

**Comprehensive Relicensing
Settlement Agreement**

for the

**Roanoke Rapids and Gaston Dam Project
FERC Project No. P-2009**

June 2003

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EXPLANATORY STATEMENT

In June 2003, Virginia Electric Power Company, doing business as Dominion Virginia Power/Dominion North Carolina Power (“Dominion” or “Licensee”), and participants in its cooperative relicensing process for the Roanoke Rapids and Gaston Hydroelectric Project (“Project”), FERC Project No. 2009, reached a Comprehensive Settlement Agreement (“Settlement Agreement”) on all issues related to Dominion's pending Application for New License filed with the Federal Energy Regulatory Commission (“FERC” or “Commission”) on January 28, 1999. The participants in this process included state and federal resource agencies, local governments and associations, and other non-governmental organizations.¹ The goal of the settlement process has been to achieve a balance of competing resource interests consistent with the public interest and all governing statutes. This goal was reached by developing objectives and reaching a consensus of all interested parties on measures to protect, enhance, and mitigate impacts to ecological resources as well as other beneficial uses of the Roanoke River, including hydropower generation, consumptive uses of Project water, and recreational opportunities.

The Process

A Settlement Committee, comprised of all interested stakeholders, began negotiations in February 1998, at which time a set of ground rules was established to aid in the decision-making process and guide the settlement discussions. Over the course of the next five years, the Settlement Committee met to identify key issues, conduct and report on studies addressing the environmental effects of Project operation, and develop options to address those effects. The Settlement Committee did this through technical working groups, established to resolve issues relating to Fisheries, a Shoreline Management Plan, Recreation and Public Access, Terrestrial Resources, and Cultural Resources.

A Drafting Committee, made up of representatives of the Settlement Committee, oversaw the technical working groups and provided a forum for resolving disputes. The Committee’s Legal Subcommittee assisted in preparing the attached binding legal agreement to implement the agreed-upon environmental and operational measures and general procedures to govern the relationship among the parties over the life of the New License.

¹ The Parties to the Settlement are: Virginia Electric and Power Company doing business as Dominion Virginia Power/Dominion North Carolina Power, United States Fish and Wildlife Service, National Marine Fisheries Service, North Carolina Department of Environment and Natural Resources, North Carolina Wildlife Resources Commission, North Carolina State Historic Preservation Office, Virginia Department of Historic Resources, Virginia Department of Conservation and Recreation, Virginia Department of Environmental Quality, Virginia Department of Game and Inland Fisheries, The Nature Conservancy, The City of Virginia Beach, Virginia, The Regional Partnership of Local Governments, The City of Roanoke Rapids, Lake Gaston Association, The Roanoke River Basin Association, and The Carolina Canoe Club.

The Settlement Agreement

The Settlement Agreement is comprised of four parts:

1. The Technical Settlement sets forth the goals and objectives and establishes specific protection, mitigation and enhancement measures the Licensee, in conjunction with other parties, shall undertake to achieve the goals and objectives. It is divided in to four sections: a) Flow, which addresses flow requirements to ensure support of a variety of needs in the bypass reach and downstream, including water quality and protection of fish and wildlife habitats; b) Fish, which addresses planning, scheduling and funding for enhancement of the lake fishery and provides for the Licensee's cooperation in the restoration of diadromous fish in the Roanoke River Basin, which includes, but is not limited to, methods to establish safe and effective upstream and downstream passage of the American Eel and the American shad; c) Lake, which sets forth requirements for water levels, access for recreational purposes and a Shoreline Management Plan for Lake Gaston and the Roanoke Rapids Lake; and d) Recreational Enhancements, which provides for facilities, operational enhancements and other programs to promote recreation including swimming, picnicking, fishing and recreational paddling. The Technical Settlement will serve as the primary reference in interpreting the Licensee's obligations set forth in the Proposed License Articles.

2. The Proposed License Articles are those provisions of the Technical Settlement that establish the Licensee's obligations that will be enforceable by the Commission. The settling parties have concluded that these proposed articles, taken together, will assure that the project is and will be best adapted to a comprehensive plan of development of the Roanoke – in other words, that the project complies with applicable laws.

The Proposed License Articles were developed with reference to Commission policies and with assistance from designated Commission staff in order to ensure that the proposals meet Commission standards and can be incorporated into the new license as drafted. General Procedures Section 6.1 of the Settlement acknowledges that the parties entered into the Settlement with the express condition that the Commission issue a new license that incorporates the Proposed License Articles without material modification. The detailed provisions of the proposed articles reflect the deliberate design of the parties to ensure the Commission's ability to enforce the Licensee's obligations in order to fully effectuate the delicately balanced scheme of the Technical Settlement. Material changes to the proposed license articles could lead to adverse consequences, including the potential for parties to withdraw or for the entire Settlement to be terminated. This aspect of the Settlement was central to the ultimate agreement of the parties. Therefore, the parties urge the Commission to seriously regard the parties' intentions.

3. The General Procedures establish the general terms and conditions that govern the relationship among the parties and aid in the implementation of the Settlement Agreement. These General Procedures include dispute resolution measures, the Licensee's participation in which the parties intend the Commission to enforce.

