCO maintains relatively constant water levels at Cisco Lake (within a 6-inch operating band) throughout the year.

B. Relicensing Proceeding

9. The Bond Falls Project was relicensed in 2003 for a 40-year term (2003 license).⁶ The 2003 license includes, as conditions, portions of a settlement agreement entered into by UPPCO and nine other relicensing participants, including the Forest Service, Michigan Department of Natural Resources (Michigan DNR), and Wisconsin Department of Natural Resources (Wisconsin DNR).⁷ Further, the 2003 license attaches, in its Appendix A, portions of the 17 conditions that the Forest Service filed pursuant to its authority under section 4(e) of the Federal Power Act (FPA).⁸ At the time, the Commission interpreted these conditions as applying to only those national forest lands where project works were located.⁹ Because staff mistakenly believed that only the Bond Falls development occupied the Ottawa National Forest, staff did not include as

⁵ *Id.*

⁶ *Upper Peninsula Power Co.*, 104 FERC ¶ 62,135 (2003).

⁷ The other signatories to the settlement are the Michigan Department of the Attorney General, U.S. Fish and Wildlife Service (FWS), Keweenaw Bay Indian Community, Michigan Hydro Relicensing Coalition, American Rivers, and American Whitewater Affiliation.

⁸ 16 U.S.C. § 797(e) (2012).

⁹ *Upper Peninsula Power Co.*, 110 FERC ¶ 61,141, at P 10 (2005) (citing *Minnesota Power & Light Co.*, 72 FERC ¶ 61,028 (1995), *on reh'g*, 75 FERC ¶ 61,131 (1996)). In 2006, the court in *City of Tacoma* held that where any part of the project is located on a federal reservation, the Secretary that supervises that reservation may impose any conditions under FPA section 4(e) that will protect the reservation, and the Commission has no discretion to reject the conditions. *City of Tacoma, Washington v. FERC*, 460 F.3d 53, 66-67 (D.C. Cir. 2006). Since that decision, the Commission has included these mandatory conditions in licenses without modification.

mandatory conditions the section 4(e) conditions that applied to the Bergland, Cisco, or Victoria developments.¹⁰

10. The Forest Service requested rehearing of the 2003 license, arguing that the Commission should have adopted eight of its section 4(e) conditions. On February 14, 2005, the Commission issued an order on rehearing finding that parts of all four developments occupied national forest lands and attaching a revised Appendix A that included additional section 4(e) conditions for those lands.¹¹

11. One of those conditions that applies to the Cisco development, Condition 13, provides in part:¹²

UPPCO will attempt, with the [Bond Falls Implementation Team's]¹³ support, to find a new owner for Cisco Dam in order to allow it to be removed from the Bond Falls Project license. Any new owner shall be required to operate the dam according to the Operation Plan developed by the Team. If Cisco Dam is removed from the license and operated by a new owner, UPPCO shall install and finance up to \$75,000 (in December 1998 dollars adjusted for CPI [Consumer Price Index]-0.5%) for a 75-foot-long spillway structure with a small adjustable spill area or another acceptable engineering design for very high-flow periods to allow dam operation as established in the Operating Plan.

12. The Cisco Chain Riparian Owners Association (Riparian Association) had previously expressed interest in purchasing the Cisco Dam. UPPCO has since executed an asset sale agreement to facilitate the Riparian Association's purchase of the dam and 7.85 acres of UPPCO's land adjacent to the dam, contingent on the Commission's approval.

¹⁰ *Upper Peninsula Power Co.*, 110 FERC ¶ 61,141 at PP 9-11.

¹¹ *Upper Peninsula Power Co.*, 110 FERC ¶ 61,141. The Commission accepted some of Forest Service's conditions under section 4(e) and some as recommendations under section 10(a)(1) of the FPA.

¹² *Id.* at 61,562. Condition 13 also reflects provisions of the settlement agreement. *Id.* at P 4 n.5.

¹³ The Bond Falls Implementation Team consists of a member from the Michigan DNR, FWS, Keweenaw Bay Indian Community, Wisconsin DNR, Forest Service, and UPPCO.

