



A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

James W. Sheedy
Lic. in SC Only
Direct: 704 341 2102
Fax: 704 341 2105
jimsheedy@driscollsheedy.com

Ballantyne: 11520 N. Community House Road
Suite 200 | Charlotte, NC 28277
Rock Hill: 140 E. Main Street
Suite 210 | Rock Hill, SC 29730
www.driscollsheedy.com

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Via E-mail and U.S. Mail

Kristin Linsley Myles, Special Master
Munger, Tolles & Olson, LLP
560 Mission Street, Twenty-Seventh Floor
San Francisco, CA 94105-2907

Re: State of South Carolina v. State of North Carolina, No. 138, Original

Dear Special Master Myles:

Through submission of this letter, with copies to opposing counsel, Catawba River Water Supply Project (CRWSP) hereby offers its position on the phasing of the above referenced action and certain aspects of the Case Management Plan (CMP).

CRWSP strenuously objects to South Carolina's assertion that the intervenors will have a "limited interest in the issues" involved in Phase I, "aside from providing relevant documents and other information in discovery." (Brief of SC Concerning Phase One and Phase Two Issues and Timing, pp. 15-16.) This assertion is nothing more than a second attempt by South Carolina, after its opposition to the motions to intervene, to deny the intervenors a substantive role in this litigation. As South Carolina concedes in its Brief, Phase One requires a determination of "the injury suffered by the downstream State." (*Id.* at 2.) The determination of whether South Carolina has been injured necessarily involves an evaluation of the alleged harms that caused the injury, which, according to the Complaint, would include Union County's 5 MGD inter-basin transfer from the Catawba River. Because this inter-basin transfer is at risk of being invalidated in this litigation – and because South Carolina's complaint more generally threatens the allocation of water rights to the Catawba River – CRWSP and the other intervenors have a direct and concrete interest in this action that entitles them to a larger role than merely providing documents in response to discovery requests. CRWSP should have the opportunity to protect itself with respect to the resolution of such issues -- unless South Carolina is willing to stipulate that CRWSP's water withdrawal transfers (including inter-basin transfers), and consumption will not be affected by this litigation – a concession that South Carolina was invited to make but conspicuously declined to do at the hearing on the motions to intervene.

CRWSP also vehemently opposes the limitations South Carolina seeks to impose on the intervenors through the CMP. This Court's Order Granting the Motions to Intervene nowhere provides for excluding the intervenors from depositions. The intervenors should not be unilaterally excluded from all depositions in Phase I, nor should their participation be limited to specific depositions in Phase II that are arbitrarily determined to have no direct influence on the interests of the intervenors. Because depositions are part of the fact-finding process, there is no fair way for the intervenors to determine ahead of time whether a deposition will reveal information that will affect the intervenors' interests. In any event, that determination should be made by the intervenors, and certainly not by an adverse party such as South Carolina. If there is a specific objection to an intervenor's participation at or role in a deposition, the opposing party should raise that in advance of the deposition and have its position heard by the Special Master, if necessary, at the appropriate time.


Although the positions of North Carolina and CRWSP are similar as to the attendance of intervenors at depositions, CRWSP disagrees with North Carolina's broad view of deposition attendance, which would include counsel for non-parties, experts, media and other witnesses. If this broad view is adopted, it should be tailored to protect the interests of all parties, including the intervenors. Such protection should include the right to sequester the deponent, with just the parties (including intervenors) present at that deposition, and limiting who has the opportunity to put an objection into the record. These two safeguards are intended merely as examples and are not meant to be comprehensive. In summary, CRWSP believes that there is a way to allow the intervenors to attend depositions without opening the depositions to any and all who wish to appear.

CRWSP respectfully requests that the Special Master refuse to exclude the intervenors entirely from Phase I or from any other phase of discovery in this case. While CRWSP has certain other comments, revisions and suggestions to be incorporated into the CMP, these remaining issues can be negotiated among the parties, without necessarily presenting these issues to the Special Master at this time. CRWSP asks that the Special Master encourage South and North Carolina to include participation by the intervenors in negotiation over the terms of the CMP.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.



James W. Sheedy

cc: Service List

SERVICE LIST

Kristin Linsley Myles
Munger Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94115
(415) 512-4000

Special Master

Christopher G. Browning, Jr.
(cbrowning@ncdoj.gov)
James C. Gulick
(jgulick@ncdoj.gov)
Marc D. Bernstein
(mbernstein@ncdoj.gov)
J. Allen Jernigan
(ajern@ncdoj.gov)
Jennie W. Hauser
(jhauser@ncdoj.gov)
North Carolina Department of Justice
Post Office Box 629
Raleigh, N.C. 27602
(919) 716-6900

Counsel for the State of North Carolina

Thomas C. Goldstein
(tgoldstein@akingump.com)
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

Jim Sheedy
(jimsheedy@driscollsheedy.com)
Susan Driscoll
(sdriscoll@driscollsheedy.com)
Driscoll Sheedy, P.A.
11520 North Community House Road
Building 2, Suite 200
Charlotte, North Carolina 28277
(704) 341-2101

Counsel for Catawba River Water Supply Project

David C. Frederick
(dfrederick@khhte.com)
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, DC 20036
(202) 326-7951

Counsel for the State of South Carolina

Carter G. Phillips
(cphillips@sidley.com)
Virginia A. Seitz
(vseitz@sidley.com)
Ileana M. Ciobanu
(iciobanu@sidley.com)
Sidley & Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8270

Garry S. Rice
(gsrice@duke-energy.com)
Associate General Counsel
Duke Energy Corp.
Legal Affairs – EC03T
P.O. 1006
Charlotte, North Carolina 28201-1006
(704) 382-8111

Counsel for Duke Energy Carolinas, LLC