

## 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 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 signature copy of the AIP (dated 02/13/06), 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.

- 4.1.1 Provisions for the Flow and Water Quality Implementation Plan include actions and time frames for modifications and interim measures.
- 4.1.5 NC mitigation package includes 28.6 (343 acres) miles of river bank and tributary conservation easements to be transferred to the state.

- 4.1.6 SC mitigation package includes 5.5 miles (67 acres) of Catawba River bank conservation easements plus \$1,000,000 contribution to create the Catawba-Wateree Hydroelectric Project Fish and Wildlife Mitigation and Enhancement Fund.
- 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 nor too broad.
- 4.12.2-3 Spring stable flow periods are provided below Wateree dam. 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:

- 4.1.5-4.1.6 The draft terms for the conservation easements resulting from the mitigation packages allow too much disturbance and do not allow public access. These will need to be redefined to provide meaningful protection.
- 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.
- 4.4-4.5 Flows below Oxford dam and below Lookout Shoals dam are lower than the studies indicated for adequate habitat and have not been sufficiently mitigated for.
- 4.8 The Wylie high inflow protocol does not provide high enough flows to provide significant benefit. We propose that when water is available, that these flows be increased.
- 4.10 Flows in Great Falls may be insufficient to provide adequate habitat but would be acceptable if flows are increased in future years to accommodate migrating fish. Flow observation is anticipated in April 2006 which may resolve the issue.
- General Adequate review and reopener provisions may be needed beyond standard FERC reopeners.
- A “high inflow protocol” is missing for the river below Bridgewater. We recommend increasing flows during spring when water is available.
- Provisions are 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:

- 5.2.3.3 Minimum flows for Carolina Heelsplitter habitat are included.
- 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.
- 5.3.3 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.
- General 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.

#### 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:

8.9.2 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 agree to provide a link on their website to any public agency who reports hazards in any river reaches.

8.1.1 We propose the Public Information System be implemented as soon as possible without waiting for the issuance of the new license.

8.2.3 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  
Conveyance and/or financial assistance for acquisition of approximately  
5000 acres of land (see below for some details)  
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. (Money to be added to the applicable state's conservation funding per Section 14)
- 10.3.1/ 10.3.2 Subject to certain conditions, Duke will convey 560 acres to NCDENR for public recreation and conservation, plus a contribution of \$225,000 for developing boat access, fishing and parking. This will be known as the North Bend Recreation Land.
- 10.3.3 Subject to certain conditions, Duke will convey 420 acres near the confluence of the Catawba bypassed reach and the Bridgewater River reach to NCDENR for public recreation.
- 10.3.4 Subject to certain conditions Duke will convey 275 acres downstream of Paddy Creek to NCDENR for public recreation and conservation.
- 10.4.4 Duke will contribute \$2,640,000 toward the purchase of 2882 acres near the confluence of the John's River and Lake Rhodhiss.
- 10.21.5 Duke will convey 800 acres to South Carolina for recreation and conservation.

Unresolved Issues:

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 should be 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 part of the FA, signatories should be able to comment on, support, or oppose ESA requirements without violating the FA.

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 annual Stakeholder review group for SMP and SMG

Improved 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  
Implementation of new guidelines begins 9/1/06

Unresolved Issues:

None

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  
Operations protocol, including interim measures, to be agreed

Unresolved Issues:

Since many of the specific details to be included in meeting water quality standards are not yet provided we are unable to list all unresolved issues at this time.

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 \$1,000,000 per state in funding for the Habitat Enhancement Program
- 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.

- 14.4 Duke will provide \$4,000,000 in funding per state to support the purchase of land for public recreation, gamelands or conservation, BUT these funds may be reduced or eliminated if conditions imposed by a jurisdictional body impose additional costs on Duke. (14.4.3 (e))

Unresolved Issues:

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.

- 14.5 Additional resource enhancements that are tied to the issuance of a 50 year license should be included even if the license term is for 40 years.

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

- 14.5.4(b) Provisions for redirecting the funds earmarked for flood management in the event that they are not spent on flood management is insufficient. The amount should be increased to at least \$6,000,000 and be distributed through a joint decisions making process involving the Water Management Group, the Habitat Enhancement Board and the Final Agreement Committee at a minimum.

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:

- 16.2.1.5& 16.2.2.5 Mediation provided to help resolve the “veto” power of one signatory regarding the support of conditions that are inconsistent with the FA
- 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 Provisions to be included for signatories to meet and confer regarding draft conditions proposed by jurisdictional bodies.
- 16.7.2 A Final Agreement Committee will be formed to assist in implementation, communication and consideration of amendments.

### Unresolved Issues:

Withdrawal provisions are referred to but not given (Sec 17) so it is impossible to determine whether signatory’s rights will be adequately protected if inconsistent conditions are either proposed or imposed by a jurisdictional body.

Provisions are needed to protect the agreed terms for Recreation, Public Information, Cultural Resources and Shoreline Management in case of withdrawal or changes made by Duke because of conditions imposed by a jurisdictional body. OR, if Duke retains the right to reduce or eliminate any of these agreed terms because of the imposition of conditions by a jurisdictional body, then signatories should have the right to support or oppose actions by such jurisdictional bodies.

- 16.2.1.5& 16.2.2.5 In the event that a disagreement cannot be resolved, then mediation should be required, not merely available. Also, since Section 17 is not complete the dispute resolution process is unknown and cannot be agreed to.
- 16.5.3 The exception to support or oppose fish passage prescriptions should include ESA provisions regarding flows.
- 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.

16.7.2.3 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.

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.