

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

Boyce Hydro Power, LLC

Project No. 10808-058

**REQUEST FOR REHEARING
OF THE SANFORD LAKE PRESERVATION ASSOCIATION**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ the Sanford Lake Preservation Association (“SLPA”),² by the undersigned counsel, respectfully requests rehearing of the Commission’s September 10, 2018 Order Revoking License (the “Revocation Order”) for the 4.8 MW Edenville (Michigan) Project No. 10808 (the “Edenville Project”).³

I. INTRODUCTION

The Revocation Order requires licensee Boyce Hydro Power, LLC (“Boyce Hydro”) to “permanently disable all generating equipment in the project’s powerhouse...” by no later than September 25, 2018.⁴ On that same date, “the Commission’s jurisdiction will end, and authority

¹ 18 C.F.R. § 385.713 (2018).

² SLPA is now part of the Four Lakes Task Force, which includes representation of multiple lake associations that have an interest not only in the Edenville Project that is the subject of this proceeding, but also in other connected lakes with Commission-regulated dams and hydroelectric facilities. Those entities are referred to herein collectively as the “Lake Associations.”

³ *Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178 (2018).

⁴ *Id.* at P 60.

over the site will pass to [the Michigan Department of Environmental Quality (“Michigan DEQ”)] for dam safety regulatory purposes.”⁵

Thus, the Revocation Order ends nearly 30 years of Commission regulatory jurisdiction over the Edenville Project, revokes the Project’s license, and shuts down the power generation plant that has operated at the site for nearly 100 years -- all on just 15 days’ notice.

As SLPA has previously advised the Commission, the abrupt elimination of federal licensing and power generation at the Edenville Project affects many parties beyond Boyce Hydro. In April 2018, the Commission was advised of the good faith efforts undertaken by SLPA, the Wixom Lake Association, Gladwin County, and other parties in the affected community to find a long-term, sustainable solution to the operational, financial, and public safety issues at the Edenville Project giving rise to the Revocation Order.⁶ Those community efforts have attempted to address, in a serious and holistic manner, the current ownership, condition, maintenance, and operation not only of the Edenville Project, but also of three related dam projects (FERC Project Nos. 10809, 10810, and 2785) that support an interconnected lake system in Gladwin and Midland Counties, Michigan. The Commission was further advised on the status of those community efforts via a follow up report submitted on July 30, 2018.⁷ The Revocation Order materially and substantially disrupts those community efforts.

⁵ *Id.*

⁶ See April 12, 2018 Letter on behalf of SLPA, the Wixom Lake Association, and the Sanford Lake Association (Accession No. 20180412-5049).

⁷ See July 30, 2018 Letter on behalf of SLPA, the Wixom Lake Association, and the Sanford Lake Association (Accession No. 20180730-5090).

A key factor in the potential success of the community efforts – indeed the lynchpin to potential success – is maintaining the Commission license to allow for its transfer to a new owner/operator. The Commission allows licenses to be transferred in accordance with Commission Rules.⁸ The concept of transferring the Edenville Project license has been integral to the planning and negotiations that have occurred over the past seven months among interested stakeholders, which have included the following assumptions:

- Boyce Hydro would continue to operate the Edenville Project until an agreement for transfer of ownership could be finalized.
- SLPA or its designee would have the opportunity to take transfer of the Edenville Project license at the time of transfer of ownership.
- Obtaining a new license from the Commission rather than taking transfer of the Boyce Hydro license would be infeasible from both cost and timing perspectives.

The concern about preserving the current license in light of the practical infeasibility of obtaining a new license is not limited to SLPA, the Four Lakes Task Force, and Midland and Gladwin Counties. The same concern is noted in the letter supporting a stay of the Revocation Order filed on September 25, 2018 by the Saginaw Chippewa Indian Tribe of Michigan, which states:

Revocation of the Project’s license by the Commission will force the Tribe to abandon its due diligence review process outright prior to reaching any conclusions regarding the investment potential of the project. **It is the Tribe’s opinion that the expense and time required applying for a new operator license rather than transferring an existing license destroys the economic viability of the transaction.**⁹

⁸ See 18 C.F.R. §§ 9.1-9.10, § 131.20 (2018); see also <https://www.ferc.gov/industries/hydropower/gen-info/comp-admin/transfer.asp>.