4. Finally, the Settlement contains a list of Parties and Primary Contacts.

These four component parts comprise the entire agreement of the signatory parties to this Settlement to be submitted to the Commission for its approval in conjunction with the issuance of a 40 year New License for the Roanoke Rapids and Gaston Hydroelectric Project.

Cooperative Management

A cooperative management approach will be used to achieve many of the key goals and objectives set forth in the Settlement. Cooperative Management Teams (“CMTs”) will establish monitoring protocols and data standards to test the Project's impact on ecological resources and determine necessary adjustments to flows and other mitigation measures within limits defined in the Settlement and the Proposed License Articles to achieve the Settlement's stated goals. The obligations of the participants in the CMTs are detailed in the Technical Settlement and the Licensee’s obligations are translated into the corresponding Proposed License Article. The flexibility to address resource needs based on a refined understanding of the system that planned studies will provide under the CMT process served as the primary basis for consensus reached on endorsement of a 40 year license term.

The Proposed License Articles have been drafted to conform to the Commission’s need to assure enforcement of the entirety of a license. Those articles that involve cooperative management provide that the Licensee’s obligation will not be delegated to any such third party. Further, such articles specify the range of values for a flow schedule or other measure, and the cooperative management will occur within that range.

Record Support

The Parties to the Settlement concur that the record developed to date in this proceeding supports the mitigation and enhancement measures contained in the Settlement, including the Licensee’s obligations set forth in the Proposed License Articles. The Application for New License was accompanied by the Preliminary Draft Applicant Prepared Environmental Assessment (APEA). A variety of studies agreed to as part of the cooperative settlement process were completed subsequent to the filing of the APEA and were filed with the Commission on April 11, 2001, May 10, 2001 and July 29, 2002. Those studies, along with other record evidence, have served as basis for the technical discussions and negotiations leading to the consensus reflected in this Settlement. Each Proposed License Article rests on a thorough review of the technical data available or produced as part of this relicensing process. The record prepared and filed with the Commission to date provides an adequate and compelling basis on which to approve the Settlement and incorporate the Proposed License Articles in the New License issued for the Roanoke Rapids and Gaston Hydroelectric Project.

GENERAL PROCEDURES

1 Definitions

- 1.1 **“Commission”** or **“FERC”** shall mean the Federal Energy Regulatory Commission.
- 1.2 **“General Procedures”** shall mean the provisions of the Comprehensive Settlement Agreement that are not contained in the Proposed License Articles in Appendix A, the Technical Settlement in Appendix B, and the list of Parties and Primary Contacts in Appendix C.
- 1.3 **“License”** shall mean the regulatory authorization for construction, maintenance, and operation of a hydroelectric project subject to the jurisdiction of FERC pursuant to the Federal Power Act, 16 U.S.C. §§ 791 et seq. (FPA).
- 1.4 **“Licensee”** shall mean Virginia Electric and Power Company doing business as Dominion Virginia Power/Dominion North Carolina Power, the legal entity to which the Commission issues the new License for the Project and any successors in interest.
- 1.5 **“License Provision”** shall mean any condition, prescription, requirement, holding, reservation of authority, or article included into the new license for the Roanoke Rapids and Gaston Dam Project by the Commission.
- 1.6 **“New License”** shall mean the license issued by the Commission to the Licensee pursuant to Section 15 of the FPA for the continued operation of the Project, which shall take effect upon the Licensee’s acceptance thereof.
- 1.7 **“Offer of Settlement”** shall mean an offer of settlement to be filed with FERC pursuant to 18 C.F.R. § 385.602, which offer shall be comprised of this Settlement Agreement, including the Proposed License Articles and the Technical Settlement.
- 1.8 **“Party”** or **“Parties”** shall mean the entities listed in Article GP1, Section 2.0 of the Technical Settlement.
- 1.9 **“Project”** shall mean the Roanoke Rapids and Gaston Dam Project, licensed to the Licensee as FERC Project No 2009.

- 1.10 **“Proposed License Article”** shall mean the terms and conditions set forth in Appendix A of this Settlement Agreement that the Commission should include, without modification, in the new license issued to the Licensee for the continued operation of the Project.
- 1.11 **“Settlement Agreement”** shall mean the entirety of this Comprehensive Relicensing Settlement Agreement, including the General Procedures, Proposed License Articles in Appendix A, the Technical Settlement in Appendix B, and the list of Parties and Primary Contacts in Appendix C.
- 1.12 **“Technical Settlement”** shall mean the provisions included in Appendix B, which reflect the detailed agreements among the Parties with respect to technical matters, including Flow, Fish, Lake and Recreation/Historic Properties matters. These provisions serve as the basis for and are incorporated as appropriate in the Proposed License Articles.

