



State of North Carolina
Department of Justice

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January 26, 2010

By e-mail and first class mail
Special Master Kristin L. Myles
Munger, Tolles & Olson, LLP
560 Mission Street, 27th Floor
San Francisco, CA 94015

RE: *South Carolina v. North Carolina*, No. 138, Original;
North Carolina's Progress Report No. 14

Dear Special Master Myles:

In advance of the telephone conference scheduled for January 27, 2010, we respectfully submit North Carolina's fourteenth progress report on the discovery which has taken place since our last progress report on April 14, 2009. As described in more detail below, there has been a substantial amount of document discovery from North Carolina, the intervening parties, and non-parties pursuant to Rule 45 subpoenas over the past nine months.

North Carolina has continued producing documents in a rolling production in response to South Carolina's Request for Production of Documents. To date we have collected documents from 212 custodians. After searching the documents electronically, North Carolina reviewed the remaining documents for responsiveness and privilege. Following that review, North Carolina has produced a total of 814,576 pages. Most of the pages were reviewed and produced since our last telephone conference on the following dates:

3rd Production May 1, 2009
4th Production October 1, 2009
5th Production December 30, 2009

A 6th production will be sent out shortly. There will be further productions after that as additional document review is completed.

Special Master Kristin L. Myles

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In addition, North Carolina sent out 115 subpoenas to water users and dischargers in South Carolina on July 31, 2009, September 16, 2009, and November 4, 2009. North Carolina requested information on water withdrawals and wastewater discharges, water quality, interbasin transfers, water supply plans and policies (including drought contingency plans), water conservation measures, past, present and future consumptive uses of water in the Catawba River Basin, and consideration of alternative sources of water other than Catawba River Basin waters. North Carolina has received approximately 250,000 pages from 93 entities in response to the subpoenas. Review of these documents is underway. We are still working with some of the subpoenaed parties who have requested additional time to produce responsive, non-privileged documents.

From August 21, 2008 (date of North Carolina's document request to South Carolina) until April 14, 2009 (date of North Carolina's last progress report to the Special Master), South Carolina produced approximately 84,000 pages. Yesterday, South Carolina sent to North Carolina by First Class mail additional documents with a Bates range of 376. (These additional documents have not yet been received by our office.)

On July 22, 2010, South Carolina directly subpoenaed HDR, Inc. f/k/a/ Devine Tarbell & Associates, Inc. requesting, among other things, the source code for an executable version of CHEOPS used by Duke Energy. North Carolina asked for copies of any materials produced in response to the subpoena. On August 18, 2009, counsel for HDR submitted a letter objecting to the HDR subpoena. On November 20, 2009, North Carolina received from South Carolina a proposed draft protective order concerning the CHEOPS source code. North Carolina provided a detailed response with suggested revisions to the proposed protective order on December 4, 2009. In addition, North Carolina suggested that South Carolina and HDR circulate the proposed protective order to all the interested parties (including the intervenors). After further discussions with North Carolina and South Carolina, HDR requested an opportunity to make further revisions to the proposed protective order. On January 21, 2010, HDR circulated the most recent draft of the protective order which provides for the CHEOPS source code and any related documents to be treated as "highly confidential - subject to protective order." In addition, the proposed protective order sets up a process whereby the CHEOPS source code is maintained by a third-party vendor on a secure platform through which the parties and their experts may view the CHEOPS Source Code.

On December 7, 2009, South Carolina sent out 47 subpoenas to entities located in the North Carolina portion of the Catawba River Basin. Responses and objections to these recent subpoenas are in process.

Since its involvement in the litigation, Charlotte has completed four rolling productions in response to South Carolina's first set of document requests. Before April 14, 2009, its production numbered approximately 190,134 pages. Following the last progress report, Charlotte served its fourth production of documents sending the parties approximately 247,861 pages on August 26, 2009. Charlotte has produced 437,995 pages of paper and electronic documents since its involvement in the litigation.

Special Master Kristin L. Myles

January 26, 2009

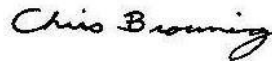
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Duke Energy has also continued its rolling production in response to the State of South Carolina's Request for Production of documents during the last nine months. On July 30, 2009, Duke Energy produced replacement volumes for its second and third productions. On January 22, 2010 in response to South Carolina's follow up request for additional documents, Duke Energy provided a tenth Production which included two CDs containing documents from HDR, Inc. and CHEOPS model output files. Duke's production includes 141,799 pages over the course of the litigation and additional computer files.

Intervenor Catawba River Water Supply Project responded to South Carolina's First Set of Document Requests on November 21, 2008 and provided responsive documents totaling 748 pages on February 3, 2009.

North Carolina is not aware of any disputes regarding the ongoing document discovery which presently require involvement by the Special Master. Although document discovery is far from complete, North Carolina believes that it would be prudent to address modifications to CMO No. 7 during tomorrow's status conference.

Sincerely,



Christopher G. Browning, Jr.
North Carolina Solicitor General

CGB/MLL/dm

cc: All Counsel of Record (via e-mail and hard copies as requested)