

IN THE
SUPREME COURT OF THE UNITED STATES

No. 138, Original

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA
Defendant.

**Before the Special Master
Hon. Kristin L. Myles**

**DUKE ENERGY'S BRIEF IN OPPOSITION
TO MOTION TO CLARIFY OR RECONSIDER**

INTRODUCTION

South Carolina seeks clarification that Duke Energy Carolinas, LLP (“Duke”) is an intervenor “solely for limited purposes and clarifying that those limited purposes extend only to defending against the issuance of a decree that would . . . impose conditions inconsistent with Duke’s federal licenses and the [Comprehensive Relicensing Agreement (“CRA”).” SC Mot. at 2. If the Special Master’s Order granting intervention is interpreted to allow Duke a more robust

role, then South Carolina asks that it be reconsidered and that intervention be denied. *Id.*

South Carolina's motion to clarify is an untimely request to reconsider the Order granting intervention. South Carolina's various arguments, including the argument that Duke can protect its interests as *amicus*, have already been considered and rejected. The motion to clarify simply pretends that the Order says something that it does not say. Indeed, the specific clarification that South Carolina requests is inconsistent with the Order. That Order granted Duke's motion to intervene in order to protect its legitimate interests implicated by any equitable apportionment of the Catawba River. The Special Master neither defined Duke's interests in the narrow way that South Carolina describes, nor tied Duke's hands in defending its interests by restricting its participation in the manner South Carolina contemplates. South Carolina is wrong both about the nature of Duke's interests and the discovery that is relevant to those interests.

Duke will not repeat here the arguments already made in support of its motion to intervene. The Master correctly permitted Duke's intervention in light of its unique interests implicated by any equitable apportionment of the Catawba River. Any harm claimed by South Carolina in this case would be inextricably intertwined with the flow of the Catawba River. Duke's actions have a substantial impact on that flow at all times and are governed in many respects by its FERC

licenses and by the CRA. Further, Duke observes that South Carolina has already served extensive document requests on it, the burden of which likely would be objectionable were Duke not a party to this litigation. See Exhibit A (document requests). Those requests alone are strong evidence of Duke's vital interests in this litigation.

Finally, Duke repeats that it has no intention of insisting on participation that is repetitive or outside of its legitimate interests; nor is there any basis for believing that the forthcoming Case Management Plan will not permit the Special Master to ensure that the intervenors' participation promotes rather than impedes a fair and orderly resolution of the issues in this case. The motion should be denied.

I. The Clarification That South Carolina Requests Is Inconsistent With The Order and Wrong.

In arguing that Duke was permitted only limited intervention, South Carolina attempts two sleights of hand. First, South Carolina parlays the Order's descriptions of Duke's interests – provided to support the finding that Duke should be permitted to intervene – into restrictive definitions of the full scope of Duke's interests. Second, South Carolina argues that Duke can protect its interests without participating in Phase One discovery concerning harms to South Carolina. In both respects, South Carolina is wrong.

First, the Special Master is in the best position to determine her intentions embodied in the intervention order; but South Carolina's reading of the Order is

inconsistent with its plain terms. South Carolina believes that the Special Master's references to Duke's interest in the "outcome" of the action and to the "court-ordered alteration of the flow" were somehow intended to limit Duke's participation to challenging only the final equitable apportionment ordered in the event that apportionment conflicts with Duke's federal licenses. See SC Mot. at 4 (quoting Order). But that reading of the Order is selective and artificial.

The Order fulsomely describes Duke's interests in the Catawba and its flow. In addition to citing Duke's "unique and compelling interest in defending the terms of its current license and the CRA," Order at 11, the Special Master recognized that Duke's hydroelectric plants and reservoirs "effectively control the flow of the Catawba." *Id.* The Order explains that "[t]he outcome of this action will affect Duke directly because Duke has significant control over the flow of the river and will be affected by any change in flow." *Id.* at 12. Further, the Order states, "South Carolina is seeking the apportionment not of the natural flow of the Catawba River, but of waters available solely or primarily because they have been impounded by Duke." *Id.* Finally, the Order notes that "[b]ecause Duke controls the flow of the Catawba River, it is likely that any Court-ordered alteration of the flow would be carried out by Duke and thus would have a direct effect on its operations." *Id.* See *id.* (Duke "also has shown that it could be subject to conflicting obligations if the Court apportions the river in a way that conflicts with

the terms of its license”). Any equitable apportionment of the Catawba will directly affect Duke’s legitimate interests recognized in the Order.

