

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

South Carolina Electric & Gas Company

Project No. 516-396

ORDER CLARIFYING AND MODIFYING ORDER
AND DENYING REHEARING

(Issued October 28, 2004)

1. On June 23, 2004, the Commission staff issued an order approving South Carolina Electric & Gas Company's (SCE&G) latest update to the Land Use and Shoreline Management Plan (shoreline plan) for Lake Murray, the reservoir for the Saluda Project No. 516.¹ Lake Murray Association, Lake Watch of Lake Murray, Coastal Conservation League, American Rivers, the Columbia League of Women Voters, and South Carolina Wildlife Federation (jointly Lake Murray Group), and SCE&G filed timely requests for rehearing of that order. Additionally, the South Carolina Department of Natural Resources (SC Natural Resources) filed comments on the approved shoreline plan update. For the reasons discussed below, we are denying the requests for rehearing, but clarifying certain aspects of the June 23 Order. This order is in the public interest because it removes uncertainty surrounding aspects of the shoreline plan.

Background

2. SCE&G has developed a comprehensive shoreline plan for Lake Murray, which is required to be updated every five years.² The stated purpose of the shoreline plan is to: (1) provide lake management policies to maintain and conserve the area's natural and

¹ South Carolina Electric & Gas Co., 107 FERC ¶ 62,273 (2004)(SCE&G).

² In 1979, the Commission ordered SCE&G to prepare a shoreline management plan. *See South Carolina Electric & Gas Co.*, 7 FERC ¶ 61,180, at n. 43 (1979).

man-made resources; (2) comply with the terms of the Saluda Project license and the Commission's regulations and orders; and (3) provide a balance between recreation and environmental protections and development control.³ SCE&G filed the latest update to its shoreline plan on February 1, 2000. On October 31, 2003, Commission staff issued an Environmental Assessment (EA) on the updated shoreline plan.

3. Under SCE&G's shoreline plan, project lands fall into one of five use classifications: (1) easement,⁴ (2) recreation, (3) project operation, (4) forest and game management, and (5) future private development.⁵ Each classification is subject to specified land use controls, such as minimum construction setbacks, buffer zones, restrictions on clearing, and protection of wildlife habitat. SCE&G also designates environmentally sensitive areas that are adjacent to shoreline classified for future development. Environmentally sensitive areas generally are areas suitable for spawning and nesting habitat for most resident fish and wildlife.⁶

4. All land that is designated for future development includes a 75-foot vegetative buffer zone that is set back from the reservoir's maximum pool elevation, 360-foot National Geodetic Vertical Datum (NGVD).⁷ The buffer zone creates a vegetative, aesthetically appealing buffer between property development and the Lake Murray shoreline.⁸

³ See *SCE&G*, 107 FERC at P 2-8, for an extensive history of SCE&G's shoreline plan.

⁴ Shoreline and project land classified as easement is property that has been sold for private use.

⁵ Land classified for future development is also referred to as fringeland.

⁶ Environmentally sensitive areas are generally located below the 360-foot contour and are not available for sale.

⁷ Although full pool elevation is at 360-foot NGVD, the normal high water level is 358-foot NGVD. The buffer zone is not created until the land is sold for private development.

⁸ The 75-foot vegetative buffer is created when a lot is sold. Fringeland is managed as designated forest until the lots are sold.

5. The June 23 Order modified and approved SCE&G's proposed shoreline plan update. Among other things, the order required that SCE&G update its list of environmentally sensitive areas, create a 50-foot buffer around these areas, and establish a 25-foot natural zone inland from the 360-foot high water contour to protect project shoreline resources in non-environmentally sensitive areas adjacent to future development areas (Ordering Paragraph D). The recommended 50 and 25-foot natural vegetative buffers are not environmentally sensitive areas per se, but generally will serve to protect shoreline resources such as aesthetics, as well as public access for fishing and hiking adjacent to land that may be developed.⁹ The buffer zones would only allow paths to boat docks and a path along the shoreline for public access.

