

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE ILLINOIS STATE HISTORIC PRESERVATION AGENCY
FOR THE MANAGEMENT OF HISTORIC PROPERTIES AFFECTED
BY THE DIXON HYDROELECTRIC PROJECT**

WHEREAS, the Federal Energy Regulatory Commission (Commission) proposes to issue a new license to the Commonwealth Edison Company (CE) to continue operating the Dixon Hydroelectric Project (Project), Project No. 2446, as authorized by Part I of the Federal Power Act, 16 U.S.C. 791(a)-825(r); and,

WHEREAS, the Commission has determined that the Project may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties), and the Commission has consulted with the Advisory Council on Historic Preservation (Council) and the Illinois State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f); and,

WHEREAS, CE has participated in the consultation and has been invited to concur in this Programmatic Agreement (PA);

NOW, THEREFORE, the Commission, the Council, and the SHPO agree that the Project will be administered in accordance with the following stipulations to satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

STIPULATIONS

Measures specified in this PA shall apply only in the event that the Commission issues, and CE accepts, a license to continue operation of the Project. The Commission will ensure that the following measures are carried out. All stipulations that apply to CE will similarly apply to any and all of CE's successors, insofar as the operation of the Project is concerned.

A. CULTURAL RESOURCES MANAGEMENT PLAN

CE will, in consultation with the SHPO, design and implement a Cultural Resources Management Plan (Plan) to avoid or minimize disturbances to historic properties. Historic properties in the Project area include: (1) the Project dam and powerhouse structures which are eligible for inclusion in the National Register; (2) 7 eligible archeological sites located adjacent to the project impoundment, specifically sites 11-OG-283, 11-LE-41, 11-OG-189, 11-LE-22, 11-OG-284, 11-LE-45, and 11-LE-40; and (3) any other historic properties that may be identified in the

course of operating the project, conducting periodical surveys, or engaging in project related ground-disturbing activities.

The Plan shall be filed for Commission approval within 1 year after the date of issuance of a license to CE for the Project. Prior to filing, CE shall provide the SHPO and the Council 45 days to provide written comments on the Plan, and make revisions as necessary based on the comments. Any SHPO or Council comments shall be filed with the Plan.

If the SHPO or the Council objects to the Plan, or any part thereof, the Commission will consult with the SHPO and the Council to resolve the objection in accordance with the dispute resolution provision of the General Provisions. The objection must be specifically identified and the reasons for any objection documented. The Commission reserves the right to require changes to the Plan based the filing and consultation with the SHPO, the Council, or CE as necessary.

The Plan shall conform to the following provisions:

1. Project dam and powerhouse

a. The Plan shall include provisions for routinely operating and maintaining the Project dam and powerhouse in accordance with the Secretary of the Interior's Standards for Historic Preservation Projects (Federal Register, Vol. 48, No. 190, page 44737, September 29, 1983) and the Secretary's of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service, Washington, DC, 1983) (Standards), so that the attributes which qualify the Project dam and powerhouse for listing in the National Register are protected from adverse effects from such routine activities.

b. The Plan shall stipulate that CE follow the Standards when undertaking new construction associated with the project dam and powerhouse. In the event a modification or undertaking is proposed that may alter characteristics of the powerhouse or dam which qualify them for inclusion in the National Register, the Plan will include provisions for consultation with the SHPO to reduce or minimize the effect of the undertaking on the powerhouse or dam.

c. The Plan will include consultation procedures in the event that CE proposes the demolition of the powerhouse or dam structures. The Plan shall require CE to document any alternatives to demolition that were considered with an explanation of why the proposed demolition is unavoidable. CE shall also develop mitigation measures for the demolition in consultation with the SHPO, and shall submit this documentation to the Commission for review and approval. The Plan will require

that the Commission submit the proposed undertaking with documentation gathered during consultation to the Council for comment.

2. Seven eligible archeological sites

a. The Plan will include provisions to stabilize sites subject to erosion, and to recover data from portions of the sites that cannot be protected or that may be disturbed by stabilization.

b. The Plan will include provisions for periodically monitoring these sites and other portions of the Project reservoir shoreline to determine if stabilization is working, or additional stabilization or data recovery is needed, or if other eligible sites may be present that require documentation and protection.

c. The Plan will include provisions for working with private land owners to preserve in place those attributes which contribute to the eligibility of these sites, and which may be impacted by the Project, through the use of plantings or other shoreline preservation techniques.

d. The Plan will include a provision to request access to private lands in order to implement shoreline stabilization techniques, to recover data, or to evaluate National Register eligibility.

