

April 12, 2018

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C., 20426

Re: Order Proposing Revocation of License for Edenville, Michigan Project P-10808

On February 15, 2018, the Commission found Boyce Hydro Power, LLC (“Boyce Hydro”) to be in violation of numerous provisions of its license for the Edenville Hydroelectric Project No. 10808 (“Edenville Project”), the Federal Power Act (“FPA”), and multiple Commission regulations and orders, including a Compliance Order issued pursuant to section 31(a) of the Federal Power Act. Consequently, the Commission proposed to revoke Boyce Hydro’s license pursuant to section 31(b) of the FPA.¹ On behalf of the Sanford Lake Preservation Association, the Wixom Lake Association and the Sanford Lake Association (collectively, “Lake Associations”), we respectfully ask the Commission to delay its decision related to the potential revocation of Boyce Hydro’s license until November 1, 2018.

Wixom Lake and Sanford Lake are important resources in Gladwin and Midland Counties. Wixom Lake is the reservoir created by the Edenville Project (P-10808). Sanford Lake is the reservoir created by the Sanford Project (P-2785), and is immediately downstream of the Edenville Dam. More than 4,000 individual parcels of land surround these lakes, providing their owners with the joys of lakefront property ownership. In addition, to private ownership, the lakes offer several access points for an abundance of recreational boaters. Not to mention, Wixom and Sanford Lakes provide anglers with some of central Michigan's best inland fishing opportunities, according to our contacts in Michigan Department of Natural Resources (“MDNR”). The continued and safe operation of the Edenville Dam is of paramount importance for the communities represented by the Lake Associations because these communities have come to depend on the reliable regulation of water levels by the dam’s operator, Boyce Hydro..

Currently, the Lake Associations are investigating the possibility (and feasibility) of transitioning P-10808 to public or not-for-profit corporation ownership, with an option to retain the existing FERC license. Since the Commission issued its Order Proposing Revocation of License, the Lake Associations, in partnership with county governments and other stakeholders, have begun studying potential paths forward that may include a new ownership structure for the dam. Therefore, we ask that the P-10808 license remain active while we perform our due diligence to allow us ample time to explore options for our communities, including the current Edenville Dam owner’s willingness to transition to a public or non-profit model of ownership.

We are familiar with the Commission’s litany of concerns related to P-10808. To the best of our knowledge, however, the Commission has not felt the need to levy any significant fines against Boyce Hydro since it acquired the P-10808 license. As such, it was our expectation that the Commission would, once again, initiate a lengthy license surrender process to prod Boyce Hydro into compliance. Instead, the Lake Associations were caught off guard when the

¹ *Boyce Hydro Power, LLC*, 162 FERC ¶ 61,115 (2018) (Order Proposing Revocation of License).

Commission took the rare action of issuing an Order Proposing Revocation of License, Accession Number 20180215-3024. As we have now learned from studying the facts of Eastern Hydroelectric Corporation(P-7019), an order proposing license revocation can lead to loss of a project license in a matter of *weeks*. If the Commission moves with equal swiftness with P-10808, it would effectively eliminate any possibility for the Lake Associations to rely on the revenue stream from P-10808 to fund the on-going expenses required to rehabilitate and operate the Edenville Dam. .

Therefore, the Lake Associations request additional time to perform necessary due diligence studies, which will allow us to adequately weigh our options and present a credible proposal to FERC and State of Michigan. Ideally, this will allow for a smooth transition of the project to public/nonprofit ownership, including: changes in property ownership, dealing with creditors, creating a Michigan Act 451, Part 307 lake level order and special assessment district. If the Lake Associations retain the project license, we propose to immediately begin working with the Commission to create a credible plan for meeting the PMF requirements and addressing the issues noted in the 2015 Consultants Safety Inspection Report. During our due diligence period, if we determine that we cannot justify keeping the P-10808 license or cannot reach an acceptable arrangement with the present owner, we will promptly notify the Commission.

Both the Wixom Lake Association and the Sanford Lake Preservation Association have filed for intervenor status in this matter. The Lake Associations have been privy to the communications between the Commission and Boyce Hydro for several years. In fact, over the last six years, the Lake Associations have spent approximately \$250,000 on public studies and property acquisitions in an effort to protect their respective interests. In addition to monetary contributions, the Lake Associations have invested thousands of hours of volunteer time in the community to protect our treasured lakes. Today, the Lake Associations are prepared to commit a minimum of \$200,000 to engage professionals in our due diligence study.

If the Commission grants our request to delay acting on its Order Proposing Revocation of License, the Lake Associations will take the following actions prior to November 1, 2018:

1. Initiate a Michigan Act 451, Part 307 Lake Level Order..
2. Evaluate the cost for repairs and improvements to existing dam embankment and spillways in the event we choose not to retain the license.
3. Evaluate the economics of continuing hydroelectric operation at the Edenville Project.
4. Evaluate and secure the funding available to enable our plans.

As previously mentioned, we presently have a commitment of \$200,000 in private funds, plus volunteer labor, to accomplish the four above-stated actions.

