

UNITED STATES OF AMERICA 136 FERC ¶ 62,070
FEDERAL ENERGY REGULATORY COMMISSION

Union Electric Company, dba AmerenUE

Project No. 459-212

ORDER MODIFYING AND APPROVING SHORELINE MANAGEMENT PLAN

(Issued July 26, 2011)

1. On March 28, 2008, Union Electric Company, dba AmerenUE (AmerenUE), filed a shoreline management plan (SMP) pursuant to article 417 of the license for the Osage Hydroelectric Project No. 459,¹ located in Benton, Camden, Miller, and Morgan counties, Missouri.

BACKGROUND

2. The Osage Project has as its reservoir the Lake of the Ozarks which is approximately 93 miles long and has a shoreline length of about 1,150 miles. The lake has four major arms, including the Osage, Niangua, Gravois, and the Grand Glaize. The lake has a surface area of about 55,342 acres at a normal pond elevation of 660.0 feet Union Electric datum (UED).² The project boundary generally follows the full pool elevation of 662.0 feet, except in some areas where it follows either a higher designated contour elevation (ranging between 663.0- and 678.0-foot contours) or irregularly shaped metes and bounds property descriptions.³ Downstream from the project, the project boundary extends approximately one mile along both banks of the Osage River, and includes a 63.86-acre parcel of land on the west bank of the river, up to elevation 600.0 mean sea level (msl).⁴

¹ See 118 FERC ¶ 62,247(2007).

² UED is 0.9 feet higher than mean sea level.

³ Currently, 72 percent of the project boundary is defined by contour elevations ranging from 662.0 to 678.0 feet UED. The remaining 28 percent of the project boundary follows property lines, which are defined by metes and bounds. All Lake of the Ozarks elevations referred to in this order are UED, unless otherwise noted.

⁴ There is little land within the project boundary downstream of the Bagnell Dam due to the steep shoreline; however, AmerenUE encourages landowners and land management entities downstream of the Osage Project boundary to implement shoreline management guidelines and programs complementary to those presented in the SMP.

3. Article 417 of the license requires the licensee to file, for Commission approval, an SMP to coordinate land-management activities along the project shoreline. At a minimum, the plan must include:

- (1) a discussion of the plan's purpose, goals, and objectives;
- (2) a discussion of key issues associated with shoreline management at the project, and how issues were addressed in developing the plan (e.g., the public's right to access the entire shoreline, excluding project works, within the project boundary, as well as boating carrying capacity, navigation hazards, and the effect permitted structures have on boating safety);
- (3) identification and description of land use along the project shoreline (taking into account the need to protect sensitive habitats, historic properties, and aesthetic resources), including (a) maps identifying the locations of land use types, as well as sensitive habitats, aesthetic areas, historic sites, etc., (b) a description of how the use classifications were defined and delineated, and (c) descriptions of activities and uses that will be allowed in those classifications;
- (4) if the licensee chooses to file an amendment to remove land from the project boundary, a map showing the location of the lands proposed for removal, overlaid with its SMP shoreline classification map developed for item (3);⁵

⁵ In its license application, AmerenUE proposed to modify the project boundary so that parcels of properties that are currently defined by metes and bounds would be eliminated from the project boundary, and the boundary would instead match the contour elevation of the adjacent properties. AmerenUE proposed eliminating approximately 31,000 of the 32,000 acres of land within the project boundary around the lake. The Director, in the license order, found that removal of the lands would be premature without an SMP, and indicated that AmerenUE may resubmit its request for amendment of the license to remove the parcels of land at such time as it files its SMP.

However, AmerenUE, while indicating in its SMP that it intended to file an application with the Commission to have the lands that are privately held and not needed for project purposes removed from the project boundary, did not ask for the removal of such land. This order does not approve the removal of said lands from the project boundary. The Commission will consider any such requests at the time they are filed.

- (5) a description of all types of permitted uses, the permit application process, and guidelines for applying for a construction permit within the project boundary;
- (6) the licensee's existing programs (e.g., Adopt-A-Shoreline program, vector control program, derelict dock removal program, shoreline protection hotline, etc.);
- (7) measures to protect water, fish, wildlife, important habitat areas, and historic properties (e.g., an updated permitting program addressing set backs, size, density, and placement of docks, piers and other in-water structures; an encroachment policy; buffer zones and vegetative buffer policy; restricting development in critical or sensitive habitats; shoreline stabilization requirements; dredging and excavation restrictions, such as restricting the timing of the activity and testing sediments for contaminants if dredging is proposed; and measures to control erosion associated with permitted development);
- (8) a description of management policies (e.g., shoreline structure permitting guidelines), monitoring programs, educational programs, and enforcement;
- (9) provisions for periodically reviewing and updating the SMP;
- (10) a provision to undertake a shoreline erosion assessment for the Missouri State Park lands;⁶ and
- (11) provisions for consultation with agencies and other interested parties in the implementation of the SMP.

4. Article 417 further states that the SMP shall be developed in conjunction with the historic properties management plan and recreation enhancement plan.⁷ The licensee

⁶ AmerenUE's recreation enhancement plan, required by article 416 of the license, provides for a shoreline erosion assessment for the Missouri State Park lands near the licensed project, and states that results will be filed with the Commission within 60 days of completion for proposed implementation during the second half of the license term.

⁷ The recreation enhancement plan was approved on May 14, 2009 (127 FERC ¶ 62,130) and the historic properties management plan was approved on June 12, 2009 (127 FERC ¶ 62,206).

shall prepare the plan after consultation with the U.S. Fish and Wildlife Service (FWS); the Department of the Army, Corps of Engineers (Corps); the National Park Service (NPS); the Missouri Department of Conservation (Conservation); the Missouri Department of Natural Resources (Missouri DNR); the Advisory Council on Historic Preservation (ACHP); and the shoreline management committee for the Osage Project. The licensee shall include with the plan an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed SMP after it has been prepared and provided to the aforementioned parties, and specific descriptions of how their comments are accommodated by the plan.

5. AmerenUE provided considerable opportunity for public input during the development of the SMP. To assist in the development of the SMP, AmerenUE formed in 2001 a Shoreline Management Team of resource agencies; federal, state, and county officials; private property owners; chambers of commerce; dock builders; and mortgage companies. Following issuance of the project license, AmerenUE solicited written comments from resource agencies on the draft SMP and conducted several review meetings. AmerenUE received 26 written comments on the revised draft SMP. On November 2, 2007, AmerenUE met with Missouri State Water Patrol (Water Patrol), marina developers, and dock builders to discuss guidelines for dock length and slip size. From November 26 to 29, 2007, AmerenUE hosted four public meetings to present the draft of the revised SMP. Forty-four comments were received from Shoreline Management Team members and the public.

