

PLACE: Held via Videoconference

DATE: Friday, October 2, 2020

TIME: 1:31 P.M. - 2:31 P.M.

DOCKET NO.: E-2, Sub 1219

E-2, Sub 1193

BEFORE: Commissioner Daniel G. Clodfelter, Presiding
Chair Charlotte A. Mitchell

Commissioner ToNola D. Brown-Bland

Commissioner Lyons Gray

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

DOCKET NO. E-2, SUB 1219

Application by Duke Energy Progress, LLC,
for Adjustment of Rates and Charges Applicable to
Electric Utility Service in North Carolina
and



DOCKET NO. E-2, SUB 1193

Application of Duke Energy Progress, LLC
for an Accounting Order to Defer Incremental Storm
Damage Expenses Incurred as a Result of Hurricanes
Florence and Michael and Winter Storm Diego

VOLUME 18

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T A B L E O F C O N T E N T S

E X A M I N A T I O N S

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E X H I B I T S

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P R O C E E D I N G S

COMMISSIONER CLODFELTER: Okay.

Ms. Cralle Jones?

MS. CRALLE JONES: All right. Thank
you.

Whereupon,

JESSICA L. BEDNARCIK,

having previously been duly affirmed, was examined

and continued testifying as follows:

CONTINUED CROSS EXAMINATION BY MS. CRALLE JONES:

Q. Ms. Bednarcik, before the break, we -- I had
directed you to the Potential Cross Exhibit 22 that is
in four parts. Were you able to locate that?

A. Yes. I have all four parts up on my
computer.

Q. Perfect. And I'm going to direct you to part
3, which is 162 pages, and I think it begins with
Section 5, and ask you to go to the PDF, page 96.

A. So, Ms. Cralle Jones, my part 3 has 32 pages.

Q. Uh-oh.

A. Four has 170 pages.

Q. Uh-oh.

A. And 2 has 200 pages.

Q. Oh, no, we're working with two different

1 documents. All right. Let me -- can you go to the one
2 that has 170 pages and open that up and tell me how
3 that starts.

4 A. This one starts with a letter dated
5 October 30, 1978.

6 Q. Okay. Can you go to about 93 of that
7 document. I think we're looking at two different
8 configurations, and I hope we can get us together.

9 A. So 93 of that document, the number down at
10 the bottom is 2-7?

11 Q. Huh. No, that's not where I'm going either.
12 Now, the way the documents were filed, there was a bit
13 of a misnomer there. Is there any way that you can
14 access the way that they were provided to the
15 Commission and --

16 A. I have it -- I have someone in the room said
17 to look at part 4. If you give me -- it looks like
18 they are searchable, text searchable, so if you give me
19 a word or a phrase I may be able to find it using the
20 text search.

21 Q. Okay. If you will look for -- well,
22 June 26, 1978. I'm not sure it's going to pull that
23 up.

24 A. Is that the exact phrase that I would be

1 searching for?

2 Q. Well, it's the date on the first page of the
3 letter. If you look at -- maybe you could look for his
4 name, Colonel Hight, H-I-G-H-T.

5 A. (Witness peruses document.)

6 I see a -- on one document is a page that
7 says that Colonel Hight was the person who signed it.

8 Q. Okay.

9 A. And it has a date on it of October 30, 1978.

10 Q. I'm looking for a document -- type this in:
11 "Region IV of the U.S. Environmental Protection." See
12 if we can get it that way.

13 A. Let me try each one of the documents, if you
14 give me one moment.

15 COMMISSIONER BROWN-BLAND:

16 Ms. Cralle Jones, this is Commissioner Brown-Bland.
17 What was that number that you gave earlier on that
18 should be at the bottom of the page?

19 MS. CRALLE JONES: Actually, the one
20 that I'm looking at, there is not a number at the
21 bottom of the page. This is actually -- it begins
22 with Section 5 of the EIS, and it is a letter with
23 a stamped date of June 26, 1978, written to
24 Colonel Adolf A. Hight.

1 THE WITNESS: I was able to find it,
2 Ms. Cralle Jones. In case others are looking for
3 it, at least on mine it was part 1, page 96 of 162
4 of the PDF.

5 Q. Okay. The PDF page 96 that we're on the same
6 page, that's exciting. Thank you for your diligence in
7 getting there.

8 Have you seen this document before?

9 A. I have seen the document. It is 500-or-some
10 pages altogether, but it has been some time since I've
11 looked at it, but I have seen it at one time.

12 Q. Okay. And just to orient everyone, I believe
13 this was EPA's -- this portion of the document is EPA's
14 review of the draft EIS for the Mayo electric
15 generating plant. And again, just for orientation,
16 make sure we're all on the same page, this PDF page 96
17 is the first page of the letter. Page 97 is the second
18 page of the letter and shows that it was signed by
19 John White with an enclosure.

20 Are we on the same page?

21 A. (No audible response.)

22 Q. Okay.

23 A. Yes, ma'am.

24 Q. And then starting at page -- PDF 98, it says

1 "Comments on draft EIS Mayo electric generating plant";
2 is that correct?

3 A. Yes, I am on that page.

4 Q. Okay. Perfect. You testified before the
5 break that the Company has to make decisions based upon
6 what is known at the time. This document would
7 indicate what was known by the Company at that time,
8 wouldn't it?

9 A. Yes, it would have. But I also know that,
10 specifically for the Mayo EIS, there was a subsequent
11 study that was done that is referenced as the Floyd
12 study, and that was produced in 1979 that -- again, you
13 have to look at it in sequence and to look at the
14 entire picture. And I do know that, at the conclusion
15 of the environmental impact statement and the
16 evaluation for the Mayo pond, we did receive approval
17 from the state agency to move forward with the
18 construction of the Mayo pond, and we received an NPDES
19 for that.

20 So we got all of the approvals we needed from
21 the state regulatory agencies and the federal
22 regulatory agencies in order to move forward with the
23 construction of the pond.

24 Q. Okay. Now, on PDF page 96, which is the

1 first page of the letter, there's three points there.
2 I would turn your attention to the third point
3 regarding fly ash and bottom ash transport system.

