

193 FERC 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

UP Hydro, LLC

Project No. 10856-141

ORDER TERMINATING LICENSE BY IMPLIED SURRENDER

(Issued December 29, 2025)

1. On November 14, 2025, the Commission initiated a proceeding to terminate by implied surrender the license held by UP Hydro, LLC (UP Hydro or licensee) for the 0.9-megawatt Au Train Hydroelectric Project No. 10856 (Au Train Project), located on the Au Train River in Alger County, Michigan. UP Hydro did not file a motion or comments in opposition. This order terminates the license for the Au Train Project by implied surrender.

I. Background

2. On June 26, 1997, the Commission issued the Upper Peninsula Power Company an original 40-year license to continue operating and maintaining the existing, unlicensed Au Train Project.¹ The project facilities consist of: (1) a 38-foot-high, 1,500-foot-long dam (North Dam) with a 100-foot-long concrete overflow spillway section topped with ten 10-foot-wide by two-foot-high wooden flashboards;² (2) a reservoir with a storage capacity of 12,342 acre-feet and a surface area of approximately 1,557 acres at elevation 780 feet local datum; (3) a 2,516-foot-long, 5-foot, 6-inch-diameter penstock with stoplogs, a trashrack, and a butterfly valve connecting to a 10-foot-diameter exposed steel surge tank connected to the penstock upstream of the powerhouse; (4) a powerhouse containing two turbine-generator horizontal Francis-type turbines having a total of 1,600 horsepower, and a capacity of 1,120 kilovolt-ampere, a hydraulic capacity range of 50 to 136.5 cubic feet per second, an average net head of 124 feet, and a power factor of 80 percent; (5) a 2,300-volt, 2,500-foot-long transmission line; (6) an earth-filled dike at

¹ *Upper Peninsula Power Co.*, 79 FERC 62,217 (1997).

² The flashboards are currently removed as a risk reduction measure.

the south end of the basin (South Levee) that is designed as a non-overflow structure; and (7) appurtenant facilities.

A. Dam Safety Directives

3. On May 18, 2010, the Commission transferred the project license to UP Hydro.³ The Transfer Order put the new licensee on notice that the project does not have adequate spillway capacity because it cannot safely pass its Inflow Design Flood,⁴ which is the Probable Maximum Flood.⁵ The Transfer Order required UP Hydro to initiate remediation of the inadequate spillway capacity by January 2011 and complete remediation by December 31, 2012.⁶

4. On March 25, 2019, the licensee submitted a 90-percent design for modifications to pass the full Inflow Design Flood,⁷ but on June 2, 2020, the licensee informed the Commission that it was unable to finance the spillway upgrades and unable to continue operating the project long term. The licensee withdrew its pending designs and ultimately filed an application to surrender its license on July 17, 2020. In its surrender application, UP Hydro proposed to modify the North Dam Spillway and South Levee to meet the State of Michigan's spillway capacity requirements and to improve the project's discharge capacity as an interim risk reduction measure.⁸

³ *Upper Peninsula Power Co.*, 131 FERC 62,125 (2010) (Transfer Order).

⁴ The Commission's Dam Safety Guidelines define the Inflow Design Flood as the flood flow above which the incremental increase in water surface elevation due to failure of a dam or other water impounding structure is no longer considered to present an unacceptable threat to downstream life or property. Engineering Guidelines for the Evaluation of Hydropower Projects, Chapter II at 2-1.

⁵ The Probable Maximum Flood is the flood that may be expected from the most severe combination of critical meteorological and hydrologic conditions that are reasonably possible in the drainage basin under study. Engineering Guidelines for the Evaluation of Hydropower Projects, Chapter II at 2-2.

⁶ Transfer Order, 131 FERC 62,125 at P 4.

⁷ Licensee March 25, 2019 Design Package.

⁸ Interim risk reduction measures are dam safety risk reduction measures that are intended to act as temporary or interim measures until such time as more permanent remediation measures can be effectively implemented.

5. On February 27, 2023, the licensee stated that it was withdrawing its surrender application and proceeding with project modifications. Commission staff subsequently determined that the licensee's proposal to withdraw the surrender application was inconsistent with the Commission's regulations because the licensee did not file a notice of withdrawal and directed the licensee to file a stand-alone notice of withdrawal of the application if it wished to move forward with the withdrawal of the surrender.⁹

6. On March 16, 2023, UP Hydro filed a voluntary petition for relief under chapter 11 of the federal Bankruptcy Code with the U.S. Bankruptcy Court for the Eastern District of Wisconsin.¹⁰ In an August 1, 2023 letter, the licensee stated that due to various contingencies in the bankruptcy proceeding it was unable to provide an acceptable plan and schedule to modify the North Dam Spillway and was unable to move forward with any modification plans.

7. In a letter dated September 12, 2023, the Commission's Division of Dam Safety and Inspections – Chicago Regional Engineer (Regional Engineer) required UP Hydro to propose an alternative interim risk reduction measure to improve project safety, including, but not limited to, lowering the project's reservoir.¹¹

8. On December 15, 2023, the Regional Engineer approved UP Hydro's alternative interim risk reduction measure of lowering the pool elevation to 773.4 feet North American Vertical Datum of 1988 (NAVD88), the minimum permitted by the license.¹² The December 15, 2023 letter also required the licensee to prepare a reservoir drawdown plan to lower the reservoir to 770.0 NAVD88 until the North Dam Spillway modifications could be completed or until other dam safety improvements were approved and completed.

9. On April 1, 2024, UP Hydro submitted a reservoir drawdown plan and documentation of agency correspondence, but in the same filing stated that the studies

⁹ Commission Staff March 29, 2023 Letter to Licensee.

¹⁰ UP Hydro Voluntary Petition for Non-Individuals Filing for Bankruptcy, Case No. 23-21117-kmp (Bankr. E.D. Wis. filed March 16, 2023).

¹¹ Commission Staff September 12, 2023 Letter. The September 12, 2023 letter provided the licensee with notice under section 31 of the Federal Power Act (FPA) that failure to comply with license requirements may lead to an order to cease generation at the project, a civil penalty proceeding, or license revocation.

¹² *Upper Peninsula Power Co.*, 79 FERC 62,217 at art. 401.

needed to obtain permits for the drawdowns were too costly to pursue and that it did not intend to complete them.¹³

10. On June 18, 2024, UP Hydro filed a notice of withdrawal of its surrender application. The withdrawal became effective on July 3, 2024, terminating the surrender proceeding.¹⁴

11. Based on the condition of the project and UP Hydro's continued inability to address the inadequate spillway capacity, the Commission's Director of the Division of Dam Safety and Inspections, by letter dated July 3, 2025, directed the licensee to make modifications to the South Levee to reduce the likelihood of an overly high reservoir by lowering a portion, or portions, of the South Levee to an elevation of, or lower than, 781.3 NAVD88.¹⁵ The letter explained that lowering the South Levee would reduce the overall dam safety risk at the project by reducing flows through the North Dam Spillway during flood events.¹⁶

12. The Chicago Regional Office completed a dam safety inspection of the project on June 18, 2025. The licensee's representatives, along with Michigan Department of Environment, Great Lakes, and Energy (Michigan EGLE) and Michigan Department of Natural Resources (Michigan DNR) representatives, accompanied the Chicago Regional Office civil engineer during the inspection. On June 27, 2025, the Regional Engineer issued a post-inspection letter to the licensee, which identified items that require additional attention.¹⁷ Such items included the following: (1) embankment seepage entering the left (west) vault at the right embankment toe from a newly identified hole in the bottom of the vault; (2) vegetation management at the toe of the South Levee; (3) rodent holes in the South Levee; (4) small trees and woody shrubs growing in the

¹³ Licensee April 1, 2024 Response to Commission's December 15, 2023 Letter Requesting Additional Alternative Interim Risk Reduction Measures.

¹⁴ See July 8, 2024 Notice of Effectiveness of Withdrawal of Application for Surrender of License.

