

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

UPPER PENINSULA POWER COMPANY (UPPCO))	PROJECT NO. 10856-061
)	
)	
)	
)	
NOTICE OF APPLICATION AND SOLICITING COMMENTS, MOTIONS TO INTERVENE, AND PROTESTS)	DEPARTMENT OF THE INTERIOR'S MOTION TO INTERVENE AND SUPPORTING MEMORANDUM
)	
)	

I. MOTION TO INTERVENE

In response to the Commission's notice dated December 28, 2007, and pursuant to 18 C.F.R. § 385.214, the United States Department of the Interior (Department) hereby moves to intervene in the Notice of Application and Soliciting Comments, Motions to Intervene, and Protests for the Au Train Hydroelectric Project located on the Escanaba River in Delta and Marquette Counties, Michigan. The Department represents national public interests that would be directly affected by initiation or operation of the project. Further, two agencies within the Department have responsibilities to protect resources that would also be affected by project operations. The interests and authorities of the Department, its anticipated position as intervener (as known at this time), and the resulting grounds for its intervention are set forth below in the Department's Supporting Memorandum of its Motion to Intervene as a basis for a Commission order granting the Department's intervention.

Service of process and other communications concerning this proceeding should be made

to:

Mr. Craig Czarnecki
U.S. Fish and Wildlife Service
2651 Coolidge Rd, Suite 101
East Lansing, MI 48823-5202
Telephone: (517)351-8470

Ms. Angie Tornes
National Park Service
Rivers & Trails Program; Hydropower Licensing Program
626 E. Wisconsin Ave., St. 100
Milwaukee, WI 53202
Telephone: (414)297-3605

Dr. Jeff Gosse
U.S. Fish and Wildlife Service
Bishop Henry Whipple Federal Building
1 Federal Drive
Fort Snelling, MN 55111
Telephone: (612)713-5138

Wayne A. Babcock
Field Solicitor
U.S. Department of the Interior
Office of the Solicitor
Three Parkway Center, Suite 385
Pittsburgh, PA 15220
Telephone: (412)937-4000

II. SUPPORTING MEMORANDUM

A. The Department's Interest

The Commission's rules provide that a party seeking to intervene must state its interest in the proceeding and its position to the extent known. 18 C.F.R. §385.214. The Department represents public interests based upon numerous statutory responsibilities. The U.S. Fish and Wildlife Service, an agency of the Department, has responsibilities to protect fish and wildlife

and their habitats. This agency also has specific statutory authority to protect resources under its charge from the effects of hydroelectric projects.

The Secretary, acting through the Fish and Wildlife Service, has primary responsibility for the management of the nation's fish and wildlife resources. The Fish and Wildlife Act of 1956, as amended, requires the Secretary to determine the policies and procedures necessary to implement fish and wildlife laws efficiently and in the national public interest. 16 U.S.C. § 742f(a). The Secretary has additional responsibilities to protect and manage the nation's fish and wildlife resources under other statutory authorities, as well, namely: the Bald and Golden Eagle Act, 16 U.S.C. §§ 668-669(d); the Endangered Species Act, as amended, 16 U.S.C. §§ 1531-1543; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-711.

The Secretary is given specific authority to protect fish, wildlife, and their habitats from the effects of hydroelectric developments. The Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, authorizes the Secretary to assist and cooperate with federal and private agencies to assure that fish and wildlife conservation measures receive "equal consideration" and are coordinated with other features of water projects. 16 U.S.C. § 661. Pursuant to section 10(j) of the Federal Power Act, the Secretary is authorized to recommend license conditions in order to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources, including related spawning grounds and habitat. 16 U.S.C. § 803(j). Pursuant to section 18 of the Federal Power Act, the Secretary has authority to prescribe fishways to be maintained and operated by hydroelectric project licensees. 16 U.S.C. § 811.

