

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

South Carolina Electric & Gas Company

Project No. 516-435

ORDER DENYING REHEARING

(Issued December 21, 2006)

1. On October 10, 2006, we issued an order¹ modifying and approving an application filed by South Carolina Electric & Gas Company (SCE&G), licensee for the Saluda Hydroelectric Project No. 516, for authorization to permit LAB Investors, L.L.C. (LAB) to use project lands for the construction of a boat docking facility, boat launch, and courtesy dock on Lake Murray at the site of a residential subdivision known as Pintail Point.
2. Lake Murray Watch (Lake Watch), which opposes the application, has filed a timely request for rehearing of the October 10 order. Because Lake Watch has not shown any error in the October 10 order, we deny rehearing.

Background

3. Lake Murray is the reservoir created by the Saluda Project, which is located on the Saluda River, ten miles west of Columbia, South Carolina. Lake Murray has a maximum depth of about 200 feet near the intake towers, a surface area of 50,000 acres, and a full pool elevation of 360 feet mean sea level (msl).

¹ 117 FERC ¶ 61,030 (2006).

4. Pursuant to the provisions of the project's shoreline management plan (SMP),² SCE&G filed an application on January 10, 2006, requesting permission for LAB to use about 2.0 acres of project lands that lie below the 360-foot-msl-contour (full pool elevation) to construct a 100-slip boat docking facility, a courtesy dock, and a boat launch for residents of Pintail Point subdivision in Lexington County, South Carolina. Lake Watch, a local citizen's group, and several residents who either own homes on Lake Murray or live nearby and use the lake for recreation, filed motions to intervene asking the Commission to deny LAB's proposal on the grounds that the proposed dock would adversely affect environmental resources and would entail excavation that violates the SMP.

5. LAB's proposal called for the excavation of 9,200 cubic feet of material over about 2.0 acres of project lands. The SMP requires that multi-slip docks be located in an area where water depths are adequate for dock development without requiring any excavation. By letter dated May 18, 2006, the Commission's staff asked SCE&G to justify the proposed excavation in light of the SMP restriction. SCE&G filed a response on May 30, 2006, stating that the proposed excavation would optimize the development by allowing year-round use, even during times of low pool elevations, but that the proposed dock would be adequate even in the absence of excavation.

6. In the October 10 order, we determined that the proposed excavation was in fact inconsistent with the SMP's prohibition on excavation for multi-slip docks. We further concluded that the remainder of the proposed development would have only minor environmental impacts. Consequently, we approved the application, as modified to exclude the excavation.

7. On November 9, 2006, Lake Watch requested rehearing of the October 10 order, arguing that the Commission based its decision on flawed information. Lake Watch disagrees with the licensee's assessment that the proposed dock would be a good project without the excavation and asks the Commission to require that the licensee conduct a survey demonstrating that water depths are adequate to accommodate the marina. Lake Watch also asks that the Commission reconsider Lake Watch's request to deny the proposal.

² The SMP governs, among other things, the licensee's consideration of requests for permission to use its project shoreline and waters. The plan, which is updated every five years, was first approved in 1981. *South Carolina Electric and Gas Co.*, 16 FERC ¶ 62,479. In 2004, the Commission approved the most recent update. *See South Carolina Electric and Gas Co.*, 107 FERC ¶ 62,273 (2004), *order clarifying and modifying order and denying rehearing*, 109 FERC ¶ 61,083 (2004).

Discussion

8. Lake Watch first disputes SCE&G's statement, on which the Commission relied in the October 10, 2006 order, that the multi-slip dock could be constructed without excavation. Lake Watch states that it conducted a site visit on November 8, 2006, and that, based on information gathered during the visit and U.S. Geological Survey records on lake levels,³ it estimates that the proposed marina would be covered in mud flats and grounded almost six months out of the year. Lake Watch alleges that the area would consequently be marred by an unsightly structure that would also contribute to adverse impacts on boating vessels (which could be stranded and damaged during low lake levels), shallow water habitat, and spawning grounds. Lake Watch asserts that the proposed marina cannot be consistent with project purposes and asks that the Commission require SCE&G to provide a survey of the lake bottom at the proposed site to demonstrate that water depths without excavation are in fact adequate for the proposed marina.

9. As noted, the SMP requires that multi-slip docks be located in an area where water depths are adequate for dock development without requiring any excavation. To be adequate, lake depths need not allow for year-round operation of a docking facility, and Lake Watch acknowledges that even under its calculations, the docking facilities would be fully operational for the summer months and at least partially operational for more than six months of the year (from about April 1 to early October). With respect to lake Watch's allegation that the presence of the docks during low-water months would have adverse impacts, it is difficult to see how the fact that the dock could be out of the water for part of the year would by itself have any impact on shallow water habitat or spawning grounds, as Lake Watch alleges. To the extent that boats at the dock could be stranded or damaged, that is a matter for private concern, and not a public interest issue. Further, we believe that our requirement that SCE&G include in the permit to LAB conditions ensuring that the permitted use and occupancy do "not endanger health, create a nuisance, or otherwise be incompatible with the project's overall purposes, including public recreation and resource protection" and that the permitted use occurs "in a manner that

³ Lake Watch cites U.S. Geological Survey data indicating that lake levels drop to about 354 feet by early October, continue dropping, and return to 354 feet by April of the following year. Using its calculations, Lake Watch estimates that the project would begin losing use of the slips when the lake level drops below 356 feet and would lose use of all the slips when levels drop below 354 feet.

will protect the scenic, recreational, and other environmental values of the project”⁴ should adequately protect the public and the environment.

10. Second, Lake Watch references a statement in the Environment Assessment (EA) prepared by Commission staff regarding SCE&G’s application, to the effect that in the absence of the multi-slip dock, LAB would likely construct individual docks, which would have greater environmental impacts than the larger facility. Lake Watch states that, according to SCE&G, LAB intends to construct individual private docks, in addition to the multi-slip dock. Based on this “new information,” Lake Watch renews its request that the Commission authorize the launching ramp and courtesy dock, but not the multi-slip dock or, in the alternative, asks the Commission to require that no individual docks be permitted.

11. In the EA, staff declined to further study Lake Watch’s alternative of denying approval of the 100-slip multi-slip dock because that alternative “would likely result in each of the lake front lots installing docks out in front of each lot, which would have a greater impact on the shoreline.”⁵ However, staff did not rely upon that statement in recommending that the application, as modified to prohibit dredging, be approved. Rather, staff’s recommendation was based on the determination that the modified proposal would not interfere with project purposes or significantly affect the environment.⁶ We approved the proposal on the same basis.⁷ Construction of any individual docks will have to comply with the standards established by the SMP, which are designed to provide appropriate environmental safeguards. In any case, Lake Watch’s allegation that SCE&G has made a non-specific statement regarding LAB’s intentions does not amount to substantial evidence on which we could rely.

⁴ See 117 FERC ¶ 61,030 at Ordering Paragraph (B).

⁵ 117 FERC at 61,142.

⁶ *Id.* at 61,153.

⁷ *Id.* at 61,138, P 32.

The Commission orders:

The request filed by Lake Murray Watch on November 9, 2006, for rehearing of the October 10, 2006 order in this proceeding is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.