

Memorandum of Understanding (MOU) Among The Parties to the Relicensing Settlement Agreement Regarding Implementation of the Federal Energy Regulatory Commission's (FERC's or the Commission's) "Order Approving Settlement and Issuing New License" (the License Order or the Order) for Alcoa Power Generating Inc's (APGI's or the Licensee's) Tapoco Hydroelectric Project (FERC Project No. 2169-020) (the Tapoco Project or the Project) Issued January 25, 2005.

Recitals:

--The Tapoco Project was originally licensed by the Commission in 1955 for a 50-year term expiring February 28, 2005.

--On May 7, 2004 APGI filed an Offer of Settlement (the Offer) with the Commission on behalf of itself and most of the major parties active in the Tapoco Applicant Prepared Environmental Assessment relicensing process for the Project.

--The Offer included a Relicensing Settlement Agreement (RSA) that was negotiated among the Parties and that was intended to resolve "all issues that have or could have been raised by the Parties in connection with the FERC relicensing of the Project". (RSA Sec. 1.1).

--The RSA is effective for the 40-year term of the new License, i.e., through February 28, 2045. (RSA Secs. 1.2.5 & 1.3.5).

--The RSA included Proposed License Articles for the new Tapoco License to implement the terms of the RSA. (RSA App. A).

--The Joint Explanatory Statement (JES) filed with the Offer of Settlement "respectfully urge[d] the Commission to incorporate the Proposed License Articles into the New License as drafted." (JES p.2).

--On January 25, 2005 FERC issued its Order relicensing the Tapoco Project.

--FERC's Order was arguably inconsistent with or went beyond important elements of the RSA and might expose the Parties to the RSA to additional costs and uncertainty.

-- The RSA requires the Parties to defend the RSA. (RSA Secs. 1.3.3, 1.3.6 & 1.3.11.4.2).

Need and Rationale:

Through this MOU the Signatories recommit to the terms of the RSA. By this MOU the Signatories intend to harmonize the agreements in the RSA with the requirements of the new Order, and to ensure that the bargained-for benefits in the RSA are preserved without imposing unforeseen or unreasonable additional costs and burdens on the Licensee or any other Signatory through the implementation and interpretation of the new Order. This MOU interprets and applies the RSA in light of the Order without amending the RSA itself.

Conflicts:

The Signatories to this MOU intend to be bound by the terms of this MOU. However, the Signatories understand and agree that the Licensee must comply with the terms of its new

License. In the event of a conflict between this MOU and the terms of the License Order, as interpreted or amended by FERC, the License Order will govern.

Requests for Rehearing:

Desiring to stand behind the terms of the RSA as written and to avoid unnecessary requests for rehearing on the Order, the Signatories have executed this MOU. However, nothing in this MOU prevents Parties to the RSA from filing a request for rehearing, so long as the consultation requirements of the RSA have been met. The Signatories acknowledge that the RSA requires "[a]ll Parties [to] support such requests for rehearing to the greatest extent possible." Furthermore, the RSA states that "[a]ny Party filing a request for rehearing is authorized to state affirmatively that no Party opposes such a request." (RSA Sec. 1.3.11.4.2).

Agreements On Interpretation and Implementation of the Tapoco Order:

1) Mandatory Conditioning Authority of the U.S. Forest Service (Forest Service):

The FERC Order includes the Forest Service's section 4(e) Condition No. 9 requiring that APGI establish a trust fund for mitigating project impacts in North Carolina (NC Fund). However, nothing in the Forest Service's mandatory condition is meant to imply that the Forest Service would control the NC Fund. Rather, the Forest Service section 4(e) condition restated the RSA requirements for how the fund would be administered. The Forest Service will be one of the resource agencies constituting the NC Fund Board and will work with the other board members and the Licensee to reach consensus decisions about the priority of activities to be pursued utilizing the NC Fund. To the extent that the Order can be read to confer Forest Service section 4(e) authority over the trust fund for mitigating project impacts in Tennessee (the Tallassee Fund), nothing in the Forest Service's mandatory condition is meant to imply that the Forest Service would control the Tallassee Fund. Rather, the Forest Service section 4(e) condition restated the RSA requirements for how the fund would be administered. The Forest Service will be one of the resource agencies constituting the Tallassee Fund Board and will work with the other board members and the Licensee to reach consensus decisions about the priority of activities to be pursued utilizing the Tallassee Fund.

