

175 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Boyce Hydro Power, LLC

Project Nos. 10809-051
10810-057
2785-103

ORDER TERMINATING LICENSES BY IMPLIED SURRENDER

(Issued May 20, 2021)

1. This order terminates, by implied surrender, Boyce Hydro Power, LLC's (Boyce Hydro) licenses for the Second Hydroelectric Project (P-10809),¹ Smallwood Hydroelectric Project (P-10810),² and Sanford Hydroelectric Project (P-2785)³ (collectively, the Boyce Projects), located on the Tittabawasee River in Midland and Gladwin counties, Michigan.

2. Boyce Hydro failed to meet the obligations of its licenses when it lost the real property associated with its projects through condemnation and declared bankruptcy; thus, in this order, we terminate by implied surrender the licenses for the Boyce Projects.⁴ Four Lakes Task Force, a nonprofit organization, now owns the real property associated with the projects and is already coordinating the safe repair and management of the facilities with the Michigan Department of the Environment, Great Lakes, and Energy (Michigan EGLE) in cooperation with Commission staff. We look with great disfavor on

¹ *Wolverine Power Corp.*, 85 FERC ¶ 61,064 (1998).

² *Wolverine Power Corp.*, 85 FERC ¶ 61,065 (1998).

³ *Wolverine Power Corp.*, 85 FERC ¶ 61,066 (1998).

⁴ See 16 U.S.C. § 799 (section 6 of the Federal Power Act establishes that a license may be altered or surrendered only upon mutual agreement between the licensee and the Commission); 18 C.F.R. § 6.4 (2020) (section 6.4 of the Commission's regulations establishes that if a licensee causes or suffers essential project property to be removed or destroyed, the Commission will deem it to be the intent of the licensee to surrender the license).

Boyce Hydro's deliberate abandonment of these projects following extensive harm being caused to the public. However, we are willing to terminate the licenses by implied surrender only under the unique facts of this case, where a local community entity has acquired the project lands and property and is already engaged in remedying the deficiencies created by Boyce Hydro, with no intent to generate hydropower, and where the state regulator has expressed support for this action.

I. Background

3. Boyce Hydro is the licensee for the Boyce Projects. The projects are located on the Tittabawassee River: Secord being the most upstream project; the Smallwood Project is approximately seven river miles downstream; the formerly-licensed Edenville Project⁵ is approximately 13 miles further downstream, at the confluence of the Tittabawassee and Tobacco Rivers; and the Sanford Project is approximately an additional 11 river miles downstream.

4. On the morning of May 19, 2020, high inflows in the Tittabawassee River from heavy rainfall resulted in the breaching and failure of the Edenville Dam. The right embankment at the jurisdictional Sanford Dam was also breached during the high flows. Since that time, Boyce Hydro repeatedly failed to comply with numerous Commission safety directives, entered bankruptcy, lost its properties through condemnation, and was assessed a \$15,000,000 penalty from the Commission for its inaction.⁶

A. Description of the Boyce Projects

5. The Secord Project consists of: (1) a 1,100-acre reservoir, Secord Lake; (2) a 47-foot-long intake structure; (3) an earthen dam with a 1,400-foot-long, 55-foot-high section between the left abutment and the powerhouse, and a 600-foot-long section between the spillway and the right abutment; (4) a reinforced concrete multiple-arch spillway with an ogee crest and two Taintor gates; (5) a powerhouse integral with the

⁵ Boyce Hydro also owned the formerly-licensed Edenville Project (formerly FERC Project No. 10808). The license was revoked due to a lengthy history of non-compliance with dam safety and other requirements, and the dam is now under the jurisdiction of the State of Michigan. *See Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178 (2018) (Edenville Revocation Order), *reh'g denied*, 166 FERC ¶ 61,029 (2019).

⁶ *See Boyce Hydro Power, LLC*, 175 FERC ¶ 61,049 (2021) (Order Assessing Penalty).

dam housing one Francis vertical-axis turbine-generator unit with an installed capacity of 1,200 kilowatts (kW); and (6) appurtenant facilities.⁷

6. The Smallwood Project consists of: (1) a 500-acre reservoir, Smallwood Lake; (2) a 52-foot-long, 25-foot-high, and 50-foot-wide reinforced concrete hollow gravity spillway dam at the base with two 25.3-foot-wide, 10-foot-high steel Taintor gates on top of the spillway crest; (3) a 100-foot-long, 40-foot-high right-side earth embankment; (4) a 550-foot-long, 40-foot-high left-side earth embankment; (5) a 55-foot-long, 27-foot-wide, and 65-foot-high reinforced concrete powerhouse integral with the spillway housing a vertical axis, open flume turbine-generator unit with a capacity of 1,200 kW; and (6) appurtenant facilities.⁸

7. The Sanford Project consists of: (1) a 1,526-acre reservoir; (2) a 26-foot-high, 1,600-foot-long dam with an integrated 71-foot-long powerhouse section, a 149-foot-long spillway section controlled by six Taintor gates, and a 1,380-foot-long earth embankment; (3) a masonry powerhouse housing three generating units with a total installed capacity of 3,300 kW; (4) a 40-foot-long, 2.3-kilovolt transmission line; and (5) appurtenant facilities.⁹ The flood event of May 19, 2020 caused the Sanford dam to breach resulting in the loss of the right embankment and fuse plug, and causing significant erosion of the left bank.

B. Description of Boyce Hydro's non-jurisdictional Edenville Project

8. On September 10, 2018, following some 14 years of Commission staff's efforts to bring the recalcitrant licensee into compliance with safety and environmental license requirements, the Commission revoked the license for the Edenville Project. At the time of revocation, the project consisted of: (1) a 2,600-acre reservoir, Wixom Lake; (2) a 50-foot-long intake structure; (3) an earthen dam totaling about 6,600 feet spanning the Tittabawassee and Tobacco Rivers; (4) two reinforced concrete multiple-arch spillways; (5) a powerhouse containing two 2,400-kW Francis-type turbine generator units for a total installed capacity of 4,800 kW; and (6) appurtenant facilities.¹⁰

⁷ *Wolverine Power Corp.*, 85 FERC at 61,221-22.

⁸ *Wolverine Power Corp.*, 85 FERC at 61,230.

⁹ *Wolverine Power Corp.*, 41 FERC ¶ 62,192, at Ordering Para. (B) (1987).

¹⁰ Edenville Revocation Order, 164 FERC ¶ 61,178 at P 2.

C. May 19, 2020 High Flow Event

9. As mentioned above, on May 19, 2020, the Tittabawassee and Tobacco Rivers flooded. Boyce Hydro informed the Commission's Division of Dam Safety and Inspections - Chicago Regional Engineer (Chicago Regional Engineer) at approximately 5:45 pm EDT on May 19, 2020, that high inflows had breached the Edenville Dam. In later discussions, Boyce Hydro informed the Chicago Regional Engineer that the Secord and Smallwood Dams were passing flood flows. However, after the Edenville Dam failure, the Sanford Dam was overtopped, which led to the failure of the Sanford Dam.

10. The breaches and resulting flooding caused substantial damage to the surrounding communities, washing out major roads, destroying homes, and forcing the evacuation of approximately ten thousand residents.¹¹ In June 2020, the State of Michigan estimated that the economic harm from failure of the Boyce Hydro facilities exceeded \$190,000,000.¹²

D. Dam Safety and Compliance Directives and Order Assessing Penalty

11. Following the May 2020 high flow event, the Commission's Division of Dam Safety and Inspections (D2SI) and Division of Hydropower Administration and Compliance (DHAC) issued several orders requiring Boyce Hydro to carry out dam safety and environmental protection measures at the Secord, Smallwood, and Sanford Projects. Specifically, the orders required Boyce Hydro to conduct dam safety inspections and provide reports to the Commission, remove debris from the Sanford Dam, and consult with the U.S. Fish and Wildlife Service, Michigan EGLE, and the Michigan Department of Natural Resources (Michigan DNR) regarding the impacts associated with the drawdown reservoirs.¹³

12. On December 9, 2020, the Commission issued an Order to Show Cause¹⁴ to Boyce Hydro, based on its apparent violation of the Commission staff orders and of license provisions addressing safety at the Secord, Smallwood, and Sanford Projects. In the

¹¹ See Letter from Hon. Gretchen Whitmer to Hon. Donald Trump, at 2 (Jun. 15, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-532190--,00.html.

¹² See *id.* at 4.

¹³ The Order Assessing Penalty contains a detailed summary of the D2SI and DHAC proceedings. See Order Assessing Penalty, 175 FERC ¶ 61,049 at PP 16-34.

