

Founded in 1852  
by Sidney Davy Miller

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January 21, 2020

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway, 3<sup>rd</sup> Floor  
Lansing, MI 48917

Re: Upper Peninsula Power Company  
Case No. U-20350

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned matter is the Settlement Agreement signed by the parties and Proof of Service.

Should you have any questions, please kindly advise.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: \_\_\_\_\_  
Paul Michael Collins

PMC/ark

Enclosure

cc: Parties of Record  
Gradon Haehnel

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*

In the matter of the application of	)	
<b>UPPER PENINSULA POWER COMPANY</b>	)	Case No. U-20350
for approval of its integrated resource plan	)	
<u>pursuant to MCL 460.6t and for other relief.</u>	)	

PROOF OF SERVICE

Allison Kellogg, being first duly sworn, deposes and states that on January 21, 2020, she served the **Settlement Agreement** upon the parties set forth on the attached Service List via electronic mail.

\_\_\_\_\_  
Allison Kellogg

Subscribed and sworn before me  
on this 21st day of January, 2020.

\_\_\_\_\_  
 Kimberly S. Fox, Notary Public  
 State of Michigan, Eaton County  
 My Commission Expires: July 20, 2023  
 Acting in Ingham County

## SERVICE LIST

CASE #U-20350

### **Administrative Law Judge**

Hon. Martin D. Snider  
Michigan Public Service Commission  
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**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

\* \* \* \* \*

In the matter of the application of )  
**UPPER PENINSULA POWER COMPANY** )  
for approval of its integrated resource plan )  
pursuant to MCL 460.6t and for other relief. )

Case No. U-20350

**SETTLEMENT AGREEMENT**

Pursuant to Section 78 of the Administrative Procedures Act of 1969 as amended, MCL 24.278, and Rule 431 of the Michigan Administrative Hearing System’s Administrative Hearing Rules (R 792.10431), Upper Peninsula Power Company (“UPPCO” or the “Company”), the Michigan Public Service Commission (“MPSC” or the “Commission”) Staff (“Staff”), Attorney General Dana Nessel, Citizens Against Rate Excess (“CARE”), and Circle Power LLC (“Circle Power”) agree to the following. Verso Corporation (“Verso”), and the Association of Businesses Advocating Tariff Equity (“ABATE”) are not participating in this settlement, though Verso is providing a statement of non-objection.

1. On February 12, 2019, UPPCO filed its Application in this case setting forth the Company’s Integrated Resource Plan (“IRP”) and Proposed Course of Action (“PCA”). The Application was supported by filed testimony and exhibits. UPPCO’s PCA consisted of (i) a long term 125 megawatt (“MW”) power purchase agreement (“Solar PPA”) from a proposed solar facility coupled with a financial compensation mechanism (“FCM”) based upon the imputed debt associated with the long term financial commitment; (ii) realizing an additional 7.6 MW of capacity by moving existing hydroelectric facilities “in front of the meter”; (iii)

increasing UPPCO's energy waste reduction ("EWR") target to 1.5% annually; (iv) constructing a new reciprocating internal combustion engine ("RICE") generating unit in the eastern portion of the Company's service territory; and (v) updating UPPCO's avoided cost and standard offer tariff.

2. On February 15, 2019, the Commission's Executive Secretary issued the Notice of Hearing. The prehearing conference was scheduled for March 15, 2019, before Administrative Law Judge ("ALJ") Martin D. Snider.

3. At the prehearing conference, Staff and UPPCO participated and the Attorney General, CARE, Circle Power, Verso, and ABATE were granted intervention.

4. On March 29, 2019, UPPCO filed the Supplemental Testimony and Exhibits of Gradon R. Haehnel and Debashis Bose, and on June 6, 2019 UPPCO filed the Supplemental Testimony and Exhibits of David R. Tripp, P.E..

5. On June 14, 2019, Staff, CARE, Circle Power and ABATE each filed testimony and exhibits.

6. On July 8, 2019, UPPCO, Staff, Circle Power, and ABATE filed rebuttal testimony and exhibits. That same date, Verso and CARE filed letters indicating that they would not file rebuttal.

7. On July 17, 2019, ALJ Snider presided over the evidentiary hearing. All parties waived cross examination, and the testimony and exhibits of all parties were bound into the record.

8. On August 14, 2019, UPPCO, Staff, CARE, the Attorney General, ABATE, and Circle Power filed initial briefs.

9. On August 29, 2019, UPPCO, Staff, the Attorney General, CARE, ABATE, and Circle Power filed reply briefs, and Verso filed a letter indicating it would not file a reply brief.

10. On October 3, 2019, ALJ Snider issued his Proposal for Decision (“PFD”). The PFD, among other things, recommended approval of the Company’s IRP and PCA with the following modifications to the PCA: (i) adoption of Staff’s proposed increased EWR targets of 1.65% for 2020 and 1.75% for 2021, (iii) denial of UPPCO’s requested FCM methodology and use of one of Staff’s proposed FCM alternatives if the Commission deemed an FCM appropriate, and (iv) approval of the Company’s avoided cost proposal as modified by Staff’s recommendations.