The Secretary of the Interior, acting through the National Park Service, has special responsibilities over outdoor recreation and cultural resources of the United States. These responsibilities include evaluation of recreational resources and assuring effective and beneficial

use and management of such resources through coordination and consultation with federal, state, and local government agencies. The National Park Service has authority to require mandatory conditions under section 4(e) of the Federal Power Act, 16 U.S.C. § 797(e), but only for select units of the national park system, depending on the authorizing legislation. The Federal Power Act regulations, as amended, require pre-filing consultation with the National Park Service, among others, 18 C.F.R. §§ 4.38(a), 16.8(a), and identifies topics for consultation on development of the Exhibit E Environmental Report, including the recreation resources and historical and archaeological resources reports for major projects at existing dams, 18 C.F.R. § 4.51(f)(4) and (5), and for major unconstructed and modified projects, 18 C.F.R. § 4.41 (f)(4) and (7) .

Recreational access, conservation and scenic components of required land management and aesthetic reports are also of special interest to the National Park Service because of their close relationship to overall recreational resources and the mission of the National Park Service. 16 U.S.C. § 1, *et seq.* The National Park Service provides technical assistance regarding outdoor recreation resources through authority of the Outdoor Recreation Act of 1963, 16 U.S.C. § 4601-1, and the National Trails System Act, 16 U.S.C. §1246(a). The National Park Service evaluates project effects and provides recommendations through the Wild and Scenic Rivers Act of 1968, 16 U.S.C. §§ 1271-1287, including FERC license restrictions related to the national wild and scenic rivers system, 16 U.S.C. 1278 (a) and (b); NPS assistance related to river resources, 16 U.S.C. § 1282 (b); and Federal agency consideration for potential wild, scenic, and recreational river areas, 16 U.S.C. § 1276 (d).

The authorities listed above constitute congressional statements of the national public interest in the protection of fish, wildlife, outdoor recreation, and other resources. The authorities

also indicate congressional intent that the Department, acting through the Fish and Wildlife Service and the National Park Service, represent those interests that could be directly affected by approval of the Shoreline Management Plan (SMP) for the Au Train Hydroelectric Project. No other party or intervener has the authority to represent these particular national public interests.

Anticipated Position of the Department

The Department, through the Fish and Wildlife Service and the National Park Service, has several unique interests in the development and approval of an SMP for the Au Train Hydroelectric Project. The National Park Service is interested in the conservation of the recreational, aesthetic, and shoreline natural resources associated with this project. It is a remotely located project in Michigan's Upper Peninsula, which retains a wilderness aspect to its shoreline and recreational access. The SMP is proposing a major change in land use and allowable activities around the basin. The majority of land adjacent to the FERC boundary will experience residential development that could have a significant impact on the land and water resources. Changes to the SMP are necessary to conserve these invaluable resources.

The Fish and Wildlife Service's interests stem primarily from its overall authority to protect, enhance, and restore fish and wildlife. There are significant public resources that must be protected or enhanced in the area affected by the proposed project. In this regard, the Fish and Wildlife Service's concerns with the SMP include potential adverse impacts to Federal trust fish and wildlife resources and their supporting riparian, wetland and aquatic habitats.

C. Conclusion:

The Department represents substantial public interests not represented by any other party to this proceeding. Intervention is proper in order to assure protection of the resources for which

the Department has authority under federal laws.

Respectfully submitted this 24th day of January, 2008.

Very truly yours,

/s/ Wayne A. Babcock

Wayne A. Babcock

Field Solicitor

U.S. Department of the Interior

Office of the Solicitor

Three Parkway Center, Suite 385

Pittsburgh, PA 15220

412-937-4000

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

UPPER PENINSULA POWER COMPANY)	PROJECT NO. 10856-061
(UPPCO))	
)	
)	
)	
NOTICE OF APPLICATION AND)	DEPARTMENT OF THE
SOLICITING COMMENTS, MOTIONS)	INTERIOR'S MOTION TO
TO INTERVENE, AND PROTESTS)	INTERVENE AND
)	SUPPORTING MEMORANDUM
)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Motion to Intervene and Supporting Memorandum" have this day been filed with the Commission and served upon each person designated on the official Service List compiled by the Secretary for this proceeding this 24th day of January, 2008.

/s/ Wayne A. Babcock
Wayne A. Babcock

Submission Contents

10856061.wpd..... 1-7