

## Naterra sues UPPCO over struggling Bond Falls land deal

*By Michael Genrich*

In a complaint filed in federal district court in Minneapolis on February 25, 2008, Naterra Land, Inc. of Minneapolis has filed suit against Upper Peninsula Power Company and its parent company, Integrys Energy Group of Chicago (formerly known as Wisconsin Public Service or WPS) over its proposed real estate development partnership with the utility at Bond Falls Flowage and five other UPPCO reservoirs in the Upper Peninsula. The action filed specifies breach of contract and fraud on the part of the utility.

According to allegations contained in the filing, UPPCO approached Naterra in November of 2004 and requested that the developer provide the utility with development proposals for long term lakeshore development opportunities located throughout Wisconsin and the Upper Peninsula, opportunities associated with lakes that had been created through the construction of dams. After submission of the proposals, Naterra was then selected by the utility to be their long-term development partner in or about September of 2005.

After the utility had committed itself to the lakeshore developments and after the developer had already expended substantial resources, the suit alleges, Naterra representatives visited Au Train Flowage near Munising and learned that the lake had been drawn down for planned dam repairs, thereby rendering its development untenable in the near future. Naterra then allegedly asked the utility if there were any planned dam repairs at any of the contemplated properties including the Bond Falls site, since the developer was working to purchase the Bond Falls property and other sites from the utility.

When UPPCO replied in the negative, the utility and the developer then entered into a purchase agreement on November 2, 2005 whereby Naterra would purchase the Bond Falls, Boney Falls and Cataract Basin non-project lands for \$8.9 million. The parties agreed to close the transaction no later than December 21, 2005. This, however, did not take place because many "contingencies" associated with the purchase had not been satisfied, and so Naterra refused to close at that time despite "extreme pressure" by the utility to complete the transaction.

At a December 22, 2005 meeting in Minneapolis, the suit alleges, Naterra was told by the utility that there were no issues whatsoever that would impact the granting of the various easements and licenses required for the development of the lakeshore property, which the utility was to obtain as part of the conditions of the sale. In fact, the utility reportedly told the developer at that time, "FERC does not have to approve the license for the shoreline easements." These representations were material, the law suit claims, because "dock and riparian rights are critical for the successful development and subsequent retail sale of lakeshore property."

At this same meeting, the suit alleges, outstanding contingencies were discussed involving zoning and subdivision approvals by local government agencies that needed to be resolved before the transaction could close. Recognizing that these known contingencies could not be cleared in time for the transaction to close before the end of 2005, UPPCO agreed to reduce the purchase price to \$5.9 million, but the parties agreed that UPPCO could potentially recover the reduction in purchase price at a later time after the local zoning and subdivision approvals were obtained and Naterra had developed the non-project lands. The sale was then closed on December 30, 2005.

After the transaction had closed and on January 6 2006, per the complaint, Naterra and UPPCO jointly attended an agency meeting in the Upper Peninsula involving several federal, state and local agencies who own lands in the area. This meeting, according to Naterra, was “contentious and adversarial”, with many of the government agencies either being opposed to or having serious concerns with the development of the lands and the granting of access easements and licenses for the necessary associated docks.

Also at this meeting, Naterra allegedly learned “for the first time” that the utility had attended two prior, pre-closing meetings in December of 2005 where it was obvious to those in attendance at those meetings that there were “significant issues and hurdles presented that would substantially and negatively impact the likelihood of forthcoming government agency approval for the necessary license from FERC for shoreline easements and dock rights”. According to the developer, it then became clear that the utility’s pre-closing representations regarding the status of the necessary easement and license approvals required for the development of the lakeshore property were false.

Later, on or about September 26 2006 the complaint continues, Naterra learned that UPPCO had filed an application to install a fuse plug on the Bond Falls Dam to prevent a similar failure to the one which had previously occurred at the Dead River dam in Marquette. This application had been filed prior to the closing of the Bond Falls purchase and, Naterra claims, additionally proves that UPPCO’s material representation regarding planned dam repairs at Bond Falls were also false.

“As of today” (February 25), the complaint concludes, “more than seventeen months after Plaintiff provided UPPCO the last of the required legal descriptions, UPPCO still has not delivered the NSA Easements of the Licenses to Plaintiff. These breaches of the parties’ agreement have prevented Plaintiff from developing the lakeshore property and selling retail lakeshore lots because, in part, the lots have no dock or riparian rights associated with them. In essence ... Plaintiff does not own developable lakeshore property and, as a result, has not obtained the benefit for which it bargained for with Defendants and paid substantial consideration for to UPPCO.”

The material for this article was obtained from publicly available material on the Minnesota District Court’s Electronic Court Filings (ECF) System. Naterra officials declined to return this reporter’s phone calls. UPPCO also declined comment at this time, since they have not yet been officially served.