IN THE
SUPREME COURT OF THE UNITED STATES

No. 138, Original

STATE OF SOUTH CAROLINA,
Plaintiff,
v.

STATE OF NORTH CAROLINA,
Defendant.

Before the Special Master
Hon. Kristin L. Myles

MOTION OF SOUTH CAROLINA FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF MAY 27, 2008 ORDER GRANTING LIMITED INTERVENTION

In a May 27, 2008 Order ("Order"), the Special Master allowed Duke Energy Carolinas, LLC ("Duke"), the City of Charlotte ("Charlotte"), and the Catawba River Water Supply Project ("CRWSP") to intervene in this original action only for "*limited* purpose[s]." Order at 9, 11, 12 (emphasis added). The Order expressly delineated those limited purposes as to each intervenor, with each permitted to participate to argue against the issuance of a final decree that invalidates their existing interbasin transfer authority under North Carolina law or, in the case of Duke, imposes obligations allegedly inconsistent with federal licenses or the Comprehensive Relicensing Agreement ("CRA"). *See id.* at 8, 11, 12.

Despite those clear terms, each intervenor has recently indicated that it seeks, in the words of Charlotte, "*unfettered opportunities* to participate in all

aspects of Phase I" of the case that relate to them in any way. Charlotte's Response at 7 (June 23, 2008) (emphasis added); *see* Duke Letter at 1 (June 18, 2008) ("Duke's interests are deeply implicated in Phase I"); CRWSP Letter at 1 (June 20, 2008) (claiming that CRWSP is entitled to "a substantive role in [Phase One of] this litigation").

But, as South Carolina and North Carolina agree — and none of the intervenors disputes — Phase One of this case should be limited to the question whether South Carolina can meet its initial burden of showing injury from activities in North Carolina affecting the Catawba River Basin. Only after finding that South Carolina has crossed that threshold will the Court, in Phase Two, confront the question of what is the equitable apportionment of the River — and only *that* decision raises the prospect of a judicial ruling that would require the intervenors to modify their current practices. Therefore, South Carolina seeks an order reaffirming that Duke, Charlotte, and CRWSP are intervenors in this original action *solely* for limited purposes and clarifying that those limited purposes extend only to defending against the issuance of a decree that would invalidate, in whole or in part, existing interbasin transfer authority or impose conditions inconsistent with Duke's federal licenses and the CRA.

In the alternative — if the intervenors are to be afforded, in effect, full party status, rather than the narrowly limited intervention authorized in the Order — South Carolina seeks reconsideration of the decision to permit intervention. In the Order, the Special Master correctly rejected the bulk of the reasons Charlotte,

CRWSP, and Duke proffered in support of their motions for intervention. The few rationales that were accepted — that Charlotte and CRWSP hold interbasin transfer authority and were mentioned by name in the complaint, and that a decree could conflict with Duke's licenses and the CRA — are insufficient to satisfy the high burden that the Supreme Court established and that no prior potential intervenor in an equitable apportionment case (let alone *three*) has ever satisfied.

I. The Special Master Should Clarify That The Limited Purposes For Which Intervention Was Permitted Are Implicated Only In Phase Two

The Order granting the motions for intervention is clear that Charlotte, CRWSP, and Duke were each permitted to intervene in this Original action only for a "*limited* purpose." Order at 9 (Charlotte) (emphasis added); *accord id.* at 11 (CRWSP); *id.* at 12 (Duke). The Order, moreover, precisely identified the limited purpose for which each party was permitted to intervene.

With respect to Charlotte, the Order concluded that Charlotte has a "unique interest in protecting its inter-basin transfer permit" against "an *injunction* invalidating all or a portion of North Carolina's inter-basin transfer statute or the certificates granted under it." *Id.* at 8 (emphasis added). The Order then described this particular interest as "sufficiently compelling and concrete to warrant intervention *for the limited purpose* of protecting its interest in defending the current inter-basin transfer regime, and its own permit in particular." *Id.* at 9-10 (emphasis added).

With respect to CRWSP, the Order concluded that CRWSP, "like Charlotte," has "a direct stake in defending its North Carolina authorized transfer" against

invalidation. *Id.* at 11. The Order again described this as a "compelling interest in defending its ability to execute th[at] transfer" and allowed CRWSP to "intervene *for that limited purpose*." *Id.* (emphasis added).

