

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 2785-078--Michigan
Sanford Project
Boyce Hydro Power, LLC

Mr. Lee Mueller
Boyce Hydro Power, LLC
4132 S. Rainbow Blvd #247
Las Vegas, Nevada 89103

APR 19 2010

Dear Mr. Mueller:

It has recently come to our attention, that Boyce Hydro Power, LLC (Boyce Hydro) may not possess the necessary property rights to the Sanford Lake reservoir to operate and maintain the Sanford Water Power Project No. 2785. It appears that property taxes were not paid for a number of parcels located in Sanford Lake and that, as of March 31, 2010, Midland County obtained fee simple title to the properties.

Standard Article 5 of the Sanford license requires, in pertinent part:

The Licensee ... or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission. . . .

Because the Commission has jurisdiction only over its licensees, the purpose of Article 5 is to ensure that the licensee has sufficient rights in project property to enable the Commission, through its licensee, to carry out its regulatory responsibilities with respect to the project.¹

¹*Seneca Falls Power Corporation*, 129 FERC ¶ 61,132 P 9 (2009).

Here, contrary to the requirements of Article 5, by failure of Boyce Hydro to pay the taxes, Midland County instituted foreclosure proceedings and obtained fee simple ownership of the properties. Contrary to the project-control requirements of Article 5, Boyce Hydro failed to retain sufficient authority over the project to ensure that it could carry out its responsibilities under the license.²

Section 4(e) of the FPA, 16 U.S.C. § 797(e) (2006), authorizes the Commission to “issue licenses ... for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development, transportation, and utilization of power” The FPA defines “project works” to include all water conduits and dams that are part of the unit of power development; all storage, diverting, or forebay reservoirs directly connected therewith; and all ditches, dams, and reservoirs that are necessary or appropriate in the maintenance and operation of the development unit.³ A Commission case that provides additional explanation of this matter is *Pacific Gas and Electric Company*, 102 FERC ¶ 61,309 (2003), and the order on rehearing of that order, 105 FERC ¶ 61,113 (2003).

For your project, the original license states that the project includes a reservoir named Sanford Lake with a surface area of about 1,526 acres and a gross storage of about 15,000 acre-feet. Your project boundary must include any and all reservoirs contributing to the complete unit of development of the project.

To cure the breach of the project-control requirements of your license, you must either reacquire the project’s reservoir or enter into an appropriate easement with Midland County.⁴

² See, e.g., *Greenwood County, South Carolina*, 73 FERC ¶ 61,336 at 61,946-48 (1995) (finding a lease of project property that gave a non-licensee/lessee control over the project’s power generation conflicted with the project-control requirements of Article 5).

³ FPA section 3(11), 16 U.S.C. § 796(11) (2006).

⁴ See, e.g., *Duke Energy Corporation, Duke Energy Fossil-Hydro, LLC and Duke Energy Nuclear, LLC*, 97 FERC ¶ 61,177 at 61,824-25 (2001), citing *City of Fayetteville Public Works Commission*, 16 FERC ¶ 61,209 at 61,457 (1981) (Any non-licensee that controls rights necessary to fulfill requirements of the project license must either convey them to the licensee or become a licensee itself).

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Within 12 months of the date of this letter, Boyce Hydro must file evidence demonstrating that it has sufficient control over project works and project operations to carry out its responsibilities under the license. The licensee must file a report within three months of the date of this letter and every three months thereafter documenting what actions it has taken towards demonstrating that it has acquired this control. This letter constitutes notice under section 31(a) of the Federal Power Act (FPA). Under section 31, the Commission is authorized to assess you civil penalties up to a maximum of \$11,000 per day, per violation, for failure to comply with the terms and conditions of your license. The Commission may also revoke your license or take other enforcement actions.

In addition, within 30 days from the date of this letter, please inform us of the status of your property interests in the three upstream licensed projects – Edenville Project No. 10808, Secord Project No. 10809, and Smallwood Project No. 10810.

If you have any questions regarding project control, please contact Steven Sachs at (202) 502-8666 or by e-mail at Steven.Sachs@ferc.gov.

Sincerely,



Charles K. Cover, P.E.
Engineering & Jurisdiction Branch
Division of Hydropower Administration
and Compliance