C. License Amendment Proceeding

13. On June 14, 2012, UPPCO filed a license amendment application seeking authorization to remove the Cisco development from the project license. To comply with the Forest Service's Condition 13, UPPCO's application also proposes to make up to \$75,000 (December 1998 dollars adjusted for the CPI-0.5%) available to the resource agencies for the construction of a 75-foot-long fixed crest spillway structure with a small adjustable area or another acceptable engineering design for very high-flow periods.

14. UPPCO does not propose to construct a 75-foot-long fixed crest spillway because it states this would no longer be financially reasonable. The licensee explains that a county project replaced the bridge that was located over the Cisco Dam, and, as a result, the cost of constructing a fixed crest spillway would significantly exceed \$75,000, as adjusted for inflation. Further, UPPCO states that, after the bridge replacement, it spent approximately \$70,000 in 2008 dollars on improvements to the Cisco Dam, including dam stabilization and bridge abutments, refurbishment of the concrete wing walls, and enhancements to assist in removing and adding stoplogs. UPPCO considers these repairs as constituting "another acceptable engineering design for very high-flow periods" that would satisfy Condition 13's requirements.

15. On October 12, 2012, Commission staff issued a public notice of the amendment application, establishing November 13, 2012, as the deadline for filing notices of intervention and motions to intervene.¹⁴ The Forest Service and the Wisconsin DNR filed timely notices of intervention.¹⁵ On November 16, 2012, Michigan DNR filed a late, unopposed motion to intervene, which Commission staff granted on June 9, 2016.

16. The Forest Service, local residents Thomas Church and Robert Evans, and the local group Northwood Alliance, Inc. filed comments stating that UPPCO's proposal does not satisfy the requirements of Condition 13. Specifically, the commenters disagreed that contributing \$75,000 or UPPCO's completed dam improvements satisfied Condition 13's requirements, and requested that UPPCO enter into formal dispute

¹⁴ The Commission's Rules of Practice and Procedure provide that, if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is not open for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2) (2016). The filing deadline was 30 days from issuance of the notice (i.e., November 11, 2012). November 11, however, fell on a Sunday and Monday, November 12, was a federal holiday (Veterans Day). Thus the filing deadline was the close of business on Tuesday, November 13, 2012.

¹⁵ Pursuant to Rule 214(a) of the Commission's Rules of Practice and Procedure, the Forest Service and the Wisconsin DNR became parties to the proceeding upon timely filing of their notices of intervention. 18 C.F.R. § 385.214(a)(1) (2016).

resolution with the settling parties. In addition, Mr. Church expressed concerns about the Riparian Association's ability to maintain the dam.

17. Philip L. Wirtanen, a local resident near the Bergland development, filed comments asserting that the Cisco development should not be removed from the project boundary. He argued that removing the Cisco development would require the Bergland development to supply more water for downstream generation, further burdening shoreline property owners at Lake Gogebic while favoring owners at Cisco Lake. In addition, Mr. Wirtanen added that UPPCO would not be unduly burdened if it were required to maintain and operate the Cisco development as part of the Bond Falls Project.

18. In January 2013, UPPCO and members of the Bond Falls Implementation Team (Michigan DNR, Wisconsin DNR, Forest Service, FWS, and Keweenaw Bay Indian Community) began a formal dispute resolution process pursuant to their settlement agreement. The parties agreed that Condition 13 had two purposes: to more closely mimic run of river flow to naturalize the hydrograph, and to create a more passive operation. Following negotiations, the Forest Service developed a conceptual design for the dam and UPPCO developed a different design; however, the team members could not reach a resolution on which design best fulfills Condition 13's purposes.

19. On December 10, 2013, UPPCO amended its application to include its proposed design, and requested that the Commission resolve its dispute with the team members.

Discussion

A. Jurisdiction

20. Condition 13 assumes that when UPPCO sells the Cisco development to a new owner, the development would not be subject to the Commission's jurisdiction and the new owner would not need a license to maintain the development. This assumption, however, overlooks the threshold question of whether the FPA requires the development to be licensed by the Commission. Section 4(e) of the FPA gives the Commission, not the Secretary that supervises the reservation where project works are located, the authority to determine whether licensing is required.¹⁶

¹⁶ As was pointed out in the Commission's rehearing order of the new license, in any license amendment application to remove the Cisco development from the Bond Falls Project license, UPPCO would have to show that the Cisco development is not necessary for project purposes. *Upper Peninsula Power Co.*, 110 FERC ¶ 61,141 at P 26. If the Commission found that the Cisco development was required to be licensed, UPPCO could not amend its license to remove the development from its project without the development being licensed to another entity.