⁹ Letter at 2 (emphasis added) (Accession No. 20180925-5019).

Although SLPA lacks detailed knowledge of each and every action taken by the Commission or Boyce Hydro over the course of the history of the Edenville Project, SLPA acknowledges that the Project has a demonstrated history of non-compliance with certain license requirements. SLPA does not condone that non-compliance. Indeed, the overriding goal of SLPA and the Four Lakes Task Force is implementation of an ownership, financing, licensing, and operational structure for the Edenville Project and related dams that achieves compliance with relevant legal standards, ensures public safety, preserves the current Commission license for power generation, and serves the local and regional public interest in both the near and long term. Achievement of that goal is best served by an orderly transition of ownership, licensing, and operation of the dams, including the Edenville Project, rather than the highly expedited and disruptive license revocation that results from the Revocation Order.

Under the circumstances, and for the reasons stated herein, the expedited withdrawal of Commission jurisdiction and revocation of the Edenville Project's license was arbitrary and capricious, an abuse of discretion, contrary to law, and contrary to the public interest.

II. STATEMENT OF ISSUES

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure, SLPA requests rehearing of the following issues:

1. Whether the Revocation Order is arbitrary, capricious, and not supported by substantial evidence because it erred in finding that the revocation of the Edenville Project's license creates zero potential to result in any harm to public safety.¹⁰

¹⁰ *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“*Motor Vehicles*”) (finding a decision to be arbitrary and capricious where the agency “entirely failed to consider an important aspect of the problem.”); *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 543-44 (D.C. Cir. 2010) (“*TANC*”) (“The Commission must respond to objections and address contrary evidence in more than a cursory fashion.”); *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C.

2. Whether the Revocation Order is arbitrary, capricious, and not supported by substantial evidence by finding that its revocation of the Edenville Project's license would not negatively impact the ability of SLPA or other stakeholders to repair the dam.¹¹
3. Whether the Revocation Order is arbitrary, capricious, and not supported by substantial evidence by finding that revocation of the Edenville Project's license would not hinder or otherwise negatively impact the ability of SLPA, the Four Lakes Task Force, and Midland and Gladwin Counties to obtain an adequate lake level requirement under state law.¹²
4. Whether the Revocation Order is arbitrary, capricious, and not supported by substantial evidence by making the license revocation effective with just fifteen days' notice without adequately considering the harm a hasty revocation will have on SLPA, including an increased risk to public safety.¹³

III. SPECIFICATION OF ERROR AND REQUEST FOR REHEARING

The Revocation Order states that revocation of the Edenville Project's license "will not interfere with" the efforts that the community has made to formulate a process to transfer the Edenville Project.¹⁴ Respectfully, that statement is incorrect. As a practical matter, the Revocation Order already has, and will continue to, materially and substantially interfere with the good faith community efforts being conducted by SLPA, the Four Lakes Task Force,

Cir. 2011) ("Among other things, '[a]n agency's "failure to respond meaningfully" to objections raised by a party renders its decision arbitrary and capricious.'"); *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 745 (D.C. Cir. 2001) ("*Wis. Valley*") (citing *Bangor Hydro-Electric Co. v. FERC*, 78 F.3d 659, 663 n.3 (D.C. Cir. 1996)) (explaining that the court will set aside a Commission order if not supported by substantial evidence and there is not a rational connection between the facts and the choice made).

¹¹ *Motor Vehicles*, 463 U.S. at 43; *TANC*, 628 F.3d at 543-44; *PSEG Energy Res. & Trade*, 665 F.3d at 208; *Wis. Valley*, 236 F.3d at 745.

¹² *Id.*

¹³ *Id.*

¹⁴ Revocation Order at P 56.

Gladwin and Midland Counties, and other community members to find a solution to the Edenville Project problem.

Accordingly, on September 18, 2018, SLPA, the Wixom Lake Association, and Gladwin County requested that the Revocation Order be temporarily stayed.¹⁵ That stay request was supported in writing by several federal, state, and local officials, including U.S. Senator Debbie Stabenow,¹⁶ Congressman John R. Moolenaar,¹⁷ Michigan Attorney General Bill Schuette,¹⁸ Michigan State Senator Jim Stamas,¹⁹ and Midland County Board of Commissioners Chair Mark C. Bone.²⁰ The stay request was also supported by the Saginaw Chippewa Indian Tribe of Michigan.²¹ In addition, a separate stay request was filed by Boyce Hydro.²²

As of the date of this rehearing request, the Commission has issued no decision on either of the pending emergency motions seeking a stay of the Revocation Order.

