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CURB UPDATE



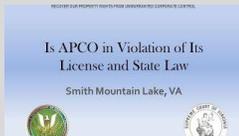
81 LIGHTHOUSE LN MONETA, VA 24121

CONTACT-US@CURB-FERC-AEP.COM

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OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 1, NUMBER 10



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CHANNEL**



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Overview of the Project History of Regulation

The Federal Power Commission in ordering the initial 1960 license required APCO to detail ownership and control of all project lands within one year following completion of the project works. They did so in 1967. APCO documented in its project drawings that all shoreline lands were controlled by Flowage Rights and Easement Deeds that APCO purchased, in the late 50's and early 60's, with landowners prior to project completion. Per these flowage easements, APCO was granted the right to flood and the property owner retained all rights to use and occupy the easement, so long as they did not impact APCO's ability to flood.

"The company proposes to purchase or obtain flowage rights on all land to be flooded. They will probably purchase more land than that was flooded because certain individuals will want to sell their entire farm where large portions are being flooded. ... On the other hand we feel that the remaining property owners will be more than compensated by reason of having the most ideal shoreline for recreational purposes on the entire project."
James L. White Roanoke District Engineer for Appalachian Power (Franklin News Post Thursday, June 20th, 1957 [Dam Runs into Opposition Residents Protest Bridge Plan.](#))

Under the terms of APCO's initial license, APCO had no obligation to regulate navigation, shoreline uses, or docks and did not do so. Appropriately, APCO relied upon and encouraged local governments to develop zoning regulations to control development along and within the project boundary.

"James Jones Appalachian Power Company industrial development planner and A.R. Martin manager of the Rocky Mount Appalachian office met with some members of the [Franklin County] Board of Supervisors ... The men suggested that the Board of Supervisors consider establishment of a county planning commission to study the situation. This planning group, they explained, could set up regulations to govern construction of any housing subdivisions that might be started in the vicinity of the lake. "We don't know what is going to develop down there in the next 10-15 years but we want to set up regulations now to govern the situation." Then Jones told the group, "You have two years to do some orderly planning instead of waiting until the last minute to do panic planning as is usually done when people suddenly realize the situation that faces them." (Franklin News Post Thursday, July 3rd, 1959 [Need for Smith Lake Planning is Stressed.](#))

Prior to 1998 neither FERC nor APCO regulated shoreline uses or docks at Smith Mountain Lake, nor had written regulations, nor issued permits, nor controlled the construction or maintenance of any easement improvement to access the impounded waters. On 17 February 1998 APCO agreed to amend its original license to add Land Use Article 41, which required APCO to permit and enforce non-project uses (i.e. docks, walls, beaches, boat ramps, plantings, etc.) within the project boundary. There is no evidence that FERC required APCO to recertify it held the necessary property rights to implement Article 41 requirements. There is no evidence that FERC examined APCO's land records to verify APCO held the necessary property rights to implement Article 41 requirements. There is no evidence that the major Article 41 amendment was noticed for public comment. **FERC simply added new rules and restrictions with no concern for the underlying vested private property rights of shoreline owners.**

In the four decades between license award in 1960 through the implementation of APCO's SMP regulations in 2003, custom and practice required shoreline property owners to coordinate with local governments for construction within the designated project boundary. According to APCO by 2003 there existed 27 unpermitted commercial facilities providing a variety of services including boat launching, boat slip rental, boat rental, boat storage, boat repair, concessions, restaurants, gas sales, equipment sales, golf courses, etc. all within the project boundary. Additionally, over 6,400 residential docks had constructed in the project without an APCO permit.

All development was regulated by local government and APCO did not regulate or restrict commercial or residential uses. In many instances homes, decks, gazebos, and even a condominium resort occupies the project boundary. Since 2003, these structures, unpermitted by APCO, are called "unpermitted encroachments." Worse yet, now APCO claims it can remove these structures, unilaterally.

APCO asserts that it holds federal authority under its license to require revocable permits for construction of boat docks, piers and ramps from individuals and businesses that are owners of lands appurtenant to the project boundary. APCO also claims it holds all necessary property rights to demand that shoreline property owners accept the terms of its revocable permits and pay to have these permits recorded, so as to encumber the land title. However, **APCO's claims of federal authority and property rights are false**; consequently private property rights are being taken without compensation. Coercing property owners, under false claim of authority, to sign APCO's permits is by definition extortion.

*Definition of **Extortion** -- obtaining of property from another, with consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. (18 U.S.C. § 1951)*

For a more in-depth understanding, we recommend the following CURB videos be viewed:

1. [Read Your Flowage Easement](#)
2. [Read APCO's Dock Permit](#)
3. [History of Regulation](#)
4. [What Did APCO Permit](#)
5. [APCO Manipulated the Judicial System](#)

DON'T FORGET -- CURB's Upcoming Meeting at the Westlake Library on 17 September -- During this meeting CURB will continue to update all on the status of on-going litigation, CURB's complaint to FERC, and answer questions and concerns. The meeting starts at 6:00PM.

Please consider making a donation to support the ongoing legal effort and education programs. CURB is a registered 501c(4) not-for-profit Virginia Corporation. Your donations to support CURB efforts are not discoverable and remain anonymous. Use the donate button on this Update. Thanks for your continued support ... For Our Property Rights

Bill Brush