11. On October 22, 2019, UPPCO, Staff, CARE, the Attorney General, ABATE, and Circle Power filed exceptions to the PFD, and Verso filed a letter indicating that it would not file exceptions.

12. On November 5, 2019, UPPCO and ABATE filed replies to exceptions. Staff, CARE, Verso, and Circle Power filed letters indicating that they would not file replies to exceptions.

13. On December 6, 2019, in accordance with MCL 460.6t(7), the Michigan Public Service Commission (“MPSC” or the “Commission”) issued its Order recommending changes to the Company’s IRP and PCA. In the December 6, 2019 Order, the Commission indicated that it would approve the Company’s IRP analyses and recommended several changes to the Company’s PCA, including: (i) removal of the Company’s FCM request; (ii) removal of the RICE unit proposal; (iii) removal of the Company’s accounting request for the Portage CT insurance settlement; (iv) inclusion of Staff’s recommended increased EWR targets of 1.65% for

2020 and 1.75% for 2021; and (v) inclusion of Staff's recommended changes to the Company's PURPA proposal.

14. On December 23, 2019, UPPCO, Staff, ABATE, CARE, and the Attorney General filed comments on the Commission's Order in accordance with the schedule provided in MCL 460.6t(7).

15. On January 6, 2020, UPPCO filed its amended IRP and PCA in accordance with the schedule in provided in MCL 460.6t(7).

16. The parties have engaged in extensive settlement discussions informed by the guidelines expressed in the Commission's December 6, 2019 Order, which negotiations have led to the agreements incorporated in this settlement agreement.

17. This settlement agreement resolves all the issues in this case and all provisions of the settlement agreement are dependent upon all other provisions.

18. It is the opinion of the signing parties that the Company's PCA, as modified herein, should be approved as the most reasonable and prudent means of meeting the Company's energy and capacity needs over the 5-year, 10-year, and 15-year time horizons. Such approval shall mean that the Company's PCA will be evaluated in future IRP proceedings to determine if the PCA continues to represent the most reasonable and prudent means of meeting the Company's energy and capacity needs. The Company will file a new IRP by December 6, 2024.

19. By this settlement agreement, UPPCO, Staff, the Attorney General, CARE, and Circle Power agree that the Company's PCA should be modified as follows:

- a. The EWR targets will be increased to 1.65% for planning year 2020 and 1.75% for planning year 2021, with details consistent with the EWR plan as modified in case U-20376.
- b. The parties support approval of an FCM for the Solar PPA as follows: UPPCO will be authorized to annually earn an FCM equal to the product of the PPA payments in that year multiplied by 5.88% for the entire term

of the contract. The method of cost recovery shall be determined in the Company's next rate case. For the Solar PPA, the Company will be authorized to annually earn an FCM equal to the product of the PPA payments in that year multiplied by the percentage specified in this agreement for the entire term of the contract. The FCM percentage utilized for the Solar PPA should be 5.88%. Additionally, the FCM shall be structured such that it will not apply to any portion of the PPA MWs owned by UPPCO.

c. Upon Commission approval of this Agreement, including approval of the modified FCM described above, UPPCO will move forward with effectuating the terms of the Solar PPA and UPPCO will not have a current capacity need, so long as it implements the provisions described in the PCA as modified by this Agreement. The following provisions will apply in the event the Solar PPA is cancelled, modified, or reduced due to any reason, including but not limited to failure to achieve contract conditions or milestones:

(1) Any new capacity and associated energy that the Company intends to procure through the PCA to replace any of the 125 MW Solar PPA that is cancelled, modified or reduced shall be: (i) acquired through a competitive bidding process consistent with the guidelines in Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800; and (ii) 50% will be from PPAs and 50% will be owned by the Company, as acquired through a competitive bidding process. The Company, at its sole discretion, may choose to acquire more than 50% of its new capacity from PPAs.

(2) For new renewable energy and capacity that the Company intends to procure through PPAs, the capacity shall be acquired through a competitive bidding process for one or more, technology-neutral RFPs for up to 125 MWs of nameplate capacity. For renewable PPAs greater than 18 MW in size, the Company shall be authorized to implement an FCM using the same methodology described above with the following FCM values dependent on the tenure of the PPA:

- a. 10 to 15-year PPA: FCM = 5.15%
- b. 15 to 20-year PPA: FCM = 5.65%
- c. Greater than 20-year PPA: FCM = 5.88%

(3) These FCM values are applicable to qualifying PPAs executed during this current IRP period until approval of the Company's next IRP.