4 Would you please read that section beginning
5 with "water carriage"?

6 A. It states for number 3, fly ash and bottom
7 ash transport system:

8 "Water carriage of fly ash and once-through
9 bottom ash sluicing systems are inconsistent with
10 existing and expected (to be repropose in the
11 September 1978 with repromulgated schedule in
12 March 1979) standards of performance for new sources.
13 It is anticipated that repromulgated regulations
14 require dry fly ash handling systems and recirculating
15 bottom ash handling systems. However, even in the
16 absence of such requirements, such systems appear
17 necessary to assure that chronic and acute toxicity
18 conditions do not occur in Mayo Creek, Crutchfield
19 Branch, and the makeup water reservoir. In the absence
20 of a commitment to the use of such systems by CP&L, the
21 project appears environmentally unacceptable."

22 But again, I would like to state that there's
23 lot that proposed new promulgations, new type of things
24 that are going on with EPA, great questions for

1 Ms. Williams who was part of EPA during this time
2 period. And again, we received -- after all of the
3 studies that we did, we received approval from all the
4 agencies to move forward with the permitted Mayo basin.

5 Q. Okay. But looking at this language where it
6 says "inconsistent with existing standards," that's
7 pretty clear, isn't it?

8 A. So it does state that, but it also says that
9 there are proposals to be repromulgated. So it is one
10 line in one document. You have to look at the history
11 of all that went on. So there are subsequent things
12 that happened to this information that came out. So
13 again, that would be -- especially since this came from
14 U.S. EPA, great thing to follow up with Ms. Williams
15 about.

16 Q. Okay. But in 1978, Ms. Williams wasn't
17 employed by EPA Region 4, who's commenting on this, was
18 she?

19 A. I cannot remember exactly what years
20 Ms. Williams was with EPA, but I will say that this is
21 one document at one time. There's lots of changes that
22 were going on with EPA related to fly ash,
23 understanding what was going on, and she would be able
24 to talk about that.

1 Q. Okay. But in terms -- you've been offered as
2 the Company's witness for historical management of coal
3 ash, so I'm just trying to get a sense of what you
4 think about the conclusions that were made in this
5 document and how that might align with other historical
6 documents that you were looking at, but thank you.

7 A. And I would say, Ms. Cralle Jones, again,
8 this is a 500-page document, talks about the history of
9 everything. This is one line in that document. I do
10 know that there was additional studies. 1979 Floyd
11 report talked about groundwater, talked about
12 Crutchfield Branch. The NPDES permit received, we were
13 required to sample out of Crutchfield Branch. So
14 it's -- you have to put the whole story together.

15 Q. Okay. Now, if you would go to PDF page 101,
16 which is part of the comments that are more details
17 about ash handling.

18 Do you see Section C that says "Ash
19 handling"?

20 A. I do.

21 Q. Okay. And the last full sentence near the
22 bottom begins:

23 Although this requirement referring to dry
24 ash handling was remanded, and then this is a quote,

1 further evaluation by EPA has indicated that the
2 technology of dry fly ash handling is feasible, is not
3 excessively costly, and is being instituted by many
4 power companies now.

5 Did I read that correctly?

6 A. Yes, that is what the document states.

7 Q. So in 1978, EPA Region 4 was recommending dry
8 ash handling, wasn't it?

9 A. Looking at the words on the page -- again, it
10 has been 500-page document. I have not read through
11 all of this in a very long time. It does say that
12 further evaluation by EPA, that the technology is
13 feasible, is not excessively costful and is being
14 instituted. It doesn't -- just by that one section it
15 doesn't say absolutely you have to do it, it made those
16 three points.

17 Again, go back to what we ended up doing at
18 the site was approved and permitted. So one document,
19 one item, lots of different ideas that were coming
20 through. It says what it says, fly ash was feasible.
21 It did not say it was required to be done at the site.

22 Q. Correct. But we have been talking about and
23 you've been testifying as to what was prudent and
24 reasonable, and that what the Company's actions were,

1 whether they were prudent and reasonable at the time
2 they were taken. And these are factors that were
3 highlighted at that point, correct?

4 A. They were highlighted in one document.

5 Q. Okay. All right. I'll move on. Okay.

6 On page 61 of your testimony, you talk about
7 the construction of ash basins. So page 61, line 22,
8 you testified that DEP last constructed a new ash basin
9 in 1985; is that correct?

10 A. Yes.

11 Q. And which one was that?

12 A. Give me one moment. It's been a very long
13 week.

14 Q. Let me do this, and it may help you. I'm
15 going to refer you to Sierra Club Potential Cross
16 Exhibit 17, which was the DEP Kerin Exhibit 5 exhibit
17 with basic ash basin information and history.

18 A. So I actually found the other document that I
19 was looking for. So at Cape Fear, we had the 1985
20 basin, and then, of course, at Sutton we also had the
21 basin that was the 1984 basin.

22 Q. Okay. Do you know how many basins were
23 constructed after 1978? And maybe this is the time to
24 refer you to that Sierra Club Potential Cross

1 Exhibit 17.

2 A. So I do have that one in front of me now.

3 Q. Okay.

4 A. What was the year that you mentioned?

5 Q. If you'll hold on just a second.

6 MS. CRALLE JONES: Commission --
7 Commissioner Clodfelter, we'd ask that Sierra Club
8 Potential Cross Exhibit 17 be marked for the record
9 as Bednarcik Rebuttal Sierra Club DEP Cross
10 Exhibit 3.

11 COMMISSIONER CLODFELTER: It will be so
12 marked.

13 (Bednarcik Rebuttal Sierra Club DEP
14 Cross Exhibit 3 was marked for
15 identification.)

