

186 FERC ¶ 62,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy South Carolina, Inc.

Project No. 516-513

ORDER APPROVING NON-PROJECT USE OF PROJECT LANDS AND WATER

(March 25, 2024)

1. On September 9, 2022, Dominion Energy South Carolina, Inc., licensee for the Saluda Hydroelectric Project No. 516,¹ filed an application, for a non-project use of project lands and water, requesting Federal Energy Regulatory Commission (Commission) approval to grant the City of West Columbia (City), South Carolina, permission to construct a new 42-inch raw water conveyance pipe parallel to the existing main and potable water lines, and replace two pumps within the existing raw water building. Once completed, the City proposes to increase its maximum water withdrawal rate from Lake Murry for drinking water demand. The Saluda project is located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, South Carolina. The existing facility is located in Lexington County. The project does not occupy federal lands.

Licensee's Proposal

2. The City currently operates an intake facility on the shore of Lake Murray with an approved maximum withdrawal volume of 48 million gallons per day (mgd). The intake facility withdrawals water from the lake and conveys it to a drinking water treatment plant located outside of the project boundary. Based on the City's modeling of population growth and increase in potable water demand, an increase to 72 mgd is proposed. In order to provide 72 mgd to the treatment plant, the City proposes to replace two of its raw water pumps in the existing intake facility building and; construct a new 42-inch raw water conveyance pipe parallel to the existing main and potable water lines.

Construction

3. Pump replacement activities would not require any construction activities outside of the existing building. In order to convey water from the raw water intake facility to the water treatment plant, the City proposes to install a new 42-inch conveyance pipe that would lay adjacent to the existing 36-inch conveyance pipeline and accompanying 8-inch potable water line within the same trench. In order to achieve this, the City would

¹ Order Issuing New License (27 FERC ¶ 61,332), issued June 1, 1984.

excavate a trench alongside the existing water conveyance pipeline and install the new 42-inch line. The new conveyance line would run approximately 1500 feet from the raw water intake facility to the treatment plant, of which approximately 300 feet would be within the Saluda Hydroelectric Project boundary. Land disturbance for the trenching within the project boundary would consist of approximately 1,650 square feet.

Environmental Measures

4. Construction activities necessary for the installation of the proposed additional raw water conveyance line could create stormwater runoff, which could affect water quality in Lake Murray through an increase in turbidity. The City proposes to mitigate this potential by implementing the stormwater management and sediment control requirements set forth by South Carolina Department of Health and Environmental Control (South Carolina DHEC),² including the development of stormwater management and control plan(s), as well as any provisions of requirements set forth by the U.S. Army Corps of Engineers (Corps) pursuant to section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act.³ Further, the potential exists to disturb sediments within the area of the intake structure because of an increased withdrawal rate. However, the City determined that during operation of the intake at larger flow rates, any increases in turbidity from an increased area of influence around the intake are not expected to exceed the State of South Carolina water quality standard applicable to Lake Murray of 25 Nephelometric Turbidity Units. The approach velocity at the intake screen would not exceed 0.5 feet per second (fps) to reduce the potential for impingement and entrainment of aquatic organisms.⁴

Pre-Filing Consultation

5. Prior to filing its application with the Commission, the City, on behalf of the licensee, consulted with the Corps, U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), South Carolina Department of Natural Resources

² South Carolina DHEC administers the state of South Carolina's stormwater management and sediment control program as defined under South Carolina Regulation 72-300- Standards for Stormwater Management and Sediment Reduction.

³ At the time of its application, the City was waiting for the Corps to determine which permit(s) issued under its authority are applicable to the proposed action. The City commits to obtaining the necessary approvals regarding stormwater management and sediment controls as required by the South Carolina DHEC for the proposed action.

⁴ See discussion regarding intake screen bar spacing and intake velocities in the Pre-Filing Consultation section of this order.

(South Carolina DNR), South Carolina State Historic Preservation Office (SHPO), and Catawba Indian Nation on the proposed action. Documentation of these consultation efforts are included in the licensee's September 9, 2022 filing with the Commission.

