

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

YADKIN RIVERKEEPER, INC., and
WATERKEEPER ALLIANCE, INC.

Plaintiffs,

v.

DUKE ENERGY CAROLINAS, LLC,

Defendant.

No. 1:14-cv-753-LCB-JEP

Mediated Settlement Agreement

The parties met at a Mediated Settlement Conference held on the 28th day of September, 2016, at Hunton & Williams LLP, 421 Fayetteville Street, Suite 1400, Raleigh, North Carolina. Based upon Duke Energy Carolinas, LLC's ("Duke Energy") intent to announce its plans to remove all coal ash from the three ash basins at Buck for processing for cementitious purposes under the provisions of the North Carolina Coal Ash Management Act and House Bill 630 (referred to herein as "beneficiation"), the parties agree as follows:

1. Duke Energy will submit all necessary permit requests to obtain approval for beneficiation of all coal ash from the three ash basins at Buck.
2. Subject to permit approval, Duke Energy will remove all coal ash from the three ash basins at Buck for beneficiation. The removal of all the coal ash from the three ash basins at Buck will be completed by the statutory deadline set forth in the Coal Ash Management Act, as amended by House Bill 630, or as may be further amended from time to time, but in any event not later than December 31, 2035. This deadline may be changed by agreement of the parties. If Duke Energy obtains the requisite permits but cannot complete beneficiation by the applicable statutory deadline, then Duke Energy will remove the remaining coal ash for storage into a lined landfill that meets the standards set out in Exhibit B to the orders granting partial summary judgment in the N.C. state court enforcement actions.
3. Following execution of a final Settlement Agreement and Release, plaintiffs will dismiss with prejudice the pending federal suit and the state complaint in intervention with respect to the Buck site. Plaintiffs covenant that they will not sue Duke Energy for any of the claims set out in the federal or state proceedings with respect to the Buck site unless the State of North Carolina rejects, in a final order, after exhaustion of all appeals, a closure plan for the Buck site that requires excavation of the coal ash from the three ash basins at Buck. Further, plaintiffs release Duke Energy for these claims once the State of North Carolina approves a final closure plan (and Duke Energy does not challenge the plan) for the Buck site that requires excavation of the coal ash from the three ash basins at Buck for beneficiation or for storage into a

lined landfill that meets the standards set out in Exhibit B to the orders granting partial summary judgment in the N.C. state court enforcement actions. If Duke Energy does not obtain the requisite permit approvals for both excavation and beneficiation, then plaintiffs may file a complaint concerning violations ongoing at the time of the complaint, and Duke Energy will not assert the dismissals as a defense to any claim for injunctive relief sought in the complaint or as a defense to civil penalties arising on or after the final denial, after exhaustion of all appeals, of the requisite permits described in this agreement. In that event, Duke Energy agrees to waive and forego all defenses of statutes of limitations, statutes of repose, and other time-related defenses as to any claims of any kind by the Plaintiffs that did not exist as of the date of this Agreement.

4. The settlement and its terms will remain confidential until Duke Energy publicly announces its decision on the beneficiation of ash at Buck.

5. Each side will bear its own costs and attorneys' fees.

6. Plaintiffs will not challenge permits or modifications to permits required for the construction or operation of the beneficiation facility at Buck. Plaintiffs also will not challenge modifications to the NPDES permit at Buck.

7. Duke Energy agrees to request from the State of North Carolina Department of Environmental Quality a Special Order By Consent ("SOC") for the Buck site that includes language substantially similar to that contained in paragraphs 1(f), 1(g), and 2(b)(2) of the Riverbend SOC that was publicly noticed on September 16, 2016, to the extent such language is not already included in the NPDES permit modifications for the Buck site.

8. The parties will incorporate the terms of this Mediated Settlement Agreement in a Settlement Agreement and Release. That Settlement Agreement and Release will also include recitals that neither party admits wrongdoing or liability.

DATED: September 28, 2016

WH

for Plaintiff Yadkin Riverkeeper, Inc.

Peetkin

for Plaintiff Waterkeeper Alliance, Inc.

Man B

Attorney for Plaintiffs

Michelle Spak

for Defendant Duke Energy Carolinas, LLC

Nash E. Long

Attorney for Defendant Duke Energy Carolinas, LLC