

SOUTH CAROLINA,

Plaintiff,

vs.

No. 138

NORTH CAROLINA,

Defendants.

CERTIFIED
COPY

TELEPHONIC CONFERENCE

BEFORE SPECIAL MASTER KRISTIN MYLES

Monday, February 6, 2008

Reported by:

DANA M. FREED

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SOUTH CAROLINA,

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NORTH CAROLINA,

Defendants.

Telephonic Conference before Special
Master Kristin Myles, beginning at 10:01 a.m. and
ending at 11:16 a.m. on Monday, February 6, 2008,
before DANA M. FREED, Certified Shorthand Reporter
No. 10602.

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APPEARANCES: (Continued)

**For PROPOSED INTERVENOR CATAWBA RIVER WATER SUPPLY
PROJECT:**

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Also present:

**AMY TOVAR
GARRY RICE
JAMES SHEEDY**

1 Monday, February 6, 2008

2 10:01 a.m. - 11:16 a.m.

3

4 SPECIAL MASTER MYLES: Why don't we begin?

5 This is Kristen Myles. Good afternoon, Counsel. It's
6 actually morning here, but we'll go with afternoon
7 since I think that's the quorum. What I'd like to do
8 first is to go through appearances. First I'd like to
9 introduce the court reporter. It is Dana Freed,
10 that's F-r-e-e-d, with Sarnoff Court Reporters. It's
11 S, as in Sam, a-r-n-o-f-f, as in Frank. The
12 court reporter is here in San Francisco. The way to
13 reach Dana is 41- -- this is Kristen Myles. I was
14 just beginning.

15 (Off the record.)

16 SPECIAL MASTER MYLES: I was just introducing
17 our court reporter Dana Freed of Sarnoff Court Reporters.
18 Her number is 415.274.9977. She'll be transcribing
19 proceedings today. At the end of the call today, I
20 will let you coordinate with Dana on how many copies
21 of transcript and all that you would like.

22 I also have on the phone with me today Amy
23 Tovar. That's T, as in Timothy, o-v, as in Victor,
24 a-r. Amy is going to be -- is an associate at my firm
25 who will be helping on the case serving as somewhat of

1 a law clerk.

2 I think the best thing to do next is
3 appearances. So why don't we begin with
4 South Carolina, since they're the petitioner, then
5 move to North Carolina and then go to each of the
6 proposed intervenors, Catawba and Duke. If you
7 wouldn't mind spelling your name for the
8 court reporter.

9 MR. FREDERICK: Sure. Special Master Myles,
10 this is David Frederick, F-r-e-d-e-r-i-c-k, for
11 plaintiff South Carolina. And joining me here in
12 Washington is my colleague Scott Attaway,
13 A-t-t-a-w-a-y. Kellogg, Huber, Hansen firm.

14 SPECIAL MASTER MYLES: North Carolina.

15 MR. COOK: Excuse me, this is Bob Cook in
16 South Carolina with the Attorney General's office and
17 Parkin Hunter in South Carolina with the Attorney
18 General's office.

19 SPECIAL MASTER MYLES: How does Mr. Hunter
20 spell his first name?

21 MR. COOK: P-a-r-k-i-n.

22 MS. CANTEY: Childs Cantey has also dialed in
23 from South Carolina. It's C-h-i-l-d-s, C-a-n-t-e-y.

24 DEPOSITION OFFICER: What firm are you with?

25 MS. CANTEY: I'm with the Attorney General's

1 office.

2 SPECIAL MASTER MYLES: Is there anyone else
3 for South Carolina?

4 Okay. Why don't we move on to North Carolina?

5 MR. BROWNING: Yes. This is Chris Browning,
6 B-r-o-w-n-i-n-g. With me is Jim Gulick, G-u-l-i-c-k,
7 and Marc Bernstein, Marc, M-a-r-c, Bernstein,
8 B-e-r-n-s-t-e-i-n. All three of us are with the
9 North Carolina Department of Justice.

10 SPECIAL MASTER MYLES: Anyone else for
11 North Carolina?

12 MR. BROWNING: No.

13 SPECIAL MASTER MYLES: Why don't we do Catawba
14 River Water Supply?

15 MR. GOLDSTEIN: Thank you. This is Thomas
16 Goldstein, G-o-l-d-s-t-e-i-n, and Steven, S-t-e-v-e-n
17 Wu, W-u, of the Akin Gump firm in Washington D.C.

18 SPECIAL MASTER MYLES: Okay. And I think the
19 last party or --

20 MR. GOLDSTEIN: I apologize. We did have --
21 there's another attorney who is either on the line or
22 will be on the line who is James Sheedy, S-h-e-e-d-y,
23 from the Driscoll Sheedy firm.

24 SPECIAL MASTER MYLES: Is that a different
25 firm from the one listed?

1 MR. GOLDSTEIN: They did just create their
2 own law firm. Sorry.

3 SPECIAL MASTER MYLES: We can get to the
4 service list issues in a moment, but they probably
5 need to make that change on the service list.

6 Is that all for Catawba?

7 MR. GOLDSTEIN: It is.

8 SPECIAL MASTER MYLES: Duke. That's the only
9 other potential party. Right?

10 MR. PHILLIPS: So far, Your Honor, yes. This
11 is Carter Phillips from Sidley Austin. Last name
12 P-h-i-l-l-i-p-s, first name is Carter, C-a-r-t-e-r,
13 and I represent Duke Energy.

14 MR. RICE: And Garry Rice, two Rs on the
15 first name, G-a-r-r-y, R-i-c-e with in-house
16 Duke Energy.

17 And Virginia Seitz, S-e-i-t-z, also with the
18 Sidley firm, also for Duke Energy.

19 SPECIAL MASTER MYLES: Okay. I thought it
20 would be best to start then with a few planning and
21 housekeeping items. I'll expand on this further. But
22 I think one of the things we ought to do first, as has
23 been done in other cases like this, is to create a
24 case management plan for going forward which will
25 incorporate an overall schedule for the case.

1 Obviously, we're not going to do that today. But
2 I think later in this call I'd like to get to some of
3 the issues that may inform that plan, among others,
4 anticipated discovery, anticipated time needed for
5 other matters such as motions. Just we don't need
6 to -- again, we don't need to have answers to all of
7 these questions today. I just want to run through
8 those issues and ultimately hopefully we can
9 incorporate them into a case management plan that can
10 govern going forward. Also, things like what federal
11 rules we want to incorporate and issues like that.

12 So I just throw that out because I want
13 people to be thinking about it. At the moment, let's
14 just run through some basic housekeeping issues. One
15 is, as I'm sure most of you probably know, in a case
16 like this, I'm responsible for creating the docket and
17 maintaining the docket as though it were a court
18 proceeding. So in that way it's probably most
19 analogous to a District Court docket.

