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Outline and Status of  
**Agreement in Principle**  
as currently proposed 12/15/05

Prepared by:

**Catawba-Wateree Relicensing Coalition**

## **Outline and Status of Agreement in Principle**

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 11/29/05 have been updated and included in this summary. We are pleased to report that the “unresolved” list continues to shrink.

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 10), 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:

Finalization of agreed terms depends on additional water supply modeling but the levels as proposed in AIP revision 10 are acceptable.

### 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

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)

### 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 except:  
below Oxford which may be acceptable depending on mitigation package;  
and except for river below Wateree as noted below for flood plain values;  
and except for provisions to take advantage of seasonal high flows.

### Unresolved Issues:

- § 4.1.6 Target dates for initiation of new Minimum Continuous Flows missing.
- 4.16 Procedures are needed for delivering flows between the time the license is issued and when new facilities are installed.
- 4.1.7-4.1.8 Appropriate mitigation package not yet agreed.
- 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)
- 4.10 Verify flows in Great Falls to ensure that they provide adequate habitat flows – 450 and 850 cfs may be insufficient.
- 4.10 Determine delivery mechanism (notches/ gates) at Great Falls to ensure habitat flows are effective and not narrowly channeled.
- 4.12 Project operations to enhance floodplain values not determined.
- General Adequate review and reopener provisions to be added.
- Final development of a “high inflow protocol” to take advantage of water availability in normal and wet years for river sections below Wylie and Bridgewater dams.
- Provisions needed for potentially increasing flows for migratory fish as and when they repopulate river sections

### Key Objectives met:

- Guiding Principle 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
- Duke is willing to make equipment modifications at Bridgewater, Wylie and Wateree dams.
- Stabilization periods for spawning in Wateree River
- High Inflow Protocol concept agreed but details not final.
- Flows below Wateree dam appear adequate except for flood plain inundation and for shortnosed sturgeon spawning (See section 11)

## **Section 5 – Instream Flows to Support Water Users**

### Summary of Significant Provisionally Agreed Terms:

Water supply studies and discussion of fees for water use remain unresolved so that many specific terms have not been agreed

### Unresolved Issues:

5.3.1(a) The water use projections used in the CHEOPS model look out 50 years and include certain withdrawals related to new power plants that may never happen. Using these projections may assume less water is available than actually is available. A provision to have this water available for habitat when it is in the system is needed.

No Guiding Principle has been agreed

The proposed water withdrawal fee structure lacks consensus. We support further discussion on the voluntary system proposed by the Water User Group.

Duke Power should participate equally in any conservation program with other water uses regarding its net consumptive use of water through evaporation due to its operations. This includes evaporation from the reservoirs as well as forced evaporation (e.g. nuclear and steam plants).

Additionally, use of any funds collected should be determined by a water user team representing multiple interests in water conservation

Adequate review/reopener methods need to be agreed and included

### Key Objectives met:

- Commitment to maintain critical lake levels and flows to meet intake levels
- Focus on long term needs and conservation of resources

## **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 by Drought Management Advisory Group

### Unresolved Issues:

Determination of exact location for ground water measurements

Method to ensure large private water withdrawers who are not signatories to the LIP (e.g. golf courses and other irrigation) or members of the Drought Management Advisory Group (DMAG), will comply with conservation measures.

Proposal: in future easements to place water intakes on reservoirs, Duke to include a provision that the user will comply with the LIP. Existing users should be offered membership in DMAG in exchange for their compliance with the LIP.

### Key Objectives met:

- Multi-party consensus to work together to manage low flow conditions
- Ongoing review team (Drought Management Advisory Group)
- 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 and manage 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.

### 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  
Assistance and/or provision of 3 swimming areas plus potentially 6 more contingent on third party involvement  
Review intervals agreed at year 7, year 14 with up to 4 million dollars for enhancements  
Full Recreation Use and Needs Study after 20 years

### Unresolved Issues:

Specific dollar amounts for Duke's contributions to land acquisitions need to be agreed.