6. The June 23 Order also required additional inventories and plans. These additional inventories and plans required that SCE&G, among other things:

1. Develop a shoreline inventory and stabilization plan that emphasizes bioengineering and other measures for shoreline stabilization; (Ordering Paragraph (B));
2. Identify perennial and intermittent streams that should be protected within the project boundary and within land classified for future development (Ordering Paragraph (C));
3. Develop a woody debris and stump management program to improve fish habitat (Ordering Paragraph (E)); and
4. Develop a buffer zone restoration plan for buffer zones that have been improperly cleared by landowners (Ordering Paragraph (G)).

The order required that SCE&G file the reports and implementation plans on the studies, for Commission approval, within one year of the issuance of the order. Upon Commission approval, SCE&G would be required to implement the plans.

7. Additionally, the June 23 Order required that SCE&G incorporate the inventories and plans into its next shoreline plan update, due in 2005. It also noted that the current license for the Saluda Project expires on August 31, 2010, and that licenses for projects of this size generally begin relicensing studies no later than five years before the license expires. The order concluded that, given the range and complexity of the issues associated with this project and the need to evaluate the project comprehensively, which

⁹ See *South Carolina Electric & Gas Co.*, 106 FERC ¶ 61,086 (2004). This order requires the establishment of these protective buffers.

would only occur during the relicensing process, the next plan update should be conducted as part of the relicensing process. The order also concluded that the next shoreline plan update should be submitted, with all the studies and implementation plans required by the June 23 Order, with the relicensing application.

Discussion

A. Project Boundary

8. The June 23 Order states that by the late 1970's a little more than half the lake-front had been sold and removed from the project boundary. It also states that where the lands had been sold, the project boundary became the reservoir's maximum pool elevation of 360 mean sea level (msl).¹⁰ On rehearing, SCE&G states that with regard to sales of property around Lake Murray, it has been standard practice for it to retain the sold property within the project boundary.¹¹

9. SCE&G states that except for the removal of the property used for the site of SCE&G's McMeekin Steam Station below the project's dam, and property used for the construction village, the project boundary has remained the same as it was established in its initial license, issued in 1927. SCE&G asserts that since the shoreline plan was implemented in 1981, it has placed greater restrictions on the use of the property it sells. SCE&G states that, for example, one parcel may have severe restrictions on cuttings, but the neighboring parcel, that was sold prior to the shoreline plan, may bear only minimal restrictions. However, it points out that all parcels, no matter when they were sold, remain within the project boundary line. Therefore, SCE&G requests that Commission revise its order to reflect the fact that none of the property transfers to third parties has resulted in any revision to the project boundary.

10. While many transfers of interest in project land for non-project uses do not require the project boundary to be redrawn, the Commission generally requires that land used for private residential development not be included in the project boundary, unless such lands are clearly needed for project purposes.¹² It appears from aerial photographs

¹⁰ *SCE&G*, 107 FERC at P 2.

¹¹ *Citing Wisconsin Public Service Corp.*, 104 FERC ¶ 61,295 at P 14-18 (2003)(the sale of interests in a parcel of project land is a matter separate from the removal of that parcel from the project boundary).

¹² *See South Carolina Electric & Gas*, 106 FERC ¶ 61,086, at P 11, *citing id.* *See also* 18 C.F.R. § 4.41(h).

submitted by SCE&G that there are various houses, swimming pools, and other structures located within close proximity to the Lake Murray shoreline.¹³ Thus, it is unclear to what extent these are permanent or non-permanent structures within the project boundary, whether the land involved serves any project purpose, and to what extent these properties need to remain in the project boundary. Accordingly, we will require that SCE&G inventory all developed shoreline within the project boundary for permanent structural encroachments and determine if this property is still needed for a project purpose.¹⁴ Any developed property within the project boundary that is no longer needed to serve project purposes should be removed from the project boundary during relicensing in SCE&G's application to relicense the project.

