

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

South Carolina Electric & Gas Company

Project No. 516-398

ORDER DENYING RECONSIDERATION

(Issued October 29, 2004)

1. On July 12, 2004, the Commission approved an application filed by South Carolina Electric & Gas Company (SCE&G) to permit Boulevard Partners, Inc. (Boulevard) to construct a concrete boat ramp and a docking facility for 32 boats to be located on Lake Murray, the reservoir for the Saluda Project No. 516.¹ On August 11, 2004, Lake Watch on Lake Murray (Lake Watch) filed a request for rehearing asking that the Commission reconsider its decision to approve the dock facility and instead first require SCE&G to conduct a study of boating activity during the summer of 2005. As discussed below, we find that such a delay is unnecessary and that it is in the public interest to reaffirm our finding that the construction of the docks would only have a minimal environmental impact and will not interfere with project purposes.

Background

2. Lake Murray, which has a surface area of 50,000 acres and about 650 miles of shoreline, is the reservoir of the 206-megawatt Saluda Project, located 10 miles west of Columbia, South Carolina. Deep coves and prominent peninsulas characterize the lake's irregular shoreline. The lake is used for boating, water skiing, fishing, swimming, picnicking, and camping.

¹ *South Carolina Electric & Gas Co.*, 108 FERC ¶ 61,040 (2004)(SCE&G).

3. Boulevard proposes to construct two 63-foot-long by 46-foot-wide floating docks with six finger docks each,² and one 34-foot-long by 46-foot-wide floating dock with four finger docks. The docks, which would be used by residents of a 180-unit residential subdivision, would be constructed perpendicular to the shoreline and be connected by a 200-foot-long, permanent dock built parallel to the shoreline. The docking facilities would accommodate 32 boats. A 14-foot-wide by 50-foot-long concrete boat ramp is also proposed.

4. The facilities would be located in the eastern portion of Lake Murray in a small cove about 3,800 feet long. The cove narrows in width from about 700 feet wide at its mouth to less than 500 feet in its upper reaches. The proposed facility would be located two-thirds of the way up the cove in an area that is slightly more than 500 feet wide.³ The longest dock would extend about 170 feet into the cove, leaving at least 350 feet from its end to the opposite shore.⁴

5. Commission staff prepared an environmental assessment (EA) for the proposed dock facilities.⁵ On July 12, 2004, the Commission issued an order approving the construction of the proposed dock as a non-project use of project lands and waters. Based on the findings in the EA, the order found that there would be no significant adverse impacts on water quality, fish and wildlife, recreational uses, boat traffic, access to the cove, the quality of life of adjacent residents, and property values. Further, as proposed, the construction of the docks would have only a minimal environmental impact and would not interfere with project purposes.

Discussion

A. Water Quality

6. Lake Watch states that it recommended that the Commission evaluate the existing Lake Murray marina water quality monitoring program to determine its effectiveness and to gather data to determine the potential water quality impacts that could occur at the

² A finger dock is the boat-mooring (tie-up) area. Boulevard's finger docks will each moor two boats.

³ See Environmental Assessment Figure 1.

⁴ See Application Exhibit 1 at 4 of 6.

⁵ The EA was attached to the July 12 Order.

proposed facility. It contends that the EA did not include a water quality assessment, and that the nearest monitoring station is approximately two miles away, and the data collected there does not reflect conditions in shallow areas.

