

150 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Boyce Hydro Power, LLC

Project No. 2785-089

ORDER DENYING REHEARING AND STAY

(Issued February 19, 2015)

1. On October 15, 2014, Commission staff issued an order (October Order)¹ approving Boyce Hydro Power, LLC's (Boyce) Exhibit G drawings² for the Sanford Water Power Project No. 2785. The order required Boyce to investigate if all lands necessary for project purposes are included within the project boundary and, if necessary, to file an amendment application with the Commission, requesting approval of revisions to the project boundary, and revised Exhibit G drawings.³
2. On November 12, 2014, Boyce requested rehearing of the October Order, arguing that certain recreational facilities mentioned in the order need not be included in the project boundary. On December 9, 2014, Boyce requested that the Commission stay its October Order requirements pending resolution of Boyce's rehearing request. For the reasons discussed below, we deny Boyce's rehearing and stay requests.

Background

3. The 3.3-megawatt Sanford project is located on the Tittabawassee and Tobacco Rivers in Midland and Gladwin Counties, Michigan. The project is one of four

¹ *Boyce Hydro Power, LLC*, 149 FERC ¶ 62,027 (2014).

² Exhibit G is a required map that includes the location of a project and its principal features, the project boundary, and an identification of federal and non-federal lands within the boundary. *See* 18 C.F.R. § 4.41(h) (2014).

³ 149 FERC ¶ 62,027 at P 10.

hydroelectric projects that Boyce and its predecessors have operated on the Tittabawassee River.⁴ The Commission issued an original license for the project in 1987.⁵

4. License article 204 directed Boyce to file revised Exhibit G drawings.⁶ License article 404 required the licensee to file a recreation plan.⁷ In addition, standard license article 5 required Boyce to acquire and retain interests in non-federal lands and other property necessary or appropriate to carry out project purposes.⁸

5. Commission staff approved Boyce's revised Exhibit G drawings in 1988.⁹

6. The licensee filed the recreation plan required by article 404 on May 19, 2000, and the Commission modified and approved the plan in a July 10, 2001 order.¹⁰ Boyce's original plan and subsequent filings identified several access areas and facilities as project recreation sites, including a barrier-free fishing platform on the Sanford reservoir (fishing platform)¹¹ and modifications to the Sanford Village Park.¹² The portions of the Village Park providing project recreation include: (1) a sheet-pile seawall and railed, concrete platform along the tailrace of the project powerhouse; (2) a concrete extension to the existing tailwater boat ramp; (3) gravel surfacing for an existing drive and parking

⁴ Three different companies have operated the dams since the Commission licensed the projects: Wolverine Power Company (Wolverine), Synex Michigan LLC (Synex), and Boyce. We will refer to all three companies as Boyce.

⁵ *Wolverine Power Corp.*, 41 FERC ¶ 62,192 (1987).

⁶ *Id.*

⁷ *Id.* as amended by *Wolverine Power Corp.*, 85 FERC ¶ 61,066 (1998).

⁸ Ordering Paragraph (D), 41 FERC ¶ 62,192 (1988), incorporating by reference the standard license articles set forth in Form L-3 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States," printed at 54 F.P.C. 1817 (1975).

⁹ *Wolverine Power Corp.*, 42 FERC ¶ 62,236 (1988).

¹⁰ *Wolverine Power Corp.*, 96 FERC ¶ 62,027 (2001).

¹¹ *Synex Michigan LLC*, 119 FERC ¶ 62,108, at 64,309 (2007).

