

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426  
August 14, 2013

OFFICE OF ENERGY PROJECTS

Project No. 1290-012 – West Virginia  
Winfield Hydroelectric Project  
Appalachian Power Company

**Reference: Transmittal of the Executed Programmatic Agreement for the  
Winfield Hydroelectric Project No. 1290-012, West Virginia  
FR#: 08-603-Multi-16**

To The Parties Addressed:

Enclosed is the final Programmatic Agreement for the existing 14.4-  
megawatt Winfield Hydroelectric Project, executed as of July 18, 2013, the date it  
was signed by the West Virginia State Historic Preservation Officer. If you have  
any questions, please contact Allyson Conner at (202) 502-6082 or at  
[allyson.conner@ferc.gov](mailto:allyson.conner@ferc.gov).

Sincerely,

John B. Smith, Chief  
Mid-Atlantic Branch  
Division of Hydropower Licensing

Addresses:

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Enclosure: Final Programmatic Agreement

cc: Public Files  
Service List

**PROGRAMMATIC AGREEMENT  
BETWEEN  
THE FEDERAL ENERGY REGULATORY COMMISSION  
AND THE WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER  
FOR MANAGING HISTORIC PROPERTIES  
THAT MAY BE AFFECTED BY ISSUING A NEW LICENSE TO  
APPALACHIAN POWER COMPANY  
FOR THE CONTINUED OPERATION AND MAINTENANCE OF THE  
WINFIELD HYDROELECTRIC PROJECT  
IN KANAWHA AND PUTNAM COUNTIES, WEST VIRGINIA  
(FERC No. 1290-012)**

**WHEREAS**, the Federal Energy Regulatory Commission or its staff (hereinafter, “Commission”) proposes to issue a new license to Appalachian Power Company (hereinafter, “licensee”) to continue operation and maintenance of the Winfield Hydroelectric Project (hereinafter, “project”) as authorized by Part I of the Federal Power Act, 16 U.S.C. sections 791(a) through 825(r) *as amended*; and

**WHEREAS**, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, “National Register” or “historic properties”) at the project; and

**WHEREAS**, Appendix A of this Programmatic Agreement provides a description of the project, historic properties, and anticipated effects identified as of the date of this Programmatic Agreement; and

**WHEREAS**, the area of potential effects (hereinafter, “APE”) includes all areas within the project boundary and 300 feet upstream and downstream of each powerhouse; and

**WHEREAS**, the U.S. Army Corps of Engineers (hereinafter, “Corps”) manages lands within the project boundary and has responsibilities for the issuance of permits under the Archeological Resources Protection Act (16 U.S.C. 470aa to 470ll; hereinafter, “ARPA”) to the licensee for archeological work on its lands; and

**WHEREAS**, the Commission has consulted with the West Virginia State Historic Preservation Officer (hereinafter, “West Virginia SHPO”), pursuant to 36 C.F.R. section 800.14(b) of the Advisory Council on Historic Preservation’s (hereinafter, “Advisory Council”) regulations (36 C.F.R.

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Part 800) implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470F; hereinafter, "section 106"); and

**WHEREAS**, the licensee has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the project may affect lands important to the Eastern Band of Cherokee Indians, who have been invited to participate in the consultation and have been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the Corps has been invited to participate in the consultation and has been invited to concur in this Programmatic Agreement; and

**WHEREAS**, the Commission will require the licensee to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the project; and

**NOW THEREFORE**, the Commission and the West Virginia SHPO agree that the project will be administered in accordance with the following stipulations in order to satisfy the Commission's section 106 responsibilities during the term of the project's license.

## S T I P U L A T I O N S

The Commission will ensure that, upon issuing a new license for this project, the licensee implements the following stipulations. All stipulations that apply to the licensee will similarly apply to any and all of the licensee's successors. Compliance with any of the following stipulations does not relieve the licensee of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

### **I. HISTORIC PROPERTIES MANAGEMENT PLAN**

- A. Within one year of license issuance for this project, the licensee will file with the Commission for approval a Historic Properties Management Plan (hereinafter, "HPMP") specifying how historic properties will be managed in the project's APE, as defined in 36 C.F.R. section 800.16(d), during the term of the license. During development of the HPMP, the licensee will consult with the West Virginia SHPO and the Eastern Band of Cherokee Indians, as

defined in 36 C.F.R. section 800.2(c).<sup>1</sup> The licensee will seek the West Virginia SHPO's concurrence with the HPMP.