B. Environmentally Sensitive Areas

1. Definition

11. As stated, SCE&G designates environmentally sensitive areas that are adjacent to shoreline classified for future development. Footnote 19 in the June 23 Order defines environmentally sensitive areas to include bottomland hardwood, button bush, exposed (sand) bars, forest management, islands, mature upland hardwood, purple martin roost, shallow coves, shallow shoals, water tupelo stands, and wet flats. It states that development or land-disturbing activities are restricted in most of these areas, except mature upland hardwood and islands. On rehearing, SCE&G states that the footnote is somewhat misleading. It contends that none of the environmentally sensitive areas, all of which are generally below or just at the 360-foot contour, have mature upland hardwood because the environmentally sensitive areas are not conducive to the growth of such trees. Further, SCE&G notes that it does not allow clearing in the environmentally sensitive areas. It also points out that none of the islands are classified as available for future development and that it prohibits any clearing of vegetation on them. Similarly, SC Natural Resources points out that the order implies that the environmentally sensitive areas are in the 75-foot buffer zone. It states that very little if any of the environmentally sensitive areas are in the 75-foot buffer zone and that they all occur below the 360-foot elevation.

¹³ See SCE&G's December 19, 2001 response to additional information request.

¹⁴ Examples of project purposes include property needed for flowage, public recreation access, shoreline control, project aesthetics, and/or protection of environmental resources including fish and wildlife habitat.

12. We agree with SCE&E's clarification of footnote 19. We clarify that there are no mature upland hardwoods in the environmentally sensitive areas and that clearing within the environmentally sensitive areas is prohibited. Finally, we will also clarify that clearing is also prohibited on the islands.

2. Restrictions

13. SC Natural Resources is also concerned that there are not sufficient restrictions for siting of docks in close proximity to environmentally sensitive areas. It asserts that Ordering Paragraph (D) of the June 23 Order states that SCE&G should site docks in such a way as to not adversely affect the environmentally sensitive areas and their 50-foot buffer and the 25-foot natural shoreline buffer. SC Natural Resources states that the order does not explain what constitutes an adverse affect. It asserts that management prescriptions around the environmentally sensitive areas need to be more restrictive and well defined.

14. To accommodate the siting of docks around the environmentally sensitive areas, SCE&G, in consultation with SC Natural Resources, delineated the environmentally sensitive areas as continuous and intermittent vegetated shoreline. Continuous vegetative shoreline is at least 66 feet long. An intermittent vegetative shoreline can have gaps. Docks cannot be constructed in areas of continuous vegetative shoreline. However, the size of the gaps in the intermittent vegetated shoreline provide potential opportunities for siting docks in a way that would not adversely affect the environmentally sensitive areas and the associated shoreline buffers, consistent with Ordering Paragraph (C) in the June 23 Order. Assessments of adverse effects should be made on a site-specific basis.

15. Further, we note that clearing is prohibited in environmentally sensitive areas. Clearing is prohibited in the 50-foot natural vegetative buffer zone adjacent to the environmentally sensitive areas and in the 25-foot buffer zone adjacent to non-environmentally sensitive areas. Accordingly, we find that additional management prescriptions around the environmentally sensitive areas are unnecessary.

3. Developed Areas

16. The June 23 Order determined that there was no need to identify and map environmentally sensitive areas that are already protected and not subject to development pressure. SC Natural Resources contends that the mapping should include environmentally sensitive areas along currently developed shoreline. It states that knowing where these areas are is very important to managing the shoreline in front of developed areas because new shoreline encroachments occur regularly.