2 General Provisions

- 2.1 Scope of the Settlement Agreement. The Parties agree that this Settlement Agreement, including General Procedures, the Proposed License Articles and the Technical Settlement, resolves all issues among the Parties associated with, and constitutes a comprehensive settlement of, the docketed Project No. P-2009, relating to issuance of a New License for the Project. This Settlement Agreement sets forth the Licensee’s obligations, subject to reserved mandatory and prescriptive authority, for the protection, mitigation and enhancement of ecological, environmental, cultural, and recreational resources affected by the Project under a new license issued by FERC. This Settlement Agreement also establishes mutual agreements and obligations by which the Parties intend to be bound outside the New License.
- 2.2 Structure of the Settlement Agreement. This Settlement is organized into four parts: (i) the General Procedures, (ii) Appendix A containing the Proposed License Articles, (iii) Appendix B, containing the Technical Settlement, and iv) Appendix C containing a list of the Parties and Primary Contact names and addresses.

- 2.3 Effective date and term of Settlement Agreement and New License. This Settlement Agreement shall become effective upon execution by all Parties. The Settlement Agreement shall remain in effect for the term of the new license issued by the Commission for the Project and for any annual license issued subsequent thereto, unless terminated pursuant to Sections 5.6 or 11. It is agreed that the obligations of the Licensee under this Settlement Agreement shall extend for a license term of 40 years.
- 2.4 Effective date of settlement obligations. Unless otherwise expressly provided in this Settlement Agreement, including the Technical Settlement, the obligations of the Licensee shall become effective upon acceptance by the Licensee of a new license for the Project, except to the extent such obligations may be stayed by FERC order.
- 2.5 Offer of Settlement. The Parties agree that within 30 days of the effective date of this Settlement Agreement, the Licensee shall file this Settlement Agreement as an Offer of Settlement with FERC pursuant to Rule 602 of the Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2002).
- 2.6 Enforceability.
- 2.6.1 It is the intent of the Parties that the Proposed License Articles set forth in Appendix A of this Settlement Agreement shall be enforced by FERC, as supplemented by other means of enforcement provided in Section 6.3.2 and other resource agencies that have concurrent jurisdiction to enforce such articles. Inasmuch as some of the terms of the Settlement Agreement are referenced in the Proposed License Articles, it is the intent of the Parties that the Settlement Agreement shall be included as an appendix to the License Order. The Offer of Settlement shall request FERC to incorporate all Proposed License Articles, without modification, into the new license for the Project and to identify all Proposed License Articles, if any, that are unenforceable by FERC. The Parties agree that if FERC does not expressly identify a Proposed License Article as unenforceable, they will proceed as though such provision is enforceable by FERC.

2.6.2 All terms of this Settlement Agreement, including the terms of the Technical Settlement, that are outside FERC's jurisdiction shall not be incorporated into the new license for the Project and shall be enforced through remedies available under applicable State or Federal law, as set forth below.

2.7 Governing Law. All provisions of this Settlement Agreement that are incorporated into the New License may be enforced as provided in Section 6.3.2. The New License shall be governed solely by the Federal Power Act and other applicable sections of federal law, except that license conditions imposed pursuant to 33 U.S.C. § 1341 shall be governed, as appropriate, also by the Federal Water Pollution Control Act (as amended), 33 U.S.C. § 1251 et seq., and implementing state law. All other provisions of this Settlement Agreement, including the Technical Settlement, that are not enforceable under the New License are contractual in nature. Any provisions of this Settlement Agreement over which a federal or state agency has jurisdiction shall be governed, construed, and enforced in accordance with the statutory and regulatory authorities of such agency. By executing this Settlement Agreement, no federal agency or other party is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists. All activities undertaken pursuant to this Settlement Agreement shall be in compliance with all applicable law.

3 Settlement Commitments

3.1 The Parties agree to support the issuance of the New License, water quality certification and other agency approvals that are consistent with the terms of this Settlement Agreement. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process undertaken by FERC as well as any regulatory approvals that may be needed to implement provisions of the Settlement Agreement; provided that any Parties who are governmental agencies are not by this commitment compromising or relinquishing any legal authority or process requirements they may have in those situations where they may be the permitting agency. For those issues addressed herein, the Parties

agree not to propose or otherwise communicate to FERC or to any other federal or state resource agency with jurisdiction directly related to the relicensing process any comments, other than ones consistent with the terms of this Settlement Agreement.

4 Adoption by FERC without Modification.

- 4.1 The parties have entered into this Settlement Agreement with the express expectation and condition that FERC will approve the Settlement Agreement as an Offer of Settlement and issue a New License for the Project that incorporates, without modification, the Proposed License Articles in Appendix A.
- 4.2 The Parties agree that if FERC approves the Offer of Settlement and incorporates the Proposed License Articles into the New License without modification, they will not seek rehearing of the FERC order granting a new license for any issues covered by this Settlement Agreement, or support in any way any such request for rehearing by any non-Party to this Settlement Agreement.