16 Q. Okay. So my question was, how many ash
17 basins were constructed after 1978?

18 A. (Witness peruses document.)
19 So it would probably be easier to go down.

20 Q. Okay.

21 A. The Asheville -- the 1982 basin in Asheville;
22 there was the Cape Fear, the 1985, the one that we
23 mentioned --

24 Q. Uh-huh.

1 A. -- and then there was the 1983 at Mayo.

2 Q. Uh-huh.

3 A. The Mayo, that's a wrong number on there.

4 That was the -- I will say that the Mayo basin, that is
5 not correct. That one was constructed in 19- -- around
6 1981 to 1983 is when it started cons- -- started
7 operation. I'm sorry, I wanted to make sure I got that
8 right. And then there is also the 1984 Sutton.

9 Q. Okay. Did we mention, I think, H.F. Lee
10 polishing pond in 1982; is that correct?

11 A. Yes. But that's not a basin -- that's not an
12 ash basin, that's a polishing pond.

13 Q. Okay. But we did mention the Asheville 1982
14 basin, correct?

15 A. Yes, ma'am.

16 Q. Okay. So we have four new ash basins that
17 were constructed after EPA clearly said to DEP in 1978
18 that wet handling was, quote, inconsistent with
19 existing and expected regulation, correct?

20 A. Again, Ms. Cralle Jones, after 1978, the one
21 document you put together that you showed me had that
22 in there; but, again, all of these basins were approved
23 for construction. I would note that the 1985 basin was
24 approved without a liner by DEQ to move forward. So

1 that -- we did get permits and approvals from our
2 regulators to move forward.

3 Q. And based on that document that -- the Kerin
4 Exhibit 5, it also has the tonnage there. So looking
5 at those, we could figure out how many tons of coal ash
6 were placed in -- placed in those basins after '78; is
7 that fair, from that document?

8 A. Yes. It does show ash in tons as of
9 1/17/2017.

10 Q. Okay.

11 (Reporter interruption due to sound
12 failure.)

13 Q. The total tonnage showed on the Kerin chart,
14 and that was for tons of fly ash placed in those basins
15 after '78; is that correct?

16 A. Tons of ash.

17 Q. Tons of ash. Okay.

18 A. Not necessarily fly ash. It may have been
19 also bottom ash.

20 Q. Okay. All righty. Do you have a breakdown
21 anywhere of fly ash versus bottom ash for those basins?

22 A. Not -- not readily available. I'm trying to
23 think if I have one, but not that I can -- as I sit
24 here today, I can't think of one.

1 Q. Okay. All right. Okay. Let's move to a
2 different topic.

3 On page 53 of your testimony, you talk
4 about -- you address the cost recovery for land
5 purchases at Mayo, correct?

6 A. Yes.

7 Q. And on line 16 you describe the land
8 purchased, quote, to mitigate groundwater risk at Mayo,
9 correct?

10 A. That is what this states.

11 Q. Okay. Earlier I think Ms. Luhr asked you
12 about the risks that the Company was hoping to mitigate
13 by purchasing property near the Mayo basin; do you
14 recall that?

15 A. I do.

16 Q. And I believe you mentioned that part of the
17 reason was to have -- and I think the words you used
18 were "more of a buffer." A buffer from what?

19 A. So a buffer as -- so we have a compliance
20 boundary at all of our ash basins, and the compliance
21 boundary. And Mr. Wells can go into more detail and
22 can also make sure I'm getting the distances right.
23 But there's a compliance boundary X number of feet away
24 from the edge of the basin, and that is the -- where we

1 have to make sure that we have groundwater inside that
2 compliance boundary.

3 Of course, the compliance boundary is a state
4 item. It is under CAMA. Under the federal CCR rule,
5 groundwater has to be managed back to the waste
6 boundary, so it's a different level there. So -- and I
7 think I mentioned in earlier testimony that we do not
8 have 2L impacts beyond the compliance boundary at Mayo.

9 So in the -- when you look at why we
10 purchased this property, there was neighbor concerns
11 about the groundwater in the area. We didn't have any
12 impacts in that area, but when I mentioned earlier
13 making sure we had more distance, a little bit more of
14 a buffer, so it helps us; A, push out that compliance
15 boundary because we were able to move the property
16 boundary out a little bit; and we can continue -- we
17 had that buffer area to make sure, as we're continuing
18 to monitor, that we had enough distance. If something
19 were to show up in the future or anything different
20 happened, we had that full compliance boundary. And
21 again, Mr. Wells can talk about also that purchase in
22 more detail related to anything with groundwater.

23 Q. Okay. But, in general, do you -- can you
24 describe where the property was located that was

1 purchased at Mayo? Was it along the Crutchfield
2 Branch?

3 A. I do know, Ms. Cralle Jones, that it is on
4 the northern side of the site closest to the Virginia
5 border. As I sit here today I can't picture exactly
6 where it is in relationship to Crutchfield Branch, but
7 I do know it's on that northern side closer to the
8 Virginia border.

9 Q. Okay. I want to refer you to Hart
10 Exhibit 54, which was entered as AGO Bednarcik Direct
11 Cross Exhibit 10. And this is the CAM report for Mayo.
12 And it's got some sources in there that I think can
13 help us a little bit on this piece.

14 A. I do have that in front of me now.

15 Q. Okay. And if you could go to page 51, and I
16 believe you'll see --

17 A. Ms. Cralle Jones, mine doesn't have -- I'm
18 looking off of the hard copy. If there's a number at
19 the bottom, that would help.

20 Q. Okay.

21 (Counsel peruses documents.)

22 A. There's also a number of attachments, so that
23 may also help, the attachment.

24 Q. Right. I'm getting to the PDF, itself, and

1 then let me see how I can find -- it's the map. It's
2 the first site map. And I believe it follows after
3 attachment B, if that helps.

4 A. (Witness peruses document.)

5 Q. Maybe figure 1-2.

6 A. I have that in front of me now.

7 Q. Great. So just to orient everyone, we've
8 been talking about the compliance boundary. Would that
9 be the purple dashed line on that map?

10 A. Yes.

11 Q. And then does this help? Is that northern
12 property outside the compliance boundary towards the
13 Virginia border, is that your understanding of the
14 property that was purchased?