6. On March 30, 2022, the City provided the above mentioned parties a description of the proposed action, including an analysis of potential environmental effects of the proposed action. By letter dated April 6, 2022, the SHPO concurred with the City's determination that the proposed action would not affect any historic properties. The SHPO reminded the City of its obligations to contact it immediately if any archaeological materials are encountered during construction.

7. By letter dated April 7, 2022, FWS had no objections to the proposed action and included comments regarding a timing restriction for in-water activities to avoid spring fish spawning season (March-May), although the City's application does not propose any in-water work.

8. On April 29, 2022, both NMFS and South Carolina DNR provided comments regarding intake screening at the raw water intake. While the City's drawing included in the licensee's initial filing proposes an intake screen with 3/8-inch bars and 3.625-inch spacing (as is the current intake screen's configuration), both agencies recommend an intake screen opening of 0.1 inch. NMFS and South Carolina DNR indicate that the current configuration is designed to exclude debris and adult fishes but is not adequate to exclude larval fish and eggs that could be fatally entrained through the intake. Both agencies cite the U.S. Environmental Protection Agency standard for limiting through-screen design in accordance with Section 316(b) of the Clean Water Act.

9. South Carolina DNR also recommended a lower intake velocity than is proposed. The City proposes an intake velocity of 0.5 fps, or less. EPA through-screen intake velocity in accordance with Section 316(b) of the Clean Water Act is 0.5 fps, or less. South Carolina DNR, however, recommends an approach velocity of 0.25, or less. In NMFS' consultation, it notes that the City modeled various scenarios and calculated an intake velocity of 0.189 fps under the proposed increased withdrawal rate, which is below the 0.25 fps recommended by these agencies, and further below the EPA standard of 0.5 fps. In the EA prepared by Commission staff,⁵ staff recommended that the City reconult with NMFS and South Carolina DNR prior to implementing the proposed increased withdrawal rate to determine at that time what screen size would be adequate for the associated intake velocity.

10. South Carolina DNR's April 29, 2022 letter, also recommended that the City allow for complete removal of the intake and associated equipment upon completion of

⁵ Commission staff's EA was issued on January 26, 2024.

withdrawals, and that the intakes be inspected and cleaned regularly to ensure proper function. Further, South Carolina DNR makes the following recommendations:

- All excavations should be backfilled with the excavated material after installation of the appropriate structures. Where practicable, side cast spoil material from trench excavation should be placed on the side of the trench opposite streams and wetlands. Spoil material from trench excavation should be placed on the side of the trench to be reused as back fill with the A horizon placed back in its original position. Excess spoil material must be removed to an approved upland disposal site.
- Pipeline construction must be accomplished in existing disturbance corridors where practicable. Upon completion, preconstruction contours must be restored along pipelines and all disturbed areas must be permanently stabilized with vegetative cover (preferable) and/or riprap, as appropriate. Right-of-ways should be no wider than that necessary for access and maintenance.
- Prior to beginning any land disturbing activity, appropriate erosion and siltation control measures (i.e., silt fences or barriers) must be in place and maintained in a functioning capacity until the area is permanently stabilized.
- Materials used for erosion control (e.g., hay bales or straw mulch) will be certified as weed free by the supplier.
- Inspecting and ensuring the maintenance of temporary erosion control measures at least:
 - a. on a daily basis in areas of active construction or equipment operation;
 - b. on a weekly basis in areas with no construction or equipment operation;and
 - c. within 24 hours of each 0.5 inch of rainfall;
- Ensuring the repair of all ineffective temporary erosion control measures within 24 hours of identification, or as soon as conditions allow if compliance with this time frame would result in greater environmental effects.
- All necessary measures must be taken to prevent oil, tar, trash, and other pollutants from entering the adjacent offsite areas/wetlands/water.
- Once the project is initiated, it must be carried to completion in an expeditious manner to minimize the period of disturbance to the environment.