20 At the end of the proceeding, when I prepare
21 my report, I'm obliged to submit to transfer that
22 entire docket to the Court which would then become the
23 docket of the Court. So what I need is a hard copy of
24 all documents that would be filed that would become
25 part of the docket. What I'm going to do also is to

1 create a website docket, of the sort that have been
2 done in similar cases, where there's a docket --
3 for example, this transcript would go on the docket.
4 You'd have a pdf of the document or the transcript
5 that you can just click on and everyone can have
6 access to it. I'll probably do that through my law
7 firm website because it's the simplest way to do it,
8 although it may end up being an external link. We
9 haven't quite sorted that out yet.

10 But in any event, I'll need pdf copies of all
11 of the documents that get filed. In that way, the IT
12 people can simply download the pdf onto the docket,
13 the electronic docket. At the moment, what the Court
14 has sent me is everything they have, copies of
15 everything they have, which are all the pleadings to
16 date in the case. It would help if those could be
17 sent to me as well in pdf, so that I can download
18 those onto the website so we have a complete docket
19 including what I currently have. I only received one
20 copy of each.

21 In addition to the -- those two things,
22 working copies, I would like four. What I would like
23 to do is ask, just go through the service list and see
24 if you all can identify how many copies of things you
25 need and to whom they should be sent. We can go

1 through that. And we need to update and finalize the
2 service list. Maybe -- if you have don't mind my
3 asking -- if counsel for South Carolina can take care
4 of coordinating that since they're the plaintiff.
5 Just finalize a service list that everybody can use.

6 MR. FREDERICK: This is David Frederick.
7 We'll be happy to do that.

8 SPECIAL MASTER MYLES: Okay. So why don't we
9 run through -- okay. So just to clarify. I need an
10 original, whatever you want to call it, a hard copy
11 for the docket. I'd like to get four copies that can
12 be working copies for me, for Ms. Tovar, and for
13 anyone else who's helping on the case. And then the
14 pdf copy. That's what I need.

15 Let's walk through South Carolina, what your
16 needs will be in the way of service.

17 MR. FREDERICK: This is David Frederick. We
18 would appreciate here at the Kellogg Huber firm
19 receiving three hard copies, as well as a pdf.

20 And Bob, would three be sufficient to be
21 served on the Attorney General's office?

22 MR. COOK: Yes, it would.

23 SPECIAL MASTER MYLES: Okay. North Carolina.

24 MR. BROWNING: If it would be possible to
25 have five hard copies sent to North Carolina in pdf,

1 that would be sufficient for our purposes.

2 SPECIAL MASTER MYLES: Mr. Goldstein.

3 MR. GOLDSTEIN: Thank you. I think for
4 Catawba, for the Akin Gump firm to receive three and
5 then the Driscoll Sheedy firm, as you said, we need to
6 update the service list to include their address.
7 They could receive as well, three as well, that would
8 be wonderful. Thank you.

9 SPECIAL MASTER MYLES: Mr. Phillips.

10 MR. PHILLIPS: If the Sidley firm could have
11 three and Duke Energy in-house people could have
12 three. I think that would be excellent.

13 SPECIAL MASTER MYLES: Mr. Frederick, if you
14 don't mind just incorporating on the service list
15 maybe, if you can summarize the number of copies
16 people need.

17 MR. FREDERICK: Certainly.

18 SPECIAL MASTER MYLES: That would make
19 everybody's life easier, I think.

20 In terms of the format, those papers, also
21 I'll provide my assistant sent you an email scheduling
22 today's call. Her email is probably also the best
23 address to which to send the papers to me. Or other
24 communications that need to be sent. Obviously, if
25 there's other communications, all counsel should be

1 copied on those.

2 We have everyone's email address. I think
3 you will do too, at least the people that got the
4 email that I sent out last week. So it may be worth
5 e-mailing to make sure that we have a full email
6 distribution list. I think that would also be helpful
7 for communications if we need to schedule something
8 informally.

9 On formatting of papers, my report has to be
10 in Supreme Court format at the end of the proceedings.
11 It has to be in booklet format. Other than that,
12 booklet format is not required except for papers that
13 get submitted to the Court directly. So you don't
14 have to print things that we use in this that aren't
15 going to the Court. That will reduce expense, I
16 think, and time. What I'll do is, in the case
17 management plan, I think lay out a format that will be
18 used.

19 Likewise, as I'm sure you know, there's the
20 Federal Rules of Civil Procedure are not themselves
21 binding. On these proceedings, however, they can be
22 used as guides. There's only one Supreme Court rule
23 on point which is Rule 17. It doesn't really deal
24 with particular issues except to say that the rules
25 are our guide.

1 So we can talk about, in the case management
2 plan, process which rules to incorporate. But
3 generally speaking, I could envision incorporating the
4 discovery rules. Probably modified in various ways.
5 I think other proceedings they haven't used,
6 for example, the early disclosure rules. I don't
7 think I want to use those either. And there may be
8 other ways in which they need to be modified.

9 I welcome debate on Rule 56, but my
10 inclination would be to incorporate that as well.
11 Once we incorporate these into the case management
12 plan, they wouldn't be guides anymore, they'd be
13 binding, but they'd be binding as modified and
14 incorporated into the plan.

15 Unless there's any comments on that, I was
16 going to move on to the next topic, which was
17 discovery. Seems to me that there's going to be a
18 need for factual discovery. Does everybody agree with
19 that?

20 MR. FREDERICK: South Carolina does.

21 MR. BROWNING: North Carolina agrees there
22 will be factual discovery. Of course, there are, I
23 think, several preliminary matters that the Special
24 Master should consider before getting to discovery,
25 but....

1 SPECIAL MASTER MYLES: Other than the
2 intervention motions, what are those?

3 MR. BROWNING: Well, as we point out in our
4 pleadings, and one of the things that I think really
5 should, is a crucial aspect of this case, South Carolina's
6 complaint is based upon a comprehensive relicensing
7 agreement that was a negotiated process involving both
8 states and all of the stakeholders in connection with
9 Duke's relicensing of its hydroelectric power plants.
10 That proceeding is currently ongoing before FERC and
11 will dramatically affect what, how South Carolina's
12 claims proceed.

13 I think there is certainly -- it would make
14 sense for us to brief to the Special Master the
15 possibility of staying this proceeding while those
16 FERC proceedings are ongoing.

17 SPECIAL MASTER MYLES: Okay. Let's -- that
18 issue is noted as a possible issue. I don't mean to.
19 Obviously, we're not in a position to discuss the
20 merits of the stay today. But what's the anticipated
21 length of the FERC proceedings?

22 MR. BROWNING: The current license for
23 Duke Energy expires in August of 2008. I would have
24 to differ to Duke Energy's counsel in terms of the
25 current status of that.

1 MR. RICE: Well, I can speak to the schedule.
2 As Mr. Browning correctly said, our current license
3 expires this coming August. We have filed an
4 application -- I'm sorry, this is Garry Rice, Duke Energy.

5 We filed an application back in August of
6 2006. FERC had issued a schedule of actions that it
7 was to take as part of this relicensing. They are
8 behind on their schedule. It is rare that FERC
9 actually completes the relicensing in the two years.
10 So through -- 2009 is probably more likely than 2008
11 currently in getting a new license issued.

