



Upper Peninsula Power Company

700 North Adams Street  
P.O. Box 19001  
Green Bay, WI 54307-9001  
www.uppco.com

September 22, 2008

FERC Project No. 10855

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

Dear Secretary Bose:

Silver Lake Reservoir Rebuild - Request for Modification of Fish Structure Installation

According to the Notice of Availability of Environmental Assessment dated June 3, 2008, in response to the Environmental Report filed by Upper Peninsula Power Company (UPPCO) on January 23, 2008, UPPCO is required to install fish habitat structures on the bed of the formerly inundated Silver Lake Reservoir at an elevation of 1473' NGVD.

Through consultation separate from the Silver Lake Rebuild Project, the Michigan Department of Environmental Quality (MDEQ) as a representative of other agencies (Michigan Department of Natural Resources (MDNR)), on September 5, 2008, changed their initial recommendation included in the January 23, 2008 environmental report filed by UPPCO to request installation of the fish habitat structures at an elevation between 1470' and 1471' NGVD instead of an approximate elevation of 1473' NGVD as originally requested (See Exhibit 1).

As a result, UPPCO is respectfully requesting approval of installation of the fish structures as detailed in the January 23, 2008 environmental report at an elevation between 1470' and 1471' NGVD.

UPPCO apologizes for any inconvenience associated with this request at such a late date. UPPCO intends to install the fish structures in October 2008.

Should you have any questions please do not hesitate to contact Shawn Puzen at (920) 433-1094.

Sincerely,

A handwritten signature in black ink that reads "T. Jensky". The signature is written in a cursive, flowing style.

Terry P. Jensky  
Vice President - Energy Supply Operations  
for Wisconsin Public Service Corporation  
Telephone: (920) 433-2900

syx

Enc.

cc: Mr. Ben Trotter, WPSC - REG  
Mr. Pat Fulsher, UPPCO - UISC  
Mr. Robert Meyers, UPPCO - UISC  
Mr. Mitch Koetje, MDEQ  
Ms. Joan Johaneck, WPSC - D2  
Mr. Doug Clark, Foley & Lardner

Mr. Jeff Krueger, WPSC - REG  
Mr. Gil Snyder, WPSC - D2  
Ms. Jessica Mistak, MDNR  
Ms. Nicole Zacharda, MDEQ  
Ms. Elyse Stackhouse, GB - G4  
Mr. Greg Egtvedt, GB - D2

# Exhibit 1

## September 5, 2008 MDEQ Letter



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

September 5, 2008

CERTIFIED MAIL

Mr. Shawn Puzen, Environmental Consultant  
Upper Peninsula Power Company  
700 North Adams Street  
P.O. Box 19001  
Green Bay, Wisconsin 54307-9001

Dear Mr. Puzen:

**SUBJECT:** August 7, 2008, Fish Shelter Plan and Detail and Future Submittals to the Michigan Department of Environmental Quality (MDEQ) Related to the Silver Lake Fuse Plug Failure

The MDEQ and its partner agency, the Michigan Department of Natural Resources (MDNR), have received and reviewed materials transmitted by you to Mr. Mitch Koetje, Upper Peninsula District Office, Water Bureau, MDEQ, on August 7, 2008, regarding the Upper Peninsula Power Company's (UPPCo) plan for constructing fish shelters as part of the rebuild of the Silver Lake Reservoir.

Prior to discussing UPPCo's August 7, 2008, proposed plan to construct fish shelters, the MDEQ would like to take this opportunity to provide you with additional detail on appropriate agency contacts now that the Silver Lake Fuse Plug Failure has shifted into a more active, MDEQ-led enforcement action. Mr. Koetje will now be replacing Mr. Steve Casey, District Supervisor, Upper Peninsula District Office, Water Bureau, as your primary contact in Gwinn. All submittals related to recovery and monitoring work within the Dead River Watershed related to the fuse plug failure should be directed to Mr. Koetje with carbon copies to me. While the MDEQ appreciates the speed of electronic transmission of submittals, an additional delivery of hard copies of all proposed plans to both Gwinn and Lansing is helpful due to: (1) the inability of MDEQ staff to print in color due to budgetary concerns, and (2) easier dissemination of plans to other members of the MDEQ/Partner Agency Team in order to aid the MDEQ's attempts to meet a 45-day turnaround time on UPPCo submittals.

