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BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: \*

\* Project No: 2210-090

SMITH MOUNTAIN PROJECT \*

\*

\* \* \* \* \*

DATE: APRIL 7, 2005

TIME: 1:33 P.M.

LOCATION: BEDFORD COUNTY ADMINISTRATION BUILDING  
122 EAST MAIN STREET  
BEDFORD, VIRGINIA

BEFORE: HEATHER E. CAMPBELL  
OUTDOOR RECREATION PLANNER  
DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION  
OFFICE OF ENERGY PROJECTS

REPORTED BY: KIMBERLY L. KRETT

1 APPEARANCES:

2

3 Frank M. Simms - AEP

4 Teresa P. Rogers - AEP

5 Carol Vanderjagt - FERC

6 Joe Estep - FERC

7 Joe Morgan - FERC

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1 P R O C E E D I N G S

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3 HEATHER CAMPBELL: We're ready to get  
4 started. Thank you for your patience getting  
5 the chairs in here and thanks for your help  
6 doing that.

7 I have a question before we start. How  
8 many people, if we had the meeting yesterday,  
9 would have been here during the beautiful  
10 weather out there?

11 (Audience show of hands.)

12 HEATHER CAMPBELL: Okay. That's good. I'd  
13 like to welcome you to FERC's meeting on the  
14 Draft Environmental Assessment for the shoreline  
15 management at Smith Mountain Lake. I'm pretty  
16 sure you're all supposed to be here for that.

17 My name's Heather Campbell and I'm with the  
18 Federal Energy Regulatory Commission. And I'd  
19 like to introduce the people up here from FERC.  
20 First we have Carol Vanderjagt. Some of you may  
21 remember her from the relicensing meeting. Then  
22 we have Joe Morgan, who is the Director of the  
23 Division of Hydropower Administration and  
24 Compliance. And John Estep, who is the Chief of  
25 the Land Resources Branch, which is who I work

1 for.

2 Now we also have with us representatives of  
3 Senator Allen's office and Congressman Goode's  
4 office. Would you like to say a few words?

5 SENATOR ALLEN'S OFFICE: I'd just first  
6 like to thank FERC for coming back here and  
7 listening to people, and AEP and the Tri-County  
8 group of all the boards of supervisors, all the  
9 citizens groups that have been involved in this  
10 process for around three years; three, four  
11 years in this.

12 And I know a lot of hard work has been put  
13 into this. And I know there's some particular  
14 items of interest to Senator Allen. So I  
15 appreciate y'all coming today.

16 Any other time or any other issue if I can  
17 help you, there are a number of people in this  
18 room who know how to get a hold of me pretty  
19 darn quick. So thank you for being here.

20 GREG CONNOR: I'm Greg Connor, I'm  
21 representing Congressman Goode today. Just  
22 wanted to say thank you, it's a key opportunity  
23 for all groups to present their situation.

24 And again, any assistance you need from our  
25 office, just give a call.

1           HEATHER CAMPBELL: Well, thank you. I'd  
2 like to thank you for coming here today. I'd  
3 like to thank the county for organizing and Gina  
4 for getting the room all set up. I appreciate  
5 that. And I appreciate everybody's comments  
6 that we've been working with for the last couple  
7 of years.

8           When I was putting my travel orders  
9 together for this meeting, one of my colleagues  
10 suggested that I just get an apartment down here  
11 given the number of time's I've come down. And  
12 as those of you who know me know how much I love  
13 my Hokies and it's a beautiful area down here,  
14 my husband and I have made a deal that if and  
15 when we ever retire we're not going to go  
16 anywhere near a civil war battle field or a  
17 hydropower project. So that rules out of a lot  
18 of Virginia.

19           The purpose of our meeting today is  
20 comments on the Draft Environmental Assessment  
21 for the Shoreline Management Plan. We want to  
22 insure that the Commission's record is as  
23 complete and accurate as possible because the  
24 Shoreline Management Plan will be acted upon by  
25 the Commission, itself.

1           A few things we have today, we do have a  
2           court reporter who is sitting behind me who will  
3           be recording this meeting. And I understand  
4           that the county's also recording it.

5           As you came in there were some sign-up  
6           sheets there. So please make sure to sign in.  
7           And if you want to speak, you need to check off  
8           your name. I'll be calling you up based on  
9           those sign-in sheets. And when you do speak, if  
10          you could come up and please state your name  
11          clearly so that the court reporter can get it.

12          Now everyone will be given an opportunity  
13          to speak. I did not alphabetize these, put them  
14          by shoe size or IQ, which probably would have  
15          taken quite a bit of time. You're called up  
16          based on how you signed in.

17          I know I don't really need to say this, but  
18          I have a 7 and a 4 year old at home, so it's  
19          kind of practice. But I ask that we all be  
20          courteous to each other. There's a lot of  
21          information in this room, a lot of good ideas  
22          and we want to make sure they all get into the  
23          Commission record to be acted upon.

24          Now the agenda today is pretty simple.  
25          Once I am done, AEP is going to talk about the

1 development of the Shoreline Management Plan. A  
2 lot of you have been involved in this. Then I  
3 will give a brief description of what the  
4 Commission is going to be doing and what our  
5 next steps are.

6 And keep in mind this is a meeting on the  
7 Shoreline Management Plan. It's not a  
8 relicensing meeting. Then we're going to open  
9 up the floor for comments. I understand the  
10 county has a PowerPoint presentation. So we're  
11 going to start off with them. And then AEP has  
12 asked for a few minutes to speak to provide  
13 comments on the Draft Environmental Assessment.  
14 And then we'll start with the sign-in sheets.

15 So does anyone have any questions before we  
16 get started?

17 (No response.)

18 HEATHER CAMPBELL: Okay. Let's turn it  
19 over to Frank Simms from AEP.

20 FRANK SIMMS: Good afternoon. I'm Frank  
21 Simms from American Electric Power. And thank  
22 goodness you didn't do this by IQ because I  
23 probably wouldn't talk until Sunday.

24 What I'm going to do is go as quickly as  
25 possible because I understand there are a lot of

1 people who want to talk. And I don't want to  
2 take up a lot of time. We've been asked to give  
3 somewhat of a history of the -- I'm at the wrong  
4 lake -- of the Shoreline Management Plan.

5 HEATHER CAMPBELL: Frank.

6 FRANK SIMMS: And then we have a PowerPoint  
7 presentation. There it is. Hopefully it will  
8 come up. Let's make sure we're all at the right  
9 Shoreline Management Plan. Smith Mountain,  
10 right? Okay. Let's go to the next slide.

11 Real quickly, the Shoreline Management Plan  
12 focuses on two developments within the Smith  
13 Mountain Project. That's Smith Mountain, which  
14 includes the dam and the reservoir. And of  
15 course Leesville, which is downstream of Smith  
16 Mountain, that also includes the reservoir for  
17 Leesville, as well.

18 The operation of the Smith Mountain Project  
19 is pump storage. I'm sure a lot of you have  
20 heard this before. It's where water is  
21 generated out of Smith Mountain down to the  
22 Leesville Reservoir and then the water is pumped  
23 back up for use again later. From Leesville  
24 Reservoir we also have a minimum flow discharge  
25 to the Roanoke River downstream.

1           The Shoreline Management Plan, itself,  
2 primarily focuses on those things that are  
3 within those project boundaries for the Smith  
4 Mountain Reservoir and the Leesville Reservoir.

5           At Smith Mountain the project boundary is  
6 elevation 800. Normal water level or the water  
7 level we operate or target at is 795.

8           For Leesville the project boundary is  
9 elevation is 620. And generally the Leesville  
10 project fluctuates from about elevation 600 to  
11 613. To let you know, too, Smith Mountain  
12 fluctuates about 715 -- from 793 to 795. Next  
13 slide.

14           A real quick history of the Shoreline  
15 Management Plan, it all really started when  
16 Article 41 was added to the existing license for  
17 the Smith Mountain Project. Article 41 is  
18 generally called the standard license language  
19 which is for land use in a project boundary.

20           When that came, there were meetings held  
21 between the FERC, AEP and the counties, agencies  
22 and so on regarding the implications of having  
23 that amendment to the license Article 41 added.

24           We initiated our permitting process once we  
25 received Article 41 in March of 2000.

1           That was followed by more meetings between  
2           -- or that the FERC participated in, between  
3           ourselves, the counties, surveyors, dock  
4           builders, realtors, dredging contractors and  
5           closing attorneys, et cetera.

6           Again, we met with the counties regarding  
7           the development of the Shoreline Management Plan  
8           the first time in February of 2001. Okay.

9           The idea was to go into a collaborative  
10          plan between the counties, the agencies and AEP.  
11          We, as the licensee, the counties, and the  
12          surrounding governmental groups and the agencies  
13          like BEGIF, AECR, even some of the federal  
14          agencies, those that would address the  
15          environmental concerns for the project.

16          So we really formed a large Steering  
17          Committee. With that -- and we'll get into this  
18          a little bit more. The Steering Committee  
19          essentially was there to put the plan together;  
20          to agree on what goes into the plan and also to  
21          agree on who should be putting the plan  
22          together.

23          In our agreement we came up with we hired a  
24          consultant, AEP did, that actually put the plan  
25          together and acted as the moderator and so on.

1           The first public meeting we had was in  
2           January of 2002. And then from there we really  
3           started rolling with Steering Committee meetings  
4           and so on. And we filed the plan in September  
5           2003.

6           The FERC filed notice of the plan on  
7           September 10th, 2003 and asked for initial  
8           comment from everybody and anybody on the plan;  
9           they were due in October of 2003. And then that  
10          comment and intervention period was extended to  
11          January of 2004.

12          We, as a company, were then also granted  
13          what they call a Section 106 authority. What  
14          that is, is that we represent the FERC in  
15          discussions with the state conservation office  
16          so that we can initiate those discussions to  
17          come up with a probomatic agreement or some sort  
18          of agreement on how to handle the cultural  
19          resources within the project boundaries.

20          The FERC issued the Draft Environmental  
21          Assessment, which is what bring us here today,  
22          March 3rd of 2005 with comments due on that  
23          Draft Environmental Assessment, I believe, on  
24          April 18th of this year. And then, of course,  
25          we're here because there's a public meeting on

1 April 7th.

2 Let's go to the next slide.

3 Why a Shoreline Management Plan? In the  
4 beginning, the idea of the Shoreline Management  
5 Plan, and still is, was for its accelerated  
6 development along Smith Mountain Lake. And  
7 there needed to a comprehensive plan for Smith  
8 Mountain Lake and Leesville Lake that  
9 incorporated all of the different aspects of  
10 what goes on within those project boundaries.

11 We have development around the lake. You  
12 have an economy established by that development  
13 along the lake. You also have people recreating  
14 in the lake. You know, is the lake getting too  
15 crowded? How do we make -- not get too crowded  
16 or is the lake not crowded enough? How do we  
17 get more folks out there?

18 You have an environment. You have a  
19 fishery. You have water quality. You have  
20 erosion. You have all these different factors.  
21 And a lot of that can be controlled effectively  
22 by a good comprehensive plan for those  
23 reservoirs. And that's the Shoreline Management  
24 Plan.

25 Still recognizing, though, we, as a

1 company, and we, as the licensee for the  
2 project, initiated the development of the  
3 Shoreline Management Plan with the intent to be  
4 to address the interests for the lakes up front  
5 including those of the federal and state  
6 agencies, local governments, non-governmental  
7 agencies and the public. And one of the  
8 ultimate results of it was really to get more  
9 local control in the reservoir through AEP.

10 The cost of the Shoreline Management Plan,  
11 I don't know if any of you have seen this, but  
12 it cost our company in excess of \$500,000 for  
13 development of this plan. And that's been costs  
14 borne by us.

15 Some of the other things that we are  
16 looking at is when you're under the permitting  
17 process and you have to go through AEP, that's  
18 for something that's only good for up to ten  
19 slips. Once you get beyond the ten slips, then  
20 the filing needs to be made with the FERC. And  
21 the FERC essentially is going to review that  
22 filing and approve or not approve that  
23 application.

24 That can be a lengthy process. And in some  
25 instances, the FERC may have a different opinion

1 as to what's in that application and essentially  
2 come back and say, "Well, maybe you should  
3 modify your plan in order that we could proceed  
4 to approve it."

5 The intent of the Management Plan as we set  
6 it up, which is a little different than what you  
7 would see in other utilities management plans,  
8 was to provide guidelines that would allow  
9 developers and individuals to be able to know  
10 what to expect, and that the applications that  
11 normally would go to the FERC would not  
12 necessarily have to go to the FERC, but would  
13 just stop with AEP.

14 And as long as the Management Plan was met,  
15 the timeframe for getting that approval could be  
16 substantially shortened. And not only can it be  
17 shortened, but it also gives you more confidence  
18 as to what it is you're going to be able to do.  
19 I think this is very important of developers in  
20 particular who make very large investments and  
21 have a lot of money involved into these  
22 projects.

23 So we had a lot of -- we talked about the  
24 Steering Committee. And as we put the committee  
25 together, the biggest problem was who should be

1 on the Steering Committee. And what we found  
2 was that everybody wanted to be on the Steering  
3 Committee. There's a lot of groups that want to  
4 be involved; with the government, they want to  
5 be involved. Everybody wanted to make sure that  
6 their interests were looked at.

7 The tough part is with all those interests,  
8 you have to try to balance all of that.

9 But some of those involved in the Steering  
10 Committee were the Virginia Department of Gamery  
11 and Fishery, Department of Conservation and  
12 Recreation, Department of Environmental Quality,  
13 Department of Historic Resources, Department of  
14 Health, ALAC, the Lake Association, the Chamber,  
15 and then the four counties that surround the  
16 lakes, Franklin County, Bedford County, Campbell  
17 County, Pittsylvania County were all  
18 represented.

19 We started with the Steering Committee  
20 meetings in May of 2001 and we had a total of 12  
21 Steering Committee meetings, the last one being  
22 held August 26th, 2003, which was just prior to  
23 when we filed the application and we filed for  
24 the Shoreline Management Plan. Next slide.

25 In addition to those 12 Steering Committee

1 meetings, we had 6 public meetings. And as I  
2 expressed that when we started the Shoreline  
3 Management Plan, our predecessors and others  
4 before me, what we want to know is what the  
5 public was looking for. What are the public  
6 interests? Because who knows the lake better  
7 than the people that live on the lake or utilize  
8 the lake.

9 So we had questionnaires that went out. We  
10 had public meetings. We tried to get as much  
11 public involvement as we could. And I think if  
12 you look on our Internet site that I'll  
13 reference later, you'll see on some of the  
14 public meetings that are on video we had 200,  
15 250 people, about the number of people here, we  
16 have a lot of interest. Next, please.

17 Outside of the Steering Committee meetings,  
18 outside of the public meetings, we also met  
19 individually with a lot of different groups.  
20 The intent really with the Steering Committee,  
21 to back up a little, was we wanted everything to  
22 be done in a full, open process and get  
23 everybody's concerns, everybody's issues out in  
24 the open. And once they came out in the open,  
25 to hear everybody's response on it so we could

1 have a good cooperative effort.

2 But still there were meetings held on the  
3 outside because there were so many groups that  
4 wanted clarification on different items or  
5 wanted to make sure that their particular items  
6 were addressed. And these include, again, the  
7 counties, the state agencies, the homebuilder's  
8 association, dock builders, marina owners, and  
9 chambers and congresses and the boards of  
10 supervisors. Next, please.

