

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>UPPER PENINSULA POWER COMPANY</b>	)	
for approval of the disposition of the net gains	)	Case No. U-15323
resulting from the sale of the Warden Generating	)	
Station, and related approvals.	)	
_____	)	

At the October 9, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Steven A. Transeth, Commissioner

**ORDER APPROVING SETTLEMENT AGREEMENT**

On June 8, 2007, Upper Peninsula Power Company (UPPCo) filed an application requesting approval of its proposed treatment of the net proceeds expected to result from the sale of the Warden Generating Station (Warden) located in Michigan’s Upper Peninsula and related accounting and revenue allocations.

In its application, UPPCo represented that it has entered into an Asset Purchase Agreement for the sale of Warden to White Pine Electric Power, LLC (White Pine), which plans to own and operate Warden through an affiliate known as L’Anse Warden Electric Company LLC. White Pine would convert Warden into a biomass power plant that will utilize renewable waste wood and other waste products to deliver green power. The application sets forth UPPCo’s proposal for sharing the expected net gain from the sale of Warden.

As part of the sale of Warden, the application represented that UPPCo has agreed to enter into a buyback power purchase agreement (Buyback PPA) whereby UPPCo will sell and UP Power Marketing will buy, 3 megawatts of capacity, with the capacity priced by and subject to the power purchase agreement between White Pine and UPPCo dated December 27, 2004 (White Pine PPA). The Buyback PPA also provides that UP Power Marketing will buy, and UPPCo will allocate, 3/35ths of the energy scheduled by UPPCo under the White Pine PPA. Payment for the energy shall be 3/35ths of the White Pine PPA variable payment. The term of the Buyback PPA will be from January 1, 2008 through December 31, 2014. In the application, UPPCo proposed to treat this power sale to UP Power Marketing in its future power supply cost recovery (PSCR) proceedings as an opportunity sale, resulting in a credit to its PSCR costs. UPPCo sought confirmation that the proposed allocation and treatment of the Buyback PPA Sale is appropriate.

Pursuant to due notice, prehearing conferences were held on August 8, 2007 and September 11, 2007 before Administrative Law Judge Barbara A. Stump. UPPCo, the Commission Staff, Smurfit Stone Container Corporation, and Michigan Technological University participated in the proceedings. The parties submitted a settlement agreement resolving all issues in the case.

The settlement agreement (attached as Exhibit A) provides that UPPCo should be authorized to share the Michigan portion of the net gains from the sale of Warden as follows:

i) the net gains are to be defined as being equal to the actual sale price of Warden minus the book value and any transaction and development costs associated with the sale; ii) the Michigan jurisdiction shall be assigned 80.05% of the net gain on the sale of Warden; iii) the Michigan portion of the first \$800,000 of any net gains will be distributed to retail customers in accordance

with the settlement agreement; iv) the Michigan portion of any net gains in excess of \$800,000 will be shared by customers and the company in accordance with the settlement agreement; v) UPPCo's share of the Michigan portion of the net gains of the sale will be allocated to its shareholder without restriction as non-utility income for ratemaking purposes; vi) the retail customers' share of the Michigan portion of any net gains will be initially recorded as a regulatory liability and will accrue interest at a rate of 7% per year; and vii) no later than April 5, 2008, UPPCo will file an application with the Commission including an accounting of all net gains from the sale and proposing a method for distributing the retail customers' share of the Michigan portion of any net gains.

UPPCo also agreed to a retail electric service base rate increase moratorium for eighteen months following the date of the signing of the settlement agreement. The moratorium, however, does not preclude deferred accounting treatment for any governmental mandates and base rate increases for any unusual and extraordinary events that would cause serious financial harm to UPPCo. It is understood that UPPCo's PSCR clause is not subject to the moratorium. As relating to UPPCo's proposed allocation and treatment of the Buyback PPA sale, the settlement agreement provides that UPPCo should be authorized to allocate and treat the Buyback PPA sale as an opportunity sale resulting in a credit to PSCR costs.

The Commission finds that the settlement agreement is reasonable and in the public interest, and should be approved.

The Commission FINDS:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as

amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The settlement agreement (attached as Exhibit A) is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement (attached as Exhibit A) is approved.

B. Upper Peninsula Power Company is authorized for ratemaking purposes, and subject to the terms of the settlement agreement, to share the Michigan portion of the net gains from the sale of the Warden Generating Station with its retail electric customers in the manner set forth in the settlement agreement, and to treat its share of the Michigan portion of the net gains as non-utility income.

C. Upper Peninsula Power Company is authorized to initially record the retail electric customers' share of the Michigan portion of any net gains as a regulatory liability, which will accrue interest at a rate of 7% per year.

