

Outline and Status of Agreement in Principle as currently proposed

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Prepared by the Catawba-Wateree Relicensing Coalition

The CWRC has prepared this “at-a-glance” summary of the status of the Agreement in Principle (AIP) being negotiated for Duke Energy’s hydropower license application.

It is intended to highlight provisionally agreed terms for most sections of the AIP, unresolved issues and key objectives being met by the proposed terms. The comments and issues we outlined in the document we sent on 1/14/05 have been updated and included in this summary. While the number of unresolved issues is small, the importance of those issues remains significant.

It is important to note that all agreed terms are provisional and may be changed or retracted at any time prior to signing the Final Agreement next year.

We compiled the list using past trial balloons, the most recent revision of the AIP (revision 12), agreements made at the most recent SRT and AG meetings, feedback from stakeholders, study team and resource committee participation, current trial balloons, and discussions with counties, towns, NGOs, state and federal agencies, public entities and other stakeholders.

The list is not exhaustive and contains few details since it is intended to serve stakeholders’ need to have a summarized overall picture of the “package” that the AIP will reflect, and to identify areas where they will want to dig deeper and study the full text of a section.

We hope this document will be useful to all stakeholders as we move toward a settlement that is acceptable and that will lead to a license that is consistent with our shared vision.

Section 1 – Introduction

Summary of Significant Provisionally Agreed Terms:

- 1.1 Agreed purpose
- 1.3 Vision adopted by Stakeholders

Unresolved Issues:

None

Key Objectives met:

- Vision included
- Non-binding nature of AIP clarified

- Cost share dependant funding removed
- General time frame language removed; specific timelines put in appropriate sections

Section 2 – Normal Operating Ranges for Lake Levels

Summary of Significant Provisionally Agreed Terms:

All lakes: Minimum and maximum levels fall within acceptable range

All lakes: Target levels acceptable

Spring spawning stabilization program tailored to specific reservoirs
and
species

Unresolved Issues:

None

Key Objectives met:

- Guiding Principle included
- Equitable use of storage so that no reservoir bears excessive burden in case of drought

Section 3 – Instream Flows for Recreation

Summary of Significant Provisionally Agreed Terms:

3.1 Bridgewater Flows and schedule

3.3 Wylie Flows and schedule

3.4 Great Falls-Dearborn Flows and schedule

3.5 Wateree Flows and schedule

3.1.2 Equivalent replacement hours will be provided for those times when flows exceed those desired for drift boating and angling.

General Agreement 4:

Multiparty review team to plan and adjust discretionary flow schedule

“Make up” days provided when recreation flow limits are exceeded

Unresolved Issues:

Determine how the equipment to be installed at new Bridgewater powerhouse can be sized and adjust flows according to its capabilities.

We support installation of two small units (producing 75 – 145 cfs each)

plus two larger units (800-1300 cfs each. Note: Final plan for new equipment will not be approved until after the FA.

Key Objectives met:

- Guiding Principle included
- Annual review of flows by multiparty team
- Recreational whitewater flows at the Great Falls
- Flexibility and discretionary flow days for special events
- Variety of flows to meet variety of interests

Section 4 – Instream Flows for Aquatic Habitat

Summary of Significant Provisionally Agreed Terms:

Adequate flows are provided except:
below Oxford which may be acceptable depending on mitigation package;
and except for final provisions to take advantage of seasonal high flows.

- 4.10 Great Falls flows will be delivered to effectively benefit habitat using gates, notches and/or inflatable bladders so distribution is neither too narrow or too broad.
- 4.1.2 Procedures and timeframes given for equipment modifications necessary to provide agreed flows as well as for delivering interim flows between the time the license is issued and when new facilities are installed will be established.
- 4.12.3 Project operations will allow for extended floodplain inundation with gradual decline to approximate natural conditions below Wateree dam following high natural inflow events.

Unresolved Issues:

4.1.6-4.1.7 Appropriate mitigation package not yet agreed. Proposed package includes conservation easements (buffers) and lands either given or partially paid for.

4.2 Determine how the equipment to be installed at new Bridgewater powerhouse can be sized and adjust flows according to its capabilities.
We support installation of two small units (producing 75 – 145 cfs each)
plus two larger units (800-1300 cfs each) Note: Final plan for new equipment will not be approved until after the FA.

4.10 Flows in Great Falls may be insufficient to provide adequate habitat

(450 and 850 cfs) but would be acceptable if flows are increased in future years to accommodate migrating fish.