Furthermore, to the extent that the Order can be read to confer Forest Service section 4(e) authority over the management of the Cheoah River, the Forest Service agrees to consult with the State of North Carolina in the management of the Cheoah River consistent with the commitments in the RSA, reflected in Appendix A, Article OR-2 and Appendix B, Article OR-3 of the License Order, and the Forest Service agrees that the State of North Carolina shall be the lead Agency in the management of water quality and stream flow in the Cheoah River consistent with Section 401 of the Clean Water Act, as reflected in the North Carolina 401 Water Quality Certification (as may be amended), which appears at Appendix F of the License Order.

2) Resource Mitigation and Enhancement Funds:

The Signatories agree that, although FERC did not specifically include in the License Order Articles F-1 and F-2 that were proposed in the RSA (Appendix B-7 and B-8), APGI is obligated to fund and participate in the management of the two mitigation funds as set forth in the RSA.

This requirement is reflected in FERC's decision statement in paragraph 32 of the Order, the Tennessee Section 401 Certification, Special Condition No. 2 (License Order Appendix E), and the Forest Service's Section 4(e) requirement Condition No. 9 (License Order Appendix G).

3) License Article 303, "Reservoir Drawdown Evaluation Report":

APGI commits to preparing and filing the FERC-required Flood Report as soon as practicable and will make its best effort to gain FERC approval of the Report so that Santeetlah Reservoir can be operated consistent with the commitments in the RSA as reflected in Appendix A, Article OR-1 of the Order. In the interim, APGI commits to managing Santeetlah Reservoir in a manner consistent with the terms and spirit of the RSA to the extent allowed by its License Order.

4) License Articles 403-407:

The Signatories agree that Articles 403 through 407 of the Order may impose certain obligations and costs on the Licensee and other parties that were not fully contemplated by provisions of the RSA. The Signatories agree to interpret and apply these articles as follows:

A. Article 403: The Signatories agree to collaborate in the development of the required Tailwater Fish Monitoring Plan. The Signatories agree that the required plan will be based largely on the study plan¹ developed during relicensing studies. Each Signatory shall bear its own costs during the planning process. The actual costs of the monitoring work shall be borne by the Licensee separately and apart from the mitigation funds² described in the RSA.

B. Article 404: The Signatories agree to collaborate in the development of the required Benthic Macroinvertebrate Study Plan. The Signatories agree that the required plan will be based largely on the study plan³ developed during relicensing. Each Signatory shall bear its own costs during the planning process. The actual costs of the studies shall be borne by the Licensee separately and apart from the mitigation funds described in the RSA.

C. Article 405: The Cheoah River Monitoring Plan required by this article shall be developed collaboratively among the listed agencies and APGI. The costs of participation in preparing the plan shall be borne by each Signatory involved, but the costs of actual monitoring activities shall be borne by the NC Fund.

D. Article 406: Article 406: The Gravel Enhancement Plan required by this article shall be prepared by APGI in consultation with the agencies managing the NC Fund. The Signatories participating in the planning shall bear their own costs in of the planning. The Signatories agree that the NC Fund will pay for the required, first-year introduction of 100 cy gravel at two sites and the follow-up, biological monitoring and substrate characterization, and that the NC Fund

¹ TAPOCO HYDROELECTRIC PROJECT, FERC NO. 2169, FINAL STUDY PLAN FOR RESERVOIR AND TAILWATER FISHERY ASSESSMENT November 2000

² The mitigation funds are the North Carolina Resource Management and Enhancement Fund ("NC Fund") and the Tallasse Fund.

