



FOUR LAKES TASK FORCE

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fourlakes taskforce.org

January 5, 2021

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

RE: Four Lakes Task Force Notification of Taking of Properties and Comments and Request related to FERC's December 7, 2020 ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED PENALTY Related to Boyce Hydro Power, LLC.

Dear Ms. Bose:

With this letter, the Four Lakes Task Force ("FLTF") is notifying FERC that the Michigan Counties of Midland and Gladwin, have acquired the properties and flowage rights ("Real Properties") from Boyce Hydro Power, LLC (BHP). In July 2020 Midland and Gladwin Counties (by and through the FLTF) initiated condemnation lawsuits against BHP to acquire the Real Properties affecting Project Numbers 10809 (Secord), 10810 (Smallwood), 2785 (Sanford) and formerly FERC Project Number 10808 (Edenville). In December 2020, the US Bankruptcy Court approved a Settlement Agreement that authorized the Counties' acquisition of the Real Properties. Subsequently, the circuit courts in Midland and Gladwin counties approved a "Consent Judgment Vesting Title and Awarding Compensation" and the orders vesting title were recorded in the county register of deeds. The effective date of the taking of the Real Properties is July 31, 2020.

With the Counties now owning the properties, and not the FERC Licenses, the regulatory framework in connection with the four dams needs to be resolved. Michigan's Department of Environment, Great Lakes and Energy ("EGLE") cannot assume regulatory authority until there is a disposition of the licenses. FLTF, Midland and Gladwin counties, have no legal interest in the fate of these licenses, and further, will not yield control of the properties and flowage rights required in connection with our responsibilities under Part 307, Inland Lakes, of the State of Michigan's Natural Resource and Environmental Protection Act, MCL 324.30701 et seq. The enforcement issues referred to in the December 7th Show Cause and Notice of Proposed Order are between the FERC and BHP.

In FERC's approach to enforcement or license disposition, we request that it place the interests of the Four Lakes community first and foremost. The failure of the Edenville Dam, destruction of the Sanford Dam, and the lowering of Secord and Smallwood lakes have created catastrophic environmental and economic damage and imposed a high public safety concern and burden on our community. Prior to any decision to surrender or revoke the Project Licenses, FLTF requests and expects an interagency meeting to help ensure an orderly transition in jurisdiction from the FERC to the State of Michigan. The meeting would convene FERC, EPA, Michigan EGLE and DNR, for the specific purpose to address protocols, roles, and jurisdictional responsibilities in connection with the transfer of the Four Lakes system from private ownership to public ownership. As discussed below, recovery and restoration will entail significant cost, and the property owners should not have to shoulder the full burden of these costs.

A. BACKGROUND

As the Commission is aware, the Four Lakes system is an important resource to Gladwin and Midland Counties and to over 6,500 lake property owners. The four dams that created the Four Lakes are hydraulically and hydrologically interrelated, and the restoration and continued operation of the dams and maintenance of the lake levels are of paramount importance to the environment, recreation, property values, and the public health, safety, and welfare of Gladwin and Midland Counties and their residents. The catastrophic dam failures that occurred on May 19, 2020 and the resulting flooding that caused substantial damage to surrounding communities, major roads, homes, and businesses has placed an untenable financial burden on the Four Lakes communities, while providing no explanation of how a federally regulated system that was intended to protect them, is just now seeking to impose a civil fine against an insolvent company.

Recognizing the importance of the Four Lakes, prior to the catastrophic events of May 19, 2020, Lake Associations from the Four Lakes (“Four Lakes Community”) raised several concerns with the Commission in connection with BHP’s stewardship of the hydroelectric projects, public safety, and long-term sustainability of the Four Lakes.

When the Commission proposed to revoke the Edenville hydroelectric project license due to BHP’s non-compliance, the Four Lakes’ community expressed its concerns and requested time from FERC to acquire the Edenville project. The Edenville Project License was revoked before the community could acquire the project.

The Four Lakes Community also raised concerns about the transfer of jurisdiction from FERC to EGLE (Dam Safety), as well as the transfer of information and knowledge in connection with Edenville Project. The January 1, 2019 Order (denying Rehearing) rejected the Four Lakes Community’s request for additional time to address the jurisdictional transfer. FERC advised that it was in contact with the Michigan authorities, and indicated that there was no concern with the transfer of jurisdiction.

When it became clear that FERC intended to revoke the Edenville Project license, the Four Lakes Community began a process that would transition ownership and operations from BHP to public ownership. To this end, in 2018 the Counties of Gladwin and Midland appointed the Four Lake Task Force (made up of representatives from the Four Lakes Community) to develop a plan to ensure the long-term sustainability of the Four Lakes. In Michigan, Part 307 “Inland Lake Levels” of the Michigan Natural Resources and Environmental Protection Act, MCL 324.30701 et seq. (“Part 307”) is the exclusive authority for establishing and maintaining the legal levels of a natural or artificial lake. Part 307 allows counties to make policy decisions regarding the maintenance of inland lakes, to acquire dams, and defray costs associated with the acquisition, operation, and maintenance of dams by special assessments to properties within the boundaries of a special assessment district.