General Adequate review and reopener provisions may be needed beyond standard FERC reopeners.

water Final development of a “high inflow protocol” to take advantage of availability in normal and wet years for river sections below Wylie and

package. Bridgewater dams. This may become part of the mitigation

that The water use projections used in the CHEOPS model look out 50 years and include certain withdrawals related to new power plants

is may never happen. Using these projections may assume less water available than actually is available. A provision to have this water available for habitat when it is in the system is needed. We propose the flows be adjusted to allow for power plant or any other modeled withdrawals that do not in fact occur.

Provisions needed for potentially increasing flows for migratory fish as and when they repopulate river sections. We propose that flow projections and plans allow for increasing flows in 15 years to accommodate these fish.

Key Objectives met:

- Guiding Principle agreed and included
- Old Catawba by-pass channel to receive minimum continuous flows.
- Great Falls to receive minimum continuous flows BUT may be too low – subject to verification or mitigation.
- Duke will make equipment modifications at Bridgewater, Wylie and Wateree dams.
- Duke will provide pulsing for interim flows between license order and completion of construction of new equipment.
- Stabilization periods for spawning in Wateree River to be provided
- High Inflow Protocol agreed but requires increased flow or further mitigation
- Flows below Wateree dam appear adequate

Section 5 –Actions to Support Water Users

Summary of Significant Provisionally Agreed Terms:

- 5.3 Agreements related to projected water use are based on a comprehensive evaluation of the water supply and projected withdrawals, and any future withdrawal requests that exceed projections will necessitate further evaluation.
- 5.2.3(c) Minimum flows for Carolina Heelsplitter habitat are included.
- 5.3.2 New permits or easements will require adherence to the LIP. This will be a condition of the conveyance issued pursuant to the Shoreline Management Guidelines.
- 5.3.3 The agreements related to water withdrawal fees include formation of a water management group to identify, fund and manage projects that help preserve, extend and enhance the capabilities of the river basin to provide water resources for human needs while maintaining the ecological integrity of the waterway.

Unresolved Issues:

None

Key Objectives met:

- Guiding Principle agreed
- Commitment to maintain critical lake levels and flows to meet intake levels
- Focus on long term needs and conservation of resources
- Duke will contribute to the water management fund in an equitable fashion and will begin its contributions in 2008, one year before other group members, and will not implement a fee for non-members until some time after 2009.
- Management of the fund will be shared among group members and coordinated with resource agencies as appropriate, and will obtain input from other interested entities.
- The water management group has 5 year review provisions

Section 6 – Low Inflow Protocol

Summary of Significant Provisionally Agreed Terms:

Attachment G: Staged approach with acceptable order of priority based on specific triggers.

Review process by Drought Management Advisory Group

Unresolved Issues:

None

Key Objectives met:

- Multi-party consensus to work together to manage low flow conditions
- Ongoing review team (Drought Management Advisory Group)
- Reasonable order of priority in water use reductions
- Devices for adding oxygen planned for Bridgewater, Oxford, Wylie and Wateree during LIP

Section 7 – Hydro Project Maintenance & Emergency Protocol

Summary of Significant Provisionally Agreed Terms:

General: The terms of the protocol (as detailed in Attachment H of the AIP) provide

adequate notice and actions for abnormal situations.

Unresolved Issues:

None

Key Objectives met:

- Comprehensive protocol enforceable via the license for maintenance and emergencies

Section 8 – Public Information System

Summary of Significant Provisionally Agreed Terms:

8.8.2 Duke to consult with local governments to assess demographic/language changes and needs every 10 years.

General: Comprehensive provisions for signage (including universal symbols) and

communication systems (web based and toll free telephone) addressing river flow information, lake level information, safety issues, recreation facilities, links to weather services, and cultural resources.

Spanish language signage to be added at tailraces to address safety issues

Warning horns to be improved below Bridgewater and Oxford dams

Unresolved Issues:

We propose that Duke fund or otherwise support a “hotline” for the public to use to call in, report, and discover, occasional hazards in the river sections such as fallen trees impeding navigation. Duke would have no obligation to clear such hazards and no liability regarding the information on the hotline. It would be provided as a public convenience only. OR provide a link to a website that does provide this information.

We propose this section be implemented as soon as possible and before issuance of the new license.

