

Memorandum of Understanding Between Duke Energy Carolinas, LLC And Oconee County, South Carolina, A Jurisdiction Adjoining the Keowee-Toxaway Hydro Project (FERC No. 2503)

I. PARTIES

This Memorandum of Understanding (MOU) is made and entered into by and between Oconee County, South Carolina, bordered by the Keowee Toxaway Hydro Project No. 2503 (the "Project"); hereafter referred to as the "Governmental Entity"; and Duke Energy Carolinas, LLC ("Duke"). Collectively, the Governmental Entity and Duke are hereinafter referred to as the "Parties".

II. PURPOSE

To promote coordination of activities to the mutual benefit of the Parties of this MOU, the public being served by the Parties and the Project's resource values.

III. SCOPE OF WORK

Duke operates the Project under a license from the Federal Energy Regulatory Commission (FERC) and the license includes, among other things, the responsibility for Duke to manage uses of Project lands and waters. The Governmental Entity also has certain responsibilities to manage land and/or water uses either within or adjoining the FERC Project Boundaries.

Duke and the Governmental Entity desire to provide an effective means to coordinate their land and/or water management responsibilities including: 1) availability and sharing of data associated with the Project, 2) reservoir buffer monitoring and enforcement activities, 3) lake use permitting review, and 4) land use and zoning considerations in the protection and enhancement of the Project and adjoining lands within each Party's jurisdiction.

A. Data Availability

The Parties agree to allow the mutual sharing of data to the greatest extent possible and subject to any mutually agreed-upon reservations. The various types and formats for data may be modified from time to time, but typically involve non-proprietary public data such as, but not limited to: 1) Shoreline Management Plan Maps (GIS); 2) County tax parcels (GIS coverages); 3) Duke aerial photography; 4) Light Detection and Ranging (LiDAR) contours; 5) Project wetlands mapping data layers; 6) Hydro Licensing Land Committee publicly-available data layers and 7) other similar data.

B. Lake Monitoring/Enforcement Activities

The Parties agree to support the management of the shoreline and upland buffer by coordinating buffer monitoring and enforcement activities. Duke will provide

additional buffer monitoring capabilities to enhance the existing monitoring conducted by the Governmental Entity. The Governmental Entity will provide Duke the most current buffer regulations for the Governmental Entity's jurisdiction. Duke will provide this information to its appropriate Lake Services Representatives ("Reps") for the particular region. The Reps will become familiar with the basic requirements of the regulations. During routine lake use permitting surveillance activities, the Reps will note any potential buffer violations and report the location and nature of the activity to the appropriate Governmental Entity within three (3) business days of noting the activity.

Likewise, Duke will provide the Governmental Entity its most current Shoreline Management Guidelines (SMG) with the expectation that any Governmental Entity will notify Duke within a similar timeframe (i.e., 3 business days) of any potential SMG violation within the Project Boundaries (full pond contour MSL) of a particular reservoir. Duke will document this interaction by tabulating the number of reported incidents, to whom reports were provided and when, and the nature of the potential violation.

The Parties further agree to coordinate and support each other's enforcement activities (as allowed by state regulation or county / municipal ordinance). In addition Duke will withhold review of any pending or future permitting activities for the property in question until all buffer, sedimentation/erosion control and SMG violation issues are resolved or a remedial action plan, satisfactory to the affected Parties, is accepted. Coordination of these enforcement activities will be in the form of e-mail or fax notification. See Attachment A {to be developed when the MOU is finalized} for a listing of the specific contacts within Duke and the Governmental Entity.

C. Lake Use Permitting Review

The Parties also agree to coordinate and support each other's permit review processes for activities within the Project Boundaries. Duke will continue to require, as part of its SMG criteria that all facility construction, stabilization, and/or excavation activities comply with all applicable local, state and federal regulations. Duke will coordinate with the Governmental Entity to develop a mutually satisfactory protocol to notify one another that authorization has been granted or denied. Typically, this will involve all lake use permit applicants being directed by Duke to contact the appropriate Governmental Entity for review and any required authorizations prior to Duke accepting a lake use permit application as complete. Also, for the benefit of the lake use permit applicant and those Governmental Entities involved in permit review, Duke will require lake use permit applicants to include copies of any required building permits or other authorization documentations in its applications. This verification can be provided by either the applicant or the Governmental Entity.

D. Land Use and Zoning Considerations

While the Shoreline Management Plan (SMP) classification maps and associated lake use restrictions provide a function similar to zoning in considering future uses of shoreline areas within the FERC Project Boundaries, they are not intended to be a substitute for or directly tied to local land use and zoning plans. Local land use and zoning plans are typically more restrictive and tailored to the conditions that exist in a very specific location. Additionally, local land use and zoning plans often include a mechanism that provides some degree of flexibility for modification to meet specific circumstances. Because of this fact, and the fact that the SMP classifications and lake use restrictions are determined and implemented based on Project specific conditions, and have little or no flexibility to modify the future uses without FERC review and

approval, the SMP classifications may not be consistent with local land use plans and zoning. It is critical to understand that although there may be instances of inconsistency between the two, the SMP classifications do not supersede or alter the authority and effectiveness of the local plans.

IV. The Parties agree that considerable effort has been invested in the development and implementation of local land use and zoning plans. Further, these plans should not be superseded by other entities that may require less restriction associated with a particular use. To continue to reinforce the effectiveness and implementation of these local plans, Duke agrees to not issue a permit for activities in conflict with local plans, provided Duke is made aware of the conflict by the Governmental Entity. Additionally, Duke will not interfere with implementation of the local plans, by either supporting a position by a lake use permit applicant that is contrary to the allowed use under the local plans or by circumventing an established permit review protocol as identified in the Lake Use Permitting Review section of this MOU or the requirements of the SMG that require all lake use permit applicants to comply with all applicable local, state, and federal regulations.