7. In fact, the EA contains a substantial discussion of water quality.⁶ As the EA notes, there are eight water quality monitoring stations located on Lake Murray. The closest one to the proposed facility is approximately 1.5 miles away. The data collected at that monitoring station shows that water quality is generally good and supports recreational uses on Lake Murray. While there are no monitoring stations that currently measure water quality in the lake's shallow coves and inlets like the one where the proposed dock is located, SCE&G will require that Boulevard monitor baseline water quality and aquatic biology data in the vicinity of the proposed dock facilities prior to construction, on a weekly basis in August, and annually for a minimum of five years after construction is completed and all the boat slips are occupied.⁷ Thus, water quality data specific to the dock facility will be collected. As we noted in the July 12 Order with respect to other water quality issues raised, we may require SCE&G to mitigate any adverse impacts to project lands or waters resulting from activities that it permits.⁸ SCE&G is required to remedy any adverse impacts that may be detected by the monitoring program. For the purpose of approving the proposed dock facilities, we find the current and proposed monitoring program is sufficient and will adequately reveal any future need for mitigation measures.⁹

B. Navigation and Recreation

8. In the July 12 Order, the Commission determined that the proposed facility would not have a significant affect on recreation in the area. It stated that proposed dock would be located in the upper third of the cove, near where the cove begins to narrow and that the impact to water skiing would be minimal. The Commission also determined that any

⁶ See EA, section 5.2.1.

⁷ *SCE&E*, 108 FERC at P 15.

⁸ *Id.* at P 16.

⁹ If Lake Watch is concerned about the effectiveness of the overall Lake Murray water quality monitoring program, the appropriate forum to raise that issue will be the Saluda Project's upcoming relicensing. The current license for the Saluda Project expires on August 31, 2010. A licensed project of this size generally begins relicensing studies no later than five years before the license expires.

traffic from the proposed facility would be dispersed temporally throughout the day and geographically throughout the lake. Therefore, the July 12 Order concluded that there would only be a minimal impact on recreation and safety in the cove.¹⁰

9. Lake Watch contends that, according to local residents, the specific area of the proposed facility is a popular skiing area and has been for decades. It argues that skiing occurs well beyond the proposed facility in the northern end of the cove. Further, it asserts that not only do local residents ski in this cove, thousands of recreational boaters also come there from nearby marinas and landings. Lake Watch states that, according to South Carolina Department of Natural Resources officers, the area is the most congested cove on Lake Murray. Lake Watch claims that the Commission cannot conclude that because a cove begins to narrow at a certain point that skiing will be minimal beyond that point. It contends that the cove is wide enough now for skiing at the proposed site, but will not be wide enough if the proposed facility is allowed.¹¹

10. Based on the foregoing, Lake Watch argues that the Commission's decision will compromise public safety because of increased congestion and recommends that the Commission withhold making any decision until site-specific data can be collected when water levels return to normal during the 2005 summer peak recreational period.¹² The group maintains that there is not sufficient recreational use data to properly assess potential impacts to existing recreational uses and public safety.

¹⁰ *SCE&G*, 108 FERC at P 23.

¹¹ Lake Watch states that local residents have observed unsafe conditions during recreational times and submitted this first-hand knowledge to the Commission in their comment letters. In their comments on the EA, the Murray Point Homeowners point out that while the cove is a popular skiing place, it is narrow and the boats turn with their skiers just in front of the area of the proposed dock. They also state that the proposed dock is located in shallow water with natural grasses that create a breeding place for fish and a feeding place for ducks and geese. *See* Murray Point Homeowners June 9, 2004 filing.

¹² Since the fall of 2002, the lake levels have been drawn down to approximately 347 feet msl (13 feet below full pool elevation) for dam remediation activities. When the lake is drawn down, there is no water in the cove except for a narrow channel.

11. As stated in the July 12 Order, the proposed facility is located in the back third of the cove at a point where it begins to narrow.¹³ The longest dock would extend 170 feet into the cove, leaving at least 350 feet from its end to the opposite shore.¹⁴ Thus, the proposed dock is consistent with SCE&G's Commission-approved General Requirements for its Shoreline Management Plan for multi-use docks, which allow docks that do not extend more than one-third the distance across any cove area or waterway. Further, SCE&G's requirements are consistent with the Commission's general practice of approving dock facilities that do not extend more than one-third into a cove.¹⁵

12. The fact that the dock may limit use in this part of the cove as a turn around for water skiers does not warrant a finding that the proposed dock is not appropriate. The area of the cove where the proposed dock would be constructed is slightly over 500 feet wide. It also narrows significantly immediately north of the proposed dock facility providing a geographic barrier that would naturally curtail use by water skiers.¹⁶ Thus, this area is not naturally suited to being used by a large number of water skiers, whereas the cove is appreciably wider just south of the proposed facility.¹⁷ Further, there are numerous other coves and open areas around the lake that are probably more appropriate for such activity.

