

Appendix E

ORIGINAL

GEORGE I. VOGEL, II
JAMES R. CROMWELL
GEORGE I. VOGEL, III

LAW OFFICES
VOGEL & CROMWELL, L.L.C.
204 McCLANAHAN ST., S.W.
ROANOKE, VA 24014

P.O. Box 18188, ROANOKE, VA 24014
(540) 982-1220
FAX (540) 982-0422

SMITH MOUNTAIN LAKE OFFICE
13245 B.T. WASHINGTON HWY., SUITE B
HARDY, VA 24101

P.O. Box 599, WIRTZ, VA 24184-0599
(540) 721-3988 • (540) 344-9514
FAX (540) 721-1978

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OFFICE OF THE
SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: Smith Mountain Lake Pump Storage Project
Shoreline Management Plan of American
Electric Power
Project No. 2210-108**

Dear Ms. Salas:

I am writing to express my concerns regarding the effect of the proposed Shoreline Management Plan of Appalachian Power Company, doing business as American Electric Power, "AEP", upon the property rights of owners of real estate abutting the waters of Smith Mountain Lake. A part of the Shoreline Management Plan calls for the permitting of the construction and improvements to boat docks on Smith Mountain Lake.

The permitting process requires owners to apply for a permit, and execute an Occupancy and Use Permit which is quite ambiguous. I am enclosing herewith a copy of a sample of the document currently being used. Recently AEP has started recording these permits in the Clerk's Office of the Circuit Court of the county in which the property is located. These permits will become a permanent encumbrance on each parcel of real estate for which a permit is recorded. I have discussed this issue with an attorney employed by Lawyers Title Insurance Co. (Land America) and was advised that it will except to these permits in insuring title to parcels for which permits are recorded.

I have practiced law in the Roanoke Valley for approximately 35 years and have had an office on Smith Mountain Lake for 15 years. I have represented numerous purchasers and developers of lakefront property as well as developers purchasing real estate on Smith Mountain Lake from AEP. I have represented owners in litigation regarding conflicting interests to rights to Smith

Mountain Lake and in doing so I have become familiar with the various legal issues regarding the rights of owners of property abutting the lake.

When AEP acquired land and flowage easements to construct Smith Mountain Lake, they did so in differing manners. In some instances they purchased land above and below the 800 foot contour line, in some instances they purchased just the land below the 800 foot contour line, in other instances they purchased merely an easement to flood the land up to the 800 foot contour line with related rights, and in some instances they condemned land through state court proceedings either to the land above and below the 800 foot contour line, or to just the land below the 800 foot contour line. The method used resulted in varying degrees of ownership of the owners of land adjoining the lake as well as the land below the 800 foot contour and under the waters of Smith Mountain Lake. As to some property, AEP owned the land up to the 800 foot contour line and the property owners were left with easements to construct boat docks, use the water for domestic purposes, and to construct fencing to protect their livestock. In some instances the owners continued to own the land below the 800 foot contour line subject to the flowage easement of Appalachian to flood the land up to the 800 foot contour line and incidental rights thereto, with rights reserved to the owners to use the land below the 800 foot contour and the lake for recreational and certain other purposes.

Regardless of the manner in which AEP acquired the land, and the documentation regarding the ownership of the land above and below the 800 foot contour line, **I believe it has been the opinion of attorneys and courts over the past 40 years that owners of property adjoining the lake have vested property rights in the land below the 800 foot contour line adjoining their property and to the use of the waters of Smith Mountain Lake.** However, the position of AEP at this time is that adjoining land owners do not have any vested property rights or easements to the land below the 800 foot contour line, but merely have a revocable license. **In my opinion this conclusion is wrong and contrary to the documentation of ownership of the land below the 800 foot contour line.** It is noted that at the website for the Smith Mountain Lake Shoreline Management Plan, www.smithmtn.com at the top of page 4, AEP states "The deeds specify that use of project property by an adjoining land owner is under a revocable license". In many instances this is not true.

The Shoreline Management Plan as presently written requires owners to go through a permitting procedure in order to construct or improve boat docks. The procedure requires owners to sign a questionable document which in my opinion may well be a relinquishment by lakefront owners of their vested property

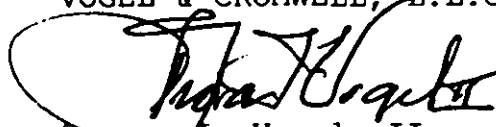
rights. If this is not the intent of AEP, wording should be added to the permit that provides the owners by executing the permit are not releasing any vested property rights.

The problem with revocable licenses is that they expire upon a conveyance of the property by the owner to whom the license is issued, and at the whim of AEP can be revoked at any time. The waterfront rights on Smith Mountain Lake and the right to construct boat docks is a very important element in the value of the owners property. A lot without access to the lake, even though it may have a view, may bring \$40,000.00 to \$50,000.00, whereas a similar lot with lake access and the right to construct a boat dock may bring \$400,000.00 to \$500,000.00.

I recently attended the scoping meeting sponsored by the Federal Energy Regulatory Commission and AEP in Gretna, Virginia. In reviewing the hand outs and the discussions at the meeting, it appears to me that the effect of the plan on property rights has not been identified as an issue to be considered. I request that this be made an issue and that a full and complete study be made of same. In my opinion AEP is using the Shoreline Management Plan and the licensing process to acquire rights to the property adjoining Smith Mountain Lake that they did not acquire in their purchases and condemnation proceedings 40 years ago. If I can supply any further information I will be glad to do so. Thank you for considering this request.

Very truly yours,

VOGEL & CROMWELL, L.L.C.



George I. Vogel, II

mbt

Enclosures

cc: The Honorable Virgil H. Goode, Jr.
The Honorable Robert W. Goodlatte