

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 2206–021]

**Progress Energy Carolinas, Inc.; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Updated shoreline management plan.
- b. *Project No*: 2206–021.
- c. *Date Filed*: December 19, 2011.
- d. *Applicant*: Progress Energy Carolinas, Inc.
- e. *Name of Project*: Yadkin-Pee Dee Hydroelectric Project.
- f. *Location*: Lake Tillery in Montgomery and Stanly counties, North Carolina.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.
- h. *Applicant Contact*: Larry Mann, Progress Energy Carolinas, Inc., 179 Tillery Dam Rd., Mt. Gilead, NC 27306, (919) 546–5300.
- i. *FERC Contact*: Mark Carter, (678) 245–3083, [mark.carter@ferc.gov](mailto:mark.carter@ferc.gov).
- j. *Deadline for filing comments, motions to intervene, and protests*: March 16, 2012.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2206–021) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application*: Progress Energy Carolinas, Inc. (licensee) filed an updated shoreline management plan (SMP) for Lake Tillery, one of the project's reservoirs. The current SMP was approved on November 24, 2004, and included a provision for the licensee to update the SMP every 10 years. The licensee's goal for the updated SMP is to balance the protection and enhancement of the environmental, scenic, and recreational values provided by Lake Tillery and the surrounding project lands, while ensuring the continued safe and reliable production of hydroelectric power at the project. Among other things, the updated SMP includes a more recent shoreline habitat survey and a reduction in the number of shoreline classifications.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in

accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 15, 2012.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2012–4075 Filed 2–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 13254–002]

**City of Aspen; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process**

a. *Type of Filing*: Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.*: 13254–002.

c. *Date Filed*: December 12, 2011.

d. *Submitted By*: City of Aspen.

e. *Name of Project*: Castle Creek Hydroelectric Project.

f. *Location*: On Maroon and Castle Creeks near the City of Aspen, in Pitkin County, Colorado. Parts of the Castle Creek Hydroelectric Project would occupy federal lands of the White River National Forest.

g. *Filed Pursuant to*: 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact*: David Hornbacher, City of Aspen, 130 South Galena Street, Aspen, CO 81611.

i. *FERC Contact*: Jim Fargo at (202) 502–6095; or email at [james.fargo@ferc.gov](mailto:james.fargo@ferc.gov).

j. City of Aspen filed its request to use the Traditional Licensing Process on December 12, 2011. The city provided public notice of its request on December 19, 2011. In a letter dated February 2, 2012, the Director of the Office of Energy Projects approved the City of Aspen's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402; and (b) the Colorado State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Aspen as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. City of Aspen filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCONlineSupport@ferc.gov](mailto:FERCONlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 14, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-4012 Filed 2-21-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM11-14-000]

#### Order Reaffirming Commission Policy and Terminating Proceeding; Analysis of Horizontal Market Power Under the Federal Power Act

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. On March 17, 2011, the Commission issued a Notice of Inquiry<sup>1</sup> seeking comment on whether, and, if so, how, the Commission should revise its approach to examining horizontal market power concerns under section 203 of the Federal Power Act (FPA)<sup>2</sup> to reflect the Horizontal Merger Guidelines issued by the Department of Justice (DOJ) and Federal Trade Commission (FTC) (collectively, Antitrust Agencies) on August 19, 2010 (2010 Guidelines). The Commission also sought comment on what impact, if any, the 2010 Guidelines should have on the Commission's analysis of horizontal market power in its electric-market based rate program under section 205 of the FPA.<sup>3</sup> Seventeen parties filed comments in response to the NOI.<sup>4</sup>

2. As discussed below, after reviewing the comments received, the Commission has decided to retain its existing policies regarding the analysis of horizontal market power when reviewing transactions under section 203 of the FPA and in its electric market-based rate program. Accordingly, we will terminate the proceeding in Docket No. RM11-14-000.

#### I. Background

##### A. Section 203

3. Under section 203 of the FPA, Commission authorization is required for public utility mergers and consolidations and for public utility acquisitions of jurisdictional facilities. Section 203(a) provides that the Commission shall approve such transactions if they are consistent with the public interest. The Commission has stated that it will consider three factors when analyzing a proposed merger: the effect on competition, the effect on

rates, and the effect on regulation.<sup>5</sup> The Energy Policy Act of 2005 added the further requirement that the Commission determine whether a proposed transaction would result in cross-subsidization, and if so, whether the resulting cross-subsidization would be consistent with the public interest.<sup>6</sup>

4. The Commission adopted the five-step framework set out in the Antitrust Agencies' 1992 Horizontal Merger Guidelines (1992 Guidelines)<sup>7</sup> as the basic framework for evaluating the competitive effects of proposed mergers.<sup>8</sup> The Commission also adopted an analytic screen (Competitive Analysis Screen), based on the 1992 Guidelines and outlined in Appendix A of the Merger Policy Statement, which focuses on the first step in the analysis: Whether the merger would significantly increase concentration in relevant markets. The components to a screen analysis are as follows: (1) Identify the relevant products; (2) identify customers who may be affected by the merger; (3) identify potential suppliers to each identified customer (includes a delivered price test (DPT) analysis, consideration of transmission capability, and a check against actual trade data); and (4) analyze market concentration using the Herfindahl-Hirschman Index (HHI)<sup>9</sup> thresholds from the 1992 Guidelines.<sup>10</sup>

<sup>5</sup> *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also* FPA Section 203 *Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement).

<sup>6</sup> Energy Policy Act of 2005, Public Law 109-58, 1289, 119 Stat. 594, 982-83 (2005), *codified*, 16 U.S.C. 824b(a)(4).

<sup>7</sup> U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (1992), as revised (1997) (1992 Guidelines).

<sup>8</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,118, 30,130. The five steps are: (1) Assess whether the merger would significantly increase concentration and result in a concentrated market, properly defined and measured; (2) assess whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects; (3) assess whether market entry would be timely, likely and sufficient either to deter or counteract the competitive effects of concern; (4) assess whether the merger would result in increases in efficiency that cannot reasonably be achieved through the parties by other means; and (5) assess whether either party to the merger would fail without the merger, causing its assets to exit the market. *Id.* at 30,111.

<sup>9</sup> The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Both the Antitrust Agencies and the Commission use HHI to assess market concentration.

<sup>10</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119-20, 30, 128-37.

<sup>1</sup> *Analysis of Horizontal Market Power under the Federal Power Act*, Notice of Inquiry, 76 FR 16,394 (Mar. 23, 2011), FERC Stats. & Regs. ¶ 35,571 (2011) (NOI).

<sup>2</sup> 16 U.S.C. 824b (2006).

<sup>3</sup> 16 U.S.C. 824d (2006).

<sup>4</sup> A list of the commenters is provided in Appendix A.