21. Pursuant to section 4(e) of the FPA, the Commission issues licenses for “project works necessary or convenient for . . . the development, transmission, and utilization of power”¹⁷ Section 3(12) of the FPA defines “project works” as “the physical structures of a project.”¹⁸ Section 3(11) of the FPA defines a “project” in pertinent part as a:

complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures . . . which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, . . . all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.¹⁹

22. The Cisco development has no generating facilities. The appropriate inquiry, then, is whether the Cisco development is “necessary or appropriate” to the Bond Falls Project, and thus requires licensing as part of that project. To reach this finding, the Commission determines a reservoir's impact, with and without manipulation of releases therefrom, on generation at downstream licensed projects.²⁰ If a reservoir provides significant generation benefits to a downstream licensed project, the reservoir requires licensing as part of that project.²¹ The intent with which a reservoir is operated is extraneous to whether a reservoir is part of a unit of hydroelectric development.²² Similarly, the Cisco

¹⁷ 16 U.S.C. § 797(e) (2012).

¹⁸ 16 U.S.C. § 796(12) (2012).

¹⁹ 16 U.S.C. § 796(11) (2012). The Commission has found that the terms “miscellaneous facilities” and “used and useful” are intended to apply to facilities other than dams and reservoirs. *See Union Water Power Co.*, 73 FERC ¶ 61,296, at 61,824 n.13 (1995).

²⁰ *Central Maine Power Co.*, 81 FERC ¶ 61,087, at 61,345 (1997).

²¹ *Id.* at 61,345 n.17.

²² *Id.* at 61,345 n.17 (citing *Union Water Power Co.*, 68 FERC ¶ 61,180 (1994); *City of Soda Springs, Idaho*, 57 FERC ¶ 61,248 (1991); *New York State Electric & Gas Corp.*, 16 FERC ¶ 61,176 (1981)).

development's occupation of federal lands,²³ and Mr. Wirtanen's arguments concerning Lake Gogebic²⁴ have no bearing on whether licensing is required for this non-generating facility.

23. The Commission has found, and the D.C. Circuit has affirmed, that a contribution to downstream generation that exceeds 2 to 2.5 percent amounts to a significant generation benefit.²⁵ The Commission has applied this threshold when considering a single reservoir²⁶ and multiple reservoirs.²⁷ Further, when considering multiple reservoirs that collectively may affect downstream generation, the Commission may exclude an individual facility from its aggregate calculations (i.e., finds licensing not required) when that facility's contribution is minimal or very small.²⁸ Here, as discussed below, we find that UPPCO has demonstrated that the Cisco development's contribution is too insignificant to require licensing.

24. In its September 26, 2012 supplemental filing, UPPCO provided a study it conducted in 1991 for its relicense application (1991 Study). The 1991 Study describes a

²³ See *PacifiCorp*, 98 FERC ¶ 61,117, at 61,346 (2002) (“[T]he fact that [the facilities] may affect, or even be located on, public lands or federal reservations cannot by itself bring the facilities within the Commission's jurisdiction.”) (citing *Georgia Pacific Corp.*, 91 FERC ¶ 61,047, at 61,172 n.25 (2000)).

²⁴ Nevertheless, we note that Article 401 of the 2003 license (which requires UPPCO to operate the Bergland development within a specific elevation range) addresses Mr. Wirtanen's concern that Lake Gogebic will be further drawn down if the Cisco development is removed from the project.

²⁵ See *Domtar Maine Corp. Inc. v. FERC*, 347 F.3d 304, 311-12 (D.C. Cir. 2003); *Chippewa & Flambeau Improvement Co. v. FERC*, 325 F.3d 353, 358-59 (D.C. Cir. 2003).

²⁶ See, e.g., *Public Utility District No. 1 of Pend Oreille County, Washington*, 122 FERC ¶ 61,249, at P 31 (2008) (finding that a single reservoir contributing less than 2 percent to downstream power generation did not require licensing).