In May 2019, the Gladwin and Midland County Circuit Courts established the normal levels for each of the Four Lakes (which was based on the historical water levels and conditions set forth in the FERC licenses) and approved the Four Lakes Special Assessment District. In connection with the Four Lakes, Midland and Gladwin counties appointed the Four Lakes Task Force (“FLTF”) as its Part 307 “Delegated Authority.”

The FLTF is a Michigan nonprofit IRS 501(c)(3) organization. As the Counties’ Part 307 Delegated Authority, FLTF represents the lake property owners within the Four Lakes Special Assessment District. The FLTF was authorized to acquire, administer, construct, operate, maintain, repair, and improve the dams as required to maintain the legal levels established by the Midland circuit court.

In 2019, FLTF sought to acquire the dams from BHP, and a purchase agreement was executed. Unfortunately, because of the catastrophic events of May 19, 2020 the purchase of the dams did not take place. In June 2020, the Counties authorized the condemnation and taking of the properties from BHP. The Counties also appointed FLTF as its Delegated Authority for all federal and state coordination and funding in connection with the recovery and restoration of the Four Lakes.

B. POST MAY 19, 2020

As of December 29, 2020, seven months after the failure of the Edenville Dam, the Counties acquired all four dams and related BHP properties through condemnation. Title of the dams and bottomlands is now held in the name of the Counties.

Since May 19th, the focus of FLTF's efforts have been on interim measures to recover and protect public safety until the dams can be rebuilt. With funding assistance from the USDA Natural Resources Conservation Services (NRCS), the State of Michigan, and private donations, FLTF has been stabilizing the dams, removing debris, and repairing shoreline damage caused by the dam failures (something that BHP had abandoned and refused to address). This effort will continue at least through 2021 and will cost approximately \$40 million. The NRCS program requires 25% matching funds -- which means that funding for this program comes directly from property owners with support from donations and other state grants. Without this program, countless homes and structures would have been lost due to erosion and instability of the lakeshore. Countless numbers of FLTF volunteers have assisted to coordinate with, Michigan EGLE Dam Safety, NRCS, and many contractors to stabilize the dams remove debris and repair the shoreline. FLTF has kept FERC informed during this process. We are thankful for this public-private partnership that is improving public safety.

The environmental restoration and bringing the lakes back to their legal level still needs to be undertaken and this will require an even stronger public-private and interagency collaboration. FLTF has undertaken the study to determine the most feasible approach to the restoration effort, with support from the State of Michigan and private donations. It is clear in our engagement with state and federal agencies, including FERC, that these dams and their prior ownership, have created a complex regulatory, environmental, and economic challenge for the agencies as well as the Counties and FLTF. There have been several important initiatives and an investigation by FERC and the State of Michigan on "what went wrong". The Four Lake Community, the Counties and FLTF need similar attention by the state and federal agencies on "how to make it right".

A year ago, the purchase and repair of the dams and the continued operation of hydro power (and the Four Lake's community's future) was very affordable. That is no longer the case. The estimated cost to recover, restore and repair all four dams exceeds \$300 million. Costs for environmental restoration are likely in the range of \$50 million. Hydropower generation facilities at Secord, Smallwood, Edenville and Sanford require major capital expenditures and are no longer economically viable as a source to reestablishing these lakes.

We understand that FERC is doing its best to enforce licensing compliance against BHP, and to manage an incredibly difficult situation. However, a \$15 million penalty is significantly less than the recovery costs and would be less than 5% of the cost to restore the environment and lakes. We believe FERC's action to seek penalties against BHP may be too late and will not benefit the Four Lakes' community. BHP is insolvent, the individual property damages already exceed the availability of funds coming out of bankruptcy.

C. IN CONCLUSION

FLTF and the counties have successfully acquired the real property interests from BHP. Absent the hydropower, the BHP holding of the licenses for the three dams has become a burden to FLTF. We request FERC to address this situation quickly and help facilitate an orderly transition in jurisdiction to the State of Michigan, which will lead to a plan to conclude the recovery and restore these lakes, the environment, and communities' economic well-being.

BHP was given the opportunity with a FERC license to profit from a natural resource, but failed on its stewardship of that resource, even with FERC oversight, to protect the public and the environment. FLTF understands the responsibility it is assuming on behalf of our community and Midland and Gladwin Counties to ensure these lakes are sustainable into the future. FLTF and the Counties have significantly fewer financial resources than the government of the United States of America to take on the disaster that it did not create. We believe significant federal assistance will be required beyond just an administrative transfer of regulatory oversight to restore the lakes.

We must collectively be forward-thinking in our approach to deal with the disaster, and the environmental and economic restoration that is required. It requires a Duty of Care by all parties that requires them to work together. It must start with a meeting with FLTF and the federal and state agencies involved in the transition to define roles, responsibilities of the transition, and expected requirements and resources needed for permits and approval.

Sincerely,



David E. Kepler II
President and Chairperson
Four Lakes Task Force

CC:

Liesl Clark, Director of the Michigan Department of Environment, Great Lakes and Energy (EGLE)
Daniel Eichinger, Director of the Michigan Department of Natural Resources (MDNR)
Andrew Wheeler, Administrator of the U.S. Environmental Protection Agency

John Moolenaar, Congressman, 4th District of Michigan
Gary Peters, U.S. Senator for Michigan
Debbie Stabenow, U.S. Senator for Michigan
James Stamas, State Senator, Michigan 36th State Senate District
Gretchen Whitmer, Governor of the State of Michigan