Doris Mendiola

From: Goudreau, Chris [chris.goudreau@ncwildlife.org]
Sent: Tuesday, May 20, 2008 9:34 AM
To: LeeCOLAEIS Resource
Subject: NCWRC scoping comments
Attachments: 2008-05-20 ncwrc scoping letter - lee nuclear.pdf

Please find attached our scoping comments.

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North Carolina Wildlife Resources Commission

May 20, 2008

Via Email to Lee.COLAEIS@nrc.gov

Chief
Rulemaking, Directives, and Editing Branch
Division of Administrative Services
Office of Administration
Mailstop T–6D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

Subject: Duke Energy Carolina, LLC, William States Lee III Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process; Docket Nos.: 52–018 and 52–019; Federal Register Vol. 73, No. 55, Pages 15009-15011, March 20, 2008

Dear Sir or Madam:

The Nuclear Regulatory Commission is beginning the preparation of an Environmental Impact Statement (EIS) for the subject project. The North Carolina Wildlife Resources Commission (NCWRC) has reviewed the information provided and field biologists on our staff are familiar with habitat values of the project area. These comments are provided in accordance with provisions of the National Environmental Policy Act (42 U.S.C. 4321-4347) and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d).

Although the proposed nuclear facilities will be located in South Carolina, their construction and operation have the potential to impact fish and wildlife resources and habitats in North Carolina. Our interests in this matter relate to diadromous fish species and water availability. Accordingly, Ron Linville, Habitat Conservation biologist and I visited the Gaffney site on April 29, 2008.

Recently, the NCWRC, along with the South Carolina Department of Natural Resources, U.S. Fish and Wildlife Service, Duke Energy, and South Carolina Electric and Gas, signed an agreement (attached) for the protection, restoration, and enhancement of diadromous fish in the Santee Basin in South Carolina and North Carolina. American shad and American eel migrations historically extended into the North Carolina portion of the Broad River sub-basin.

Mailing Address: Division of Inland Fisheries • 645 Fish Hatchery Road • Marion, NC 28752
Telephone: (828) 652-4360 • **Fax:** (828) 652-3279

While work will be done in other portions of the Santee Basin, the initial focus of the restoration work will occur in the Broad River sub-basin. Over time, we expect that other downstream blockages to movements of these species will be reduced or eliminated. We want to ensure that operation of the proposed Lee Nuclear site will not create any additional impediments to the upstream and downstream migrations of these species. We did not find any analyses in the Environmental Report prepared by Duke Energy regarding the potential effects on diadromous species.

We are particularly interested in understanding if the nuclear facilities will alter the physical, hydrologic, thermal or chemical characteristics of the Broad River in ways that might alter, prevent or delay the upstream or downstream movements of these species. The EIS should specifically address whether river water temperatures would disrupt the upstream migrations during April and May. Although the warm-water plume may not be extremely high, the difference in temperature may act as a behavioral barrier to movements. The potential for the cooling water intakes to impinge or entrain larval and juvenile stages of both species should also be addressed. Should South Carolina DENR not have intake specifications, we routinely recommend the use of passive screens with openings not to exceed 1 centimeter (1millimeter in waters having anadromous fish) and with a maximum intake velocity of 0.5 feet per second. When diadromous species arrive at the project site in the future, monitoring should be required to make sure they are not stopped, slowed down or otherwise affected by operation of the facility.

The recent droughts have increased the public's awareness of the limited availability of water in the Broad River basin. A number of municipalities are investigating the potential to increase their water withdrawals or to construct new storage reservoirs or intake facilities. This trend is likely to continue over the term of the proposed nuclear facility as human demand for water increases with increased population size. We want to be assured that the hydrology of streams in North Carolina will not be altered in order to provide cooling water for the nuclear project. This could occur in several ways. Water could be diverted directly from the Broad River basin or another basin in North Carolina. Another possibility is that water stored in existing or future reservoirs could be allocated to meet the cooling water needs for the Lee facility. In either event, it is likely that the flow regime in North Carolina streams and rivers would be altered in terms of magnitude, duration, timing, frequency or rate of change. The EIS should assess whether the nuclear project is able to operate throughout the projected license term without altering the hydrology of North Carolina streams. Any existing or potential interbasin transfer infrastructure and facilities should be included and discussed in detail in the EIS.

If you have any questions regarding these comments, please contact me at 828-652-4360 x223 or chris.goudreau@ncwildlife.org.

Sincerely,

Christopher Goudreau

Christopher Goudreau
Special Projects Coordinator

SANTEE RIVER BASIN ACCORD FOR DIADROMOUS FISH PROTECTION, RESTORATION, AND ENHANCEMENT

General

The Santee River Basin Accord ("Accord") is a collaborative approach among utilities with licensed hydroelectric projects, and federal and state resource agencies to address diadromous fish protection, restoration, and enhancement in the Santee River Basin ("Basin"). This Accord supports the *Santee-Cooper Basin Diadromous Fish Passage Restoration Plan* (2001) which was developed by the South Carolina Department of Natural Resources ("SCDNR"), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NMFS"), and the United States Fish and Wildlife Service ("USFWS"), and was accepted as a Comprehensive Plan by the Federal Energy Regulatory Commission ("FERC") as noted in the FERC's letter to the USFWS dated October 3, 2001.

