

November 7, 2012

Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N. E
Washington, DC 20426

**RE: RESPONSE TO UPPCO SEPTEMBER 28, 2012 SUBMITTAL
REGARDING THE BOND FALLS PROJECT (FERC NO. 1864) LICENSE
AMENDMENT TO REMOVE THE CISCO DAM FROM THE LICENSE**

Dear Mrs. Kimberly Bose:

The Michigan Department of Natural Resources, Wisconsin Department of Natural Resources, US Fish and Wildlife Service, (Collectively "resource agencies") and Michigan Hydro Relicensing Coalition (MHRC) have been reviewing Upper Peninsula Power Company's (UPPCO) request for license amendment to FERC submitted on June 14, 2012.

Two groups of issues have arisen as we contemplate the potential for transfer of the Cisco Dam out of UPPCO's FERC license for the Bond Falls Project. First, the fact that the fixed crest outlet structure as described in the settlement agreement has not been installed or planned to be installed by the licensee; and secondly, there are a number of concerns related to the future operation of the dam and resolution of the discharge of liability for the dam if the dam is sold and removed from the license.

There remains a dispute between the Resource Agencies and UPPCO regarding funding a 75 foot fixed crest weir prior to the transfer of ownership of the dam. In UPPCO's June 14, 2012, filing for license amendment, they state that:

UPPCO will make available up to \$75,000 (December 1998 dollars adjusted for the CPI - 0.5%) for a 75 foot long fixed crest spillway structure with a small adjustable area or another acceptable engineering design for very high flow periods to allow dam operation as established in the Operation Plan for no more than 5 years after the date of the order removing the Cisco Dam from the Bond Falls Hydroelectric Project License.

The settlement agreement clearly states that:

UPPCO *shall* install and finance up to \$75,000 (in December 1998 dollars adjusted by CPI -0.5%) with a small adjustable spill area or another engineering design for very high-flow periods to allow for dam operations as established in the Operating Plan (emphasis added).

UPPCO did not discuss or negotiate a five year period of availability of this funding with the Resource Agencies, and certainly not after removing the dam from the license. Nor did UPPCO explore the feasibility of construction of a structure or an alternative that would meet the intent of the structure and downstream resource concerns. The use of the word “shall” in the settlement agreement was deliberate. The Resource Agencies remain willing to discuss options to meet the intent of the 75-foot fixed crest weir, prior to removing the dam from the license.

Following resolution of the fixed-crest weir, there are still a number of questions to be addressed regarding future operations, maintenance, monitoring, dam safety and liability. More specifically, the resource agencies and MHRC would like a response from UPPCO regarding the following:

1. Maintenance of dam operations: UPPCO proposes to sell the dam and associated lands to the Cisco Chain of Riparian Owners Association and immediately transfer ownership to Gogebic County. Has Gogebic County acknowledged the liabilities and requirements of being a responsibility party, and are they financially and physically capable of maintaining and operating the dam, and have they provided all the required documentation that the dam is being operated according to the provisions of the settlement agreement?

In the amendment request, there are a number of items listed that will be documented as ongoing operation of the dam continues.

- Who exactly will be the responsible party for maintaining the dam in its physical condition?
 - Who will be the responsible party for operating the dam per the conditions of the license and the settlement agreement?
 - Who will be the responsible party for report preparation and submittal for requirements identified in the license, to be submitted to all the agencies?
 - If these items will be the responsibility of the County, please document the appropriate paperwork that indicates an understanding for the FERC requirements and reporting needs.
2. Ownership: It is the agencies understanding that Gogebic County may take transfer from UPPCO for the Cisco Dam. It is the agencies understanding that the Lake Association may take responsibility or ownership shortly thereafter.
 - If the Cisco Dam is transferred to another party, is that party fully aware of all of the liability issues related to owning and operating the dam?

- How will liability issues be handled?
- How much does it cost to operate the dam annually?
- Who will be responsible for maintenance of the dam?
- How much does a dam safety review cost?
- How frequently have you conducted such a review?
- Who will operate the dam if it is transferred?
- What will the requirement be for dam operators and who will provide training and/or certification for operators.
- Who will be responsible for the requirements and monitoring and reporting operation of the dam?
- How does UPPCO plan on making sure that the dam is operated in accordance with the requirements of the settlement?
- How will UPPCO monitor compliance with the terms of the settlement agreement?

Please provide documentation that whoever owns, operates, and maintains the dam is financially capable of the yearly costs associated with the dam operations.

3. Fish Passage: Currently the USFWS can recommend fish passage under Section 18 authority, and as the licensee, UPPCO would need to provide fish passage.
 - Would UPPCO be willing to install fish passage if needed between the time of transfer and the end of the current license for the Bond Falls Project?

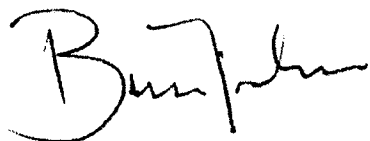
4. Existing License Requirements: UPPCO indicates that Operation of the gauges in the vicinity of the Cisco Dam are not necessary to operate the dam, however they are a requirement under the license.
 - Is UPPCO planning on continuing its share of the costs of those gauges? If not, the agencies expect that the gauges will be maintained by the new owner of the dam to provide independent verification of the operation of the dam.

UPPCO stated in their Sept 28, 2012, letter to FERC that the comment period had passed without any comments being provided by resource agencies. We disagree, and believe UPPCO was aware of our concerns. There were many verbal discussions, and informal communications, indicating that UPPCO was not going to change their plans for their amendment application, despite concerns raised by the agencies. The resource agencies were waiting for a dispute resolution process to be initiated. Therefore, we request that the concerns identified above be formally acknowledged and adequately addressed to the satisfaction of the resource agencies. Resolution of our concerns will ensure continued resource protection and oversight of the Cisco Chain of Lakes.

Ms. Kimberly D. Bose, Secretary, FERC
Bond Falls License Amendment Comments

November 7, 2012
Page 4

The resource agencies and Michigan Hydro Relicensing Coalition appreciate the opportunity to comment on this license amendment request response. If you have any questions or need clarification, please feel free to contact us.



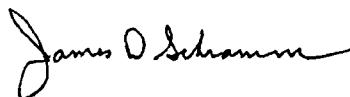
Burr Fisher
US Fish and Wildlife Service
(517)-351-6274



Steven Gilbert
Wisconsin Dept. of Natural Resources
(715) 356-5211 x 229



Kyle Kruger
Michigan Dept. of Natural Resources
(989) 826-3211 x 7073



James Schramm
Michigan Hydro Relicensing Coalition
(231)-869-5487

cc Shawn Puzen, UPPCO
Mark Fedora, USFS
Cheryl Laatsch, WDNR

Document Content(s)

Agency Comments Cisco Amemdment - Bond Falls.PDF.....1-4