¹⁵ Commission Staff July 3, 2025 Dam Safety Directive.

¹⁶ *Id.* at 3.

¹⁷ Commission Staff June 27, 2025 Follow-up to the 2024 FERC Dam Safety Inspection.

channel just downstream of the spillway; and (5) replacement of the Emergency Action Plan in the powerhouse with the most recently updated version.¹⁸

13. On July 17, 2025, the licensee provided a plan and schedule to lower the South Levee, which included a plan for filing documentation of consultation with resource agencies by September 5, 2025, but to date the licensee has not filed such documentation.¹⁹

14. The Au Train's North Dam and South Levee are classified as having high hazard potential, which indicates that failure or misoperation will probably cause loss of human life.²⁰ As discussed above, the project does not meet the Commission's dam safety standards and the licensee has failed to conduct the necessary remediation.

B. Other Compliance Issues

15. In addition to the dam safety issues described above, the licensee has consistently failed to comply with Commission staff directives and license requirements in a complete and timely manner.

16. By letter dated April 1, 2021, the Regional Engineer directed the licensee to coordinate with downstream communities and their floodplain managers to discuss the possible impacts of modifying the North Dam Spillway.²¹ The licensee never filed the required documentation of coordination.

¹⁸ *Id.*

¹⁹ Licensee July 17, 2025 Dam Safety Directive Follow-Up.

²⁰ 18 C.F.R. § 12.3(b)(13)(i) (2025).

²¹ Commission Staff April 1, 2021 Letter Regarding Request for Authorization to Commence Interim Risk Reduction Measures at 5-6. The April 1, 2021 letter requested written documentation of this coordination by May 4, 2021. By letter dated August 19, 2021, the Regional Engineer reminded the licensee its response was overdue and requested a response by September 21, 2021. The Regional Engineer issued another letter, dated October 4, 2021, requiring the licensee to file the overdue documents by October 15, 2021.

17. Multiple dam safety submittals were filed late, including documentation related to the Au Train Project's Emergency Action Plan,²² interim risk reduction measures,²³ Dam Safety Surveillance and Monitoring Report,²⁴ and Part 12D Consultant's Safety Inspection Report.²⁵

18. By letter dated June 13, 2022, the Commission's Division of Hydropower Administration and Compliance found that the licensee failed to adequately address state agency concerns and obtain the necessary state permits required to lower the North Dam Spillway.²⁶ The June 13, 2022 letter also required the licensee to consult with Michigan EGLE and Michigan DNR and provide documentation of consultation and the necessary permits with the Commission. The licensee never acquired the necessary permits.

19. The updated Owners Dam Safety Plan, dated December 29, 2017,²⁷ provided that an external audit was to be completed every five years, with the next audit scheduled for

²² The annual documentation pertaining to the training, testing, and updating of the Emergency Action Plan was due on December 31, 2021, but was not received by the Commission until March 1, 2022.

²³ By letter dated March 16, 2022, the Regional Engineer directed the licensee to address Commission staff's comments on the interim risk reduction measure for the North Dam Spillway by April 19, 2022, but the licensee's April 25, 2022 submittal was non-responsive, did not provide the required information, and requested extended due dates. Commission Staff March 16, 2022 Letter Regarding Request for Authorization to Commence Interim Risk Reduction Measures; Licensee April 25, 2022 Response to Commission's March 16, 2022 Letter; Commission Staff May 10, 2022 Letter Regarding Non-Compliance for Missed Dam Safety Requirements (providing notice under section 31 of the FPA).

²⁴ The licensee's annual Dam Safety Surveillance and Monitoring Report was due April 1, 2022, but was not filed until June 9, 2022.

²⁵ The licensee's plan and schedule to address recommendations stemming from the Part 12D Consultant's Safety Inspection Report was due on April 4, 2022. The licensee did not submit a plan and schedule until June 13, 2022.

²⁶ The June 13, 2022 letter provided the licensee with notice under section 31 of the FPA. Commission Staff June 13, 2022 Referral to the Commission's Division of Hydropower Administration and Compliance.

²⁷ December 29, 2017 Owner's Dam Safety Program Update.

2021.²⁸ By letter dated March 14, 2023, the Regional Engineer found the 2021 audit was past due and stated that a plan and schedule to complete the audit was due by May 12, 2023.²⁹ By letter dated July 16, 2024, the Regional Engineer noted the plan and schedule to complete the 2021 audit was still past due.³⁰ These items remain outstanding.

20. The Regional Engineer's July 16, 2024 letter also identified several other past due items: (1) the 2022 and 2023 Dam Safety Surveillance and Monitoring Reports were due on April 1 of 2023 and 2024, respectively; (2) an update to the Dam Safety Surveillance and Monitoring Plan incorporating recommendations from the Sixth Part 12D Consultant's Safety Inspection Report was due by May 1, 2023; (3) recommendations from the Sixth Part 12D Consultant's Safety Inspection Report regarding the Field Inspection, the Operation and Maintenance Program, and the Supporting Technical Information Document Program were to be incorporated by the licensee by December 31, 2023; (4) the Emergency Action Plan reprint and Emergency Action Plan Status Report was due by December 31, 2023; and (5) the annual review of the Owners Dam Safety Plan was due by December 31, 2023. These items also remain outstanding.

C. 2025 Violation of Article 5

21. Standard Article 5 of the project license requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project.³¹ Article 5 stipulates that none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without prior Commission approval, except as

²⁸ 18 C.F.R. § 12.65(a) (2025) ("For licensees of one or more dams or other project works classified as having a high hazard potential, [] an independent external audit or peer review of the Owner's Dam Safety Program, and the implementation thereof, shall be performed at an interval not to exceed five years.").

²⁹ Commission Staff March 14, 2023 Follow-up to the 2022 Dam Safety Inspection Report.

³⁰ Commission Staff July 16, 2024 Letter Regarding Completion of the Dam Safety Inspection Report.

³¹ *Upper Peninsula Power Co.*, 79 FERC 62,217 at ordering para. (E) (citing form L-12, Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce, 54 FPC 1799 (1975)).

provided for under the current regulations of the Commission.³² Accordingly, during the license period, the licensee must retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use.³³ Among other license requirements, the project's comprehensive land management plan, required under Article 407 and approved by order dated May 3, 1999,³⁴ requires the licensee to develop and maintain a 200-foot-wide buffer zone around the project reservoir and downstream of the dam.

22. As noted above, UP Hydro filed a voluntary petition for bankruptcy protection on March 16, 2023. On November 12, 2024, UP Hydro informed the Commission that Stephenson National Bank and Trust (Stephenson Bank), which owned the mortgage on the 22 parcels of land within the project boundary, was working to foreclose on a large portion of the property and sell it to another entity.³⁵

23. By letter dated November 26, 2024, Commission staff reiterated the licensee's obligations under Article 5 of the project license and directed the licensee to file a detailed progress report of the licensee's compliance with Article 5.³⁶ The licensee did not respond to the letter.

24. On May 7, 2025, Stephenson Bank acquired title to 18 of the 22 parcels that make up the project boundary through a foreclosure sale.³⁷ Stephenson Bank later sold those 18

³² *Upper Peninsula Power Co.*, 79 FERC 62,217 at ordering para. (E) (citing form L-12, Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce, 54 FPC 1799 (1975)).

³³ *Id.*

³⁴ *Id.* at art. 407; *Upper Peninsula Power Co.*, 87 FERC 62,125 (1999).

³⁵ Licensee November 12, 2024 Response to Commission's September 12, 2024 Letter.

³⁶ Commission Staff November 26, 2024 Letter Regarding Standard Article 5 Compliance.

