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June 23, 2010

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 Fifteenth Progress Report**

Dear Special Master Myles:

In advance of our next telephonic hearing on June 25, 2010, we respectfully submit South Carolina's fifteenth progress report concerning events that have occurred since the fourteenth progress report, dated January 26, 2010.

Document discovery and review are ongoing. South Carolina made its sixth, seventh, and eighth productions of documents on March 5, 2010, April 2, 2010, and June 23, 2010, respectively. North Carolina made its sixth production of documents on February 1, 2010. Based on the automated counts in our litigation document database, South Carolina to date has produced approximately 53,400 documents, as compared with approximately 70,000 documents produced by North Carolina; in fact, by comparison, South Carolina has produced more than 53,400 documents, because North Carolina's production treats e-mails and their attachments as separate documents, but South Carolina's production does not. On March 12, 2010, North Carolina also forwarded documents received in response to its subpoenas.

On April 7, 2010, Duke Energy Carolinas served its First Request for the Production of Documents to the State of South Carolina, to which South Carolina provided responses and objections on May 7, 2010. Duke's requests were largely if not entirely duplicative of North Carolina's previous document requests. In addition, South Carolina's eighth production of documents served on June 23, 2010, contained additional documents responsive to both Duke's and North Carolina's document requests.

On May 19, 2010, pursuant to a subpoena served by South Carolina, South Carolina received a second production of documents from Duke's consultant, HDR Engineering, Inc., which consists mainly of voluminous data files concerning

computer modeling of the Catawba River Basin by HDR and Duke. On June 23, 2010, South Carolina forwarded Bates-stamped copies of that production to North Carolina and intervenors. Because HDR designated its entire production as confidential, South Carolina has not forwarded copies to the City of Charlotte, pursuant to paragraph two of the Order Granting City of Charlotte's Motion to Participate as an *Amicus Curiae* (June 16, 2010). Counsel for the party States and intervenors also have been working with HDR and its escrow vendor to finalize the necessary contract and protective order for production by HDR of the source code for the computer model used by Duke and HDR.

On February 23, 2010, North Carolina served its First Set of Contention Interrogatories on South Carolina. South Carolina served its responses to those contention interrogatories on April 2, 2010, as well as Supplemental Responses to Defendant North Carolina's First Set of Interrogatories. On May 7, 2010, North Carolina sought clarification of those responses in certain respects, and South Carolina provided a detailed response to North Carolina's letter on June 7, 2010. On May 4, 2010, South Carolina served its First Set of Contention Interrogatories to North Carolina, and North Carolina responded on June 4, 2010.

Finally, during the hearing in Raleigh, North Carolina, on April 23, 2010, the Special Master inquired about the FERC relicensing proceeding and related matters. The parties noted that the South Carolina Department of Health and Environmental Control ("SCDHEC") had denied Duke's application for a section 401 water quality certification, the grant of which is a prerequisite before FERC may grant Duke's application for a new federal hydropower license. Duke challenged SCDHEC's denial in South Carolina state tribunals, and the South Carolina Attorney General's Office intervened to protect South Carolina's interests in this litigation. On May 5, 2010, Duke and the Attorney General reached a settlement in connection with the section 401 water quality certification, under which the Attorney General has withdrawn his objections and intervention, and Duke has committed to certain enhancements to water quantity and quality, as set out in the attached settlement documents filed with the South Carolina Administrative Law Court. Subsequently, that court granted summary judgment against SCDHEC, on the procedural ground that SCDHEC waived its right to rule on Duke's application by not issuing its decision within a 180-day time period set out under state law. See Order on Motion for Summary Judgment at 13-14, *Duke Energy Carolinas, LLC v. South Carolina Dep't of Health & Envtl. Control*, No. 09-ALJ-07-0377-CC (S.C. Admin. L. Ct. June 10, 2010).

Special Master Kristin L. Myles

June 23, 2010

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Frederick". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

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

cc: Case Management Plan, Appendix A, Service List

Attachment: South Carolina Motion to Withdraw and Settlement Agreement
Between Duke Energy Carolinas, LLC and South Carolina Attorney
General (May 5, 2010)



FILED

MAY 05 2010

SC ADMIN. LAW COURT

HENRY McMASTER
ATTORNEY GENERAL

May 5, 2010

The Honorable Ralph K. Anderson, III
Administrative Law Court
1205 Pendleton Street
Edgar A. Brown Building, Suite 224
Columbia, South Carolina 29201-3755

Re: *Duke Energy Carolinas, LLC v. South Carolina Department of Health and Environmental Control, et al.*, Docket No. 09-ALJ-07-0377-CC

Dear Judge Anderson:

Upon consent of Petitioner, Duke Energy Carolinas, LLC, Intervenor, South Carolina Attorney General moves this Court to withdraw as a party to the above-referenced matter and to dismiss its defenses and claims with prejudice. Based upon memoranda of law filed in this case, Intervenor, South Carolina Attorney General, no longer contests the Motion for Summary Judgment filed by Petitioner and set for hearing May 6, 2010. As a collateral matter, Duke Energy and the South Carolina Attorney General have agreed that the outstanding motions related to discovery between Duke and South Carolina are moot and are withdrawn.