¹⁴ *Boyce Hydro Power, LLC*, 173 FERC ¶ 61,217 (2020) (Order to Show Cause).

Order to Show Cause, the Commission directed Boyce Hydro to provide an answer within 30 days and show cause why the Commission should not assess a \$15,000,000 civil penalty.¹⁵

13. On April 15, 2021, the Commission issued an Order Assessing Penalty¹⁶ finding that Boyce Hydro violated numerous Commission staff orders and license conditions addressing the safety of project facilities and surrounding communities after the failures of the Sanford Dam and the non-jurisdictional Edenville Dam. The Order Assessing Penalty assessed a \$15,000,000 civil penalty under section 31(c) of the FPA,¹⁷ for the violations of Standard Article 4 of the Boyce Projects' licenses, and section 12.4(b) of the Commission's regulations.¹⁸ The order also states that the Commission agreed to subordinate any civil penalty assessed by the Commission to the settlement fund for the victims of the dam breaches and flooding.¹⁹

E. Bankruptcy and Condemnation of the Boyce Projects

14. Boyce Hydro filed a voluntary petition for bankruptcy protection on July 31, 2020.²⁰ On February 25, 2021, the Bankruptcy Court confirmed Boyce Hydro's plan of liquidation.²¹ The confirmed plan provides for a settlement fund and subordinates any claim made by the Commission below all claims made to the settlement fund.²²

¹⁵ *Id.* P 2 (citing 18 C.F.R. § 385.213(a)); Ordering Para. (A).

¹⁶ Order Assessing Penalty, 175 FERC ¶ 61,049.

¹⁷ 16 U.S.C. § 823b(c).

¹⁸ 18 C.F.R. § 12.4(b) (2020).

¹⁹ Order Assessing Penalty, 175 FERC ¶ 61,049 at P 60.

²⁰ *See In re Boyce Hydro, LLC*, No. 20-21214 (Bankr. E.D. Mich. Jul. 31, 2020).

²¹ *See* Non-Consensual Order Confirming Debtors' Fourth Modified Joint Consolidated Chapter 11 Plan of Liquidation, *In re Boyce Hydro, LLC, et al.*, Case No. 20-21214 (Bankr. E.D. Mich. Feb. 25, 2021), ECF No. 489.

²² *See* Fourth Modified Joint Consolidated Chapter 11 Plan of Liquidation, *In re Boyce Hydro, LLC, et al.*, Case No. 20-21214 (Bankr. E.D. Mich. Feb. 23, 2021), ECF No. 481.

15. On July 31, 2020, Midland and Gladwin Counties, Michigan, acting through their delegated agent, the Four Lakes Task Force,²³ filed condemnation complaints against Boyce Hydro and all other related entities that owned property rights within the licensed project boundaries for the Boyce Projects. On December 23, 2020, the Circuit Court for the County of Gladwin and on December 28, 2020, the Circuit Court for the County of Midland, issued an order approving the taking of the real properties associated with the Boyce Projects.²⁴ Four Lakes Task Force now owns the properties associated with the Boyce Projects. Four Lakes Task Force did not acquire the licenses and states that it does not intend to operate the facilities for hydropower generation.²⁵ Since acquiring the projects, the task force, which has consulted with Commission staff and with Michigan EGLE, has developed and begun implementing plans to restore the reservoirs to a safe condition.

16. On February 5, 2021, Boyce Hydro filed an Application for the Unconditional Surrender of Licenses, asking the Commission to terminate the licenses by implied surrender. On March 3, 2021, the Commission issued a *Notice of Termination of Licenses by Implied Surrender and Soliciting Comments, Protests, and Motions to Intervene* for the Sanford Hydroelectric Project No. 2785, Secord Hydroelectric Project No. 10809, and the Smallwood Hydroelectric Project No. 10810.²⁶ On March 4, 2021, Four Lakes Task Force filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²⁷

²³ The Four Lakes Task Force is a 501(c)(3) nonprofit organization managed and operated by lake residents and industry experts and serves as a Delegated Authority for Midland and Gladwin counties to administer and oversee the maintenance and operations of the Secord, Smallwood, Edenville, and Sanford Dams.

