

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY  
REGULATORY COMMISSION

Alcoa Power Generating Inc.

Project No. 2197-042

RESPONSE OF THE YADKIN DIVISION OF ALCOA POWER GENERATING INC.  
TO THE COMMISSION'S REQUEST FOR ADDITIONAL INFORMATION  
REGARDING AUTHORIZATION TO ALLOW NON-PROJECT USE OF PROJECT  
LANDS AND WATERS

On August 1, 2000, the Yadkin Division of Alcoa Power Generating Inc. ("APGI" or "Yadkin"), filed a request seeking Commission authorization to issue two permits for non-Project use of Project lands and waters at the Yadkin Hydroelectric Project No. 2197. Specifically, Yadkin seeks Commission authorization to issue permits to: (1) KEJ Marketing Co., Inc. ("KEJ"), developer of the Heron Bay subdivision adjacent to the Project, for the construction of four marinas and one boat launch (together, the "Marina Facilities") within the Project boundary on Narrows Reservoir, and (2) Heron Bay Homeowners' Association ("HBHOA") for the use and operation of the Marina Facilities. By a letter dated September 26, 2000, Commission staff requested additional information needed to process Yadkin's application. The letter requested responses within 30 days to questions concerning potential environmental impacts of the proposed Marina Facilities in light of the policies and procedures contained in the Yadkin Project Shoreline Management Plan that was submitted for Commission approval on July 1, 1999. Yadkin requested (by a letter dated October 24, 2000) and received a 14 day extension (through November 9, 2000) in which to respond to the Commission's inquires.

Yadkin's responses to the Commission's inquires are provided below, and are supported by the exhibits attached hereto. Each question posed by Commission staff is presented in single-spaced, italicized text, followed by Yadkin's response to that question.

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1. *The four boat docks would be located in a Shoreline Management Plan (SMP) Conservation Zone. According to the SMP, which is pending Commission approval, Alcoa Power Generating Inc. (Alcoa) will strongly discourage the construction of new piers, marinas, and other shoreline facilities within Conservation Zones to protect wetlands and other natural communities that have been identified in these areas.*

*Provide your reasons why this development should be permitted in a Conservation Zone. Why is this project acceptable in light of the "strongly discourage" policy contained in your pending SMP? Give your assessment of the project's impacts to those resources (wetlands, aesthetics, etc.) which warrant Conservation Zone designation. Further, discuss whether you believe approving this project would set a precedent for the approval of other projects in SMP Conservation Zones.*

The Conservation Zone designation is intended to be a planning tool and management guide to provide notice to adjoining property owners and to assist Yadkin in fulfilling its responsibility to strike the proper balance between shoreline development and protecting important natural, environmental, and scenic resources. Accordingly, the Conservation Zone designation seeks to ensure that special consideration and protection is given to areas found to support important or sensitive natural areas and habitats. The standard for approving development in a Conservation Zone was articulated in the SMP:

If potential impacts to [a Conservation Zone] cannot be avoided, offset, or mitigated, then any development activity proposed for the reservoir or Yadkin-Managed Buffer in that area will not be allowed.

(SMP at 7-4). This standard is not intended to preclude development, but to minimize potential impacts and require enhanced mitigation. As stated in the SMP:

Regardless of an area's designation, potential impacts to identified resources from proposed development will have to be avoided or mitigated to the satisfaction of State and federal resource agencies. However, it is anticipated that mitigation requirements in the Conservation Zone will be significantly greater than mitigation that may be required for proposed development outside the Conservation Zone.

(SMP at 7-4, 7-5).

The proposed Marina Facilities should be permitted because the SMP's standard for approving development in a Conservation Zone has been met and potential adverse impacts have

been mitigated to the satisfaction of federal and state resource agencies. As discussed more fully in the 1996 and 1998 Environmental Assessments prepared for the Heron Bay development (copies of which are provided in response to Question 6), the impacts of the proposed Marina Facilities will be felt primarily by water willow beds and other aquatic vegetation that commonly occurs along the shores of Heron Bay. Although Yadkin began discussions regarding the proposed Heron Bay marina with KEJ, the developer of the Heron Bay subdivision, in the early 1990's well before the SMP development process was initiated, the proposed Marina Facilities were, nonetheless, subjected to an environmental review by federal and state resource agencies at least as rigorous as the process later outlined in the SMP. As a result of this process, the Marina Facilities incorporate agency-recommended mitigation and offsets that will minimize the impacts to an area subsequently designated as a Conservation Zone.

Specifically, consistent with guidance provided by the North Carolina Wildlife Resources Commission ("NCWRC"), with the concurrence of the U.S. Fish and Wildlife Service, Yadkin, in conjunction with KEJ, has agreed to conduct substantial mitigation measures prior to and during construction of the Marina Facilities. In particular, the Facilities will be constructed to span existing willow beds; piers and paths will be routed to minimize the need for shoreline and in-water tree removal; all unavoidably removed trees will be replaced at a ratio of 2:1; and 50 trees have already been placed in-water to improve fish and wildlife habitat. The cumulative impact to resources in the Conservation Zone will also be mitigated by the phased in use of the Facilities. The proposed Heron Bay marina, including these mitigation measures proposed as offsets to the anticipated environmental damage resulting from construction and operation of the Facilities, have been evaluated and approved by the respective environmental resource agencies.