³⁷ Michigan DNR June 17, 2025 Filing Regarding Au Train Status Following Sheriff Sale.

parcels to D. Charles Trust Investments, LLC (Trust).³⁸ These parcels include the powerhouse and most of the impoundment and surrounding project buffer.³⁹ Accordingly, the licensee no longer holds sufficient ownership and control of project lands to operate and maintain the project, as required. Therefore, by letter dated June 18, 2025, Commission staff found the licensee in violation of Article 5 of its license.⁴⁰ The letter required the licensee to provide, in part, a description of the licensee's intent regarding its plans to maintain the project license and comply with its conditions, given the loss of property rights. On July 2, 2025, the licensee stated, in part, that it was working with the property owner to lease the foreclosed property to allow for continued operation and license compliance with Article 5.⁴¹

25. On September 8, 2025, Mr. David Charles, trustee of the Trust, informed Michigan DNR and Michigan EGLE that while the dam and the South Levee are still in the licensee's possession and the project is still operating, the Trust owns the first mortgage for the property.⁴² Mr. Charles stated that he was working to reach a lease agreement with the licensee, but that if the licensee did not enter into a lease agreement within the next one or two weeks he would deny further access to the powerhouse.⁴³

26. Loss of access to the powerhouse will immediately affect the licensee's ability to comply with the terms and conditions of the license, including Article 401, which requires continuous minimum powerhouse discharge for the protection and enhancement of fish and wildlife resources in the Au Train River, or to ensure the safety of the facility. In light of the licensee's imminent loss of necessary property rights to operate and maintain the project and to ensure that minimum flows can be passed in accordance with Article 401, by letter dated September 16, 2025, the Regional Engineer required the

³⁸ Commission Staff September 10, 2025 Communication Memorandum (concerning land ownership at the Au Train Project); *see also* November 14, 2025, Notice to Vacate/Termination of Access Rights.

³⁹ Parcels containing the North Dam and South Levee were not sold.

⁴⁰ The June 18, 2025 letter again provided the licensee with notice under section 31 of the FPA. Commission Staff June 18, 2025 Violation of Standard Article 5 and Section 31(a) Notice.

⁴¹ Licensee July 2, 2025 Violation of Standard Article 5 Response.

⁴² *See* Commission Staff September 10, 2025 Communication Memo (attaching Sept. 8, 2025 email correspondence between Michigan DNR and Mr. Charles).

⁴³ *Id.*

licensee to file the following by September 22, 2025: (1) confirmation that the project has been configured to pass minimum flows without on-site operational staff and that it has provided the new owner with a safe powerhouse shutdown procedure; or (2) proof of a lease agreement with the new owner that grants the licensee all property rights to operate and maintain the project, including accessing and operating the powerhouse, and confirmation that the licensee will comply with Article 401.⁴⁴ In a September 22, 2025 filing, the licensee indicated that it was discussing a lease with the new property owner and asserted that to pass minimum flows, on-site operational staff would be needed to prevent damage and uncontrolled releases.⁴⁵

27. On November 18, 2025, the Trust filed with the Commission a copy of a November 14, 2025, notice requiring the licensee to vacate and terminating its access rights as of December 31, 2025. The notice stated that the Trust had elected not to enter into a lease agreement with the licensee for continued access to Lot 10, which includes the Au Train powerhouse, penstock, and transmission line, and is used for recreation, fish and wildlife, and power generation.⁴⁶ In light of the termination of access rights, and in exchange for allowing the licensee access through the end of the year, the Trust required the licensee to present to the Trust by December 1, 2025, a written plan setting forth the licensee's safe shutdown and decommissioning of the powerhouse and related improvements.

28. On November 19, 2025, the licensee provided Commission staff with a courtesy copy of its proposed decommissioning plan.⁴⁷

⁴⁴ The September 16, 2025 letter provided the licensee with notice under section 31 of the FPA. Commission Staff September 16, 2025 Letter Regarding Non-Compliance with Dam Safety Directive and New Directive Due to Impending Loss of Access to the Powerhouse.

⁴⁵ Licensee September 22, 2025 Dam Safety Directive Follow-Up.

⁴⁶ Trust November 18, 2025 Notice to Vacate/Termination of Access Rights.

⁴⁷ See Commission Staff November 19, 2025 Communication Memo (attaching Nov. 19, 2025 email correspondence from licensee). The licensee proposes to: (1) shut down all generators; (2) block or chain the rotating portion of the generator; (3) open one turbine to pass minimum flows (50 cubic feet per second) while the unit is blocked and unable to spin; (4) disconnect the power to the powerhouse at the substation on M-94; and (5) upon reservoir levels reaching the North Dam crest, the penstock would be closed, utilizing the penstock gate valve at the dam. The licensee stated its plan assumes that the Trust is amenable to allowing the water to flow through the powerhouse.

II. Public Notice, Interventions, and Comments

29. On November 14, 2025, the Commission issued a *Notice of Termination of License by Implied Surrender and Soliciting Comments, Protests, and Motions to Intervene*, with protests, comments, and motions to intervene due by December 15, 2025.⁴⁸

30. Michigan DNR filed a timely, unopposed motion to intervene.⁴⁹ Michigan EGLE, Michigan DNR, and three residents of Alger County, John Tait, Barbara Isom, and Elise Bunce, filed comments. All comments were addressed in the environmental assessment (EA) prepared by Commission staff to analyze the impacts of the proposed action, which is attached as an appendix to this order, or, as appropriate, below.

III. Discussion

A. License Termination

31. A license may be terminated by implied surrender where a licensee, by action or inaction, has clearly indicated its intent to abandon the project, and has not filed a surrender application (e.g., the licensee has physically abandoned the project property, sold the project property without Commission authorization, dissolved its corporate or

⁴⁸ November 14, 2025 Notice of Proposed Termination of License by Implied Surrender and Soliciting Comments, Motions to Intervene, and Protests, Docket No. P-10856-141.

⁴⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2025).

other legal identity, or has failed for several years to operate or maintain the project with no indication of doing so in the reasonably foreseeable future).⁵⁰

32. Here, we consider the disposition of the license under the implied surrender framework because UP Hydro has repeatedly failed to comply with compliance directives, no longer owns the property associated with the project, and has been informed by the property owner that UP Hydro will lose access to project facilities at the end of this month.

33. The license for the project includes the Commission's standard articles,⁵¹ including the following Standard Article 16:

If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. . . . [T]he Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.⁵²

⁵⁰ 18 C.F.R. § 6.4 (2025); see *Boyce Hydro Power, LLC*, 175 FERC 61,143, at PP 18-19 (2021) (terminating licenses due to failure to maintain ownership of the necessary project properties; licensee had lost property rights and declared bankruptcy); *River Bounty, Inc.*, 142 FERC 61,126 (2013) (terminating an exemption by implied surrender for the failure to operate or maintain the project); *James B. Boyd & Janet A. Boyd*, 138 FERC 61,085, at P 16 (2012) (citing *James Lichoulas Jr.*, 124 FERC ¶ 61,255 (2008), *reh'g denied*, 125 FERC 61,195 (2008), *aff'd*, *Lichoulas v. FERC*, 606 F.3d 769 (D.C. Cir. 2010)) (terminating a license where the licensee failed to operate or maintain the project for several years and showed no indication of doing so in the foreseeable future); *Fourth Branch Assocs. (Mechanicville) v. Niagara Mohawk Power Corp.*, 89 FERC 61,194, at 61,598 (1999) (finding implied surrender of license due to licensee's financial inability to carry out the license terms and conditions and despite licensee's expressed desire to continue as a licensee), *reh'g denied*, 90 FERC ¶ 61,250 (2000).

⁵¹ *Upper Peninsula Power Co.*, 79 FERC 62,217 at ordering para. (E) (including Form L-12 in the Au Train Project license).

⁵² This article appears in Form L-12 as Standard Article 16. Section 6.4 of the Commission's regulation, 18 C.F.R. § 6.4 (2025), contains similar language.