²⁴ See *County of Gladwin v. Sanford Hydro Prop., LLC*, Consent Judgment Vesting Title and Awarding Compensation at 3, No. 20-10509-CC (Dec. 23, 2020) (available in Boyce Hydro's January 8, 2021 Filing at Att. 1); *County of Midland v. Sanford Hydro Prop., LLC*, Consent Judgment Vesting Title and Awarding Compensation at 3, No. 20-7191-CC (Dec. 28, 2020) (available in Boyce Hydro's January 8, 2021 Filing at Att. 2).

²⁵ See Four Lakes Task Force Jan. 5, 2021 Comments at 3.

²⁶ 86 Fed. Reg. 13,539.

²⁷ 18 C.F.R. § 385.214(c) (2020).

17. We received comments from the Four Lakes Task Force, Michigan EGLE, Michigan DNR, the National Park Service, and the Michigan Hydro Relicensing Coalition (Relicensing Coalition).²⁸

II. Discussion

18. A license may be terminated by implied surrender where a licensee, by action or inaction, has clearly indicated its intent to abandon the project, and has not filed a surrender application (e.g., the licensee has physically abandoned the project property, sold the project property without Commission authorization, dissolved its corporate or other legal identity, or has failed for several years to operate or maintain the project with no indication of doing so in the reasonably foreseeable future).²⁹

19. Boyce Hydro's February 5 filing requests that the Commission find the licenses terminated because the properties were condemned, or that we revoke the licenses due to Boyce Hydro's failure to maintain ownership of the necessary project properties. We consider the disposition of the licenses under the implied surrender framework because Boyce Hydro is bankrupt and no longer owns the property associated with the project.

20. Section 6 of the FPA provides that licenses "may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days public

²⁸ The Relicensing Coalition consists of four statewide, conservation groups composed of Michigan United Conservation Clubs, Michigan Council of Trout Unlimited, Great Lakes Council of Flyfishers International, and Anglers of the Au Sable. Relicensing Coalition Apr. 5, 2021 Comments.

²⁹ 18 C.F.R. § 6.4. See *River Bounty, Inc.*, 142 FERC ¶ 61,126 (2013); *James B. Boyd and Janet A. Boyd*, 138 FERC ¶ 61,085, at P 16 (2012) (citing *James Lichoulas Jr.*, 124 FERC ¶ 61,255 (2008), *reh'g denied*, 125 FERC ¶ 61,195 (2008), *aff'd*, *Lichoulas v. FERC*, 606 F.3d 769 (D.C. Cir. 2010)); *Fourth Branch Assocs. (Mechanicville) v. Niagara Mohawk Power Corp.*, 89 FERC ¶ 61,194, at 61,598 (1999) (finding implied surrender of license due to licensee's financial inability to carry out the license terms and conditions and despite licensee's expressed desire to continue as a licensee), *reh'g denied*, 90 FERC ¶ 61,250 (2000). Implied surrender is an administrative action that does not require environmental review. See 18 C.F.R. § 380.4(a)(1). See, e.g., *James B. Boyd and Janet A. Boyd*, 136 FERC ¶ 62,119, *order denying reh'g*, 138 FERC ¶ 61,085 at P 31 (environmental analysis not necessary for implied surrender); *Watervliet Paper Co.*, 35 FERC ¶ 61,030 (1986) (license surrender leaving all project features in place not major federal action significantly affecting environmental quality).

notice.”³⁰ Further, the license for each of the Boyce Projects includes the Commission’s standard articles,³¹ including the following article:

If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission . . . the Commission will deem it to be the intent of the Licensee to surrender the license. . . . [T]he Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.³²

21. When a licensee accepts a license that includes the above-quoted standard article, it thereby agrees that surrender is implied if the conditions described are met. In addition, section 6.4 of the Commission’s regulations pertain to implied surrender and state that it is the intent of a licensee to surrender the license if it shall cause or suffer essential property to be removed or destroyed, or become unfit for use.³³ Section 6.4 further provides that the Commission may in its discretion terminate the license, but not less than 90 days after public notice. The Commission can, however, waive its regulations where, as here, it is warranted.³⁴ Accordingly, we waive the 90-day requirement of section 6.4 because no comments in opposition to the notice were received, Boyce Hydro does not object to termination of the licenses by implied

³⁰ 16 U.S.C. § 799.

