

PLACE: Held via Videoconference REDACTED

DATE: Friday, October 2, 2020

TIME: 9:00 A.M. - 12:26 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 17

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P R O C E E D I N G S

COMMISSIONER CLODFELTER: It looks like we have everyone assembled who needs to be assembled, and so we will come back to order here. And this is -- we're in the middle of the panel, but it's also at the beginning of questioning by the Attorney General's Office. So this might be a convenient point if there are any overnight procedural matters we need to address, this might be a convenient point to get them out of the way.

MR. GRANTMYRE: Commissioner Clodfelter, when we left yesterday, there was discussion whether or not Duke was going to stipulate to those two exhibits or that we would recall later in the day Michael Maness to sponsor them. And if Duke said they would consider it overnight, if they could give us their answer, then Mr. Maness would know how to proceed.

MR. MARZO: Commissioner Clodfelter, I apologize for not jumping in sooner.

COMMISSIONER CLODFELTER: That's quite all right.

MR. MARZO: I do have a response to that. I do appreciate you allowing us the

1 overnight period to consider the objection. As
2 you're aware, yesterday we objected to primarily
3 Public Staff Exhibit 100, which I believe now is --
4 and you can confirm for me, is marked as
5 Doss/Spanos/Riley Cross Exhibit, I believe, 7.

6 COMMISSIONER CLODFELTER: That's
7 correct.

8 MR. MARZO: We have conferred on that.
9 In the interest of judicial economy and to avoid
10 any interruption in our rebuttal case, we do agree
11 to withdraw the objection to the exhibit's
12 admission into the record. However, I would like
13 the record to reflect that the exhibit depicts the
14 Public Staff's position that 50 percent of even
15 prudently incurred costs should be disallowed under
16 the auspices of culpability, which is position
17 adopted by no regulatory Commission anywhere, and
18 which is not contrary to the basic regulatory
19 compact that underlies the regulations in this
20 country.

21 So with that, Commissioner Clodfelter,
22 we would withdraw the objection.

23 COMMISSIONER CLODFELTER: Thank you,
24 Mr. Marzo. We understand the document reflects the

1 Public Staff's position, and that's apparent from
2 the face of the document. These are -- as I looked
3 at them further overnight, especially Exhibits 7
4 and 8, they're essentially summaries of a lot of
5 data compiled to show what that value would be
6 under the Public Staff's legal position in the
7 case. So I think they would probably be admissible
8 as summaries of data compilations under 1006. And
9 I appreciate your stipulating to them, that does
10 save us some time.

11 Can I ask if you're also prepared to
12 stipulate as to Exhibits 6 and 8?

13 MR. MARZO: Commissioner Clodfelter, we
14 would withdraw the objection generally to all those
15 exhibits, so we are allowing all those exhibits
16 too.

17 COMMISSIONER CLODFELTER: Well, then,
18 when we get to the end of the panel's testimony, we
19 will take motions for actual admission at that
20 time, but at least you've clarified the process
21 we'll use for the day. And Mr. Maness may have
22 Friday off, then. So thank you for that.

23 MR. MARZO: Thank you, sir.

24 COMMISSIONER CLODFELTER: All right.

1 MR. GRANTMYRE: He would appreciate
2 that. Thank you.

3 COMMISSIONER CLODFELTER: Is there
4 anything else? Mr. Robinson, anything from you?

5 MR. ROBINSON: No, sir.

6 COMMISSIONER CLODFELTER: Okay. Thank
7 you.

8 Ms. Force, the panel is with you.

9 MS. FORCE: Good morning. Thank you,
10 Commissioner.

11 Whereupon,

12 DAVID L. DOSS, JR., JOHN J. SPANOS, AND SEAN P. RILEY,
13 having previously been duly sworn, were examined
14 and continue testifying as follows:

15 CROSS EXAMINATION BY MS. FORCE:

16 Q. Good morning, gentlemen. I see -- I don't
17 see Mr. Riley, but I only -- I have questions for
18 Mr. Doss and one for Mr. Spanos.

19 COMMISSIONER CLODFELTER: Let's hold
20 just a second. I'm sorry, that's neglect on my
21 part. Do we have Mr. Riley with us?

22 MS. FORCE: He's there now.

23 THE WITNESS: (Sean P. Riley) Yes, sir.

24 COMMISSIONER CLODFELTER: I see him.

1 Okay.

2 Q. As I said yesterday, I have a couple of
3 questions that follow up on Mr. Grantmyre's questions
4 yesterday, and they all relate to accounting for coal
5 ash closure and disposal of CCR. And there are two
6 documents you won't be surprised that I'll be referring
7 to. One of those is the 2003 order on ARO accounting
8 that you talked about yesterday. And that document is
9 already admitted in the record as Smith AGO Cross
10 Exhibit 6, and it was in our potential exhibits as
11 Number 34. And the other document is the 2016 petition
12 for an accounting order that was submitted jointly by
13 Duke Energy Progress and Duke Energy Carolinas. And
14 for reference, that is AGO McManeus/Speros Cross
15 Exhibit 1 that was entered in this record by
16 stipulation and was provided as AGO Exhibit 40 in this
17 proceeding.

18 Do you have those in front of you and
19 available?

20 A. (David L. Doss, Jr.) Yes, I do have those
21 available, yes.

22 Q. Okay. So --

23 COMMISSIONER CLODFELTER: I'm sorry,
24 Ms. Force, those were -- I got the marking on AGO

1 McManeus/Speros 1, but what was the other number?

2 MS. FORCE: I'm sorry. And those are
3 both admitted already.

4 COMMISSIONER CLODFELTER: They are, but
5 I just want them for my notes. What was the other
6 one that you --

7 MS. FORCE: Sure. The other is Smith
8 AGO Cross Exhibit 6, which is the 2003 order for
9 CP&L, Duke Energy Progress, several other names
10 applied during that time frame.

11 COMMISSIONER CLODFELTER: Thank you. I
12 know those have been admitted previously, I just
13 needed to note them for my tracking sheet. Thank
14 you.

15 MS. FORCE: Sure. Sure. And for
16 reference.

17 Q. Okay. So as we discussed in the DEC case,
18 Duke filed a petition for accounting order in the rate
19 case, the last rate cases -- before the last rate cases
20 in a separate docket on December 31, 2016, right? Am I
21 referring to that petition?

22 A. That's correct, yes. Do you want me to have
23 that available?

24 Q. We're going to get to it later.

1 A. Okay.

2 Q. But it makes specific reference, as you did
3 yesterday, to the 2003 ARO order as support for the
4 deferral; am I right about that?

5 A. That's correct.

6 Q. Okay. So let's turn to the 2003 order. And
7 this is what ties back to what you talked about with
8 Mr. Grantmyre. There are a number of points in that
9 order I just want to highlight relate to your
10 discussion. One of them is on the first page at the
11 bottom under background, the second paragraph.
12 Indicates that PEC, which is Progress Energy
13 Corporation at that time, it's DEP now, indicated that
14 the only significant retirement cost expected to be an
15 ARO is the radiated portions of nuclear plants at that
16 time; is that right?

17 A. That is what's indicated in this paragraph.
18 I will note that later on it mentions those as well as
19 other AROs.

20 Q. Okay. That's fine. And then turn to page 11
21 of that order. There's a paragraph there that talks
22 about depreciation expense, and it indicates that --
23 that as part of the function of depreciation rates,
24 included a component of the Company's North Carolina

1 retail cost of service established in the Company's
2 rate cases included cost of removal; is that right, in
3 that paragraph? Let's see, it would be the fourth
4 paragraph on page 11.

5 A. Yeah. I think that what it is trying to
6 indicate there is that, prior to 2003 when FAS 143,
7 which was the GAAP ARO guidance, before that came out
8 we would have been collecting perhaps some amounts
9 through the cost of removal accounting method where we
10 collected that through our depreciation expense for
11 costs that would be incurred upon the retirement of
12 assets.

13 And so I believe that what was trying to be
14 addressed right here is that, to the extent that we had
15 those types of costs -- I think this was the big
16 concern back in 2003 -- to the extent that we had those
17 already embedded in customer rates through collections
18 and depreciation expense, that once those were pulled
19 out as an asset retirement obligation, you need to
20 distinguish those from amounts that had been previously
21 collected through your cost removal and your
22 depreciation. So I just wanted to -- was trying to
23 make that distinction.

24 Q. Okay. And so what it said at the end there,

1 or in the middle of that paragraph is:

2 "Consistent with the economic consequences of
3 that regulatory treatment, the cost of removal is
4 accrued and recognized as an operating revenue
5 deduction over the usable life of the related assets
6 rather than waiting to record the expense until the
7 assets are actually removed and the related costs
8 actually paid", right? That was a direct quote. Do
9 you see that?

10 A. Yes, that is a direct quote, that's right.

11 (Reporter interruption to minimize sound
12 disruption.)

13 Q. Okay. And then on page 12 -- on page 12,
14 that top paragraph is just a partial paragraph.
15 There's a statement that:

16 "Any change -- any proposed changes in cost
17 of removal for long load assets and/or an accounting
18 for such costs must be submitted to the Commission for
19 its approval in the context of a general rate case or
20 other appropriate proceeding prior to implementation,"
21 correct?

22 A. So sorry. So sorry. I believe that's
23 getting to what I was pointing to before, which is that
24 we had a mechanism where we were collecting these costs

1 through depreciation expense. And to the extent that
2 we needed to consider that as we moved into ARO
3 accounting, we wanted to make sure that those were
4 considered appropriately, as we talked about in the
5 last case, so we make sure that we're not
6 double-recovering, right.

7 Q. There. Okay. My button wasn't working
8 right. So just a couple more.

9 In the ordering paragraphs, then, it
10 indicates:

11 "The intent and outcome of the deferral
12 process," under A, "shall be to continue the
13 Commission's currently existing accounting and
14 ratemaking practices for nuclear decommissioning costs
15 and other ARO costs, as you referred to earlier,
16 correct?

17 A. Yes, that's what 2a says.

18 Q. Okay. And then in paragraph C, the
19 Commission ordered that:

20 "The implementation of SFAS 143," the ARO
21 accounting, "for financial reporting purposes and
22 deferrals allowed in this docket shall have no impact
23 on the ultimate amount of costs recovered from the
24 North Carolina retail ratepayers for nuclear

1 decommissioning or other ARO costs, subject to future
2 orders of the Commission," correct?

3 Which is -- you mentioned that in your
4 testimony, I believe, too?

5 A. Yes. Effectively what they asked us to do is
6 that they wanted to see our books and records, have
7 some deferrals that would essentially remove those
8 impacts.

9 Q. Okay. And then the last paragraph I'll refer
10 you to is paragraph F where it says, as part of this
11 pending further order:

12 "No portion of the total ARO asset or
13 liability shall be included in rate base for
14 North Carolina retail accounting for ratemaking
15 purposes," right?

16 A. Yes, that's what it says. That was very
17 common across the industry. One of my fellow
18 panelists, Sean Riley, mentioned that in his testimony.
19 And if there's additional questions on that or
20 additional thoughts that Sean might have to add to --
21 just add to the context here, that that was pretty
22 typical across the industry and the utility industry.

23 Q. Okay. I don't have any questions. Maybe you
24 could take that up on redirect if you'd like.

1 So moving back to the petition in 2016, in
2 that petition, the request that was filed as to DEP was
3 to defer \$2.4 billion, the total amount of the
4 obligation as anticipated at that time, or estimated;
5 is -- for the ARO; is that right? If you can refer to
6 page 9, paragraph 11.

7 A. I thought that that number sounded familiar.
8 Yes, \$2.4 billion was the number for DEP at that time.

9 Q. Thank you. And then the number -- so that's
10 the total ARO amount. Then there was also a request to
11 defer amounts as spent. And at that time, from the
12 period of January 1, 2015, through November 30, 2016,
13 the amount had accumulated at \$291.9 million, correct?

14 A. Yes. So some context here on what we're
15 attempting to do here. So from the 2003 order, as we
16 just went through, that gave the Company the authority
17 to defer the income statement impacts of the FAS 143 as
18 it applied to our coal ash remediation obligations.
19 Essentially, that order told us to remove the income
20 statement impacts through deferral entries so that it
21 didn't change our income statement because of the
22 impacts of applying ARO accounting to our coal ash
23 obligations.

24 And what this request here now -- so that

1 gave us the authority to defer those costs. Think of
2 those as noncash costs. We're accruing for those
3 obligations, but we haven't spent any money yet. In
4 2016 we came in, because in 2015 we had started to
5 spend some money associated with these requirements
6 under CAMA and the CCR rules. And as a result of that,
7 we needed to come in and start requesting continuation
8 of the process that was established back in 2003, as
9 far as how the Commission wanted us to handle this.
10 And that 2003 order, the Commission said defer those
11 noncash impacts until such time we can consider this in
12 a rate proceeding or some sort of regulatory
13 proceeding.

14 And now that we've started to incur the
15 costs, this request was to -- as we settle those
16 obligations that we've already established, these
17 capital obligations that we've established in
18 association with ARO accounting, and we're starting to
19 settle those costs through paying cash and relieving
20 that obligation, what we want to do now is we want to
21 start reclassifying some of these costs that had been
22 in the deferral account, that was a noncash account, we
23 call the theory regulatory asset that was established
24 from the 2003 order, and now we want to just reclass

1 those amounts as they are spent into a new regulatory
2 asset that reflects amounts, cash outlays, to settle
3 these obligations.

4 Q. And so I think it would be your position that
5 that's not a change in accounting from what had been
6 approved previously, then?

7 A. The change in accounting -- let me say as far
8 as change in accounting. We're starting now to settle
9 that obligation that had been established, and we're
10 asking to -- for authority to create a new regulatory
11 asset that would just allow for the transfers from the
12 theory regulatory asset, sort of the noncash amount,
13 into this cash spent account. As far as a change in
14 accounting, we think that it was prudent for us to --
15 as the Commission asked in 2003, that we set these
16 amounts aside from the initial application of ARO
17 accounting until we -- until such time we can come to
18 the Commission and allow the Commission to start
19 addressing the actual costs incurred.

20 Q. Okay. And in the petition, there is a
21 reference to account 182.3. That's a FERC account,
22 right? That would be used for recording the deferral
23 as a regulatory asset; am I right about that?

24 A. You are right about that. That is typically

1 the way that deferrals, the way that deferral
2 accounting works, in that we request permission to use
3 a 182.3 account to defer costs to. So this is, in
4 effect, asking for permission to start transferring
5 costs from that previous theory 182.3 account to a new
6 182.3 account to reflect amounts spent.

7 Q. Okay. And then in doing so, then, that would
8 signal that the anticipation is that probably those
9 amounts deferred would be recoverable in a different
10 period; am I right about that?

11 A. Well -- and this request, just to be clear,
12 we were clear, I think, in the request, that we were
13 just asking for deferral authority. And you mentioned
14 recovery, and it said that we would be addressing the
15 recovery phase of this in a future proceeding. I think
16 that we had said that, if I recall, that we would be
17 filing rate cases within the next year or so at the
18 time that we made this filing.

19 Q. Okay. And that FERC account indicates that
20 it's a regulatory-created asset not includable
21 elsewhere are included that result from ratemaking
22 actions and regulatory agencies, right?

23 A. That's what a 182.3 account is for, yes.

24 Q. Okay. And if that deferral account were not

1 used, then, for -- would it be an amount that, at least
2 in -- for instance, in the Sutton, the amount related
3 to the Sutton plant would have been written off?

4 A. I'm not sure what you're referring to on the
5 Sutton plant, but I would say this, is that the -- in
6 2015 when we started to incur these costs, we actually
7 filed an informational filing. You may recognize it as
8 the Savoy letter. It was actually attached to our 2016
9 deferral request. Laid out very specifically what
10 accounting using. And as I said yesterday in
11 responding to questions of Mr. Grantmyre, I alluded to
12 this. Is that for accounting purposes, what we do is
13 we -- in order to record amounts into a regulatory
14 asset, we may have -- we have to make an evaluation or
15 an assessment as to whether those amounts are probable
16 of recovery. And at some times there are times when we
17 make that assessment before we actually have official
18 approval to open a 182.3 account.

19 In those cases, we follow Commission
20 guidance, we don't create it -- we don't start using a
21 182.3 account until we have actually received authority
22 to do so, but we believe the amounts to be probable of
23 recovery. So per GAAP rules and per FERC rules, we're
24 required to deferral them. And so what we do in that

1 case is we use a 186 account. Actually, a 186 account
2 is used for GAAP purposes. Our GAAP financial
3 statements are actually maps to the same line item as a
4 regulatory asset, but for our regulatory reporting
5 purposes, there is a difference between a 186 and
6 182.3.

7 A 186 is something that we use when we are
8 required to, per the FERC rules, per the GAAP rules,
9 after making that assessment that we believe it's
10 probable of recovery, but before getting the approval
11 for the 182.3, we use that 186 as a holding account.

12 Q. I see. That's helpful. And in any event,
13 the way it's mapped, then, is -- does signal to the
14 investment community that it's the Company's belief
15 that it's probable that this amount will be
16 collection -- collected in a future period?

17 A. That's correct. And that goes through a
18 thorough evaluation and assessment with the accounting
19 team, the rates team, and the legal team to make that
20 judgment.

21 Q. Okay. And there were some arguments that
22 were made, they're already stated in that document.
23 I'm not going to run through those with you this time,
24 Mr. Doss, to save some time. But I do want to

1 introduce an exhibit that will be familiar. If you'd
2 please turn to AGO Potential Exhibit 36, and that is an
3 EPRI document titled "Decommissioning handbook for
4 coal-fired power plants."

5 MS. FORCE: And,
6 Commissioner Clodfelter, I'd ask to mark this as
7 AGO -- well, maybe I've got the order wrong. Under
8 your convention, I guess it would be
9 Doss/Spanos/Riley AGO Rebuttal Cross Exhibit 1
10 [sic]; is that correct?

11 COMMISSIONER CLODFELTER: Well, that is
12 correct. This is the first new exhibit, so it
13 would be number 1, correct.

14 (Doss/Spanos/Riley Rebuttal AGO Cross
15 Exhibit 1 was marked for
16 identification.)

17 MS. FORCE: Okay. Thank you.

18 Q. Did you find -- did you find that?

19 A. I do -- I did find that exhibit, yes.

20 Q. And -- I'm sorry, I'm getting confused about
21 whether I'm muted or not. I'm back on. You've seen
22 this before, I guess, because we talked about it a
23 couple of weeks ago.

24 If you would, I just want to signal, on

1 page 2 it indicate that this is a document from
2 November 2004, correct?

3 A. Yes. Yes, that is what it indicates.

4 Q. And it's -- it discuss -- it's a report on
5 decommissioning of coal-fired power plants. And if you
6 would turn, please, to page 2-5, if you can agree with
7 me that I'm reading this sentence correctly:

8 "Closure of surface impoundments and
9 landfills probably will be the most expensive task
10 undertaken during the decommissioning process."

11 That's one of the -- appears to be one of the
12 conclusions of this report; would you agree?

13 A. Well, I -- and I think I may have said this
14 before. I'm not familiar with this report. I agree
15 that that's what that sentence states. I don't know
16 the context. I really think, Ms. Force, that for this,
17 this would be better questions to ask of our coal
18 ash-specific witnesses like Ms. Bednarcik, Mr. Wells,
19 and Williams. This is not a document that -- in the --
20 that I'm familiar with.

21 Q. Well, Mr. Doss, you are familiar with EPRI;
22 are you not? The Electricity Power Research Institute.

23 A. I have heard of EPRI, yes, yes. It's not
24 a -- it's not really -- for accountants, it's not an

1 organization that we typically refer to a lot for our
2 accounting guidance and for accounting regulations.

