

UNITED STATES OF AMERICA 114 FERC ¶ 62, 333
FEDERAL ENERGY REGULATORY COMMISSION

Alcoa Power Generation, Inc.
Tapoco Division

Project No. 2169-028

ORDER MODIFYING AND APPROVING SHORELINE MANAGEMENT PLAN
PURSUANT TO ARTICLE 410

(Issued March 31, 2006)

On October 1, 2004, the Tapoco Division of Alcoa Power Generation, Inc. (Alcoa), licensee for the Tapoco Hydroelectric Project, filed a shoreline management plan (SMP or plan) pursuant to article 410 of the project license.¹ The Tapoco Hydroelectric Project is located on the Little Tennessee and Cheoah Rivers in Graham and Swain Counties in North Carolina, and Blount and Monroe Counties in Tennessee. Part of the project occupies federal lands within the Nantahala National Forest (NNF).

PROJECT DESCRIPTION

The Tapoco Project is located approximately 15 miles south of Maryville, Tennessee, and 90 miles northeast of Chattanooga, Tennessee. The major tributaries of the Little Tennessee River above Chilhowee Dam are the Cullasaja, Nantahala, Tuckasegee, and Cheoah Rivers. Land in the watershed is dominated by undeveloped forest, the majority of which lies within either the Great Smoky Mountains National Park (GSMNP) or the Nantahala and Cherokee National Forests. Some development is occurring in the area, though steep terrain makes most of the land around the project unsuitable for development. Approximately 2,500 acres of land and 5,800 acres of water are contained within the project boundary.²

The four developments of the Tapoco Project are described as follows:

1. The Santeetlah Development is located in Graham County, North Carolina on the Cheoah River and consists of 78.8 miles of shoreline, 2,881 acres of water

¹ The SMP was submitted prior to the issuance of the new license for the Tapoco Project (110 FERC ¶ 61,056, issued January 25, 2005). The new license issued in 2005, states that this plan satisfies the requirements of license article 410. Since the plan was filed after the issuance of the final Environmental Assessment (EA), Commission staff will conduct a separate analysis of the plan.

² The 2005 license added about 147 acres of land within the project boundary.

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at a full-pool elevation of 1,940.9 feet, a drainage area of 176 miles, and an installed capacity of 49.2 megawatts (MW).

2. The Cheoah Development is located in Graham and Swain Counties, North Carolina, on the Little Tennessee River and consists of 19.6 miles of shoreline, 644 acres of water at a full-pool elevation of 1,276.8 feet, a drainage area of 1,608 miles, and an installed capacity of 118.0 MW.
3. The Calderwood Development is located in Graham and Swain Counties, North Carolina, and Blount and Monroe Counties, Tennessee, on the Little Tennessee River, and consists of 16.9 miles of shoreline, 570 acres of water at a full-pool elevation of 1,087.8 feet, a drainage area of 1,856 miles, and an installed capacity of 140.4 MW.
4. The Chilhowee Development is located in Blount and Monroe Counties, Tennessee, on the Little Tennessee River and consists of 26.4 miles of shoreline, 1,723 acres of water at a full-pool elevation of 874.0 feet, a drainage area of 1,977 miles, and an installed capacity of 52.2 MW.

The Tapoco Project's lands and waters are used primarily for hydropower production and public recreational uses. There are no permitted water withdrawals within the project boundary, aside from some private withdrawals for minor irrigation on the Santeetlah Reservoir. The Santeetlah Reservoir is the largest of the four and operates as a storage impoundment. Beginning September 1, 2005, flows will be released from Santeetlah Dam into the Cheoah River. The Cheoah, Calderwood, and Chilhowee Reservoirs are operated with daily pondage and maximum drawdowns of 7 feet, 6 feet, and 5 feet respectively. The Santeetlah is the only reservoir with private and commercial developments, and though most of the shoreline is managed as public lands, about 23 percent of the shoreline is, or has the potential to be developed.

