

CLARK HILL

Christopher N. Skey
T 312.517.7515
F 312.517.7585
Email: cskey@clarkhill.com

Clark Hill PLC
130 E. Randolph St.
Suite 3900
Chicago, IL 60601
T 312.985.5900
F 312.985.5999

clarkhill.com

December 28, 2018

Via Electronic Filing

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

**Re: Docket No. P-10808-058
Second Supplemental Filing in Further Support of
Request for Rehearing of the Sanford Lake Preservation Association**

Dear Ms. Bose:

This letter is submitted on behalf of the Sanford Lake Preservation Association (“SLPA”) to further update the Federal Energy Regulatory Commission (“Commission” or “FERC”) regarding ongoing efforts being taken by SLPA and other stakeholders to achieve an ownership and operational structure to repair, operate, and preserve the 4.8 MW Edenville (Michigan) Project No. 10808 (“Edenville Project”), which is the subject of FERC Docket No. P-10808-058.

This letter is submitted in further support of SLPA’s October 10, 2018 Request for Rehearing (“SLPA Request for Rehearing”), which requested rehearing of the Commission’s September 10, 2018 Order Revoking License (“Revocation Order”). This letter further supplements SLPA’s October 23, 2018 Supplemental Filing in Further Support of the SLPA Request for Rehearing (“SLPA First Supplement”).

Summary of Previous Community Efforts

As explained in the SLPA Request for Rehearing, the Commission’s expedited revocation of the Edenville Project FERC license materially impacted and altered efforts that had been undertaken by SLPA, related 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 that gave rise to the Revocation Order.¹ Those community efforts, which began in February 2018, included:

- Formation 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 Edenville Project and three related dam projects (FERC Project Nos. 10809, 10810, and 2785) that support an interconnected lake system in Gladwin and Midland Counties, Michigan (the four dam projects are referred to collectively as the “Projects” and the four related lakes are referred to collectively as the “Four Lakes”).²
- Multiple meetings and discussions with Gladwin and Midland County Commissioners, resulting in Resolutions adopted in July 2018 by both Counties (“July 2018 County Resolutions”) to pursue action under Part 307 of the Michigan Environmental and Natural Resource Act, MCL 324.30701 *et seq.* (“Part 307”) to implement state lake level requirements in both Gladwin and Midland County.³
- Conferences with representatives of Michigan Department of Environmental Quality and Department of Natural Resources regarding the status and planning associating with the Projects and the Four Lakes.
- Advising State and Federal government officials regarding the status and planning associated with the Projects and the Four Lakes.
- Securing \$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.
- Engagement with Consumers Energy (the utility that purchases power from the Edenville Project) on options where it may assist.
- Negotiation and finalization of a Letter of Intent between Boyce Hydro (the current owner of the Edenville Project) and SLPA to provide for a process to have the community acquire the Edenville Project and the other three related dams.

¹ See SLPA Request for Rehearing at 13-17.

² The Four Lakes refers to four inland lakes, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake, located in Gladwin and Midland counties, created by the impoundment of the Tittabawassee River by the dams owned by Boyce Hydro, LLC (“Boyce Hydro”).

³ Copies of the July 2018 County Resolutions were attached as Exhibits A and B, respectively, to the September 18, 2018 Emergency Motion to Stay the Revocation Order filed on behalf of SLPA, the Wixom Lake Association, and the Gladwin County Board of District Commissioners.

- Retention of attorneys, financial, and engineering experts to assist with the efforts of the involved lake associations and the Four Lakes Task Force, including:
 - Engagement of Fisher Construction to prepare cost studies for the structural repairs on all of the Projects and the Four Lakes and the cost to make upgrades to meet the PMF requirements on the Edenville Project.
 - Engagement of For Analytics, LLC to perform economic assessments to evaluate ownership structuring options and funding options.
 - Engagement of 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.
- Cooperative engagement 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.
- Holding additional discussions with Gladwin County and Midland County Commissioners, resulting in Resolutions adopted in October 2018 by both Counties (“October 2018 County Resolutions”) authorizing the initiation of legal action to establish a legal level for the Four Lakes and appointing SLPA as the Part 307 Delegated Authority.⁴ It is anticipated that the Part 307 case will be filed in state circuit court in January 2019.