A. The Commission Erred in Finding That License Revocation Does Not Have the Potential to Harm Public Safety.

To date, the Commission has summarily dismissed the serious concerns raised by SLPA and other stakeholders that license revocation could increase public safety concerns. In fact, the

¹⁵ See Emergency Motion To Stay Order Revoking License (Accession No. 20180918-5103).

¹⁶ Accession No. 20180926-0013.

¹⁷ Accession No. 20180926-0011.

¹⁸ Accession No. 20180925-5007.

¹⁹ Accession No. 20180920-5105.

²⁰ Accession No. 20180920-5111.

²¹ Accession No. 20180925-5019.

²² See Emergency Motion to Stay (Accession No. 20180917-5067).

Commission states in the Revocation Order that it “disagree[s] that revocation of the license has the *potential* to harm public safety.”²³ In other words, the Commission found that there is *zero* possibility that revoking the license will have a direct or indirect harm on public safety. This finding is not supported by substantial evidence and constitutes legal error that must be reversed.

Revocation of the license increases the risk of harm to public safety by dramatically reducing the ability of the Edenville Project owner (whomever that might ultimately be) to obtain financing the necessary repairs. Whether or not the project maintains a license for power production, the dam and spillway need to be repaired and upgraded – even assuming that the Michigan DEQ will adequately regulate the Edenville Project. The work necessary to fix the Edenville Project includes extensive upgrades and repair of concrete at multiple project components, including the spillways, decks, and tailrace. These upgrades and repairs will be extremely expensive relatively speaking, given the size of the Edenville Project. Without a license, and thus a legal right to resume future power production, the Edenville Project owner will have a more difficult time financing the needed repairs.

The Commission license provides the Edenville Project owner with a valuable property right that can help with financing such repairs, thus offsetting the repair costs for the community (or other party) as future owner. The existence of a license for the Edenville Project facilitates the ability of the Edenville Project owner to obtain the financing necessary to pay for such repairs. SLPA has established the costs, through work by Fischer Construction, for the 2013 Boyce Hydro PMF engineering study, and has determined that this design is not economically feasible given the current and future electrical rates available to the owner. The Auxiliary

²³ Revocation Order at P 55 (emphasis added).

Spillway design by Boyce Hydro was not satisfactory to SLPA because it did not mitigate all of the PMF deficiencies. The Revocation Order eliminates the opportunity to negotiate other power rates that may be available to a new owner, or other designs that might create a solution that both meets the requirement and is feasible for a new owner.

In addition, the Commission failed to take into the account its own protocol and its timing to transfer the needed Safety Information to the Michigan DEQ. In a October 4, 2018 meeting with Congressman Moolenaar, Michigan State Senator Jim Stamas, and members of SLPA, *the Michigan DEQ declared that it had not received all the safety information that the Commission has on the Edenville Project for Michigan DEQ to calculate the State Probable Maximum Flood (“PMF”) requirement or assess general safety of the Edenville Project, nor did it have a timetable for when this would occur.* As of this filing, SLPA is not aware of that status changing. Clearly, at least the risk of harm to public safety has increased if the state agency now tasked with regulating the Edenville Project says it does not possess all of the safety information. SLPA is not to blame for Boyce Hydro’s failure to comply with its license, but its members risk being directly harmed by any failure of the Michigan DEQ to adequately replace the Commission as the primary regulatory authority over the dam.

Even though the Commission has ordered the Edenville Project to cease power generation, stakeholders agree unanimously that it would be substantially easier for the Edenville Project owner to come into compliance with an existing license and regain the right to generate power, rather than have to begin the lengthy and expensive process of applying for a new license. These facts cut directly against the Commission’s finding that its revocation of the license has zero potential to increase the risk of harm to public safety. Although Boyce Hydro is responsible

for its failure to comply with the license, it is SLPA, the Lake Associations, and other community stakeholders who will be negatively and unfairly impacted by the Commission's decision to revoke the license.