Development along the Chilhowee Reservoir is limited to several public access recreation areas and one private residence, while there is no development along the Cheoah and Calderwood Reservoirs other than project facilities and a few public access areas. Since there is potential for additional development along the Santeetlah and Cheoah Reservoirs, there is a need to ensure the protection of several rare, threatened and endangered species known to or that could possibly occur in the area. There are also 11 archeological sites in close proximity to the project.

BACKGROUND

Article 410 requires the licensee to file a shoreline management plan with the Commission. The plan is to be developed in consultation with the North Carolina

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Department of Environment and Natural Resources (NCDENR), North Carolina Wildlife Resources Commission (NCWRC), North Carolina State Historic Preservation Office, U.S. Forest Service (FS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), GSMNP, East Band of Cherokee Indians (EBCI), Cross Creek Property Owners Association (CCPOA), Friends of Lake Santeetlah (FOLS), Town of Lake Santeetlah, Town of Robbinsville, Graham County, Sierra Club (SC), American Rivers (AR), Tennessee Clean Water Network (TNCWN), The Nature Conservancy (TNNC), Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency (TWRA), Tennessee Historic Commission and Tennessee State Historic Preservation Office.

The licensee must allow the consulted parties 30 days to review and comment on a draft shoreline management plan. The licensee must also provide the public with an opportunity to comment on the plan by holding a public meeting on the draft plan at least 30 days prior to filing the plan with the Commission. The filing must also include copies of agency comments and recommendations and descriptions of how the agencies' recommendations were accommodated. If the licensee does not adopt the agencies' recommendations, the reasons must be included in the filing based on project specific information.

PROPOSED PLAN

The SMP will be used as a tool to assist in the management of project shorelines in a way that is consistent with the project license and addresses the interests of various stakeholders. Goals for the SMP were developed by the project stakeholders and the licensee.

The goals of the SMP are listed as follows:

- (1) To balance the protection of the important environmental, cultural, recreational, and aesthetic resources unique to the Tapoco Project with the provision of recreational opportunities.
- (2) To establish a process for reviewing and approving shoreline development uses and activities that encourage stewardship of environmental, cultural, recreational and aesthetic resources by avoiding, offsetting, or mitigating impacts to the resources

Existing Land Use

Since much of the land in the immediate vicinity of the project is within federal land preserves, development in these areas is generally limited to public recreation,

administrative buildings and some occasional private holdings. The Santeetlah Reservoir and portions of the Cheoah and Calderwood Reservoirs are surrounded by NNF lands. Approximately 77 percent of the Santeetlah Reservoir shoreline is public land managed by the FS, but there are no project works on FS lands. There are no Cherokee National Forest lands within the project boundary, though it does border the project boundary for a distance of about 2.5 miles in Monroe County, Tennessee.

The GSMNP borders the project boundary for a distance of 12.7 miles along the north and northeast side of the Cheoah and Chilhowee Reservoirs respectively. The National Park Service (NPS) manages the park in accordance with a General Management Plan.³ Under the original license,⁴ approximately 110 acres of land on or adjacent to the Chilhowee Reservoir shoreline is owned by the GSMNP. Alcoa has property rights for the operation of this land, but according to the Relicensing Settlement Agreement (RSA) (2004), Alcoa and designated parties to the settlement are seeking legislative change to exclude lands⁵ from the park and in exchange will provide the NPS with 186 acres of land located northeast of the U.S. Highway 129.⁶ There are 20 separate areas of Cherokee Tribal lands in the vicinity of the project, specifically near the Santeetlah Reservoir. These lands support forest and agricultural land use but are not located within the project boundary.

Alcoa owns approximately 7,836 acres of the project lands and waters within the project boundary.⁷ The land owned by Alcoa includes areas for dams, switchyards, substations, transmission lines, access roads and other related facilities. Project lands not used in connection with project facilities are managed as natural areas and are available for recreational use. In addition, Alcoa also owns 12,725 acres of non-project lands that borders about 30 percent of the project boundary. As part of the RSA, Alcoa would grant TNNC the option of acquiring the title to a portion of these lands for conveyance to a federal or state agency in the future.

