

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 10809-045 & -047
Secord Hydroelectric Project
Project No. 10810-051 & -053
Smallwood Hydroelectric Project
Project No. 2785-098 & -099
Sanford Hydroelectric Project
Michigan
Boyce Hydro Power, LLC

July 1, 2020

Via Electronic Mail and
CERTIFIED MAIL
RETURN RECEIPT REQUEST

Mr. Lee Mueller
Boyce Hydro Power, LLC
10120 W. Flamingo Rd, Ste 4 #192
Las Vegas, NV 89147
lwmueller@boycehydrorollc.com

Subject: Overdue Dam Safety and Public Safety Information, Reminder Regarding
Environmental Consultation, and Section 31 Notice

Dear Mr. Mueller:

This letter concerns overdue dam safety and public safety information, and necessary environmental consultations you must initiate for the Sanford Project No. 2785, Secord Project No. 10809, and Smallwood Project No. 10810. You have failed to respond to certain directives from the Commission to investigate safety issues at these projects following the May 19, 2020 high-flow event. Given the serious nature of the recent failures at the Sanford and Edenville Dams, and the need to provide timely information to the Commission, this letter serves as notice that under Section 31 of the Federal Power Act (FPA)¹ the Commission may pursue enforcement actions.

¹ 16 U.S.C. § 823b (2018) (Section 31 of the FPA).

By letter dated May 20, 2020, the Commission required you to perform a dam safety inspection of the Sanford, Secord, and Smallwood Dams within three days of flood flows receding. In that letter, you were required to file an inspection report for each project within three days of completing the inspections. Flood flows had fully receded and reservoir elevations were at or below normal levels by May 21 and May 23 at the Smallwood and Secord Projects, respectively. Despite this, you did not perform the required inspections until the week of June 8, 2020, over two weeks later. On June 30, 2020, you filed the inspection report for the Smallwood Dam, which is currently under review. However, we have not received your inspection reports for the Secord and Sanford Dams.

By letter dated May 26, 2020, you were required to reach out to Michigan Department of Natural Resources and U.S. Fish and Wildlife Service regarding mussel surveys and provide the Commission a copy of any correspondence issued to, or received from, the resource agencies. To date we have not received this information, nor confirmation that you have consulted with the agencies.

By letter dated May 28, 2020, you were required to file an incident report for the Sanford, Secord, and Smallwood Dams prepared in accordance with section 12.10(a)(2) of the Commission's regulations. That report must discuss the flood event, failure of the Sanford Dam, damage and erosion at the Smallwood project, and specific information on your operations and emergency response specified in an enclosure to the letter. The letter established June 16, 2020, as the date for filing the incident report. We have not received your report.

By letter dated June 4, 2020, you were required to immediately remove significant amounts of debris that had accumulated at the Sanford Dam as a result of the May 19, 2020 failure of the upstream Edenville Dam. The letter required documentation of your efforts to remove debris at the Sanford Dam by June 8, 2020. We have not received that documentation.

By a separate letter also dated June 4, 2020, Commission staff pointed out that residences and structures located near the Sanford reservoir shoreline may be subjected to instability from steep banks. This instability may be exacerbated by additional erosion from a now free-flowing river compared to the previous lacustrine condition, particularly during rainfall with higher flows. You were directed to have a professional engineer survey the shoreline to identify areas of instability and file a report as soon as possible. The letter required Boyce Hydro to immediately implement stabilization measures for any residences or structures in jeopardy of additional damage. We have not received a report with your professional engineer's survey and analysis.

In summary, you are in violation of orders issued by the Commission pursuant to Part 12 of the Commission's regulations. You must file the following information with the Commission immediately as required by the above letters:

1. Your dam safety inspection report(s) for Sanford and Secord Dams;
2. Your section 12.10(a)(2) incident report for the flood event and subsequent failure and damage to the Sanford, Secord, and Smallwood Dams;
3. Your documentation that all debris has been removed at the Sanford Dam; and
4. Your professional engineer's survey and analysis of steep banks and any slope instability along the shoreline of the Sanford reservoir.

Finally, your above reports must contain a current assessment of the Secord and Smallwood Dams that documents how the two projects can continue to be operated safely. Your assessment must describe whether you plan to make any additional repairs or take any additional actions needed to ensure project safety and must include a proposed schedule for raising the two reservoirs and restoring normal operations. However, you must not increase reservoir elevations at the two projects until you request and receive specific approval from the Commission.

Failure to provide the Commission with timely information related to the May 19, 2020 flood event and subsequent damage could further jeopardize dam safety, public safety, and hinder the Commission's understanding of the above incident. Accordingly, this letter constitutes notice under section 31 of the FPA that you are currently in non-compliance of Part 12 of the Commission's regulations for failure to submit/complete the above listed items. If you believe that you filed the required information, you should respond immediately, identifying the specific filings. Otherwise, Section 31 of the FPA provides the Commission authority to monitor and investigate compliance with terms and conditions of licenses and based on the Commission's findings, assess civil penalties for violations of licenses issued under Part I of the Act. Section 31 authorizes the Commission to assess civil penalties exceeding \$20,000 per day, per violation, for failure to comply with the terms and conditions of a license.²

Failure to comply with license requirements may lead to an enforcement proceeding and civil penalties under Section 31 of the FPA, or license revocation. Your efforts to proceed with all due diligence will be considered in any future Commission action on this matter.

² See Civil Monetary Penalty Inflation Adjustment, 18 C.F.R. § 385.1602(b) (2019).

As public safety at these projects is paramount, we strongly urge you to comply with our regulations and file all of the requested information immediately. You remain in non-compliance of your licenses until all of the requested items have been received.

Please contact me if you have any questions regarding this letter via email or phone at carlisa.linton@ferc.gov or 202-502-8416.

Sincerely,

CarLisa Linton
Director
Division of Hydropower
Administration and Compliance