5 Rehearing and Judicial Review.

- 5.1 The Parties respectfully request that FERC adopt the Proposed License Articles without material modification or omission. Each term, including Appendices A and B, is in consideration of each other term. Such modification may materially alter the bargained-for benefits of one or more Parties, resulting in their withdrawal or, in the worst case, the termination of the Settlement Agreement. If FERC issues a New License that contains an article, omits a Proposed License Article, or otherwise takes action that is materially inconsistent with the terms of this Settlement Agreement, the Settlement Agreement shall be deemed modified to conform to the New License, only if no Party objects thereto within the time allowed for rehearing. Absent such objection, the Parties will be bound by the terms of this Settlement Agreement as modified and such terms shall be enforceable as described in Section 2.6 of this Settlement Agreement.
- 5.2 If any Party objects to an article, or the omission of an article, in the New License that is materially inconsistent with the terms of this Settlement Agreement, the

- Agreement shall not be conformed to FERC's order, and all Parties shall engage in Consultation in accordance with Section 6.2 in an attempt to reach consensus on (i) conforming the Settlement Agreement to the New License or (ii) filing a request for rehearing of the New License. If consensus has not been reached 15 days prior to the due date for the request for rehearing, any Party may file a request for rehearing of the New License to challenge the material modification, which no other Party shall oppose. All Parties shall support the request for rehearing to the greatest extent possible. Any Party filing for rehearing is authorized to state affirmatively that no Party opposes the request.
- 5.3 The filing of a request for rehearing shall not terminate Consultation, which shall continue, if necessary, for the full 90-day period, mindful of the demands on parties involved in a request for rehearing. If during the 90-day period the Parties unanimously consent to modify the Settlement Agreement to conform with the New License, the filing Party shall withdraw its request for rehearing.
- 5.4 After the conclusion of Consultation, and unless and until a final decision, as defined in Section 10.1, alters FERC's modification to the Proposed License Articles, the Settlement Agreement shall temporarily be deemed amended by FERC's modification if supported by (i) the Licensee and (ii) each resource agency with jurisdiction over a resource that is a subject of the disputed license article or omission. A resource agency shall be considered to have jurisdiction over a resource if a characteristic of the resource is within the agency's statutory mandate and with respect to state agencies, the resource is within the agency's geographic jurisdiction.
- 5.5 Any Party may file a request for rehearing of issues arising under the FERC order issuing the New License that are not deemed to be related to the Settlement Agreement, provided that: (i) the Party shall notify all other Parties of its intention by email or facsimile at the earliest practicable time; and (ii) the Parties will undertake the Consultation process in Section 6.2 if any other Party disputes the request as materially inconsistent with the Settlement Agreement.
- 5.6 If FERC's modification of the Proposed License Articles, as modified or affirmed by any final agency or judicial action, does not have the support of both the

Licensee and each resource agency with jurisdiction over the resource that is the subject of the disputed license article, this Settlement Agreement shall be terminated. If FERC's modification of the Proposed License Articles, as modified or affirmed by any final agency or judicial action, has the support of both the Licensee and each resource agency with jurisdiction over the resource that is the subject of the disputed license article, the Settlement Agreement shall be deemed amended to conform to the New License. Any Party who does not support the modification of the Proposed License Articles, as modified or affirmed by any final agency or judicial action, may seek withdrawal pursuant to Section 9.

- 6** **Dispute Resolution.** Except where otherwise specifically provided in the Settlement Agreement, disputes arising under or related to the Settlement Agreement or the License shall be resolved as follows:
 - 6.1 The Parties will make best efforts to reach consensus and resolve any dispute arising under or related to the Settlement Agreement and the New License. A resolution based on consensus shall have either the unanimous support of all designated and participating Parties, or at least no opposition from any Party. In the event a consensus cannot be reached, each Party shall state the reason for its position in writing. In the event of a conflict between or among decisions reached by separate Cooperative Management Teams, the Licensee, or any other Party, may undertake informal consultation in advance of invoking dispute resolution procedures.
 - 6.2 Consultation. In the event any dispute arises, the Parties agree to engage in good faith negotiations for a period of at least ninety (90) days in an effort to resolve the dispute, except that in emergency situations, a Party may, for good cause, seek relief prior to the expiration of the 90-day period. During the ninety-day period, any Party may request the services of a neutral mediator to assist in resolving the dispute. The disputing Parties will jointly select such mediator and, if mediation is acceptable to all of them, before engagement, will reach an agreement on how to cover the costs of such services in an appropriate manner.

6.3 Remedies. If after engaging in Consultation pursuant to Section 6.2, the Parties have not reached consensus on the resolution of a dispute, the Licensee shall call the parties together to resolve the dispute under one of the following procedures, depending on the type of dispute at issue:

6.3.1 *Implementation Disputes*. An Implementation Dispute is the failure to reach consensus on any decision or action required to implement the Settlement Agreement. It does not include any dispute that relates to the Licensee's compliance with any duty arising under the New License, any Party's compliance with its duties under the Settlement Agreement, or any dispute that relates to a proposed amendment to the Settlement Agreement or the New License.

6.3.1.1 If an Implementation Dispute is not resolved after Consultation, a resolution of that dispute will become effective if supported by (i) the Licensee and (ii) each resource agency with jurisdiction over the resource affected by the decision, as defined in Section 5.4. Any other Party who does not support the resolution may seek resolution before an agency or court with jurisdiction over the dispute or, upon consent of the disputing Parties, seek resolution of the Implementation Dispute through binding arbitration. The exclusive remedy in arbitration shall be to identify from the Parties' written positions as stated in Section 6.1 the resolution that best achieves the goals of the article under which the dispute arose. The resolution described in this Section shall remain in effect during the pendency of arbitration.

