

UNITED STATES OF AMERICA 132 FERC ¶ 62,045  
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Carolinas, LLC

Project No. 2503-134

ORDER MODIFYING AND APPROVING UPDATED RECREATION  
MANAGEMENT PLAN

(Issued July 19, 2010)

1. On December 23, 2008, Duke Energy Carolinas, LLC (Duke), licensee for the Keowee-Toxaway Project (FERC No. 2503), filed a recreation management plan (plan) pursuant to ordering paragraph (C) of Order Modifying and Approving Shoreline Management Plan.<sup>1</sup> The project is located on the Keowee, Little, Whitewater, Toxaway, Thompson and Horsepasture Rivers, all tributaries of the Savannah River, in Oconee and Pickens Counties, South Carolina and Transylvania County, North Carolina.
2. Ordering paragraph (C) requires the licensee to file, for Commission approval, an updated plan to manage the project's recreational resources based on the results of the project's completed Recreation Use and Needs (RUN) study. In general, the plan is to include: (1) a description of existing public recreation measures and recreation/access facilities; (2) any proposed changes to new or existing recreation measures and recreation/access facilities; (3) provisions to monitor recreation use and activities at the project through the remainder of the license term; and (4) appropriate maps or drawings showing the type and location of existing or proposed public recreation features.
3. The plan is to be prepared in consultation with the U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; U.S. Forest Service; Eastern Band of Cherokee Indians; North Carolina Departments of Parks and Recreation and Water Resources; North Carolina Wildlife Resources Commission (NCWRC); North Carolina Wildlife Federation; South Carolina Departments of Natural Resources (SCDNR); Parks, Recreation, and Tourism (SCPRT); and Archives and History; South Carolina Wildlife Federation; Pickens County, South Carolina; Oconee County, South Carolina; Clemson University Department of Parks, Recreation, and Tourism Management; and Friends of Lake Keowee Society (FOLKS).

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<sup>1</sup> Issued on May 25, 2007 (119 FERC ¶ 62,165).

## DESCRIPTION OF THE PLAN

4. The licensee's plan includes a detailed description of the recreation goals and objectives for the project, as well as the proposed plans for the 18 existing recreation sites in the project area. The plan also includes provisions for ongoing recreation use monitoring, and a description of the management policies associated with Duke operated/managed recreation sites, as well as sites associated with Duke's Access Area Improvement Initiative (AAII). The AAII is a mechanism by which Duke may partner with (state or local government) entities to provide additional or enhanced recreation opportunities.<sup>2</sup>

5. Duke would continue to monitor recreation use through the remainder of the license term (which ends in 2016) and prepare an annual "recreation activities status report" to keep the appropriate organizations, tribes, federal, state, and local agencies, involved during the continued development of recreational facilities and management guidelines. Further, all proposals submitted under the AAII would undergo a review process involving site planning; and review by federal, state and local agencies, and other interested organizations, prior to submission of the proposal to the Commission for final approval.

6. Based on the results of the RUN study, the licensee determined whether, and in what capacity, recreational improvements are needed; and would be made to each recreation site in the vicinity of the project. No improvements are proposed for the following sites: (1) Toxaway River Foothills Trail Access Area; (2) Horsepasture River Foothills Trail Access Area; (3) Laurel Creek Foothills Trail Access Area; (4) the undeveloped access areas (Handpole, Grindstone, and Bootleg) on Lake Jocassee; (5) World Energy Picnic Area; and (6) High Falls County Park.

7. The licensee proposes to complete various improvements at the remaining sites, based on average user capacity and the recommendations of visitors. Examples of the facility enhancements include, but are not limited to, extension of existing boat ramps; expansion of parking facilities; and the addition of courtesy docks, fishing piers, picnic areas, lighting, and signage. Several of these sites are owned and managed by the licensee (i.e., Fall Creek, Crow Creek, Keowee Town, Stamp Creek, and Cane Creek Access Areas), while others have been leased to other entities through the AAII (e.g.,

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<sup>2</sup> If state or local government agencies are not able to accept the leases under the AAII program, Duke then offers these leases to the private sector for the development of public lake access and use sites. The AAII program was developed as an outgrowth of its lease program and the recreation management system, during the establishment of the approved shoreline management plan.

