

The Upper Peninsula Public Access Coalition
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July 13, 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,

The Upper Peninsula Public Access Coalition (UPPAC) was formed January 2006 in response to UPPCO/WPS plans for private non-project uses of the project lands at six hydroelectric projects.

As the agency responsible for the oversight of these licenses, it is the duty of the FERC to act independently while following all processes and procedures. Instead, the Environmental Assessment produced by the FERC is in great part a repetition of UPPCO's proposed Shoreline Management Plan (SMP), which is riddled with assumptions, inaccuracies, misleading information, and conclusions that are purely speculative. The EA supports the SMP that was based on an assessment conducted by E-PRO. The assessment, completed in just a matter of days, was seriously flawed and captured only a snapshot overview of some of the natural features and resources of the project lands and waters.

The EA fails to address concerns of more than 2000 individuals who signed the UPPAC sponsored petition (many of whom also added comments). In part, the petition requested *"that public notice and comment is appropriate since the proposed non-project use of project lands, as well as the residential development of adjacent UPPCO lands, were not disclosed to the public during the relicensing process. The extensive shoreline development would be in conflict with key objectives within each license. We urge FERC not approve any conveyances until there is a new environmental impact study, public hearings and a public comment period."*

The FERC finding that *"the implementation of the proposed SMP, with our recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment"* is wholly without merit. "Significantly" as used in NEPA requires considerations of both context and intensity. The FERC must consider short and long term effects, unique characteristics of the geographic area, the degree to which the effects on the quality of the human environment are likely to be highly controversial or are highly uncertain or involve unique or unknown risks. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. The

Environmental Assessment completed by the FERC acknowledges the following potential impacts could occur during the license term:

- The proposed development of access trails across and along the buffer zone would increase potential erosion from runoff
- The construction, installation, removal and storage of temporary boat docks on the shoreline would increase the potential for erosion on the shoreline embankments.
- The development of view areas across the buffer zone by removing small trees would allow for thinning of the forest understory.
- Implementation of the proposed SMP would result in some unavoidable sedimentation and erosion.
- The addition of the boat slips/docks would have the potential to affect water quality.
- Increased motorized boating in the reservoir would increase the potential for water quality effects, associated with oil and gas leakage from outboard motors and the release of sewage from the boats.
- During boat operations near the docks in the summer months, there would be the potential for disturbance of the reservoir bottom associated with propeller strikes or boats running aground. Then concludes the overall area of aquatic habitat likely affected would be small.
- Removal of shrubs and tree limbs for the construction of trails, paths and enhanced view areas would have an unavoidable negative effect on wildlife habitat.
- The creation of enhanced view areas and paths would result in the reduction of mid-forest canopy and shrub cover and decrease habitat connectivity within this layer.
- The reduction of nesting and perching habitat for some bird species and reduce protective shrub cover for ground nesting birds and small mammals.
- The reduction in habitat connectivity would limit the ability of wildlife to move throughout the area while remaining within preferred habitat.
- Reduced connectivity also creates increases in edge habitat and could reduce the size of intact, non-effected forest patches to the point that they are not suitable for some species.
- The selective removal of tree limbs would have a similar effect on the canopy layer in the forest, decreasing habitat and connectivity.
- The removal of limbs would also reduce canopy cover allowing more sunlight to reach the forest floor and changing microhabitat conditions like temperature and humidity.
- If UPPCO allows the removal of shrubs in these areas (wetlands), following the guidelines set forth under the Enhanced View clearing protocol, PEM wetlands would replace the PSS wetlands, reducing habitat for birds and other wildlife species that prefer the scrub-scrub wetlands.
- Increased human presence both on shore and in boats would also affect wetlands, which would result in the displacement of some wildlife.

- Vegetation removal and increased human presence in the project area could result in an increased potential for nuisance species establishment.
- Additional sunlight and increased temperature would change microhabitat conditions and potentially alter the composition of forest floor vegetation.
- This change in microhabitat combined with soil disturbance associated with path and trail construction would increase the potential for invasive terrestrial weeds to colonize that area.
- Implementation of the proposed plan has the potential to impact bald eagles through increased human presence within the project area and the removal of vegetation suitable for bald eagle roosting and nesting.
- The construction of docks and resulting increases in boat traffic would increase disturbance to foraging eagles that can be sensitive to noise.
- If developed to the fullest extent, this development would alter the existing landscape at the impoundment. Over time, the scenic character of the impoundment would change from a rural, wilderness nature to a more developed landscape, consisting primarily of residential boating facilities that serve single and multi-family dwellings.
- Increased boating use on the impoundment would create long-term, intermittent noise impacts in the immediate vicinity.
- There is the possibility of disturbing cultural resources at locations of ground-disturbing activity where shoreline facilities would be constructed.
- The lake and surrounding area may become less attractive to recreationists who prefer more serene, natural recreation activities.

Individually, any of the above potential impacts could be significant and the cumulative effects simply are not known. “Effects” include direct effects, which are caused by the action and occur at the time and place. Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems including ecosystems. Effects include ecological, aesthetic, historic, cultural, economic, social or health, whether direct, indirect or cumulative (40 CFR Section 1508.8). The potential impacts identified by the FERC, even considering the recommended measures, clearly identifies the need for an Environmental Impact Statement under The National Environmental Policy Act (NEPA) guidelines.

NEPA is also designed to allow the public to be involved in the Federal Agency decision-making process. In our letter dated 5/19/07, it was documented that UPPCO did not collaborate or consult with UPPAC during the development of the Shoreline Management Plan. We believe one of the most basic goals for development of the plan was for the licensee to bring together all interested parties for open discussion. Most of the concerns raised by focus group members were not given serious consideration.

