

SCE&G's Wateree Station to enter the environment without a permit, and SCE&G has denied the allegation; and

- C. WHEREAS, Riverkeeper and SCE&G desire to enter into this Agreement in order to settle the Action; and
- D. WHEREAS, Riverkeeper and SCE&G intend for these Recitals to be a part of their binding agreement and to be incorporated into this Agreement.

NOW THEREFORE, the parties to this Agreement agree as follows:

- 1. Undertakings by SCE&G: In consideration of the promises contained herein, the adequacy of which are hereby acknowledged, SC&EG agrees to implement the following actions at the coal-fired power plant known as Wateree Station in Richland County, South Carolina:
 - 1.1 By December 31, 2012, install equipment for dry bottom ash handling, with equipment fully operational by June 1, 2013. SCE&G will cease to deposit bottom ash into the Ponds at the Wateree Station by June 1, 2015, and instead shall either sell or recycle bottom ash or place it in a Class 3 (or better) landfill.
 - 1.2 Continue to remove ash from Pond 1 for sale, recycling or placement in a Class 3 (or better) landfill, with the net reduction of ash in Pond 1 of at least 240,000 tons during the period from January 1, 2012 to January 1, 2015.
 - 1.3 By November 2, 2013, apply for any necessary approvals or permit(s) for development of the on-site Class 3 landfill to



accommodate removal of all ash from Pond 1 by December 31, 2020.

- 1.4 Within 20 months of issuance of final permits or approvals described in paragraph 1.3, develop the on-site Class 3 landfill to accommodate the coal ash removed from Pond 1 and ash generated by the Wateree Station.
- 1.5 By December 31, 2017, remove emergency ash sluice piping and cease depositing any coal ash into the Ponds at the Wateree Station.
- 1.6 By December 31, 2015, apply to DHEC for a permit to construct a new synthetically lined wastewater pond to replace Pond 1 and for any permits or approvals necessary to close the existing Pond 1. The replacement Pond 1 shall meet applicable DHEC regulations for wastewater treatment ponds, and the synthetic liner will include best engineering QA/QC protocols during construction to verify that the liner is free of manufacturing and installation defects.
- 1.7 Within two years after issuance of the final permit(s) described in paragraph 1.6, construct a new synthetically lined wastewater pond to replace Pond 1 and proceed to close Pond 1. The replacement Pond 1 shall meet applicable DHEC regulations for wastewater treatment ponds, and the synthetic liner will include best engineering QA/QC protocols during construction to verify that the liner is free of manufacturing and installation defects.



1.8 By December 31, 2020, complete removal of ash and an additional two feet (minimum) of underlying soil from existing Pond 1, and further soil removal if necessary as follows: The parties understand and agree that such removal will result in soil arsenic concentrations averaging no higher than 10 parts per million at each of 30 or more sample locations systematically selected within existing Pond 1 and sampled at approximately two-foot intervals above the clay layer.

1.9 On a semi-annual basis, provide a status report to Riverkeeper that states (1) the amount of ash removed during the six-month period; (2) the results of groundwater sampling for wells monitored pursuant to the Mixing Zone Consent Agreement; and (3) the activities performed during the six-month period in furtherance of the Undertakings described in this Paragraph 1. Reports for the period from January 1 through June 30 of each year shall be provided by July 31; and reports for the period from July 1 through December 31 shall be provided by January 31 of the following year.

2. RELEASE AND DISCHARGE BY RIVERKEEPER:

2.1 Consideration: In consideration of the Undertakings by SCE&G set forth in Paragraph 1, Riverkeeper, on behalf of itself and its successors, predecessors, assigns, affiliates, parent companies, subsidiaries, officers, directors, agents, and employees, hereby completely releases and forever discharges SCE&G from all past,



present, and future claims, demands, obligations, actions, and causes of action, whether now known or unknown, including, but not limited to, claims for injunctive relief, personal injury, property damage, economic loss or expense, attorneys' fees, penalties, sanctions, and consequential damages of any nature whatsoever, whether based on statute, tort, subrogation, contract, quasi-contract, or any other theory of recovery or responsibility, for the claims set out in the Complaint; for any alleged contamination of groundwater at Wateree Station; for any allegation relating to migration or movement of that groundwater into the Wateree River, into wetlands, or under other properties; and for management of coal ash in compliance with this Agreement or other actions to expedite removal of coal ash from the Ponds (collectively, the "Released Claims"). Riverkeeper shall not submit comments to a regulatory agency concerning, or legally or administratively contest, the provisions of any permit or approval that deals with the contamination of groundwater at Wateree Station, the migration or movement of that groundwater into the Wateree River, into wetlands, or under other properties, or the management of coal ash in compliance with this Agreement or other actions to expedite removal of coal ash from the Ponds. Except as to the Released Claims, nothing in this Agreement affects or releases the rights of the Riverkeeper to comment upon and contest, through