12 SPECIAL MASTER MYLES: Okay.

13 MR. FREDERICK: David Frederick for
14 South Carolina. Obviously, we have an interest in not
15 staying the proceeding and we can address the merits
16 if you should decide that there needs to be briefing
17 and argument on the merit of any proposed stay action.
18 I would just point out that North Carolina, in
19 opposing South Carolina motion for leave to file the
20 complaint made basically the exact same argument. And
21 the Court, in allowing the complaint to proceed, in
22 appointing the Special Master, I think can be fairly
23 assumed to have considered that argument and rejected
24 it.

25 SPECIAL MASTER MYLES: Okay. Fair enough.

1 I think that, it seems to me the best solution to that
2 problem is for there to be a motion for a stay, if
3 there is to be a motion. Obviously, we can't resolve
4 it today. I'm not in a position to discuss the merits
5 of it today including whether the court's action
6 precludes the argument. But I do think that if
7 there's going to be a motion, that's something that
8 ought to be brought on promptly.

9 In the meantime, we have the intervention
10 motion, two motions. I don't see any reason why those
11 should be delayed. We can move to that first and then
12 go back to discovery, because I would like to schedule
13 a hearing as promptly as possible on the intervention
14 motion. So I guess I have two question -- three
15 questions.

16 One, what I have seem to be complete briefs
17 on those issues, the issues being intervention of two
18 separate parties. So my questions are, is that
19 correct? And then is there a need for additional
20 briefing, which I'm welcome, I welcome if anybody
21 thinks additional briefing is needed. And is there
22 any need for anything else on it? Does anyone need
23 discovery on the question of intervention? Not that
24 I think it's necessary, but I just ask if anybody
25 thinks that's necessary.

1 So I mean, why don't we start with -- why
2 don't we start with the two intervenors, Mr. Phillips
3 and Mr. Goldstein. Whoever wants to go first.

4 MR. PHILLIPS: Yes, this is Carter Phillips
5 for Duke. I think we are confident the case, that the
6 issue's been fully briefed. And I don't think we need
7 any additional discovery. And we would like to try to
8 schedule the argument as soon as possible.

9 MR. GOLDSTEIN: This is Tom Goldstein for
10 Catawba. We agree.

11 SPECIAL MASTER MYLES: Okay. Now I guess
12 I should ask South Carolina next, since South Carolina
13 -- is it correct that South Carolina is the only one
14 that opposes it. Right.

15 MR. FREDERICK: That's correct. This is
16 David Frederick. We do oppose it. And we agree the
17 issue has been fully briefed and there is no
18 additional discovery that would be necessary.

19 SPECIAL MASTER MYLES: Okay. Then let's talk
20 in a moment about when to have that hearing. What
21 I would like to do is just briefly address discovery,
22 and then get back to the possibility of having a
23 status conference and a hearing at the same time.
24 Maybe later this month, if that will work for people.
25 But we can talk about particular dates in a moment.

1 But if we were to do that, what I'd like to
2 see if we can get some sort of status conference
3 report, progress report before that time. The date
4 I'm thinking about is either the 21st or 22nd of
5 February. And if we were to have that date, in
6 advance of that, I think to have the parties lay out
7 what they anticipate in terms -- assuming there is no
8 stay or if you wish built into the schedule time for
9 briefing and a hearing on a stay motion.

10 But assuming there is no stay for present
11 purposes, just because we have to lay out the timeline
12 in the case, and then without prejudice to the issue
13 of the stay. But I'd like to have, assuming no stay,
14 what do the parties anticipate working back from total
15 time to trial, to resolution, how much time for
16 factual discovery?

17 I'm not really inclined to divide factual
18 discovery in two phases, but, you know, people can use
19 their judgment on whether document discovery ought to
20 come first and then depositions or if there's
21 depositions that could occur without documents. I do
22 think expert discovery can be a separate phase,
23 assuming there is a need for expert discovery. Maybe
24 we can briefly talk about those two things. But
25 ultimately, I think they ought to be incorporated into

1 some sort of progress report if the parties can confer
2 on the progress report date.

3 (Mr. Sheedy joins conference.)

4 MR. SHEEDY: Jim Sheedy.

5 SPECIAL MASTER MYLES: Good afternoon,
6 Mr. Sheedy. We were expecting you.

7 MR. SHEEDY: My apologies.

8 SPECIAL MASTER MYLES: That's not a problem.

9 If the parties can confer on the date before
10 these reports come in, that would be helpful. Just
11 indicate in the report whether such conferring has
12 occurred. If you can agree on dates, great. If not,
13 people can lay out their own proposed dates. And
14 these are not deadlines necessarily, but just general
15 time frames for completing these major tasks,
16 discovery, expert about discovery, whether the parties
17 think that summary judgment motions would be
18 productive. If so, when that might occur. And then
19 when the parties think a trial would be, could be
20 scheduled. How long such a trial would be expected to
21 go.

22 So as an overview, no one's going to be bound
23 by these dates, but it would be very helpful in
24 setting a case management order to have the parties'
25 views on those issues. So if we can just quickly go

1 through those issues now if anybody has preliminary
2 thoughts they'd like to throw out. Why don't we start
3 with South Carolina, and then we can ultimately
4 incorporate these into a progress report or status
5 conference report.

6 MR. FREDERICK: This is David Frederick.
7 I think we would envision a discovery process that
8 would take something in the neighborhood of 9 to 12
9 months that would include both document review, formal
10 written discovery responses, depositions, so that the
11 record could close approximately a year from now.

12 We -- I think depending on the nature of the
13 evidence that comes in, we would think that the case
14 could possibly be resolved on cross motions for
15 summary judgment. I don't anticipate that the
16 credibility of key witnesses will be an issue, but
17 would like to resolve a final judgment on that. There
18 will be expert testimony, I believe, based on the
19 hydrology and environmental aspect of the case.

20 So having sufficient time for expert reports
21 and depositions, if necessary, of the expert would be
22 appropriate. And I think otherwise, we would
23 anticipate there being ample time for the briefing and
24 argument for cross motions for summary judgment, which
25 might take another four or five months or so from the

1 point of the close of discovery.

2 SPECIAL MASTER MYLES: And your time frame
3 includes expert discovery? In other words, the nine-
4 to twelve-month -- I don't mean to hold you to this
5 again, but I'm just trying to understand what you
6 said. That includes expert discovery, it doesn't
7 include expert discovery?

8 MR. FREDERICK: I think that it should be
9 possible to do that, say, for experts' time that's not
10 feasible.

11 SPECIAL MASTER MYLES: Okay. How about
12 North Carolina?

13 MR. BROWNING: Well, first of all, I'll tell
14 you from our perspective we think it makes sense to
15 have factual discovery and then following that expert
16 discovery. And estimating the amount of the length of
17 factual discovery is we are very much at a loss to try
18 to figure out South Carolina's complaint and whether
19 they are complaining about just interbasin transfers
20 which would be a fairly limited scope versus what
21 appears to be an effaceable allocation of the entire
22 river, which the discovery with respect to every
23 single use, the economic effect of the use, that
24 scenario would be a massive amount of discovery and
25 expert testimony and a very lengthy trial.