3. Previously unidentified archeological and historic sites

CE will include in its Plan the following provisions:

a. In planning any Project-related land-clearing or ground-disturbing activities in an area which has not been subjected to an archeological survey, including recreation developments at the Project, CE will consult with the SHPO concerning the need for a survey to identify archeological or historic sites. If the survey results in the identification of eligible sites, CE shall consult with the SHPO to develop and implement appropriate treatment measures.

b. Moreover, if previously unidentified archeological or historic sites are discovered during any Project-related land-clearing or ground-disturbing activities, CE will immediately alert the SHPO to the discovery and ensure that all work that may affect the property is halted until CE in consultation with the SHPO implements a treatment plan. CE will be responsible for ensuring that Project-related work crews are informed that they are required to report and protect archeological and historic sites that are encountered.

c. CE will consult with the SHPO to determine the National Register eligibility of archeological and historic sites discovered after licensing and assess the effects of the Project on eligible sites. CE will also consult with the SHPO to design a treatment plan for avoiding or mitigating adverse effects upon eligible properties.

d. If CE and the SHPO are able to agree on such a plan, CE will execute the plan. If CE and the SHPO disagree, CE will refer the matter to dispute resolution as described in the PA's General Provisions.

B. GENERAL PROVISIONS

The following general provisions will apply in administering this PA throughout the term of the license.

1. Identification and evaluation surveys

Results of historical and archeological survey of the Project area are contained in the documents entitled "Results of the Phase I, Stage II Archeological Survey and Testing Program for the Dixon Hydroelectric Plant Relicensing Project in Lee and Ogle Counties, Illinois" by Joseph Randolph and Rochelle Lurie (Midwest Archeological Research Services, Inc., Cultural Resource Management Report, No. 211, Harvard, Illinois, November 15, 1992), and CE's Application of Commonwealth Edison Company for the Dixon Hydroelectric Project (FERC Project No. 2446) (specifically, exhibits A, E, F, and G, and appendix 1) (Commonwealth Edison Company, Chicago, Illinois, December, 1991) (filed with the Commission on December 27, 1991). The historic properties identified are: the Project powerhouse and dam, and archeological sites 11-OG-283, 11-LE-41, 11-OG-189, 11-LE-22, 11-OG-284, 11-LE-45, and 11-LE-40.

a. The above survey has been, and all future surveys will be, conducted in a manner consistent with the Secretary of the Interior's "Standards and Guidelines for Identification" (Federal Register, Vol. 48, No. 190, pages 44720-23, September 29, 1983) and the procedures outlined in the publication entitled "The Archeological Survey: Methods and Uses" by Thomas F. King (National Park Service, Washington, DC, 1978).

b. Surveys will be conducted in consultation with the SHPO and CE will provide a report on the surveys to the SHPO for review.

c. In consultation with the SHPO, CE will determine the National Register eligibility of archeological and historic sites which may be identified as a result of any work carried out pursuant to this PA. If the SHPO agrees with CE's determination of eligibility, such concurrence will be deemed conclusive for

purposes of this PA. If the SHPO fails to respond within 45 days after receipt of the request for concurrence, then CE's determination will be deemed conclusive for purposes of this PA. If the SHPO disagrees with CE's determination within 45 days, or if the Council or the Secretary of the Interior so request, the Commission will request a determination of eligibility from the Keeper of the National Register of Historic Places in accordance with 36 CFR Part 63.

d. If a survey results in the identification of archeological or historic sites that are eligible for listing on the National Register, CE will develop and implement a treatment plan in consultation with the SHPO for those sites subject to Project effects.

2. Archeological data recovery

Where it is not practical to protect an eligible archeological site in place, recovery of data contained in the site may be deemed an appropriate means of mitigating adverse effect. In all instances of archeological data recovery, CE will adhere to the following requirements.

a. CE will consult with the SHPO to develop and implement any plan for the recovery of archeological data, and will ensure that it is consistent with the Secretary of the Interior's "Standards and Guidelines for Archeological Documentation" (Federal Register, Vol. 48, No. 190, pages 44534-37, September 29, 1983) and the Council's publication, "Treatment of Archeological Properties" (Advisory Council on Historic Preservation, 1980).

b. At a minimum, the plan for recovery of archeological data will specify: (i) the sites where data recovery is to be conducted; (ii) the research questions to be addressed through data recovery and an explanation of their relevance, importance, and data requirements; (iii) the methods to be used, with an explanation of their relevance and relationship to the research questions; (iv) the methods to be used in data analysis, management, and dissemination; (v) the proposed costs for data recovery, data analysis, and report preparation; (vi) the proposed schedule for the implementation and completion of field work, data analysis, and report preparation; and (vii) a description of how the final report will be made available to the professional archeological community and the public.

