

**Yadkin Hydroelectric Project (FERC No. 2197)  
Settlement Negotiations Planning Meeting  
September 9, 2004**

**Alcoa Conference Center  
Badin, North Carolina**

**Final Meeting Summary**

**Meeting Attendees**

See Attachment 1.

**Welcome and Introductions**

Steve Padula, Long View Associates, opened the meeting with a review of the agenda. Steve said that he and Randy Benn, LeBoeuf, Lamb, Greene, and MacRae (Yadkin counsel), would first review and solicit comments on the Draft Meetings and Negotiations Protocol (draft protocol) distributed to all Issue Advisory Group members on July 28, 2004. Then, Steve Smutko, Natural Resources Leadership Institute (NRLI), would review the Interest-Objectives Worksheet (distributed on August 30, 2004) and would be available to help anyone who wanted to begin or continue to work on their interest statements.

Jerry Thornton, Department of Interior, suggested that there be time during the meeting to go around the table and have everyone express their interests for the benefit of the group as a whole. Steve Padula agreed to revisit this idea after completing the review of the draft protocol.

**Draft Meetings and Negotiations Protocol**

Randy Benn explained that Yadkin had developed the draft protocol at the request of the IAG members. He said that at the May 4, 2004 Joint IAG meeting there had been a strong interest expressed in initiating settlement negotiations sooner rather than later. In response to this interest, Yadkin hired Mary Lou Addor and Steve Smutko, NRLI, to train Yadkin and other IAG members in interest-based negotiations. Randy said that many of the Yadkin IAG members who also participated in the Tapoco Project relicensing had been intimately involved in drafting the protocol used at Tapoco and would be very familiar with the draft protocol distributed to the IAG members. Randy explained that the draft protocol proposes a Process Team, describes how meeting agendas will be set, discusses participation and interaction, etc. He said that Yadkin would consider all comments received on the draft protocol and then re-issue a second draft.

Gerrit Jobsis, SC Coastal Conservation League and American Rivers, asked that any future drafts be distributed as Microsoft Word documents rather than a portable document format (pdf). Randy agreed.

The following are comments received on the draft protocol at the meeting by section and page number<sup>1</sup>:

- Under Purpose on page 1 revise “Only those Parties and Participants that sign this Protocol will be included in the Yadkin settlement negotiations.” To “Only those Parties and Participants that sign this Protocol will be included in the Yadkin settlement agreement.” The concern being that some regulatory agencies choose not to sign such protocols, but need to participate in the negotiations (Gerrit Jobsis)
- “Settlement negotiations” under Purpose on page 1 should not be changed to “settlement agreement” because it would allow those who did not participate in the settlement negotiations to sign the settlement agreement (Jerry Thornton, Department of Interior); Randy Benn commented that there might be some who do not participate in the active settlement negotiations, but that could add value by signing the settlement agreement; Gerrit Jobsis commented that the only signed document that is really necessary is a confidentiality agreement; Randy noted that some meeting norms would be beneficial
- Chris Goudreau, NC Wildlife Resources Commission (NCWRC) and Jerry Thornton asked that the “consensus” definitions under Section A Definitions No. 1a and 1b on page 1 be combined; Randy Benn agreed
- Request to revise “. . . , but who is not claiming Party status and will not be canvassed regarding settlement in the decision making process” to “. . . , but who is not claiming Party status and will not be canvassed during the decision making process” (Chris Goudreau); Jerry Thornton suggested ending the sentence after “status”. Randy Been preferred to keep “will not be canvassed”. Larry Jones, High Rock Lake Association, commented that any participant who is not willing to sign the Meetings and Negotiations Protocol should not be able to testify or express an opinion during negotiations
- Chris Goudreau suggested that Section A Definitions No. 4 on page 2 require Authorized Representatives to present their qualifications in written form at the first meeting rather than “an Authorized Representative may be required to demonstrate the fact and nature of his/her appointment”
- Section A Definitions No. 4 on page 2, add “or otherwise authorized” after “. . . who is formally appointed by the governing body of a Party” (Steve Reed, NC Division of Water Resources)
- Gerrit Jobsis suggested that the protocol not differentiate between “partial settlement” and “complete settlement” in Section A Definitions No. 9 on page 2; Randy stated that it is important to understand that a partial settlement can be reached (i.e. it does not have to be all or nothing); Gerrit offered to provide Randy some additional language to help clarify the definition of settlement. When asked, Randy said that Yadkin would like to achieve a complete settlement, but would be willing to consider partial settlements; Steve Padula clarified that partial settlements would not allow for a party to sign saying “I