B. The Commission Erred in Dismissing the Lake Associations' Legitimate Concerns That License Revocation Will Hinder Their Ability to Repair the Edenville Project.

The Revocation Order summarily dismisses any concerns raised by the Lake Associations that license revocation would hinder their ability to acquire the Edenville Project from Boyce Hydro, noting that “[t]he Lake Associations are free to attempt to acquire the project or certain project facilities (e.g., the dam) once this termination order becomes effective”²⁴ The Revocation Order also concludes that, “should the Lake Associations ultimately acquire the project, nothing in this order prevents them from seeking a Commission license for the project in the future should they wish to use the project to generate power.”²⁵ These findings are, at best, disingenuous. Although the Commission's decision to revoke the license does not legally bar the Lake Associations from exercising their general right to engage in commerce and acquire the Edenville Project, or to thereafter seek a new license, it creates a substantial barrier for the Lake Associations to obtain their ultimate – and quite legitimate – goals: to improve the safety of the Edenville Project and to maintain the lake's positive characteristics.

As previously explained to the Commission, several entities – including the Lake Associations and the Saginaw Chippewa Indian Tribe of Michigan – have held extensive negotiations concerning the future ownership and operations of the Edenville Project.

²⁴ Revocation Order at P 37.

²⁵ *Id.*

Regardless of who the new owner might be, the necessary repairs will be expensive. Allowing the Edenville Project to maintain a license will increase its value and thereby improve its ability to obtain the financing necessary to implement these repairs. With or without a Commission license, with or without the legal right to produce power, the Edenville Project needs to be fixed. License revocation makes that already difficult task much more challenging, and thereby less likely to occur in a timely fashion. Even assuming the Lake Associations, the Saginaw Chippewa Tribe, or anyone else can obtain long-term operational control of the Edenville Project from the current owner, the process of applying for a new license is extremely lengthy and expensive, and poses substantial risk for lenders and other sources of revenue to repair the dam and related components.

Under these circumstances, it is impossible to see how revoking the license could have a positive impact on public safety or preserving quality of life for the Lake Associations' members. At the very least, preserving the license would create no additional harm to the current situation, as there is no credible evidence that revoking the license will help improve public safety or the local environment.

C. The Commission Erred in Finding That License Revocation Would Not Hinder or Otherwise Negatively Impact the Ability of the Lake Associations to Obtain an Adequate Lake Level Requirement Under State Law.

The Revocation Order also found that license revocation would not hinder the efforts of the Lake Associations to establish an appropriate lake level through the State of Michigan.²⁶ This finding is arbitrary and capricious, and not supported by record evidence.

²⁶ Revocation Order at P 37 (finding that the Lake Associations “may continue their efforts establishing lake levels through the State of Michigan”).

First, license revocation – without question – constitutes a major setback for the Lake Associations regarding their wish that the Edenville Project maintains an appropriate lake level. The license includes specific and legally enforceable lake level requirements. Under Michigan law, once the license revocation became effective, no new lake level requirement takes effect until a lengthy and potentially complex judicial process takes place before the Gladwin County and/or Midland Count Circuit Courts.²⁷ In this particular case, several factors will likely exacerbate the complexity of that process including:

²⁷ The setting of the legal lake levels requires specific findings by the Circuit Court (see MCL 324.30707(4)), which provides:

- (4) In a determination of the normal level of an inland lake, the court shall consider all of the following:
 - (a) Past lake level records, including the ordinary high-water mark and seasonal fluctuations.
 - (b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.
 - (c) Government surveys and reports.
 - (d) The hydrology of the watershed.
 - (e) Downstream flow requirements and impacts on downstream riparians.
 - (f) Fisheries and wildlife habitat protection and enhancement.
 - (g) Upstream drainage.
 - (h) Rights of riparians.
 - (i) Testimony and evidence offered by all interested persons.
 - (j) Other pertinent facts and circumstances.

- The Edenville Project is part of a four-lake system located in two separate Michigan counties.
- It is likely that given the repairs needed at the Edenville Project, some level of public financing could be needed, which will be supported by establishment of one or more special assessment districts associated with properties surrounding the lakes.
- The lakes are interdependent, requiring significant cooperation between the counties and other stakeholders to establish the lake levels, and among any special assessment districts that may be associated with funding the capital improvements needed to maintain lake levels.
- The four lakes affect over 6,000 parcels of land.

