

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 10808-058--Michigan
Edenville Hydroelectric Project
Boyce Hydro Power, LLC

April 20, 2018

Mr. Lee Mueller
Boyce Hydro Power, LLC
10120 W. Flamingo Rd, Suite 4192
Las Vegas, NV 89147

Mr. Michael A. Swiger & Mr. John H. Clements
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007

Subject: Additional information requested regarding March 16, 2018 filing

Dear Mr. Mueller and Counsel:

On March 16, 2018, you filed with the Commission a Motion for Withdrawal of the February 15, 2018 Order Proposing Revocation of License for the Edenville Project No. 10808 (Motion for Withdrawal). In the Motion for Withdrawal, you argue that Boyce Hydro Power, LLC (Boyce) has made efforts to comply with the June 15, 2017 Compliance Order. In order to consider your Motion for Withdrawal, we request additional information and clarification on a number of your statements in your filing. Please see the attached Schedule A containing our questions and provide your response within 30 days of the date of this letter.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426. The first page of any filing should include docket number P-10808-058.

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Thank you for your cooperation. If you have any questions regarding this matter, please contact Dr. Jennifer Ambler at (202) 502-8586 or jennifer.ambler@ferc.gov.

Sincerely,

A handwritten signature in black ink that reads "CarLisa Linton". The signature is written in a cursive, slightly slanted style.

CarLisa Linton
Acting Director
Division of Hydropower Administration
and Compliance

cc: Ms. Michelle Mueller
6000 S. M-30
P.O. Box 15
Edenville, MI 48620

Schedule A

Finances

- 1) You attached a copy of a commitment letter dated March 15, 2018 to your Motion for Withdrawal stating that Johnston Contracting, Inc. (Johnston Contracting) is “willing to finance and construct a portion” of the Tobacco auxiliary spillway. Identify the date on which Boyce first requested such a commitment letter from Johnston Contracting.
- 2) The commitment letter states that Johnston Contracting’s commitment is subject to, among other things, “mutual agreement of terms and conditions.” Identify any and all of the terms and conditions for which Boyce and Johnston Contracting have reached agreement as of the date of your response to this request. In addition, state the specifics of any agreement (whether final or not) regarding the amount of money that Johnston Contracting is willing to finance and the date by which Boyce must complete payment (or repayment) for any work performed consistent with the commitment letter.
- 3) Submit copies of all documents providing or referencing estimates for the cost of the (1) engineering/design of the “Tobacco Spillway” described on page 1 of the Motion for Withdrawal, (2) construction of the “Tobacco Spillway” described on page 1 of the Motion for Withdrawal, (3) engineering/design of the “future spillway gate capacity increases” referenced on page 1 of the Motion for Withdrawal, and/or (4) construction of the “future spillway gate capacity increases” referenced on page 1 of the Motion for Withdrawal. To the degree that you do not provide documents for any of the preceding categories of costs, state your best estimates of costs for each of the categories discussed herein.
- 4) Identify all financial institutions or other sources from which Boyce sought financing for engineering/design or construction of (1) the 5,600 cfs “Tobacco auxiliary spillway” referenced on page 8 of Boyce’s December 1, 2017 Emergency Motion for Stay Pending Rehearing (Motion for Stay); (2) the 12,000 cfs “Tobacco Spillway” described on page 1 of the Motion for Withdrawal; and (3) the “future spillway gate capacity increases” referenced on page 1 of the Motion for Withdrawal. For each such potential source of financing identified, state the date on which any request was made, the name of the individual making the request on behalf of Boyce, the name of the individual responding to the request, the date Boyce received the response to its request, and the response received.

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Boyce's Assets

You claimed on page 5 of your Motion for Withdrawal that Boyce “has made every reasonable effort to complete those requirements [(of the Compliance Order issued June 15, 2017)] in light of the financial constraints under which it operates.” You did not include an assets and liabilities statement or ownership statement with the Motion for Withdrawal, but the Corporate Disclosure Statement filed with Boyce’s December 20, 2017 Emergency Motion to Stay filed in the United States Court of Appeals for the District of Columbia Circuit states: “All outstanding membership interests of [the Boyce LLC] are held directly by the William D. Boyce Trusts 2350, 3649, and 3650.”

- 5) Provide a complete list of Boyce’s current assets and liabilities.
- 6) For any trust holding a membership interest in the Boyce LLC (including, but not limited to, William D. Boyce Trusts 2350, 3649, and 3650): (a) identify the trust’s membership interest in the Boyce LLC, (b) state the total assets currently held by the trust (if known), (c) identify the trustee of the trust, and (d) either (i) provide a copy of any provisions from the trust instrument governing dissolution or termination of the trust (with dates on which such dissolution or termination must occur) and accompanying distribution of assets or (ii) provide a detailed narrative explanation of the plans or requirements of dissolution or termination of the trust (with dates) and accompanying distribution of assets.
- 7) Confirm that there are no members of the Boyce LLC other than the trusts discussed in your response to the previous request. Otherwise identify each member not discussed in the response to the previous request and state the current value of each member’s holdings in the Boyce LLC.

