

136 FERC ¶ 61,043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Alabama Power Company

Project No. 2165-029

ORDER MODIFYING AND APPROVING  
NON-PROJECT USE OF PROJECT LANDS AND WATERS

(Issued July 21, 2011)

1. On June 5, 2009, Alabama Power Company (Alabama Power), licensee for the Warrior River Hydroelectric Project No. 2165, filed an application for non-project use of project lands and waters. The licensee requests Commission authorization to permit Mr. Lynn Layton to construct marina facilities (Cushman's Marina) at Smith Lake, one of the project's reservoirs. The marina facilities that would be located inside the project boundary would consist of 3 boat docks with a total of 30 boat slips, a new walkway to the slips, and a lakefront concrete patio. As discussed below, we are granting the application with certain modifications and conditions.

**Background**

2. The 211.485-megawatt (MW) Warrior River Hydroelectric Project<sup>1</sup> is a two-development project: (1) Lewis Smith, located in north central Alabama at the headwaters of the Black Warrior River on the Sipsey Fork<sup>2</sup> in Cullman, Walker, and Winston Counties; and (2) John Hollis Bankhead, in west central Alabama on the Black Warrior River in Tuscaloosa County.

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<sup>1</sup> Commission staff issued to Alabama Power a new license for the project on March 31, 2010. *Alabama Power Co.*, 130 FERC ¶ 62,271 (2010). Rehearing of the license order is pending before the Commission. The original license was issued on September 12, 1957. *Alabama Power Co.*, 18 F.P.C. 327 (1957).

<sup>2</sup> Sipsey Fork is a tributary of the Black Warrior River.

3. The Lewis Smith development, which includes Smith Lake, encompasses a total area of 26,823 acres. Smith Lake has about 500 miles of shoreline. The project boundary includes Smith Lake up to the normal pool elevation of 510 feet mean sea level (msl) and lands used for flood control between 510 feet and 522 feet msl. Alabama Power owns the lands up to elevation 510 feet msl, and either owns or leases the flood rights to lands between 510 feet and 522 feet msl.
4. The site of the proposed Cushman's Marina is on Smith Lake, on the western shore of Pidgeon Roost Creek, which is located off the Ryan's Creek arm of Smith Lake, approximately 0.5 miles north of the highway 222 bridge in Cullman County. The marina would occupy three lakefront lots that have about 366 feet of shoreline. The shoreline at normal pool is a flat, excavated area and extends approximately 25 feet to a sandstone bluff. At the most narrow point, the opposite shoreline on the east is 666 feet away, and 847 feet at the widest.
5. Formerly, two covered docks with twelve slips occupied the proposed location on Smith Lake. Both were removed in, or prior to, 2009. Currently, a concrete block boathouse is located on shore, with a concrete ramp extending into Smith Lake. A concrete driveway begins outside the project boundary and ends inside the boundary at the boathouse. Three concrete piers are located approximately eight feet from the shoreline adjacent to the boat ramp. Many lakeside homes and boathouses occupy the shoreline in the surrounding area. Because the two existing docks have been removed, no boating activity currently originates from this location.
6. Article 422 of the project license authorizes to Alabama Power to grant permission for certain types of non-project use and occupancy of project lands and waters without prior Commission approval.<sup>3</sup> Because the proposed marina would accommodate more than ten watercraft, it is outside the scope of license Article 422. Therefore, Mr. Layton's proposal can only be granted if the Commission approves the licensee's application.

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<sup>3</sup> Article 422 of the current license is similar to Article 43 of the original license. The licensee's application was filed pursuant to the original license, but because the Commission subsequently issued a new license for the project, the licensee's application will be considered under its new license.

### **Proposed Marina Facilities**

7. Mr. Layton proposes to install three ten-slip covered boat docks at the site.<sup>4</sup> The slips would be available for rental by the general public, and the marina would be operated for commercial purposes.