Accordingly in context, the Order’s reference to Duke’s interests in the outcome does not mean that Duke’s need to participate arises only *after* the outcome is determined and the liability issue is decided, as South Carolina posits (Mem. at 6). Duke’s interest in the outcome – arising from its control of the flow, its FERC licenses, and its impoundment of water – necessarily means that Duke is deeply interested in *the determination of the outcome of any equitable apportionment*. And Duke cannot protect that interest unless it participates in the litigation that determines whether there should be an equitable apportionment, what that apportionment is, and how it will affect the Catawba’s flow. Once relief is awarded, it will be too late for Duke to argue that the equitable apportionment has failed to take its uses and interests and federal licenses into account in determining whether apportionment was warranted and, if so, what that apportionment should be.

South Carolina contends that the only issue in Phase One is “whether South Carolina can carry its initial burden of showing harm.” SC Mot. at 6. But there is no way to segregate that issue from the more fundamental questions posed by South Carolina’s blunderbuss complaint because any harm that South Carolina seeks to show will necessarily arise from the flow of the Catawba (*i.e.*, a claim that

the flow is too low in terms of quantity or in order to preserve water quality), which in turn, necessarily implicates Duke's activities pursuant to its federal licenses and Duke's impoundment and release of water.¹ Thus, South Carolina's articulation of the Phase One question – “whether actions in North Carolina, including, in particular, actions taken under the auspices of North Carolina law, have injured South Carolina,” *id.* at 7 – is incomplete. Duke's activities are directly implicated in any assessment of whether and the extent to which South Carolina is harmed by upstream actions.²

South Carolina argues that “although the nature and extent of the particular harms identified in Phase One may inform the inquiry into what type of a decree should issue, they will not control the scope of the decree.” SC Mem. at 7. This is far from clear. Phase Two will involve a “weighing of the equities.” *Id.* In that process, the “source” of a harm may well be significant. For example, if a particular withdrawal of water supports a long-established and beneficial use, such as withdrawal for an electric power plant that provides energy to numerous citizens

¹ Indeed, in light of the Case Management Plan's provision authorizing the simultaneous exploration of Phase One and Two issues when it is efficient to do so, South Carolina's proposal for a blanket exclusion of Duke during Phase One makes little sense. How will the parties determine when a deposition or interrogatory has slipped over the line from Phase One discovery to Phase Two discovery?

² This is true even if it is the “cumulative impact of all water uses and other activities in North Carolina” that is assessed to determine whether South Carolina has been substantially harmed and is entitled to apportionment. SC Mem. at 7.

of the region on both sides of the State line, then any resulting harm may be warranted. Similarly, if water is available to South Carolina during low-water periods only because of Duke impoundments, South Carolina may have to show that Duke would have released more water absent North Carolina's consumption. The source of the harm that South Carolina claims may well be critical to any equitable apportionment.³

Finally, South Carolina cites Duke's recognition that as a private party, it plays a "secondary" role in litigation within the Court's original jurisdiction, as evidence that Duke should not be permitted to participate in the discovery addressing the need for equitable apportionment or the determination of an equitable apportionment. SC Mot. at 4. This is a non-sequitur. Duke's recognition that its intervenor role is limited to its legitimate and unique interests does not mean that Duke plays no role at all in these proceedings. Instead, Duke's participation is defined by its interests which are clearly and inextricably implicated in discovery addressing the need for and amount of any equitable apportionment. One need only peruse South Carolina's document requests of

³ In a related point, South Carolina asserts that "nothing [the intervenors] might seek to prove during Phase One about whether Harm in South Carolina is attributable to their specific actions will preclude the issuance of a decree during Phase Two that directly or indirectly affects them." SC Mem. at 8. As shown in text, the source of any alleged harm to South Carolina will directly affect the weighing process that occurs in Phase Two.