³ To carry out the strategies of the General Management Plan, management zones have been designated for the various lands and waters of the park to indicate the appropriate uses, activities and management actions.

⁴ 14 FPC 610 (1955).

⁵ Specifically, the Shop Creek, Unnamed Creek, Chilogate Branch, and Abrams Creek lands

⁶ The licensee filed confirmation with the Commission on January 26, 2005, that this land exchange was executed on January 14, 2005, to satisfy the requirements of the Tapoco project license and RSA.

⁷ This is approximately 94 percent of the total 8,300 acres of land and water within the project boundary.

The licensee states that development is only permitted on or in close proximity to the Santeetlah Reservoir. About 18.1 miles of shoreline is, or could potentially be developed. The licensee has permitted one marina, one multi-use dock, and three small commercial facilities to date on or on lands adjacent to the Santeetlah Reservoir, and has issued 238 private permits for access facilities that are primarily clustered in four subdivisions on the north side of the reservoir. There is one small parcel of private land adjacent to the Calderwood Reservoir that includes the Tapoco Lodge and a small wastewater treatment facility. There is also 3,000 acres of undeveloped private land adjacent to the Chilhowee Reservoir.

Zoning and Development Regulations

Each of the counties adjacent to the project reservoirs assumes responsibility for land use regulations that govern the activities occurring within these areas.

- Blount County—the only county within the project boundary with a county-wide zoning ordinance and Land Use Plan.⁸ Parcels of land near the Chilhowee and Calderwood reservoirs are zoned in three areas: (1) Rural 1—medium to low density development; (2) Rural 2—low density development; and (3) National Park—autonomous planned area.⁹
- Monroe County—has subdivision regulation provisions that state when land is deemed topographically unsuitable by the planning commission, this land shall not be platted for residential subdivision or other uses that may endanger health, life, property, or aggravate erosion (amended February 2000).
- Graham County—has no zoning ordinance; however, the Town of Santeetlah adopted a zoning ordinance that zoned the town for single family residences with property line set-backs from the shoreline.
- Swain County—has a soil and erosion control ordinance managed in accordance with the North Carolina Sedimentation Pollution Act of 1973.

⁸ The county-wide zoning ordinance was amended in 2002, and the Land Use Plan was created in 2000.

⁹ Permitted uses under the Rural 1 and Rural 2 designations include one or two single family dwellings on a single lot, duplex dwellings, customary home occupations, group homes, churches, temples, cemeteries, government and utility uses and accessory structures. Any land uses within the GSMNP and Foothills Parkway area is not subject to zoning regulation provisions.

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National Forest System (NFS) lands are managed under various federal regulations including the National Forest Management Act of 1976 (NFMA). The NFMA established Land and Resource Management Plans that developed management areas similar to city zones. Four of these management areas occur within or adjacent to the Tapoco Project boundary:

(1) Management Area 2—older forests combined with timber management that is sensitive to scenery and is accessible by car or boat;

(2) Management Area 3—forest management activities including timber harvest, road building and timber stand improvement occur in this area, providing habitat for small mammals, wild turkey and deer. Visitors use this area for hiking, mountain biking, horseback riding and hunting;

(3) Management Area 4—managed for scenic quality with most roads closed to motor vehicles. This area has timber management but in limited areas as it provides high quality wildlife habitat for black bears; and

(4) Management Area 7—managed to perpetuate naturalness while providing for recreational, scenic, scientific, educational, conservation, and historical uses compatible with wilderness resources.

Alcoa has no oversight of the NFS lands, though the SMP is designed to complement the management of these areas and promote the stewardship of natural resources.

Watershed Protection/Wildlife Management Areas

Two areas within the vicinity of the Tapoco Project in North Carolina have been given water supply classifications. The Cheoah River, upstream of Santeetlah Reservoir, is classified as protected waters, generally low to moderately developed watersheds with no new discharging landfills permitted (WS-III). Yellowhammer Branch, located south of Cheoah Dam, is classified as waters protected in natural and uninhabited watersheds (WS-I). This is a critical area designation with no discharges, development, or landfills allowed. The state of Tennessee does not have a comparable watershed classification system.