11 Once we got together as a Steering  
12 Committee, what was the overall goal and  
13 objective of that Steering Committee, and what  
14 were we heading towards? And what we were  
15 heading towards was to develop a management tool  
16 that would help provide guidance for fulfilling  
17 our license obligations and responsibilities for  
18 the project, including the protection and  
19 enhancement of the project's environmental,  
20 scenic and recreational values. There's a lot  
21 of things involved. And when you think about  
22 it, you're talking about recreation,  
23 environment, development, and even some power  
24 generation. That kind of falls in somehow.  
25 Next one, please.

1           The specific goals and objectives were to  
2 protect the environmental attributes such as  
3 wetlands, habitats and spawning areas; to  
4 preserve the natural and scenic quality of the  
5 shoreline for both boaters and shore viewers.

6           And I want to emphasize, remember, this is  
7 just what's within the project boundary. That's  
8 only our -- that's where our authority or our  
9 responsibility ends.

10           To protect cultural resources; to enhance  
11 recreational opportunities by considering  
12 boating densities and navigation and maximizing  
13 available use of the project waters by the  
14 public; and to cooperate with multiple  
15 governmental entities that surround the project  
16 to coordinate adjacent land uses and proposed  
17 infrastructure with shoreline uses; to work with  
18 the multiple governmental entities that surround  
19 the project to coordinate permitting efforts; to  
20 minimize impacts amongst contrasting uses; and  
21 to strive for a balance that supports the local  
22 economic interests, yet protects the  
23 environmental and recreational resources that  
24 allows the public to enjoy those interests and  
25 those resources. Next, please.

1           The Shoreline Management Plan is a very  
2 flexible document. I think some people look at  
3 it and it's, you know, here's the rule, here's  
4 the rule, there's no flexibility. It is a  
5 flexible document. And it's designed to be  
6 flexible, first of all, by the classifications  
7 within it. The classifications are inclusive  
8 from top down.

9           For example, if you have a high density  
10 commercial classification, it doesn't mean you  
11 have to put a high density commercial operation  
12 at that point on the lake. What it means is  
13 that you can put anything that's lower than that  
14 or less than that within that classification.

15           And even in the low density use, which is  
16 the lowest of the classifications, you can have  
17 residential, multi-family, public and commercial  
18 uses as long as they meet the classification  
19 levels, such as number of docks, number of  
20 slips, dock -- or foot of shoreline and so on.

21           The process also includes variance  
22 processes for reclassifying shorelines and  
23 construction in a conservation/environmental  
24 classification.

25           So one thing to recognize when this plan

1 was put together there was no consideration at  
2 all for property limits or project owner -- or  
3 property ownership. Property lines did not  
4 exist. Because we wanted it to be a  
5 free-flowing document that said we're not going  
6 say that we're trying to protect AEP property or  
7 trying to do something for this developer or  
8 that developer. It was totally project  
9 inclined.

10 As I said, the Shoreline Management Plan  
11 only addresses activities within the project  
12 boundary.

13 And if the county zoning adjacent to the  
14 project boundary is more restrictive, then the  
15 zoning is what controls what goes here.

16 For example, if on the Shoreline Management  
17 Plan a property is classified as commercial high  
18 density, and the zoning for the county is for  
19 low density, well, then what's going to have to  
20 go in there is what the county said, is low  
21 density, even though you have a higher shoreline  
22 classification. Next, please.

23 Mapping. The mapping was discussed quite a  
24 bit in the Steering Committee, and as to what  
25 detail would go to what type of mapping. We

1 talked all the way from the range of very, very  
2 inaccurate USGS mapping up to the highest  
3 detailed mapping you can get from satellite  
4 imagery and so on. And a decision was made to  
5 go with something reasonable with an inherent  
6 inaccuracy. And that was an orthorectified  
7 aerial photograph.

8 Now we understood that there were some  
9 inaccuracy in that mapping with about close to  
10 three feet.

11 One of the problems with that is in  
12 recognizing that you had that inaccuracy, if you  
13 went and stuck with the one parameter of the 500  
14 foot width, they might say, "Well, this cove  
15 should not have any high density commercial."  
16 And it's that theory recognizing that  
17 inaccuracy.

18 So modifications were made to say, "We're  
19 going to go to the most liberal limit," if you  
20 want to look at it as liberal, and then say,  
21 "All right, let's use 494 feet as the  
22 parameter." And in rerunning that, it actually  
23 did open up a lot of -- about two miles of the  
24 total shoreline to a reclassification. And that  
25 went through the Steering Committee and was

1 reviewed.

2 And as I said, we realize that even with  
3 that there's minor inaccuracies in the mapping.  
4 And things are going to change over time. And  
5 that's why, again, that's a flexible document.

6 And that flexible document is if you feel  
7 that the mapping is inaccurate, then come to us  
8 and ask for a review of that. It has a variance  
9 process. And that's found in Section 2.2.1 of  
10 the Shoreline Management Plan.

11 We also know that there's other reasons  
12 maybe to have a shoreline reclassified. Now  
13 depending on what you're trying to do in a  
14 reclassification, there's certain phases of it.

15 But, for example, if you want to get a  
16 reclassification of commercial to low density or  
17 low density to commercial, we have a FERC  
18 process, because the whole plan is based on  
19 these classifications. And as long as these  
20 classifications are met, and the limits that are  
21 established for those classifications are met,  
22 we're going to be able to proceed and continue  
23 on with developing without having to go with the  
24 FERC.

25 But in this particular case if you need to

1 get a variance, you would have to go through the  
2 FERC, and there's a FERC variance process  
3 defined in the plan. Okay.

4 But there's also local variance processes.  
5 There's low density variances in 3.3.1. There's  
6 a variance process for high density commercial  
7 and so on in 3.3.2. And we have what they call  
8 an IMZ or an impact minimization zone. I think  
9 a lot of people are going to look at that and  
10 say, "Gee, I can't have a boat docked in an  
11 IMZ." No. You can have a boat docked in an  
12 IMZ, there's just going to be certain conditions  
13 that you're going to have to meet to have that  
14 boat docked.

15 But if you want to get a modification to  
16 that IMZ classification, there's a variance  
17 process also defined within the Shoreline  
18 Management Plan.

19 One of the things that came out of the --  
20 and I know there's a lot of comments on this,  
21 but I thought I would highlight one letter on  
22 the plan that came from VDEQ. And they  
23 represent a state agency.

24 And in there they said that the result --  
25 well, first they said: "The land use

1 restrictions set out in the early drafts  
2 resulted in considerable give-and-take over the  
3 ensuing months."

4 And "The result is a balanced plan  
5 reflecting the best efforts of the negotiating  
6 parties." And that "Any further easing of the  
7 restrictions would weaken existing policies on  
8 shoreline management and would give rise to  
9 permanent adverse impacts upon water quality,  
10 fish and wildlife habitat, riparian buffers, and  
11 the visual and recreational values of Smith  
12 Mountain Lake.

13 We have deprivation of those environmental  
14 values. Our concern, as AEP, is that you're  
15 going to have a deprivation of property values.

16 Understand this company knows that this is  
17 a very important resource for the counties.  
18 It's a very important resource for the people  
19 especially that have invested on the lakes.  
20 It's a very important resource to the public.  
21 It's a very important resource to the state  
22 agencies, to the federal agencies. And it's a  
23 very important resource to AEP. Next one,  
24 please.

25 ALAC, they're on the Steering Committee.

1       Comments that they provided. "We strongly  
2       believe that this plan is vital to provide a  
3       framework for future growth." It says they  
4       "favor growth and development around the  
5       shoreline of the lakes."

6               And in looking at the plan, both Lake  
7       Associations in their comments that said that  
8       the plan works for them. And they represent the  
9       people -- they represent a lot of you on there.

10              Implementation of the plan. Well, since  
11       we've submitted the plan, we wanted to tell you  
12       that we haven't been just sitting there and not  
13       doing anything. Believe me, we've seen a few  
14       permit applications, one or two, I think.

15              Actually, where we're at on them is that we  
16       have 15 large projects filed with the FERC. Of  
17       those projects, 8 have been approved. None have  
18       been denied that I know of. And those 8  
19       projects entail 561 slips that have been brought  
20       into Smith Mountain Lake and Leesville Lake.

21              The other seven projects right now are  
22       under review of the FERC, awaiting approval, and  
23       they entail another 345 slips.

24              On the individual docks and individual  
25       slips we're talking 451 permits that have come

1 to us since the plan was filed in 2003. They've  
2 all been approved. Some of them there's had to  
3 be some discussion back and forth. But there's  
4 451 that have been approved. And then beyond  
5 that are all of the permits that have been  
6 approved for different types of shoreline  
7 stabilization and vegetation. Next one, please.

8 As I said, this is an important resource to  
9 AEP. It is now and always has been.

10 There are things we've done in addition to  
11 the Shoreline Management Plan. There are some  
12 -- there are contributions that we make to the  
13 lake. And we make these contributions to the  
14 lake because we want the lake to be a good  
15 experience for everybody, those who live on it  
16 and those who visit.

17 Actually, we spend about \$300,000 a year or  
18 more on debris removal. I'm sure you've seen  
19 our skimmer boat and I'm sure you've seen our  
20 men who dive out off the skimmer to catch your  
21 debris.

22 We've contributed to the water quality  
23 monitoring program for the Smith Mountain Lake  
24 Association so far about \$93,000.

25 We're working right now on a donation of

1 property to Smith Mountain Lake Fire and Rescue  
2 Unit for them to have a permanent building over  
3 towards Hales Ford Bridge.

4 We encourage participation in lake clean-up  
5 days by either providing funds or we'll have the  
6 skimmer crew out there at overtime, no charge.

7 And we believe in supporting the activities  
8 at the lake such as the Bass Master tournament  
9 that was held last year.

10 Maybe some of you don't know a lot of the  
11 public -- the public boat access locations, even  
12 though they're operated by VDGIF and VDCR are on  
13 our property at no cost to them. The state  
14 parks, same thing. And property over in  
15 Franklin County right now, built a very nice  
16 park. And that was part of the property that  
17 was donated for lease at no cost. The 4-H  
18 center. I know some of you know about our Penn  
19 Hall facility, we made that available for  
20 different events so that we could bring tourism  
21 into the counties, bring some money into the  
22 counties. I know the tourism is very important.

23 And we've worked with Bedford County on a  
24 water intake a few years ago, which by working  
25 with them we saved them a lot of time and a lot

1 of money on the application.

2 Basically what I'd like to do is -- I'm  
3 done. The one thing I will always want you to  
4 do is that we run a very open operation. We  
5 have a web site, [www.smithmtn.com](http://www.smithmtn.com). All  
6 correspondence, anything that's done on the  
7 Shoreline Management Plan, any announcements  
8 that come out, anything at all can be found on  
9 that web site. And I would suggest that you  
10 reference that web site as much as you can.  
11 Thank you for listening.

12 HEATHER CAMPBELL: Okay, thank you,  
13 Frank. For those of you who just came in, my  
14 name is Heather Campbell, I'm with FERC. And  
15 what I'd like to do is tell you exactly what  
16 we've done with the plan since we've gotten it,  
17 and actually even before that.

18 The commission staff was involved in  
19 several of the Steering Committee meetings and  
20 also met with the counties on different  
21 occasions. The plan was filed with the  
22 Commission in September of 2003. And as we do  
23 with all applications of this nature, we public  
24 noticed it, it went into the newspapers and also  
25 our web site. And the comment period was

1 extended to January of 2004.

2 Since that time we've been looking at the  
3 extensive comments. We've been doing what the  
4 Commission is charged to do, and that's  
5 balancing all of the different interests and  
6 needs and the resources. And we've put together  
7 a preliminary analysis in early March. And that  
8 is what Frank's referred to as the Draft  
9 Environmental Assessment.

10 Once that was done, we public noticed that.  
11 And that comment period ends, as Frank said, on  
12 April 18th. So if you get your taxes done by  
13 April 15th, you've got the weekend to work on  
14 your comments for this and file them by Monday.

15 What we'll do with those comments is review  
16 those comments as we've done all of the comments  
17 that you've sent in. And I appreciate all of  
18 your comments. I've put together a final  
19 Environmental Assessment. And that will be  
20 issued with the Commission order.

21 And what I mean by that is this proceeding  
22 is what we consider a contested proceeding.  
23 There have been a lot of comments filed in  
24 opposition to the plan. When that happens, the  
25 decision is taken out of the staff's hands and

1 put in the Commission's hands. So this will go  
2 before our commissioners to have the decision  
3 made.

4 Now, again, I encourage you to put all of  
5 your comments on the record. As you came in  
6 there was a sheet that had the Commission  
7 address on it, the secretary's address, and also  
8 a web site, in order to keep up with AEP, our  
9 web site address is on there, too. You can go  
10 on and file your comments electronically.

11 And you also have the ability through that  
12 web site to e-subscribe to the commission. And  
13 what that will allow you to do is when things  
14 are filed with the commission, put the project  
15 number in, 2210, and every time something is  
16 filed or issued with the Commission you will be  
17 noted by e-mail.

18 I will caution you, you will get everything  
19 that's issued on the project. It doesn't just  
20 filter down to the Shoreline Management Plan.

21 But that gives you an opportunity to see  
22 the comments come in instead of continuing going  
23 on the web site.

24 So again, this is a contested proceeding.  
25 This is your opportunity to provide your

1       comments.  They will go into the Commission  
2       record and will be looked at.  And I thank you  
3       for coming here.  I encourage you to be as frank  
4       as possible and provide us comments so that we  
5       can make the best decision and provide the  
6       records to the Commission.

7                So with that, I'd like to start with the  
8       county.  I understand they have a PowerPoint.  
9       And we thought for logistic purposes it would be  
10      great to start with them.  So, again, thank you  
11      for coming.

12               RUSSELL JOHNSON:  Good afternoon.  My name  
13      is Russell Johnson and I am Chairman of the  
14      TCRC, which stands for the Tri-County  
15      Relicensing Commission.

16               I think we need to start with our social  
17      skills by saying thank you.  Thank you for  
18      coming.  Thank you for taking the time to be  
19      here because we know your time is spread to many  
20      different projects.

21               And I think if nothing else is  
22      accomplished, we're going to accomplish  
23      something which is the improvement of  
24      communications.  Rather than in just words,  
25      you'll get a chance to see our tone, our body

1 language, and to communicate to you as  
2 completely as possible.

3 So with respect to the fact that you've  
4 made a journey down here, we thank you very much  
5 for doing so. And we appreciate it.

6 I think I'd like to tell you quickly about  
7 the Tri-County Relicensing Committee only for a  
8 little bit of background.

9 It is made up of two elected supervisors  
10 from each county, and those are the counties of  
11 Franklin, Bedford and Pittsylvania. Supporting  
12 those supervisors are the County Administrators:  
13 Rick Huff from Franklin County, Kathleen Guzi  
14 from Bedford and Dan Sleeper from Pittsylvania.

15 We also have an attorney, Karl Lotts, from  
16 Bedford, who sits with us. And Greg Sides is  
17 County Planner in Pittsylvania, and he sits with  
18 us.

19 There are some members of TCRC that are  
20 here today and I'd like to just briefly  
21 introduce them to you. Charles Poindexter is a  
22 Supervisor in Franklin County. He's also the  
23 Chairman of an organization TLAC, which is the  
24 county's organization for part of the management  
25 responsibilities of the lake.

