

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:13-CV-633-BO

STATE OF NORTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
YADKIN RIVERKEEPER, INC.,	)	<b>JOINT CONSENT MOTION TO DISMISS INTERVENOR AND FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE</b>
	)	
Plaintiff-Intervenor,	)	
	)	
ALCOA POWER GENERATING, INC.,	)	
	)	
Defendant.	)	

Plaintiff-Intervenor Yadkin Riverkeeper, Inc. (the “Riverkeeper”), the State of North Carolina (the “State”), and Alcoa Power Generating, Inc. (“Alcoa”), by and through the undersigned counsel and pursuant to Local Civil Rule 7.1, respectfully move the Court to enter the attached Consent Order dismissing the Riverkeeper as a Plaintiff-Intervenor and, instead, granting the Riverkeeper leave to participate as amicus curiae in merits issues before the Court.

On August 30, 2013, the Riverkeeper filed a motion to intervene in North Carolina state court. The basis for the motion was to protect the Riverkeeper’s interests in the state proceedings before the Office of Administrative Hearings (“OAH”). The motion was removed and this Court granted the motion on October 28, 2013. (ECF Nos. 9, 27.)

On November 12, 2013, Alcoa and Stanly County, North Carolina filed in OAH a Joint Motion for an Order Dismissing Contested Cases as Moot (hereafter “Joint Motion”). OAH issued an Order granting Stanly County and Alcoa Power Generating Inc.’s Motion to Dismiss

on November 20, 2013. Thus, the underlying case the Riverkeeper used to support its motion to intervene has been dismissed as moot as of the date of this Motion.

The parties to this case have now conferred and agreed that, rather than participate as a party in this case, the Riverkeeper should be dismissed as a party and instead submit amicus curiae briefing on merits issues related to substantive Motions to Dismiss and for Summary Judgment. All parties agree that their resources, the Court's resources, and overall case efficiency will be served if the Riverkeeper is dismissed as a party. No party will be injured by the dismissal of the Riverkeeper because it has not yet filed any pleading. As amicus curiae, Riverkeeper may serve the same assistance to the Court on the merits issues as it would have as a party. The State and Alcoa are not opposed to the Riverkeeper's submission of amicus curiae briefing on Motions to Dismiss or for Summary Judgment, subject to the Court's continuing discretion in management of the case. A proposed consent order is attached.

This 24th day of December, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that this day, December 24, 2013, I electronically filed the Consent Motion with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to those persons on the CM/ECF service list for this matter, including: Donald R. Teeter, Ryal W. Tayloe, Gary Mark Teague, Gary J. Rickner, E. Bradley Evans, Ann Wilkinson Matthews, Joseph A. Schouten, Joshua J. Newcomer, Mike McKool, Jr., Carolina Batchelor McLean, Erin E. Murphy, Paul D. Clement, and Candice Chiu.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CIVIL ACTION FILE NO.: 5:13-cv-00633-BO

STATE OF NORTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>[PROPOSED] <u>CONSENT ORDER</u></b>
	)	
ALCOA POWER GENERATING, INC.,	)	
	)	
Defendant.	)	
	)	

This cause comes before the Court on a Joint Consent Motion to Dismiss Plaintiff-Intervenor Yadkin Riverkeeper, Inc. and for Leave for Plaintiff-Intervenor Yadkin Riverkeeper, Inc. to Participate as Amicus Curiae. All parties join and consent to the Motion. The Court rules that the Motion is meritorious and should be granted.

It is therefore ORDERED that the Motion is GRANTED.

It is further ORDERED that Yadkin Riverkeeper, Inc. is DISMISSED as a party.

It is further ORDERED that Yadkin Riverkeeper, Inc. is GRANTED LEAVE to participate as amicus curiae in briefing merits issues related to substantive Motions to Dismiss and for Summary Judgment.

SO ORDERED, this \_\_\_\_ day of December, 2013.

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TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE