

149 FERC ¶ 62,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boyce Hydro Power, LLC

Project No. 2785-082

ORDER APPROVING UPDATED EXHIBIT G DRAWINGS

(Issued October 15, 2014)

1. On February 4, 2014, Boyce Hydro Power, LLC, licensee for the Sanford Hydroelectric Project, FERC No. 2785,¹ filed updated Exhibit G drawings in response to a May 23, 2012 letter sent by Commission staff, which requested updated drawings. The project is located on the Tittabawassee River, in Midland and Gladwin counties, Michigan.

Background

2. Commission staff's May 23, 2012 letter required the licensee, within 60 days of the date of the letter, to file updated Exhibit G drawings prepared in accordance with sections 4.39 and 4.41 of the Commission's regulations. Commission staff requested updated drawings because the drawings currently on file with the Commission are of poor quality and do not meet the Commission's current regulations for exhibit drawings. On July 26, 2012, the licensee filed preliminary updated Exhibit G drawings and requested comments from the Commission. Commission staff provided comments in a letter dated October 10, 2012, and gave the licensee 60 days from the date of the letter to address the comments and file updated Exhibit G drawings for Commission approval.

3. The licensee filed updated Exhibit G drawings on December 7, 2012. Commission staff, in a letter dated January 18, 2013, requested the licensee to address several comments regarding the drawings. Specifically, the letter requested the licensee to: (1) identify the project boundary following the water's edge, at elevation 630.8 North American Vertical Datum of 1988 (NAVD88), or to file an amendment application to change the project boundary; (2) address the inconsistencies regarding the actual normal pool elevation for the project and if necessary request to amend Article 411 of the license² to reflect the appropriate elevation; and (3) identify land rights by legal

¹ *Wolverine Power Corporation*, 41 FERC ¶ 62,192 (1987).

² *Wolverine Power Corporation*, 85 FERC ¶ 61,066 (1998).

subdivision within the project boundary.

4. The licensee filed revised updated drawings on March 25, 2013, and in a letter dated May 1, 2013, Commission staff requested the licensee to revise the exhibits to show the project boundary at the normal water surface elevation which is 630.8 feet NAVD88. The licensee filed another set of revised updated drawings on June 5, 2013, and in a letter dated June 21, 2013, Commission staff requested the licensee to revise the drawings to add two missing areas (around Sanford Dam and the northern extent of project boundary below Edenville Dam) to the project boundary. On August 29, 2013, the licensee filed a set of revised updated Exhibit G drawings to include the two missing areas.

5. On September 5, 2013, the Commission issued an Order Approving Updated Exhibit G drawings³ that approved eight Exhibit G drawings, G-3 through G-10. The order also required the licensee to correct the Exhibit G-2 drawing to match the project boundary identified on the approved Exhibit G drawing on file with the Commission or file a report with information showing that it has the necessary rights to those lands within the revised project boundary below Sanford Dam as identified on the Exhibit G-2 drawing that was filed on August 29, 2013. In addition, the order required the licensee to revise the Exhibit G-2 drawing to identify its land rights within the project boundary below Sanford Dam. Finally, the order required the licensee to provide a revised Exhibit G-1 drawing that has been revised to reflect the changes on the Exhibit G-2 drawing.

6. On November 4, 2013, the licensee filed a request to rescind the Commission's September 5, 2013 order. The licensee's request stated that upon subsequent review of drawings approved by the Commission, the licensee's registered land surveyor identified errors in the representation of the current ownership of certain property parcels depicted within the project boundary. In addition to requesting to rescind the Commission's order, the licensee also requested until January 15, 2014, to correct and re-file the updated Exhibit G-1 and G-2 drawings. On November 12, 2013, the Commission issued an Order Rescinding Order Approving Updated Exhibit G Drawings.⁴ The order required the licensee to file corrected updated Exhibit G drawings, for Commission approval, by January 15, 2014.

