

ORIGINAL

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SECRETARY OF THE
COMMISSION

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

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FEDERAL ENERGY
REGULATORY COMMISSION

COMMENT ON APPLICATION BY UPPER PENINSULA POWER COMPANY
(UPPCO) TO REMOVE CISCO DAM FROM THE BOND FALLS FERC LICENSE -
Project 1864-164 (FERC NOTICE issued October 12, 2012)

Comment submitted by: Robert Evans, 205 Lilac Street, Iron River, MI 49935
906-367-1863

Dear Ms. Bose:

I am writing in response to the Notice issued by FERC on October 12, 2012, regarding the application made by UPPCO to remove the Cisco Dam from the Bond Falls FERC license, Project 1864-164. I am strongly opposed to this application being approved, for reasons I will cite below.

The Bond Falls Settlement Agreement (S.A.), which is incorporated into the Bond Falls FERC license, includes a requirement that UPPCO, if they wish to sell the Cisco Dam and have it removed from their FERC license, "*shall install and finance, up to \$75,000 (in 1998 dollars) a new, 75-foot long, fixed-crest spillway structure*". UPPCO, in their proposed license amendment, chooses to not comply with this requirement, apparently because of the cost and other reasons.

On March 14, March 16, and April 9 of 2012, respectively, the Michigan Dept. of Natural Resources, US Forest Service, and Wisconsin Dept. of Natural Resources all wrote comment letters to UPPCO in response to this proposal. All three agencies were strongly in opposition to UPPCO selling the Cisco Dam and having it removed from their FERC license without first complying with the above requirement to finance and install a fixed-crest wier. For example, here is one noteworthy passage from the US Forest Service letter of March 16, 2012 to UPPCO on this subject:

"The intent of the Settlement negotiations regarding the transfer of ownership of Cisco Dam was to assure stakeholders that License and Settlement conditions would be maintained in perpetuity. This is supported by a statement in the Final Environmental Impact Statement prepared by FERC, June 2002, which states on page 19: "*Any new owner would be bound by the terms of the Settlement Agreement, in regard to the operation of Cisco dam, whether or not the dam continues as a part of the license*". The Forest Service is receptive to exploring alternatives which may exist for an acceptable engineering and operational solution that would meet the intent of the Settlement Agreement. Without the development of a 75-foot-long fixed crest weir or the opportunity to consider acceptable alternatives that meet

the intent of the Settlement Agreement the Forest Service does not support removal of the dam from the license or transfer of ownership.”

There are similar statements made in the letters from the Michigan Dept. of Natural Resources, and Wisconsin Dept. of Natural Resources. UPPCO’s response to this comment is as follows:

“Any additional negotiations with the MDNR or USDA-Forest Service to exploring additional alternatives will not yield any results (bold emphasis added). The terms of the Settlement Agreement under Section 3.1.4.3 indicate “UPPCO shall install and finance up to \$75,000 (in December 1998 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.” To resolve this conflict between UPPCO and the MDNR and USDA-Forest Service, UPPCO will make available up to \$75,000 (in December 1998 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 for no more than five years after the date of the Order removing the Cisco Dam from the Bond Falls Hydroelectric Project License. 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 MDNR and the USDA-Forest Service have no more than five years after the date of the Order removing the Cisco Dam from the Bond Falls Hydroelectric Project to complete their portions of the construction in order for UPPCO to provide its share of the project.”

From this response, it can be seen that not only is UPPCO unwilling to comply with the terms of the S.A., they are also unwilling to even discuss alternatives to a fixed-crest wier that could possibly achieve a similar objective. With regard to the wier, UPPCO’s demand that the resource agencies provide supplemental funding for construction (after FERC issues an Order permitting them to remove the dam from the license), is of course outrageous and absurd. UPPCO is well aware that as licensee, they cannot simply transfer their responsibilities under the S.A. and the license to the resource agencies, or anyone else.

In a recent letter to FERC dated Sept. 28, 2012 (responding to an information request from FERC), UPPCO goes even further to deny any knowledge of a dispute with the resource agencies on this subject, when such a dispute is very clear from the March/April agency letters, and UPPCO’s inadequate response to the comments in those letters. This display of arrogance and clear unwillingness to abide by the terms of the S.A. by UPPCO is amazing.

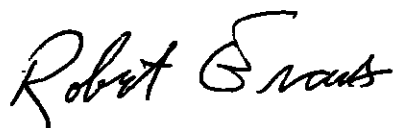
The Bond Falls Settlement Agreement (S.A.) includes a dispute resolution procedure to be used when a dispute arises over any of the S.A. terms. UPPCO is well aware of this requirement, but in this instance has chosen to ignore the fact that a dispute even exists.

despite clear evidence of disagreement from the above-cited agency letters and other agency correspondence with UPPCO (UPPCO even refers to this disagreement as a "conflict" in their response to the March 16 US Forest Service letter cited above). Because they are ignoring the dispute, UPPCO has not yet approached the agencies to begin dispute resolution talks, as they clearly must do in this instance.

FERC should take no action on UPPCO's request for license amendment until UPPCO approaches the resource agencies to begin dispute resolution talks on this matter, and the outcome of those talks is documented. And in those talks, UPPCO needs to negotiate in good faith (as required by the S.A.), and be receptive to possible alternatives offered by the resource agencies, and not simply take the position that "any additional negotiations with the MDNR or USDA-Forest Service to exploring additional alternatives will not yield any results", as they stated in response to the March/April agency comments on this subject. FERC should pay close attention to UPPCO's willingness to negotiate in good faith with the resource agencies on this matter.

Thank you for the opportunity to comment on this proposed license amendment. I will be watching this process closely to see what transpires next, and what action(s) FERC takes in the future.

Sincerely,

A handwritten signature in black ink that reads "Robert Evans". The signature is written in a cursive, slightly slanted style.

Robert Evans
205 Lilac Street
Iron River, MI 49935

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