Under the licensee's RSA Alcoa is required to place permanent or term conservation easements on certain non-project lands. This measure will provide for the protection of the Little Tennessee and Cheoah River watersheds and riparian buffers. The easements will prevent prohibited physical development or alteration of lands but will allow, where applicable, continued management of lands in the Tennessee Foothills Wildlife Management Area.

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Alcoa has cooperative wildlife management agreements with the TWRA for 14,000 acres of project and non-project lands known as the Foothills Wildlife Management Area.¹⁰ This area abuts the entire north shore of the Calderwood Reservoir and large portions of both shorelines of the Chilhowee Reservoir. Land uses and activities on shoreline within this area will be managed in accordance with TWRA rules and regulations.

Shoreline Classification

The SMP designates classifications for the shoreline within the project boundary for future planning and management as other/general development, stewardship area, or conservation easement.

The shoreline areas in need of special protection have been designated as “Stewardship Areas”. These areas support important or sensitive natural areas or habitats including, wetlands, aquatic and terrestrial habitats, and/or cultural resources. Some criteria for designating these areas include significant gravel beds, extensive cobble beds, heavily branched trees, and continuity of critical habitat. Proposals for development in these areas will require the development of an environmental assessment by a qualified professional. To the extent that development within these areas is permitted, potential impacts to resources must be mitigated, offset or avoided to the satisfaction of state and federal resources agencies, as well as the EBCI, and the Tribal Historic Preservation Office. The mitigation requirements of proposals within stewardship areas, however, will be significantly greater than mitigation required for proposals outside of these parcels.

The shoreline areas to be included in term or permanent conservations easements, as discussed in the RSA will be designated as “Conservation Easement” lands.¹¹ There will be no construction, excavation, cutting or removal, dumping, polluting, vehicles, bikes, horses, or exploration permitted on the conservation easements. Public access, hiking, and hunting are permitted as long as it is consistent with the conservation easement document. All lands not classified under the above designations are classified as “Other/General Development”. Activities and non-project uses proposed on lands under this classification can include private or multi-use recreational facilities, shoreline stabilization, vegetation removal and shoreline clean up, walkways and steps, and excavation. Of the 141.7 miles of shoreline included in this classification system, over

¹⁰ Land excluded from this acreage includes lands used for power generation facilities, power lines, and rights-of-way.

¹¹ Uses and activities must be in accordance with the North Carolina Riparian Land Conservation Easement.

95% will be classified as a stewardship area, leaving approximately 18 miles of shoreline of conservation easement lands, and 14 miles of shoreline as other/general development.

Shoreline Development Permitting Process

The licensee developed procedures for permitting non-project uses on Alcoa-owned lands.¹² These procedures address private recreational facilities as well as multi-use recreational facilities. Private facilities include those owned by an individual (i.e., an individual pier), or two adjoining property owners (i.e., shared piers).¹³ All other recreational access facilities are considered multi-use facilities that are designed for a group or community. Uses not meeting these two definitions are considered industrial uses or facilities.

Private Facilities

- The licensee requires that private facility permit holders abide by its “Shoreline Stewardship Policy”.¹⁴
- Failure to do so could result in the loss of the permit, as identified in the “Specifications”.¹⁵
- Modification of these facilities requires a written construction permit from the licensee.¹⁶
- These permits are issued for five years, and must be renewed prior to expiration.

Subdivision Access

- New subdivisions with lots adjoining Santeetlah Reservoir that anticipate requests for reservoir access will be reviewed for potential impacts and approved by the licensee before these lots will be eligible for private recreation facilities.¹⁷
- If a developer is planning one or more multi-use facilities as part of a

¹² Alcoa manages development on the Santeetlah Reservoir and maintains a policy of not allowing private recreation or multi-use facilities on the main reservoirs of the other three developments.

