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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SOUTH CAROLINA *v.* NORTH CAROLINA

ON EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

No. 138, Orig. Argued October 13, 2009—Decided January 20, 2010

South Carolina brought this original action seeking an equitable apportionment with North Carolina of the Catawba River's (river) waters. The Court referred the matter to a Special Master, together with the motions of three nonstate entities—the Catawba River Water Supply Project (CRWSP), Duke Energy Carolinas, LLC (Duke Energy), and the city of Charlotte, N. C.—seeking leave to intervene as parties. South Carolina opposed the motions. After a hearing, the Special Master granted all three motions and, on South Carolina's request, memorialized her reasoning in a First Interim Report. Among other things, she recognized that *New Jersey* v. *New York*, 345 U. S. 369, 373, sets forth the "appropriate" standard for a nonstate entity's intervention in an original action; looked beyond intervention to original actions in which the Court allowed complaining States to name nonstate entities as defendants in order to give that standard context; "distilled" from the cases a broad rule governing intervention; and applied that rule to each of the proposed intervenors. South Carolina presented exceptions.

Held: The CRWSP and Duke Energy have satisfied the appropriate intervention standard, but Charlotte has not. Pp. 6–18.

(a) Under *New Jersey* v. *New York,* "[a]n intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." 345 U. S.*,* at 373. That standard applies equally well in this case. Although high, the standard is not insurmountable. See, *e.g., Oklahoma* v. *Texas*, 258 U. S. 574, 581. The Court declines to adopt the Special Master's proposed intervention rule, under which nonstate entities may become parties to original disputes in appropriate and compelling circumstances, such as

where, *e.g.,* the nonstate entity is the instrumentality authorized to carry out the wrongful conduct or injury for which the complaining State seeks relief. A compelling reason for allowing citizens to participate in one original action is not necessarily a compelling reason for allowing them to intervene in all original actions. Pp. 6–11.

(b) This Court applies the *New Jersey* v. *New York* standard to the proposed intervenors. Pp. 11–18.

(1) The CRWSP should be allowed to intervene. It is an unusual bistate entity that is jointly owned and regulated by, and supplies water from the river to, North Carolina's Union County and South Carolina's Lancaster County. It has shown a compelling interest in protecting the viability of its operations, which are premised on a fine balance between the joint venture's two participating counties. The stresses this litigation would place on the CRWSP threaten to upset that balance. Moreover, neither State has sufficient interest in maintaining that balance to represent the full scope of the CRWSP's interests. The complaint attributes a portion of the total water transfers alleged to have harmed South Carolina to the CRWSP, but North Carolina cannot represent the joint venture's interests, since it will likely respond to the complaint's demand for a greater share of the river's water by taking the position that downstream users—such as Lancaster County—should receive less water. See, *e.g., Colorado* v. *New Mexico*, 459 U. S. 176, 186–187. Any disruption to the CRWSP's operations would increase—not lessen—the difficulty of achieving a "just and equitable" allocation in this dispute. See *Nebraska* v. *Wyoming*, 325 U. S. 589, 618. Pp. 11–14.

(2) Duke Energy should also be permitted to intervene. It has carried its burden of showing unique and compelling interests: It operates 11 dams and reservoirs in both States that generate electricity for the region and control the river's flow; holds a 50-year federal license governing its hydroelectric power operations; and is the entity that orchestrated a multistakeholder negotiation process culminating in a Comprehensive Relicensing Agreement (CRA), signed by 70 entities from both States, which sets the terms under which Duke Energy has applied to renew its license. These interests will be relevant to the Court's ultimate decision, since it is likely that any equitable apportionment of the river will need to take into account the amount of water that Duke Energy needs to sustain its operations. And, there is no other similarly situated entity on the river, setting Duke's interests apart from the class of all other citizens of the States. Just as important, Duke Energy has a unique and compelling interest in protecting the terms of its license and as the entity that orchestrated the CRA, which represents a consensus regarding the appropriate minimum continuous flow of river water into South Carolina under a va-

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riety of natural conditions and the conservation measures to be taken during droughts. Moreover, neither State is situated to properly represent Duke Energy's compelling interests. Neither has signed the CRA or expressed an intention to defend its terms, and, in fact, North Carolina intends to seek its modification. Pp. 14–16.

(3) However, because Charlotte's interest is not sufficiently unique and will be properly represented by North Carolina, the city's intervention is not required. Charlotte is a North Carolina municipality, and for purposes of this litigation, its water transfers from the river basin constitute part of that State's equitable share. While the complaint names Charlotte as an entity authorized by North Carolina to carry out a large water transfer from the river basin, the complaint does not seek relief against Charlotte directly, but, rather, seeks relief against all North Carolina-authorized water transfers in excess of that State's equitable share. Charlotte, therefore, occupies a class of affected North Carolina water users, and the magnitude of its authorized transfer does not distinguish it in kind from other class members. Nor does Charlotte represent interstate interests that fall on both sides of this dispute, as does the CRWSP. Pp. 16–18.

Exceptions to Special Master's First Interim Report overruled in part and sustained in part.

ALITO, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and BREYER, JJ., joined. ROBERTS, C. J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, GINSBURG, and SOTOMAYOR, JJ., joined.