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D. O. Foster
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March 26, 1985

Director of Nuclear Reactor Regulation
Attention: Ms. Elinor G. Adensam, Chief
Licensing Branch #4
Division of Licensing
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

File: X8BE03
Log: GN-567

NRC DOCKET NUMBERS 50-424 AND 50-425
CONSTRUCTION PERMIT NUMBERS CPPR-108 AND CPPR-109
VOGTLE ELECTRIC GENERATING PLANT - UNITS 1 AND 2
SCE&G 230 kV TRANSMISSION LINE ENVIRONMENTAL ASSESSMENT

Dear Mr. Denton:

The Vogtle - South Carolina Electric & Gas (SCE&G) 230 kV transmission line was discussed in Amendment 5 to the Environmental Report - Operating License Stage (Section 3.9, March 15, 1985). This letter provides additional information to clarify the State of South Carolina's requirements regarding the design, construction, operation and maintenance of the proposed transmission line right-of-way. This information is based on discussions with SCE&G representatives.

Pursuant to the Utility Facility Siting and Environmental Protection Act (Title 58, Chapter 33, Code of Laws of South Carolina, Attachment I), SCE&G is required to provide an environmental assessment of the proposed route. The environmental assessment is necessary for completion of the Application for a Certificate of Environmental Compatibility and Public Convenience and Necessity for Electric Transmission Line Construction as required by the State's Public Service Commission. Attachments II and III are examples of the environmental assessment and application. A report on the location, identification and assessment of cultural resources which would be affected by the proposed right-of-way is also included as part of the application.

The Applicant serves copies of the application on municipalities, state and local government agencies charged with protecting the environment and others. The following agencies will be served with a copy of the application:

South Carolina Department of Archives and History
South Carolina Department of Health and Environmental Control
South Carolina Department of Wildlife and Marine Resources
Institute of Archaeology and Anthropology
South Carolina Water Resources Commission
South Carolina Department of Parks, Recreation and Tourism

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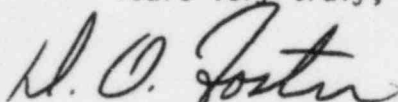
These agencies consult with the appropriate federal regulatory agencies as part of the application review process regarding review of material within their specific area of responsibility. For example, the South Carolina Department of Wildlife and Marine Resources consults with the Department of Interior's Fish and Wildlife Service regarding endangered species. Also, the South Carolina Department of Archives and History consults with the Advisory Council on Historic Preservation regarding cultural resources.

The South Carolina Public Service Commission will either grant or deny the application in an order (Attachment IV). The Order will contain conditions of construction, operation and maintenance to ensure compliance with the regulatory requirements of the various agencies whose jurisdiction is encompassed by the proposed action. As demonstrated in attachment IV, these conditions include compliance with Federal regulatory requirements. The requirements which SCE&G must meet under the laws of South Carolina are essentially the same as those that GPC must meet for their transmission facility construction associated with the VEGP. These requirements include endangered species, archaeological and historical resources and other environmentally sensitive areas.

As noted in previous submittals, the NRC staff will be provided with the application when it is submitted to the South Carolina Public Service Commission. The application currently is scheduled to be submitted on or about June 1, 1985.

If you have any questions concerning the attached comments please contact us.

Yours very truly,


D. O. Foster

DOF/DHW/sro
Attachments

cc: M. A. Miller
R. A. Thomas
J. A. Bailey
L. T. Gucwa
G. F. Trowbridge, Esquire
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CHAPTER 33
Utility Facility Siting and Environmental Protection

- ARTICLE 1. Short Title; Definitions.
ARTICLE 3. Certification of Major Utility Facilities.
ARTICLE 5. Judicial Review.
ARTICLE 7. Miscellaneous Provisions.

ARTICLE I

SHORT TITLE; DEFINITIONS

SEC.

58-33-10. Short title.

58-33-20. Definitions.

§ 58-33-10. Short title.

This chapter shall be known, and may be cited, as the "Utility Facility Siting and Environmental Protection Act."

HISTORY: 1962 Code § 58-1801; 1971 (57) 889.

Cross references—

As to constitutional provision for regulation of common carriers, see SC Const., Art 9, § 1.

§ 58-33-20. Definitions.

