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By e-mail and first class mail

Special Master Kristin L. Myles
Munger, Tolles & Olson, LLP
560 Mission Street
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San Francisco, CA 94015

RE: ***South Carolina v. North Carolina*, No. 138, Original**
North Carolina's Letter Brief re Motion for Reconsideration of Order Granting Intervention

Dear Special Master Myles:

Pursuant to your request during the conference call of June 30, 2008, this letter brief addresses South Carolina's request for reconsideration of the Order issued May 27, 2008, granting Duke Energy Carolinas, LLC ("Duke"), the Catawba River Water Supply Project ("CRWSP") and the City of Charlotte ("Charlotte") the ability to participate in this matter as intervenors.

Phase One clearly implicates the interests of Duke, the CRWSP, and Charlotte. In its Bill of Complaint, South Carolina specifically identified interbasin transfers benefitting Charlotte and the CRWSP joint venture as potential causes of the purported harms South Carolina has allegedly suffered. South Carolina has also specifically complained that the minimum continuous flow from Duke's reservoirs, negotiated by stakeholders in the course of Duke's relicensing process, may not be sufficient, and South Carolina has alleged that this has contributed to South Carolina's purported harms during low flow periods. If South Carolina is to meet its burden in Phase One of showing injuries from activities in North Carolina that allegedly have resulted in a negative impact on the flow of the Catawba River into South Carolina, South Carolina must provide evidence to support the contentions concerning the alleged harms involving these intervenors. For this reason alone, during the collection of this evidence through the discovery process each intervenor must be afforded the opportunity to protect its particular interests as permitted in the May 27, 2008 Order at pages 9-10, 11, and 12.

It simply will be impractical to separate discovery into two phases with regard to participation or non-participation by the intervenors. Significantly, Section 4.1 of the Joint Proposed Case Management Plan ("CMP") contemplates an overlap in discovery, allowing questions into matters relevant to Phase Two during Phase One. In the discussions leading to the CMP, South Carolina emphasized to North Carolina a desire for the parties to be able to address Phase Two issues during Phase One discovery, if it would be more efficient and convenient to do so. It seems somewhat disingenuous for South Carolina to now argue that nothing in Phase One will necessitate intervenors' participation in the discovery process. Contrary to South Carolina's assertion, it will be too late for the intervenors to begin to mount their respective defenses at the point at which a decree might issue invalidating their existing interbasin transfers or imposing conditions inconsistent with federal licenses.

The Special Master's Order of May 27, 2008 is well reasoned and fully supported by Supreme Court precedent. South Carolina has failed to show any reason why that Order should be withdrawn by the Special Master. Moreover, denying intervenors the opportunity to participate in Phase I discovery would be inconsistent with that order.

Sincerely,

Jennie Wilhelm Hauser
Special Deputy Attorney General

J. Allen Jernigan
Special Deputy Attorney General

cc: All Counsel of Record