3 Q. Well, the document will speak for itself. I
4 think I'm going to ask for it here. This has to do
5 with the cost element of it, that particular statement
6 does, and that's my purpose in asking you the question.
7 And I don't have any more questions along the line.

8 MR. MARZO: Mr. Chairman, I was just
9 going to say, to the extent this document --
10 Ms. Force has questions, I think clearly the
11 witness indicated that the witnesses that are
12 following immediately after Mr. Doss will be able
13 to answer those witness -- those questions. And
14 that may be a better forum to try to enter this
15 particular document into the record.

16 COMMISSIONER CLODFELTER: I think I
17 understood Ms. Force to say that you didn't have
18 any additional questions for this panel on the
19 document; is that correct? Did I hear you
20 correctly?

21 MS. FORCE: That's right.

22 COMMISSIONER CLODFELTER: So, Mr. Marzo,
23 I think your concern here is moot. She's not going
24 to ask any more questions about it of this panel.

1 MR. MARZO: Commissioner Clodfelter,
2 just to confirm, and I think this is part of your
3 determination yesterday, that to the extent these
4 questions are not asked of those later witnesses, I
5 assume this is one of those issues that can be used
6 in our direct?

7 COMMISSIONER CLODFELTER: That's
8 correct. You are not, of course -- on your direct
9 examination, you are not limited to the prefiled
10 testimony. And if you have supplemental direct
11 that you need to use for the purpose of exploring a
12 topic that has come up in the testimony of another
13 witness, that's one of the purposes of supplemental
14 direct.

15 MR. MARZO: Thank you,
16 Commissioner Clodfelter. I just wanted to confirm
17 that.

18 COMMISSIONER CLODFELTER: Sure.
19 Ms. Force, you're on mute again. Ms. Force, you're
20 on mute.

21 MS. FORCE: I'm sorry.

22 Q. Mr. Spanos, I do have a question for you
23 about your testimony on page 35. On line 14 you say:

24 "The earliest depreciation study dated as of

1 December 31, 2002," and that would be the company Duke
2 Progress' was in -- I believe it says their
3 E-2, Sub 828, "reflects a calculated net salvage
4 percentage for equipment and facilities, subject to the
5 study, which would include coal ash basins as part of
6 the plant facilities, although not in any specific
7 dollar amount?"

8 Do you see where I'm referring there?

9 A. (John J. Spanos) Sorry. Yes, I do see. I
10 just want one clarification. The -- I believe the
11 discussion is related to a decommissioning study within
12 a depreciation study. I wasn't sure if that was what
13 you were referring to in this section, but I wanted to
14 make sure that I was on the right page, that we were --
15 there's three decommissioning studies that were
16 conducted and -- as part of three depreciation studies.

17 Q. Okay. I'm referring to the one in -- that
18 was dated, according to your testimony,
19 December 31, 2002. And that study was filed with the
20 Utilities Commission, let me see, on March 10, 2004, in
21 that docket. And when I look at that study, I think
22 what you may be referring to there -- I'm reading from
23 that on page 311 -- that:

24 "The cost of removal includes such costs as

1 demolishing, dismantling, tearing down, disconnecting
2 or otherwise removing plant as well as normal
3 environmental cleanup costs associated with property."

4 Would that be consistent with your statement
5 in your testimony?

6 A. Well, first, just to make sure that we're
7 clear with the process, the study was done as of
8 December 31, 2002. It was a depreciation study. I was
9 not the one that performed that study, but again, based
10 on what I've described, the precision in
11 decommissioning studies, and the information that's
12 included in decommissioning studies, and how it is
13 applied to a depreciation study are much more precise
14 today because of what we know with regards to AROs.

15 So at this particular time, the information
16 is consistent with what was described. There were many
17 components of the decommissioning study that -- many of
18 them that you read off were accurate. It does not
19 specifically talk about all of the different
20 environmental components that were built into that
21 study. They're not precisely identified, such as the
22 coal ash basins, which is what I talk about on lines 12
23 and 13.

24 Q. Okay. I understand. I think you mentioned

1 that in your testimony as well.

2 MS. FORCE: I don't have any other
3 questions for the panel. Thank you very much.

4 COMMISSIONER CLODFELTER: Thank you,
5 Ms. Force. We've come to the point where I don't
6 have any other parties who indicated an interest in
7 cross examination, but for the record, I'll ask.
8 Are there any other parties who have questions on
9 cross examination for this panel?

10 (No response.)

11 COMMISSIONER CLODFELTER: If there are
12 not, Mr. Jeffries, Mr. Marzo, we're back to you on
13 redirect.

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

16 REDIRECT EXAMINATION BY MR. MARZO:

17 Q. First off, Mr. Riley, I believe that the AG,
18 Ms. Force, had referred you to what is Smith AGO Cross
19 Exhibit 6, which is a 2003 -- referred Mr. Doss, I'm
20 sorry, to the 2003 order on deferrals. And
21 specifically she had referred Mr. Doss to Section F of
22 that order, which refers to the rate base treatment of
23 ARO assets and liabilities.

24 And Mr. Doss, at that point in time, thought

1 you may have more to add on that based on your
2 testimony. Could you please elaborate on that
3 particular provision and how AROs are considered in
4 terms of their treatment in rate base?

5 A. (Sean P. Riley) Certainly. So -- and I do
6 talk about this in my testimony as well. Witness Doss
7 talked about -- he talked a lot about cash and noncash.
8 It is not uncommon, and I would say it is consistent
9 with industry practice not to include asset retirement
10 costs and their associated asset retirement obligations
11 in rate base because they are effectively accounting
12 entries. We call it a balance sheet gross up where the
13 asset have been increased and the liabilities have been
14 increased on the balance sheet, but it's a result of
15 accounting entries that are required under what was
16 referenced FAS 143.

17 It is not an outlay of cash. There has not
18 been use of shareholder funds. There has not been use
19 of customer contributions either, and therefore, there
20 is no adjustment to rate base as a result of ARO
21 accounting.

22 (Reporter interruption due to

23 Mr. Marzo's microphone being muted.)

24 Q. Mr. Doss, Mr. Grantmyre asked you some

1 questions about the recent Dominion rate case order
2 yesterday; do you recall that?

3 A. (David L. Doss, Jr.) I do recall that, yes.

4 Q. And he asked you specifically whether you
5 were aware that in that case the Commission had ruled
6 that basin closure expenses were deferred operating
7 expenses; do you recall that?

8 A. Yes, I do recall that.

9 Q. And he asked you further whether the
10 Commission in that order agreed with Mr. Maness'
11 position that the expenses were deferred operating
12 expenses; do you recall that?

13 A. I do recall that, yes.

14 Q. Now, do you know the factual basis of the
15 Commission's findings of the Dominion case -- rate
16 case?

17 A. I don't know the factual basis or all the
18 context around that order. I did peruse the order.

19 Q. Okay. And I was just going to ask you, do
20 you have Exhibit D -- what is D -- Duke Energy
21 Progress' Exhibit 3 with you?

22 MR. MARZO: And for the record,
23 Commissioner Clodfelter, I'll just indicate that
24 this is the DNC rate case order from February 2020.

1 I will just ask the Commission to take notice of
2 this order obviously.

3 COMMISSIONER CLODFELTER: That's
4 correct. The Commission will take judicial notice
5 of its own prior orders without marking them
6 separately as an exhibit. If you want to mark them
7 for purposes of managing the record, that's fine,
8 but the Commission will take judicial notice of its
9 prior order.

10 MR. MARZO: Thank you, sir.

11 Q. If you would for me, Mr. Doss, would you turn
12 to page 134 of that order?

13 A. Yes, I'm at 134.

14 Q. Okay. And do you see the first full
15 paragraph in the order?

16 A. And that would be the paragraph starting with
17 "additionally"?

18 Q. Yes. Would you -- for me, would you read the
19 first two sentences of that paragraph.

20 A. Certainly.

21 "Additionally, at the hearing, witness
22 McCloud confirmed that the vast majority of the CCR
23 expenditures were for services and labor and would have
24 been charged to operation and maintenance expenses in

1 the absence of GAAP ARO accounting requirements."

2 And there's a reference there.

3 Q. That's a reference to an exhibit that was
4 used on cross. But if you could read the next
5 sentence.

6 A. Okay.

7 "He also confirmed that roughly 98 percent of
8 the CCR costs incurred during the deferral period would
9 have been booked as operation and maintenance expenses
10 but for GAAP accounting requirements."

11 Q. Okay. Thank you, Mr. Doss.

12 Does the record in this case support the
13 proposition that the basin closure costs the Company is
14 seeking to recover in this case are operating and
15 maintenance expenditures?

16 A. No. That's not what we believe in our case
17 to be true. The costs associated with basin closure in
18 our case are part of the ARO. And as I've indicated in
19 my testimony, and as other -- Sean Riley has indicated
20 in his testimony as well is that, in ARO accounting,
21 those costs are capitalized as part -- as an integral
22 part of the plant that gave rise to the obligation. So
23 it's a capital cost.

24 Q. Okay. And likewise, in our case, is

1 proposition that 98 percent of the closure costs, when
2 you bill it to operation and maintenance, correct in
3 this case, the Duke Energy Progress case?

4 A. No. Our costs -- and I've got this in my
5 supplemental testimony as well, where I indicated I did
6 a review of the costs from Jessica Bednarci k's
7 supplemental testimony and concluded that those costs
8 were part of the ARO; and as such, as ARO costs, they
9 are capitalized as part of the property plant equipment
10 that gave rise to that capital obligation for
11 retirement.

12 Q. And again, I think --

13 A. (Sean P. Riley) Mr. Marzo, could I add to
14 that?

15 Q. Sure, Mr. Riley.

16 A. Because I think that's a very important
17 point. If you step back -- and we've talked about this
18 in our testimony. But under ARO accounting, the
19 Company has to evaluate what its legal retirement
20 obligation is, and that would include all activities
21 associated with relieving itself of that retirement
22 obligation. All of those activities will be forecast
23 out in terms of when cash expenditures will actually
24 occur, and then it's present valued back using a credit

1 adjusted risk-free rate of return to come up with what
2 the asset retirement obligation is at a point in time.

3 The offset to that adjustment is an asset
4 retirement cost that witness Doss is talking about.
5 That's a capital asset. And to be clear, the FASB was
6 extremely focused on this point that -- and I believe
7 witness Doss actually referred to this yesterday, that
8 those costs are considered integral to the operation of
9 the asset, in this case, the coal plants, and therefore
10 should be capitalized.

11 So there's no real nature of operating
12 expenses or capital expenses as it relates to asset
13 retirement obligations and their associated asset
14 retirement costs.

15 Q. Thank you, Mr. Riley.

16 Mr. Doss, in regards to Duke Energy Progress,
17 has the Commission spoken previously on this issue in
18 terms of the accounting and the related treatment of
19 ARO's capitalized costs?

20 A. Yes, they have actually in the Duke Energy
21 Progress case, as well as the Duke Energy Carolinas
22 case previously from a couple of years ago. The
23 Commission agreed that these were not in the nature of
24 deferred expenses, but these were in the nature of ARO

1 costs which more closely aligned as capital costs.

2 Q. Now, what effect does the purpose for which
3 costs are incurred have upon the proper classification
4 of costs?

5 A. Well, it's everything. You know, I -- in
6 reading through this, what the witness for Dominion
7 said, that these were services and labor costs, there
8 seems to be an implication there that because it's
9 services and labor, that somehow defines it as
10 operation and maintenance, which couldn't be further
11 from the truth. As I've said in my supplemental
12 testimony, we need to know what the purpose of that
13 services and labor is for.

14 And I can give examples. For instance, at
15 our company, if I'm at a warehouse and I see a truck
16 leaving a warehouse with some materials and supplies
17 and it's going to a job site, I don't know whether
18 that's expense or that's capital in nature. I need to
19 know what the purpose for that is. For instance, it's
20 going to a job site where they're doing some repair of
21 a distribution line after a storm; that's an expensed
22 activity, and therefore, the cost of that truck rolling
23 out carrying the materials, the person driving the
24 truck, all those costs would be considered expense.

1 However, I could see another truck leaving
2 from that same facility also with a driver in the
3 truck, some materials in the truck that's going to, for
4 instance, a site where we're building a generation
5 plant. Same activity, but the purpose is for a capital
6 construction project, and that cost can be charged to
7 capital.

8 So we need to understand the purpose of that
9 activity. You can't let the activity itself -- I have
10 to do this every day with my own asset accountings. I
11 have something in the neighborhood of 60 accountants
12 working for me. About one-third of my costs are
13 charged to capital for my group. I can't walk through
14 my group and just see labor and services going on,
15 which is my entire budget really, labor and services.
16 I can't just see somebody doing debits and credits,
17 working on a project and so forth. I can't know from
18 it being labor and services whether that's capital or
19 O&M. I have to ask that person what they're working
20 on. And, in fact, we have strict controls around us at
21 our company and strict controls in my group where twice
22 a year I review how my accountants are charging their
23 time. I need to know what they're working on. It's so
24 critical in determining whether it's a capital or O&M

1 type of cost.

2 But it appears from looking at -- if you can
3 envision two accountants working in a cubicle side by
4 side, it looks like they're doing the same thing. I
5 need to know the purpose of their activities.

6 Q. Thank you, Mr. Doss.

7 And, Mr. Riley, is the classification of CCR
8 expenditures, as Mr. Doss and I have been discussing,
9 consistent with what you have seen in your national
10 practice?

11 A. (Sean P. Riley) Sure, absolutely. That is
12 absolutely consistent with what we see in our practice.

13 Q. And is -- Mr. Riley, is the Commission's
14 treatment of ARO costs in the prior DEC and DEP orders
15 consistent with what you see in your national practice
16 working with regulated utilities across the country?

17 A. It is exactly as how we've talked about it
18 before. I would also add to witness Doss' comments
19 just a moment ago in terms of his examples. There's
20 lots of other examples that would -- where it's very
21 difficult to identify if a cost is expense or capital.
22 I think of overheads, benefit costs, for example.
23 Those costs typically follow the labor associated with
24 an expense activity or a capital activity.

1 So you can't just look at benefit costs and
2 determine that they're expense or capital, you have to
3 know what they're associated with.

4 Q. Thank you, Mr. Riley. Thank you, Mr. Doss.
5 Thank you, Mr. Spanos.

6 MR. MARZO: Commissioner Clodfelter,
7 that's all my redirect.

8 COMMISSIONER CLODFELTER: Thank you.
9 Let's see if there are questions from
10 Commissioners.

11 Commissioner Brown-Bland?

12 COMMISSIONER BROWN-BLAND: No, I have no
13 questions.

14 COMMISSIONER CLODFELTER: All right.
15 Commissioner Gray?

16 COMMISSIONER GRAY: No questions.

17 COMMISSIONER CLODFELTER: Chair
18 Mitchell?

19 CHAIR MITCHELL: No questions.

20 COMMISSIONER CLODFELTER: Commissioner
21 Duffley?

22 COMMISSIONER DUFFLEY: Yes, I do have a
23 few questions.

24 EXAMINATION BY COMMISSIONER DUFFLEY:

1 Q. I'd like to discuss -- and it can go to
2 everyone, but I'm going to refer to Mr. Spanos'
3 testimony. If you could turn to page 36 of your
4 testimony. So what I'd like to discuss with the panel
5 today is the status of the fuel mix in the industry at
6 the beginning of the 21st century.

7 Mr. Spanos, are you at page 36?

8 A. (John J. Spanos) I am, yes. Of my rebuttal
9 testimony?

10 Q. Yes.

11 A. Okay.

12 Q. Okay. Mr. Spanos, I'm not seeing you on the
13 screen. Okay. Found you. So on lines 6 through the
14 following page, lines 5, do you agree that a summary of
15 this part of your testimony is basically stating that,
16 prior to approximately the mid-2010s and maybe even
17 later, but in the earlier part of 2000 to 2010, that
18 the Company -- the prevailing presumption by electric
19 companies at the time was that these coal-fired
20 facilities would continue to provide power long into
21 the future; and that it was not until probably 2009
22 time frame, 2009, 2010, 2011, that electric utilities
23 with coal-fired power plants were evaluating potential
24 retirement of those plants because of the tighter

1 environmental regulations coupled with the falling
2 price of natural gas? Is that generally a summary of
3 your testimony?

4 A. Yes, that is very accurate. I will add, in
5 hope for clarity, that specifically for coal-fired
6 plants, the overall lifespans for these facilities was
7 expected to be 55 to 65 years, which would have taken
8 us well beyond our current time of the 2015 to 2020
9 period. However, over the last five to seven years,
10 we've seen that coal-fired plants are retiring at ages
11 46 to 50, and that's across the country.

12 So all of that is being driven by
13 environmental issues, the prices for natural gas, all
14 of which I've discussed in my testimony. So the
15 expectation that coal-fired facilities are going to be
16 retired in the very near future is exactly what I'm
17 talking about, and it is driven by multiple issues,
18 specifically environmental regulations and natural gas
19 prices and the efficiencies of other facilities beyond
20 coal.

21 Q. Okay. Thank you. And I would like to
22 request a late-filed exhibit. If I could have the
23 monthly history of the Henry Hub Natural Gas prices in
24 a graph form from August of 2000 through

1 September of 2020. And you should be able to find
2 something on EIA. And just have it fit on one page,
3 have a one-page-type graph, please.

4 So you're familiar -- are you familiar -- are
5 you familiar with the fact that the North Carolina
6 Utilities Commission submits long-term generation-type
7 planning document to the governor each year?

8 A. I am familiar that that's filed. I don't
9 necessarily research that, but.

10 Q. Well, subject to check, would you agree that,
11 in 2007, DEP, the electric -- electricity production
12 for DEP was -- they were producing 49 percent from coal
13 in 2007, and then only 5 percent from oil and natural
14 gas?

15 A. Subject to check. But that would seem to be
16 a reasonable expectation around that time period.

17 Q. And then by 2012, coal was responsible for
18 DEP for about 34 percent of the production, and oil and
19 natural gas had bumped up and was responsible for about
20 18 percent?

21 A. I'm sorry, which time period was those
22 numbers?

23 Q. That would be 2012. Subject to check.

24 A. Subject to check, that trend would be

1 consistent with what I would have expected for DEP, and
2 for others in the industry for that matter.

3 Q. And then in 2018 for DEP, coal was
4 responsible for 12 percent, and natural gas and oil was
5 responsible for -- or made up 34 percent?

6 A. Again, subject to check, that trend is
7 exactly what I would expect, and I'm seeing all within
8 the industry. I just don't have the exact numbers for
9 DEP. But that's what I believe to be the case with the
10 assets that are in service today.

11 Q. Okay. Thank you.

12 COMMISSIONER DUFFLEY: I have nothing
13 further.

14 COMMISSIONER CLODFELTER: Thank you.

15 Commissioner Hughes?

16 COMMISSIONER HUGHES: No questions.

17 COMMISSIONER CLODFELTER: Okay.

18 Commissioner McKissick?

19 COMMISSIONER MCKISSICK: No questions.

20 COMMISSIONER CLODFELTER: Okay. Thank
21 you. Gentlemen, I have just a couple.

22 EXAMINATION BY COMMISSIONER CLODFELTER:

23 Q. Mr. Doss, I have just a couple for you. I
24 may refer in my questions -- we alerted your counsel

1 overnight so you could have it available to you. In my
2 questions I may refer to an exhibit from the prior Duke
3 Energy Carolinas case which was marked as Attorney
4 General Doss Cross Examination Exhibit 1. I'm not
5 going to question you about the document, but I may
6 refer to it, so I wanted to be sure you had access to
7 it in case you wanted to refer to it. Do you have
8 access to that?

