

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 10856-9999 and -115
—Michigan
Au Train Hydroelectric Project
UP Hydro, LLC

July 21, 2020

VIA FERC Service

Ms. Martha L. MacFarlane-Faes
Deputy State Historic Preservation Officer
Michigan Economic Development Corporation
300 North Washington Square
Lansing, MI 48913

Mr. Scott Hicks
Filed Office Supervisor
U.S. Fish and Wildlife Service
East Lansing Field Office
2651 Coolidge Rd., Ste. 101
East Lansing, MI 48823

Subject: Designation of non-federal representative for consultation under the Endangered Species Act and the National Historic Preservation Act

To the parties addressed:

On July 1, 2020, UP Hydro, LLC, licensee for the Au Train Project No. 10856, requested designation as the Commission's non-federal representative for the purpose of consultation with your offices pursuant to section 106 of the National Historic Preservation Act (NHPA) and conducting information consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to the regulations at 50 C.F.R. 50 C.F.R. §402.08 implementing section 7 of the Endangered Species Act (ESA). The licensee additionally requests that its consultant, Renewable World Energies (RWE), also be designated as a

non-federal representative on the behalf of the licensee.¹ The Au Train Project is located on the Au Train River, in Alger County, Michigan.

On June 2, 2020, the licensee filed plans for spillway capacity improvements and for modifications to the project's North Dam and South Levee as required by the Commission's Division of Dam Safety and Inspections – Chicago Regional Office. The licensee believes there is an immediate need to perform the updates at the project in order to protect the safety, stability, and integrity of the structures prior to the upcoming winter season. As such, the licensee requested expedited consideration for the authorization to commence the dam safety improvements by August 2020.

The licensee's June 2, 2020 filing additionally includes a notice of intent to surrender the license for the project.² The licensee subsequently filed the application to surrender the project license on July 17, 2020. To transition the project to state jurisdiction, the licensee proposes to include provisions for the spillway capacity upgrades to meet Michigan state dam safety standards, as part of its decommissioning plan. The licensee plans to consult with the FWS and the Michigan State Historic Preservation Officer (Michigan SHPO) on the project upgrades and surrender of the project license. During the consultation process, the licensee would address the potential effect on federally-listed species and historic properties located within the project's area of potential effects.

By this letter, we designate the licensee and its consultant, RWE, as our non-federal representative for the purpose of conducting informal consultation with the FWS pursuant to the regulations at 50 C.F.R. §402.08 implementing section 7 of the ESA. The role of the non-federal representative may include conducting studies, developing and supplying information, attending meetings, ensuring that pertinent endangered species information is maintained in a project file, participating in informal consultation with your agency, developing a draft biological assessment if necessary, and keeping the Commission apprised of its actions. However, the Commission remains ultimately responsible for all finding and determinations regarding the effects of the project on any federally-listed species or critical habitat.

By this letter, we also designate the licensee and its consultant, RWE, as our non-federal representatives for the purpose of conducting consultation with the Michigan

¹ The licensee's designation request can be accessed by following this link: <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=15572227>

² *Upper Peninsula Power Company*, 79 FERC ¶ 62,217 (1997).

SHPO, appropriate Indian tribes, and other consulting parties, pursuant to the regulations at 36 C.F.R. Part 800.2(c)(4) implementing section 106 of the NHPA. As our non-federal representative, the licensee and its consultant can perform tasks in support of our compliance with section 106. Such tasks may include, for example: performing cultural resource surveys and studies, determining areas of potential effect, identifying eligible properties, determining any adverse effects to those properties, proposing mitigation to address adverse effects if needed, and developing a draft Memorandum of Agreement in order to memorialize any proposed mitigation. However, the Commission remains ultimately responsible for all findings and determinations made pursuant to section 106.

We appreciate your assistance with section 7 and section 106 consultations regarding the spillway capacity upgrades and the surrender of the Au Train Project. If you have any questions regarding this matter, please contact me at (202) 502-6125 or by email at Marybeth.Gay@ferc.gov.

Sincerely,

Marybeth Gay, Fish Biologist
Environmental and Project Review Branch
Division of Hydropower
Administration and Compliance

cc: VIA FERC Service

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