6. On April 15, 2008, the Commission issued a public notice of the application requesting comments, recommendations, motions to intervene, or protests by May 16, 2008. Dr. Edward Ronwin and the Duncan's Point Homeowners and Lot Owners Associations, Inc., filed motions to intervene in response to the public notice.⁸

7. Comments on the SMP that were received in response to the public notice are summarized in the Environmental Assessment (EA) that the Commission issued on June 10, 2009 for comment.⁹ The deadline for filing comments on the EA was July 10, 2009. Comments in response to the EA were filed by Douglas A. Beck, AmerenUE,

⁸ The motions were timely and unopposed. Therefore, they were automatically granted under Rule 214(c)(1) of the Commission's regulations. 18 C.F.R. §385.214(c)(1) (2010).

⁹ The EA contains one minor error. Table 1 indicates that shoreline use "Boat ramps, landings" exceeds the standard land use article, it does not.

Bagnell Dam Association of Realtors, Central Bank of Lake of the Ozarks, First Title Insurance Agency, Arrowhead Title, Inc., Lake Area Chamber of Commerce, and Lake of the Ozarks Board of Realtors.

8. The EA concludes that, with certain modifications and additional measures that are discussed below, the SMP should protect the project's environmental, recreational, historic, and scenic values, while providing adequate opportunities for private access to project lands and waters.

9. In the EA, Commission staff concludes that approval of the SMP, with modifications, would not constitute a major Federal action significantly affecting the quality of the human environment.

DISCUSSION

10. Consistent with the article 417, AmerenUE states in its SMP that the purpose of the SMP is to properly coordinate shoreline management activities at Lake of the Ozarks. The goals and objectives of the SMP are to define the procedures and policies that AmerenUE has in place for successful shoreline management activities at Lake of the Ozarks, and the reasons why the procedures and policies are needed and important to all stakeholders for protecting the energy, natural resources, and historic properties that are unique to the Osage Project. The SMP governs the shorelands and waters of the Lake of the Ozarks and the lower Osage River below Bagnell Dam (about one mile) that lie within the project boundary. The SMP notes that the majority of the lands immediately adjacent to the Lake of the Ozarks shoreline are privately owned, and AmerenUE has no direct control of development outside the project boundary.

11. The proposed SMP contains eight sections and eight appendices. These sections: provide background information and describe the project area and project operations; detail the environmental, recreational, and cultural resources within the project boundary; discuss shoreline management programs and guidelines; and present SMP enforcement, review, update, and implementation processes. Appendices to the SMP include: shoreline use classification maps, a permit requirements guide, a description of the derelict dock removal program, a description of the Adopt-A-Shoreline program, an overview of Duncan's Point, the procedure for addressing challenges to shoreline management plan mapping accuracy, a chart of responses to Shoreline Management Team comments, and the new license for the project.

12. The proposed SMP's provisions are discussed below.

13. AmerenUE began implementing its shoreline management permit program in 1983. AmerenUE proposes to continue to implement the permit program as part of the

SMP. Article 419 (“standard land use article”) of the project license and the shoreline use classifications would be used to determine the level of review and approval required for any proposed shoreline use.¹⁰ Certain shoreline uses would be allowed in each shoreline use classification and AmerenUE would be able to convey certain interests in project lands and waters (through leases, rights-of-way, fee-title conveyances) or permit certain non-project uses without resource agency notification and/or Commission approval.

14. Shoreline use classification maps were created to inventory the current shoreline resources uses and classify those uses as a shoreline management tool. The shoreline use classification maps were developed through the use of digital ortho-rectified aerial photography that was collected in 1999, with updated photography in 2004. The shoreline use classification maps for the project show two types of information about the Osage Project shoreline: (1) existing shoreline use classifications; and (2) the location and type of wetlands. AmerenUE classified the existing shoreline into six existing use categories. The six existing use classifications are: (1) commercial (e.g., marinas); (2) multi-family residential (e.g., condo/homeowners); (3) public recreation (i.e., state-owned access areas); (4) single-family residential; (5) state protected; and (6) undeveloped.

15. AmerenUE indicates certain areas along the shoreline are worthy of an additional level of protection that is not afforded to all of the lands covered by the permit requirements. These areas are identified along undeveloped shoreline with the following resources present: wetlands, heads of coves, historic properties, and areas of woody debris. These areas are of special concern to AmerenUE and the resource agencies. Within these areas, an increased level of assessment, consultation and/or protection will be required. Development may occur in these areas, but the resources must be afforded protection.

¹⁰ Article 419 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for minor activities that are consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project. Through the standard land use article, a licensee can convey an interest in project land and permit private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina within the project boundary without prior Commission approval. AmerenUE’s proposed SMP would delegate to AmerenUE the authority to issue permits for large docks with 1-50 slips, and commercial facilities with 1-10 slips, without Commission review and/or approval.

Shoreline Development Permit Program

16. To facilitate implementation of its permit program, AmerenUE includes in its SMP permitting guidelines which provides details on how permits will be issued for any shoreline development activity. The guidelines identify allowable uses under each shoreline classification and what level of review is required in order to obtain a permit from AmerenUE. The permitting program guidelines establish the specific requirements for obtaining permits for allowable uses and any restrictions for resource protection related to the following topics: wetlands, historic properties, heads of coves, and woody debris; public access; waterway protection; dredging/excavation/fill; bank stabilization; electric power; sewer effluent; large docks and marinas; deck/pier guidelines; breakwaters; boat dock placement; habitable structures; water withdrawals/private irrigation systems; fish attractors; and heat exchange coils.

17. The permit program addresses installation, modification, or transfer of boat docks; bank stabilization construction (i.e., vegetation, riprap, and seawalls); decks; breakwaters; boat ramps; and any other structures, including excavation and fill within the project boundary. Prior to any ground-disturbing activity, or the installation or construction of any structure on or affecting project lands, a permit application must be approved by, and a permit issued by, AmerenUE. Any activity such as installation of a seawall, riprap, or breakwater (except installation or construction of boat docks) located lakeward of elevation 658.5 feet that would affect a wetland, or rare, threatened, or endangered species, would require approval from the Corps and possible review from other resource agencies if deemed necessary by AmerenUE.

18. AmerenUE has taken a number of steps to ensure the accuracy and efficiency of its permitting program. The first was to develop an electronic permitting system that allows for easier tracking of permit information. AmerenUE has instituted a geographic information system (GIS) that contains information about the entire shoreline around the lake; permit information, including any conditions that must be met; and county land ownership information. AmerenUE can also search its permit information, which allows for ease of enforcement and permit verification.

