

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Appalachian Power Company

Project No. No. 2210-128

ORDER GRANTING REHEARING

(Issued April 20, 2006)

1. On January 5, 2006, Commission staff issued an order¹ modifying and approving an application filed by Appalachian Power Company (Appalachian), licensee for the Smith Mountain Project No. 2210, for authorization to permit J. W. Development, Inc. (JWD), to, among other things, install eight additional boat docks on the project's reservoir at the site of an existing resort and residential development known as The Pointe at Mariners Landing. The order modified the proposal by denying authorization to construct three of the proposed docks and by reducing the length of two of the proposed docks from about 200 feet to the 120-foot-length that the order stated was specified in the project's shoreline management plan (SMP).²
2. Appalachian filed a timely request for rehearing of the January 5 Order, asserting that the SMP restricts the length of the proposed docks to 166 feet, not 120 feet.³ As discussed below, we grant Appalachian's rehearing request, and, consistent with the SMP, we will extend the allowable length of the two docks to 166 feet.

¹ 114 FERC ¶ 62,006 (2006).

² Dock length is measured from the shoreline and includes the walkway from the shore to the actual dock structure.

³ On February 6, 2006, Concerned Citizens of Craddock Creek filed an answer to Appalachian's rehearing request. Answers to rehearing requests are not permitted (18 C.F.R. § 385.213(a)(2)), and the February 6 filing is accordingly rejected.

Background

3. The Smith Mountain Pumped Storage Project is located on the Roanoke River in west-central Virginia, about 30 miles southwest of Lynchburg, Virginia. Smith Mountain Lake, the project's upper reservoir, has 500 miles of shoreline and a surface area of approximately 26,000 acres. Mariners Landing is a 1,000-acre resort and residential development located at the upper end of the Craddock Creek arm of the project's reservoir. The Pointe is a residential and commercial condominium community within the Mariner's Landing Development. On March 4, 2005, Appalachian filed an application (which it revised on June 21, 2005) requesting permission for JWD to install additional shoreline facilities at The Pointe.⁴ The additional facilities included a swim platform, fishing pier, boat ramp, expanded beach area, and 8 boat docks having a total of 144 boat slips.

4. On July 5, 2005, while Appalachian's application was pending, the Commission modified and approved the SMP for the project.⁵ Under the approved SMP, shoreline development is classified as high-density commercial, high-density multi-use, public use, low-density use, conservation/environmental zones, or impact minimization zones. In addition to designating the types of shoreline use, the classifications also dictate the size, length, height, width, and setback of potential docking facilities.

5. Five of the proposed docks would be built along shoreline classified as high-density commercial, which is governed by the SMP's high-density commercial regulations.⁶ The other three proposed docks would be constructed along shoreline classified in the SMP as low-density use, where such development is not allowed. The January 5 Order approved construction of the five docks (98 slips) located in the high-density commercial zone, but denied authorization for the three docks (46 slips) located

⁴ Currently, the Pointe has a beach area and four boat docks with a total of 88 slips. These docks were authorized in 2001 (*see* 96 FERC ¶ 62,036 (2001) and 95 FERC ¶ 62,174 (2001)).

⁵ 112 FERC ¶ 61,026 (2005). Appalachian filed its SMP on September 2, 2003.

⁶ Under the regulations, the high-density commercial classification includes facilities that would be expected to incur heavy amounts of boat traffic, such as marina facilities, and project lands and waters where individuals and entities operate facilities for business and profit, including facilities where boats can be docked, launched, or retrieved. *See* SMP, section 2.3 at 9.

in the low-density zone. For two of the authorized docks, the order further required that, to be consistent with the SMP, the docks could not exceed 120 feet in length.

6. On rehearing, Appalachian contends that staff misapplied the requirements of the SMP for docks within a high density commercial classification. Appalachian points out that the 120-foot-length requirement of the SMP does not apply to docks located in a cove that is greater than 510 feet wide, as is the proposed dock site. Appalachian therefore requests that the Commission revise the January 5 Order to change the allowable length for the two proposed docks from 120 to 166 feet, consistent with the applicable requirements of the SMP.

Discussion

7. Section 2.5.1, paragraph 6 of the SMP regulations governing high density commercial classifications states:⁷

The docks shall not exceed a maximum of 1/3 cove width or 120 feet in length, whichever is less, as measured from the base elevation [*i.e.*, from the shore] ... However, an exception is allowed when the cove is 510 feet or wider; then the length of the dock plus a 50 foot no-wake zone cannot exceed 1/3 cove width with a maximum dock length of 166 feet.

The two proposed docks will be located in a cove that is 750 feet wide. Appalachian is correct that, under the SMP requirement set forth above, the maximum dock length allowed at this location is 166 feet, not 120 feet. We will therefore revise the January 5 order as requested by Appalachian.

The Commission orders:

(A) The request filed by Appalachian Power Company on February 1, 2006, for rehearing of the January 5, 2006 Order in this proceeding is granted, as set forth below.

(B) Ordering Paragraph (C), subpart 1, of the January 5, 2006 Order is revised to read as follows:

⁷ SMP, section 2.5.1 at 14.

The two proposed covered docks with 11 fixed slips and 2 floating slips, each shall be designed and constructed in conformity with the applicable requirements of the approved Shoreline Management Plan (SMP), including, but not limited to, the requirement in section 2.5.1 of the SMP, that the length of the docks plus a 50-foot no wake zone cannot exceed 1/3 cove width with a maximum dock length of 166 feet.

(C) The Concerned Citizens of Craddock Creek's pleading, filed in this proceeding on February 6, 2006, is rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.