As for proposed mitigation projects such as the fish shelters that were the subject of your August 7, 2008, letter to Mr. Koetje, please direct those submittals and other communications to my attention or the attention of our attorney, Ms. Pamela Stevenson. It is the MDEQ's position that proposed mitigation projects will be guided from Lansing with input from district representatives as a component of the Consent Judgment that the parties seek to enter in spring 2009. To ensure that you are aware of what the MDEQ interprets as an agreement between the parties for managing the progress of this complex project, I am enclosing a copy of the Work Plan Identification, Scope of Work, and Schedule (Framework Agreement) that was transmitted by Ms. Stevenson in her August 5, 2008, letter. Be advised that the Framework Agreement is simply a cleaner version of the extensive redlined documents that UPPCo's attorneys provided to Ms. Stevenson on June 16, 2008. By and large, the Framework Agreement reflects the MDEQ's acceptance of UPPCo's revisions and as such the MDEQ and the Michigan Department of Attorney General (MDAG) continue to expect that UPPCo will endeavor to meet the intent of this agreement. However, the agencies are growing increasingly concerned as additional submittals, such as UPPCo's proposed plan to construct fish shelters,

Mr. Shawn Puzen

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September 5, 2008

arrive in a manner inconsistent with the Framework Agreement. While the agencies hope that those concerns will be remedied when the parties meet in Gwinn on October 1, 2008, in the interim it has become apparent that the MDEQ must reiterate the positions set forth by Ms. Stevenson in her August 5, 2008, letter.

The MDEQ is currently awaiting UPPCo's response to the MDEQ's August 5, 2008, comments on the Draft Mitigation Proposal provided by UPPCo on June 16, 2008. The MDEQ accepts that Ms. Stevenson's August 5, 2008, letter and your Fish Shelter Plan proposal may have crossed in the mail. The MDEQ is still requiring a revised Draft Mitigation Proposal that allows the MDEQ and Partner Agencies to review a *complete* mitigation package. Upon approval by the MDEQ, approved projects are to be further detailed in the Mitigation Work Plan to be submitted on October 15, 2008. Please be advised that the MDEQ will not be approving mitigation projects on a piecemeal approach.

UPPCo's delay in responding to the MDEQ's October 2007 settlement offer coupled with the ongoing Silver Lake Rebuild project has created an undesirable situation with respect to the construction of the fish shelters in the rebuilt Silver Lake Basin and other recent mitigation project submittals. The MDEQ recognizes the increased difficulty of fish shelter installation once higher 2009 Silver Lake Basin water levels are achieved and that implementation is simplified if the work is completed in conjunction with the rebuild effort. For this proposed project and projects logically associated with the Silver Lake Basin rebuild construction work only, the MDEQ agrees to begin the review and approval process for the mitigation projects to ease UPPCo's implementation efforts. Furthermore, the MDEQ believes it is necessary to provide comment due to the potential creation of a recreational impairment and safety hazard identified after reviewing the August 7, 2008, proposal and revisiting the MDEQ's initial suggestion.

The MDNR and the MDEQ comments have been compiled and the proposal reviewed with respect to the requirements included in the August 5, 2008, Framework Agreement under Section III. B. Mitigation Work Plans and the comments are enclosed. Again, please be aware that all submittals from UPPCo will be reviewed with respect to the details included in the Framework Agreement and UPPCo should be developing plans accordingly. As the Framework Agreement does not reflect a significant departure from the original MDEQ proposal from October 2007, none of this should come as a surprise to UPPCo. If UPPCo intends to continue to seek mitigation credit for the installation of fish shelters within the rebuilt Silver Lake Basin and other rebuild-associated mitigation projects, then the MDEQ expects to see a completed proposal for review and MDEQ approval provided prior to implementation, and that the project be properly identified within UPPCo's revision to its June 16, 2008, Draft Mitigation Proposal.