Boat Dock Approval

19. Typically, through the standard land use article, a licensee can convey an interest in project land and permit private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina within the project boundary without prior Commission approval. AmerenUE's proposed SMP would delegate to AmerenUE the authority to issue permits for large docks with 1-50 slips, and commercial facilities with

1-10 slips, without Commission review and/or approval. AmerenUE proposes that applications for docks with a cumulative total of 11-50 existing and proposed slips would be subject to review by the Missouri DNR, Conservation, Water Patrol, and any other appropriate agency deemed necessary by AmerenUE, but would not require Commission approval.

20. The EA recommends using as a measure the number of watercraft to be served rather than number of slips to conform to the language used in the Commission's standard land use article. The EA further recommends modifying the permitting guidelines for large docks (those with the cumulative total of existing and proposed slips, to accommodate 11-50 watercraft) contained within the proposed SMP to require review and approval by the Commission in the event the Missouri DNR, Conservation, Water Patrol, or any other appropriate agency deemed necessary by AmerenUE identifies a known rare, threatened, or endangered species and/or its habitat; an historic property, unless previously determined to be ineligible; wetlands; and/or any significant resource as being potentially affected by the proposed use and/or activity the proposed non-project use of project lands, and AmerenUE and the agency cannot reach consensus on how to proceed. Proposals for large docks (those with the cumulative total of existing and proposed slips to accommodate 51 or more watercraft) should also be subject to agency consultation and Commission review and approval. AmerenUE would also file an annual report with the Commission that summarizes the extent and location of all large marinas (11-50 watercraft) permitted within the project boundary without prior notice to or approval by the Commission.

21. In light of AmerenUE's shoreline management program and guidelines, and with the additional requirements added by this order, authorizing AmerenUE to issue permits for large docks to accommodate 1-50 watercraft, and commercial facilities to accommodate 1-10 watercraft, without Commission review and/or approval as described in the SMP should be adequate to protect the environmental resources of the project while reducing the number of applications the licensee must prepare and file with the Commission.

22. The SMP also authorizes AmerenUE to issue permits for individual breakwaters without Commission review or approval. Pursuant to the SMP, if a breakwater is proposed as part of a boat dock, it should be included as part of the dock design and must fit within the building area allowed for that location. Individual or standalone breakwaters would require Corps and Water Patrol approval. Authorizing AmerenUE to issue permits for breakwaters as described in the SMP should be adequate to protect the environmental resources of the project while reducing the number of applications the licensee must prepare and file with the Commission.

Large Docks and Marinas

23. AmerenUE has defined large docks as proposed docks, or the cumulative total of existing and proposed slips, that would consist of 11 or more slips. AmerenUE defines marinas as commercial facilities that provide docking, storage, maintenance, and/or other facilities equipped to provide marine repair service, gassing, and supplies. To ensure that such docks and marinas do not adversely affect the lake, navigation on the lake, public safety, public recreation, and the natural environment, AmerenUE is proposing permitting requirements for large docks and marinas as set forth in the proposed SMP. These requirements include dock placement standards (e.g., fairway widths and minimum distance from existing marinas), dock configuration standards (e.g., maximum slip length and maximum dock length), construction standards (e.g., load specification, flotation requirements, and construction material requirements), permit conditions (e.g., expiration dates, posting requirements, and transfer restrictions), and prohibiting habitable structures and devices which could cause waste to be discharged into the lake.

24. During review of these large dock and marina applications, AmerenUE, resource agencies, and, in some cases, the Commission would consider potential impacts to vegetation, shoreline stability, significant resources, existing land uses, and water quality within the project boundary. In addition to the information required in the permit application, applicants for large docks and marinas would be required to submit an environmental review describing the affected environment, probable impacts, and proposed mitigation for the facilities to be permitted by AmerenUE under the SMP.

25. AmerenUE proposes that applications for docks with a cumulative total of 11 to 50 existing and proposed slips would be reviewed by the Missouri DNR, Conservation, Water Patrol, and any other appropriate agency deemed necessary by AmerenUE. Applications for docks with a cumulative total of 51 or more existing and proposed slips would undergo the same agency review as noted above and be required to be reviewed and approved by the Commission before AmerenUE would issue a permit.

26. AmerenUE proposes that all proposed marinas would be required to be located no closer than one-half of a mile (measured over project waters) from existing marinas, and that all applications for marinas with more than 10 existing and proposed slips would undergo the same agency review as outlined above for large docks as well as be reviewed and approved by the Commission before AmerenUE would issue a permit.

27. In additions, the proposed SMP would delegate to AmerenUE the authority to issue permits for the construction and operation of fueling facilities.

Dredging

28. AmerenUE also proposes to have authority to permit dredging and excavation of up to 500 cubic yards of material at a location without prior Commission approval. AmerenUE would consider dredging or excavation only when all other options have been exhausted, and dredging, excavation, and fill would be prohibited in wetlands, stream channels, and mouths of streams. This delegated authority is consistent with the dredging management plan that was part of AmerenUE's previous license.

29. Dr. Ronwin, who owns property along the lake, objects to AmerenUE's interpretation and application of the SMP policies regarding docks and dredging and the associated negative impact on recreational activities and interstate and foreign commerce at the lake. In his May 4, 2008 motion to intervene, he states that the dredging/excavation standards are too broad and prohibitive, and asks that the standards be justified and that permits be considered on a case-by-case basis.

30. The dredging/excavation guidelines included in the SMP were developed in consultation with the Shoreline Management Team, which consists of private property owners; chambers of commerce; dock builders; mortgage companies; Water Patrol; federal and state resource agencies, and several state and county representatives. The proposed SMP's dredging guidelines are consistent with the terms of Corps General Permit 38 which has been in effect since 2006.¹¹

31. The dredging guidelines prohibit excavation or filling of wetlands, stream channels or the mouths of streams, areas above elevation 655.5 feet UED, and areas below elevation 652.0 feet UED, except immediately under an existing boat lift. Dredging to elevation 650.0 feet UED would be authorized only to accommodate an existing boat lift. The dredging guidelines restrict areas that can be dredged and provide specific direction for: excavation dimensions; slope; disposal of dredged material;

¹¹ The Corps General Permit 38 authorizes the excavation and/or discharge of dredged or fill material for the following structures or projects, subject to the general and special conditions the permit, and the criteria in the appendices: retaining walls, sea walls, and other bank stabilization; boat ramps; decks, piers, pilings, breakwaters, and small private or recreational bridges; mechanical excavation for existing and proposed boat docks, and for access to other structures; water intakes structures, outfall structures, heat pump loops, water line crossings, overhead and submerged communication and electric lines and other utility lines; and fish attractant devices. These conditions are designed to protect water quality, and aquatic life and habitat.

dredging for non-commercial use for landscaping purposes or backfill for seawalls; dredging during fish spawning activity; quantity; dredging beneath boat docks; and fill on project property.