D. On or before April 5, 2008, Upper Peninsula Power Company will file an application with the Commission, including an accounting of any net gains from the sale, identifying all options it considers viable for distribution, and proposing a method for distributing the retail customers' share of the net gains as defined by the settlement agreement.

E. Upper Peninsula Power Company is authorized to allocate and treat the Buyback Purchase Power Agreement sales between Upper Peninsula Power Company and UP Power Marketing as opportunity sales thereby resulting in a credit to its power supply cost recovery costs.

F. Subject to the conditions set forth in the settlement agreement, Upper Peninsula Power Company will submit to an eighteen month moratorium for retail electric service base rate increases from the date of signing the settlement agreement.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Orjiakor N. Isiogu  
Chairman

( S E A L )

/s/ Monica Martinez  
Commissioner

/s/ Steven A. Transeth  
Commissioner

By its action of October 9, 2007.

/s/ Mary Jo Kunkle  
Its Executive Secretary

F. Subject to the conditions set forth in the settlement agreement, Upper Peninsula Power Company will submit to an eighteen month moratorium for retail electric service base rate increases from the date of signing the settlement agreement.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of October 9, 2007.

\_\_\_\_\_  
Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of UPPER	)	
PENINSULA POWER COMPANY for	)	
approval of the disposition of the net gains	)	Case No. U-15323
resulting from the sale of the Warden Generating	)	
Station, and related approvals.	)	

SETTLEMENT AGREEMENT

As provided in Section 78 of the Administrative Procedures Act of 1969 (“APA”), as amended, MCL 24.278, and Rule 333 of the Rules of Practice and Procedures Before the Commission, 2000 AC, R 460.17333, Upper Peninsula Power Company (“UPPCO”), Michigan Public Service Commission Staff (“Staff”), Michigan Technological University (“MTU”) and Smurfit - Stone Container Corporation (“Smurfit”) hereby agree as follows:

1. On June 8, 2007, UPPCO filed an application with the Michigan Public Service Commission (“Commission”) requesting approval of proposed treatment of the net proceeds expected to result from the sale of the Warden Generating Station (“June Application”) and related accounting and revenue allocation.

2. The June Application represents that UPPCO owns a gas and/or coal fired steam plant located in L’Anse, Michigan known as the Warden Generating Station. The June Application further represents that UPPCO has entered into an Asset Purchase Agreement for the sale of the Warden Generating Station to White Pine Electric Power, LLC (“White Pine”). White Pine plans to own and operate Warden (“Warden”) through an affiliate known as L’Anse Warden Electric Company LLC (“LWEC”). It is anticipated that White Pine will convert Warden into a biomass power plant that will utilize renewable waste wood and other waste products to deliver green power. It is further anticipated that the conversion of Warden to a renewable facility will

potentially create approximately 25 jobs, bring additional local generation capacity to the Upper Peninsula and be consistent with Michigan's 21<sup>st</sup> Century Electric Energy Plan. The June Application sets forth a proposal for sharing the expected net gain from the sale of Warden.

3. The June Application further represents that as part of the sale of Warden, UPPCO has agreed to enter into a buyback power purchase agreement ("Buyback PPA") whereby, UPPCO will sell, and UP Power Marketing<sup>1</sup> will buy, 3 MW per day of capacity, with the capacity priced and subject to the Power Purchase Agreement between White Pine and UPPCO dated December 27, 2004 ("White Pine PPA"). Additionally, under the Buyback PPA, UP Power Marketing will buy, and UPPCO will allocate, 3/35 of the energy scheduled by UPPCO under the White Pine PPA. Payment for the energy shall be 3/35 of the White Pine PPA variable payment. The term of the Buyback PPA will be from January 1, 2008, through December 31, 2014. UPPCO proposes to treat this power sale to UP Power Marketing in its future Power Supply Cost Recovery ("PSCR") proceedings as an opportunity sale, thereby resulting in a credit to PSCR costs. The June Application seeks confirmation that the proposed allocation and treatment of the Buyback PPA Sale is appropriate.

4. On July 12, 2007, the Commission's Executive Secretary issued a Notice of Hearing directing UPPCO to mail a copy of the Notice of Hearing to all cities, incorporated villages, townships, and counties in its Michigan electric service area. UPPCO was further directed to publish the Notice of Hearing in daily newspapers of general circulation throughout its service area. On August 7, 2007, UPPCO electronically filed with the Commission the requisite Proofs of Publication and Affidavit of mailing.

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<sup>1</sup> Traxxys North American is the parent company of White Pine, LWEC, and UP Power Marketing.

5. On August 8, 2007, Administrative Law Judge (“ALJ”) Barbara A. Stump presided over a prehearing conference in this matter, and Staff entered its Appearance. The intervention of MTU was granted, and thereafter the intervention of Smurfit was also granted by ALJ Stump.