¹² 96 FERC at 64,041.

lot; (4) a paved trail along the river to connect to a nearby rails-to-trails park;¹³ and (5) an access area at the tailrace.¹⁴

7. In 2012, in the course of reviewing a request by Boyce for an extension of time to comply with certain license requirements, Commission staff discovered that the Exhibit G drawings were out-of-date and of poor quality. Staff therefore requested that Boyce update the 1988 drawings with drawings that complied with the Commission's regulations.¹⁵ From July 24, 2012 to February 4, 2014, Boyce submitted seven Exhibit G filings, all of which were deficient in various respects, resulting in repeated instruction from Commission staff to make corrections.¹⁶ During this multiple-year effort to bring Boyce's Exhibit G drawings into compliance, staff informed Boyce that the differing sets of drawings revealed some discrepancies in the project boundary and noted that, if the licensee needed to amend the boundary, it would need to file an amendment application to make any necessary changes.¹⁷

8. On October 15, 2014, Commission staff approved Boyce's most recent (February 4, 2014) Exhibit G drawings. However, staff determined that the project boundary did not include all lands necessary for project purposes. Specifically, staff found that Commission approved-recreation amenities near Sanford Dam were not within the project boundary. These included portions of the Village Park and the fishing platform.

9. Accordingly, staff ordered Boyce, within 180 days, to file an application to amend the project boundary to include all lands necessary for project purposes.¹⁸

¹³ *Boyce Hydro Power, LLC*, 149 FERC ¶ 62,027, at P 8, n.5 (2014) (citing *Wolverine Power Corp.*, 96 FERC ¶ 62,027, at 64,041 (2001)).

¹⁴ *Synex Michigan LLC*, 119 FERC ¶ 62,108, at 64,309 (2007) (approving Boyce's feasibility report); Synex August 9, 2006 Feasibility Report at 2 (describing Boyce's work to provide fishing access near the tailrace by giving the Village of Sanford design time and two acres of land).

¹⁵ Letter from Charles Cover to Lee Mueller (May 23, 2012).

¹⁶ *See Boyce Hydro Power, LLC*, 149 FERC ¶ 62,027, at PP 2-8 (2014).

¹⁷ Letter from Charles Cover to Lee Mueller (May 1, 2013).

¹⁸ *Boyce Hydro Power, LLC*, 149 FERC ¶ 62,027, at ordering paragraph (C) (2014).

10. The October Order also directed Boyce to show that it is complying with standard license article 5. When the Commission licensed the project in 1987, Boyce owned all areas on either side of the dam as well as the reservoir's bottomlands.¹⁹ In 2010, Commission staff discovered that Boyce did not possess the necessary property rights for lands serving project purposes. Boyce had lost much of this land in tax sales and also sold other parcels without Commission approval. Commission staff directed Boyce to gain sufficient control over lands that served project purposes.²⁰ Staff directed Boyce to file a report every three months documenting how it was attempting to acquire control, and set a final compliance deadline for April 19, 2013.²¹ Boyce missed this compliance deadline and has not filed a quarterly report since April 30, 2012.²²

11. The October Order stated that Boyce is violating license article 5 and that its updated Exhibit G drawings failed to bring Boyce into compliance.²³ According to the October Order, the drawings do not clearly show that Boyce has all necessary property rights within the project boundary, including flowage rights for certain forfeiture tax parcels and property rights for areas of the reservoir adjacent to a nearby subdivision (Ferro's Subdivision).²⁴ Staff ordered Boyce to show, within 60 days, that it has complied with article 5 and describe how it will change its Exhibit G drawings to address the aforementioned concerns.²⁵

12. On November 11, 2014, Boyce filed a timely request for rehearing of the October Order, and, on December 9, 2014, filed a request to stay all of the October Order's compliance requirements.

Discussion

13. On rehearing, Boyce contends that the Commission erred in requiring Boyce to expand its project boundary to include portions of the Village Park and the fishing

¹⁹ Wolverine Application, 32 (1983).

²⁰ Letter from Charles Cover to Lee Mueller (April 19, 2010).

²¹ Letter from Charles Cover to Lee Mueller (May 23, 2012).

²² Letter to Kimberly Bose from John Clements (April 30, 2012).

²³ *Boyce Hydro Power, LLC*, 149 FERC ¶ 62,027, at P 11 (2014).