Yours very truly,

Henry McMaster

HM/an

The Honorable Ralph K. Anderson, III

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May 5, 2010

cc: Nash E. Long, III, Esquire
James W. Potter, Esquire
W. Thomas Lavender, Jr., Esquire
Stephen P. Hightower, Esquire
Christopher K. DeScherer, Esquire
Julia F. Youngman, Esquire
Richard Roos-Collins, Esquire

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the South Carolina Attorney General's Office, and that on the 5th day of May, 2010, in Columbia, South Carolina, I served a copy of the foregoing letter dated May 5, 2010 from Attorney General Henry McMaster to The Honorable Ralph K. Anderson, III and a copy of the Settlement Agreement Between Petitioner, Duke Energy Carolinas, LLC, and Intervenor, South Carolina Attorney General, dated May 5, 2010, on the following persons by causing the same to be deposited in the United States Mail, postage prepaid, as shown below. I have also on the 5th day of May, 2010 e-mailed pdf copies to the e-mail addresses shown below.

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W. Thomas Lavender, Jr., Esquire
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FILED

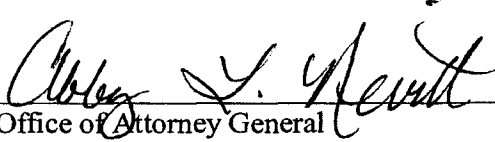
MAY 05 2010

SC ADMIN. LAW COURT

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FILED

MAY 05 2010

STATE OF SOUTH CAROLINA
BEFORE THE ADMINISTRATIVE LAW COURTS SC ADMIN. LAW COURT

Duke Energy Carolinas, LLC, Petitioner, v. South Carolina Department of Health and Environmental Control, Respondent, South Carolina Attorney General, American Rivers, and the South Carolina Coastal Conservation League, Respondent-Intervenors	Docket No. 09-ALJ-07-0377-CC
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**SETTLEMENT AGREEMENT BETWEEN PETITIONER,
DUKE ENERGY CAROLINAS, LLC, AND INTERVENOR,
SOUTH CAROLINA ATTORNEY GENERAL**

Petitioner, Duke Energy Carolinas, LLC ("Duke"), and Intervenor, South Carolina Attorney General Henry D. McMaster ("Attorney General"), having entered into negotiations agree to settle this matter on the terms and conditions contained herein.

PREAMBLE

The South Carolina Attorney General has been involved in the relicensing of the Duke hydroelectric power plants, which are the subject of this 401 Water Quality Certification case. As a result of input and efforts of the Attorney General, Duke agrees to provide improved water quality and water flow through the dam system as described below in settlement of all issues raised by the Attorney General in this 401 Certification proceeding.

Duke recognizes revisions to current dam operations contained in this Agreement are accomplished by the work of the Attorney General and as the result of this agreement, Duke will redirect water resources from power production during peak periods to enhance the quantity and quality of the Catawba River Basin. Moreover, the projected inter-basin transfer flows from a water study conducted by Duke in 2006 are important data that should be considered in the assessment of inter-basin transfers in the Catawba River Basin when making the future management decisions.

AGREEMENT

The Attorney General agrees to send a letter to Judge Anderson prior to May 6, 2010, withdrawing from this 401 Water Quality Certification case, stating the Attorney General no longer contests the Motion for Summary Judgment on procedural grounds entered in this case by Duke. The Attorney General and his staff will not attend the hearing and will advise DHEC that the Attorney General no longer has an interest in any appeal in the 401 Water Quality Certification.

As a result of this Settlement with the Attorney General, Duke agrees to undertake the following water quality (dissolved oxygen) and water quantity (flow) enhancements at its Lake Wylie Hydroelectric Development until such time that the permanent flow release and water quality provisions of the New License are implemented:

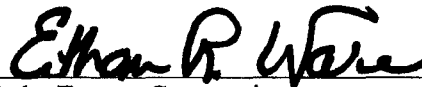
1. Minimum Flow Improvement - To approximate the new flow release requirements under the Comprehensive Relicensing Agreement (CRA), without the delays allowed in the proposed water quality certification decision of May 15, 2009 for the construction and other requirements that allow for "continuous flow" from the Wylie Dam, Duke will rapid-pulse an existing unit thereby running it 1 hr on, 2 hrs off, during periods when at least 1 unit is not running continuously (effectively giving a "continuous flow" through Wylie Dam where now Duke is not required to provide continuous flow) and Duke is not operating under the CRA's Low Inflow Protocol or Maintenance and Emergency Protocol; and

2. Dissolved Oxygen (DO) Improvement - From May 15 through October 31 (i.e., the low DO season prescribed in S.C. Regs. 61-68.C-D), Duke will operate one or more existing units that have dissolved oxygen enhancement capability on a first on, last off hierarchy whenever the station is being operated for flow release, reservoir level control or generation, which will improve the DO levels in the flow discharging from the system.

This two part settlement gives the State of South Carolina a commitment for real water quantity and water quality improvements at the Wylie Hydroelectric Development substantially earlier than would have occurred otherwise.

Any terms or conditions set forth in any 401 Certification in this matter will not be asserted by Duke as an equitable apportionment of the Catawba River in *South Carolina v. North Carolina*, No. 138 Original, nor will be deemed to estop the State of South Carolina in such proceeding.

Respectfully submitted,



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526 South Church Street
EC03T/Post Office Box 1006
Charlotte, NC 28201-1006



South Carolina Attorney General
Rembert C. Dennis Office Building
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Columbia, SC 29211

Columbia, South Carolina
May 5, 2010