Finally, approval of the Marina Facilities will not set a precedent for approval of future development in Conservation Zones around the Project's reservoirs. Future development

projects located in a Conservation Zone will be subject to a case-by-case review of the potential impacts on the Conservation Zone resources in relation to the standards, policies, and procedures contained in the SMP. If the SMP's standard is not met, development will not be permitted.

2. *Discuss the alternatives to locating these facilities in an SMP Conservation Zone you considered and the reasons why those alternatives were not adopted.*

From the outset, the Heron Bay development contemplated access to the reservoir for homeowners in order to enhance sales of lots. By virtue of this fact, the location of the subdivision determines the economic necessity of locating reservoir access facilities within an area subsequently designated as a Conservation Zone. As a result, alternatives to locating the Marina Facilities somewhere else on the reservoir were not considered.

However, from virtually the outset of discussions between KEJ and Yadkin regarding reservoir access for residents of the Heron Bay subdivision, the environmental sensitivity of that portion of the reservoir has been the driving factor limiting both the nature and extent of shoreline development. The Marina Facilities as proposed themselves represent an alternative designed to minimize the impact of the shoreline development associated with the Heron Bay subdivision. In particular, four marinas (formerly referred to as "cluster piers" in the 1996 environmental assessment) accommodating 12 watercraft each attempt to mitigate the impacts that might otherwise be caused by numerous individual piers scattered across the shores of the Heron Bay subdivision.

3. *Discuss whether the proposed project will be subject to the SMP's vegetation aquatic agreement and/or if any aquatic vegetation monitoring will be required.*

The permit issued to the HBIHOA for the operation and maintenance of the proposed Marina Facilities will contain specific provisions, consistent with the SMP's Shoreline Stewardship Policy, that will require the HBIHOA to ensure that there will not be undue

degradation of existing water willow beds, and will authorize Yadkin to enforce such requirements.

4. *Clarify whether only those lot owners assigned a slip at the proposed boat docks would be barred from applying later for an individual or shared pier or whether all shoreline lot owners in this development would be barred because of the proposed project.*

As indicated in Yadkin's August 1, 2000 "Request for Authorization to Allow Non-Project Use of Project Lands and Waters," based on the assignment of the right to use a specified slip, present and future owners of a residential lot receiving such assignment will not be eligible to apply to Yadkin for permission to construct a private or individual or shared pier pursuant to Yadkin's Specifications for Private Recreation Facilities, unless the specific marina on which that residential lot's slip is located is removed or the Marina Facilities' operating permit from APGI is terminated and the lot owner was not responsible for that termination. Conversely, owners of residential lots not assigned the right to use a specific slip on the Marina Facilities will not waive the right to seek permission to construct an individual or shared pier pursuant to Yadkin's Specifications.

5. *Provide a map of the subdivision showing the location of the proposed boat docks and ramp. Provide color photos of the areas where these facilities would be located. The photos should show the general lay of the land, any aquatic or terrestrial vegetation, and any nearby homes, structures or other development associated with the proposed project. Also, show on this map any other approved piers, boat docks, ramps or other recreational facilities for the Heron Bay subdivision.*

The requested materials are attached hereto as Exhibit A.

6. *Provide a copy of the Heron Bay subdivision environmental assessment (EA) prepared in 1996 and 1998, to the extent any portions of these EAs discuss the proposed project.*

Attached hereto as Exhibits B and C are copies of the February 1996 "Environmental Assessment: Heron Bay Development," and the October 1998 addendum to that document addressing the extension of the Heron Bay development. It should be noted that these assessments discuss primarily the impacts of the Heron Bay development as a whole, of which

the Marina Facilities now proposed are an integral part. Furthermore, the documents do not address the suitability of the proposed development in a Conservation Zone because, as discussed above, the proposed Facilities and these assessments predate the SMP and designation of the Conservation Zones.

7. *Discuss whether there will be any gas pumps, restrooms, restaurants, marine stores or other facilities planned as part of this project.*

No such other facilities are planned as part of this project. See Letter from KEJ attached hereto as Exhibit D.

8. *Give the amount of excavation, in cubic yards of sediment, needed for the proposed boat ramp, docks, and any other facilities.*

Approximately 30 cubic yards of sediment will be removed to construct the proposed Marina Facilities. See Letter from KEJ attached hereto as Exhibit E.

Respectfully submitted,

  
David R. Poe

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DATED: 11-9-00

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a copy of the foregoing **RESPONSE OF THE YADKIN DIVISION OF ALCOA POWER GENERATING INC. TO THE COMMISSION'S REQUEST FOR ADDITIONAL INFORMATION REGARDING AUTHORIZATION TO ALLOW NON-PROJECT USE OF PROJECT LANDS AND WATERS** to be served on each party designated on the official service list maintained by the Secretary of the Federal Energy Regulatory Commission for Project No. 2197.

Dated at Washington, D.C. this 9<sup>th</sup> day of November, 2000.

  
Paul C. Freeman