In sharp contrast, reversing the license revocation will not require the Lake Associations to take additional actions to establish an adequate lake level. If the Lake Associations are unable to acquire the Edenville Project, they will have to rely on the behavior of Boyce Hydro to exercise its discretion in maintaining an adequate water level.

Second, the Lake Associations face a substantial risk that the state court proceedings will result in establishing lake levels that fail to address their concerns. SLPA does not dispute the Commission's conclusion that the Revocation Order does not limit an interested party's right under state law to request the establishment of a new lake level requirement that is appropriate. However, that conclusion neglects the fact that by revoking the license, the Commission is punishing the Lake Associations and others by creating substantial legal uncertainty, and forcing them to spend additional resources on legal proceedings, in the hope of obtaining a satisfactory finding when it would be substantially better for everyone involved to simply reverse the license revocation and maintain Commission lake level requirements as legally enforceable. SLPA asks the Commission to reconsider its decision, as it punishes local residents for Boyce Hydro's failures.

D. The Commission Erred in Making the License Revocation Effective With Just Fifteen Days' Notice Without Adequately Considering the Harm a Hasty Revocation Will Have on SLPA and Others.

Assuming *arguendo* that it was appropriate for the Commission to revoke the Edenville Project's license, the Commission nevertheless erred in making that revocation effective with only fifteen days' notice. As discussed above, the expedited license revocation ignored the current circumstances and community efforts to formulate and implement a viable transition plan for the Edenville Project and unnecessarily made it more difficult to bring the Edenville Project into compliance, improve public safety, and preserve the benefits enjoyed by the Lake Associations' members of the lakes' current characteristics.

SLPA appreciates that the Revocation Order was issued in the context of a considerable history of compliance issues at the Edenville Project. However, the timing of the Revocation Order's issuance, as well as the rapidity with which the Revocation Order required closure of the Edenville Project electric generation plant and removed the license and federal jurisdiction, substantially disrupts good faith efforts undertaken since February 2018 by the Lake Associations, Gladwin and Midland Counties, and other parties in the affected community to find a long-term, sustainable solution to the operational, financial, and public safety issues at the Edenville Project giving rise to the Revocation Order.

Those community efforts have attempted to address the current ownership, condition, maintenance, and operation of the Edenville Project and three related dam projects that support an interconnected lake system in Gladwin and Midland Counties. Those efforts have been undertaken on behalf of approximately 6,000 persons owning lakefront properties within that lake system, as well as numerous other community members and tourists who use the lakes for

recreational purposes. Community efforts have involved and continue to involve complex coordination with:

- federal, state, county, and local officials and agencies;
- multiple citizen groups representing the interests of various property owners and recreational lake users;
- technical and financial consultants and advisors;
- legal counsel;
- Consumers Energy (the local public utility that buys the electricity generated from the Edenville Project); and
- Boyce Hydro.

The community efforts have been time consuming and expensive, involving numerous public and private meetings, negotiations, strategic planning sessions, technical assessments, document preparations, and substantial community input and commitment. However, those efforts were bearing encouraging fruit up until the time of the Revocation Order. Unfortunately, the Revocation Order has threatened to derail that process, and also upset shorter-term steps that were underway to assess the public safety of the Edenville Project and related dams.

Those community efforts were reported to the Commission via the previously-referenced letters dated April 12, 2018,²⁸ and July 30, 2018;²⁹ in the September 18, 2018 Emergency Motion for Stay the Revocation Order filed by the SLPA, the Wixom Lake Association, and Gladwin

²⁸ Accession No. 20180412-5049.

²⁹ Accession No. 20180730-5090.