With respect to Duke, the Order concluded that Duke has a "unique and compelling interest in defending the terms of its current license and the CRA" and noted Duke's claim that the "*outcome* of this action" — which could result in a "*Court-ordered* alteration of the flow" — could "have a direct effect on [Duke's] operations." *Id.* at 11-12 (emphases added). The Order then found that Duke's "interest in defending [the CRA], as well as its current and future licenses," and the possibility that "it could be subject to conflicting obligations if the Court apportions the river in a way that conflicts with the terms of its license," are "sufficient to warrant intervention *for the limited purposes* discussed." *Id.* at 12 (emphasis added).

These clear limitations, moreover, followed directly from those entities' representations at the March 28, 2008 hearing on their motions to intervene. Counsel for Duke, for example, recognized that "any private entity [in an original action] has to have a *somewhat limited role*" that is "secondary . . . to the States." Mar. 28, 2008 Tr. at 16 (emphasis added). Counsel for Duke also acknowledged that it is "clear" that what an intervenor "could normally do . . . in traditional litigation *is not available* to us in this particular forum" — and that Duke "do[es]n't have any quarrel with that." *Id.* at 21 (emphasis added). Similarly, counsel for CRWSP stated clearly that CRWSP "hope[d] to intervene *just for the purpose* of"

defending its interbasin transfer authorization from any "*decree* in the case" that might "limit[]" CRWSP's "interbasin transfer." *Id.* at 31, 36 (emphases added). Charlotte's counsel expressly acknowledged that the Court "can limit [its] intervention" and that Charlotte, moreover, would "self-condition [its] participation in the case" to only those "things that directly affect [it]." *Id.* at 53. Charlotte's counsel also acknowledged that its concern is with the ultimate "*relief*" in this case, and noted its interest in "develop[ing] the kind of factual record on the *equities* that would justify and defend [its] current and projected water uses" in the consideration of any apportionment of the Catawba River. *Id.* at 75 (emphases added).

Although South Carolina disagrees with the decision to grant these parties any intervenor status at all, South Carolina expected that the intervenors would comply with the Order's unambiguous limitations imposed on their intervenor status. Nonetheless, each of the intervenors has now sought to weigh in on additional issues, such as the division of this case into phases, with Charlotte going so far as to file a brief — despite the fact that the Special Master sought briefs on the phasing of this case only from the party States. Moreover, each intervenor has expressed its belief that it is entitled to "*unfettered opportunities* to participate in all aspects of Phase I" of the case that relate to it in any way. Charlotte's Response at 7 (June 23, 2008) (emphasis added); *see* Duke Letter at 1 (June 18, 2008) ("Duke's interests are deeply implicated in Phase I"); CRWSP Letter at 1 (June 20, 2008) (claiming that CRWSP is entitled to "a substantive role in [Phase One of] this litigation").

Those positions are incorrect. As the Order makes clear, Charlotte, CRWSP, and Duke were each permitted to intervene for the limited purpose of arguing that any *relief* awarded to South Carolina in this case — such as an "injunction" or other "Court-ordered alteration of the flow" of the Catawba River, Order at 8, 12 — should not alter their existing interbasin transfer authority or impose conditions inconsistent with Duke's federal licenses and the CRA. Those purposes are not implicated in Phase One of this litigation, which South Carolina and North Carolina agree concerns only whether South Carolina can carry its initial burden of showing harm. *See* SC Brief Concerning Phase One and Phase Two Issues and Timing at 2 (June 16, 2008) ("SC 6/16/08 Br."); NC Brief Regarding Issues for Phase I at 2 (June 16, 2008). As South Carolina has explained — and neither North Carolina nor the intervenors have seriously disputed — the Court's precedents confirm that South Carolina may satisfy that threshold burden of proving injury based on a range of factors, or a combination thereof, resulting from harms to water quantity and water quality (including assimilative capacity for waste water). Those harms may include (but are not limited to) harms to environmental, recreational, commercial, industrial, agricultural, and other similar interests. *See* SC 6/16/08 Br. at 8-11. South Carolina, therefore, is *not* limited to showing only that particular actions of Charlotte, CRWSP, or Duke have caused (or threaten to cause) it harm.

As a result, the question whether South Carolina has satisfied its initial burden is one that can be "properly represented by the state" of North Carolina as *parens patriae*, *New Jersey v. New York*, 345 U.S. 369, 373 (1953) (per curiam).