34. When the licensee accepts a license that includes the above-quoted article, it thereby agrees that surrender is implied if the conditions described in the article are met. In addition, section 6.4 of the Commission's regulations states that it is deemed to be the intent of the licensee to surrender the license if it shall cause or suffer essential property to be removed or destroyed or become unfit for use or abandons its project.⁵³ In finding implied surrender, "the key element is the licensee's failure to live up to the obligations of its license, and we have implied surrender even where the licensee has expressed an interest in continuing to operate the project."⁵⁴

35. As discussed above, as a high hazard dam, the Au Train Project poses a threat to public safety and UP Hydro has been unwilling and unable since 2010 to undertake required remediation. UP Hydro has repeatedly failed to timely and fully respond to correspondence and directives from Commission staff,⁵⁵ by itself sufficient grounds to justify implied surrender under Article 16. Further, UP Hydro violated Article 5 of its license when it lost title to 18 parcels within the project boundary. Although UP Hydro is the licensee of record for the Au Train Project, it lacks sufficient ownership and control of the Au Train Project facilities or property and will lose access to some of the project facilities, including the powerhouse, after December 31, 2025. The licensee's inaction has made clear that it does not intend or is unable to resume operation of the project consistent with the license. These failures demonstrate that UP Hydro has neither the intention nor the ability to operate or maintain the project.

⁵³ 18 C.F.R. § 6.4. Section 6.4 provides for no less than 90 days' notice. The Commission can, however, waive its regulations where warranted. *See City of Fremont v. FERC*, 336 F.3d 910, 917-18 (9th Cir. 2003) (finding waiver of regulations within the authority of an agency when there is no showing of demonstrated injury or substantial prejudice). We waive the 90-day notice provision given the serious unremediated public safety threat posed by the project; UP Hydro's failures to comply with dam safety directives and with license Article 5; and UP Hydro's non-opposition to the termination of the license by implied surrender. *Boyce Hydro Power, LLC*, 175 FERC 61,143 at P 21.

⁵⁴ *Xcel Energy Operating Cos.*, 123 FERC 61,053, at P 13 (2008); *see also Congdon Pond Hydro, LLC*, 154 FERC 61,209, at P 17 (2016); *Lichoulas v. FERC*, 606 F.3d 769, 777 (D.C. Cir. 2010) (holding that an evidentiary hearing on the licensee's intent was not warranted, even when the licensee argued he intended to restore the project).

⁵⁵ *See supra* P 17.

36. Three individuals from Alger County urge the Commission to retain the dam and powerhouse and seek funding to cover interim modifications. They also highlight the project's capacity to provide clean energy and recreational benefits. The termination of this license by implied surrender does not dictate removal of either the dam or the powerhouse; those are matters within the control of the property owner. The Commission has no authority to fund project repairs.

37. Michigan EGLE's comments highlight the severe consequences of dam failure and note that jurisdiction over the dam will pass to Michigan EGLE after license termination.⁵⁶ Michigan EGLE states the Commission has various tools to compel compliance (e.g., license revocation, penalties, filing suit in court) which should be fully exhausted before terminating a license.⁵⁷ Michigan EGLE asks that, before termination, the Commission require the licensee to submit a decommissioning plan that provides for reservoir drawdown and a continued minimum discharge.⁵⁸ Michigan EGLE asserts "swift termination of the license and transfer of regulatory authority over the safety of the dam is needed."⁵⁹ Lastly, Michigan EGLE requests that Commission staff remain available for consultation related to existing deficiencies with the dam and future actions to correct those deficiencies.⁶⁰ Michigan DNR echoes and supports Michigan EGLE's comments.⁶¹

38. When a project is surrendered, the Commission's jurisdiction over the project ends and future operation of any remaining works may become the responsibility of the state entity with regulatory authority over dam safety, here, Michigan EGLE.

39. We appreciate Michigan EGLE's expertise, as well as its cooperation in handling this matter. While Michigan EGLE correctly notes that the Commission has a variety of compliance options, unfortunately none of them, such as ordering the licensee to come into compliance, requiring the licensee to cease generation, imposing civil penalties, or seeking relief in court, is likely to lead to remediation of the safety issues at the project when faced with a licensee that has declared bankruptcy, lost title to project property, and

⁵⁶ Michigan EGLE December 15, 2025 Comment at 1.

⁵⁷ *Id.* at 1-2.

⁵⁸ *Id.* at 2.

⁵⁹ *Id.*

⁶⁰ *Id.* at 3.

⁶¹ Michigan DNR December 15, 2025 Comment.

will shortly be unable to access project works. Therefore, terminating the project license is the most appropriate course of action.

40. As noted above, the licensee has provided the Commission with a copy of a decommissioning plan as Michigan EGLE recommends.⁶² Once the project license is terminated, we cannot require measures, such as minimum flows or continued drawdown that extend beyond the license termination. We understand, however, that the licensee, Michigan EGLE, and the property owner are currently in discussions on how to decommission the project, including permitting the interim continuation of minimum flows.⁶³ We believe that it would be prudent to maintain the project in its current condition under the interim risk reduction measure – keeping the reservoir level at 773.4 feet NAVD88. Once we terminate the license, we will not have jurisdiction to oversee development of a decommissioning plan. We will make our staff available, as Michigan EGLE requests, to consult with Michigan EGLE as it assumes authority over the project and determines what actions may be appropriate.

41. As explained above, the licensee has abandoned the project. Terminating this license by implied surrender would result in leaving the existing project facilities in place, would not authorize new facilities, and would not authorize any other action. As discussed below, terminating the license would not alter the current condition of the project or the surrounding environment.⁶⁴

B. Environmental Analysis

42. To satisfy the Commission's responsibilities under the National Environmental Policy Act of 1969 (NEPA),⁶⁵ Commission staff prepared an EA for the implied surrender of the Au Train Project license, which is attached as an appendix to this order. The EA addresses the environmental effects of an implied surrender of the license where the licensee would no longer be authorized to generate electricity, and all the licensed facilities would remain in place.

⁶² Commission Staff November 19, 2025 Communication Memo (attaching email correspondence from the licensee regarding its proposal to decommission the powerhouse).

⁶³ *Id.*

⁶⁴ Appendix at A-15.

⁶⁵ 42 U.S.C. §§ 4321 *et seq.*; *see also* 18 C.F.R. pt. 380 (2025) (Commission's regulations implementing NEPA).

43. Because the implied surrender would not involve modifications to the existing project features and no ground disturbing activities would occur, Commission staff found that the implied surrender would not affect geology and soils, water quality, water quantity, aquatic or terrestrial resources, air quality, aesthetics, or recreation at the project.⁶⁶ The proposed action would not affect any federally listed threatened or endangered species, nor would it have the potential to affect historic resources.⁶⁷ Given that there are no identified environmental effects associated with this action, the EA recommended termination of the license by implied surrender.⁶⁸ We agree. Based on Commission staff's analysis, the implied surrender of the license for the Au Train Project would not constitute a major federal action significantly affecting the quality of the human environment.

IV. Conclusion

44. For the reasons discussed above, we find that the licensee has discontinued good faith operation of the project and failed to demonstrate its ability to comply with its license. As a result, it is in the public interest to terminate the license for Project No. 10856 by implied surrender, with the project facilities left in place.

The Commission orders:

(A) The license for the Au Train Hydroelectric Project No. 10856 is terminated by implied surrender, effective at the close of business on the issuance date of this order.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l, and the Commission's regulations at 18 C.F.R. § 385.713 (2025). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

⁶⁶ Appendix at A-15.

⁶⁷ *Id.*

⁶⁸ *Id.* at A-17.

Carlos D. Clay,
Deputy Secretary.