- Upon project completion, all disturbed areas must be permanently stabilized with vegetative cover (preferable), riprap or other erosion control methods as appropriate.
- The project must comply with any applicable floodplain, stormwater, land disturbance, shoreline management guidance or riparian buffer ordinances.

Public Notice

11. The Commission issued a public notice of the application on December 8, 2022, that set a deadline of 30-days for filing comments, protests, and motions to intervene. No comments, protests, or motions to intervene were filed.

Threatened and Endangered Species

12. Section 7(a)(2) of the Endangered Species Act of 1973⁶ 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. Lexington County contains four species that could potentially be affected by the proposed action: endangered red-cockaded woodpecker (*Picoides Borealis*); endangered smooth coneflower (*Echinacea laevigata*); endangered tricolored bat (*Perimyotis subflavus*); and monarch butterfly (*Danaus plexippus*) (a candidate species).

13. In addition, three migratory bird species protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act could potentially be affected by the proposed action. These species include the bald Eagle (*Haliaeetus leucocephalus*); the red-headed woodpecker (*Melanerpes erythrocephalus*); and the wood thrush (*Hylocichla mustelina*). The red-headed woodpecker and wood thrush are listed a species of conservation concern.

14. Further, the endangered shortnose sturgeon (*Acipenser brevirostrum*) was identified as potentially occurring within the vicinity of the proposed action, however, this listing is for the lower Saluda and Broad Rivers which converge to form the Congaree River. Since this area is downstream of the dam, it would not be affected by the proposed action. No critical habitats are designated nor have shortnose sturgeon been documented in Lake Murray.

15. While the tricolored bat, red-cockaded woodpecker, monarch butterfly, and smooth coneflower are in various listing stages, and occur in Lexington County, South

⁶ 16 U.S.C. § 1536(a).

Carolina, the likelihood of these species residing in the proposed action area is low due to the fact that suitable habitat does not exist for these species and that the action area is a narrow strip of previously disturbed land where the current conveyance pipe is buried.

16. The FWS stated on April 7, 2022, that upon its review of the proposed action, they determined that there are no species protected under the Endangered Species Act of 1973 within the proposed action's boundaries. Further, the FWS has no objections to the proposed action and offered the following comments:

- Native vegetation removed must be replaced with native vegetation of a similar species or type in accordance with the Vegetation Management Requirements;
- The permittee must make every reasonable effort to minimize any adverse effects on fish, wildlife, and other natural resources.
- Coordinate construction activities with low lake levels to minimize sedimentation, turbidity, and disturbance to aquatic habitats (especially benthic habitats); and
- Construction activities, (especially in-water activities) should avoid the spring fish spawning season (March – May).

17. No effects to federally listed species would occur as a result of the operation of the existing City of West Columbia's water intake facility. Therefore, the proposed action would have no effect on any federally listed species.

National Historic Preservation Act

18. Under section 106 of the National Historic Preservation Act,⁷ and its implementing regulations,⁸ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the South Carolina SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

19. The City reviewed data available from the South Carolina SHPO that identifies one eligible structure, which is a house located within a 1-mile radius of the raw water intake facility. The City provided its findings to the South Carolina SHPO as part of consultation under section 106 of National Historic Preservation Act on March 30, 2022. Upon review, the South Carolina SHPO provided concurrence with the City's findings in

⁷ 16 U.S.C. § 470 (2006).

⁸ 36 CFR Part 800 (2011).

a letter dated April 5, 2022, that none of the properties listed in or eligible for listing in the National Register of Historic Places would be affected by the proposed action. In addition, the South Carolina SHPO letter includes a standard discovery clause, which should be included in the Commission's approval of the proposed action. This clause exerts that if a previously undiscovered historic property is discovered during construction, operation, and/or maintenance of the proposed facilities within the project boundary, the applicant would cease all activity at the construction site immediately and contact the licensee, who would then follow the provisions of the Historic Properties Management Plan (HPMP) for the Saluda Hydroelectric Project.