1 So we're -- we are at, the extent that
2 perhaps written discovery, contention interrogatories
3 would help flesh out really what South Carolina's
4 complaint is about, our estimate would be better
5 informed. Right now we're assuming that a discovery
6 period of roughly 10 to 12 months followed by expert
7 discovery would make sense, but it's difficult for us
8 to gauge how South Carolina is approaching the action.

9 We also think it might make sense to take a
10 look at the proceedings in essentially two different
11 phases. First, whether South Carolina has made a
12 threshold showing of a harm of a serious magnitude
13 caused by North Carolina.

14 And then the next question, assuming they're
15 able to come forward with enough evidence to meet that
16 threshold showing, would be what is the -- what would
17 be the equitable allocation between South Carolina and
18 North Carolina.

19 SPECIAL MASTER MYLES: Was that Mr. Cook?

20 MR. BROWNING: I'm sorry, this is Browning.
21 I will eventually get in the habit of giving my name.

22 SPECIAL MASTER MYLES: Okay. Thanks. I'm
23 sorry, Mr. Cook. I had you on the wrong side. It
24 just helps the court reporter.

25 MR. FREDERICK: Special Master Myles, this is

1 David Frederick. I think that there would be
2 productivity in a meet and confer on different
3 proposals for how the case might proceed. And we have
4 not -- we have not had the opportunity to meet and
5 confer with Christopher Browning on these aspects of
6 the case yet. We've conferred on other matters.

7 And my suggestion is, as you had indicated a
8 desire for us to meet and confer before the status
9 reports, that it would be helpful for Mr. Browning and
10 us to sit down and talk about how we might see the
11 case proceeding. And then we can frame whatever
12 disagreements we might have for you to resolve. But
13 that might be a helpful way to make the process a more
14 efficient one.

15 MR. BROWNING: This is Chris Browning.
16 I would concur on that very reasonable observation.

17 SPECIAL MASTER MYLES: Okay. That makes
18 a lot of sense to me. I think what -- what ought to
19 happen that will help frame the issues and then
20 ultimately help me decide what's going to be in the
21 case management plan. It's going to be a written
22 document, whether it's jointly submitted or separately
23 submitted, laying out what we just talked about, which
24 is the proposed time line. But also laying out,
25 either before or after that, what each side sees as

1 the key issues in the case.

2 And I think that's what Mr. Browning was
3 getting at, was having South Carolina frame what it
4 views as the key factual and legal issues in the case.
5 That's going to be essential as a part of this case
6 management conference. And I think it will be helpful
7 to incorporate it into the plan in some way that
8 doesn't necessarily preclude further refinement of
9 those issues or even the addition of new issues if
10 they arise if they're encompassed by the pleadings.

11 But for purposes of case management and
12 organizing things going forward, I think it's going to
13 be very helpful to me and to everyone to have what
14 precisely the issues are factually and legally. And
15 then from that what, you know, anticipated time frames
16 for discovery and other things are.

17 Now, obviously you might not agree on what
18 the issues are, but I think there should be a meet and
19 confer to try to agree. And then there is no harm in
20 everybody separately stating their view of the issues.

21 But the distinction that Mr. Browning just
22 made is a valuable one, you know, it would help to
23 know are we talking about just interbasin transfers or
24 are we talking about equitable proportionment of the
25 whole river? That would be definitely be something

1 that we'd want to have laid out in this report.

2 How soon can that report, do you think, be
3 generated -- or report, or reports? Why don't we ask
4 Mr. Frederick first. I'd like to see if this date two
5 weeks from now is realistic to have a first conference
6 on some of these case management issues and possibly
7 on the intervention motion.

8 MR. FREDERICK: Well, this is David
9 Frederick. Special Master Myles, if I could make this
10 suggestion, I can certainly sit down with our people
11 and Mr. Browning within the next week. I'm traveling
12 tomorrow and Friday. But certainly, you know, early
13 next week we can have a meet and confer to discuss
14 each state's position of how the case could proceed.

15 Because the intervention motions do have an
16 impact on case management, we might respectfully
17 suggest that argument and decision on the intervention
18 motions be decided before we get too far down the road
19 on committing to a case management plan, simply
20 because discovery involving four parties will be
21 inherently more complicated than a discovery involving
22 two.

23 SPECIAL MASTER MYLES: Mr. Browning, do you
24 have any thoughts on that?

25 MR. BROWNING: I am hesitant to confer with

1 Mr. Frederick too much. But I agree with him on this
2 point as well that obviously the nature of discovery
3 will be -- going forward will be completely different
4 if, for example, depending upon whether Duke Energy is
5 a party or whether Duke Energy is a third party, the
6 nature of the discovery and how it's conducted would
7 be completely different and would in certain ways
8 infirm the case management plan. But I think what
9 Mr. Frederick raised is an excellent point.

10 SPECIAL MASTER MYLES: Well, I think that
11 I agree that we don't want to finalize any case
12 management plan prior to resolving the intervention
13 motions. That places priority on resolving the
14 intervention motions as rapidly as possible. Also, I
15 don't think it precludes preliminary discussions
16 and/or reports on the element of the case management
17 plan as we've just talked about.

18 I do agree that it probably doesn't want to
19 be finalized, but I think that productive progress can
20 be made toward what the case management plan will be.
21 If there's a need to put in caveats in whatever you
22 submit that says, okay, if Duke and Catawba are in,
23 then discovery might go this way. If they're not in,
24 it might go a different way. These are overview
25 presentations. This is not meant to be comprehensive

1 or detailed. It's a very broad brush, how people see
2 the case going in the long term. I think that
3 conversation can still be had while the intervention
4 motions are pending.

5 So if that's the case, then how soon do you
6 think you all can get these reports prepared? Could
7 it be done in 10 days?

8 MR. FREDERICK: Well, if -- this is David
9 Frederick. If the ambition was to have a conference
10 on the 21st of February, if we could have until a day
11 or two before that to prepare the reports, that
12 would -- that would be helpful.

13 SPECIAL MASTER MYLES: Would that work for
14 you, Mr. Browning?

15 MR. BROWNING: Yes, that will work with our
16 schedule.

17 SPECIAL MASTER MYLES: And then if anybody
18 wants to confer with the proposed intervenors,
19 I hesitate to make any requirements along these lines
20 for them, but if they -- if anybody wants to confer on
21 input from either Duke or Catawba, that's fine. But
22 I really only think at this moment we need one or two
23 reports from -- either a joint report with
24 South Carolina, North Carolina, or two separate
25 reports. It's all the same to me. They can both be

1 submitted two days in advance. They don't need to
2 respond to one another. But I mean, because that
3 presupposes you have talked anyway.