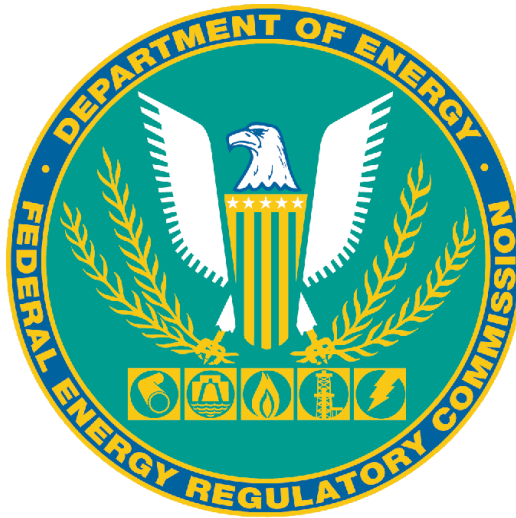
APPENDIX

**ENVIRONMENTAL ASSESSMENT FOR TERMINATION OF LICENSE BY
IMPLIED SURRENDER**

**ENVIRONMENTAL ASSESSMENT
FOR TERMINATION OF LICENSE BY IMPLIED SURRENDER**

Au Train Project—FERC Project No. 10856-141

Michigan



Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance
888 First Street, NE
Washington, D.C. 20426

December 29, 2025

I. INTRODUCTION

- A. **Proceeding Type:** Implied Surrender of License
- B. **Project Number:** P-10856
- C. **Date Initiated:** November 14, 2025
- D. **Licensee's Name:** UP Hydro, LLC
- E. **Project Name:** Au Train Hydroelectric Project
- F. **Waterbody:** Au Train River
- G. **Project Location:** Alger County, Michigan
- H. **Federal Lands:** None

II. PURPOSE AND NEED FOR ACTION

On June 26, 1997, the Commission issued an original license to continue operating and maintaining the existing, unlicensed 0.9-megawatt Au Train Project No. 10856 to the Upper Peninsula Power Company, for a term of 40 years.⁶⁹ The license was subsequently transferred to the current licensee, UP Hydro, LLC, by order issued May 18, 2010 (Transfer Order).⁷⁰ The project is located on the Au Train River in Alger County, Michigan. There are no federal lands at the project.

As described in an order being issued concurrently with this Environmental Assessment (EA), the licensee has consistently failed to comply with Commission directives and license requirements in a complete and timely manner. Moreover, the licensee no longer holds or retains sufficient ownership and control of the project to fulfill license requirements. Standard Article 16 of the project license provides that, if the licensee abandons or discontinues good faith operation of the project or refuses or neglects to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the licensee or its agent, the Commission will deem it to be the intent of the licensee to surrender the license. Therefore, the Commission's most practical recourse is to terminate the license for the Au Train Project by implied surrender.

⁶⁹ *Upper Peninsula Power Company*, 79 FERC 62,217 (1997).

⁷⁰ *Upper Peninsula Power Company and North American Hydro Holdings, LLC*, 131 FERC 62,125 (2010). *See also* Errata Notice issued on May 19, 2010, revising the Transferee's name from North American Hydro Holdings, LLC to UP Hydro, LLC.

This EA is being prepared to satisfy the Commission's responsibilities under the National Environmental Policy Act of 1969 (NEPA)⁷¹ and the Commission's implementing regulations.⁷² Unless otherwise stated, our analysis herein is based on site inspections and the EA issued with the license in 1997 (1997 EA).⁷³

A. Project Description

⁷¹ National Environmental Policy Act of 1969, amended (Pub. L. 91-190. 42 U.S.C. §§ 4321–4347, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, Pub. L. 97-258, §4(b), September 13, 1982, Pub. L. 118-5, June 3, 2023).

⁷² 42 U.S.C. §§ 4321 *et seq.*; *see also* 18 C.F.R. pt. 380 (Commission's regulations implementing NEPA); FERC, *Staff Guidance Manual on Implementation of NEPA*, (June 2025), <https://www.ferc.gov/media/staff-guidance-manual-implementation-national-environmental-policy-act-june-2025s>.

⁷³ The 1997 EA is attached to the project license, and can be accessed on the Commission's eLibrary by following this link: <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=000CF2BA-66E2-5005-8110-C31FAFC91712>.

The Au Train Project facilities include: (1) a 38-foot-high and 1,500-foot-long dam (North Dam) with a 100-foot-long concrete overflow spillway section topped with ten 10-foot-wide by two-foot-high wooden flashboards;⁷⁴ (2) a reservoir with a storage capacity of 12,342 acre-feet and a surface area of approximately 1,557 acres at elevation 780 feet local datum; (3) a 2,516-foot-long, 5-foot, 6-inch-diameter penstock with stoplogs, trashrack, and butterfly valve connecting to a 10-foot-diameter exposed steel surge tank connected to the penstock upstream of the powerhouse; (4) a powerhouse containing two turbine-generator horizontal Francis-type turbines having a total of 1,600 horsepower, and a capacity of 1,120 kilovolt-ampere, a hydraulic capacity range of 50 to 136.5 cubic feet per second (cfs), an average net head of 124 feet, and a power factor of 80 percent; (5) a 2,300-volt, 2,500-foot-long transmission line; (6) an earth-filled dike at the south end of the basin (South Levee) that is designed as a non-overflow structure; and (7) appurtenant facilities. The dam has a high hazard potential rating.⁷⁵

B. Project Operations

Pursuant to license Article 401, the licensee must operate the project in a modified run-of-river mode, with a steady drawdown of the reservoir in the winter and drawdowns as necessary at other times of the year to provide a continuous minimum powerhouse discharge of 50 cfs for the protection and enhancement of fish and wildlife resources in the Au Train River. The licensee must maintain an absolute minimum water surface elevation in the reservoir of 773.4 North American Vertical Datum of 1988 (NAVD88) (772.0 feet local datum or 773.7 feet above mean sea level) for the protection of aquatic resources in the reservoir. At no time shall the licensee release less than 50 cfs from the powerhouse, or lower the water surface in the reservoir below 772.0 feet local datum, except as provided for in the Operation and Compliance Plan developed under Article 402.⁷⁶

⁷⁴ The licensee has currently removed the wooden flashboards as a risk reduction measure.

⁷⁵ Dams considered as having a high hazard potential are those located where failure may cause serious damage to homes, agricultural, industrial and commercial facilities, important public utilities, main highways, or railroads, and there would be danger to human life. A high hazard rating generally indicates that failure or misoperation will probably cause loss of human life.

⁷⁶ On January 17, 2020, the licensee filed an update to the Article 402 Operation and Compliance Plan (2020 Update), which was approved by order dated December 21, 2020. See *UP Hydro, LLC*, 173 FERC 62,155 (2020).

The Commission's Division of Dam Safety and Inspections – Chicago Regional Office (D2SI-CRO) has determined that the Au Train Project does not meet the Commission's criteria for spillway adequacy because it cannot safely pass its Inflow Design Flood (IDF),⁷⁷ which is the Probable Maximum Flood. After multiple correspondences back-and-forth regarding Interim Risk Reduction Measures (IRRM), the licensee proposed an IRRM to lower the reservoir elevation to 773.0 feet NAVD88,⁷⁸ and continue passing 50 cfs to maintain the downstream fishery and recreation, as required. By letter dated December 15, 2023, the Commission's D2SI – Chicago Regional Engineer (Regional Engineer) reviewed the licensee's proposal and approved the IRRM to lower the pool to 773.4 feet NAVD88, the minimum permitted by license Article 401. The Regional Engineer additionally instructed the licensee to take all reasonable measures to maintain the project's reservoir at this elevation year-round, starting immediately, until further notice.⁷⁹

Due to a bankruptcy proceeding and property foreclosure, the licensee no longer holds sufficient ownership and control of project lands to operate and maintain the project, as required. Although the licensee has continued to operate the project, the licensee has been unable to secure access to project lands, and will no longer be authorized to access certain project lands, including the powerhouse, after December 31, 2025.

⁷⁷ The Commission's Dam Safety Guidelines define the IDF as the flood flow above which the incremental increase in water surface elevation due to failure of a dam or other water impounding structure is no longer considered to present an unacceptable threat to downstream life or property.

⁷⁸ Renewable World Energies, LLC's (RWE) December 1, 2023 filing did not specify a datum. However, all datums in the Ayres Associates report attached to the December 1, 2023 filing were in NAVD88. In a December 12, 2023 call between D2SI-CRO staff and Jason Kreuscher of RWE, staff confirmed that the licensee intended 773.0 feet NAVD88.

