

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. 138, Original

STATE OF SOUTH CAROLINA,  
*Plaintiff,*

v.

STATE OF NORTH CAROLINA,  
*Defendant.*

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Before the Special Master  
Hon. Kristin L. Myles

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CITY OF CHARLOTTE'S REPLY IN SUPPORT OF MOTION FOR PERMISSION TO  
PARTICIPATE AS AN *AMICUS CURIAE*

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April 16, 2010

In its partial opposition to Charlotte's motion to participate as an *amicus curiae*, South Carolina reiterates its general position that Charlotte should be allowed to participate in that role. See Partial Opposition of the State of South Carolina to City of Charlotte's Motion to Participate as an *Amicus Curiae* ("SC Opp.") at 1. South Carolina does not dispute or qualify its position that *amici's* participation should enable them to "represent their interests," <sup>1/</sup> and does not dispute Charlotte's explanation of its interest in this case, as illuminated by the Court's characterization of the narrow, targeted scope of South Carolina's Complaint. See City of Charlotte's Motion for Permission to Participate as an *Amicus Curiae* ("Charlotte Mot.") at 3-5. Instead, South Carolina contends that the specific forms of participation requested by Charlotte would "significantly burden or prejudice South Carolina, or unnecessarily tax the resources of the parties and of the Special Master," and "would interfere materially with the efficient resolution of this original action." SC Opp. at 1.

None of the other Parties has raised such concerns. North Carolina supports Charlotte's motion and the types of participation requested by Charlotte. See State of North Carolina's Response in Support of City of Charlotte's Motion for Permission to Participate as an *Amicus Curiae* at 1. Duke and CRWSP have authorized Charlotte to state that the Intervenors do not oppose Charlotte's motion to participate as an *amicus* on whatever terms the Special Master deems helpful and appropriate.

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<sup>1/</sup> See Exceptions of the State of South Carolina to First Interim Report of the Special Master at 54. See also Charlotte Mot. at 3 n.1 (citing Sur-Reply Brief of the State of South Carolina in Support of Exceptions to First Interim Report of the Special Master at 13; Brief of the State of South Carolina in Opposition to Motion for Leave to Intervene of the City of Charlotte, North Carolina at 11; Brief of the State of South Carolina in Opposition to Motion of the Catawba River Water Supply Project for Leave to Intervene at 8; Brief of the State of South Carolina in Opposition to Duke Energy Carolinas, LLC's Motion for Leave to Intervene and File Answer at 14).

In contrast to South Carolina's general predictions of significant burdens, prejudice and delays, its specific objections to Charlotte's participation are quite modest. For the reasons set forth below, Charlotte believes South Carolina's concerns should not prevent Charlotte's participation to the extent requested.

1. Participation in Conferences. South Carolina objects to Charlotte's participation in conferences with the Special Master, contending that Charlotte should be content with reviewing conference transcripts. SC Opp. at 5. Charlotte believes live participation would be much more useful and efficient. If matters pertaining to Charlotte's interests arise during conference discussions, Charlotte's brief interjections or answers to questions would be far more useful to the Parties and the Special Master than subsequent submissions by Charlotte to correct or clarify such matters following its review of conference transcripts.

South Carolina also contends that Charlotte should have no speaking role in the conferences (except in response to direct inquiries), but South Carolina does not identify any anticipated burden or prejudice to South Carolina that a normal speaking role for Charlotte might produce. Again, in the interest of efficiency, Charlotte requests the opportunity to speak up when matters affecting its interests arise during conferences. Charlotte believes its prior record of participation in conferences provides the necessary assurance that its involvement in conferences would neither burden nor prejudice South Carolina.

In addition, South Carolina stresses that the Special Master should not consider Charlotte's needs in scheduling any conferences. SC Opp. at 6. Charlotte has not requested such consideration, but would appreciate any courtesies the Special Master and the Parties might extend in this regard.

2. Service of Documents. South Carolina objects to Charlotte's request to be served with documents on the basis that the Parties would be required to maintain a separate service list, excluding Charlotte, for confidential materials. SC Opp. at 7. Charlotte views this as a truly minor inconvenience, and would be willing to perform the chore itself if South Carolina finds it too burdensome to do so.