North Carolina must defend against South Carolina's showing of injury in *all* its aspects in order to prevent the Court from moving on to Phase Two, weighing the equities, and adopting a decree apportioning the Catawba River. Indeed, in finding that North Carolina did not properly represent Charlotte's interests — despite the fact that North Carolina "disput[ed] Charlotte's suggestion that North Carolina would not represent [those] interests" — the Order identified only Charlotte's interest in showing why "*relief* against [it] individually should not be granted." Order at 9 (emphasis added; internal quotation marks omitted; third alteration in original). The Order never suggested that North Carolina cannot properly represent Charlotte's interests — or Duke's or CRWSP's, for that matter — on the threshold question whether actions in North Carolina, including, in particular, actions taken under the auspices of North Carolina law, have injured South Carolina.

Moreover, as South Carolina argued in its Briefs on the Scope of the Complaint, it is the *cumulative* impact of all water uses and other activities in North Carolina affecting the Catawba River Basin that will be assessed to determine whether South Carolina can meet its threshold showing of harm. *See* SC Brief in Response to CMO No. 3 as to Scope of Complaint at 5-8 (Mar. 20, 2008) ("SC 3/20/08 Br."); *see also infra* pp. 11-12. Although the nature and extent of the particular harms identified in Phase One may inform the inquiry into what type of a decree should issue, they will not control the scope of the decree. *See* SC 6/16/08 Br. at 12-14. And regardless of the particular uses that contribute to South

Carolina's showing of harm (whether those of the intervenors or of other water users), the Court's decree may properly limit North Carolina to a fixed (and lower) quantity of water, leaving it to North Carolina to allocate that reduced volume of water among the competing users in that State. North Carolina could then decide — as a matter of internal state policy — to curtail the intervenors' consumptive uses in favor of those of other users, irrespective of whether the Court found that the intervenors' uses caused harm to South Carolina. Therefore, any interest the intervenors have in arguing that their particular water usage should be preserved or obligations should not be altered is implicated only at Phase Two of this case; nothing those entities might seek to prove during Phase One about whether harm in South Carolina is attributable to their specific actions will preclude the issuance of a decree during Phase Two that directly or indirectly affects them.

For the foregoing reasons, the Special Master should issue an order reaffirming that Duke, Charlotte, and CRWSP are intervenors in this original action *solely* for the limited purpose of defending against the issuance of a decree that would invalidate, in whole or in part, existing interbasin transfer authority or impose conditions inconsistent with Duke's federal licenses and the CRA. The order should further clarify that this means that Charlotte, CRWSP, and Duke are not parties with rights to participate in Phase One of this case, including to seek discovery and to file motions or briefs (except in objecting to discovery requested of them).

II. The Decision To Permit Intervention Should Be Reconsidered, And Reversed

In the event the Special Master does not reject Charlotte's, CWRSP's, and Duke's new claims that they may participate in aspects of the case that go beyond the "limited purpose" for which they were permitted to intervene — making them, in effect, full parties to this case — South Carolina respectfully requests that the Special Master reconsider, and reverse, the decision to allow Charlotte, CWRSP, and Duke to intervene in this original action.

In a case directly on point, the Supreme Court has reaffirmed "the principle that the state, when a party to a suit involving a matter of sovereign interest, *must* be deemed to represent all its citizens," describing that principle as a "necessary recognition of sovereign dignity, as well as a working rule for good judicial administration," so that the Court is not "drawn into an intramural dispute over the distribution of water within" a State. *New Jersey*, 345 U.S. at 372-73 (emphasis added; internal quotation marks omitted). The Court denied the City of Pennsylvania's effort to intervene, despite its claim that the Court's decree could interfere with its state-law authorization — in its "Home Rule Charter" — to manage its "own water system," recognizing that any interest in avoiding a conflict with that Charter "is invariably served by [Pennsylvania's] position" and finding that Philadelphia had not "point[ed] out a single concrete consideration in respect to which [Pennsylvania's] position does not represent Philadelphia's interests." *Id.* at 374. Although the Court left open the possibility that a potential "intervenor whose state is already a party" might overcome "the burden of showing some compelling

interest in [its] own right, apart from [its] interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state," *id.* at 373, the Court has never found that burden overcome in an equitable apportionment case. This Court's conclusion that *three* entities have done so in this case is both unprecedented and in error.

Charlotte and CRWSP. In finding that Charlotte and CRWSP showed a "compelling interest in [their] own right, apart from [their] interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state," *New Jersey*, 345 U.S. at 373, the Order focused on the fact that Charlotte and CRWSP have authorizations under North Carolina's interbasin transfer statute, *see* Order at 8, 11. That fact is insufficient to meet *any* of the three criteria set forth by the Court, much less *all* of them.

First, any interest Charlotte and CRWSP have in preserving those authorizations cannot rise to a "compelling" interest in the context of an equitable apportionment case. *Id.* "The question of apportionment of interstate waters is a question of 'federal common law' upon which state statutes or decisions are not conclusive." *Illinois v. City of Milwaukee*, 406 U.S. 91, 103, 105 & n.7 (1972); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938). Equitable apportionment rests on federal common law precisely because "state law cannot be used" to resolve disputes between States about the use of an interstate river. *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981); *see also Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 & n.13 (1981) ("our federal

system does not permit the controversy to be resolved under state law"). Indeed, in *Hinderlider*, this Court held that "apportionment [by this Court] is binding upon the citizens of each State and all water claimants," even where the State had previously allocated state-law water rights among individual claimants. 304 U.S. at 106. Any interest Charlotte and CWRSP have in defending a state-law authorization, therefore, cannot be compelling as a matter of law in the context of an equitable apportionment case, where that authorization is plainly subordinate to the federal common law principles that govern here.

Nor can that interest be transformed into a compelling one simply because South Carolina's complaint mentions North Carolina's decisions to authorize Charlotte and CWRSP to engage in such transfers. *See* Order at 8, 10. Contrary to the claim in the Order, those references do not make Charlotte or CWRSP akin to the City of New York, which the Court in *New Jersey* described as "the authorized agent for the execution of the sovereign policy which threatened injury to the citizens of New Jersey." 345 U.S. at 375; *compare* Order at 8, 11 (quoting "authorized agent"). In *New Jersey*, the *sole* basis of the complaint was the City of New York's proposed construction of dams, and New Jersey's *sole* goal was to stop construction of those dams.[1] Here, South Carolina challenges North Carolina's enactment and implementation of its interbasin transfer statute (based upon federal constitutional and common law) as part of its challenge to the *totality* of all North Carolina uses of the Catawba River Basin, which South Carolina alleges

[1] *See* Report of the Special Master at 7-8, *New Jersey v. New York*, No. 16, Orig. (U.S. filed Feb. 2, 1931).

exceeds North Carolina's equitable share of the River. *See* SC 3/20/08 Br. at 4-5. Indeed, the Special Master rejected North Carolina's attempt to limit South Carolina's claim of harm to consumptive uses from interbasin transfers,[2] finding that the "pleadings are broader than North Carolina has tried to say they are" and that they "fairly encompass a broader request for relief in the form of an equitable apportionment." May 23, 2008 Tr. at 7. On that proper understanding of South Carolina's complaint, neither Charlotte nor CRWSP is akin to the City of New York.

Moreover, in *New Jersey*, the Court's use of the term "authorized agent" to describe the City of New York was in the service of its explanation for why the City had been "forcibly joined as a defendant," *not* why it was "admitted into th[e] litigation as a matter of discretion at [its] request." 345 U.S. at 374-75. South Carolina, however, did not seek to join either Charlotte or CRWSP as a defendant in this case. The Order recognizes that South Carolina is "master of its complaint," but suggests that this rule "has less force in cases falling under the Court's original jurisdiction." Order at 5. But the fact that the Court has discretion to decline to hear a dispute between two States or can dismiss private parties named in a complaint, *see id.*,[3] in no way suggests that the Court, in original actions, is free to

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[2] NC Brief in Response to CMO No. 3 Regarding Scope of Pleadings at 8 (Mar. 20, 2008). North Carolina also sought to limit South Carolina's claim of harm to times of drought and areas above and including Lake Wateree. *See id.* The Special Master rejected those limitations as well. *See* May 23, 2008 Tr. at 7.