¹³ The term “pier” refers to a (1) a stationary pier, ramp, and floating dock combination, (2) ramp and floating dock combination, or (3) floating dock.

¹⁴ Appendix A of the licensee’s filing.

¹⁵ Appendix B of the licensee’s filing.

¹⁶ The exception to this rule is that the repair of a pier, that does not require a county permit, generally will not require prior authorization provided that the repair does not change the footprint or operation of the facility.

¹⁷ The details of this process are discussed in Appendix C of this filing.

subdivision, prior FERC notice and/or approval may also be required.

- Subdivision developers must submit an application and prepare an environmental assessment for (1) subdivisions seeking eligibility for private recreation and/or multi-use facilities along the shoreline of the stewardship area, and (2) subdivisions with more than 5 lots seeking eligibility for private and/or multi-use facilities.¹⁸
- All other developers must prepare an agency consultation process information package (information package).

Multi-Use Facilities/Industrial Uses and Facilities

- Multi-use facilities require a multi-use facility construction permit issued by the licensee, and a building permit from the county for new construction and repairs.
- Industrial uses/facilities refer to proposed projects that are unrelated to recreation and adjacent property owner access. These uses may be permitted on all four reservoirs.

Other permitted uses of project reservoirs and shorelines include shoreline stabilization, excavation, vegetation removal and shoreline cleanup, vegetative planting, walkways and steps. If shoreline stabilization is needed on the Santeetlah Reservoir, the licensee may permit the planting of native vegetation, the installation of riprap, or the construction of retaining walls. Excavation may be permitted for the maintenance or creation of recreational boat access on the Santeetlah Reservoir, however, excavation is not permitted on the mainstem reservoirs, on the Cheoah River, or on the Calderwood Bypass. The licensee also prohibits excavation in areas of wetland vegetation and within known priority habitat areas. Proposed excavation activities must have prior written approval from the appropriate agencies and must not alter the reservoir shoreline at normal full-pool elevation.

Written permission from the licensee must be attained prior to the removal of vegetation from Alcoa-owned lands. Permits for the removal of woody debris lap trees will be issued by Alcoa on a case-by-case basis; however, floating debris, trash, and litter can be removed without written approval. The planting of any vegetation is prohibited in the project reservoirs, along the shoreline and on Alcoa-owned lands. Approval for these activities will be given by the licensee in limited instances for shoreline stabilization or habitat enhancement. The licensee may require consultation

¹⁸ Applicants proposing multi-use facilities and industrial uses or facilities must also file environmental assessments if they are wholly or partially within the stewardship area, or if they require FERC approval. If an environmental assessment is not required, an information package should be submitted.

with the resource agencies.¹⁹ Since many lots on the Santeetlah Reservoir are steep with difficult access, the licensee may also grant permission for steps and walkways for safe access to a pier. All structures must meet all local zoning requirements and must not interfere with navigation, present a safety hazard, or prevent ingress or egress. Non-project uses will also require prior written permission from the licensee.²⁰

Violations of the shoreline stewardship policy include (1) any failure to comply with the provisions of the policy; and (2) failure to obtain or comply with written permission from Alcoa, where required, before undertaking construction or other non-project activities. The FS will be notified of enforcement actions on a facility located adjacent to its lands. The primary sanctions for violations of this policy include the loss ineligibility for a permit, and the inability to use private access to the reservoir and/or Alcoa-owned lands. In the event of a violation, the licensee has the sole right to terminate existing permits or licenses, erect a barrier to restrict access to the reservoir on Alcoa-owned lands, and/or require the removal of structures and the restoration of shoreline to its original condition. Any changes will be made at the expense of the adjoining property owner.

The licensee provided detailed information about project water quality, wildlife, endangered species, priority habitat, fisheries, recreational use, aesthetics, and historic and archeological sites. The licensee's filing also includes several documents to more specifically identify permitting fees, permit approval procedures, and the shoreline stewardship policy. These documents are located in the appendices of the SMP.

