

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. 516-380

ORDER DISMISSING COMPLAINT
AND AMENDING LICENSE

(Issued July 15, 2004)

1. On September 9, 2003, as amended on October 15, 2003, the South Carolina Coastal League and American Rivers (Conservation Groups) filed a complaint alleging that South Carolina Electric & Gas Company was violating the terms of the license for the Saluda Project No. 516 by operating the project in a manner such that the standard for dissolved oxygen in the reach of the Saluda River below the project was not being met, and requesting that the company be ordered to comply with that standard. On October 17, 2003, the Commission issued public notice of the complaint.
2. On October 29, 2003, South Carolina Electric & Gas filed a motion for an extension of time, until November 28, 2003, to respond to the complaint, in order to engage in settlement discussions to resolve the matter. On November 26, 2003, the company filed a request for a second extension, until January 16, 2004, to answer the complaint.
3. On May 19, 2004, South Carolina Electric & Gas filed an uncontested “offer of settlement,” supported by the Conservation Groups. No comments on the settlement have been received.
4. The offer provides that South Carolina Electric & Gas will cooperate with the Conservation Groups and with South Carolina Department of Health and Environmental Control, South Carolina Department of Natural Resources, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in using models to analyze operational alternatives that may affect dissolved-oxygen concentration in the Saluda River below the project dam, and in developing operating plans to enhance water quality, including

dissolved-oxygen concentrations, in the lower Saluda River. The offer also proposes that the Commission dismiss the complaint.

5. Consistent with the request of the parties to the complaint, we will approve the terms of the offer, which provides a reasonable resolution of the matters raised, and will dismiss the complaint. We will amend the license for the Saluda Project to require South Carolina Electric & Gas to undertake the proposed measures, and to obtain Commission approval of the operating plans.

6. The question of whether the project was operated in compliance with the conditions of the license is, notwithstanding any agreement reached by the parties, a matter between the Commission and its licensee. On its face, the complaint appears to demonstrate that dissolved-oxygen levels below the project were during some periods below the applicable state standards. However, the complaint does not allege, nor does the record otherwise show, any resultant harm to aquatic resources. Moreover, the company has explained that factors beyond its control, particularly a Commission-required drawn-down of the project reservoir in connection with dam safety activities, and unusually high rainfall levels after a significant period of drought, directly contributed to low dissolved oxygen levels. *See* letter to George H. Taylor, Division of Hydropower Administration and Compliance, Office of Energy Projects, from Brian J. McManus, counsel for South Carolina Electric & Gas, at 5 (filed October 16, 2003). We therefore conclude that the measures called for by the offer provide a satisfactory resolution of this matter.

The Commission orders:

(A) The complaint filed on September 9, 2003, as amended October 15, 2003, by the South Carolina Coastal League and American Rivers is dismissed.

(B) The license for the Saluda Project No. 516 is amended by adding the following license article:

Article 31. The licensee shall, consistent with the provisions of the Offer of Settlement filed by South Carolina Electric & Gas Company on May 19, 2004, and in cooperation with South Carolina Department of Health Environmental Control, South Carolina Department of Natural Resources, U.S. Fish and Wildlife Service, National Marine Fisheries Service, South Carolina Coastal Conservation League, and American Rivers, develop and file each year, for Commission approval, an operating plan to enhance water quality in the lower Saluda River. The plan shall include measures designed to achieve dissolved-oxygen levels of a minimum of 4 milligrams per liter (mg/l), a daily average of 5 mg/l, and a monthly

average of 5.5 mg/l. The licensee shall file the initial plan within 60 days of the date of this order, and shall file subsequent plans each year thereafter by no later than June 30.

(C) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.