



United States
Department of
Agriculture

Forest
Service

Ottawa National Forest
Supervisor's Office

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File Code: 2770 - General

Date: November 8, 2012

The Honorable Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 1st Street, NE
Washington, DC 20426-0001

RE: COMMENTS - Bond Falls Project, License No. P-1864-164, Proposed License
Amendment, Cisco Dam Ownership Transfer

Dear Secretary Bose:

The US Forest Service objects to the proposed license amendment to remove the Cisco Dam from the License for the Bond Falls Project, P-1864. The Forest Service has also filed a separate Notice of Intervention with the Commission in regards to the proposed license amendment.

Upper Peninsula Power Company's (UPPCO) request for license amendment is in clear violation of the license and our final Section 4(e) condition number 13, filed May 22, 2001. The Commission, in their Order on Rehearing, February 14, 2005, affirmed that the Forest Service Condition 13 applies to the Cisco development. Regarding the Cisco Dam and future ownership, our condition states:

Cisco Dam Ownership and Operation Under Any New Owner

UPPCO will attempt, with the Team's support, to find a new owner for Cisco Dam in order to allow it to be removed from the Bond Falls Project license. Any new owner shall be required to operate the dam according to the Operating Plan developed by the Team. If Cisco Dam is removed from the license and operated by a new owner, UPPCO shall install and finance up to \$75,000 (in December 1988 dollars adjusted for CPI-0.5%) for a 75-foot long fixed-crest spillway structure with a small adjustable spill area or another acceptable engineering design for very high-flow periods to allow dam operation as established in the Operating Plan.

In UPPCO's June 14, 2012, filing for license amendment, they state that:

UPPCO will make available up to \$75,000 (December [1988] 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.



UPPCO did not discuss with us, and we did not agree to, a five year period of availability of this funding. Most certainly, we would not agree to have the funding available only after removing the dam from the license unless formal agreements are in place, which provide assurances that a fixed crest weir would be designed and installed. UPPCO has not provided a feasible alternative that would meet the intent settlement language and associated downstream resource concerns. The use of the word “shall” in the license condition was deliberate. The Forest Service remains willing to discuss design options to meet the intent of the 75-foot fixed crest weir, prior to removing the dam from the license.

In their license amendment application, UPPCO also stated that “since the project cannot be completed only with the money contribution of UPPCO, the MDNR and the USDA-Forest

Service will have to secure the necessary funding for design, permitting and approval of the project in addition to the remaining funds required for construction. Once the funding is secured,

the design, permitting and approvals are completed along with the non- UPPCO share of

construction; UPPCO will complete its required share of the installation according to Section 3.1.4.3 of the Settlement Agreement”. The Forest Service does not agree with this statement. The Settlement Agreement contained no such requirement nor has the Forest Service ever contemplated taking on any responsibility for funding the replacement of the current dam. Additionally, UPPCO has not contacted the Forest Service nor have they sought our comments regarding such funding.

UPPCO stated in their September 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 Forest Service and the other resource agencies. Therefore, we request that the proposed license amendment be rejected, and for you to direct UPPCO to initiate the dispute resolution process as outlined in the Settlement Agreement and described in paragraph 46 of the project license.

Copies of this comment letter have been sent to the official Service List compiled by the Secretary in this proceeding. If you have any questions, please contact the Forest’s representative on the Bond Falls Implementation Team, Norman Nass at (906)-358-4014 or by email at nass@fs.fed.us.

Sincerely,

/s/ Anthony V. Scardina
ANTHONY V. SCARDINA
Forest Supervisor

CERTIFICATE OF SERVICE

I, Rhonda Johnson, Legal Instruments Examiner for the U.S. Forest Service, Ottawa National Forest, hereby certify that on this 9th day of November 2012, I have served a copy of the forgoing **COMMENTS by the US Forest Service, Ottawa National Forest** electronically per Commission direction, or by First Class U.S. Mail, postage prepaid, upon each person designated on the official Service List compiled by the Secretary for the Bond Falls Hydroelectric Project, No. P-1864-164, and that the same **COMMENTS** were electronically filed with the Commission this same day.

/s/ Rhonda T. Johnson
Rhonda Johnson
Legal Instruments Examiner

Document Content(s)

CiscoCommentLetter110912.DOC.....1-3