

SOUTH CAROLINA,

**Plaintiff,**

vs.

No. 138

NORTH CAROLINA,

**Defendant.**

REVISED

CERTIFIED

**COpy**

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TELEPHONIC CONFERENCE

BEFORE SPECIAL MASTER KRISTIN LINSLEY MYLES

Thursday, April 16, 2009

**Reported by:**

DANA M. FREED

CSR No. 10602

JOB No. 105320

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SOUTH CAROLINA,  
**Plaintiff,**

vs.

No. 138

NORTH CAROLINA,  
**Defendants.**

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**Telephonic Conference before Special  
Master Kristin Linsley Myles, beginning at 11:00 a.m.  
and ending at 11:09 a.m. on Thursday, April 16, 2009,  
before DANA M. FREED, Certified Shorthand Reporter  
No. 10602.**

1 APPEARANCES:

2

3

MUNGER, TOLLES & OLSON LLP  
KRISTIN LINSLEY MYLES, SPECIAL MASTER  
560 Mission Street, Twenty-Seventh Floor  
San Francisco, California 94105-2907  
415.512.4000

6

7

For SOUTH CAROLINA:

8

ASSISTANT DEPUTY ATTORNEY GENERAL  
BY: ROBERT D. COOK  
T. PARKIN HUNTER  
L. CHILDS CANTEY

9

10

Post Office Box 11549  
1000 Assembly Street, Room 519  
Columbia, South Carolina 29211-1549  
803.734.3736  
agrcook@ag.state.sc.us

11

12

13

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.  
BY: DAVID C. FREDERICK  
MICHAEL GOTTLIEB  
SCOTT K. ATTAWAY

14

15

Attorneys at Law  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
202.326.7900  
dfrederick@khhte.com

16

17

18

19

For NORTH CAROLINA:

20

NORTH CAROLINA DEPARTMENT OF JUSTICE  
BY: CHRISTOPHER G. BROWNING  
JAMES C. GULICK  
CARRIEANNE ORLIKOWSKI

21

22

Attorneys at Law  
114 West Edenton Street  
Raleigh, North Carolina 27603  
919.716.6900  
cbrowning@ncdoj.gov

23

24

25

1 APPEARANCES: (Continued)

2  
3 For PROPOSED INTERVENOR DUKE ENERGY CAROLINAS, LLC:

4 SIDLEY AUSTIN LLP  
5 BY: VIRGINIA A. SEITZ  
6 Attorney at Law  
7 1501 K Street, N.W.  
8 Washington, D.C. 20005  
9 202.736.8270  
10 cphillips@sidley.com

11 For PROPOSED INTERVENOR CATAWBA RIVER WATER SUPPLY  
12 PROJECT:

13 DRISCOLL SHEEDY, P.A.  
14 BY: JIM SHEEDY  
15 SUSAN DRISCOLL  
16 Attorneys at Law  
17 11520 North Community House Road  
18 Building 2, Suite 200  
19 Charlotte, North Carolina 28277  
20 jimsheedy@driscollsheedy.com

21 AKIN GUMP STRAUSS HAUER & FELD LLP  
22 BY: TROY CAHILL  
23 THOMAS G. GOLDSTEIN  
24 Attorneys at Law  
25 Robert S. Strauss Building  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036  
tgoldstein@akingump.com

1 APPEARANCES: (Continued)

2

3 For the CITY OF CHARLOTTE:

4

HOGAN & HARTSON LLP

5

BY: JAMES T. BANKS

Attorney at Law

6

555 Thirteenth Street, N.W.

Washington, D.C. 20004

7

202.637.5600

jtbanks@hhlaw.com

8

CHARLOTTE-MECKLENBURG UTILITIES

9

BY: H. MICHAEL BOYD

Senior Assistant City Attorney

10

5100 Brookshire Boulevard

Charlotte, North Carolina 28216

11

704.391.5110

Hmboyd@ci.charlotte.nc.us

12

13

14

15

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Thursday, April 16, 2009

11:00 a.m. - 11:09 a.m.

MR. BROWNING: Chris Browning for North Carolina. With me are Jim Gulick and Carrieanne Orlikowski, C-a-r-r-i-e-a-n-n-e, O-r-I-i-k-o-w-s-k-i.

MR. FREDERICK: This is David Frederick for South Carolina. And with me here is Mike Gottlieb.

MR. COOK: Bob Cook, Parkin Hunter, and Childs Cantey for South Carolina.