County,³⁰ and in the various letters of support that were submitted to the Commission following filing of that motion.³¹ The efforts include:

- Formed of the Four Lakes Task Force, whose purpose is to advise government officials on a strategy for ensuring the future of lakes formed by the Projects.
- Held multiple discussions with Gladwin and Midland County Commissioners, resulting in Resolutions adopted by both Counties to pursue action under Part 307 of the Michigan Natural Resource Act to create state lake level requirements in both Gladwin and Midland County. Copies of the Gladwin County and Midland County Resolutions were attached to the September 18, 2018 Emergency Motion to Stay the Revocation Order as Exhibits A and B, respectively.
- Conferred with representatives of Michigan DEQ and Department of Natural Resources regarding the status and planning associating with the Projects and the lakes.
- Advised our State and Federal government officials regarding the status and planning associated with the Projects and the lakes.
- Secured \$200,000 in private funding to advance the efforts of the Lake Associations, the Four Lakes Task Force, and the Counties in establishing state lake levels and Special Assessment Districts.
- Engaged with Consumers Energy on options where they may help.
- Negotiated and finalized a Letter of Intent between Boyce Hydro and SLPA to provide for a process to have the community acquire the Edenville Project and the other three related dams.
- Retained attorneys, financial, and engineering experts to assist with the efforts of the Lake Associations and the Four Lakes Task Force, including:
 - Engaged Fisher Construction on cost studies for the structural repairs on all four lakes and the cost to make upgrades to meet the PMF requirements on the Edenville Project.

³⁰ Accession No. 20180918-5103.

³¹ Accession Nos. 20180926-0013, 20180926-0011, 20180925-5007, 20180920-5105, 20180920-5111, 20180925-5019.

- Engaged For Analytics, LLC to perform economic assessments to evaluate ownership structuring options and funding options to implement the best ownership structure.
- Engaged the law firm of Clark Hill PLC for assistance with FERC issues, Michigan Part 307 implementation, and document preparation relating to the Letter of Intent between Boyce Hydro and SLPA.
- Worked cooperatively with Boyce Hydro to get an inspection report with cost and timing estimates required for the dams associated with the Projects, including cost and timing to meet the PMF requirements on the dams.

Since the July 31, 2018 letter, the Lake Associations, Gladwin County, and other community members have continued those efforts in the implementation of the Michigan Part 307.³² In addition, on October 9, 2018, the Gladwin County Board of Commissioner unanimously approved a resolution authorizing the initiation of legal action to establish a legal level for the Four Lakes and appointing SLPA as the Part 307 Delegated Authority. It is SLPA's understanding that the Midland County Board of Commissioners has scheduled to formally approve a similar measure on October 16, 2018.³³

However, the sudden implementation of the Revocation Order has in many ways undermined the progress that has been achieved by the Lake Associations and other community members, for several reasons:

- Negotiations up to the issuance of the Revocation Order assumed that Boyce Hydro would continue to operate the Edenville Project until an agreement for transfer of ownership could be finalized.

³² At the same time, after the community was informed that the Commission scheduled a mandatory inspection that involved lowering of all four lakes beginning on September 20, 2018, the community marshalled the approximately 6,000 property owners to remove boats from the lakes by that date.

³³ Copies of those Resolutions are not available as of the date of this filing, but will be provided via a supplemental filing when they become available.

- Financial analysis and planning undertaken by experts retained by the Lake Associations assumed that the Lake Associations or their designee would have the opportunity to take transfer of the Edenville Project license at the time of transfer of ownership.
- The need to obtain a new license from the Commission rather than take transfer of the Boyce Hydro license would be infeasible from both cost and timing perspectives.

1. A Temporary Stay Would Serve The Public Interest.

A reasonable stay of the Revocation Order would provide all the parties additional time – with clear additional motivation of a pending possible Commission revocation – to continue that progress, in an effort to transition to a new ownership, financial, licensing, and operational arrangement for the Edenville Project. Summarily undercutting that process would be harmful and irreversible.

Under these circumstances, the Commission should at least grant rehearing regarding the effectiveness of the revocation *nunc pro tunc* as of September 25, 2018 for a period of 180 days from the Rehearing Order to maintain the *status quo*.³⁴ That remedy will allow the affected parties time to conduct additional public safety assessments in a coordinated fashion and to continue the community's efforts to achieve a longer-term solution to remedy the Edenville Project's problems in a manner that will ultimately serve the best interests of the community and its residents and visiting tourists.

³⁴ Although relatively unusual, the Commission will stay an order in appropriate circumstances. *See, e.g., Keating v. FERC*, 569 F.3d 427, 428-31 (D.C. Cir. 2009) (recounting circumstances under which the Commission implemented an 11-year-plus stay of a hydroelectric project licensing order); *FPL Energy Maine Hydro, LLC*, 108 FERC ¶ 61261 at P 12 (2004) (staying issuance of FERC license pending appeal of related state certification).

