

138 ORIG SOUTH CAROLINA V. NORTH CAROLINA

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

EXCEPTIONS TO FIRST INTERIM REPORT OF THE SPECIAL MASTER

In an equitable apportionment action between two States brought under this Court's original jurisdiction, intervention by a non-state entity is proper only when the putative intervenor demonstrates (1) a "compelling interest in [its] own right," (2) "apart from [its] interest in a class with all other citizens and creatures of the state," (3) "which interest is not properly represented by the state." *New Jersey v. New York*, 345 U.S. 369, 373 (1953) (per curiam).

The State of South Carolina excepts to the following conclusions of the Special Master:

1. That intervention is proper regardless of whether the party States adequately represent the movant's interests, whenever the movant is the "instrumentality" authorized to engage in conduct alleged to harm the plaintiff State, has an "independent property interest" at issue in the action, or otherwise has a "direct stake" in the outcome of the action. See First Interim Report at 10-21.
2. That the City of Charlotte, North Carolina, the Catawba River Water Supply Project, and Duke Energy Carolinas, LLC should be permitted to intervene in this original action. See First Interim Report at 21-32.

CERT. GRANTED 3/30/2009