administrative or judicial proceedings or otherwise, any permit or permit renewal issued to SCE&G; or affects or releases the rights of the Riverkeeper with respect to any violation by SCE&G of any NPDES or other permit; or releases or affects the rights of the Riverkeeper with respect to any discharge by SCE&G into the environment. Specifically, nothing in this Agreement affects or releases the rights of the Riverkeeper with respect to any unpermitted discharge (other than a discharge of groundwater) flowing on or above the surface of the ground to the Wateree River or permit violations with respect to any such discharge to the Wateree River. Nothing in this Agreement precludes the Riverkeeper from reporting seeps from the Wateree Station to the Wateree River, whether a discharge of groundwater or otherwise, solely to SCE&G, the South Carolina Department of Health and Environmental Control, and/or the U.S. Environmental Protection Agency.

- 2.2 Change of Law or Facts: Riverkeeper expressly acknowledges that other, new, or supplemental information or causes of action that either may now exist or that may arise or become known in the future could cause it to evaluate the underlying facts or its position in the Action differently than it has been evaluated as of the date of this Agreement. Riverkeeper expressly agrees, and specifically assumes the risk, that if facts with respect to the matters covered



by this Agreement are found hereafter to be other than, in addition to, or different from, the facts now believed or assumed to be true by either or all parties, this Agreement shall nonetheless remain in full force and effect.

2.3 Released Parties: This release and discharge by Riverkeeper shall apply to and inure to the benefit of SCE&G, its past, present, and future officers, directors, agents, servants, representatives, employees, shareholders, subsidiaries, insurers, affiliates, partners, predecessors and successors in interest, and assigns.

3. ADEQUATE CONSIDERATION – DENIAL OF LIABILITY: Riverkeeper agrees and acknowledges that the Undertakings by SCE&G set forth in Paragraph 1 of this Agreement will be made in full, complete, final, and binding compromise and satisfaction of its claims as set out in Paragraph 2 above; that SCE&G's performance of the Undertakings is not and shall not be considered an admission by SCE&G of, and SCE&G specifically denies any liability for, the allegations of the Complaint; and that no past or present violation of law on the part of SCE&G shall be implied by such Undertakings. Furthermore, this is a settlement that, pursuant to Rule 408 of the Federal Rules of Evidence, is inadmissible against SCE&G in any other court proceeding, except in a proceeding to enforce this Agreement

4. ATTORNEYS' FEES, COSTS, AND LIENS: The parties to this Agreement represent and warrant that all legal expenses, bills, costs, or fees resulting from or arising out of the representation by any attorney in



relation to the Action are the responsibility of the party that retained the attorney, and that any liens based on legal expenses, bills, costs, or fees incurred as a result of the Action will be satisfied by each party who retained its counsel. The parties agree that they will indemnify, defend, and hold the other party harmless from any such claims.

5. DISMISSAL WITH PREJUDICE: Riverkeeper and SCE&G shall file with the Court a stipulation of dismissal with prejudice of the Action, each party to bear its own costs.
6. ACKNOWLEDGMENT THAT AGREEMENT WAS NOT DRAFTED BY ONE PARTY: The parties agree that no one party drafted this Agreement, that the Agreement is the result of negotiation and a mutual decision between the parties, and that it is not to be interpreted against either party.
7. WARRANTY OF CAPACITY TO ENTER INTO AGREEMENT AND EXECUTE RELEASE: The parties represent that they have the legal capacity to enter into this Agreement, and that this Agreement is not for the benefit of any party other than those who have entered into this Agreement, and gives no rights or remedies to any third parties.
8. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST: This Agreement contains the entire understanding and agreement between the parties to this Agreement with respect to the matters referred to herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way



to exist or to bind either of the parties to this Agreement. The parties to this Agreement acknowledge that all terms of this Agreement are contractual and not merely a recital.