32. Commission staff in the EA noted that certain shoreline areas, such as wetlands, heads of coves, historic properties, and areas of woody debris, would require an increased level of assessment, consultation and/or protection, as appropriate.¹² AmerenUE does not propose an absolute prohibition of all uses and activities in these areas, but would require that proposed disturbances in these areas contain measures to avoid, minimize, or mitigate impacts to important resources. Commission staff found that the additional protection afforded by the SMP within certain shoreline classifications protects important resources such as fish habitat, to the extent practicable, while still allowing environmentally sensitive development and recreation access along the project shores.¹³ Staff further recommended that AmerenUE file an annual report with the Commission that summarizes dredging authorized without prior notice to, or approval by, the Commission.

33. The proposed dredging/excavation guidelines would balance the public's use of shoreline areas with the protection of other natural resources at the project. Authorizing AmerenUE to grant dredging and excavation permits for up to 500 cubic yards of material as described in the SMP should be adequate to protect the environmental resources of the project.

Individual Breakwater Structures

34. The SMP, as proposed, sets certain limits on the location, size, and setback of individual breakwater structures. According to AmerenUE's permit requirements, breakwaters should be included as part of a dock design, must fit within the building area allowed for the location, and include a lighting plan. Individual or stand-alone breakwaters would require Corps and Water Patrol approval.

35. As part of a dock design, breakwaters associated with applications for docks with a cumulative total of 11 to 50 existing and proposed slips would be subject to review by the Missouri DNR, Conservation, Water Patrol, and any other appropriate agency deemed necessary by AmerenUE. Breakwaters associated with applications for docks with a cumulative total of 50 or more existing and proposed slips would undergo the same

¹² EA at 57.

¹³ EA at 58.

agency review as noted above and be reviewed and approved by the Commission before AmerenUE would issue a permit.

Non-Conforming Structures

36. AmerenUE indicates a considerable number of structures have been located within the project boundary along the shoreline of the lake over the last 75 years, some prior to adoption of formal permitting procedures and policies and some since, which do not conform to current shoreline management standards and could not be permitted under AmerenUE's current guidelines or license. Examples of such non-conforming structures include, but are not limited to, floating habitable enclosures, dwellings partially or wholly within the project boundary, decks extending more than three feet over seawalls, and floating commercial businesses. AmerenUE does not propose to grandfather any of these pre-existing structures, but has developed proposed guidelines to manage such non-conforming structures.

37. In addition to not grandfathering pre-existing structures, AmerenUE would require that these structures be registered prior to January 1, 2012. AmerenUE also intends to notify property owners who appear to claim ownership of non-conforming structures prior to this deadline. Upon registration of a non-conforming structure, AmerenUE would consider four options for appropriately managing the non-conforming structure: (1) remove and relocate the non-conforming structure outside of the project boundary; (2) seek revision of the project boundary to exclude the non-conforming structure; (3) take action to affirm or secure rights necessary to manage and control the non-conforming structure; or (4) convey an interest in project property to an applicant, which will allow the applicant to continue the use of the non-conforming structure and to transfer the interest. AmerenUE would file an annual report with the Commission for all non-conforming structures for which interests have been conveyed under this section, including information on the nature of the interest conveyed, the location of the non-conforming structure, and the nature of the use of the non-conforming structure.

38. Standard article 5 of the project license requires licensees to acquire and retain sufficient property and rights to construct, maintain, and operate the project. In this regard licensees are responsible for ensuring that project lands are protected and maintained for their designated project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control. Licensees must also monitor project property to ensure that no authorized uses and occupancies occur within the project boundary as such encroachments may adversely impact project purposes and take appropriate actions to address any encroachments found at the project.

39. Lands that are included in the project boundary are needed for particular project purposes. Non-conforming structures located on lands in the project boundary can have adverse affects on project purposes and the project's scenic, recreational, and environmental values and are inconsistent with the licensee's obligations and responsibilities under standard article 5. Some of the provisions of AmerenUE's non-conforming structure policy in the proposed SMP are inconsistent with standard article 5. Further, it should be noted that the Commission does not condone residential development and occupancy of project lands, since such residential use is inconsistent with the Commission's policy of maximizing public recreational development.¹⁴ Consequently, AmerenUE's SMP must demonstrate compliance with the Commission's policies on these issues related to non-conforming structures at the project.

40. As such, AmerenUE should be required to develop a plan and schedule to inspect and identify all lands within the project boundary; identify existing non-conforming structures and encroachments; identify the project purposes being served by the underlying lands, and take appropriate actions to resolve such non-conforming structures and encroachments with the goal of removing them from the project boundary. In the majority of cases, the existing non-conforming structure/encroachment should be removed in a timely manner and the site restored to pre-existing conditions. However, it may not always be feasible to remove the non-conforming structure/encroachment in the near term due to site-specific circumstances or hardship, and later removal of the encroachment may be warranted.

41. If site-specific circumstances or hardship warrant delayed removal, the licensee should develop a plan and schedule that provides for the conveyance of project property for the continued temporary use of project lands for that structure until specific circumstances allow for future removal and restoration of the site. Such a conveyance may include among other things, but are not limited to, a conditional, non-transferable lease that would terminate upon the lessee's vacancy of property, a mitigation plan for allowing project purposes to be impacted during the temporary use; and provision for requiring removal of the structure at such time. Any such document should include appropriate conditions to ensure the encroachment is managed and maintained in an appropriate manner. These conditions should include, but are not limited to, provisions that require that the use or structure comply with all applicable federal, state, and local standards or codes; not be expanded, altered, or transferred to other parties; avoids impacts on any nearby sensitive habitat areas or resources; and be subject to licensee inspection, and other actions, as needed, to ensure compliance.

¹⁴ 18 C.F.R. § 2.7

42. If AmerenUE seeks to manage a non-conforming structure by revising the project boundary to exclude the non-conforming structure because the underlying lands are not needed for project purposes, AmerenUE would need to file an application to amend the license to delete the lands from the project boundary. No land may be removed from a project boundary until the Commission has examined the current and potential need for these lands for project purposes, including but not limited to public access, shoreline control, aesthetic values, and protection of environmental and wildlife resources. If the Commission finds that the licensee has demonstrated that the parcel is not (or no longer) needed for project purposes, the parcel will be deleted from the project boundary upon Commission approval.