Accord participants and hydroelectric projects (referred to herein singularly as "Project" and together as "Projects") that are the subject of this Accord include South Carolina Electric & Gas Company ("SCE&G"), licensee of the Saluda Hydroelectric Project No. 516, the Parr Hydroelectric Project No. 1894, and the Neal Shoals Hydroelectric Project No. 2315, and Duke Energy Carolinas, LLC ("Duke"), licensee of the Catawba-Wateree Hydroelectric Project No. 2232, the Ninety-Nine Islands Hydroelectric Project No. 2331, and the Gaston Shoals Hydroelectric Project No. 2332 (SCE&G and Duke referred to herein singularly as "Utility" and together as "Utilities") and their successors; and the SCDNR, the North Carolina Wildlife Resources Commission ("NCWRC"), and the USFWS (referred to herein singularly as "Agency" and together as "Agencies") and their successors. Singularly, any Utility or Agency that signs this Accord may be referred to herein as "Party". Collectively, the Utilities and Agencies that sign this Accord constitute the Cooperative Accord Partnership ("CAP" or "Parties"). The NMFS and the South Carolina Department of Health and Environmental Control ("SCDHEC") were also involved in the development of this Accord, but neither are currently signatories to the Accord and are therefore not CAP members. Future CAP members, if any, will be limited to federal and state resource agencies with authority for any diadromous fish species and their habitats in the Basin, and to owners of other FERC-licensed hydroelectric projects in the Basin. Non-governmental organizations and the general public will not be members of the CAP, but may participate via consultation with CAP members and may attend CAP meetings in a non-decision-making role. However, all discussions by non-CAP members in CAP meetings will be limited to a short public comment period (to include submission of written comments, if desired) at the start of a meeting, unless the CAP agrees by consensus on a case-by-case basis to do otherwise.

This Accord constitutes an agreement among the CAP members for the protection, restoration, and enhancement of diadromous fish in the Basin through implementation of a 10-year Action Plan ("Plan") that was initially developed by the USFWS (*Cooperative Accord 10-Year Action Plan For The Restoration and Enhancement of Diadromous Fish In The Santee Basin*—original draft dated January 24, 2007), and that includes no-sooner-than dates and biological triggers for fish passage as specified in this document. Tasks and cost estimates for each activity in the Plan are shown in Appendix A, and no-sooner-than dates, biological triggers, and other agreed-upon actions are noted in Appendix B. The agreements, activities, and biological studies identified in

the Accord, and in Appendices A, B, and C which are hereby incorporated by reference, will be used to support the development of fish passage prescriptions that will protect, restore, and enhance diadromous fish species in the Basin and will be filed with the FERC for inclusion in the new licenses for some of the above-referenced Projects. The CAP members have worked to create this Accord to meet the interests of CAP members while still allowing all Agencies and Jurisdictional Bodies to meet their respective statutory obligations for diadromous fish under §7 of the Endangered Species Act ("ESA") and under §4(e), §10(a), §10(j), and §18 of the Federal Power Act ("FPA"), and under §401 of the Clean Water Act ("CWA"), for the above-referenced Projects. The CAP has agreed to implement phased, deliberate, and effective activities that will initiate diadromous fish population enhancements in the near-term while collecting data and monitoring diadromous fisheries over a longer period for optimizing further restoration efforts.

Definitions

Consensus—a vote with no dissenting votes; abstention by a member is not a dissenting vote.

Jurisdictional Body—any governmental body, except Agencies, which has the authority to bind the Utilities by imposing requirements affecting the operation of the Projects that are the subject of the Accord.

Existing Project License—the hydropower license that as of the effective date of this Accord has been issued by the FERC for Projects No. 1894, No. 2315, No. 2331, and No. 2332 but does not include subsequent or renewed licenses, or their terms, even if some or all of the terms of a subsequent or renewed license are identical to terms in an Existing Project License.

Inconsistent Act—(A) any requirement, condition, prescription, or recommendation imposed by a Jurisdictional Body pursuant to §§4(e), 10(a), 10(j), or 18 of the FPA, §7 of the ESA, or §401 of the CWA for operation of a Project that materially varies any obligation concerning the restoration of diadromous fish, reservoir elevation limitations, required flow releases, and low inflow protocols or high inflow protocols from those set forth in the Catawba-Wateree Comprehensive Relicensing Agreement (CRA), as amended on December 29, 2006, or in an Existing Project License; or (B) any requirement, condition, prescription, or recommendation imposed by a Jurisdictional Body pursuant to §§4(e), 10(a), 10(j), or 18 of the FPA, §7 of the ESA, or §401 of the CWA that materially varies any obligation from those set forth in this Accord.

Breach—a failure of a Party to comply with the terms of the Accord in a significant and non-trivial manner and includes, but is not limited to: (A) a requirement, condition, prescription, or recommendation for a Project that is imposed by an Agency pursuant to §§4(e), 10(a), 10(j), or 18 of the FPA, or §7 of the ESA that materially varies any obligation set forth in this Accord; or (B) any CAP member's requesting, promoting, or supporting an Inconsistent Act or other requirements that materially varies any obligation set forth in this Accord.

Materially Vary or Varies—a requirement, condition, prescription, or recommendation materially varies if it imposes additional obligations that in the discretion of the affected Utility are significant and includes, but is not limited to: (A) reservoir elevation limitations; required flow releases; low inflow protocols or high inflow protocols that are significantly different from

those in the CRA or in an Existing Project License (whether by changing the actual obligation or by changing the method of implementing the obligation); (B) upstream or downstream passage of diadromous fish at a Project dam on a schedule different from that identified in the Accord; (C) installation of fishway equipment on a Project dam that is in addition to or different from what is required by the Accord; or (D) fish studies, monitoring, or analyses that are in addition to or different from what is required by the Accord.

Fish Passage Facilities, Fishways, and Prescriptions— defined in *Notice of Proposed Interagency Policy on the Prescription of Fishways Under Section 18 of the Federal Power Act,* (Federal Register/Volume 65, No. 247/Friday, December 22, 2000) for existing hydroelectric projects on the Saluda, Broad, and Catawba-Wateree rivers. These terms are used interchangeably throughout this document.