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<sup>1</sup> Other comments were submitted in writing prior to the meeting.

agree with everything except . . .” Gerrit asked if he agreed to a settlement on a single issue if he retained the right to comment on other issues that he does not agree with; Randy explained that it would be beneficial to all if the flexibility to agree on some issues and disagree on others was reserved

- Gerrit Jobsis asked when a Relicensing Settlement Agreement (RSA) would be filed with the Federal Energy Regulatory Commission (FERC); Randy answered that Yadkin will file an application for new license no later than April 2006; he said that Yadkin would like to be in the position to file a RSA with the application for new license, but if not, Yadkin and the participants could continue working on a RSA after the application was filed; if a RSA is not signed by April 2006, there should be the option to continue negotiating (Steve Reed); therefore, Section J Duration of the Protocol on page 11 should be revised to read, “This Protocol will be operational as long as parties continue to negotiate in good faith.”
- Don Seitz, Concerned Property Owners High Rock Lake, asked how opposing views would be presented to FERC; Randy Benn explained that participants who do not choose to sign a RSA have a right to submit their views to FERC
- Gerrit Jobsis commented that there may be parts of a RSA that are outside of FERC’s jurisdiction and therefore not enforceable by FERC; he noted that there had been some misinterpretation of settlement agreements at FERC and suggested that Yadkin and the participants only submit agreements enforceable by FERC (to make it very clear that FERC is not to act on certain agreements not enforceable by FERC); Randy explained that the Tapoco Project RSA included draft license articles in a separate and distinct section from other agreements; this organization was carefully explained in a Joint Explanatory Statement, which was filed with the RSA
- Regarding Steve Reed’s comments about Section J Duration of Protocol on page 11, Larry Jones said that if the protocol did not have a specific duration and end date, then some participants who wish to discuss issues with FERC after the application is filed would continue to be bound by the protocol’s confidentiality clauses; Steve Reed said that an option would be to have the protocol terminate, but with an option to renew; Randy agreed to add some language that will not prevent non-settling participants to discuss issues with FERC, however signatories to the protocol would continue to be bound by the confidentiality provisions regarding knowledge gained during negotiations
- Acknowledge under Section B Ground Rules and General Protocol on page 3 that participation in the settlement negotiations process does not extinguish a participant’s ability to also participate in FERC’s traditional process (on a parallel track with settlement negotiations) (Gerrit Jobsis)
- Under Section B No. 2c Attendance at Meetings, Gerrit Jobsis suggested that a participant who missed a meeting would have an opportunity to review and comment on a meeting summary; Randy noted that at Tapoco, negotiations meetings were not summarized to allow a freer discussion of alternatives; Gerrit asked how the group would

track progress if a summary of decisions made at each meeting was not maintained; Randy explained that as agreements were made, they were reduced to writing. These agreements were then carried forward into an Agreement in Principle (AIP), which became a part of the relicensing record; Pete Petree, SaveHighRockLake.org, said that if he could not attend a meeting he would want to have something in writing so that he could follow the group's discussions, even if second-hand; Pete questioned the need for confidentiality when the resource agencies represent the general public; Andy Abramson, The Land Trust, said that confidentiality eliminates the fear of a proposal being taken to the media and facilitates more open negotiations; Bob Warren, Uwharrie Point Community Association, advocated, at a minimum, a document that outlines any decisions made at a given meeting; Steve Smutko agreed that there is a need to track proposals and actions taken on proposals; many agreed that verbatim summaries are not necessary, but a progress report is; Gerrit recommended that language be added to 2c that allows for comments on progress reports or draft AIPs prior to the next meeting