Permit Applications

43. Dr. Ronwin objects to state and local resource agencies having input and veto power on permit applications. AmerenUE designed its program to address the needs of each category of permits it will be administering. There are a number of agencies that have various responsibilities regarding the lake. The level of review and required approvals for each use and/or activity depends upon the proposed location of the use and/or activity. In accordance with article 419 of the project license, AmerenUE could in some cases issue permits without review by other agencies; however, certain allowable uses would also require agency notification, and in some instances agency permits, and/or Commission approval. Despite Dr. Ronwin's objection, we find the level of agency review is reasonable.

Decks and Patios

44. AmerenUE seeks in its proposed SMP to permit within the project boundary decks, piers, gazebos, patios, and walkways along the shoreline in certain shoreline use classifications. The EA recommends modifying the proposed SMP to prohibit the construction of decks, gazebos, and patios within the project boundary. Walkways along the shoreline, including but not limited to boardwalks, would also be prohibited. Walkways that provide direct access from the adjacent property to the permitted facility (e.g., a pier) would be permitted.¹⁵

45. In its July 9, 2009 response to the Commission's EA, AmerenUE stated that it believes that permitting decks, gazebos, patios, and walkways in the project boundary is compatible with public access, and proposes that limitations, such as set backs or square footage limitations, rather than outright prohibition, may be appropriate. Bagnell Dam

¹⁵ EA at 66.

Association of Realtors, Central Bank of Lake of the Ozarks, First Title Insurance Agency, Arrowhead Title, Inc., Lake Area Chamber of Commerce, and Lake of the Ozarks Board of Realtors comments noted their agreement with AmerenUE.

46. If allowed in the project boundary, decks, gazebos, patios, and walkways along the shoreline, including but not limited to boardwalks, could potentially restrict a significant area of project lands and waters from public access. As a general policy, the Commission does not allow the interests of private property owners to override the public's use and enjoyment of project lands and waters.¹⁶ Such structures have the potential to impede public access to the project if they are located in the project boundary. This prohibition would protect public access to and recreational use of project lands and waters. AmerenUE has not raised anything that would overcome the Commission's stated policy on this matter and we will require the SMP be modified to reflect the policy.

Historic Properties

47. The EA recommends the proposed SMP be modified with regard to historic properties. For boat docks and marinas with 1-50 slips or for any other proposed use and/or activity within 300 feet of an historic property, the EA recommends requiring consultation with the Missouri SHPO. Authorizing boat docks and marinas with more than 50 slips requires consultation with the Missouri SHPO regardless of the proximity to an historic property.

48. Additionally, if during the construction of any permitted facility within the project boundary, any cultural resources are discovered, the EA recommends that AmerenUE require the permittee to (1) cease all work at the site immediately and (2) immediately contact AmerenUE. Pursuant to the inadvertent discovery clause in the approved historic properties management plan, AmerenUE would then consult with the Missouri SHPO and any tribes that might attach religious or cultural significance to the discovered materials, to determine what steps need to be taken to evaluate the discovery and, if found to be eligible for the National Register of Historic Places, to mitigate any adverse

¹⁶ See Guidance for Shoreline Management Planning at Hydropower Projects (<http://www.ferc.gov/industries/hydropower/gen-info/guidelines/smpbook.pdf>); *West Penn Power Co.*, 81 FERC ¶ 61,362 at 62,376 (1997), *reh'g denied*, 83 FERC ¶ 61,225 (1998); and *Wisconsin River Power Co.*, 58 FERC ¶ 61,117 at 61,383-84 (1992) (rejecting easements that would limit public access to a "walk-through corridor" and refusing to allow construction of private facilities other than necessary waterfront facilities at common areas).

effects. The permittee would not resume work at the site until notified by AmerenUE that the necessary steps have been completed by AmerenUE.

49. Duncan's Point Homeowners Association, in its May 15, 2008 motion for intervention stated without elaboration that it believes that the SMP fails to provide an effective set of guidelines, procedures, and consultation for cultural resources management and historic properties. AmerenUE would review each permit application to determine if the proposed use and/or activity is located within 300 feet of an historic property. In SMP section 3.2.2 *Historic Properties*, AmerenUE requires consultation with the Missouri SHPO, and Missouri SHPO approval, if the proposed use and/or activity is located within 300 feet of a historic property. Additionally, if historic properties (e.g., artifacts or human remains) are encountered during any permitted excavation or dredging, AmerenUE would require that all construction cease. The permittee would notify AmerenUE and the Missouri SHPO of any unanticipated finds or new discoveries. Local law enforcement would also be notified should human remains be found. We note that AmerenUE's Permit Requirements (Appendix B section 6.1.2 *Historic Properties*) are inconsistent with section 3.2.2 in that the Permit Requirements state that consultation with the Missouri SHPO, and Missouri SHPO approval, would be required if the proposed use and/or activity is located within 100 feet of an historic property. As recommended in the EA, the proposed SMP should be modified with regard to historic properties. Any reference to Missouri SHPO approval should be changed to reflect just consultation with the Missouri SHPO is required. The Missouri SHPO should be consulted for boat docks and marinas with 1-50 slips or for any other proposed use and/or activity within 300 feet of an historic property. For boat docks and marinas with more than 50 slips, the Missouri SHPO should be consulted regardless of the proximity to a historic property.

Geographic Information System

50. AmerenUE proposes to maintain a GIS to manage information collected through its SMP (e.g., permitting information for existing structures, location of derelict docks, accident data).

51. As discussed above (Shoreline Development Permit Program), AmerenUE instituted a GIS that contains information about the entire shoreline around the lake, permit information, and county land ownership information. In 2002, inspectors traversed all 1,150 miles of shoreline and collected information about all the structures around the lake and shoreline condition. This information has been overlaid onto AmerenUE's existing GIS.

Lake of the Ozarks Resource Protection Guidelines

52. The proposed SMP includes resource protection guidelines to provide an additional level of protection for undeveloped shoreline with the following resources present: wetlands, historic properties, heads of coves, and areas of woody debris. Within these areas, an increased level of assessment, consultation, and/or protection would be required, as appropriate, to avoid adverse impacts. Development may occur in these areas as long as there is a plan that contains measures to avoid, minimize, or mitigate impacts on important environmental features within the area. AmerenUE and resource agencies would carefully review any proposed uses and mitigation plans on a case-by-case basis to ensure the resources are afforded protection. The proposed SMP delegates permitting authority for applications to waive these guidelines to AmerenUE, with resource agency consultation for some shoreline use classifications.