4 Why don't we defer the scheduling then on the
5 21st, 22nd.

6 MR. PHILLIPS: Special Master, this is
7 Carter Phillips. Are you planning to do this
8 telephonically?

9 SPECIAL MASTER MYLES: No, that's what I was
10 just about to get to. I think the best way to do it
11 is not telephonically. To do it in person. I also
12 don't think I want to be doing it in either
13 South Carolina or North Carolina. So my thinking was
14 to have a hearing in Richmond, Virginia in the
15 Lewis Paul courthouse in Richmond. It would be in one
16 of the court of appeal courtrooms. Court of appeals
17 courtrooms in the fourth circuit. I've already spoken
18 with the clerk there. And they have a courtroom
19 available on both of those days. It's called the
20 Tan Courtroom.

21 I asked for your input on this. I have two
22 courtrooms available. One's the Green and one's the
23 Tan. The Tan one seats 20 to 22 people. I said
24 I thought that would be fine. The Green one seats
25 100 people. I didn't think that was necessary. Does

1 anybody think we need the larger one?

2 All right. Then we'll go with the Tan
3 Courtroom. And then the question is, is that, are
4 those two dates not doable for anybody? I guess my
5 inclination would be the 22nd.

6 MR. SHEEDY: Special Master Myles, this is
7 Jim Sheedy. Can you hear me okay?

8 THE COURT: Yeah.

9 MR. SHEEDY: I have a conflict. I sit on the
10 Board of Governors of the South Carolina Bar. And I'm
11 supposed to be in a retreat those two days. I'm not
12 quite sure I could reschedule that.

13 MR. PHILLIPS: Special Master, this is
14 Carter Phillips at Sidley. I also have a conflict on
15 both of those dates. I'm supposed to be in Chicago.
16 And then I have an argument at the court itself the
17 next Monday on the 25th.

18 MR. GULICK: Your Honor, this is Jim Gulick
19 in the North Carolina Attorney General's office.
20 I have a conflict during those days. To the extent
21 that you're just addressing intervention, it is not
22 necessary for me to be there. But I would very much
23 like to be present if there's discussion of the case
24 management order and reports and those issues.

25 SPECIAL MASTER MYLES: Okay. Let's go

1 through the -- what I have just heard. As a general
2 matter, we're going to have scheduling issues in this
3 case because there's so many -- at the moment anyway
4 there's so many parties involved and counsel involved.
5 We're going to need to have a protocol for resolving
6 this kind of thing, because frankly it's very
7 difficult to schedule with so many counsel dates that
8 work for everyone. Especially if we need to move the
9 case along.

10 So just as a rule of thumb, you know, I'd
11 like to try to schedule things in a way that counsel
12 can have someone else in their office available if
13 they're not available to do these things. In
14 addition, if I need to come back, then my schedule's
15 affected also if I have to come back east to hear
16 things in person.

17 So I guess my question is, Mr. Sheedy, would
18 you need to be there or can somebody else argue it on
19 the intervention motion? I mean --

20 MR. SHEEDY: I would like to be there. And
21 Tom Goldstein will probably argue the motion. But on
22 the technical side, I probably know more about some of
23 the water issues than Tom does. I would like to be
24 there. If push comes to shove, Your Honor, I just
25 won't attend that retreat and I'll be there in

1 Richmond in an effort to accommodate.

2 SPECIAL MASTER MYLES: Okay. Why don't
3 I hear all the scheduling concerns and issues and then
4 make a decision after the call as to when to have the
5 conference.

6 Mr. Phillips, I ask you the same question.

7 MR. PHILLIPS: Well, my problem is I'm
8 supposed to teach a course at Northwestern on Friday
9 along with the Solicitor General of the United States.
10 But if -- if it turns out that the 22nd is -- and it's
11 reasonably clear that the client would prefer that
12 I argue this, because this is a pretty important issue
13 to Duke Energy. So, you know, if it turns out that
14 the 22nd is the date that works for you, I nevertheless
15 will be there in Richmond.

16 MR. FREDERICK: This a David Frederick. I am
17 currently scheduled to be doing a moot court on the
18 afternoon of the 22nd in Washington. So if it is
19 possible to schedule the hearing for the morning of
20 the 22nd or any time on the 21st, I would be grateful
21 for that.

22 SPECIAL MASTER MYLES: I think there was --
23 Mr. Gulick, is that the right pronunciation?

24 MR. GULICK: Yes, Special Master. That's
25 Gulick. As I indicated, my conflict is that I have a

1 confirmed flight to Arizona to attend the Annual
2 Conference of the National Association of Attorney
3 Generals and Environmental Chiefs. I can cancel that
4 if I have to. It is not necessary for me to be
5 present for argument of the intervention motions, as I
6 indicated before. But if there is extended or
7 detailed discussion of the case management, I do feel
8 the need to be present for that.

9 SPECIAL MASTER MYLES: Okay. One other
10 possibility is the 20th. I throw that out. That's
11 not quite as convenient from my standpoint but I could
12 probably make that work. Does that solve anybody's
13 problems or create new problems?

14 MR. FREDERICK: This is David Frederick. It
15 creates a new problem for me, unfortunately, because
16 of preexisting commitments that I have that day in the
17 Exxon Valdez case which is going to be argued the
18 following week in the Supreme Court. And it entails
19 quite a lot of lawyers being at moot courts that day,
20 which if the Court grants Alaska's motion for divided
21 argument, I would be participating in those moot
22 courts.

23 SPECIAL MASTER MYLES: Anybody else?

24 MR. PHILLIPS: This is Carter Phillips.
25 I don't want to make life more difficult for

1 Mr. Frederick. The 20th would be better for me. But
2 as I said, the intervenors do not want to complicate
3 this schedule at all. And we will do what we have to
4 in order to keep the schedule.

5 SPECIAL MASTER MYLES: Well, the main people
6 that need to be there on the motion are obviously the
7 intervenors and those opposing the intervenors.

8 Mr. Frederick, can you make yourself available on the
9 20th, or can someone else argue the motion?

10 MR. FREDERICK: Well, I would need a day or
11 so to see what I can do about rearranging moot courts
12 for which people have got in their calendars. I mean,
13 we've got moot courts schedule for both the morning
14 and the afternoon that day with the National
15 Association of Attorneys General among others. And
16 I just can't say at this moment whether I can get
17 people to rearrange their schedules for that.

18 I don't know, Mr. Phillips, if it's possible
19 for you to do the morning of the 21st. I don't know
20 if that's a possibility.

21 SPECIAL MASTER MYLES: Why don't we do this?
22 What may be most efficient, rather than spending too
23 much time today, is why don't we have everybody say as
24 among those three dates, the 20th, the 21st and the
25 22nd, what would work best. And I think I may just

1 end up having to pick one of those days. I don't
2 really have a serious problem with not having case
3 management issues being discussed, although I'd like
4 to be able to touch on them, have a progress report,
5 not in any binding way.

6 If Mr. Gulick, that could be managed without,
7 if you can have someone else from your office there.
8 We're not going to be making any final decisions on
9 case management. But I'd like to at least have the
10 possibility of discussing it while we're all there in
11 person.

12 So can we just perhaps have everybody submit
13 an email to Ms. Nichols, my assistant, with what their
14 order of preference would be on those days? And then
15 I'll just make a decision. We'll just set a time and
16 pick one of those days.