8. Each proposed dock would consist of: (1) a 50-foot-long ramp; (2) an 8-foot-square equalizing platform;<sup>5</sup> (3) a 78-foot-long and 4-foot-wide central walkway that connects the 10 slips; and (4) 10 boat slips, each 12 feet wide by 28 feet long. Each dock, made of steel with wood flooring and Styrofoam encasement, would be constructed offsite and placed at the site by barge. Each dock would be attached to an existing concrete pier on the shoreline via a hinged walkway, and by two cables running to heavy pins driven into the bank. Each dock would be anchored to the lake bottom with lines running to cement anchors. Combined with the ramp and equalizers, each dock would extend 136 feet into the lake. Navigational lighting would be installed on each dock.

9. In addition, Mr. Layton proposes to demolish the concrete boathouse, but leave its concrete floor in place. Additional concrete would be poured over the boathouse floor, the existing driveway, and an adjacent vegetated area to create a concrete patio area 144 feet long and 30 feet wide. Part of the patio would be covered. The patio would extend along the shoreline and be inside the project boundary.<sup>6</sup>

10. No fuel-dispensing or sewage-pumping facilities are proposed. Cushman's Marina would have facilities for parking, restrooms, and trash disposal, but these would all be outside the project boundary.

11. Alabama Power's consideration of the Cushman's Marina proposal is guided by its Shoreline Management Plan (SMP), including the SMP classification maps, and its 1992 Lake Shore Use Permitting Program (Permitting Program). The Permitting Program includes guidelines for commercial developments and a form (Standard Land

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<sup>4</sup> This order is premised on Commission staff's understanding that the slips will each accommodate a maximum of one watercraft.

<sup>5</sup> An equalizing platform connects the ramp to the dock slip structure.

<sup>6</sup> Neither Alabama Power nor Mr. Layton specified a plan for the existing ramp from the boathouse to the water. Presumably it would remain in place, although it would not be usable for launching or retrieving boats.

Use Form) that sets out the information requirements and describes the application process (initial review, stakeholder consultation, and FERC filing).<sup>7</sup> Only the SMP classification maps, which establish uses for various sections of the shoreline, have been approved and made a part of the license.<sup>8</sup>

12. According to the Commission-approved SMP classification maps for Smith Lake, the shoreline where the proposed facilities would be located is classified as “Multiple Use.”<sup>9</sup> Permitted uses for this classification include uses related to residential waterfront development (e.g., boat docks, paths, steps); commercial recreation facilities (e.g., marinas); industrial facilities, business parks, and industrial water access (e.g., intakes, discharges, barge terminals); wildlife management; and agriculture.<sup>10</sup>

13. Alabama Power’s commercial use guidelines allow structures to occupy a footprint of 1,000 square feet per 100 feet of shoreline.<sup>11</sup> The proposed marina occupies 366 feet of shoreline, so under the guidelines an on-the-water footprint of 3,660 square feet would be allowed. As proposed, the marina facilities would occupy an on-the-water footprint of 14,682 square feet, which is approximately four times the allowable footprint set forth in the guidelines. Alabama Power states that it has allowed a variance for the marina because it believes the proposal would enhance aesthetics (by removal of the

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<sup>7</sup> The guidelines set forth general standards for site conditions, structure dimensions, and other considerations that must be met in order for the licensee to consider an application for non-project uses of project lands and waters. The guidelines further provide that the licensee may make exceptions to them at any time.

<sup>8</sup> The SMP is intended to assist Alabama Power in managing the use and development of the project’s shoreline. The March 31, 2010 license order approved Alabama Power’s SMP classification maps, but not its proposed SMP. It instead required Alabama Power to file a revised SMP within one year. Alabama Power subsequently requested, and was granted, an extension until June 29, 2011, to file its SMP for Commission approval. Alabama Power has filed the proposed SMP, and it is being reviewed by Commission staff.

<sup>9</sup> *See Alabama Power Co.*, 130 FERC ¶ 62,271 at 64,716 (Article 418).

<sup>10</sup> *See Alabama Power’s SMP Classification Maps*, filed July 28, 2005, as part of its relicense application.

<sup>11</sup> *See Attachment 2 of Alabama Power’s supplemental filing on August 6, 2009.*

concrete block boathouse and the two dilapidated boat docks<sup>12</sup>) and recreational opportunities. It believes that allowing the larger square footage in exchange for the clean-up of the site was a beneficial compromise. In addition, it contends that the previous docks were similar in size to the proposed facilities.