8.1.3 Define normal and abnormal situations

Key Objectives met:

- Multi-lingual needs beginning to be addressed
- Enforceable communications system with community input
- Guiding Principle included

Section 9 – Cultural Resources Management

Summary of Significant Provisionally Agreed Terms:

9.2 Monitoring and protection of important sites agreed
Financial assistance to the Catawba Nation for management of sacred sites
Historic Properties Management Plan to be implemented
Nominal cost leases to South Carolina for important sites
Conservation easement for Dearborn armory site
Financial assistance for preservation of the Mulberry site

Unresolved Issues:

None

Key Objectives met:

- Guiding Principle included
- Signage for parts of the Overmountain Victory Trail
- Funding provided for varied cultural resource protections
- Important sites protected through leases and easements

Section 10 – Public Recreation Plan

Summary of Significant Provisionally Agreed Terms:

Access area and facility improvements at all reservoirs
Trails provided at some reservoirs
Additional access provided for river sections
Financial assistance for acquisition of approximately 5000 acres of
land
Funding for 6 miles of the Overmountain Victory Trail
Portage trails evaluated and potentially provided
Public fishing areas (bank and pier) provided at specified locations
Restrooms to be constructed at specified locations
Review intervals agreed at year 7, year 14 with up to 4 million
dollars
for enhancements
Full Recreation Use and Needs Study conducted after 20 years
Acceptable number of promised new swimming areas are provided:
Lake James – 1; Lake Hickory -1; Lake Norman – 2; Lake Wylie –
1;
Fishing Creek – 1.
PLUS additional swimming areas contingent on other parties are:
Lake Hickory – 1, Lake Norman – 2; Mt. Island – 1;
Lake Wylie – 1; Wateree – 2.
This should result in a total(including existing swimming areas) of:
2 swimming areas for Lake James, 1 to 2 for Hickory, 3 to 5 at
Norman,
1 at Mt Island, 2 to 3 at Wylie, 1 at Fishing Creek, 1 to 3 at
Wateree.

10.1.11 /10.1.12 Acceptable method agreed to deal with facilities that cannot be built due to inability to obtain permits or because they are not feasible at the specified location.

10.1.22 Acceptable method agreed for dealing with situations where land acquisitions do not take place as originally planned.

Unresolved Issues:

Specific dollar amounts for Duke's contributions to land acquisitions are proposed but not yet agreed.

A provision for potential financial or other assistance for Mecklenburg County to construct a swimming area if the county changes its current policy at its parks on Lake Norman.

Key Objectives met:

- Guiding Principle agreed
- Facilities will be ADA compliant
- Low Impact Design for construction of facilities

- Emphasis on non-motorized boating facilities and diverse recreation opportunities are the priority for next 20 years
- Lands set aside and/or acquired to enhance recreational experience
- Adequate review and update mechanisms in place
- Increase in bank and pier fishing opportunities
- Adequate swimming areas provided
- Addition to Lake Norman State Park will be accomplished directly through purchase from Crescent Resources and will not be part of the agreement
- Adequate safety net for situations where third parties do not perform as expected

Section 11 – Species Protection Plans

Summary of Significant Provisionally Agreed Terms:

The following special status species have been properly identified with

adequate provisions for plans and consultation with appropriate agencies subject to the issues listed below.

Schweinitz’s sunflower, Rocky Shoals Spider Lily, Dwarf flowered heartleaf, Bald Eagle, Wood Stork, Rafinesque’s Big-eared bat, Bog turtle, American alligator, 6 species of mussels, Flat bullhead, Snail bullhead, Robust redhorse, Shortnosed sturgeon, American eel, Heron rookeries

Species protection plans will be developed after signing the AIP and will be included in the FA and license application.

11.5.4 Duke has agreed to place conservation easements on the Wateree tailrace to protect Bald Eagle habitat.

11.9 Duke has agreed to place a conservation easement in the Bristol Creek watershed in Burke County to protect Bog Turtle habitat.

Unresolved Issues:

11.6 Specific species plans have not yet been presented, but will be prepared by June 1. Whether this will result in further unresolved issues is not yet determined. Procedures should be developed to reconcile disagreements regarding the plans.

11.15 Since the AIP will not include diadromous fish passage required under the Endangered Species Act and such passage will not be

- Habitat Enhancement Program agreed
- Adequate update and review mechanisms
- Likely increase in buffers through incentive program

Section 13 – Water Quality Enhancements

Summary of Significant Provisionally Agreed Terms:

Equipment replacement and/or modifications at Bridgewater, Wylie and

Wateree to improve water quality

Pulsing will not be used to replace continuous minimum flows

Operations protocol, including interim measures, to be agreed

Unresolved Issues:

Without benefit of having the Water Quality Certificates, nor the mitigation package, we are unable to list unresolved issues at this time.

General Agreement 4:

Add: Duke Power will attain standards to the extent that attainment is in their control but not beyond the extent that any non attainment is the result of hydro-electric operation. **This was agreed at the 2/6/06 SRT.**

Key Objectives met:

- Equipment modifications at 3 locations to improve dissolved oxygen and temperature
- Pulsing alternative replaced by modifying or acquiring new equipment
- Guiding principle agreed and included

Section 14 – Other Resource Enhancements

Summary of Significant Provisionally Agreed Terms:

Since this section is primarily for mitigation, some terms have not been

agreed pending resolution of other sections.

14.2 Duke will provide funding for the Habitat Enhancement Program however the amount remains undetermined.

14.3 Financial and technical assistance in trash collection and removal will be provided. Releases of large amounts of debris from trash gates to be avoided. Trash rake to be installed at Fishing Creek.

Unresolved Issues:

Lands to be added as mitigation for water flows, water quality or habitat loss are undetermined or not addressed.

Flood management at Wateree has been proposed but not yet acceptable to the stakeholders.

Additionally, if the Flood Management facilities are not constructed for any reason, then the amount of funds that would have been spent to build the facilities should be equitably distributed to other projects. **This has been proposed by Duke as of 2/6/06.**

Establishment of a Watershed Enhancement Fund has been eliminated and all Duke funding is now directed to the Habitat Enhancement Fund. This may be insufficient for local conservation projects and sediment control.

Dollar amounts are unresolved for Duke's contributions pending resolution of the mitigation package among other things.

Key Objectives met:

- The fact that there will be some mitigation is promising but it is too early to say if key objectives will be met

Section 15 – Gauging and Compliance Monitoring

Summary of Significant Provisionally Agreed Terms:

- 15.2.1.1 Funding, maintenance and monitoring of seven streamflow gauges:
USGS Gauge # 021460000 (Catawba River near Rock Hill, SC)
USGS Gauge # 021480000 (Wateree River near Camden, SC)
USGS Gauge# 02145000 (South Fork at Lowell, NC)
USGS Gauge#02137727 (Catawba River near Pleasant Garden NC)
USGS Gauge# 02140991 (John's River at Arney's Store, NC)
USGS Gauge# 02147500 (Rocky Creek at Great Falls)
USGS – new
- 15.2.2.3 Funding for ground water monitors is guaranteed by Duke.
- 15.5 Provide dissolved oxygen monitoring below Bridgewater, Wylie and Wateree

Unresolved Issues:

None

Key Objectives met:

- Guiding Principle agreed and included

- Increase in monitoring for water quality and quantity
- Adequate predictive ability for low and high inflow protocols

Section 16 – Miscellaneous Agreements

Summary of Significant Provisionally Agreed Terms:

- 16.5 Provision that calls for procedures to follow in the event that the FERC or a Section 401 Certification agency adds requirements that are materially inconsistent with the Final Agreement. These procedures would allow parties to amend the Final Agreement and/or withdraw from it.
- 16.5.3 Exception provided to support or oppose fish passage prescriptions.
- 16.7.2 A Final Agreement Committee will be formed to assist in implementation, communication and consideration of amendments.
- 16.2.1.5 Mediation provided to help resolve the “veto” power of one signatory 16.2.2.5 regarding the support of conditions that are inconsistent with the FA
- 16.7 Provisions to be included for signatories to meet and confer regarding draft conditions proposed by jurisdictional bodies.

Unresolved Issues:

- 16.5.3 The exception to support or oppose fish passage prescriptions should include ESA provisions. Tentitively agreed at SRT 2/6/06
- Signatory organizations reserve the right to actively support or oppose diadromous fish passage, provisions, including flows, after the FA is signed since this will not be included in the FA and this interest may not be adequately addressed in the FA.
- 16.6 Length of license term. Important factors are:
1. The number and extent of permanent easements for conservation and recreation rather than easements for the term of the license only.
 2. The degree of review and flexibility available for certain license terms so that any terms that are found to be ineffective in fulfilling their purpose

are not locked in, and so that revisions may be made to ensure objectives are met as circumstances change, or if projections and expectations prove to be inaccurate.

the 3. The extent to which Duke has provided public benefits beyond requirements of a traditional FERC generated license.

16.7.2.3 Since the extension of the Final Agreement Committee after 5 years is contingent on a majority that must include Licensee, there is a danger that Duke could unilaterally choose to disband. A better mechanism is needed.

Provisions need to sever and protect Recreation, Public Information, Cultural Resources and Shoreline Management in case of renegotiation or withdrawal by Duke.

Key Objectives met:

- Clear statement excepting those with statutory obligations from contractual limitations.
- Commitment to writing a durable agreement that will be fully supported by signatories.