17 MR. FREDERICK: That's fine.

18 SPECIAL MASTER MYLES: Okay. Why don't we
19 just try to get an email in by tomorrow?

20 MR BROWNING: That works. Thank you.

21 SPECIAL MASTER MYLES: Okay. You have her
22 email address from the order that went out?

23 MR. BROWNING: Yes, we do.

24 SPECIAL MASTER MYLES: I should ask also, is
25 there anyone who didn't get that email who should be

1 on our email distribution list?

2 MR. GOLDSTEIN: This is Tom Goldstein.
3 I don't think that -- it's possible that Jim Sheedy
4 was not on that list. But as I said, I'll get
5 everyone his address and email information.

6 SPECIAL MASTER MYLES: You could just include
7 it in the same email, the scheduling email. Tell me
8 anyone else that ought to be on the email list.

9 MR. RICE: This is Garry Rice. Honestly,
10 I can't recall whether I got it directly or whether
11 I got it from Carter Phillips. But I just need to
12 make sure I'm on there.

13 MR. PHILLIPS: Garry. This is Carter Phillips.
14 I will add you on when I send it in, so that will then
15 be with her assistant.

16 MR. RICE: Great. Thank you.

17 MR. FREDERICK: This is David Frederick.
18 I would like to propose being the recipient of
19 everybody's email request, because the service list
20 had the counsel of record. But there are other people
21 in respective attorney general's offices and in law
22 firms who would I think appreciate getting the email
23 notice of various hearings.

24 And that would probably make life more
25 efficient and easier for everybody. As I'm preparing

1 the service list, I will endeavor to include the email
2 addresses for anyone who would like to receive service
3 or notification of development in the case.

4 SPECIAL MASTER MYLES: Okay. That's helpful.
5 Thank you, Mr. Frederick.

6 Now, I need to finalize arrangements for the
7 courtroom, which I will communicate. But
8 preliminarily, it appears that that's where it will
9 be. I can circulate -- I imagine many of you have
10 probably been in that courthouse in Richmond.
11 I anticipate holding hearings there, if we have
12 hearings. The alternative location would be Atlanta.
13 If for some reason I can't do it in Richmond, or
14 there's some other reason, Atlanta seems to me the
15 most sensible alternative city. Since those are the
16 two major cities on either side of the two states
17 involved. Richmond's a pleasant place to be. And
18 it's a nice courthouse and it's well, well run.

19 MR. RICE: This is Garry Rice. I take it you
20 have a desire to not have these hearings in either
21 North Carolina or South Carolina?

22 SPECIAL MASTER MYLES: That made sense to me
23 just conceptually, yes. Does that make sense to
24 others?

25 MR. FREDERICK: This is David Frederick.

1 I would like consideration to be given to Washington D.C.
2 particularly, given how easy it is for transportation
3 to come in and out of Washington D.C. airports.

4 And I would also like for consideration to be
5 given to having as many teleconferences without actual
6 travel as possible. If the Special Master
7 contemplates, say, monthly conferences on the
8 development and progress of the case, our submission
9 would be that much productive work could be done by
10 telephone conference without a meeting in person. Our
11 aim is to try to hold the costs of this litigation
12 down to the maximum extent practicable. And
13 obviously, travel to any of the places that you've
14 mentioned, Atlanta, Richmond, Charlotte, anywhere
15 else, entails additional costs for the clients.

16 SPECIAL MASTER MYLES: Well, I was going to
17 get to the issue of conference calls. I do think that
18 it's a good idea to have a monthly conference call.
19 I think we can accomplish a lot in those calls
20 including resolution of issues. And we could have
21 a status call once a month preceded by a progress
22 report once a month. If those end up being too
23 frequent, we can make them less frequent or vice versa
24 if we need more calls. But I do agree that, in order
25 to keep the costs down, I think we ought to do as much

1 as we can by telephone.

2 I think on the intervention motion, partly
3 because it's the first motion, particularly because
4 I think we ought to have at least one in-person status
5 conference toward the beginning of the case, I think
6 that ought to be done in person. But generally
7 speaking, I think a lot can be done by phone,
8 especially since I'm out here, to keep the cost down.
9 So I agree with that.

10 In terms of Washington, I'll take that under
11 advisement. I don't have any problem with Washington.
12 I just think Richmond is closer to the parties, so
13 that's why I picked Richmond for the first one. But
14 I don't -- I think Washington is certainly on the list
15 of possible venues. I think Washington court,
16 the Court there is a little busier. The Court of
17 Appeals.

18 MR. BROWNING: Special master, the other
19 possibility obviously, is the Federal Circuit.
20 Sometimes that's easier to get access to.

21 SPECIAL MASTER MYLES: Well, that's true.
22 And there's a ceremonial courtroom in the D.C.
23 courthouse as well that they don't use as frequently.
24 Physically the en banc courtroom. So yes, that's a
25 possibility.

1 I think this first one will be in Richmond
2 but for future conferences D.C. is certainly a
3 possibility.

4 MR. BROWNING: For us certainly Richmond is
5 much more convenient to travel to than D.C. But we
6 very much agree that keeping cost to a minimum is in
7 the interest of everyone. And if for some reason it's
8 more cost efficient to alternate hearings between
9 North Carolina and South Carolina, since that's where
10 the parties are, we would be perfectly fine with that
11 as well. But we will leave it to the Special Master
12 what's the most efficient for the special master to
13 reach.

14 MR. RICE: This is Garry Rice with Duke Energy.
15 I think following up on that, I don't know if at any
16 point perhaps you would desire or it would be useful
17 to have a hearing in the area where the -- I mean, the
18 Catawba River runs through both states and the largest
19 city between Washington and Atlanta is Charlotte,
20 which is kind of the focus of a lot of the activity
21 that is at issue here. And we have fairly convenient
22 airports.

23 I like Christopher Browning's suggestion of
24 maybe even alternating locations. That might kind of
25 make it eventually fair for everybody.

1 SPECIAL MASTER MYLES: Okay. Well, I don't
2 know what you think about that, Mr. Frederick. But
3 from the standpoint of the parties, anyway, as opposed
4 to counsel, that would make some sense.

5 MR. FREDERICK: Well, I think much of it just
6 depends on how often you think we need to have
7 in-person meetings to resolve issues.

8 SPECIAL MASTER MYLES: Right. That's true.
9 The big issue, which I think is going to be partly
10 addressed in this -- these reports, including the
11 first one, is anticipated time of trial. Because the
12 trial would be in a courtroom. We would have to
13 decide where that would be. And length of trial
14 anticipated, nonbinding estimates, will affect,
15 obviously, the choice of that venue. But that's down
16 the road. I don't think we need to make a final
17 decision on that. But that would -- I think there
18 we're not going to be alternating. I think we'd need
19 to pick a place and have the trial there.

20 So I leave that open, but feel free to
21 address it in your report. In other words, feel free
22 to address venue. I think we need to address time of
23 trial and time to trial. Length of trial and time to
24 trial. And then if you want to throw in any thoughts
25 about venue, that's fine, too. But it sounds like we

1 have a lot of options on hearings, to the extent we
2 need them, so that's helpful going forward.
3 The courts are very cooperative in making courtrooms
4 available.