The following words, when used in this chapter, shall have the following meanings, unless otherwise clearly apparent from the context:

(1) The word "*Commission*" shall mean Public Service Commission.

(2) The words "*major utility facility*" shall mean:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts.

(b) An electric transmission line and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more; *provided, however*, that the words "*major utility facility*" shall not include electric distribution lines and associated facilities,

nor shall the words "*major utility facility*" include electric transmission lines and associated facilities leased to and operated by (or which upon completion of construction are to be leased to and operated by) the South Carolina Public Service Authority.

(3) The words "*commence to construct*" shall mean any clearing of land, excavation or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying or changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(4) The word "*municipality*" shall mean any county or municipality within this State.

(5) The word "*person*" shall include any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, but shall not include the South Carolina Public Service Authority.

(6) The words "*public utility*" or "*utility*" shall mean any person engaged in the generating, distributing, sale, delivery or furnishing of electricity for public use.

(7) The word "*land*" shall mean any real estate or any estate or interest therein, including water and riparian rights, regardless of the use to which it is devoted.

(8) The word "*certificate*" shall mean a certificate of environmental compatibility and public convenience and necessity.

HISTORY: 1962 Code § 58-1803; 1971 (57) 889.

ARTICLE 3

CERTIFICATION OF MAJOR UTILITY FACILITIES

SEC.

- 58-33-110. Certificate required before construction of major utility facility; transfer and amendment of certificate; exceptions; emergency certificates.
- 58-33-120. Application for certificate; service on and notice to municipalities, government agencies and other persons of application.
- 58-33-130. Hearings.
- 58-33-140. Parties to certification proceedings; limited appearances; intervention.
- 58-33-150. Record of proceedings; consolidation of representation of parties.
- 58-33-160. Decision of Commission.
- 58-33-170. Opinion of Commission.

§ 58-33-110. Certificate required before construction of major utility facility; transfer and amendment of certificate; exceptions; emergency certificates.

(1) No person shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the Commission. The replacement of an existing facility with a like facility, as determined by the Commission, shall not constitute construction of a major utility facility. Any facility, with respect to which a certificate is required, shall be constructed, operated and maintained in conformity with the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter; *provided, however*, any authorization relating to a major utility facility granted under other laws administered by the Commission shall constitute a certificate if the requirements of this chapter have been complied with in the proceeding leading to the granting of such authorization.

(2) A certificate may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) A certificate may be amended.

(4) This chapter shall not apply to any major utility facility:

(a) The construction of which is commenced within one year after January 1, 1972; or

(b) For which, prior to January 1, 1972, an application for the approval has been made to any Federal, State, regional or local governmental agency which possesses the jurisdiction to consider the matters prescribed for finding and determination in subsection (1) of § 58-33-160.

(c) For which, prior to January 1, 1972, a governmental agency has approved the construction of the facility and indebtedness has been incurred to finance all or part of the cost of such construction; or

(d) Which is a hydroelectric generating facility over which the Federal Power Commission has licensing jurisdiction.

(5) Any person intending to construct a major utility facility excluded from this chapter pursuant to subsection (4) of this section may elect to waive the exclusion by delivering notice of the waiver to the Commission. This chapter shall thereafter apply to each major utility facility identified in the notice from the date of its receipt by the Commission.

(6) The Commission shall have authority to waive the normal notice and hearing requirements of this chapter and to issue a

certificate on an emergency basis if it finds that immediate construction of a major utility facility is justified by public convenience and necessity; *provided*, that the Public Service Commission shall notify all parties concerned under § 58-33-140 prior to the issuance of such certificate; *provided, further*, that the Commission may subsequently require a modification of the facility if, after giving due consideration to the major utility facility, available technology and the economics involved, it finds such modification necessary in order to minimize the environmental impact.

(7) The Commission shall have authority, where justified by public convenience and necessity, to grant permission to a person who has made application for a certificate under § 58-33-120 to proceed with initial clearing, excavation, dredging and construction; *provided, however*, that in engaging in such clearing, excavation, dredging or construction, the person shall proceed at his own risk, and such permission shall not in any way indicate approval by the Commission of the proposed site or facility.

HISTORY: 1962 Code § 58-1810; 1971 (57) 889.

Research and Practice References—

Amending of Certificate of Public Convenience. 25 SCL Rev 319.

