

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 29, 2020

Liesl Clark
Director
Michigan Department of Energy, Great Lakes, and Environment
Constitution Hall
525 West Allegan, P.O. Box 30473
Lansing, Michigan 48909

Dear Director Clark:

On May 19, 2020, the Edenville dam breached, resulting in catastrophic flooding and the evacuation of approximately 10,000 residents in the areas downstream of the dam. We write to request further information about the actions the State of Michigan (Michigan) took in overseeing the 96-year-old Edenville dam, which is currently under Michigan's jurisdiction.

The Edenville dam, operated by Boyce Hydro Power, LLC (Boyce Hydro) has a long history of non-compliance with safety requirements, and in September 2018, the Federal Energy Regulatory Commission (FERC) issued an order revoking its Federal hydropower license.¹ While states maintain jurisdiction over non-powered state- and privately-owned dams within state boundaries, FERC maintains jurisdiction over non-Federal dams that produce electricity. With Edenville's FERC permit revoked, regulatory authority passed to the State of Michigan. Most states, including Michigan, have established a regulatory program for the safety of dams not under federal jurisdiction. State dam safety programs typically include safety evaluations of existing dams and periodic reviews.

¹ United States Federal Energy Regulatory Commission, *Order Revoking License*, 164 FERC 61,178 (2018).

To assist us in better understanding the current situation, the period leading up to the transfer of authority over the dam from FERC to Michigan, and the sufficiency of tools available to Michigan to address the public safety risks presented by high hazard dams, we request responses to the following questions:

1. As you are aware, Michigan inspected the Edenville dam on October 8, 2018, and found the facility in “fair structural condition,” despite FERC’s finding only one month prior that resulted in the revocation of the project’s hydropower license.² Please detail what assessment was performed to reach that finding.
2. What communications did Michigan have with FERC regarding the Edenville dam prior to and during the noncompliance and revocation proceedings?
3. What did Michigan view as its authorities and obligations with respect to the Edenville dam prior to FERC’s revocation of the hydroelectric license for the dam in September 2018?
4. What did Michigan view as its authorities and obligations with respect to the Edenville dam after FERC’s revocation of the hydroelectric license for the dam?
5. What actions did Michigan take with respect to Edenville dam after FERC’s revocation of the hydroelectric license for the dam?
6. According to press reports, a January 31, 2020 communication from an engineer employed by your department to consultants indicated that the dam did not meet safety standards.³ What additional assessment or action undertaken by Michigan during the period between October 2018 when the dam was found to be in “fair” condition and January 2020 led to the conclusion that the dam did not meet safety standards?
7. In May 2020, Michigan sued Boyce Hydro for alleged counts of environmental violations, public nuisance, and conversion, based upon Boyce Hydro’s lowering of Lake Wixom’s water levels in the winters of 2018 and 2019.⁴ What legal and regulatory actions, if any, has Michigan taken against Boyce Hydro with respect to the Edenville dam? Please provide a list of all legal and regulatory actions taken by Michigan against Boyce Hydro between September 2018 and today.

² Letter from Jim Pawloski P.E., Hydrologic Studies and Dam Safety Unit, Water Resources Division, Department of Environmental Quality, State of Michigan (Oct. 2018) (www.michigan.gov/documents/egle/egle-EdenvilleDamInspection-10042018_691245_7.pdf).

³ *State found by January that Edenville Dam didn't meet Michigan safety standards*, The Detroit News (May 22, 2020).

⁴ Summons and Complaint (May 1, 2020), *Michigan Department of Environment, Great Lakes, and Energy; and the Department of Natural Resources v. Boyce Hydro Power, LLC* (No. 20-255-CE).

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8. What resources, including financial and personnel, does Michigan dedicate to the state's dam safety program?
9. What communications has Michigan had with FERC regarding the safety of the Edenville dam since FERC's revocation of the hydroelectric license for the dam?

Please provide a response to the above questions by Friday, June 12, 2020. If you have any questions please contact Jean Fruci (Jean.Fruci@mail.house.gov) or Rick Kessler (Rick.Kessler@mail.house.gov) with the Committee Majority Staff at (202) 225-2927 or Brandon Mooney (Brandon.Mooney@mail.house.gov) with the Committee Minority Staff at (202) 225-3641. Thank you for your consideration and attention.

Sincerely,

Frank Pallone, Jr.
Chairman

Greg Walden
Ranking Member

Bobby L. Rush
Chairman
Subcommittee on Energy

Fred Upton
Ranking Member
Subcommittee on Energy

Debbie Dingell
Member of Congress

Tim Walberg
Member of Congress