Sincerely,



Nicole M. Zacharda, Enforcement Specialist  
Field Operations Division  
Water Bureau  
517-373-2038

## Enclosures

cc/enc: Ms. Elyse Mollner Stackhouse, Integrys Business Support LLC  
Ms. Pamela Stevenson, MDAG  
Ms. Jessica Mistak, MDNR  
Mr. Steven Casey, MDEQ  
Mr. William Larsen, MDEQ  
Mr. Barry H. Selden, MDEQ  
Mr. Mitch Koetje, MDEQ  
Mr. Michael Smolinski, MDEQ

**Agency Review Comments on the August 7, 2008,  
Silver Lake Fish Shelter Plan and Detail**

**Plans submitted in accordance with the August 5, 2008, Work Plan Identification, Scope of Work, and Schedule under Section III. B. Mitigation Work Plans shall include:**

*i. The purpose of the project with environmental benefits identified.*

Completed - Identified by the Agencies.

*ii. Location of the proposed project.*

Completed.

*iii. Design drawings.*

Completed.

*iv. Estimated start and completion dates.*

Completed - Propose to complete installation by the end of 2008.

*v. Estimated project costs.*

Not Completed.

*vi. Monitoring plans to determine the effectiveness of mitigation projects (some mitigation projects may not require monitoring).*

Not included and generally not applicable for this plan. However, UPPCo must include a plan for properly alerting the public of navigational hazards at Silver Lake Basin during times when pond elevations are lower than Federal Energy Regulatory Commission (FERC) licensed minimums.

*vii. The methods used for monitoring.*

Not included and not applicable for this plan.

*viii. A schedule for reporting monitoring results.*

Not included and not applicable for this plan.

*ix. Benchmarks to determine the success of the mitigation work.*

Not included. The installation of the structures is suitable for determining success.

*x. An outline of likely follow up activities if the benchmarks are not met.*

Not included and not applicable for this plan.

**PLEASE NOTE:** The scanned Fish Shelter Detail image distributed by UPPCo on August 7, 2008, had some text distortions. The image/plan reviewed was the one included in MDEQ, Land and Water Management Division (LWMD), Permit No. 07-52-0110-P. Please advise if the August 7, 2008, image and the LWMD permit image are different in any way.

**There are four additional comments that must be addressed in the revised Project Proposal:**

1. The minimum monthly FERC license elevations are as follows: April 1477, May 1478.5, June 1480.5, July 1480, August - October 1479, and November 1478.5. In order to prevent a recreational impairment and safety hazard, the original MDEQ suggestion and UPPCo's proposal must be modified to install the base of the structures between the 1470 and 1471 foot

contour and NOT the 1473 foot contour as proposed. This would allow a minimum of 3.5 feet of water depth over the structures during the recreation season for minimum monthly elevations outlined in the FERC license.

2. UPPCo did not identify the number of structures to be installed in either the August 7, 2008, proposal or the MDEQ, LWMD, Permit No. 07-52-0110-P. The MDEQ suggested that 99 structures be installed. The number of structures to be installed needs to be included in the final project proposal.

3. The MDEQ, LWMD, requires that a permit revision be submitted prior to installation that revises the plan to include the new bottom of structure contour elevation between 1470 and 1471 and the number of structures to be installed.

4. Following installation of the structures, UPPCo must submit to the MDEQ, LWMD, and the MDEQ, Water Bureau, a list of GPS points for each structure with their locations identified on a map.

Document Content(s)

20080922 FERC Fish Structures SilverLake.PDF.....1-6