MR. GULICK: This is Jim Banks for the City of Charlotte.

MR. GOLDSTEIN: Tom Goldstein and Troy Cahill for CRWSP.

MR. BOYD: Mike Boyd. Also City of Charlotte.

SPECIAL MASTER MYLES: Is that everybody? This is Kristin Myles. Okay. I guess I had --

MS. SEITZ: Virginia Seitz.

MS. DRISCOLL: Susan Driscoll and Jim Sheedy.

SPECIAL MASTER MYLES: Well, I jumped the gun. But now I think everybody's on. Does that seem correct? Okay. Well, why don't we just go ahead.

The first thing I want to ask is whether

1 people have anything they want to add or amplify to  
2 what was in the report which I read. I see there's  
3 not a lot going on that needed to be reported, other  
4 than obviously the Court setting the intervention  
5 issue for argument in the fall. So are there  
6 things are there particular issues that anybody  
7 wanted to raise on the call? And then I just had  
8 a couple of additional questions.

9 MR. FREDERICK: This is David Frederick for  
10 South Carolina. We do not have any issues to raise on  
11 today's call.

12 MR. BROWNING: This is Chris Browning for  
13 North Carolina. We have no additional issues.

14 SPECIAL MASTER MYLES: Okay. Then it may be  
15 a very short call. My only two followup questions  
16 were, one, now in light of the argument being set  
17 for -- someone just joined.

18 MR. ATTAWAY: Hi, this is Scott Attaway,  
19 South Carolina.

20 SPECIAL MASTER MYLES: Hi, Mr. Attaway. We  
21 have sort of gotten started. My question was whether  
22 in light of the Court setting the argument for the  
23 fall, rather than I think we had thought it might be  
24 done sooner, are there any adjustments that need to be  
25 made to any of the arrangements that we put in place?

1 The interim order that I drew in terms of while we  
2 were waiting for the Court to decide the issue.  
3 That's one question.

4 And the related question is, what, if  
5 anything, do the parties anticipate or think would be  
6 useful from me in the meantime. And there may be  
7 nothing that particularly needs to be done. But I  
8 just pose both of those questions.

9 I guess the more concrete question is do we  
10 need to do anything to the interim -- not the interim  
11 order, but whatever we call it, the order governing  
12 this interim period.

13 MR. BROWNING: Your Honor, this is Chris Browning  
14 for North Carolina. I don't think there's a need to  
15 change anything at this point. If you recall in case  
16 management order number 7, you conclude by saying that  
17 if there are any adjustments, basically, the States  
18 and the intervenors will cooperate, discuss the issue,  
19 and then effectively come back with you to a proposal.

20 I think we're all proceeding with discovery  
21 for the moment. And if there is a need to adjust,  
22 I would envision the most appropriate step would be  
23 we'll all talk, see if we can't come up with a fair  
24 schedule or proposal and present that to you. And  
25 I think subparagraph F of case management order

1 number 7, *in* paragraph 2 of that case management  
2 order, *is* certainly sufficient to guide the parties at  
3 this stage of the proceeding.

4 SPECIAL MASTER MYLES: Okay. The most  
5 obvious thing, I think we sort of left on the  
6 assumption that the *issue* wouldn't really arise, was  
7 the depositions, which I think we thought would create  
8 more *issues* than we thought needed to be dealt with *in*  
9 that order. And I assume that's still going to be the  
10 case, that there won't be deposition *issues* that arise  
11 *in* the meantime. If there are, they can be presented  
12 through that paragraph F, if necessary, you know, to  
13 me.

14 MR. FREDERICK: This *is* David Frederick for  
15 South Carolina. Special Master Myles, that seems  
16 entirely fair to us.

17 SPECIAL MASTER MYLES: And what about the  
18 intervenors? Are things *in* the satisfactory state  
19 from the standpoint of the operation of that order?

20 MS. SEITZ: This *is* Virginia Seitz for  
21 Duke Energy. Yes, likewise.

22 MR. GOLDSTEIN: This *is* Tom Goldstein for  
23 CRWSP. Our current sense *is* that the document  
24 discovery that *is* allowed by CMO number 7 will take up  
25 a lot of this time. And as North Carolina said, and

1 South Carolina I think agrees, if some issue comes up  
2 before the, before the Court rules, then we can always  
3 try and work it out ourselves if not come back to you.

