

COMMENTS

On the Updated Shoreline Management Plan for Project # 2210-207

Submitted to: THE UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

Date of this submission: April 12, 2011 by the Smith Mountain Lake Association (SMLA)

Reference: Hydroelectric application filed with the Commission

a. Application Type: Updated shoreline management plan (SMP)

b. Project No: 2210-207

c. Date Filed: January 3, 2011, supplemented on February 18, 2011

d. Applicant: Appalachian Power Company (APCO)

e. Name of Project: Smith Mountain Pumped Storage Project

These comments are in response to the revised Shoreline Management Plan (SMP) submitted by Appalachian Power Company (APCO) of the same subject as listed above.

The Smith Mountain Lake Association (SMLA) agrees there is a need for an SMP and therefore embraced the opportunity to participate on the steering committee to revise the SMP. Two of our board members represented our organization on the steering committee with the understanding that the mission of the steering committee was to shape the new SMP to meet the needs of the project and its stakeholders. The SMLA also participated in the licensing process for the Smith Mountain Project from the beginning so we are known to the FERC staff. We are a membership based – 1200+ families – organization representing the interests of residents of Smith Mountain Lake. Our twenty-member board is comprised of volunteers.

SMLA hereby requests that the Federal Energy Regulatory Commission:

- (1) Deny approval of the submitted updated SMP and**
- (2) Reopen the revision process with the inclusion of an independent third party to guide the development of the plan.**

SMLA through our two Steering Committee appointees fully participated in the SMP revision process attending all eight meetings with various stakeholder groups as listed in the subject revised SMP in *Table 1.5-4. Stakeholder Meetings* and the eleven Steering Committee meetings as listed in the subject revised SMP in *Table 1.5-3. Steering Committee Meeting Dates*.

Upon reading the submitted revised SMP, SMLA realized the futility of our efforts on the steering committee, and we recognized that the steering committee was nothing more than window dressing to feign a cooperative effort by APCO. Most recommendations of steering committee members were not incorporated into the proposed plan.

Furthermore, the plan often ignores existing standards, recommendations and definitions already established by local, state and federal agencies and regulations.

SMLA strongly supports the Tri-County Relicensing Committee's (TCRC) comments filed separately, the SMP fails to strike the proper balance – SMP goal #8. .

Additionally, SMLA emphasizes four major points of concern from our member with the revised SMP.

First: The proposed SMP regulations often do not conform to local, state and federal regulations and guidelines. An example is the designation of wetlands in the proposed SMP. Proposed SMP wetlands do not follow classifications of the US Army Corps of Engineers (USACE) "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual). The proposed SMP enables APCO to arbitrarily designate wetlands with no reference to the USACE definitions. This puts property owners at risk of not being able to build docks, access the water or recreate along the shoreline on their own property for no substantiated reason.

Second: SMLA objects to the proposed planting density requirements. The Virginia Department of Conservation and Recreation (DCR) has planting density guidelines, as do Master Gardener associations. SMLA and the Virginia DCR agreed on needed changes during the steering committee meetings, which considers the existing plant and tree density and canopy along the shoreline in order to determine the amount of additional plants and trees needed to create a healthy established root system and canopy to assist in protecting the quality of water within the project lakes. APCO after stating that they agreed with this change did not incorporate the recommendations of SMLA and the Virginia DCR. Though APCO reduced the requirements of replanting densities to amend removal of vegetation or mitigate permit violations, they did so arbitrarily cutting the prior SMP requirements in half. The plan still requires excessive planting densities that often are not sustainable by the amount of soil and water available. Furthermore, they often require these plantings with no regard to the season or the water available to the homeowner to establish the plantings.

SMLA disagrees with using vegetative mitigation to rectify an issue that APCO has with a dock. The revised SMP would enable APCO to continue to use mitigation as punishment for infringements to the plan. We do not understand the connection or the validity of the punishment that frequently costs property owners thousands of dollars. For example, SMLA cannot identify any logic in requiring a homeowner to plant trees and shrubs in their yard as mitigation for a dock roofline being extended beyond its original measurements. This aspect of the plan only serves to enable APCO to strong-arm residents to landscape as APCO desires.

Third: The transfer of dock permits with property and home sales is another critical issue of concern to all lake residents and businesses. In cases where a dock does not exactly match the permit on file, property sellers are burdened with renovating or removing modifications and rebuilding the dock to permit specifications prior to the sale.

Often times the seller does not know the dock permit will not transfer with the property until the seller receives an offer on his/her property. The seller is then faced with the financial burden of making changes and the unexpected delay in the sale, which can cause the property sale to fall through. If there is an issue with a house or property, often funds are held in escrow until the issue is resolved post closing and transfer of the deed. SMLA does not think APCO has the right to delay transfer of the dock permit with the sale of the property. The damages incurred with delay or cancellation of a property sale are often disproportionate to monies involved with a dock issue. APCO should be required by FERC to transfer the dock permit with transfer of the property deed after the appropriate dock escrow is created.

Fourth: Affecting all efforts to comply with the SMP is customer service. The consensus of the steering committee was that APCO must strive for greater customer service. The proposed SMP does not include specific commitments to maintain reasonable business hours, respond in a timely manner to e-mail and phone requests, or issue permits in within a reasonable time period. There is not a designated person on staff who can assist with the requirements of the SMP. Permit applicants often drive to the local APCO office only to find that they must slip a note under the door and that they will not be assisted without a prior appointment.

APCO should be required by FERC to have regular open office hours each week where property owners and businesses, such as dock builders, can go to submit dock applications, discuss issues and seek assistance during regular business hours. This is customary for businesses and agencies conducting business and serving customers. APCO does not have an open office near the project. This encumbers communication and prompt approval of dock applications and resolution of issues. Also to facilitate communication, APCO should be required to answer the phone or at least return phone call messages and e-Mails within 48 business hours. This is not the current APCO practice. APCO should also be required by FERC to communicate any Issue with a dock application or other project related permit within a reasonable time, such as one week. Delays are expensive for both dock builders and property owners.

APCO should be required to:

- Have regular office hours offering assistance to property owners and businesses
- Respond to phone calls and e-mails within 48 hours
- Adhere to communication timeframes to avoid delays that are costly to property owners and marine business operators

In summary our primary concerns are:

- SMP regulations should conform with local, state and federal regulations
- Mitigation should not be punishment
- Dock permits should transfer with the property when it is sold

- APCO should be required to provide greater levels of customer service

The SMLA strives to serve as a steward of Smith Mountain Lake and its stakeholders. The implementation of a shoreline management plan is critical to both. Our intent in participating in the steering committee to develop the pending plan was to ensure the voices of our members were included in the development of the plan to ensure it is logical, complies with existing regulations of recognized authorities and recognizes and allows for stakeholders to enjoy their property. The Smith Mountain Lake Association appreciates this opportunity to comment upon APCO's proposed revised SMP that is so vital to the health of Smith Mountain Lake and the economies of the surrounding communities. We request the FERC assistance in resolving the aforementioned issues.

Sincerely,

Kristina Mize
President