15 A. Yes.

16 Q. Okay. And then just to get a little bit of
17 orientation, monitoring well 16 is the set of
18 monitoring wells that's in that -- on -- located
19 adjacent to Crutchfield Branch and in that purchase
20 property; is that correct?

21 A. I do see monitoring well 16-S, the pair. So
22 there's an SD and 16-BR. What I don't have on here is
23 the property borders, and I'm sorry, I do not -- based
24 upon this can tell you if that's inside or outside

1 without seeing a map of the property borders. I'm
2 sorry, I can't remember.

3 Q. But subject to check, that's a well off --
4 off -- outside of the compliance boundary on the
5 Crutchfield Branch; can we agree on that piece?

6 A. It is a well outside the compliance boundary
7 as shown on this drawing, and then also on -- appears
8 to be on a stream, and that would be Crutchfield
9 Branch.

10 Q. Okay. Okay. And in that 1978 document, EPA
11 stated in that same EIS that they did not believe that
12 the use of the proposed pond for ash disposal was an
13 acceptable use of Crutchfield Branch, and that would be
14 what was dammed here for the creation of the ash basin;
15 is that correct?

16 A. Yes. But I would also state that in the --
17 I'm trying to pull up the 1979 Floyd report that
18 actually references the Crutchfield Branch and what
19 came out of that 1979 evaluation. Mr. Wells may be
20 able to pull it up better than I can, because he has
21 information on this.

22 But I also do know that the NPDES permit
23 included sampling within Crutchfield Branch, and that
24 was how the department looked at it and said this is a

1 sampling -- important sampling point. And Mr. Wells
2 has more information about that NPDES permit and those
3 samples.

4 Q. Okay. And I believe you've testified a
5 couple of times now that there were no exceedances
6 beyond the compliance boundary at Mayo; is that
7 correct?

8 A. At Mayo, we are not having to do an
9 extraction system or extraction treatment at Mayo
10 because there are none -- none -- we've had four
11 quarters, and that is what we provided to the agency
12 that shows we do not have impacts beyond the compliance
13 boundary. What I don't know as I sit here today --
14 again, better question for Mr. Wells -- at any time
15 there was any type of hit in one of those wells. But I
16 do know we do not have to do any type of groundwater
17 correction action to pull a plume back into the
18 compliance boundary.

19 Q. Okay. So based upon those four quarters.
20 But you're not testifying that there's never been an
21 impact to the Crutchfield Branch or the groundwater
22 related thereto?

23 A. I think -- if I haven't made myself clear,
24 related to what is required under CAMA and looking at

1 background information, Mr. Wells has more detail on
2 that, but I do know that we have -- we do not have to
3 do a groundwater corrective action to pull a plume back
4 inside the compliance boundary, because we do not have
5 a plume that's outside that compliance boundary.

6 Q. Okay. Just again for orientation --

7 COMMISSIONER CLODFELTER: Excuse me.

8 Mr. Marzo, we've lost your video.

9 MR. MARZO: Sorry. I keep having the
10 wrong finger slide over with this new setup. Sorry
11 about that.

12 COMMISSIONER CLODFELTER: I've been
13 having the same problem. I just wanted to make
14 sure you were still with us. Go ahead. I'm sorry
15 for any interruption.

16 Q. Looking back at the map, we've identified
17 MW-16, the set, and then MW-3, that's the monitoring
18 well that is inside the compliance boundary, correct?

19 A. Based upon this drawing, which is really
20 small, I don't know if it's right at the compliance
21 boundary or inside or right outside. Mr. Wells may
22 know specifically where that is, but I would have to
23 have a much bigger picture to be able to know where
24 that is. It appears to be placed either right on top

1 of the compliance boundary, so I don't know if it's
2 inside or out.

3 Q. Okay. And I'm not sure, you've got a hard
4 copy, but on the digital copy the next page begins
5 reporting out various -- well, data from the
6 groundwater monitoring. Would you agree with me that
7 on these sheets, yellow indicates exceedances?

8 A. Yellow is an exceedance of an -- of the 2L
9 standard.

10 Q. Okay. And go one more page in, because I
11 believe the next -- it's PDF page 53, but it's the next
12 page of data is where you find the results for MW-3 for
13 those four quarters.

14 A. I do see MW-3.

15 Q. Okay. And when you look there, there are
16 exceedances for boron.

17 Generally, boron is not a naturally occurring
18 substance, correct?

19 A. So it is not, but again, I would also say
20 that, although this says location with respect to
21 groundwater flow direction downgradient and saprolite,
22 you'd need to look and see where it is, and we are
23 talking about -- I don't know if that's one inside or
24 outside. And it also does not take into account any

1 type of background.

2 So I would say that -- I would go back to I
3 know in working with the agency, looking at background,
4 looking at what we have provided to them, we do not
5 have to pull any type of plume back inside the
6 compliance boundary at Mayo. Looking at these --
7 again, Mr. Wells may have more detail, but that is a
8 factor that I know with the agency today.

9 Q. Okay. And I'm just trying to get a
10 high-level understanding of some of this, and I'm not
11 trying to get into the weeds. But my understanding,
12 and just trying to make sure, that boron is one of
13 those indicators of a plume, of a coal ash-related
14 plume; is that correct?

15 A. Yes. And actually we use boron when we did
16 our modeling that we submitted to the state with our
17 groundwater corrective action plans. We use boron, I
18 believe -- and again, Mr. Wells will know for sure
19 whether or not -- but I believe we use boron as kind of
20 our key of what we would look at when we did our
21 modeling.

22 Q. Okay. And subject to check -- I know you had
23 a small map, but I'll represent that monitoring well 3
24 is inside the compliance boundary, so I'm not

1 suggesting that this is an indication outside there.

2 But inside the compliance boundary, right on
3 Crutchfield Branch, this page 53 does show exceedances
4 of 2L for boron; is that correct?

5 A. So based upon the document, the document
6 shows what the document shows. But again, I would go
7 back to discussion with the agencies, where we are
8 today, we do not have to do groundwater corrective
9 action plan to bring anything back inside of the
10 compliance boundary.