6. Subsequent to the prehearing conference, the parties engaged in settlement discussions which have resulted in UPPCO, Staff, MTU and Smurfit (hereafter referred to as the “Parties”) agreeing to a settlement of the June Application as set forth below:

a. As relating to the sale of Warden, the Parties agree that UPPCO should be authorized to share the Michigan Jurisdictional Portion of the net gains from the sale of Warden as follows:

i) The net gains are to be defined as being equal to the actual sale price of Warden minus the book value and any transaction and development costs associated with the sale;

ii) The Michigan jurisdiction shall be assigned 80.05% of the net gain on the sale of Warden (otherwise known as the “Michigan Jurisdictional Portion”);

iii) The Michigan Jurisdictional Portion of the first \$800,000 of any net gains will be distributed to retail customers in accordance with paragraphs 6,a,vi and vii below;

iv) The Michigan Jurisdictional Portion of any net gains in excess of \$800,000 will be shared with retail customers on a 50%/50% basis, e.g. 50% to retail customers and 50% to the Company in accordance with paragraphs 6,a, vi and vii below;

v) UPPCO’s share of the Michigan Jurisdictional Portion of any net gains will be allocated to its shareholder without restriction as non-utility income for ratemaking purposes;

vi) The retail customers' share of the Michigan Jurisdictional Portion of any net gains will be initially recorded as a regulatory liability. This regulatory liability will accrue interest at a rate of 7% per year; and

vii) No later than April 5, 2008, UPPCO will file an application with the Commission inclusive of an accounting of any net gains from the sale and proposing a method for distributing the retail customers' share of the Michigan Jurisdictional Portion of any net gains; and

viii) UPPCO also agrees to a retail electric service base rate increase moratorium for eighteen (18) months following the date of the signing of this Settlement Agreement. This moratorium, however, does not preclude deferred accounting treatment for any governmental mandates and base rate increases for any unusual and extraordinary events that would cause serious financial harm to UPPCO. Further, UPPCO's Power Supply Cost Recovery Clause is not subject to the moratorium.

b. As relating to UPPCO's proposed allocation and treatment of the Buyback PPA sale, the Parties agree that UPPCO should be authorized to allocate and treat the Buyback PPA sale as an opportunity sale thereby resulting in a credit to PSCR costs.

7. As part of the application described in paragraph 6a(vii) herein, UPPCO will identify and discuss all short term and long term options it considers viable for distributing the retail customers' share of the net gain. Moreover, at least sixty (60) days prior to filing the application described in paragraph 6a(vii) herein, UPPCO will meet with MTU and Smurfit to (i) explain the options UPPCO has identified for distributing the retail customers' share of the net gains, (ii) solicit input from MTU and Smurfit on the options identified by UPPCO, and (iii) provide MTU and Smurfit with an opportunity to identify any alternative options for UPPCO's consideration.

8. All of the Parties are of the opinion that this Settlement Agreement will aid the expeditious conclusion of this case.

9. This Settlement Agreement is intended for a final disposition of all issues addressed in the June Application, and the Parties join in respectfully requesting that the Commission grant prompt approval. The Parties agree not to appeal, challenge or contest the Commission's Order accepting and approving this Settlement Agreement without modification. If the Commission does not accept the Settlement Agreement without modification, the Agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.

10. This Settlement Agreement has been made for the sole and express purpose of settling this case, and all discussions relating hereto are and shall be privileged and shall not be used in any manner, or be admissible for any other purpose in connection with this proceeding or any other proceeding hereof. This Settlement Agreement does not constitute a precedent in any other case or proceeding except as necessary to carry out its terms.

11. All Parties waive Section 81 of the Administrative Procedures Act of 1969, as amended, MCL 24.281, as it applies to the issues settled by this Settlement Agreement, providing that the Commission approves this Settlement Agreement without modification.

UPPER PENINSULA POWER COMPANY


Dated: September 14, 2007

By: **Sherri A. Wellman**  Digitally signed by Sherri A. Wellman  
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Dated: September 14, 2007

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# PROOF OF SERVICE

STATE OF MICHIGAN )

Case No. U-15323

|  
County of Ingham )

E. David Lechler being duly sworn, deposes and says that on October 9<sup>th</sup>, 2007, A.D. he served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

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E. David Lechler

Subscribed and sworn to before me  
this 9<sup>th</sup> day of October 2007

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William Brandon  
Notary Public - State of Michigan  
County of Ingham  
My Commission Expires January 14, 2013  
Acting in the County of Ingham

SERVICE LIST FOR DOCKET # U - 15323-                      CASE #  
DATE OF PREPARATION: 10/09/2007

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