

Smoky Mountain news Opinions

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Relicensing the Duke hydro projects

By Fred Alexander

Two recent stories about the relicensing of Duke Power-Nantahala Area hydroelectric projects contained information from sources who appear to have some misunderstandings. As a result, some inaccuracies were introduced which, in our opinion, led to some conclusions or assertions based on those misunderstandings.

Over a three-year period, more than 9,000 man-hours were spent in meetings of two broad-based teams regarding the relicensing of Duke hydro projects on the Nantahala and Tuckasegee Rivers.

As is normal in any group, some members were more engaged than others. This was certainly the case in teams working on relicensing hydro projects. So some of the errors are understandable since some members of the group quoted attended a small percentage Tuckasegee Cooperative Stakeholder Team meetings and others quoted, none at all.

Comparing the individual attendance records in the Tuckasegee Cooperative Stakeholder Team Final Report and the supporters of the Tuckasegee Settlement Agreement on Oct. 29, 2003, shows an apparent relationship between participation and agreement.

Hydro relicensing basics

In 1980-81, Nantahala Area plants received their first operating licenses from the Federal Energy Regulatory Commission (FERC). Good for 25 years, they expire in 2005-06.

Historically, federal licenses were based primarily on the need for electrical generation. Today, public recreation and environmental issues are an integral part of the comprehensive licensing process for hydroelectric projects.

FERC requires hydro project owners to submit a license renewal application two years before a license expires. Because some Nantahala Area hydro projects are relatively small and to eliminate highly duplicative meetings and work, we've been working on them collectively.

Five years in the making

While our relicensing process began formally in April 2000, it began informally in November 1999. That month we invited local governments and other possibly interested parties to a general information meeting.

When the process began formally in April 2000, volumes of data had been collected for reference. All interested parties were asked to submit requests for studies they felt would help in decision making about the projects. Working with the parties, technical leadership teams were formed to determine the scope, work method, consultants, and review process for selected studies.

A N.C. Division of Water Quality representative asked to use the Tuckasegee River relicensing process as his practicum for the NC Natural Resources Leadership Institute (NRLI) course. This NC State University-based institute trains citizens in consensus-based decision making for the use and management of environmental resources.

Thus, the Tuckasegee Cooperative Stakeholder Team began as a NRLI project. It worked so well that the group wanted to continue on after the NRLI student finished his work. The Institute Director and staff were hired by Duke to facilitate the Tuckasegee and Nantahala Cooperative Stakeholder Teams.

The Tuck Team over three years and Nantahala Team over two, heard presentations on technical leadership team research and topics of interest. They also asked thousands of questions and traveled to various sites. Their 9 a.m.-3 p.m. meetings were monthly and sometimes more frequent.

Relicensing information and studies were posted on the Duke Power-Nantahala Area website. All meetings were open to the public and media. All stakeholder team members accepted responsibility for keeping their organization informed. When new license applications are completed, they are sent to local governments and libraries for public use.

Where we are now

Currently we've reached a new plateau, not the end of the journey, but an important waypoint in the form Settlement Agreements.

Before the Settlement Agreements, the Tuckasegee and Nantahala combined teams worked diligently to create "consensus agreements" in May 2003. While they had no legal status, they were a best effort to record all the things we'd been talking about and the expected conditions under which they'd be done.

The consensus agreements were described as "a snapshot of where we are now, based on current information." Team members rated individual items on a 1-5 point scale. The team charters describe "one" as "Endorsement (i.e. Member likes it)." "Five" meant "Block – Member will not support proposal, sign settlement agreement, or work with the stakeholder process. Blocking means that the member may work outside the stakeholder team process to meet his interests."

In other words, a "five" also meant a member was leaving the team, exiting the stakeholder process. Eighty-seven percent (87 percent) of the total primary members of both the Tuckasegee and Nantahala teams rated the consensus agreements as a "one" to "four" in May 2003. But, some rated them a "five" because they couldn't live with the presence or absence of certain items.