- Chris Goudreau and Steve Reed said that Authorized Representatives can ask that an alternate attend a meeting
- Randy Tinsley, Salisbury Rowan Utilities, commented that state agencies are subject to NC public record law and that any meeting notes taken by a state employee could become public record through the Freedom of Information Act; Steve Reed suggested that the phrase, "to the extent allowed by law" be added to 5b on page 5; Jerry Thornton agreed
- Donley Hill, US Forest Service, stated that much of the negotiations take place in what are called "side bar" meetings (i.e. mini negotiations outside the larger group); he opined that these side bar meetings are very important
- Ben West, US Environmental Protection Agency, asked if the parenthetical in Section G Decision Making under 2b on page 8, "their disagreement will be formally documented in the Yadkin relicensing record" should be deleted; it was not clear if this applied to general meetings or negotiations meetings or both; Randy agreed to clarify the difference between the types of meetings and revise the protocol as necessary
- Section E Authority and Limitations on page 6 reads "The only documentation of the negotiating sessions will be final agreements. No written summary of offers and counter offers will be prepared on behalf of the negotiating parties and filed in the record, and no preliminary agreement will be filed for the record" – Gerrit Jobsis asked that this section be revised and clarified; Randy agreed

After a break, Randy Benn said that Yadkin would commit to prepare a simple summary, no more than one or two pages, that outlines the meeting agenda, lists the meeting participants, highlights any decisions or agreements made, and outlines action items, but that the summary would be used by only those participating in the negotiations and it would not be filed with FERC

Larry Turner, SC Department of Health and Environmental Control, asked if Yadkin would begin the negotiations process with a strawman AIP. Randy Benn said that he did not know the answer to the question, but that it would depend on how the process evolves.

Before beginning to take additional comments on the draft protocol, Gene Ellis briefly discussed the facilitation of meetings (Section B No. 3 on page 3). He said that the protocol was drafted at a point in time when meeting facilitation was being considered by Yadkin. Since that time, budget concerns have caused Yadkin to question whether meeting facilitation is affordable. Gene proposed that the participants try to self-facilitate during negotiations meetings. Gene asked if the participants were willing to take this approach. He commented that if Yadkin does expend funds on meeting facilitation, the funds might not be available in the future for something else. John Ellis, US Fish and Wildlife Service, said that he was willing to try it and see if it works. He said that if things go badly it may come to a point where Yadkin cannot afford not to provide meeting facilitation. Mark Oden, High Rock Lake Business Owners Group, said that the participants new to the relicensing process would have to rely on those who have been involved in hydropower relicensings before. Randy commented that there were many in the room that have facilitation experience. John Ellis noted that Steve and Mary with NRLI also have experience facilitating relicensing meetings. Based on the decision to try to self-facilitate, Randy agreed to revise Section B No. 3 on page 3.

The following are additional comments received on the draft protocol at the meeting by section and page number:

- Section B strike No. 4j on page 4 “Parties will seek mutually beneficial solutions to the issues raised in the proceeding.” (Gerrit Jobsis)
- Steve Smutko agreed to strengthen the language in Section B No. 4n on page 5 specific to dismissal; Steve Reed noted that Section B No. 5c also discusses violations of the protocol and accountability; Randy Benn said that at a minimum, behavior and violations of the protocol should be discussed in the same section
- Define “negotiations meetings/sessions” as used in Section B No. 5b (Chris Goudreau)
- Pete Petree asked if only the negotiations meetings were closed and all “other meetings” are open. Jerry Thornton asked if “side bar” meetings were considered “other meetings”
- The group discussed the possibility of developing talking points and/or new releases (bi-monthly or quarterly) that could be used to inform the media about progress in the settlement negotiations; Gerrit Jobsis said that it would be important to be able to go to the media with information specific to the relicensing, but not the negotiations (e.g. a RTE species); Randy Benn suggested adding “good faith” language or a “no surprises” policy
- Ben West provided Randy language from Duke’s Catawba Wateree charter, which Randy agreed to use as an example [Charter excerpt: Team members agree not to negotiate through the media and will avoid making public statements that take issues out of

context, sensationalize, or that may disrupt the good-faith negotiations that this charter is intended to ensure. Team Members will also advise the leadership of organizations they represent that their organization should respect the spirit and guidelines of this charter.]

