

BOYCE HYDRO POWER, LLC

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ORIGINAL

28 February, 2012

Ms. Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Subject: Transmittal of BHPLLC Counsel's letter to
Midland County Counsel Re: Property Rights Issues
For Project P-2785-078 (Sanford)

Secretary Bose:

Forwarded herewith is a letter dated 24 February, 2012 from Boyce Hydro Power, LLC's (Boyce) counsel, Jay Brown, addressed to Midland County counsel, Lawrence W. Smith. This letter was tendered in furtherance of Boyce's efforts to obtain cooperation from Midland County in helping to resolve the extensive FERC Project Boundary issues that must be corrected for the above-referenced Sanford license.

Sincerely yours,



Lee W. Mueller, Architect
Co-Member Manager
Boyce Hydro Power, LLC

LWM/wp

Cc: Charles K. Cover
John Clements

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W. JAY BROWN PLC

ATTORNEY AT LAW

February 24, 2012

Mr. Lawrence Wm. Smith
Gilbert, Smith & Borrello, P.C.
721 South Michigan Avenue
Saginaw, MI 48602

Re: Boyce Hydro Power, LLC & Sanford Lake

Dear Bill:

I am writing in reply to your January 26, 2012 letter proposing to have the county profit from Boyce continuing to provide free recreation opportunities and a significant tax base for Midland County. This offer is of course rejected. Furthermore, Boyce is very troubled by the tone of your letter which appears to reflect a County administration belief that it retains a position of strength and leverage over Boyce regarding FERC license compliance matters. This, however, is simply not the case. I am writing to address the reality of the situation and to reiterate and specify the elements of FERC license compliance that are necessary in order to resolve the present situation.

First, the County's response indicates that it does not understand the profound ramifications of FERC's project boundary control requirements imposed upon Boyce. In regard to the shoreline property within the Sanford license project boundary, Boyce must demonstrate to FERC's satisfaction that all of this land is subject to FERC's control requirements and that Boyce, as the FERC licensee, has the authority to police such lands against any further encroachments. Because of FERC's standard license Article 5 requirements these lands, along with any inchoate adverse possession rights that were foreclosed by the County in the course of Boyce's tax parcel forfeiture, must be reacquired or subjected to appropriate control by Boyce. County officials should understand that Boyce has no interest in retaining ownership of the shoreline properties and the corresponding tax burden. Consequently, Boyce intends to divest itself of such shoreline property by creating correct legal descriptions and transferring the correctly identified individual shoreline property parcels to the parties who presently occupy and possess those foreclosed parcels. Unfortunately, if the County continues to thwart Boyce's requests for cooperation and Boyce is forced to expend significant funds in order to accomplish this objective, Boyce may need to recoup these costs by charging shoreline residents for costs associated with the property reconveyance.

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The ultimate transfer to the shoreline occupants will be by deed or easement which will contain language to satisfy FERC license requirements for control. At a minimum, such conveyances will include the following:

- The right of Boyce (the FERC licensee) to enter onto such property to accomplish all applicable project purposes;
- Boyce's rights to Project lands in connection with the license are perpetual and transferable;
- The prohibition on occupiers from placing any future improvements within the project boundaries without the Boyce's, and by extension, FERC's permission;
- An allowance of use of such lands only so long as the use of such lands is consistent with the operation of the FERC regulated project;
- The right of Boyce to perform any and all acts required by FERC on such lands without first obtaining the permission of the occupier and at any time it is so required. (See, for example, the FERC August 12, 2010 letter to Boyce Hydro Power LLC)
- That all property improvements be subject to any allowed permit fee which may be assessed if necessary and payable to the licensee as prescribed by FERC regulations for the administration of allowable encroachments and property usages within the project boundary.

There are two alternative methods by which this undertaking can be accomplished. First, the County cooperates and works with Boyce to undertake title research and prepare and issue deeds to the shoreline possessors from either the County or from Boyce (provided the County first conveys the property to Boyce); or Second, Boyce proceeds to use its power of eminent domain to obtain title to the forfeited tax parcels prior to conveying the shoreline property with deed restrictions to the affected parcel possessors. In either case the County should not overlook the fact that Boyce has already expended considerable company resources in man hours and funds in order to collect, assemble, and organize the data necessary to properly effectuate the identification of actual property interests which FERC has mandated be done by the licensee. Moreover, this has been an investment made by Boyce in order to preserve the Sanford license and ultimately the continued existence of the recreational amenities, considerable real estate values, and commercial enterprises all of which are afforded by the existence of the Sanford Dam.

Up to this point, the County has not indicated it will cooperate in any way with Boyce in resolving the shoreline control issues. The resolution of this issue is a necessary prerequisite to any long-term resolution of ownership issues. Please address this with the commissioners and let me know if Boyce will receive any cooperation or whether it should commence its eminent domain action. As you are aware from its filings with FERC, Boyce must commence the condemnation action in April unless there is evidence that the County agrees to cooperate with

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Boyce to reach an appropriate resolution to the FERC project boundary control matter which was brought to FERC's attention by virtue of your communications with FERC in 2010.

On a different matter, it has come to my attention that my client retains ownership of the lands which abut the Sanford Lake Park. The Midland County GIS map confirms this fact. I have also learned that in approximately 2008 Midland County engaged in substantial park improvements which have resulted in significant trespasses on Boyce property. These trespasses by Midland County, which at a minimum consist of an expanded boat launch, fishing piers and the like, will need to be resolved. It is entirely possible that Boyce may lease the rights to maintain such facilities to the County. Otherwise, Boyce may bring a trespass action to prohibit the County from continuing to occupy and use Boyce property without permission.

In closing, Boyce reiterates its desire to work with the County to bring about a full and fair resolution to all of the outstanding issues. Boyce will make its representatives available to meet with County representatives to work through the outstanding issues. However, it makes no sense to meet if the County persists in its hard-line position and ignores the fundamental issues that must be resolved which are the FERC project boundary control issues. Please advise me of the County's willingness to cooperate with Boyce.

Sincerely,



W. Jay Brown

cc. Boyce Hydro Power, LLC
John Clements
FERC

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