²⁴ For example, it is not clear from Exhibit G-2 that Boyce possess property rights adjacent to Ferro's Subdivision. *Id.*

²⁵ *Id.* at ordering paragraph (D).

platform. Boyce does not allege that it is aggrieved by the October Order, but claims that these facilities are not portions of its approved recreation plan and including the facilities within the project boundary is unnecessary. Boyce does not take issue with the October Order's findings and conclusions with respect to the lack of compliance with standard article 5.

14. In its subsequent request for stay, Boyce asked that the Commission stay the October Order's standard article 5 and Exhibit G project boundary compliance requirements pending resolution of the rehearing request. If we do not grant rehearing, Boyce asks that we revise the compliance deadlines to run from the rehearing order date.

Boyce's Rehearing Request

15. The Commission must ensure that hydroelectric facilities are operated in the public interest. To that end, the Federal Power Act directs the Commission, when licensing a project, to require the licensee to undertake appropriate measures on behalf of both developmental and non-developmental public interest uses, including recreation.²⁶ These measures, as reflected in the license requirements, are the "project purposes."²⁷ In the case of recreation, the Commission may, as it did here, require a licensee to submit for approval a recreation plan to secure the development and maintenance of adequate public recreational facilities.²⁸ Facilities that serve a project purpose—such as recreation—must be included in a project boundary.²⁹

16. In its October Order, Commission staff noted that two recreational amenities required by the license for project purposes – portions of the Village Park and the fishing platform – were not included within the project boundary, as they should be. Boyce claims that the October Order was the first time the Commission ever identified either as project recreation. This is incorrect: as discussed below, Boyce identified both facilities as project recreation sites in its approved recreation plans.

17. In licensing the Sanford Project, the Commission documented high public and private recreational use on the Sanford reservoir.³⁰ To meet recreational needs, the

²⁶ *Wis. Pub. Serv. Corp.*, 104 FERC ¶ 61,295, at 62,088 (2003) (citing 16 U.S.C. §§ 797(e), 803(a)(1)).

²⁷ *Id.*

²⁸ 18 C.F.R. § 4.41(f)(7) (2014).

²⁹ *See, e.g., Portland Gen. Elec. Co., et al.*, 117 FERC ¶ 61,112 (2006).

³⁰ *Wolverine Power Corp.*, 41 FERC ¶ 62,192 (1987).

license directed Boyce to plan for future recreational use and prevent overuse.³¹ License article 404 required Boyce to submit a recreational development plan identifying the development of public access at the reservoir and to the downstream Tittabawassee River. The plan was required to discuss the short- and long-term need for recreational facilities and provide a timetable for their construction.³²

18. Boyce first identified portions of the Village Park as project recreation in its May 11, 2000 recreation plan. Boyce's plan described several recreational amenities to meet area demand: access to the river and reservoir from Boyce's earthen embankment; recreational facilities and access to the reservoir and river at the Midland County Sanford Lake Park; river access at portions of the existing Village Park;³³ and new facilities and upgrades to the Village Park to be completed with the Village of Sanford.³⁴ These new and upgraded facilities are portions of the Village Park that Boyce now claims are not part of its recreation plan.³⁵ As described in its plan, the facilities are downriver from and adjacent to the power house and include: (1) a sheet-pile seawall and railed, concrete platform along the tailrace of the project powerhouse to provide river access; (2) a concrete extension to the existing tailwater boat ramp; (3) gravel surfacing for an existing drive and parking lot; and, (4) a paved trail along the river to connect to a nearby rails-to-trails park. Boyce described these facilities in its plan as recreation enhancements needed at the project in the short term,³⁶ and proposed to develop the facilities in cooperation with the Village of Sanford. Under Boyce's agreement with the Village, Boyce would provide \$10,000 in cash, labor, supplies, and donated land to implement the plan, and the

³¹ *Id.* at 14.

³² *Id.* at ordering paragraph (D).