Sewer Effluent Lines that Discharge into Project Waters

53. AmerenUE would not permit individual wastewater systems within the project boundary under the proposed SMP unless a request is filed with AmerenUE, a written recommendation from the county health department and/or the Missouri DNR is provided, and the request is specifically approved by AmerenUE. If the requested system is expected to discharge into project waters, it would require Commission approval. All marina effluent removal systems within the project area must be approved by city/county health departments and the Missouri DNR. Any system that has not received approval and is within the project boundary will be removed by AmerenUE and at the owner's expense.

Derelict Dock Removal Program

54. AmerenUE would continue to implement its existing derelict dock removal program under the proposed SMP. The goal of the program is to preserve the aesthetic integrity of the lake's shorelines by removing docks in poor condition from the Lake of the Ozarks. Under state law, it is unlawful to abandon a dock on the Lake of the Ozarks. AmerenUE would make every attempt to identify the owner of a derelict dock and enforce their responsibility to observe timely and proper disposal methods. In the event that AmerenUE is unable to locate the dock owner, AmerenUE would suspend or revoke its permit(s), remove and dispose of the derelict dock, and seek reimbursement from the owner.

Shoreline Condition Assessment

55. AmerenUE would continue to use certain information about permitted and unpermitted structures, general shoreline conditions, and shoreline stabilization measures,

collected during its 2002 assessment of shoreline conditions and available in its GIS, to process permit applications and enforce the SMP.

Shoreline Management Plan Enforcement

56. AmerenUE is responsible for supervising and controlling the permitted uses and to monitor the use of, and ensure compliance with, any permits it has conveyed under its license. If any unauthorized activities or structures are identified along the lake shoreline, AmerenUE would hold the applicant responsible for correcting or removing the structure/activity, may revoke the permit, and/or charge enforcement fees. Further, if any non-project use/activity violates any conditions of AmerenUE's project license or any other condition imposed by AmerenUE for the protection and enhancement of the project's environmental, recreational, scenic, and historic values or if the terms of the permit are violated, AmerenUE would take any action necessary to correct the violation. AmerenUE would use GIS to help process permit applications and provide a visual record of all structures on the lake. AmerenUE proposes to conduct annual shoreline inspections and/or random permit audits to ensure compliance.

Shoreline Management Plan Review and Update Process

57. In order to continue to protect public recreation opportunities, aesthetic beauty, historic resources, environmental features, and power production capability at the Osage Project throughout the term of the license, AmerenUE would modify the SMP and permit requirements as needed, and consult with the resource agencies and other stakeholders, as appropriate. AmerenUE would inform the Commission of significant modifications to these documents and would provide documentation of the consultation among AmerenUE, resource agencies, and other stakeholders. AmerenUE proposed reviewing the overall SMP 5 years after the effective date of the new license, and subsequently every 10 years.

58. Any change to any of the provisions of the SMP would require approval by the Commission. Prior to submitting any proposed modification, AmerenUE would need to consult with the FWS; Corps; NPS; Conservation; Missouri DNR; and the Missouri SHPO. In order to allow AmerenUE the opportunity to implement the SMP for at least 5 years, AmerenUE's initial overall review should be filed by March 31, 2017, and subsequently every 10 years.

Shoreline Protection Hotline

59. AmerenUE would continue to make available a shoreline protection hotline to provide lake residents with a single, local telephone number for reporting any lake management concerns.

Adopt-A-Shoreline Program

60. AmerenUE proposes to continue to support the adopt-a-shoreline program currently in place. The mission of the program is: “. . . to assume a leadership role in creating and maintaining a shoreline clean of debris and litter, thus enhancing the quality of life at the Lake of the Ozarks and increasing public awareness of the importance of keeping the lake clean.” AmerenUE’s adopt-a-shoreline program enables and encourages groups and individuals to adopt portions of shoreline for litter control. AmerenUE coordinates biannual clean-up events. While AmerenUE is not ultimately responsible for non-project related litter control, the program is successful and enhances the aesthetic value of the lake.

Lake of the Ozarks Office and Staff

61. Within the SMP, AmerenUE would continue staffing an office located at the Lake of the Ozarks to allow staff members to continue to interact closely with individuals at the lake and increase the efficiency of implementing shoreline management programs and policies.

Land Disturbance Education

62. In the SMP, AmerenUE proposes to sponsor annual seminars in coordination with the Missouri DNR to educate developers and builders about best management practices (BMPs) to control stormwater runoff and nonpoint source pollution at the Osage Project. This education program is also a requirement of AmerenUE’s Storm Water Pollution Prevention Plan.

Public Education

63. AmerenUE would continue to use a wide range of methods (e.g., news releases, brochures, media interviews, public presentations, exhibits) to educate the public about shoreline management issues and the importance of protecting the Lake of the Ozarks and its resources. AmerenUE would also continue to make relevant permitting information available on its web site.

Certified Dock Builders Program

64. Under the SMP, AmerenUE proposes to continue to implement the Certified Dock Builders Program to ensure that all docks constructed on the Lake of the Ozarks meet a standard of craftsmanship that prevents sub-standard docks from appearing on the lake. In conjunction with this program, AmerenUE would implement its plan for eliminating the use of all non-encapsulated foam in boat dock construction.

Flotation Program

65. The SMP states that as of December 31, 2008, all non-encapsulated foam should have been removed from the Lake of the Ozarks. Moving forward, only AmerenUE-approved encapsulated flotation would be permitted under the proposed SMP for new dock construction or the repair of existing docks.¹⁷

Vegetative Cover Policy

66. The Lake of the Ozarks has historically been a national tourist destination and vacation home area. The heavy use along the shoreline has reduced vegetative cover in some areas. As part of the SMP, AmerenUE would continue to implement its vegetative cover policy to create a “shoreline buffer zone” in order to preserve riparian vegetation, enhance the aesthetics of the lake, provide riparian habitat, decrease sediment and nutrient runoff, protect water quality in developed portions of the lake, and enhance property values. The policy would pertain to lands that extend from the shoreline up to the project boundary.

Yard Waste Disposal Policy

67. Missouri Clean Water Law specifies that it is a violation for commercial or industrial businesses to dispose of leaves by placing them into waters of the state and that it is unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminate in a location where it is reasonably certain to cause pollution of any waters of the state shoreline residents from disposing of or burning leaves and other organic material in or near the lake.

68. Nutrient cycling is a vital function of the ecology of any region. In any particular environment, the nutrient cycle must be balanced and stable if the organisms that live in that environment are to flourish and be maintained in a constant population. The Lake of the Ozarks has sufficient nutrients and organic matter as a large amount of organic matter makes its way into the lake naturally. Any additional leaf litter and nutrient concentrate from ash may be unnecessary and even negative as the disposal of leaves (and grass clippings) in the lake can add to an excessive nutrient loading in the lake, thus causing pollution issues.

