

137 FERC ¶ 62,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company

Project No. 2165-040

ORDER MODIFYING AND APPROVING RECREATION PLAN PURSUANT TO
ARTICLE 415

(Issued December 29, 2011)

1. On March 31, 2011 and supplemented on December 1, 2011, Alabama Power Company (Alabama Power), licensee for the Warrior River Hydroelectric Project (FERC No. 2165), filed a recreation plan, pursuant to article 415 of the March 31, 2010 license.¹ This project includes the Lewis Smith (Smith) and John Hollis Bankhead (Bankhead) developments. The Smith development is located on the Sipsey Fork in the headwaters of the Black Warrior River in Cullman, Walker, and Winston counties, Alabama. The Bankhead development is located downstream of the Smith development on the Black Warrior River in Tuscaloosa County, Alabama. The Smith development occupies 2,691.44 acres of federal lands administered by the U.S. Forest Service (Forest Service), and the Bankhead development occupies 18.7 acres of federal lands administered by the Bureau of Land Management.

BACKGROUND

2. Article 415 of the project license requires the licensee to file a recreation plan within one year of the issuance of the license. The recreation plan is required to include the following: (1) a description of the three project recreation sites (Alabama Power boat launch area located at Smith Lake, Smith Lake Visitor Center, and Smith dam tailrace area; (2) at the Alabama Power boat launch area, provisions for an additional boat launch, courtesy dock, and expansion of the parking lot; (3) an evaluation of the existing signage at the project recreation sites for accuracy of information and a revision of the signs if needed; and (4) the Section 7-Handicapped Hunting Areas described in article 414.² The

¹ See Order Issuing New License, 130 FERC ¶ 62,271.

² Article 414 requires the licensee to include provisions for Section 7-Handicapped Hunting Areas (i.e., construct a shooting house downstream of Smith dam designed to accommodate disabled hunters, and if needed build and maintain a road to access the shooting house or houses) in the project recreation plan required in Article 415. Flexibility was provided for the licensee to initially construct one shooting house and add

(continued)



recreation plan is also required to include: (1) design drawings of the new recreation measures; (2) a description of soil erosion and sediment control measures to be used where ground-disturbing activities are proposed; (3) a discussion of how the needs of the disabled were considered in the planning and design of the recreation facilities; (4) an operations and maintenance cost for each facility; and (5) an implementation schedule. The plan is to be prepared in consultation with the Alabama Department of Conservation and Natural Resources (ADCNR) and the U.S. Fish and Wildlife Service (FWS).

PROPOSED RECREATION PLAN

3. The recreation plan addresses the recreation requirements of article 415 and 414, in part. Appendices to the recreation plan include a summary of consultation, photographs of existing project signage, and as-built and/or concept design drawings of all recreation sites in relation to the project boundary.
4. According to the March 31 filing, Lewis Smith Lake extends 35 miles upstream from the dam, with a surface area of 21, 200 acres and approximately 660 acres of shoreline at a normal water surface elevation of 510 feet mean sea level (msl). Popular activities include fishing, pleasure boating, water skiing, and swimming. No formal recreation facilities are associated with the Bankhead development.
5. There are currently three recreation sites on project lands, all located at the Smith development. The Alabama Power boat launch (owned by Alabama Power and leased to the ADCNR) has three boat launches, two courtesy docks, and a parking area with one barrier-free and 43 parking spaces for vehicles with trailers. Alabama Power would share long-term heavy maintenance and construction with the ADCNR and would continue to conduct day-to-day maintenance. Estimated annual cost for operation and maintenance is \$15,000.
6. The Smith Lake Visitors Center houses interpretive displays and restroom facilities. The Smith dam tailrace area provides access to a fishing platform, two picnic tables, and a shelter. These two facilities share a parking area with three barrier-free and 22 vehicle spaces. Alabama Power would continue to be responsible for the operation and maintenance of the visitor center and tailrace fishing area with estimated annual costs of \$5,000 and \$12,000, respectively.
7. Proposed recreation site improvements within the project boundary include (1) the addition of 44 vehicle with trailer spaces, with at least three Americans with Disabilities Act (ADA) compliant spaces, at the Alabama Power boat launch parking lot (estimated cost of \$250,000; and (2) construction of a barrier-free hunting area consisting of one shooting house, food plots, and road access (as necessary) (estimated costs of \$9,500 for a second house later as needed.

construction and continued operation and maintenance). The need for a second shooting house would be assessed in 2014 in consultation with ADCNR. ADCNR would be responsible for supervision of hunting activities at the barrier-free hunting area. As discussed below, the boat launch and courtesy dock at the Alabama Power boat launch area were constructed in 2006.

8. In accordance with the requirements of Title 18, Part 8, Section 2 of the Code of Federal Regulations (18 CFR 8.2), Alabama Power proposes to conduct an annual inventory of project signage at recreation sites and provide a report to the consulting agencies upon request. The annual inventory would ensure that signs are well maintained and replaced as needed.