³¹ *Wolverine Power Corp.*, 85 FERC at 61,221 (including Form L-9 in the Secord Project license); *Wolverine Power Corp.*, 85 FERC at 61,230 (including Form L-9 in the Smallwood Project license); *Wolverine Power Corp.*, 41 FERC ¶ 62,192 (including Form L-3 in the Sanford Project license).

³² This article appears in Form L-3 as Standard Article 26 and in Form L-9 as Standard Article 17.

³³ 18 C.F.R. § 6.4.

³⁴ See *City of Fremont v. FERC*, 336 F.3d 910, 917-18 (9th Cir. 2003) (finding waiver of regulations within the authority of an agency when there is no showing of demonstrated injury or substantial prejudice). Given that all commenters support the proposed action, we also waive section 6.4’s proviso that implied surrender be preceded by three years of a lack of operation or other specified issues.

surrender,³⁵ and no entity will be disadvantaged by our grant of waiver, allowing the Commission to act sooner.

22. In its February 5 filing, Boyce Hydro admits that it violated the standard conditions of its licenses when the essential property for the Secord, Smallwood, and Sanford Projects was removed from its control via the condemnation proceedings.³⁶ Further, with Boyce Hydro's bankruptcy plan confirmed, the liquidating trustee will begin winding up and dissolving Boyce Hydro until the company no longer exists. Under the current scenario, Boyce Hydro states that it is the licensee for the Boyce Projects, but has no ownership or control of the Boyce Project facilities and that Four Lakes Task Force owns the properties.³⁷ Thus, it argues the Commission should find Four Lakes Task Force's condemnation of the Boyce Hydro properties and Boyce Hydro's bankruptcy constitute an implied surrender of the Boyce Projects.³⁸

23. Four Lakes Task Force, Michigan DNR, and the Relicensing Coalition support termination of the licenses for the Boyce Projects by implied surrender³⁹ and, Michigan EGLE does not object to the proposed action.⁴⁰ Four Lakes Task Force emphasizes that Boyce Hydro had numerous opportunities since the May 2020 high flow event to satisfy its license obligations and bring the projects into compliance, but instead it failed to satisfy its obligations to protect the public and the environment.⁴¹

24. Four Lakes Task Force and Michigan EGLE state that under the current scenario Boyce Hydro is the licensee for the Boyce Projects and remains under the Commission's jurisdiction, but Four Lakes Task Force is the owner of the properties and the Commission has no jurisdiction over it.⁴² Further, Michigan EGLE states that as long as

³⁵ Boyce Hydro Feb. 5, 2021 Filing at 2, 3.

³⁶ Boyce Hydro Feb. 5, 2021 Filing at 3-4.

³⁷ *Id.* at 5; *see also* Four Lakes Task Force Mar. 23, 2021 Comments at 1 (“[t]he Counties now own the properties and not the FERC licenses.”).

³⁸ *Id.* at 6.

³⁹ Four Lakes Task Force Mar. 23, 2021 Comments at 1; Michigan DNR Apr. 5, 2021 Comments at 1; Relicensing Coalition Apr. 5, 2021 Comments at 1.

⁴⁰ Michigan EGLE Apr. 5, 2021 Comments at 2.

⁴¹ Four Lakes Task Force Mar. 23, 2021 Comments at 1.

⁴² Four Lakes Task Force Mar. 23, 2021 Comments at 1; Michigan EGLE Apr.5,

the Boyce Projects remain under the Commission's jurisdiction the projects are exempt from Michigan's dam safety regulations, creating an untenable scenario.⁴³ Four Lakes Task Force also states that restoring hydroelectricity at the projects is not economical.⁴⁴

25. Four Lakes Task Force states that implied surrender will allow it to continue its work stabilizing the dams at the Boyce Projects and returning the reservoirs to their state-established normal elevation levels.⁴⁵ Michigan EGLE has worked cooperatively with Four Lakes Task Force to execute these stabilization efforts that mitigate ongoing erosion, public safety, natural resources, and transportation issues.⁴⁶ Four Lakes Task Force and Michigan EGLE note Commission staff's willingness to cooperate on the transfer of regulatory authority to provide an understanding of the current conditions and safety concerns.⁴⁷

26. Michigan DNR states that under normal circumstances it would provide comments on the local environmental and recreational issues that would arise during a license surrender proceeding.⁴⁸ However, Michigan DNR recognizes that the Commission will be unable to receive cooperation from Boyce Hydro and there are limitations associated with an implied surrender.⁴⁹

27. Boyce Hydro, Four Lakes Task Force, and Michigan EGLE, the agency responsible for dam safety within Michigan, agree that implied surrender is appropriate.⁵⁰

2021 Comments at 2.

⁴³ Michigan EGLE Apr. 5, 2021 Comments at 2.