1 Kathleen Guzi, County Administrator. Chuck  
2 Morndorfer, who is the Vice Chairman of TCRC.  
3 Jan is a valuable member. Rick Huff. Hank  
4 Davis, Pittsylvania. Kate Berger, Pittsylvania.  
5 Mr. Sides, County Planner. They came here to  
6 see that I follow the golden rule of being  
7 brief.

8 As a matter of fact, I'd like to share with  
9 you for a second. When we put this presentation  
10 together, we asked for some guidelines or help.  
11 So what's the most effective way to talk with  
12 you?

13 And we got three guidelines. One of them  
14 was to be brief. Brief as possible, but be  
15 brief. The other one was to be fair. We  
16 believe we are fair people. We did not come to  
17 bash AEP. We came to present our case to you.

18 So we want to be fair, we want to be brief,  
19 we want to be direct. We thought you'd  
20 appreciate that because we did our research on  
21 what the best way was to communicate with you.

22 And there is a story that everyone who runs  
23 for an elected position quickly learns. When  
24 you get in front of the citizens, you present  
25 who you are, you present what you want to

1 accomplish, and then you explain how you're  
2 going to accomplish what you want to accomplish.

3 You don't bash the other candidates. That  
4 rule is so important that we've never had a  
5 candidate elected who bashed another candidate.  
6 That rule is even so important that when we have  
7 elections, we don't even have debates between  
8 candidates. We have a set amount of time,  
9 candidate presents himself or herself, and the  
10 audience is left to judge, just as you're left  
11 to judge our presentation today.

12 What makes me personally nervous about this  
13 presentation is not only talking with you today,  
14 like I was reading through the DEA and I noticed  
15 on page 45 we talked about the 14,000 citizens  
16 that live around the lake. I've got an even  
17 more awesome response. There's 147,000 citizens  
18 that live in our counties. This lake touches  
19 their lives in many different ways, whether it's  
20 because they live on the lake, or because they  
21 work at the lake or because the tax money that's  
22 generated from the lake is so helpful to them.

23 So my responsibilities are more than just  
24 to speak for the counties. I'm speaking for the  
25 people. It must have been a question in your

1 mind of who speaks for the people. For the next  
2 15 or 20 minutes, I speak for the people. And I  
3 hope I do a good job of representing that.  
4 Let's see what happens. So let's follow the  
5 guidelines of being brief and let's look at the  
6 maximum question.

7 We're here to ask you the question should  
8 the current Shoreline Management Plan go into  
9 effect?

10 Well, if you look at the DEA on page 50,  
11 you say yes. That is your recommendation.

12 And to get to our bottom line, we say no.  
13 We say that TCRC's position it's not ready to go  
14 into effect as proposed.

15 Now we tried to carefully choose those  
16 words. First, to be as clear as possible we  
17 want a Shoreline Management Plan. We just don't  
18 want this plan as it is currently written. And  
19 we don't think it would take a grave deal of  
20 work to bring us into to full consensus for  
21 supporting this plan. But as proposed, as  
22 written, we're not for it.

23 Now our second guideline is to explain to  
24 you why we feel that way. So let me try to  
25 state our case.

1           There was a time when the counties and AEP  
2 were productively working together,  
3 communicating together, cooperating, sharing,  
4 give and take. And then suddenly, from our  
5 viewpoint, the communication stopped. Left on  
6 the table were 29 items in 10 categories which  
7 we felt were very important.

8           And maybe the difference between us and  
9 some of the other agencies and so on is we're  
10 representing people. We're representing the  
11 local governance responsibility. And so those  
12 items deal with our ability to be effective in  
13 that area. So much so that we took our unique  
14 step of getting together to form TCRC, and then  
15 filing to you those 29 items in the form of  
16 Appendix A, and asking you for the lake's  
17 intravenous status and asking you to help us go  
18 back to the time when we had cooperative and  
19 productive discussions, because these items deal  
20 with people. And they deal with the governance  
21 of people.

22           AEP, since filing the Shoreline Management  
23 Plan, has chosen not to work further with us on  
24 these items.

25           Now I guess there's an expression that sums

1       it up. It takes two to tango. We can't hold  
2       conversations one way. And AEP has remained  
3       silent on issues that really affect or bother or  
4       trouble or worry or have some impact in some way  
5       on our community.

6               For example, performance standards: We  
7       very much believe that there should be  
8       performance standards as part of the Shoreline  
9       Management Plan on AEP. How long does it take  
10      in the process of filing for a permit? What is  
11      the standard of time?

12             What I know has happened so far is citizens  
13      call me and I can't help them. And I can't even  
14      judge whether their criticism is fair or not  
15      because there's no standard. And we have not  
16      been able to get standards.

17             We talk about fees. AEP and ALAC made the  
18      statement that at this time they do not intend  
19      to charge fees. That's the English language.  
20      You can interpret it as you wish, but I can  
21      interpret it my way. They do intend to charge  
22      fees, just not now.

23             Now our whole community, in a backdrop to  
24      this, has been through looking at a tax district  
25      as a way to help take further care of the lake.

1 We've looked at a lot of different things. And  
2 one of the things that that tax district ran  
3 into was: How much are you going to charge me?

4 By not stating even what the fees would be,  
5 what would they be for, and how much would they  
6 be, would they be reoccurring or would they be  
7 one time, you're left to your own conjecture.  
8 And usually the fear is greater than the  
9 reality.

10 Transferring permits: The statement was  
11 made that we're going to allow -- we, AEP, are  
12 going to allow the transfer of permits. Can we  
13 have that in writing? It hasn't appeared.

14 The exchange of land rights for a dock  
15 permit: Now this seems to be the kind of thing  
16 that makes business for lawyers. I'm not a  
17 lawyer, so I can't answer you or reflect to you  
18 of a legal consideration. But I can suggest  
19 what I call common sense.

20 When somebody asks you for a dock permit,  
21 you don't make them exchange their land rights  
22 for it. Well, maybe I should say more  
23 accurately, I don't think you should make them  
24 exchange their land rights for it.

25 I am sure that in some length FERC requires

1 AEP to gain control of all of the property under  
2 its jurisdiction. That's reasonable. But using  
3 a permit process to do it? Not even -- my own  
4 personal recognition: A possibility that a  
5 citizen wouldn't even know what you're  
6 exchanging one thing for in order to get  
7 another. It's too common sense to say, "I want  
8 a permit, please, for my dock," and get handed  
9 back, "Here, sign here," and I don't know what  
10 I've done.

11 I don't think the process should be that  
12 indirect. If you need to capture the land for  
13 flowage easement and other things, then go out  
14 and capture it directly. Perhaps compensate the  
15 citizen for it. But don't use a permitting  
16 process as a mechanism to do it.

17 We say no at this time for another reason.  
18 We went through your records, and these are the  
19 three elements that we came up with. We think  
20 that AEP is in the beginning stages of learning  
21 how to manage this project, but it's struggling  
22 right now. We think that AEP has been  
23 inconsistent with its enforcement of what it is  
24 they have now yet to enforce.

25 And I don't think I'm wrong, but a lot of

1 citizens are here today because the enforcement  
2 issues haven't been here. And I would think  
3 that most people have hoped that AEP would be  
4 that third party entity that would stand firm to  
5 hold the Shoreline Management Plan in place, and  
6 would be the least subjective to political or  
7 other type of pressures. But so far we haven't  
8 seen that in the record.

9 And because of the permitting process, and  
10 because of some other things, we questioned, and  
11 some citizens have questioned, the openness of  
12 AEP.

13 Why we say no at this time? Well, you go  
14 to your own document, and you go to page 1 in  
15 your own document, you see 8 goals. We went  
16 through it and we found that goals 1, 4, 5, 6, 7  
17 and 8 are not met. Let's see: 6 out of 8 is  
18 three-quarters, which is 75 percent. 75 percent  
19 of the goals aren't met and we're ready to  
20 approve it? I'm not sure I'd be ready to  
21 approve it if 75 percent of the goals were met.  
22 But when 75 percent aren't met, I think we need  
23 to pause for a reflection.

24 We think that the reason the Shoreline  
25 Management Plan needs some improvement is that

1 it denies the local communities a way to appeal  
2 AEP actions. If there's one thing that's  
3 missing, we think it's this ability to handle  
4 things locally.

5 And in your own words and in your own  
6 documents you talk about the value of localness.  
7 You talk about the value of citizen control.  
8 And now when we get to the Shoreline Management  
9 Plan, we leave out the very value that we said  
10 we have valued. There are no performance  
11 standards. And we have conflicts between local  
12 zoning and the Shoreline Management Plan.

13 Now if you could, put yourself in my shoes  
14 and say I am a supervisor in the county, I have  
15 a local governance responsibility. Our counties  
16 work on comprehensive plans. They, too, spend a  
17 great deal of money and time building that plan.  
18 And that plan maps out our future. That plan  
19 says where we're going to go and how we're going  
20 to economically grow our counties.

21 That plan has hearings on it. And so  
22 citizens have input into the plan. And when the  
23 plan comes out, it's what we, the people, say.

24 And yet we can't find harmony between the  
25 Shoreline Management Plan and the local zoning

1 or the local comprehensive plans. And it isn't  
2 that we expected it to just drop out by luck  
3 that it would occur. We expected that we would  
4 find this harmony by working together.

5 And we have been deprived that right. And  
6 by depriving us that right, we are deprived of  
7 the right and the responsibility of local  
8 governance.

9 I picked a couple of things out just  
10 because they would probably, in one way, be  
11 fresh in your mind.

12 LakeWatch: When, in your own records, the  
13 narratives were written on LakeWatch there was  
14 the admission of mapping errors, the admission  
15 of shoreline classification errors.

16 Then we have the Turner case. It's kind of  
17 a new case. We hadn't heard about it. Which  
18 means we're not talking with each other.

19 But suddenly the idea has come about that  
20 for four months we're going to stop all pile  
21 driving on the lake. Now that's an economic  
22 impact. There are companies of one, two, three,  
23 four people that do this, and I don't know if  
24 they can go four months not doing it. There are  
25 larger companies that will survive that period

1 of time, but may raise the cost of their work  
2 and so on because of it.

3 The man who wrote you the letter, Mr.  
4 Turner, not only puts in a large percentage of  
5 the docks on the lake, he's the man that that  
6 maintains the navigation aids. And his question  
7 was: How do I do that when I can't? And he has  
8 offered to come before you, AEP, or whoever, and  
9 explain the geology of the lake's bottom, and  
10 explain at least in his opinion why pile driving  
11 could still occur without interrupting the fish.

12 Now it's usual when you have two different  
13 sides to a story that the truth lies in the  
14 middle. But how do you seek the truth when you  
15 don't talk to each other? I don't know. I know  
16 that our citizens have no one else to look to  
17 but you for help.

18 These are some of the elements in the 29  
19 items that we came back and repeated. And,  
20 Heather, you were clear enough to say this is  
21 not a relicensing. Many of those issues aren't,  
22 I know that.

23 But I want you to appreciate a different  
24 view of these items, and that is the view of  
25 today is today, and we have problems, and we

1 want to work on our problems.

2 Now, okay, the guy's lost his mind or must  
3 have had the wrong slide. This (indicating) is  
4 a gas station. This is a gas station on Route  
5 834. See the name of it? It used to be a  
6 marina. And when you can walk down in your mind  
7 that what used to be a marina is today a gas  
8 station because that's (indicating) what's left  
9 of the Black Water River at that time.

10 Mr. Poindexter, who stood up, as a young  
11 man used to water ski under that bridge. As a  
12 matter of fact he told a story, he said both  
13 ways.

14 A gas station so filled in, a marina that  
15 once existed? That kind of debris? That color  
16 of water? Look at this.

17 Now this is Bobby Scruggs' story. And I'll  
18 take just 30 section seconds, please, to tell  
19 it. Bobby Scruggs' grandfather has the road 616  
20 named after him; Scruggs Road connects 122 to  
21 Bernard's Landing. Bobby called me up one day  
22 and said, "Come over here and look at this."  
23 And I did. He said, "Let me tell you a story.  
24 I was a little boy and we got called to go to  
25 school to meet the people from Appalachia Power.

1 I knew who the guy was, not by name, but because  
2 he wore a tie, and that's obviously who the man  
3 was from Appalachia Power."

4 He said, "Russ, this man promised my family  
5 as we were signing over our property that he  
6 would keep the lake pristine."

7 He just turned around and said later, "I  
8 didn't know what pristine meant then, but later  
9 when I knew what the word pristine meant, this  
10 isn't it."

11 Another shot (indicating) with all the  
12 debris mounded, with all the wildlife living on  
13 it.

14 Bobby owns a trailer park that's been  
15 closed down because of the amount of fecal coli  
16 in the water at times during the year, because  
17 they live in the middle of it.

18 This shot (indicating) where the water is  
19 red is at the 4-H Center, a 25 million dollar  
20 investment by the counties. A predominant place  
21 for children and kids. This is part of that  
22 issue of the silt and the erosion and the  
23 filling in of lands and what is or is not  
24 declared wetlands.

25 This is the issue of a horseshoe bed used

1 to be 23 feet deep and today it's 12. This is  
2 the issue of people had to abandon their docks,  
3 some abandoned their homes because it filled in  
4 on them. This is the issue of why a marina is  
5 no longer a marina, but it's a gas station.  
6 It's kind of an island. Three part peninsula is  
7 probably a better word.

8 We have real issues to deal with now. They  
9 can't wait until 2008 when the studies are done.  
10 They can't wait until a license or a relicense  
11 is issued. Need to fix them, need to work on  
12 them now.

13 So because we are logical people and  
14 because we'd like to just say we feel we made  
15 part of our case is a logical conclusion, the  
16 Shoreline Management Plan is not ready. AEP is  
17 not ready. The people are not ready to accept  
18 this plan as written. But what we want to do is  
19 work on it quickly and promptly to get it where  
20 we can support it.

21 Now going further into your Draft of  
22 Environmental Assessment on page 48, you write  
23 that this is going to be approved unless the  
24 part -- keyed in on the word unless there is an  
25 alternative.

1           So we brought to you an alternative. And  
2           it is an alternative that has four parts to it:  
3           Local interest, local dispute resolution,  
4           working together on management land, planning  
5           and addressing the critical issues now.

6           It's a two-part recommendation. One, we  
7           want a local resolution board, a citizen's board  
8           where local issues can be discussed and,  
9           perhaps, by the way, AEP's decision should be  
10          supported. And if there is not support in the  
11          judgment of this group, at least a local way to  
12          resolve it.

13          Now that's new. That's something we hope  
14          you will look at and say, "Yes, I value local  
15          input, I want the citizens to have a way to  
16          resolve their problems and resolve them  
17          locally."

18          And so we offer this idea to you to  
19          establish the standards of performance, address  
20          performance, and for many issues clarify some of  
21          the language in the documents and then have an  
22          LRB along with the Shoreline Management Plan  
23          that's proposed as amended go into effect for  
24          the current license.

25          The second part, because I said to you it

1 was a two-part thing, is: We need you to do  
2 something for us, if you so choose. We need you  
3 to urge AEP to work with us.

4 We have 29 issues to take off of the table.  
5 We have to address immediate problems. We have  
6 to create the LRB.

7 We think this is all doable, and doable  
8 rather quickly. We respect every ounce of  
9 energy, every moment of time you put into the  
10 Shoreline Management Plan. We have no  
11 intentions to weaken it. We have no intentions  
12 to gut it. We want simply to make the one  
13 that's been created work, and work for the  
14 people as well as it will work for the other  
15 issues you had to protect or represent.

