



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

ROY COOPER
ATTORNEY GENERAL

REPLY TO: Christopher G. Browning, Jr.
Office of the Solicitor General
(919) 716-6900
FAX: (919) 716-6763

August 6, 2008

By e-mail and first class mail

Special Master Kristin L. Myles
Munger, Tolles & Olson, LLP
560 Mission Street
27th Floor
San Francisco, CA 94015

RE: ***South Carolina v. North Carolina, No. 138, Original; North Carolina's
Letter Brief re Issuance of an Interim Report with Respect to Intervention***

Dear Special Master Myles:

North Carolina submits this letter brief in response to South Carolina's letter of July 30, 2008 requesting that the Special Master issue an interim report with respect to the Special Master's Order of May 27, 2008. Although South Carolina repeatedly professes that it needs for discovery and the ultimate resolution of this action to proceed quickly, its actions are to the contrary. South Carolina's request for the issuance of an interim report will undoubtedly hinder and delay the parties' ability to move forward with this action. The Special Master, in her discretion, should decline South Carolina's request.

The Court specifically referred to the Special Master the intervention motions of Duke Energy, Catawba River Water Supply Project ("CRWSP") and Charlotte. 1/15/08 Order ("The motions of Catawba River Water Supply Project and Duke Energy Carolinas, LLC for leave to intervene are referred to the Special Master."); 3/17/08 Order ("The motion of the City of Charlotte, North Carolina for leave to intervene is referred to the Special Master."). Unquestionably, whether Duke Energy, CRWSP and Charlotte are permitted to intervene in this action will impact how discovery is conducted. Transcript of 2/6/08 Telephonic Conference, p. 27 (priority must be placed on "resolving the intervention motions as rapidly as possible" because it will impact how discovery is conducted). Issuing an interim report at this stage would only serve to place this action on hold during the several months it will take the Court to address such an interim report.

By e-mail and first class mail
Special Master Kristin L. Myles
August 6, 2008
Page 2

The issuance of an interim report would serve little or no purpose. The Special Master's ruling with respect to the intervention motions is well-reasoned and is supported by the Court's precedent. South Carolina undoubtedly understands that at the end of the day, the result of an immediate appeal of the Special Master's ruling will simply be an affirmance of the Special Master's ruling. Neither the parties nor the Court would be served by the inevitable cost and delay that the issuance of an interim report would necessitate.

The Special Master is under no obligation to issue a report at this early stage of the proceedings. Nothing in the Guide for Special Masters nor the decisions of the Court mandates that the Special Master issue an interim report at this time. In fact, the Court's order appointing a Special Master makes clear that the timing for issuing a report is wholly within the discretion of the Special Master. 1/15/08 Order ("The Special Master is directed to submit Reports as she may deem appropriate."). The Special Master should exercise her discretion in such a way that facilitates this action moving forward. South Carolina's request will effectively derail the discovery process that has already commenced and will delay this action. South Carolina's request should be denied.

Sincerely,

A handwritten signature in black ink that reads "Chris Browning". The signature is written in a cursive, flowing style.

Christopher G. Browning, Jr.
Solicitor General

cc: All Counsel of Record