

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

South Carolina Electric & Gas Company

Project No. 516-374

ORDER EXTENDING TERM OF LICENSE

(Issued November 18, 2003)

1. In this order we grant in part South Carolina Electric & Gas Company's (SCE&G) application to extend the termination date of the license for the Saluda Project No. 516 in order to give the company adequate time to conduct studies needed to prepare its application for a new license once the reservoir is refilled and the affected environment has returned to near normal.

**BACKGROUND**

2. On June 1, 1984, the Commission issued a new license to SCE&G for the Saluda Project, located on the Saluda River in Lexington, Newberry, Richland, and Saluda Counties, South Carolina.<sup>1</sup> The license was issued for a term of 30 years, with an effective date of September 1, 1977, and a termination date of August 31, 2007.

3. Article 27 of the license required SCE&G to examine the ability of the Saluda Project dam to withstand the maximum credible earthquake. The examination determined that the dam embankment material and the foundation of the dam would lose a significant amount of its strength and would fail under an event with a magnitude less than that of the 1886 Charleston Earthquake, which is estimated to have been about 7.3 on the Richter scale. The Commission directed SCE&G to take remedial action by constructing a new "backup" dam immediately downstream of the existing dam.

4. Prior to the excavation and backfilling in the downstream toe of the existing dam, the water level of the project reservoir was lowered from the normal operating range of

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<sup>1</sup> 27 FERC ¶ 61,332 (1984).

352-358 feet (plant datum) to elevation 345 feet, to ensure the safety of people and property downstream of the project.

5. Construction on the new dam began on August 12, 2002, and over the period September 2002 to January 2003 the reservoir was lowered to elevation 345. On January 10, 2003, SCE&G filed an application to extend the term of the Saluda Project license by five years, from August 31, 2007, to August 31, 2012. The company states that only after the reservoir is refilled and returns to pre-drawdown conditions can it conduct the studies needed to complete its relicense application by the statutory deadline, which is two years before the license expiration date, i.e., August 30, 2005. SCE&G asserts that any studies of fishery resources, shoreline vegetation, recreation, land use, and project economics that are conducted before the restoration of pre-drawdown conditions would be useless to the Commission in making its decision on a relicense application, because such studies would reflect conditions different from the conditions under which the project would operate during the term of any new license.

6. Public notice of SCE&G's amendment application was issued on January 28, 2003. Timely motions to intervene in opposition to SCE&G's application were filed by The Lake Murray Association, Inc., South Carolina Department of Natural Resources (Carolina DNR), South Carolina Coastal Conservation League and American Rivers (Conservation League), Lake Watch on Lake Murray (Lake Watch), U.S. Department of the Interior, Saluda Chapter of Trout Unlimited (Trout Unlimited), South Carolina Department of Health and Environmental Control's Bureau of Water (Carolina DHEC), Hawleek Creek Homeowners Association, and South Carolina Department of Parks, Recreation and Tourism. The intervenors contend that extending the termination date of the license is not necessary, noting that SCE&G has already completed a number of studies, and asserting that any other needed studies could be conducted during the remediation process.

## **DISCUSSION**

### **A. The Extension Request**

7. Commission regulations require prospective relicense applicants to describe existing environmental conditions and to conduct studies and provide information sufficient to allow the Commission to assess the impacts of the proposed action and reasonable alternatives thereto. Commission staff may in addition ask for studies to address specific issues. Relicensing studies typically include, but are not limited to:

- (1) a water quality study and assessment, for both the impoundment and downstream river reach and sediment sampling (if necessary);

- (2) fishery- and aquatic-related studies, including (a) surveys describing existing species assemblage, as well as creel surveys, (b) littoral-zone habitat and spawning studies, where water level fluctuations are a concern, (c) instream flow studies and habitat assessments, (d) fish entrainment and impingement studies, and (e) fish passage-related studies, including facility design;
- (3) terrestrial-related studies, including (a) wetland and riparian habitat surveys and (b) habitat and cover-type mapping;
- (4) if applicable, shoreline and riverbank erosion studies, as well as morphology studies and other sediment and deposition assessments;
- (5) recreation-related studies, including (a) a description of existing facilities, (b) recreation use surveys, (c) an evaluation of recreation needs in the area, and (d) lake carrying capacity studies;
- (6) development of a shoreline management plan, if necessary; and
- (7) historical and archeological studies.

8. We agree that some studies may be conducted now with Lake Murray drawn down. However, there are other studies that should be conducted after the lake has recovered from the temporary effects of the drawdown. These studies would likely include: (1) a dissolved oxygen study in the project tailrace to address issues related to a stocked rainbow trout fishery downstream from the project; (2) instream flow studies, under normal operations, downstream from the project; (3) littoral-zone studies to address water level fluctuations; (4) fish entrainment and impingement studies that require field work; (5) recreation use surveys, where data and information beyond the FERC Form 80 (recreation use report) is required; and (6) lake carrying capacity studies.

