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Comment Date: 5 p.m. eastern time on March 23, 2007.

Philis J. Posey,

Acting Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349-115—Alabama]

Alabama Power Company; Notice of Availability of Environmental Assessment

March 9, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Martin Dam Project (FERC No. 349), and has prepared an environmental assessment (EA) for the proposal. The project is located on Lake Martin near Dadeville, in Tallapoosa County, Alabama.

In the application, Alabama Power (licensee) requests Commission authorization to permit The Pointe at Sunset Pointe, LLC (The Pointe) to install 30 boat slips as well as a pier/platform and floating-dock structure on Lake Martin, the project reservoir. These structures would serve the residents of condominiums that are located on adjoining project lands. The EA contains Commission staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal, as modified by the staff-identified alternative, would not constitute a major federal action

significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Non-Project Use of Project Lands and Waters," which was issued February 22, 2007, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the project number (prefaced by P- and excluding the last three digits) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Philis J. Posey,

Acting Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12617-001]

Fall Creek Hydro, LLC; Notice Dismissing Filing as Deficient

March 9, 2007.

On January 10, 2007, Commission staff issued an order dismissing Fall Creek Hydro, LLC's (Fall Creek) application for a second three-year preliminary permit to study the proposed 4.7-megawatt Fall Creek Hydroelectric Project No. 12617, to be located at the existing U.S. Army Corps of Engineers' (Corps) Fall Creek Dam, on Fall Creek in Lane County, Oregon. On February 8, 2007, Fall Creek filed a timely request for rehearing, seeking reinstatement of its application.

Fall Creek's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.¹ Rule 713(c)(2) requires that a rehearing request must

¹ 18 CFR 385.713(c)(2) (2006). See Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663, 70 FR 55,723 (September 23, 2005), FERC Statutes and Regulations ¶ 31,193 (2005). See also, Order 663-A, effective March 23, 2006, which amended Order 663 to limit its applicability to rehearing requests. Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663-A, 71 FR 14,640 (March 23, 2006), FERC Statutes and Regulations ¶ 31,211 (2006).

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.² Under Rule 713, any issue not so listed will be deemed waived. Accordingly, Fall Creek's rehearing request is dismissed.³

In any event, Fall Creek's arguments on rehearing are without merit. The purpose of a preliminary permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. While an applicant is not precluded from seeking and obtaining a successive preliminary permit for the same site, it must demonstrate that, under the prior permit, it pursued the proposal in good faith and with due diligence.⁴ A permittee seeking a successive permit is therefore required to take certain minimal steps, including filing six-month progress reports and consulting with the appropriate federal and state resource agencies.⁵

In October 2002, Commission staff granted Fall Creek a three-year preliminary permit to study its proposed project.⁶ Upon expiration of the first permit term, Fall Creek immediately filed its application for a second permit. Commission staff dismissed Fall Creek's application for a successive permit, concluding that Fall Creek failed to prosecute diligently the requirements of its previous permit.

On rehearing, Fall Creek contends that it has made substantial progress in analyzing the proposed project's feasibility and completing the Pre-

² As explained in Order No. 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.

³ See, e.g., South Carolina Electric & Gas Company, 116 FERC ¶ 61,218 (2006); and Duke Power Company, LLC, 116 FERC ¶ 61,171 (2006).

⁴ See Little Horn Energy Wyoming, Inc., 58 FERC ¶ 61,132 (1992).

⁵ See Burke Dam Hydro Associates, 47 FERC ¶ 61,449 (1989).

⁶ 101 FERC ¶ 62,038 (2002).