- Jerry Thornton asked if it would be necessary to address the situation where press showed up at a closed meeting; Randy Been did not anticipate this being an issue because all meetings are held in a privately-owned building
- Gene Ellis suggested that language also be added to discourage participants from negotiating through elected officials; Randy Tinsley said that he is concerned about excluding communications with elected officials because there may be times when a local, state, or federal agency is asked to present information to a committee or general assembly. Gene noted that presenting information and expressing interests was different than asking an elected official for action.
- Pete Petree asked for clarification on Section C “Statements Used During the Process” on page 5; Randy Benn explained that if a RSA is not reached, any statements made during the settlement negotiations may not be used by one participant against another; Gerrit Jobsis stated that the second sentence under Section C is redundant; additionally, “relicensing” in the last sentence should be “settlement negotiations”; Randy agreed to revise this section
- Replace “. . . any agency charged with a statutory responsibility under the Federal Power Act . . .” in Section E No. 2 on page 6 with “any agency with statutory rights and obligations” or “any agency charged with a statutory responsibility under the Federal Power Act and applicable state and federal laws” (Steve Reed, Gerrit Jobsis)
- Larry Jones noted that there is no meeting notice provision for negotiations meetings; Randy agreed to add such a provision
- Specific to Section E No. 2 on page 6, Gerrit Jobsis suggested that the people with the authority to make decisions be at the negotiating table, to the extent possible
- No. 4 in Section E on page 6 seems out of place (Jerry Thornton)
- Randy Benn briefly described the functions of the Process Team (Section F); he agreed to revise this section to correspond with the decision to self-facilitate; when no one volunteered to work on the Process Team, Yadkin agreed to nominate a Process Team
- Change “Process Team” to “negotiating team” at the end of Section F No. 3 (Gerrit Jobsis)
- Larry Jones expressed a desire to be able to add an item to a meeting agenda, if necessary

- Clarification is needed in Section F No. 5 on page 7 specific to the various teams and workgroups; the “Settlement Team” should not be listed under “Other Work Groups” (Chris Goudreau)
- Delete “their disagreement will be formally documented in the Yadkin relicensing record” under Section G No. 2b on page 8
- Under Section G “Decision Making” on page 8 Gerrit asked that the protocol identify how the participants will test for consensus; Randy Benn said that to avoid voting, the standard would be “can you live with it?”; Gerrit suggested that the question be asked “is there general agreement?” If a participant says no, further discussion may be needed
- Revise Section G No. 2 on page 8 to apply to both general and negotiations meetings (Chris Goudreau)
- Include a process to revisit issues that are parked in the parking lot (Gerrit Jobsis)
- Donna Davis, Stanly County Utilities, asked if there are multiple representatives of Stanly County if she could yield her seat at the table to an alternate who may have more specific knowledge about the issue being discussed; Randy explained that everyone would have an opportunity to nominate their “Authorized Representative” and yes, the Authorized Representative could yield his/her seat at the table to another (Section H No. 1 on page 9 allows alternates to substitute for the Authorized Representative); Donna asked when and where an Authorized Representative would identify his/her alternates; Randy suggested providing this information on the signature page
- Larry Jones asked how participants with similar interests would be consolidated; Randy Benn said that he did not want to presume who would or would not be an Authorized Representative; Randy noted that the negotiating team would be too large at 75 members, but possibly manageable with 25 members; Randy said that the intent is not to exclude people; John Ellis noted that because decisions will be made based on consensus and not majority rules, there is not as strong a need to have multiple representatives with the same interests
- Don Seitz asked if Authorized Representatives would have opportunities to caucus with their alternates or other group members; Randy responded yes
- In Section H No. 1 on page 9 clarify that when an Authorized Representative yields his/her seat to an alternate that it is a temporary seating of the alternate (Chris Goudreau)
- Strike the word “significant” in Section H No. 1 paragraphs one and two on page 9 (Jerry Thornton)
- The protocol needs to address how others, who come late in the process, will or will not be added to the negotiating team (Steve Reed and Chris Goudreau); Randy suggested that once the protocol has been signed and is in effect any new participants would be allowed

to participate if the negotiating team determines by unanimous consent that the participant represents a new interest, not already otherwise represented

- Delete Section H No. 3 on page 10 “Applicable Protocols”, but keep the language “It is acknowledged that . . . consistent with this Protocol.”
- Randy Benn noted the date signatures will be due will become the effective date of the protocol

Randy Benn said that he would revise the draft protocol by the end of the month (September). He anticipated that the final protocol would be distributed sometime in October for signature and would become effective in November. Larry asked that Yadkin also distribute a list of eligible Authorized Representatives when the revised protocol is distributed. Gene Ellis agreed.