Key Agreements

The CAP members agree as follows:

General Agreements

1. The Utilities will not pursue Trial Type Hearings ("TTH") before an Administrative Law Judge pursuant to FPA §§4(e) or 18 to contest the USFWS's FPA §§4(e) or 18 diadromous fish requirements so long as the USFWS's ESA §7 requirements, FPA §§4(e) conditions, 10(a) and 10(j) recommendations, and 18 prescriptions do not materially vary reservoir elevation limitations, required flow releases, low inflow protocols or the high inflow protocols as set forth in: (A) the CRA; (B) Existing Project Licenses at the Ninety-Nine Islands and Gaston Shoals Projects; (C) a settlement agreement among the SCDNR, the USFWS, and SCE&G for the Saluda Hydroelectric Project; and (D) this Accord.

2. The Plan, which emphasizes research on fish movement (both upstream and downstream), distribution, and habitat use; fish population enhancement and restoration activities; and related funding responsibilities for American eels, American shad, Atlantic sturgeon, blueback herring, and shortnose sturgeon, will be implemented.

3. The Accord's no-sooner-than dates and biological triggers (in Appendix B) will be used to initiate conceptual design and subsequent construction of fish passage facilities for existing hydroelectric Projects on the Broad River and the Catawba-Wateree River.

4. The restoration target numbers for adult anadromous American shad and adult anadromous blueback herring restoration in the Broad River are set in Appendix C.

5. Subject to limitations regarding confidential and proprietary information, the CAP will establish and maintain a publicly accessible electronic archive for all data and documents created as a result of the Accord. When requested by a Utility, the Agencies will treat specific data provided by the Utility as confidential and proprietary, to the extent permitted by law. This may include pre-decisional work products, proprietary information, and sensitive resource data. In the event that any confidential or proprietary information is required by law to be released by an Agency, that Agency shall provide

CAP members affected by such a release with at least a 30-day written notice in advance of such release, unless a shorter notice period is required by law. Nothing herein shall be interpreted to prevent any Agency from complying with the Freedom of Information Act and 43 CFR Part 2, Subpart A and B.

6. If any Utility considers an action or omission to be an Inconsistent Act or a Breach, then that Utility may withdraw from this Accord by giving written notice of its intent to withdraw, pursuant to Paragraph 7; provided, however, that in the case of an Inconsistent Act, such notice of withdrawal may not take place until the time period to initiate administrative appeal of the Inconsistent Act has expired.

7. A withdrawing Utility initiates withdrawal by providing written notice of an Inconsistent Act or Breach and its intent to withdraw to all CAP members. This notice must include a brief statement setting forth: (A) the date and nature of the Inconsistent Act or Breach giving rise to the right to withdraw and (B) how the alleged Inconsistent Act or Breach meets the definition of "Inconsistent Act" or "Breach," as defined herein.

8. In the event of an alleged Accord Breach by any CAP member, the CAP member that is alleged to have breached the Accord shall have thirty (30) days after receipt of the notice of Breach within which to cure the Breach. If it is not reasonably possible to cure such Breach within thirty (30) days, the breaching CAP member shall notify the CAP Board ("Board," see Paragraph 26) of the time reasonably necessary to cure such Breach. If the Board can agree on the time reasonably necessary to cure the Breach, the breaching CAP member shall proceed to cure such Breach within such time as the Board shall agree. If the Board is unable to agree on the time reasonably necessary to cure the Breach, the breaching CAP member shall proceed to cure such Breach as soon as reasonably possible. The breaching CAP member(s) shall keep the Board informed of the progress in curing the Breach. Failure of the breaching CAP member to cure a Breach in accordance with this paragraph shall allow the CAP member that is harmed by the Breach to withdraw from the Accord.

9. In the event of a withdrawal by a Utility or the failure of a Utility to cure a Breach of the Accord, the Agencies have the option to reconsider any prior fish passage prescriptions submitted pursuant to FPA §18 for Projects owned by the withdrawing or breaching Utility. Withdrawal relieves the Utility of its performance obligations under this Accord, but will not result in the return of any funds previously contributed pursuant to Paragraph 37.

10. If the Accord Utility membership changes, the Plan will be adjusted by the remaining CAP members to be compatible with funding being provided by the remaining member Utilities.

11. The Agencies and Utilities agree that extension of the Plan beyond 2017 is optional, and the obligation and agreement to comply with the Accord is not conditioned upon a continuation of the Plan beyond the initial 10-year term.

12. The Agencies and the Utilities agree to use their best efforts to make this Accord a success and to participate in all Accord administrative activities at their own expense.

SCE&G Specific Agreements

13. The reservoir elevation limitations, required flow releases, low inflow protocols or high inflow protocols to be developed in a relicensing agreement for the Saluda Hydroelectric Project among the USFWS, SCDNR, and SCE&G along with the reservation by the USFWS of any fishway prescriptions for this Project will be filed with the FERC for the term of the new Saluda Hydroelectric Project license which is anticipated to be issued in 2010.

14. It is the understanding of the CAP that the diadromous fish study needs below the Parr Shoals Development Dam will be addressed through the Accord. Additional diadromous fish studies downstream of Parr Shoals Development Dam will not be required during the relicensing of the Parr Hydroelectric Project. A Fish Passage Feasibility Assessment (an evaluation of the upstream and downstream passage alternatives and their conceptual designs) will be conducted pursuant to the Accord, by SCE&G, and will commence upon attainment of the biological triggers as set out in Appendix B.

15. The Fish Passage Feasibility Assessment will commence at the Parr Shoals Development Dam within one year following passage of 50% of the adult anadromous American shad or adult anadromous blueback herring target restoration numbers as set out in Appendix B, upstream for any three years in a five-year period at the Columbia Diversion Dam Fish Passage Facility. Construction of a fishway at the Parr Shoals Development Dam will be initiated within one year and completed within three years following passage of 75% of the adult anadromous American shad or adult anadromous blueback herring target restoration numbers as described in Appendix B, upstream for any three years in a five-year period at the Columbia Diversion Dam Fish Passage Facility. In no event shall fish passage feasibility assessment or construction of the fishway commence before 2012. No changes will be required in the Parr Hydroelectric Project's current operations until issuance of the new FERC license for this Project. Any fish passage at this Project will not impact generation and pumping operations at the Fairfield Pumped Storage Facility until relicensing studies support the need for such a change and then only with the issuance of the new license for the Parr Hydroelectric Project (anticipated to be issued by FERC in 2020).

