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January 7, 2009

By E-Mail and First Class Mail

Special Master Kristin L. Myles
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105

Re: *South Carolina v. North Carolina*, No. 138, Original:
South Carolina's Tenth Progress Report

Dear Special Master Myles,

In advance of the telephonic hearing scheduled for Friday, January 9, 2009, we respectfully submit South Carolina's tenth progress report concerning events that have occurred since the last progress report dated December 5, 2008.

Document discovery is ongoing. As previously reported, South Carolina made its second production of documents on December 2, 2008. North Carolina likewise made its second production on December 16, 2008. The party States are also working toward agreement on search terms to be used in processing electronic documents. South Carolina received a supplemental document production from proposed intervenor Duke; and it has met and conferred with CRWSP but as yet has received no documents in response to South Carolina's requests dated October 20, 2008. With respect to Rule 45 subpoenas, South Carolina has received an initial production from Great Wolf Resorts, Inc. and the Town of Statesville, and has met and conferred with counsel for the Towns of Concord and Kannapolis.

At the direction of the Special Master in last month's status conference, South Carolina has met and conferred with North Carolina and the proposed intervenors to discuss the scheduling and bifurcation issues identified by the Special Master. Due to the holiday season and conflicting travel schedules, the conference was delayed until January 5, at which time all participants to the conference engaged in a full and frank discussion of the issues but were unable to reach resolution on a proposed discovery and trial schedule and the terms of bifurcation. The conference participants discussed concerns regarding an overlap of Phase One and Phase Two factors but expressed disagreement on how those issues should be resolved such that the phases are properly defined and administrable as a practical matter. Another issue is the current uncertainty concerning the Court's schedule for addressing the intervention issues presented in the First Interim Report. As we understand it, the Court will likely issue an order on or about January 12 (following its January 9, 2009 conference) ruling on South Carolina's request to file exceptions to the First Interim Report. A consensus emerged that the party States

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and proposed intervenors would be in a stronger position to make recommendations to their clients after another meet-and-confer. The party States and proposed intervenors therefore agreed to renew their efforts toward amicable resolution of these issues next week, following the expected issuance of the Court's order and additional guidance from the Special Master at the scheduled January 9 conference call.

Respectfully submitted,

A handwritten signature in black ink that reads "D. C. Frederick". The signature is written in a cursive style with a horizontal line underlining the first part of the name.

David C. Frederick
*Special Counsel to the
State of South Carolina*

cc: Joint Proposed Case Management Plan, Appendix A, Service List