Duke to learn that Duke's activities are the direct focus of this litigation. See Exhibit A.

That is not to say that Duke will have the interest or the inclination to participate in every deposition or discovery dispute. It certainly has no interest in duplicating the discovery efforts of others. But, in the first instance and in light of its substantial interests, Duke seeks the right to determine for itself the extent to which its undoubted and significant interests require participation in discovery, rather than to have South Carolina unilaterally determine that Duke need not concern itself with Phase One.

II. The Order Granting Intervention Should Not Be Reconsidered.

Duke will not repeat the arguments previously made in support of its motion to intervene, but responds to South Carolina's particular points.

South Carolina does not deny that Duke controls the flow of the Catawba, that "any Court-ordered alteration of the flow would likely be carried out by Duke," that Duke has a strong interest in defending the CRA and its current and future licenses, and that Duke would be subject to conflicting obligations if any apportionment conflicts with its licenses. SC Mem. at 16 (quoting Order). But, South Carolina says, it seeks to reduce consumption and pollution in North Carolina and therefore the sole consequence of its claims would "necessarily increase the amount of water available for Duke to manage and discharge into

South Carolina,” making it “easier for Duke to manage the flow of the River and to meet any obligations it has in its licenses or in the CRA.” *Id.*

First, this assumes that South Carolina will prevail and that the ultimate equitable apportionment, if any, will not award more water to North Carolina than the CRA contemplates that it will use. That is not the inevitable outcome of this case. Second, South Carolina ignores that under the CRA, Duke has obligations to North Carolina as well as to South Carolina, and that any equitable apportionment could easily be inconsistent with those obligations. Third, Duke does not yet know, *inter alia*, whether South Carolina is claiming that it will suffer substantial harm (and thus be entitled to seek an equitable apportionment) if the CRA is approved by FERC. Duke does know that South Carolina is pursuing this litigation despite the CRA and its endorsement by governmental entities in both North and South Carolina. The logical inference from this is that South Carolina believes that it will suffer substantial harm even under an approved CRA. That places South Carolina directly in opposition to legitimate interests of Duke identified by the Special Master. And, contrary to South Carolina (Mem. at 16), Duke’s presence as an intervenor is required because only Duke has an unqualified interest in defending its federal licenses and the CRA.⁴ Finally, South Carolina

⁴ South Carolina notes that the CRA states that it does not affect any signatory’s water rights. SC Mem. at 16. From this, South Carolina concludes that there can be no conflict between the agreement and the determination of North Carolina’s

ignores Duke's rights and obligations as an impounder of water – a role that the Special Master acknowledged. See Order at 12.⁵

CONCLUSION

For the foregoing reasons, the Special Master should deny South Carolina's motion to clarify or, in the alternative, to reconsider the Order granting the motions to intervene.

Respectfully submitted,

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July 10, 2008

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and South Carolina's respective rights to the River. That is plainly incorrect. If South Carolina has a right that does not allow Duke to fulfill its obligations under the CRA, then there will be a conflict between the CRA and the equitable apportionment.

⁵ Duke is a significant consumer of water. But as South Carolina notes, "Duke has not asserted [its] interests as a consumer" in support of intervention, see SC Mem. at 17.

Exhibit A

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**PLAINTIFF SOUTH CAROLINA'S
FIRST SET OF DOCUMENT REQUESTS TO
LIMITED INTERVENOR DUKE ENERGY CAROLINAS, LLC**

Plaintiff State of South Carolina, by its attorneys, propounds the following requests for the production of documents upon Limited Intervenor Duke Energy Carolinas, LLC and requests that Duke Energy produce the requested documents at the offices of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., 1615 M St., N.W., Suite 400, Washington, DC 20036, within 30 days of service hereof, or as otherwise ordered by the Special Master or agreed to by the parties.

INSTRUCTIONS

In construing these document requests, the following instructions shall apply:

1. A complete and legible copy may be produced in lieu of producing the document itself.

2. With respect to the documents produced, you are to:

(a) (i) Produce them as they are kept in the usual course of business; or
(ii) organize and label them to correspond with each numbered paragraph and each lettered subparagraph of this Request in response to which such documents are produced; and

(b) If any of the documents cannot be produced in full, produce to the extent possible, specifying the reason for the inability to produce the remainder.

3. For all data produced, you are to produce them in their native electronic format (e.g., all Microsoft Excel spreadsheets should be produced in Excel format).

4. In the event that any document, or any portion of any document, within the scope of these requests is withheld from production upon a claim of privilege, provide a privilege log in accordance with the Federal Rules of Civil Procedure and as the Special Master may direct.

5. In the event that any document called for by this request has been destroyed or discarded, that document is to be identified as follows:

(i) each addressor and addressee;

- (ii) each indicated or blind copy;
- (iii) the document's date, subject matter, number of pages, and attachments or appendices;
- (iv) all persons to whom the document was distributed, shown, or explained;
- (v) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; and
- (vi) the person who authorized such destruction or discard.

6. Words in the past tense include the present tense, and words in the present tense include the past tense.

7. "And" and "or" are both conjunctive and disjunctive.

8. These requests shall be deemed continuing so as to require further and supplemental production if, between the date hereof and the time of hearing or trial, any additional documents responsive to these requests come into your possession, custody, or control, or the possession, custody, or control of your agents or representatives, including (without limitation) any attorneys, accountants, and advisors. You are to produce any such additional documents within ten (10) days of their coming into your possession, custody, or control, or the possession, custody, or control of your agents or representatives. If any such additional documents or any portion thereof are withheld from production upon a claim of privilege, you are to promptly serve a privilege log in accordance with Instruction 3 hereof.

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below unless specifically indicated:

1. "Communication" means any statement, admission, denial, inquiry, discussion, conversation, negotiation, agreement, contract, understanding, letter, note, telegram, telex, facsimile, advertisement, e-mail, document, or any other form of written, verbal, electronic, or symbolic discourse, whether internal or external.

2. "Complaint" means the complaint filed by South Carolina in the above-styled case.

3. "Data" means any data compilation or array, including (without limitation) all spreadsheets, databases, modeling inputs and outputs, and Geographic Information System (or GIS) data.

4. "Document" means any kind of written, recorded, or graphic matter, whether produced, reproduced, or stored on paper, cards, film, audio or video tapes, electronic facsimile, electronic mail, computer storage device, or any other media, or any kind or description, whether sent or received or neither, including (without limitation): originals, copies (with or without notes or changes therein), and drafts including (without limitation): papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, declarations, statements, summaries, opinions, reports, studies, analyses,

evaluations, contracts, agreements, journals, newspaper accounts, statistical records, desk calendars, appointment books, diaries, lists, tabulations, summaries, sound recordings, computer printouts, data processing input and output, microfilms, e-mails, all other records kept by electronic, photographic, or mechanical means, and things similar to the foregoing however denominated by You, in the possession, custody, or control of You or any officer, employee, consultant, agent, or counsel of or for You.

5. "Catawba River Basin," "Catawba River," or "River" means the Catawba River Basin from its source in North Carolina to the mouth of the Santee and Cooper River systems at the Atlantic Ocean in South Carolina, including (without limitation) all tributaries, rivers, reservoirs, streams, and lakes therein.

6. "CHEOPS" means the Computer Hydro-Electric Operations and Planning Software, or "CHEOPS" model, developed by Duke Energy to model the waters of the Catawba River Basin.

7. "Concerning" means and includes: with respect to, referring to, relating to, purporting, embodying, establishing, evidencing, comprising, connected with, commenting on or about, responding to, showing, describing, analyzing, reflecting, indicating, summarizing, containing, mentioning, discussing, presenting, and/or constituting.