16. The USFWS agrees to reserve its FPA §18 authority to prescribe any type of fish passage facilities for sturgeon species at the Parr Shoals Development Dam until the new FERC license is issued for the Parr Hydroelectric Project, anticipated to be in 2020.

17. In the event that SCE&G applies for an amendment to the Parr Hydroelectric Project's current license for construction of a future power plant, the USFWS will reserve its authority under FPA §4(e) and §18 for this license amendment at that Project.

18. The Fish Passage Feasibility Assessment, including conceptual designs, will begin at the Neal Shoals Hydroelectric Project within one year following 50% of target restoration

numbers for adult anadromous American shad or adult anadromous blueback herring, as described in Appendix B, being passed upstream for any three years out of a five-year period at the Parr Shoals Dam. The construction of fish passage facilities at the Neal Shoals Hydroelectric Project will commence within one year and be completed within three years following passage of 75% of target restoration numbers of adult anadromous American shad or adult anadromous blueback herring being passed upstream three years out of a five-year period at the Parr Shoals Development Dam, but in no event shall the fish passage feasibility assessment or construction commence before 2016.

Duke Specific Agreements

19. For the Catawba-Wateree Hydroelectric Project, the obligation to operate a fishway and associated facilities as set out in the Accord will continue for the term of the new license, and the USFWS agrees that the prescription to be filed with the FERC for the new license will include such a provision. A trap and truck fish passage facility ("T&T facility") for adult anadromous American shad and adult anadromous blueback herring will be designed by Duke, in consultation with the Agencies and with input from the Accord Technical Committee ("TC;" see Paragraph 33), by December 31, 2015, and will commence operation by January 1, 2018, at the Wateree Development of the Catawba-Wateree Hydroelectric Project (see Appendix B). Fish trapped at this T&T facility will be placed in Lake Wateree. The year after the combined annual total catches of adult anadromous American shad and adult anadromous blueback herring equal or exceed 10,000, and in all subsequent years of the term of this Accord, all trapped adult anadromous American shad and adult anadromous blueback herring shall be trucked to upstream areas in the SC portion of the Catawba-Wateree River Basin designated by the TC. If the Accord is not functional, then the USFWS and the SCDNR will designate these upstream reaches in the SC portion of the Catawba-Wateree River Basin by consensus. Effectiveness studies (e.g., usefulness of attraction flows to increase capture of target fish and determination of target fish mortality associated with handling and transportation) for this T&T facility will be conducted by Duke during the first three years of operations, provided sufficient numbers of fish, as determined by the consensus of the Agencies with input from the TC, are available to do so. Information from the effectiveness studies will be used to improve effectiveness of the T&T facility.

20. The Agencies agree that operation of the T&T facility at the Wateree Development, as specified above and as incorporated in the prescription to be filed with the FERC for inclusion in the new license, will fulfill FPA §18 prescriptions and ESA §7 requirements for upstream passage for all adult anadromous fish (including but not limited to American shad, blueback herring, Atlantic sturgeon, and shortnose sturgeon) for all Catawba-Wateree Hydroelectric Project developments for the term of the new license.

21. The SCDNR will issue a scientific collection permit to operate the T&T facility at the Wateree Development pursuant to SC Code §50-11-1180 to ensure that Duke will not be held civilly or criminally responsible for any bycatch mortality, provided Duke is in compliance with its collection permit.

22. The Agencies agree that existing upstream fish passage facilities at the Wateree Development (i.e., partial ramp(s) and manual trap(s) in good repair and similar to that described in David Solomon's 2004 Fish Passage Design for Eels and Elvers) that use manual transport and release of captured American eels into Lake Wateree are sufficient to fulfill FPA §18 upstream prescriptions for catadromous fish (e.g., American eels) at the Wateree Development, when supplemented with additional partial ramp(s)/manual trap(s) determined by the results of partial ramp/manual trapping conducted in all seasons in 2009-2011 in areas adjacent to the spillway (data collected via the Catawba-Wateree River Elver Study in Appendix A). So long as American eels are passed upstream at the Wateree Development in an efficient, safe, and timely manner, Duke, at its sole discretion, may decide to continue operation of the ramp/trap fishway or construct a new passage facility. If Duke chooses to construct a new American eel passage facility at the Wateree Development, Duke will consult with the Agencies and the TC regarding facility design and construction.

23. The Agencies and Duke agree that a series of portable ramp/trap devices will be sufficient for the three-year monitoring studies, and that the studies will be conducted at each development in an orderly upstream sequence of the Catawba-Wateree Hydroelectric Project developments upstream of the Wateree Development. A template for the initial and subsequent studies to ascertain American eel abundance at each tailrace site is set out in the 10-Year Action Plan and is budgeted in Appendix A (location of such studies will occur in an orderly upstream sequence beginning at the Rocky Creek-Cedar Creek Development and ending at the Bridgewater Development at a time to be determined in consultation with the Agencies and with input from the TC). These data will allow effective design and placement of permanent or semi-permanent passage devices for best upstream passage at each development for American eels. Duke will develop a study plan for review and approval by the Agencies with input from the TC prior to commencing any studies at these upstream developments. Information collected from these studies shall include size, seasonality, and location of juvenile American eels in the tailrace areas where these fish may congregate. Captured American eels will be passed into the immediate upstream reservoir. The Agencies and the TC may approve a request for extension of the term of the initial monitoring study in the event few American eels are captured during the study phase.