AGENCY CONSULTATION AND PUBLIC INVOLVEMENT

Alcoa public noticed a shoreline management plan pre-planning meeting. The March 2003 meeting was attended by 30 people. Planning issues, goals and objectives were identified at this time, and those interested in working closely with the licensee on

¹⁹ These agencies include the North Carolina Department of Water Quality, NCDENR, NCWRC, FS, and FWS.

²⁰ Examples of prohibited activities include, but are not limited to include private boat launches, dredging (in the wet), operation of equipment not connected with permitted activities, construction of roads and sidewalks, removal of rocks, discharges and dumping, application of pesticides and herbicides, and overnight camping in unapproved areas. Additional restrictions may apply in areas under the conservation easement.

the SMP volunteered to participate on an advisory committee.²¹ In May of 2003 the licensee hosted the first of three Santeetlah Reservoir planning workshops, and distributed mail-back surveys to people with licensed docks on the Santeetlah Reservoir. An additional meeting was held on August 12, 2004, to allow the SMP Advisory Committee, pier permittees, and the general public to comment. After the meeting, the licensee revised the draft SMP based on the input that was received and filed the final SMP with the Commission. Once the draft plan was written, comments were received from the BIA, Mr. Robert Moseley, Mr. Thomas Nanney, NCWRC, FWS, and FS. The licensee filed a letter on October 25, 2005, with the Commission to respond to the issues identified by the agencies and the public.

The BIA wrote that the shoreline of the Santeetlah Reservoir is extremely eroded and that the shoreline stabilization measures discussed in Section 7.6.1 are inadequate. While the operating curve for the project provides a guide to prevent further erosion, it does not address previous damage which BIA fears will lead to sediment deposition onto important cultural properties. The BIA further recommends that the licensee should engage in active planting of native vegetation along the shoreline. The licensee responded by stating that even though Alcoa only owns 11% of the Santeetlah Reservoir shoreline, much of what exists is protected in its natural and/forested condition under the conservation easement. Much of the shoreline is managed by the FS as national forested land and is therefore, already provided with vegetative protection measures. Of the lands remaining, the licensee notes that its shoreline stewardship policy acknowledges erosion as a problem and outlines stabilization measures. Vegetation planting is identified as the preferred shoreline stabilization method that adjoining property owners can receive a permit to undertake. The licensee does note, however, that the Santeetlah shoreline is generally very steep and vegetative planting may not be the best means of controlling shoreline erosion. Alcoa does recognize that shoreline erosion has the potential to affect archaeological sites, and is in the process of developing a historic properties management plan that will address shoreline erosion and the protection of archaeological sites.

Mr. Robert Moseley and Mr. Thomas Nanney wrote letters in August of 2004, to express their concern about the SMP policy that will no longer allow floating trampolines on the Santeetlah Reservoir. Mr. Moseley expressed sentiments that barring the mooring or docking of floatplanes is an unnecessary restriction that will be hard to enforce. Mr. Moseley sent an inquiry to the Federal Aviation Administration and was able to locate

²¹ The members of the advisory committee attended planning workshops and public meetings to share goals, objectives and planning issues. The committee had representatives from state, local and federal governments, EBCI, TNNC, AR, SC, TNCWN, FOLS, CCPOA as well as individual property owners.

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several studies that illustrated the fact that boat collisions with floatplanes are relatively nonexistent, especially when compared to boat collisions with other vessels. The licensee states that the installation of new floating trampolines will not be permitted due to safety concerns, however, trampolines that existed on or before October 1, 2004, have been grandfathered in. For similar safety reasons, the licensee has also prohibited the docking or mooring of floatplanes at piers permitted by Alcoa.

The NCWRC provided its comments in response to the draft SMP in a letter dated August 27, 2004. The NCWRC recommended changes to the criteria for selecting aquatic habitats classified as stewardship areas on Santeetlah Reservoir. In the stabilization section of the SMP, the NCWRC also provided the licensee with a list of preferred stabilization techniques. The NCWRC also submitted various editorial comments and general corrections in regards to the SMP, but generally supports the plan. The licensee revised the draft SMP to include all editorial changes recommended by the NCWRC. Outstanding issues were then settled by a follow-up phone call with the licensee and NCWRC representatives. Comments were also received by the FWS, and FS. The licensee incorporated each of these comments into the Final SMP.

PUBLIC NOTICE

The Commission issued a public notice of the licensee's application on May 9, 2005, and set June 10, 2005, as the deadline for filing comments, recommendations, and motions to intervene. The U.S. Department of the Interior Office of Environmental Policy and Compliance (DOI), the FS, and the NCWRC on June 9, June 7, and June 3, 2005, respectively, filed comments in support of the plan. The FS and NCWRC also filed motions to intervene.

DISCUSSION AND CONCLUSION

The Tapoco Project consists of four large reservoirs that are predominantly surrounded by federally owned and managed lands. Three of these four reservoirs are largely undeveloped. Due to the unique nature of these reservoirs, the licensee seeks to provide the public with a semi-primitive to primitive recreational experience. Alcoa would also like to protect the remaining undeveloped lands on the Santeetlah Reservoir, and therefore sought to create an SMP that would protect the natural and undeveloped state of the project's shoreline. Alcoa plans to use the SMP as a tool to review shoreline development activities that encourage responsible development and stewardship by avoiding, offsetting or mitigating impacts to project resources. Alcoa's proposed SMP provides an appropriate balance of developmental and non-developmental resource

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values for the four project developments. The SMP should be approved with the following two modifications.

The licensee adequately addressed the comments that were submitted in response to the filed SMP, except that it failed to provide adequate evidence to support a general prohibition of floatplane docking and mooring at permitted piers. Floatplane use is a legitimate use of project reservoirs and should be prohibited only to the extent needed to promote public safety or protect project resources.²² The licensee has not provided any specific evidence that floatplane mooring or docking compromises public safety or impacts other resources; therefore the general prohibition should be deleted from the plan. We note, however, that the Commission has allowed licensees to place restrictions on floatplanes when found necessary by site-specific circumstances.²³

While the shoreline is expected to remain largely unchanged under the SMP, changes could occur over the 40-year term of the license that would warrant changes in the plan. Therefore, the licensee should review and update as necessary, its SMP every ten years throughout the term of the project license. This will allow for any changes that may occur at the project to be reviewed and addressed in the SMP. The SMP update should be filed with the Commission for approval after consultation with the appropriate agencies.

The Commission orders:

(A) The shoreline management plan filed October 1, 2004, pursuant to article 410 of the project license, as modified in ordering paragraphs (B) and (C) is approved.

(B) The prohibition of floatplane docking and mooring is deleted from the shoreline management plan.

(C) The licensee shall review and update as necessary, the shoreline management plan for the Tapoco Project every ten years in consultation with the North Carolina Department of Environment and Natural Resources, North Carolina Wildlife Resources Commission, North Carolina State Historic Preservation Office, U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Great Smoky Mountains National Park, East Band of Cherokee Indians, Cross Creek Property Owners Association, Friends of Lake Santeetlah, Town of Lake Santeetlah, Town of Robbinsville, Graham County,

²² See 70 FERC ¶ 61, 128, Order Granting Rehearing issued March 16, 1995.

²³ Examples include the Upriver Project (FERC No. 3074), Kayuta Lake Project (FERC No. 5000), and Thompson Falls Project (FERC No. 1869).

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Sierra Club, American Rivers, Tennessee Clean Water Network, The Nature Conservancy, Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency, Tennessee Historic Commission and Tennessee State Historic Preservation Office. The update shall be filed with the Commission for approval. The first update shall be filed on or before April 1, 2016.

The licensee shall allow the consulted parties 30 days to review and comment. The filing must also include copies of agency comments and recommendations and descriptions of how the agencies' recommendations were accommodated. If the licensee does not adopt the agencies recommendations, the reasons must be included in the filing based on project specific information.

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

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Administration and Compliance