⁴⁴ Four Lakes Task Force Jan. 5, 2021 Comments at 3;

⁴⁵ Four Lakes Task Force Mar. 23, 2021 Comments at 1.

⁴⁶ Michigan EGLE Apr. 5, 2021 Comments at 2.

⁴⁷ *Id.*; Four Lakes Task Force Mar. 23, 2021 Comments at 1.

⁴⁸ Michigan DNR Apr. 5, 2021 Comments at 1.

⁴⁹ *Id.* In its comments, Michigan DNR provides recommendations for Four Lakes Task Force for public recreation, resource protection, and maintenance at the Boyce Projects.

⁵⁰ The National Park Service recommends an assessment of existing recreation facilities and whether any instream work as a result of the surrender would have an impact on the Tittabawassee River and its status on the Nationwide Rivers Inventory.

Boyce Hydro violated the standard articles of its licenses when essential project property was removed from its possession and due to its bankruptcy. Further, the Commission is unable to require the Boyce Hydro to take action at the project because the licensee no longer has any ownership of the properties and because the licensee is bankrupt. At the same time, Four Lakes Task Force, a community entity, has acquired the project properties and has already begun rehabilitation work. Moreover, the state dam safety agency supports implied surrender. Given these facts, we find that surrender by Boyce Hydro is implied for the Secord, Smallwood, and Sanford Projects.

28. The Secord, Smallwood, and Sanford Projects already have a new owner, Four Lakes Task Force, which is actively working to remediate the issues from the May 2020 high flow event. Since the May 2020 high flow event, Four Lakes Task Force performed activities at the projects to implement interim risk reduction measures⁵¹ and provided information to the Commission, including a description of environmental damage,⁵² an estimate on the costs for remediation of the projects,⁵³ and documentation of how it assisted Boyce Hydro during and after the flooding.⁵⁴ Furthermore, Four Lakes Task Force is currently coordinating with Michigan EGLE and other agencies to ensure the project will transition from the Commission's dam safety program to Michigan's dam safety program.

29. We will ensure Commission staff remain available for continued coordination with Four Lakes Task Force and Michigan EGLE for up to a year following surrender to

National Park Service Apr. 5, 2021 Comments at 2. Given that we will have no jurisdiction over any project recreation facilities after surrender, we see no need to perform an inventory. Similarly, the absence of the licenses will not affect the river's status in the Nationwide Inventory. The Relicensing Coalition request that the Commission include a condition requiring financial assurances from Four Lakes Task Force. Relicensing Coalition Apr. 5, 2021 Comments at 1. We have no jurisdiction over the task force, which is not a licensee, so any financial requirements would be a matter of state law.

⁵¹ Commission staff Nov. 24, 2020 Letter Providing Comments on Four Lakes Task Force's Proposed Interim Risk Reduction Measures.

⁵² Four Lakes Task Force Jun. 18, 2020 Environmental Damage Filing.

⁵³ Four Lakes Task Force Jul. 18, 2020 Post-Failure Reconstruction Cost Analysis.

⁵⁴ Four Lakes Task Force Jul. 7, 2020 Comments at 3.

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ensure an effective and successful transition of jurisdictional authority for each of the Boyce Projects.

30. The financial viability of hydropower licensees, which can have significant impacts on the public and the environment, is a matter of great concern to us, and we have recently issued a notice of inquiry to seek public comments on steps we could take in this area.⁵⁵ We caution licensees that we are terminating Boyce Hydro's licenses by implied surrender with some reluctance and only under the unique circumstances presented here, where a local entity, with the support of state regulators, has stepped in to remedy the licensee's malfeasance. There is no guarantee that we will agree to a similar resolution in future cases.

The Commission orders:

(A) The licenses for the Secord Hydroelectric Project No. 10809, Smallwood Hydroelectric Project No. 10810, and Sanford Hydroelectric Project No. 2785 are terminated by implied surrender, effective at the close of business on May 27, 2021.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2020). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁵ See *Financial Assurance Measures for Hydroelectric Projects*, 174 FERC ¶ 61,039 (2021).

Document Content(s)

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