24. Following the above monitoring for American eels described in Paragraph 23, Duke agrees to design, construct, and operate at each development (in consultation with the Agencies and with input from the TC after a review of the data collected during each three-year study) permanent or semi-permanent upstream passage facilities at each development within two years of completion of the monitoring study at a particular development. So long as American eels are passed upstream at each development in an efficient, safe, and timely manner, Duke, at its sole discretion, may decide to continue operation of the ramp/trap type fishways or construct a new passage facility at each Catawba-Wateree Project development.

25. Duke in cooperation with Agencies and with input from the TC will commence studies in 2024 to address the safe, timely, and effective downstream passage of American eels in the Catawba-Wateree system.

Management and Direction

CAP Board

26. The Accord will be directed by a Board composed of one representative appointed by each CAP member. Each CAP member may designate an alternate who may function as its Board representative in the absence of the appointed Board member. It shall be the responsibility of each CAP member to notify other members in writing within 14 calendar days following any change of the name or contact information for its Board member and/or alternate. On an annual basis, the Board shall elect a chairperson ("Chair") and may elect other officers as deemed necessary. Initial terms for Board members will be staggered so that there is continuity in the operation of the Accord over the long term, with Duke and USFWS Board members serving three-year initial terms and SCE&G and state agency members serving two-year terms. Successive Board members will serve two-year terms. Meetings by the Board will be held in compliance with the Freedom of Information Act in the jurisdiction where the meeting is held.

27. The initial Board shall establish and schedule at least one meeting of the Board per calendar year (Annual Meeting) for the duration of the Accord. The Chair will select the meeting location and will develop an agenda and provide draft minutes of the previous meeting within two weeks following each meeting and require all members to return their comments within two weeks following receipt of the draft minutes. Additional meetings (Called Meetings) of the Board may be called by the Chair or upon the agreement of at least 25 percent of the Board members, but no Called Meeting that is not called by consensus vote by the Board may be held with less than four weeks prior written notice.

28. A quorum is required for the transaction of business (e.g., official votes) at any Board meeting. A quorum is defined as the presence of a representative or alternate of each CAP member participating in the Accord on the date of the meeting. Once a quorum is established, it may not be broken by departure of one or more members' representatives or alternates, and voting may occur once a quorum is established.

29. Failure to comply with terms of the Accord, including the prompt payment of a Utility's annual contributions, will result in the revocation of that member's right to vote until the failure to comply is remedied.

30. The representatives of the members, or their alternates, may participate, which participation includes voting, in meetings by any means of communication by which all participants may simultaneously hear each other during the meeting. A member's representative or its alternate participating in a meeting by this means is deemed to be present in person at the meeting. No proxy voting shall be permitted. A member's alternate shall not vote if that member's regular representative is present.

31. In addition to conducting its affairs at meetings, the Board may also validly exercise its authority in writing. A proposal may be presented, whether in written or electronic format, to each member's representative. Upon the approval, whether in written or electronic format, of each member's representative to that written proposal, the action of

the Board concerning the proposal will constitute a valid exercise of the Board's authority. A complete record of all action taken by the Board without meeting shall be filed with the minutes of the proceedings of the members, whether done before or after the action so taken.

32. Final decisions must be made by consensus of Board members or their alternates.

Technical Committee (TC)

33. A TC comprised of fishery biologists and/or other qualified professionals representing each CAP member will be established by the Board and will advise the Board on technical issues associated with the Accord. The TC will exist for the duration of the Accord.

34. The TC will develop consensus recommendations to the Board and will guide the design and implementation of all Plan tasks for the duration of the Plan. Following the expiration of the term of the Plan, the TC will function as a scientific advisor to the Board regarding all matters related to the restoration of diadromous fish in the Santee Basin.

35. Failure to allocate and disburse funds according to direction of the Board will result in the revocation of that member's right to participate or to vote on matters brought to the TC, until the failure to comply is remedied.

36. For the duration of the Accord, the TC will provide a brief written annual progress report to the Board by February 15 of the following year.

Communications Protocol

The Board will develop a protocol to communicate clearly on all Accord-related resource study, protection, restoration, and enhancement activities occurring in the Basin. All CAP members shall adhere to the Communications Protocol. It is the intent of the Accord to publicly disseminate all technical and scientific findings of its monitoring and study efforts.

Term of the Accord and the 10-year Action Plan

The effective date of this Accord shall be April 15, 2008. The Accord shall terminate for SCE&G at the end of the term of the new FERC license for the Saluda Hydroelectric Project (expected to be issued by the FERC in 2010) and for Duke at the end of the term of the new FERC license for the Catawba-Wateree Hydroelectric Project (expected to be issued in 2009). Each annual extension, if any, of the applicable new licenses by the FERC (commonly referred to as an "annual license") will also extend the term of the Accord for the applicable Utility by one year. Since diadromous fish restoration can be a long-term endeavor, the Board may desire to extend the term of the Plan, or to increase funding during its term. Through a consensus vote of its members, the Board may alter or modify Plan tasks and expenditures within those amounts currently established by the Plan and such Plan modifications do not require new signatures on the Accord from the authorized representative of each CAP member's organization.

The term of the Plan shall be April 15, 2008, through December 31, 2017, unless extended as noted above. The Board shall consider revision or renewal of the Plan in 2015 and shall decide by consensus of its membership if the Plan shall be revised or renewed. A decision not to extend or renew the Plan does not affect the obligations of and agreements among the CAP members contained in the Accord.

Dispute Resolution

Major disputes regarding the Accord, if at all possible, will be resolved by the Board through good-faith negotiations which may be assisted by selecting the services of a neutral mediator (cost of the mediator to be shared as determined by the Board).