### **Public Notice, Interventions, and Comments**

14. The Commission issued public notice of Alabama Power's application on July 2, 2009, thereafter published in the *Federal Register* on July 13, 2009 (74 Fed. Reg. 33,430). The notice established August 3, 2009, as the deadline for submitting comments, protests, and motions to intervene. The following individuals, owners of property adjacent to or nearby the proposed marina, jointly filed a timely motion to intervene in opposition to the proposal: Kathy Perdue Scott, Teresa Myers, Clay and Wendy Cook, Michael Thomas and Samantha Higginbotham, Morris and Ruby Winnett, Jerry and Lori Callahan, Joseph and Regina Freeman, Russell Adams, Robert Marks Jr. and Jeri Marks, and Robert Marks Sr. and Rosalie Marks (referred to jointly as Residents).<sup>13</sup>

15. In addition, the following individuals (nearby landowners and users of the lake) filed comments in opposition to the proposal: Jef Freeman, Cathy Buhring, David Loper, P.S. McCain, John Grant, Susan Davis, Tania Leigh Norwood, Horace Ward, Earl Gaspard, Lisa Winkler, and Claude Earl Fox. The intervenors and commenters argue that the proposed marina exceeds Alabama Power's Permitting Program guidelines and raise concerns regarding safety and shoreline erosion.

16. On March 1, 2011, Commission staff issued for public comment an Environmental Assessment (EA) of the proposed action and established March 31, 2011, as the deadline for filing comments. The EA recommended adopting the staff alternative, which would authorize only two boat docks rather than three docks proposed, prohibit construction of the concrete patio, and reduce the footprint of the boat docks from 14,682 square feet to 9,788 square feet. Additionally, the permittee would be required to remove the concrete

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<sup>12</sup> As noted, the boat docks that previously occupied the site have already been removed.

<sup>13</sup> The motion was timely and unopposed. Therefore, it was automatically granted under Rule 214(c)(1) of the Commission's regulations. *See* 18 C.F.R. § 385.214(c)(1) (2011).

block building and foundation, and concrete driveway within the project boundary, and to restore the land inside the project boundary with native riparian vegetation. The permittee also would be allowed to construct only simple walkways (i.e., made of wood or other pervious surface and a width not to exceed the width of the dock ramp) to access the two dock facilities.

17. Robert Marks, Jr., was the only entity to file comments on the EA.<sup>14</sup> Mr. Marks objects to staff's alternative, arguing that it is too large for the area, will result in increased boat traffic, which will increase erosion and result in safety issues, and is much larger than allowed under Alabama Power's guidelines.

### **Discussion**

18. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by the project's approved SMP classification maps, public and agency comments on the proposed non-project use, and the EA. As discussed below, the record indicates that, with Commission staff's recommended modifications to Mr. Layton's marina proposal, constructing and operating the proposed facilities would only have minor environmental impacts and would not interfere with licensed project purposes, including public safety and recreation.

19. The Residents and commenters argue that the proposed facilities violate Alabama Power's Permitting Program for the lake, and that Alabama Power's granting of a variance in this case was not justified.

20. Through its Permitting Program, Alabama Power manages the reservoir and its shoreline for recreational, commercial, safety, and other purposes. Under this program, Alabama Power may grant variances to allow the construction of structures that do not meet its guidelines. We have not adopted the company's regulations as license conditions. Therefore, in considering whether, or under what circumstances, to authorize a non-project use of project lands and waters that Alabama Power lacks the authority to approve, we may consider a proposal's consistency with the program, but we are not bound by them.<sup>15</sup>

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<sup>14</sup> FWS filed a letter stating that it had no comment to add to the record.

<sup>15</sup> Typically, a licensee is free to adopt a permitting program or other similar regulations. We generally do not review such programs unless there is an allegation that they are inconsistent with the project license or SMP.

21. The Residents and many of the commenters contend that the shoreline on their property is already badly eroding from boat traffic,<sup>16</sup> and the further increase in boating that would occur if the proposed marina is built would worsen the erosion problem.