11 Q. And I get that. I understand that. You've
12 been very clear on that.

13 But also, monitoring well 3 also shows
14 exceedances inside the compliance boundary for
15 manganese and vanadium, correct?

16 A. Of the 2L standard. What I don't know is
17 what the background standard is for those constituents.

18 Q. Okay. And then if you go to the next page,
19 which is 54, you have to go -- it's kind of the bottom
20 of the middle third of the data sheet. I believe
21 that's where you start seeing the results for
22 monitoring well 16, which we agreed was outside the
23 compliance boundary. Do you see those?

24 A. Yes. And actually, in here it says off Duke

1 property. But again, that's based upon this time
2 frame, and I'm not sure if that was inside the property
3 we purchased or not. So -- but it does say off Duke
4 property. So off Duke property, it's outside the
5 compliance boundary.

6 Q. And the sampling dates there, what you
7 suggested, the four quarters from July of 2018 to
8 April of 2019; and -- you see those?

9 A. I do.

10 Q. And granted it is not an exceedance, but do
11 you see for MW-16-S, that saprolite shallow wells, that
12 boron is showing up in that well?

13 A. I do see that, and that's actually why we
14 will continue to monitor.

15 Q. Okay.

16 A. And it's something that, of course, we will
17 do. It's not like we will stop. We will continue to
18 monitor and work with the agency if anything were to
19 change in the groundwater.

20 Q. Okay. And then do you also see that there is
21 a 2L exceedance for iron in 16-S?

22 A. Yes. But I would go back to this is just
23 showing 2L exceedances, it does not do any indication
24 of background. And when you look at -- with 2L, you

1 also have to look at background at the end of the day.
2 So this is a straight comparison with 2L, from what I
3 can tell. Again, Mr. Wells may be able to provide more
4 clarity, but you also, of course, have to take into
5 account background levels.

6 Q. Okay. And there was additional groundwater
7 monitoring data that was presented as part of the
8 comprehensive site assessments for these sites,
9 including Mayo, wasn't there?

10 A. Yes. There was a lot of groundwater data
11 that was provided.

12 Q. Some of that beginning as early as 2015 for
13 Mayo; would that -- would you be surprised? Subject to
14 check, sampling data from 2015 through 2017 is
15 available in addition to the four quarters that are
16 shown on this particular exhibit?

17 A. Mr. Wells would be able to tell you the years
18 for groundwater data, but all of the data that we have,
19 all of the groundwater data has been provided to the
20 agency. It was also, of course, provided to all of the
21 intervenors.

22 Q. Okay. And so the documents will show what
23 the documents will show relative to exceedances for pH,
24 cobalt, manganese, and boron, or -- there's not a 2L

1 exceedance for boron, but for pH, cobalt, and manganese
2 in these -- well 16. So if that's there. And you said
3 you didn't have knowledge of those particulars, and
4 that would be something for Mr. Wells, correct?

5 A. Yes, that is a good question for Mr. Wells.

6 Q. Okay. Now, are you aware that DEQ concluded
7 that the groundwater plume of boron at concentrations
8 above 2L standards had migrated beyond the compliance
9 boundary and had reached Crutchfield Branch?

10 A. I do know, and I testified this the other
11 day, I can't remember which of the intervenors asked me
12 this question about the April 1, 2019, order from DEQ
13 for excavating and the fact that it did have in there
14 an indication that there was a plume outside the
15 compliance boundary. And I believe I also discussed
16 that was part of our filing with the Office of
17 Administrative Hearing, and specifically we called out
18 that we do not have impacts beyond the compliance
19 boundary.

20 So anything beyond that related to
21 groundwater, again, Mr. Wells would be able to talk to
22 groundwater.

23 Q. Okay. And that same document that I think
24 you referenced that's been -- it's now marked as

1 Bednarcik Rebuttal AGO DEP Cross Exam 2, Number 2, that
2 is that April 1st order. Were you aware that DEQ also
3 concluded in there that manganese and strontium were
4 detected more than 500 feet beyond the compliance
5 boundary?

6 A. Again, Ms. Cralle Jones, that was all part
7 of -- it was one of the reasons -- one of the multiple
8 reasons all laid out in our filing against the
9 administrative -- to the Office of Administrative
10 Hearing in our response to those orders. And there was
11 information related to groundwater, no matter what the
12 constituents is, related to the compliance boundary
13 specifically at Mayo.

14 Q. And so the Company just disagreed with DEQ's
15 conclusion about the groundwater data submitted; is
16 that correct?

17 A. I would point to the Office of Administrative
18 Hearing what our filing was. We have had -- I did talk
19 to our groundwater experts in that area and asked them
20 what the April 1st order said, what did the
21 conversations with the agency; did they know? And
22 based upon the conversations I have had with Duke
23 Energy, subject matter experts who had discussions with
24 DEQ at that time, is that it was clear the information

1 was that we did not have exceedances beyond background,
2 beyond 2L, beyond the compliance boundary.

3 Now, of course, DEQ had what DEQ had in their
4 document, and we, of course, disagreed with that, and
5 that is why we ended up having the order of -- why we
6 went back and went to the Office of Administrative
7 Hearing. But again, I would go back to today, working
8 with the agency, we do not have to bring any type of
9 contaminant plume back inside of a compliance boundary
10 at Mayo.

11 Q. The conclusion that DEQ reached about there
12 having been impacts past the compliance boundary was
13 based upon the data that the Company reported to DEQ in
14 its comprehensive site assessments, wasn't it?

15 A. And the reason we ended up contesting that is
16 because what came out in that order, we looked at it
17 and said that that is not correct. And subsequently,
18 where we are today is we do not have to bring
19 anything -- this is nothing outside that compliance
20 boundary we have to bring back. I think all those
21 documents speak for themselves. I don't know what DEQ
22 was thinking when they were putting it together, but I
23 do know we are where we are today related to
24 groundwater at Mayo related to the compliance boundary.

1 Anything on groundwater, again, I think I
2 said it a couple of times, Mr. Wells is also a good
3 person to talk about this.