9. MODIFICATION BY WRITING ONLY: The parties agree that this Agreement may be modified only by a writing signed by both parties to this Agreement and that any oral agreements are not binding until reduced to writing and signed by the parties to this Agreement.
10. FORCE MAJEURE: The deadlines set forth in Paragraph 1 shall be extended by an event of *force majeure*, which shall mean any event arising from causes beyond the control of SCE&G that causes a delay in or prevents the performance of an Undertaking, including, but not limited to: (a) acts of God, fire, war, insurrection, civil disturbance, labor disputes, labor or material shortages, or explosion; (b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; (c) restraint by court order or order of public authority; and (d) inability to obtain any necessary authorizations, approvals, permits, or licenses. SCE&G shall promptly, and no later than the next semi-annual status update, inform Riverkeeper if an event of *force majeure* has occurred.
11. AUTHORITY OF DHEC UNAFFECTED: The parties acknowledge that several of the Undertakings set forth in Paragraph 1 require approvals and/or permits from DHEC. SCE&G agrees to apply timely and completely (as determined by DHEC) for any required approvals and/or



permits and to cooperate with DHEC to provide such information as may be reasonably requested by DHEC to issue the approvals and/or permits. Riverkeeper acknowledges that if SCE&G has exercised appropriate efforts to submit a timely and complete (as determined by DHEC) application or request for approval to DHEC, then any delay, failure, or refusal to issue required approvals and/or permits by DHEC shall be considered *force majeure*.

12. TERMINATION: This Agreement shall terminate upon completion by SCE&G of the undertakings set out in Paragraph 1. If, prior to that time and in violation of this Agreement, Riverkeeper submits comments to a regulatory agency concerning, or legally or administratively contests, the provisions of any permit or approval that deals with the contamination of groundwater at Wateree Station, the migration or movement of that groundwater into the Wateree River, into wetlands, or under other properties, or the management of coal ash in compliance with this Agreement or other actions to expedite removal of coal ash from the Ponds, then SCE&G shall have the right, but not the obligation, to terminate this Agreement. If SCE&G fails to carry out any of the Undertakings in Paragraph 1 in compliance with this Agreement, then Riverkeeper shall have the right, but not the obligation, to terminate this Agreement. If either party decides to terminate this Agreement, then it shall give the other party written notice of the basis for its termination. Notice of termination shall be sent in accordance with Paragraph 16.



Unless withdrawn by the terminating party or invalidated by a court of law, the termination shall become effective 15 days after receipt of the notice of termination. Riverkeeper may make comments to any government agency concerning and may take action with respect to or contest any unpermitted discharge (other than a discharge of groundwater) flowing on or above the surface of the ground to the Wateree River, and any comments, contests, or other actions taken by Riverkeeper concerning any such discharge shall not be a basis for termination of this Agreement. Nothing in this Agreement precludes the Riverkeeper from reporting seeps from the Wateree Station to the Wateree River, whether a discharge of groundwater or otherwise, solely to SCE&G, the South Carolina Department of Health and Environmental Control, and/or the U.S. Environmental Protection Agency; and any such report, but only such report, by Riverkeeper shall not be a basis for termination of this Agreement.

13. BINDING UPON SUCCESSORS AND ASSIGNS: The parties to this Agreement agree that this Agreement is binding upon the parties' successors and assigns.
14. SEVERABILITY: The parties agree that if any provision of this Agreement should become inconsistent with present or future law governing the subject matter of the provision, such provision shall be deemed to be rescinded or modified in accordance with any such law. In all other



respects, the parties to this Agreement agree that the other provisions of this Agreement shall continue and remain in full force and effect.

15. EXECUTION IN COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Photocopies or facsimile copies of executed copies of this Agreement may be treated as originals. A duly authorized attorney may sign on behalf of a corporate entity.

16. NOTICE TO PARTIES: Notices required or authorized to be given pursuant to this Agreement shall be sent to the persons at the addresses set out below. Notices are effective upon receipt. Semiannual status reports may be sent by e-mail. All other notices may be delivered in person or sent by U.S. Mail or an overnight delivery service. Either party may change the persons and/or addresses for notice by providing notice to the representative(s) of the other party set out below.

For the Riverkeeper:

Executive Director
Catawba Riverkeeper Foundation
421 Minuet Lane, Suite 205
Charlotte, North Carolina 28217
rick@catawbariverkeeper.org

With a copy to:

Frank S. Holleman III, Esq.
Southern Environmental Law Center
601 W. Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516
fholleman@selcnc.org



For SCE&G:

J. Hagood Hamilton, Jr., Esq.
Assistant General Counsel
SCANA Corporation
220 Operation Way, MC-C222
Cayce, South Carolina 29033-3107
jhamilton@scana.com

17. GOVERNING LAW: This Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina.
18. EFFECTIVE DATE: This Agreement shall become effective immediately following execution by both of the parties listed below.

[signatures on following pages]



SOUTH CAROLINA ELECTRIC & GAS
COMPANY

BY: 
James M. Landreth

ITS: Vice President
Fossil Hydro Operations