Need method to capture potential contributions that may not be spent because third party land acquisitions do not take place. We propose that any unspent financial contributions (such as the 10-30% toward land purchases by states or counties that fall through) be put into a fund for recreational facilities and/or land acquisition for recreational purposes.

In addition, if a land parcel is substituted for one proposed in the FA, then the amount(not the percentage) of contribution from Duke shall be the same as in the originally proposed parcel.

The difference in objectives and requirements between Duke and Catawba County for recreational development at Island Point (approximately 140 acres) needs to be resolved. Key concerns are traffic, emergency access, and overall design to best suit the needs of the public.

More assistance is needed for towns and counties for the development of swimming areas. A minimum of 2 swimming areas needed at Lake James; minimum of 2 at Lake Hickory (Oxford and Wittenberg); minimum of 4 swimming areas needed for Lake Norman; minimum of 1 at Mountain Island Lake; minimum of 2 at Lake Wylie; minimum of 2 at Lake Wateree.

Kingsbury State Park and Wateree Gamelands provisions not fully resolved with South Carolina

A number of enhancement provisions that rely on partners and lessees need to be clarified regarding procedures to take if the partner or lessee does not perform as contemplated in the agreement.

### Key Objectives met:

- Guiding Principle agreed
- Facilities will be ADA compliant
- Low Impact Design for construction of facilities
- Emphasis on non-motorized boating facilities made 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
- Addition to Lake Norman State Park will be accomplished directly through purchase from Crescent Resources and will not be part of the agreement

## **Section 11 – Species Protection Plans**

### Summary of Significant Provisionally Agreed Terms:

Most special status species have been properly identified with adequate provisions for plans and consultation with appropriate agencies subject to the issues listed below.

A species protection plan is to be developed after signing the AIP and will be included in the FA and license application.

### Unresolved Issues:

Fact 3: This should be corrected since rare species do have protection through the South Carolina Pollution Control Act

Fact 4: The American eel should be added to the list of special status species

11.2 An agreement regarding the Rocky Shoals Spider Lilies has not yet been reached. Regardless of who conducts the monitoring, the monitoring remains the responsibility of licensee.

11.3 Duke Energy and the USFWS will need to agree a plan for the Schweinitz Sunflowers

11.6 An agreement regarding mussels has not yet been reached.

11.7 In addition to the Santee Cooper Diadromous Fish Restoration Plan, a specific plan for Short nosed sturgeon will need to be developed.

Since the AIP will not include diadromous fish passage and such passage will not be part of the FA, signatories should be able to advocate for fish passage without violating the FA.

11.7 Funding for these plans should be provided in the first year after issuance of the new license subject only to the closure of any rehearing periods directly related to these plans.

A Guiding Principle has been proposed but not formally agreed

More specificity is needed for species protection plans with the clear statement that Duke Power is responsible for their implementation

A proactive restoration plan, including plantings, should be developed for the Great Falls Spider Lilies

The existence of nesting sites for bald eagles at Riverbend Park in Catawba County and at Lookout Shoals Lake is being studied and we propose appropriate actions be developed depending on results. Further we propose a process be created to receive and update information on sightings and nesting activities.

The existence of a heron rookery on Lake Hickory should be investigated, documented and appropriate action taken depending on results.

Adequate public access for Kershaw County on the east side of the lake still needs to be addressed.

### Key Objectives met:

- Use of the Santee Cooper Diadromous Fish Restoration Plan

## **Section 12 – Shoreline Management Plan**

### Summary of Significant Provisionally Agreed Terms:

12.2 Ten year modification schedule with Stakeholder review group for SMP and SMG

#### Shoreline Management Guidelines:

Added protection bordering environmentally sensitive areas  
100 foot minimum shoreline per pier (vs 75 feet)  
MOU regarding buffer enforcement  
MOU for coordination with state and local zoning, regulation and law  
Limits on stabilization methods  
300 foot width requirement in coves for marina construction  
Incentive program for developers to leave undisturbed areas of shoreline  
Requirements for marine sanitation devise pump out facilities  
No private boat ramps  
New “isolated berm” classification protects important habitat  
New “bottomland hardwoods” classification protects important habitat

### Unresolved Issues:

A comprehensive build-out analysis, not limited to the recreation component needs to be undertaken. The cumulative impacts of shoreline buildout on recreation, habitat, viewshed, water quality all need to be assessed and addressed. This analysis should be addressed in the first review of the SMP.

