

144 FERC ¶ 62,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boyce Hydro Power, LLC

Project No. 2785-082

ORDER APPROVING UPDATED EXHIBIT G DRAWINGS

(Issued September 5, 2013)

1. On August 29, 2013, 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 41 FERC ¶ 62,192 (December 1, 1987).

² 85 FERC ¶ 61,066 (October 16, 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.

Review

A. Exhibit G Drawings

5. Our review of the drawings filed on August 29, 2013, found some lands in the tailrace located below Sanford Dam displayed on Exhibit G-2,³ differ slightly from the project boundary identified on the approved Exhibit G drawing currently on file with the Commission. Therefore, ordering paragraph (A) requires the licensee to correct the boundary to match the approved Exhibit G drawing on file with the Commission or to file a report with information showing that it has the necessary rights to those lands within the revised project boundary below Sanford Dam. The licensee must also revise Exhibits G-1 and G-2 to identify its land rights within the project boundary and file the exhibit with the report.

6. Our review of the remaining Exhibit G drawings (G-3 through G-10) found they accurately update the Exhibit G drawings currently on file, are 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 are approved by this order, as shown in ordering paragraph (B). In ordering paragraph (C), we are requiring the licensee to file the approved exhibit drawings in aperture card and electronic file formats.

7. We identified that the drawings are not stamped by a professional land surveyor but include a placeholder for the stamp. Ordering paragraph (C) of this order requires the

³ Exhibit G-1 is an overview of the entire project boundary and includes a sheet index of all the Exhibit G drawings. The project boundary on Exhibit G-1 is the same as identified on Exhibit G-2 in the area below Sanford Dam. Therefore, Exhibit G-1 is not approved by this order and must be filed re-filed with Exhibit G-2.

licensee to include the surveyor stamp on the drawings when they are filed in aperture card and electronic file formats. The Commission typically requires licensees to file geographic information system (GIS) data when it approves Exhibit G drawings. Due to the uncertainty regarding the project boundary on the Exhibit G-2 drawing, it is premature to require the GIS data at this time. The licensee will be required to file GIS data for the entire project when the Exhibits G-1 and G-2 drawings are approved.

B. Compliance Issues

8. The licensee failed to timely meet the filing deadlines established in each of the Commission's three letters. The licensee's failure to timely respond to the Commission is a violation of its license and will be made part of the compliance history for the project. However, the Commission will take no further action at this time.

9. In addition to requiring updated Exhibit G drawings, the Commission's May 23, 2012, letter extended the deadline for the licensee to show compliance with standard Article 5 of the license until April 19, 2013. To date, the licensee has not filed any quarterly reports since the Commission's letter. The licensee also has not filed information showing its compliance with standard Article 5. 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 and will remain in violation until acceptable information is filed. The licensee is reminded that under section 31(a) of the Federal Power Act,⁴ 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.

The Director orders:

(A) Within 30 days from the date of this order, the licensee shall 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. The licensee shall also provide a revised Exhibit G-2 drawing, for Commission approval, that identifies its land rights within the project boundary below Sanford Dam. In addition, the licensee shall provide a revised Exhibit G-1 drawing that has been revised to reflect the changes on the Exhibit G-2 drawing.

⁴ 16 U.S.C. § 823b (2006).

(B) The following Exhibit G drawings filed on August 29, 2013, 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

(C) Within 45 days of the date of issuance of this order, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

a) Three sets of the approved exhibit drawing shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" x 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-2785-9, etc.) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., G-3), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card (See Figure 1).

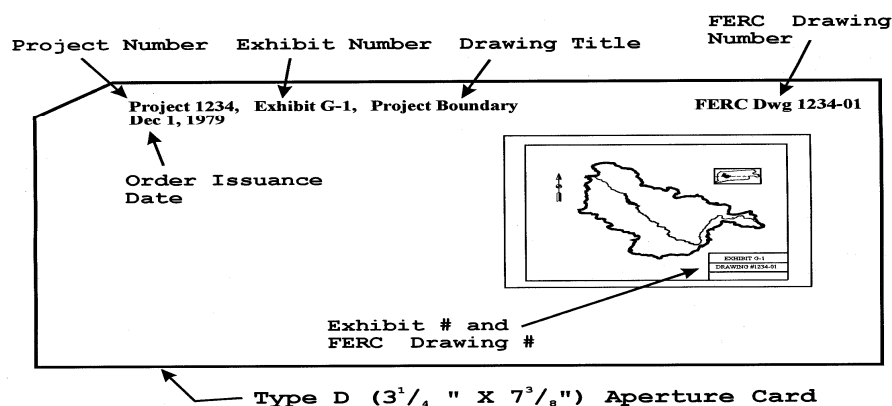


Figure 1. Sample Aperture Card Format

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Chicago Regional Office.

b) The licensee shall file two separate sets of the exhibit drawing in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Chicago Regional Office. Each drawing must be a separate electronic file, and the file name shall 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]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
 FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
 RESOLUTION – 300 dpi desired, (200 dpi min)
 DRAWING SIZE FORMAT – 24” x 36” (min), 28” x 40” (max)
 FILE SIZE – less than 1 MB desired

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.

(D) Within 60 days from the date of this order, the licensee shall file information that shows compliance with standard Article 5 of its license.

(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 Federal Power Act, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). 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

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