4 MR. BANKS: This is Jim Banks for Charlotte.  
5 We agree with that.

6 SPECIAL MASTER MYLES: Well, great. Well,  
7 that pretty much answers my second question then about  
8 whether there was anything, any way in which,  
9 you know, people need me. So I guess we have the  
10 shortest call ever today. But we have -- do we have  
11 another call scheduled? I don't have my calendar in  
12 front of me.

13 MR. BROWNING: Your Honor, there is not  
14 another call currently scheduled. This is  
15 Chris Browning.

16 SPECIAL MASTER MYLES: Well, I leave it to  
17 your all collective judgment on when the next call  
18 would be necessary. We haven't had much to cover in  
19 the last two calls, just because we have been in this  
20 transitional phase and you all have been moving ahead  
21 with discovery without a hitch. So do we think we  
22 need another call in a month? Do we want to set it  
23 out longer than that?

24 MR. FREDERICK: This is David Frederick for  
25 South Carolina, Special Master Myles. I would propose

1 that we either agree to work among ourselves to come  
2 up with a date some time in the mid summer and propose  
3 that, or propose some suggested dates to you or your  
4 office. And then to have, you know, a couple of  
5 months of continued discovery before we reconvene.

6 SPECIAL MASTER MYLES: Is everybody okay with  
7 that? Or not hearing any dissent from that, why don't  
8 we do that? I'll wait to hear from you then on  
9 a proposed date. And we can communicate, why don't we  
10 communicate by email? Does that make sense,  
11 Mr. Frederick, for you to come back to me with email?  
12 We can just work that out by email.

13 Sounds good. If there is nothing else, then  
14 why don't we just adjourn for the day.

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

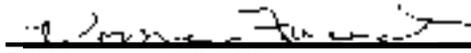
3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed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

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

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

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

20  
21 Dated: MAY 11 2009

22  
23   
24 \_\_\_\_\_  
DANA M. FREED  
25 CSR No. 10602

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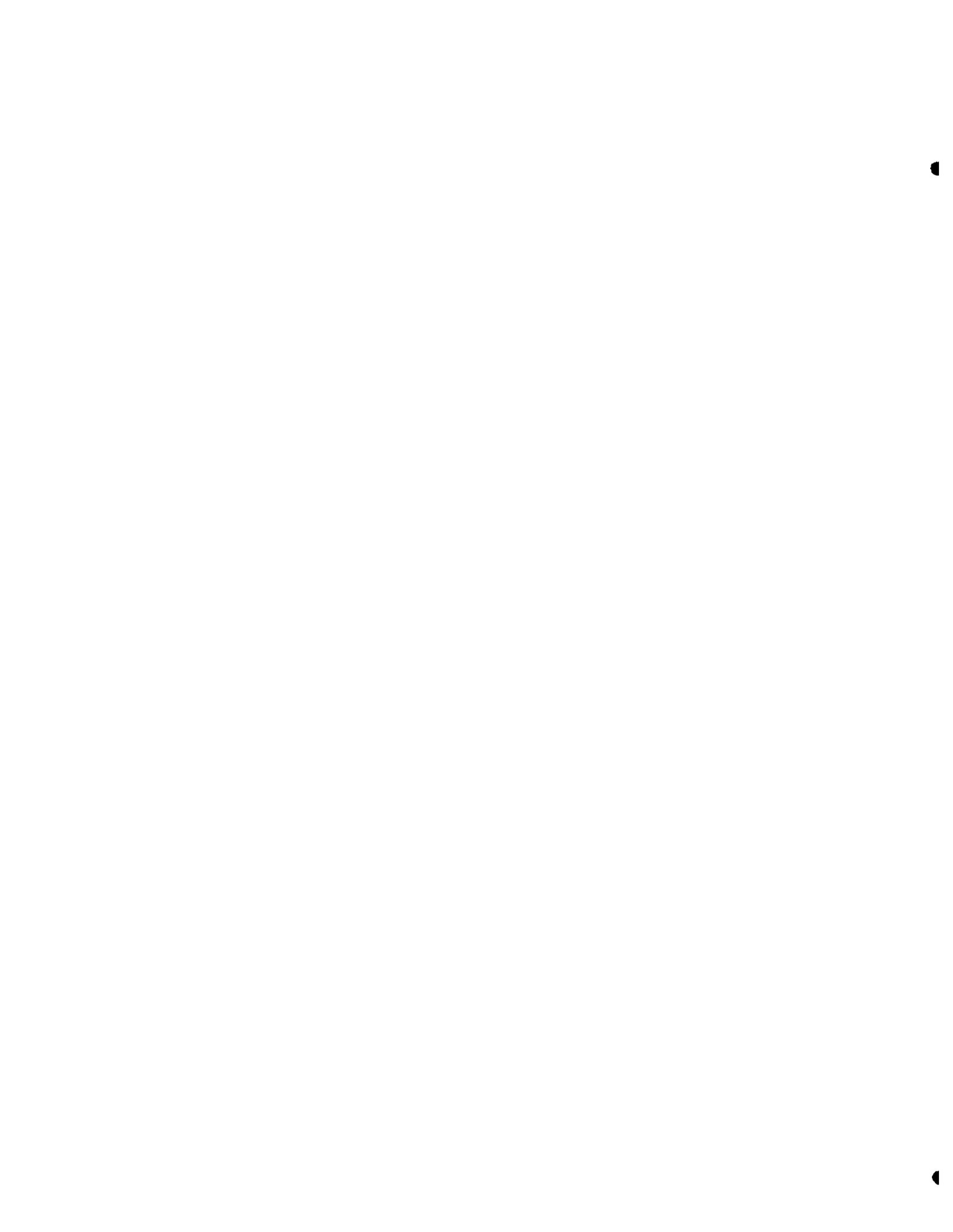
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 DANA M. FREED  
 CSR No. 10602  
 JOB No. 105320