22. As explained in the EA, the licensee operates the project in a peaking mode, meaning that daily, and even hourly, fluctuations in the lake level occur.<sup>17</sup> While it is likely that some shoreline erosion may occur in the area of Pidgeon Roost Creek due to the combined effects of project-induced water level fluctuations, wave action, and the wake-producing boating, it is difficult to ascertain the extent of shoreline erosion in the area due to boat traffic.<sup>18</sup> However, there is no evidence to suggest that significant erosion now occurs in the area of the proposed marina, or that any increase in boaters as a result of 20 additional boat slips would result in a significant increase in shoreline erosion in the area.<sup>19</sup>

23. The Residents and commenters argue that the proposed marina facilities would be too large for the area.

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<sup>16</sup> They contend that boat traffic in the area has recently increased due to two marinas that recently opened about a mile away. However, as Alabama Power explains, the two marinas have been in existence for years.

<sup>17</sup> See EA at 11. The lake level varies seasonally: in April, May, and June, the lake is operated near the normal full pool level of 510 msl, and after that it is drawn down to reach the winter pool level of 496 feet msl by December 1. This winter pool level is maintained until January 31, at which time the licensee refills the lake to reach 510 feet msl by April 1.

<sup>18</sup> See *id.* at 12-13.

<sup>19</sup> See *id.* at 12. Alabama Power states that there is no documented evidence of increased erosion in the area. In addition, Commission staff reviewed photographs of the shoreline in the area of the proposed marina and could not identify evidence of significant shoreline erosion. In his comments on the EA, Mr. Marks argues that, given the time of year and lake levels, rather than looking for fallen trees as a sign of eroding shoreline, Commission staff instead should have looked for signs of turbulence and suspended sediment. Commission staff has reviewed the pictures submitted by Mr. Marks and is unable to determine whether they indicate erosion/turbidity or whether they show shallow near-shore areas (e.g., sandbars). In any event, it is not likely that increased boating from 20 additional boat slips would significantly increase shoreline erosion in the area.

24. We agree that the proposed three docks would be too large for the area.<sup>20</sup> Instead, under staff's alternative, we are authorizing only two docks. As noted, until a few years ago, 2 docks with a total of 24 slips occupied the site and were likely used by nearby residents without waterfront access. So, while the footprint of two docks would still be larger than that allowed in the licensee's commercial guidelines, it would be similar to the facilities that previously existed at this location.<sup>21</sup> Furthermore, with the removal of the dilapidated block building and concrete floor, there will be an overall improvement in the aesthetics of the area. Further, we accept staff's conclusions that replacing the proposed patio with native riparian vegetation would cause long-term, beneficial effects on terrestrial and wildlife resources, including improving the ground's ability to absorb and filter rainwater before it enters the lake and creating some habitat benefits for small mammals and songbirds by providing cover and forage; and that the footprint of the project as recommended by staff would be similar to what previously existed at the site, would be less inconsistent with the licensee's commercial marina guidelines, and would be less likely to interfere with adjacent property owners' use and enjoyment of the lake in comparison with the action proposed by the developer.<sup>22</sup>

25. The Residents and many commenters argue that the addition of the proposed facilities to this narrow area of the lake would endanger recreational users of the lake

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<sup>20</sup> Although the licensee's application did not show the location of the proposed docks with respect to both adjacent landowners' properties, given the curve of the shoreline in this area, it appears that at least one of the three proposed docks would affect shoreline access by at least one adjacent landowner. *See* EA at 24. Considering the limited amount of shoreline available for the marina, its proximity to adjacent landowners' property, and the difficulty of fitting three docks into such a limited space, staff determined, and we agree, that reducing the number of docks from three to two is warranted. As revised, the marina will not adversely affect access by adjacent landowners.

<sup>21</sup> The two previous docks contained 12 slips each, while the new ones will include 10 slips apiece. As noted above (see P 16), allowing two docks, instead of three, would reduce the footprint of the proposed marina from 14,682 square feet to 9,788 square feet.