4 Q. In 1978, the environmental impact statement
5 warned against using Crutchfield Branch to construct an
6 ash basin. And it turned out, based upon DEQ's
7 conclusions, that that warning was correct, because
8 there ultimately ended up being impacts to Crutchfield
9 Branch.

10 Wasn't that information known to the Company
11 at the time -- and you've mentioned the Floyd report a
12 number of times -- and doesn't it appear now looking
13 back that Floyd was wrong?

14 A. I would say no. I don't agree with you. I
15 found the Floyd report. I have it in front of me. The
16 very last page in the Floyd report says:

17 "It is difficult to imagine that any
18 significant adverse impacts on the groundwater aquifer
19 could be caused by ponding of the ash waters at the
20 proposed sites."

21 That was one I was able to pull up quickly.
22 I would say our groundwater data today and what we have
23 to do related to our compliance boundary aligns with
24 what this is. And any other questions you have on

1 groundwater, please refer to Mr. Wells.

2 Q. All right.

3 MS. CRALLE JONES: I have no further
4 questions.

5 COMMISSIONER CLODFELTER: All right.
6 Thank you, Ms. Cralle Jones. These are the only
7 parties that I have any reservation of cross
8 examination, so let me ask for the record, are
9 there any other intervenors or parties who have
10 questions for Ms. Bednarcik at this time?

11 (No response.)

12 COMMISSIONER CLODFELTER: If not,
13 Mr. Marzo, we will come back to you for redirect.

14 MR. MARZO: Thank you,
15 Commissioner Clodfelter. Just a few questions.

16 REDIRECT EXAMINATION BY MR. MARZO:

17 Q. I'll start probably from the back and move
18 forward. Ms. Bednarcik, you were just asked several
19 questions by Ms. Cralle Jones regarding Mayo and the
20 EIS in particular. And I think you did say you have
21 the Quarles report in front of you now. Not the
22 Quarles report, I'm sorry, the 1979 report in front of
23 you now?

24 A. I do.

1 Q. The Mayo --

2 A. I do.

3 Q. -- and it's the Edwin Floyd report?

4 A. I have that in front of me. At least the
5 main document. I don't know if there was attachments,
6 but the main document I have in front of me.

7 Q. And I heard you read us a portion of that,
8 and I want to make sure that we -- for clarity's
9 purposes, that we're talking about the same portion of
10 that report.

11 Can you reference page 14 of that report; is
12 that --

13 A. (Witness peruses document.)

14 So I was actually talking about the next
15 page. I'm on page 14 now.

16 Q. Okay. If you see the first full paragraph on
17 that page.

18 A. Yes, I do.

19 Q. Would you mind reading the first full
20 sentence which goes a few lines down?

21 A. "Soil conditions at the proposed ash pond
22 site at the Mayo electric generating plant are adequate
23 to provide excellent protection to the groundwater
24 aquifer both in preventing significant leakage from the

1 pond and in reducing the concentrations of the heavy
2 minerals by filtration before the leachate reaches the
3 aquifer. "

4 Q. Thank you. So a very different opinion than
5 what Ms. Cralle Jones was talking about in the 1978
6 report; is that correct?

7 A. Yes.

8 Q. Okay. And I think you mentioned subsequent
9 to that EIS draft, that you ultimately received permits
10 for an ash basin at Mayo; is that correct?

11 A. Yes.

12 Q. Okay. And I think Ms. Cralle Jones asked you
13 a number of questions around industry standard and your
14 understanding of industry standard.

15 Let me ask you, is one way of understanding
16 industry standard understanding the common practices
17 that are occurring across the industry with your peers?

18 A. Yes, it is.

19 Q. Okay. And are you -- you're familiar with
20 the Boneparte report, correct?

21 A. Yes, I am.

22 Q. Okay. And the Boneparte report identifies at
23 least four states within Region 4 of EPA, correct?

24 A. Correct.

1 Q. Okay. And are there -- are there a number of
2 unlined basins that were in existence even up to the
3 point in time the CCR rule was put in effect?

4 A. Yes, there were.

5 Q. Okay. So following the EIS report that
6 Ms. Cralle Jones showed you, there was still a common
7 practice across the industry to use unlined basins for
8 sluicing ash; is that correct?

9 A. Yes.

10 Q. Okay.

11 MR. MARZO: And for the record,
12 Commissioner Clodfelter, just to make sure the
13 record is clear, the report that identified, I'd
14 like to have it marked, which is the 1979 Edwin
15 Floyd report for the evaluation of the potential
16 for contamination of the groundwater aquifer by
17 leachate from the coal ash storage pond at the Mayo
18 electric generation plant site. I'd like to have
19 that marked as Bednarcik Rebuttal DEP Redirect 1.

20 COMMISSIONER CLODFELTER: It will be so
21 marked.

22 MR. MARZO: Thank you, sir.

23 (Bednarcik Rebuttal DEP Redirect 1 was
24 marked for identification.)

1 Q. Just a few more questions, Ms. Bednarcik.

2 Now, you were asked several questions by
3 Ms. Jost regarding the Asheville plant, and I think she
4 asked you a number of questions about the potential to
5 build a landfill at that facility in the prior period
6 of time, back in that 2015 or so time frame; do you
7 recall those?

8 A. Yes.

9 Q. And did the Commission already opine on
10 whether it was feasible to develop a landfill at
11 Asheville in that time period?

12 A. Yes. In that -- in the time period that
13 Mr. Kerin talked about, yes.

14 Q. Okay. And did the Commission find, in Duke
15 Energy Progress' last rate case order, that the
16 Mountain Energy Act effectively made construction of a
17 new on-site CCR landfill technically infeasible during
18 the development of the combined cycle?

19 A. Yes, that is my recollection.

20 Q. Now, you're proposing to build a landfill
21 today that won't be completed until 2021; is that
22 right?

23 A. The current schedule is that will be -- we
24 will be submitting and hopefully starting to be able to

1 put ash in that landfill at the end of January,
2 beginning of February of 2021.