1 APPEARANCES:  
 2  
 3 MUNGER, TOLLES & OLSON LLP  
 4 KRISTIN LINSLEY MYLES, SPECIAL MASTER  
 5 560 Mission Street, Twenty-Seventh Floor  
 6 San Francisco, California 94105-2907  
 7 415.512.4000  
 8 For SOUTH CAROLINA:  
 9 ASSISTANT DEPUTY ATTORNEY GENERAL  
 10 BY: ROBERT D. COOK  
 11 T. PARKIN HUNTER  
 12 L. CHILDS CANTEY  
 13 Post Office Box 11549  
 14 1000 Assembly Street, Room 519  
 15 Columbia, South Carolina 29211-1549  
 16 803.734.3736  
 17 agrcook@ag.state.sc.us  
 18 KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.  
 19 BY: DAVID C. FREDERICK  
 20 MICHAEL GOTTLIEB  
 21 SCOTT K. ATTAWAY  
 22 Attorneys at Law  
 23 1615 M Street, N.W., Suite 400  
 24 Washington, D.C. 20036  
 25 202.326.7900  
 dfrederick@khhte.com  
 For NORTH CAROLINA:  
 NORTH CAROLINA DEPARTMENT OF JUSTICE  
 BY: CHRISTOPHER G. BROWNING  
 JAMES C. GULICK  
 CARRIEANNE ORLIKOWSKI  
 Attorneys at Law  
 114 West Edenton Street  
 Raleigh, North Carolina 27603  
 919.716.6900  
 cbrowning@ncdoj.gov

1  
 2  
 3  
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1 APPEARANCES: (Continued)  
 2  
 3 For PROPOSED INTERVENOR DUKE ENERGY CAROLINAS, LLC:  
 4 SIDLEY AUSTIN LLP  
 5 BY: VIRGINIA A. SEITZ  
 6 Attorney at Law  
 7 1501 K Street, N.W.  
 8 Washington, D.C. 20005  
 202.736.8270  
 cphillips@sidley.com  
 For PROPOSED INTERVENOR CATAWBA RIVER WATER SUPPLY  
 PROJECT:  
 DRISCOLL SHEEDY, P.A.  
 BY: JIM SHEEDY  
 SUSAN DRISCOLL  
 Attorneys at Law  
 11520 North Community House Road  
 Building 2, Suite 200  
 Charlotte, North Carolina 28277  
 jimsheedy@driscollsheedy.com  
 AKIN GUMP STRAUSS HAUER & FELD LLP  
 BY: TROY CAHILL  
 THOMAS G. GOLDSTEIN  
 Attorneys at Law  
 Robert S. Strauss Building  
 1333 New Hampshire Avenue, N.W.  
 Washington, DC 20036  
 tgoldstein@akingump.com