9. In September 2003, based on the performance of the dam during excavation and backfill work, Commission staff allowed the reservoir to be raised to elevation 347. Commission staff and SCE&G have worked to modify construction activities and task scheduling in innovative ways in order to minimize the remaining drawdown period. As a result, the scheduled completion date for the excavation and backfilling, which corresponds to the refilling start date, has been moved from November 2004 to May 2004. Thus, if the Saluda River drainage above the project receives average precipitation during refilling, the reservoir should return to normal levels by sometime between late spring 2004 and late spring 2005. Once refilled, Lake Murray, its ecology, and the surrounding environment are expected to return to near pre-drawdown conditions within two years. At that time, it should be possible for SCE&G to begin studies and collect meaningful data to support its application for new license. Based on our relicensing experience, these studies should be completed by two years of their commencement. Under the described conditions, therefore, SCE&G should have sufficient time to complete its pre-application studies if we extend the license term by three years, to

August 31, 2010, making the August 31, 2008, the deadline for filing relicensing applications.

10. We recognize that the schedule estimated above could be pushed back by unforeseen construction difficulties or unexpected conditions within the dam detected by monitoring instrumentation, as well as by variables affecting the timing of the reservoir refilling, such as meteorological and hydrological conditions, power demand, and the time of year during which refilling occurs (since the normal pool elevation varies by time of year). If SCE&G finds it necessary, it is of course free to file at a later date an application to further extend the license termination date.

### **B. Intervenor Arguments**

11. Lake Watch and Trout Unlimited argue that the Commission must prepare an environmental assessment before the term of the license can be extended. Section 380.4 of the Commission's regulations sets out a list of projects and actions which are categorically excluded from the preparation of an environmental assessment. However, the Commission's regulations implementing the National Environmental Policy Act specifically exempts from such requirement "amendments to water power licenses . . . that do not require ground disturbing activity or changes to project works or operation." 18 C.F.R. 380.4(a)(15) (2003). Because extending the term of the Saluda Project license does not entail any ground-disturbing activity or changes to project works or operation, an environmental assessment is not required.

12. Lake Watch, Trout Unlimited, Conservation League, and Carolina DHEC argue that a new water quality certification under Section 401 of the Clean Water Act is required before the termination date of the license can be extended. The project received certification in 1977 for the 1984 license. A new certification would be required only if extending the license term would result in a new or greater discharge from the project. Since the term extension does not authorize or require anything involving project discharges, it does not trigger the Clean Water Act.

13. Lake Watch, Trout Unlimited, and Conservation League ask the Commission, if we grant the license term extension, to invoke our reserved authority in standard license Article 15 to add a number of new conditions to the Saluda Project license.<sup>2</sup>

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<sup>2</sup> Ordering paragraph D of the Saluda Project license, 27 FERC ¶ 61,332 at 61,634, incorporates by reference Form L-10 (reported at 54 FPC 1858-64 (1975)), Article 15 of which states:

(continued...)

Conservation League seeks to require run-of-river operation; Trout Unlimited seeks to require minimum flows, ramping of generation flows, and an audible alarm below the project to warn of increased flow releases.<sup>3</sup> Lake Watch seeks to require SCE&G to maintain water levels in the reservoir between elevation 354 and 358 feet. Trout Unlimited and Lake Watch also want a moratorium on conveyances of fringe lands surrounding the reservoir.

14. We decline to initiate reopener proceedings to entertain the intervenors' requests for new license conditions. The requests are not accompanied by information sufficient to support reopeners,<sup>4</sup> and the requests involving flows are in any event more appropriately examined in the context of the relicense proceeding, where all aspects of the project's developmental and environmental impacts will be examined in a comprehensive manner.<sup>5</sup>

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The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate . . . such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

<sup>3</sup> Extending the license term will not endanger downstream recreationists. Public safety issues are addressed through SCE&G's Public Safety Plan, which is updated as needed during the license term to help ensure the safety of the public in and around the project. In addition to the previously installed water level sirens at the Riverbank Zoo, SCE&G recently installed an additional water level siren at Saluda Shoals/Hope Ferry Landing. The new siren is undergoing testing and will be in operation shortly.

<sup>4</sup> CCL submitted some evidence that low dissolved oxygen levels occurred during project operation in the summer and fall. However, this evidence appears to reflect conditions prior to SCE&G providing venting on four of the project's turbines, and hub baffles on the fifth turbine. See Attachments 1 and 2 to Conservation League's February 28, 2003 motion to intervene, and Appendix B to SCE&G's March 21, 2003 response.

<sup>5</sup> Conservation League also asks, pursuant to 18 C.F.R. § 385.716, that the Commission reopen the record of the November 14, 2002 Order of the Director of the Division of Dam Safety and Inspections approving a revised operating plan for the

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The Commission orders:

(A) The license for the Saluda Project No. 516 is amended to extend the term of the license to August 31, 2010.

(B) The Commission's September 5, 2002 notice of South Carolina Electric and Gas Company's intention to file an application for new license for the Saluda Project No. 516 is rescinded.

(C) The motion filed on February 28, 2003, by the South Carolina Coastal Conservation League to reopen the record of the November 14, 2002 Order issued by the Director, Division of Dam Safety and Inspections, is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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(continued...)

project during the seismic remediation. SCE&G responds that Rule 716 does not apply to the order in question, which is in any event final and nonreviewable. We agree that the order is final and nonreviewable. On October 20, 2003, Conservation League filed a complaint under 18 C.F.R. § 385.206 (2003), alleging that SCE&G is violating the terms of the water quality certifications issued for the operation of the Saluda Project under normal operating conditions and during the seismic remediation. The complaint is under review.