

# DEWEY & LeBOEUF

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dpoe@dl.com

May 9, 2008

Hon. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Alcoa Power Generating Inc., P-2197-073  
Relicensing Application for the Yadkin Project

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Dear Secretary Bose:

Please be advised that Alcoa Power Generating Inc. ("APGI") has withdrawn its May 10, 2007 application for water quality certification pursuant to Section 401 of the Clean Water Act in connection with the above-referenced relicensing matter, and has submitted a new application for such certification. This withdrawal and reapplication occurred May 8, 2008 pursuant to a request of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources ("DWQ"), the agency under North Carolina law empowered to consider and rule upon such applications.

The above-described actions supercede the previous submission to the Commission by DWQ on November 30, 2007 of its Water Quality Certificate No. 003173 issued on November 16, 2007. On April 16, 2008, DWQ sent a letter to APGI stating that it would "revoke" Water Quality Certificate No. 003173 because of a failure to publish public notice of the application for the certificate. Through its letter, DWQ requested that APGI withdraw its application supporting the certificate and file a new application requesting Section 401 certification.

Copies of DWQ's April 16, 2008 letter and the transmittal letter sent to DWQ regarding withdrawal and reapplication are attached hereto.

Kimberly D. Bose  
May 9, 2008  
Page 2

If you have any questions regarding this matter, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Poe", written over a horizontal line.

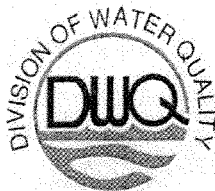
David R. Poe  
*Attorney for Alcoa Power Generating Inc.*

Attachment

cc: All Parties

## **Attachment 1**

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Michael F. Easley, Governor

William G. Ross Jr., Secretary  
North Carolina Department of Environment and Natural ResourcesColeen H. Sullins, Director  
Division of Water Quality

April 16, 2008

## CERTIFIED MAIL – Return Receipt Requested

Mr. William Bunker  
Alcoa Generating Inc.  
V.P. Hydro Operations – Yadkin Division  
P.O. Box 576  
Badin, NC 28009-0576

RE: Yadkin Hydroelectric Project  
Stanly County  
DWQ # 2007-0812; FERC Project No. 2197  
Request for Withdrawal and resubmittal of application for 401 Certification

The Division of Water Quality has determined that we must prepare an additional public notice for the 401 Water Quality Certification for the relicensing of the Yadkin Project (High Rock, Tuckertown, Narrows and Falls reservoirs) on the Yadkin River, Stanly County, North Carolina since questions have been raised about the process followed for our earlier public notice that was sent to the Stanly News and Press on June 5, 2007. A new public notice has been sent today to the Stanly News and Press for publication in their Thursday April 17, 2008 edition with the required 15 day comment period to end on May 2, 2008. We invite any additional comments that APGI may have on the 401 Certification that was issued on November 16, 2007 during that public comment process. As part of this process, the Division has decided to revoke the November 401 Certification since conditions under which the certification was made have changed (15A NCAC 2H .0507 (d)(2)).

If this decision is unacceptable to you, you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this decision. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. Unless such demands are made, this decision shall be final and binding.

On the other hand, we hereby request that APGI agree to withdraw the application sent to the Division on May 10, 2007 and then resubmit the application. We believe that this action would not affect the FERC schedule for relicensing since according to the most recent information that we have concerning the scheduling, APGI expects that FERC will issue a one year extension of the present license. Please let me know whether APGI is willing to withdraw your May 10, 2007 application and (if so), when a new application may be submitted.

I can be reached at 919-733-9646 if you have any questions.

Sincerely yours,

  
John Dorney

Cc: Don Laton, NC Attorney General's Office – Environmental Section  
Coleen Sullins, DWQ  
Paul Rawls, DWQ  
Susan Massengale, DWQ  
Gene Ellis, APGI  
Central files  
File copy

Wetlands and Stormwater Branch  
Internet: h2o.enr.state.nc.us

1617 Mail Service Center  
512 N. Salisbury St.

Raleigh, NC 27699-1617  
Raleigh, NC 27604

Phone (919) 733-5083  
FAX (919) 733-9612

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## **Attachment 2**

# DEWEY & LeBOEUF

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dpoe@dl.com

May 9, 2008

RECEIVED  
MAY 8 2008

**BY HAND**

North Carolina Division of Water Quality  
Attn: John Dorney  
Wetlands Program Development Unit  
Parkview Building  
2321 Crabtree Blvd.  
Raleigh, NC 27604

DENR - WATER QUALITY  
WETLANDS AND STORMWATER BRANCH

Re: Water Quality Certification Application for the Yadkin Hydroelectric Project (FERC No. P-2197)

Dear Mr. Dorney:

By letter dated April 16, 2008 to Alcoa Power Generating Inc. ("APGI"), the Division of Water Quality ("DWQ") stated that it would "revoke" Section 401 Water Quality Certificate No. 003173 for the Yadkin Hydroelectric Project (FERC No. 2197) because of a failure to publish public notice, and further requested that APGI withdraw the application supporting that certificate and file a new application for Section 401 authorization for that project. Accordingly, through undersigned counsel, APGI hereby respectfully withdraws its application for Section 401 Water Quality Certification submitted on May 10, 2007 and hereby submits a new application for such certification which is enclosed for filing. Thus, please find enclosed one (1) original and six (6) copies of a complete application package for the Section 401 water quality certification of the Yadkin Hydroelectric Project and a check in the amount of \$570.00 payable to the North Carolina Division of Water Quality. Each enclosed application package set consists of the following:

- (1) A completed and signed "FERC 401 Water Quality Certification Application" as required by DWQ;
- (2) A copy of the "Application for License for Major Project – Existing Dam" (April 2006) for the Yadkin Project (which includes maps of the Project)

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North Carolina Division of Water Quality  
May 9, 2008  
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which APGI filed with the Federal Energy Regulatory Commission ("FERC");

- (3) Yadkin Project "Relicensing Settlement Agreement" (February 2007) ("RSA") filed with FERC on May 7, 2007;
- (4) Draft Yadkin Project "Dissolved Oxygen Monitoring Plan" (May 2007);
- (5) Draft Yadkin Project "Tailwater Dissolved Oxygen Monitoring Quality Assurance Project Plan" (May 2007); and
- (6) Draft Yadkin Project "Flow and Reservoir Elevation Monitoring Plan" (April 2007).

Please be advised that, in addition to the undersigned, APGI is represented in this matter by Charles D. Case, Esq. and Craig Bromby, Esq. of the firm of Hunton & Williams LLP, One Bank of America Plaza, Suite 1400, 421 Fayetteville Street (27601), P.O. Box 109, Raleigh, NC 27602.

Please contact me with any questions concerning this application.

Sincerely,

A handwritten signature in black ink, appearing to read 'David R. Poe', written over a horizontal line.

David R. Poe

cc: Gene Ellis  
Coralyn Benhart, Esq.  
Thomas N. Griffin, III, Esq.  
Donald W. Laton, Esq.

Attachments

Document Content(s)

Rep\_Re\_Rel\_App\_P\_2197.PDF.....1-7