[3] In fact, the Court dismissed the private defendants in *Kentucky v. Indiana*, 281 U.S. 163 (1930), only after finding that the injunction Kentucky had sought against them "for the purpose of . . . restraining the prosecution of [a] suit in the state court" was "not needed, as a decree in this suit would bind the state of Indiana" and, therefore, would of its own force "bar any inconsistent proceedings" in

bypass the defendant State's duty as *parens patriae* to represent the interests of all citizens by adding non-essential, non-sovereign defendants over the objection of the complaining State.[4] Indeed, the Order cites no case standing for that proposition, and this case instead is governed by the general rule that courts are not "to inquire whether some other person might have been joined as an additional . . . defendant." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 93 (2005).

Second, the fact that Charlotte and CRWSP hold interbasin transfer authorizations does not set them "apart from . . . a class with all other citizens and creatures of the state" for purposes of this case. *New Jersey*, 345 U.S. at 373. As explained above, "state law cannot be used" to resolve disputes between States about the use of an interstate river. *City of Milwaukee*, 451 U.S. at 313 n.7. And it is the cumulative effect of water uses and other activities in North Carolina that is of ultimate importance to South Carolina's showing of harm. Therefore, for purposes of the equitable apportionment of the Catawba River, Charlotte and CRWSP stand in the exact same position as *all* other users of the River in North Carolina, each of which has an interest in ensuring that any equitable apportionment of the River does not disrupt its current water usage. In any event,

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Indiana state courts. *Id.* at 175. The same is true here. Any decree would bind the prospective intervenors here, "through representation by their respective States," from taking actions inconsistent with the decree. *Nebraska v. Wyoming*, 515 U.S. 1, 22 (1995). Therefore, to the extent *Kentucky* has relevance here, it suggests that South Carolina would have acted improperly if it had named Charlotte or CRWSP (or Duke) as defendants in this case.

[4] That fact distinguishes this case from *Texas v. Louisiana*, 426 U.S. 465 (1976) (per curiam), in which the United States — which claimed title to a single island to which the City of Port Arthur also claimed title — did not oppose the City's intervention.

we respectfully submit that the Special Master erred in limiting the inquiry to the "three interbasin transfers that South Carolina identifies in its Complaint," suggesting that those three transferors are the only "similarly situated entities." Order at 10. Not only is that suggestion inconsistent with the Special Master's conclusion that South Carolina's complaint is not limited to those transfers, as North Carolina has argued, but it also ignores that North Carolina has identified at least 22 others transferring water from the Catawba River Basin, which North Carolina's interbasin transfer statute expressly authorizes (but for which a specific permit is not required). *See* SC 3/20/08 Br. at 5 & Ex. 1. Even if Charlotte and CRWSP had a cognizable interest in "defending the current inter-basin transfer regime," the same would be true of each of those other transferors (and others), precluding any "'practical limitation' on the number of similarly situated entities that would be entitled to be made parties" on the theory in the Order. Order at 9-10 (quoting *New Jersey*, 345 U.S. at 373).

Third, the Special Master erred in concluding that the interest of Charlotte and CRWSP "is not properly represented by the state." *New Jersey*, 345 U.S. at 373. With respect to this factor, the Order states only that the Court did not require a potential intervenor to show that the State is "incapable of representing the proposed intervenor's interests, such as because their interests are in conflict." Order at 8-9. Even if the Court's standard does not require a showing of direct conflict, however, it requires *some* showing of inadequacy. At a bare minimum, it requires the potential intervenor to "point out a single concrete consideration in

respect to which the [State's] position does not represent [the potential intervenor's] interests." *New Jersey*, 345 U.S. at 374.[5] The Order, however, does not identify *any* "concrete consideration" in which the interests of Charlotte, CRWSP, and North Carolina diverge, or in which North Carolina's representation of the interests of Charlotte and CRWSP is improper. That is because North Carolina has the *same* interest in "defending the current inter-basin transfer regime" and the "permit[s]" issued thereunder as Charlotte and CRWSP, if not a greater one. Order at 9-10.

In fact, there is only one way in which Charlotte's, CRWSP's, and North Carolina's interests may diverge with respect to the formers' interbasin transfer authorizations: if faced with a decree requiring it to consume less Catawba River Basin water, North Carolina may decide that others' uses are more important and that Charlotte and/or CRWSP must reduce their consumption below previously authorized levels. But that is precisely the type of "intramural dispute over the distribution of water within" a State that the Court has made clear that it should *not* be "drawn into." *New Jersey*, 345 U.S. at 373. That potential divergence of interests, therefore, cannot constitute a manner in which Charlotte's and CRWSP's interests are "not properly represented by the state." *Id.*

Duke. In finding that Duke made a showing that satisfied the *New Jersey* test, the Order focused on Duke's claim that it "controls the flow of the Catawba

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[5] In fact, the standard is much higher than that bare minimum. Indeed, it is hornbook law that, even under the "adequate[] represent[ation]" standard in Federal Rule of Civil Procedure 24(a)(2), it will be presumed, "in the absence of a very compelling showing to the contrary, [that] . . . a state . . . adequately represent[s] the interests of its citizens." 7C Charles A. Wright, *et al.*, *Federal Practice and Procedure* § 1909, at 414-22 (3d ed. 2007).

