

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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*Comment Date:* 5 p.m. eastern time on March 23, 2007.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-4714 Filed 3-14-07; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 349-115—Alabama]

#### Alabama Power Company; Notice of Availability of Environmental Assessment

March 9, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Martin Dam Project (FERC No. 349), and has prepared an environmental assessment (EA) for the proposal. The project is located on Lake Martin near Dadeville, in Tallapoosa County, Alabama.

In the application, Alabama Power (licensee) requests Commission authorization to permit The Pointe at Sunset Pointe, LLC (The Pointe) to install 30 boat slips as well as a pier/platform and floating-dock structure on Lake Martin, the project reservoir. These structures would serve the residents of condominiums that are located on adjoining project lands. The EA contains Commission staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal, as modified by the staff-identified alternative, would not constitute a major federal action

significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Non-Project Use of Project Lands and Waters," which was issued February 22, 2007, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the project number (prefaced by P- and excluding the last three digits) in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-4718 Filed 3-14-07; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12617-001]

#### Fall Creek Hydro, LLC; Notice Dismissing Filing as Deficient

March 9, 2007.

On January 10, 2007, Commission staff issued an order dismissing Fall Creek Hydro, LLC's (Fall Creek) application for a second three-year preliminary permit to study the proposed 4.7-megawatt Fall Creek Hydroelectric Project No. 12617, to be located at the existing U.S. Army Corps of Engineers' (Corps) Fall Creek Dam, on Fall Creek in Lane County, Oregon. On February 8, 2007, Fall Creek filed a timely request for rehearing, seeking reinstatement of its application.

Fall Creek's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.<sup>1</sup> Rule 713(c)(2) requires that a rehearing request must

<sup>1</sup> 18 CFR 385.713(c)(2) (2006). See Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663, 70 FR 55,723 (September 23, 2005), FERC Statutes and Regulations ¶ 31,193 (2005). See also, Order 663-A, effective March 23, 2006, which amended Order 663 to limit its applicability to rehearing requests. Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663-A, 71 FR 14,640 (March 23, 2006), FERC Statutes and Regulations ¶ 31,211 (2006).

include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.<sup>2</sup> Under Rule 713, any issue not so listed will be deemed waived. Accordingly, Fall Creek's rehearing request is dismissed.<sup>3</sup>

In any event, Fall Creek's arguments on rehearing are without merit. The purpose of a preliminary permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. While an applicant is not precluded from seeking and obtaining a successive preliminary permit for the same site, it must demonstrate that, under the prior permit, it pursued the proposal in good faith and with due diligence.<sup>4</sup> A permittee seeking a successive permit is therefore required to take certain minimal steps, including filing six-month progress reports and consulting with the appropriate federal and state resource agencies.<sup>5</sup>

In October 2002, Commission staff granted Fall Creek a three-year preliminary permit to study its proposed project.<sup>6</sup> Upon expiration of the first permit term, Fall Creek immediately filed its application for a second permit. Commission staff dismissed Fall Creek's application for a successive permit, concluding that Fall Creek failed to prosecute diligently the requirements of its previous permit.

On rehearing, Fall Creek contends that it has made substantial progress in analyzing the proposed project's feasibility and completing the Pre-

<sup>2</sup> As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. See Order No. 663 at P 3-4.

<sup>3</sup> See, e.g., South Carolina Electric & Gas Company, 116 FERC ¶ 61,218 (2006); and Duke Power Company, LLC, 116 FERC ¶ 61,171 (2006).

<sup>4</sup> See Little Horn Energy Wyoming, Inc., 58 FERC ¶ 61,132 (1992).

<sup>5</sup> See Burke Dam Hydro Associates, 47 FERC ¶ 61,449 (1989).

<sup>6</sup> 101 FERC ¶ 62,038 (2002).

application Document (PAD),<sup>7</sup> a step in the license application process.<sup>8</sup> As evidence of its “substantial progress” and due diligence, Fall Creek states that it made two site visits (November 2002 and July 2003) and held two meetings (May 2006 and January 2007). It also describes nine “consultations” made in preparation of its PAD, all but one of which occurred in a ten-day period after the dismissal of its permit application.<sup>9</sup> Finally it cites to 52 documents, publications, and Web sites that it reviewed in preparing its PAD. These efforts are too little, too late.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-4716 Filed 3-14-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 9, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2242-078.

c. *Date Filed:* November 24, 2006.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Carmen-Smith Hydroelectric Project.

f. *Location:* On the McKenzie River in Lane and Linn Counties, near McKenzie Bridge, Oregon. The project occupies approximately 560 acres of the Willamette National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

<sup>7</sup> The purpose of a PAD under the Commission's Integrated Licensing Process is to provide detailed information about a proposed project to enable interested entities to identify issues, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. See 18 CFR 5.6 (2006).

<sup>8</sup> Fall Creek later filed its PAD and a notice of intent to file a license application in a new proceeding (docketed Project No. 12778-000) on February 16, 2007, eight days after the filing of its request for rehearing. Finding the PAD to be deficient, partially because of Fall Creek's failure to consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, staff by letter dated February 28, 2007, gave Fall Creek 75 days to file an updated PAD or an addendum to the originally filed PAD.

<sup>9</sup> The Corps is the only consulted federal entity and the Oregon Department of Fish and Wildlife the only consulted resource agency.

h. *Applicant Contact:* Randy L. Berggren, General Manager, Eugene Water and Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440, (541) 484-2411.

i. *FERC Contact:* Bob Easton, (202) 502-6045 or [robert.easton@ferc.gov](mailto:robert.easton@ferc.gov).

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

*All documents (original and eight copies) should be filed with:* Philis J. Posey, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the “e-Filing” link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Carmen-Smith Hydroelectric Project consists of two developments, the Carmen development and the Trail Bridge development. The Carmen development includes: (1) A 25-foot-high, 2,100-foot-long, and 10-foot-wide earthen Carmen diversion dam with a concrete weir spillway, (2) a 11,380-foot-long by 9.5-foot-diameter concrete Carmen diversion tunnel located on the right abutment of the spillway, (3) a 235-foot-high, 1,100-foot-long, and 15-foot-wide earthen Smith diversion dam with a gated Ogee spillway, (4) a 7,275-foot-long by 13.5 foot-diameter concrete-lined Smith power tunnel, (5) a 1,160-foot-long by 13-foot-diameter steel underground Carmen penstock, (6) a 86-foot-long by 79-foot-wide Carmen powerhouse, (7) two Francis turbines each with a generating capacity of 52.25 megawatts (MW) for a total capacity of 104.50 MW, (8) a 19-mile, 115-kilovolt (kV) transmission line that connects the Carmen powerhouse to the Bonneville Power Administration's Cougar-Eugene transmission line, and (9) appurtenant facilities.

The Trail Bridge development includes: (1) A 100-foot-high, 700-foot-long, and 24-foot-wide earthen Trail

Bridge dam section with a gated Ogee spillway, (2) a 1,000-foot-long and 20-foot-wide emergency spillway section, (3) a 300-foot-long by 12-foot-diameter concrete penstock at the intake that narrows to a diameter of 7 feet, (4) a 66-foot-long by 61-foot-wide Trail Bridge powerhouse, (5) one Kaplan turbine with a generating capacity of 9.975 MW, and (6) a one-mile, 11.5-kV distribution line that connects the Trail Bridge powerhouse to the Carmen powerhouse.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) Bear in all capital letters the title “PROTEST” or “MOTION TO INTERVENE;” (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each