

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Wisconsin Power and Light Company

Project No. 11162-011

ORDER LIFTING STAY

(Issued October 6, 2004)

1. On June 27, 2002, Commission staff issued an order granting an original license to Wisconsin Power and Light Company (Wisconsin Power) for the Prairie du Sac Hydroelectric Project No. 11162. *Wisconsin Power and Light Company*, 99 FERC **&62,225** (2002). The license reserved the Commission's authority to impose on the licensee such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act. *Id.* at 64,516 (2002).
2. On rehearing of the license order, Interior invoked its reserved authority to impose a fishway prescription.¹ Accordingly, on October 11, 2002, the Commission amended the license to make it subject to the conditions set forth in the prescription. *Wisconsin Power and Light Company*, 101 FERC **&61,055** (2002) (*See Appendix B*, at 61,191.)
3. The Commission denied Wisconsin Power's request for rehearing of the amendment, *Wisconsin Power and Light Company*, 101 FERC **&61,338** (2002), and on February 18, 2003, Wisconsin Power filed with the U.S. Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's October 11, 2002 amendment order.

¹ The prescription gave the licensee one year (*i.e.*, by October 11, 2003) to develop a detailed engineering and biological evaluation of potential fishway alternatives and to install agency-approved fish-protective devices, and three years to install agency-approved fishways.

4. Wisconsin Power also asked the Commission to stay the fishway prescription until completion of the court proceedings. On July 29, 2003, the Commission issued an order granting stay pending further order of the Commission after the completion of court proceedings. *Wisconsin Power and Light Company*, 104 FERC **&**61,157 (2003).

5. On April 6, 2004, the court affirmed the Commission's decision. *Wisconsin Power and Light Company v. FERC*, 363 F.3d 453 (D.C. Cir. 2004). Accordingly, we are lifting the stay.

The Commission orders:

The stay granted in the Commission's order of July 29, 2003, is lifted, effective on the date this order is issued.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.