20. Similarly, the City contacted the Catawba Indian Nation during its pre-consultation process. No response from the Tribe was received.

21. There is no indication that the proposed action would have any effect on this historic structure given that the raw water intake facility, an existing conveyance pipe, and the water treatment plant were previously constructed and currently operating. The proposed action would have no effect on historic resources.

Executive Orders 12898 and 14008

22. The Commission follows Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).⁹ Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹⁰

23. Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the

⁹ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our statutory duties.

¹⁰ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. Id. § 219, 86 Fed. Reg. 7619, 7629. The term also includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples.

development, implementation, and enforcement of environmental laws, regulations, and policies”.

24. Commission staff’s analysis did not identify any environmental justice communities within a one-mile radius of the proposed action site; as such, Commission staff conclude that approving the water withdrawal would not result in disproportionately high or adverse impacts on any environmental justice communities.

Discussion and Conclusion

25. Section 10(a)(1) of the Federal Power Act (FPA)¹¹ provides that a licensed project must be:

such as in the judgement of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public purposes, including irrigation flood control, water supply, and recreational and other purposes.

26. Further, section 10(a)(1) of the FPA requires the Commission to ensure that any hydropower project it licenses will be consistent with the optimal utilization of a waterway, taking into account and balancing all the various developmental and environmental values. In addition, section 10(a)(1) informs the Commission’s actions with respect to a project throughout the term of the license, including its review of requests to use a project’s lands and waters for non-project purposes.

27. The considerations specified in section 10(a)(1) are reflected in Article 30 of the project license, a standard article commonly referred to as the joint-use article. Article 30 provides that, in pertinent part:

...on the application of any person, association, corporation, Federal agency, State or municipality, the licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the

¹¹ 16 U.S.C. § 803(a)(1).

water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses.¹²

28. The Commission's review of a joint-use application is only to examine whether, and to what extent, the proposed use would adversely affect any other beneficial use of the water, and, if so, whether the benefits of the proposed use outweigh such effects. For the reasons discussed below, Commission staff finds that the licensee's proposal complies with Article 30.

29. Commission staff prepared an Environmental Assessment (EA) for the licensee's proposal.¹³ In the EA, staff analyzed the potential effects that constructing, operating, and maintaining the facility could have on terrestrial resources, water quantity and hydrology, water quality, aquatic resources, threatened and endangered species, recreation resources, cultural resources, environmental justice communities, and aesthetics in the project area, as well as any cumulative impacts that could result. The EA concluded that there would be no significant effect or significant cumulative impacts to any of these resources as a result of the proposed action, nor would it constitute a major federal action that significantly affects the quality of the human environment.

30. Section 7.2 of the EA includes Commission staff's recommendations, based on consultation between the licensee and resource agencies and other stakeholders, for ensuring that no significant effects occur as a result of the proposed action. Although the South Carolina SHPO indicates that no known historic resources would be affected by the licensee's proposal, Commission staff recommended that the licensee ensure that cultural resources are addressed in the event they are discovered during construction, operation, or maintenance of the proposed action. Further, Article 24 of the project license includes a discovery provision for cultural resources, and as such, the licensee should include in any approval document or permit issued to the City for the proposed action, conditions that require the City to: (1) cease all activities in the area of any discovered archeological or historic remains; and (2) immediately contact the licensee. The licensee should follow the discovery provisions in Article 24 of the project license.¹⁴

¹² 27 FERC ¶ 61,332 (issued June 1, 1984), at ordering paragraph (D) (citing L-Form 10, *Terms and Conditions of License for Constructed Major Projects Affecting the Interests and Interstate and Foreign Commerce*, 1975).

¹³ EA issued on January 26, 2024.

¹⁴ Article 24 requires, among other things, that if previously unidentified archaeological or historical sites are discovered during the course of construction or development of project works or other features, construction activity in the vicinity be halted, a qualified archaeologist be consulted to determine the significance of the sites, (continued ...)