13. Further, we note that by limiting the noise and disturbance created by water skiing, fishing opportunities in the northern section of the cove most likely will increase. Finally, the dock facility will provide lake access and additional recreational opportunities for residents of both the new subdivision at Lakeside at Ballentine and those in the existing Shadowood Cove subdivision.¹⁸ Accordingly, while the placement

¹³ See EA Figure 1.

¹⁴ See *supra* n. 4.

¹⁵ See, e.g., *Grand River Dam Authority*, 105 FERC ¶ 61,100, at n. 25 (2003); *Duke Energy Corp.*, 101 FERC ¶ 62,010, at 64,015 (2002), 99 FERC ¶ 61,283, at 62,192 (2002), and 96 FERC ¶ 62,101, at 64,246 (2001).

¹⁶ See EA at section 5.2.5.

¹⁷ See *id.* Figure 1.

¹⁸ While the docking facility would be used exclusively by owners of the residents within the Lakeside at Ballentine, residents in the adjacent Shadowood Cove subdivision, which currently only have access through other public marinas, would also have access to the lake by using the boat ramp.

of the proposed docking facilities would slightly reduce the current use of that portion of the cove by pleasure boaters, jet skiers, and water skiers, we find that public safety would not be compromised and other recreational opportunities could be enhanced.

14. We also do not believe that the proposed dock facilities will add appreciably to the congestion in the cove. As stated, the reservoir has a surface area of 50,000 acres. Just as others travel from other areas of the lake to recreate in this cove, the boats from this facility will disperse geographically to other areas within the 50,000 acres of the lake reservoir.¹⁹ Moreover, all of the boats from the facility will probably not be in use at the same time and will likely disperse from the facility on an intermittent basis.²⁰

15. Because we affirm our finding that the construction of the docks would have only a minimal environmental impact and would not interfere with project purposes, we see no need for the additional requested studies, which would not yield useful information and would delay the construction of the facilities.

C. License Articles 12 and 30

16. Lake Watch states that Article 12 requires that SCE&G operate the project in a manner that will protect public safety. It argues that if the Commission approves the proposed dock facilities, it will compromise public safety by increasing recreational activity in an already congested and unsafe area, which has a record of boating accidents. As discussed above, an adequate amount of open water will still be available after the docks are installed to safely accommodate appropriate boat-related activities in this portion of the cove. Therefore, we find that public safety will not be compromised. Accordingly, we find that the proposed dock does not violate Article 12.

17. Lake Watch also states that Article 30 requires that permitted uses of project waters and lands protect and enhance the scenic, recreational, and other environmental resources of the project. It claims that the negative impacts of the proposed dock facility far outweigh the benefits the facility offers to a few residents at Lakeside of Ballentine, pointing to Table 4 in the EA, which purportedly shows that the facilities will cause negative impacts to water quality, soil erosion, wildlife habitat, boating use and navigational safety, scenic and aesthetic values, and noise levels. Lake Watch contends that the Commission's has understated the degrees of these impacts. Therefore, it surmises that the proposed boat facility will violate Article 30 of the license.

¹⁹ See EA at section 5.2.5.

²⁰ *Id.*

18. Table 4 in the EA lists minor impacts the proposed facility may have on various environmental resources. However, none of these impacts is significant, and, as discussed above, any adverse impacts are outweighed by the potential increase in recreational benefits. Therefore, the proposed dock does not violate Article 30.

The Commission orders:

Reconsideration of the August 11, 2004 Order is denied, as discussed above.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.