

Outline and Status of Agreement in Principle as currently proposed

Updated November 29, 2005

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 9/15/05 have been updated and included in this summary. While a number of issues remain unresolved we are pleased to say that many have been resolved through recent negotiations.

It is important to note that all 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 9), 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:

- 1.3.1 (b) Acceptable definition of “date of closure” to trigger financial contributions from Duke Power.
- 1.3.2-3 Three year time frame for easements and land acquisitions
- 1.4 Vision adopted by Stakeholders

Unresolved Issues:

None

Key Objectives met:

- Vision included
- Non-binding nature of AIP clarified
- Fair time frames for land easements and acquisitions
- Cost share dependant funding removed
- Financial contributions not unreasonably delayed in the event of rehearing or legal challenge

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

All lakes: Spring spawning stabilization program tailored to specific reservoirs and species

Unresolved Issues:

Finalization of agreed terms depends on additional water supply modeling

Key Objectives met:

- Guiding Principle included
- Equitable use of storage so that no reservoir bares 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:

Most of these flows are still being negotiated and further study is needed before specific terms can be agreed

Unresolved Issues:

4.4 Flows proposed for Oxford dam appear insufficient to provide adequate habitat

General Subsequent trial balloons proposed by Duke have reduced flows from those in Revision 8 of the AIP. Many of these appear too low.

Adequate review and reopener provisions to be added

Appropriate mitigation not yet agreed

Final development of a “high inflow protocol” to take advantage of water availability in normal and wet years

Project operations to enhance floodplain values have not yet been determined.

Finalize verbal agreement to provide continuous flows rather than pulsing

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
- Old Catawba by-pass channel to receive minimum continuous flows BUT appear too low
- Great Falls to receive minimum continuous flows BUT appear too low
- Duke is willing to make equipment modifications at various dams
- Flows below Wateree dam appear adequate

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 and order of priority. Specific triggers depend on further studies.

Review by Drought Management Advisory Group

Unresolved Issues:

New early stage to trigger end of a “high inflow protocol” for aquatic habitat flows

Specific trigger points to be agreed through gauging and monitoring

Further analysis of dissolved oxygen and temperature are needed to determine if LIP flows will meet water quality requirements.

Key Objectives met:

- Multi-party consensus to work together to manage low flow conditions
- Ongoing review team
- Order of priority in water use reductions

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:

Flood Management at Lake Wateree should be addressed here. 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. **MOVED TO SECTION 14**

Trash management provisions to be included in this section. 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. **MOVED TO SECTION 14**

We propose 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:

- 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.

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:

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

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
Kingsbury State Park on Wateree to be created
Gamelands on Wateree to be provided
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:

A greater contribution toward land acquisition costs is needed. For example, the amount of financial support should increase from 10-20% for land acquisition to 30-60% for entities unable to obtain the additional funds.

Financial and corporate support is needed from Duke for North Carolina to acquire approximately 486 acres to add to the Lake Norman State Park.

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.

Any area to be offered with an AAIL lease should be offered first to a public entity before being offered to private or commercial interests.

Use Build-Out scenario information for strategic management planning in coordination with local governments.

A Kershaw County Park on Lake Wateree as yet unresolved.

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

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.

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.
- We suggest dividing this into two sections: one specific to the Shortnosed Sturgeon (a federally listed endangered species), and the other for a general plan for diadromous fishes.
- 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.

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.

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

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 too many unresolved issues to list at this time.

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 quality or habitat loss.

Trash management plan

Flood management at Lake Wateree

Cost share and funding contributions for a variety of initiatives

Key Objectives met:

- The fact that there will be some mitigation is promising but it is too early to say if any 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:

16.4 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. Since the conditions imposed by the FERC and the states under their obligations pursuant to the Clean Water Act arise under federal law, signatories should not be asked to refrain from supporting any such conditions. This may be resolved through a precise definition of “support” and limitations on scope and timing.

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

Signatory organizations reserve the right to support re-openers in the §401 water quality certificates in the event that the water quality standards and designated uses are not being met.

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.

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