3 Q. Okay. And does it change -- does that change
4 fact that no on-site landfill at Asheville could have
5 been reasonably developed from September 1, 2017, to
6 December 31, 2019?

7 A. It does not change the fact. It takes a
8 number of years to put together packages, get permits,
9 build, all that together. We are doing it, of course,
10 with the 1.3-million-ton landfill. We started
11 construction right after the compliance cycle was done
12 and cleared the area so we could have it. And we're
13 moving really quick for a small landfill.

14 Q. And that was my next question, which was the
15 combined cycle was completed and the coal plant was
16 shut down at that point; is that right?

17 A. Yes. And actually it's actually very
18 interesting to note, because I'm also over our
19 demolition group. In order to build that new landfill,
20 we had to quickly move the coal yard and get that clean
21 so that they could utilize the coal yard, which was, of
22 course, in operation when the coal plant was operating.
23 Had to have that nice and clean so they could use some
24 of the fill dirt as they were building the landfill,

1 putting it inside of the coal yard area. So really has
2 been like a domino effect to make sure we utilize the
3 area appropriately.

4 Q. And by phasing that work, have you created an
5 opportunity to save customers by being able to pursue
6 an on-site landfill at this point?

7 A. Yes. So by doing the 1.3-million-ton
8 landfill on site, in our evaluation, we are looking at
9 a 20 to \$30 million savings for the Company -- for our
10 customers and for the Company.

11 Q. And Ms. Jost also asked you questions about
12 Charah, and I think I can ask these without eliciting
13 any confidential information. Because she asked you
14 primarily about the Sanford coal mine.

15 And I just want to ask you, did Charah
16 purchase that mine to undertake the contract?

17 A. Yes.

18 Q. Okay. And are there obligations that Charah
19 has now that is assumed, by virtue of purchasing a
20 mine, that it has ongoing obligations related to that?

21 A. Yes.

22 Q. Okay. And is the fulfillment fee, in part,
23 intended to address what are ongoing obligations for
24 essentially buying a mine and that mine not being used,

1 but still having the obligations to address that mine
2 environmentally and otherwise?

3 A. Yes.

4 Q. Okay. And Commissioner Clodfelter indicated
5 earlier today that -- he had punted a question to you,
6 and I'm just going to ask you, regarding the cost
7 breakout for of Sutton and Roxboro for the corrective
8 action necessitated by exceedances of the 2L standards
9 beyond the compliance boundary, he asked you to try to
10 figure out if you could break out cost data. And that
11 was sort of termed a homework assignment. And I'm
12 going to ask you, did you do your homework?

13 A. Yes, I did. I reached out to the accounting
14 group. The person actually Mr. Doss referenced this
15 morning. Because I took that down as a homework
16 assignment not as something for Mr. Doss. So we did
17 reach out and ask. And really, when we talk about
18 groundwater and what may have had happened, what we may
19 have had to do under the 2L standards related to
20 groundwater around the basins, we don't know where we
21 sit today what we would have to do.

22 The corrective actions or what would have
23 happened under the groundwater -- under 2L by itself
24 there is a lot of different ways we could have worked

1 with the agencies to move forward. We don't know what
2 we would have to do, if we would have had to put in the
3 wells that we had to under CAMA and CCR or not. The
4 number of wells, what would have happened.

5 So once CAMA and CCR came along, it really --
6 the door was closed on just under 2L, and the
7 prescriptive, the requirements, the groundwater
8 requirements, the sampling, the assessment under CAMA
9 and CCR are very prescriptive. And Mr. Wells can talk
10 about that in more detail. But when I discussed it
11 with our accounting people, as soon as CAMA and CCR
12 came around, their asset retirement obligations in
13 those -- it's all tied together. And because of the
14 requirement under CAMA and CCR related to groundwater,
15 which is tied all with the asset and retirement of the
16 basins are all tied together, so you really can't look
17 at it and say, well, what would have only been under 2L
18 versus CAMA and CCR.

19 As soon as that happened, the accounting
20 people said 2L is kind of -- is not gone, we still have
21 to of course comply with 2L, but the actions that we
22 have to take are CAMA and CCR.

23 Q. And I think you said that's because CAMA and
24 CCR are prescriptive; is that what you termed it as?

1 A. Yes, they're more prescriptive. Of course,
2 CAMA has the compliance boundary requirements related
3 to groundwater. CCR has a different compliance
4 boundary. You have -- it's at the waste boundary,
5 which is a lot closer than the compliance boundary. So
6 you have to put all of that together, different
7 requirements required underneath those new obligations.

8 Q. Okay. So trying to compare what you had done
9 for 2L rules and CCR is very different because you had
10 prescriptive requirement on one hand, you don't on the
11 other hand with the 2L rules; is that generally
12 correct?

13 A. With 2L, we don't know what would have
14 happened with -- underneath 2L by itself. Where we sit
15 today is we have to comply with CAMA and CCR.

16 Q. Thank you, Ms. Bednarci k.

17 MR. MARZO: Commissioner Clodfel ter,
18 that's all the redirect I have.

19 COMMISSIONER CLODFELTER: All right.
20 Thank you, Mr. Marzo. Let me tell you what I'm
21 going to propose to do. We are right about at
22 2:30. I'm going to vary a little bit our
23 adjournment time for this reason. I'm going to
24 give my colleagues a chance over the weekend to

1 collect their thoughts. This is the last time
2 we'll get to talk to Ms. Bednarcik, at least in
3 this series of rate cases, and it might be useful
4 for the Commissioners just to have a little bit of
5 time to reflect and be sure we get everything in
6 last minute. So I'm going to hold Commissioners'
7 questions over.

8 Ms. Bednarcik, unless you were planning
9 on taking a long vacation starting on Monday, I
10 hope that won't disrupt you too much. But I don't
11 think we'd finish with you anyway, I think you're
12 likely to have enough Commissioner questions and
13 then people wanting to ask you about it where we
14 probably wouldn't finish anyway. So with that
15 said, I'm going to hold Commissioners' questions
16 and pick up with those on Monday. And perhaps that
17 might even enable us to focus a little more tightly
18 and get you through quicker. Mr. Marzo, if that's
19 okay.