⁷⁹ To lower the reservoir below 773.4 NAD88, the Regional Engineer required the licensee to prepare a Reservoir Drawdown Plan, following the procedures outlined in the 2020 Update.

By email dated November 19, 2025, RWE, on behalf of the licensee, provided the U.S. Forest Service (Forest Service), U.S. Fish and Wildlife Service (FWS), Michigan Department of Natural Resources (Michigan DNR), and Michigan Department of Environment, Great Lakes, and Energy (Michigan EGLE) (with a courtesy copy to Commission staff) with a proposed plan for the decommissioning of the powerhouse, and requested agency review and comment as soon as possible.⁸⁰ The details of the decommissioning plan are further discussed in Section IV.B., *Proposed Action with Licensee's Proposed Decommissioning Plan Alternative*, below.

III. PUBLIC NOTICE AND COMMENTS

On November 14, 2025, the Commission issued a public notice of the Commission's intent to terminate the license by implied surrender, pursuant to 18 C.F.R. § 6.4.⁸¹ The notice established December 15, 2025,⁸² as the deadline for filing comments, protests, and motions to intervene. On December 15, 2025, Michigan EGLE, Michigan DNR, and three residents of Alger County (Elise Bunce, Barbara Isom, and John Tait) filed comments on the proposed termination of license by implied surrender, as discussed below. Michigan DNR additionally filed a motion to intervene in a separate filing on December 15, 2025. No other comments, motions to intervene, or protests were received.

⁸⁰ See email between Jason Kreuscher and Commission staff. Communication memorandum filed November 19, 2025.

⁸¹ Section 6.4 provides, in part, that the Commission may in its discretion terminate the license, but not less than 90 days after public notice. See 18 C.F.R. § 6.4.

⁸² The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. 385.2007(a)(2) (2020). Because the 30-day filing deadline fell on a Sunday (i.e., December 14, 2025), the filing deadline was extended until the close of business on Monday, December 15, 2025.

In its December 15, 2025 comments, Michigan EGLE noted similarities between this proceeding and the Edenville Project No. 10808, and advocated for the Commission to be granted funding to be able to take necessary actions to address safety concerns when licensees are unwilling or unable to do so. Michigan EGLE also surmised that the new property owner's deadline for the licensee to vacate the powerhouse property would threaten the Commission's earlier directives to reduce the reservoir elevation by stopping flows through the powerhouse and allowing the reservoir to refill. Michigan EGLE foresees the effects of this scenario would result in the stoppage of flows in the Au Train River downstream of the powerhouse until the reservoir refills. Michigan EGLE recommended continued conversations between the licensee, state and federal agencies, and the new property owner, and requested the Commission require the licensee to submit a decommissioning plan that allows for the drawdown and minimum flows to continue. Upon acceptance of such a plan, Michigan EGLE requests the Commission take expedient action on the termination.

Michigan DNR echoed and supported Michigan EGLE's comments that the Commission compel the licensee to submit a decommissioning plan that considers options for maintaining both the current reservoir drawdown for public safety and provide continuous flows to the Au Train River for environmental resources in the Au Train River. The three residents of Alger County filed similar comments that noted the deterioration of the Au Train dam, and urged collaboration to save the dam and powerhouse due to its ability to generate clean energy, thus assuring resilience and sustainability of the electric grid in Alger County.⁸³ Further, Ms. Bunce summarized Michigan EGLE's preliminary proposal to cut the penstock, which would avoid risks associated with water passing through the turbines that could risk freezing, clogging and/or equipment damage.

⁸³ The residents additionally urged the Commission to seek funding to cover interim modifications. However, the Commission has no authority to fund project repairs. Michigan EGLE correspondence with the licensee (20251210-3041) indicates the State may be able to mobilize some resources to assist (*in reference to cutting the penstock, which would maintain IRRM reservoir levels*).

IV. PROPOSED ACTION AND ALTERNATIVES

A. Proposed Action for Termination by Implied Surrender

Under the proposed action, the licensee would no longer be authorized to generate electricity, but all the licensed facilities would remain in place. Implied surrender of the project license would not involve any ground-disturbing activities. Terminating the license would administratively remove the Commission's jurisdiction over the project facilities, and the project would no longer be subject to the requirements of the Federal Power Act. The project would subsequently be subject to Michigan state law, with Michigan EGLE assuming the role of regulator overseeing the safety of the dam.

B. Proposed Action with Licensee's Proposed Decommissioning Plan Alternative

On November 19, 2025, RWE, on behalf of the licensee, initiated decommissioning consultation and provided Commission staff and resource agencies with a draft proposed decommissioning plan that consisted of disconnecting the generators and powerhouse from the substation, blocking the units from spinning, setting the opening to pass the minimum flow (50 cfs), and, upon reservoir levels reaching the North Dam crest, lowering the penstock stop logs blocking inflows into the powerhouse so that all inflow discharges over the spillway.

On December 4, 2025,⁸⁴ Michigan EGLE proposed alternative decommissioning activities to RWE, which include securing the penstock intake log gates and cutting the penstock about 400 feet downstream of the dam. Under Michigan EGLE's proposed alternative, discharge from the reservoir would drain at the elevation set by the stop logs via the penstock and return to the bypassed channel where the penstock is cut as long as inflows matched outflows within the penstock capacity. In response to Michigan EGLE's proposal, RWE suggested these activities could be completed after January 1, 2026. Consultation regarding project decommissioning between the licensee, the property owner, and Michigan EGLE is ongoing.

This alternative was considered but removed from further consideration given the licensee's compliance history. The licensee has failed to follow through with prior directives to modify the project. Further, the licensee will not have access to project lands after December 31, 2025 in order to implement the decommissioning activities. This situation binds the Commission into requiring a modification to project features the licensee cannot access and delays the seemingly inevitable transition of dam safety regulatory authority to Michigan EGLE. Commission staff, therefore, removed this alternative from further consideration.

⁸⁴ See emails between Jason Kreuscher, Michigan EGLE, and the new property owner. Communication memorandum filed December 10, 2025.

C. No-Action Alternative

The no-action alternative is the baseline from which to compare the proposed action and any reasonable action alternatives. Under the no-action alternative, the project license would not be terminated by implied surrender. The Commission would continue to require compliance with dam safety directives and license conditions. This includes requiring that the licensee: (1) comply with the terms and conditions of the existing license by securing or acquiring necessary rights to the lands; (2) make the necessary dam safety modifications to the North Dam spillway; and (3) file all outstanding license requirements. However, as stated above, the Commission has previously made such requests, and the licensee has not complied. Commission staff has removed the no-action alternative from further consideration as it is not feasible to implement due to the licensee losing project lands in a foreclosure sale and ultimately all access to the powerhouse parcel after December 31, 2025. Further, the licensee no longer has the financial resources available to meet license conditions and D2SI directives.

V. STATUTORY AND REGULATORY COMPLIANCE

A. Endangered Species Act

Section 7 of the Endangered Species Act of 1973 (ESA)⁸⁵ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened or endangered species or result in the destruction or adverse modification of the critical habitat of such species.

Based on the FWS's Information for Planning and Consultation (IPaC) database,⁸⁶ Commission staff identified five federally listed species that could potentially be present in the project area; the endangered gray wolf (*Canis lupus*) and northern long-eared bat (*Myotis septentrionalis*), and the threatened Canada lynx (*Lynx canadensis*), rufa red knot (*Calidris canutus rufa*), and Pitcher's thistle (*Cirsium pitcheri*), as occurring in the project area.⁸⁷ No critical habitat was identified in the project area.

⁸⁵ 16 U.S.C. § 1536(a).

⁸⁶ IPaC, FWS, <https://ipac.ecosphere.fws.gov/> (accessed November 13, 2025).

⁸⁷ One proposed species, the monarch butterfly (*Danaus plexippus*), is also known to or may occur within the project area.