7. On January 21, 2014, the licensee filed a complete set of updated Exhibit G drawings and on January 24, 2014, Commission staff issued a letter requesting additional information regarding the drawings. Specifically, the drawings were not stamped by a

³ *Boyce Hydro Power, LLC*, 144 FERC ¶ 62,210 (2013).

⁴ *Boyce Hydro Power, LLC*, 145 FERC ¶ 62,101 (2013).

registered land surveyor and used inconsistent line weights in the hatching to designate project land rights.

Review

A. Exhibit G Drawings

8. Our review of the Exhibit G drawings filed on February 4, 2014, found the quality much improved, they were prepared in accordance with the Commission's regulations, and address the comments in the Commission staff's letters. We georeferenced the Exhibit G drawings and found them to be in agreement with our current mapping requirements. The drawings submitted conform to the Commission's rules and regulations and this order approves the drawings, as shown in ordering paragraph (A). In ordering paragraph (B), we are requiring the licensee to file the approved exhibit drawings in electronic file formats. While this order approves the Exhibit G Drawings, it does so only to the extent they replace the poor quality existing drawings and brings them up to the Commission's map accuracy standards. Our review found several discrepancies and omissions with the drawings that are described in more detail below, and must be corrected.

9. The updated drawings identify that the licensee does not own or possesses the necessary rights to all lands that are within the project boundary. In addition, our review found the project boundary does not include all lands necessary for project purposes. Specifically, we found Commission approved recreation amenities near Sanford Dam are not within the project boundary. A project boundary designates the geographic extent of a hydropower project, and within the boundary a licensee must own or control all lands and facilities needed for licensed project purposes. The project boundary must enclose only those lands and facilities necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources. The license requires all structures, fixtures, equipment, or facilities used to operate or maintain the project to be located within the project boundary.

10. According to the licensee's approved Recreation Plan⁵ portions of the Sanford Village Park displayed on the drawings included with the plan are not within the project boundary. In addition, the shoreline fishing area on the south shore of the project reservoir, upstream of the powerhouse, is not within the project boundary.⁶ Ordering

⁵ The licensee filed the recreation plan on May 19, 2000, and the Commission modified and approved the plan in a July 10, 2001 order. *Wolverine Power Corporation*, 96 FERC ¶ 62,027 (2001).

⁶ The licensee filed a report on January 3, 2007, that supplemented its August 9, (continued)

paragraph (C) of this order requires the licensee to investigate if all lands necessary for project purposes are included within the project boundary. The licensee must file an amendment application with the Commission, requesting approval of revisions to the project boundary and revised Exhibit G drawings. The amendment application must be prepared in accordance with 18 C.F.R. §4.200 (2014) and the Exhibit G drawings must conform to 18 C.F.R. §§ 4.39 and 4.41 (2014).

B. Compliance Issues

11. In an April 30, 2012 letter, Boyce filed a status report on property interests and requested an extension of time to resolve land right issues within the project boundary. In its request, the licensee also proposed to continue filing quarterly reports to update the Commission on the status of its efforts to comply with standard Article 5. In a May 23, 2012 letter, the Commission extended the deadline for compliance with standard Article 5 to April 19, 2013, and approved the quarterly report filing. The letter also specified the minimum information the licensee should include in the reports. To date, the licensee has not filed the reports nor has it filed information showing its compliance with standard Article 5. In approving the Exhibit G drawings, we recognize there may be outstanding issues with the licensee's right to use all lands within the project boundary. For example, the legend for the exhibits identifies forfeiture tax parcels where the licensee executed a letter of intent to obtain flowage rights. In addition, the exhibits identify lands where it is unclear what rights the licensee possesses (e.g. Exhibit G-2 adjacent to Ferro's subdivision). However, in the absence of quarterly reports by the licensee we do not know the status of its compliance with Article 5. Therefore, Ordering paragraph (D) of this order requires the licensee to file information that shows compliance with standard Article 5 of the license within 60 days from the date of this order. The licensee is in violation of the license for failure to maintain/acquire rights to use all lands in the project boundary for project purposes as required by standard Article 5 and will remain in violation until it files acceptable information and demonstrates it has adequate property rights. The licensee is reminded that under section 31(a) of the Federal Power Act (FPA),⁷ the Commission may issue such orders to require compliance with the terms and conditions of the license and under section 31(c) is authorized to assess civil penalties up to a maximum of \$11,000 per day, per violation, for failure to comply with the terms and conditions of the license.