5 On the subject of monthly calls, today is the
6 6th. Could we have another call on the 6th at 10:00?
7 Or the 10th, Monday? I think the 10th is a Monday.

8 MR. RICE: This is Garry Rice with Duke.
9 Either day works for me. The 10th is a little bit
10 better than the 6th, but I can do either day.

11 MR. PHILLIPS: Special Master, at what time?

12 SPECIAL MASTER MYLES: I said 10:00 a.m.
13 I meant 10:00 a.m. Pacific time. 1:00.

14 MR. SHEEDY: Special Master, this is Jim Sheedy.
15 I certainly have no objection to that. And I might
16 suggest the 6th, as we move forward, so that everyone
17 can arrange their calendars accordingly.

18 SPECIAL MASTER MYLES: We can have the 6th or
19 the next business day. And then I think before each
20 call, we ought to have a little progress report
21 submission, which can be any length. And if there's
22 no issues to be addressed, that's fine. But just if
23 there's any outstanding issues that should be
24 addressed on the call, which could be submitted two
25 days in advance of the call, two business days in

1 advance of the call.

2 Shall we just, for the moment, set March 10th
3 at 10:00 a.m., 1:00 p.m. your time, for the next call
4 with reports to be submitted two business days in
5 advance? And then thereafter, the 6th of each month
6 or the next business day following the 6th?

7 Obviously, if anyone can't be on the call, someone
8 else can be on the call. There is no need to have
9 lead counsel on each call.

10 MR. SHEEDY: That's fine. This is Jim Sheedy
11 again.

12 MR. PHILLIPS: This is Carter Phillip.
13 That's fine with me.

14 MR. BROWNING: This is Chris Browning.
15 North Carolina is fine with that approach.

16 MR. FREDERICK: This is David Frederick. And
17 we are as well.

18 MR. RICE: Garry Rice with Duke Energy
19 concurs.

20 SPECIAL MASTER MYLES: Okay. I think that's
21 everybody.

22 Okay. I'm going to get to some administerial
23 issues in a moment. But those are all the scheduling
24 and substantive issues that I have for today. Not
25 substantive but scheduling and issue-related issues.

1 Does anyone else have any -- why don't we go
2 through each party again and see if we've left
3 anything out? And then we'll just get to the
4 administrative housekeeping issues at the end. So why
5 don't we start with Mr. Frederick?

6 MR. FREDERICK: I don't think we have
7 anything further.

8 SPECIAL MASTER MYLES: Okay. Mr. Browning.

9 MR. BROWNING: The only thing that I had on
10 my list for the Special Master's consideration would
11 be the role of the United States government and
12 whether, as is done in many of these cases, whether
13 the views of the Solicitor General are invited.
14 I certainly think it's appropriate, given that this is
15 a water rights case affecting federal land and the
16 providence of the federal regulatory agencies being,
17 concerning Duke Energy's hydroelectric power plant.

18 SPECIAL MASTER MYLES: Okay. That seems to
19 me to be an issue that you might want to put in your
20 report, whether this one or a subsequent one. It
21 seems to me that it's a point that you might want to
22 brief. And at least briefly brief. I don't mean a
23 long, 20-page brief on the subject, but you might want
24 to put thoughts and/or possibly authorities on that.
25 And also on, if there were to be such a request, when

1 in the case would it occur.

2 I know the SG's opinion is sought on matters
3 pending before the Court. This case is pending before
4 the Court, but it's not pending in the sort of fully
5 developed state that most of the requests, most of the
6 cases where the requests are made are.

7 So I think it's really two questions, whether
8 such a request would be warranted, whether such a
9 request would be authorized. And I guess a third
10 question is when would such a request be made. So
11 feel free to address that in your report.

12 Anything else that you can think of,
13 Mr. Browning, that we've left out today?

14 MR. BROWNING: No, that was the major item
15 that we had left open on our list.

16 SPECIAL MASTER MYLES: Okay. Mr. Goldstein.

17 MR. GOLDSTEIN: Thank you. No there is
18 nothing further from us.

19 SPECIAL MASTER MYLES: Mr. Phillips?

20 MR. PHILLIPS: No, nothing further.

21 SPECIAL MASTER MYLES: Okay. So action items
22 going forward are that Mr. Frederick is going to
23 prepare, update a comprehensive service list including
24 email addresses, everyone's going to send me their
25 preferences on the hearing date for the intervention

1 motion and/or possibly a case management, informal
2 case management conference on whatever the same day
3 is. And we have, obviously, the date that we've set
4 out for various reports and the next call. I think
5 that's all the action items. Right?

6 MR. GOLDSTEIN: Special Master, you had asked
7 us to email you pdf's of the documents in the case so
8 far.

9 SPECIAL MASTER MYLES: That's another action
10 item. Right.

11 MR. GOLDSTEIN: Sorry. This is Tom Goldstein.

12 SPECIAL MASTER MYLES: Yes. Now, who -- I
13 don't know if there's any -- if one party could
14 undertake to do that? If anybody has all of that
15 electronically already and can just send it, that
16 would be fine. Otherwise, we can do it one of two
17 ways: We can have Mr. Frederick do it, because he's
18 the plaintiff. If that's too burdensome, we can have
19 each party send me what they have, their respective
20 pleadings and documents.

21 MR. FREDERICK: This is David Frederick.
22 I believe that we finally have been served with
23 everything. And so we will endeavor to put together
24 an email packet or a series of email transmission to
25 your office.

1 SPECIAL MASTER MYLES: Okay.

2 MR. FREDERICK: Or we can burn it on a CD and
3 just send it to you by that method.

4 SPECIAL MASTER MYLES: I think that's
5 probably better.

6 MR. FREDERICK: Okay.

7 SPECIAL MASTER MYLES: That would probably be
8 better.

9 MR. FREDERICK: And we'll be happy to provide
10 service to the parties and the proposed intervenors as
11 well.

12 SPECIAL MASTER MYLES: Okay. And you have my
13 office address, I'm sure, from the website. Right?

14 MR. FREDERICK: Yes.

15 SPECIAL MASTER MYLES: And you can look up
16 Ms. Tovar on there. She's on there, too. Send it to
17 me and her, I guess. It will get to one of us.

18 MR. FREDERICK: Okay.

19 SPECIAL MASTER MYLES: And again, I need hard
20 copies as well, because the Court sent me one. And
21 I think for purposes of the docket -- there's not much
22 here. There's really just -- there's the petition,
23 the answer and related documents. There's the
24 intervention motion and related documents. The two
25 motions. And there's the preliminary injunction

1 motion papers.

2 So the preliminary injunction I don't need
3 additional copies of, because those I can make. The
4 documents that are in booklet form, if people in due
5 course can just send me four copies of those, I can
6 use one as the docket copy and then the others can be
7 working copies. I have one already, so there I only
8 need four copies. There is no rush on that, but that
9 will help me complete the docket.

