



SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 736 8000  
(202) 736 8711 FAX

BEIJING  
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TOKYO  
WASHINGTON, D.C.

vseltz@sidley.com  
(202) 736-8015

FOUNDED 1866

July 11, 2008

**By E-mail and First-Class Mail**

Kristin Linsley Myles, Special Master  
Munger, Tolles & Olson LLP  
560 Mission Street, Twenty-Seventh Floor  
San Francisco, California 94105-2907

Re: State of South Carolina v. State of North Carolina, No. 138, Original

Dear Special Master Myles:

The three intervenors have conferred in order to present you with a single response to South Carolina's July 3, 2008 proposal for the timing of Phase One discovery.

First, South Carolina carries the burden of proof in Phase One. Thus, South Carolina will be required to set forth the facts that it asserts satisfy its burden of proving harms caused by specific upstream activities, with appropriate citation to supporting evidence. Because South Carolina bears the burden of proof in Phase One, intervenors submit that North Carolina should not be required to submit contention interrogatories in order to learn the facts and evidence that South Carolina will rely on to carry its burden.

Second, South Carolina proposes to provide the facts and evidence that will carry its burden of proof in Phase One at the conclusion of nine months. If South Carolina later seeks to rely on facts and evidence not presented at the end of the initial nine months of Phase One, then South Carolina should be required to demonstrate that discovery of such evidence was not reasonably possible during the initial nine month period. If South Carolina is permitted to rely on facts and evidence discovered after the initial nine month period, then opponents of equitable apportionment should be permitted any discovery necessary to respond.

Third, intervenors respectfully submit that in their collective experience, three months is too short a time for expert reports.

Fourth, intervenors request that the operative principle governing expert reports should be equality. That is, if South Carolina is permitted to file reply reports, opposing parties should be permitted to file sur-replies. In addition, intervenors respectfully suggest that any reply or sur-

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reply reports be restricted to material that the proponent could not reasonably have foreseen the need to address in its initial reports.

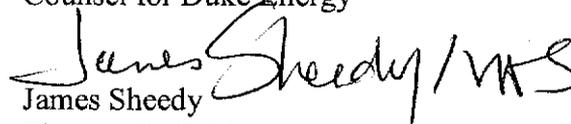
Intervenors respectfully request that the Special Master adopt a Case Management Plan consistent with the positions set forth above.

Thank you.

Sincerely,



Carter G. Phillips  
Garry S. Rice  
Counsel for Duke Energy



James Sheedy  
Thomas C. Goldstein  
Counsel for CRWSP



James T. Banks  
H. Michael Boyd  
Counsel for City of Charlotte, N.C.

cc: Attached Service List

## SERVICE LIST

### Special Master

Kristin Linsley Myles, Special Master  
Assistant to the Special Master Lori A. Nichols  
Munger, Tolles & Olson LLP  
560 Mission Street, Twenty-Seventh Floor  
San Francisco, California 94105-2907  
Phone: (415) 512-4000  
Fax: (415) 512-4077  
myleskl@mto.com  
tovarac@mto.com  
lori.nichols@mto.com  
Copies: Original and 4 copies, plus email pdf

### South Carolina

Robert D. Cook  
Assistant Deputy Attorney General  
T. Parkin Hunter  
L. Childs Cantey  
Assistant Attorneys General  
1000 Assembly Street, Room 519  
Columbia, South Carolina 29201  
Phone: (803) 734-3736  
Fax: (803) 734-3524  
agrcook@ag.state.sc.us  
phunter@ag.state.sc.us  
ccantey@ag.state.sc.us  
Copies: 3, plus email pdf  
(Send overnight deliveries to street address;  
send mail to P.O. Box 11549, 29211-1549  
zip code)

David C. Frederick  
Scott H. Angstreich  
Scott K. Attaway  
David Sarratt  
Kellogg, Huber, Hansen, Todd,  
Evans & Figel, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
Phone: (202) 326-7951  
Fax: (202) 326-7999  
dfrederick@khhte.com  
sangstreich@khhte.com  
sattaway@khhte.com  
dsarratt@khhte.com  
Copies: 3, plus email pdf

### North Carolina

Christopher G. Browning, Jr.  
James C. Gulick  
Marc D. Bernstein  
J. Allen Jernigan  
Jennie W. Hauser  
North Carolina Department of Justice  
114 West Edenton Street  
Raleigh, North Carolina 27603  
Phone: (919) 716-6900  
Fax: (919) 716-6763  
cbrowning@ncdoj.gov

jgulick@ncdoj.gov  
mbernstein@ncdoj.gov  
ajern@ncdoj.gov  
jhauser@ncdoj.gov  
Copies: 5, plus email pdf  
(Send overnight deliveries to street address;  
send mail to P.O. Box 629, 27602 zip code)

**Proposed Interveners**

**Duke Energy Carolinas, LLC**

<p>Carter G. Phillips Virginia A. Seitz Ileana M. Ciobanu Sidley Austin LLP 1501 K Street, N.W. Washington, D.C. 20005 Phone: (202) 736-8270 Fax: (202) 736-8711 cphillips@sidley.com vseitz@sidley.com iciobanu@sidley.com Copies: 3, plus email pdf</p>	<p>Garry S. Rice Associate General Counsel Duke Energy Corp. Legal Affairs – EC03T 526 South Church Street Charlotte, North Carolina 28202 Phone: (704) 382-8111 Fax: (980) 373-9903 gsrice@duke-energy.com Copies: 3, plus email pdf (Send overnight deliveries to street address; send mail to P.O. Box 1006, 28201-1006 zip code)</p>
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**Catawba River Water Supply Project**

<p>Thomas C. Goldstein Akin Gump Strauss Hauer &amp; Feld, LLP Robert S. Strauss Building 1333 New Hampshire Avenue, N.W. Washington, D.C. 20036-1564 Phone: (202) 887-4000 Fax: (202) 887-4288 tgoldstein@akingump.com Copies: 3, plus email pdf</p>	<p>Jim Sheedy Susan Driscoll Driscoll Sheedy, P.A. 11520 North Community House Road Building 2, Suite 200 Charlotte, North Carolina 28277 Phone: (704) 341-2101 Fax: (704) 341-2105 jimsheedy@driscollsheedy.com sdriscoll@driscollsheedy.com Copies: 3, plus email pdf</p>
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**City of Charlotte, North Carolina**

<p>James T. Banks H. Christopher Bartolomucci Hogan &amp; Hartson LLP 555 Thirteenth Street, N.W. Washington, D.C. 20004 Phone: (202) 637-5600 Fax: (202) 637-5910 jtbanks@hhlaw.com hcbartolomucci@hhlaw.com Copies: 3, plus email pdf</p>	<p>DeWitt F. McCarley City Attorney Office of the City Attorney 600 East Fourth Street Charlotte, North Carolina 28202 Phone: (704) 336-2254 Fax: (704) 632-8328 dmccarley@ci.charlotte.nc.us Copies: 3, plus email pdf</p>
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**City of Charlotte, North Carolina, cont'd:**

<p>H. Michael Boyd Senior Assistant City Attorney Charlotte-Mecklenburg Utilities 5100 Brookshire Boulevard Charlotte, NC 28216 Phone: (704) 391-5110 Fax: (704) 632-8336 Hmboyd@ci.charlotte.nc.us</p>	
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