17. As noted in the June 23 Order, 99 percent of the shoreline around the eastern third of the lake is privately owned.¹⁵ Given this amount of development, it is conceivable that some shoreline areas with environmental values worth protecting exist adjacent to land already developed at the project. Thus, upon reconsideration, we find that it is reasonable to survey such areas as part of SCE&G's required update to the maps and list of environmentally sensitive areas required in Ordering Paragraph (D) of the June 23 Order.

4. **Brush Removal**

18. The June 23 Order states that SCE&G proposed that for any fringeland slated for development that exceeds 500 feet along the buffer zone, it would require that purchasers perform limited brush removal of the buffer zone.¹⁶ SC Natural Resources contends that there is a conflict between SCE&G's proposal and Ordering Paragraph (G), which states that SCE&G should not require a homeowner to clear vegetation in the 75-foot buffer.

19. SCE&G proposed certain measures pertaining to vegetation that could be removed within the 75-foot vegetation buffer, based on agency input during pre-filing consultations for the updated shoreline plan. One of these proposals was for limited brush removal along fringeland slated for development that exceeds 500 feet along the buffer zone. SC Natural Resources recommended a similar measure.¹⁷ The EA recommended that while limited brush removal may be allowed, SCE&G should not require that land purchasers perform limited brush removal.¹⁸

20. The Commission did not intend to impose a requirement that clearing must be done on land slated for development that exceeds 500 feet along the buffer zone. As stated in the EA, SCE&E should not require land purchasers to perform limited brush removal because of the benefits that vegetation provides in protecting the project's environmental resources.¹⁹ We clarify the June 23 Order accordingly.

¹⁵ See *SCE&G*, 107 FERC at n. 6.

¹⁶ *Id.*, 107 FERC at P 18.

¹⁷ See SC Natural Resources March 28, 2000 filing, at 5.

¹⁸ See EA at 27.

¹⁹ *Id.* at 27.

C. Erosion and Sedimentation Control

21. The June 23 Order determined that developing and implementing a plan for erosion and sedimentation control for future development areas would protect and conserve the project's fish and wildlife habitat, as well as control erosion and preserve water quality. In Ordering Paragraph (B), it required that SCE&G prepare an erosion and sedimentation control plan for Commission approval. SC Natural Resources states that the plan should go beyond developed and future developed shorelines to include areas that are used for shoreline recreation.

22. While the June 23 Order only stated that SCE&G should develop a plan for developed and future developed area, the EA states that the scope of the erosion assessment would include existing and future recreation areas and all SCE&G owned islands on Lake Murray.²⁰ We clarify that it is our intent that SCE&G include recreation areas in the plan.

D. Buffer Zone

23. The June 23 Order requires that SCE&G identify streams in areas classified for future development and map a 75-foot buffer zone around each stream. On rehearing, Lake Murray Group requests that the Commission clarify that the 75-foot buffer is required on both sides of the stream. We so clarify.

24. SC Natural Resources is pleased that the order addresses protection of stream corridors but is concerned that the restriction of ground-disturbing activity is not a sufficient restriction to protect the buffer. It recommends that these areas be treated as environmentally sensitive areas with a 50-foot natural buffer within the 75-foot buffer.

25. Ordering Paragraph (C) in the June 23 Order requires that SCE&G create a 75-foot buffer zone around perennial or intermittent streams. It also requires that no ground-disturbance activity be permitted within the identified stream buffers. SC Natural Resources appears to believe that the 50-foot environmentally sensitive area buffers provide more protection than the 75-foot buffer. We consider the prohibition of ground disturbance within stream buffers, which are 25 feet wider than environmentally sensitive area buffers, to also prohibit vegetation removal. Therefore, Ordering Paragraph (C) imposes greater protective restrictions on these areas. To clarify this point, we will revise Ordering Paragraph (C) in the June 23 Order to state that no ground-disturbing activity, including vegetation removal, shall be permitted within the identified stream buffers.

²⁰ *Id.* at 18.