Roles and Responsibilities for Implementing the 10-year Action Plan

Utilities

37. Utilities will fund the Plan with SCE&G providing $200,000 per year (unadjusted annual contribution) and Duke providing $500,000 per year (contributions expressed in 2008 dollars and to be adjusted annually using the Consumer Price Index). Additional funding secured through grants or other sources by the CAP may be incorporated into the budget and is encouraged. Funding levels provided by the original Utilities are set at that described above. If the costs of proposed activities and studies under the Plan exceed the funding provided by the Utilities, then later activities and studies under the Plan will be abandoned or reduced appropriately as determined by the Board to accommodate the funding level agreed to in this document, unless the necessary additional funding can be obtained by new utility participants, non-CAP member entities, grants and/or existing Fisheries Enhancement Plans from within the Basin. However, funding by non-CAP members will not render otherwise ineligible entities eligible to guide Accord activities or become members of the CAP.

38. In addition to the funding set forth in Paragraph 37, Utilities will provide technical/scientific input to program development, personnel and in-kind services (as appropriate), while conducting some studies, and will provide assistance in the scheduling and conduct of studies.

State and Federal Agencies

39. Agencies will provide technical/scientific input to program development, assistance in the scheduling of studies, personnel and in-kind services (as appropriate) while conducting some studies, and assistance in reporting study results.

40. Agencies will investigate and solicit any sources of supplemental or matching funds.

41. Agencies will assist, to the extent practicable, with the issuance of all applicable permits.

Fund Management

Funds to be contributed by the Utilities shall be maintained by each Utility and accounted for in a separate CAP Fund Account. The CAP Board will develop and adopt procedures concerning when the Utilities will deposit their contributions to this account and how disbursements from this account are approved. Each Utility shall provide annually, no later than March 31, a report of all fund deposits, disbursements, and balances for the previous calendar year. Any funds obtained by a Utility from other sources that are to be used solely in the execution of the Plan shall be included in that Utility's CAP Fund Account and shall be identified in the annual report as a contribution by others. The annual reports provided by the Utilities to the CAP Board will be provided to all CAP members. All such funds, whether contributed by Utilities or others shall be the exclusive property of the CAP to be disbursed and spent according to the Board.

Disbursements from a Utility's CAP Fund Account shall be made only at the consensus direction of the CAP Board. Each Utility owes a fiduciary duty to manage and account for the funds for the benefit of the CAP and to follow the CAP Board's direction for disbursements.

It is the desire of the Utilities that all monies contributed to the Plan be spent during the term of the Plan. In the event that the Plan is not extended and unspent funds are available at the conclusion of the Plan term, the Board will decide by consensus and direct the Utilities to allocate these monies to other ongoing programs of a similar nature and the Utility CAP Fund Accounts will be closed, after which each Utility shall submit to the CAP Board a final accounting report within 60 days following closing its account.

Reserved Authority

The Utilities recognize that the USFWS will reserve authority to alter its FPA §4(e) conditions and FPA §18 prescriptions for diadromous fish. The Agencies and Utilities agree that the Accord provisions are appropriately based on current knowledge of diadromous fisheries in the Santee River Basin. The USFWS believes it will be able to meet its FPA §§ 4(e) and 18 and ESA §7 obligations consistent with its Accord commitments.

State Commitments

The SCDNR agrees to use its best efforts to make this Accord a success. In the event that the USFWS exercises its reserved authority and issues a FPA §18 prescription or a FPA §4(e) condition, or an ESA §7 requirement, or the SCDHEC issues a CWA §401 certification that is inconsistent with, or would impose obligations in addition to those set forth in the Accord or Project settlement agreement with the SCDNR, the SCDNR may exercise any procedural and substantive rights it may have to contest such a prescription, condition, or requirement.

The NCWRC agrees to use its best efforts to make this Accord a success. In the event that the USFWS exercises its reserved authority and issues a FPA §18 prescription or a FPA §4(e) condition, or an ESA §7 requirement, or the North Carolina Division of Water Quality issues a CWA §401 certification that is inconsistent with, or would impose obligations in addition to those set forth in the Accord or Project settlement agreements with the NCWRC, the NCWRC may exercise any procedural and substantive rights it may have to contest such a prescription, condition, or requirement.

Modification of the Accord

This Accord may be modified; however, except for modifications of the Plan as described above, no modification of the Accord will be effective or valid unless it is signed by the authorized representative of each CAP member's organization.

Miscellaneous Agreements

No Admission of Liability – The Accord is a compromise, balancing many interests. The actions taken hereunder are not intended nor shall be construed as an admission on the part of any CAP member, or its agents, representatives, attorneys or employees that such CAP member was so obligated in any manner independent of this Accord. Except as provided herein, no CAP member shall be prejudiced, prevented, or estopped from advocating in any manner or before any entity, including the FERC or any state agency, any position inconsistent with those contained in this Accord regarding the licensing, permitting and license compliance of these or any other hydropower projects other than those addressed in this Accord.

Accord Terms Contractual/Merger – The terms of the Accord are contractual and not mere recitals. This Accord, which includes and fully incorporates any and all Appendices and the Plan, constitutes the entire agreement among the CAP members with respect to the subject matter hereof. All prior contemporaneous or other oral or written statements, representations or agreements by, between or among any of the CAP members, with respect solely to fish passage and fishway prescriptions of the subject Projects are superseded hereby. Nothing herein shall be construed to affect, negate, or supersede obligations and benefits arising from Duke's Comprehensive Relicensing Agreement and SCE&G's potential settlement agreement for the Saluda Hydroelectric Project regarding reservoir elevation limitations, required flow releases, low inflow protocols or high inflow protocols.

Enforceability – All terms of the Accord not incorporated as FERC License Articles shall be enforced through remedies available under applicable state or federal law.