16 It's a practical solution to me, and it's a  
17 basic math. Establish the LRB, urge cooperative  
18 and productive discussions with AEP, and the  
19 result will be local support for an improved  
20 Shoreline Management Plan, support that we, the  
21 counties, support that we, the people, will give  
22 you, and we will give to AEP.

23 Make no mistake about it, we want a  
24 Shoreline Management Plan. We need a Shoreline  
25 Management Plan. And what we want to do is

1 correct this one and go forward together. That  
2 doesn't seem to be too radical of a request, I  
3 don't think.

4 We are ready to do our part. We're ready  
5 to begin immediate discussions with AEP. We're  
6 ready to be a part of the local resolution  
7 design. We're willing to and want to help build  
8 every citizen's confidence in this plan. Thank  
9 you.

10 HEATHER CAMPBELL: We'll go to Frank Simms  
11 from AEP who is doing the comments.

12 FRANK SIMMS: Comments?

13 HEATHER CAMPBELL: Comments, yeah.

14 FRANK SIMMS: That would be Teresa Rogers.

15 TERESA ROGERS: I'm Teresa Rogers. I'm the  
16 Reservoir Superintendent with AEP. And I'd like  
17 to share one comment that we have on the Draft  
18 Environmental Assessment.

19 The Draft Environmental Assessment includes  
20 the recommendation that Appalachia develop and  
21 incorporate into the SMP criteria for commercial  
22 docks that take into account navigation and  
23 safety issues.

24 When developing the guidelines for the  
25 commercial facilities, it was recognized by the

1 Steering Committee that marinas do provide a  
2 public service by providing access to the lake  
3 for people that don't necessarily live at the  
4 lake.

5 The marina owner on the Steering Committee,  
6 Jeff Graff, expressed a need for flexibility in  
7 the commercial dock regulations so that they can  
8 best meet the changing needs of the public.

9 Now the Shoreline Management Plan does not  
10 have a set number of slips allowed per shoreline  
11 length. But it does limit the number of slips  
12 by the length of the docks, themselves, the  
13 setbacks that are required and the shoreline  
14 that's available and the size of the slip that's  
15 being constructed.

16 We do have regulations on the maximum  
17 length of the dock as 120 feet or one-third of  
18 the cove, unless you're in the very wide, open  
19 part of the lake. And if you're in an area of  
20 the lake that's over 510 feet, and if you add, I  
21 think, the no-wake zone on the end of the dock,  
22 then you can go out further than 120 feet.  
23 There is an overall maximum of 166 feet.

24 The setback for the commercial docks  
25 between the docks and the extended property line

1 differs depending on what that adjacent property  
2 use is.

3 And we recognize that you needed more room  
4 between like a residential area and a commercial  
5 area, and less room between two commercial  
6 areas.

7 Docks are not allowed to block or obstruct  
8 or impede the line of vision for channel  
9 markers.

10 We do require the reflective tape on the  
11 docks so they can be seen during the evening.

12 And the area that contains a high  
13 concentration of high density commercial use,  
14 which is at Hales Ford Bridge, has the added  
15 requirement that the docks cannot extend into  
16 that navigational channel going under the  
17 bridge.

18 So we feel that utilizing these  
19 requirements that we have met navigation and  
20 safety aspects of the commercial facilities.

21 However, we do offer one recommendation  
22 that can be added to help address the  
23 Commission's concerns. And that's the added  
24 requirement that a commercial facility consult  
25 with Gamery and Fishery on establishing a

1 no-wake zone in the area of a commercial  
2 facility.

3 And I'll be providing our recommendations  
4 to the FERC in writing by letter.

5 HEATHER CAMPBELL: Thank you, Teresa.  
6 Okay. We're going to open up to the comments  
7 and requests for speaking. And again, I'm  
8 basing it on these sheets. I didn't alphabetize  
9 them while you all were talking. And I  
10 apologize ahead of time for any names that I  
11 mispronounce. I'll try my best. We're going to  
12 start off with Warren Theis.

13 Again, I would ask when you come up to  
14 please state your name and state your  
15 affiliation so that our court reporter can get  
16 it.

17 If you signed up to speak and changed your  
18 mind, that's all right, just let me know when I  
19 call your name. If you haven't signed up to  
20 speak and still would like to, there's still  
21 sign-up sheets there and we'll periodically be  
22 going back and getting them.

23 WARREN THEIS: Good afternoon. My name  
24 Warren Theis and I have a single home -- or a  
25 family home in Lake Retreat West subdivision on

1 a cove in Bedford County. I bought the home in  
2 1987 and recently have used it in business as a  
3 short-term vacation rental home.

4 There are a total of four homes on the  
5 cove. And if you look at the picture over here,  
6 the Craddock Creek is the left side. Most of  
7 you in the room here are familiar with it. And  
8 then Pointe is on the left center bottom down  
9 here. Monoacan Shores is up two coves up. The  
10 cove to my house is on -- is the one just above  
11 the Pointe. Anyway, there's four homes around  
12 the cove.

13 The Shoreline Management Plan identifies a  
14 wetland at the head of the cove. And AEP owns  
15 the cove property below the 800 foot contour.

16 I've had three major problems over the past  
17 few years. Soil erosion and silting of my cove  
18 from development activities that have occurred  
19 and have continued to occur over the past four  
20 years.

21 Every rain event, large or small, results  
22 in silting of my cove.

23 And a few examples. This (indicating) is  
24 the recent one, and another one (indicating).

25 There is a lack of enforcement at every

1 level. The developer is ultimately responsible  
2 because the erosion and siltation is a direct  
3 result of, in my opinion, careless land clearing  
4 and reckless land disturbance actions. And  
5 county enforcement actions are clearly  
6 ineffective.

7 And finally and very important, actions are  
8 taken after the damage is done rather than as a  
9 preventative measure.

10 And the impacts in my case, the water depth  
11 at the docks has been reduced as well. It has  
12 affected my rental business and in following  
13 with the taxes paid to the county and resale  
14 value of the home.

15 And I built another dock, that's the one on  
16 the right, as far out in the cove as possible  
17 seeking deeper water. So it's an economic  
18 consequence to me, too.

19 It is also clear that both AEP and the  
20 Corps of Engineers have responsibilities within  
21 the project boundaries. It's also clear that  
22 the Shoreline Management Plan is ineffective in  
23 preventing the siltation. And this results in  
24 degradation of the wetlands by repeated silting,  
25 which negatively impacts the environment.

1           And if you'll bear with me a little bit, I  
2           have about four or five bullets here that I'd  
3           like to read to you. This gives the history of  
4           the cove and the soil erosion.

5           The soil erosion and silting first occurred  
6           in the cove about four years ago when a  
7           developer placed a large amount of excavated  
8           fill dirt next to a natural drainage ditch. The  
9           drainage ditch leads to the wetlands and gets  
10          into the cove, my cove.

11          The only protection was a single silt fence  
12          placed in loose fill dirt around the base of the  
13          fill area with no straw bales or rock  
14          reinforcement. After the first rain event, it  
15          collapsed and caused erosion and silting in the  
16          cove.

17          I immediately informed the developer and  
18          the county. The county conducted a site visit  
19          and confirmed severe erosion from the fill area  
20          and silting through draining ditches to the  
21          cove.

22          The county wrote a letter to the developer  
23          for corrective actions to be completed within 30  
24          days. Multiple rain events, thunderstorms and  
25          erosion and silting occurred during that 30

1 days. And to me this clearly demonstrates that  
2 actions were taken after the damage was done.

3 The developer initially built two  
4 sedimentation ponds near the fill area, replaced  
5 the silt fence and seeded the fill area in in 30  
6 days. And he later built another sedimentation  
7 pond using riprap because the upper ponds had  
8 filled with sediment. And I have some pictures  
9 later on in the presentation. And it became  
10 ineffective so quickly with subsequent rain  
11 events.

12 It took two years for that fill area to  
13 stabilize. And during those two years, erosion  
14 and silt continued to occur in my cove at every  
15 rain event. The developer and county never  
16 maintained the erosion and sedimentation  
17 controls.

18 Then in the spring of 2004 the developer  
19 placed a mass septic field in the watershed  
20 above the same drainage ditch leading to the  
21 cove. It was seeded, strawed and one silt fence  
22 was placed at the bottom in a land-disturbed  
23 area.

24 The silt fence, in my opinion, was  
25 improperly placed and never maintained. I'll

1 show you a picture to that. Most of the straw  
2 and grass seed blew away in the wind and was  
3 never replaced. Furthermore, the developer  
4 aggravated the situation by piling additional  
5 fill dirt at the highest area of the field with  
6 silt fences placed around it.

7 And there is the dirt (indicating). And  
8 you can see some of the erosion. There's some  
9 other various in the mass septic field. All of  
10 that ends up in the cove.

11 And the dirt, I have no clue why it's in  
12 there. I did talk to a developer's  
13 representatives and there was no -- I didn't get  
14 an answer as far as I was concerned.

15 This is an example of the lack of  
16 maintenance of the silt fence. Same hill, same  
17 septic field.

18 To this day, the siltation of my cove  
19 occurs after every rain event from the mass  
20 septic field land disturbing.

21 This is an example (indicating). See how  
22 little rain is involved there, a quarter of an  
23 inch.

24 And I'll just go through these relatively  
25 quickly.

1           But it just occurs every time it rains.  
2           And nothing is being done.

3           That big green block at the top  
4           (indicating) is the landfill that I talked to  
5           you earlier that was put in four years ago.  
6           It's stabilized now, but in the meantime the  
7           silt comes down. And I believe this part here  
8           (indicating) is coming from the mass septic  
9           field land.

10          This (indicating) is an example of an  
11          unmaintained sediment pond. That's right at the  
12          base of that landfill.

13          In the cove, one cove towards Monoacan  
14          shores. And let's see here. It also, according  
15          to the Shoreline Management Plan, has a wetland.  
16          And that cove that is currently suffering the  
17          same erosion and siltation as my cove.

18          That's the next cove (indicating).

19          Now the developer has brought in fill dirt  
20          to the watershed before he recently began work  
21          to mitigate the earlier erosion. That's in  
22          process right now. And the silt still is  
23          entering the cove. And that dirt was brought in  
24          prior to some of these pictures were took. So  
25          the siltation is still going on in their cove,

1 too.

2 Conclusions: My conclusion is the  
3 development activity in the cove watersheds has  
4 resulted in silting of the coves.

5 Silting in my cove has damaged wetlands,  
6 damaged AEP properties, because they own the  
7 land below the 800 foot contour. And they  
8 affect my home value and business property.

9 The developer has initiated erosion control  
10 prevention in Toms Cove watershed, and it  
11 remains to be seen if it's effective.

12 Erosion and silt prevention in my cove's  
13 watershed has not been addressed.

14 My recommended actions is for AEP to  
15 enforce the requirements of Article 41 of the  
16 Shoreline Management Plan, specifically the  
17 developer and the counties place effective silt  
18 control measures and maintain them over time.

19 And the second is that AEP comply with  
20 Article 41 by requiring the developer to  
21 remediate the existing silt damage by dredging  
22 all of the silt damaged coves, including my  
23 cove, to his expense.

24 Thank you. I'm sorry for taking so long.

25 HEATHER CAMPBELL: Appreciate it. The next

1 speaker we have up here is Russ Johnson. Do you  
2 want to say anything? Did you want to say  
3 anything else?

4 RUSSELL JOHNSON: No. I think that we were  
5 hoping on our Attorney Francis.

6 HEATHER CAMPBELL: Francis Francis is right  
7 behind you. I just wanted to make sure, because  
8 you signed up, if you wanted to speak again.  
9 Francis Francis? Can you get up there?

10 FRANCIS FRANCIS: Thank you. I need a  
11 soapbox or something here, but I think --

12 HEATHER CAMPBELL: We don't want you in a  
13 soapbox.

14 FRANCIS FRANCIS: I'm Francis Francis. I'm  
15 from the law firm of Spiegel McDermott. And  
16 we're trying to assist TCRC. And Russ just  
17 suggested that I might just wind up and include  
18 those comments which he might have omitted.

19 And I must say that I don't think that you  
20 omitted a single thing. Especially that thing  
21 which he said we had to find some way to  
22 communicate to you the passion in the community  
23 about their concerns about this plan. And he  
24 did a fine job in that regard.

25 My contribution, if I can add anything to

1 his presentation, is that as someone who does  
2 work in this area, I find it extremely puzzling  
3 to understand what is going on here in many  
4 ways.

5 I think Mr. Simms gave an excellent  
6 position insofar as the company's intent was in  
7 doing -- in starting the SMP; however, I think  
8 it's high time for the company to recognize or  
9 appreciate the fact that there are large  
10 elements of this community that are very  
11 unhappy. And that can happen. But whatever  
12 happened, I don't think you accomplished all  
13 that you wish.

14 Sometimes it's very hard to come to a  
15 resolution when that happens; however, based on  
16 my experience, this is a very unusual group.  
17 They work very, very hard. The community is  
18 very willing to work with you.

19 And what I find very unusual is that in the  
20 circumstances where the community is willing to  
21 work with you, and where they will work very  
22 hard on this, that there is a refusal on the  
23 part of the company to really sit down and do  
24 what's absolutely necessary to get to a better  
25 state.

1           And with all due regard to FERC, I know  
2           that you have held many public hearings. And I  
3           know that the company has also sponsored public  
4           hearings. And public hearings are very  
5           important.

6           But also what is totally essential in this  
7           process is to get to the nuts and bolts. We  
8           cannot impose on everybody here by working  
9           through the volumes of technical data and so  
10          forth that we need to get to some answers,  
11          including answers to the questions of the man  
12          who was just in front of me.

13          These are technical issues that can be  
14          resolved, but we have to talk about them. And  
15          what TCRC has done, they want to know why AEP  
16          will not sit down with them, they want to look  
17          at the studies, and let's work out the details.

18          I think it is correct that the problems are  
19          solvable, some are institutional problems, some  
20          are technical problems, but they can be  
21          resolved.

22          That is very, very big lake. Five hundred  
23          miles of shoreline, four counties. Basically  
24          they want a governance because they want to have  
25          something to say about what their community

1 looks like. They do not want all of the fate of  
2 the community to be held by AEP, which has no  
3 laws that govern it.

4 Right now we go to FERC. You are governed  
5 by a public interest standard. If AEP is making  
6 all of the decisions, then there is no place for  
7 the community to go, and there is no law that  
8 governs AEP in terms of the same kinds of laws  
9 that govern FERC.

10 So that's what we're asking for. I would  
11 think that AEP would want to share the  
12 responsibility for 500 miles of shoreline and  
13 150,000 people with the people in the community.  
14 And that's where they want to go. And I think  
15 there is more work to be done, but I'm hopeful  
16 that it can be done.

17 And I hope that, Heather, you and the  
18 others at FERC will use your good offices, as I  
19 know you have done in other cases, to bring the  
20 parties together and to have these working  
21 sessions that are dreadfully dull, but  
22 ultimately work, and come to a workable plan for  
23 the community. Thank you.

24 HEATHER CAMPBELL: Okay. Bruce Dungan.

25 BRUCE DUNGAN: My name is Bruce Dungan.

1 I'm appearing here today as president of the  
2 Smith Mountain Lake Association. The Lake  
3 Association represents approximately 3,000  
4 individuals who reside either full-time or  
5 part-time around the lake and its watershed.

