

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

ALCOA POWER GENERATING INC.

Project Nos. 2197-000  
and P-2197-073

**MOTION TO INTERVENE OF STANLY COUNTY  
AND COMMENTS ON AGREEMENT IN  
PRINCIPAL SUBMITTED BY ALCOA POWER  
GENERATING INC.**

Pursuant to Rules 212, 214 and 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.214, and 385.602 (2006), Stanly County hereby submits its Motion to Intervene and Comments on the Agreement in Principal ("AIP") regarding the proposed terms for the relicensing of Alcoa Power Generating Inc.'s ("APGI," "Alcoa," or "Licensee") Yadkin Hydroelectric Project. The AIP was filed by Alcoa in connection with the License Application it filed on April 25, 2006 to renew its current license for the Yadkin Project for another 50-year term. The AIP, which was executed by 27 signatories, is represented by Alcoa as providing "an excellent basis for the development of a binding Relicensing Settlement Agreement." Transmittal Letter from D. Randall Benn and David R. Poe, Counsel for APGI, to Magalie R. Salas (August 28, 1006) ("Transmission Letter"), at 2.

It is not clear whether the AIP should be regarded as a Rule 602 settlement proposal, but Part I, (A), especially Subsection (A)(6), of the AIP makes clear that the AIP is "intended as a comprehensive, although general, good faith offer toward settlement of issues related to relicensing of the Project, *i.e.*, all of the issues that will be finalized in the RSA are addressed in this AIP at some level of detail." AIP at 2. In an abundance of caution to avoid waiver of its position as to the AIP and what it represents

and to assure that its Comments are timely received by the Commission and the participants in the relicensing process, Stanly County is filing this Motion to Intervene and Comments on the AIP.

## **I. STATEMENT OF ISSUES**

- A. Whether to grant Stanly County intervention in the proceeding associated with the filing of the AIP by the License Applicant, APGI.
- B. Whether the AIP constitutes an “Offer of Settlement” under Section 602 of the Commission’s Regulations.
- C. Whether the AIP adequately covers all the issues necessary to relicense the Yadkin Project or whether the record should include further evidentiary proceedings as to issues of concern to Stanly County, in light of the prior history of the Project and the requirements of the Federal Power Act that the Commission issue a license only if the Project proposal is the best adapted project and in the public interest.

## **II. MOTION TO INTERVENE**

### ***A. Identity and Contact Information***

Stanly County is a governmental body located in North Carolina’s Piedmont region, with a population of almost 60,000. At its western edge, it is located about 10 miles from Mecklenburg County and about 20 miles from the City of Charlotte. The Yadkin River makes up the eastern boundary of the County and is an important feature of the State and Region. Since the late 1970’s, the County has provided water and sewage services for its citizens, initially around the Badin area, principally through the transfer of a water and sewer system owned and operated previously by Alcoa since 1916. The water and sewage system relies on the Yadkin River for its primary water supply, and the County’s water charges and supply depend on what it indirectly must pay Alcoa for its water supply, since its water is treated by the City of Albemarle, which in turn receives

- 3 -

and pays Alcoa for the water used by the County. APCI is the Licensee for the Yadkin Project, which consists of four developments, including reservoirs, and is also a major landowner in the County. At one time, APCI and its parent, Alcoa, was also the largest employer in the County.

The names and individuals to whom all communications should be sent and who should be included on the official service list maintained by the Commission are:

Jerry D. Myers  
County Manager  
Stanly County  
201 South Second Street  
Albemarle, NC 28001  
Tel: (704) 986-3600  
Email: [jmyers@co.stanly.nc.us](mailto:jmyers@co.stanly.nc.us)

Frances E. Francis  
William S. Huang  
Rebecca J. Baldwin  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
Tel: (202) 879-2039  
Fax: (202) 393-2866  
Email: [frances.francis@spiegelmc.com](mailto:frances.francis@spiegelmc.com)  
Email: [william.huang@spiegelmc.com](mailto:william.huang@spiegelmc.com)  
Email: [rebecca.baldwin@spiegelmc.com](mailto:rebecca.baldwin@spiegelmc.com)

***B. Interest of Stanly County***

The Yadkin River and the Yadkin Project are large features in the County. High Rock, one of the four developments forming the Yadkin Project, is the principal storage for the entire Yadkin-Pee Dee River System. Badin Lake and Lake Tillery are large lakes located within or on the Yadkin, and are major features of the Yadkin-Pee Dee River system. These sites not only provide resources for drinking water and sanitation purposes, but also provide hydroelectric power and cooling water for large electric plants located on or near the River. The lakes also serve as recreation destinations and create a large fishery and tourist attraction for the County. These activities directly affect the level of economic activity in the County and directly influence the quality of life for the County's citizens. In addition, access to and use of these natural resources directly affect

the County's ability to provide infrastructure and other services at reasonable costs and to attract new businesses and jobs into the Region. Until recently, Stanly County was an active participant in the Yadkin relicensing negotiations.

