

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Boyce Hydro Power, LLC) **Project No. 10808-058**

**ANSWER OF BOYCE HYDRO POWER, LLC, TO MOTION
TO INTERVENE OF WIXOM LAKE ASSOCIATION**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2017), Boyce Hydro Power, LLC (“BHPLLC”), licensee for the Edenville Project No. 10808 (“Project”), hereby files this “Answer of Boyce Hydro Power, LLC, to Motion to Intervene of Wixom Lake Association.” BHPLLC does not oppose the motion to intervene¹ of Wixom Lake Association (“WLA”) but, should the Commission ultimately revoke the Project license, objects to WLA’s request for post-license conditions for continued public access to former licensed project recreation facilities and lands.

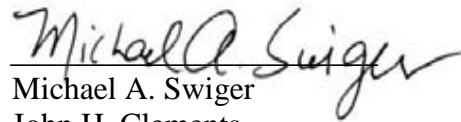
WLA states that “[s]hould the license be revoked or surrendered, we ask the Commission to perform a smooth and orderly transition of responsibilities to the State which does not compromise preexisting recreational opportunities, and corrects current recreational and/or access deficiencies.”² BHPLLC objects to WLA’s request for continuation of licensed Project recreational opportunities if the license is revoked or surrendered. In either case, the Commission will be unable to meet WLA’s request because it has no continuing authority over Project property, including facilities, lands,

¹ Motion to Intervene of Wixom Lake Association, Inc., Project No. 10808-000 (filed Mar. 9, 2018).

² *Id.*

and waters, once a revocation or surrender becomes effective.³ Further, with no income from the formerly licensed project, BHPLLC would have no alternative but to close all existing recreation facilities and access points in order to prevent damage to the property and minimize potential litigation risk from trespassing recreationists or others.⁴ This land is privately owned and the State of Michigan will have no jurisdiction to impose recreational requirements on BHPLLC.

Respectfully submitted,



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Dated: March 14, 2018

³ See e.g., *Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,069 at PP 31-32 (2008), *aff'd*, *Jackson Cty. v. FERC*, 589 F.3d 1284, 1291 (D.C. Cir. 2009) (rejecting request for fish passages measures since FERC cannot require post-license maintenance and monitoring); *FPL Energy Maine Hydro, LLC*, 106 FERC ¶ 61,038 at P 52 (“we will impose no requirement on FPL Energy to undertake recreational use measures after surrender. As we have stated in other proceedings, it is not appropriate for us to place encumbrances on a licensee’s ownership of project lands after our jurisdiction has ended.” (citation omitted)), *reh’g denied*, 107 FERC ¶ 61,120 (2004), *aff’d on other grounds*, *Save our Sebasticook v. FERC*, 431 F.3d 379 (D.C. Cir. 2005); *Niagara Mohawk Power Corp.*, 98 FERC ¶ 61,227 at p. 61,902 (“[the licensee] is certainly free to undertake such long-term measures [rehabilitation of project facilities for post-license historic preservation display], but these would occur beyond the effective date of license surrender, and the Commission has no authority over project works once it has accepted a surrender.”), *reh’g denied*, 100 FERC 61,185 (2002), *reconsideration granted in part*, 102 FERC ¶ 61,324 (2003); *Rochester Gas & Elec. Corp.*, 99 FERC ¶ 61,012 at p. 61,041, *reh’g denied*, 100 FERC ¶ 61,113 (2002) (rejecting proposal requirements for continued maintenance and operation of project dam for water quality and fish passage).

⁴ As BHPLLC has previously notified the Commission, there is a continuing problem with vandalism of Project facilities, including removal of the tailrace boat barrier intended to prevent access to the tailrace immediately below the existing spillway and turbine discharge and attacks on the Project powerhouse. See, e.g., Letter from Lee W. Mueller, BHPLLC, to John Zygaj, Chicago Regional Engineer, Project No. 10808-000 (filed July 23, 2014).

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service lists compiled by the Secretary in this proceeding for Project No. 10808-058.

Dated at Washington, DC, this 14th day of March, 2018.

/s/ Mealear Tauch _____
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