6 It was interesting to me when I signed up  
7 to speak as I looked at the name of the speaker  
8 in front of me and I saw it was Francis Francis.  
9 And I was reminded of the story of Franklin D.  
10 Roosevelt who as a politician, unfortunately,  
11 had no gift for remembering people's names. And  
12 as a politician, as Russ Johnson will tell you,  
13 you've got to remember names.

14 But he had a unique way of getting around  
15 that problem. If he couldn't remember your  
16 name, he would look at you at the beginning of  
17 the conversation and say, "Now I'm having  
18 trouble with your name." And if he was talking  
19 to Russ, Russ would go, "Russ." He said, "No,  
20 no, no. Not your first name, your last name."

21 Francis, you would have really thrown him  
22 for a loop.

23 Stewardship of the Smith Mountain Project  
24 and its watershed is a complex and multifaceted  
25 problem, one that cannot be solved with a silver

1 bullet, more frankly by a single entity.

2           Complex problems necessitate complex  
3 solutions. Solutions like stop further  
4 development, make AEP pay, the counties can do a  
5 better job of regulation, it's my land and I  
6 should be able to build whatever I want are  
7 certainly simple solutions, but they cannot be  
8 effective.

9           Effective stewardship requires a merging of  
10 common visions, cooperation between stakeholders  
11 and the project licensee, complementing  
12 legislation at all levels of government, and  
13 most importantly a sense of responsibility.

14           The Shore Management Plan and the Draft  
15 Environmental Assessment that recommends its  
16 approval of the stewardship issues. Although  
17 SMLA's membership supports the content of the  
18 SMP, we do have concerns. We wish to see the  
19 SMP implemented because we believe the SMP  
20 offers a reasonable balance between economic  
21 development and watershed protection  
22 preservation.

23           We need for effective regulation of docks  
24 and other in water construction than existing  
25 county regulations provide, however.

1           Having said this, SMLA is very concerned  
2 about the enforcement of the SMP. Enforcement  
3 requires staffing and funding, and it's not  
4 apparent that APCO corporate is committed to  
5 these needs.

6           SMLA contributed substantial volunteer  
7 hours to the development and support of the SMP.  
8 And if AEP offices are not forthcoming with the  
9 resources needed for adequate enforcement, our  
10 3,000 members will be disappointed, at best.

11           Another concern with the SMP is the lack of  
12 public awareness in the permitting process.  
13 Citizens should be aware of applications and be  
14 able to review them and to offer comments.  
15 Permits should be posted to indicate the work  
16 has been properly approved. And these permits  
17 should have an expiration date.

18           There's no provision in the SMP to address  
19 disputes locally and in a timely manner; i.e.,  
20 through a local dispute resolution process, the  
21 LDR.

22           Without an appropriate LDR, we believe the  
23 commission needs to have final approval for  
24 commercial large-scale private dockage and  
25 public uses within the project.

1           As an association, we recognize that  
2           appropriate fees are expected to support  
3           staffing and resources for both enforcement and  
4           permitting, and a fee schedule should be  
5           included.

6           In summary, SMLA respectfully requests that  
7           prior to the commission's approval, the draft  
8           SMP be modified to:

9           One, to include a local dispute resolution  
10          process to ensure timely and balanced  
11          enforcement.

12          Two, without an appropriate LDR, we believe  
13          the Commission needs to retain final approval  
14          for commercial, large-scaled private dockage and  
15          public uses within the project.

16          Three, performance standards need to be  
17          included for permit processing and enforcement  
18          of the SMP.

19          Four, a schedule of fees should be included  
20          within the SMP, along with a process to revise  
21          those fees.

22          Five, in the interim until these issues can  
23          be resolved, the draft SMP must continue to be  
24          enforced by AEP.

25          And six, the SMP should be scheduled for

1 update in 2008 to include study results from the  
2 relicensing activities.

3 I thank you for the opportunity today to  
4 present the comments of the Smith Mountain Lake  
5 Association.

6 HEATHER CAMPBELL: Thank you. Our next  
7 speaker is Mr. Bill Brush.

8 BILL BRUSH: Thank you for being here,  
9 coming down. Let me start something with a  
10 little light heartedness. Frank Carl at one  
11 time told a joke and said that it was a pill  
12 that was just invented for apathy, but no one  
13 really cared. We all took the pill.

14 My name is Bill Brush and I'm representing  
15 the interests of the Concerned Citizens for  
16 Craddock Creek regarding the Draft Environmental  
17 Assessment. Several of our members are here and  
18 I would ask that you stand or raise your hands.

19 (Audience responds.)

20 HEATHER CAMPBELL: Anybody left on Craddock  
21 Creek today?

22 BILL BRUSH: The Concerned Citizens totally  
23 support the goals and the objections of the  
24 Shoreline Management Plan. And we believe its  
25 contents offer a reasonable balance between

1 economic development and protection and  
2 preservation of the character of the project.

3 However, after a comprehensive review of  
4 the issues, the obvious inconsistencies and  
5 apparent enforcement lapses, we do not believe  
6 the Shoreline Management Plan is ready for  
7 Commission approval at this time.

8 If this position seems contradictory, we  
9 assure you it's not. After all, the SMP is only  
10 as good as its enforcement. Effective  
11 enforcement requires a top down corporate  
12 commitment to project stewardship, staffing and  
13 funding. It's not apparent that APCO corporate  
14 is ready to make such a commitment.

15 So let me make an important distinction  
16 here: We personally know APCO's local staff  
17 that are charged with the SMP implementation.  
18 They are knowledgeable, they're intelligent,  
19 they're hardworking, they're even good looking,  
20 and committed to doing a good job. They have  
21 our respect and they have our encouragement.  
22 But the equivalent of three and one half people  
23 who share enforcement tasks with other  
24 responsibilities is not a corporate commitment.

25 On February 17th, 1998 APCO's license was

1 amended to incorporate Article 41. Article 41  
2 clearly demonstrates the Commission's commitment  
3 to project stewardship, a commitment to  
4 protection and enhancement of the project's  
5 scenic, recreational and other environmental  
6 values.

7 This article requires APCO to act as the  
8 project steward and to grant permission for  
9 landscape plantings, certain types of docks and  
10 piers, and for shoreline stabilization and  
11 erosion control measures. It also requires APCO  
12 to supervise and control the use and occupancies  
13 for which it granted permission.

14 Now at this time let me briefly illustrate  
15 what I consider to be -- or we consider to be  
16 some post-Article 41 examples of where  
17 enforcement actions are inadequate, inconsistent  
18 or even arguably arbitrary.

19 An example of an inconsistent enforcement:  
20 In November of 200 APCO filed suit and requested  
21 a preliminary injunction to halt the  
22 un-permitted construction of boat docks in the  
23 Craddock Creek area.

24 APCO's then project manager, Mike Thacker,  
25 said in sworn testimony: "The construction of

1 these large docks in Mitchell's are inconsistent  
2 with the scenic, recreational and environmental  
3 values of this project. 475 will be  
4 problematic. The cove is too narrow. They will  
5 interfere with the public's ability to use the  
6 cove. Large numbers of docks will raise  
7 environmental, public safety and aesthetics  
8 issues. Furthermore, the public, including the  
9 neighboring property owners, should have the  
10 opportunity to comment upon the potential  
11 congestion created by this large number of  
12 additional boats in the Craddock Creek area."

13 Mike went further on to say that "Large  
14 docks at the Point are inconsistent with the  
15 scenic, recreational and environmental values of  
16 the project. They extend approximately 140 feet  
17 into the lake at an important navigational  
18 location. They also raise environmental and  
19 aesthetic concerns due to the massive volume of  
20 boat slips."

21 In the complaint that they filed, they said  
22 that "these boat slips would cause irreparable  
23 harm to this project."

24 Well, following the dismissal of the  
25 lawsuit in February of 2001, APCO immediately

1 made application to the Commission recommending  
2 it approve some 182 boat slips even though they  
3 violated Article 41, would result in irreparable  
4 project and were objected to by numerous  
5 impacted citizens. At best, this recommendation  
6 was totally inconsistent with APCO's original  
7 complaint and the sworn affidavit of its project  
8 manager.

9 An example of inadequate enforcement: On  
10 January 12th, 2001 APCO wrote the Commission  
11 stating that between February 17, 1998 and April  
12 18th of 2000 APCO had not administered Article  
13 41 and consequently requested the Commission  
14 retroactively approve some 281 un-permitted and  
15 existing boat slips at multiple project  
16 locations constructed during the same period.

17 The Commission granted retroactive  
18 approval, a decision for which it had no  
19 reasonable alternative.

20 An example of inadequate, inconsistent and  
21 arbitrary enforcement: On September 28th, 2003  
22 Concerned Citizens representatives met in AEP  
23 offices to review applications for an additional  
24 363 boat slips in the Craddock Creek area. Less  
25 than a month later we delivered a petition to

1 AEP with over 340 signatures -- pardon me for  
2 hitting that mike -- voicing opposition to the  
3 planned proliferation of boat slips in Craddock  
4 Creek. We specifically requested that APCO  
5 include this petition in any future filing they  
6 might make to the Commission.

7 On February 27th, 2004 in response to a  
8 Commission request, APCO acknowledged that many  
9 of the existing slips in Mariners Landing were  
10 rented to the general public, and recommended  
11 the Commission allow public rentals to continue  
12 until the slips were assigned to the residents  
13 or directly to a unit. It also recommended that  
14 boat slips at the Pointe be allowed to be rented  
15 to the public until the restaurant opens.

16 On the 6th of August in 2004 in response to  
17 a letter from a citizen, Mr. Robert P. Powers,  
18 Executive VP of Generation for the AEP, speaking  
19 on behalf of Michael G. Morris, Chairman, CEO  
20 and President of AEP, said: "The practice of  
21 renting boat docks that are designated for  
22 residents of any adjoining development is an  
23 issue that we are attempting to address. Some  
24 permits issued by AEP contain restrictions  
25 relative to the use of the docks and the slips

1 provided. When we find that the permittees are  
2 not abiding by the requirements of the issued  
3 permits, we're prepared to take appropriate  
4 actions to rectify the situation."

5 Well, seven months after Chairman Morris's  
6 letter, March 3rd, 2005 to be explicit, and only  
7 days after dismissal of the second lawsuit with  
8 the Mariners Landing developer, APCO requested a  
9 FERC variance to change all shoreline  
10 classifications at the Pointe to high density  
11 commercial, thus permitting public rental of all  
12 existing and planned boat slips.

13 In the same filing, they submitted plans  
14 for an additional 146 boat slips at the Pointe  
15 that could also be used for public rental.  
16 Apparently this is easier than enforcing  
17 compliance with the FERC order. And Mr.  
18 Morris's position was nothing more than a few  
19 words on paper.

20 Furthermore, as a part of any request for a  
21 FERC variance, the draft Shoreline Management  
22 Plan process says: "The applicant shall include  
23 receipts from certified letters indicating  
24 notification in writing to all adjoining  
25 property owners of the applicant's intent. The

1 adjacent property owners, along with the  
2 appropriate county, shall be given 30 days to  
3 provide comments to AEP prior to AEP finalizing  
4 its review. Comments will be available to the  
5 public. Once comments are received and  
6 resolved, the variance request and the agency  
7 comments will be reviewed by AEP and a decision  
8 will be made as to whether it will be forwarded  
9 to the FERC for action."

10 In this case, APCO didn't follow this  
11 process when they filed the March variance  
12 request, nor did they include the 340 signatures  
13 on the petition from the Concerned Citizens for  
14 Craddock Creek opposed to the proliferation of  
15 boat slips in this filing.

16 When the Commission opens this filing for  
17 public comment, we will formally file our  
18 comments and our recommendations at that time.

19 In summary, there is a clear and undeniable  
20 pattern that has emerged regarding APCO's past  
21 and present Article 41 and Shoreline Management  
22 Plan enforcement activities.

23 First, we do not believe that APCO has  
24 adequate staff assigned to enforcement  
25 activities.

1           It appears that if sued, APCO will reverse  
2           its position and knuckle under to the special  
3           interests even if this position violates Article  
4           41.

5           It appears that APCO prefers not to include  
6           citizen stakeholder concerns in its applications  
7           to the resource agencies or to the Commission.  
8           Their applications provide one-sided  
9           perspectives, piecemeal plans and incomplete  
10          information upon which the Commission is  
11          expected to make decisions.

12          Article 41 was imposed on APCO over seven  
13          years ago. The draft Shoreline Management Plan  
14          enforcement began 19 months ago. This plan  
15          could be very effective; however, in the absence  
16          of open and complete execution and consistent  
17          enforcement, it is no more than a paper tiger;  
18          potentially designed to enhance an image and  
19          expedite relicensing.

20          We do not know of APCO ever submitting a  
21          request to the FERC that it did not support.  
22          Now think about that statement for a second.

23          APCO's filings with to FERC are biased.  
24          They always recommend a solution. They don't  
25          give equal balance to both sides of an issue.

1 They do not include the input of affected  
2 stakeholders. And they do not always contain  
3 accurate and complete information because the  
4 information they package to the FERC primarily  
5 comes from the applicant.

6 If the applicant misrepresents his  
7 intentions, APCO forwards those  
8 misrepresentations to the FERC as truth. If  
9 APCO elects not to submit a permit request, they  
10 simply don't submit it.

11 Citizens and business and property owners  
12 need some means to have their concerns fairly  
13 considered and represented to the Commission.  
14 The draft SMP doesn't allow this. And some APCO  
15 submittals do not fairly represent the  
16 situation.

17 So in conclusion, we respectfully request  
18 that the Commission postpone approval of the  
19 draft SMP until:

20 A local disclosure/dispute process is  
21 developed and included in the SMP to ensure full  
22 disclosure, openness, consistency, timeliness  
23 and balance.

24 And consistent with Article 41, those  
25 provisions in the SMP granting APCO approval

1 authority for commercial and large-scale  
2 projects should be removed. This authority  
3 should remain with the FERC until a local  
4 disclosure/dispute process can be implemented  
5 and sufficient staff is assigned to the  
6 enforcement activities.

7 Again, thank you for allowing us to address  
8 you. And thank you for the commitment to the  
9 project stewardship.

10 HEATHER CAMPBELL: Okay. I do not want to  
11 lose momentum at all, but we have all been  
12 sitting here for a little over an hour and a  
13 half and I was wondering if anyone would be  
14 interested in taking a ten-minute break?

15 (Audience show of hands.)

16 HEATHER CAMPBELL: Wow, hands went up fast.  
17 Let's take a ten-minute break and come back in  
18 here around 3:20.

19 (Whereupon, a short break was taken.)

20 HEATHER CAMPBELL: The next speaker who  
21 signed up is Mr. Ralph Brush.

22 RALPH BRUSH: Defer.

23 HEATHER CAMPBELL: Defer, okay.

24 How about John Snidow? One thing, if you  
25 do have a prepared speech, the reporter has

1 asked that you give it to her so we make sure  
2 that it's recorded accurately. If she has any  
3 questions, we can refer to that. If you don't  
4 want to, that's fine. But if you do, she'd  
5 appreciate it. Thank you.

6 JOHN SNIDOW: I can do that or I can submit  
7 it on the e-mail, whichever is most efficient  
8 for you.

9 HEATHER CAMPBELL: If you have a copy  
10 available, thank you.

11 JOHN SNIDOW: Yes. It's been modified  
12 somewhat.

13 Well, my name is John Snidow. My wife and  
14 I live on the Franklin County side of the lake  
15 on Indian Creek Inlet. And I appreciate y'all  
16 coming down here.