8. "Concord/Kannapolis IBT Proceedings" means the entire proceedings before the North Carolina Environmental Management Commission (or any other agency of North Carolina) concerning the request by Concord and Kannapolis for

authorization to make an interbasin transfer of water out of the Catawba River Basin.

9. "Consumptive Use" shall mean any water withdrawal from the Catawba River Basin for which the volume of water returned to the Catawba River Basin is less than the volume withdrawn, regardless of the reason and regardless of whether the withdrawal is an interbasin transfer as defined under the applicable North Carolina law.

10. "DENR" means the North Carolina Department of Environment and Natural Resources.

11. "Duke Energy," "You," or "Your" means Duke Energy Carolinas, LLC and any of its current or former ("current or former" modifies all of the following terms) affiliated or associated entities, subsidiaries, parent or sister corporations, parent entities, owners, representatives, shareholders, directors, officers, employees, attorneys, members, managers, agents, consultants (including, without limitation, Devine, Tarbell, & Associates, Inc. in connection with the "CHEOPS" computer model, and HDR Engineering, Inc. in connection with the Water Supply Study prepared for the FERC Relicensing Proceedings), predecessors in interest, successors and assigns, and any entity, person, or partnership acting on its behalf.

12. "EIS" means Environmental Impact Statement.

13. "EMC" means the North Carolina Environmental Management Commission.

14. "EPA" means the United States Environmental Protection Agency.

15. "FERC" means the Federal Energy Regulatory Commission.

16. "FERC Relicensing Proceedings" means proceedings before the FERC upon Duke Energy's application for a new license to operate its Catawba-Wateree hydroelectric project, including (without limitation) the negotiation and formulation of the Comprehensive Relicensing Agreement ("CRA") submitted by Duke Energy in those proceedings.

17. "Grandfathered Share" shall mean any water withdrawal, regardless of whether designated as an Interbasin Transfer, that is withdrawn pursuant to any claimed exception(s) to any law that would otherwise require a permit for the withdrawal, and that is not otherwise illegal. All references to Interbasin Transfers, Intrabasin Transfers, and Consumptive Uses shall also include any Grandfathered Share.

18. "Interbasin Transfer" or "IBT" shall mean any withdrawal of water from the Catawba River Basin for which the water withdrawn is transferred to a river basin other than the Catawba River Basin.

19. "North Carolina" means the State of North Carolina and any of its current or former ("current or former" modifies all of the following terms) Governors, Attorneys General, elected officials (including those elected to state or federal legislatures), departments, subdivisions, political subdivisions, agencies, boards, offices, officials, agents, or attorneys; any employee, official, agent, or elected representative of any county or municipality in North Carolina; and any

person, entity, or partnership acting on behalf of the State of North Carolina in any official or any unofficial capacity.

20. "South Carolina" means the State of South Carolina and any of its departments, subdivisions, political subdivisions, agencies, boards, offices, officials, agents, attorneys, and any person, entity, or partnership acting on behalf of the State of South Carolina in any official or any unofficial capacity.

21. "Third Party" means any person, entity, state, agency, government, political subdivision, or partnership other than Duke Energy.

22. "Withdrawal" shall mean any withdrawal or removal of water from the Catawba River Basin that is not de minimis. For purposes of this definition, any withdrawal that amounts to more than 1,000 gallons per day on any day of the year shall not be considered de minimis.

DOCUMENTS REQUESTED

1. All communications concerning this litigation or the anticipation of this litigation, including (without limitation) communications with North Carolina, the City of Charlotte, the City of Rock Hill, or the Catawba River Water Supply Project.

2. All documents and data¹ concerning Duke Energy's "CHEOPS" computer model, including (without limitation) a usable and functioning copy of source code and executable code of the version or versions of the CHEOPS model used in the FERC Relicensing Proceedings (including, without limitation, the formulation of the CRA) or the Concord Kannapolis IBT Proceedings, and identified as such, and including all data inputs and outputs (in native electronic format) for all runs of the CHEOPS model in those proceedings.

3. All documents and data, including (without limitation) communications, concerning the development, testing, validation, or evaluation of any and all versions of the CHEOPS model used in the FERC Relicensing Proceedings (including, without limitation, the formulation of the CRA) or the Concord Kannapolis IBT Proceedings, and identified as such, including (without limitation) all underlying data and assumptions concerning the CHEOPS model, regardless whether such data and assumptions were used, considered, or rejected and any criticisms or other reviews of the CHEOPS model.

¹ As set forth in the instructions above, all data should be produced in native electronic format.

4. All communications concerning any and all versions of the CHEOPS model used in the FERC Relicensing Proceedings (including, without limitation, the formulation of the CRA) or the Concord Kannapolis IBT Proceedings, and identified as such, including (without limitation) communications concerning the accuracy, validity, vulnerabilities, or biases of the CHEOPS model, and including (without limitation) communications within Duke Energy or between Duke Energy and any Third Party, including (without limitation) North Carolina and any outside consultants engaged to formulate, review, or validate the CHEOPS model.

5. All communications between Duke Energy, North Carolina, and counsel for either concerning the Catawba River Basin waters, the FERC Relicensing Proceedings, the Concord/Kannapolis IBT Proceedings, the CHEOPS model, or this litigation.

6. All documents and data, including (without limitation) communications, concerning the differences between the CHEOPS model as used in the FERC Relicensing Proceedings and in the Concord/Kannapolis IBT Proceedings, including (without limitation) differences in data/inputs, modeling methodology, validation, model source code, or the manner in which the model was relied upon in preparation of environmental impact statements, or for other purposes.

7. All documents and data, including (without limitation) communications,² concerning errors identified in North Carolina's and Duke Energy's use of the CHEOPS model, including in connection with the May 2006

² As a reminder, these requests are intended to include all responsive documents, data, and communications within the custody or control of Duke Energy's consultants.

Final EIS for the Concord/Kannapolis IBT Proceedings, the July 2006 supplement to the Final EIS, or the FERC Relicensing Proceedings (including, without limitation, the negotiation and formulation of the CRA), as well as all documents or communications concerning any efforts to correct such errors.

8. All documents and data, including (without limitation) communications, concerning all reports, revisions of reports, comments received about the reports, prepared by or on behalf of DENR concerning the Concord/Kannapolis IBT Proceedings, including (without limitation) any EIS (whether preliminary, final, supplemental, or revised) and all appendices and attachments.

9. All documents and data, including (without limitation) communications, concerning Duke Energy's Water Supply Study, Final Report, dated April 2006, prepared in connection with the FERC Relicensing Proceedings, including (without limitation) all communications concerning the development of the report within Duke Energy or between Duke Energy and any Third Party, and any prior or subsequent versions of the Water Supply Study.

10. All documents and data, including (without limitation) communications, concerning Duke Energy's efforts or attempts to work "with water users in the Catawba River Basin to develop updated water use projections for use in the CHEOPS model."³

³ Concord/Kannapolis IBT Final EIS at p. 2-84, § 17.1 (May 2006).

11. All documents and data, including (without limitation) communications, concerning operation manuals, guidelines, communications, or other items concerning Duke Energy's management of water flows, water levels, water recreation, water quality, fisheries, and aquatic life in the Catawba River Basin.

12. All documents and data, including (without limitation) communications, concerning Duke Energy's past, current, or future consumptive use of Catawba River Basin waters (including, without limitation, by evaporation), regardless whether such use was or is authorized by law or permit.

13. All documents and data, including (without limitation) communications, concerning Duke Energy's claims that Duke Energy is entitled to sell any "excess" water in its reservoir system, including (without limitation) internal reports, studies, projections, pricing strategies, and any documentation of the grounds upon which Duke Energy asserts that it is entitled to any such "excess" water.

