

ATTACHMENT E

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

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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,

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

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RCJ

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

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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.



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:

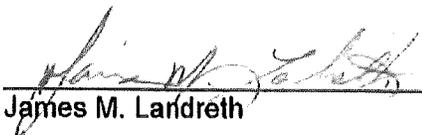
Executive Director
Catawba Riverkeeper Foundation
421 Minuet Lane, Suite 205
Charlotte, North Carolina 28217
rick@catawbariverkeeper.org

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



SOUTH CAROLINA ELECTRIC & GAS
COMPANY

BY: 
James M. Landreth

ITS: Vice President
Fossil Hydro Operations