No activities are to resume in the area of a discovery until the Commission notifies the licensee that the requirements of Article 24 have been fully met.

31. The licensee has an overall obligation to ensure that any non-project uses and occupancies of project lands and waters that it permits are not inconsistent with the purposes of the project, including public recreation and resource protection. In this regard, the licensee should include in any permit(s) issued for the facility the following standard conditions: (1) the City's use of the project lands and waters must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the City must take all reasonable precautions to ensure that the construction, operation, and maintenance of the facility must occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the City must not unduly restrict public access to project waters. Additionally, the licensee is reminded that it is responsible for ensuring that all necessary local, state, and federal permits have been obtained for the proposed facility before any construction activities begin.

32. In the licensee's initial request for an amendment, no clear resolution to the recommended intake screen spacing was presented. As such, in the EA, Commission staff recommended that prior to implementing the proposed increased water withdrawal, the licensee and City should consult with the NMFS and South Carolina DNR regarding the recommended 0.10 inch secondary intake screen installation.

33. Approving the licensee's request would allow the City to increase its raw water withdrawal rate by 24 mgd, from 48 mgd up to 72 mgd, as well as install pump and infrastructure to convey raw water from the existing raw water pump facility on Lake Murray, to the nearby municipal water treatment plant. The proposed increase would provide drinking water to its growing service area. The increase in water withdrawal as proposed would not result in any long-term, adverse effects to project lands, waters, fish and wildlife resources, recreational resources, cultural resources, or environmental justice communities and would not interfere with project purposes. The proposed actions are within the existing raw water pumping and conveyance system facilities currently operated by the City. Finally, the proposed facility is not opposed by any agencies, provided that the environmental protection measures recommended through the consultation process for the licensee's proposal are implemented. Given the above information, the licensee's request for Commission approval to grant the City permission

and the licensee consult with the South Carolina SHPO to develop a mitigation plan for the protection of significant archaeological or historic resources. Pursuant to 36 Code of Federal Regulations Part 800.3, this coordination with the South Carolina SHPO includes identifying any Indian tribes that might attach religious and cultural significance to historic properties in the potentially affected area.

to use project lands and water within the project boundary for the expansion, operation, and maintenance of the facility, as modified, should be approved.

The Director orders:

(A) Dominion Energy South Carolina, Inc.'s (licensee) request to grant the City of West Columbia (City) an easement to use project lands and water within the Saluda Hydroelectric Project No. 516 boundary to increase its rate of raw water withdrawal from Lake Murray from the current maximum of 48 million gallons per day (mgd) to a maximum of 72 mgd; construct a new 42-inch raw water conveyance pipe parallel to the existing main and potable water lines; and replace two pumps within the existing raw water building, filed with the Federal Energy Regulatory Commission (Commission) on September 9, 2022, as modified in paragraphs (B), (C), and (D), is approved.

(B) The licensee must include the following condition in any approval document or permit it issues for the facility approved in ordering paragraph (A) above: (1) if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facility, the City must immediately cease all work at the site and immediately contact the licensee. The licensee must then contact the South Carolina State Historic Preservation Office immediately and follow the discovery provisions in Article 24 of the project license.

(C) The licensee must include the following conditions in any permit it issues for the increased water withdrawal and construction of the associated supporting infrastructure approved in ordering paragraph (A) above: (1) the City's use of project lands and waters covered by the permit must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the City must take all reasonable precautions to ensure that the increased water withdrawal and construction of the associated supporting infrastructure will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the City must not unduly restrict public access to project lands and waters.

(D) The licensee must ensure that prior to implementing the proposed increased water withdrawal rate, the licensee and City must consult with the National Marine Fisheries Service and South Carolina Department of Natural Resources regarding the recommended 0.10-inch secondary intake screen installation.

(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 Federal Power Act, 16 U.S.C. § 825I, and the Commission's regulations at 18 C.F.R. § 385.713 (2023).

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.

Andrea Claros
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Division of Hydropower
Administration and Compliance