14. All documents, including (without limitation) communications, concerning lobbying efforts by Duke Energy with respect to any elected officials of South Carolina relating to water use in the Catawba River Basin or this litigation.

15. All documents and data, including (without limitation) communications, concerning Duke Energy's past, current, or future non-consumptive uses of Catawba River Basin waters, regardless whether such use was or is authorized by law or permit.

16. All documents and data, including (without limitation) communications, concerning Duke Energy's past, current, or future authorization of consumptive or non-consumptive use of or withdrawal from Catawba River Basin waters by any Third Party.

17. All documents and data, including (without limitation) communications, concerning past, current, or future water flows or water flow data at any point in the Catawba River Basin, including but not limited to flows at the border between North Carolina and South Carolina.

18. All documents and data, including (without limitation) communications, concerning past, current, or future evaporative losses in the Catawba River Basin, including (without limitation) losses from the reservoir surface waters, cooling towers, and steam generation .

19. All documents and data, including (without limitation) communications, concerning the impacts or potential impacts of past, current, or future droughts in the Catawba River Basin, including (without limitation) evaluations, assessments, forecasts, and their past and expected future impacts on reservoir management in the Catawba River Basin.

20. All documents and data, including (without limitation) communications, concerning planning and management of the Catawba River Basin in times of low flows, including (without limitation) during times of drought.

21. All documents and data, including (without limitation) communications, concerning Duke's consideration of climate or weather data in

managing reservoirs in the Catawba River Basin, including (without limitation) whether to retain or release waters from any of those reservoirs.

22. All documents and data, including (without limitation) communications, concerning past, current, or future requirements for, by any law, regulation, or agreement, reduced water withdrawals in the Catawba River Basin in times of low water flows, including (without limitation) during times of drought.

23. All documents and data, including (without limitation) communications, concerning past, current, or future requirements for, by any law, regulation, or agreement, concerning modified reservoir operations in the Catawba River Basin in times of low water flows, including (without limitation) during times of drought.

24. All documents and data, including (without limitation) communications, concerning any past or current consideration by Duke Energy of reduced water withdrawals from Catawba River Basin waters or modified reservoir operations in times of low water flows, including (without limitation) during times of drought.

25. All documents and data, including (without limitation) communications, concerning past, current, or future return flows or rate-of-return flows to the Catawba River Basin.

26. All documents and data, including (without limitation) communications, concerning past, current, or future water quality, water recreation, fisheries, and aquatic life in the Catawba River Basin, including but not

limited to the impacts or potential impacts of past, current, or future consumptive or non-consumptive uses by Duke Energy.


27. All documents and data, including (without limitation) communications, concerning past, current, or future water conservation measures taken by Duke Energy.

28. All documents and data, including (without limitation) communications, concerning past, current, or future water conservation measures considered (to any extent) but not taken by Duke Energy.

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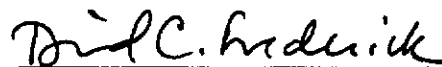
STATE OF SOUTH CAROLINA,
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CERTIFICATE OF SERVICE

Pursuant to Rule 29.5 of the Rules of this Court, I certify that all parties required to be served have been served. On June 23, 2008, I caused copies of Plaintiff South Carolina's First Set of Document Requests to Limited Intervenor Duke Energy Carolinas, LLC to be served by first-class mail, postage prepaid, and by electronic mail (as designated) on those on the attached service list.



David C. Frederick
*Special Counsel to the
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STATE OF SOUTH CAROLINA,
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STATE OF NORTH CAROLINA,
Defendant.

CERTIFICATE OF SERVICE

Pursuant to Rule 29.6 or the Rules of this Court, I certify that all parties required to be served have been served. On July 10, 2008, I caused copies of Duke Energy's Brief in Opposition To Motion To Clarify Or Reconsider to be served by first-class mail, postage prepaid, and by electronic mail (as designated) on the attached service list.



Virginia A. Seitz

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Proposed Interveners

Duke Energy Carolinas, LLC

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Catawba River Water Supply Project

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