³³ Boyce noted that the public could already access the Tittabawassee River at the Village Park, and listed "a boat ramp, rest rooms, and park facilities." Wolverine Power Corp. May 19, 2000 Recreational Plan for Sanford (Recreational Plan), Project No. 2785-021. Commission staff noted that these facilities included ball fields, a playground, a pavilion, a boat ramp, restrooms, and a parking lot. *Wolverine Power Corp.*, 96 FERC ¶ 62,027, at 64,041 (2001).

³⁴ 96 FERC at 64,041.

³⁵ Boyce's Request for Rehearing, at 1 (Nov. 11, 2014).

³⁶ *Wolverine Power Corp.*, 96 FERC ¶ 62,027 (2001).

Village would partially fund and fully maintain the new facilities as part of the Village Park.³⁷

19. On July 10, 2001, Commission staff approved Boyce's plan with an additional filing requirement: staff directed Boyce to consider additional shoreline fishing access near the project powerhouse on the reservoir. Ordering paragraph (B) directed Boyce to submit a feasibility report assessing shoreline fishing within 90 days.³⁸

20. Boyce filed two shoreline feasibility reports, both of which identify portions of the Village Park and the fishing platform as project recreation. Boyce submitted its first feasibility report on August 9, 2006, and supplemented it on January 3, 2007. Boyce claimed that additional shoreline fishing access on the reservoir and Tittabawassee River was unnecessary because Boyce has "provided for the access and needs of the public required under [its] license" through several new and proposed facilities.³⁹ Of interest in this proceeding is a facility and access area in Boyce's report: (1) an area near the tailrace outlet that Boyce added to the Village Park to improve fishing access; and (2) the fishing platform on the reservoir's south shore constructed in cooperation with the Village of Sanford. Boyce provided Sanford Village with \$10,000 to construct the platform, which Sanford Village owns, operates, and maintains. Boyce argued that additional shoreline access to the reservoir at the powerhouse would be unsafe and, in light of the proposed facilities, unnecessary.⁴⁰

21. Commission staff approved Boyce's plan on May 8, 2007, but again, with an additional filing requirement.⁴¹ Staff agreed that all of the facilities identified by Boyce

³⁷ Recreational Plan at 4.

³⁸ 96 FERC ¶ 62,027.

³⁹ These facilities and access areas included: (1) a fishing platform on the reservoir's south shore, which Boyce had contributed \$10,000 to the Village of Sanford to construct; (2) a proposed expansion of the Village Park to the tailrace outlet; (3) a proposed boat trailer, overflow parking lot, and fishing pier and platform at the Sanford Lake Park; and (4) pursuant to a Michigan Department of Natural Resources recommendation, a trail from the proposed Sanford Lake Park fishing platform to the base of the spillway allowing angler access to the tailrace area. *Synex Michigan LLC*, 119 FERC ¶ 62,108 (2007).

⁴⁰ *Id.*

⁴¹ *Id.*

met project purposes, but required that Boyce submit a report to ensure that Boyce completed other recreational improvements not at issue in this proceeding.⁴²

22. On May, 1 2007, Boyce filed a recreation plan for three of its other projects⁴³ that also addressed a Michigan Department of Natural Resources (Michigan DNR) request for fishing access at the Sanford project. Michigan DNR asked Boyce to consider moving the boat barrier and repositioning a fence to provide public fishing and swimming access at the Sanford site. Boyce opposed Michigan DNR's request both on safety grounds and based on the "tremendous fishing opportunity that [Boyce has] provided and that which is being provided by the Midland County parks."⁴⁴ Commission staff treated the recreation plan filing for the other three projects as a second feasibility report for the Sanford project. Staff agreed with Boyce's assessment, noting that facilities identified in previously approved filings and future improvements by the Midland County Park Service would provide sufficient fishing access.⁴⁵

