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Outline and Status of
Agreement in Principle
as currently proposed January 14, 2006

Prepared by:

Catawba-Wateree Relicensing Coalition

*The mission of the CWRC is to facilitate a process to protect, enhance and restore
the natural, cultural, recreational and economic resources of the Catawba-Wateree River basin.*

Outline and Status of Agreement in Principal

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 12/15/05 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 11), 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)

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.

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 Verify flows in Great Falls to ensure that they provide adequate habitat flows – 450 and 850 cfs may be insufficient. This may be dealt with in the mitigation package.

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. This may become part of the mitigation package.

Provisions needed for potentially increasing flows for migratory fish as and when they repopulate river sections. (Currently Duke is unwilling to do this, and in the case that a future fish prescription requires increased flows, Duke wants adjustments to be made to the FA to accommodate those flows and mitigate for detrimental effects to Duke.)

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.
- 5.3.3 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:

- 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.

Proposed projects for the Water Management Fund include various stream flow gauges that we feel Duke should be funding as part of the license rather than paid for by the fund. (see Section 15)

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 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. (I believe this has been proposed and will be agreed).

We also need to consider a method to include secondary or indirect users who do not have conveyance agreements with Duke so that they will comply 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 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.

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 guaranteed new swimming areas are provided:
Lake James – 1; Lake Hickory -1; Lake Norman – 2; Lake Wylie – 1;
Mt. Island – 1; Fishing Creek – 1.
PLUS additional swimming areas contingent on other parties are:
Lake Hickory – 1, Lake Norman – 2;
Lake Wylie – 1; Wateree – 2.
This results in a total 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 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. (agreed at 1/13/06 Recreation Ad Hoc team meeting subject to final language.)

Unresolved Issues:

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

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

Adequate public access for Kershaw County on the east side of the lake still not resolved.

10.1.22 Final language for adding unspent contributions to the recreation fund.

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.

Unresolved Issues:

11.6 An agreement regarding mussels has not yet been reached but will be prepared between time of signing the AIP and the FA.

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 prescriptions without violating the FA. Duke has indicated that this will be the case but this subject to amending Section 16 language.

Key Objectives met:

- Guiding principle included
- Shortnosed sturgeon will be accommodated for spawning below Wateree dam

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 minimum width requirement in coves for marina construction
Incentive program for developers to leave undisturbed areas of shoreline as well as buffers
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.

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
- 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

Unresolved Issues:

Since much data is still to be collected and interpreted, there are a number of unresolved issues at this time. A key unresolved issue is how the water quality conditions pursuant to Section 401 certificates will alter flow requirements.

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, 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 will require floodgates or equivalent alternative technology that will modify Wateree dam in order 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 funding, maintenance and monitoring of two streamflow gauges:
USGS Gage # 0214600000 (Catawba River near Rock Hill, SC)
USGS Gage # 0214800000 (Wateree River near Camden, SC)
- 15.3 Provide dissolved oxygen monitoring below Bridgewater, Wylie and Wateree

Unresolved Issues:

Guiding Principle proposed but not formally agreed

Six gauges proposed in the CWRC trial balloon are not listed in the most recent AIP. However,
Gauges 02145000 (South Fork at Lowell NC);
02137727 (Catawba River near Pleasant Garden NC);
02140991 (John's River at Arneys Store, NC)
are included in the provisional Water Management Fund Projects list prepared by the Water User's Group. This potential list of gauges funded by the water management fund also includes Gauge 02147500 (Rocky Creek at Great Falls) These gauges are those needed for LIP management.

Gauges we recommend be funded that are not included are:
#02138500 near Nebo, NC nor 021390362 near Calvin, NC)

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 with 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 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.

- 16.7 A Final Agreement Committee will be formed to assist in implementation, communication and consideration of amendments.

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.

- 16.5 This section needs an exception for fish passage prescriptions imposed by the USFS or NOAA.

- 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.

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.