Assistance in obtaining vegetated shoreline buffers should be provided by Duke. This may include: implementation of buffers on all Duke Energy owned or controlled lands adjacent to project waters and on regulated river reaches; assistance in drafting a model buffer ordinance and support in encouraging counties to adopt it; funds for a marketing campaign to educate the public, real estate agents, developers and officials on the value of vegetated buffers along shorelines.

Inclusion of state agencies in the MOU for coordination of rules and laws

Reconcile any differences in reviews between SMP and Recreation that may cause conflict or redundancy such as the timing and scope of a carrying capacity analysis.

### Key Objectives met:

- Guiding Principle included
- Encouragement of bio-engineering and protection of vegetation
- Better coordination with local governments
- Increase in total undisturbed shoreline
- Comprehensive, detailed guidelines to replace existing pamphlet
- Habitat Enhancement Program agreed
- Adequate update and review mechanisms

## **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

### Unresolved Issues:

Since much data is still to be collected and interpreted, there are a number of unresolved issues at this time such as how Duke will meet nutrient standards depending on the source of the nutrients.

A Guiding Principle has been proposed but not formally agreed

### Key Objectives met:

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

## **Section 14 – Other Resource Enhancements**

### Summary of Significant Provisionally Agreed Terms:

Since this section is primarily for mitigation, most terms have not been agreed pending resolution of other sections.

Duke Energy has agreed to place conservation easements on the Wateree tailrace and in the Bristol Creek watershed in Burke County, and provide funding for the Habitat Enhancement Program.

### Unresolved Issues:

Lands which may be added to Section 10 (recreation) or added as mitigation for water flows, water quality or habitat loss.

Flood management at Wateree may require floodgates or alternatives to relieve flooding. Raising roads that are periodically inundated is an additional need to be addressed.

Trash management provisions: Trash released from the dams should include only natural material such as logs and branches, and then only in small amounts as determined to be safe by the Lake Marine Commissions and/or State Resource Agencies. All other debris should be collected regularly and removed from the river system and properly disposed of in appropriate landfills or taken to recycling centers if the material is recyclable.

Assistance is needed from Duke in providing pedestrian access across Canal Bridge to recreate part of the original route of the Overmountain Victory Trail.

Cost share and funding contributions for a variety of initiatives such as: cost share funding or another mechanism be provided to assist local governments in obtaining and managing call-back systems or other devices in order to provide adequate warning in times of high water or flooding.

### 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:

- 15.1 Continued maintenance and monitoring of streamflow gauges
- 15.3 Provide dissolved oxygen monitoring below Bridgewater, Wylie and Wateree

### Unresolved Issues:

Guiding Principle proposed but not formally agreed

A number of gauges proposed in the CWRC trial balloon are not listed in the most recent AIP. We will investigate what is needed. One additional gauge we propose would be located at or near the confluence of Muddy Creek at mile marker 1 since the flows from Linville, the old Catawba bypass and Muddy Creek will be indicative of the total flow in the unregulated river reach down to Rhodhiss. This will have a direct effect on recreational options and trout habitat.

### Key Objectives met:

- Increase in monitoring for water quality

## **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.

### Unresolved Issues:

- 16.2 This section needs to be revised to allow Stakeholders to support FERC license conditions and State water quality certificate conditions that may arise after the FA is signed, in certain circumstances.

Signatory organizations reserve the right to be actively involved in the water quality certification process by supporting state conditions and making public comments, in certain circumstances to be agreed.

In addition, signatory organizations reserve the right to actively support diadromous fish passage provisions 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.
  3. The extent to which Duke has provided public benefits beyond the requirements of a traditional FERC generated license.

- 16.7 An implementation team should be formed to assist Duke in monitoring implementation of the terms of the final agreement. Proposed function and accountability of this team is currently being negotiated.

### 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.