

**To:** Alan Stuart

**CC:** Randy Mahan, Bill Argentieri

10/21/05

**Comments on “Operating Procedures for the Relicensing of the Saluda  
Hydroelectric Project FERC Projects 516”**

The following comments on the Operating Procedures for the Relicensing of the Saluda Hydroelectric Project FERC Projects 516 are offered with the goal of insuring that the atmosphere of collaboration initiated by SCE&G effectively continues throughout the process. Pursuant to our belief that the formation of ground rules governing the actions of stakeholders is a critical step that affects the substantive rights of all parties, we respectfully offer the following comments:

General Comments:

We appreciate the opportunity to comment on the protocol document. In fact, it is a document with relatively few substantive issues. Much of the confusion arises from the absence of a definition section and lack of clarity in drafting the initial protocol. When the request to comment on the protocol was made, the response from Kleinshmidt & Associates was positive. However, the lack of a framework to handle the comments, the refusal to form a group to handle procedural concerns, and the lack of stakeholder involvement in the initial drafting of the protocol raises concerns that collaborative drafting was abandoned for the sake of convenience. More meetings are not ideal but

may be necessary to do what it takes to do the job correctly, regardless of time or energy expenditure. We are recommending a Procedural Resource Conservation Group aimed at handling procedural concerns with a representative from each Resource Conservation Group (RCG), resource agency, and SCE&G. While this is another meeting, the Procedural RCG will only meet as necessary, most likely a few times toward the beginning of the process to address items such as the communications protocol. This structure would actually be more efficient because each representative could report on process developments to the individual RCG groups; enabling the groups to be proactive instead of reactive to protocol document drafting.

The introduction to the protocol states “These procedures provide a framework, which can be amended as the process evolves, when there is consensus among the team to make changes”. It can sometimes be difficult to ascertain what effects certain protocol provisions will have on the process in the future and the protocol explicitly recognizes the need for the flexibility to amend. A Procedural RCG will be the forum for establishing consensus among all RCGs as called for in the protocol. This forum currently does not exist. The stakeholders were told at the September 22, 2005 meeting that these concerns would be handled informally between some stakeholders, possibly over the phone. Any process concerns arising in the RCGs will undoubtedly involve discussions that are currently underway and issues in need of quick resolution. The notion that informal consultation between dozens of stakeholders is less burdensome than a small group of people regularly in contact seems counterintuitive.

## Section 1:

Fundamentally, the mission statement should not be unilaterally created as it is the guiding document of all the parties. Other relicensings involving the traditional licensing process have taken months to formulate the initial protocol and mission statement. While no one is suggesting this sort of delay (or any delay at all), Saluda stakeholders were offered no chance to input until they requested it. This demonstrates the need for a dependable way of addressing procedural questions to avoid confusion.

### Section 1.1:

The mission statement should reflect the collaborative intent of the parties to reach a settlement and refer to a balanced result for the utility and the resource, much like the RCG mission statement does. This is possible with only minor modifications and serves the stated goal of the mission statement being a “guidepost” for everyone:

*SCE&G will manage the process through collaboration with state and federal resource agencies, non-governmental organizations, special interest groups, and other interested stakeholders. This collaborative consultation process will be used to gather as well as disseminate information. The objective will be to learn from, as well as educate, stakeholders on the issues and come to a balanced settlement of those issues that accounts for the reasonable needs of SCE&G, maintains and enhances the quality of the resource, and accounts for the reasonable needs of the stakeholders.*

### Section 2.6:

This section should make clear that the knowledge requirement to serve on the Technical Working Committee (TWC) is not limited to formal training in respective areas of expertise but also considers practical knowledge and experience and the insights that informed lay people can make to analysis and decision making. The protocol should establish how the members of the TWC are selected in a manner that all stakeholders have a reasonable opportunity to participate in or be represented on the TWC.

### Section 2.8:

This section should say that the communications protocol will contain specifics on when contact with the press is allowed. What appears to be a total prohibition on press releases in section 5.0 should be addressed in these communication protocols. In other proceedings there is a confidentiality agreement between stakeholders regarding settlement discussions or certain proprietary information that may come out in the operations RCG. The protocol should make clear that no confidentiality agreements will be required that attempt to (1) protect information that is accessible to the public, whether as public documents or through any applicable legal process or (2) that are designed to withhold information from certain stakeholders.

### Section 4.3:

#4- Who has to agree to the inclusion/exclusion of a parking lot item should be specifically identified.

#5- “SCE&G invites and encourages, at anytime during this process, all interested parties to participate on any level of the relicensing of the Saluda Hydro Project.” The stakeholders appreciate SCE&G’s acknowledgement of the stakeholders’ rights to participate in the relicensing process that will ultimately control many aspects of SCE&G’s use of the water and other resources in the project boundary that belong to the public. We believe the current meeting schedule is insufficient in that all meetings are scheduled Monday through Friday during business hours. Many stakeholders are taking personal and vacation leave to participate in this process. We recognize the important role that agencies play, how hard they work, and how thinly their efforts are often stretched. Their absence at an occasional evening meeting does not mean no progress can be made without them. An added benefit to occasional evening and weekend meetings is increased public involvement, something SCE&G has strived for from the beginning.

Section 5.0:

“All news releases to the media will be coordinated through the SHRG and RCG.” As discussed above, this topic should be covered in detail in the communications protocol. The protocol must be clear that stakeholders may communicate with their constituencies, individually and through the press, without restriction or any sort of preclearance, provided that the communications are not covered by any applicable confidentiality agreements and do not purport to speak for the Saluda Hydro Relicensing Group. Stakeholders, including SCE&G, have constituencies to which they are

committed to updating, occasionally, the most effective way of doing this could be through use of the press.