Contract agreements

- 8) Provide copies of all engagement agreements for all engineering/design firms (including Gomez and Sullivan Engineers, PC) and any related statements of work or any similar memorialization of assignments related to: (1) the 5,600 cfs “Tobacco auxiliary spillway” referenced on page 8 of the Motion for Stay; (2) the 12,000 cfs “Tobacco Spillway” described on page 1 of the Motion for Withdrawal; (3) the “Tittabawassee Auxiliary Spillway plans and specifications” referenced on page 11 of the Motion for Stay; (4) the “Plan and schedule for modifications to meet PMF [(Probable Maximum Flood)]” referenced on page 11 of the Motion for Stay and/or the “future spillway gate capacity increases” referenced on page 1 of the Motion for Withdrawal; and (5) “Plans and specifications for permanent

repairs to Left and Right Tobacco Abutment Spillway Walls” referenced on page 11 of the Motion for Stay and Attachment C of the Motion for Withdrawal.

Construction Plans

The Motion for Withdrawal states that Boyce is developing new plans and specifications for a 12,000 cfs Tobacco auxiliary spillway and plans for changes to spillway gates at the Tittabawassee spillway to meet the PMF. These new plans are different from the plans for a 5,600 cfs Tobacco auxiliary spillway that Boyce previously has promised to submit for Commission review and that Boyce was required to submit pursuant to Ordering Paragraph (B) of the Compliance Order.

- 9) Has Boyce submitted for Commission review, plans for any auxiliary spillway on the Tobacco River? If so, provide the FERC eLibrary accession number of the submission.
- 10) When was Boyce’s new plan for a larger Tobacco auxiliary spillway developed and when will you file the plans and specifications for this revised idea to the Commission? You state that you will be able to start construction, “possibly in 2018 and completed in 2019.” Provide a detailed timeline of how you propose to meet this construction schedule based off of your newly proposed plans and designs.
- 11) Explain whether, and how, the revised plans for a Tobacco auxiliary spillway described on page 1 of the Motion for Withdrawal resolves permitting and utility relocation concerns raised with prior designs, which you alleged were reasons why advancement to construction could not happen.
- 12) By what date will construction of all spillway modifications be completed such that the Edenville Project can safely pass the PMF?
- 13) Using the Edenville Parcel Map provided to the Commission as Attachment A to your July 26, 2017 filing in Docket No. P-10808, mark in red the planned location of the Tobacco auxiliary described on page 1 of the Motion for Withdrawal and include the map with your response to this request.

Permitting

- 14) Describe with particularity the current status of all federal, state, or local permits necessary to construct the Tobacco auxiliary spillway described on page 1 of the Motion for Withdrawal. Provide forum and docket information, and a current

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status summary, of any administrative or court litigation related to such permits. Identify any changes to permits or permit applications that may be necessary based on Boyce's modification of anticipated design of the Tobacco auxiliary spillway.

- 15) Identify and describe any federal, state, or local permits that may be required to complete the "Plan and schedule for modifications to meet PMF" referenced on page 11 of the Motion for Stay and/or the "future spillway gate capacity increases" referenced on page 1 of the Motion for Withdrawal.

Other Compliance Order Requirements:

- 16) Provide a copy of the draft amendment of Boyce's Recreation Plan that Boyce submitted to the Michigan Department of Natural Resources (MDNR) in October 2017.
- 17) Has Boyce filed as-built plans with the Commission, as required by the Commission's July 1, 2001 Order approving Boyce's Recreation Plan? If so, state the date and manner in which such plans were provided (including FERC accession number) and include a copy with your response to this request.
- 18) In the Motion for Withdrawal, you requested that the Commission stay the requirements of Ordering Paragraphs (J) and (K) of the Compliance Order concerning recreation related compliance matters, and stated, as you have previously in the Motion for Stay that you plan on filing an application to amend the Recreation Plan. To date, Boyce has not filed any application with the Commission to amend its Recreation Plan. State when Boyce plans on filing this amendment application with the Commission. Explain why a stay is needed if Boyce plans to construct recreation facilities in 2018.
- 19) You state in the Motion for Withdrawal that there is "utility company substation construction work" occurring at the project and state that this is the reason why a parking lot is closed at the Edenville Project. Explain why this construction work is occurring, identify the entity conducting this work, and state when this construction started and when it is expected to be completed. Please include with your response to this request a map showing the location of this construction work.
- 20) Describe with particularity all efforts made by Boyce to satisfy each of the requirements of the Commission's June 15, 2017 Compliance Order. Include the date(s) on which each requirement was satisfied.

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21) On April 10, 2018, Consumers Energy filed a letter with the Commission noting a potential inaccuracy in a statement you made in a March 19, 2018 filing with the Commission. You stated on page 3 of the March 19, 2018 filing that “[a]ccess to the Tittabawassee River tailrace below the east side of the Edenville Dam via Levely Road is currently available to the public, and [Boyce] would be pleased to provide photographic evidence of this fact.” Consumers Energy states that the access road you are likely referring to is their access road which the public cannot access. Please clarify your earlier statement and provide with your response to this request the photographic evidence you offered to provide of the public access point as well as a map showing its location.

Document Content(s)

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