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February 25, 2013

VIA ELECTRONIC MAIL

Ms. Karen Higgins
Wetlands, Buffers, Stormwater – Compliance and Permitting Unit
North Carolina Division of Water Quality
512 North Salisbury Street
Raleigh, NC 27604
karen.higgins@ncdenr.gov

Re: Alcoa's 401 Water Quality Certification application and the Federal Energy Regulatory Commission ("FERC") Final Environmental Impact Statement ("FEIS") for Relicensing Yadkin/Yadkin Pee-Dee Hydroelectric Projects 2197 and 2206

Dear Ms. Higgins:

We appreciate the opportunity to submit comments on behalf of the North Carolina Environmental Justice Network ("NCEJN") regarding the Federal Energy Regulatory Commission's ("FERC") Final Environmental Impact Statement ("Final EIS" or "FEIS") in connection with the above referenced Water Quality Certification application.

NCEJN is a coalition of community organizations and its supporters who work with low-income communities and people of color to promote health and environmental equity, clean industry, safe work places and fair access to all human and natural resources through organizing, advocacy, research and education based on principles of economic and political equity. The NCEJN works to empower impacted communities through organized forums, conferences and support of member advocates on environmental issues that negatively impact their health and quality of life.

The Southern Environmental Law Center ("SELC") is a non-profit legal advocacy group dedicated to protecting the environment of the South. SELC works with more than 100 partner groups in six southeastern states. SELC has been actively involved in a variety of efforts to protect and improve water quality in the Yadkin River Basin and strives to incorporate principles of environmental justice in its program work.

The FEIS was prepared by FERC in order to analyze the environmental effects associated with the reissuance of licenses for the Yadkin and Yadkin Pee-Dee hydropower projects and to recommend conditions for inclusion in any licenses issued.¹ DWQ sent the FEIS to the State Environmental Review Clearinghouse on January 18, 2013. It was received on January 24, 2013.

FERC's FEIS for relicensing the hydro-projects fails to include integral information relating to environmental justice and water quality in Badin Lake. We urge the Division of Water Quality, in its review of the FEIS and consideration of Alcoa's Water Quality Certification application, to conduct a public hearing on the Water Quality Certification to address inadequacies in the FEIS related to non-compliance with Title VI of the Civil Rights Act of 1964 and the federal Executive Order on Environmental Justice.

In order to comply with the Act and the Order, DWQ should request additional study of PCB contamination on communities of color near Badin Lake and it should recommend additional conditions for inclusion in any license issued. Further, we urge that any Water Quality Certification associated with the hydropower projects, if issued, include additional conditions to protect communities of color and low-income communities in the project study area, particularly in the Badin Lake community. There are numerous inadequacies related to lack of consideration of communities of color and low-income communities in the FEIS.

I. The Final EIS is Inadequate Because it Fails to Include an Environmental Justice Analysis

The Final EIS fails to adequately consider the principles of Environmental Justice. The Environmental Protection Agency (EPA) defines environmental justice, as:

[f]air treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, or commercial operations, or the execution of federal, state, local, and tribal programs and policies. *Meaningful involvement* means that potentially affected community residents have an appropriate opportunity to participate in decision-making about a proposed activity that will affect their environment and/or health.²

¹ FEIS Executive Summary, p. xix.

² <http://epa.gov/region4/ej/index.html> accessed February 4, 2013.

Title VI of the Civil Rights Act of 1964 states that “[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”³ As a state agency receiving federal funds, the North Carolina Department of Environment and Natural Resources must comply with Title VI and its regulations. Executive Order 12898 reinforces Title VI by requiring that each federal agency identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.⁴

There are numerous omissions and areas of concern in the Final EIS that reflect a lack of analysis regarding consideration of Environmental Justice in this relicensing proposal. First, an EJ analysis should include a discussion of the racial characteristics of the communities in the study areas.⁵ The demographics of the affected counties are mentioned only briefly and in passing.⁶ The Final EIS does not reflect that an environmental justice analysis was performed, nor does it reflect meaningful involvement of at least one EJ community near Badin Lake, with respect to the drafting of the Final EIS.

In particular, NCEJN is concerned that inadequate consideration has been given to minority residents in the area of Badin Lake. Badin Lake is a reservoir along the Yadkin River in Stanly County, which is contained by the Narrows Dam. In the Final EIS, it is sometimes referred to as Narrows Reservoir.⁷ The community near this lake consists of higher than county-wide, low-income and minority populations. The Final EIS fails to consider the relative minority population in the area of Badin Lake compared to other areas which are discussed.

According to the Environmental Protection Agency’s environmental justice assessment tool, “EJ View”, the population within the 5-mile buffer around the Alcoa Badin Works facility on Badin Lake is 23.2% minority, 19.5% African-American and 10.2% of the population is below the poverty level.⁸ Within a 3-mile buffer around the facility, the population is 25% minority, 21.1% African-American and 9.8% of the population is below the poverty level.⁹ These percentages are all higher than or equivalent to the Stanly County population which is 15.3

³ 42 U.S.C. § 2000d (2012).