Initiate a Michigan Act 451, Part 307 Lake Level Order.

The Lake Associations will seek a lake level order under Part 307 of Michigan's Natural Resources and Environmental Protection Act as soon as it becomes necessary. A representative of Michigan's Department of Environmental Quality pointed out that, in the absence of a FERC license, there is no other regulatory control in place specifying the water level in Wixom Lake,

the P-10808 reservoir. Absent federal regulatory oversight, it is our understanding that the dam owner is responsible for managing lake levels, which could be detrimental to the recreational uses of our respective lakes. A Part 307 order, however, provides for establishing the level at which water is to be managed in a lake and for collecting funds to pay public employees or contractors to perform management of that water level. Other impounded Michigan lakes have Part 307 orders in place, even though the impoundment level is currently controlled by a FERC license. One such example is the Elk Rapids hydroelectric project (P-3030). A Michigan lake level order pursuant to Part 307 provides for backup water level control in the event that a FERC-licensed hydroelectric facility loses its license.

If necessary, we intend to put lake level orders in place for both Wixom and Sanford Lakes, at a minimum. The Chairs of both the Gladwin and Midland County Boards of Commissioners have expressed their intent to introduce motions at their respective Boards of Commissioners meetings to initiate the process for issuing lake level orders. This process requires a few months to complete the required studies, assemble special assessment rolls, hold public hearings, and obtain a court order. It is the intent of the Lake Associations to complete this process in the shortest time possible, which should result in a smoother transition from FERC to State regulation, should that be necessary.

Evaluate the cost for repairs and improvements to existing dam embankment and spillway.

Members of our team have been granted access to the most recent P-10808 Part 12D Consultants Safety Inspection Report and advised us that the report contains a number of recommended repair and maintenance items. We understand that these items may need to be addressed whether or not we retain the FERC license. In any event, we need time to conduct our own inspections of these items and estimate the cost for remediation. That will take time, plus access to records and the physical dam facility.

Evaluate the economics of operating the Edenville Project as a hydroelectric facility.

The Edenville Project has historically generated approximately \$1 million in annual gross revenue from power generation. We want to evaluate the economics of bringing the Edenville project into compliance with FERC safety regulations in order to retain this revenue. We understand that the spillway capacity of the dam needs a substantial increase to meet the PMF requirement. The Lake Associations are aware of various plans for either fully or partially meeting that requirement with Boyce Hydro, but, as of today, we have not yet finalized a choice of plans capable of immediate action. Undeterred, we will expend the necessary effort to understand what is required to meet the Commission's PMF requirement, the options for doing so, the associated costs, and the funding options. The Lake Associations pledge to perform this evaluation with an eye towards the long-term continued operation of P-10808 as a hydroelectric facility.

It is our sincere hope that, by cooperating with FERC, we will find a path to improve the dam's spillway capacity and meet the PMF requirement. We understand the cost of meeting the PMF requirement will be significant and the net revenue derived through the Edenville Project's power generation will be insufficient to fully cover the costs while the work is being done.

Therefore, it is imperative that the revenue stream continue beyond completion of projects to meet the PMF requirement so that the Lake Associations may eventually recoup their investments.

Evaluate the funding available to enable our plans.

Our strategic intent is to move ownership of the dam to a public body or a not-for-profit corporation created to serve the public interest. We have the necessary options and resources to enable us to do such things as acquire the Edenville Project property, modify the project to meet the PMF requirement, as well as operate, maintain and improve the existing project facilities.

Our 180-day study will yield the following:

1. A decision on our interest in retaining the project license;
2. A decision on the ownership model for the project properties;
3. A decision on the funding method(s) for project operation and maintenance; and
4. An established Michigan Act 451, Part 307 lake level order(s).

Governmental Support.

We currently have support of the Chairs of the Gladwin and Midland County Boards of Commissioners for introducing a motion to initiate the lake level order process. Furthermore, we have opened a dialogue with the Michigan Department of Environmental Quality — Dam Safety Division and the Michigan Department of Natural Resources, whose representatives support our proposal for lake level management. Finally, we have engaged our State Senator, the Honorable Jim Stamas, and our U.S. Congressman, the Honorable John Moolenaar. Both support the efforts of the Lake Associations.

Summary

The actions outlined above will take require significant time and effort to complete. The Lake Associations wish to explore the option of retaining the P-10808 license as we evaluate our alternatives. Doing so will enhance our ability to reach a desirable outcome for our communities. To that end, we respectfully request that the Commission withhold action on the Order Proposing Revocation of License for P-10808 for at least 180 days, preferably until November 1, 2018. This will allow us sufficient time to complete our studies while maintaining the customary water levels in Wixom Lake. We will keep the Commission advised of our progress.

Sincerely,

David Kepler, President
Sanford Lake Preservation Assoc.

Larry Woodard, President
Wixom Lake Assoc.

Adam Beebe, President
Sanford Lake Assoc.

Document Content(s)

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