- B. The licensee will take into account the "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (Federal Register, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740; hereinafter, "Secretary's Standards") and the "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects,"<sup>2</sup> while developing the HPMP. The HPMP will be developed by, or developed under the direct supervision of, a person or persons who meet(s), at a minimum, the professional qualifications standards for architectural history in the Secretary's Standards (48 FR 44738-39).
- C. The HPMP will include, at a minimum, provisions for:
1. identification of the APE for the project and inclusion of a map or maps that clearly show the APE in relation to the project boundary;
  2. completion, if necessary, of identification of historic properties within the project's APE;
  3. maintenance and operation of the project,<sup>3</sup> which constitutes a National Register eligible Hydropower Historic District known as the Kanawha River Navigation System Historic District, as a historic property according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 C.F.R. Part 68), and applicable National Park Service Preservation Briefs;

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<sup>1</sup> The licensee must allow the consulting parties at least 30 days to respond to a request for review of a finding or determination involving the HPMP and during the interim period pursuant to Stipulation III of this Programmatic Agreement.

<sup>2</sup> This document was issued jointly by the Commission and the Advisory Council on May 20, 2002. The document is available at <http://www.ferc.gov/industries/hydropower/gen-info/guidelines/hpmp.pdf>.

<sup>3</sup> The project consists of the Winfield: (1) powerhouse, (2) forebay and logboom, (3) tailrace, (4) switchyard, (5) recreational facilities, and (6) transmission lines.

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4. continued use and maintenance of historic properties;
5. treatment of historic properties threatened by project-induced shoreline erosion,<sup>4</sup> other project-related ground-disturbing activities, and vandalism;
6. consideration and implementation of appropriate treatment that would minimize or mitigate unavoidable adverse effects on historic properties;
7. treatment and disposition of human remains that may be discovered, taking into account any applicable state laws and the Advisory Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," dated February 23, 2007, and compliance with the Native American Graves Protection and Repatriation Act (25 U.S.C. section 3001), if tribal or federal lands are within the project boundary;
8. discovery of previously unidentified properties during project operations;
9. public interpretation of the historic and archeological values of the project;
10. a list of activities (*i.e.*, routine repair, maintenance, and replacement in kind at the project) not requiring consultation with the West Virginia SHPO because these activities would have little or no potential to affect historic properties;
11. a procedure to address effects on historic properties in the event of a project emergency; and
12. a review of the HPMP by the licensee, the West Virginia SHPO, and the Eastern Band of Cherokee Indians to ensure that the information continues to assist the licensee in

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<sup>4</sup> Project-induced shoreline erosion does not include shoreline erosion attributable to flood flows or phenomena, such as wind driven wave action, erodible soils, and loss of vegetation due to natural causes.

managing historic properties and updating the HPMP based on agency and tribal consultations.

## **II. HPMP REVIEW AND IMPLEMENTATION**

- A. The licensee will submit the HPMP, along with documentation of the comments of the West Virginia SHPO and the Eastern Band of Cherokee Indians, to the Commission for review and approval.
- B. If the West Virginia SHPO has concurred with the HPMP and the Commission determines that the HPMP is adequate, the Commission will forward a copy of the HPMP along with the comments of the West Virginia SHPO and the Eastern Band of Cherokee Indians, to the Advisory Council for filing.
  - 1. If the Advisory Council does not object to the HPMP, then the Commission will proceed to ensure that the licensee implements the HPMP.
  - 2. If the Advisory Council objects to the HPMP, then the Commission will consult with the Advisory Council in an effort to reach agreement on the HPMP. If agreement cannot be reached, then the Commission will request that the Advisory Council comment pursuant to Stipulation IV.B of this Programmatic Agreement.
- C. If the West Virginia SHPO has not concurred with the HPMP, or the Commission finds the HPMP inadequate, the Commission will consult with the licensee and the West Virginia SHPO to seek agreement on the HPMP. If concurrence is not reached within 45 days, the Commission will request that the Advisory Council enter into consultation to seek agreement on the HPMP.
  - 1. If agreement is reached on the HPMP, the Commission will forward a copy of the revised HPMP to the Advisory Council for filing.
  - 2. If agreement on the HPMP cannot be reached among the Commission, the West Virginia SHPO, and the licensee, then the Commission will request that the Advisory Council comment pursuant to Stipulation IV.B, of this Programmatic Agreement.