Accordingly, the relicensing of the Yadkin Project and the terms of the new license will directly and substantially affect Stanly County. No other party can represent Stanly County's interest and its participation in the relicensing and related proceedings for the Yadkin Project before this Commission, as an intervenor and full party, is in the public interest.

### **III. COMMENTS ON SETTLEMENT AIP**

Under the Commission's regulations an Offer of Settlement is a written offer of settlement filed in any proceeding pending before the Commission and must be filed with the Secretary of the Commission. 18 C.F.R. § 385.602 (2006). APGI has filed a written document with the Commission in the Yadkin relicensing proceeding that has been executed by what the Applicant states is a "super-majority of the parties that have participated in intensive negotiations with APGI over the last two years." Transmittal Letter, at 1. According to APGI, the Licensee and Applicant for a new license for Yadkin, the Agreement "addresses to some level of detail *all* the necessary protection, mitigation and enhancement measures necessary to relicense the Project (with the exception of fish passage, which is being dealt with in a separate process)." *Id.* at 2 (emphasis added).

As noted earlier, Stanly County has participated for the past two years in the extensive relicensing negotiations, but it did not sign the AIP. One reason it did not sign the AIP was because the process did not, in its opinion, allow adequate time to discuss

- 5 -

and negotiate other provisions that are, in its view, necessary to include in any new license that must meet the public interest test set out in the Federal Power Act. However, when APGI recently filed its AIP and Transmittal Letter with the Commission, Stanly County did not wish for its failure to sign the AIP to be interpreted as a willingness to accept the terms of the AIP, by default.

More to the point, although many issues are covered in the AIP, the AIP fails to include provisions of concern to the County, including (1) adequate and reasonable provisions for the long-term water supply needs of the County's residents, especially in light of the projections that the County's population will grow by over 30% in the next 20 to 30 years (*See* Table E.1-2 of Exhibit E of the Yadkin License Application, at E-8); (2) the identification and mitigation of pollution or contamination in the form of hazardous waste on Project lands and adjacent land or other areas related to this relicensing that may be transferred or sold to governmental agencies and bodies for public use as part of a final settlement; (3) the disposition of energy within the local area; and (4) other remediation activities associated with the Licensee's past industrial activities within the County.

The Yadkin Project, Alcoa and Alcoa's industrial operations and those of its predecessors have greatly affected Stanly County for the past almost 100 years. The activities of the Project were associated with the significant presence of the Alcoa aluminum smelting operations since 1917, and the major expansion of the Project, which resulted in the current license, was associated with the need to maintain the hundreds of jobs created by the Alcoa Plant's operations and to create profitable operations for the Company. Just as the terms of the present license have determined the flows and

- 6 -

elevations of the Yadkin River and affected the livelihood and quality of the County's environment for County residents since it was issued, the terms of the new Yadkin License for the next fifty years will do the same. As the AIP makes clear, it is in the new license terms and conditions that issues of water flows, wildlife and plant protection, and the factors affecting the level of community economic growth will occur.

Stanly County wants to make clear that it does not believe the AIP adequately addresses all the issues that need to be explored and resolved in this relicensing process. Many issues were left unresolved because of lack of time, or differences in priority, or because the essential data were simply not available to the County to initiate meaningful discussions. For example, an issue like the proposed land sale to the State for park purposes may hold great appeal to some of the participants. However, the issue did not arise at the commencement of the proceedings and it was only when the land sale became a proxy or substitute for other balancing factors, that the majority decided to pursue the issue. Only after the magnitude and location of the properties involved were decided as a settlement element could the County, the party that could be most impacted by the transfer or sales of the realty and facilities, begin to assess the value of this element.<sup>1</sup>

Of concern to the County is the fact that for almost a hundred years, Alcoa has conducted industrial process operations on lands it owns within Stanly County. These operations included the disposal of tailings and other refuse from the smelting operations which we now consider to be hazardous. Where any specific refuse was disposed is not known to the County. However, accounts by local residents who worked at the Alcoa

---

<sup>1</sup> The County notes that the taxes related to the Alcoa Plant's Badin operations it collected in 2006 are less than half of what it collected ten years ago. Much of this decrease is attributable to the reduction in the APGI operations in the County. *See* Attachment A hereto.

