

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CIVIL ACTION FILE NO.: 5:13-cv-00633-BO

THE STATE OF NORTH CAROLINA, by)	
and through its agency, the NORTH)	
CAROLINA DEPARTMENT OF)	JOINT RULE 26(F) REPORT AND
ADMINISTRATION,)	DISCOVERY PLAN
Plaintiff,)	
)	
v.)	
)	
ALCOA POWER GENERATING, INC.,)	
Defendant.)	

1. Pursuant to Fed. R. Civ. P. 26(f), a telephonic meeting was held on December 11, 2013 and was attended by:

Donald R. Teeter, Sr., Esq., G. Mark Teague, Esq., and Lewis W. Lamar, Jr. Esq. for Plaintiff State of North Carolina

Ryke Longest, Esq. for Intervenor Yadkin Riverkeeper, Inc.

Courtland L. Reichman, Esq., Joshua Newcomer, Esq., Gary J. Rickner, Esq. and E. Bradley Evans, Esq. for Defendant Alcoa Power Generating, Inc.

2. **Pre-Discovery Disclosures.** The parties will exchange by January 10, 2014 the information required by Fed. R. Civ. P. 26(a)(1).

3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan:

a. Discovery will be needed on the following subjects: The claims and defenses of the parties.

b. Disclosure or discovery of electronically stored information should be handled as follows: The parties will disclose and produce electronically stored

information in accordance with the Federal Rules of Civil Procedure. Production of electronically stored documents shall be in either hardcopy or electronic format to best facilitate production and lower costs related to the production and review of the documents. The parties will work together to coordinate production of large electronic files as needs arise. The parties do not anticipate that there is a need to produce metadata. If metadata is sought, the requesting party agrees to notify the other party of the request in writing and the parties have agreed to work together in good faith to come to a reasonable agreement on the scope and content of such a production.

To the extent that a dispute arises with respect to the costs associated with the production of electronically stored information, the parties will attempt to resolve any such disputes without court intervention.

c. The parties are working to agree to an order regarding claims of privilege or of protection as trial preparation material asserted after production, as follows: The parties will submit to the court for its approval and entry a proposed Protective Order and Order Pursuant to Rule 502(d) of the Federal Rules of Evidence to govern the use and disclosure of confidential documents and information, including matters set forth in interrogatory responses and testimony provided in depositions, and the treatment of information subject to the attorney-client privilege, work product protection, or other privilege.

d. Schedule and Parameters for Discovery:

i. All fact discovery will be commenced in time to be completed by December 15, 2014.

ii. Maximum of 35 interrogatories, including sub-parts, by each party to the other party.

iii. Maximum of 100 requests for admission, including sub-parts, by each party to the other party.

iv. Maximum of 20 fact witness depositions per party. Should a party determine that additional fact witness depositions are necessary, the parties have agreed to work together in good faith to come to a reasonable agreement with respect to additional depositions.

v. Unless otherwise agreed by the parties, each fact deposition shall be limited in duration as provided in Fed. R. Civ. P. 30(d) unless otherwise agreed to by the parties or ordered by the Court.

vi. Plaintiff's reports from retained experts under Fed. R. Civ. P. 26(a)(2)(D) shall be due February 16, 2015.

vii. Defendant's reports from retained experts under Fed. R. Civ. P. 26(a)(2)(D) shall be due April 17, 2015.

viii. Expert depositions shall be completed by June 19, 2015.

ix. Supplementations under Fed. R. Civ. P. 26(e) shall be due reasonably timely without separate request.

4. Other Items.

a. The parties do not request a conference with the court before the entry of the scheduling order.

b. The parties request a pretrial conference on October 15, 2015.

c. The parties shall join additional parties by June 16, 2014 and shall amend their pleadings by June 16, 2014, except for pleadings directly responsive to amended pleadings, which shall be filed pursuant to the Federal Rules of Civil Procedure.

d. All potentially dispositive motions shall be filed by July 15, 2015.

e. Settlement cannot be evaluated prior to the initial stage of fact discovery. The parties will engage in mediation during the course of discovery as required under the Local Rules.

f. Final lists of witnesses and exhibits under Fed. R. Civ. P. 26(a)(3) shall be due from the parties on September 1, 2015.

g. The parties shall have until September 15, 2015 to list objections under Fed. R. Civ. P. 26(a)(3)(B).

h. The case will be ready for trial by October 31, 2015, and at this time the trial is expected to take approximately 14 days.

i. The parties have agreed to this discovery plan based on the participation of Yadkin Riverkeeper, Inc. as amicus curiae, not as a party, as set forth in the pending joint motion.