6.3.1.2 If an Implementation Dispute is not resolved after Consultation, and the Licensee and resource agencies with jurisdiction over the affected resource do not agree on a mutual resolution, all disputing Parties shall seek resolution of the Implementation Dispute through binding arbitration unless any resource agency with jurisdiction over the affected resource objects to binding arbitration on the ground that such resource agency by law or policy cannot

participate in binding arbitration. Any Party is free not to participate in arbitration provided it agrees to abide by the outcome. If an objection to arbitration is made by a resource agency with jurisdiction over the affected resource who by law or policy cannot participate in arbitration, the matter shall not go to arbitration, any Party may seek resolution before an agency or court with jurisdiction over the dispute. The exclusive remedy in arbitration shall be the resolution, selected from the Parties' positions as stated in Section 6.1, that best achieves the goals of the article under which the dispute arose, and a plan for its implementation.

6.3.2 *License Compliance Dispute.* A License Compliance Dispute relates to the Licensee's compliance with any obligations arising under the New License. If a Party believes that the Licensee has failed to perform any of its obligations under the New License, the Licensee shall, upon notice, call together the interested Parties to engage in Consultation pursuant to Section 6.2, unless any other Party has initiated Consultation, to (i) determine whether noncompliance has occurred, and, (ii) in the event of noncompliance, establish a time in which the Licensee must cure the noncompliance. If the License Compliance Dispute is not resolved at the conclusion of Consultation, or if, in the event of noncompliance, the Licensee has not cured the failure within the established time, any Party may petition or otherwise request FERC to enforce the license article with which the Licensee is alleged to have failed to comply. If FERC affirmatively declines to enforce a license article or fails to act within a reasonable period of time after a petition or other request to enforce has been filed, which period of time shall be no less than six months, a Party may seek specific performance of the analogous term of the Settlement Agreement, or other relief, from any agency or court with competent jurisdiction over the dispute.

6.3.3 *Settlement Agreement Compliance Dispute.* A Settlement Agreement Compliance Dispute relates to any Party's compliance with any obligation arising under the Settlement Agreement that is not contained in or enforceable under the New License, including a Party's failure to act or a Party's abuse of discretion in performing such duty. In the event of a Settlement Agreement Compliance Dispute, the Licensee shall, upon notice, call together the interested Parties to engage in Consultation pursuant to Section 6.2 to (i) determine whether noncompliance has occurred, and, (ii) in the event of noncompliance, establish a time in which the offending Party must cure the noncompliance. If the Settlement Agreement Compliance Dispute is not resolved at the conclusion of Consultation, or if, in the event of noncompliance, the offending Party has not cured the failure within the established time, any Party may seek resolution before any agency or court with competent jurisdiction over the matter.

6.3.4 *Amendment Dispute.* An Amendment Dispute is a dispute related to any Party's proposal to amend the Settlement Agreement or the New License. A proposal to amend the Settlement Agreement shall take effect only as provided in Sections 7, 8, or 9, as appropriate.

6.3.5 The Parties agree that damages at law are inadequate. No party shall be liable in damages for any breach of this Settlement Agreement, any performance or failure to perform an obligation imposed by this Settlement Agreement, or any other cause of action arising from this Settlement Agreement.

7 Amendments to the Settlement Agreement.

7.1 Except as provided herein, nothing in this Settlement Agreement is intended to limit the Parties' ability to amend or modify this Settlement Agreement. The Party seeking an amendment shall provide notice pursuant to Section 13.5 of its proposal to amend the Settlement Agreement. Each other Party shall, within 30

days of the notice date, provide the proposing Party with a written confirmation of its consent to or rejection of the proposal to amend the Settlement Agreement. If a Party does not respond within the 30-day period, that Party shall be deemed to have rejected the request to amend the Settlement Agreement.

7.1.1 If the proposed amendment has the unanimous consent of the Parties and is not materially inconsistent with the New License, it shall go into effect upon execution by every Party.

7.1.2 If the proposed amendment is materially inconsistent with the New License, but has the unanimous support of every Party, the Parties shall seek modification of the New License, and any related permits or authorization, to conform with the proposed amendment pursuant to the provisions of Section 8. The amendment shall not go into effect until all authorizations, including the New License, are conformed to the amendment of the Settlement Agreement.

7.1.3 If any Party opposes the proposed amendment within 30 days after receiving notice, the Parties shall engage in Consultation pursuant to Section 6.2. If at the end of Consultation, the Parties have not reached unanimous consent with respect to the proposed amendment, the proposed amendment shall not go into effect.