17 My main concern and most of what I wanted  
18 to say has already been said probably more  
19 eloquently. And the pictures certainly said a  
20 lot, too.

21 I did want to talk about water quality and  
22 sedimentation control. It seems to me it's core  
23 to what this lake is because without it the lake  
24 is just another impoundment. And less and less  
25 of even that is siltration and debris fill the

1 basin.

2 We've got a number of problems. Developers  
3 are often one of the major problems. They run  
4 the gamut from great to abysmal. You can pretty  
5 well tell which kind of a developer you're going  
6 to see when at the planning commission or board  
7 of supervisors meeting you see the engineering o  
8 the lack of it.

9 Environmental enforcement has been a  
10 problem. Silt fence, moving debris off site or  
11 burying it, destruction of creeks, et cetera.  
12 The enforcement has been spotty at best.  
13 Compliance with respect to developers depends on  
14 the good will of the developer to a large  
15 extent. And it seems like the more flagrant  
16 violators seem to get a pass, at least in some  
17 cases. In any case, the enforcement process  
18 takes a long time to stop the damage that's  
19 being done and it may never get around to fixing  
20 the damage.

21 On our inlet, and we've been there 17 years  
22 now, we've lot between 3 and 7 feet in or around  
23 our dock. And this is not a scientific study.  
24 I understand that. But it serves to  
25 demonstrate.

1           We've lost well over a hundred yards of  
2           navigable water at the head of the inlet.  
3           Several days ago we saw a blue heron standing  
4           ankle deep in water where we used to go in our  
5           deep V runabout and the lake is full pond right  
6           now.

7           We're located on a double S curve. And  
8           despite the heavy ski boat traffic throwing big  
9           wakes, we see about a third of the properties on  
10          our inlet are not rip-raped. Many of those are  
11          absentee owners. I don't know how we address  
12          that. But when there's no riprap and you get  
13          those heavy waves, I guarantee you you're going  
14          to see a lot of red in the water on a Saturday  
15          or Sunday afternoon. And if it's raining today,  
16          I guarantee you the lake will be red tonight.

17          The lake residents are so concerned that,  
18          as you heard earlier, a proposal has been  
19          floated to create separate overlay tax district  
20          to fund a response to these and other issues.

21          I personally think it's not a good idea  
22          because it lets the counties and AEP off the  
23          hook. But it shows the level of concern of the  
24          residents, particularly in view of the fact that  
25          the -- of the rapid rise of waterfront property

1 values and the concomitant rise in real estate  
2 taxes. In fact, it's my understanding that the  
3 lake area carries over half of the total  
4 Franklin County tax burden.

5 So in conclusion I would ask that the  
6 Commission require that AEP, and I would hope  
7 that the counties could be involved in this,  
8 too, become more proactive in the control of  
9 sedimentation and debris.

10 I think time limits would be a big help.  
11 Right now on our inlet we have a development  
12 that's about one-third complete, and no work has  
13 been done for about three-quarters of the year.  
14 This would probably be the poster child for  
15 developments that aren't done like they ought to  
16 be done. But there are some others running a  
17 close second.

18 So I'd ask you to put in strong  
19 requirements and enforcement languages -- a  
20 language, rather, in the enforcement plan, thank  
21 you -- the Smith Mountain Lake Shoreline  
22 Management Plan. Thank you.

23 HEATHER CAMPBELL: Our next speaker is Mr.  
24 Stan Smith.

25 STAN SMITH: I have copies. My name is

1 Stan Smith and I'm here representing TLAC, the  
2 Tri-County Lake Administration. I'm  
3 vice-chairman of TLAC and chairman of its  
4 navigation committee.

5 As many of you know, TLAC is the  
6 administrative arm for the lake of the three  
7 counties. Its mission is to act as the  
8 counties' representative to the lake community  
9 and to monitor lake issues for the counties.

10 The recent Environmental Assessment  
11 prepared in response to the Shoreline Management  
12 Plan submission to you causes some concerns for  
13 TLAC's Navigation Committee. One of the three  
14 primary recommendations in the Environmental  
15 Assessment would prohibit in-water construction  
16 from February 15th to June 15th each year. If  
17 this prohibition applies to pile driving, and we  
18 assume it does, it could have signature impact  
19 on the maintenance of navigational aids in Smith  
20 Mountain Lake.

21 AEP initially had the responsibility for  
22 the maintenance of navigational aids on Smith  
23 Mountain Lake as well as periodic improvements  
24 to the system.

25 In the 1990s TLAC's predecessor, the Policy

1 Advisory Board, assumed this responsibility to  
2 make it possible to receive funding from the  
3 Commonwealth. Maintenance of the system  
4 involves replacement of damaged pilings, often  
5 the result of boating accidents, on which these  
6 navigational aids are mounted. We've been  
7 forced to replace four pilings in the past six  
8 months.

9 TLAC relies on dock builders to place these  
10 pilings for us as the builders move their pile  
11 driving equipment around the lake. And they've  
12 been very gracious to do this at a reduced fee  
13 if we will use -- allow them do it as their  
14 equipment is in the area.

15 If the dock builders cannot drive piles, we  
16 will be unable to repair damaged markers and the  
17 associated lights during one-third of the year.  
18 This has the potential for creating serious  
19 unsafe boating conditions on the lake.

20 TLAC is not concerned about the impact that  
21 this prohibition might have on improvements to  
22 the navigational aid system. It would be  
23 possible for us to schedule such improvement  
24 projects for the months when in-water  
25 construction is permissible.

1           We are hesitant to advance any suggestions  
2           on how this problem can be addressed because we  
3           don't have the expertise to do it. It might  
4           solve our problem -- it was our first thought  
5           that the problem can be solved by FERC granting  
6           an exception for the maintenance of navigational  
7           aids in the system. But that really won't work  
8           very well because if there are no dock builders  
9           using pile driving equipment on the lake at that  
10          point, we'll either have to pay greatly  
11          increased costs for the pile drivers or the dock  
12          builders will be reluctant to do that work at  
13          all.

14          We doubt -- we're skeptics that pile  
15          driving has a serious adverse effect on fish  
16          spawning. We really don't know. So the  
17          solution that we hope you'll consider is  
18          exempting pile driving from this in-water  
19          construction prohibition.

20          We urge you to carefully evaluate the  
21          impact of pile driving on fish spawning before  
22          limiting this activity on the lake.

23          Thank you for hearing us today.

24          HEATHER CAMPBELL: Thank you. The next  
25          speaker is Mr. Jim Klepek.

1           JIM KLEPEK: I'm Jim Klepek and I'm a  
2           resident representing myself. I agree with the  
3           FERC's recommendation that AEP develop and  
4           incorporate into the SMP criteria to limit the  
5           number of piers, docks and slips that may be  
6           constructed in commercial areas.

7           Some of my reasons for agreeing with the  
8           FERC's recommendation include:

9           One, a very high percentage of the people  
10          coming to the high density commercial areas,  
11          both non-resident short-term renters and  
12          vacationers.

13          Two, most of the people injured or killed  
14          on Smith Mountain Lake last year were  
15          non-resident vacationers.

16          Three, non-resident vacationers won't be  
17          taking the local boating safety classes.

18          Four, non-resident short-term renters will  
19          be more likely to go out onto the lake during  
20          the most congested times of the year.

21          Five, Smith Mountain Lake already has the  
22          reputation as the most dangerous body of water  
23          of Virginia.

24          Six, Smith Mountain Lake has no speed  
25          limits or noise limits.

1           Seven, renting out more and more high speed  
2 jet skis and power boats to vacationers  
3 unfamiliar with the lake and the watercraft will  
4 result in more needless injuries and death.

5           Eight, law enforcement on the lake is  
6 grossly inadequate and will most likely always  
7 be understaffed in part because:

8           Nine, Virginia ranks last in the nation in  
9 public expenditures for environmental issues.

10          Ten, stuffing in as many high density  
11 commercial docks as possible will certainly  
12 destroy Smith Mountain Lake much sooner than  
13 later.

14          And I have some other comments, questions  
15 and concerns that I'll turn in later in writing.  
16 I just want to give more people a chance to  
17 talk.

18          HEATHER CAMPBELL: The next speaker is  
19 Donald Holland.

20          DONALD HOLLAND: I'm Donald Holland. I  
21 live in the Craddock Creek area. I do have one  
22 point I would like to make. Hopefully it will  
23 reinforce the request, that requested oversight  
24 regardless of what you call it, some kind of  
25 oversight, some involvement, more than just one

1       entity.

2               And my story started in 2001. Mike Thacker  
3       called from AEP. We were talking about the area  
4       that there's a large density of boat docks and  
5       he asked me if I knew the plan to -- he stated  
6       that he had a request for a permit to issue  
7       approximately 400 boat slips. He asked me what  
8       I thought about it. I told him I just could not  
9       comprehend it. I said, "I'm against it." He  
10      asked me why. I said, "Because the congestion  
11      in the long narrow cove, and it is a narrow  
12      cove, water pollution from houseboat cleaning,  
13      oil leaking, noise pollution were from the  
14      boats. This is dangerous due to the high  
15      traffic in the congested area, and the erosion  
16      after a couple years, and more erosion."

17              So Mike said he felt the same way and asked  
18      me if I would go to the AEP attorney's offices  
19      in Roanoke and tell them my feelings, which I  
20      did. And in the conversation that I asked the  
21      attorneys what happens if you don't own the  
22      property under the water. The attorney said,  
23      "You just don't want to know." He said, "They  
24      have total rights. They can do anything they  
25      want to. They can stop this project, they can

1 control it, monitor it or tone it down." And  
2 Mike stated that we planned to stop most of it.

3 And so he asked me to appear in court at a  
4 later date, that I did. I spent the best part  
5 of the day waiting to be heard. Mr. Thacker  
6 came out and informed me and the others that  
7 were waiting to speak that the project would be  
8 put on hold, no further action was necessary.

9 And in Mike's parting statement was: "They  
10 cannot so much as drive a nail. If you hear  
11 anybody working over there, please call me." So  
12 over four months, five months, six months  
13 construction started again. So I called him.  
14 He said, "Oh, I should have called you. We gave  
15 them permits to -- I don't remember exactly --  
16 for 400 or so boat slips." I said, "Oh, you  
17 lost your case." He said, "No, we never really  
18 wanted to stop anybody from doing anything; we  
19 wanted to get the proper paperwork." And I was  
20 devastated. Felt like jelly in my knees. I  
21 wanted to know why have I been used, why have I  
22 been lied to, what did it take to get this  
23 project reversed?

24 My point in telling you all of this is so  
25 that someone besides that one entity is allowed

1 to make these decisions. Thank you.

2 HEATHER CAMPBELL: Karen Klepek is our next  
3 speaker.

4 KAREN KLEPEK: My name is Karen Klepek and  
5 I wish to comment briefly in regards to the  
6 Shoreline Management Plan and the Draft  
7 Environmental Assessment completed by the FERC  
8 for this plan.

9 According to the FERC's environmental  
10 assessment, quote: The SMP does not place  
11 limitations on the number of docks allowed in  
12 commercial areas, but it does place limits on  
13 the size of structures. If development is  
14 permitted without limitations on the number of  
15 docks in the commercial areas, there could be  
16 impacts to navigation and public safety because  
17 of crowding or reduction in line site within the  
18 commercial areas.

19 Further unlimited construction could have  
20 indirect effects elsewhere on the lake by  
21 causing excessive noise, congestion, or  
22 increased wave action.

23 It is recommended that AEP develop and  
24 incorporate into the SMP criteria to limit the  
25 number of piers, docks and slips that may be

1 constructed in commercial areas. End of quote.

2 I support this recommendation by the FERC  
3 and ask that AEP and the FERC establish sane and  
4 reasonable limitations on the number of  
5 commercial docks, and include these changes in  
6 the final Shoreline Management Plan.

7 The central goal of the Shoreline  
8 Management Plan is to protect and enhance the  
9 environmental, scenic and recreational value of  
10 the Smith Mountain Project.

11 With the current pace and intensity of  
12 development at Smith Mountain Lake, I believe  
13 without placing limitations on the number of  
14 piers, docks and slips in the high density  
15 commercial areas this central goal would be  
16 jeopardized.

17 I support wise and prudent development of  
18 the shoreline. Please consider my comments.  
19 Thank you.

20 HEATHER CAMPBELL: Thank you. The next  
21 speaker is Reba Short.

22 REBA SHORT: My name is Reba Short. I  
23 represent Michael Dillon we're dock builders.  
24 And what I'm here for today is very simple, to  
25 as you what you would have us do with six

1 employees that we employ year round. If it's  
2 raining we put our employees in our shop. If  
3 not, they're out on the water.

4 Say, you know, we're sorry but because it  
5 takes two days to put the poles in, you have  
6 another four weeks or five weeks of work  
7 building the dock above the water. But because  
8 they passed this new rule that for the next four  
9 months you're going to be unemployed. You're  
10 going to have children at home that you can't  
11 support and you're going to have homes that you  
12 can't pay for.

13 What happens is these people go out and  
14 find new jobs. The time passes and we need our  
15 employees back. We can't get our employees back  
16 because they know the next year the same thing  
17 will happen to them again.

18 Very seldom do -- you know, we are here  
19 from a large -- one area. Most of the time your  
20 docks are spaced out pretty far apart. So you  
21 shouldn't have any problem with bothering your  
22 fish because you're not in the water more than  
23 two days at the most when we set the poles.  
24 From that point on you're above the water.

25 And the other thing that I think -- and I

1 have worked at the lake for nine years. I do  
2 have a certification in building retaining  
3 walls, a class A contractor's license and I did  
4 erosion for nine years. The biggest problem I  
5 find here at this lake is not necessarily the --  
6 has nothing to do with the docks. It's because  
7 people clear the land, go out, they clear the  
8 land, they get their money and they leave.

9 Now homeowner's builder comes in and he  
10 builds it and he leaves. The builder has to  
11 have an inspection that says his house is built  
12 properly. A dock builder has to have an  
13 inspection that says we built that dock  
14 properly. But where is the guy that goes back  
15 and says to the guy who did the erosion that he  
16 did -- he has to come back and do his job  
17 properly? Why do we not have someone to come in  
18 and say, "If you're going to clear this land,  
19 when it's all finished you're going to come back  
20 out and we're going to inspect it. If you don't  
21 have french drains, if you don't have the proper  
22 erosion problems taken care of, then you will do  
23 your job over." We all stand for that, why does  
24 someone else not have to?

25 The other thing I was listening to the

1 other day a guy came out to borrow a digger from  
2 us. He was putting in 300 azaleas to stop  
3 erosion. I teach people here at the lake to  
4 plant azaleas above the ground because they're  
5 not a root plant. So why would you use them for  
6 erosion? Why not use an aster when you have to  
7 take a bulldozer to pull its roots out of the  
8 ground?

9 You know, I think the one problem we have  
10 here is a lack of education for people to stop  
11 some of the erosion. It's not your dock  
12 builders that's down here tearing up the banks.  
13 We only connect the walkways to the bank, which  
14 is only six foot wide. It's lack of not having  
15 proper erosion control on your lane clearing and  
16 your house developments that is causing the most  
17 of your erosion.