¹⁷ AmerenUE banned any new installation of non-encapsulated foam in 1995. To ease the impact on dock owners, the company did not require the immediate removal of existing foam if the flotation was still in good condition. In 2003, AmerenUE set a final deadline for replacement of all non-encapsulated foam flotation.

Mosquito Vector Control Program

69. As proposed in the SMP, AmerenUE would treat mosquito habitat, up to elevation 660.0 feet, with a spray bio-larvicide. In addition, AmerenUE would also treat areas upland of elevation 660.0 feet, as needed, with floating briquettes containing a sustained release larvicide to control mosquito development in areas with standing water. This would only occur if shoreline residents report areas in need of mosquito control and AmerenUE determines action is necessary and appropriate at that area. Given Commission jurisdiction only extends to the project boundary, any applications outside of the project boundary would be at AmerenUE's expense.

Mile Marker Project

70. Mile markers on Lake of the Ozarks have been established by the Corps for the main channel and arms of the Lake. Mile marker "0" begins at Bagnell dam and the markers progress upstream towards the Corps' Truman dam.¹⁸ To promote navigation and safety, AmerenUE presented a grant to the Mile Marker Project to employ 100 new marker signs along the Lake of the Ozarks shoreline. AmerenUE would continue its cooperation to establish mile markers that begin at the Osage arm of the lake and continue along the entire shoreline.

Fees

71. Dr. Ronwin objects to the enforcement fees that may be levied against property owners who do not obtain all necessary permissions in accordance with the SMP. He also objects to the fees AmerenUE proposes to charge for permits and other lake management services. We note that article 419 of AmerenUE's project license allows AmerenUE to establish fees to cover the cost of administering a permit program. Further, the Commission has authority to allow licensees to issue permits for the use of project lands and waters and to charge reasonable fees to recover its expenses.¹⁹ AmerenUE's proposed enforcement fees would serve as a deterrent for non-compliance with the SMP and its Permit Requirements. We have reviewed the processing fees, user fees, and

¹⁸ These mile markers are not the same as river miles. These mile markers begin at Bagnell dam and serve as a navigational aid only on the lake and its arms. A river mile is a measure of distance in miles along a river from its mouth which begins at zero and increases further upstream.

¹⁹ See *Coalition for the Fair and Equitable Regulation of Docks on the Lake of the Ozarks v. FERC*, 297 F.3d 771 (8th Cir. 2002).

enforcement fees proposed by AmerenUE in its SMP at Appendix B, Section 4.0 Fees and Fee Schedule, and find that they are reasonable.

Other Issues

72. Douglas A. Beck requested clarification of the terms “commercial” and “significant shoreline development.” Commercial facilities provide docking, storage, maintenance, and/or other facilities equipped to provide marine repair service, gassing, and supplies. They may also include land-based areas for car parking, boat ramps, and associated facilities and services. Private marinas are an example of commercial development. While the term “significant shoreline development” does not occur in the SMP, development, as used in the SMP, is a non-project land use activity that would disturb the land or add to the man-made features at the lake and along the shoreline, and has the potential to impact environmental resources. A SMP typically represents balance between resource protection and enhancement and development. The standard land use article included in most licenses allows licensees to establish a program for issuing permits for specified types of use and occupancy of project lands and waters. Typically, any development that is beyond the scope of the standard land use article requires Commission approval.

73. We will require the licensee to file GIS data regarding the reservoir area and shoreline management classifications. This will allow detailed tracking of shoreline resources and uses, and facilitate future reviews. Ordering Paragraph (J) contains the details and filing specifications for the GIS data required by the Commission.

74. The SMP fulfills the requirements of article 417 and, with the identified modifications, is a reasonable plan for protecting the project’s environmental, recreational, historic, and scenic values, while providing adequate opportunities for private access to project lands and waters. The proposed SMP, as modified below, balances the public interest while protecting project resources.

The Director orders:

(A) Union Electric Company’s (dba AmerenUE) shoreline management plan, filed March 28, 2008, pursuant to license article 417, as modified by ordering paragraphs (B) through (J) below, is approved.

(B) The large docks permitting guidelines contained within the proposed Shoreline Management Plan is modified as follows (the marina requirements would remain unchanged):

Proposals for large docks, or the cumulative total of existing and proposed slips to accommodate 11-50 watercraft, shall be subject to review by the Missouri Department of Natural Resources, Missouri Department of Conservation, Missouri State Water Patrol, and any other appropriate agency deemed necessary by AmerenUE. Should AmerenUE and/or any of the agencies identify a known rare, threatened, or endangered species and/or its habitat; an historic property, unless previously determined to be ineligible; wetlands; and/or any significant resource as being potentially affected by the proposed use and/or activity, the proposed non-project use of project lands shall also be submitted to the Commission for its review and approval if AmerenUE and the agency cannot reach consensus on how to proceed.

(C) Beginning on January 31, 2012, and every year thereafter, AmerenUE shall file an annual report with the Commission that summarizes the extent and location (including latitude/longitude point data) of all large docks and commercial marinas, fuel facilities, and breakwaters permitted within the project boundary without prior notice to or approval by the Commission. The Commission reserves the right to require changes to the annual report in future reporting years.

(D) Beginning on January 31, 2012, and every year thereafter, AmerenUE shall file an annual report with the Commission that summarizes the extent and location of all dredging and excavation permitted within the project boundary without prior notice to or approval by the Commission. The Commission reserves the right to require changes to the annual report in future reporting years.

(E) By May 1, 2012, AmerenUE shall complete its registration and review of all non-conforming structures on lands within the project boundary and file, for Commission approval, a report documenting the results of the review. The report shall describe the all non-conforming structures and encroachments found within the project boundary. For each structure/encroachment, the filing shall include: (1) a description of the type, size, and location of the site, including all facilities and structures and resource value; (2) a detailed map or drawing showing the location of the encroachment in relation to the project boundary, project reservoir shoreline, and any nearby project features; (3) a description of the licensee's current ownership or rights to the lands underlying the encroachment, as acquired pursuant to article 5 of the project license; (4) a description of the specific project purposes served by the underlying lands; and (5) a description of the any adverse impacts the encroachment may have on specific project purposes or resources.

The report shall also include location point data representative of each encroachment site. The location point must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The

location point must include latitude/longitude, in decimal degrees, based on the horizontal reference datum of the North American Datum of 1983 (NAD 83).

