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July 7, 2008

Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1-A
Washington, DC 20426

Re: Comments on the Environmental Assessment dated June 11, 2008 for Au Train Hydroelectric Project No 10856-061—MI

Dear Secretary Bose,

I am more than disappointed after reading the Environmental Assessment (EA) for the Au Train Project addressing whether and under what conditions UPPCO's proposed SMP and amendment request be approved; I am appalled. It reads more like a product produced by UPPCO itself rather than by a Commission responsible for protecting the public's interest and ensuring any proposed use and occupancy of the project lands is consistent with the purposes of protecting and enhancing the scenic, recreational and other environmental values of the project.

Instead, the EA is rife with language parroted from UPPCO's SMP with little regard afforded to addressing the major concerns and objections expressed by the Federal and state agencies and their comments to both the draft and final SMP. For example, on page 18, the EA states that Federal and state agencies worked "collaboratively" with the licensee during the pre-filing process. However, the agencies themselves had stated in their joint comments to the draft SMP that this language (specifically, the term collaboration) overstated their involvement and participation in drafting the SMP and added, "We clarify that the draft SMPs are solely the product of UPPCO and remind UPPCO that our involvement, communication, and comments do not imply endorsement." (See Resource Agency comments on draft SMP, 05/21/07) Subsequently, UPPCO dropped the term "collaboration" from the final SMP, changing the title of Section 12.0 from "Agency and Public Collaboration" to "Agency and Public Consultation." Yet, the authors of this EA ignore this not so subtle difference. The EA seeks to portray the SMP as a product produced as a result of genuine agency and public input. It is not.

This EA is flawed from beginning to end with misleading language, lack of analysis and unsupported conclusions. For example, on page 41, the EA states: "The licensee's proposed SMP for the Au Train impoundment includes approved dock zones that were selected to minimize visual impacts." No supporting documentation or analysis is offered explaining how this was done. It is simply a repetition of the same statement made by UPPCO in its SMP (See Section 9.7) and is apparently accepted as fact by the

preparers of this EA. Even UPPCO's conclusion that "The physical presence of the proposed boat docks would have *minimal* (emphasis added) long term visual impact on the shoreline" is parroted in the EA without analysis. Many of us in the general public strongly disagree with this conclusion, as well documented by public comment.

The EA makes no mention of the significant aesthetic impacts from the proposed "enhanced view" corridors or how they "are consistent with the purposes of protecting and enhancing the scenic, recreational and other environmental values of the project." Rather, the EA simply recommends that the widths be limited so effects on vegetation would be *reduced* (emphasis added). The EA admits the cumulative effects on wildlife are not known because development plans have not been finalized (Page 36) and cumulative effects on vegetation would depend upon the number of paths and enhanced view areas eventually permitted by UPPCO (Page 53). These plans should be made known so that cumulative effects can be evaluated as required by the National Environmental Policy Act (NEPA).

Among the most critical flaws in the document was the lack of any genuine discussion of the Commission's reasons for requiring in Article 407 the establishment of a 200-foot buffer zone in the original 1997 license. Agency comments (MDNR, DOI and USFS) to the 1996 draft EA for the original license recommended UPPCO establish a project boundary that includes all UPPCO lands adjacent to the reservoir. However, the Commission concluded this was not necessary. Rather, it recommended in the final EA the following:

We conclude that it is not necessary that all UPPCO-owned lands be included in a project boundary if any minor license is issued because these lands are not necessary for operation of the project. We do agree that a shoreline buffer is valuable for protection of the shoreline and environmental resources. We recommend that UPPCO establish a shoreline buffer along the reservoir shoreline and along the river down-stream of the dam within UPPCO-owned lands. We recommend that the shoreline buffer be targeted at 200 feet wide, but that it vary as necessary according to topography or species habitat needs. We recommend that the buffer area be determined in consultation with the resource agencies. We do not agree with USFS's recommendation that a 600 feet buffer is necessary along the Au Train River down-stream of the dam. We conclude that a buffer with an average width of 200 feet would provide adequate protection of vegetation. A no-cut buffer zone would protect the shoreline, as well as provide vegetation to support future nesting sites for the bald eagle and other wildlife species. We recommend that UPPCO consult with the agencies to establish the boundary and width of the buffer zone, with an average width of 200 feet. We recommend that no timber management be permitted in the buffer zone; however, certain activities should be allowed for safety and resource protection purposes. For instance, removal of trees for non-commercial purposes, such as creating a clearing at the Upper Au Train viewing area, would be permitted.