Several stakeholder team members noted a "one" on the consensus agreements, only to have their boards, commissions, or leadership not support them.

There were surprises, too. A few organizations presented unexpected positions at the last minute, perhaps reflecting a misunderstanding of the stakeholder process.

Most team members continued working through the summer to refine the consensus agreements into "settlement agreements." The Settlement Agreements are legally-binding documents and the object of the entire stakeholder process. The majority — 30 (68%) of 44 organizations involved with one or both stakeholder teams, signed the Settlement Agreements on Oct. 29, 2003. This is a remarkable achievement.

What next?

The Settlement Agreements were sent to FERC on Jan. 8. Duke is required to submit license applications two years before the old ones expire. Between now and the expiration dates, FERC will hold public meetings to receive broad public input. Four such meetings were held last week concerning Bryson, Dillsboro, Franklin, and Mission projects.

Based on previous FERC decisions, the agency starting point is expected to be trying to incorporate the Settlement Agreements language into new licenses. Of course FERC may have other ideas. Those who opted out with a "five," and others not previously involved, will also be exercising their legal rights to try to get items added or deleted from the Settlement Agreements contents. That's an important part of the comprehensive licensing process.

We're hopeful that FERC will issue new licenses when the old ones expire in 2005 and 2006. But FERC has many projects to relicense nationwide. It could take longer. Legal appeals and other actions can keep the final license contents uncertain for years. We feel there are too many good things for the environment and public recreation that don't need to be held up. In situations in which contents are still up in the air, FERC issues annual license extensions.

Wrong conclusions

The two stories reflected misunderstandings that led to inaccurate conclusions. Here are responses to the most misleading that were actually relicensing-related: (Quote marks indicate phrases from SMN articles.)

1. The stakeholder team process was described as an "Extensive and laborious negotiations process designed by Duke."

The negotiation process, defined by the two stakeholder team charters, was developed by the teams themselves, not Duke Power. The process may have felt "extensive and laborious" because hydro relicensing is very important. The use of public trust resources like waterways should not be taken lightly. For perspective, the process of renewing the license of hydro projects takes more time than renewing the license of a nuclear-fueled plant!

2. "The pact would then clear the way for Duke to get a new permit with little scrutiny or probing by the federal energy commission ... The process would work like a plea bargain agreement, where feuding parties draft a settlement out of court and the judge rubber stamps it ... Non-signers could always take their case to FERC to lobby for the compensation they wanted."

These statements are simply untrue and reflect a gap in understanding the hydro relicensing process. The first Federal Energy Regulatory Commission public meetings were held in the area last week. There is no "rubber stamp" or "plea bargaining" in this administrative process. It isn't a criminal trial. Relicensing is a comprehensive process that takes several years at best. The process is an opportunity for all parties and the public to make their wishes known to FERC.

3. "They [opponents to the Settlement Agreements] would then be kicked out of the process and barred from future negotiations ..."

No one was "kicked out." Those who sought more or different results were always free to pursue their interests apart from the stakeholder teams through the comprehensive licensing process. Some exercised their right not to continue. However, much effort was devoted to trying to retain parties whom we felt were making decisions based on incorrect information.

4. "The Nantahala is bled dry for miles where the river is diverted away from the age-old riverbed and instead funneled through pipes to powerhouses. Fish must cope with the constant ebb and flow of water levels controlled by the powerhouse gates upstream."

A large portion of the "bled dry" Nantahala stretch mentioned has also been described as the "Queen of NC Trout Waters." That Nantahala stretch and the Tuckasegee where the fish "cope" are among the two most popular trout waters in the state. Also, fish studies on the Nantahala River below the hydro plant indicate a very healthy reproducing population of trout. In two 100-meter sections of the river nearly 800 trout, all but a small number were wild, having been born in the river. Duke Power, U.S. Forest Service and N.C. Wildlife Resources Commission conducted the study. While some of these river stretches have reduced flow rates, none are dry.