Compliance with Laws – It is the responsibility of the CAP members to comply with all applicable federal, state and local laws, codes, rules, regulations, and orders of any governmental authority, and, except as otherwise provided herein, each CAP member will obtain, at its own expense all permits and licenses pertaining to its obligations under the Accord. The Accord is not intended and shall not be construed as a defense to or a limitation on civil or criminal liability in any action brought by any governmental entity to enforce any law and shall not limit the assessment or award of any fees, fines, penalties, remediation costs or similar liabilities in any such enforcement action.

Force Majeure – The Parties agree that a CAP member shall not be in breach of the Accord to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting CAP member; provided, that the delayed or defaulting CAP member notifies the other CAP members as soon as possible of: (A) the event; (B) the expected duration of the event; and (C) the delayed or defaulting CAP member's plan to mitigate the effects of the delay or default. Such causes may include, but are not limited to, natural disasters, labor or civil disruption, acts of terrorism, the inability to secure any legal authorization from another entity

(e.g., a permit or license) where such legal authorization is a prerequisite or requirement for complying with the Accord, or breakdown or failure of the affected Project's works, so long as such causes are beyond the reasonable control of the delayed or defaulting CAP member.

Applicable Law and Venue – This Accord shall be governed by the law of the state wherein the subject hydroelectric development is located. Execution of the Accord does not constitute a consent to jurisdiction of any court unless such jurisdiction otherwise exists. Execution of the Accord also does not constitute a waiver of any immunity or privilege except as provided by law.

Waiver Independence – No consent to or waiver of any provision of the Accord shall be deemed either a consent to or waiver of any other provision hereof, whether or not similar, or a continuing consent or waiver unless otherwise specifically provided.

Water Rights Unaffected – Except as between the Parties hereto and as specifically set forth in this Accord, the Accord does not release, deny, grant or affirm any property right, license or privilege in any waters or any right of use in any waters. The Accord does not authorize any person to interfere with the riparian rights, littoral rights or water use rights of any other person. No person shall interpose the Accord as a defense in an action respecting the determination of riparian or littoral rights or other water use rights.

Parties' Own Costs – Except as expressly provided for in the Accord, all CAP members are to bear their own costs of participating in the Accord.

Existing Laws – Unless otherwise noted, any reference to any statute, regulation or other document refers to the statute, regulation or document as it exists on the date of the first signature on the Accord.

No Third-Party Beneficiary – The Accord shall not create any right in any individual or entity that is not a signatory hereto or in the public as a third-party beneficiary. This Accord shall not be construed to authorize any such third party to initiate or to maintain a suit in law or equity or other administrative proceeding.

No Commitment of Funds – Nothing in the Accord shall be construed as obligating any federal, tribal, state, or local agency to expend in any fiscal year any sum in excess of appropriations made by Congress, tribal councils, or state or local legislatures or administratively allocated for the purpose of this Accord for the fiscal year or to involve any federal, tribal, state, or local agency in any contract or obligations for the future expenditure of money in excess of such appropriations or allocations.

No Government Agency Delegation – Nothing in the Accord shall be construed as requiring or involving the delegation by any government agency to any other body of any authority entrusted to it by Congress, tribal council, or by the legislature of any state.

Successors and Assigns – The Accord shall apply to, and be binding on, the CAP members, their successors, transferees and assigns. No change of ownership in a Project or transfer of a license shall in any way modify or otherwise affect any other CAP member's interests, rights, responsibilities, or obligations under the Accord. (See the General section of the Accord for a list of Projects and current licensees.) Unless prohibited by applicable law, the licensee of the

affected Project shall provide in any transfer of the existing or new license for the Project, that such new owner shall be bound by, and shall assume the rights and obligations of the Accord upon completion of the change of ownership. In the event applicable law prohibits the new owner from assuming the rights and obligations of the Accord, any CAP member may withdraw from the Accord. The licensee of the affected Project shall provide written notice to the other CAP members at least 90 days prior to completing such transfer of the license.

Caption Headings – The paragraph titles and caption headings in the Accord are for convenience of reference and organization, are not part of the Accord, and shall not be used to modify, explain, interpret, or define any provisions of the Accord or the intention of the CAP members.

Limitation of Applicability – The CAP members have entered into the negotiations and discussions leading to the Accord with the explicit understanding that all discussions relating thereto are to be considered as settlement negotiations, shall not prejudice the position of any CAP member or entity that took part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings. The CAP members understand and agree that execution of the Accord establishes no precedents, does not admit or consent to any fact, opinion, approach, methodology, or principle except as expressly provided herein.

Execution in Counterparts – This Accord may be signed in counterparts to expedite signatures, and shall become binding between the Utilities and the Agencies upon the last signature below by an authorized representative of each.

Full Legal Authority – Each signatory Party to the Accord represents that it has the full legal authority to execute this Accord and to bind the principal who it represents, and that by such representative's signature, such principal shall be bound upon full execution of the Accord.

Notices – Notices in connection with matters under the Accord shall be provided in writing and addressed to:

Hugh Barwick
Senior Environmental Resource Manager
Duke Energy Carolinas, LLC
526 South Church Street, P. O. Box 1006 (EC12Y)
Charlotte, NC 28201-1006
704/382-8614 FAX

William Argentieri, PE
Manager—Civil Engineering F/H Technical Services
South Carolina Electric & Gas Company
111 Research Drive
Columbia, SC 29203
803/933-7849 FAX

Bennett Wynne
Anadromous Fish Coordinator
NC Wildlife Resources Commission
901 Laroque Avenue
Kinston, NC 28501
252/522-9736 FAX

Richard Christie
FERC Coordinator
SC Department of Natural Resources
1771-C Highway 521 By-Pass South
Lancaster, SC 29720
803/286-5598 FAX

Tim Hall
USFWS Field Supervisor
176 Croghan Spur Rd., Suite 200
Charleston, SC 29407
843/727-4218 FAX