²⁷ See, e.g., *Great Northern Paper, Inc.*, 91 FERC ¶ 61,035, at 61,121-24 (2000) (finding that an aggregate of dams contributing 4 to 5 percent to downstream power generation required licensing).

²⁸ *Chippewa & Flambeau Improvement Co.*, 85 FERC ¶ 61,234, at 61,977-78 (1998), *order on remand*, 95 FERC ¶ 61,017, at 61,035, 61,037 (2001) (finding that a reservoir that contributed 0.06 percent to downstream generation could be excluded from aggregate calculations).

simulation model UPPCO used to estimate the difference in downstream generation at the Victoria development that would occur between UPPCO's then operation of the Cisco development (within a 12-inch operating band), and its proposed, and now current, operation (within a 6-inch operating band). The model's results showed the 6-inch change in the operating band for the reservoir amounted to a loss of 135 megawatt-hours per year at the Victoria development, or approximately 0.18 percent of the project's total annual generation.

25. Because the annual generation difference while operating within a 6-inch band compared to a 12-inch band and operating within a 6-inch band compared to run-of-river would be similar, UPPCO expects that its current operation of the Cisco development also contributes approximately 0.18 percent, or less, to downstream generation. Therefore, UPPCO argues that the Cisco development is inconsequential to downstream generation and can be removed from the license.

26. Commission staff reviewed UPPCO's study and estimates that the difference between operating the Cisco development within a 12-inch band and a 6-inch band amounts to approximately 0.17 percent of the Victoria development's annual downstream generation, essentially confirming UPPCO's calculation. Staff finds it reasonable to assume that operating within a 6-inch band, when compared to unregulated run-of-river operation, results in a similar or smaller contribution to downstream generation. Even if we assumed that the Cisco development operated within a 12-inch band, the maximum operation that we are aware of, the development would only contribute approximately 0.36 percent to downstream generation. Such a contribution to downstream generation is insignificant.

27. Therefore, we find that the Cisco development is not necessary or appropriate for the operation of the Bond Falls Project and that the Commission does not have mandatory licensing jurisdiction over the development or any control over who purchases it. Accordingly, we amend the license to exclude the development and associated facilities from the project. Specifically, this order requires the licensee to file a revised Exhibit A and Exhibit G-1 drawing, and removes Article 407 (Cisco Dam Operation Plan) and any reference to the Cisco development in Articles 401 (Operational Requirements), 403 (Dry Year Operation), and 408 (Water Quality Standards) from the license. If, in the future, any proposed changes to the operation of the Cisco development would significantly benefit downstream hydroelectric generation, the development could require licensing.²⁹

²⁹ The Commission has the authority to review and revise its jurisdictional determinations if warranted by a change in fact or law. *Nantahala Power & Light v. FPC*, 384 F.2d 200 (4th Cir. 1967).

B. Condition 13

28. Because the Commission does not have mandatory licensing authority over the Cisco development, and that authority cannot be expanded by a section 4(e) condition, we cannot enforce Forest Service's Condition 13. Therefore, we have no authority to resolve the parties' dispute regarding Condition 13's requirements and the Cisco Dam design. The parties' settlement agreement, however, may provide the parties an opportunity to resolve their dispute in a court of appropriate jurisdiction.

Other Regulatory Reviews

29. Under section 106 of the National Historic Preservation Act (NHPA)³⁰ and its implementing regulations,³¹ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register), defined as historic properties, and afford the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on any undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties and to seek ways to avoid or minimize any adverse effects.

30. The Cisco Dam was evaluated for eligibility during relicensing and was found not eligible for listing in the National Register. To identify any potential eligible archaeological sites that may be affected by the amendment, in September 2011, UPPCO hired a cultural resources firm to conduct a shovel survey of the 7.85 acres that would be removed from the project boundary and transferred out of federal jurisdiction.³² The survey identified three new archaeological sites: 20GB451, 20GB452, and 20GB253. Site 20GB453 was not recommended for any further work and was determined not eligible for listing in the National Register. The other two sites, likely two subareas of a single site that was divided by construction of a road, contained a large number of artifacts. Because of the large number of artifacts, and their potential to provide additional data, more information and further research would be needed to determine if these sites are eligible.