20 Let me, then, address one other issue.
21 Ms. Cralle Jones, can you come back? Are you
22 around?

23 MS. CRALLE JONES: I am.

24 COMMISSIONER CLODFELTER: All right.

1 Let me just have you think about this also over the
2 weekend. I'm going to make a suggestion, and I've
3 asked the court reporter to consider this as well,
4 but I want to ask it of you. With respect to your
5 Rebuttal Cross Examination Exhibit Number 2, that's
6 the EIS that was served in electronic form, I'm
7 going to suggest that the way we bring that into
8 the record when you are ready to move it is that in
9 the record, in the actual transcript, we simply
10 have a reference to the hyperlink to the website;
11 but that we also then ask you if you would provide
12 the court reporter copies of the pages, the hard
13 copy pages that you and Ms. Bednarcik specifically
14 called out of that larger document to discuss.

15 And if the court reporter tells me I'm
16 not crazy in doing that, I'm going to suggest that
17 might be the most efficient way to handle that
18 exhibit when it's ready to come into the record.
19 So if you'll think about that, and Mr. Marzo, too,
20 if you'll think about that also. I think that may
21 be the best way to get that document wrangled into
22 the record, as it were, since it's so massive.

23 MS. CRALLE JONES: I appreciate that. I
24 had a note that we needed to address that issue, so

1 you were reading my mind. Thank you so much.

2 COMMISSIONER CLODFELTER: I'm trying to
3 keep up with you and to say that will give you
4 something to think about over the weekend.

5 So let me ask the parties, is there any
6 other administrative or procedural matter that we
7 might usefully take up here in a few remaining
8 minutes?

9 MR. MARZO: Commissioner Clodfelter --

10 COMMISSIONER CLODFELTER: The exhibit
11 policeman has returned. Mr. Mehta.

12 MR. MEHTA: This is not a police matter,
13 at least I don't think so. On the -- with respect
14 to the EIS document --

15 COMMISSIONER CLODFELTER: Yes.

16 MR. MEHTA: Is it -- would it --
17 assuming the document is moved into evidence, the
18 entire document will be in evidence; is that
19 correct?

20 COMMISSIONER CLODFELTER: Well, it would
21 be, yes.

22 MR. MEHTA: Okay. I think that's
23 what -- that was my confusion, as to what -- the
24 entire document as opposed to the handful of pages

1 that were actually discussed.

2 COMMISSIONER CLODFELTER: I think that's
3 correct. What I'm suggesting, really, is that how
4 the transcript reflects that fact is to have the
5 hyperlink in the transcript and then the hard copy
6 pages, but that the entire document is actually in
7 the record of the case. I'm trying to avoid having
8 to have our court reporter have to copy a
9 500-plus-page document and then have to manage
10 that. So that also reduces rate case expense,
11 Mr. Mehta.

12 MR. MEHTA: A very good outcome there,
13 Commissioner Clodfelter. We have managed to kill
14 probably a small forest at this point. Paper
15 copies of everything, so I'm all in favor of that.
16 I just wanted to be sure that the entire document
17 was in evidence.

18 COMMISSIONER CLODFELTER: The entire
19 document will, and the record will so reflect so
20 that for purposes -- should there be subsequent
21 proceedings in the case and there's a need to refer
22 to other portions of the document, for example, the
23 entire document will be considered part of the
24 record.

1 MR. MEHTA: Thank you,
2 Commissioner Clodfelter. I appreciate that.

3 COMMISSIONER CLODFELTER: Mr. Robinson,
4 I see you reappear. Is there something you want to
5 take up?

6 MR. ROBINSON: No,
7 Commissioner Clodfelter, I just wanted to confirm
8 there was nothing. However, the Company will
9 provide an update on late-filed exhibits on Monday.
10 So we'll be able to give the Commission a road map
11 as to what is still outstanding and when it will be
12 done.

13 COMMISSIONER CLODFELTER: That's great.
14 As we've been proceeding through the afternoon,
15 Mr. Robinson, I've also been having some exchanges
16 with Commission staff. And I think you should
17 anticipate, if you don't -- if you haven't already
18 done so, that whenever it -- we'll make the
19 following request if we haven't done so. Whenever
20 in the Duke Carolinas case there was a request for
21 a late-filed exhibit that would contain data or
22 compilations pertinent to Duke Carolinas, you will
23 very likely get a parallel request so that the
24 information is pertinent and compiled as to Duke

1 Progress. So we'll be tracking parallel on those
2 late-filed exhibit requests. If we haven't
3 officially done that, we'll probably do that at the
4 end of -- close of all the evidence. But you might
5 go ahead and anticipate it if you want to do so,
6 and that will just move us that much further down
7 the road.

8 MR. ROBINSON: Will do. Thank you, sir.

9 COMMISSIONER CLODFELTER: All right. If
10 that is -- if that's good for today, then we will
11 recess for the weekend. And remember again, we are
12 reconvening on Monday at 1:30 p.m. All right.
13 Thank you. Everyone have a good weekend.

14 (The hearing was adjourned at 2:31 p.m.
15 and set to reconvene at 1:30 p.m. on
16 Monday, October 5, 2020.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF NORTH CAROLINA)

4 COUNTY OF WAKE)

5
6 I, Joann Bunze, RPR, the officer before
7 whom the foregoing hearing was taken, do hereby certify
8 that the witnesses whose testimony appear in the
9 foregoing hearing were duly affirmed; that the
10 testimony of said witnesses were taken by me to the
11 best of my ability and thereafter reduced to
12 typewriting under my direction; that I am neither
13 counsel for, related to, nor employed by any of the
14 parties to the action in which this hearing was taken,
15 and further that I am not a relative or employee of any
16 attorney or counsel employed by the parties thereto,
17 nor financially or otherwise interested in the outcome
18 of the action.

19 This is the 8th day of October, 2020.

20
21 

22 JOANN BUNZE, RPR

23 Notary Public #200707300112

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