9. To consider the needs of persons with disabilities, Alabama Power proposes to construct a barrier-free hunting area and to increase the number of ADA compliant parking spaces from one to at least four at the Alabama Power boat launch area. Alabama Power constructed the walkway to the new courtesy dock at the Alabama Power boat launch area so that the dock is accessible at full pool level (510 msl).³ Existing and future access needs at Smith Lake would be analyzed at full pool elevation.

10. Alabama Power proposes several measures for erosion and sedimentation control. Alabama Power staff would review plans that include land disturbing activities and recommend best management practices, such as silt fencing, straw wattles, temporary grassing, and disturbance minimization. For land disturbance that equals or exceeds an acre, a construction permit would be required, followed by monitoring and record keeping by Alabama Power until the site is stabilized and the permit terminated. Alabama Power proposes to conduct agency consultation for any recreation site improvements involving shoreline stabilization projects in areas designated as "sensitive resources" in the project's shoreline management plan.⁴

11. The implementation schedule for the proposed recreation improvements and sites would be as follows: expand the parking lot at Alabama Power boat launch within two years of approval of the recreation plan; construct one barrier free shooting house, plant food plots, and construct road access within one year of plan approval; consult with ADCNR by December 31, 2014 regarding the need for an additional shooting house at Smith Barrier-Free Hunting Area; and complete an additional shooting house (if needed) by December 31, 2015. Additional proposed timeframes include assessment of the project recreation site signage associated with 18 CFR 8.2 and annual consultation with

³ The Smith development is operated near target elevation 510 msl during spring/summer (April 1 to June 30) to provide recreational opportunities at the lake.

⁴ Alabama Power filed the project's shoreline management plan with the Commission on June 30, 2011.

ADCNR to discuss recreation access at Smith development by December 31 during the life of the license. By March 31 during the life of the license, Alabama Power proposes to file a recreation plan addendum with the Commission if there are changes to the proposed recreation improvements and facilities resulting from consultation with ADCNR; documentation of consultation, implementation, scheduling, photographs, and "as-built" drawings of recreation facilities would be provided. The first addendum is proposed for March 2012.

AGENCY CONSULTATION

12. Alabama Power submitted the final draft of the recreation plan on February 3, 2011, to ADCNR and FWS and requested comments by March 7, 2011. By email dated December 17, 2011, ADCNR-Fisheries Section responded that they had minor edits/comments to the recreation plan and that a memorandum of understanding confirming Alabama Power's commitment to complete the recreation improvements not addressed in the license would be desirable. By letter dated February 24, 2011, FWS responded in support of the recreation plan. FWS also stated that before any new or existing shoreline recreational site improvements or development is conducted, consideration of the presence or absence of the flattened musk turtle and its habitat be thoroughly evaluated; FWS also encouraged Alabama Power to develop a fact sheet or other education material for the flattened musk turtle and the Alabama streak sorus fern to be displayed and distributed at the Smith Lake Visitor Center or other appropriate location. Alabama Power responded that it would consult with the appropriate agencies for any recreation improvements that include shoreline stabilization projects that involve resources classified as "sensitive" in the project's shoreline management plan and would work with FWS to identify appropriate education materials and the best method of dissemination.

13. ADCNR provided minor edits via email dated March 4, 2011. By email dated March 7, 2011, ADCNR-Wildlife pointed out that Alabama Power and ADCNR had originally discussed two barrier-free shooting house sites, but only one was addressed in the recreation plan. ADCNR also recommended adding ADCNR developed "PDHA" (physically disabled hunting area) signage along the boundary of the accessible hunting area. Alabama Power addressed the minor edits, FWS comments, and ADCNR's discussion of a second shooting house in the recreation plan. Alabama Power did indicate that, due to the location of the barrier-free hunting area, it does not deem the PDHA signage necessary along the hunting area boundary but will provide signage according to Part 8 requirements and continue to consult with ADCNR regarding the need for additional signage.

DISCUSSION

14. Article 415 requires, in part, that the licensee construct a new boat launch and courtesy dock at the Alabama Power boat launch area. While this provision was proposed as a recreation improvement by the licensee in its 2005 application for a new

license, it was not addressed in the filed recreation plan. Commission staff requested additional information, and Alabama Power responded in its December 1, 2011 supplemental filing that it had built the boat launch and courtesy dock at the Alabama Power boat launch area in 2006, based on public use needs at that time. The launch meets public use needs and serves as a staging and collection area for lake clean-up activities. The provision of the boat launch and courtesy dock meets the requirements of article 415.

15. The consulting agencies had minor edits and few comments on the recreation plan, which were adequately addressed by Alabama Power. Alabama Power proposes to continue to consult with ADCNR annually regarding recreation improvements and facilities. The licensee is reminded that article 415 requires consultation with both ADCNR and FWS on the recreation plan; therefore, the licensee should continue to include FWS in its consultation processes specific to the recreation plan and any needed updates.

