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June 23, 2010

**By Email 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:

We hereby set forth Joint Progress Report No. 15 from intervenors Catawba River Water Supply Project (CRWSP) and Duke Energy Carolinas, LLC (Duke) (collectively, Intervenors).

As you know, the party States and Intervenors were occupied through April on South Carolina's request to reverse the order bifurcating the proceedings, and on City of Charlotte's motion to participate as an *amicus curiae*, which was heard on April 23<sup>rd</sup> in Raleigh.

CRWSP and Duke are working with the parties to establish an escrow arrangement for review of computer source code related to the CHEOPS model, which has been a protracted and extensive negotiation among the party States, Intervenors, HDR and a third party vendor.

Document discovery in accordance with Case Management Order No. 7 is continuing among the parties pending your resolution of the question whether to maintain the bifurcation of this matter. On April 7, 2010, Duke issued its first set of document requests to South Carolina. On May 7, South Carolina issued its preliminary response to these requests. At that time, South Carolina did not produce any documents, but stated that it would produce documents after undertaking "a reasonable search of documents in its possession, custody or control." South Carolina has not yet produced these documents. South Carolina's May 7 response also contained multiple objections to Duke's requests on grounds of relevance, duplication, and unreasonable burden. Finally, South Carolina identified certain documents that it had already produced that were responsive to Duke's requests. While awaiting South Carolina's further production, Duke is reviewing South Carolina's objections and identification of relevant documents. Duke intends to file a response to South Carolina's objections, and a first set of interrogatories and contention interrogatories. In addition, Duke may conduct follow up discovery and serve further document

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requests after it reviews the documents South Carolina ultimately provides. All requests are intended to be non-duplicative of previous discovery.

CRWSP is still gathering and reviewing documents responsive to the requests of the party States. Counsel for CRWSP has completed review of CRWSP's electronic documents and the responsive documents of Union County, and anticipates production of such documents to the party States in the near future. CRWSP has not yet acquired and reviewed the responsive documents of LCWSD. CRWSP does not anticipate separate document requests upon the party States unless, after all of their documents have finally been produced, there are any gaps in such production with respect to factual issues unique to CRWSP. CRWSP is in the process of drafting third party subpoenas in order to obtain information which has not already been produced. CRWSP has not decided whether to propound contention interrogatories on the party States. CRWSP's decision in that regard hinges on whether this case continues to be bifurcated and if so, the scope of Phase 1.

Duke also wishes to report that on June 10, 2010, the S.C. Administrative Law Court granted Duke's Motion for Summary Judgment and Motion for Declaratory Judgment in the proceeding involving Duke's water quality certification under section 401. Duke has been notified that American Rivers, the S.C. Coastal Conservation League and the S.C. Department of Health and Environmental Control ("DHEC") have filed with the Administrative Law Court a Motion for Reconsideration of the June 10 order (along with other procedural motions). Duke is preparing its response to this request. The court has 30 days to rule on this filing. If the court does not act, the motion for reconsideration is deemed denied, and the parties have an additional 30 days to appeal the ruling to the South Carolina Appeals Court.

CRWSP and Duke agree with North Carolina, upon receipt of the Special Master's ruling with respect to bifurcation, CRWSP and Duke expect to participate in a conference with the party States to discuss the length of time necessary to complete discovery. Any such discussion about a supplemental case management plan, including a sufficient time for Intervenors to complete catch-up discovery, would be premature until after the ruling on bifurcation.

Sincerely,



Roger Martella

cc: All Counsel of Record