### **Conclusion**

As you can see our substantive concerns are few. Before the last public meeting, the document distributed with the notation of “final protocol” and the 10 days of ensuing confusion clearly demonstrate the need for a more effective way of identifying and handling procedural concerns. When the first rounds of RCG meetings were scheduled without any agency or stakeholder consultation, it became immediately apparent that many of the dates would not work. As a result, the entire process has been delayed while everyone’s schedule is coordinated. This is another example of the inherent problems of unilateral action in a public process and the need for a procedural group. The undersigned stakeholders respectfully request a Procedural RCG:

- 1) American Rivers
- 2) Coastal Conservation League
- 3) Columbia Audubon Society
- 4) Lake Murray Association- *See Attached*
- 5) Lake Murray Homeowner’s Coalition
- 6) Lake Watch
- 7) Midlands Striper Club
- 8) South Carolina League of Women Voters
- 9) South Carolina Wildlife Federation
- 10) Trout Unlimited- Saluda Chapter

*Signatories reserve may submit individual comments as they see fit*



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**Ballentine,**

**October 20, 2005**

Memo : Alan Stuart, Kleinschmidt

Randy Mahan and Bill Argentieri, SCE&G

The Lake Murray Association sees a need to clarify the protocol document in several areas before the RCG meetings can become productive. We are not suggesting that a protocol RCG be established to function indefinitely as we think one more committee may be counterproductive. We do however believe that a committee appointed from the various stakeholders to work with SCE&G to clarify various items in the current protocol before the work begins is appropriate.

The introduction to the protocol states “These procedures provide a framework, which can be amended as the process evolves, when there is consensus among the team to make changes”. The stakeholders were told at the September 22, 2005 meeting that these concerns would be handled informally between some stakeholders, possibly over the phone. There needs to be a method to amend the protocol process when the need arises. We believe decision should be made in the RCG’s only and no decision should be made between stakeholders in a parking lot or over the phone. There needs to be a method established from the beginning to make these adjustments. This needs to be made clear in the current document.

Consensus needs to be defined and a percentage attached to it and clearly written in the protocol document.

Section 1:

Fundamentally, the mission statement should not be unilaterally created as it is the guiding document of all the parties. We agree with other stakeholders that the mission statement needs to be amended as follows:

The mission statement should reflect the collaborative intent of the parties to reach a settlement and refer to a balanced result for the utility and the resource, much like the RCG mission statement does:

*SCE&G will manage the process through collaboration with state and federal resource agencies, non-governmental organizations, special interest groups, and other interested stakeholders. This collaborative consultation process will be used to gather as well as disseminate information. The objective will be to learn from, as well as educate, stakeholders on the issues and come to a balanced settlement of those issues that accounts for the needs of SCE&G and the quality of the resource.*

#### Section 2.6:

This section should make clear that the TWC committee requirement of knowledge also includes practical knowledge, to what extent practical knowledge is sufficient, and who ultimately makes that decision.

LMA believes the protocol document should indicate the RCG's with the help of recognized experts should decide if the person in question has enough experience to be useful. The **consensus rule** whatever it turns out to be should prevail.

The last paragraph in 2.1 is convoluted and gives the impression that RCG's work for TWC's . This is not the case according to SCE&G. It is our understanding that the RCG's will actually decide the issues and the TWC's will conduct the test and suggest alternatives. The language, perform necessary studies under the direction of TWC's should be pointed out and eliminated. The relationship between the two committees needs to be clearly defined.

This section also states each group/organization should select a primary spokesperson or rep and alternate that is authorized to speak for the group/organization . This appears to limit an organization with more than 1 person on the committee from more than one member expressing an opinion. We do not agree this should be the case and needs clarification and modification.

#### Section 2.8:

The following paragraph is the coalition stakeholders interpretation on communications protocol and Lake Murray Association agrees wholeheartedly:

This section should say that the communications protocol will contain specifics on when contact with the press is allowed. What appears to be a total prohibition on press releases in section 5.0 should be addressed in these communication protocols. In other proceedings there is a confidentiality agreement between stakeholders regarding settlement discussions or certain proprietary information that may come out in the operations RCG.

Section 4.3:

#4- Who has to agree to the inclusion/exclusion of a parking lot item should be specifically identified in the protocol document. This again needs to be clarified from the beginning. .

#5- The paragraph below is the consensus of the stakeholder coalition and we agree there should be some evening meetings to benefit the general public LMA can be available for all meetings but strongly suggest some evening meetings be planned. .

SCE&G invites and encourages, at anytime during this process, all interested parties to participate on any level of the relicensing of the Saluda Hydro Project.” The stakeholders appreciate the invitation to weigh in on the management of the public’s water. We believe the current meeting schedule is insufficient in that all meetings are scheduled Monday through Friday during business hours. Many stakeholders are taking personal and vacation leave to participate in this process. We recognize the important role that agencies play, how hard they work, and how thinly their efforts are often stretched. Their absence at an occasional evening meeting does not mean no progress can be made without them. An added benefit to occasional evening meetings is increased public involvement, something SCE&G has strived for from the beginning.

Section 5.0:

“All news releases to the media will be coordinated through the SHRG and RCG.” As discussed above, this topic should be covered in detail in the communications protocol. It is unclear if stakeholders need only coordinate with the SHRGs and RCGs if the press release is from the entire group or if this is a more general prohibition All situations where stakeholders right to communicate with the press will be limited should be clarified.

The Lake Murray Association would like to be a member of the committee on protocol items and feels the work can be done with one or two meetings.

Thank you very much for your consideration.

Lee Barber, President