The proposed action would not result in any identified changes to the existing environment. Based on the available information, Commission staff has determined that the proposed action would have no effect on federally listed or proposed for listing species. Therefore, no further action pursuant to section 7 is needed.

B. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA)⁸⁸ and its implementing regulations⁸⁹ require federal agencies to take into account the effect of any proposed undertaking⁹⁰ on properties listed or eligible for listing in the National Register of Historic Places (National Register) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects. Historic properties are those that are listed or eligible for listing on the National Register and may also include resources of traditional religious and cultural importance to Native American Tribes that meet the National Register criteria.

The Au Train Project was initially constructed by Cleveland-Cliffs Iron Company to serve the electric power needs of the Munising Paper Company and was put in service in 1910. In 1917, electric service to the paper company was discontinued and the plant was modified to supply power to the Cleveland-Cliffs Iron Company's mining operations.

A 1991 Phase I cultural resources inventory of the project focused on the immediate vicinity of the hydroelectric facility (dam, penstock, and powerhouse), the access roads, and the public access areas on the shores of the Au Train basin. As discussed in the 1997 EA, no prehistoric or historical cultural materials were encountered in the archaeological field work phase of the inventory. It was, therefore, determined that the likelihood that significant historical or archaeological resources exist within the project area was low to medium, depending on the specific location.

⁸⁸ 54 U.S.C. § 306108.

⁸⁹ 36 C.F.R. pt. 800.

⁹⁰ An undertaking means “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.” 36 C.F.R. § 800.16(y). Here, the undertaking is the termination of the license.

As addressed in the 1997 EA, archaeological investigations in the vicinity of the project recorded 24 historical sites dating from the 1890s through the 1920s, including several logging camps, a log dam, a mill, a cabin, and a home or camp. However, at the time of project licensing, these sites were determined to be historically insignificant or had not been evaluated. In the 1997 EA, Commission staff stated that the potential for discovery of additional late nineteenth and early twentieth century sites related to early Euro-American settlement and resource extraction was high.

At the time of project licensing, the powerhouse was over 75 years old. Commission staff noted in the 1997 EA that none of the structures associated with the project were of architectural importance, as a considerable portion of the project had been replaced, rebuilt, or installed since 1910. Additionally, the 1991 Phase I cultural resources inventory of the project concluded that the project did not merit inclusion on the National Register as a whole, but that the powerhouse may be eligible for listing because it is an uncommon surviving representative of turn-of-the-century hydroelectric technology and because it was the first hydroelectric plant erected by the Cleveland-Cliffs Iron Company. However, as stated in the 1997 EA, the Michigan SHPO subsequently determined that the powerhouse did not meet the criteria for listing in the National Register.⁹¹ Although the project powerhouse is now over 100 years old, to date, it has not been listed on the National Park Service's (Park Service) National Register database.⁹²

Pursuant to 36 C.F.R. § 800.3(a)(1),⁹³ Commission staff has determined that implied surrender of the license for the Au Train Project has no potential to cause effects on historic properties. Accordingly, the Commission has no further obligations under section 106 or its implementing regulations in 36 C.F.R. Part 800 for this action.⁹⁴

⁹¹ In a letter dated February 21, 1992, and attached to the licensee's Historic Resource Management Plan, the Michigan SHPO stated that, although the powerhouse does retain much of its original early equipment, the rest of the facility has been rebuilt and component structures replaced. The Michigan SHPO stated that the plant should be evaluated as a whole, and did not believe that one component of a plant designed to operate as a unit can be eligible for inclusion in the National Register (in this case, the powerhouse). Although the plant attains significance as the first built by Cleveland-Cliffs Iron Company in the Upper Peninsula, Michigan SHPO stated that this significance is greatly compromised by the fact that so little of the facility as it existed dates to the 1910 era.

⁹² Park Service. 2025. National Register Database and Research. Available online, <https://www.nps.gov/subjects/nationalregister/database-research.htm#table>. Accessed November 17, 2025.

⁹³ 36 C.F.R. § 800.3(a)(1) (providing that "[i]f the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part").

⁹⁴ *See id.*

C. Wild and Scenic Rivers Act

Section 7(a) of the Wild and Scenic Rivers Act of 1968⁹⁵ prohibits the Commission from licensing any project located on or directly affecting any river that is designated as a component of the National Wild and Scenic Rivers System, or any river segment that Congress has designated for study. Designation under this act is intended to protect rivers with outstanding natural, cultural, and recreational value.

The Whitefish River is located in the Hiawatha National Forest and is the closest designated river. Headwaters of the Whitefish River originate just downstream of the South Levee. On March 3, 1992, the mainstem of the Whitefish River from its confluence with the East and West Branches to Lake Michigan, was added to the National Wild and Scenic River System through the Michigan Scenic Rivers Act of 1991.⁹⁶ The Forest Service was designated as the river-administering agency. In total, 33.6 miles of the Whitefish River have been designated as wild and scenic, with 2.1 miles classified as recreational, and 31.5 miles classified as scenic.⁹⁷ Based on available information, Trout Lake Road (County Road 142, about 0.75-mile downstream from the South Levee) represents the upstream-most boundary of the Wild and Scenic River designation.

The creation of the Au Train dam necessitated the construction of the South Levee, which creates the divide between the Lake Superior and Lake Michigan drainages, and prevents the backed up water from flowing south into Lake Michigan.⁹⁸ As described in the 1997 EA, the Hiawatha National Forest is located in the immediate vicinity of the Au Train basin, with the Forest situated, in part, to the south of the South Levee.

Because the proposed action would result in no changes to the South Levee, project operation, or discharge that would affect downstream resources, Commission staff concludes that the termination of the project license by implied surrender would not invade or unreasonably diminish the outstandingly remarkable values of the Whitefish River. Accordingly, the Commission has no further obligations under the Wild and Scenic Rivers Act for this action.

⁹⁵ 16 U.S.C. §§ 1271-1287.

⁹⁶ PL102-249.

⁹⁷ National Wild and Scenic River System. 2025. Whitefish River. Available online, <https://rivers.gov/rivers/river/whitefish>. Accessed November 24, 2025.

⁹⁸ Peterson, J.H. 1975. Series: The Trout Streams of Michigan. No. 18: The Whitefish River. Michigan DNR, Fisheries Division, Technical Report No. 75-6. Available online, <https://www.michigandnr.com/publications/pdfs/DNRFishLibrary/TechnicalReports/TR75-6.pdf>. Accessed November 24, 2025.

VI. ENVIRONMENTAL ANALYSIS

A. Affected Environment

The Au Train Project is located in the central portion of Michigan's Upper Peninsula, about 7 miles south of the town of Au Train, Michigan, and about 15 miles southwest of Munising, Michigan. The Au Train River flows in a northerly direction from the dam to Au Train Lake, about six river miles (RM) downstream. The powerhouse discharge bypasses 0.7-mile of the Au Train River. The bypassed reach contains two waterfalls, and only dam leakage and groundwater seeps provide flow to this reach. Au Train Lake, which is not part of the Au Train Project, is a natural lake providing a variety of recreational opportunities for the resort community along the shore. From the outlet at the north end of Au Train Lake, the Au Train River meanders about 8.5 miles north to Lake Superior.

The Au Train basin is located in the middle region of Michigan's Upper Peninsula in a relatively small, low-relief watershed. As described in the 1997 EA, the project impounds the upstream limit of the Au Train River, including its original source, Mud Lake. Three tributaries, Joe Creek, Johnson Creek, and Slapneck Creek, flow into the Au Train river basin. The reservoir has over 15 miles of shoreline, a total drainage area of 80.5 square miles, and is about 6.5 miles long and 0.25 to 0.5 mile wide. The project is located approximately 17 RMs upstream of the river's mouth at Lake Superior. The southern end of the river basin is impounded by an earth-filled dike, which creates the divide between the Lake Superior and Lake Michigan drainages.