§ 58-33-120. Application for certificate; service on and notice to municipalities, government agencies and other persons of application.

(1) An applicant for a certificate shall file with the Commission an application, in such form as the Commission may prescribe, containing the following information:

(a) A description of the location and of the major utility facility to be built.

(b) A summary of any studies which have been made by or for applicant of the environmental impact of the facility.

(c) A statement explaining the need for the facility.

(d) Such other information as the applicant may consider relevant or as the Commission may by regulation or order require. A copy of the study referred to in item (b) above shall be filed with the Commission, if ordered, and shall be available for public information.

(2) Each application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each municipality and the head of each State and local government agency, charged with the duty of protecting the environment or of planning land use, in the area in the county in which any portion of the facility is to be located. The copy of the application shall be

accompanied by a notice specifying the date on or about which the application is to be filed.

(3) Each application shall also be accompanied by proof that public notice was given to persons residing in the municipalities entitled to receive notice under subsection (2) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in newspapers of general circulation as will serve substantially to inform such persons of the application.

(4) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (2) and (3) of this section may be cured pursuant to orders of the Commission designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the Commission may, after filing, require the applicant to serve notice of the application or copies thereof, or both, upon such other persons, and file proof thereof, as the Commission may deem appropriate.

(5) An application for an amendment of a certificate shall be in such form and contain such information as the Commission shall prescribe. Notice of the application shall be given as set forth in subsections (2) and (3) of this section.

HISTORY: 1962 Code § 58-1811; 1971 (57) 889.

§ 58-33-130. Hearings.

(1) Upon the receipt of an application complying with § 58-33-120, the Commission shall promptly fix a date for the commencement of a public hearing, not less than sixty nor more than ninety days after the receipt, and shall conclude the proceedings as expeditiously as practicable. The testimony presented at the hearing may be presented in writing or orally, *provided* that the Commission may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) On an application for an amendment of a certificate, the Commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any significant increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility; *provided*, that the Public Service Commission shall forward a copy of the application to all parties upon the filing of an application.

HISTORY: 1962 Code § 58-1812; 1971 (57) 889.

§ 58-33-140. Parties to certification proceedings; limited appearances; intervention.

(1) The parties to a certification proceeding shall include:

(a) The applicant.

(b) The Department of Health and Environmental Control, the Wildlife and Marine Resources Department, Department of Parks, Recreation and Tourism and the Water Resources Commission.

(c) Each municipality and government agency entitled to receive service of a copy of the application under subsection (2) of § 58-33-120 if it has filed with the Commission a notice of intervention as a party within thirty days after the date it was served with a copy of the application.

(d) Any person residing in a municipality entitled to receive service of a copy of the application under subsection (2) of § 58-33-120, any domestic nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interest, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be located; or any other person, if such a person or organization has petitioned the Commission for leave to intervene as a party, within thirty days after the date given in the published notice as the date for filing the application, and if the petition has been granted by the Commission for good cause shown.

(2) Any person may make a limited appearance in the sixty days after the date given in the published notice as the date for filing the application. No person making a limited appearance shall be a party or shall have the right to present oral testimony or argument or cross-examine witnesses.

(3) The Commission may, in extraordinary circumstances for good cause shown, and giving consideration to the need for timely start of construction of the facility, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person or organization which is identified in paragraphs (b) or (c) of subsection (1) of this section, but which failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

HISTORY: 1962 Code § 58-1813; 1971 (57) 889.

§ 58-33-150. Record of proceedings; consolidation of representation of parties.

A record shall be made of the hearing and of all testimony taken

and the cross-examination thereon. Upon request of a party, either before or after the decision, a State agency which proposes to or does require a condition to be included in the certificate as provided for in § 58-33-160 shall furnish for the record all factual findings, documents, studies, rules, regulations, standards, or other documentation, supporting the condition. The Commission may provide for the consolidation of the representation of parties having similar interests.

HISTORY: 1962 Code § 58-1814; 1971 (57) 889.

§ 58-33-160. Decision of Commission.

