

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

South Carolina Electric & Gas Company

Project No. 516-431

ORDER DISMISSING FILING AS DEFICIENT

(Issued September 6, 2006)

1. On July 13, 2006, Commission staff issued an order modifying and approving a non-project use of project land and waters for the Saluda Project No 516.¹ The order authorizes South Carolina Electric and Gas Company (SCE&G), licensee for the Saluda Project, to issue a permit to The Lakeport LLC (Lakeport) for the construction of three common docks for the joint use of residential waterfront lot owners, one community dock for the use of interior residential lot owners, and a boat ramp. However, the order denied authorization for the dredging of approximately 6,600 cubic yards of material to provide better access to the docks, finding that such excavation is not allowed by the project's shoreline management plan (SMP).
2. On August 7, 2006, SCE&G filed a timely request for rehearing of the Commission staff's order, objecting to the excavation restrictions. SCE&G alleges that, while excavation is not permitted for multi-use docks, the docks authorized in the July 13 Order are "individual" docks, not multi-use docks.
3. SCE&G's request for rehearing is deficient because it fails to include a Statement of Issues, as required by Order No. 663,² which became effective September 23, 2005.

¹ *South Carolina Electric and Gas Co.*, 116 FERC ¶ 62,030 (2006). The Saluda Project is located on Lake Murray, in Lexington, Richland, Newberry, and Saluda Counties, South Carolina.

² *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 *Fed. Reg.* 55,723 (September 23, 2005), *FERC Statutes and Regulations*, ¶ 31,193 (2005), as amended by Order 663-A, effective March 23, 2006 to

(continued...)

Order 663, *inter alia*, amended Rule 713 of the Commission's Rules of Practice and Procedure to require that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.³ Under Rule 713, any issue not listed will be deemed waived. In addition to not having the required Statement of Issues section, SCE&G's pleading does not include Commission and court precedent on which it relies. Accordingly, SCE&G has waived the issues it seeks to address and we will dismiss its rehearing request.⁴

4. In any event, the SMP establishes four categories of docks and the requirements for authorizing each category: single family residential docks (for individual residential waterfront lots); common docks (for common use by two to five single-family waterfront lots); community docks (for common use of owners of non-waterfront lots within a subdivision); and multi-use docks (for five or more watercraft, where a user or maintenance fee is charged, and including marinas, condominium projects, and private clubs).⁵ Contrary to the licensee's statement in its rehearing request, the docks authorized in the July 13 Order are not "individual" docks, but rather fit the SMP descriptions for common docks and community docks.

limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order 633-A, 71 *Fed. Reg.* 14,640 (March 23, 2006), *FERC Statutes and Regulations* ¶ 28,813 (2006) (codified at 18 C.F.R. §§ 385.203(a)(7) and 385.713(c)(2) (2006)).

³ As explained in Order 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order 633 at P. 3-4.

⁴ *Compare American Municipal Power-Ohio v. PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,019 (2006) (dismissing complaint lacking Statement of Issues).

⁵ Exhibit 28 to SCE&G's filing of December 29, 1989, seeking to update and amend the project's SMP. The Commission approved the amendment in 1991. *South Carolina Electric and Gas Company*, 56 FERC ¶ 62,194 (1991).

5. The SMP provides that community docks must meet the requirements for multi-use docks, one of which is that the docks must be located in an area where water depths are adequate for dock development without requiring any excavation.⁶ Because the development proposal includes a community dock, the July 13 Order declined to authorize a permit for the excavation of 6,600 cubic yards. Although some excavation is allowed for residential docks if certain conditions are met, the licensee's application for approval of the facilities did not specify what, if any, portion of the 6,600 cubic yards was not related to the community dock, and contained no information on whether or to what extent excavation related to the other facilities should be authorized.

The Commission orders:

South Carolina Electric and Gas Company's request for rehearing, filed in this proceeding on August 7, 2006, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ Contrary to the licensee's contention, this is indeed a requirement of the SMP. In fact, in its December 29, 1989 filing (*see* n.5, *supra* at 46), SCE&G asked the Commission to approve Exhibit 28 as part of the SMP, and the Commission approved the amendment request with modifications not related to this issue. *See* 56 FERC ¶ 62,194.