18 I went out and I looked at a wall in a big  
19 development. The erosion was so bad from the  
20 development next-door it was running overtop of  
21 this lady's retaining wall. A six-foot  
22 retaining wall.

23 This is where there needs to be better  
24 education and better mandates to make the  
25 erosion people, the people that does the

1 clearing, to come back, have theirs inspected  
2 and they have to pass. Thank you.

3 HEATHER CAMPBELL: Thank you. The next  
4 name I have on here, I apologize, I know I'm  
5 going to butcher it, it's Napier.

6 NAPIER NILLS: That's not bad.

7 HEATHER CAMPBELL: I try. I was going to  
8 go by the person who lives at this address, but  
9 I didn't know if you wanted that in the record.

10 NAPIER NILLS: Well, my name is Napier  
11 Nills. I've been coming to the lake since the  
12 late 60's and early '70s, bought property in  
13 '78, moved here permanently in '88.

14 A couple of things that I'd like to mention  
15 here. I would invite AEP representatives to  
16 come to my house and I'll take them out on the  
17 boat at night and we'll see what -- how much --  
18 what reflectors do for you.

19 I used to think that we ought to have  
20 reflectors on the pilings because people hit  
21 them. So as a result, I got on the Navigation  
22 Committee, we bought many different kinds of  
23 reflectors and I went out and put them on  
24 pilings. I wrapped some with white aluminum  
25 foil.

1           So I'm out there at night on the fireboat.  
2           You know what? They don't do a bit of good.  
3           The only way they do any good is if you shine a  
4           light on them. And you know if you have  
5           headlights on your boat the game warden's going  
6           to give you a ticket because it's illegal.

7           So your little deal on reflectors -- I  
8           thought it was great, too. You need to take it  
9           out of there. Simplify this thing, if you can.

10          Pilings. You know, I take Virginia  
11          wildlife, I fished and hunted, never saw  
12          anything in there that ripraping and driving  
13          pilings upset the fish. Now all of a sudden you  
14          want to stop it for four months of the year?  
15          It's crazy.

16          I mean, I don't know -- you probably asked  
17          the game commission and the biologist had to say  
18          something: "Well, I got to get my two cents  
19          in." So he comes up with this. So maybe he  
20          upsets a couple fish. So what. You know, it's  
21          still, according to all reports, a good fishery.

22          All in all, this Shoreline Management Plan  
23          is at least 25 years too late. And the reason I  
24          say that, when I retired I was on the Smith  
25          Mountain Lake Association Board. We tried to

1 get the counties to come up with a uniform dock  
2 ordinance. No way. As of today, they don't  
3 have one. So it's time. Let AEP try it.

4 The counties have got to work together.  
5 They're trying. They're doing better.

6 I'll bring up one other little thing. No  
7 wake markers. And it's a big controversy.  
8 Everybody wants a no wake marker. We have a  
9 criteria for that. Let's say you want to get  
10 rid of them. Well, we can do it in Pittsylvania  
11 County. We can do it in Bedford County. But  
12 the Board of Supervisors has to do it in  
13 Franklin County.

14 The counties have not done what they  
15 should. Siltation is a big problem, and the  
16 counties are responsible. I don't see how AEP  
17 can correct the siltation. The kind of  
18 siltation we're talking about comes under the  
19 county ordinances. And they do not enforce  
20 those ordinances as well as they should be.

21 In Bedford County they required a developer  
22 to post a bond. If he doesn't do what he's  
23 supposed to do, they can go in and do it for him  
24 and charge him.

25 They just don't do it. When they do get

1 after one, they say, "Well, you've not 30 days  
2 to correct it." So when it doesn't stop raining  
3 for 30 says, you never know. They can't control  
4 nature.

5 So the counties need to stand up and be  
6 counted on this erosion bill. And I don't know  
7 how AEP is going to control the erosion and the  
8 Blackwater -- Upper Blackwater and Upper Roanoke  
9 River. You know, that's -- it's other  
10 governments that were involved.

11 But a lot of the lower inlets in the lake  
12 could be controlled if the counties would just  
13 enforce their ordinances.

14 HEATHER CAMPBELL: Thank you, Mr. Nills.  
15 That time I got it right. The next speaker is  
16 Nancy Atkins.

17 NANCY ATKINS: My name is Nancy Atkins and  
18 I would like to thank you for the opportunity to  
19 speak today.

20 I'm very concerned about the amount of  
21 sedimentation from new construction and  
22 developments entering all areas of the lake.

23 Unfortunately, I live beside a perfect  
24 example. Almost two years ago the Grand Harbor  
25 project, due to a total lack of erosion control

1 allowed sediment to enter our creek and fill a  
2 cove where a natural beach once existed on part  
3 of our property.

4 The developer finally agreed to sign a  
5 consent order with the DEQ in November of 2004.  
6 A fine was imposed for violations that had  
7 occurred on site. And the order stated that no  
8 less than 122 cubic yards of sediment would be  
9 removed. I'm told that's approximately 12 large  
10 dump trucks of mud.

11 AEP has stated that dock permits for the  
12 Grand Harbor project will not be issued until  
13 all DEQ violations have been addressed.  
14 Although I greatly appreciate the fact that the  
15 issuing of the permits is currently on hold,  
16 almost two years after the environmental damage  
17 occurred, the dredging is yet to be completed.

18 The developer has simply put the Grand  
19 Harbor project on hold and moved to another area  
20 of the lake where he continues to build  
21 waterfront houses and receive permits to build  
22 docks.

23 The Shoreline Management Plan has been in  
24 place for 19 months. In order for the plan to  
25 be effective, it should enable problems like the

1 ones that still exist at Grand Harbor to have  
2 been resolved long ago. Thank you.

3 HEATHER CAMPBELL: The next speaker is John  
4 White.

5 JOHN WHITE: Thank you. I'm John White  
6 representing the East Lake Business Association,  
7 a group of over 200 businesses in this region or  
8 area.

9 We want to say that we strongly support the  
10 TCRC and their efforts in working with AEP to  
11 find answers for all of the things that have  
12 been spoken to today.

13 A lot of good things have come up as far as  
14 need is concerned, which I have to iterate that  
15 I'll say the Shoreline Management Plan is not  
16 ready for adoption.

17 I'd also like to say that -- something I  
18 did didn't know I would be saying, but it seems  
19 to me today that what I see is coalition of  
20 organizations for the purpose of what the TCRC  
21 stands for. And I think that's appropriate.

22 The particular differences the  
23 organizations may have can be left to later when  
24 the Shoreline Management Plan has been safely  
25 put in place.

1           So the other issues seem to me that is the  
2 long-term difficulty for the counties has to be  
3 the fiscal responsibility of Smith Mountain  
4 Lake. The maintenance issues when they do  
5 occur, for an example, the water quality  
6 coalition which did not speak today, but has  
7 been trying to have an overlaid district for tax  
8 put in place had very good intentions of making  
9 sure that for long-term the most economically  
10 viable entity of these counties is maintained  
11 and protected. And so they had very appropriate  
12 concerns and were trying to do it from a local  
13 standpoint of providing funds to take care of  
14 the lake.

15           It just seems that that is an impossible  
16 task for counties that are already strapped for  
17 monies to at some time in the future have to  
18 provide funds potentially to maintain the lake  
19 which is .2000 thousand acres and 500 miles of  
20 shoreline.

21           So the physically responsibility party  
22 should be AEP. And Frank gave indications today  
23 of many contributions, which are certainly  
24 appreciated, that have been given by AEP to the  
25 lake. But he didn't say they were mandated to

1 do that, he said they were contributions.

2 And unfortunately in the long range what  
3 these counties need is for there to be a mandate  
4 of responsibility of AEP, just take a little  
5 piece of these profits and put back into Smith  
6 Mountain Lake. Thank you very much.

7 HEATHER CAMPBELL: Thank you, Mr. White.  
8 The next speaker is Don Meyer.

9 DON MEYER: It's my business associate.

10 HEATHER CAMPBELL: Tag team?

11 DON MEYER: Don Meyer of Dock Doctors. We  
12 build custom boat docks. We do pile driving.  
13 And if you guys could help me to understand why  
14 if a tree falls in the water it's structure for  
15 fish, but if we put pilings in the water it's a  
16 nuisance and it disrupts the fish beds?

17 You got to get a permit to remove the  
18 vegetation for a tree, but when you actually put  
19 stuff in the water for structure, it disrupts  
20 the fish beds.

21 My next point is everybody's worried about  
22 the fish habitat and stuff like that. I wish I  
23 had a PowerPoint presentation to pass around.  
24 This right here is -- I'm not sure if you guys  
25 can see it -- there's a pier right there

1 (indicating) where it's silted on in with about  
2 500 cubic yards of material.

3 Now I realize that the fish live in the  
4 water and they spawn in about two foot of water,  
5 but they don't spawn up on that. Yet with the  
6 current regulations, we can't even dredge that  
7 on out to remove the -- to restore the fish  
8 habitat.

9 I mean, it just really doesn't make that  
10 much sense that there's the enforcement, there's  
11 the -- when the silt fences break and everything  
12 like that it silts it on in and right off the  
13 band we got a silt problem, but then for four  
14 months out of the year you can't do anything to  
15 remediate the problem. I mean, you can't clean  
16 it up, you can't do anything.

17 There's a small creek that runs on through  
18 here which spreads the silt out further into the  
19 cove, which even maximizes the problem into this  
20 cove. And as long as it rains, it's going to  
21 keep getting worse and worse and worse and it's  
22 going to go on down there, it's going to spread  
23 the silt on out even further yet and just spread  
24 the problem around, spread it further into the  
25 cove, silting in the cove. But for four months

1 out of the year people can't even remediate that  
2 legally to take care of that problem. And we're  
3 worried about the fish. I guarantee you if I  
4 can walk on it, a fish isn't going to spawn on  
5 it.

6 JASON PRYOR: Basically what we've got  
7 there is a picture of a cove that Don talked  
8 about. But the next picture down is a -- that's  
9 a hydraulic air -- auger dredge. And what we  
10 planned on doing is bringing one of those to  
11 Smith Mountain Lake. And there's many things  
12 that we can do with it this. Out of 90 percent  
13 of the things that pass through the AEP -- not  
14 AEP, but the Army Corps of Engineers for this  
15 machine, 90 percent of them are approved out of  
16 a hundred percent. I'm sorry.

17 But this thing could be very good for the  
18 economy or -- I'm sorry. I'm all nervous. It  
19 would be good --

20 HEATHER CAMPBELL: You're standing there,  
21 we're all sitting up here.

22 JASON PRYOR: It would be good for  
23 everybody around here, the environment and  
24 everything. It's fish friendly. And we could  
25 pump the product into a bag and contain it right

1 on the shoreline and actually create a berm to  
2 prevent future siltation and runoff from coming  
3 in the lake. It gives it a place for it to  
4 settle.

5 DON MEYER: So not only does it encapsulate  
6 the material, but develop a berm to keep future  
7 siltration from going back into the lake.

8 JASON PRYOR: But the most important thing  
9 that I wanted to say up here is that I thrive  
10 off of this lake as far as making a living. And  
11 if I had four months that my business was taken  
12 away, it would actually kill me. And it really  
13 would.

14 For me to have to go drive poles for a  
15 customer in the winter and then come back and  
16 finish their dock in the off season, it's just  
17 not something that the customers are going to  
18 accept. When they get their poles in, they want  
19 to see finished product pretty soon after. They  
20 don't like to wait that long.

21 And that would really be one way we could  
22 accommodate that schedule of not being able to  
23 drive for four months out of the year would be  
24 to drive all of our poles and then do our  
25 finishing in the off season.

1           So I mean keep in effect that there's a lot  
2 of people that live off of -- people that we  
3 subcontract to, and ourselves, that have --  
4 people that have equipment on the lake that  
5 would greatly suffer if four months of our  
6 season was taken away.

7           HEATHER CAMPBELL: Thank you.

8           JASON PRYOR: Thank you.

9           HEATHER CAMPBELL: Next speaker is Jeff  
10 Graff.

11           JEFF GRAFF: My name is a Jeff Graff.  
12 Personally I wanted to let you know that I've  
13 been visiting this lake and my family has owned  
14 property, residential property, on this lake  
15 since before I was old enough to have memories  
16 on it. I almost lost my life on this lake when  
17 I was younger. I almost drowned. But I've had  
18 a lot of great times also. This lake is and  
19 continues to be an integral part of my life.

20           With the support of our lakes' marinas, I  
21 assisted the Smith Mountain Lake Chamber of  
22 Commerce during the last three meetings of the  
23 Shoreline Management Plan Committee to address  
24 issues vital to public accessibility of these  
25 lakes.

1           Our marinas employ numerous full-time and  
2 part-time employees. In fact, in a nationwide  
3 study marinas typically generally directly and  
4 indirectly 30 jobs for every 100 slips. Yet the  
5 recommendations of this Environmental Assessment  
6 will further curb our marina's ability to  
7 maintain jobs by placing additional restrictions  
8 on commercial dock development.

9           The commercial regulations proposed by our  
10 marinas are based widely-accepted principles of  
11 marina design, the details of which can be found  
12 in the SMP Committee documentation. Many of  
13 these proposed regulations were accepted by the  
14 SMP Committee. As you will note in the  
15 documentation, the proposed SMP regulations  
16 satisfactorily address navigational issues,  
17 again based on widely-accepted principles.

18           In a region which suffers from lack of  
19 recreational and economic opportunities, marinas  
20 serve the needs of the public by filling the gap  
21 between limited public access and the private  
22 property which bounds these lakes, while at the  
23 same time creating much needed jobs. Many  
24 cannot afford private property on these lakes.

25           Furthermore, many necessary services are

1 only provided by our lakes' marinas, quite often  
2 as a loss leader, which is subsidized by our  
3 slip rentals.

4 Therefore, and according to AEP's own  
5 studies, marinas represent the most utilized  
6 form of public access to these lakes. Without  
7 delving into the nasty details, suffice it to  
8 say that slip rentals are our only source of  
9 reliable income for our lakes' marinas.

10 In a market where the value of residential  
11 real estate far outstrips the revenues returned  
12 by commercial ventures, which is a fact  
13 confirmed by Bedford County's Real Estate  
14 Appraiser, certainly I could sell my marina real  
15 estate to a residential developer and walk away  
16 from the stress of this political situation  
17 while still making a nice return for myself. In  
18 fact, several marina owners have done so in  
19 recent years. Clearly I'm not here for my own  
20 interests. I'm here because I'm trying to do  
21 the right thing for my employees and for this  
22 community.

23 In a recent letter the FERC stated that  
24 property rights are a state issue. This implies  
25 that the FERC understands that land use is a

1 matter of the state. However, the SMP clearly  
2 conflicts with the county land use plans and  
3 therefore effectively overrides state authority.

4 It is a shame that the stakeholders most  
5 affected by shoreline management, that is the  
6 citizens of our counties and their elected  
7 representatives, appear to have the least  
8 influence over the rules by which they will be  
9 forced to live by.

10 Throughout the EA there are significant  
11 concern of the habitat of trout, bass and other  
12 fish in this unnatural environment. And  
13 certainly humans must be concerned with other  
14 species. However, I wonder why is there so  
15 little concern for the habitat of humans? I'm  
16 referring to the socioeconomic impact that this  
17 lake has on the lives of those who live in this  
18 region, not just those who live around the lake.