Numerous comments regarding private docks and view corridors and the resulting negative impact they will have on shoreline aesthetics and the traditional uses of the flowage were simply dismissed with the statement: “the physical presence of the proposed boat docks would have only a minor, long-term visual impact on the shoreline.” The FERC acknowledges that the Au Train shoreline “has very little development giving the shoreline the appearance of wilderness and the project features blend well with the surrounding landscape.” The EA further states, “Views from the public recreation facilities are scenic, unobstructed and aesthetically pleasing.” It was the licensee (who will realize considerable financial profits if its proposals are allowed) that determined that enhanced view corridors, pedestrian paths and 193 private boat slips would have “minor long term visual impacts”; not those who use or value these resources. Both the SMP and EA ignore the Commission’s original intent for establishing the buffer zones. UPPCO’s proposed private uses within the project lands clearly benefit only the private lot owners, UPPCO and the land developer; they are not for the benefit of the general public or the protection of the natural resources of the project lands.

The resource agencies, non-governmental organizations and many private citizens raised other environmental concerns, not fully addressed in the Shoreline Management Plan or the Environmental Assessment. With the controversial nature and the potential risks associated with UPPCO’s proposal for non-project uses of the project lands, UPPAC fully expected the FERC to make diligent efforts to involve the public in the preparation of the Environmental Assessment consistent with 40 CFR 1501.4 and 1506.6. Once again, the public has been basically excluded from this process. We believe, the FERC should issue a Notice of Intent to prepare an Environmental Impact Statement, followed by public scooping and appropriate public involvement.

Those who support the proposed non-project uses speak of economic growth & prosperity. The EA speaks of socioeconomic factors and admits, “no project-specific economic analysis has been prepared to conclusively demonstrate whether the increased tax revenues would more than offset the additional costs to the communities for providing services to those properties and residents.”

Following the NEPA process, agencies are required to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions. The EA, even with its recommendations, falls short of these expectations. The recommendations merely outline measures to minimize or mitigate impact. None address how the proposed non-project uses of the project lands are consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. We strongly disagree with the “finding of no significant impact”. Throughout the EA, the FERC admits:

- The schedule for development may be spread over many years, depending on the demand for access to the impoundment, so any impacts would similarly be spread over many years (p 25-26).
- Although the licensee states there is the potential for a total of 193 private boat slips, the schedule for development may be spread over many years, depending on

the demand for boating in the reservoir, so any impacts related to dock installation would similarly be spread over many years (p 27).

- The overall effects of motorized boating, however, may not be substantial in that this boating may take some years to become fully established on the reservoir (p27).
- Without knowing the number and size of parcels landowners would develop adjacent to the project, it is impossible to determine the cumulative effects of this (enhanced view area) clearing (p 32).
- Because the degree to which the SMP would result in disturbance to forest vegetation is currently unknown, it is not possible at this time to adequately evaluate the threat of noxious weed introduction (p 35).
- The SMP would permit certain levels of disturbance within the buffer zone by adjacent landowners, however, the cumulative effects are not known because the development plans have not been finalized (p 36).
- It is not possible at this time to determine if such disturbance would be detrimental to the local eagle population because eagles vary in their sensitivity to human presence, and the future level of boat activity is unknown (p 37).

For the purpose of NEPA, the FERC must analyze the full range of direct, indirect and cumulative effects of the preferred alternative and ecological, aesthetic, historic, cultural, economic, social, or health impacts whether adverse or beneficial. If significant environmental effects may or will occur, it is the responsibility of the FERC to prepare an Environmental Impact Statement and involve the public.

The FERC conclusion that “the no-action alternative would likely have greater overall adverse impacts on the environmental resources of the impoundment shoreline” is unfounded. According to Appendix D of the existing Commission approved CLMP, private docks are listed as an “unauthorized use” of the project lands. Private docks have never been permitted on a “case by case” basis. A “No-action Alternative” should mean continued protection of the visible buffer and the environmental resources of the project lands currently afforded under the present CLMP. In simple terms, that would mean no private docks, no enhanced view corridors and no pedestrian paths. It would also mean that the licensee must ensure, through enforcement, that prohibited activities do not occur thus preventing adverse impacts on the environmental resources as presently required by Article 407 and the approved CLMP.

In summary, the EA fails to demonstrate that UPPCO’s proposed private uses “are consistent with the purpose of protecting or enhancing the scenic, recreational, and other environmental values of the project.” In its letter to the licensee dated January 9, 2006 the FERC expressed its concerns about the impacts that the sale of lands adjacent to the project boundary could have on the conditions of their license. In another letter dated January 26, 2006 the FERC stated “Due to the large scale sales of non-project lands within close proximity to the aforementioned projects, and the potential impacts to project lands and waters from these sales, the Commission must closely monitor any development along the reservoir shorelines of these projects.” It is clear that the sale and

development of the non-project lands and the non-project use of the project lands will have significant impact.

UPPCO and the real estate developer still have not disclosed their specific plans for the non-project lands. Only after this is done will the FERC be able to monitor and fully evaluate the direct, indirect and cumulative effects and determine the potential impacts to the project lands and waters.

We once again ask the FERC to follow the comprehensive NEPA process including the preparation of an Environmental Impact Statement, subject to public scrutiny before granting any license amendments.

Sincerely,

Nancy Warren

Nancy Warren

Spokesperson

Upper Peninsula Public Access Coalition

(filed electronically)

Document Content(s)

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