(1) The Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate; such conditions shall be as determined by the applicable State agency having jurisdiction or authority under statutes, rules, regulations or standards promulgated thereunder, and the conditions shall become a part of the certificate. The Commission may not grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the Commission, unless it shall find and determine:

- (a) The basis of the need for the facility.
 - (b) The nature of the probable environmental impact.
 - (c) That the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.
 - (d) That the facilities will serve the interests of system economy and reliability.
 - (e) That there is reasonable assurance that the proposed facility will conform to applicable State and local laws and regulations issued thereunder, including any allowable variance provisions therein, except that the Commission may refuse to apply any local law or local regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics or of the needs of consumers whether located inside or outside of the directly affected government subdivisions.
 - (f) That public convenience and necessity require the construction of the facility.
- (2) If the Commission determines that the location of all or a

part of the proposed facility should be modified, it may condition its certificate upon such modification, *provided* that the municipalities and persons residing therein affected by the modification shall have been given reasonable notice.

(3) A copy of the decision and any opinion shall be served by the Commission upon each party.

HISTORY: 1962 Code § 58-1815; 1971 (57) 889.

§ 58-33-170. Opinion of Commission.

In rendering a decision on an application for a certificate, the Commission shall issue an opinion stating its reasons for the action taken. If the Commission has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (e) of subsection (1) of § 58-33-160, it shall state in its opinion the reasons therefor.

HISTORY: 1962 Code § 58-1816; 1971 (57) 889.

ARTICLE 5

JUDICIAL REVIEW

SEC.

58-33-310. Appeal from final order or decision of Commission.

58-33-320. Jurisdiction of courts.

§ 58-33-310. Appeal from final order or decision of Commission.

Any party may appeal from all or any portion of any final order or decision of the Commission including conditions of the certificate required by a State agency under § 58-33-160 as provided by § 58-27-2310. Any appeals may be called up for trial out of their order by either party.

HISTORY: 1962 Code § 58-1820; 1971 (57) 889.

Research and Practice References—

Administrative Law—The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 SCL Rev 472.

§ 58-33-320. Jurisdiction of courts.

Except as expressly set forth in § 58-33-310, no court of this State shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the Commission under this chapter or to stop or delay the construction, operation or maintenance of a major utility facility except to enforce compliance with

this chapter or the provisions of a certificate issued hereunder, and any such action shall be brought only by the Commission. *Provided, however,* nothing herein contained shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

HISTORY: 1962 Code § 58-1821; 1971 (57) 889.

ARTICLE 7

MISCELLANEOUS PROVISIONS

SEC.

58-33-410. Authority of other agencies or local governments; application of other laws.

58-33-420. Joint investigations, hearings, agreements and compacts with agencies of other states.

58-33-430. Annual reports shall be furnished by public utilities.

§ 58-33-410. Authority of other agencies or local governments; application of other laws.

Notwithstanding any other provision of law, no State or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a major utility facility authorized by a certificate issued pursuant to the provisions of this chapter; *provided*, that nothing herein shall prevent the application of State laws for the protection of employees engaged in the construction, operation or maintenance of such facility; *provided, however*, that State agencies shall continue to have authority to enforce compliance with applicable State statutes, rules, regulations or standards promulgated within their authority.

HISTORY: 1962 Code § 58-1830; 1971 (57) 889.

§ 58-33-420. Joint investigations, hearings, agreements and compacts with agencies of other states.

The Commission, in the discharge of its duties under this chapter or any other statute, is authorized to make joint investigations, hold joint hearings within or without the State and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any other state of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the Commission shall function under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce or as an agency of the United States, or otherwise. The Commission, in the discharge of

its duties under this chapter, is authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation and maintenance of major utility facilities in accord with the purposes of this chapter and for the enforcement of the respective state laws regarding same.

HISTORY: 1962 Code § 58-1831; 1971 (57) 889.

§ 58-33-430. Annual reports shall be furnished by public utilities.

Each public utility shall annually furnish a report to the Commission for its review containing a ten-year forecast of loads and resources; *provided, however*, this section shall not apply to any electric cooperative. The report shall list the major utility facilities which, in the judgment of such utility, will be required to supply system demands during the forecast period. The forecast shall cover the ten-year period next succeeding the date of the report, shall be made available to the public and furnished upon request to municipalities and government agencies charged with the duty of protecting the environment or of planning land use.

HISTORY: 1962 Code § 58-1832; 1971 (57) 889.