<sup>22</sup> EA at 23; 30.

because the excessive length of the proposed docks would create dangerous boating conditions.<sup>23</sup>

26. We disagree. The distance between the shorelines at the narrowest point of the proposed location is 666 feet and 847 feet at the widest point.<sup>24</sup> The proposed docks would extend only 136 feet into the lake, and approximately the same distance into the lake as the docks that were formerly there. This distance leaves about 530 feet of open water at the narrowest point between the two shores, which should provide ample room for boats to maneuver without causing harm to other recreational users.<sup>25</sup> In addition, Alabama Power explains that an Alabama Marine Police report of all accidents on Smith Lake since 1997 shows that only three, relatively minor accidents occurred near the vicinity of Pidgeon Roost Creek.<sup>26</sup> Further, in comments included with Alabama Power's application, the Alabama Marine Police states that it does not object to the proposal, and

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<sup>23</sup> To support his claim that Pidgeon Roost Creek is already too congested, Mr. Marks provided a photograph, which shows at least seven watercraft and tube riders using the area of the lake on August 7, 2010. *See* Figure 3 of Robert E. Marks, Jr.'s comments, filed on March 31, 2011. Alabama Power also filed data, collected by Mr. Layton, on boating usage in Pidgeon Roost Creek during May and June 2010.<sup>23</sup> Mr. Layton collected counts through on-site observations of daytime usage. During peak boating season, generally from May through July, about 22 boats per day use Pidgeon Roost Creek on weekdays (Monday through Thursday), about 90 boats per day on Fridays and Saturdays, and about 67 boats per day on Sundays. *See* Appendix B of Alabama Power's supplemental filing of June 23, 2010.

<sup>24</sup> *See* Schedule A of Alabama Power's supplemental filing on August 6, 2009; *see also* the revised Site Plan, included in the same supplemental filing, providing a surveyor's map of the proposed site.

<sup>25</sup> This is well within Alabama Power's commercial guidelines, which require that the length of structures protruding into the lake must be the lesser of 150 feet or a quarter of the distance across the local water (in this case, 166.5 feet). *See* Attachment 2 of Alabama Power's supplemental filing of August 6, 2009.

<sup>26</sup> *See* Schedule A of Alabama Power's supplemental filing of June 23, 2010.

recommends that, if approved, the docks be lighted at night, which will be the case.<sup>27</sup> Given that two similarly-sized boat docks historically existed at this location with only a few incidents over more than ten years, we agree with the Alabama Marine Police that the proposed docks would not pose public safety concerns.

27. One of the Residents expressed concern that there would be an increase in noise from traffic and late-night parties at the marina once it is operational. The EA found that minor, long-term adverse noise effects would occur during construction and operation of the boat docks.<sup>28</sup> Although a 20-slip marina could potentially increase the level of disturbance to adjacent residents, any disturbance should be minor, especially in light of our denial of authorization to build the proposed patio where marina users could congregate. Also, it is not likely that the boat-slip renters of all 20 watercraft would use the boat slips at the same time. Moreover, the associated noise should not differ much from the historic noise levels in the area (i.e., from the two docks that previously were at the site).<sup>29</sup>

28. In his comments on the EA, Mr. Marks expresses concern that the proposal as modified by Commission staff could violate the licensee's setback requirement in its commercial guidelines, which requires docks to be set back a minimum of 25 feet from the extended property lines of adjacent lots. He contends that one of the docks that existed at the site violated Alabama Power's setback requirement and that the surveyor's map in Alabama Power's August 6, 2009 supplemental filing does not clearly show whether there would be a violation. However, Alabama Power states that the proposed marina meets the setback requirements. Moreover, we are adopting the staff alternative, which will significantly reduce the marina's footprint (from 14,682 to 9,788 square feet),

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<sup>27</sup> See March 23, 2009 letter from Alabama Department of Conservation and Natural Resources, Marine Police, included in Alabama Power's June 5, 2009 application.

<sup>28</sup> See EA at 25.

<sup>29</sup> The Residents and some commenters express concern that a lack of trash receptacles and bathroom facilities could lead to marina users dumping trash and waste into the lake, which could harm the water quality of the lake. However, Alabama Power responded that the marina would provide restroom facilities and trash receptacles for patrons, outside of the project boundary. See *id.* at 19.

thus ensuring the marina will meet the setback requirements.<sup>30</sup> In any event, we are requiring that Alabama Power make the setback requirement a condition of its authorization.