8 License Amendments.

8.1 Nothing in this Settlement Agreement is intended or shall be construed to affect or limit the right of Licensee to seek amendments of the New License, provided that (i) Licensee may seek a Project license amendment that would involve a material modification to this Settlement Agreement only if the Licensee demonstrates the request is founded on significant new information not known and that could not have been reasonably known as of the date of issuance of the New License, and (ii) the Licensee has complied with the requirements of Section 7 to amend the Settlement Agreement, including, if necessary, engaging in Consultation pursuant to Section 6.2. An amendment to the New License that

materially affects the Settlement Agreement shall not proceed unless it has the unanimous consent of all Parties. Licensee shall not be required to comply with this 90-day Dispute Resolution period if it believes an emergency situation exists or if required to meet its responsibilities under applicable law or an order of an agency with jurisdiction over Licensee.

- 8.2 Licensee may file for an amendment to the New License that is not deemed to be related to the Settlement Agreement, provided that: (i) the Licensee shall notify all Parties of its intention by email or facsimile at the earliest practicable time, and (ii) the Parties will undertake the Consultation process set forth in Section 6.2 if any other Party believes that the amendment is a material modification of the Settlement Agreement.

9 Reopeners.

- 9.1 Any Party may seek to invoke or rely upon any reopener article contained in the New License for the purpose of seeking an amendment to the New License with respect to any matter covered by this Settlement Agreement, only if the Party demonstrates the request to amend the New License is founded on significant new information not known and that could not have been reasonably known as of the date of issuance of the New License. In such event, that Party shall comply with the provisions of Section 7 pertaining to the amendment of the Settlement Agreement, including, if necessary, engaging in Consultation pursuant to Section 6.2. An amendment to the New License that is a material modification of the Settlement Agreement shall not proceed unless it has the unanimous consent of all Parties.
- 9.2 Nothing in this Settlement Agreement requires an agency in the exercise of lawfully reserved authority to obtain unanimous consent of the Parties with respect to the exercise of that authority or to comply with any standards or procedures otherwise generally applicable under this Settlement Agreement.

10 Withdrawal From Settlement Agreement.

- 10.1 A Party may withdraw from this Settlement Agreement once a final decision has

been rendered with respect to the New License, provided the withdrawing Party has complied with the Consultation procedures in Section 6.2 and only if, in its judgment, a disputed decision materially alters its bargained-for benefits in the Settlement Agreement. A decision is considered final when the Party seeking withdrawal has exhausted administrative remedies, including rehearing, and has either exhausted judicial remedies, or allowed the opportunity to seek such judicial remedies to expire. A Party may also withdraw from this Settlement Agreement if FERC modifies the New License in a manner that was not the result of an agreement to amend pursuant to Section 7 and that materially alters the Party's bargained-for benefits in the Settlement Agreement.

- 10.2 A Party shall not have the right to withdraw from the Settlement Agreement in the event a dispute falling under Sections 6.3.1, 6.3.2, or 6.3.3 of this Settlement Agreement is not resolved in the Party's favor.
- 10.3 A Party may exercise its right to withdraw from this Settlement Agreement by giving notice pursuant to Section 13.5. Withdrawal is effective 10 calendar days after notice. The withdrawal of a Party, other than Licensee, does not terminate this Settlement Agreement for the remaining Parties.

11 Termination of Settlement Agreement.

- 11.1 This Settlement Agreement shall terminate as to all Parties and have no further force or effect upon termination under Section 5.6, upon withdrawal of the Licensee, or upon expiration of the New License and any annual licenses issued thereafter. It shall terminate for a withdrawing Party upon such Party's withdrawal from this Settlement Agreement.
- 11.2 If the Settlement Agreement is terminated before the expiration of the New License or any annual license due to withdrawal of the Licensee, all Parties agree and will support a motion or other form of request, as appropriate, that the Commission commence a proceeding to determine whether the termination of the Technical Settlement Document, including the mutual rights and obligations in cooperative management, may justify amendment of the New License.

12 Cooperative Management Teams.

- 12.1 Unless otherwise specified, any Cooperative Management Team ("CMT") provided for in this Settlement Agreement shall function consistent with the following:
- 12.1.1 Decision-making shall be by consensus.
 - 12.1.2 Disputes shall be resolved according to Section 6.
 - 12.1.3 Provision shall be made for adequate communication and coordination among and between the members of the CMT.
 - 12.1.4 Unless an alternative procedure is adopted by the CMT, the Licensee will provide reasonable advance notice of all CMT meetings to CMT members and maintain minutes of such meetings.
 - 12.1.5 Each CMT, within one year of acceptance of the License, shall adopt an appropriate policy with respect to public observation and non-voting participation in CMT meetings and public access to minutes, reports and documents of the CMT.
 - 12.1.6 Additional members may be added to the CMT upon consensus of the CMT members.

13 Miscellaneous Provisions.

- 13.1 Limitation of Applicability. This Settlement Agreement is made on the express understanding that it constitutes a negotiated settlement of issues specific to the Project. No Party shall be deemed, by virtue of execution of this Settlement Agreement, to have established precedent, or admitted or consented to any approach, methodology, or principle except as expressly provided herein. In the event this Settlement Agreement is approved by FERC, such approval shall not be deemed precedential or controlling regarding any particular issue or contention in

any other proceeding.