9 A. (David L. Doss, Jr.) Let me make sure we've
10 got that. What's it look -- could you --

11 Q. The title of it is the plant retirement
12 comprehensive program plan dated October 2012. I'm not
13 going to question you about the contents of the
14 document. I just wanted to be sure -- I'm going to
15 refer to it in my question, and you may, therefore,
16 refer to it in your answer. I didn't know. I just
17 wanted to be sure.

18 A. I'm sorry, Mr. Clodfelter, we'll try to get a
19 copy of that, but I'm comfortable trying to answer the
20 questions.

21 Q. Let me try.

22 MR. MARZO: Commissioner Clodfelter, I'm
23 sorry to interrupt. I just didn't know if this
24 would help in terms of your questioning. We are

1 aware I think of that document that you have
2 questions on. I think Ms. Bednarcik was given the
3 document and not Mr. Doss, so I do want you to know
4 we heard your request, and we did provide the
5 document to a witness.

6 COMMISSIONER CLODFELTER: I apologize.
7 I thought I referred to both Ms. Doss and
8 Ms. Bednarcik. I don't think we'll get into
9 trouble in the document. Let me ask my question,
10 and if Mr. Doss needs to defer it, he can.

11 MR. MARZO: Okay.

12 Q. In the rate case that the Company filed
13 either in 2011 or 2012, I can't remember which year it
14 was, the Company made a request for a specific
15 revenue -- inclusion in the revenue requirement, a
16 specific item -- itemized amount for the costs of
17 closure of coal ash basins, correct?

18 A. Yes, I am aware of that.

19 Q. And if my recollection is -- without having
20 gone back -- I haven't gone back and looked at the
21 record of that case. My recollection is that it was an
22 amount of approximately \$10 million that the Company
23 wanted to put into rates for that purpose.

24 A. \$10 million annually sounds about right,

1 Commi ssi oner.

2 Q. Okay. And my question to you really is how
3 was that amount -- do you know how that amount was
4 arrived at? How was the estimate of the amount
5 arrived? Mr. Spanos may have some information to share
6 on this too. Really looking just for where did the
7 number come from?

8 A. It was in a -- what I know is -- and I wasn't
9 involved at the time, but there was a dismantlement
10 study done, I believe, in which those numbers came from
11 that study. I can't tell you the science behind the --
12 or the assumptions behind those numbers, I'm sorry.

13 Q. I understand.

14 Mr. Spanos, do you know the answer to the
15 question?

16 A. (John J. Spanos) I -- I -- excuse me, there
17 was a Burns & McDonnell study that -- decommissioning
18 study that incorporated those numbers. I don't know
19 the -- all of the support from Burns & McDonnell to how
20 they got those numbers, but that was part of the
21 assessment. I was not directly involved, so I don't
22 know all the research behind Burns & McDonnell's work
23 at that time. I was much more familiar with the work
24 they did in 2016, because that was for -- DEP is when I

1 became much more active.

2 Q. Do either of you know whether -- I'm really
3 looking for direction here, and I'm not going to make
4 you do the work for me.

5 Do either of you know whether that Burns &
6 McDonnell decommissioning study from the 2011, 2012
7 rate case, was it filed in the record of that case? If
8 I went back to the record in that case now, could I
9 find it there? Do either of you know?

10 A. It was part of the filing. I will tell you
11 there is two different pieces in that decommissioning
12 study, one for near-term facilities, and one for those
13 that would be further in time. And they are taken care
14 of differently between the decommissioning components.
15 So I think that's an important thing for you to look at
16 as you see it, but it was part of that filing.

17 Q. That's great. I won't press you further on
18 that. I can go off and do the reading later on my own.
19 The last question on this topic, though, does connect
20 back to the plant retirement program document.

21 Mr. Doss, I don't know if you've got it. There are in
22 that document cost estimates that look to be internally
23 prepared by the Company for what it expected at that
24 point in time, this was 2011/2012, to spend on closing

1 the coal ash ponds. And I'm really just trying to
2 connect.

3 Do you know who might have developed those
4 internal documents? I'm asking a fairly awkward
5 question. I'm really trying to identify were those
6 independently developed or were those based upon the
7 Burns & McDonnell decommissioning studies; do you know?

8 A. (David L. Doss, Jr.) I'm afraid I don't. I
9 remember in the last case, DEC case, I remember seeing
10 some estimates. I think those were specific to Duke
11 Energy Carolinas. I'm sorry, I -- for Duke Energy
12 Progress, I can't think of having seen any estimates
13 that may have been done internally for Duke Energy
14 Progress.

15 Q. Okay. The document does include estimates
16 for both companies, and I just was -- again, really the
17 purpose of my question was to find out what the basis
18 for those estimates was. Whether it was based upon
19 work by Burns & McDonnell or whether it was based upon
20 some other work. And that's really what I'm trying to
21 drive at.

22 A. I really wish I could help you. I'm sorry, I
23 just don't know.

24 Q. I'll leave you alone on that and -- you and

1 Mr. Spanos. I can check the record of the prior case.

2 I won't press further on that.

3 COMMISSIONER CLODFELTER: Mr. Marzo, I
4 would ask maybe just as a late-filed exhibit
5 answer, if we could just get an answer to that
6 question, is were the estimates of that document,
7 Attorney General Doss Cross Exhibit 1, based upon
8 the Burns & McDonnell decommissioning studies that
9 were filed in the earlier rate case, or were they
10 prepared independently from some other source.
11 That's what I'm trying to find out.

12 MR. MARZO: We could get that for you,
13 Commissioner Clodfelter.

14 COMMISSIONER CLODFELTER: Thank you.

15 Q. Another topic, Mr. Doss.

16 Were you listening or observing when
17 Ms. Bednarcik testified on direct examination?

18 A. I was not, but I did speak to Ms. Bednarcik
19 yesterday, and she kind of gave me an overview of her
20 testimony yesterday, and gave me heads up that I might
21 get a question.

22 Q. Well, you're going to get a question. I'm
23 not sure which one she gave you heads up about. But I
24 had asked -- she deferred this one to you. I had asked

1 her a question that -- let's see if I can summarize it
2 without going back through the whole sequence. And
3 let's take the Roxboro plant as an example. I think it
4 was Roxboro, Sutton, and perhaps one other, but let's
5 use Roxboro as an example.

6 At the Roxboro plant, there are some issues
7 currently and have been some issues currently with
8 respect to exceedances of their 2L groundwater
9 standards beyond the compliance boundary at the plant.
10 And Ms. Bednarci k told me that, of course, in
11 consequence of that, the Company is required, under the
12 2L rules, to undertake monitoring and assessment
13 activities, to prepare corrective action plans and work
14 through the agency on how that would be done, and then
15 to implement some corrective action.

16 And my questions to Ms. Bednarci k were, to
17 the extent that those activities would have been
18 required by the -- of the Company even if the Company
19 were not being required to close the ash pond at
20 Roxboro under CAMA and CCR, those would be required
21 under the 2L rules regardless of whether the ash pond
22 was being closed, continuing in operation, or just
23 staying in an indefinite state. And I asked her the
24 question of whether she was able to break those costs

1 associated with the corrective action requirements
2 beyond the compliance boundary, to break those costs
3 out separately from the ARO costs associated with the
4 closure of the basins. And she said that would be a
5 better question to ask you. So I'm doing so now.

6 Are you able to separately provide
7 information as to what costs the Company is incurring
8 in consequence of the remediation of groundwater
9 exceedances beyond the compliance boundary at the
10 Roxboro plant? Distinguish those from costs associated
11 with the closure of the basin.

12 A. I don't know off the top of my head. We have
13 our coal combustion products finance team that's
14 involved day-to-day in tracking all the costs
15 associated with these activities. I would need to
16 check with them to see, in their records, if they have
17 a way of separating those costs. And we can certainly
18 do that for you. I'm afraid I don't have an answer
19 today. I don't know.

20 Q. Okay.

21 COMMISSIONER CLODFELTER: Mr. Marzo, I'm
22 going to look at that as a late-filed request as
23 well.

24 MR. MARZO: Yes,

1 Commissioner Clodfelter. We'll do that.

2 Q. Finally, I want to ask one question of
3 Mr. Riley. Are you there?

4 A. (Sean P. Riley) Yes, Commissioner. I'm
5 here, Commissioner.

6 Q. Mr. Riley, do you agree that the ratemaking
7 treatment or ratemaking characterization of an item of
8 expenditure by the Company may be -- depending upon the
9 law and precedent in a particular jurisdiction, may be
10 different from the accounting characterization of that
11 expenditure?

12 A. I would respond by saying -- well, and I
13 think -- I believe that this was discussed yesterday.
14 The Commission is not bound by accounting, the
15 Commission sets rates. But the Company is bound by the
16 accounting rules. And so to the extent that the
17 Commission makes a determination, then the Company must
18 react to that determination in the context of the
19 accounting under its books and records. And part of
20 that may include a consideration of ASC 980, which is
21 regulatory accounting, whereby the Commission may not
22 allow the current recovery of costs, but may allow it
23 recoverable -- to be recoverable in the future; and as
24 such, the Company can defer recognition of expense, the

1 recognition of a regulatory asset to match up the
2 revenue in the expense -- the expense, I should say, to
3 the revenue recovery in the future.

4 Q. I follow you on that, but I was actually
5 probably asking a slightly different question. Let me
6 put it this way.

7 If the law of North Carolina says that I am
8 to determine whether something is or is not property,
9 plant, or equipment, then my guidance for determining
10 whether or not something is property, plant, or
11 equipment comes from statutory language, from case law,
12 and from prior precedent of the Commission. It does
13 not necessarily come from or necessarily follow the
14 accounting characterization; is that correct?

15 A. I would say that is correct. I would
16 elaborate by saying -- and I do use this in my practice
17 when I talk to others that I work with, other clients,
18 other people within our practice. The Commission
19 cannot dictate GAAP. The Commission dictates rates.
20 So if the Commission were to look at something and say
21 it is not capital -- and, in fact, this is off topic,
22 but a good example of this is flow-through treatment of
23 taxes, which happens in some states, not all states.
24 But the example there is that the Commission refers

1 flow-through treatment of taxes -- I'll go with my
2 example -- such that tax expense is not recognized for
3 ratemaking purposes for the benefit of effectively
4 flowing through that benefit, lowering rates to
5 customers currently.

6 But the Commission cannot dictate GAAP in
7 that a tax liability must be recognized. And
8 therefore, it gets back to what witness Doss talked
9 about yesterday and today, the Company must make a
10 determination, what is the offset to that accounting
11 entry; is that amount that's going to be recover- -- is
12 it an amount recoverable in the future from ratepayers,
13 and therefore can they record a regulatory asset?

14 So the key point there is that the
15 Commission -- as I'm -- just to complete my thought.
16 The Commission dictates the rates, the Company
17 determines the accounting consequences of those
18 decisions.

19 Q. I follow you completely, Mr. Riley, but
20 again, my question was slightly different, and actually
21 was the converse of the statement you made. I
22 understand completely the Commission does not determine
23 GAAP. My question was a different one to you.

24 If what the Commission must determine by law

1 is what constitutes property, plant, and equipment, the
2 statute says we must do that, then GAAP does not
3 necessarily dictate that determination under
4 North Carolina law, does it?

5 A. I would agree with that statement.

6 Q. That's all I have. Thank you.

7 MR. MARZO: Commissioner Clodfelter, can
8 you hear me?

9 COMMISSIONER CLODFELTER: I'm sorry, I
10 turned my microphone off. We're back to questions
11 on Commissioners' questions.

12 MS. FORCE: I just want to say I do have
13 a question, Mr. Marzo, if you'd like me to go
14 first.

15 COMMISSIONER CLODFELTER: Mr. Marzo,
16 we'll take you last, if that's okay.

17 All right. Ms. Force?

18 MS. FORCE: Mr. Grantmyre, did you want
19 to go?

20 MR. GRANTMYRE: Public Staff Grantmyre
21 has no questions.

22 COMMISSIONER CLODFELTER: Okay.

23 Ms. Force now. You're on mute. You're on mute,
24 Ms. Force.

1 MS. FORCE: I'm sorry. I find these
2 buttons confusing, I apologize.

3 EXAMINATION BY MS. FORCE:

4 Q. The last question for Mr. Riley overlaps with
5 a question, I think, that Mr. Doss answered earlier.
6 So I have a follow-up question about the difference
7 between ratemaking and accounting. And here's my
8 question.

9 I think you would agree with me that the
10 costs that accumulate when a nuclear power plant is
11 under construction would normally be considered capital
12 costs; would you agree with me?

13 A. (Sean P. Riley) Sure. Costs that are
14 incurred that are related to constructing an asset
15 certainly are capitalizable.

16 Q. So -- but at some point, if that plant is
17 abandoned and never put into rate base, it might be,
18 under North Carolina law, that it has been allowed to
19 be booked as an operating expense instead of rate base.
20 And in that event, you wouldn't have a lineup between
21 the ratemaking treatment of the expenditures and normal
22 accounting treatment; would you agree with me?

23 A. Well, under your example, that actually gets
24 into some complex accounting. There are specific rules

1 around abandonment of plants for accounting purposes.
2 The Company, to be -- to clarify what that accounting
3 is, if at a point in time the Company would make a
4 determination that a plant is to be abandoned, that it
5 is probable it will be abandoned, then there's an
6 accounting consequence associated with that. It would
7 no longer be a capital asset, but rather, the Company
8 would have to determine is there an impairment of that
9 asset or is that asset recoverable from ratepayers. If
10 it's recoverable from ratepayers in the future, then
11 the Company would apply ASC 980 and record a regulatory
12 asset associated with that.

13 Q. Okay. You've gone way beyond my ability to
14 keep up with you, Mr. Riley, but --

15 A. Apologies.

16 Q. -- I think we had a similar conversation in
17 the DEC case about impairment of assets, then, so I'll
18 leave it at that. I don't have any other questions.
19 Thank you.

20 COMMISSIONER CLODFELTER: Mr. Marzo, I
21 think we're back to you.

22 MR. MARZO: Just very quickly,
23 Commissioner Clodfel ter.

24 EXAMINATION BY MR. MARZO:

1 Q. Gentlemen, I'm just having a little mic
2 trouble, myself.

3 You were asked some questions by
4 Commissioner Clodfelter about just certainly the theory
5 of ratemaking -- of the accounting following
6 ratemaking.

7 And what I want to ask you primarily,
8 Mr. Doss, Mr. Riley, maybe you, Mr. Riley, first, is
9 the ARO process, the structure for recovery of the ARO
10 process, is there a set process and framework for the
11 recovery of AROs, regulated utilities?

12 A. (Sean P. Riley) So to answer your question,
13 generally speaking, it's as we described it earlier, or
14 I talked about it earlier, where, first of all, a
15 retirement obligation has to be identified. And when
16 the retirement obligation -- a legal retirement
17 obligation is identified, and can it be quantified, it
18 is quantified based on how I described earlier, and it
19 is recorded, at that point in time when it's identified
20 and estimatable, with an obligation being recorded in
21 an offsetting retirement cost. And as I said earlier,
22 FASB was very clear that that's a capital asset.

23 But for ratemaking purposes, again, there has
24 been no cash outlay, and therefore, that asset

1 retirement cost is not included in rate base at that
2 time as is industry practice.

3 In the future when expenditures occur, it's
4 at that time costs are evaluated for recovery and are
5 deferred in Duke's case, because they were determined
6 to be probable of recovery by the Company. And I would
7 also say in the opinion of the Company's auditors,
8 Deloitte, that those costs were probable for recovery
9 and it was acceptable to record a regulatory asset.

10 That regulatory asset, once it -- once there
11 was an actual cash outlay, it was recharacterized as a
12 spent regulatory asset for specific recovery from
13 ratepayers.

14 I think it's important to note also with
15 respect to when Doss was -- witness Doss was talking
16 about the theoretical regulatory asset versus the spent
17 regulatory asset, that that's a good accounting
18 mechanism to ensure that customers are not overcharged.
19 In other words, that they only reimburse the Company
20 for actual cash outlay associated with retirement
21 activities.

22 Q. Thank you, Mr. Riley. And just one last
23 question. When we look at the components of that
24 framework: we look at 410, we look at 980, and we

1 ultimately look at the Commission's deferral process,
2 those are all the framework that allows for the
3 traditional recovery of ARO costs for regulated
4 utility, correct?

5 A. That is correct.

6 Q. Okay. And deferral and return on any amounts
7 that are amortized retirements, that's part of the
8 traditional framework for that process, correct?

9 A. That's correct.

10 Q. And the designation of that -- of those costs
11 as capital is consistent with that framework in -- I
12 assume, with you being a national accountant, is
13 consistent with how those costs are considered across
14 the country nationally by utilities?

15 A. Again, that is correct. Just one point that
16 I would add. Once there is a cash outlay by the
17 Company, now there has been a use of investor funds,
18 shareholder funds, it's appropriate to allow a return
19 on the uncollected balances to reimburse shareholders
20 for the use of those funds. Similarly, if in the
21 case -- we were talking earlier about the cost of
22 removal. If amounts are collected from customers in
23 advance of expenditures being made, that's appropriate
24 to reflect that cost of removal, regulatory liability

1 as a reduction of rate base to compensate customers for
2 the use of their money in advance of expenditures being
3 made.

4 Q. Thank you, Mr. Riley.

5 MR. MARZO: Commissioner Clodfelter,
6 that's all the questions I have. I did want to
7 raise one matter with you related to the second
8 late-filed exhibit. I believe Ms. Bednarcik may be
9 able to address that question. I don't think -- I
10 was in the position, as you were, that it might
11 have been deferred to Mr. Doss. I think she's
12 actually prepared to discuss that. So if you want
13 to wait until after her cross, and if you want to
14 renew the late-filed exhibit at that point --

15 COMMISSIONER CLODFELTER: Absolutely.

16 MR. MARZO: -- you want to do it --
17 okay.

18 COMMISSIONER CLODFELTER: Absolutely.
19 Excellent. Thank you. Thank you for that. I was
20 simply proceeding off of the earlier information,
21 and so if she can address it now, we won't need the
22 late-filed exhibit.

23 MR. MARZO: Okay. Thank you, sir.

24 COMMISSIONER CLODFELTER: Thank you.

1 All right, folks, I think we're at the point where
2 we're ready for motions relative to exhibits. Who
3 wants to go first?

4 MR. GRANTMYRE: This is Public Staff
5 Grantmyre. The Public Staff would move that Public
6 Staff Doss/Spanos/Riley Rebuttal Cross Examination
7 Exhibits 1 through 8 be introduced into evidence.

8 COMMISSIONER CLODFELTER: All right.
9 We've heard the motion. And, Mr. Marzo, I believe
10 we've cleared up the issue by -- with respect to 6,
11 7, and 8, so I'll hear if there are any other
12 objections.

13 (No response.)

14 COMMISSIONER CLODFELTER: Hearing none,
15 those are admitted into the record.

16 (Doss/Spanos/Riley Rebuttal Public Staff
17 Cross Exhibit Numbers 1 through 8 were
18 admitted into evidence.)

19 COMMISSIONER CLODFELTER: Ms. Force?

20 MS. FORCE: Yes. Thank you. I think
21 that we designated the exhibit as Doss/Spanos/Riley
22 AGO Rebuttal Cross Exhibit 1 [sic].

23 COMMISSIONER CLODFELTER: That is --

24 MS. FORCE: There's a little confusion

1 sometimes in these exhibits about whether the panel
2 name should come ahead of the party that's
3 introduced it. It's my understanding your
4 preference is to have the panel name first.