29. Last, the Residents and many commenters state that the marina application was deficient because Mr. Layton failed to consult with adjacent property owners, as required by Alabama Power's Permitting Program.<sup>31</sup> They argue that they, as property owners who would be impacted by the proposed construction, should have been consulted but in fact never received notice of Mr. Layton's proposal prior to Alabama Power's filing of the application with the Commission. We agree that it would have been best for the company to have required Mr. Layton to have consulted the landowners, although this is a company, not a license, requirement. However, the landowners received notice of the application when it was filed with the Commission and have had ample opportunity to express their concerns to the Commission in response to our public notices of the application and the EA. Therefore, we conclude that sufficient notice has been provided.<sup>32</sup>

30. For the above reasons, the Commission concludes that the proposed non-project use of project lands and waters, as modified by the staff alternative, would be consistent with project purposes and is approved.

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<sup>30</sup> The Residents and some of the commenters argue that the county road leading to the proposed marina is insufficient to support the increased traffic from the marina. However, the road is not part of the licensed project and thus is beyond the Commission's jurisdiction. Rather, issues concerning the road must be raised with the appropriate state or local jurisdiction.

<sup>31</sup> Alabama Power's Standard Land Use Form (at 5) requires a permit applicant to "notify all adjacent property owners and other property owners who may be impacted by the proposed construction and/or use, and request their comments."

<sup>32</sup> However, in the future we expect Alabama Power to ensure that permit applicants comply with the consultation requirements of Alabama Power's Permitting Program.

The Commission orders:

(A) Alabama Power Company's application, filed on June 5, 2009, requesting Commission approval to authorize Mr. Lynn Layton's proposed marina is approved, as modified below.

(B) Alabama Power Company may authorize Mr. Layton to construct facilities as follows: (1) the permittee may construct 2 boat docks (10 slips each), with the dimensions described in the application, and the 2 boat docks must comply with the licensee's 25-foot side lot line setback requirement; (2) the permittee shall remove the existing cement-block boathouse and concrete foundation, and concrete driveway within the project boundary, and restore these lands inside the project boundary with native riparian vegetation; and (3) the permittee may construct walkways, made of wood or other pervious surface and a width not to exceed the width of the dock ramp, across project land to access the two boat docks.

(C) Alabama Power Company shall condition the authorization to require the permittee to replace the existing concrete areas within the project boundary with native riparian vegetation according to a plan to be submitted for the licensee's approval, construct a silt fence along the shoreline, and submit a sediment and erosion control plan for the licensee's approval prior to commencing any ground-disturbing activities.

(D) Within 45 days of the date of this order the licensee shall file location point data representative of the marina. The location point must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point must include latitude/longitude in decimal degrees based on the horizontal reference datum of the North American Datum of 1983 (NAD 83).

(E) To ensure that any non-project uses and occupancies of project lands and waters it authorizes are not inconsistent with the purposes of the project, including public recreation and resource protection, the licensee shall include in any permit issued for these facilities the following conditions: (1) the permittee's use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (2) the permittee shall take all reasonable precautions so that the construction, operation, and maintenance of the permitted facilities will occur in a manner that protects the scenic, recreational, and other environmental values of the project.

(F) The licensee shall include a provision in the permit that if any historic properties, including archeological or historic remains are discovered during construction of the docks, the permittee must immediately cease all work at the site and contact the

licensee. The licensee will then consult with the Alabama State Historic Preservation Office and any tribes that might attach religious or cultural significance to the discovered materials to determine what steps need to be taken to evaluate the discovery and, if found to be eligible for National Register of Historic Properties listing, to mitigate any adverse effects. The licensee should file with the Commission, for approval, a report on any discoveries determined to be eligible and adversely affected, along with proposed mitigation.

(G) The proposed facilities shall be constructed as approved in this order in a timely manner to ensure that they do not result in new or different impacts than anticipated, due to unauthorized changes to the facilities or changes in the surrounding environment over time. In order to keep the Commission apprised of the progress towards completing the proposed facilities and to ensure the facilities are built as approved, the licensee shall file within two years of the date of this order, documentation, including photographs, showing the type and location of the proposed facilities. The filing should also include verification that the licensee inspected the proposed facilities to ensure they have been constructed as approved in this order. If the facilities are partially completed or construction has not begun, the licensee shall include in its filing, for Commission approval, a schedule for completing construction of the proposed facilities and a description of the key factors considered in the development of the schedule.

(H) This order constitutes final agency action. Any party to this proceeding may file a request for rehearing of this order within thirty days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.