³ TAPOCO HYDROELECTRIC PROJECT FERC NO. 2169 MACROINVERTEBRATE AND MUSSEL EVALUATIONS IN THE CHEOAH RIVER AND CALDERWOOD BYPASS REACHES FINAL STUDY PLAN JULY 2000

Board will make the determination whether follow-up additions of sand or gravel are needed. If FERC exercises its retained right to modify the plan and mandates sand or gravel placements that require expenditures in a particular year, beyond the level determined by the NC Fund Board in its annual expenditures determination, the NC Fund shall bear these costs up to the full extent of moneys in the NC Fund that particular year. If there are still FERC-mandated sand and gravel costs after the Fund is exhausted for that year, they shall be borne by APGI without effect on its future obligations to the NC Fund.

E. Article 407: The Endangered Species Management Plan required by this section shall also specifically include the Smoky Madtom, the Yellowfin Madtom, Duskytail Darter, and Spotfin Chub. APGI shall prepare the plan in consultation with the listed agencies and also the Tennessee Wildlife Resources Agency. APGI and each consulted agency shall bear its own costs in the planning exercise. The plan for vegetation removal in the Cheoah River bypass reach shall be based primarily on high flows rather than mechanical removal. However, the Signatories agree that there must be some mechanical vegetation removal during the first year of the license to provide safe conditions for whitewater boating. The costs of mechanical vegetation removal from the Cheoah River mandated by FERC for any particular year will be borne by the NC Fund to the maximum extent of the moneys available in the Fund for that particular year. Any costs for FERC-mandated vegetation removal beyond exhaustion of the NC Fund for a particular year shall be borne by APGI without effect on its future obligations to the NC Fund.

5) License Article 408, "Recreation Plan":

The Signatories recommit to the upgrades of existing recreation facilities and to the construction of new recreation facilities, and to their respective cost-sharing commitments for those upgrades and for new construction, as delineated in Appendix A, Section 2.0, "Article RF-1. Recreational Enhancements" of the RSA. The Signatories agree to develop, through consultation, a Plan pursuant to License Article 408 for Commission approval that is consistent with the recreation commitments in the RSA.

6) License Articles 411 & 412, Land Disturbing Activities and Endangered Species Act (ESA) Consultation:

APGI and the U.S. Fish and Wildlife Service will agree on a process for ESA review of "land-disturbing activities" guided by the FERC document "**HYDROPOWER LICENSING AND ENDANGERED SPECIES: A Guide for Applicants, Contractors, and Staff**" published in December 2001. Only "land-disturbing activities" that may affect a threatened or endangered species or critical habitat will require formal consultation. This process will be incorporated into the agency review process described in the Tapoco Shoreline Management Plan.

7) Article 412:

APGI agrees that it will exercise its authorities granted in Article 412 in a manner consistent with the Tapoco Shoreline Management Plan in effect from time to time. Further, the parties agree that for purposes of Project lands covered by the Law Enforcement and Resource Management Easement entered into between APGI and the United States of America, and its assigns, acting through the National Park Service, U.S. Department of the Interior, dated January 13, 2005, and delivered January 14, 2005, recorded in Record Book 2042, Page 668 in the Register's Office for Blount County, Tennessee, and the Management Easement reserved in the Quit Claim Deed

entered into between the United States of America, and assigns, acting by and through the Land Resources Division, National Park Service, Department of the Interior and APGI dated and delivered January 14, 2005, recorded in Record Book 2042, Page 640 in the Register's Office for Blount County, Tennessee, AGPI shall not exercise its authorities granted in Article 412 in a way that would violate specific commitments in said management easements, subject to APGI's Reserved Rights as stated therein.

8) Tapoco License Order Consistency With RSA:

Where possible, the Signatories to this MOU intend to interpret all provisions of the Tapoco License Order in a manner that maximizes consistency with the RSA.

Submitted for Signature on February 24, 2005.

**Tapoco Hydroelectric Project FERC No. 2169
Memorandum of Understanding – February 24, 2005**

Signature Page

Signature: _____ Date: _____

Print: _____

Agency/Organization: _____

Title: _____