A table setting forth the deadlines in chronological order is attached as an appendix.

This the 24th day of December, 2013.

/s/ Donald R. Teeter, Sr.
Donald R. Teeter, Sr.
N.C. State Bar I.D. No.: 9492
Special Deputy Attorney General
North Carolina Department of Justice
Civil Division, Property Control Section
Administration Building
116 W. Jones Street, Suite 4054

/s/ Gary J. Rickner
Gary J. Rickner
N.C. State Bar I.D. No.: 025129
email: gjr@wardandsmith.com
E. Bradley Evans
N.C. State Bar I.D. No.: 028515
email: ebe@wardandsmith.com
Ryal W. Tayloe

Raleigh, NC 27602
Telephone: 919.733.7408
Facsimile: 919.733.2947
email: drteeter@ncdoj.gov
Counsel for Plaintiff State of North Carolina

/s/ James P. Longest
James P. Longest
N.C. Bar. No. 18297
Duke Environmental Law and Policy Clinic
Science Drive and Towerview Road
Box 90360
Durham, NC 27708
Phone: (919) 613-7207
Fax: (919) 613-7262
email: longest@law.duke.edu
*Counsel for Intervenor Yadkin Riverkeeper,
Inc.*

N.C. State Bar I.D. No.: 010549
email: rwt@wardandsmith.com
For the firm of
Ward and Smith, P.A.
Post Office Box 33009
Raleigh, NC 27636-3009
Telephone: 919.277.9100
Facsimile: 919.277.9177
*Counsel for Defendant Alcoa Power
Generating, Inc.*

/s/ Mike McKool
Mike McKool
Texas State Bar No. 13732100
email: mmckool@mckoolsmith.com
Joshua Newcomer
Texas State Bar No. 24060329
email: jnewcomer@mckoolsmith.com
For the firm of McKool Smith P.C.
300 Crescent Court
Suite 1500
Dallas, TX 75201
Telephone: 214.978.4002
Facsimile: 214.978.4044
*Counsel for Defendant Alcoa Power
Generating, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2013, I electronically filed this Rule 26(f) discovery plan with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Gary Mark Teague, Esq., James P. Longest, Jr., Esq., Donald R. Teeter, Sr., Esq., Ann Wilkinson Matthews, Esq., and Donald R. Teeter, Sr., Esq.

/s/ Joshua Newcomer

Joshua Newcomer
Texas State Bar No. 24060329
email: jnewcomer@mckoolsmith.com
Mike McKool
Texas State Bar No. 13732100
email: mmckool@mckoolsmith.com
For the firm of McKool Smith P.C.
300 Crescent Court
Suite 1500
Dallas, TX 75201
Telephone: 214.978.4002
Facsimile: 214.978.4044
*Counsel for Defendant Alcoa Power
Generating, Inc.*

APPENDIX: DATES IN CHRONOLOGICAL ORDER

Event	Date
Exchange Initial Disclosures	January 10, 2014
Deadline to amend pleadings	June 16, 2014
Deadline Joinder of parties	June 16, 2014
Close of fact discovery	December 15, 2014
Plaintiff's retained expert reports pursuant to FRCP 26(a)(2)(D)	February 16, 2015
Defendant's retained expert reports pursuant to FRCP 26(a)(2)(D)	April 17, 2015
Deadline to complete expert depositions	June 19, 2015
Pretrial conference	October 15, 2015
Deadline to file dispositive motions	July 15, 2015
Deadline for witness and exhibit lists pursuant to FRCP 26(a)(3)	September 1, 2015
Deadline to object to witness and exhibit lists pursuant to FRCP 26(a)(3)(B)	September 15, 2015
Trial	October 31, 2015