23. Throughout the three recreation plan filings, Boyce did not simply characterize portions of the Village Park and the fishing platform as existing recreational facilities in the project vicinity. It proposed the Village Park expansion to provide needed recreation in its initial recreation plan.⁴⁶ It also worked with the Village of Sanford to expand the Village Park to its tailrace and to build a fishing platform while it was considering whether or not it could provide the impoundment fishing recommended by the July 10, 2001 Order's ordering paragraph (B).⁴⁷ Boyce then relied on the Village Park modifications and fishing platform to meet project purposes in lieu of the impoundment

⁴² Commission staff required Boyce to report on the proposed Sanford Lake Park expansion. The required report was to include drawings of the existing and newly constructed facilities, and additional information on the expansion's status. *Id.* The report was due October 12, 2007, but never filed.

⁴³ The Edenville (P-10808), Secord (P-10809), and Smallwood (P-10810) Projects.

⁴⁴ Final Recreation Plan for the Secord, Smallwood, Edenville, and Sanford Dams, Project Nos. 2785-065, 10809-032, 10810-036, 10808 (May 1, 2007) (Letter to Kyle Kruger, Michigan Department of Natural Resources, from David Moore (January 11, 2007)).

⁴⁵ *Boyce Hydro Power, LLC*, 124 FERC ¶ 62,041 (2008).

⁴⁶ Wolverine Power Corp. May 19, 2000 Recreational Plan for Sanford, Project No. 2785-021.

⁴⁷ Synex August 9, 2006 Feasibility Report at 2, Project No. 2785-021.

fishing.⁴⁸ As project recreation, both the portions of the Village Park and the fishing platform must be within the project boundary.

24. Boyce argues that these facilities are not project recreation facilities because its filings only proposed that Boyce pay one-time construction payments.⁴⁹ It states that the plan made clear that the Village Park was a pre-existing, non-project facility and it was not proposing to accept responsibility for future maintenance. As for the fishing platform, Boyce claims the Commission has never categorized it as a project recreational facility.

25. The test for determining whether a recreational facility should be within the project boundary is not, as Boyce suggests, whether the licensee maintains the facility, but rather whether the facility is needed to provide public recreation. As a general rule, all facilities, lands, and waters needed to carry out project purposes should be within the project boundary.⁵⁰ The Commission requires a project boundary to include all project recreation.⁵¹ The licensee is free to make arrangements with other entities, including counties and municipalities, to construct, manage, and maintain approved recreational facilities, and the Commission encourages such arrangements in its regulations.⁵² However, the licensee remains ultimately responsible for those facilities so that the Commission, through its licensee, retains the ability to obtain compliance with these

⁴⁸ *Synex Michigan LLC*, 119 FERC ¶ 62,108, at 64,309, ordering paragraph (A) (2007).

⁴⁹ Boyce's Request for Rehearing, at 8 (Nov. 11, 2014).

⁵⁰ *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270, at P 32 (2006).

⁵¹ *Portland Gen. Elec. Co., et al.*, 117 FERC ¶ 61,112, at 61,573-74 (2006). It is true that there may be sufficient recreation facilities at a project reservoir such that the Commission will not require that they all be considered project recreation. For example, if project facilities include enough boat ramps to ensure public access, the Commission may not consider that other ramps operated by governmental or private entities to be project facilities. That is not the case here, however, where the Commission, at the licensee's suggestion, specifically approved the facilities as issue as part of the project recreation plan.

⁵² 18 C.F.R. § 2.7 (d)-(e) (2014).

requirements.⁵³ If the other entity fails to operate the recreation facility as required by the license, the licensee must ensure that the license condition is satisfied.⁵⁴

26. As discussed, portions of the Village Park and the fishing platform are project recreational facilities. Boyce cannot both ask us to determine that it is meeting its public recreation obligations based on the existence of these facilities and also claim that the facilities are not project recreation sites and that its sole responsibility for the facilities consisted of making one-time payments to improve them. The Commission requires project facilities be maintained and places this responsibility on the licensee.⁵⁵ A licensee cannot satisfy this obligation by a simple payment to another party, nor can this obligation be limited by a particular dollar figure.⁵⁶ It is appropriate for the Village of Sanford to fund, operate, and maintain the fishing platform and portions of the Village Park, but because these facilities serve a project purpose throughout the license term, they must be included in the project boundary.

27. The Commission has excluded certain lands and waters serving a project purpose from the boundary, but only in limited circumstances. When the licensee will carry out a single measure on lands and waters, those areas may be excluded so long as the measure is of a one-time nature.⁵⁷ Although the Commission will occasionally approve a proposal

⁵³ See *Smith Falls Hydropower*, 56 FERC ¶ 61,279, at 62,091 (1991); *Ohio Power Co.*, 71 FERC ¶ 61,092, at 61,314 n.40 (1995).

⁵⁴ See, e.g., *Portland Gen. Elec. Co., et al*, 117 FERC ¶ 61,112 (2006); *Cal. Dep't of Water Res.*, 91 FERC ¶ 61,176 (2000); *Upper Peninsula Power Co.*, 85 FERC ¶ 61,245 (1998); *Indiana Michigan Power Co.*, 82 FERC ¶ 61,274 (1998); *Pub. Serv. Co. of N.H.*, 75 FERC ¶ 61,333 (1996); *Cal. Dep't of Water Res.*, 68 FERC ¶ 61,358 (1994); *Smith Falls Hydropower*, 56 FERC ¶ 61,279 (1991).

⁵⁵ See *Portland Gen. Elec. Co., et al.*, 117 FERC ¶ 61,112, at 61,573-74 (2006).

⁵⁶ See *Settlements in Hydropower Licensing Procedures Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 (2006); *Va. Elec. Power Co.*, 110 FERC ¶ 61,241, at 61,914 (2005).

⁵⁷ *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270, at P 33 (2006). For example, when a one-time financial contribution can fulfill the project purpose for which the contribution is intended, then that measure may be excluded from the project boundary. See, e.g., *Pub. Util. Dist. No. 1 of Chelan Cnty*, 107 FERC ¶ 61,280, at P 148 (2004) (contributing funds for habitat restoration); *Pac. Gas & Electric Co.*, 97 FERC ¶ 61,084 (2001) (adding spawning gravel to creek, removing portions of a weir, building spawning channels, and installing terraced planting sites).

by a licensee to make a one-time payment to improve a recreation facility (for example, by making improvements to a Forest Service campground) and not include that facility in the project boundary, this is because the licensee has no ongoing responsibility with respect to that non-project facility.⁵⁸ In this case, however, Boyce has repeatedly characterized the facilities at issue as satisfying its obligation to meet both the short- and long-term recreation needs of the public in the project area. Further, there are no other recreation sites in the area that can meet those specific needs. The fact that its obligations to date with respect to those facilities have been limited to making single payments does not diminish the significance of the facilities to project recreation or mean that Boyce will not in the future incur additional obligations regarding them. Accordingly, we find that Boyce must include the facilities within the project boundary.

28. We are not requiring Boyce to immediately assume maintenance responsibilities. Nor are we requiring Boyce to obtain control over the recreational facilities by acquiring property rights because the need for public recreation is currently being satisfied through the ongoing efforts of Sanford Village. If, however, this is no longer the case at some future point, we may direct Boyce to maintain the facilities and obtain any necessary property rights in order to meet its obligations to the public.

29. Finally, Boyce argues that including the contested facilities within the project boundary is unnecessary. Boyce points out that Sanford Village has and will continue to maintain the facilities and adding the facilities to the project boundary would not enhance area recreation.⁵⁹ It adds that the Commission has the authority to require Boyce to undertake additional recreational development, should circumstances warrant, but that the Commission does not need to do so at this time.

30. As discussed, the Commission will not allow recreational facilities that serve a project purpose to be excluded from the project boundary simply because an entity other than the licensee operates and maintains those facilities.⁶⁰ These facilities are already part of the Boyce's recreation plan and must be added to the project boundary.