- 7 -

industrial operations indicate that it was not unusual in the past to dump the sludge and other remains from the industrial operations on lands within the County. The County is aware that there are sites identified and marked off from public access within the Alcoa and APGI properties, but is not certain why all these sites have been so identified. If these lands are subsequently sold to the State or a public body, and depending on the terms of the sale, the lands could require remedial measures before they can be safe for public use or for sale to private parties. In any event, neither the County, the State or the Federal Government should be required to be the source of funds to clean up properties that were contaminated during this past century when the environmental regulations governing disposal and industrial operations were much different than they are today.

When the County sought to raise this issue with the Applicant, it was not successful in having the issue addressed in what the County believes to be a satisfactory way.

There are other issues that should be clarified. No single document can fully provide the information that the Commission should look at before it makes its decision whether and under what conditions to issue a new license to APGI; a single document that is not the product of compromise among all the affected parties is particularly insufficient. Under the rules established by the License Applicant for this relicensing negotiation, there is only one route for a participant to take if it has any reservations about the group Settlement or the Final Relicensing Agreement ("FA," the expected agreement referred to in the AIP as the Relicensing Settlement Agreement or "RSA"). That route is to decline to execute the AIP or the FA, and go it alone. Furthermore, whatever that participant may have gained in the process is allocated to the remaining

parties. AIP, Part I, Sec. A(7). Accordingly, it is not an easy matter for the County to step out of line, and raise these issues separately. The County also is aware that under the APGI settlement rules, anything it left at the table will automatically revert to those remaining in the Settlement and those who remain are legally obligated to support whatever the final document is. And if there is no time left to talk about issues—however great their impact on the participant—then those issues will not be addressed. Somehow, the incentives seem more inclined to foster a group of jackals feasting on their prey than an efficient and just way to work out resolutions among the participants, many of whom are governmental bodies, with their own set of obligations.

The AIP also raises directly the issue of the use of public resources by a private entity and the question of accountability when that private entity seeks to continue its exclusive use under very different circumstances. Stanly County acknowledges that there was a time when Alcoa or APGI provided jobs needed in this State to allow people to earn a decent living.<sup>2</sup> Indeed, as the Initial Decision issuing the license for the Yadkin Project noted, in the 1950's, when the current license was issued, the economics of aluminum smelting in Stanly County were already on the decline, but the expectation was that the expansion of the hydro Project and the attendant license conditions would enable the Company to make adequate profits to expand its aluminum operations.<sup>3</sup> Moreover,

---

<sup>2</sup> In fact, the Commission adopted the decision of the Presiding Examiner, who made a specific finding that the proposed reconstruction of the aluminum smelting plant associated with the expanded hydro operations was expected to “afford continued employment to more than 900 persons in the Badin area.” *Carolina Aluminum Co.*, Project No. 2197, 19 F.P.C. 704, 722 (1958), (Project No. 2197, finding 20).

<sup>3</sup> See *id.* at 714-716.



the license was issued for fifty years, to allow the Licensee to continue its aluminum operations within the State longer.<sup>4</sup>

In 2006, Alcoa has essentially disappeared as a major employer and provider of jobs in Stanly County. The Project is now owned by APGI, a limited liability company. It appears that Alcoa may be required sign the AIP and the FA independent of APGI. *See* AIP Part I, § A(8). If Alcoa must sign the AIP and the FA, it may be because Alcoa is the holder of at least some of the land and water rights likely to be implicated in the Final Agreement, but this is not explained in the AIP. In any event, the Commission should ascertain, in light of the license condition barring transfers of interest in Project water, land and other rights, without the Commission's consent, whether the current Licensee retains all the necessary rights such that APGI can, in fact, establish a warranty as necessary for the contractual agreements that are to be a part of the Final Agreement or the terms and conditions of the new license. The Commission should inquire as to the precise details of the extent of the holdings held by each entity so that all participants are fully advised.