Recent Additional Community Efforts and Progress

Since the submission of the SLPA First Supplement, additional community efforts directed toward resolving issues at the Edenville Project that gave rise to the Revocation Order include:

- SLPA and Gladwin and Midland Counties have established an Implementation Plan to ensure current needed repairs and the long-term maintenance of the dams at the Projects, including the Edenville Project, and lake levels for the Four Lakes.
- The Spicer Group, Inc. (civil engineers) has been engaged to assist with preparing the lake level study, costs estimates for the maintenance and improvements of the dams, and identifying the boundaries of the lake level special assessment district.
- SLPA and Boyce Hydro have conducted in-depth, substantive negotiations regarding the transfer and future operations of the Edenville Project and the other three dams making up the Projects, and are moving toward a comprehensive definitive agreement. As cost estimates are being finalized, SLPA and Boyce Hydro are

⁴ Copies of the October 2018 County Resolutions were attached as Attachments 1 and 2, respectively, to the SLPA First Supplement.

actively negotiating an arrangement that would provide for the maintenance of the lake levels, capital improvements, and continuance of power generation. This arrangement proposes, among other things: (1) separating lake level assets (those assets necessary for maintaining lake levels) from the power generation assets; (2) having SLPA (as the Counties' delegated authority per Part 307) acquire certain rights and responsibilities regarding the maintenance and improvements of the lake level assets (consistent with Part 307); and (3) SLPA and Boyce entering into an operating agreement to ensure the long-term operation, maintenance, and improvements of the lake level and power generation assets.

- SLPA and Boyce Hydro are actively negotiating a new power purchase agreement with Consumers Energy (the utility that purchases power from the Edenville Project) that would provide long-term sustainability of the power generation assets.
- SLPA and other stakeholders have worked with Gladwin County and Midland County and affected Townships regarding establishment of Special Assessment District boundaries. The Special Assessment District boundaries are nearing completion and it is anticipated that they will be filed with the Circuit Court in the Part 307 case in January 2019, which will be followed by a communication to over 7,000 property owners.
- Gladwin County and Midland County have engaged the law firm of Dickinson Wright, PLC to act as bond counsel to address the bond issues associated with funding.
- Fisher Construction has prepared cost estimates for work to address issues identified in Dam Safety Reports for the Edenville Project and the other three dams making up the Projects.

Conclusion

As previously stated, the Revocation Order and the resulting expedited timeline for revocation of the Edenville Project's FERC license materially and detrimentally impacted the efforts of SLPA and other stakeholders to advance a sustainable solution to address the issues giving rise to the Revocation Order. However, as demonstrated by the developments described above, SLPA and other stakeholders have pressed forward in a good faith attempt to formulate a structure and a set of agreements that can mitigate the concerns that led to the Revocation Order. That outcome would serve the best interests of the affected community members and landowners surrounding not only the Edenville Project, but the Four Lakes generally.

SLPA commits to provide a further update to the Commission in forty-five (45) days, as the ability of SLPA and other stakeholders to close the contemplated transaction and implement the necessary repairs likely will depend, in part, on the parties' ability to rely on the Commission's authority to reinstate the Edenville Project license, and not require SLPA and other stakeholders to pursue the expensive, multi-year process of applying for a new one.

Kimberly D. Bose
December 28, 2018
Page 5

Accordingly, SLPA respectfully reiterates the requests for relief set forth in the SLPA Request for Rehearing. Alternatively, SLPA requests that the Commission consider the developments reported herein as a basis to withhold action on the SLPA Request for Rehearing (and a related Request for Rehearing filed by Boyce Hydro) for 180 days from this filing.

A copy of this filing is being served via email to each person on the Service List in this Docket. Thank you.

Sincerely yours,
CLARK HILL PLC

/s/Christopher N. Skey
Christopher N. Skey
**Counsel for the Sanford Lake Preservation
Association**

cc: Service List - Docket No. P-10808-058
U.S. Congressman John Moolenaar
Michigan State Senator Jim Stamas
Midland County Commission Chair Mark Bone
Gladwin County Commission Chair Terry Walters
Bill Smith, Attorney for Midland County
Doug Jacobson, Attorney for Gladwin County