⁵⁸ *City of Tacoma, Wash.*, 132 FERC ¶ 61,037, at P 217 (2010) (approving a one-time contribution for a Forest Service campground when the campground was not project recreation and the licensee operated eight other recreational facilities).

⁵⁹ Boyce's Request for Rehearing, at 9 (Nov. 11, 2014).

⁶⁰ *See, e.g., Portland Gen. Elec. Co., et al.*, 117 FERC ¶ 61,112, at 61,573-74 (2006).

Boyce's Stay Request

31. In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act, that is, the stay will be granted if the Commission finds that “justice so requires.”⁶¹ In assessing a request for stay, we consider several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁶² Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.⁶³

32. On December 9, 2014, Boyce requested that the Commission stay the October 15, 2014 Order's article 5 and Exhibit G project boundary compliance requirements pending resolution of the rehearing request. Boyce states that, “[c]onsistent with the Rehearing Request, Boyce submits that it is in compliance with standard article 5 and no changes are needed to the approved Exhibit G drawings.”⁶⁴ It asks that the Commission stay the compliance requirements until we grant rehearing, or if we do not grant rehearing, reinstate the compliance deadlines to run from the rehearing order date.

33. The October Order's ordering paragraph (C) directed Boyce to file an amendment application for revisions to the project boundary to include all lands necessary for project purposes within 180 days (by April 13, 2015). Ordering paragraph (D) directed Boyce to show compliance with standard article 5 and describe the changes it will make to the Exhibit G drawings to clearly indicate its property rights on all lands within the project boundary, including property rights adjacent to Ferro's Subdivision and the flowage rights for forfeiture tax parcels. Alternatively, ordering paragraph (D) directed Boyce to file a compliance plan and schedule. Boyce had to comply with ordering paragraph (D) within 60 days (by December 15, 2014).

34. We will not grant Boyce's stay requests. The ordering paragraph (C) requirements, and consequently Boyce's stay request, are broader than Boyce's rehearing request. Boyce's rehearing only challenged our request that it amend its project boundary to include portions of the Village Park and the fishing platform. Our October Order underscored that both needed to be included within the boundary, but also

⁶¹ 5 U.S.C. § 705 (2012).

⁶² See, e.g., *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at 61,649 (2005).

⁶³ See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

⁶⁴ Boyce's Request for Stay, at 2 (December 9, 2014).

directed Boyce to investigate if all lands necessary for project purposes are included within the project boundary and amend its boundary accordingly.

35. Similarly, the October Order's ordering paragraph (D) article 5 compliance requirements are unrelated to Boyce's rehearing request. For example, staff requested that the Exhibit G drawings account for property rights near Ferro's Subdivision and the flowage rights for forfeiture tax parcels. These requests have nothing to do with the rehearing's contested recreational facilities. Moreover, Commission staff specifically asked that Boyce show article 5 compliance within 60 days of the October Order; well before the 180 day deadline for Boyce to amend its project boundary to include recreational facilities.

36. As demonstrated above, Boyce has been in non-compliance with various aspects of its license for many years. The public interest requires it to promptly come into compliance: staying the deadlines would be contrary to that goal. Boyce has failed to show why extensions should be granted for those October Order's ordering paragraphs (C) and (D) requirements that are unrelated to its rehearing request. Similarly, Boyce has failed to explain why we should extend the time for it to comply with ordering paragraph (C)'s requirements for portions of the Village Park and the fishing platform. Boyce still has until April 13, 2015, to comply with ordering paragraph (C), but has not justified staying its obligations. Accordingly, we deny Boyce's stay requests.

The Commission orders:

(A) The request for rehearing filed on November 12, 2014, in this proceeding by Boyce Hydro Power, LLC is denied.

(B) The request for a stay filed on December 9, 2014, in this proceeding by Boyce Hydro Power, LLC is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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