- D. The licensee will file an annual report with the West Virginia SHPO and the Eastern Band of Cherokee Indians on activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

### **III. INTERIM TREATMENT OF HISTORIC PROPERTIES**

- A. After a license for the project has been issued, but before the HPMP has been approved by the Commission (hereinafter, “the Interim”), the licensee will consult with the West Virginia SHPO and the Eastern Band of Cherokee Indians regarding the effects of the following actions that may be implemented in the Interim:
1. all project-related activities, including recreational developments, that require ground-disturbance;
  2. non-routine maintenance, new construction, demolition, or rehabilitation of project-related National Register-eligible structures; and
  3. project-induced shoreline erosion of archeological sites not attributable to flood flows or phenomena, such as wind-driven wave action, erodible soils, and loss of vegetation due to natural causes.
- B. Consultation will be in accordance with 36 C.F.R. sections 800.4 and 800.5, with the licensee acting as the Agency Official. If the licensee and the West Virginia SHPO agree that the activity will not adversely affect historic properties, the licensee may proceed in accordance with any agreed-upon treatment measures or conditions.
- C. If either the licensee or the West Virginia SHPO determines that the activity will have an adverse effect on a historic property, and the affected property is a National Historic Landmark, the licensee will submit the matter to the Commission, which will initiate the process set forth at 36 C.F.R. sections 800.6. Otherwise, the licensee and the West Virginia SHPO will consult to develop a strategy for avoiding or mitigating such adverse effects. If the licensee and the West Virginia SHPO can reach agreement, the licensee will implement the agreed-upon strategy. If they disagree, the licensee will submit the



matter to the Commission, which will initiate the process set forth at 36 C.F.R. sections 800.6 and 800.7(a) through (c)(3).

#### **IV. DISPUTE RESOLUTION**

- A. If at any time during implementation of this Programmatic Agreement and the resulting HPMP, the licensee, the West Virginia SHPO, the Eastern Band of Cherokee Indians, or the Advisory Council objects to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission. In the event a written objection is filed with the Commission, the Commission will follow the steps listed below.
1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection.
  2. The Commission may initiate, on its own, such consultation to remove any of its objections.
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Advisory Council and request that the Advisory Council comment. Within 30 days after receiving all pertinent documentation, the Advisory Council will either:
1. provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
  2. notify the Commission that it will comment pursuant to 36 C.F.R. sections 800.7(c)(1) through (c)(3) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Advisory Council comment, provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

#### **V. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT**

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- A. The Commission, the licensee, the West Virginia SHPO, or the Eastern Band of Cherokee Indians may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. section 800.14(b), to consider such amendment.
- B. The Commission or the West Virginia SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, the licensee, the West Virginia SHPO, and the Eastern Band of Cherokee Indians consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement, and its subsequent implementation, is evidence that the Commission has satisfied its responsibilities pursuant to section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues a license for the project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or project.

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**FEDERAL ENERGY REGULATORY COMMISSION**

By: \_\_\_\_\_  
Vince Yearick, Director  
Division of Hydropower Licensing

Date: \_\_\_\_\_

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**WEST VIRGINIA DIVISION OF CULTURE AND HISTORY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Susan Pierce  
Deputy State Historic Preservation Officer

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**CONCUR: APPALACHIAN POWER COMPANY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Frank Sims  
Plant Manager

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**CONCUR: EASTERN BAND OF CHEROKEE INDIANS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Tyler Howe

Tribal Historic Preservation Officer

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**CONCUR: U.S. ARMY CORPS OF ENGINEERS**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Amy Frantz, Chief  
Planning Branch – Huntington District

Document Content(s)

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