5 COMMISSIONER CLODFELTER: My preference
6 is for the panel name first, because then when
7 you're searching for an exhibit later in the
8 record, you know where -- the highest order of
9 classification is the witness, then becomes the
10 examining party, then becomes the sequence and the
11 number. So it's a much more logical way to find
12 the exhibit later when you're looking for it.

13 MS. FORCE: Understood.

14 COMMISSIONER CLODFELTER: You have the
15 correct designation, and I take it you're moving
16 admission of that exhibit?

17 MS. FORCE: I do, thank you.

18 COMMISSIONER CLODFELTER: Without
19 objection, it is so ordered.

20 (Doss/Spanos/Riley Rebuttal AGO Cross
21 Exhibit 1 were admitted into evidence.)

22 MS. FORCE: Thank you.

23 COMMISSIONER CLODFELTER: All right.

24 Mr. Jeffries and Mr. Marzo.

1 MR. MARZO: I'll let Mr. Jeffries go
2 first. Go ahead, Mr. Jeffries.

3 COMMISSIONER CLODFELTER: There you go.

4 MR. JEFFRIES: I don't believe we have
5 anything for Mr. Spanos. His direct exhibit was
6 admitted when his direct appearance was waived, and
7 he has no -- he has no rebuttal exhibits.

8 COMMISSIONER CLODFELTER: That is
9 consistent with my notes also. Thank you.

10 MR. MARZO: And I'd ask,
11 Commissioner Clodfelter, that Mr. Doss' rebuttal
12 exhibit as well as his supplemental rebuttal --
13 supplemental, sorry, exhibit be admitted into the
14 record.

15 COMMISSIONER CLODFELTER: Okay. If
16 there is no objection?

17 (No response.)

18 COMMISSIONER CLODFELTER: Hearing none,
19 it will be so ordered.

20 (Doss Rebuttal Exhibit 1 and Doss
21 Supplemental Exhibit 1 were admitted
22 into evidence.)

23 COMMISSIONER CLODFELTER: Okay. I think
24 that concludes the panel presentation.

1 Mr. Jeffries, Mr. Marzo, do you wish to
2 have any of these witnesses excused?

3 MR. JEFFRIES: Yes.

4 MR. MARZO: Yes.

5 COMMISSIONER CLODFELTER: All right. If
6 there's no objection, then we will excuse Mr. Doss,
7 Mr. Spanos, and Mr. Riley. Thank you for being
8 with us.

9 THE WITNESS: (David L. Doss, Jr.)
10 Thank you.

11 THE WITNESS: (Sean P. Riley) Thank
12 you.

13 THE WITNESS: (John J. Spanos) Thank
14 you.

15 COMMISSIONER CLODFELTER: Okay. Let's
16 get started on our next witness. Mr. Marzo, I
17 believe that would be Ms. Bednarcik?

18 MR. MARZO: Yes, sir. We would like to
19 call Ms. Jessica Bednarcik to the stand.

20 COMMISSIONER CLODFELTER: Ms. Bednarcik,
21 I saw you earlier. There you are. Great.
22 Ms. Bednarcik, you are still under oath. I remind
23 you you are still under oath. And with that,
24 Mr. Marzo, the witness is with you.

1 MR. MARZO: Yes, sir.

2 Whereupon,

3 JESSICA L. BEDNARCIK,

4 having previously been duly affirmed, was examined

5 and testified as follows:

6 DIRECT EXAMINATION BY MR. MARZO:

7 Q. Ms. Bednarci k, once gain, would you please
8 state your name and your business address for the
9 record.

10 A. My name is Jessi ca L. Bednarci k, and my
11 business address is 400 South Tryon Street, Charlotte,
12 North Carol ina.

13 Q. And again, by whom are you employed and in
14 what capaci ty?

15 A. I 'm employed by Duke Energy Business
16 Servi ces, and I am the vice president of coal
17 combusti on products, operations, maintenance, and
18 governance organi zati on.

19 Q. Ms. Bednarci k, did you cause to be prefiled
20 in this docket, rebuttal testimony consi sting of
21 69 pages?

22 A. Yes.

23 Q. Do you have any changes or corrections to
24 your prefiled rebuttal testimony?

1 A. No.

2 Q. And if I asked you the same questions today,
3 would your answers be the same?

4 A. Yes.

5 Q. And did you also cause to be prefiled in this
6 docket, Bednarcik Rebuttal Exhibit 1 through 9 to your
7 rebuttal testimony?

8 A. Yes.

9 Q. Do you have any changes or corrections to
10 your prefiled rebuttal exhibits?

11 A. No.

12 MR. MARZO: And portions of that
13 testimony, Commissioner Clodfelter, and exhibits,
14 for the record, are marked confidential.

15 Q. Did you also cause to be prefiled, 12 pages
16 of supplemental testimony on August 28, 2020, in
17 response to Commission's order?

18 A. Yes.

19 Q. And did you have any changes or corrections
20 to that prefiled supplemental testimony?

21 A. No.

22 Q. And if I asked you the same questions today,
23 would your answers be the same?

24 A. Yes.

1 Q. And did you also cause to be prefilled,
2 Bednarci k Supplemental Exhi bi ts 1, 2, 3, and 4?

3 A. Yes.

4 Q. And was there a correction filed to Exhi bi t
5 Number 3?

6 A. Yes, there was.

7 Q. And with that correction, do you have any
8 other changes or corrections to your prefilled
9 supplemental exhi bi ts?

10 A. No, I do not.

11 MR. MARZO: Commi ssi oner Clodfel ter, at
12 this time I would ask that Ms. Bednarci k's prefilled
13 rebuttal testimony, her supplemental testimony be
14 entered into the record as given orally here today.

15 COMMI SSI ONER CLODFELTER: You've heard
16 the motion. Is there any objection?

17 (No response.)

18 COMMI SSI ONER CLODFELTER: Hearing none,
19 motion is allowed.

20 (Whereupon, the prefilled rebuttal and
21 supplemental testimony of
22 Jessica L. Bednarci k were copied into
23 the record as if given orally from the
24 stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. E-2, SUB 1219**

In the Matter of:)	
)	
Application of Duke Energy Progress, LLC)	REBUTTAL TESTIMONY OF
For Adjustment of Rates and Charges)	JESSICA L. BEDNARCIK FOR
Applicable to Electric Service in North)	DUKE ENERGY PROGRESS, LLC
Carolina)	

I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME, OCCUPATION, TITLE, AND BUSINESS ADDRESS.

A. My name is Jessica L. Bednarcik. My business address is 400 South Tryon Street, Charlotte, North Carolina, 28202. I am employed by Duke Energy Business Services, LLC, as Vice President, Coal Combustion Products (“CCP”) Operations, Maintenance and Governance. In this docket, I am submitting this rebuttal testimony on behalf of Duke Energy Progress, LLC (“DE Progress,” or the “Company”).

Q. ARE YOU THE SAME JESSICA BEDNARCIK WHO FILED DIRECT TESTIMONY IN THIS CASE?

A. Yes.

Q. PLEASE DISCUSS THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. The purpose of my rebuttal testimony is to address several issues discussed in the direct testimony of intervenors that are related to the recovery of costs associated with coal ash expenses. Specifically, I will address issues raised in the testimonies of Public Staff witnesses Jay B. Lucas (“Lucas”), L. Bernard Garrett (“Garrett”), and Vance F. Moore (“Moore”), Carolina Utility Customer Association (“CUCA”) witness Kevin W. O’Donnell (“O’Donnell”), Attorney General Office (“AGO”) witness Steven C. Hart (“Hart”), and Sierra Club witness Mark Quarles (“Quarles”).

1 **Q. ARE YOU PROVIDING ANY EXHIBITS WITH YOUR TESTIMONY?**

2 A. Yes. I have attached nine (9) total exhibits that I discuss further herein.

3 **Q. WERE EXHIBITS 1 THROUGH 9 PREPARED OR PROVIDED**
4 **HEREIN BY YOU, UNDER YOUR DIRECTION AND SUPERVISION?**

5 A. Yes.

6 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

7 A. My rebuttal testimony will begin by providing a brief update on developments
8 in the Company's basin closure plans that have occurred since I filed my direct
9 testimony. I will then turn to the primary focus of my testimony – addressing
10 the position of the Public Staff with respect to the Company's request to recover
11 costs related to coal combustion residuals ("CCR") compliance and ash pond
12 closure. Through the testimony of witnesses Lucas, Moore, and Garrett, the
13 Public Staff recommends that the Commission impose two distinct
14 disallowance mechanisms on the Company's CCR-related expenses: (1) a
15 number of specific, prudence-based disallowances related to closure activities
16 at the Company's Sutton, Asheville, H.F. Lee, Cape Fear, Weatherspoon, and
17 Mayo sites as well as certain expenses associated with the Company's
18 fulfillment of CAMA's provision requiring permanent water supplies; and
19 (2) for all remaining expenses, a purported "equitable sharing" approach—
20 which effectively amounts to a 50% disallowance across the board that is not
21 tied to any specific finding of imprudence.

22 My testimony will first focus on rebutting the specific disallowances
23 proposed by witnesses Lucas, Garrett, and Moore to show that each expense

1 was the result of the Company’s reasonable and prudent efforts to comply with
2 applicable laws and regulations. I note, as Jon Kerin did in our last rate case in
3 Docket No. E-2, Sub 1142, that Public Staff witnesses Garrett and Moore
4 engaged in a thorough analysis and investigation. However, I believe that they
5 have again missed or overlooked key facts in several of their recommendations
6 that I will address specifically in my testimony.

7 In summary, I do not believe that the disallowances suggested by
8 witnesses Garrett and Moore are warranted based on a complete view of the
9 applicable facts.

10 I will then rebut witness Lucas’s contention that the Public Staff’s
11 proposed “equitable sharing” approach is appropriate because the Company is
12 allegedly “culpable” for environmental degradation that now requires
13 expensive environmental compliance costs to be incurred. In addressing his
14 arguments on this point, I will also respond to related allegations in the
15 testimony of witnesses Hart and Quarles suggesting that the Company’s CCR
16 practices lagged behind industry standards. Next, my rebuttal testimony will
17 address the argument of AGO witness Hart that the Company’s CCR closure
18 costs would have been reduced by \$218 to \$291 million had DE Progress
19 chosen to close its basins at some unspecified earlier date. My rebuttal
20 testimony will then address CUCA witness O’Donnell’s arguments for
21 disallowance - which have not been updated from his testimony in the 2017 rate
22 case and are, therefore, not credible – through reliance upon the testimony of
23 Company witness Jon Kerin in the 2017 DE Progress rate case. Finally, my

1 rebuttal will address the argument made by Sierra Club witness Quarles that the
2 costs the Company has incurred related to CCR excavation and groundwater
3 monitoring would be lower if the Company had converted to dry disposal in
4 lined landfills sooner.

5 Overall, despite making sweeping suggestions that the Company should
6 have converted to lined basins and/or generally increased groundwater
7 monitoring, no party has identified any concrete, specific action the Company
8 should have taken at any certain point in history with respect to specific CCR
9 impoundments. Nor has any party put forth a concrete number in testimony to
10 quantify the purported reduction in CCR costs the Company might currently be
11 realizing had it pursued another avenue for CCR disposal and storage at some
12 unspecified time in the past.¹ In the absence of a specifically identified action
13 or inaction alleged to be unreasonable or imprudent, the Public Staff and
14 intervenors have simply failed to provide the Commission with a sound reason
15 to support any sweeping disallowance of costs that incorporate applicable
16 regulatory principles. Indeed, as recently as February of this year, the
17 Commission rejected this type of baseless request to disallow recovery of CCR
18 costs, holding that:

19 [N]o party presented evidence to attempt to quantify which, if
20 any, of the CCR Costs might have been avoided if [Dominion
21 Energy North Carolina (“DENC”)] had used a different
22 approach to managing its CCRs at some point during the last

¹ The AGO has presented a range of alleged cost reductions it contends the Company could have achieved by closing its CCR impoundments at an earlier date. However, as explained by Company witness Erik Lioy, the methodology used to calculate those purported “savings” is fundamentally flawed, and the nearly \$80 million delta between the range endpoints further underscores the impossibility of identifying a concrete disallowance number. Testimony of Sierra Club witness Quarles provides even less certainty regarding purported savings, stating only that “costs associated with excavation and groundwater monitoring would be lower if the Company had converted to dry disposal in lined landfills sooner.”

1 several decades. Indeed, it would be very difficult to go back
 2 and recreate the timing and cost of such different approaches.
 3 For example, one could argue that DENC should have converted
 4 all of its coal-fired plants to dry ash handling at least at some
 5 time during the 1990s. However, to quantify the costs and
 6 benefits of this strategy would require establishing, with some
 7 level of certainty, the costs that DENC would have incurred for
 8 such conversions, and the savings in present CCR remediation
 9 costs that would have resulted from such conversions. In
 10 addition, DENC could have been entitled to recover those
 11 conversion costs, plus a return on its increased rate base, from
 12 its ratepayers over the past several decades. On the present
 13 record, the Commission has no substantial evidence on which to
 14 make such determinations.²

15 The Commission has now rejected the Public Staff’s equitable sharing
 16 proposal on three distinct occasions – the 2017 DE Progress rate case, the 2017
 17 Duke Energy Carolinas, LLC (“DE Carolinas”) (together with DE Progress,
 18 “Duke Energy”) rate case, and the 2019 DENC rate case. Because neither the
 19 Public Staff nor any intervenor has put forth new, concrete evidence with
 20 respect to what the Company should have done at each impoundment and how
 21 such action would have decreased closure costs, they have given the
 22 Commission no reason to part with past precedent.

23 In sum, my direct testimony established the reasonableness and
 24 prudence of the Company’s current CCR practices,³ and my rebuttal will show
 25 that the Public Staff and intervenors have done nothing more than advocate for
 26 a wide-reaching, categorical disallowance that avoids established regulatory

² *Order Accepting Public Staff Stipulation in Part, Accepting CIGFUR Stipulation, Deciding Contested Issues, and Granting Partial Rate Increase*, at 129, Docket Nos. E-22 Subs 562 & 566 (Feb. 24, 2020).

³ Company witness Jon Kerin established the reasonableness and prudence of the Company’s historical practices in his 2017 direct testimony in Docket No. E-2, Sub 1142, which the Commission found to be convincing, and I understand that Company witness Jim Wells will again address the Company’s historical groundwater practices in his rebuttal testimony in this case.

1 principles and have failed to present any concrete evidence to support
2 disallowance of any distinct CCR cost.

3 **II. UPDATE TO DIRECT TESTIMONY**

4 **Q. SINCE THE FILING OF YOUR DIRECT TESTIMONY, HAS THE**
5 **COMPANY TAKEN ANY SIGNIFICANT ACTIONS WITH RESPECT**
6 **TO BASIN CLOSURE?**

7 A. Yes. On December 31, 2019, the Company entered into a Settlement
8 Agreement (the “Agreement”) with the North Carolina Department of
9 Environmental Quality (“DEQ”) and a variety of special interest groups
10 represented by the Southern Environmental Law Center (“SELC”). The
11 Agreement details a reasonable and prudent plan for closure of the nine
12 remaining CCR basins owned by DE Progress and DE Carolinas. Seven of the
13 nine basins – including one at the Mayo Plant, one at the Roxboro Plant, two at
14 the Allen Steam Station, one at Belews Creek Steam Station, and two at the
15 Rogers Energy Complex (Cliffside) – will be excavated with ash moved to on-
16 site lined landfills. For the other two basins, at the Roxboro Plant and the
17 Marshall Steam Station, uncapped basin ash will be excavated and moved to
18 lined landfills. The Agreement calls for expedited state permit approvals, which
19 would keep projects on a rapid timeline, while at the same time reducing the
20 total estimated cost to close the remaining basins by roughly \$1.5 billion as
21 compared to the April 1, 2019 DEQ order requiring full excavation at all sites.
22 An official consent order was filed with the courts on January 31, 2020 (the
23 “Consent Order”).

1 **Q. DOES THE AGREEMENT ADDRESS ANY POTENTIAL IMPACTS TO**
 2 **GROUNDWATER?**

3 A. Yes. The Agreement and Consent Order ensures that impacted groundwater is
 4 addressed and includes provisions to streamline the process for this work
 5 through corrective action plans at each site.

6 **Q. DOES THE AGREEMENT AND/OR CONSENT ORDER ADDRESS**
 7 **THE LITIGATION REGARDING CLOSURE PLANS THAT HAS**
 8 **BEEN INITIATED IN VARIOUS COURTS THROUGHOUT THE**
 9 **STATE?**

10 A. Yes. The Consent Order completely resolved all of the disputes that were
 11 pending between the parties over basin closure plans.

12 **III. RESPONSE TO THE PUBLIC STAFF'S SPECIFIC RECOMMENDED**
 13 **DISALLOWANCES**

14 **Q. PLEASE DESCRIBE THE SPECIFIC, PRUDENCE-BASED**
 15 **DISALLOWANCES RECOMMENDED BY THE PUBLIC STAFF.**

16 A. The Public Staff has recommended prudence-based disallowances in the
 17 following areas: (1) payment of a fulfillment fee to Charah, Inc. ("Charah")
 18 (\$33,670,054); (2) payment of a purported \$30.42 per ton "transportation cost"
 19 to transport CCR from the Asheville plant to the R&B landfill in Homer,
 20 Georgia (\$50,238,630); (3) construction costs at the H.F. Lee and Cape Fear
 21 Beneficiation plants (\$130,384,392); (4) expenditures for groundwater
 22 extraction and treatment at the Asheville and Sutton plants, as well as the
 23 purchase of land at the Mayo plant which allowed the Company to mitigate
 24 potential exposure pathways (\$1,240,328 on a system basis); and (5) costs

1 incurred to connect eligible residential properties to permanent alternative
2 water supplies (\$1,087,612 on a system basis) and/or install and maintain water
3 treatment systems (\$2,774,583 on a system basis), as required by CAMA. I will
4 address each of these recommended disallowances separately below.

5 **A. CHARAH FULFILLMENT FEE**

6 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION**
7 **REGARDING THE CHARAH CONTRACT.**

8 A. As I explained in my direct testimony, DE Progress and DE Carolinas executed
9 eMax Master Contract Number 8323 (the “Charah Master Contract”) with
10 Charah to dispose of CCR from both DE Progress and DE Carolinas locations.
11 The contracts required DE Progress and DE Carolinas, together, to provide a
12 minimum amount of coal ash for disposal at Charah’s mines. With respect to
13 DE Progress, the Company agreed to this term because for Sutton, a designated
14 high priority site, it was important to know that there would be a guaranteed,
15 immediate place in which to relocate the excavated CCR to ensure compliance
16 with CAMA deadlines.

17 **Q. HAS THE PUBLIC STAFF OR ANY INTERVENOR SUGGESTED**
18 **THAT IT WAS IMPRUDENT FOR DE PROGRESS TO ENTER INTO**
19 **THE CONTRACT WITH CHARAH?**

20 A. No. No party has challenged the prudence of the Company’s decision to
21 contract with Charah. The sole issue before the Commission with respect to the
22 Company’s engagement of Charah is whether the fulfillment fee the Company
23 paid to Charah pursuant to the contract terms was reasonable.

1 **Q. PLEASE EXPLAIN WITNESS GARRETT’S RECOMMENDATIONS**
 2 **AS THEY RELATE TO THE CHARAH FULFILLMENT FEE.**

3 A. Mr. Garrett argues that the fulfillment fee paid to Charah for the planned
 4 disposal of ash at the Brickhaven and Sanford Clay Mines⁴ was unreasonable
 5 and imprudent, and therefore recommends a disallowance of \$33,670,054. In
 6 support of his recommendation, Mr. Garrett points to a single number in the
 7 fulfillment fee calculation provisions of the Charah Master Contract that he
 8 contends creates a “fundamental flaw” in the contract. In somewhat of a
 9 contradiction, he also argues that DE Progress acted imprudently because it “did
 10 not use the pricing [terms and conditions] established in [the Charah Master
 11 Contract]” to calculate the fulfillment fee.

12 Despite these criticisms, however, Mr. Garrett does not recommend any
 13 specific adjustments to the charged and paid fulfillment fee that would comport
 14 with the terms of the Master Contract, purportedly because, as he sees it, there
 15 are “too many flaws” in Duke Energy’s calculation method to do so. Instead,
 16 he supports his disallowance proposal by calculating a separate, hypothetical
 17 fulfillment fee – one that inserts a newly manufactured denominator into the
 18 unambiguous calculation methodology set forth in the Charah Master Contract,
 19 thus materially changing the bargained-for contractual term.

⁴ In my direct testimony, I referred to the Sanford Clay Mines as the “Colon Mine.” While the Company uses these names interchangeably, I will use the “Sanford Clay Mines” term in my rebuttal testimony to avoid confusion and match the terminology used by Mr. Garrett.

1 **Q. PLEASE PROVIDE SOME BACKGROUND REGARDING THE**
2 **PARTIES' DECISION TO INCLUDE THE FULFILLMENT FEE**
3 **PROVISIONS IN THE CHARAH MASTER CONTRACT.**

4 A. As I explained in my direct testimony, the Charah Master Contract required
5 Duke Energy to provide a minimum amount of coal ash for disposal at Charah's
6 Brickhaven and Sanford Clay Mines. This arrangement reflected the fact that
7 Charah, at the time of contracting, did not own sufficient land to accommodate
8 the ash it was being engaged to manage. **[BEGIN CONFIDENTIAL]**

[illegible]

[illegible]

18 **Q. DO YOU AGREE WITH MR. GARRETT'S CONCLUSION THAT THE**
19 **TERMINATION PROVISIONS OF THE CHARAH MASTER**
20 **CONTRACT WERE TRIGGERED ON MAY 29, 2019?**

21 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Notwithstanding

22 the CAMA-imposed requirement to beneficiate rather than store a large

23 percentage of Duke Energy's ash, the Company was still contractually bound

1 to pay the Prorated Costs arising from delta between the 20 million ton storage
2 capacity earmarked for Duke Energy at Brickhaven and Sanford and the
3 7,342,409 tons of ash actually excavated and transferred to Brickhaven.

4 **Q. HOW DO YOU RESPOND TO MR. GARRETT'S CONTENTION THAT**
5 **CHARAH WAS "REASONABLY REIMBURSED" FOR THE ACTUAL**
6 **DEVELOPMENT COST INCURRED AT BRICKHAVEN THROUGH**
7 **THE PER TON PRICE SET OUT IN THE PURCHASE ORDERS?**

8 A. The development costs that were included in the per ton price of the purchase
9 orders were markedly different from the development costs intended to be
10 captured by the fulfillment fee. For example, the development costs
11 contemplated by the Charah Master Contract included items such as the cost of
12 purchasing the properties, construction of the leachate management system,
13 infrastructure construction, and rail construction at Brickhaven. In addition, the
14 Contract obligated Charah to obtain all permits required to lawfully accept and
15 store ash at both sites, including a Structural Fill Permit and a Mine
16 Reclamation Permit, each of which imposed a number of affirmative duties and
17 costs on Charah to maintain compliance. By contrast, the development costs
18 that were included in the price per ton of the purchase orders were for items that
19 were specifically related to the ash that was sent, including synthetic and clay
20 liners, temporary caps, anchor trenches, and temporary and final seeding.

1 **Q. WHY WERE PRORATED COSTS ALLOCATED FOR THE SANFORD**
 2 **CLAY MINE WHEN NO ASH WAS SENT TO THAT LOCATION?**

3 A. As I explained above, the Company's contractual duty to pay Prorated Cost for
 4 capital expenses incurred and anticipated at the Sanford Clay Mines could be
 5 triggered by the issuance of a purchase order for transfer of ash to *either*
 6 *Brickhaven or Sanford* and, in fact, were triggered when DE Progress issued a
 7 first purchase order to transfer ash from Sutton to Brickhaven in December
 8 2014.⁵ Moreover, Charah actually incurred development costs for the Sanford
 9 site to receive the planned-for ash, including, but not limited to, capital expenses
 10 to purchase the property, as well as anticipated Site Closure and Post Closure
 11 costs required for compliance with the Mine Reclamation Permit. In any event,
 12 costs related to Sanford made up only approximately 12% of the total
 13 fulfillment fee.

14 **Q. HOW DO YOU RESPOND TO MR. GARRETT'S CONTENTION THAT**
 15 **THE COMPANY INCORRECTLY CALCULATED THE PRORATED**
 16 **PERCENTAGE AND, BY EXTENSION, THE PRORATED COSTS?**

17 A. [BEGIN CONFIDENTIAL] [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

⁵ DE Carolinas likewise issued a purchase order to transfer ash from its Riverbend site to the Brickhaven mine in December 2014.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

13 Mr. Garrett’s proposal demonstrates a fundamental misunderstanding of

14 both general contractual construction and the rationale behind the termination

15 provisions to which the parties agreed. In particular, while Mr. Garrett is

16 correct that DE Progress was not financially committed to provide Charah with

17 quantities of ash for *excavation* beyond those identified in the purchase orders,

18 the Company was still financially obligated to make Charah whole for prorated

19 costs per the prorated cost triggering event definition in the Master Contract.

[REDACTED] [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. CAN YOU POINT TO ANY OTHER TERMS IN THE CHARAH
7 MASTER CONTRACT THAT SUPPORTS YOUR UNDERSTANDING?

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

12 Q. IS IT COMMON PRACTICE TO INCLUDE FULFILLMENT FEE-
13 RELATED TERMS AND CONDITIONS IN CONTRACTS?

14 A. Yes. For contracts that require a contractor to invest a large amount of capital,
15 such as in the development of significant infrastructure in order to be able to
16 perform the needed contracted service, it is common practice and reasonable to
17 require a minimum investment by the company requesting the contracted
18 service. This is particularly common where the market does not indicate a
19 readily “next available client.” In this case, the large infrastructure
20 development by Charah involved land purchase, permitting cost, infrastructure
21 and unloading system construction, and a rail spur at Brickhaven.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

10 Mr. Garrett's unsupported argument again misunderstands the meaning
11 of Prorated Costs and the purpose of the cost cap. **[BEGIN CONFIDENTIAL]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]. [END CONFIDENTIAL]

3 Q. WHAT IS THE TOTAL SAVINGS THE COMPANY ACHIEVED FOR
4 ITS CUSTOMERS BY INCLUDING THOSE MITIGATING TERMS
5 INTO THE CONTRACT?

A. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

1 **[END CONFIDENTIAL]**

2 **Q. MR. GARRETT ALSO TAKES ISSUE WITH THE COMPANY'S COST**
3 **ALLOCATION METHODOLOGY. HOW DO YOU RESPOND?**

4 A. First, Mr. Garrett argues that the entire Prorated Costs amount should be allocated
5 to DE Carolinas on the grounds that all 2,000,000 tons of ash authorized by
6 purchase orders to be transferred from Sutton to the Brickhaven mine were so
7 transported, the 16,425 tons of ash authorized by purchase orders to be transferred
8 from Riverbend to the Brickhaven mine were never so transported, and no
9 purchase order was ever executed with respect to Cape Fear, Weatherspoon,
10 and/or H.F. Lee. Once again, however, this analysis fundamentally
11 misunderstands the purpose of the fulfillment fee. As I have already explained,
12 the provision and calculation methodology was targeted to make Charah whole
13 for the costs it incurred to prepare both sites to receive 20 million tons of ash
14 reserved for DE Carolinas and DE Progress.

15 In the alternative, should the Commission determine that DE Progress
16 is contractually obligated to pay some portion of the fulfillment fee, Mr. Garrett
17 disagrees with the Company's allocation methodology. Specifically, Mr. Garrett
18 notes that the Company has employed a different allocation methodology in the
19 instant case than it did in response to a Public Staff data request in Docket No. E-
20 2 Sub 1142. Importantly, DE Progress was not seeking recovery of the
21 fulfillment fee in the 2017 rate case as it had not yet paid any such fee to Charah.
22 Instead, the spreadsheet produced to the Public Staff in 2017, attached hereto as
23 Bednarcik Rebuttal Exhibit 2 was an internal document created to help the

1 Company determine the most cost effective sites for beneficiation based on a
2 hypothetical model of the estimated prorated fulfillment fee. The spreadsheet
3 was thus created before Duke Energy had any idea of Charah's actual total
4 development costs and was just an early rough order of magnitude estimate using
5 the \$90 million fulfillment fee cap. Despite the hypothetical nature of the
6 spreadsheet's assumptions, Mr. Garrett argues that, if the Commission does not
7 assign an allocation of zero to the Cape Fear, Weatherspoon, and H.F. Lee plants,
8 it should adopt the methodology employed in DE Progress's 2017 spreadsheet
9 with a fulfillment fee of "\$53,093,377 and no greater than \$57,857,800." (Garrett
10 Dir. T, at p. 33.) However, Mr. Garrett's analysis misses several key points.

11 First and most importantly, the allocation methodology employed by the
12 2017 spreadsheet was no longer applicable once the Company and Charah
13 reached a negotiated settlement that Duke Energy would pay \$80 million as the
14 fulfillment fee. Following that settlement, the Company engaged in analysis to
15 determine a fair allocation of the fulfillment fee based on both the actual tonnage
16 sent to Brickhaven and the originally anticipated tonnage each facility would
17 send. The Company's calculation methodology is set forth in detail in DEP PS
18 1-8 Bednarcik Workpaper (Charah Fee), which is attached hereto as Bednarcik
19 Rebuttal Exhibit 3.

20 In addition, Mr. Garrett's contention that the Company did not incur any
21 closure or post-closure costs at the Sanford Clay Mine is incorrect. In fact, site
22 permits necessitated a host of closure and post-closure activities for which Charah
23 incurred costs, including, but not limited to compliance with the final closure

1 plan, such as testing, quality and engineering, site grading and fill needs, general
2 site maintenance, stormwater management, water quality monitoring and
3 reporting, infrastructure maintenance and general administrative expenses. These
4 expenses are described in further detail in the Company's Responses to Questions
5 from the Public Staff Sent After January 16, 2020 call, attached hereto as
6 Bednarcik Rebuttal Exhibit 4.

7 **Q. HOW DO YOU RESPOND TO MR. GARRETT'S CONTENTION THAT**
8 **FEES PAID FOR LAND ACQUISITION AT THE SANFORD MINE**
9 **SHOULD BE EXCLUDED FROM THIS PROCEEDING?**

10 A. Mr. Garrett recommends that the Commission exclude from consideration any
11 fees paid for land acquisition at the Sanford Mine in light of two provisions that
12 allow for a potential future recovery of some or all of the Prorated Costs. In
13 particular, Section 7.4 of the Charah Master Contract allows for recovery of a
14 portion of the Prorated Costs in the event Charah sells or transfers ownership of
15 either the Brickhaven or Sanford Mine to a third party. Similarly, Section 7.6 of
16 the Charah Master Contract may allow the Company to re-activate the contract
17 and recover some or all of the Prorated Costs in the event it chooses to supplement
18 beneficiation projects at H.F. Lee and Cape Fear at the Sanford Clay Mine.
19 Importantly, however, Mr. Garrett does not suggest that either of these clauses
20 will *certainly* be triggered by future events, nor does he suggest that any
21 triggering event is currently under consideration by either the Company or
22 Charah. It would, therefore, be inappropriate to deny recovery of costs already
23 incurred for a potential future event that is not currently under consideration. In

1 the unlikely event that either Section 7.4 or 7.6 of the Charah Master Contract is
2 triggered in the future and a portion of the Prorated Costs is returned, the
3 Company will pass those recoveries along to its customers in a future rate case.

4 **B. “TRANSPORTATION COSTS” AT ASHEVILLE STEAM STATION**

5 **Q. DOES PUBLIC STAFF WITNESS GARRETT RECOMMEND A**
6 **DISALLOWANCE OF DE PROGRESS’ COSTS INCURRED AT**
7 **ASHEVILLE?**

8 A. Yes. Regarding the CCR that was excavated from Asheville between
9 September 1, 2017 and December 31, 2019, Mr. Garrett testifies that there were
10 two lower cost alternatives to disposal at R&B Landfill: 1) transport to
11 Cliffside; or 2) onsite landfill. He then recommends that the Commission
12 disallow [BEGIN CONFIDENTIAL] [REDACTED] [END
13 CONFIDENTIAL], which represents only the cost the Company incurred to
14 *transport* 1,651,500 tons of ash from Asheville to Waste Management’s
15 permitted R&B Landfill in Homer, Georgia between September 1, 2017 and
16 December 31, 2019. It appears that Mr. Garrett concluded that the Company
17 should have pursued an onsite landfill option, since he did not recommend a
18 disallowance based on transportation costs to R&B Landfill versus Cliffside.

1 **Q. HAS THE COMMISSION PREVIOUSLY APPROVED COSTS**
 2 **RELATED TO DE PROGRESS' DECISION TO TRANSPORT ASH**
 3 **FROM ASHEVILLE TO THE R&B LANDFILL?**

4 A. Yes. In Docket No. E-2, Sub 1142, the Commission approved rate recovery of
 5 DE Progress' costs to transport CCR from Asheville to the R&B Landfill.
 6 These approved costs included costs to transport CCR from both the 1982 Ash
 7 Basin and the 1964 Ash Basin to the R&B Landfill under DE Progress'
 8 purchase orders with Waste Management dated October 2015 and November
 9 2016. The Public Staff now seeks to disallow costs incurred under the same
 10 purchase orders as the costs that were approved by this Commission in the
 11 Company's prior rate case.

12 **Q. WHAT WAS THE PUBLIC STAFF'S POSITION IN DOCKET NO. E-2,**
 13 **SUB 1142 REGARDING THE COMPANY'S DECISION TO**
 14 **TRANSPORT ASH TO THE R&B LANDFILL?**

15 A. Regarding the CCR that was excavated and transported offsite from the 1964
 16 Ash Basin through August 31, 2017, the Public Staff argued that DE Progress
 17 should have exclusively utilized the landfill at Cliffside. The Public Staff also
 18 argued that DE Progress should have taken steps to pursue an onsite landfill to
 19 store the remaining CCR at the site (~3 million tons). Public Staff witnesses
 20 Garrett and Moore previously testified, "[h]ad an on-site industrial landfill
 21 capable of storing three million tons of CCR been pursued, **[BEGIN**
 22 **CONFIDENTIAL]** [REDACTED] **[END**
 23 **CONFIDENTIAL]** in hauling costs could potentially be avoided." (Garrett

1 Direct T., at 45:12-17) (emphasis added.) In approving the Company's
2 transportation costs for Asheville, the Commission agreed with the Company
3 that transporting CCR to Cliffside and constructing the onsite landfill for the
4 remaining CCR as proposed by the Public Staff were not the most prudent
5 options.

6 **Q. WHAT IS THE PUBLIC STAFF'S PURPORTED BASIS FOR THE**
7 **RECOMMENDED DISALLOWANCE IN THIS CASE?**

8 A. The Public Staff contends that a "material change in facts regarding the onsite
9 landfill at Asheville" justifies revisiting the transportation costs that the
10 Commission approved in Docket No. E-2, Sub 1142.

11 **Q. DO YOU AGREE WITH MR. GARRETT THAT THERE HAS BEEN A**
12 **CHANGE IN CIRCUMSTANCES THAT JUSTIFIES REVISITING DE**
13 **PROGRESS' TRANSPORTATION COSTS UNDER ITS CONTRACT**
14 **WITH WASTE MANAGEMENT?**

15 A. No. DE Progress stands by its testimony in Docket No. E-2, Sub 1142. The
16 on-site landfill that was proposed by the Public Staff was, and continues to be,
17 an infeasible option. Even if there had been a change in circumstances related
18 to the feasibility of an on-site landfill capable of storing 3 million tons of ash,
19 which there has not, that would not be grounds for revisiting alternative *offsite*
20 disposal options. The Public Staff cannot have it both ways.

21 The landfill that DE Progress is currently constructing on-site at
22 Asheville is not the same 3 million ton-capacity landfill that the Public Staff
23 argued should have been pursued in Docket No. E-2, Sub 1142. To this day,

1 neither Mr. Moore nor Mr. Garrett have provided any evidence – in the form of
2 designs, plans, or otherwise – showing that their 3 million ton landfill is
3 technically or practically feasible or that it could have been constructed and
4 permitted in time to avoid offsite transportation of CCR from September 1,
5 2017 going forward. Absent that showing, there has been no material change
6 that has obviated the need for offsite disposal.

7 The design process for the new landfill confirmed that offsite disposal
8 was always going to be necessary for most of the CCR at Asheville. Due to site
9 constraints, including wetlands, property buffers, and topography, the
10 maximum capacity of the on-site landfill at Asheville currently being
11 constructed is 1.3 million tons⁶ of CCR. To even achieve that capacity, the
12 Company had to use state-of-the-art technology that has not previously been
13 used in North Carolina. See Garrett Direct Exhibit 13. This landfill will
14 account for less than one-third of the CCR that was remaining at the site as of
15 August 31, 2017. Mr. Garrett did not challenge the siting, design, or capacity
16 limitations for the new on-site landfill.

17 The Public Staff's math does not add up. Mr. Garrett misleadingly
18 conflates DE Progress' planned on-site landfill (~1 million ton capacity) with
19 the Public Staff's previously proposed on-site landfill (~3 million ton capacity)
20 to suggest that they were right all along:

21 DEP witness Kerin's rebuttal testimony...implied that the construction
22 of an onsite landfill at the Asheville site was impossible in 2015.
23 Witness Bednarcik's testimony that an onsite landfill is possible not
24 only renders the transportation costs associated with disposal at R&B

⁶ Equivalent to roughly 1.1 million cubic yards.

1 Landfill unreasonable, but provides the Commission with justification
2 to review those costs in this rate case.

3 (Garrett Direct T., at 46:12-15 (E-2, Sub 1219)). Mr. Garrett is distorting Mr.
4 Kerin's testimony.

5 Company witness Kerin never testified or implied that an on-site landfill
6 of any size was infeasible; his testimony was that constructing the 3 million ton-
7 capacity landfill proposed by Garrett & Moore was not feasible:

8 Q: What do you mean by the technical feasibility that
9 statement?

10 [Kerin]: Technically is building a landfill of the appropriate
11 size that can handle 3 million tons of ash.

12 (T. Vol. 20, at 114 (E-2, Sub 1142)).

13 The Company's ability to construct a relatively small on-site landfill at
14 Asheville after 2020 does not invalidate the Company's position that a much
15 larger onsite landfill was impossible to construct in 2015. Nor does the
16 Company's ability to store roughly one-third of the remaining CCR in an onsite
17 landfill somehow validate the Public Staff's position from Docket E-2, Sub
18 1142 that all remaining CCR should be stored in an onsite landfill. The Public
19 Staff seems to hope that the Commission will gloss over these glaring
20 discrepancies.

21 **Q. WHAT IS THE REGULATORY CONTEXT FOR THE COMPANY'S**
22 **CLOSURE STRATEGY FOR ASHEVILLE?**

23 A. As discussed in Company witness Jon Kerin's testimony in Docket E-2, Sub
24 1142, the Company has had to adjust its closure strategy due to shifting
25 regulatory deadlines and obligations under CAMA and then under the Mountain

1 Energy Act (“MEA”). Just as it did in Docket E-2, Sub 1142, the Public Staff
2 failed to consider the real-world applications of these laws.

