

January 18, 2011

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

Re: Project No. 2785 (Sanford)

*Status Report on Property Interests
And Request for Extension of Time*

Dear Ms. Bose:

As requested by the Commission staff during a January 5, 2011, discussion concerning property rights for the subject projects, Boyce Hydropower, LLC (“Boyce”), licensee for the referenced project, hereby submits this status report concerning Boyce’s efforts to ensure compliance with standard Article 5 of the license for the Sanford Project No. 2785.

As discussed at the January 5 meeting, Boyce has in recent months conducted extensive title research and topographic mapping of property tax lots in relation to the project boundary, which revealed that many tax lots within the project boundary are not owned by Boyce because its predecessors in interest conveyed to adjacent property owners numerous parcels of land from the contour line which defines the approved project boundary down to the ordinary high water mark of the project reservoir. This practice began in the 1930s and continued following issuance of the Sanford original license in 1987 until the project was acquired by Boyce in 2006. Thus, the Article 5 issue existed for nearly two decades before Boyce acquired the project. Moreover, these conveyances were apparently never authorized by or reported to the Commission by Boyce’s predecessor and many of them were never recorded with the Midland County Register of Deeds, so Boyce had no reason to be aware of them when it acquired the project. The owners of many of the conveyed lots have also placed structures, including year-round residences, within the project boundary. In addition, title to many other lots within the project boundary was lost by adverse possession under Michigan law as a result of adjacent landowners placing structures on and otherwise exclusively occupying project lands. The owners, however, have not

recorded their titles. In sum, Boyce has inherited a mess which did not become evident to Boyce until 2008, about two years after Boyce became the licensee.

As a result of this longstanding situation, which has had no effect on Boyce's ability to meet the operating, environmental, and recreational requirements of the project licenses, Boyce has been receiving tax bills from Midland County for 27 separate tax parcels comprising, in part, an estimated forty acres of property which it does not own, and which does not appear to serve any project purpose. To ensure the economic viability of this small (3.3 MW) project and the benefits the project reservoir provides to the surrounding community, Boyce is working vigorously to rectify the situation, as discussed below.

The economic viability of the Sanford Project is particularly at risk owing to the need for extensive and very costly dam safety work to, among other things, revamp the original toe drain system and install significant new mass (earth fill and crushed stone) to the downstream slope of the earthen embankment for which current generation revenues provide insufficient funds. Boyce is diligently attempting to remedy this situation. These efforts include increasing revenues by responding to an RFP from Detroit Edison to receive renewable energy credits,¹ seeking Federal and State grants² and the formation by property owners adjacent to the project lands of a special benefit tax assessment district.³ All of these potential sources of revenue are being actively pursued, but Boyce cannot say when or if relief will be forthcoming. If these efforts are unavailing, Boyce may be forced to surrender the license and drain the project reservoir, which would be to no one's benefit.

As previously indicated,⁴ Boyce relinquished ownership of several parcels of land under and surrounding the Project reservoir through a tax forfeiture, as a result of which the parcels are now owned by Midland County.⁵ The foreclosed upon lands include the abovementioned lands conveyed by Boyce's predecessors and the lands lost via adverse possession. With regard to lands inundated by the project reservoir, Boyce has offered to negotiate a flowage easement or lease of

¹ The deadline for submitting the RFP is February 17, 2011.

² A USDA grant application was forwarded to Boyce by the office of Congressman Dave Camp.

³ Boyce recently discussed this possibility with members of the Sanford Lake Association and Sanford Lake Improvement Board, which currently collects annual fees from its members for noxious weed control.

⁴ Letter to William Guey-Lee, FERC, from Lee W. Mueller, Boyce, filed August 9, 2010, in Project No. 2785 (Accession No. 20100809-5108).

⁵ This does not include the lands on which the project dam, dikes, powerhouse, and recreation facilities are located. The taxes on those lands are paid in full.

the lands underlying the project reservoir with the County Board of Supervisors that will enable the project to remain viable. Boyce met with County officials on July 29, 2010. Since then, ongoing discussions have been occurring between the attorney for Boyce and the attorney representing the Midland County Board of Commissioners. To date, potential solutions have been discussed and a non-disclosure agreement has been provided to Midland County for consideration prior to discussing the economic situation of Boyce and certain funding or disposition options for the Sanford Dam. The next meeting on the subject involving Midland County is January 24th. If Boyce is unable to obtain an easement on terms that preserve the economic viability of the project, it will have to determine what other options may be available at that time, which may include surrender of the license and permanent draining of the reservoir.

As to the Project lands now owned by the County between the reservoir high water mark and the project boundary, Boyce believes that most, if not all, of these lands no longer serve any project purpose. Not only are there dozens of structures, including year-round residences on this land, it does not include any of the facilities necessary for generation or designated in the license for recreation or wildlife. In other circumstances, Boyce would develop materials necessary to support an application to amend the Project license to exclude as much of these lands and improvements as is consistent with Commission policies and the license specific conditions. However, Boyce is very reluctant to incur the effort and expense of developing an amendment application to that end when the very continuation of a licensed project is in doubt and the application might be swiftly followed or superseded by a surrender application. For that reason, Boyce requests that the Commission defer any potential compliance action with respect to such lands until Boyce is in a position to know whether it will be able to continue operating the licensed project. That, of course, will depend on the outcome of negotiations with the County regarding the inundated lands.

The Commission has directed Boyce to demonstrate by April 19, 2011, that it has regained sufficient rights to carry out its responsibilities as the licensee.⁶ As discussed above, Boyce will not be able to resolve the difficult issues pertaining to this project in that time frame. Boyce therefore requests in light of the foregoing discussion that the Commission extend the deadline for an additional year. During this period, Boyce proposes to provide the Commission with quarterly reports⁷ while events play out explaining what specific actions have been taken and are planned to be taken to resolve the Commission's Article 5 concerns.

⁶ Letter to Lee Mueller, Boyce, from Charles K. Cover, Division of Hydropower Administration and Compliance, issued April 19, 2010, in Project No. 2785 (Accession No. 20100420-0558), at p. 3.

⁷ Due March 15, June 15, September 15, and December 15.

In closing, Boyce appreciates the opportunity to clarify the situation pertaining to the Sanford Project and is as anxious as the Commission for these difficult and complex issues to be resolved. If you have any questions or concerns, please contact me at 202-298-1933 or Mr. Lee Mueller at 702-367-7302.

Sincerely,



John H. Clements
Counsel to Boyce Hydro Power LLC

Cc: Edward Abrams
William Guey-Lee
Kirk Cover
Keith Brooks
Lee Mueller
Jay Brown