10 MR. FREDERICK: This is David Frederick. We
11 certainly can provide copies of South Carolina's
12 submissions in booklet form, but we would request that
13 the parties and the proposed intervenors separately
14 submit their booklet copies to your office.

15 SPECIAL MASTER MYLES: I agree with that.
16 Obviously, people don't have other people's booklet
17 form documents in sufficient numbers. So I think that
18 each party, each entity in the case, the two states
19 and the two intervenors, should send me four copies of
20 their booklet form documents to my office address.

21 A couple other housekeeping, a couple other
22 matters. On compensation and fees, the way this
23 usually works -- well, since I'm in a law firm, I'd
24 like to -- I'm going to run my fees through the law
25 firm invoicing process. I think it's going to be

1 a lot more efficient than doing it separately. That's
2 what some other Special Masters have done who are in
3 law firms. Which just simply means that there will be
4 an invoice generated through the invoicing system here
5 at my firm. My rate is ordinarily \$600 an hour. I'm
6 going to discount that, as other Special Masters have
7 done, in recognition of the public, public interest
8 aspect of the job. I'm going to lower my rate to 550.
9 Ms. Tovar's rate is 420. Our paralegal rates are in
10 the 200 range. I don't know what paralegal help I'm
11 going to need. I don't think very much. But I just
12 say that. We're not going to bill for clerical,
13 because that's really billed into our hourly rates.
14 Clerical costs are relatively high out there, as are
15 all costs in San Francisco. Our rates somewhat
16 reflect that regional cost. I think they're higher
17 than rates, for example, in Portland, Maine, where one
18 of the other Special Masters resides. So -- but that
19 does reflect a discount.

20 The way I'd like to do the billing is to
21 bill, is to send the bills to the parties. Now, at
22 the moment, at the moment, I'm not going to discuss
23 now how many parties, et cetera. I think there will
24 need to be a resolution of how that gets divided up.
25 But the parties right now, North Carolina and

1 South Carolina, are responsible for the costs. And
2 I expect that they can work out between themselves how
3 that get allocated. I don't really have any view on
4 that. If necessary, I'm happy to resolve it. But
5 I think that's something that can be worked on the
6 parties' side of things.

7 I don't think there's any need to set up an
8 escrow or any other kind of an account, which has been
9 done on some other cases. Disbursements, conference
10 call, travel, printing of reports, ultimately, those
11 costs are all borne by the parties. We'll try to keep
12 those costs down. That's one reason I think that the
13 telephone conference calls are helpful.

14 The way the billing works is that I submit
15 a motion for cost for reimbursement to the Court and
16 then the parties have 10 days to comment to the Court.
17 It's the Court that ultimately rules on fee requests
18 by the Master.

19 Any objections you have or comments to the
20 fee, the invoice, should be submitted to the Court,
21 not to me. You should send that directly to
22 the Court. In other words, I don't really want to be
23 involved in issues over fees. So you don't even need
24 to copy me on those. The Court deals with those
25 directly. So that's, I think, all the information on

1 fees.

2 Does anyone have any comments now on that, on
3 that process?

4 Okay. I think then the only final issue is
5 the court reporter. I should have mentioned the court
6 reporter's costs are also disbursements that will be
7 included. The court reporter I think needs to know
8 what everyone's needs are for purposes of getting the
9 transcript of today's call and other calls. When we
10 have a hearing in Richmond, it will be a different
11 court reporter. So we'll need to deal separately with
12 that court reporter at that time. But I'm hopeful
13 that Dana and Sarnoff, her company, will be helping us
14 on all of these conference calls to simplify things.

15 Why don't you all give her whatever
16 information you need on the need for copies?

17 MR. FREDERICK: This is David Frederick for
18 South Carolina. We would appreciate obtaining one
19 hard copy. And if you could email us a document
20 containing the transcription that we could then
21 transmit to our team members, that would be
22 appreciated.

23 DEPOSITION OFFICER: Would you like that as
24 an e-tran or ASCII?

25 MR. FREDERICK: Electronic or ASCII, I'm not

1 sure which would be easiest to work with, to be
2 perfectly honest with you. Is it possible to receive
3 each type and then canvass for the workability?

4 In that regard, if I can make a request of
5 the other folks on the call, if we could serve each
6 other and prepare searchable pdf's of documents, that
7 would greatly facilitate our work on the case.

8 MR. GOLDSTEIN: Special Master, this is
9 Tom Goldstein. Do you know what the timeline will be,
10 roughly, for setting up the website? Obviously, you
11 won't know precisely but if we're talking multiple
12 months. And once it's up, how quickly the transcripts
13 you anticipate would make their way onto the website,
14 that may make everything relatively easy in terms of
15 folks getting access to transcripts.

16 SPECIAL MASTER MYLES: Yes, certainly it
17 would. I don't know the answer to your first question
18 which is how long it will take to set up the website.
19 The last report I had was that it could be done
20 relatively quickly, but I don't have a precise time.
21 I might be able to get that information in a second.
22 But let's assume that that can be done within the next
23 couple of weeks.

24 And then in terms of getting the transcript,
25 that will depend on whether the parties are willing to

1 pay Dana extra to get expedited transcripts.
2 Otherwise, she can tell me how long it will take me to
3 get downloadable versions of the transcripts.

4 MR. FREDERICK: For South Carolina, this is
5 David Frederick. I don't anticipate that we need an
6 expedited transcript of today's call. And whether we
7 need expedited transcripts, I think would depends on
8 the nature of the proceeding and what follow-up
9 briefing requirements might be called for.

10 MR. BROWNING: This is Chris Browning. We
11 concur. There is no reason for an expedited copy of
12 the transcript. And like South Carolina, one copy of
13 the transcript and an electronic copy can be sent to
14 our office.

15 SPECIAL MASTER MYLES: Dana, how long do you
16 think it would take to turn around a nonexpedited
17 transcript?

18 DEPOSITION OFFICER: The standard is a
19 two-week turnaround.

20 SPECIAL MASTER MYLES: Okay. I should also
21 ask Dana if it's feasible to have a pdf-formatted
22 transcript that can be downloaded. Can the electronic
23 transcript that you send be downloaded onto a website?

24 DEPOSITION OFFICER: Yes, it can. We can do
25 a pdf for you.

1 SPECIAL MASTER MYLES: I imagine that process
2 can occur pretty quickly, once it gets here. I'll
3 notify the parties by email when the website is up and
4 give a link.

5 Is there anything else today we need to talk
6 about? I don't think so, because I think we already
7 went through that.

8 DEPOSITION OFFICER: Special Master, this is
9 the court reporter. Do you need a hard copy or just
10 the pdf sent to you?

11 SPECIAL MASTER MYLES: I need a hard copy
12 also.

13 We'll turn to the action item list and
14 everybody will do what they have agreed to today. And
15 then we'll just reconvene then via email on the
16 hearing date, on the hearing date for the week of the
17 18th. I think that's all for today.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [] was [] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: FEB 25 2008



DANA M. FREED
CSR No. 10602

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