- 3 • September 2014 - CAMA designated Asheville as a high priority site
4 and establishes a closure deadline of August 1, 2019. All CCR from the
5 1964 Ash Basin and 1982 Ash Basin was required to be excavated. At
6 the time, the Company was already excavating ash from the 1982 Ash
7 Basin and was sending that ash to the Asheville Airport. The
8 completion of ash removal from the 1982 Ash Basin and transportation
9 to the Asheville Airport represented Phase I of the Company’s
10 November 2014 Coal Ash Excavation Plan. Phase I also included
11 planning for subsequent phases, which would address the remainder of
12 the 1982 Ash Basin and the 1964 Ash Basin, as well as additional
13 production ash from the site.

- 14 • June 2015 – The Mountain Energy Act (“MEA”) is passed requiring the
15 Company to construct a combined cycle plant at Asheville by January
16 31, 2020 to replace the site’s coal-fired units. To facilitate construction
17 of the combined cycle plant, the MEA extended the closure deadline for
18 Asheville’s ash basins to August 1, 2022. While constructing the
19 combined cycle plant, the Company needed to continue operating its
20 coal-fired units at Asheville to maintain reliable electric service to its
21 western grid region. That meant that from June 2015 until January 31,
22 2020, the Company would be managing three large-scale projects at
23 Asheville on a confined piece of property:

- 1 i. Operate the coal-fired units to generate electricity for customers;
- 2 ii. Complete closure of the 1982 Ash Basin and begin excavation
- 3 of the 1964 Ash Basin; and
- 4 iii. Construct a combined cycle plant.

5 **Q. WHAT WERE THE LAND USE CONSTRAINTS THAT DICTATED**
 6 **THE COMPANY’S CLOSURE STRATEGY?**

7 A. The size of the Asheville property and its geography limited the closure options
 8 available to the Company. The Asheville property is tightly bordered to the
 9 East by Lake Julian, to the South by a residential community, to the West by
 10 Interstate 26, and to the North by other residential properties. The plant
 11 property can be divided into four quadrants as depicted below:



12 When the MEA was passed in June 2015, Quadrant 1 was vacant, Quadrant 2
 13 contained the coal-fired generation units and coal pile area, Quadrant 3
 14 contained the 1964 Ash Basin, and Quadrant 4 contained the 1982 Ash Basin.

1 The only potentially feasible location to site the combined cycle plant was in
2 Quadrant 4 (1982 Ash Basin), where excavation and closure could be
3 completed before 2017 to allow for construction of the combined cycle plant.
4 Quadrant 1 was not large enough and was needed as a lay-down yard to support
5 construction of the combined cycle unit, Quadrant 2 was occupied by the coal-
6 fired units, and Quadrant 3 contained the 1964 Ash Basin, which could not be
7 excavated, closed, and graded in time to facilitate construction of the combined
8 cycle plant by January 31, 2020. In addition, the rim ditch and basin were still
9 required to maintain operations of the coal plant.

10 As discussed by Company witness Kerin in Docket E-2, Sub 1142, the
11 site of the current landfill was evaluated and considered to be too small to meet
12 the projected capacity needs in the 2007-2011 time period and was thus not
13 further evaluated at that time. Note that seismic issues were a significant factor
14 in the design of a landfill sited over ash, as well as proximity to the French
15 Broad River. Such a design required placement of stone columns and a stone
16 mat to support the landfill during a design earthquake. Siting a landfill over
17 natural soils, such as the landfill currently being built, does not face the same
18 seismic risk and is stable under a design seismic event. An on-site landfill as
19 the sole and permanent CCR storage solution an infeasible option.

1 **Q. WAS CONSTRUCTION AND UTILIZATION OF AN ONSITE**
2 **LANDFILL OF ANY SIZE FEASIBLE BETWEEN SEPTEMBER 1, 2017**
3 **AND DECEMBER 31, 2019?**

4 A. No, which is why the Public Staff's disallowance of all offsite transportation
5 costs defies reality. To rationalize the Public Staff's disallowance, one would
6 have to assume that the Company could have created space out of thin air for
7 an onsite landfill. Until completion of the combined cycle plant, there was
8 simply no available space for an onsite landfill. Even then, a landfill with
9 sufficient capacity to store all of the ash in the 1964 Ash Basin plus the
10 additional production ash from the coal-fired units was not technically feasible
11 or safe. The infeasibility of such a landfill was addressed in Company witness
12 Kerin's direct testimony in Docket E-2, Sub 1142, and it was confirmed during
13 the planning and design of the new landfill. Therefore, offsite disposal was
14 always going to be necessary.

15 **Q. WHAT IS YOUR OPINION REGARDING THE PUBLIC STAFF'S**
16 **CALCULATION OF ITS DISALLOWANCE OF TRANSPORTATION**
17 **COSTS FOR ASHEVILLE?**

18 A. I believe that Mr. Garrett's recommended disallowance is punitive and
19 unsupportable. The Public Staff recommends a disallowance of all of the
20 Company's offsite transportation costs to transport 1,651,500 tons of ash
21 between September 1, 2017 and December 31, 2019. Implied in this
22 disallowance is that 1,651,500 tons of ash could have been disposed in an onsite
23 landfill. The Public Staff recommends this disallowance despite the fact that

1 Mr. Garrett has not demonstrated where on onsite landfill could have been
2 constructed between September 1, 2017 and December 31, 2019. The only
3 feasible location for an onsite landfill, the lay-down area, was in use through
4 the construction of the combined cycle plant. The Company could not utilize
5 space that did not exist. Therefore, the Public Staff is wrong to suggest that an
6 onsite landfill could have been constructed and put into use between September
7 1, 2017 and December 31, 2019 so as to avoid offsite transportation costs.

8 Even if the Company could have constructed an onsite landfill to receive
9 CCR during that period, Mr. Garrett's disallowance does not account for the
10 costs to construct his alternative landfill.

11 Mr. Garrett's disallowance is also flawed because it incorrectly assumes
12 that an onsite landfill could have been constructed that was capable of storing
13 the amount of ash transported between September 1, 2017 and December 31,
14 2019 (1,651,500 tons). The currently planned landfill has a maximum capacity
15 of 1.3 million tons. To even achieve that capacity, the Company will have to
16 utilize state-of-the-art landfill technology never-before used in North Carolina.
17 That leaves over 300,000 tons of ash that would have had to go elsewhere.

18 Mr. Garrett calculated his disallowance based on the erroneous
19 assumption that the 1,651,500 tons of ash could have been disposed onsite, but
20 he did not take into account the approximately 1.5 million tons of remaining
21 ash that also needs to be properly managed. However it was sequenced, ash
22 would have needed to be disposed offsite to meet CAMA's closure
23 requirements.

1 In order to achieve a punitive disallowance, the Public Staff disregarded
2 basic, indisputable facts: 1) construction of an onsite landfill was impossible
3 during the ongoing construction of the combined cycle plant, 2) Mr. Garrett
4 failed to calculate, then account for, the costs of his (infeasible) alternative, and
5 3) Mr. Garrett ignored the discrepancy between the onsite landfill's permitted
6 capacity and the total amount of CCR at the site.

7 Imposing the Public Staff's unsupportable disallowance would also
8 punish the Company for modifying its strategy to reduce costs for customers.
9 The Company built flexibility into its excavation plans by taking a phased
10 approach to closing its ash basins at Asheville. This allowed the Company to
11 consider adjusting its strategy for the third phase of the project and investigate
12 other options for the remaining CCR in the 1964 Ash Basin. The result of the
13 investigation was the Company's decision to construct an onsite landfill, which
14 will result in cost savings to customers compared to offsite disposal for the same
15 1.3 million tons of CCR. The Company has calculated those savings range from
16 \$23-30 million compared to offsite disposal.

17 But by recommending a disallowance of present-day costs that is based
18 on future cost-saving actions, the Public Staff is unfairly engaging in double-
19 dipping. If the onsite landfill, which does not avoid offsite disposal, is credited
20 against the Company in this case, then the Company should be allowed to
21 recover its unavoidable offsite disposal costs in a later case. To avoid this
22 absurd result, the Commission should reject the Public Staff's recommended
23 disallowance.

1 **Q. ARE THE PUBLIC STAFF’S CRITICISMS OF DE PROGRESS’**
2 **OFFSITE DISPOSAL STRATEGY RELEVANT TO THEIR**
3 **DISALLOWANCE PROPOSAL?**

4 A. No. The basis of the Public Staff’s disallowance appears to be that any offsite
5 disposal of CCR between September 1, 2017 and December 31, 2019 was
6 imprudent. Therefore, the Public Staff’s criticisms about DE Progress’ decision
7 to send CCR to R&B Landfill as opposed to Cliffside is irrelevant to the Public
8 Staff’s proposed disallowance.

9 **Q. DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY**
10 **SHOULD HAVE SELECTED CLIFFSIDE AS THE PRIMARY**
11 **OFFSITE DISPOSAL OPTION FOR ASHEVILLE’S CCR?**

12 A. No. During Phase 1 of the Asheville closure plan, the Company was able to
13 utilize the landfill at Cliffside to dispose a relatively small volume of ash from
14 the 1982 Ash Basin, roughly 195,000 tons. This allowed the Company to
15 remain on schedule to meet its deadline to prepare the site for construction of
16 the combined cycle plant. Cliffside, though, was not the most prudent option
17 for later phases of the Asheville excavation plan, which would be focused on
18 excavation of the 1964 Ash Basin.

19 From a financial standpoint, contracting with Waste Management to
20 send the CCR to R&B Landfill was the most prudent option. The Company
21 could not ignore that termination costs would be incurred if it chose an
22 alternative offsite location. It was not a purchase order that would cause the
23 Company to incur termination costs, as Mr. Garrett suggests. It would have

1 been DE Progress' Master Contract with Waste Management that was entered
 2 into in 2015 after an extensive open bidding process. Despite what Mr. Garrett
 3 may think, there are financial consequences for breaching contracts and those
 4 consequences must be considered if work is re-bid.

5 From a technical standpoint, the R&B Landfill provided two distinct
 6 advantages over Cliffside. First, transportation from Asheville to R&B Landfill
 7 could be accomplished on an established trucking route that is mostly via
 8 Interstate. Transporting ash to Cliffside, while a shorter distance than to R&B
 9 Landfill, included approximately 8 miles of the trip covering two-lane country
 10 roads. The impacts to the community around Cliffside resulting from the track
 11 traffic needed to dispose 1.6 million tons of ash would not have been trivial.

12 Second, the Company could preserve the Cliffside landfill's primary
 13 responsibility, which was to store CCR from Cliffside. If the Company
 14 overcommitted off-site ash to Cliffside, thereby leaving less capacity for
 15 Cliffside ash, the benefits of having an on-site landfill there would be rendered
 16 meaningless. At the time DE Progress entered into its Master Contract with
 17 Waste Management in September 2015, the Company was balancing the
 18 following factors:

- 19 • The Cliffside landfill was originally sited and designed to store
- 20 production ash from Cliffside;
- 21 • Permitting and construction of the Cliffside landfill, like most landfills
- 22 of its size, is divided into phases, with the timeline for designing,
- 23 permitting, and constructing additional landfill phases/cells ranging
- 24 from 3-4 years;
- 25 • As of September 2015, Duke Energy only had a permit to operate Phase
- 26 I of the landfill, which had a capacity of approximately 2.9 million tons;
- 27 • Duke Energy had received a permit to construct Phase II in September
- 28 2012. The Phase II capacity is approximately 2.3 million tons. Duke

- 1 Energy did not receive its permit to operate Phase II from DEQ until
2 June 2016;
- 3 • Cliffside was expected to generate an average of 500,000 tons of
4 production ash per year;
 - 5 • Duke Energy's closure plan called for approximately 600,000 tons of
6 ash from the Unit 1-4 Ash Basin and portions of the Unit 5 Ash Basin
7 to be sent to the on-site landfill. It was anticipated that the Company
8 would be allowed to cap the remaining ash from the Unit 5 ash basin in
9 place;
 - 10 • DEQ had not yet approved the Company's closure plan for the
11 remainder of the ash at Cliffside, approximately 7.6 million tons. That
12 is roughly half of the total capacity of the on-site landfill if one accounts
13 for all phases of the on-site landfill;
 - 14 • DE Progress is required to complete excavation of its ash basins at
15 Asheville by August 1, 2022.

16 While not impossible, choosing Cliffside as the location for offsite
17 storage for Asheville's CCR would have been practically and operationally
18 challenging. At the same time it was receiving a steady flow of trucks from
19 Asheville, Cliffside would be managing production ash and ash from its
20 partially excavated basins, as well as closure of those basins. This option would
21 also assume that DE Carolinas was able to get the necessary regulatory
22 approvals and permits to expand the landfill for the purpose of receiving
23 Asheville's CCR. Any substantial delay – in permitting or construction – would
24 have potentially jeopardized DE Progress' ability to meet its closure deadline
25 at Asheville. Most significantly, Mr. Garrett did not even consider the impact
26 of DE Carolinas' Agreement with DEQ on his proposal to send all of
27 Asheville's ash to Cliffside. DE Carolinas is now required to excavate all CCR
28 from its ash basins at Cliffside. By not receiving 1.6 million tons of CCR from
29 Asheville, DE Carolinas has 1.6 million tons of much-needed flexible capacity

1 in its landfill as it develops its closure strategy while at the same time needing
2 to manage future production ash from Unit 6.

3 **Q. MR. GARRETT ALLEGED THAT THE OVERALL COST PER TON**
4 **CHARGED BY WASTE MANAGEMENT FOR SENDING CCR TO**
5 **R&B LANDFILL IS EXCESSIVE. DO YOU AGREE?**

6 A. No. It appears that to calculate the overall cost per ton that Mr. Garrett deemed
7 “excessive,” he simply divided the total cost paid to Waste Management by the
8 volume of ash transported. That calculation ignores the fact that Waste
9 Management conducted other activities at Asheville related to water
10 management and operations of the rim ditch. He also states that “the costs
11 became excessive primarily as a result of the transportation cost associated with
12 the off-site disposal of ash at the R&B Landfill.” These transportation costs
13 were part of a competitive bid analysis, and Mr. Garrett provides no details as
14 to why he believes the rate to be “excessive.”

15 **C. H.F. LEE AND CAPE FEAR BENEFICIATION PROJECTS**

16 **Q. PLEASE EXPLAIN MR. MOORE’S RECOMMENDATIONS AS THEY**
17 **RELATE TO THE COMPANY’S ASH BENEFICIATION PROJECTS**
18 **AT THE H.F. LEE AND CAPE FEAR PLANTS.**

19 A. Mr. Moore recommends a disallowance of \$130,384,392, which represents the
20 costs incurred by contractor Zachry Industrial Inc. (“Zachry”) for Engineering,
21 Procurement, and Construction (“EPC”) expenses at the H.F. Lee and Cape
[REDACTED] Fear beneficiation sites. **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END]

6 **CONFIDENTIAL]** Accordingly, Mr. Moore suggests that the Company
 7 should have taken the following steps before contracting with Zachry:

8 1) Upon receiving the estimate from Zachry, the Company
 9 should have sent the construction contract out for bid again to a
 10 broader group of companies;

11 2) instead of contracting with a single company to construct all
 12 three STAR facilities, the Company could have entered into
 13 three separate contracts for the construction of one STAR
 14 facility each, which he alleges would have been cheaper;

15 3) before entering into the construction contract with Zachry, the
 16 Company should have sought statutory relief from the CAMA
 17 Amendment's beneficitation requirements from the General
 18 Assembly; and

19 4) upon receiving the estimate from Zachry and learning that the
 20 estimated cost of the beneficitation projects would be far higher
 21 than originally estimated, the Company should have sought
 22 guidance from the regulator, DEQ, as to whether some waiver
 23 or compromise would be possible, and what the consequences
 24 would be if it did not comply with the beneficitation requirements
 25 of the CAMA Amendment.

26 As I detail below, Mr. Moore's recommended disallowance should be
 27 rejected, as the Company's choice of Zachry as the EPC subcontractor was
 28 reasonable, prudent, and supported by law.

1 **Q. CAN YOU EXPLAIN WHY IT IS UNREASONABLE FOR MR. MOORE**
2 **TO COMPARE THE CONSTRUCTION ESTIMATE INCLUDED IN**
3 **SEFA'S RFI RESPONSE TO THOSE INCLUDED IN ZACHRY'S EPC**
4 **CONTRACT?**

5 A. Yes. First, the purpose of an RFI is to collect general written information about
6 the capabilities of various contractors in an effort to screen contractors and help
7 the Company decide on what steps to take next about a potential project. From
8 the contractor's standpoint, the purpose of an RFI is also to help prepare the
9 contractor to submit a formal Request for Proposal and develop an appropriate
10 strategy to do so. Accordingly, the RFI promulgated by the Company in August
11 of 2016 for technologies that would be able to beneficiate ponded ash for the
12 concrete industry requested general information regarding ash beneficiation,
13 was not site-specific, and did not identify the scope of the beneficiation projects
14 to be completed – in large part because the Company was still developing the
15 project's precise scope and determining the locations for beneficiation.

[BEGIN CONFIDENTIAL]

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[END CONFIDENTIAL] In short, the Company's RFI did not ask responding contractors for any site-specific estimate of the EPC costs to be incurred for the beneficiation sites, nor did it provide project details that would be necessary to calculate such an estimate. Notwithstanding the lack of details required to prepare an EPC estimate, SEFA's RFI response proposed that the Company engage H&M Architects and Engineers ("H&M") to perform the EPC work and provided a cost estimate for that work based on the costs it (and H&M) incurred to construct the Winyah STAR Facility in South Carolina.

N.C. House Bill 630 § 130A-309.216 required the Company to execute a binding agreement for the installation and operation of ash beneficiation projects by January 1, 2017. [BEGIN CONFIDENTIAL]

1 [REDACTED]
2 [REDACTED]. [END CONFIDENTIAL]

3 Q. DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY
4 SHOULD HAVE SIGNED AN EPC CONTRACT WITH SEFA FOR THE
5 CONSTRUCTION OF THE BENEFICIATION SITES, BASED UPON
6 THE INITIAL CONSTRUCTION ESTIMATE PROVIDED BY H&M IN
7 THE RFI RESPONSE?

8 A. No. [BEGIN CONFIDENTIAL] [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] [END
20 CONFIDENTIAL]

1 **Q. HOW DID THE COMPANY PROCEED AFTER H&M TURNED DOWN**
2 **THE COMPANY’S BENEFICIATION WORK?**

3 A. Once H&M informed the Company that it was not interested in the construction
4 of these beneficiation sites, the Company moved forward with issuing an RFP
5 to other EPC contractors. In January 2017, the Company sent out an RFP for
6 the balance of plant engineering and construction. Because the detailed
7 engineering had not begun and one of the three locations had not been selected,
8 the RFP evaluation was based upon labor and equipment *rates*, not on overall
9 estimated construction costs. Ultimately, the Company selected Zachry based
10 upon its stated rates and *not* on any overall estimated contract price. In fact,
11 after the Company selected Zachry as the EPC contractor in February 2017, the
12 Company’s internal estimating group worked with Zachry to develop an
13 estimated overall cost, which was the amount included in the Zachry Master
14 Contract 21281, dated November 3, 2017. See Bednarcik Rebuttal Exhibit 6
15 for a copy of the confidential Master Contract between Zachry and DE Progress.