River" and that "any Court-ordered alteration of the flow would [likely] be carried out by Duke," as well as Duke's asserted "interest in defending" the CRA and "its current and future licenses," as it "could be subject to conflicting obligations if the Court apportions the river in a way that conflicts with the terms of its license." Order at 12. But these claims misperceive the nature of the relief that South Carolina seeks and the interests that Duke has asserted.

South Carolina seeks a decree that would apportion the Catawba River and *reduce* the total consumption and pollution by entities in North Carolina as a whole. Any such reductions would necessarily *increase* the amount of water available for Duke to manage and to discharge into South Carolina, particularly in times of drought or low flows. The availability of such additional water would make it *easier*, not harder, for Duke to manage the flow of the River and to meet any obligations it has in its licenses or in the CRA (if and when approved by FERC). The CRA, moreover, expressly *disclaims* resolution of the water rights issues raised in this case,[6] so there can be no conflict between the agreement and the determination of North Carolina's and South Carolina's respective rights to the River in this case. In short, the Order identifies no serious likelihood that the Court's decree could conflict with federal licenses or the CRA — each of which the Court can take public notice of and consider without Duke's presence as an

[6] *See* CRA § 39.9 ("Water Rights Unaffected – This Agreement does not release, deny, grant or affirm any property right, license or privilege in any waters or any right of use in any waters.").

intervenor. There is, therefore, no "compelling" interest of Duke's with regard to those issues that would justify intervention.[7]

Instead, the only way a decree providing additional water for Duke to manage could implicate Duke's interests would be if that decree also limited Duke's ability to *consume* that water. But Duke has not asserted any interests as a consumer, nor would such interests justify intervention here. To the extent Duke consumes water in North Carolina, that State represents its interests here; the same is true of South Carolina, to the extent Duke consumes water on that side of the boundary. As the Special Master correctly found with respect to CRWSP, as an "ordinary user of water," Duke lacks "a sufficiently compelling basis to intervene in an original action." Order at 11. Moreover, the fact that Duke uses water on both sides of the boundary does not help its cause: because ordinary consumers on each side cannot "intervene in [their] own right, it is hard to see a basis for allowing them to intervene together simply by joining forces." *Id.*

[7] In addition, with respect to the CRA — to which Duke is one of "70 stakeholder[]" signatories, Order at 11 — the Order identifies no respect in which North Carolina will not represent any interest Duke (and the other signatories) may have in that agreement. Indeed, North Carolina itself has argued that the CRA is sufficient to protect South Carolina's interests. *See* NC Brief in Opposition at 11-17 (Aug. 7, 2007). As to the CRA, moreover, Duke's status as a signatory provides no "'practical limitation' on the number of similarly situated entities that would be entitled to be made parties" on the theory in the Order. Order at 10 (quoting *New Jersey*, 345 U.S. at 373).

CONCLUSION

For the foregoing reasons, the Special Master should issue an order clarifying that Duke, Charlotte, and CRWSP are intervenors only for the limited purpose of defending against an adverse decree. In the alternative, the decision to permit intervention should be reconsidered and Duke, Charlotte, and CRWSP should be denied permission to intervene.

Respectfully submitted,

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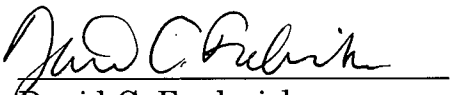
CERTIFICATE OF SERVICE

Pursuant to Rule 29.5 of the Rules of this Court, I certify that all parties required to be served have been served. On June 27, 2008, I caused copies of the Motion of South Carolina for Clarification or, in the Alternative, for Reconsideration of May 27, 2008 Order Granting Limited Intervention to be served by first-class mail, postage prepaid, and by electronic mail (as designated) on those on the attached service list.



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