Devils Fork State Park, Warpath Access Area, Mile Creek County Park, and South Cove County Park). Further, the Keowee Toxaway State Natural Area, which was donated to SCPRT by Duke in 1970, is located in the vicinity of the project but is not considered a project recreation area as the site is owned, operated, and managed by SCPRT. Improvements are proposed at this site, though an agreement between SCPRT and Duke has not yet been reached.

8. The licensee's filing also includes a description of each public recreation site, the results of the RUN Study, visitor feedback, conceptual maps, a tentative schedule for completion of the proposed improvements by 2016, and documentation of agency consultation.

#### AGENCY CONSULTATION

9. The licensee distributed a draft of the plan to the appropriate agencies for review, and held a meeting with interested stakeholder groups to review and receive comments on the draft plan.<sup>3</sup> During the agency comment period, NCWRC, SCDNR, AQDI, Oconee County, SCPRT, Pickens County, and FOLKS submitted comments. Once the final plan was filed with the Commission, additional comment letters were submitted by SCPRT, ADQI, FOLKS, the North Harbour Owner's Association (NHOA), and Mountain Lakes Community Association (MLCA).

10. Generally, the entities consulted express support of the plan, and the licensee incorporated or otherwise addressed most of the comments that were submitted. However, several agencies recommend supplementary improvements, in addition to those proposed by the licensee.

11. By letter dated September 9, 2008, SCDNR recommends additional facilities to improve access to Lake Jocassee, as well as additional fishing enhancements at Crow Creek, Mile Creek, and Cane Creek on Lake Keowee. Similarly, on September 12, 2008, SCPRT suggests that the licensee install a new boat launch, picnic shelter, and fishing pier at Devils Fork State Park (Devils Fork).

12. The licensee states that the plan proposes high priority facility enhancements on Lake Jocassee, including extending boat ramps and providing restrooms at Devils Fork. With respect to Lake Keowee, Duke further notes that approximately seven miles of shoreline are available (unless specifically noted otherwise) for boat-in and foot

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<sup>3</sup> In addition to the agencies required by ordering paragraph (C), the licensee gave 10 other agencies/organizations the opportunity to participate in the plan consultation process, including the National Park Service, North Carolina Department of Cultural Resources, and Advocates for Quality Development Inc. (AQDI), to name a few.

accessible fishing. Further, the proposed plan provides for enhanced bank fishing opportunities and/or a new fishing pier at the Fall Creek, Cane Creek, and Stamp Creek Access Areas; and five of the Duke-owned access areas currently leased to others either currently provide, or propose to provide, bank/pier fishing opportunities. Based on the information above, the licensee does not plan to construct additional facilities at this time; however, Duke does agree to consider additional enhancements to project recreation sites as part of ongoing recreation planning.

13. The SCDNR also submits comments noting that it has assisted with navigational safety by providing hazard markers and other signage, as necessary; though its ability to continue to provide this assistance in the future is uncertain. As such, SCDNR suggests that Duke address navigational safety features as part of the plan. The licensee responds that such features are not considered recreation facilities and therefore are not included in the plan.

14. On September 15, 2008, FOLKS submits a series of comments, including the following: (1) Duke should accelerate the implementation of proposed improvements, starting with those at Cane Creek; (2) there is the potential for “commercialization” of access areas under the current provisions of the AAIL; and (3) greater attention should be given to litter collection at the public access areas during peak usage periods and on islands. The licensee acknowledged these comments but did not determine that any changes were necessary.

15. After the plan was filed with the Commission both FOLKS and ADQI, in letters submitted on January 19 and 29, 2009 respectively, reemphasized concerns about boating density/navigational aids, and high-density development proposals that could potentially be submitted as part of the AAIL. FOLKS also made additional suggestions for managing runoff near boat ramps and parking lots. By letters dated February 3, 2009, NHOA and MLCA expressed support of ADQI’s comments and concerns. On February 17, 2009, SCPRT submitted another comment letter in support of the plan.

## DISCUSSION

16. Based on staff’s review, the licensee’s proposed plan meets the requirements of ordering paragraph (C). However, a few outstanding issues remain.

