

161 FERC ¶ 62,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cube Yadkin Generation LLC

Project No. 2197-117

ORDER AMENDING SHORELINE MANAGEMENT PLAN

(Issued October 23, 2017)

1. On May 12, 2017, Cube Yadkin Generation LLC, licensee for the Yadkin Hydroelectric Project No. 2197, filed an application to amend its shoreline management plan (SMP) pursuant to Article 407 of the project license.¹ The project is located on the Yadkin River, near the City of Charlotte, in Davie, Davidson, Montgomery, Rowan, and Stanly Counties, North Carolina. The project does not occupy federal lands.

I. Background

2. During the recent relicensing of the project, the licensee filed a Relicensing Settlement Agreement (RSA) for the project on May 7, 2007. The RSA represented collective agreement among 23 entities including the prior licensee, state and federal resource agencies, the Catawba Indian Nation, local governments, homeowner's associations, and national and local nongovernmental organizations (NGOs) on a variety of issues. Regarding the SMP, the RSA committed the licensee to implementing certain modifications to the SMP within three months of the effective date of the new license, subject to Commission approval. These changes to the Yadkin Project Specifications for Private Recreation Facilities (SMP Appendix E), the Subdivision Access Approval, Multiuse Facility Permitting, and Industrial Approval Procedures (SMP Appendix F), and the Shoreline Stewardship Policy (SMP Appendix G) were developed in consultation with resource agencies and other stakeholders.

3. Commission staff analyzed these proposed changes in its Final Environmental Impact Statement (FEIS) issued April 18, 2008. In Section 3.3.8.2 of the FEIS, we concluded that, "changes to the Yadkin SMP are unlikely to affect land ownership, management, or visual aesthetics because the proposed Yadkin SMP would not allow additional large-scale development without review and permission from the Commission. Proposed changes would allow residents more flexibility in pier construction and enhancement of water views, while maintaining existing measures to ensure the forested nature of the shoreline is protected..."

¹ *Alcoa Power Generating Inc.*, 156 FERC ¶ 62,210 (2016).

4. Article 407 of the license requires the licensee to continue to implement the SMP that was modified and approved under the prior license.² Further, within two years of issuance of the new license (i.e., September 22, 2018), the licensee is required to file a revised SMP with several conditions specified in Article 407. Those specific conditions are not directly related to the SMP modifications the licensee is now proposing.

II. Licensee's Proposal

5. Even though the Commission analyzed in the FEIS the proposed changes to the SMP, the RSA was not entirely incorporated into the license and the proposed changes to the SMP were not specifically approved. In a recent stakeholder meeting regarding the SMP, the licensee states that stakeholders requested that the licensee seek Commission approval of the proposed SMP changes in advance of the next SMP update due September 22, 2018. The licensee would still file its SMP update at that time, including any changes approved in this proceeding, but requests that the Commission approve these agreed-upon changes at this time.

6. The licensee's proposed changes to the SMP include: (1) increasing flexibility in the design of private individual and shared piers; (2) allowing private piers in subdivisions developed prior to May 1, 1987, with a 50-foot lot width; (3) reducing the minimum water depth at private piers and multi-use facilities from 8 feet to 6 feet; (4) permitting boat lifts with supports resting on the reservoir bottom; (5) allowing a sitting area within the 100-foot forested setback; (6) relaxing limitations on vegetation removal in the 100-foot forested setback to improve water views, among other things; and (7) removing voluntary guidelines for timbering operations because most of the measures are already contained in the forested setback requirement. The licensee also proposes many editorial and other corrections (e.g., changing the licensee's name to reflect current ownership, correcting reservoir elevation contours, updating names and addresses, etc.) to Appendices E, F, and G. The licensee states that the proposed changes do not materially change the basic goals or provisions of the SMP or significantly alter the strength of the SMP in protecting the Project's recreational, visual, cultural, and environmental resources. The licensee states that the proposed modifications would improve the SMP's effectiveness and provide for more flexibility in considering and approving specific shoreline development proposals and requests.

III. Public Notice and Agency Consultation

7. On July 12, 2017, the Commission issued a notice of the application to amend the SMP, establishing August 11, 2017, as the deadline to file comments motions to intervene, and protests regarding the proposed changes to the SMP. No entities or

² *Alcoa Power Generating Inc.*, 93 FERC ¶ 61,152 (2000).

agencies filed a response to the public notice. In its unsolicited comments filed June 6, 2017, the High Rock Lake Association expressed support for the proposed SMP changes and urged the Commission to approve the changes without delay.

IV. Discussion and Conclusion

8. As noted in the FEIS for relicensing, the proposed changes to the SMP are designed to continue the current level of protection to the shoreline and reservoirs while providing adjoining property owners and the licensee more flexibility in considering specific shoreline development proposals and requests. We concur with Commission staff's findings in the FEIS that the proposed changes would allow adjacent landowners more flexibility in pier construction and water view enhancement while maintaining existing measures to ensure the forested nature of the shoreline is protected. Further, we find that our approval of the proposed changes at this time would allow additional landowners adjacent to the project to access project lands in an environmentally-sensitive manner without waiting until the next SMP update. Finally, many of the editorial changes to the SMP (e.g., reservoir elevations, licensee's name, etc.) would correct and otherwise facilitate clarity of the SMP to the benefit of the licensee and stakeholders. Given these reasons, and that the licensee's application is not opposed by any entities or agencies, the licensee's proposed SMP changes should be approved.

The Director orders:

(A) Cube Yadkin Generation LLC's request to amend its shoreline management plan, filed May 12, 2017, pursuant to Article 407 of the license for the Yadkin Hydroelectric Project No. 2197, is approved.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2017). 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. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

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and Compliance