V. MUTUAL AGREEMENTS

{Specific detailed protocols will be developed on an individual basis with the Parties at the time of negotiating a final Memorandum of Understanding. This will allow flexibility in assuring each individual Memorandum of Understanding will more adequately meet the needs of all Parties.}

It is mutually agreed by all Parties to this MOU that:

- A. The Parties will review the effectiveness of the MOU after the first year and every five years beginning in 2012 and evaluate potential modifications that more adequately address the purpose of this MOU.
- B. The Parties will work in partnership to promote the MOU, and its benefits to the Project and community, in discussions with other resource management agencies, adjoining property owners, land developers, governments, elected officials, non-governmental organizations, and the general public.
- C. Duke, within the limits of its permitting authority, will support implementation and enforcement by the Governmental Entity of regulations within and adjacent to the FERC Project Boundaries, including but not limited to sedimentation and erosion control, buffer creation/maintenance/restoration, and land use planning and zoning, but Duke will not as part of this MOU directly implement and enforce any regulation except as specifically identified in this MOU or as required by law.
- D. Should the Governmental Entity desire to create and develop a visioning or long-range planning process related to the overall character of the reservoir area and future development within and adjacent to the FERC Project Boundaries, then Duke will participate in, but not lead, that effort.
- E. In the event that a Party no longer approves implementation of any of the provisions referenced in this MOU, the individual Party and Duke agree to promptly confer to determine what, if any, modifications to this MOU should be made to address the issue(s) of concern.

- F. In the event that a Party no longer desires to be a part of this MOU or any modification(s), then the individual Party and Duke in their sole discretion may terminate their relationship within this MOU. Written notice must be provided by the Party desiring to withdraw from the MOU at least thirty days prior to termination.
- G. Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof. Each Party, therefore, agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents or employees under this MOU, for any loss, cost, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its agents or its own employees, while occupying or visiting the premises under and pursuant to the MOU.
- H. The terms of the MOU will apply to the following reservoirs of the Keowee-Toxaway Project No. 2503 even if any of the associated hydro developments are included in different FERC licenses:
 - Lake Keowee*
 - Lake Jocassee*
- I. This MOU will terminate with the expiration of the New License unless the Parties agree to renew this MOU, but no Party is obligated to renew.

VI. FUNCTIONS

{Specific detailed protocols will be developed on an individual basis with the Parties at the time of negotiating a final Memorandum of Understanding. This will allow flexibility in assuring each individual Memorandum of Understanding will more adequately meet the needs of all Parties. This could include such items as coordinated permit review based on buffer regulations, sedimentation/erosion control and other regulations.}

A. Duke Energy Carolinas, LLC

Duke agrees to:

Upon request by the Governmental Entity, provide available non-proprietary data identified in Section III.A of this document,

Provide the Governmental Entity notice of observed violations of duly adopted standards occurring in upland areas adjacent to the Project within 3 business days.

Provide appropriate staff from the Governmental Entity with an annual briefing and update on issues related to implementation of the SMP, to include an overview of lake use permits issued during the previous year.

Take part in an annual tour of the Project lakes with appropriate staff of the Governmental Entity to review development and potential impacts on the Projects and adjacent uplands.

At the request of the Governmental Entity, withhold issuance of any lake use permit associated with a parcel deemed to be in non-conformance with duly adopted standards.

For the purposes of determining setbacks, offsets, and other dimensional requirements of lake use permitting, to consider an approval by the Governmental Entity sufficient to permit an owner/developer to initiate construction of a proposed structure, subdivision, or other development to be existing development; however, Duke shall in no way be responsible for requesting updates related to approvals or denials by the Governmental Entity, and shall review all applications for lake use permits based on the best and most current information available.

B. The Governmental Entity

The Governmental Entity agrees to:

Upon request by Duke, provide available data identified in Section III.A of this document.

Provide Duke notice of observed violations of SMP standards occurring in the Project within 3 business days.

Provide appropriate Duke staff with an annual briefing and update on issues related to adopted plans and regulations, to include an overview of development permits issued during the previous year.

Take part in an annual tour of the Project lakes with appropriate Duke staff to review development and potential impacts on the Projects and adjacent uplands.

Work with Duke staff to create a notification process that will provide verification of approvals of proposed development.

VII. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the last written date below.

Governmental Entity

_____ (Printed Name of Signer)

_____ (Signature)

_____ (Title)

_____ (Date)

Duke Energy Carolinas, LLC

_____ (Printed Name of Signer)

For Planning Commission Review Only
This document HAS NOT been approved by Oconee County, and is subject to change

_____ (Signature)

_____ (Title)

_____ (Date)

DRAFT



Oconee County Planning Department

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Date: March 6, 2012

To: Chairman Thrift, Members of County Council, Mr. Moulder, and Ms. Hulse

From: Aaron Gadsby, Planning Department

Re: Additional Planning Commission Recommendation and Revisions concerning Ordinance 2007-18, the Oconee County Zoning Enabling Ordinance, pg. 50

The Planning Commission voted last evening, March 5, 2012, to make additional recommendations to the Zoning Enabling Ordinance. I have corrected the appropriate page to reflect the changes. Please insert page 50 (and 51) as part of the Planning Commission recommendations. Thank you.