

BOYCE HYDRO POWER LLC

A W.D. Boyce Trusts Legacy Enterprise

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23 September, 2013

Secretary Bose

Federal Energy Regulatory Commission

888 First Street, N.E., Routing Code: PJ-13

Washington, D.C. 20426

Re: FERC Project Nos. 2785 and 10808

August 22, 2013, Letter Regarding

Recreation Compliance Matters

Secretary Bose: This letter is filed in response to the Federal Energy Regulatory Commission's ("Commission") letter issued August 22, 2013, regarding allegations made by the Michigan Department of Natural Resources ("MDNR") that Boyce Hydro Power, LLC ("Boyce"), licensee for the referenced projects, is not in compliance with license requirements pertaining to public recreation access¹.

The Commission's letter discusses recreation requirements at the projects established by license articles, including standard Articles 17 and 18, and Commission orders issued in response to submissions by Boyce, and requests that Boyce address (1) how public recreation is provided at the projects pursuant to these requirements and (2) respond to MDNR's allegations of violations.

Boyce is actively engaged and working through the issues identified in the Commission's letter and has consulted with MDNR in that regard. However, there has been no agreement with MDNR because it has a fundamentally different view than Boyce of public safety and project security issues at licensed projects. This response addresses the issues identified by the Commission's letter to the extent possible, but also requests a meeting with Commission senior staff in Washington, DC, to fully explain, with detailed maps, the measures Boyce has taken to secure public safety and project security, the consistency of those measures with measures taken by other licensees in Michigan, and the actions Boyce is taking to ensure that reasonable public recreation access requirements at the projects will continue to be met.

Sanford Project

The Commission's letter recounts two specific allegations of non-compliance at the Sanford Project. First, it is alleged that "all of the access points on the north side of [Sanford Dam] have been blocked off" by a fence that extends into the water and by signage, and that these areas were formerly open to all public uses other than camping². Second, the letter alleges that the public can no longer walk from Sanford Lake Park on the north side of the dam to the south side of the dam because the access route was eliminated by fencing and signage³.

There are multiple recreation opportunities at the Sanford Project, provided in compliance with the approved recreation plan, as described in the Commission's orders⁴. The licensee contributed a significant amount of land to the Village of Sanford to use as a public park and boat launch in the tailrace below the powerhouse and dam, as well as shoreline fishing in the area. The licensee also contributed funds to the Village of Sanford for a handicapped accessible fishing deck, located about one thousand feet downstream of the powerhouse on the east bank of the Tittabawassee River. In addition, on the eastern shore of Sanford Lake at the end of the dam's earthen embankment is a public park operated by Midland County with a boat ramp and recreational access to the lake. There is also a canoe portage on

¹ Letter to Mr. Lee Mueller from Robert J. Fletcher, Chief, Land Resources Branch, Division of Hydropower Administration and Compliance, Project No. 2785-085 (Aug. 22, 2013) (Commission Letter).

² Commission Letter at 2.

³ Commission Letter at 2.

⁴ See *Wolverine Power Corp.*, 41 FERC ¶ 61,292 (1987) (Order Issuing License); *Wolverine Power Corp.*, 96 FERC ¶ 62,027 (2001) (Modifying and Approving Recreation Plan); *Synex Michigan LLC*, 119 FERC ¶ 62,108 (2007) (Modifying and Approving Recommendations on Public Access for Fishing); and *Boyce Hydro Power, LLC*, 124 FERC ¶ 62,041 (2008) (Approving Recreation Feasibility Report).

the eastern bank of Sanford Lake, which has signs marking the path of travel from the upstream area to the downstream area.

Consistent with the provisions of Standard Article 18, Boyce has installed fencing and signage at the Sanford Project to secure the project powerhouse, spillways, and the earthen embankment dam. Boyce looks forward to an opportunity to demonstrate that these measures are necessary, consistent with security fencing at other licensed projects in Michigan, and cause no unreasonable impairment of the ability of recreationists to use the facilities identified above or other project lands and waters.

Edenville Project

The Commission's letter requests Boyce respond to the following allegations that Boyce: (1) constructed exclusionary fences; (2) removed the fishing access path; (3) installed "No Trespassing" signs; (4) closed the M-30 parking area for fishing access; (5) posted exclusionary signs at the main entrance gate; (5) installed a heavy gauge wire downstream boat barrier across the Tittabawassee River about 300 feet downstream of the tailrace with a "No Trespassing" sign on it; (6) closed the east and west downstream sides of the river; (7) eliminated the canoe portage; (8) removed the restrooms; and (9) installed fencing and gates at the main entrance access.

Initially, I note that there are multiple recreational opportunities available at the Edenville Project. There are three designated fishing areas at the Edenville Dam. Two fishing platforms have already been constructed on the Edenville Dam earthen embankment for reservoir fishing. A third fishing area is currently being prepared for public access below the Tobacco Spillway structure (tailrace area) on the east side of the Tobacco River and should be ready for use by November 15, 2013.

With regard to specific allegations (1) - (3), (6), and (8) above, Boyce has, consistent with Standard Article 18, installed security fencing and signage to secure the powerhouse, spillway, and portions of the earth embankment dam. At the requested meeting, Boyce will provide maps showing the specific location of the fencing and justification for this measure.

Regarding (4), the M-30 parking area has been closed. It is not located on project lands and is not a project facility. Boyce's intention is not to prevent fishing access. Rather, Boyce is seeking to provide an alternative parking area and handicapped accessible toilet facilities within the project boundary to serve all three fishing areas. To that end, it is seeking a permit from the Michigan Department of Transportation for a new driveway entrance from M-30. The Commission is well aware of the downstream boat barrier in (5). As directed in the Commission's August 1, 2013, letter regarding the boat barrier, Boyce has removed barbed wire from the boat barrier and is preparing an update to the Project Safety Plan to reflect the current safety devices and signage. The updated PSP for the Tittabawassee River side of the Edenville Dam will be filed on or about Wednesday, 2 October, 2013. Finally, regarding (9), MDNR's allegation notwithstanding, there remains a functional canoe portage on both the Tobacco River and the Tittabawassee River side of the Edenville Dam.

Boyce looks forward to an opportunity to fully discuss all these matters with the Commission staff. Boyce asks that the requested meeting take place on Wednesday, 30 October, 2013, but if that date is not feasible we will work with the Commission to identify an alternative date.

Sincerely yours,



Lee W. Mueller, Co-Member Manager
Boyce Hydro Power, LLC

LWM/wp

cc: Robert Fletcher, DHAC
Frank O. Christie, P.E.

William Allerton, D2SI
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