

147 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

South Carolina Electric and Gas Company

Project No. 516-480

ORDER DENYING REHEARING

(Issued April 17, 2014)

1. On February 28, 2014, Pat Kelleher filed a request for rehearing of a January 30, 2014 notice dismissing his motion to intervene and rejecting his request for rehearing of a staff order approving South Carolina Electric and Gas Company's (South Carolina E&G) request to convey lands at the Saluda Hydroelectric Project No. 516.<sup>1</sup> For the reasons discussed below, we deny the request for rehearing.

**Background**

2. The Saluda Project is located on the Saluda and Congaree Rivers in Lexington, Newberry, Richland, and Saluda Counties, near Columbia, South Carolina. Project works include Lake Murray, the project's reservoir. The project was relicensed by the Commission in 1984.<sup>2</sup>

3. On October 18, 2013, South Carolina E&G submitted a compliance filing, notifying the Commission of its plan to convey to a private homeowner approximately 0.02 acre of project land on which the homeowner had placed earth fill many years ago. Mr. Kelleher filed comments on November 1, 2013, asserting that the licensee had failed to properly monitor the project shoreline and that the land transfer required amendment of the project license.

4. On December 11, 2013, Commission staff issued an order approving South Carolina E&G's proposal. The order indicated that the earth fill had been discovered during South Carolina E&G's efforts to inventory developed shoreline property within the project boundary, as part of its most recent update to the project's shoreline

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<sup>1</sup> *South Carolina Electric and Gas Company*, 145 FERC ¶ 62,175 (2013).

<sup>2</sup> *South Carolina Electric and Gas Company*, 27 FERC ¶ 61,332 (1984).

management plan.<sup>3</sup> Staff concluded that the 0.02-acre parcel was not needed for project purposes, was surrounded by residential development, and was not near any environmentally-sensitive areas.<sup>4</sup>

5. On January 2, 2014, Mr. Kelleher filed a motion to intervene and a request for rehearing of Commission staff's order. Aside from his objections to the conveyance, Mr. Kelleher asserted that he "has been actively seeking purchase of Licensee-owned land along the project shoreline for future recreational access to enjoy the recreational amenities of the project." By notice issued January 30, 2014, the Commission's Secretary dismissed Mr. Kelleher's motion to intervene and rejected his request for rehearing for lack of party status, citing the Commission's practice of not entertaining motions to intervene and requests for rehearing in post-licensing proceedings except under limited circumstances that did not exist in this proceeding. The notice also explained that Mr. Kelleher had failed to show that his participation in the proceeding would be in the public interest.

6. On February 28, 2014, Mr. Kelleher filed a request for rehearing of the notice.

### **Discussion**

7. Mr. Kelleher asserts that he "met all conditions to become a party to the proceeding."<sup>5</sup> He contends that he is aggrieved because he "actively recreates at FERC projects nationwide" and "has put Saluda Hydroelectric Project on a list of FERC projects in 49 states to visit."<sup>6</sup> Further, "Mr. Kelleher is aggrieved by the loss of any possibility of future recreational access to this parcel" to which he "currently enjoys free public access . . . ."

8. First, review of the proposed conveyance is not a proceeding in which Mr. Kelleher has a right to participate. Although the Commission allows extensive public participation in licensing proceedings, after a license has been issued, opportunities for public participation in compliance matters are limited. The January 30 notice articulated the Commission's long-standing practice of limiting public participation in post-licensing proceedings to those involving certain types of filings.<sup>7</sup>

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<sup>3</sup> In approving the update to the shoreline management plan, staff required that the licensee determine if such parcels serve a project purpose. 145 FERC ¶ 62,175 at P 2.

<sup>4</sup> *Id.* P 3.

