

**The Governor's Water Law Review Committee
North Carolina/South Carolina Subcommittee Meeting
November 7, 2003**

Present: Mayor Willis
Fred Richardson
John Tiencken

Staff: Alfred Vang (DNR)
Danny Johnson (DNR)
David Baize (DHEC)
Hank Stallworth (DNR).

Guests: Karen Addy (Reporter)
Geoff Penland (Santee Cooper)
John Dulude (Santee Cooper)
Gene Ellis (Alcoa)
Stuart Ames (Progress Energy),

Mr. Tiencken gave a brief synopsis of the last Committee meeting to give a sense of direction for the subcommittee meeting.

Mr. Tiencken asked if there were any corrections to the Notes for the Subcommittee's October 31 meeting. With some spelling errors corrected, the Notes were approved.

Next was a discussion of the bill sponsored by Senator Hayes (S. 720) with regard to the Catawba River basin advisory commission.

Mr. Tiencken asked Mr. Vang to assess Senator Hayes' bill regarding a Bi State Commission for the Catawba River. Mr. Vang said he would try to get in contact with Senator Hayes.

Mr. Tiencken summarized the bill. It proposes a bi-state commission for the Catawba River, which would consist of fourteen members with the Governor of each state appointing five members and those members themselves appointing the balance to be equally divided between the two states. This commission would mirror what had already been suggested in a similar bill in North Carolina. He requested that DNR (and Geoff Penland) review the North Carolina bill, compare it to S. 720, and prepare some recommendations. Mr. Tiencken asked if any other parties participating in the meeting had an interest in the bill or comments on it.

Mr. Baize stated DHEC reviewed this legislation last year and learned from Senator Hayes' staff that there were errors in the original bill. Corrections were to be made to a later version. DHEC also provided comments and suggestions for that bill to Senator Hayes.

Mr. Baize said that DHEC supported the general concept of a group for the river, but they would not want that group to perform a regulatory role.

Mr. Tiencken stated it clearly is advisory in nature, but indicates that agencies of the two states would have to cooperate in fulfilling the Commission's responsibilities. The Bill is vague about the duties of the Commission.

Mr. Tiencken asked staff to email to the subcommittee a copy of this bill, a copy of the North Carolina bill, and DHEC's recommendations provided to improve the South Carolina bill.

Mayor Willis said he was a little confused about a Bi-State Commission. Are we talking about multiple bi-state commissions to address the different basins or are we talking about one statewide commission?

Mr. Tiencken responded that the Subcommittee might want to recommend that the SC bill suggest a broader responsibility. The commission could also look at the Yadkin-Pee Dee.

Mr. Penland reported that the bill had passed the SC Senate and it resides in the House Agriculture, Natural Resources and the Environment Committee.

Mr. Tiencken said Mr. Witherspoon, the chair of that committee, may be receptive to a joint commission since he is from the Conway area.

Mr. Tiencken stated that it while it might make sense to look at multiple basins it might be that the NC contingent has already been appointed, is already focused on the Catawba, and may have no experience on the Pee Dee River.

Mr. Tiencken asked Mr. Vang to talk to Senator Hayes to be sure that he has no objections to that concept as well. Also, he asked Mr. Penland to communicate with Chairman Witherspoon as to his position on this issue.

Mr. Tiencken discussed the relicensing meetings that have taken place and commented that there will be many more meetings over the next few years. Mr. Tiencken asked for a brief synopsis from participants in the relicensing meetings.

Mr. Johnson (DNR) suggested that Mr. Ellis (Alcoa/APGI) give his perspective and then Mr. Johnson would give the DNR response. Mr. Ellis stated that the purpose of the November 5, 2003, meeting was for Alcoa to present their views on the scope of the FERC relicensing process, those issues that are and are not appropriate, and to suggest a mechanism for handling those that are outside of what they consider is the scope of the FERC process.

Mr. Ellis gave a brief background to frame his perspective appropriately. As a part of the relicensing process there are seven Issue Advisory Groups (IAGs). They are made up of North Carolina and South Carolina state agencies, federal agencies, nongovernmental organizations, and others who advise Alcoa on specific study requests. Alcoa has been working with those advisory groups since around February 2003. At one IAG meeting, the participants raised a

question about whether or not Yadkin APGI would be willing to discuss the broader issues of water and storage allocation within the context of relicensing. The initial APGI response was that as the FERC licensee, they have some requirements that primarily deal with environmental and recreational impacts downstream, but don't go beyond that. They also expressed some concern about getting into what they thought was really an issue that the two states needed to look into. They received some pretty significant feedback on that position and they said they would do some additional background and research in order to come back to the IAG and inform them of what they found. They could then suggest what they thought needed to be done to deal with these issues. After quite a bit of work and a quite a bit of discussion they met with the North and South Carolina representatives as well as some representatives from Progress Energy. In summary, Alcoa's background work suggested that as a FERC licensee, Alcoa does have obligations to look downstream from an environmental and recreational perspective. Other issues that deal with water allocation from the broader context (such as salinity intrusion, wastewater dispersion, municipal withdrawals, industrial withdrawals) were not areas that were covered under FERC relicensing from the context of Alcoa needing to affirmatively study or act on those issues. In keeping with the request that Alcoa had and recognizing there was interest in allowing those discussions to occur in the IAG forums, and also recognizing that Alcoa is part of the broader social fabric, Alcoa did offer to the states and to Progress Energy the idea that they would be willing to use the IAG forum with some caveats: (1) the states would develop agenda items for these parts of the meetings; (2) the states would run those parts of the meetings; and (3) minutes from these parts of the meetings would be separate from the relicensing portion of the meeting. Alcoa presented that not only to the North Carolina and South Carolina state agencies and Progress Energy, but at yesterday's IAG forum, they informed the broader audience of their proposal.