2. In the Alternative, a Modification of the Revocation Date Is Appropriate.

In the alternative, if the Commission declines to stay the Revocation Order, it would be appropriate for the Commission to modify the Revocation Order to provide for an effective date for license revocation of no less than 180 days from the Order on Rehearing. That step would not stay the Revocation Order generally; nor would it frustrate the Commission's directions in that order. Rather, everything in the Revocation Order would remain in place, with the narrow exception of preserving the viability of the Edenville Project license for future transfer.

That step would relieve the immediate pressure on the Lake Associations, Gladwin County, and other interested stakeholders, allowing time to implement a transition plan for transfer of ownership and/or operational control of the Edenville Project and related dams that would support a license transfer application and achieve compliance with relevant legal standards, ensuring public safety, and serving the local and regional public interest.

As with the request for a full stay, the narrower relief of an extension of the revocation effective date would be entirely in the public interest without causing injury to any person or entity or materially increasing any threat to public safety. At the same time, this narrower relief would preserve the opportunity for a transfer of the Edenville Project license, which the involved parties view as a lynchpin to further viable planning for a transfer of ownership.

Accordingly, the Commission should grant rehearing to provide for an effective date for license revocation of no less than 180 days from the Order on Rehearing, in order to afford the Lake Associations, Gladwin County, and other interested stakeholders time to implement a transition plan for transfer of ownership, licensing, and operational control of the Edenville

Project and related dams that achieves compliance with relevant legal standards, ensures public safety, and serves the local and regional public interest.

3. In the Alternative, Suspending Rather than Revoking the License for a Reasonable Period Is Appropriate.

For the reasons stated herein, maintaining the opportunity to transfer the Edenville Project license to a new owner/operator is a critical component of the arrangements that interested stakeholders are currently evaluating and negotiating. Revocation of the license on the expedited basis set forth in the Revocation Order materially undercuts those arrangements. Accordingly, in the event that the Commission declines to stay the Revocation Order or modify its effective date for license revocation, it would be appropriate for the Commission to suspend the Edenville Project license for a reasonable period rather than revoke it effective September 25, 2018.

As discussed above, relief of this type would alleviate the immediate pressure on the Lake Associations, Gladwin County, and other interested stakeholders, allowing time to implement a transition plan and achieve compliance with relevant legal standards, ensuring public safety, and serving the local and regional public interest.

As with the request for a full stay or modification of the effective date of the license revocation, the narrower relief of a suspension would be entirely in the public interest, without causing injury to any person or entity, or materially increasing any threat to public safety. At the same time, this narrower relief would preserve the opportunity for a transfer of the Edenville Project license -- a lynchpin to further viable planning for a transfer of ownership.

Suspension of the license would be consistent with Commission practice in complex, multi-stakeholder contexts involving licensing of hydroelectric projects.³⁵ In such cases, the Commission has granted requests for expedited suspension of licensing proceedings.³⁶ The Commission has done so even where various parties opposed both the expedited nature of the request and the suspension itself.³⁷ Notably, in this case since the issuance of the Revocation Order, no person or entity has opposed the requests for relief to preserve the viability of the license transfer.

Accordingly, if the Commission declines to stay the Revocation Order or modify its effective date for license revocation, on rehearing the Edenville Project license should be suspended for a reasonable period, rather than revoked effective September 25, 2018, to afford SLPA and other interested stakeholders time to implement a transition plan for transfer of ownership, licensing, and operation in a manner that ensures public safety and serves the local and regional public interest.

³⁵ See, e.g., *PacifiCorp. (Project No. 2082-027)*, 155 FERC ¶ 61,271 (2016) (Order Holding Relicensing Proceeding In Abeyance).

³⁶ See *id.* at P 13.

³⁷ See *id.* at P 11.

IV. CONCLUSION

For the reasons stated herein, SLPA respectfully requests that the Commission grant rehearing of the Revocation Order and the additional relief requested herein, and grant such other relief as the Commission deems just and reasonable.

Respectfully submitted:

THE SANFORD LAKE PRESERVATION ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 10th day of October, 2018.

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Document Content(s)

SLPA Rehearing Request 10_10_18.PDF.....1-22