As described in the 1997 EA, the Au Train basin hydrologic regime consists of a typical seasonal pattern for an upper Midwest stream with an inflow pattern of low winter flows, a spring snowmelt peak, decreasing flow during the summer, and a fall peak associated with rainstorms. Average monthly inflows ranged from 35 to 310 cfs, with a mean annual basin inflow of 91 cfs. The flood of record at the dam was 3,676 cfs in 1985 which is larger than the 1,000-year flood (estimated 3,141 cfs) and the project performed as intended.

As stated in the 1997 EA, approximately 687 acres of wetlands occur within the Au Train basin at full pool. Wetlands of the project area consist of palustrine systems of emergent, scrub-shrub, and forested vegetation. Wetlands are primarily found in the lakebed and shoreline of the basin, its tributaries, and the Au Train River downstream of the powerhouse.

The Au Train basin also supports a diverse fish population, including resident brook, brown, and rainbow trout, as well as white sucker and logperch. Dominant game fish occupying the Au Train basin include northern pike, yellow perch, smallmouth bass, and stocked walleye. Non-game fish consist of brown bullhead and white sucker. As discussed in the 1997 EA, steelhead, coho salmon, and chinook salmon reside in Lake Superior and spawn in the Au Train River. Other river species identified in the 1997 EA include mottled sculpin, slimy sculpin, johnny darters, central mud minnow, blacknose dace, and bluntnose minnows. The Au Train basin exhibits a diversity of aquatic vegetation and substrate types and cover, resulting in high quality habitat for the abundant and varied fish community.

The 1997 EA also noted that a limited number of reptiles and amphibians were identified during biological surveys conducted in 1991, but several are known to inhabit the general area. Observed species of reptiles and amphibians include the green frog, American toad, and garter snake.

The Au Train Project area provides a high diversity of wildlife habitats. Many of the animal species that occur in the Upper Peninsula of Michigan are found within the project area, which is relatively undisturbed. The major wildlife species found on project lands include white-tailed deer, black bear, and beaver. Population numbers of these species vary from year to year, with some populations moving locally throughout the year. Other mammals found in the project area include, but are not limited to, the following: eastern cottontail, red squirrel, bobcat, otter, coyote, snowshoe hare, gray squirrel, mink, red fox, skunk, opossum, fox squirrel, raccoon, and weasel. The area additionally supports a variety of avian species, including upland game birds, raptors, shorebirds, waterfowl, and songbirds. Typical bird species observed in and around the basin include, but are not limited to, the following: wood duck, green-winged teal, mallard, American black duck, common merganser, bald eagle, ruffed grouse, osprey, red-tailed hawk, peregrine falcon, sandhill crane, and Canadian goose. These species may inhabit the area as residents or as transients to feed and rest during migration. The Au Train Project area also offers important nesting and foraging areas for the bald eagle, with eagles known to breed on an island within the basin.

The Au Train basin is located in a relatively remote area, offering an abundance of recreation opportunities in an undeveloped setting. Michigan DNR maintained the primary recreation facility, with two formal recreation sites at the basin, and one informal viewing area downstream of the dam. These facilities provided opportunities for fishing, camping, canoeing, boating, and sightseeing. Recreation demand at the project during licensing was characterized as light to moderate, being light in the spring and fall, and moderate in summer and winter, with peak use occurring in July and August. As described above, the licensee abandoned the project when it filed for bankruptcy and lost lands necessary for project purposes in a foreclosure sale. This resulted in the closure of the recreation facilities and loss of public access to the reservoir and project lands.

B. Effects of Proposed Action

The proposed action would not involve modifications to the existing dam or powerhouse, and no ground disturbing activities would occur. The licensee's prior efforts to maintain the project's minimum reservoir elevation of 773.4 feet NAVD88 year-round and provide a continuous minimum discharge of 50 cfs, would be in effect until it is either precluded from accessing the site by the current landowner and/or receives further directives from the State of Michigan post-termination. Termination of the license would not authorize any action or alter the current condition of the project or surrounding environment.

We have evaluated the environmental effects of the proposed action to various resources. Commission staff has not identified any effects to geology and soils, water quality, water quantity, aquatic resources, terrestrial (vegetation and wildlife) resources, threatened or endangered species, recreation, aesthetics, air quality, or historic resources from implied surrender of the project license, as proposed.

C. Effects of No Action Alternative

Under the no action alternative, the license would not be terminated by implied surrender. Ultimately, the project would remain subject to current license requirements, although the licensee will lose control of project lands this month. In Commission staff's review, the no-action alternative does not warrant further consideration as it is not feasible to implement due to the licensee losing access to the powerhouse parcel after December 31, 2025.

VII. DAM SAFETY

The Au Train Project has a high hazard potential rating, which means failure of the project's works would create a threat to human life and/or would cause significant property damage. The most recent dam safety inspection of the project was performed by the Commission's D2SI-CRO on June 18, 2025. On June 27, 2025, the Regional Engineer issued a post-inspection letter to the licensee, which identified items that require additional attention. Such items included the following: (1) embankment seepage entering the left (west) vault at the right embankment toe from a newly identified hole in the bottom of the vault;⁹⁹ (2) vegetation management at the toe of the South Levee; (3) rodent holes in the South Levee; (4) small trees and woody shrubs growing in the channel just downstream of the spillway; and (5) replacement of the Emergency Action Plan (EAP) in the powerhouse with the most recently updated version.¹⁰⁰ During the inspection, the licensee agreed to the following: (1) to continue daily inspections of the vault; (2) to conduct vegetation management at the toe of the South Levee, including removal of trees and shrubs and cutting down excessive vegetation as conditions allow; (3) to fill in the rodent holes in the South Levee; (4) to remove the small trees and woody shrubs growing in the channel downstream of the spillway; and (5) to replace the EAP in the powerhouse. By email dated July 17, 2025, the licensee reported to D2SI-CRO that on July 3, 2025 a sandbag had been placed over the hole in the vault.

The Commission's D2SI has concluded that there is no reason not to terminate the project license by implied surrender. Due to the bankruptcy filing and imminent loss of access to the powerhouse, it is highly unlikely that the outstanding dam safety repairs will be addressed. D2SI recommends that the licensee continue to operate the project under existing conditions of the license and the December 15, 2023 directive to keep the reservoir level at 773.4 feet NAVD88.

D2SI staff has been closely coordinating with Michigan EGLE, as the project would come under the State's jurisdiction following the termination of the license. Therefore, D2SI recommends that the licensee coordinate with Michigan EGLE on how best to transfer dam safety jurisdictional oversight of the facilities, such that any conditions or requirements of Michigan EGLE are implemented soon after the Commission has terminated the license. Following the termination of the license, D2SI staff would remain available for continued coordination with Michigan EGLE to ensure effective and successful transition of jurisdictional authority.

⁹⁹ The Regional Engineer recommended that the licensee immediately place a sandbag over this hole, and continue with daily inspections of the vault.

¹⁰⁰ These outstanding dam safety items are in addition to the licensee not addressing the inadequate spillway capacity. In the June 27, 2025 letter, the Regional Engineer advised the licensee that it may provide additional comments that develop as a result of the preparation of the dam safety inspection reports.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Termination of the license would not result in any adverse effects on environmental resources because there would be no ground disturbing activities or changes to the project. Post surrender, reservoir elevations and releases would be dictated by the property owner and Michigan EGLE. The proposed action would not affect geology and soils, water quality, water quantity, aquatic or terrestrial resources, air quality, recreation, or aesthetics at the project. The proposed action would not affect any federally listed threatened or endangered species, nor would it have the potential to affect historic resources. Because there are no identified environmental effects associated with this action, Commission staff recommends the proposed action, termination of the license by implied surrender.

IX. FINDING OF NO SIGNIFICANT IMPACT

Based on our independent analysis, the implied surrender of the license for the Au Train Project would not constitute a major federal action significantly affecting the quality of the human environment.

X. LIST OF PREPARERS

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