Mr. Johnson stated that the response from South Carolina and North Carolina was the two states are not in agreement with APGI on their interpretation of what is and what isn't included in the relicensing process. APGI believes that primarily biological and some recreational issues only are included. Currently, the two States' interpretation of the scope in the Federal Power Act is broader than that. North Carolina and South Carolina believe that other issues of interest such as salt water intrusion, water supply, wastewater assimilation, and navigation are well within the scope of FERC relicensing. More legal research is being done on this issue. Right now the two states disagree with the Alcoa suggestion that the states take over part of the IAG meeting to talk about these broader allocation issues. The states are not ready to do that. Alcoa suggests the end result should be an interstate compact, which would have to be ratified by legislatures of both states and by the US Congress. At some point in time, that may be a desirable thing to do but it is the States' opinion that that time is not yet here. Currently, the SCDNR is of the opinion that the FERC relicensing process is the way to handle these issues.

The States of North and South Carolina would like for the relicensing process to continue as it is with the IAG meetings. Progress Energy has a separate set of resource working groups. All are looking at operations models, low flow contingency plans, and instream flow studies. A lot of useful data are being generated from those studies. It will be a year or a year and half before all that information is in hand.

Mr. Tiencken stated that this subcommittee must define its role. He perceives that role will be to

make a recommendation or suggestion to the Governor whether a compact might be appropriate or whether a focused DNR effort should be made on the relicensing process itself first. In order to reach a conclusion about a recommendation to the Governor, it would seem that Mr. Johnson and Mr. Ellis need to produce some sort of papers, not necessary from a solely legal perspective, expressing their positions.

Mr. Tiencken asked Mr. Ames if Progress Energy has taken a position. Mr. Ames responded Progress Energy has not taken a position.

Mr. Tiencken asked Mr. John Dulude, a FERC relicensing expert at Santee Cooper, if Santee Cooper had taken any position on this. Mr. Dulude stated no they have not. Mr. Dulude suggested the subcommittee check precedent in this area of the law. He pointed out that a similar coordination of issues has occurred on a relicensing project between Virginia and North Carolina (Virginia Power—the Roanoke Rapids Project). He thought it may be worthwhile to research that to see how those two states worked it out and maybe give some insight as to what didn't work.

Mr. Johnson stated the Virginia situation is one of the cases that APGI mentioned on Wednesday and the States' legal staff are looking into that. He also mentioned that the states don't have a written position from APGI, and he agreed it would be helpful to have one.

Mr. Tiencken stated that neither APGI nor anyone else has to give the subcommittee anything on these issues, but the subcommittee would like to be able to form a conclusion as to whether or not it should make a recommendation to the Governor. It should be based on more than what was discussed today. So, it would be most helpful for such information to be provided to the members of the Subcommittee.

Mr. Ellis said that Alcoa understands the timing issue that South Carolina and North Carolina have with this that now is not the right time. Alcoa doesn't necessarily disagree with that. So, while Mr. Johnson has correctly stated that North Carolina and South Carolina have indicated that timing is a problem, Alcoa does understand that. Alcoa's ideal goal would be to have a Bi-State Compact. They may be able to live with something less than that, but as they described to the South Carolina state agency staff, that is the ideal place to end. As far as establishing or providing a position in writing, Mr. Ellis will talk with his relicensing team and provide some information, probably through Mr. Johnson. While the position/proposal that Alcoa has offered may not be agreeable to South Carolina right now, he wanted to stress that the conversations are very cooperative. The issues are being discussed very frankly and though there may be disagreements, the dialogue is very good between parties.

Mr. Johnson echoed that the discussions have been very cooperative and congenial. He believes all groups are working on the matter in a very positive way.

Mr. Tiencken stated the subcommittee is charged with delivering a product by January. This is not a statutory issue except as how FERC may interpret a licensee's downstream duties and responsibilities. He suggested that the committee receive a recommendation on any laws or other

course of action should be pursued with FERC.

The other issue addressed was the Section 401 certification. That is not a NC/SC issue per se, but is important to assure that DHEC has as much information as possible when it makes its certification decision.

Mayor Willis mentioned that he has scheduled a regional meeting of the Committee in Florence for November 19, 2003, at 6:00 p.m. at Francis Marion University. The Pee Dee River Coalition will meet prior to the public hearing. He anticipates a good turnout for that meeting.

Mr. Stallworth added that at the last full Committee meeting a request was made for staff to create a public announcement for these meetings and that will be done.

Mr. Richardson made a motion to adjourn. Mayor Willis seconded. The meeting adjourned at 11:39 a.m.

The next subcommittee meeting will be established after getting all information.