³⁰ Section 106 of the NHPA of 1966, as amended, 54 U.S.C. § 306108, Pub. L. No. 113-287, 128 Stat. 3188 (2014).

³¹ 36 C.F.R. pt. 800 (2016).

³² The amendment will not have an adverse effect on any potentially eligible sites on the remaining lands within the Cisco development, which are owned by the Forest Service, because the amendment will not take those lands out of federal jurisdiction.

31. UPPCO initiated consultation with the Michigan SHPO by letter dated January 13, 2012, which included the shovel survey report and a copy of the draft amendment application. In the draft application, the licensee proposes to include in the asset sale agreement with the Riparian Association a deed restriction requiring any future ground disturbance be completed only after consultation with the appropriate authority.³³ By letter dated June 5, 2012, the Michigan SHPO concurred that site 20GB453 is not eligible, and that based on the proposed deed restriction, removing the Cisco development from the project license would have no adverse effect on historic properties within the area of potential effect.

Administrative Conditions

A. Project Description

32. The existing Exhibit A for the project includes the Cisco development as a project feature. Because this order removes the Cisco development from the project, ordering paragraph (D) requires the licensee to file a revised Exhibit A removing any reference to the Cisco development.

B. Exhibit Drawings

33. Exhibit drawings F-5, G-1, and G-6, and recreation drawing R-1 show the Cisco development. Exhibits F-5 and G-6 relate only to the Cisco development and are removed from the license by ordering paragraph (E). Exhibit G-1 is a general map identifying all project developments, including the Cisco development. Ordering paragraph (F) requires the licensee to file a revised Exhibit G-1 drawing removing the reference to the Cisco development and complying with sections 4.39 and 4.41(h) of the Commission's regulations.³⁴ As-built recreation drawing R-1 shows all developments and identifies recreational signage at the Cisco development. Ordering paragraph (G) requires the licensee to revise drawing R-1 to exclude the Cisco development.

C. Annual Charges

34. The Commission charges licensees for their use, occupancy, and enjoyment of lands or facilities owned by the United States. The Bond Falls Project occupies 249.12 acres of federal lands, with 157.59 acres of that land located within the Cisco

³³ The enforcement of the asset sale agreement is outside the Commission's jurisdiction, which is specifically limited to the licensee with respect to the project license and licensed works.

³⁴ 18 C.F.R. §§ 4.39, 4.41(h) (2016).

development. Because this order removes the Cisco development from the project, ordering paragraph (H) revises license Article 201 to reflect the reduction in federal land.

D. Updates to Approved Plans

35. Several plans required by the license reference the Cisco development, including the Operations Monitoring Plan (Article 404), Reservoir Drawdown Plan (Article 406), Water Quality Monitoring Plan (Article 409), Erosion and Sediment Control Plan (Article 410), Wildlife and Land Management Plan (Article 414), Threatened and Endangered Species Protection Plan (Article 415), and Recreation Plan (Article 416). Ordering paragraph (K) requires UPPCO to revise these plans, if necessary, to remove all references and requirements related to the Cisco development.

The Commission orders:

(A) The Cisco development of the Bond Falls Hydroelectric Project No. 1864 is not required to be licensed under Part I of the Federal Power Act. This order is issued without prejudice to any future determination, upon new or additional evidence, that licensing is required.

(B) The license for the Bond Falls Hydroelectric Project No. 1864 is amended as provided in this order, effective the day this order is issued.

(C) Ordering paragraph (B)(2) of the license is revised to read as follows:

The project consists of three developments on the Middle Branch and West Branch of the Ontonagon River. The Bond Falls and Bergland developments provide seasonal storage and diversion of river flow to the Victoria development, which is the only power-producing facility within the project.