### **Interests and Objectives Worksheet**

Steve Padula explained that once the Meetings and Negotiations Protocol was finalized, the focus would shift to interest identification. Steve Smutko briefly reviewed the Interests and Objectives Worksheet. Steve was available throughout the afternoon to work with groups or individuals on their worksheets.

Larry Jones said that his group, High Rock Lake Association, has been discussing its interests for years, but that they had never heard Yadkin express their interests. He thought it would go a long way if Yadkin could share their interests or an operations proposal. Randy Benn stated that Yadkin has developed an interest statement, but it is not final and formatted using the Interest and Objectives Worksheet. Gene Ellis committed to providing Yadkin’s interest statement in advance of a November meeting.

Donley Hill suggested that the group not rely only on a paper exchange of interest statements, but to also sit down together at a meeting and verbally share interests. Chris Goudreau agreed. Donley proposed that an additional heading be added to the Interest and Objectives Worksheet, which would identify proposed actions specific to the identified objectives and interests. Gene Ellis noted that the identification of specific actions relies somewhat on the results of the technical studies being conducted as part of the relicensing.

The group agreed to send completed worksheets to Jody Cason, Long View Associates, for compilation and distribution prior to a November meeting. No specific due date was set.

Don Seitz suggested that it might be beneficial to understand if there have been major issues at other recently relicensed projects that were reason for a participant to go to FERC and dispute the RSA.

John Ellis questioned why Yadkin and Progress Energy were pursuing separate negotiations processes. He asked if FERC has ever mandated that two licensees work together. Randy Benn commented that FERC will generally stay out of pre-licensing proceedings. Gene Ellis added

that Yadkin had invited Progress Energy to participate in its process, but had not received a reciprocal invitation to participate in Progress Energy's process.

## Attachment 1 - Meeting Attendees

Name	Organization
Andy Abramson	Land Trust
Ben West	US Environmental Protection Agency
Bob Warren	Uwharrie Point Community Association
Chip Conner	Uwharrie Point Community Association
Chris Goudreau	NC Wildlife Resources Commission
Coralyn Benhart	Alcoa
Danny Johnson	SC Department of Natural Resources
Dean Vick	Concerned Property Owners High Rock Lake
Dick Christie	SC Department of Natural Resources
Don Seitz	Concerned Property Owners High Rock Lake
Donley Hill	US Forest Service
Donna Davis	Stanly County
Fred Richardson	Pee Dee River Coalition
Gene Ellis	APGI, Yadkin Division
Gerrit Jobsis	SC Coastal Conservation League and American Rivers
Greg Scarborough	Rowan Association of Realtors
Guy Cornman	Davidson County Planning
Jerry Thornton	Department of the Interior
Jim Melton	SaveHighRockLake.org
Jody Cason	Long View Associates
John Ellis	US Fish and Wildlife Service
John Vest	Salisbury Rowan Utilities
June Mabry	Albemarle District 67
Larry Jones	High Rock Lake Association
Larry Turner	SC Department of Health and Environmental Control
Lee Hinson	Concerned Property Owners High Rock Lake
Mark Bowers	US Fish and Wildlife Service
Mark Oden	High Rock Lake Business Owners Group
Norbert Zalme	Duke Power – Buck Steam Station
Oliver Webster	Yadkin Pee Dee Lakes Project
Randy Benn	LLGM, Yadkin counsel
Randy Tinsley	Salisbury Rowan Utilities
Robert Brown	Fitzpatrick Communications
Robert Petree	SaveHighRockLake.org
Scott Leonard	Davidson County Planning
Steve Padula	Long View Associates
Steve Reed	NC Division of Water Resources
Steve Smutko	NCSU – Natural Resources Leadership Institute
Stuart Andrews	Concerned Property Owners High Rock Lake
Todd Ewing	NC Wildlife Resources Commission