2006 report assessing the feasibility of providing public access from the parking area at Sanford Village Park for shoreline fishing near the project powerhouse and the Commission modified and approved this report on May 8, 2007. *Synex Michigan LLC*, 119 FERC ¶ 62,108 (2007).

⁷ 16 U.S.C. § 823b (2006).

12. Finally, we note the licensee failed to timely meet the filing deadlines established by Commission staff as it reviewed the exhibit drawings. The licensee is reminded of its obligation to meet filing deadlines specified by the Commission, and if a filing deadline cannot be met, it must file a request for extension of time prior to the deadline along with the reasons for the delay and a proposed filing date. We warn the licensee that we may consider its failure to timely respond to the Commission in the future as a violation of its license. However, the Commission will take no further action at this time.

The Director orders:

(A) The following Exhibit G drawings filed on February 4, 2014, conform to the Commission's rules and regulations, and are approved and made part of the license:

Exhibit	FERC Drawing No.	Superseded FERC Drawing No.	Title
G-3	2785-9	2785-8	Project Boundary
G-4	2785-10	2785-8	Project Boundary
G-5	2785-11	2785-8	Project Boundary
G-6	2785-12	2785-8	Project Boundary
G-7	2785-13	2785-8	Project Boundary
G-8	2785-14	2785-8	Project Boundary
G-9	2785-15	2785-8	Project Boundary
G-10	2785-16	2785-8	Project Boundary
G-1	2785-21	2785-8	Project Boundary
G-2	2785-22	2785-8	Project Boundary

(B) Within 45 days of the date of issuance of this order the licensee must file two sets of the following information in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

a) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-2785-9, P-2785-10, etc.) must be shown in the margin below the title block of the approved drawing. Each drawing must be a separate electronic file, and the file name

must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this order, and file extension in the following format [P-2785-9, G-3, Project Boundary, MM-DD-YYYY.TIF].

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS georeferencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY:	black & white raster file
FILE TYPE:	Tagged Image File Format, (TIFF) CCITT T.6 (CCITT Group 4 fax encoding)
RESOLUTION:	300 dpi desired, (200 dpi min)
SIZE FORMAT:	22" x 34" (min), 24" x 36" (max)
FILE SIZE:	less than 1 MB desired

b) The licensee must file two separate sets of the project boundary GIS data on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC. The data must be in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format). The filing must include both polygon data and all reference points shown on the individual project boundary drawings. An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The georeferenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) must include: FERC Project Number, data description, date of this order, and file extension in the following format [P-2785, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc.), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name must include: FERC Project Number, data description, date of this order, and file extension in the following format [P-2785, project boundary metadata, MM-DD-YYYY.TXT].

(C) Within 180 days from the date of this order, the licensee must file an application to amend the license, prepared in accordance with 18 C.F.R §4.200 (2014), for revisions to the project boundary to include all lands necessary for project purposes.

The filing must include the corresponding revised Exhibit G drawings that conform to 18 C.F.R §§ 4.39 and 4.41 (2014).

(D) Within 60 days from the date of this order, the licensee must file information that shows compliance with standard Article 5 and that describes the changes that the licensee will make to the Exhibit G drawings to address the standard Article 5 issues discussed in this order. If the licensee is unable to provide this information, it must file a plan and schedule that explains how and when it will comply with standard Article 5.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Charles K. Cover, P.E.
Chief, Project Review Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

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