The power from the Project will be sold in the open electricity market at competitive rates and it is no longer an issue that APGI must operate the Project in a manner that allows it to keep its smelters running. Now, the River is being managed to maximize profits on electricity sales by the private owner, APGI.

This raises an issue of fundamental importance to Stanly County, which is struggling with its legacy of outmoded infrastructure and its future as an area with an expanding population with more sophisticated and modern expectations about their

---

<sup>4</sup> *Id.* at 716.

- 10 -

schools and other infrastructure. The Yadkin River is a natural resource that belongs to the people of this Nation, and Stanly County believes that some equitable recognition of its value should flow to the people of the Region where it is located. Whatever the past legacy of benefits and burdens Alcoa and the people in the Region shared together, there is no reason now, under present and future expectations, why Alcoa should be granted an exclusive right to exploit the River only for its own profits. Finding a way to acknowledge that future basis is an issue that Stanly County believes is in the public interest and a necessary pursuit of this relicensing process. Issues of health benefits, provision of services for workers and their families, the infrastructure needs of the new residents of the County, and the clean-up and maintenance of past Alcoa activities, are issues that the County faces today and will continue to face in the next fifty years, when the new 50-year license Alcoa seeks will be in force.

Stanly County is optimistic that given adequate time and facts on both sides, the Licensee and the County can come to mutually acceptable terms. However, it did not wish to let a technicality of the FERC procedures deny it the right to state up front and clearly what its position is, and why it does not concur in the AIP as filed. Furthermore, the Commission should urge the License Applicant to continue its negotiations with those who might differ, so long as there is mutual good faith. These efforts should provide the Commission a more complete record to enable it to meet its obligations under the Federal Power Act to issue a license in the public interest.

#### **IV. CONCLUSION**

WHEREFORE, for all the reasons stated herein, Stanly County requests that the Commission grant its Motion to Intervene in the relicensing proceeding, and if necessary,

- 11 -

any associated settlement proceeding; urge the Applicant to continue negotiations with other parties so long as both sides exercise good faith efforts; and include these Comments as part of this relicensing proceeding and in its consideration of the AIP.

Respectfully submitted,

/s/ Frances E. Francis

Frances E. Francis  
William S. Huang  
Rebecca J. Baldwin

Attorneys for  
Stanly County, North Carolina

Law Offices of:  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

September 18, 2006

---

# ATTACHMENT A

**ATTACHMENT A****Data Attributable to Alcoa's  
Industrial Operations in Badin, North Carolina**

<b>Year</b>	<b>Real Property Value</b>	<b>Personal Property Value</b>	<b>Total Property Value</b>	<b>County Taxes</b>	<b>City Taxes</b>	<b>Fire District Taxes</b>	<b>Total Taxes</b>
1996	13,066,097	50,972,101	64,038,198	427,454.97	134,480.22	0	561,935.19
1997	13,066,097	51,212,153	64,278,250	429,057.32	134,984.33	0	564,041.64
1998	13,066,097	54,717,002	67,783,099	452,452.19	162,679.44	0	615,131.62
1999	13,066,097	50,822,078	63,888,175	445,620.02	153,331.62	0	598,951.64
2000	13,066,097	54,892,643	67,958,740	514,787.46	169,896.85	0	684,684.31
2001	13,046,334	54,128,101	67,174,435	448,389.35	154,501.20	0	602,890.55
2002	13,046,334	58,242,877	71,289,211	475,855.48	180,361.70	35,644.61	691,861.79
2003	13,046,334	51,776,782	64,823,116	432,694.30	194,469.35	32,411.56	659,575.21
2004	13,046,334	41,351,242	54,397,576	363,103.82	174,072.24	27,198.79	564,374.85
2005	9,988,653	22,241,423	32,230,076	207,883.99	103,136.24	16,115.04	327,135.27
2006	9,988,653	20,700,768	30,689,421	197,946.77	104,344.03	15,344.71	317,635.51

Source: Stanly County  
Prepared: September 2006

CERTIFICATE OF SERVICE

I hereby certify that I have on this 18th day of September, 2006, caused the foregoing document to be sent by first-class mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

*/s/ Frances E. Francis*

---

Frances E. Francis

Law Offices of:  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

Submission Contents

Intervention

Intervention.pdf..... 1-14