1 APPEARANCES: (Continued)  
 2  
 3 For the CITY OF CHARLOTTE:  
 4 HOGAN & HARTSON LLP  
 5 BY: JAMES T. BANKS  
 6 Attorney at Law  
 7 555 Thirteenth Street, N.W.  
 8 Washington, D.C. 20004  
 9 202.637.5600  
 10 jtbanks@hhlaw.com  
 11  
 12 CHARLOTTE-MECKLENBURG UTILITIES  
 13 BY: H. MICHAEL BOYD  
 14 Senior Assistant City Attorney  
 15 5100 Brookshire Boulevard  
 16 Charlotte, North Carolina 28216  
 17 704.391.5110  
 18 Hmboyd@cLcharlotte.nc.us  
 19  
 20  
 21  
 22  
 23  
 24  
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1 people have anything they want to add or amplify to  
 2 what was in the report which I read. I see there's  
 3 not a lot going on that needed to be reported, other  
 4 than obviously the Court setting the intervention  
 5 issue for argument in the fall. So are there  
 6 things -- are there particular issues that anybody  
 7 wanted to raise on the call? And then I just had  
 8 a couple of additional questions.  
 9 MR. FREDERICK: This is David Frederick for  
 10 South Carolina. We do not have any issues to raise on  
 11 today's call.  
 12 MR. BROWNING: This is Chris Browning for  
 13 North Carolina. We have no additional issues.  
 14 SPECIAL MASTER MYLES: Okay. Then it may be  
 15 a very short call. My only two followup questions  
 16 were, one, now in light of the argument being set  
 17 for -- someone just joined.  
 18 MR. ATTAWAY: Hi, this is Scott Attaway,  
 19 South Carolina.  
 20 SPECIAL MASTER MYLES: Hi, Mr. Attaway. We  
 21 have sort of gotten started. My question was whether  
 22 in light of the Court setting the argument for the  
 23 fall, rather than I think we had thought it might be  
 24 done sooner, are there any adjustments that need to be  
 25 made to any of the arrangements that we put in place?

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1 Thursday, April 16, 2009  
 2 11:00 a.m. - 11:09 a.m.  
 3  
 4 MR. BROWNING: Chris Browning for  
 5 North Carolina. With me are Jim Gulick and  
 6 Carrieanne Orlikowski, C-a-r-r-i-e-a-n-n-e,  
 7 O-r-l-i-k-o-w-s-k-i.  
 8 MR. FREDERICK: This is David Frederick for  
 9 South Carolina. And with me here is Mike Gottlieb.  
 10 MR. COOK: Bob Cook, Parkin Hunter, and  
 11 Childs Cantey for South Carolina.  
 12 MR. GULICK: This is Jim Banks for the City  
 13 of Charlotte.  
 14 MR. GOLDSTEIN: Tom Goldstein and Troy Cahill  
 15 for CRWSP.  
 16 MR. BOYD: Mike Boyd. Also City of  
 17 Charlotte.  
 18 SPECIAL MASTER MYLES: Is that everybody?  
 19 This is Kristin Myles. Okay. I guess I had --  
 20 MS. SEITZ: Virginia Seitz.  
 21 MS. DRISCOLL: Susan Driscoll and Jim Sheedy.  
 22 SPECIAL MASTER MYLES: Well, I jumped the  
 23 gun. But now I think everybody's on. Does that seem  
 24 correct? Okay. Well, why don't we just go ahead.  
 25 The first thing I want to ask is whether

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1 The interim order that I drew in terms of while we  
 2 were waiting for the Court to decide the issue.  
 3 That's one question.  
 4 And the related question is, what, if  
 5 anything, do the parties anticipate or think would be  
 6 useful from me in the meantime. And there may be  
 7 nothing that particularly needs to be done. But I  
 8 just pose both of those questions.  
 9 I guess the more concrete question is do we  
 10 need to do anything to the interim -- not the interim  
 11 order, but whatever we call it, the order governing  
 12 this interim period.  
 13 MR. BROWNING: Your Honor, this is Chris Browning  
 14 for North Carolina. I don't think there's a need to  
 15 change anything at this point. If you recall in case  
 16 management order number 7, you conclude by saying that  
 17 if there are any adjustments, basically, the States  
 18 and the intervenors will cooperate, discuss the issue,  
 19 and then effectively come back with you to a proposal.  
 20 I think we're all proceeding with discovery  
 21 for the moment. And if there is a need to adjust,  
 22 I would envision the most appropriate step would be  
 23 we'll all talk, see if we can't come up with a fair  
 24 schedule or proposal and present that to you. And  
 25 I think subparagraph F of case management order