Brian Cole
USFWS Field Supervisor
160 Zillicoa Street
Asheville, NC 28801
828/258-5330 FAX

AGREED TO BY THE AUTHORIZED REPRESENTATIVES OF THE PARTIES NAMED BELOW ON THE DATES SHOWN BY THEIR SIGNATURES:

SOUTH CAROLINA ELECTRIC & GAS COMPANY

By: _____ Date: 4/18/08
James M. Landreth
Vice President, Fossil Hydro Operations
111 Research Drive
Columbia, SC 29203

DUKE ENERGY CAROLINAS, LLC

By: _____ Date: 4/10/08
Steven D. Jester
Vice President, Hydro Licensing and Lake Services
526 South Church Street
Charlotte, NC 28202

U.S. FISH & WILDLIFE SERVICE

By: _____ Date: 4/25/08
Sam Hamilton
Regional Director, Southeast Region
1875 Century Blvd., Suite 400
Atlanta, GA 30345

S.C. DEPARTMENT OF NATURAL RESOURCES

By: _____ Date: 5/14/08
John Frampton
Director
1000 Assembly Street
Columbia, SC 29202

N.C. WILDLIFE RESOURCES COMMISSION

By: _____ Date: 4/21/08
Fred Harris
Interim Executive Director
1701 Mail Service Center
Raleigh, NC 27699-1701

Appendix A. Projected annual costs for tasks in the Santee River Basin Cooperative Fish Passage Accord 10-Year Action Plan[1].

Task	Years										Total for all years
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
Hatchery Operations	$ 340,000	$ 138,000	$ 142,000	$ 146,000	$ 151,000	$ 155,000	$ 160,000	$ 165,000	$ 170,000	$ 175,000	$ 1,742,000
Adult Shad Transport	$ 77,000	$ 80,000	$ 82,000	$ 84,000	$ 87,000	$ 90,000	$ 92,000	$ 95,000	$ 98,000	$ 101,000	$ 886,000
Elver Studies/Catawba-Wateree River	$ 43,000	$ 64,000	$ 46,000	$ 47,000	$ 75,000	$ 50,000	$ 52,000	$ 82,000	$ 55,000	$ 56,000	$ 570,000
Juvenile Shad Monitoring		$ 106,000	$ 109,000	$ 113,000	$ 116,000	$ 119,000	$ 123,000	$ 127,000	$ 130,000	$ 134,000	$ 1,077,000
Adult Shad Migration		$ 159,000						$ 190,000			$ 349,000
Sturgeon Studies			$ 109,000	$ 113,000	$ 116,000	$ 119,000	$ 123,000				$ 580,000
Elver Studies/Parr									$ 65,000	$ 34,000	$ 99,000
Estimated Annual Costs	$ 460,000	$ 547,000	$ 488,000	$ 503,000	$ 545,000	$ 533,000	$ 550,000	$ 659,000	$ 518,000	$ 500,000	$ 5,303,000
Available Funds	$ 700,000	$ 715,000	$ 730,450	$ 746,364	$ 762,755	$ 779,638	$ 797,027	$ 814,938	$ 833,386	$ 852,388	$ 7,731,946
Fund Balance[2]	$ 240,000	$ 408,000	$ 650,450	$ 893,814	$ 1,111,569	$ 1,358,207	$ 1,605,234	$ 1,761,172	$ 2,076,558	$ 2,428,946	

[1] Assumes an annual 3% inflation rate for all items except contributions by South Carolina Electric and Gas Company.

[2] Fund balance or contengency is the difference between the estimated task costs and available funds for that year, and includes the balance from the previous year.

Appendix B. No-sooner-than dates, total restorational numbers, and biological triggers for construction of fish passage facilities at selected Santee River Basin hydroelectric dams.

Utility	Dam	Date	Total number[1]	50% Trigger[2]	75% Trigger[3]
SCE&G	Saluda	Deferred	NA[4]	NA	NA
	Columbia[5]	2007	92,800 (464,000)	46,400 (185,600)	69,600 (348,000)
	Parr	2012	128,150 (640,750)	64,075 (320,325)	96,112 (480,562)
	Neal Shoals	2016	37,400 (187,000)	18,700 (93,500)	28,050 (140,250)
Duke	Wateree[6]	2018	NA	NA	NA

[1] Total restoration numbers for adult andaromous American shad (blueback herring) developed by the USFWS from surface acreage calculations of the river (including available tributaries) from that dam to the next dam upstream.

[2] 50% trigger or when 50% of the total restoration numbers for adult anadromous American shad (blueback herring) for the unblocked reach upstream of the dam are being passed at that dam. This would initiate a Fish Passage Feasibility Assessment at the upstream dam.

[3] 75% trigger or when 75% of the total restoration numbers for adult anadromous American shad (blueback herring) for the unblocked reach upstream of the dam are being passed at that dam. This would initiate construction of a Fish Passage Facility at the upstream dan

[4] NA = Not applicable

[5] Volitional Fish Passage Facility is operational and passage is currently being evaluated.

[6] Trap and Truck Fish Passage Facility operational by January 1, 2018.

Appendix C. River miles, surface acreages of the mainstem river and associated tributaries, and restoration numbers (fish/acre) calculated for adult anadromous American shad and blueback herring from selected reaches of the Broad River.

Restoration phase and Reach	River miles	Mainstem acres	Tributary acres	Total acres	Shad[1]	Herring[2]
Phase 1						
Columbia Dam to Parr Shoals Development Dam	24	1,758	98	1,856	92,800	464,000
Phase 2						
Parr Shoals Development Dam to Neal Shoals Dam	31	2,106	457	2,563	128,150	640,750

[1] American shad restoration numbers are the product of total acres and 50 fish/acre.

[2] Blueback herring restoration numbers are the product of total acres and 250 fish/acre.