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STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



LIESL EICHLER CLARK
DIRECTOR

April 5, 2021

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Dear Secretary Bose:

SUBJECT: Comments on the Notice of Termination of Licenses by Implied Surrender and Soliciting Comments, Protests, and Motions to Intervene; Federal Energy Regulatory Commission (FERC) Docket Nos. P-2785-103, P-10809-051, and P-10810-057

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) respectfully submits the following comments in response to FERC's Notice of Termination of Licenses by Implied Surrender and Soliciting Comments, Protests, and Motions to Intervene for FERC Project Nos. P-2785 (Sanford Dam), P-10809 (Secord Dam), and P-10810 (Smallwood Dam).

Item I. of the Notice of Termination states the following:

“On May 19, 2020, the floodwaters of the Tittabawassee and Tobacco Rivers breached the Edenville Dam and the downstream Sanford Dam. The Secord and Smallwood Dams were not breached. The breaches and flooding caused substantial damage to the surrounding communities, washing out major roads, destroying homes, and forcing the evacuation of thousands of residents. The Commission’s Division of Dam Safety and Inspections issued numerous directives relating to dam and public safety at the Boyce Projects that Boyce Hydro failed to address. Boyce Hydro filed for bankruptcy protection on July 31, 2020. Midland and Gladwin Counties, Michigan, acting through their delegated authority, the Four Lakes Task Force, filed condemnation petitions against Boyce Hydro. On December 23, 2020, and December 28, 2020, the circuit court judges granted the petitions, which resulted in the transfer of all properties associated with the Secord, Sanford, Smallwood, and the non-jurisdictional Edenville Projects to Four Lakes Task Force, retroactively, effective to July 31, 2020.”

This matter is of grave importance to the State of Michigan in light of the May 19, 2020, failures of the Edenville and Sanford Dams in Gladwin and Midland Counties. Following the May 19, 2020, dam failures there have been several safety inspections of the Secord and Smallwood Dams and remaining portions of the failed Edenville and Sanford Dams. The Secord and Smallwood impoundments remain drawn down as a risk reduction measure until thorough safety evaluations and any necessary improvements are completed. The State of Michigan and Four Lakes Task Force (FLTF) have also undertaken several stabilization projects in the former Edenville and Sanford impoundments and at the Edenville Dam to mitigate ongoing erosion, public safety, natural resource, and transportation related issues. Continued work at all four dams is planned over the next several years to ensure that these issues are properly mitigated.

Section 31506(2)(a) of Michigan's dam safety statute, Part 315, Dam Safety, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), specifically exempts hydropower dams regulated by FERC from regulation by the State of Michigan:

“(2) The following are exempt from this part:

(a) Projects licensed, projects that have preliminary permits, or projects for which an application for licensure has been filed under the federal power act, chapter 285, 41 Stat. 1063, 16 U.S.C. 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and 824b to 825r, if federal dam safety inspection provisions apply during the license period and the inspection reports are provided to the department.”

The Secord, Smallwood, and failed Sanford Dams are currently under FERC jurisdiction and, therefore, exempt from State of Michigan dam safety regulation. FERC licenses for these three projects are held by the dams' previous owner, Boyce Hydro Power, LLC, which has filed for bankruptcy. Gladwin and Midland Counties have taken over ownership of all four dams via condemnation proceedings, with operation and maintenance responsibilities falling to their delegated authority, the FLTF. Since FERC's regulatory authority is through the licenses held by Boyce Hydro Power, LLC, this creates a unique regulatory conundrum in which the State of Michigan has no regulatory authority over the safety of dams the FERC licensee no longer owns. This is not an effective or sustainable regulatory model.

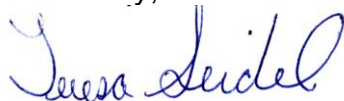
Given this unique set of circumstances, EGLE does not object to the termination of the FERC licenses for the Secord, Smallwood, and Sanford hydroelectric projects by implied surrender. Termination of the licenses would cause the three dams currently under FERC jurisdiction to come under State of Michigan regulatory authority under Part 315, just like the Edenville Dam. Since the May 19, 2020, dam failures occurred,

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EGLE has had extensive coordination with FERC and the FLTF in an effort to better understand the current condition and safety concerns of all four dams. If the FERC licenses are not to be transferred to the FLTF for future hydropower generation at any of the dams, then the logical path forward is termination of the licenses as assumption of regulatory authority by the State of Michigan. Regardless of whether FERC grants the licensee's petition for license surrender, EGLE will continue to coordinate with FERC and the FLTF to ensure that whatever the long-term disposition of the dams may be, that it be realized in a manner that protects public health and safety, natural resources, and the public trust in those natural resources.

Thank you for the opportunity to provide comments on this issue. If you have any questions about these comments, please contact Mr. Lucas A. Trumble, P.E., Supervisor, Dam Safety Unit, Water Resources Division, at TrumbleL@Michigan.gov; 517-420-8923; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958; or you may contact me.

Sincerely,



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cc: Ms. Amy Lounds, EGLE
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