3. Attendance at Hearings. With respect to Charlotte's attendance at hearings, South Carolina does not object provided that Charlotte's scheduling needs are not considered and Charlotte is allowed to speak only with the Special Master's permission. SC Opp. at 8. Charlotte will abide by whatever schedule suits the Special Master and the Parties, and would not expect to speak except with permission from the Special Master.

But South Carolina goes further, contending the Special Master should limit any permission for Charlotte to speak, consistent with the Supreme Court's rules governing divided argument (Sup. Ct. R. 28.4) and argument by *amicus curiae* (Sup. Ct. R. 28.7). SC Opp. at 8. While the Special Master may well choose to apply the Supreme Court's restrictive rules governing oral argument on suitable occasions, Charlotte's understanding is that the Parties and the Special Master generally intend to use the Federal Rules of Civil Procedure as a guide, and that hearings and arguments will continue to be conducted in the less-formalistic manner traditionally employed by federal district courts. South Carolina provides no basis for seeking to apply procedural handcuffs to the Special Master's decisions regarding Charlotte's participation at hearings.

4. Attendance at Depositions. South Carolina objects to Charlotte's attendance at most depositions, asserting that Charlotte's counsel might take too much time to leave the room when necessary, Charlotte should have no right to utilize allotted time for asking questions of

witnesses Charlotte's counsel does not represent, and Charlotte might take too much time to confer with North Carolina's counsel. SC Opp. at 9. Charlotte commits to exiting quickly when required, makes no general request for permission to question witnesses, and promises to keep conferences with other counsel as brief as possible. There is no need for a blanket restriction on Charlotte's attendance at depositions.

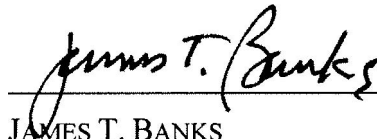
5. Request for General Standards. Finally, South Carolina requests that the Special Master establish general standards governing any future requests by Charlotte or others for *amicus* participation. SC Opp. at 11. Charlotte sees no need for such an investment of the Special Master's or the Parties' resources at this point. No other requests for *amicus* participation are pending or likely, and Charlotte is the only entity for which the Court, the Parties and the United States have all suggested that participation as an *amicus curiae* would be appropriate in this case. There is no basis for concern that Charlotte will burden the Special Master or the Parties with undue motions for specific opportunities to participate in the future. If the Special Master deems it advisable to develop such standards, however, Charlotte disagrees with the principle urged by South Carolina - whether "Charlotte can demonstrate that its specific contribution to the case will be helpful to the Court, above and beyond North Carolina's representation of Charlotte . . . ." SC Opp. at 4. Instead, the Special Master should consider whether Charlotte's participation would be helpful given Charlotte's unique interest, expertise, command of information and perspective as the principal target of South Carolina's Complaint in this case.

\* \* \*

For the foregoing reasons, the Special Master should grant Charlotte's motion and issue an order: (1) allowing Charlotte to participate as an *amicus curiae*, (2) permitting Charlotte to

participate in conferences, (3) directing the Parties to serve Charlotte with non-confidential documents served on Parties or filed with the Special Master; (4) allowing Charlotte to attend all hearings and depositions; and (5) providing that Charlotte may seek the Special Master's permission to participate more fully in specific aspects of the proceedings in order to aid in the Special Master's consideration of factual and legal questions and to present Charlotte's interests.

Respectfully submitted,



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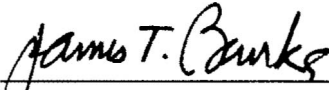
STATE OF NORTH CAROLINA,  
*Defendant.*

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**CERTIFICATE OF SERVICE**

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Pursuant to Rule 29.5 of the Rules of this Court, I certify that all parties required to be served have been served. On April 16, 2010, I caused copies of Charlotte's Reply in Support of Motion for Permission to Participate as an *Amicus Curiae*, to be served by first-class mail, postage prepaid, and by electronic mail (as designated) to those on the attached service list.

  
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