3. Report dissemination

CE will ensure that all archeological reports resulting from actions taken pursuant to this PA are provided to the SHPO and the Commission for their review and comment, and that all such reports are responsive to contemporary professional standards,

and to the Department of the Interior's "Format Standards of Data Recovery Program" (Federal Register, Vol. 42, pages 5377-79). CE will, upon request, provide copies of the reports to other interested parties, but will withhold precise locational data if it appears that its release could jeopardize archeological sites.

4. Disposition of cultural and human remains

a. CE will ensure that all materials and records resulting from actions pursuant to this PA are curated within the State of Illinois in accordance with 36 CFR Part 79.

b. CE will ensure that treatment of any human remains and grave-associated artifacts encountered during any action pursuant to this PA will conform to the Human Skeletal Remains Protection Act (Ill. Rev. Stat. Chap. 12.7. para 2661 et seq.), and will take into account the Council's "Policy Statement Regarding Treatment of Human Remains and Grave Goods," adopted by the Council September 17, 1988, at Gallup, New Mexico.

5. Professional qualifications

CE will ensure that all historic preservation work carried out pursuant to this PA is carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's "Professional Qualifications Standards" (Federal Register, Vol. 48, No. 190, pages 44738-9, September 29, 1983).

6. Interim procedures

Until the Plan is implemented, CE will comply with 36 CFR 800.4 through 800.6 with respect to any ground-disturbing activities proposed by CE.

7. Five-year review

Five years from the date of the Project license, CE will file, for Commission approval, a summary report of the activities conducted pursuant to this PA, along with recommended mitigation of identified adverse effects. The filing shall include the written comments of the SHPO, and any revisions necessary based on these comments. CE will allow the SHPO 45 days to provide these comments. Upon approval, CE shall proceed with the measures proposed in the report. The Commission reserves the right to require changes to the report and additional work to satisfy the requirements of this PA based on the filing.

The 5-year summary report shall include the following:

a. The results of monitoring activities, including identification and assessment of the effects of vandalism and of recreational use on historic properties within the Project

boundary, and actions proposed to correct or mitigate identified adverse effects.

b. The results of work carried out pursuant to the Plan and the terms of this PA.

8. Monitoring

The SHPO may monitor activities carried out pursuant to this PA. CE will cooperate with the SHPO in carrying out its monitoring activities.

9. Dispute resolution

If the Commission, the SHPO, the Council, or CE objects within 45 days to any action pursuant to this PA, the Commission will consult with the objecting party to resolve the objection. If the Commission determines that the objection cannot be resolved, the Commission shall request comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by the Commission in accordance with 36 CFR 800.6(c)(2) with reference to the subject of dispute. The Commission's responsibility to carry out all actions under this PA that are not the subject of dispute will remain unchanged.

EXECUTION OF THE AGREEMENT

Execution and implementation of this PA evidences that the Commission has satisfied its Section 106 responsibilities for all individual actions of the Project.

FEDERAL ENERGY REGULATORY COMMISSION

By: _____ Date: _____
Fred E. Springer, Director
Office of Hydropower Licensing

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert D. Bush Date: 12/23/93
Robert D. Bush, Executive Director

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
William L. Wheeler, State Historic Preservation Officer

CONCUR:

COMMONWEALTH EDISON COMPANY

By: _____ Date: _____
Emerson Lacey, Vice President, Fossil Division

boundary, and actions proposed to correct or mitigate identified adverse effects.

b. The results of work carried out pursuant to the Plan and the terms of this PA.

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The SHPO may monitor activities carried out pursuant to this PA. CE will cooperate with the SHPO in carrying out its monitoring activities.

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If the Commission, the SHPO, the Council, or CE objects within 45 days to any action pursuant to this PA, the Commission will consult with the objecting party to resolve the objection. If the Commission determines that the objection cannot be resolved, the Commission shall request comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by the Commission in accordance with 36 CFR 800.6(c)(2) with reference to the subject of dispute. The Commission's responsibility to carry out all actions under this PA that are not the subject of dispute will remain unchanged.

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
Robert D. Bush, Executive Director

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: William L. Wheeler Date: 12-21-93
William L. Wheeler, State Historic Preservation Officer