16. In its response to the recreation plan, ADCNR indicated that locations for two shooting houses for the barrier-free hunting area had originally been identified and recommended installing ADCNR developed "PDHA" signage along the boundary of the accessible hunting area. Alabama Power proposes to construct the first shooting house and continue consultation with ADCNR regarding the need for a second shooting house in the barrier-free hunting area; consultation would be conducted by December 2014 and, if needed, construction of a second shooting house scheduled for completion by December 2015. Alabama Power also proposes to install Part 8 signage at the barrier-free hunting area and continue to consult with ADCNR regarding the need for additional signage. If a need is determined, Alabama Power would work with ADCNR on the type and location of signage to be installed. Commission staff concurs with the proposed plan and schedule to determine the need for a second shooting house prior to construction and finds the licensee's proposal for further consultation with ADCNR regarding signage reasonable.

17. Alabama Power performed an inventory of signage at the project recreation sites, according to the requirements of Title 18, Part 8, Section 2 of the Code of Federal Regulations (18 CFR 8.2). From photographs provided in the recreation plan appendices, it appears that the current signage meets the federal code requirements.

18. Article 415 does not specify any reporting or update requirements for the recreation plan. For informational purposes, Alabama Power proposes to provide a recreation plan addendum by March 31 during the life of the license if there are changes to the proposed recreation improvements and facilities resulting from consultation with ADCNR; documentation of consultation, implementation, scheduling, photographs, and "as-built" drawings of recreation facilities would be provided. If future proposals modify or increase project recreation sites, Alabama Power proposes to file appropriate documentation with the Commission, for approval, prior to construction. As proposed, the annual reports would provide useful information to the Commission; however, less

frequent reports, filed for Commission approval, would accomplish the same outcome and minimize the administrative burden for the licensee and Commission. Given the conditions outlined for providing a recreation plan addendum, it is possible that a recreation plan addendum may not be filed over a several year period. Instead, Alabama Power should file, for Commission approval, a recreation plan update every six years in conjunction with the FERC Form 80. The update should address current use of the existing recreation facilities, projected future needs, proposed new recreation facilities or improvements, how the needs of persons with disabilities are considered in the construction and operation of proposed recreation facilities, and scheduling. The recreation plan update should be completed after consultation with ADCNR and FWS. Documentation, including copies, of consultation should be included in the update. The first update would be due by April 1, 2015. If there are proposed changes to existing recreation facilities or proposed new facilities, which occur prior to the next due date for the recreation plan update, the licensee should file, for Commission approval, an application to amend the recreation plan.

19. The recreation plan meets the requirements of article 415. The licensee is providing adequate recreation opportunities for public use to support the recreational purposes of the project. The proposed recreation plan does not interfere with the environmental purposes of the project or project operations. The licensee's recreation plan meets the requirements of article 415 and, with the above modification, should be approved.

20. In order to ensure that the proposed recreation facilities and improvements are completed as described in the plan, the licensee should file as-built drawings showing the type and location of the completed recreation facilities and improvements in relation to the project boundary. Photographs showing the location and text of all signage should also be filed for Commission approval. In order to update the Commission's files with the locations of the recreation sites in this approved recreation plan, ordering paragraph (D) requires the licensee to provide geographical location point data to the Commission.

The Director orders:

(A) Alabama Power Company's Recreation Plan for the Warrior River Hydroelectric Project (FERC No. 2165), filed on March 31, 2011 and supplemented on December 1, 2011, as modified by paragraph (B), is approved.

(B) The licensee shall file, for Commission approval, a recreation plan update in conjunction with the FERC Form 80. The recreation plan update shall address, minimally, current use of the existing recreation facilities, projected future needs, proposed new recreation facilities or improvements, how the needs of persons with disabilities are considered in the construction and operation of proposed recreation facilities, and scheduling. The licensee shall prepare the update after consultation with the Alabama Department of Conservation and Natural Resources and U.S. Fish and

Wildlife Service. The licensee shall include with the recreation plan update documentation of consultation, copies of comments and recommendations on the completed update after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated in the update. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the update with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information. The Commission reserves the right to require changes to the recreation plan update.

(C) Within 90 days of completion of the construction of the proposed recreation facilities, the licensee shall file, for Commission approval, as-built drawings for each of the facilities described in the approved Recreation Plan. The drawings shall show the type and location of the facilities in relation to the project boundary. Photographs showing the location and text of signage shall also be included.

(D) Within 45 days of issuance of this order, the licensee shall file location point data representative of each of the facilities approved in the Recreation Plan. The location point must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point must include latitude/longitude, in decimal degrees, based on the horizontal reference datum of the North American Datum of 1983 (NAD 83).

(E) 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 FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2011). 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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Administration and Compliance