F. Woody Debris and Stump Management Plan

26. To protect fish habitat, the June 23 Order required that SCE&G, in consultation with the FWS and SC Natural Resources, prepare a woody debris and stump management plan. The plan is to identify and provide management guidelines for areas of stable debris that are sufficient in area and density to provide significant fish and wildlife habitat adjacent to future development areas.

27. On rehearing, SCE&G states that while it considers the presence of such debris to be of vital importance to the maintenance of fish and wildlife around Lake Murray, it is concerned that such a requirement could result in hazards to those engaging in water activities on the lake. SCE&G contends that debris just below water level, particularly stumps, can pose serious problems for novices, especially at the high speeds associated with water and jet skiing. SCE&G requests that the Commission clarify this requirement to allow SCE&G and the consulting agencies to give equal weight to safety as that shown to the enhancement of fish and wildlife.

28. The Commission agrees that SCE&G and the agencies should give equal consideration to safety concerns when preparing the woody debris and stump management plan. Accordingly, we will clarify the June 23 Order as requested and emphasize that SCE&G is responsible for ensuring that appropriate public safety measures are considered in the plan, as well as the guidelines necessary for maintaining the fish and wildlife habitat.

G. Land Use Re-Classification and Re-Balancing

29. As stated in the June 23 Order, SCE&G proposed to reclassify, as conservation areas, land that is contiguous to certain coves within the future development classification, and to evaluate these areas prior to sale on a case-by-case basis to determine if the land warrants protection. Any reclassification to a conservation area would be based on an exchange for additional future development land elsewhere along the 360-foot contour.

30. The June 23 Order found that there was an imbalance between the developed and undeveloped shoreline and that a comprehensive reclassification was necessary. However, it adopted the EA's recommendation that the re-evaluation of land classifications be conducted as part of the upcoming comprehensive relicensing, because it would provide the opportunity for consultation with various stakeholders in the development of land classifications and associated land management prescriptions, which would help ensure the protection and balancing of the various shoreline resources over the term of a new license.

31. The June 23 Order points out that the Commission's primary concern is with the preservation of water-related shoreline resources, particularly fish and wildlife habitat, aesthetic resources, and public recreational use and water access, within 200 feet of the water's edge. Ordering Paragraph (F) requires that SCE&G consult with the resource agencies and develop a procedure and criteria for land exchanges that will become part of the land use rebalancing during the next shoreline plan update, which will be included in the relicense application.

32. On rehearing, Lake Murray Group contends that deferring rebalancing until 2010 is not acceptable. It argues that the land use designations have been an unresolved issue since before the 1991 order approving the shoreline plan update. Lake Murray Group states that during the 1990 update, the resource agencies argued that pro-development land use classifications needed to be addressed in order to reduce the potential for cumulative adverse environmental impacts on the lake's shoreline and water quality. It states that in response to the agencies' concerns, the Commission's 1991 Order required that SCE&G conduct an inventory and assessment of the project's shoreline, including existing and proposed development around the lake, and the undeveloped areas. Lake Murray Group asserts that despite the fact that the required assessment is still outstanding, SCE&G continues to benefit from the unbalanced land use classification by selling land for development. It contends that if rebalancing is deferred until relicensing, then further land sales and development requests should also be deferred until relicensing.

33. Lake Murray Group also opposes the exchange of developable, low resource value, forest management land for preserving and protecting critical shoreline high-resource value lands. It contends that a program of land exchanges does not address the problem of over-development. It argues that land exchanges would allow pockets of development within areas currently protected and would take away aesthetic and recreational values.

34. Similarly, SC Natural Resources states that rebalancing needs to be completed before any more significant fringeland is sold for development. It contends that with continued land sales, more of the identified areas will be lost to development and rebalancing opportunities will be lost. SC Natural Resources also asserts that land exchange is not the solution for rebalancing. It argues that it could be an interim tool to be used until rebalancing is done. However, the primary purpose of rebalancing should be to limit future development, and to protect and enhance other uses of the project. Further, it claims that the notion of establishing conservation areas in exchange for the right to reclassify property from the forest management classification to future development is not appropriate.