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1 number 7, in paragraph 2 of that case management  
 2 order, is certainly sufficient to guide the parties at  
 3 this stage of the proceeding.  
 4 SPECIAL MASTER MYLES: Okay. The most  
 5 obvious thing, I think we sort of left on the  
 6 assumption that the issue wouldn't really arise, was  
 7 the depositions, which I think we thought would create  
 8 more issues than we thought needed to be dealt with in  
 9 that order. And I assume that's still going to be the  
 10 case, that there won't be deposition issues that arise  
 11 in the meantime. If there are, they can be presented  
 12 through that paragraph F, if necessary, you know, to  
 13 me.  
 14 MR. FREDERICK: This is David Frederick for  
 15 South Carolina. Special Master Myles, that seems  
 16 entirely fair to us.  
 17 SPECIAL MASTER MYLES: And what about the  
 18 intervenors? Are things in the satisfactory state  
 19 from the standpoint of the operation of that order?  
 20 MS. SEITZ: This is Virginia Seitz for  
 21 Duke Energy. Yes, likewise.  
 22 MR. GOLDSTEIN: This is Tom Goldstein for  
 23 CRWSP. Our current sense is that the document  
 24 discovery that is allowed by CMO number 7 will take up  
 25 a lot of this time. And as North Carolina said, and  
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1 South Carolina I think agrees, if some issue comes up  
 2 before the, before the Court rules, then we can always  
 3 try and work it out ourselves if not come back to you.  
 4 MR. BANKS: This is Jim Banks for Charlotte.  
 5 We agree with that.  
 6 SPECIAL MASTER MYLES: Well, great. Well,  
 7 that pretty much answers my second question then about  
 8 whether there was anything, any way in which,  
 9 you know, people need me. So I guess we have the  
 10 shortest call ever today. But we have -- do we have  
 11 another call scheduled? I don't have my calendar in  
 12 front of me.  
 13 MR. BROWNING: Your Honor, there is not  
 14 another call currently scheduled. This is  
 15 Chris Browning.  
 16 SPECIAL MASTER MYLES: Well, I leave it to  
 17 your all collective judgment on when the next call  
 18 would be necessary. We haven't had much to cover in  
 19 the last two calls, just because we have been in this  
 20 transitional phase and you all have been moving ahead  
 21 with discovery without a hitch. So do we think we  
 22 need another call in a month? Do we want to set it  
 23 out longer than that?  
 24 MR. FREDERICK: This is David Frederick for  
 25 South Carolina, Special Master Myles. I would propose  
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1 that we either agree to work among ourselves to come  
 2 up with a date some time in the mid summer and propose  
 3 that, or propose some suggested dates to you or your  
 4 office. And then to have, you know, a couple of  
 5 months of continued discovery before we reconvene.  
 6 SPECIAL MASTER MYLES: Is everybody okay with  
 7 that? Or not hearing any dissent from that, why don't  
 8 we do that? I'll wait to hear from you then on  
 9 a proposed date. And we can communicate, why don't we  
 10 communicate by email? Does that make sense,  
 11 Mr. Frederick, for you to come back to me with email?  
 12 We can just work that out by email.  
 13 Sounds good. If there is nothing else, then  
 14 why don't we just adjourn for the day.  
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1 I, the undersigned, a Certified Shorthand  
 2 Reporter of the State of California, do hereby  
 3 certify:  
 4 That the foregoing proceedings were taken  
 5 before me at the time and place herein set forth; that  
 6 any witnesses in the foregoing proceedings, prior to  
 7 testifying, were duly sworn; that a record of the  
 8 proceedings was made by me using machine shorthand  
 9 which was thereafter transcribed under my direction;  
 10 that the foregoing transcript is a true record of the  
 11 testimony given.  
 12 Further, that if the foregoing pertains to  
 13 the original transcript of a deposition in a Federal  
 14 Case, before completion of the proceedings, review of  
 15 the transcript [ ] was [ ] was not requested.  
 16 I further certify that I am neither  
 17 financially interested in the action nor a relative or  
 18 employee of any attorney or party to this action.  
 19 IN WITNESS WHEREOF, I have this date  
 20 subscribed my name.  
 21  
 22 Dated:  
 23  
 24  
 25  
 DANA FREED  
 CSR No. 10602  
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