16 **Q. HOW DO YOU RESPOND TO MR. MOORE’S COMPARISON OF THE**
17 **EPC COSTS AT H.F. LEE AND CAPE FEAR TO THOSE INCURRED**
18 **TO CONSTRUCT THE WINYAH BENEFICIATION UNIT?**

19 A. Mr. Moore attempts to support his argument that the H.F. Lee and Cape Fear
20 beneficiation EPC costs are unreasonable by comparing the costs incurred at
21 H.F. Lee and Cape Fear to his understanding of the capital costs for SEFA’s

1 beneficiation unit at Winyah Station in South Carolina.⁷ However, the Winyah
2 plant and the beneficiation units SEFA constructed for the Company have a
3 number of key differences that render cost comparisons between the two
4 facilities of little use. First, the Winyah plant was designed to produce 250,000
5 tons of ash product per year (a 120 MMBtu facility) under normal operations,⁸
6 while the H.F. Lee and Cape Fear beneficiation units must produce 300,000
7 tons of ash product per year (140 MMBtu facilities) to meet the requirements
8 of CAMA. CAMA's output requirement necessitated installation of a second
9 external heat exchanger at H.F. Lee and Cape Fear along with all associated
10 equipment. In addition, as originally designed, the Winyah facility was
11 intended to process 67% ponded ash and 33% production ash. In 2019, 80% of
12 the ash processed at Winyah was ponded ash. Ash processed at the Company's
13 plants, on the other hand, is 100 percent ponded ash and required the addition
14 of a grinding circuit to meet American Society for Testing Materials ("ASTM")
15 standards for concrete. The facilities also differ in the type of scrubbers each
16 utilizes. Winyah has a wet scrubber, while H.F. Lee and Cape Fear are
17 equipped with dry scrubbers, which require a second bag house with additional
18 induced draft fans. Finally, the Winyah STAR facility was a
19 refurbishment/addition to an existing carbon burn-out facility and SEFA was

⁷ Mr. Moore suggests that SEFA expended only \$40 million on capital costs for the Winyah Station. From what I can tell, however, his cost analysis is based on a single 2013 article from Waste 360 that neither provides a source for this number, nor gives any specificity as to what costs were included/excluded in the \$40 million number.

⁸ See Bednarcik Rebuttal Exhibit 8, Affidavit of William R. Fedorka. Following modifications to the dryer systems at Winyah, the current design parameters for normal operations have increased to 275,000 tons per year of beneficiated ash. *Id.*

1 able to reuse a significant part of the carbon burn-out facility when constructing
 2 Winyah's STAR unit. The Company's facilities are new construction. The
 3 reuse of existing infrastructure lowered the overall cost of construction of the
 4 Winyah STAR.⁹

5 In short, there is little to no instructive value in comparing construction
 6 costs for the beneficiation units at Winyah, H.F. Lee, and Cape Fear given the
 7 significant, fundamental differences between the facilities.

8 **Q. HOW DO YOU RESPOND TO MR. MOORE'S CRITICISMS OF YOUR**
 9 **TESTIMONY IN THE DE CAROLINAS REGARDING COMPARISON**
 10 **TO THE WINYAH FACILITY?**

11 A. Mr. Moore points out a number of items from my testimony regarding the
 12 Winyah facility that he wrongly believes to be inaccurate. First, he suggests
 13 that the SEFA facility was designed to produce 350,000 tons of STAR ash per
 14 year based on a statement from SEFA's response to Duke Energy's RFI. In
 15 fact, however, SEFA Vice President William Fedorka has provided a sworn
 16 affidavit in this case confirming that the Winyah facility was only designed to
 17 produce 250,000 tons of ash.¹⁰ Mr. Moore's claim that the Winyah facility
 18 routinely operates using 100% ponded ash is likewise untrue. Instead, Mr.
 19 Fedorka confirms that the Winyah plant operates on 67% ponded ash and 33%
 20 production ash.¹¹ Finally, Mr. Moore suggests I was incorrect to state that the

⁹ *Id.*

¹⁰ In my DE Carolinas' testimony, I originally stated that the Winyah facility was designed to process 200,000 tons of ash per year. However, I am filing a correction to that testimony contemporaneously to my testimony.

¹¹ In my DE Carolinas testimony, I approximated these numbers as 70% ponded ash and 30% production ash. However, I am clarifying that number in a correction being filed contemporaneously therewith.

1 Winyah facility was a refurbishment of an existing building and contends that
2 the previous building was demolished before construction began on the Winyah
3 STAR. While it is true that a portion of the facility was taken down, significant
4 infrastructure from the previous facility unrelated to the beneficiation
5 technology was retained and reused in the Winyah STAR. Retained
6 infrastructure included a storage dome, a load out silo, truck load outs, a
7 baghouse, ID fan, gas coolers, control room and elements of electrical
8 equipment.¹²

9 **Q. MR. MOORE CONTENDS THAT COSTS FOR A SECOND**
10 **EXTERNAL HEAT EXCHANGER, DRY SCRUBBERS, AND SECOND**
11 **BAG HOUSE WERE INCLUDED IN ZACHRY'S OVERALL**
12 **ESTIMATED CONTRACT COST. DO YOU AGREE?**

13 A. Yes. Zachry's overall estimated contract cost, which was developed after the
14 Company's internal estimating group worked with Zachry to develop the
15 technical specifications and a more detailed scope, did include costs for a
16 second external heat exchanger, dry scrubbers and a second bag
17 house. However, I would like to point out that while the SEFA and H&M
18 estimate provided in the RFI did have allowance values for the second heat
19 exchanger, grinding circuit and a *wet* scrubber, a comparison of the Zachry
20 estimated costs for only these items – excluding the scrubber – of \$21.33M
21 (reference response to DEC PS DR 231-19 included as Bednarcik Rebuttal
22 Exhibit 7) to the overall construction screening estimate (\$50.8M) helps to

¹² *Id.*

1 show the discrepancy between a screening estimate and costs based upon
2 detailed engineering.

3 **Q. DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY**
4 **SHOULD HAVE SENT AN ADDITIONAL BID TO A BROADER**
5 **GROUP OF SUBCONTRACTORS AFTER RECEIVING ZACHRY'S**
6 **BID?**

7 A. No. Due to the size and scope of the beneficitation projects as well as the
8 deadlines required under CAMA, the Company wished to contract with a
9 familiar contractor upon which it knew it could depend based on past
10 engagements. [BEGIN CONFIDENTIAL] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [END
15 CONFIDENTIAL]

16 In addition, as recognized in the Commission's *Order Requesting*
17 *Additional Information* dated November 9, 2018 in Docket Nos. E-2, Sub 1142
18 and E-7, Sub 1146, the Company has a long history and policy of supporting
19 local suppliers. Therefore, the Company also chose to target contractors with a
20 North Carolina presence like Zachry, which maintains an industrial and power
21 office in Charlotte. It is also worth noting that it is now the defined policy of
22 the state of North Carolina for utilities to maximize the use of resident

1 contractors for utility projects undertaken in the State of North Carolina, as
2 stated in new NCUC Rule R25-1(a).

3 Q. DO YOU AGREE WITH MR. MOORE'S ARGUMENT THAT THE H.F.
4 LEE AND CAPE FEAR EPC COSTS WOULD HAVE BEEN LOWER IF
5 THE COMPANY HAD CONTRACTED WITH THREE SEPARATE
6 CONTRACTORS FOR EACH BENEFICIATION PROJECT?

7 A. No. As an initial matter, Mr. Moore provides no support for this argument, and
8 the Commission should therefore dismiss it. Further, there is no certainty that
9 SEFA would have been able to support three separate EPC subcontractors at
10 once, particularly in light of its smaller size.

11 More importantly, Mr. Moore ignores the fact that by contracting with
12 Zachry, the Company was able to realize extensive cost savings through
economies of scale. [BEGIN CONFIDENTIAL]

[illegible]

1 savings for customers for the Company to contract with a single contractor for
2 all three sites.

3 **Q. HOW DO YOU RESPOND TO MR. MOORE’S ARGUMENT THAT**
4 **THE COMPANY SHOULD HAVE SOUGHT STATUTORY RELIEF**
5 **FROM CAMA’S BENEFICIATION REQUIREMENTS?**

6 A. I disagree. If the Company had sought statutory relief from the General
7 Assembly, there would have been no guarantee that the General Assembly
8 would have actually granted such relief. Moreover, even if the General
9 Assembly were inclined to grant such relief, there would have been the risk of
10 the original CAMA deadline being realized before such a bill could be drafted,
11 vetted, and passed.

12 Moreover, although I am not an attorney, the relevant CAMA section
13 requiring beneficiation, N.C.G.S. § 130A-309.216, makes no mention of the
14 word “cost.” In fact, N.C.G.S. § 130A-309.211(c1) is the only section within
15 CAMA I have found that provides alternative means if an action is “cost-
16 prohibitive.” It is therefore reasonable to conclude that the General Assembly
17 did not intend for the costs of beneficiation to be considered in requiring the
18 Company’s environmental compliance.

19 Finally, Mr. Moore’s comparison to the North Carolina utilities’ receipt
20 of statutory relief in the context of the Renewable Energy and Portfolio
21 Standards under N.C.G.S. § 62-133.8(i)(2) is misplaced. In that case, the
22 General Assembly granted the utilities relief from achieving an environmental
23 *mandate* of buying renewable energy *from a specific resource that was*

1 *unavailable in the initially enacted statute.* In this case, the Company would be
 2 asking the General Assembly for relief from an environmental regulation
 3 requiring the cleanup of areas identified by the General Assembly as posing
 4 risks to groundwater via an amendment to CAMA. It is my opinion that it
 5 would be unreasonable to establish precedent in this state where utilities are
 6 granted “relief” from adhering to environmental regulations meant to address
 7 identified risks on the basis of costs where such statutes do not already
 8 specifically contemplate costs.

9 **Q. MR. MOORE ALSO ARGUES THAT THE COMPANY SHOULD HAVE**
 10 **SOUGHT GUIDANCE FROM DEQ UPON LEARNING OF ZACHRY’S**
 11 **ESTIMATED EPC COSTS. HOW DO YOU RESPOND?**

12 A. I disagree. As an initial matter, DEQ is responsible for enforcing the State’s
 13 environmental laws irrespective of an entity’s cost of compliance. While the
 14 Company often works with DEQ on its own initiative and as required by law
 15 regarding compliance, it would be outside of DEQ’s purview to consider costs.
 16 Indeed, there are no cost considerations in the beneficitation provisions of
 17 CAMA and it would therefore be inappropriate for DEQ to make such
 18 considerations as part of its enforcement. **[BEGIN CONFIDENTIAL]**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

23 [REDACTED] **[END CONFIDENTIAL]**

1 Therefore, even assuming the Company were to “seek guidance” from
2 DEQ, the Company would have no argument supporting why the beneficiation
3 project should be modified based on the cost estimates included in the Zachry
4 EPC contract.

5 As Mr. Moore did not detail what “waiver or compromise” he believes
6 would have been possible to obtain from DEQ and under what authority, I can
7 only assume he was referencing N.C.G.S. § 130A-309.215 Variance Request
8 within CAMA. However, as I have already explained, DEQ has the authority
9 to grant variances to deadlines *only* when “compliance with the deadline cannot
10 be achieved by application of best available technology found to be
11 economically reasonable at the time and would produce serious hardships
12 without equal or greater benefits to the public.” Because the Company believed
13 it could meet the existing deadline through application of the best available
14 technology and without serious hardship, it did not believe it had strong grounds
15 upon which to request a variance.

16 **Q. ARE THE COMPANY’S EPC COSTS PAID TO ZACHRY FOR THE**
17 **H.F. LEE AND CAPE FEAR BENEFICIATION PROJECT**
18 **REASONABLE AND PRUDENT?**

19 A. Yes. Given the scope, novelty, and difficulty of the project, the regulatory
20 requirements, and for all of the reasons already articulated in my testimony, the
21 EPC costs paid to Zachry were reasonable and prudent. Moreover, there are
22 major differences in the scope and requirements of the Winyah STAR Facility
23 project and the H.F. Lee and Cape Fear beneficiation project. These differences

1 explain the difference between the initial estimate provided in the RFI and the
2 actual EPC costs and support the Zachry EPC contract as reasonable.

3 **D. EXTRACTION WELLS AT ASHEVILLE AND SUTTON; LAND**
4 **PURCHASES AT MAYO**

5 **Q. WHAT COSTS ARE THE COMPANY PRESENTLY SEEKING TO**
6 **RECOVER RELATED TO ITS EXTRACTION WELL SYSTEM AND**
7 **RELATED LAND PURCHASES?**

8 A. Mr. Lucas suggests that the Commission disallow the Company's incurred
9 expenses for groundwater extraction and treatment at the Asheville, H.F. Lee,
10 and Sutton Plants as well as the cost of land purchases at the Asheville, H.F.
11 Lee, and the Mayo plants. To the contrary, however, the Commission addressed
12 the majority of these expenses in the Company's 2017 rate case. In this case,
13 the Company is only seeking recovery for extraction well costs incurred at
14 Asheville and Sutton and land purchases at Mayo in this proceeding. In total,
15 the Company has incurred \$1,240,328 related to its extraction well system at
16 Asheville and Sutton and its land purchase to mitigate groundwater risks at
17 Mayo.

18 **Q. DID THE COMMISSION ADDRESS THE COMPANY'S RECOVERY**
19 **OF COSTS ASSOCIATED WITH EXTRACTION WELLS AND**
20 **GROUNDWATER TREATMENT IN ITS 2017 ORDER¹³?**

21 A. Yes. In 2017, through the nearly identical testimony of Mr. Lucas, the Public
22 Staff recommended that the Commission disallow recovery of the cost of

¹³ *Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction*, Docket No. E-7, Sub 1146 (June 22, 2018) ("2017 Order")

1 extraction wells and groundwater treatment. The Commission rightly rejected
2 the proposed disallowance, finding that the Company's CCR expenses,
3 including those related to the Asheville and Sutton extraction wells, were
4 reasonably and prudently incurred.

5 **Q DID THE COMMISSION ADDRESS THE COMPANY'S RECOVERY**
6 **OF COSTS ASSOCIATED WITH LAND PURCHASES TO MITIGATE**
7 **GROUNDWATER RISKS IN ITS 2017 ORDER?**

8 A. Yes. In the 2017 case, the Company sought recovery of land acquisition costs
9 at Cape Fear and H.F. Lee. The Public Staff did not argue for a disallowance
10 of those costs and, accordingly, the costs were approved by the Commission.

11 **Q. WHAT IS YOUR RESPONSE TO MR. LUCAS'S CONTENTION THAT**
12 **THE COST OF EXTRACTION WELLS AND GROUNDWATER**
13 **TREATMENT AT ASHEVILLE AND SUTTON SHOULD BE**
14 **DISALLOWED?**

15 A. The premise of Mr. Lucas' argument for disallowance of these costs, that the
16 Company should not be allowed recovery because these costs would not have
17 been necessary under CAMA without violations of the state's groundwater
18 standard, is incorrect. Because the measures undertaken at the DEP sites were
19 reflected in the Sutton Settlement Agreement, they were moved up in time from
20 when they would have otherwise been required, but DE Progress would have
21 installed extraction wells to comply with CAMA even without the Sutton
22 Settlement Agreement.

1 As Mr. Lucas acknowledges in his testimony, the Commission directly
2 addressed the Sutton Settlement Agreement in its 2017 Order, stating that it
3 “declines to find that [the Sutton Settlement Agreement] evidences violation of
4 environmental obligations” and that “there is insufficient evidence that [DE
5 Progress] would have had to engage in any groundwater extraction and
6 treatment activities absent the obligations imposed upon it by CAMA and/or
7 the CCR Rule.”¹⁴ Importantly, the Commission found that “the assertion that
8 DE Progress’ ‘violations’ resulted in the [Sutton Settlement Agreement] and in
9 groundwater extraction and treatment costs that would not otherwise have been
10 incurred is incorrect and not supported by the evidence.”¹⁵

11 In the face of this clear directive from the 2017 Order, Mr. Lucas asks
12 this Commission to “take a fresh look” at the extraction well costs. In
13 particular, Mr. Lucas points to the fact that groundwater exceedances measured
14 at Asheville, H.F. Lee, Mayo, and Sutton have increased from 2017 to today—
15 725 to 1,685 measured exceedances at Asheville; 250 to 1402 measured
16 exceedances at H.F. Lee, 0 to 328 measured exceedances at Mayo, and 723 to
17 1,778 measured exceedances at Sutton. Mr. Lucas’s reliance on these numbers,
18 however, is indicative of a basic misunderstanding of the 2L
19 exceedance/violation process. An increase in measured exceedances does *not*,
20 as Mr. Lucas contends, suggest an increase in groundwater contamination in
21 and around these DEP plants. Rather, because it is impossible to flip a switch
22 and reverse the existence of exceedances, the increased number simply

¹⁴ 2017 DE Progress Order at 297, 300.

¹⁵ *Id.* at 300.

1 indicates that sampling is ongoing at both pre-existing and new wells while the
2 Company engages in preparing and implementing a corrective action plan in
3 cooperation with DEQ and as required under CAMA. In this way, an increased
4 number of exceedances is not unexpected while the Company works with DEQ
5 toward corrective action. This concept is discussed further in the testimony of
6 Company witness Wells, and I agree with his analysis.

7 **E. PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**
8 **TREATMENT SYSTEMS**

9 **Q. WHAT IS YOUR RESPONSE TO WITNESS LUCAS'S CONTENTION**
10 **THAT THE COSTS THE COMPANY INCURRED TO INSTALL**
11 **PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**
12 **TREATMENT SYSTEMS SHOULD BE DISALLOWED?**

13 A. DE Progress' efforts with respect to installation of permanent alternative water
14 supplies and water treatment systems were undertaken to comply with
15 applicable law. In particular, N.C.G.S. § 130A-309.211(c1) obligated the
16 Company to establish permanent replacement water supplies for each
17 household that has a drinking water supply well located within a one-half mile
18 radius from the established compliance boundary of a CCR impoundment and
19 is not separated from the impoundment by a river. The statute goes on to
20 provide that the requisite replacement water supply can be achieved either
21 through connection to public water supplies or, in certain circumstances,
22 through installation of a filtration system at the household. The requirement
23 exists even absent the existence of a 2L exceedance for qualifying households
24 and also applies to households outside the half-mile radius where such

1 exceedances were identified. Through its efforts, DE Progress complied with
2 the letter of the law.

3 In this case, as witness Lucas acknowledges, the Company is not
4 seeking to recover the costs it voluntarily incurred to connect uncovered
5 properties to alternative water supplies that were not subject to the requirements
6 of CAMA. Instead, the Company simply seeks recovery of the costs it incurred
7 pursuant to the statute.

8 **Q. DID THE COMMISSION ADDRESS THE COMPANY’S RECOVERY**
9 **OF COSTS ASSOCIATED WITH ALTERNATIVE WATER SUPPLIES**
10 **AND WATER TREATMENT IN ITS 2017 ORDER?**

11 A. Yes. Although the Commission did not directly comment on the Public Staff’s
12 position in its 2017 Order, the Commission rightly rejected the proposed
13 disallowance, finding that the Company’s CCR expenses, including those
14 related to providing permanent alternative water supplies, were reasonably and
15 prudently incurred.

16 **Q. WHAT IS YOUR RESPONSE TO WITNESS LUCAS’S CONTENTION**
17 **THAT THE COSTS THE COMPANY INCURRED TO INSTALL**
18 **PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**
19 **TREATMENT SYSTEMS SHOULD BE DISALLOWED?**

20 A. Witness Lucas argues that the permanent alternative water supply expenses are
21 analogous to the costs the Company incurred to provide temporary bottled water
22 supplies to customers and should, therefore, be disallowed. However, the
23 Commission had the opportunity to deny recovery of these costs on such

1 grounds in the last case but declined to do so. Consistent with that decision, the
2 Company has not sought recovery for bottled water expenses in this case, as
3 Mr. Lucas acknowledges, but the Commission majority's decision to grant
4 recovery of alternative water supplies and treatment expenses in 2017 reflects
5 that the expenses were incurred to comply with the law and are equally
6 appropriate for recovery in the instant case.