35. In the 1991 shoreline plan order, the Commission required that SCE&G conduct an inventory and assessment of the project's shoreline and prepare recommendations of additional measures needed to ensure adequate shoreline will be reserved to protect the environment qualities of the lake.²¹ The inventory and assessment resulted in SCE&G's creating a Geographic Information System database for the project that significantly improved the accuracy of the determination of acreages and shoreline distances. SCE&G also compiled various maps and aerial photographs that specifically delineate the various uses associated with the Lake Murray shoreline.²² SCE&G used this inventory and assessment to develop its proposed updated shoreline plan and the Commission used it in reviewing the shoreline plan approved in the June 23 Order.

36. We disagree with Lake Murray Group's contention that the assessment is still outstanding. The filings made by SCE&G during the shoreline plan update proceeding generally comply with the conditions imposed in the 1991 shoreline plan. However, we note that, as presently compiled, SCE&G's shoreline use and management plan is not available in one comprehensive readily available document. SCE&G's shoreline plan consists of various update applications, responses to additional information requests, and rulings in Commission letters and order. For example, the most comprehensive document delineating SCE&G's land use management plan is Exhibit 1 of the application for the 1984 update.

37. We do agree that more refinement of the land classifications should be explored. Currently, approximately 60 percent of the shoreline is developed. Another 16 percent is classified for future development. Further, the Commission views land exchanges as a tool for negotiated rebalancing and not as a means of creating additional areas of future development. The Commission intends to evaluate closely all future land sales for consistency with the principles and conditions implemented in the updated shoreline plan. We will require that, as part of its relicensing application, SCE&G shall file a comprehensive, consolidated shoreline plan that consists of, among other things, an inventory of all land classifications, including all environmentally sensitive areas and buffer areas within those classifications. It should also include all the studies and plans required in the June 23 Order and this rehearing order. During the relicensing proceeding, all parties will be able to review and comment on the shoreline plan as a consolidated document. Given the complex nature of the issues involved in the Saluda

²¹ See *South Carolina Electric and Gas Co.*, 56 FERC ¶ 62,194 at 63,249-51 (1991).

²² See SCE&G's December 19, 2001 response to additional information request.

Project's shoreline plan, we conclude that the appropriate forum to address further issues concerning the plan and land reclassification and rebalancing is in the context of the comprehensive framework of the relicensing process.

H. Improperly Cleared Buffer Zones

38. The EA found that clearing of vegetation within the vegetative buffer zone by adjacent landowners is occurring along segments of Lake Murray. Ordering Paragraph (G) in the June 23 Order required that SCE&G prepare a buffer zone restoration plan for areas that have been improperly cleared by landowners including an implementation schedule. The order required that the plan be filed with the Commission within one year, and be included in the next shoreline plan, which will be considered during relicensing. The June 23 Order stated that while the plan should place an emphasis on re-naturalization (*i.e.*, ceasing cutting and mowing), it should also include new tree and shrub planting where appropriate.

39. SC Natural Resources states that the plan needs to go further than the recommended re-naturalization and new tree and shrub planting, and should address specified criteria for the restoration of natural vegetation. SC Natural Resources believes that without more definitive criteria, there will be no measure to determine if restoration of the buffer zone has actually occurred or been maintained.

40. The June 23 Order requires that SCE&G consult with SC Natural Resources in developing the plan. It also requires that SCE&G explore new tree and shrub plantings. We do not believe it is necessary to impose specific requirements for shoreline restoration now. The Commission will review the plan when it is filed and will make further determinations concerning implementation at that time.