Bond Falls Development

The Bond Falls Development project works consist of: (1) a main dam consisting of a 45-foot-high, 900-foot-long earthfill embankment with a sheet pile core wall, and a 26-foot-long concrete overflow spillway (crest elevation of 1,462.9 feet mean sea level [msl]) with discharge controlled by a 13-foot-high by 26-foot-wide steel radial crest gate; (2) the 2,160-acre Bond Falls reservoir with a maximum water surface elevation of 1,475.9 feet msl; (3) an outlet structure consisting of (a) a 7.5-foot-high by 5-foot-wide concrete intake equipped with a trashrack, (b) a 2.75-foot-high by 2.5-foot-wide concrete intake conduit, (c) a gate well and house, (d) a clapper valve upstream and a dish valve downstream, (e) two 24-inch-diameter discharge pipes, and (f) receiving basins; (4) a control dam consisting of (a) a 35-foot-high and 850-foot-long earthfill embankment with a steel sheet pile core wall, (b) a 13.8-foot-high by 10-foot-wide concrete intake equipped with a trashrack; and (c) three earthfill dikes on the rim of the reservoir: one that is 15-foot-high, 250-foot-long, and 35-foot-wide, and two that are 5-foot-high, 110-

foot-long, and 20-foot-wide; (5) a 20-foot-high, 7,500-foot-long trapezoidal canal; and (6) appurtenant facilities. The Bond Falls Development has no power generating capability.

Bergland Development

The Bergland Development consists of: (1) the 4-foot-high and 179-foot-long Bergland dam consisting of 24 bays, each 7-feet-wide, and a series of wooden stoplogs stacked between steel I-beams; (2) the 14,080-acre Lake Gogebic at a maximum operating elevation of 1,296.2 feet msl, and a gross storage capacity of 276,000 acre-feet; and (3) appurtenant facilities.

The Bergland Development has no power generating capability.

Victoria Development

The Victoria Development consists of: (1) a new 301-foot-long and 118 foot-high roller-compacted concrete dam; (2) the 250-acre Victoria reservoir with a maximum operating elevation of 910 feet, and an effective storage area of 3,300 acre-feet at a drawdown of 14 feet; (3) a gated spillway consisting of four concrete bays, equipped with steel radial gates, 22 feet wide by 13 feet high; (4) a new 9.5-foot-diameter, 6,050-foot-long above-ground steel pipeline; (5) a 32-foot-diameter, 120-foot-high steel surge tank (capacity 491,300 gallons); (6) a 10-foot-diameter steel penstock that bifurcates into two 7-foot-diameter penstocks before entering the powerhouse; (7) a 30-foot-wide by 82-foot-long by 50-foot-high powerhouse; (8) generating facilities consisting of two 6-megawatt Francis-type vertical shaft turbine-generator units, each unit rated at 9,300 horsepower at 210 feet of head and 300 revolutions per minute; (9) a tailrace; (10) a 1.6-mile-long bypassed reach; and (11) appurtenant facilities.

(D) Within 45 days of the date of this order, Upper Peninsula Power Company must file, for Commission approval, a revised Exhibit A that describes the entire project, as amended in this order, excluding the Cisco development.

(E) Exhibit F-5 (Drawing No. 1864-1012) and Exhibit G-6 (Drawing No. 1864-1019) are deleted from the license.

(F) Within 45 days from the issuance date of this order, Upper Peninsula Power Company must file, for Commission approval, a revised Exhibit G-1 drawing showing the revised project boundary for the Bond Falls Project, eliminating the Cisco development. The Exhibit G-1 drawing must comply with sections 4.39 and 4.41(h) of the Commission's regulations.

(G) Within 45 days from the issuance date of this order, Upper Peninsula Power Company must file, for Commission approval, a revised as-built recreation drawing R-1 showing directional signage and the location of recreation sites, excluding the Cisco development.

(H) Article 201(B) is revised to read as follows:

To recompense the United States for use, occupancy, and enjoyment of 91.53 acres of lands other than for transmission line right-of-way.

(I) Articles 401, 403, and 408 are revised to remove any reference to the Cisco development.

(J) Article 407 is deleted.

(K) Several plans required by the license reference the Cisco development including the Operations Monitoring Plan (Article 404), Reservoir Drawdown Plan (Article 406), Water Quality Monitoring Plan (Article 409), Erosion and Sediment Control Plan (Article 410), Wildlife and Land Management Plan (Article 414), Threatened and Endangered Species Protection Plan (Article 415), and Recreation Plan (Article 416).

Within 120 days from the date of this order, Upper Peninsula Power Company must file, for Commission approval, a plan and schedule for revising the above plans to remove all references and requirements related to the Cisco development. If any of the above plans do not need revision, the licensee must give its reasons why no revisions are necessary.

(L) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 825l (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2016). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.