- 13.2 Successors and Assigns. This Settlement Agreement shall apply to, and be binding on, the Parties and their successors and assigns. No change in ownership of the Project or transfer of the New License by Licensee shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities, or obligations under this Settlement Agreement. Unless prohibited by applicable law, Licensee shall provide in any transaction for a change in ownership of the Project or transfer of the existing or New License, that such new owner shall be bound by, and shall assume the rights and obligations of this Settlement Agreement upon completion of the change of ownership and, as applicable, approval by FERC of the license transfer. In the event applicable law prohibits the new owner from assuming the rights and obligations of this Settlement Agreement, any Party may withdraw from this Settlement Agreement. The Licensee shall provide notice to the other Parties at least 90 days prior to completing such transfer of license.
- 13.3 Severability. The terms of this Settlement Agreement are not severable one from the other. This Settlement Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement Agreement.
- 13.4 Force Majeure. In those instances where force majeure may apply, unlike FERC enforcement of License conditions under the FPA, no Party shall be liable to any other Party for breach of this Settlement Agreement as a result of a failure to perform or for delay in performance of any provision of this Settlement Agreement due to any cause reasonably beyond its control. This may include, but is not limited to, natural disasters, labor or civil disruption, or breakdown or failure of Project works, so long as any such event is reasonably beyond the control of the Party who delays or fails to perform. The Party whose performance is affected by a force majeure will make all reasonable efforts to promptly resume performance. The Party affected by a force majeure event shall notify the other Parties of the circumstances of the event that it believes constitutes a force majeure event by telephone, fax or e-mail, as soon as it is reasonably possible and

practical to do so.

13.5 Notice and Communications.

13.5.1 All written notices to be given pursuant to this Settlement Agreement shall be mailed by electronic mail, fax, first class mail, or overnight express service, to each Party at the addresses listed below or to such subsequent address as a Party shall identify. Notices shall be deemed to be given on the same business day as any email or fax transmitted before 5:00 pm, eastern time, unless the intended recipient demonstrates that the electronic mail or fax was not timely received, or five (5) business days after the date of mailing or on date of receipt if overnight express or other receipt-notification service is used. When time is of the essence, such as in an emergency situation, notice may be accomplished by fax or electronic mail so long as written notice is made by first class mail or overnight express service as soon as practicable.

13.5.2 For purposes of implementing this Settlement Agreement, the Parties agree that the individuals listed in Appendix C shall be designated to be the primary contact person and all written notices shall be posted to these individuals at the addresses listed below. Notification of changes in the contact persons must be made in writing and delivered to all other contact persons.

13.6 Responsibility for Costs. Except as expressly provided for in this Settlement Agreement, all Parties are to bear their own costs of participating in the Settlement Agreement.

13.7 Adjustment for Inflation / Deflation.

13.7.1 Unless otherwise stated, all annually provided funds by the Licensee are in Year 2002 dollars and shall be adjusted as described in Section 13.7.3 below, except when a settlement article explicitly states that the funds are not to be adjusted.

13.7.2 Unless otherwise stated, all capital funds provided by the Licensee are in Year 2002 dollars and will not be adjusted per the index described in

Section 13.7.3 below.

13.7.3 The funds described in Section 13.7.1 above in this Settlement Agreement shall be adjusted for inflation or deflation by using the Consumer Price Index (CPI) – All Urban Consumers, U.S. City Average, All Items, Index Base Period: 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics. A reference period from which changes in the CPI will be measured shall be established for each base payment. An adjusted payment shall be calculated by taking the published CPI for the month two months prior to the month the payment is due and dividing by the reference period CPI, then multiplying this value by the base payment. The calculated adjusted payment shall be rounded to the nearest whole dollar.

13.7.4 If the Bureau of Labor Statistics changes the CPI or changes the index base period, the Parties affected by the CPI agree to negotiate whether to use the new CPI or a substitute, whichever is more consistent with the above principles.

13.8 Funding for Resource Agency Studies

13.8.1 The Licensee agrees to fund enhancements as stated in the Proposed License Articles and related provisions of the Technical Agreement. Any funds provided to any governmental agency, NGO, home owner association or any other group shall be used for the specific purpose outlined in the settlement article. The Licensee reserves the right to require an annual accounting for funds provided to any of the entities designated to receive funds from the Licensee and the recipient entity shall provide that accounting within 90 days of the Licensee's request.

13.8.2 Unless specifically provided to the contrary in this Settlement Agreement, any funds not explicitly identified as monetary payments to a group or agency may be accounted for either as costs paid by the Licensee for outside goods and services or costs accrued by use of the Licensee's professional and technical staff.