5. "But opponents say it is not enough, citing the \$20 to \$30 million range as a more appropriate compensation package."

Through hydro relicensing a utility must address very specific issues, including public recreation and environmental concerns raised by agencies with responsibilities for environmental protection and public interests. All of the work and money provided by a utility should be related to conditions created by the hydro dams or plant operations.

These hydro plants have already lowered the cost of living for individuals; increased both profit margins and thereby taxes paid by companies to government at all levels; and been a factor in some industry existing here. It seems like some want Duke Power to do what's right through relicensing and then pay even more because the hydro projects exist.

6. "... dubbed Duke's threat to raise rates as the 'rate card.'"

It is just reality. For example, the trade-off on removing or keeping Dillsboro Dam is simple. Give up Dillsboro Dam and its generators run by 320 hp of water-powered turbines — three-tenths of 1 percent of Nantahala Area

generating capacity. Or lose a yet to be determined amount of water from Nantahala and Glenville lakes that would otherwise run generators with water-powered turbines totaling 90,000 hp — for 65 percent of Nantahala Area generating capacity.

While it is premature to speculate on actual numbers, clearly reducing water available for hydropower generation does increase the amount of electricity Nantahala Area electric customers must replace with power that is more expensive to make. That additional cost is passed onto customers.

Such additional energy costs would be spread over the 65,000 Duke Power-Nantahala Area customers in Cherokee, Graham, Jackson, Macon, and Swain counties. Now about 40 percent of the energy used by Nantahala Area customers is made by the local hydro projects. Since 1971, when customer needs began exceeding the output of Nantahala Area hydro projects, the remainder has come from more expensive generation.

7. "Some stakeholders claim Duke established unfair rules for the process by not allowing stakeholders to record the meetings and by limiting contact with the media ... a gag rule"

Duke didn't establish the rules. The teams did. Team charters were based on rules used by groups led earlier by the N.C. Natural Resources Leadership Institute staff or students. The rules were modified from time to time by the teams — not any one member.

Tape recording meetings was not discussed by the teams, as we recall. There is no rule against tape recording. The topic is not mentioned in team charters. No Duke Power employee asked the gentleman quoted to turn off his recorder.

The teams did address media contact in the charters, but only to avoid having negotiations take place in the media and avoid ill will created among those who were supposed to be working together.

According to the Smoky Mountain News, 4/24/02, "Stakeholders reached consensus on the media issue and slightly amended their charter. Members are free to discuss their interests and interests of their constituents with the media. Members are prohibited from addressing specific positions held by other team members or negatively characterizing other members or other members' interests."

One team member, who attended four of 26 meetings, resigned over this rule. The rule is on page five of the team charters on the web.

But the media and public were welcome at all meetings. Though the charters allowed closed meetings for sensitive discussions, none were ever held.

8. "... Duke was not contributing nearly enough to fight the single largest water quality problem – namely sediment and erosion control ... Forty thousand dollars to Jackson County to do sediment control over a 40-year period is not adequate. Sedimentation is the leading water quality problem."

The technical studies did not show a significant contribution of sediment resulting from hydro project operations. Relicensing deals with hydro project-related conditions, not other environmental concerns in the area. Also, the county has the only state-designated, high-quality water reservoir in NC. This is Lake Glenville, which serves our second largest hydro plant, Thorpe.

Duke Power has no idea how long future hydro licenses will be and didn't request a specific length. Most recent licenses are for 30 years, but length is FERC's decision.

For more information visit www.nantahalapower.com; for information on the stakeholder process visit www.ces.ncsu.edu/depts/agecon/nrlj. If you have any further questions contact Fred Alexander, district manager, Duke Power-Nantahala Area, at afalexan@duke-energy.com, 828.369.4534, or 301 NP&L Loop, Franklin, NC, 28734.