We recommend that UPPCO develop a CLMP that details specific buffer zone management guidelines, defines the buffer zone, and addresses leasing policies for lands within the buffer zone. We also recommend that UPPCO modify its bald eagle management plan to incorporate buffer zone management policies. (see FEA pages 4-5)

Accordingly, Article 407 of the Commission's Order Issuing Original License dated March 26, 1997, included the following:

Within one year of the issuance date of this license, the licensee shall file with the Commission, for approval, a comprehensive land management plan (CLMP) for a buffer zone around the reservoir and down-stream of the dam on licensee-owned lands.

The intent of the plan is to define the location of, and establish policies for, management of the buffer zone. The plan shall include, at a minimum:

- (1) maps delineating a buffer zone on licensee-owned lands around the reservoir and down-stream of the dam; the buffer zone shall be determined in consultation with the agencies, but shall have an average width of 200 feet;*
- (2) policies for land management within the shoreline buffer zone, including provision that no timber harvesting can occur in this buffer (certain activities would be permitted for safety and resource protection purposes);*
- (3) policies regarding leasing of lands, including details of existing leases; ...*

...The plan shall be prepared in consultation with the Michigan Department of Natural Resources, the US Fish and Wildlife Service and the US Forest Service.

On March 5, 1999 UPPCO's Comprehensive Land Management Plan required by Article 407 was submitted to the FERC. It was approved May 3, 1999 and reads in part:

The CLMP includes provisions for each of the measures required under Article 407 and satisfies the requirements of the license. Implementation of this plan should ensure adequate management of land within the buffer zone at Au Train project. It was developed in consultation with the FWS, MDNR, and FS and all comments were adequately addressed. Therefore, this plan should be approved.

Just what were these provisions that the Commission then stated: "satisfies the requirement of the license"? Lets look at the approved CLMP. On page 4, under Management Concepts, is Section A. Forest Management (UPPCO now proposes this entire section be deleted). What is in this section that needs to be removed that would allow for private docks, trails and view corridors? The answer is found in Section A.2. Aesthetic Management. It reads as follows:

Aesthetic Management is applied to areas that have unique qualities which require more restrictive management policies. Such areas include but are not limited to 200-ft shoreline buffer zones, 100-ft roadway buffer zones, and sensitive areas (see appendix B). Aesthetic management techniques are modifications of normal management techniques that are designed to minimize the negative effects on aesthetics and recreational values. In addition, timber harvesting techniques such as reduction of slash visibility, winter logging, precautionary skidding, etc. are practices, which further minimize logging impacts. Land management methodology utilizes aesthetic techniques relative to the intensity of potential public use (zones A, B, C, D).

An area utilizing Zone A techniques is defined in a area of high intensity public use adjacent to the reservoirs, rivers, campgrounds and major highways. Aesthetic management techniques are applied most intensively in Zone A. The primary action is to place Zone A areas in limited cutting categories to be used as visible buffers. Single-tree selection is the usual harvest method in these forest areas which range from 200 to 300 feet in depth. Topography and vegetation density may require greater distances, such as line of sight from a ridge, or may permit shorter distances when vision is blocked. (CLMP, Pages 4-5)

The approved CLMP calls for “aesthetic management” of the buffer zone that will provide “visible buffers” for viewers on the reservoir or along the shoreline from certain activities outside the buffer zone. During the licensing process, these activities were perceived to be only from possible timber sales conducted on UPPCOs non-project lands (Article 407 had already specifically prohibited timber harvesting in the buffer zone). There was no mention of selling the surrounding non-project lands to a land developer who would sub-divide these properties for a recreational housing development. Nowhere was any mention of allowing “enhanced viewing areas” and trails through the buffer zone leading to private docks that would provide up to 193 private boat slips exclusively for new owners of the subdivided lots. In fact, private docks are currently listed as an unauthorized private use of WPS hydro lands (See Appendix D of CLMP).