### Additional Facilities/Enhancements

17. As noted above, SCDNR and SCPRT recommend additional recreation facilities to supplement those proposed by the licensee. The licensee acknowledged these suggestions, yet decided that said facilities were not necessary at this time. Based on the information provided, we agree that the existing and proposed facilities are adequate to meet the demand of recreating users. Of the specific sites mentioned by SCDNR, new fishing access sites are proposed for two of the three sites (Crow and Cane Creek);

whereas the primary recreational improvements suggested by visitors for the third site (Mile Creek Access Area) are related to boating access.

18. With respect to Devils Fork, we find that additional facilities (i.e., fishing pier, picnic area, and/or boat launch) may be warranted, as it is currently the only developed public access site on Lake Jocassee.<sup>4</sup> It is unclear, however, based on the information provided whether development and installation of additional facilities at Devils Fork is necessary or feasible at this time, given the number of improvements already proposed project-wide. The overall scale and cost of the project-wide improvements may make it difficult for the licensee to provide any additional facilities prior to the expiration of the project license. With a large number of public access sites it is often necessary to prioritize the recreational improvements needed throughout the project to promptly meet the most immediate needs of the recreating public. Therefore, the licensee should monitor the site annually, in cooperation with SCPRT (the site lessee) to determine the feasibility and level of public interest in providing these additional enhancements to Devils Fork.<sup>5</sup>

#### Oversight and Management of Recreation Areas

19. Several entities express concern about future oversight of public access sites, particularly related to AAI proposals. While entities are not precluded from submitting high-density facility proposals as part of the AAI process, the licensee specifies that the applicant would have to document an existing public need for the planned facilities. Further, the consultation process required by Duke would give the appropriate entities the opportunity to assess potential impacts and provide comments prior to filing the proposal with the Commission for final approval. We also note that commercial lodging facilities (i.e. hotels) are generally not considered public recreation features, and if present, are often located outside the project boundary (e.g. Warpath Access Area).<sup>6</sup>

20. The licensee is ultimately responsible for oversight and management of project recreation sites, including those sites that are currently, or will potentially be, leased to another entity through the AAI. While the licensee may choose to transfer certain duties to an AAI Partner (lessee), please note that Duke is accountable for carrying out these duties should the lessee fail to do so. As such, the licensee is expected to ensure that

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<sup>4</sup> Particularly, boat ramps and fishing access, as these types of facilities were recommended by both SCPRT and recreational users during the RUN study.

<sup>5</sup> This monitoring can be done in conjunction with the annual monitoring proposed for the undeveloped access sites on Lake Jocassee.

<sup>6</sup> See 115 FERC ¶ 62,327 (2006).

lessees adhere to the management policies described in the plan, as well as the applicable requirements of the project license, including the project's Programmatic Agreement (PA) on cultural resources, which was executed on May 25, 2007.

21. The SCDNR, ADQI, and FOLKS request that navigational aids and boating capacity be addressed as part of Duke's responsibilities for oversight of public access sites. We find these issues to be outside the scope of the plan and the measures required by ordering paragraph (C). However, in accordance with its' responsibilities under section 2.7 of the Commission's regulations, the licensee should work closely with the SCDNR, and other agencies as needed, to ensure that navigation markers/signage associated with project recreation sites are provided, to the extent necessary to ensure the safety of recreating users.

22. FOLKS also recommends that the licensee give greater attention to litter control and runoff associated with boat ramps. FOLKS comments are general in nature, and did not give details about existing problems at any particular site, however, we agree that management of litter and runoff associated with boat ramps are part of the licensee's responsibilities. As such, Duke is reminded that section 2.7(f)(2) of the Commission's regulations state that the licensee is expected to provide, either by itself or through arrangements with others, for the proper processing of litter, and other wastes (including wastes from watercraft), at recreation facilities maintained and operated by the licensee or concessionaries.

#### Scheduling and Improvement Details

23. While the proposed improvements would enhance existing project recreation areas and meet the needs of the recreating public, additional information is necessary to ensure that these improvements would be developed accurately and in a timely manner. FOLKS requests that the licensee accelerate the implementation of the plan but provides no site-specific information to support why such changes are necessary. Therefore, within 45 days the issuance date of this order, the licensee should file an updated schedule outlining the projected completion dates for the planned improvements.