I. Wood Stork and Bald Eagle

41. The June 23 Order pointed out that the shoreline plan did not address threatened and endangered species and that the bald eagle, a federally and state-listed endangered species, is found within the project area. Additionally, the order noted that the wood stork, also a federally and state-listed endangered species, was recently identified in the western portion of the project. The order required that SCE&G consult with FWS and SC Natural Resources concerning the protection of the peninsula north of Saluda Island and of the eastern shoreline along Big Creek, which may be sensitive habitat for these species. While consultations are proceeding, the Commission required that these areas must remain protected and undeveloped until new evidence is submitted to indicate that protection of these areas is not warranted.

42. On rehearing, SCE&G contends that this requirement is not supported by evidence in the record and goes beyond the purpose and scope of the Endangered Species Act (ESA), as well the appropriate exercise of the Commission's authority under the Federal Power Act. SCE&G argues that there is no credible evidence in the record that the wood stork is present within the project boundary. Therefore, it asserts that the Commission's decision to circumscribe any development of the peninsula north of Saluda Island and the eastern shore along Big Creek is unwarranted.

43. In a subsequent telephone conference between FWS and SCE&G, FWS confirmed that the wood stork had been sighted at Lake Murray.²³ Section 7(a)(2) of the ESA²⁴ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat. The Commission believes that it is necessary to require that SCE&G refrain from selling or developing the land in these areas until further consultation determines if the habitat needs further protection. If subsequent studies demonstrate that further protection is unwarranted, the Commission will allow SCE&G to revert these areas back to their original future development classification.

J. Hurricane Hole and Two Bird Cove/Waterfowl Hunting Area

44. The June 23 Order states that Hurricane Hole and Two Bird Cove have a unique and historical project-related recreation use as overnight anchoring areas. Therefore, we required that SCE&G designate those areas as special recreation areas.

45. On rehearing, Lake Murray Group contends that the order does not adequately protect these two areas. It argues that the Shoreline Plan should clearly state what additional measures SCE&G must implement to ensure the protection of these areas, including but not limited to: (1) prohibiting any sale of this property; (2) prohibiting new dock construction in order to avoid conflicts between recreation boaters and dock owners; and (3) maintaining the property in a natural state to provide a visual buffer from upland development.

46. As discussed above, the purpose of the 75-foot vegetative buffer is to create a vegetated, aesthetically appealing buffer between back property development and the Lake Murray shoreline. Moreover, under the shoreline plan, docks may not interfere with

²³ See August 24, 2004 FWS filing.

²⁴ 16 U.S.C. § 1536(a)(2004).

surface water activities or navigation. Therefore, we will require that SCE&G consult with South Carolina Department of Parks, Recreation & Tourism and SC Natural Resources before siting any docks in these areas to assure that adequate mooring areas are preserved.

47. SCE&G points out that the order requires that it designate Hurricane Hole and Two Bird Cove as special recreation areas that would be used for overnight anchoring of sailboats. SCE&G contends that restricting these areas to a particular type of activity to the exclusion of others impinges on the policing powers of the state of South Carolina. Further, SCE&G argues that the restriction applies to nocturnal usage and appears to ensure that the areas are only used for anchoring sailboats, leaving other boaters without equal access for their overnight stays. It claims that while the concept of the restricted use may have facial appeal, it would create an undue administrative burden for SCE&G to enforce the restriction. It requests that the Commission remove the proposed designation. The Commission's intent was not to restrict anchoring in the coves to sail boats. Therefore, we will clarify that Hurricane Hole and Two Bird Cove should be designated a special recreation areas for overnight anchoring of all types of boaters.

48. The June 23 Order also requires that SCE&G, in consultation with SC Natural Resources and FWS, designate new waterfowl hunting areas to replace those lost to land sales and development, and indicate these areas in the project's Recreation Plan. SC Natural Resources contends that just replacing the areas is not an adequate approach to protecting waterfowl opportunities on Lake Murray. It states that the best way to protect this outdoor recreation is to identify waterfowl hunting areas within the project boundary and prohibit development of adjacent shoreline areas. Specifically, SC Natural Resources recommends that SCE&G take waterfowl hunting areas that are currently in future development and reclassify them as natural areas before any future significant lands sales are approved.

