

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boyce Hydro Power, LLC

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

NOTICE OF TERMINATION OF LICENSES BY IMPLIED SURRENDER AND
SOLICITING COMMENTS, PROTESTS, AND MOTIONS TO INTERVENE

(March 3, 2021)

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

- a. Type of Proceeding: Termination of Licenses by Implied Surrender
- b. Project Nos: P-2785-103, P-10809-051, and P-10810-057
- c. Date Initiated: February 5, 2021
- d. Licensee: Boyce Hydro Power, LLC (Boyce Hydro)
- e. Name of Projects: Sanford (P-2785), Secord (P-10809) and Smallwood (P-10810) Hydroelectric Projects (Boyce Projects)
- f. Location: The projects are located on the Tittabawasee River in Midland and Gladwin counties, Michigan.
- g. Filed Pursuant to: 18 CFR section 6.4
- h. Applicant Contact: Mr. Michael A. Swiger, Van Ness Feldman, LLP,
1050 Thomas Jefferson Street, NW, Washington, DC 20007.
(202) 298-1800, mas@vnf.com
- i. FERC Contact: Rebecca Martin, (202) 502-6012, Rebecca.martin@ferc.gov
- j. Deadline for filing comments, motions to intervene and protests: **June 1, 2021.**

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments

up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket numbers P-2785-103, P-10809-051, and P-10810-057. Comments emailed to Commission staff are not considered part of the Commission record.

k. Description of Projects Facilities: The Boyce Projects are located on the Tittabawassee River with the Secord Project being the most upstream, followed by the Smallwood Project, which is located approximately seven river miles downstream, followed by the non-jurisdictional Edenville dam (formerly FERC Project No. 10808), which is located approximately 13 river miles downstream of the Smallwood Project, at the confluence of the Tittabawassee and Tobacco Rivers. The Sanford Project is located approximately 11 river miles downstream of Edenville Dam.

The Secord Project was licensed on October 16, 1998. The project works consist of: (1) the 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, 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 dam housing with one Francis vertical-axis turbine-generator unit with installed capacity of 1,200 kilowatts (kW); and (6) appurtenant facilities.

The Smallwood Project was licensed on October 16, 1998. The project works consist of: (1) the 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; (3) two 25.3-foot-wide, 10-foot-high steel Taintor gates on top of the spillway crest; (4) a 100-foot-long, 40-foot-high right-side earth embankment; (5) a 550-foot-long, 40-foot-high left-side earth embankment; (6) 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 capacity of 1,200 kW; and (7) appurtenant facilities.

On May 19, 2020, the Sanford Project, licensed on December 1, 1987, was breached. This breach resulted in the loss of the right embankment and fuse plug and significant erosion of the left bank. However, as licensed, the project works consisted 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.

l. Description of Proceeding: The Commission's regulations, at 18 CFR 6.4, provide that if a licensee shall cause or suffer essential property to be removed or destroyed, or become unfit for use, without replacement it is deemed to be the intent of a licensee to surrender the license, and the Commission may, and not less than 90 days after public notice, in its discretion terminate the license by implied surrender.

The Commission is issuing this notice of termination by implied surrender based on case specifics. 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.

m. Location of the Orders Issuing Licenses: These orders may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR §§ 385.210, .211, .214, respectively. In determining the

appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. The Commission invites comments by the Four Lakes Task Force, which now owns the project works for the three projects, as well by Michigan Department of Environment Great Lakes and Energy, which would become the regulator of the facilities should the Commission terminate the licenses.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

q. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR §§ 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Nathaniel J. Davis, Sr.,
Deputy Secretary.