

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
UPPER PENINSULA POWER COMPANY)
for authority to increase retail electric rates.)
_____)

Case No. U-16417

PROTECTIVE ORDER

1. This Protective Order governs the use and disclose of confidential (“Protected Material”) to be disclosed by Upper Peninsula Power Company (“UPPCO” or “Company”) as set forth herein. The intent of this Protective Order is to protect the release, use and disclosure of Critical Energy Infrastructure Information and documentation as to hydro-electric projects and facilities and UPPCO’s witness’s related testimony and exhibits that meet the following criteria:

- a. UPPCO hereby certified that such Protected Material is not in the public domain; and
- b. The testimony, exhibit, and schedules listed in paragraph 2, either (i) have not been filed with state, provincial or federal agencies, or (ii) if filed with state, provincial or federal agencies, has been protected against public disclosure.

2. The Protected Material that this protective Order protects is Critical Energy Infrastructure Information and documentation included in Exhibit A-2 (SSD-2), Schedules B7, B8, B9, and B10 of Seth S. DeMerritt’s pre-filed direct testimony, and Exhibit A-9 (CWS-1) of Charles W. Severance’s pre-filed direct testimony, which discuss energy infrastructure project information and dam safety and inspection documents for the McClure Development of the Dead River Hydroelectric Project; the Bond Falls Hydroelectric Project; the Prickett Hydroelectric Project; the Victoria Dam; and the Cataract Hydroelectric Project.

3. This Protective Order protects not only the documents described in Paragraph 2, but also protects from disclosure the information contained therein in any form including, but not limited to, affidavits, testimony, exhibits, workpapers, studies, discovery inquiries and responses, and all other data and documentation to the extent provided to the parties or filed with the Michigan Public Service Commission (“MPSC”) in connection with these proceedings.

4. UPPCO shall furnish the Protected Material to MPSC Staff (“Staff”) and any properly admitted intervenors (“Intervenors”) (collectively the “Parties”) subject to the terms of this Protective Order for the objective of allowing the Parties access to information requested by them for the purposes of advocating positions in this proceeding. UPPCO shall provide such Protected Material directly to Staff and Intervenors and shall file them under seal with the Docket Section of the MPSC.

5. The parties to this case retain the right to seek further restrictions on the dissemination of Protected Materials to persons or entities who may subsequently seek to intervene in this or any other MPSC proceeding.

6. UPPCO shall stamp each page of the Protected Material: “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO A [DATE] PROTECTIVE ORDER WHICH IS ON FILE IN CASE NO. U-16417 WITH THE DOCKET SECTION. ANY PERSON RECEIVING OR REVIEWING THIS DOCUMENT IS BOUND BY THE TERMS OF THE PROTECTIVE ORDER.”

7. Parties receiving Protected Material shall be bound by the terms of this Protective Order and shall, to the extent permitted by law, take reasonable steps to protect the Protected Material from being available for review by third persons or from being stored or otherwise included with materials available for public disclosure.

8. Parties receiving a copy of the Protected Material may make additional copies and may use the Protected Material in the course of this proceeding; however, such material shall not be released or disclosed to any other person, except to the extent

authorized in this Protective Order. The Protected Material may not be used for any purpose except as necessary for the conduct of this proceeding and any other UPPCO proceeding before the MPSC for which Protected Material is a source document.

9. Offers of evidence in this or any other MPSC proceeding, as well as briefs and other written submissions, may include, incorporate, utilize, refer to, or otherwise use Protected Material in any reasonable manner. Written submissions using Protected Material shall be filed under seal with the ALJ, to be maintained by the Docket Section of the MPSC in envelopes clearly marked on the outside with the notation reflected in Paragraph 6, supra, or in another appropriate manner. Simultaneously, identical documents and materials, but with the protected information redacted, shall be filed, offered, introduced, or otherwise disclosed in the usual manner for the submissions of evidence or briefs.

Furthermore, with regard to proceedings before the MPSC or presiding officers designated by it, examination of witnesses on the Protected Material shall be conducted on a separate record to be maintained by the Docket Section of the MPSC in the manner, and subject to the limitations provided in Paragraphs 4, 6, and 7 above. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and Parties otherwise submit to this Protective Order. The party presenting the information during the course of a proceeding shall advise the presiding officer receiving testimony of the terms of this Protective Order and suggest that a separate, protected record be made of all testimony concerning the protected information. Copies of documents filed with the MPSC that contained Protected Material, including the portions of the exhibits, transcripts, and briefs that refer to Protected Material, should be sealed and maintained in the MPSC's files with a copy of this Protective Order attached.

10. It is intended that the Protected Material subject to this Protective Order shall be shielded from disclosure to anyone who is not a party to this case only to the extent permitted by law. If any person files a Freedom of Information Act Request with the MPSC or Michigan Attorney General seeking access to documents subject to this Protective Order,

the MPSC's Executive Secretary or the Attorney General shall immediately notify UPPCO, and UPPCO may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In accordance with Section 5 of the Freedom of Information Act, MCL 15.235, the notice must be given at last five (5) business days prior to the MPSC, its Staff, and/or Attorney General responding to the request.

11. The provision of this Protective Order shall not apply to a particular document or portion of a document described in Paragraphs 2 and 3 if a party can demonstrate that it has been previously disclosed by UPPCO and does not meet the criteria set forth in Paragraph 1 a or b. Before disclosing a particular document or portion of a document described in Paragraph 2 or 3, however, the party must first provide reasonable notice to UPPCO of its conclusion that the document or portion of a document is not subject to this Protective Order because of prior disclosure. The provision of this Protective Order shall terminate as to the particular documents described in Paragraphs 2 and 3 to the extent that the terms of such documents are filed with a state, provincial or federal agency and are not subject to a protection from public disclosure, or are otherwise lawfully disclosed.

12. If Parties that receive Protected Material under this Protective Order violate this Order by an improper disclosure or use of Protected Material, then the violating party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MSPC, the Administrative Law Judge ("ALJ"), and UPPCO, in writing, of the identity of each person known or reasonably suspected to have obtained the Protected Material. Parties that violate this Protective Order remain subject to Paragraph 12 regardless of whether UPPCO could have discovered the violation earlier than it was discovered. Paragraph 12 of this Protective Order applies to both inadvertent and intentional violations. Nothing in this Protective Order limits UPPCO's rights and remedies, at law or in equity, against Parties or persons using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief to prevent or redress violations of this Protective Order.

13. The MPSC or any ALJ designated by it may subsequently declare that the protected status of a document or portion of a document designated a Protected Material should not be continued and immediately communicate that declaration to UPPCO. Thereafter, this Protective Order shall cease to apply to that document or portion of the document unless, within ten (10) days, UPPCO files a pleading asserting that the information should continue to be protected and setting forth the basis for that assertion. UPPCO shall bear the burden of proving that the information is entitled to continuing protection from disclosure. If the MPSC or ALJ finds that a document or portion of a document no longer qualifies for treatment as "Protected Material", it shall remain subject to the protection afforded by this order for ten (10) days following the issuance of the MPSC's order or the ALJ's ruling.

Dated: _____

Administrative Law Judge

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