⁴ Exec. Order No. 12898, § 101.1-101, 59 C.F.R. 7629 (1994), amended in 60 FR 6381 (1995).

⁵ Minority populations should be identified where either: (a) the minority population of the affected area exceeds 50% or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. Council on Environmental Quality (CEQ), Environmental Justice: Guidance under the National Environmental Policy Act, (Dec. 10, 1997).

⁶ Final EIS at 230-31.

⁷ See, e.g., Final EIS at 54.

⁸ See http://iaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110017425614, navigate to Site Demographics and change buffer value to 5.

⁹ See http://iaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110017425614, navigate to Site Demographics and change buffer value to 3.

% minority, 11.5 % African-American and 10.7% of the county-wide population is below the poverty level.¹⁰

The FEIS misses even the baseline discussion of demographic data in the project study area.

II. The Final EIS is Inadequate Because it Fails to Recommend Additional Environmental Measures for Badin Lake

The FEIS also fails to document problems with PCB contamination in Badin Lake/Narrows Reservoir, and it does not recommend additional environmental measures regarding that contamination. It has been documented that fish with elevated concentrations of PCBs have been found in Badin Lake.¹¹ Because of the heightened concentrations of PCBs in these fish, a fish consumption advisory was issued in February of 2009. That advisory is still active for Badin Lake.

The Final EIS includes extended consideration of additional environmental measures to be taken at other sites, especially at High Rock Reservoir and Blewett Falls Reservoir. For instance, the Final EIS recommends the Alcoa undertake sedimentation efforts in High Rock Reservoir to protect municipal water supplies, at an estimated annual cost of \$1.9 million.¹² No additional environmental measures are suggested for Badin Lake. The recommendations section on water quality fails to mention PCBs, suggesting that the issues particular to Badin Lake are being overlooked.

The Environmental Impacts section of the Final EIS lists a number of environmental problems in Badin Lake. Although PCBs are not mentioned, the Final EIS does recognize blue-green algae blooms, oxygen depletion, ammonia concentrations, and inadequate food supply for fish as issues of concern.¹³ These issues are cumulative rather than independent; fish populations which are already under stress from environmental contamination are more likely to be affected by temperature swings or changes in oxygen levels. Fish kills in turn can have further negative impacts on water quality.

Given the significant presence of minority and low-income populations in the Badin Lake vicinity, the known but little discussed PCB contamination, and the potential for negative impacts, the FEIS should have recommended additional measures for protection of

¹⁰ 2010 US Census Data.

¹¹ <http://epi.publichealth.nc.gov/fish/current.html#badin> accessed February 22, 2013.

¹² FEIS at 294.

¹³ FEIS pp. 71-72.

environmental and human health in and near Badin Lake. The Division of Water Quality should conduct a public hearing on these concerns and provide protections for Badin residents by including additional measures in the Water Quality Certification, if granted.

III. The Final EIS is Inadequate Because it Fails to Consider Cumulative Health Impacts

The Final EIS also fails to take into consideration existing health disparities in the Badin Lake community. Executive Order 12898 requires that, where analysis is made of the impacts of a project on human health, it includes the cumulative impact of multiple exposures. This includes analysis of the ways in which environmental exposures can interact with pre-existing health issues.

In particular, the Final EIS makes no mention of known Polychlorinated Biphenyl (PCB) and mercury contamination in Badin Lake. PCBs are persistent chemicals that are slow to degrade in the environment. PCBs are of concern to fish as well as species that consume fish, like people and other wildlife.¹⁴ This concern arises from the fact that PCBs accumulate in the tissue of fish, and the people and wildlife that consume them. Mercury is a neurotoxin that can pose dangers for children and pregnant women. No mention was made in the Final EIS of research into the baseline health concerns of the Badin community, or the potential impact to humans that may arise from exposure to PCBs in contaminated fish.

Fish with elevated concentrations of PCBs have already been found in Badin Lake.¹⁵ Because of the heightened concentrations of PCBs in these fish, as stated earlier in this letter, a fish consumption advisory was issued in February of 2009. Given this known risk, DWQ should recommend additional study to consider the potential impact of the dam projects on pre-existing PCB contamination, and the subsequent impact on humans that may consume the fish.

IV. Conclusion

Because the impacted area contains a higher than county average population of people of color and a higher than county average population of low-income people, and because of the numerous flaws and omissions in the Final EIS, related to water quality and environmental justice, the DWQ should 1) conduct a public hearing to hear from the community and address the

¹⁴ Environmental Protection Agency, *Basic Information: Polychlorinated Biphenyls (PCBs)*, <http://www.epa.gov/cpawaste/hazard/tsd/pCBS/pubs/about.htm>.

¹⁵ <http://epi.publichealth.nc.gov/fish/current.html#badin> accessed Feb. 5, 2013.

concerns related to PCB contamination in and around Badin Lake, 2) recommend inclusion of additional environmental measures in the FEIS for Badin Lake and 3) include special conditions regarding water quality enhancement and public health protection in and near Badin Lake for any Water Quality Certification, if granted.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Chandra T. Taylor
Senior Attorney
Southern Environmental Law Center