



A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

James W. Sheedy  
Lic. in SC Only  
Direct: 704 341 2102  
Fax: 7043412105  
jimsheedy@driscollsheedy.com

**Ballantyne:** 1120 N. CommIniry House Road  
Suite 200 | Charlotte, NC 28277  
**SoUlh Carolina Office:** 222 E. Main Street  
Suite 204 | Rock Hill, SC 29730  
www.driscollshccdy.com

January 26, 2010

By E-mail and First-Class Mail

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

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

Dear Special Master Myles:

We hereby set forth a Joint Progress Report No. 14 from intervenors Catawba River Water Supply Project (CRWSP) and Duke Enrgy Carolinas, LLC (Duke) (collectively, Intervenors).

As you know, the Supreme Court requested briefing and oral argument on South Carolina's exceptions to your First Interim Report. Intervenors were occupied through the October 13th argument date with proceedings before the Court. Last Wednesday, January 20, 2010, the Supreme Court upheld your deternlnation that non-sovereign entities may intervene in equitable apportionment actions and your recommendation that CRWSP and Duke be permitted to intervene, although the Court declined your recommendation that the City of Charlotte be permitted to intervene.

Pursuant to your instructions in your e-mail of today, Intervenors hereby offer the following response. With respect to Case Management Order Nos. 7 and 9 (adopting the Case Management Plan), Intervenors agree that the discovery limitations imposed upon them are no longer appropriate; there is a need to enter a supplemental case management plan which provides Intervenors with the same rights to participate in the case as the party States; and that the supplemental case management plan should also address a discovery schedule, for example, fact and expert discovery deadlines, and a date for service of expert reports. Prior to the Supreme Court upholding your recommendation that CRWSP and Duke be allowed to intervene, neither has pursued affirmative discovery and, as a result, any supplemental case management plan will need to allow sufficient time within which for Intervenors to pursue catch-up discovery. Intervenors propose that they and the party States meet and confer to make a proposal to you on

January 26, 2010

Page 2

a supplemental case management plan, thereby attempting to minimize any discovery scheduling disputes for you to hear. This proposal could be adopted by you through case management order, or heard at the next telephonic status conference.

Document discovery is continuing among the parties without any disputes that require your involvement. CRWSP is still gathering and reviewing documents responsive to South Carolina's request. In addition to documents previously produced by CRWSP, counsel for CRWSP now has received and is reviewing both CRWSP's electronic documents and the responsive documents of Union County. CRWSP is still gathering the responsive documents of LCWSD. Further, North Carolina served a third party subpoena upon LCWSD, to which it responded at length, in writing, on January 13. Production of documents to North Carolina will occur on a rolling basis as set forth in the subpoena response.


Duke has continued to respond to follow up requests from South Carolina for discovery. Duke most recently produced additional documents on January 22, 2010.

As the Special Master is aware, FERC issued its Final Environmental Impact State (FEIS) in July, 2009. There remain two additional steps that must be completed before FERC can issue the new license for the project - a final 401 water quality certificate (or waiver thereof) by South Carolina and the National Marine Fisheries Service (NMFS) Biological Opinion (BO) assessing the likelihood of potential project impacts on (federally endangered) shortnose sturgeon. South Carolina DHEC issued a proposed 401 certificate in May, 2009. At the behest of the SC Attorney General and two environmental groups, the DHEC Board denied issuance of the 401 certificate. Duke Energy has petitioned the FERC to waive South Carolina's 401 on the ground that it was issued after a federal deadline had passed. Duke has also appealed the DHEC denial in South Carolina Administrative Law Court where the SC Attorney General and environmental groups have both intervened. That contested case is currently scheduled for hearing in May, 2010 and a motion for summary judgment is pending. The NMFS BO is expected in the first half of 2010. Thus, FERC may be in a position to issue the new license in the second half of 2010.

Intervenors are aware from media reports that the party States have conducted some settlement-related exchanges, but are not otherwise aware of those efforts. Intervenors intend to inquire with the party States on the status of any settlement discussions and potential participation in such discussions.

Intervenors anticipate that the Special Master will be asked to consider the continuing role of Charlotte in the case and will address that issue once Charlotte has stated its intentions.

Sincerely,

  
James W. Sheedy

January 26, 2010

Page 3

**cc: All Counsel of Record**