<sup>5</sup> Request for Rehearing at 3.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> This approach allows the Commission to act on numerous hydroelectric

Specifically, to give rise to an opportunity to intervene, the licensee's filing or the Commission's order must involve a material change in the plan of project development or in the terms and conditions of the license, an adverse effect on the rights of a property holder in a manner not contemplated by the license, or an appeal by an agency or entity specifically given a consultation role with respect to the filing at issue.<sup>8</sup>

9. Neither of the bases for entertaining an intervention and allowing public participation in a post-licensing proceeding exists here. The licensee's proposal entails no material change in project operations, no property rights have been adversely affected, and Mr. Kelleher has not been given a consultation role with respect to the proposal. In this case, the licensee is simply engaged in reconciling a very small portion of the project's boundary as shown in the project's approved Exhibit G drawings with the project boundary as it has existed in this location for many years.<sup>9</sup> The December 11 order merely approved the licensee's proposal. There is thus no reason to permit intervention.

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compliance matters in a manner that is both administratively efficient and consistent with the requirements of the Federal Power Act and due process. *See City of Tacoma, Washington*, 109 FERC ¶ 61,318, at n.5 (2004); and *Kings River Conservation District*, 36 FERC ¶ 61,365, at 61,181-83 (1986).

<sup>8</sup> *See Puget Sound Energy, Inc.*, 112 FERC ¶ 61,116, at P 6 (2005); *City of Tacoma, Washington*, 109 FERC ¶ 61,318, at P 6 (2004); *City of Tacoma, Washington*, 89 FERC ¶ 61,058, at 61,193 (1999); *Pacific Gas and Electric Company*, 40 FERC ¶ 61,035, at 61,099 (1987); and *Kings River Conservation District*, 36 FERC ¶ 61,365, at 61,883 (1986). As discussed in greater detail in the *Kings River* case, if a filing would involve a material change to the project or its operation, section 6 of the FPA, 16 U.S.C. § 799 (2012), would require that the Commission provide notice and an opportunity to participate in much the same manner as it does for licensing proceedings. Similarly, if the rights of third-party property holders could be adversely affected by post-licensing actions of the Commission, due process considerations would require that the Commission provide notice and an opportunity to be heard.

<sup>9</sup> The project boundary in this area is the reservoir's maximum pool elevation of 360 feet mean sea level. The area that is the subject of this proceeding is a triangle-shaped piece of land about 20 feet wide and less than 75 feet long.

10. Second, even if intervention were permitted, Mr. Kelleher does not show how he is aggrieved by the order. Mr. Kelleher does not have a direct interest in the proceeding;<sup>10</sup> nor has he shown that his participation is in the public interest.<sup>11</sup> Neither Mr. Kelleher's unsupported contention that he has been seeking to purchase licensee-owned project lands nor his assertion that he hopes to visit the project area in the future are sufficient to demonstrate a direct interest, and he makes no showing that his participation would be the public interest. In any case, Mr. Kelleher has failed to show that the removal from the project boundary of a small piece of land that has been covered by land fill for many years and is located in a residential area that is neither part of a designated recreation area nor environmentally sensitive has a cognizable impact on the public interest.

11. Mr. Kelleher has failed to demonstrate any error in the December 11 order. His request for rehearing is therefore denied.

The Commission orders:

The request for rehearing filed by Mr. Pat Kelleher on February 28, 2014, is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>10</sup> The Commission has consistently found that an entity seeking the right to intervene must have a direct interest in a proceeding. *Kansas-Nebraska Natural Gas Company, Inc.*, 21 FERC ¶ 61,285 (1982); *see also American Electric Power Service Corp. et al.*, 120 FERC ¶ 61,052, at PP 10-12 (2007) (entity seeking to intervene in site-specific matter must show direct interest); upheld on clarification, 120 FERC ¶ 61,265, at P 9 (2007); *Duke Energy Shared Services, Inc., et al.*, 119 FERC ¶ 61,146, at P 9 (2007) (entity seeking to intervene in site-specific matter must show direct interest).

<sup>11</sup> Rule 214 of the Commission's Rules of Practice and Procedure requires that motions to intervene state the movant's interest in sufficient factual detail to demonstrate, *inter alia*, that the movant's participation is in the public interest. 18 C.F.R. § 214(b)(2)(iii) (2013).