- 13.9 Operational Changes to Kerr Reservoir. The Parties agree that operations at the Project may need to be modified as necessary to reflect future changes by the Army Corps of Engineers to operations at Kerr Reservoir. The Licensee shall have the responsibility to evaluate and determine whether obligations under this Settlement Agreement cannot be reasonably met as a result of operational changes at Kerr. Licensee shall consult with other Parties if its evaluation demonstrates that such conflict may occur and shall seek to reach consensus of mutually agreeable amendment to the Settlement Agreement. The Licensee shall follow Section 7 to develop any license amendment application as required by FERC regulations.
- 13.10 Liabilities for Required Biological / Ecological Actions. To the extent the Licensee is required to provide upstream or downstream passage for any fish species under this Settlement Agreement, the Licensee shall not be liable for any harm or damages to the river ecosystem as a result of passage of fish with parasites or diseases both known and unknown at this time, provided that the Licensee provides such passage in conformance with the License or other binding agency requirements.
- 13.11 Water Quality Certification.
- 13.11.1 Nothing in this Settlement Agreement is intended to or shall be construed to affect in any way the authority of the State of North Carolina pursuant to 33 U.S.C. § 1341, and related state statutes and rules, such as by limiting the authority of the State of North Carolina to issue, condition, or in any way alter a water quality certification or by limiting the exercise of the State of North Carolina's discretion. Execution of this Settlement Agreement by the State of North Carolina implies no representation that the requirements of this Settlement Agreement ensure compliance with State water quality standards and other appropriate requirements of State law.
- 13.11.2 Execution of this Settlement shall not be construed to confer on any Party any right to contest the water quality certification or any condition thereof. Any Party aggrieved by North Carolina's water quality

certification has the right to an adjudicatory hearing upon written request made within sixty (60) days following receipt of the certification. The request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, P.O. Box 27447, Raleigh, NC 27611-7447. If modifications are made to the certification, any Party aggrieved by the modifications has the right to an adjudicatory hearing on the modifications upon written request made within sixty (60) days following receipt of the modifications.

- 13.12 Water Rights Unaffected. This Settlement Agreement does not grant or affirm any property right, license or privilege in any waters or any right of use in any waters. This Settlement Agreement does not authorize any person to interfere with the riparian rights, littoral rights or water use rights of any other person. No person shall interpose this Settlement Agreement as a defense in any action respecting the determination of riparian or littoral rights or other water use rights.
- 13.13 Cross Referenced Laws and Documents. Unless otherwise noted, any reference to any statute, regulation or other document refers to the statute, regulation or document as it exists on the effective date of this Settlement Agreement.
- 13.14 No Third Party Beneficiaries. This Settlement Agreement shall not create any right in any individual or entity that is not a Party or in the public as a third-party beneficiary. This Settlement Agreement shall not be construed to authorize any such third party to maintain a suit in law or equity under this Settlement Agreement.
- 13.15 No commitment of funds. Nothing in this Settlement Agreement shall be construed as obligating any federal, state, or local agency to expend in any fiscal year any sum in excess of appropriations made by Congress or state or local legislatures or administratively allocated for the purpose of this Settlement Agreement for the fiscal year or to involve any federal, state, or local agency in any contract or obligations for the future expenditure of money in excess of such appropriations or allocations.

13.16 No Delegation. Nothing in this Agreement shall be construed as requiring or involving the delegation by any government agency to any other body of any authority entrusted to it by Congress or the legislature of any State.

14 Signatures

14.1 Each party to this Agreement represents and acknowledges that it has the full legal authority to execute this Agreement and shall be fully bound by its terms.

For Virginia Electric and Power Company doing business as Dominion Virginia Power/Dominion North Carolina Power:

M. G. Deacon, Jr.
Vice President

Entered into as of this _____ day of June, 2003

For United States Fish and Wildlife Service:

J. Mitch King
Deputy Regional Director

Entered into as of this _____ day of June, 2003

For National Marine Fisheries Service:

Roy E. Crabtree, Ph.D.
Regional Administrator, Southeast Region

Entered into as of this _____ day of June, 2003

For North Carolina Department of Environment and Natural Resources:

William G. Ross, Jr., Secretary

Entered into as of this _____ day of June, 2003

For North Carolina Wildlife Resources Commission:

Mr. Charles R. Fullwood, Jr., Executive Director

Entered into as of this _____ day of _____, 2003

For North Carolina State Historic Preservation Office:

Dr. Jeffery J. Crow, State Historic Preservation Officer

Entered into as of this _____ day of June, 2003

For Virginia Secretary of Natural Resources

David K. Paylor, Deputy Secretary

Entered into as of this _____ day of June, 2003

For The Nature Conservancy:

Sam Pearsall, Ph.D.
Director of Science & Roanoke River Project Director

Entered into as of this _____ day of June, 2003

For The Regional Partnership of Local Governments:

Mr. Russell Slayton, Coordinator

Entered into as of this _____ day of June, 2003

For The City of Roanoke Rapids, North Carolina:

D.N. Beale, Mayor

Entered into as of this _____ day of June, 2003

For Lake Gaston Association:

Jean McCarter, Director

Entered into as of this _____ day of June, 2003

For The Roanoke River Basin Association:

Robert Lindsay, Executive Director

Entered into as of this _____ day of June, 2003

For The Carolina Canoe Club:

Paul Ferguson, President

Entered into as of this _____ day of June, 2003

For The City of Virginia Beach, Virginia:

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

Approved as to Legal Sufficiency:

Approved as to Content:

Deputy City Attorney

Director, Department of Public Utilities

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 20____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)

My Commission Expires: