

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Duke Power Company, LLC

Project No. 2503-104

ORDER DISMISSING FILING AS DEFICIENT

(Issued August 24, 2006)

1. On June 30, 2006, Commission staff issued an order permitting Duke Power Company, LLC (Duke) to lease 63 acres of land in the Warpath Access Area of the Keowee-Toxaway Project No. 2503 to Warpath Development, Inc. (Warpath) to construct and maintain a public park and/or public recreation area. The order provided for removal from the project boundary of the portion of those 63 acres on which Warpath will build a commercial lodge/conference center.¹ The Warpath Access Area is located on Lake Keowee in Pickens County, South Carolina.
2. On July 26, 2006, the Friends of Lake Keowee Society (FOLKS) filed a timely motion for rehearing,² noting that the Warpath Access Area was one of eight public access areas for Lake Keowee that were provided pursuant to the project's Exhibit R, Recreational Use Plan (Exhibit R), and arguing that the commercial development proposed for the Warpath Access Area far exceeds the kind of recreational facilities (passive and non-passive) that Exhibit R contemplates.

¹ 115 FERC ¶ 62,327 (2006).

² FOLKS timely filed an unopposed motion to intervene in the proceeding on April 27, 2006, and, accordingly, became a party to the proceeding. *See* 18 C.F.R. § 385.214(c) (2006). It therefore has standing to request rehearing.

3. FOLKS's rehearing request is deficient because it fails to include a Statement of Issues, as required by Order No. 663,³ which became effective September 23, 2005. Order No. 663, *inter alia*, amended Rule 713 of the Commission's Rules of Practice and Procedure to require that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.⁴ Under Rule 713, any issue not so listed will be deemed waived. In addition to not having the required Statement of Issues section, FOLKS's pleading does not clearly specify each issue and does not include Commission and court precedent on which it relies. Accordingly, we will dismiss the FOLKS's rehearing request.⁵

4. In any event, while commercial development such as the proposed lodge/conference center is not appropriate within a project boundary, the order required removal from the project boundary of the land underlying the lodge/conference center. Removal from the project boundary was approved based on the determination that the land on which the lodge/conference center will sit is not necessary for the operation and maintenance of the project or for other project purposes.⁶ FOLKS does not question this

³ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 *Fed. Reg.* 55,723 (September 23, 2005), *FERC Statutes and Regulations* ¶ 31,193 (2005). Order 663-A, effective March 23, 2006, amends Order 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 *Fed. Reg.* 14,640 (March 23, 2006), *FERC Statutes and Regulations* ¶ 31,211(2006) (codified at 18 C.F.R. §§ 385.203(a)(7) and 385.713(c)(2)).

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

⁵ *Compare American Municipal Power-Ohio v. PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,019 (2006) (order dismissing a complaint because it lacked a Statement of Issues).

⁶ *See* 64 FERC at 64,999-316.

conclusion. In addition, removal from the project of the land underlying the Warpath Access Area's proposed lodge/conference center in no way lessens the licensee's obligation to comply with Exhibit R's requirements concerning recreation, passive and non-passive, at the portion of the Warpath Access Area, and other public access areas, that remain within the project boundary.⁷ With respect to the other public recreation facilities to be constructed as part of the Warpath Development, as the June 30, 2006 order found, those facilities are consistent with the approved Exhibit R for the project.⁸

The Commission orders:

The Friends of Lake Keowee Society's request for rehearing filed in this proceeding on July 26, 2006, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ We also note that FOLKS raises several issues generally, such as water safety, overcrowding, and fish and wildlife habitat, without making any showing that the actions at issue here will have any specific adverse impacts as to those matters. As FOLKS states, there is an ongoing shoreline management plan proceeding regarding the project, and relicensing proceedings will begin in the next few years. Global issues regarding allocation of project resources will best be addressed in those proceedings.

⁸ See 115 FERC ¶ 62,327 at 64,999-316; see also Commission staff's final environmental assessment, concluding that the proposed facilities are consistent with the Exhibit R, and will have only minor environmental impacts and also recreational benefits. *Id.* at 64,999-329.