If the licensee finds an encroachment is consistent with the allowable uses and occupancies of article 419 (i.e., standard land use article) and the project's approved resource management plans, the licensee shall identify its plans to grant permission for the existing use in accordance with the applicable license requirements. If the licensee finds the encroachment is consistent with the approved resource management plans for the project, but not within the scope of the types of uses and occupancies allowed under article 419, the licensee shall file an application for Commission approval to authorize the existing use.

For each encroachment identified in the report that cannot be authorized pursuant to the current requirements of the license, the report shall include a proposed plan and schedule for removing or otherwise resolving the encroachment. Depending upon the site-specific circumstances, this plan and schedule shall conform to the applicable requirements below.

(a) Unless either item (b) or (c) below apply to the subject encroachment, the report shall include a plan and schedule for the timely removal of the encroachment and restoration of the site to its pre-existing condition. The plan and schedule shall identify the procedure, methods, and timeline to be used in the removal of the encroachment and restoration of the site to its pre-existing condition, including any protective measures to be implemented to minimize potential environmental effects associated with such actions.

(b) If it is not feasible to remove the encroachment in the short-term, due to site-specific circumstances or hardship, and the encroachment is located on lands needed for specific project purposes, the report shall include a plan and schedule for allowing the encroachment to remain on project lands temporarily, until future conditions or circumstances allow for removal. The filing shall also include a detailed explanation of why it is not feasible to remove the encroachment in the short-term due to site-specific circumstances or hardship. The plan and schedule shall include: (1) a procedure and timeline for allowing the encroachment to temporarily remain within the project boundary and for implementing appropriate mitigation measures for the encroachment's continued use and occupancy of project lands; (2) a description of the proposed mitigation measures, including type, location, and appropriateness; (3) documentation of the encroachment's compliance with applicable federal, state, and local standards and regulations; and (4) a proposal to convey project property for the encroachment that includes, at a minimum, provisions that require: the future removal of the encroachment and

restoration of the site, ensure the encroachment is managed and maintained in an appropriate manner that minimizes or prevents adverse impacts on project purposes and resources, and provides for appropriate mitigation measures.

(c) If it is not feasible to remove the encroachment in the short-term, due to site-specific circumstances or hardship, and the encroachment is located on lands not needed for specific project purposes, the report shall include a plan and schedule for filing an amendment application with the Commission to revise the project boundary to exclude the encroachment site from the boundary in accordance with Section 4.201 of the Commission's regulations. The filing shall also include a detailed explanation of why it is not feasible to remove the encroachment in the short-term due to site-specific circumstances or hardship; and appropriate mitigation measures for the removal of the subject project lands, including a description of the mitigation type, location, and appropriateness.

Plans and schedules filed pursuant to items (b) and (c) above shall be prepared in consultation with the U.S. Fish and Wildlife Service; the Department of the Army, Corps of Engineers; the National Park Service; the Missouri Department of Conservation; the Missouri Department of Natural Resources; and the Missouri State Historic Preservation Office. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations on the plan and schedule before filing the report with the Commission. The filing shall include documentation of agency consultation. If the licensee does not adopt an agency recommendation, the report shall include the licensee's reasons, based on site-specific considerations.

(F) The proposed Shoreline Management Plan is modified to prohibit the construction of decks, gazebos, patios, and walkways along the shoreline within the project boundary. Walkways with minimal aesthetic and environmental impact that provide direct access from the adjacent property to the permitted facility (e.g., a pier) would be permitted.

(G) With regard to provisions related to historic properties, the proposed Shoreline Management Plan is modified as follows:

For boat docks and marinas with 1-10 slips proposed to be located within 300 feet of an historic property, consultation with the Missouri State Historic Preservation Officer shall be required.

For boat docks and marinas with 11-50 slips proposed to be located within 300 feet of a historic property, consultation with the Missouri State Historic Preservation Officer shall be required.

For boat docks and marinas with more than 50 slips, consultation with the Missouri State Historic Preservation Officer shall be required regardless of the proximity to a historic property.

For any other proposed use and/or activity within 300 feet of an historic property, consultation with the Missouri State Historic Preservation Officer shall be required.

(H) If during the construction of any permitted facility within the project boundary any cultural resources are discovered, AmerenUE shall require the permittee to (1) cease all work at the site immediately and (2) immediately contact AmerenUE. Pursuant to the approved historic properties management plan for inadvertent discoveries, AmerenUE shall consult with the Missouri State Historic Preservation Officer and any tribes that might attach religious or cultural significance to the discovered materials, to determine what steps need to be taken to evaluate the discovery and, if found to be eligible for the National Register of Historic Places, to mitigate any adverse effects. The permittee shall not resume work at the site until notified by AmerenUE.

(I) The first Shoreline Management Plan review and update shall be filed with the Commission, for approval, no later than March 31, 2017, and every 10 years thereafter. AmerenUE shall file with the Commission, for approval, any proposed modification to the Shoreline Management Plan whether as part of an review and update or as needed, following resource agency and stakeholder consultation. Any proposed modifications shall be developed in consultation with the U.S. Fish and Wildlife Service; the Department of the Army, Corps of Engineers; the National Park Service; the Missouri Department of Conservation; the Missouri Department of Natural Resources; and the Missouri State Historic Preservation Office. The licensee shall include in its filing documentation of consultation, copies of recommendations on the proposed modification, and a description of how any comments were accommodated.

(J) Within 45 days of the date of this order, the licensee shall file two separate sets of GIS data in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The data shall include a) polygon files of the project reservoir(s) surface area including a separate polygon for the tailrace area, and b) polyline files representing the shoreline management classifications. The filing must be in CD or diskette format and shall include polygon data that represents the surface area of each reservoir/tailrace, as shown on the project boundary exhibits, and polyline data that represents the linear extent of each shoreline classification segment as shown on maps in the shoreline management plan.

A polygon GIS data file is required for the reservoir(s)/tailrace; with each reservoir separately identified. The attribute table for each reservoir/tailrace must include at least the reservoir name, water elevation, and elevation reference datum. A polyline GIS data file is required for the shoreline classifications associated with each reservoir. The attribute table for each reservoir must include at least the reservoir name and management classification description for each polyline, consistent with the shoreline management plan.

All GIS data must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-459, *reservoir name* polygon/or *reservoir name* shoreline polyline data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees), the map datum (i.e., North American 27, North American 83), and the units of measurement (i.e., feet, meters, miles). The text file name shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-459, project reservoir/or shoreline classification metadata, MM-DD-YYYY.TXT].

(K) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher
Chief, Land Resources Branch
Division of Hydropower
Administration and Compliance