49. Approximately 24 percent of the land in the project boundary is designated for forest and game management. We find that this is sufficient under the approved shoreline plan to provide adequate outdoor recreation areas, including hunting areas. We will, however, consider potential reclassification of project lands during the upcoming relicensing proceeding.

K. Compliance Filings

50. Lake Murray Group points out that the June 23 Order requires that SCE&G file certain plans within one year of the date of the order.²⁵ It argues that while the order sets a firm deadline for plan filings, the order is unreasonably vague as to when the plans actually will be implemented. The group states that the order should include a deadline for the Commission's approval of the submitted plans. Further, once each plan is approved, the Commission should require that SCE&G implement it immediately. It contends that the public interest is not served by having the plans delayed for five years until the next shoreline plan is approved and a new license is issued.

51. Once SCE&G files the required plans, the Commission will review them, require any necessary changes, and determine implementation schedules. The Commission's intent is to have the plans implemented under the current shoreline plan. Any subsequent review under the next shoreline plan would be to refine and modify the existing studies and plans based on implementation experience.

L. Pending Proceedings

52. On November 18, 2003 the Commission issued an order extending term of license which extended the expiration date of the license issued in 1984 from August 13, 2007 to August 31, 2010.²⁶ Two of the Lake Murray Group members filed a request for rehearing of that order. On March 1, 2004, the Commission issued an order approving certain lands sales on Lake Murray.²⁷ Lake Murray Group also filed a request for rehearing of the land sale order. They contend that the Commission cannot reasonably determine that the shoreline plan update serves the public interest absent a final decision on whether the existing license expires in 2007 or 2010 because they do not know if the land use classifications approved in the updated shoreline plan are to be in effect for three or seven years.

²⁵ They include: a sedimentation control plan (Ordering Paragraph (B)); stream buffer report (Ordering Paragraph (C)); an updated list of environmentally sensitive areas (Ordering Paragraph (D)); woody debris and stump management plan (Ordering Paragraph (E)); and a buffer zone restoration plan (Ordering Paragraph (G)).

²⁶ South Carolina Electric & Gas Co., 105 FERC ¶ 61,226 (2003).

²⁷ South Carolina Electric & Gas Co., 106 FERC ¶ 61,086 (2004).

53. As discussed above, the Commission finds that the shoreline plan updated in the June 23 Order adequately protects the projects resources until an updated plan is considered during the relicensing process, currently scheduled to commence in 2005. Accordingly, the expiration date of the license and the pending rehearing request in the land sale order are not determinative of the Commission action in this proceeding.

The Commission orders:

(A) The requests for rehearing filed by Lake Murray Group and SCE&G are denied.

(B) The June 23, 2004 Order is clarified, as discussed above.

(C) SCE&G shall inventory all developed shoreline within the project boundary for structural encroachments and determine if this property is still needed to serve a project purpose, during pre-filing consultation in its relicensing proceeding. Any property within the project boundary that is no longer needed to serve a project purpose should be removed from the project boundary in the licensee's application for a new license.

(D) SCE&G, in consultation with FWS and NC Natural Resource, shall update the list of environmentally sensitive areas to include shoreline within the developed areas and file it with the plan required in Ordering Paragraph (D) of the June 23 Order.

(E) Ordering Paragraph (C) is revised to state that no ground-disturbing activities, including vegetation removal, shall be permitted within the identified stream buffers.

(F) SCE&G shall file with its next updated shoreline plan a comprehensive, consolidated shoreline plan that consists of, among other things, an inventory of all land classifications, including all environmentally sensitive areas and buffer areas within those classifications. It should include management prescriptions for each classification. It should also include all the studies and plans required in the June 23 Order and this rehearing order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.