19 The TCRC has unified the counties over  
20 these concerns. I ask that you give significant  
21 weight to the TCRC's comments and requests. I  
22 ask that the FERC approve a local dispute  
23 resolution process involving our local  
24 representatives, and that you work with the TCRC  
25 through a technical conference to resolve the

1 many outstanding issues that the TCRC, members  
2 of the Shoreline Management Plan Committee, and  
3 many others have clearly pointed out.

4 Several of these issues are addressed by  
5 state laws that prevent the local government  
6 from taking similar positions, for instance, a  
7 timeline for processing permit applications.  
8 The SMP should also respect these laws.

9 As well as intended as it may be, there is  
10 grave concern that the scope of perception of a  
11 multi-national billion dollar corporation and  
12 the most powerful bureaucracy in Washington,  
13 D.C. is simply too large to be concerned with  
14 the little things; the things we must live with  
15 every day. This is why the local government  
16 exists and this is why local government should  
17 have a heavy hand in shoreline management.

18 In closing, I ask that you put yourself in  
19 the shoes of the local citizens and small  
20 businesses. We don't have resources to pay  
21 departments of staff to handle red tape and to  
22 pay legal expenses. We struggle to help our  
23 employees put food on the table, prioritizing  
24 limited resources to serve the needs of our  
25 community.

1           Small business is the backbone of our  
2 community. Yet we have been asked to sacrifice  
3 for what some deem to be a greater good. In  
4 return all we are asking for is responsive  
5 management involving accountable elected  
6 representatives.

7           That concludes my written statement. I  
8 would like to add on based on some things I've  
9 heard today. I want to make it clear that there  
10 is a misunderstanding amongst a lot of citizens  
11 about the difference between commercial and  
12 large residential developments.

13           I'd also like to point out that when we're  
14 talking about commercial developments, we're  
15 talking about less than two percent of the  
16 shoreline, much of which hasn't even been  
17 developed and will probably not develop  
18 commercially.

19           One other point to make is that there was  
20 recently a large fishing tournament held at the  
21 lake over the winter, a very prominent fishing  
22 tournament. The winner of that tournament, as I  
23 understand it, was fishing on the water's docks.  
24 Thank you.

25           HEATHER CAMPBELL: Thank you. The next

1 speaker is Ron Willard.

2 RON WILLARD: Good afternoon. I'm going to  
3 be -- try to be brief. There's been a whole lot  
4 of great comments so far. I'm here representing  
5 the Smith Mountain Lake Chamber of  
6 Commerce/Partnership and the Roanoke Regional  
7 Homebuilder's Association. And the Chamber, of  
8 course, has about 600 member affiliates. In the  
9 Roanoke Regional Homebuilder's Association we  
10 have around 500 members.

11 I sent my comments in a couple different  
12 times via e-mail and a hard copy and kind of  
13 went through some of the things that I felt  
14 still needed to be addressed. And I was unable  
15 to get here early enough to hear all of Russ  
16 Johnson's speech with the TCRC. But definitely  
17 support the efforts of the Tri-County relicense  
18 committee on what they're doing and what their  
19 address -- and hoping that FERC will address  
20 those issues that they brought up in addition to  
21 the reference to the one being economic impact,  
22 whether it being economic impact with, you know,  
23 local business around the lake, or definitely  
24 with marinas and what have you.

25 One of the bigger issues that I had wanted

1 to address, and I've addressed and also been  
2 addressed by a local attorney at the lake is Mr.  
3 George Vogel. And this references property  
4 rights issues. And I did receive a letter back,  
5 I can't remember the gentleman's name, but it  
6 was addressed to Mr. Goodlet here recently that  
7 said that they were in the right.

8 But I just wanted to bring this back up to  
9 the committee here that, you know, basically he  
10 acquired land through flowage easements,  
11 purchased land above and below the 800 foot  
12 contour line. In another instance they  
13 purchased merely an easement to flood the land  
14 at the 800 foot contour line.

15 That's methods used resulting in varying  
16 degrees of ownership of the owners of land  
17 adjoining the lake, as well as land below the  
18 800 foot contour line.

19 Regardless of the manner in which AEP  
20 acquired the land, owners of property adjoining  
21 the lake have vested property rights in the land  
22 below the 800 foot contour line adjoining the  
23 property.

24 It is noted that their web site, Smith  
25 Mountain Lake Shoreline Management Plan, that

1 the deeds specify that the use of a project  
2 property by adjoining land owner is under a  
3 revokable license.

4 In many instances Attorney George Vogel  
5 disagreed with that.

6 The Shoreline Management Plan as presently  
7 written requires owners to go through a  
8 permitting process in order to construct or  
9 improve dock facilities. It requires the owners  
10 to sign a questionable document in his opinion  
11 that well may mean the relinquishment of  
12 lakefront owners vested property rights. And  
13 wording should be added to the permit that  
14 provides owners, by executing the permit, are  
15 not releasing any vested property rights.

16 I think that was a big issue. And I think  
17 you guys hopefully will address that somehow.

18 Also the TCRC addressed lake debris and  
19 removal and various other issues in that  
20 category.

21 Document variance processes: I'm also a  
22 developer at the lake, and hopefully you won't  
23 hold that against me. But I see day in and day  
24 out the issues that the local AEP has with dock  
25 approvals and trying to obtain variances and so

1       forth. And it's not a real easy process. And I  
2       think under the Shoreline Management Plan it  
3       still needs to be modified to be fair to the  
4       person that's applying for the dock permit and  
5       not put so much power into the adjoining  
6       property owners because, for example, if you  
7       send a registered letter to your adjoining  
8       property owners, they have to actually sign off  
9       on that registered letter receiving it. I send  
10      registered letters all the time. But whether  
11      anybody actually signs for them, picks it up is  
12      another thing. So I think there's still things  
13      that are still open there.

14             Dredging, another thing that's a big issue.  
15      And I think the Shore Management Plan says  
16      nothing -- dredging excavation between the  
17      elevations of 795 and 793. That might have been  
18      addressed already. But for issues like what's  
19      been brought up here recently as far as runoff  
20      from bad soil and erosion preparation, you know,  
21      some areas are silted in 795, 794 that need to  
22      be returned back to their original state. And I  
23      think there needs to be a little flexibility.  
24      There is a variance procedure that is in  
25      process. But there might be something that you

1 don't always have to go get a variance to do --  
2 to improve what has been damaged through a  
3 construction process.

4 Also a big thing that I think the public  
5 doesn't know or many of the property owners on  
6 Smith Mountain Lake is the issue with the cutoff  
7 date on the nonconforming use documentation  
8 which is required by August 31st of 2005.

9 I don't know how many non-conforming docks  
10 there are as far as residential ones goes on the  
11 lake. But many of these property owners on the  
12 lake are second homeowners and don't really know  
13 what's going on. And they need to be notified.  
14 I don't know how it's done, I know you can do it  
15 publicly through the newspaper and what have  
16 you, but somehow, I don't know how you can do  
17 it, but they need to submit documentation to AEP  
18 that they have a non-conforming use, the photos  
19 or site plan and what have you.

20 What happens if they don't do it, you know,  
21 what's going to happen after the fact? Well,  
22 you know, you did submit your plan. You know,  
23 what's going to happen?

24 So there's still a lot of issues out there  
25 I still think we need to work through. And

1 hopefully the TCRC is going to be a major player  
2 in that arena. And I would be glad to offer any  
3 assistance that I can. I appreciate your time.  
4 Thank you.

5 HEATHER CAMPBELL: Thank you Mr. Willard.  
6 That was the last speaker that had signed up to  
7 speak. If there's anyone that didn't get a  
8 chance, this is your opportunity to come up.

9 LARS HAGEN: My name and address is on the  
10 bottom. And there's a copy for each person  
11 here.

12 HEATHER CAMPBELL: Okay.

13 LARS HAGEN: Hi. My name's Lars Hagen.  
14 Thank you very much for giving me the  
15 opportunity to address you. The.

16 Basis for my input are personal  
17 observations here at the lake for 16 years  
18 available technical information that we have to  
19 us, prior experience with low-flow lakes,  
20 personal involvement with Franklin County  
21 planning, zoning and subdivision application  
22 processes that apply to property in my  
23 neighborhood.

24 The key items that is really key to my  
25 thinking about all of this is first of all Smith

1 Mountain Lake is a very fragile ecosystem due to  
2 very low flow rates compared to lake volume and  
3 area. Some of you in Gretna, properties out  
4 there, it's difficult for people to realize that  
5 a lake this size has this small flow of water  
6 coming through it, particularly in the three  
7 summer months. And we had data for seven  
8 consecutive years for the three summer months.

9 The stream water entering the lake has  
10 significant quality issues.

11 The water quality and allocation issues are  
12 going to increase now because now we have  
13 municipalities pumping large bodies of water out  
14 of the lake in addition to power generation,  
15 downstream releases and of course level.

16 There are many narrow coves with minimal or  
17 no fresh water sources, which is my cove and the  
18 coves surrounding mine.

19 We have high density development in long  
20 stagnant coves that represent significant runoff  
21 issues with no remediation process available.  
22 That is, my cove gets in trouble, there isn't  
23 anybody in this room or anybody in this state  
24 who can fix that.

25 My cove is fed by runoff. Runoff is not a

1 solution. Runoff is part of my problem.

2 The attached graphic on the back is an  
3 example of an approved in-process development  
4 that joins my cove. And it shows you the  
5 negative impacts on the water quality and the  
6 quality of life that can result from shoreline  
7 management decisions.

8 And what this is, it's an aerial photograph  
9 actually done by one of the developers. It  
10 shows the Emerald Bay Villas and Emerald Bay  
11 development, to what we used to call Montego  
12 Bay, Park Place and Spinnneker Run. Those  
13 developments are exclusive, beautiful  
14 developments, large lots. People obviously have  
15 thought about what was going to happen there.

16 What has happened is the county has  
17 approved putting roughly a hundred watercraft in  
18 the very back end of that cove. You can see by  
19 the picture the issues in water quality that  
20 already exist. And they haven't even really  
21 gotten started yet. They've done some site  
22 prep.

23 So based on all this, my recommendations  
24 are that AEP represents the best alternative for  
25 exercising good stewardship of Smith Mountain

1 Lake. I believe they have the least conflicts  
2 of interest in establishing the rules,  
3 regulations, what should be done. They should  
4 be the control agency for shoreline management.  
5 And I would like to see them join, of course,  
6 and the three counties, a consortium so that the  
7 health, safety, water quality, quality of life  
8 things can all be worked on jointly. Basic  
9 management, I feel, should stay with AEP.

10 Thank you very much for this opportunity.

11 HEATHER CAMPBELL: Thank you. Is there  
12 anyone else that didn't sign up to speak that  
13 would like to speak?

14 ED YARBAUGH: I didn't fill out a form.  
15 May I speak anyway?

16 HEATHER CAMPBELL: You sure can. Make sure  
17 that the reporter gets your name.

18 ED YARBAUGH: Absolutely. I'm Ed Yarbaugh,  
19 property owner on Smith Mountain Lake. And I  
20 had no plans to speak, but respectfully disagree  
21 with one small point that Mr. Willard brought  
22 up, and only one point. And that is the  
23 stakeholders, i.e., the property owners that are  
24 adjacent to variance procedures.

25 In my career and in my business sending a

1 registered letter is exceedingly appropriate  
2 point to make. It makes sure everyone is on the  
3 same page. And if someone does not get that  
4 registered letter, clearly they don't sign it.  
5 So whoever is sending that registered letter  
6 needs to follow up on that, send another, do  
7 whatever it takes to get everyone to buy in.

8 So on that point, again, respectfully  
9 disagree. I think the registered letter process  
10 for property owners adjacent to variances is  
11 exceedingly important to make sure that  
12 everyone, all stakeholders, are involved in this  
13 process. And that's all I have to say. Thank  
14 you very much.

15 HEATHER CAMPBELL: Okay. Going once?  
16 Going twice?

17 LAURIE RHODES: My name is Laurie Rhodes.  
18 I am here representing my husband and myself.  
19 We are a small construction company that just  
20 recently started on this lake. I grew up around  
21 this lake whether I was here vacationing until I  
22 was older when my parents moved me here, and I  
23 never really moved away. I have watched this  
24 lake grow in development over the years.

25 I know that a lot of small businesses, we

1 draw our income from this lake. And one of my  
2 main concerns is that for four months out of the  
3 year, what do we do? We have started a dock  
4 business. We don't drive pile lines yet, but  
5 that is where it's going. If we are not allowed  
6 to do this for four mounts out of the year, how  
7 are me and my husband going to survive? That is  
8 my main concern for that, not just for us, but  
9 for any of the dock builders. The dock builders  
10 are a small business. There are some marginal  
11 ones out there.

12 With regarding to the erosion, I feel that  
13 a partnership with the DEQ would benefit this.  
14 The coves are filling up. We are currently  
15 working in a cove where the sedimentation and  
16 the silt coming down from the construction sites  
17 where homes are being built it's filling up the  
18 coves and it's pushing people's shoreline out  
19 and filling up their dock areas where they don't  
20 have any shoreline. So a partnership with the  
21 DEQ, I feel that that problem could be  
22 addressed; some solutions could be better sought  
23 for.

24 Something else that I would like to say or  
25 -- well, just bring to attention: Why do dock

1 permits going through AEP have to conform to the  
2 Shoreline Management though FERC has not  
3 approved the Shoreline Management yet? It's  
4 just a question. I haven't sat down -- I mean  
5 here I've heard a lot of comments, a lot of  
6 issues being brought forth that I haven't even  
7 had a chance to comprehend in my head yet. But  
8 that was one of them that stuck out. And I just  
9 wanted to bring forth that question. Thank you.

10 HEATHER CAMPBELL: Any other comments?

11 NAPIER NILLS: Is there an answer to the  
12 question?

13 HEATHER CAMPBELL: The answer to the  
14 question: The Commission has not approved the  
15 Shoreline Management Plan. AEP can implement  
16 the portions of the Shoreline Management Plan  
17 that are not in conflict with their current  
18 license.

19 So does that help answer the question?

20 NAPIER NILLS: Yes, thank you.

21 HEATHER CAMPBELL: Any other commentors?  
22 Are you stretching back there or raising your  
23 hand?

24 UNIDENTIFIED SPEAKER: I was getting a  
25 mint.

1 HEATHER CAMPBELL: Oh, okay.

2 UNIDENTIFIED SPEAKER: Sorry.

3 HEATHER CAMPBELL: Just wanted to make sure  
4 everybody had their chance. Well, I'd like to  
5 thank you all for coming today. The information  
6 you provided us and comments here are very  
7 valuable. We'll take it back to Washington  
8 along with the rain outside.

9 I encourage you to stay involved in the  
10 process. The address is out there for the  
11 Commission. Please file comments. If you have  
12 questions, the web site is there, as well. And  
13 thank you for spending the afternoon with us.  
14 (Whereupon, the proceedings concluded at 4:20  
15 p.m.)

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1 STATE OF VIRGINIA )

2 COUNTY OF ROANOKE )

3

4 C E R T I F I C A T E

5

6 I, KIMBERLY L. KRETT, Court Reporter and Notary  
7 Public at Large, do hereby certify that the above and  
8 foregoing proceeding was taken down by me in machine  
9 shorthand and were reduced to typewriting under my  
10 personal supervision, and that the foregoing represents  
11 a true and correct transcript of the proceeding given.

12 I further certify that I am neither of counsel nor  
13 of kin to the parties to the action, nor am I in any  
14 way interested in the result of said cause.

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KIMBERLY L. KRETT

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