Apparently, UPPCO recognizes that these private uses of the project lands in the buffer zone are not compatible with Article 409 of the license and the approved CLMP. To remedy this problem, UPPCO is requesting the FERC delete this troublesome Section A from the CLMP.

It is also worth noting that UPPCO has pulled back from its proposal in its March 2007 Draft SMP requesting the deletion of Article 407 of the license altogether. UPPCO must have determined that this would be too large a pill for the FERC to swallow. So now UPPCO proposes deletion of Section A from Management Concepts in the CLMP and inserting a statement that everything is now consistent with the license. It is not. Article 407 is still in the license. The reasons for Article 407 are documented in the final EA with which the Commission agreed (see Order Issuing Original License, pages 19-20).

Another major flaw in the EA is its mischaracterization of the “No-Action Alternative” stating “The licensee would continue to permit activities and placement of docks on a case-by-case basis and therefore not benefit from an overall plan designed to protect environmental resources of the project.” The EA conveniently omits the fact that under its existing Commission approved plans, private docks are listed as an “unauthorized use” of the project lands (Appendix D of CLMP) and have not been permitted “case-by-case” (or otherwise).

The current CLMP already provides an overall plan designed to protect the environmental resources of the project lands. UPPCO’s proposals in the SMP would strip these protections to allow for up to 193 private boat slips. By amending the CLMP to eliminate the provisions of Section A. 2. Aesthetic Management, UPPCO also seeks to remove the “visible buffer” protection the 200-foot buffer was meant to provide. UPPCO seeks to eliminate this section to allow for “enhanced view” corridors, thus increasing the sale value of its non-project lands for real estate development. This fact should be clear to everyone, even to the FERC, and should be addressed openly. The No-Action Alternative should be stated properly. “No-Action” would mean no amendments to the CLMP, which currently prohibits private docks and maintains the buffer zone to provide a “visible buffer” from activities outside the project lands. UPPCO’s proposed amendments to the CLMP are clearly meant to lessen the protections now provided in the Commission approved CLMP and not to enhance them. The statement in the EA that “UPPCO also proposes to amend the CLMP to clarify the uses and prohibitions specified in the SMP are consistent to the CLMP’s objectives” is more than incongruous, it is Orwellian. The No-Action Alternative should be properly described as “No Action”; the existing license and management plans will remain as written and approved. No private docks and “a no-cut buffer zone (that) would protect the shoreline, as well as provide vegetation to support future nesting sites for bald eagle and other wildlife species.”

According to the Council on Environmental Quality publication *A Citizens Guide to NEPA*, the purpose of an EA is to determine the significance of the environmental effects of the proposed action. An Environmental Impact Statement should be prepared if significant environmental effects may or will occur. The EA acknowledges that UPPCO’s proposed non-project uses of the project lands would change the future character of the Au Train impoundment: “The character of the shoreline would change to a more residential, developed environment and the lake and surrounding area may become less attractive to recreationists who prefer more serene, natural recreation activities” (Page 49). These changes alone are significant by any definition and should require the preparation of an EIS. The FERC also admits the cumulative effects on wildlife and vegetation cannot be determined at this time because development plans have not been finalized. Thus, the EA’s finding of no significant impact is unsupported.

The EA also fails to demonstrate that UPPCO’s proposed private uses of the project lands are in any way “***consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project.***” If these words have real meaning, the FERC should require the preparation of an EIS so the direct, indirect and cumulative long term environmental effects can be determined and shared with the

public. Before any amendments are made to the 40-year license, the FERC should follow the full NEPA process including on-site public scoping meetings (that are not under the control of UPPCO/WPS). These public meetings should be held for each reservoir at locations nearby and well advertised in advance to encourage true public comment and participation.

Sincerely,

Al Warren
(filed electronically)

Document Content(s)

CommentsAuTrainEA.DOC.....1-6