24. Though the plan includes area maps, descriptions, and representative drawings of the existing and proposed facilities, detailed design drawings of the proposed recreation enhancements are absent. Consequently, it is difficult for staff to determine the size, location, and lay-out of the proposed facilities, as well as the amount of ground disturbance necessary for construction and installation. Therefore, the licensee should file site plans for each recreation area, with detailed drawings of the proposed facility enhancements, at least 60 days prior to ground-disturbing activities. The site plans should contain, at a minimum: (1) maps of each recreation site, as appropriate, showing the type and location of existing and proposed recreation facilities; (2) detailed drawings of each proposed recreation facility/enhancement; and (3) descriptions of any mitigation

measures necessary to protect project resources during construction and restore the site once construction is complete. The Commission should reserve the right to require changes to the site plans, as necessary, to ensure the protection of project resources and adherence to the proposed plan.

25. Pursuant to sections 4.39 and 4.41 of the Commission's regulations, the licensee is required to ensure that all project recreation sites and features are located within the project boundary. Based on staff review of the project exhibit G drawings, 12 of the 18 existing recreation sites are currently identified. Therefore, the licensee is reminded to conduct a review of the project exhibit drawings and to submit updated Exhibit G (project boundary) drawings, as necessary.

26. After proposed permanent recreation facilities are constructed, the licensee should submit drawings showing the location, type and layout of the completed facilities, as built. Due to the magnitude of the improvements proposed by Duke, these drawings can be filed on an annual basis by December 31 of each year (starting in 2011) until all the proposed facilities have been constructed. In order to accurately include these recreation facilities in the Commission's geographic database for the project, the licensee should also file site-specific information on their location.

## CONCLUSION

27. Implementation of the plan would allow for greater public access to project lands and waters, and additional recreational opportunities. The proposed enhancements would benefit the general public and comply with all applicable local, state, and federal guidelines. The management policies proposed by the licensee would ensure that recreation enhancements would not be incompatible with project purposes, or be constructed in a manner that would adversely affect project resources.

28. With the modifications stated above, the plan adequately meets the requirements of ordering paragraph (C), and should be approved

### The Director orders:

(A) The updated recreation management plan for the Keowee-Toxaway Hydroelectric Project, filed on December 23, 2008, as modified by ordering paragraphs (B), (C), (D), (E), and (F) is approved.

(B) The licensee shall monitor Devils Fork State Park, annually in cooperation with the South Carolina Department of Parks, Recreation and Tourism, to determine the feasibility and level of public interest in providing additional recreation facilities at the site in the future. The results of monitoring shall be included in Duke's annual recreation activities status report identified in the plan approved by ordering paragraph (A).

(C) Within 45 days of the issuance date of this order, the licensee shall file an updated schedule outlining the projected completion dates for each of the proposed improvements identified in the plan approved by ordering paragraph (A).

(D) At least 60 days prior to the start of ground-disturbing activities, the licensee shall file site plans for each project recreation area, with detailed drawings of the proposed facility enhancements. The site plans shall contain, at a minimum: (1) maps of each recreation site, as appropriate, showing the type and location of existing and proposed recreation facilities; (2) detailed drawings of each proposed recreation facility/enhancement; and (3) a description of any mitigation measures necessary to protect project resources during construction and restore the site once construction is complete. The Commission reserves the right to require changes to the site plans, as necessary, to ensure the protection of project resources and adherence to plan approved by ordering paragraph (A).

(E) By December 31 of each year, starting in 2011, the licensee shall file with the Commission, for approval, as-built drawings of the recreation facilities identified in the plan approved by ordering paragraph (A), as the facilities are completed during each calendar year. The drawings shall show the location, type and layout of the facilities in relation to the project boundary.

(F) Within 120 days of the issuance date of this order, the licensee shall file location point data representative of each facility provided by the recreation plan approved in ordering paragraph (A). The location points must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location points must include latitude/longitude in decimal degrees based on the horizontal reference datum of the North American Datum of 1983 (NAD 83).

(G) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 CFR § 385.713.

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Chief, Land Resources Branch  
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Administration and Compliance

Document Content(s)

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