- d. UPPCO also agrees to use commercially reasonable efforts to enter two 10-year PPA contracts for all energy, including renewable attributes, from the Circle Power Norton Wind and Scotia Wind projects at a \$35/MWh flat rate for the duration of each contract. UPPCO will purchase all capacity from these projects at the MISO Planning Resource Auction (“PRA”) price, as updated by MISO’s PRA each year. Contract CODs will be determined with respect to project interconnection schedules. Other PPA terms will be commercially reasonably based on current market. UPPCO will be authorized to implement an FCM for each Circle Power PPA as specified in paragraph 19.c.2, above. Circle Power and UPPCO agree to suspend the schedule in Case U-20635 pending the finalization of the Project Norton and Project Scotia PPAs. Upon execution of the PPAs, Circle Power will withdraw the Complaint in Docket No. U-20635, and UPPCO and Circle Power will stipulate to the dismissal of the Complaint. UPPCO and Circle Power agree that the remaining commercial terms of the two 10-year PPAs will be agreed upon within the 90 days from the date this settlement agreement is signed. The PPA contracts entered with Circle Power are included in the calculation for the 50% PPA requirements as specified in paragraph 19.c.1. If the PPAs are not executed within 90 days, then both parties will agree to a case schedule to expeditiously resolve Case U-20635.
- e. The RICE Unit proposal is removed from the PCA at this time pending further analysis and study. The signing parties support UPPCO’s adoption of the 120-day plan update as outlined by the Company in its revised IRP, which may result in a future IRP amendment, which may consider comparable alternatives, if warranted. Specifically, within 120 days of the issuance of an order approving this Agreement, UPPCO will submit an update in this docket including the following information:
- (1) An analysis of the Company’s capacity position with and without the proposed RICE facility in conjunction with its currently assumed resource retirements and new resource installations;
  - (2) Revised modeling runs using the appropriate Upper Peninsula (“UP”) energy pricing to determine the likely dispatch of the proposed RICE facility;
  - (3) A revised rate impact that builds on the revised expected dispatch rate of the proposed RICE facility and the results from the Company’s competitive bidding process;
  - (4) A memo from the transmission owner in UPPCO’s service territory that describes how the proposed RICE facility provides significant reliability benefits, is being proposed at a reasonable location on the transmission system, and contributes to a holistic reliability solution for the UP accompanied by a description of

the analysis the transmission owner conducted to make its conclusions. This should include any information that indicates how co-location on an existing generation site may be more or less advantageous to the transmission system. If a memo from the transmission owner cannot be obtained within the 120-day plan update period, UPPCO will provide a status update of its discussions with the transmission owner;

- (5) An explanation of how the Company considered coordination/cooperation with other entities as described in the Commission's December 6, 2019 Order.

After UPPCO files the 120-day plan update, the Company may file an amended IRP requesting approval of the RICE project, a modified RICE project or another solution, such as battery storage, in accordance with MCL 460.6t. All study and preliminary costs related to the RICE proposal will be recorded in FERC Account 183 and will be subject to review in the Company's next general rate case, unless such costs are booked to a completed, approved project.

- f. UPPCO withdraws its request for accounting treatment for the Portage Combustion Turbine insurance settlement as the associated accounting treatment will be determined in UPPCO's next general rate case.
- g. UPPCO's PURPA requests should be approved with the revisions recommended in the Commission's December 6, 2019 Order, specifically:
  - (1) Inclusion of a five-year planning horizon for PURPA capacity;
  - (2) Avoided cost energy payments will be determined based upon a five-year fixed schedule on peak and off peak LMP rate for the applicable years, as shown in Attachment A. This will be followed by a 5-year variable rate of actual MISO LMP at UPPCO pricing node, "UPPC.Integrated".
  - (3) Avoided capacity cost at the MISO PRA price;
  - (4) Lowering the standard offer tariff cap for QFs to 550 kW.
- h. UPPCO will submit a modified PCA implementation plan (Revised Exhibit A-32) consistent with the changes described in this Agreement.
- i. UPPCO will be allowed to defer for consideration in UPPCO's next rate case all justifiable IRP related costs recorded in UPPCO's FERC Account 183, pursuant to Section 6t of 2016 PA 341, MCL 460.6t, and all other applicable laws.

20. Each signatory agrees not to appeal, challenge or contest the terms and rates approved by the Commission in this case if they are the result of a Commission order accepting and approving this settlement agreement without modification. If the Commission does not accept this settlement agreement without modification, this settlement agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.

21. All the signatories to this Settlement Agreement agree that it is reasonable, in the public interest, and will aid in the expeditious conclusion of this case.

22. This settlement agreement is entered into for the sole and express purpose of reaching compromise among the parties. All offers of settlement and discussions relating to this settlement agreement are considered privileged under MRE 408. If the Commission approves the settlement agreement without modification, neither the parties to the settlement nor the Commission shall make any reference to, or use this settlement agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided however, such reference may be made to enforce or implement the provisions of this settlement agreement and the order approving it.

23. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of the Settlement Agreement. Failure to comply with any provision of the Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, the Settlement Agreement shall be withdrawn and

shall not constitute any part of the record in this proceeding or be used for any other purpose. Each party agrees not to appeal or otherwise contest any Commission order accepting and approving this Settlement Agreement without modification

24. The Company shall file a tariff sheet with Staff consistent with section 19 (g) within 30-day of an order approving a settlement agreement.

25. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues in this proceeding, if the Commission approves this settlement agreement without modification.

UPPER PENINSULA POWER COMPANY

**Paul M. Collins**

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Dated: January 21, 2020

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

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ATTORNEY GENERAL DANA NESSEL

**Michael Moody**

Digitally signed by Michael  
Moody

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CIRCLE POWER LLC

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