7 **Q. WHAT IS YOUR RESPONSE TO WITNESS HART'S CONTENTION**
8 **THAT THE REQUIREMENTS SET FORTH IN SECTION N.C.G.S. §**
9 **130A-309.211(c1) WERE LIKELY ENACTED IN RESPONSE TO THE**
10 **COMPANY'S "DELAY IN ADDRESSING GROUNDWATER**
11 **IMPACTS"?**

12 A. To the extent witness Hart is suggesting that the actions or inactions of DE
13 Progress were the root cause of CAMA, history demonstrates that the
14 environmental regulatory regime is an ever-evolving body of law, and it would
15 be impossible to connect CAMA or any of its provisions to any singular
16 underlying act. Subsection (c1) was enacted as an amendment to CAMA in
17 July 2016, less than two years after the General Assembly passed the original
18 law. Because CAMA contains detailed provisions outlining how and when the
19 Company may undertake corrective action, including by addressing any
20 groundwater impacts, and requires that any such action must first be subject to
21 the review and approval of DEQ, it is nonsensical to suggest that the Company
22 delayed taking action following the passage of CAMA. This issue is addressed
23 in more detail by Company witness Wells and was extensively discussed by

1 witnesses Kerin and Wells in the 2017 case, and I agree with all of those
2 arguments.

3 **IV. RESPONSE TO THE PUBLIC STAFF'S PURPORTED "EQUITABLE**
4 **SHARING" DISALLOWANCE**

5 **Q. WHAT IS YOUR UNDERSTANDING OF THE PUBLIC STAFF'S**
6 **RECOMMENDED "EQUITABLE SHARING" DISALLOWANCE?**

7 A. As discussed in detail by Company witness Smith, the Public Staff's "equitable
8 sharing" recommendation amounts to a wholesale 50% disallowance of the
9 CCR-related costs for which DE Progress requests recovery in this case. Unlike
10 the specific disallowances discussed in Section III of my testimony, the Public
11 Staff's "equitable sharing" proposal is not tied to any finding of
12 unreasonableness or imprudence on behalf of the Company. In fact, Mr. Lucas
13 admits in his testimony that it would be impossible to conduct a prudence
14 analysis on the Company's historical CCR-related activities.

15 Instead, the Public Staff cites two purported justifications for its
16 equitable sharing approach. First, Mr. Lucas alleges that DE Progress is
17 culpable for environmental degradation that now requires expensive
18 remediation, the costs of which should be shared between the Company and its
19 customers. Second, Public Staff witness Maness argues that even in the absence
20 of evidence of environmental culpability, the Public Staff would recommend
21 equitable sharing due to the enormity of the costs. Company witnesses Smith
22 and Steven Fetter will address the latter justification. My testimony will focus
23 on rebutting Mr. Lucas's contention that DE Progress is "culpable" for the
24 CCR-related costs that the Company has incurred to comply with applicable

1 laws – including the CCR Rule and CAMA as well as regulations promulgated
2 by the South Carolina Department of Health and Environmental Control
3 (“SCDHEC”) – in light of available historical knowledge and industry
4 standards. Company witnesses Marcia Williams and Jim Wells will provide
5 greater detail regarding the history of CCR regulations and applicable laws and
6 standards, and I agree with the positions taken by those witnesses.

7 **Q. DO YOU HAVE A GENERAL RESPONSE TO MR. LUCAS’S**
8 **CONTENTION THAT 50% OF THE COMPANY’S CCR EXPENSES**
9 **SHOULD BE DISALLOWED BECAUSE THE COMPANY IS**
10 **“CULPABLE” FOR THE COSTS IT HAS INCURRED IN CCR**
11 **COMPLIANCE COSTS?**

12 A. Yes. As I briefly mentioned in the introduction to my rebuttal testimony, the
13 Commission has now rejected the Public Staff’s equitable sharing proposal
14 three times in the last two years. Indeed, the Commission correctly identified
15 the proposal as “not based on an applicable standard” in the 2017 DEP Order.¹⁶
16 Turning to Mr. Lucas’s contention in 2017 that the Company’s historical
17 actions with respect to CCR storage were “culpable,” the Commission further
18 noted that “a ‘determining principle’ or prudence standard is missing from the
19 Public Staff’s 50/50 ‘equitable sharing’ proposal... As such, were the
20 Commission to adopt it, the Commission very well could be found to be acting
21 arbitrarily and capriciously, and subject itself to reversal.”¹⁷ In other words,
22 after days and days of CCR testimony in the 2017 case, neither the Public Staff

¹⁶ 2017 Order at 189.

¹⁷ *Id.*

1 nor any intervenor was able to quantify any discrete cost throughout the
2 Company's considerable history managing CCR that was deemed to be
3 imprudent or connected to an imprudent action. The same is true in this case.

4 **Q. WHAT IS YOUR RESPONSE TO THE CONTENTION OF MR. LUCAS,**
5 **MR. HART, AND MR. QUARLES THAT THE COMPANY'S CCR**
6 **HANDLING PRACTICES LAGGED BEHIND INDUSTRY**
7 **STANDARDS?**

8 A. I disagree with Mr. Lucas and the other witnesses and believe that DE Progress'
9 coal ash management practices were and continue to be consistent with industry
10 standards at the time.

11 In an apparent attempt to cast doubt over DE Progress' use of unlined
12 basins, Mr. Lucas, Mr. Hart, and Mr. Quarles cite a small handful of papers
13 published between 1967 and 1985 which discuss potential issues associated
14 with coal ash disposal and the importance of developing and implementing
15 appropriate controls. Company witnesses Williams and Wells will more
16 thoroughly address the findings of these publications, but, together, the
17 publications do not provide sufficient, if any, conclusions or certainty to prompt
18 a utility to undertake the costly effort of changing its storage practices. For
19 example, Mr. Lucas cites statistics on the use of lined surface impoundments
20 and landfills for new construction contained in the 1988 EPA Report. This
21 report shows increases in the percentages of *new* landfills and surface
22 impoundments that were lined. However, DE Progress last constructed a new
23 ash basin in 1985. In addition, Mr. Lucas's assertion fails to account for site-

1 specific conditions, which, as EPA explains in the preamble to the CCR Rule
2 and guidance, is an essential consideration when making CCR unit-specific
3 determinations. Mr. Lucas likewise presents no credible evidence to show that
4 DE Progress' engineering and design of its impoundments was not consistent
5 with industry practice and regulatory requirements at the time other than Mr.
6 Lucas's subjective allegations.

7 Finally, the conclusions Mr. Lucas and other intervenors make on this
8 point were viewed through the filter of a 21st century lens when no such clarity
9 existed in real time.

10 **Q. HOW DO THE COMPANY'S HISTORICAL CCR PRACTICES**
11 **COMPARE TO THE PRACTICES OF SIMILARLY SITUATED**
12 **UTILITIES IN NEIGHBORING STATES?**

13 A. Based upon a review of the materials and report prepared by Geosyntec
14 Consultants of NC, P.C. and presented by Company witness Rudy Bonaparte,
15 analyzing coal-fired power plants in South Carolina, Virginia and Georgia, it
16 appears that of the 63 CCR impoundments identified in the reports, only six had
17 liners. Of the 58 CCR impoundments that were constructed in or before 1985,
18 the year that the last of DE Progress's ash basins was constructed at Cape Fear,
19 only two basins are reported as having liners, one of which was installed due
20 to site specific conditions (located in karst terrain). The other basin's liner was
21 installed in 1985; that location also installed a liner for a gypsum pond during
22 the same year. Through this assessment, DE Carolina's practices were similar
23 to our neighboring states.

1 **Q. BASED ON YOUR REVIEW OF THE DOCUMENTS PRESENTED BY**
2 **THE PUBLIC STAFF AND OTHER INTERVENORS, DO YOU**
3 **BELIEVE THAT DE PROGRESS SHOULD HAVE BUILT NEW LINED**
4 **IMPOUNDMENTS AS OPPOSED TO EXPANDING EXISTING**
5 **UNLINED IMPOUNDMENTS?**

6 A. No. The construction of new lined impoundments would have entailed
7 significant expense to the Company, while not removing the need to maintain
8 the existing unlined impoundments. Even if the Company had built new lined
9 impoundments, it would still have had the old unlined impoundments to manage
10 and would thus have ended up with double the sites to manage. This is aside
11 from the fact that such action would have been taken before it was consistent
12 with industry standards to do so and would have put the Company at risk of
13 disallowance of those costs.

14 **Q. DO YOU BELIEVE THE COSTS TO BUILD NEW LINED**
15 **IMPOUNDMENTS TO RETIRE EXISTING CCR IMPOUNDMENTS**
16 **WOULD HAVE BEEN RECOVERABLE IN RATES BEFORE THE**
17 **ENACTMENT OF THE CCR RULE AND/OR CAMA?**

18 A. No. Before the promulgation of the CCR Rule and/or the enactment of CAMA,
19 there was no reasonable or prudent justification for the Company to change its
20 operation with respect to CCR impoundments. The Company's operation of its
21 various CCR impoundments was consistent with existing federal and state
22 (including North Carolina and South Carolina) law, and no federal or state
23 regulator or intervenor suggested that the Company should change its historical

1 practices during those previous cases. In the absence of any such authority, I,
2 as a witness for the Company, would have had no basis upon which to advocate
3 for recovery of costs.

4 Indeed, the Public Staff and each of the intervenors offering testimony
5 regarding CCR costs in this proceeding seem to implicitly acknowledge this
6 challenge as none have been able to propose a concrete alternate course the
7 Company should have taken.

8 **Q. DO YOU BELIEVE THE COMPANY HAD SUFFICIENT CERTAINTY**
9 **REGARDING APPROPRIATE REGULATORY STANDARDS TO**
10 **UNDERTAKE ASH BASIN CLOSURE PRIOR TO 2015?**

11 A. No. Before the promulgation of the CCR Rule and CAMA and, in South
12 Carolina, the Company's entrance into settlement agreements with the
13 SCDHEC and various environmental groups regarding closure of CCR
14 impoundments – all of which set forth clear procedures for the Company, in
15 concert with its regulators, to follow to develop and implement closure plans
16 for each of its CCR impoundments – there was little certainty in the regulatory
17 landscape regarding basin closure. Before 2015, no law or regulation mandated
18 closure or excavation of CCR impoundments and there was no guidance from
19 regulators regarding how or when the Company should undertake such an
20 effort. In the absence of any such authority, I, as a witness for the Company,
21 would have had no basis upon which to testify that CCR removal was a prudent
22 step for the Company to take, let alone to advocate for recovery of associated
23 costs.

V. RESPONSE TO AGO WITNESS HART

**Q. WHAT IS YOUR UNDERSTANDING OF THE AGO'S
RECOMMENDED DISALLOWANCE?**

A. AGO witness Hart has not recommended any concrete disallowance. Instead, he simply contends that the CCR closure costs for which DE Progress is seeking recovery in rates “would have been reduced by somewhere between \$218 million to \$291 million” had the Company undertaken to close its ash basins in 1992, 1996, and/or 2009. To arrive at this conclusion, witness Hart discounted the actual system closure expenditures set forth in and supported by my direct testimony in three ways. First, like Mr. Lucas, Mr. Hart removed the costs to install permanent water supplies, which were required by statute, as well as the Charah fulfillment fee. Second, he excluded all closure costs related to basins that had been taken out of service “long ago.” Last, he purportedly adjusted the remaining, non-excluded costs for the “time value of money” assuming closure activities had been conducted at three different points between 1992 and 2009. In doing so, he assumed that the Company’s current closure activities “are similar to the activities that would have been conducted at an earlier time.”

In sum, his conclusion – which covers a span of more than \$80 million – fails to provide the Commission with any tangible recommendation for a reduction in the Company’s cost recovery.

1 **Q. HOW DO YOU RESPOND TO WITNESS HART’S POSITION THAT**
2 **CLOSURE COSTS FOR BASINS THAT WERE “TAKEN OUT OF**
3 **SERVICE LONG AGO” SHOULD NOT BE RECOVERABLE TODAY?**

4 A. Mr. Hart’s wholesale disregard for closure costs at previously retired basins
5 ignores the regulatory landscape in place at the time of those closures through
6 the enactment of the CCR Rule and CAMA. As I have already explained, the
7 Company’s maintenance and handling of its CCR basins, including retired
8 basins, has always been in compliance with existing state and federal laws and
9 guided by the input of the Company’s regulators. Before the enactment of the
10 CCR Rule and CAMA, there was no regulatory guidance suggesting, let alone
11 mandating, that retired basins should be permanently closed or otherwise
12 setting forth applicable standards for such closure. In fact, as recently as July
13 2009, the Company sought guidance from DEQ regarding what to do with its
14 inactive basins and requirements for closure. *See* Bednarcik Rebuttal Exhibit
15 9. According to the Company’s notes, DEQ instructed that there was no need
16 for DE Progress to initiate closure of the inactive ponds absent known
17 groundwater or surface water issues, and that guidance on closure requirements
18 would be forthcoming at some unspecified date in the future.

19 Even if Mr. Hart could somehow support a disallowance based on the
20 date of basin closure, the methodology he used to discount these basins is
21 flawed. For sites that contained both older, inactive basins *and* more recently
22 used basins, Mr. Hart calculated a discount based on the ratio of ash located in
23 older vs. newer basins. However, it is not true that closure costs directly

1 correlate to the amount of ash earmarked for excavation. Costs for engineering,
2 design, and permitting do not necessarily decrease proportionally to a decrease
3 in ash.

4 In sum, the closure activities costs for which the Company is now
5 seeking recovery were incurred to comply with the CCR Rule and CAMA and
6 after thorough vetting with state and federal regulators. For all of these reasons,
7 it would be improper to ignore closure costs at retired basins.

8 **Q. DO YOU AGREE WITH WITNESS HART THAT ACTIONS**
9 **REQUIRED TO CLOSE THE COMPANY’S BASINS AT AN EARLIER**
10 **DATE ARE THE SAME OR SUBSTANTIALLY SIMILAR TO THE**
11 **CLOSURE ACTIVITIES FOR WHICH THE COMPANY IS SEEKING**
12 **REIMBURSEMENT IN THIS PROCEEDING?**

13 A. I do not. In fact, Mr. Hart appears to disagree with his own assumption, noting
14 that “[i]t is difficult at this point in time to estimate what costs would have been
15 incurred 10 or more years ago.” (Hart Direct T., at 167.) I could not agree
16 more. Such an analysis would be futile as it is impossible to retroactively
17 predict with any degree of certainty what options the Company might have
18 pursued had it chosen to close its inactive basins in 1992, 1996, and/or 2009
19 given the historical regulatory landscape, available technology, and evolving
20 industry best practices, among other factors.

1 **Q. DO YOU HAVE ANY OTHER COMMENTS ON WITNESS HART'S**
2 **PURPORTED RECOMMENDATION?**

3 A. Yes. As Company witness Liroy explains in his testimony, Mr. Hart's time
4 value of money calculations do *not*, as Mr. Hart contends, demonstrate any
5 savings the Company could have achieved by engaging in closure activities at
6 an earlier date. Instead, they simply show the equivalent of those closure costs
7 in 1992, 1996, and 2009 dollars. This concept and the flaws in Mr. Hart's
8 approach are thoroughly discussed in Mr. Liroy's testimony, and I agree with
9 his conclusions.

10 **VI. RESPONSE TO CUCA WITNESS O'DONNELL**

11 **Q. HOW DO YOU RESPOND TO THE RECOMMENDATIONS OF CUCA**
12 **WITNESS O'DONNELL?**

13 A. CUCA witness O'Donnell has submitted testimony that is virtually identical to
14 his written testimony in the 2017 DE Progress rate case. Because his arguments
15 are unchanged from the 2017 case, the Company's response to it is likewise
16 unchanged. Accordingly, I adopt and incorporate by reference the responsive
17 points and arguments set forth in the rebuttal testimony of Company witness
18 Jon Kerin in Docket No. E-2, Sub 1142.

1 **VII. RESPONSE TO SIERRA CLUB WITNESS QUARLES**

2 **Q. DO YOU AGREE WITH SIERRA CLUB WITNESS QUARLES'**
3 **CONTENTION THAT COSTS ASSOCIATED WITH EXCAVATION**
4 **AND GROUNDWATER MONITORING LIKELY WOULD BE LOWER**
5 **IF THE COMPANY HAD CONVERTED TO DRY DISPOSAL IN**
6 **LINED LANDFILLS SOONER?**

7 A. No. As I explained in response to Mr. Lucas's testimony, the increased
8 percentage of basins that were lined during the 1970s and 1980s still
9 represented a minority of the new basins being constructed, showing that
10 unlined basins were still the industry standard at that time. And again, the EPA
11 report focused on *new* landfills and surface impoundments, while DE Progress
12 last constructed a new ash basin in 1985. In addition, like Mr. Lucas, Mr.
13 Quarles presents no specific evidence to show that DE Progress' engineering
14 and design of its impoundments was not consistent with industry practice and
15 regulatory requirements at the time. Moreover, witness Quarles completely
16 fails to identify any specific action the Company should have taken at any
17 specific time that would have decreased closure costs. Nor does he even
18 attempt to assign a value to the purportedly "lower" costs for the purpose of
19 proposing a disallowance. In the absence of any concrete testimony on this
20 point, witness Quarles' testimony is not useful to the Commission and should
21 be disregarded.

22 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

23 A. Yes.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1219

In the Matter of:)	SUPPLEMENTAL
)	TESTIMONY OF
Application of Duke Energy Progress, LLC)	JESSICA L. BEDNARCIK
For Adjustments of Rates and Charges)	FOR DUKE ENERGY
Applicable to Electric Service in North Carolina)	PROGRESS, LLC

1 **Q. PLEASE STATE YOUR NAME, AFFILIATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Jessica L. Bednarcik. My business address is 400 South Tryon
4 Street, Charlotte, North Carolina, 28202. I am employed by Duke Energy
5 Business Services, LLC, as Vice President, Coal Combustion Products (“CCP”)
6 Operations, Maintenance and Governance. In this docket, I am submitting this
7 supplemental rebuttal testimony on behalf of Duke Energy Progress, LLC (“DE
8 Progress,” or the “Company”).

9 **Q. PLEASE DISCUSS THE PURPOSE OF YOUR SUPPLEMENTAL**
10 **TESTIMONY.**

11 A. The purpose of my supplemental testimony is to respond to the Commission’s
12 July 23, 2020 Order Requiring Duke Energy Carolinas, LLC and Duke Energy
13 Progress, LLC to File Additional Testimony on Grid Improvement Plans and
14 Coal Combustion Residual Costs. In particular, my supplemental testimony
15 will address the Commission’s request for additional information regarding
16 costs associated with closure of the Company’s coal combustion residual
17 (“CCR”) basins. My testimony responds to three of the Commission’s
18 questions, specifically (1) projected annual CCR remediation costs on a plant-
19 by-plant basis from 2019 through 2057; (2) for each plant and year, a break-
20 down of the costs by remediation activities; and (3) for each plant’s annual total
21 cost an allocation to North Carolina retail based on the applicable energy factor.
22 I will also respond to the Commission’s question regarding the Company’s

1 ability to estimate the incremental costs of excavating, rather than capping-in-
2 place, remaining ash at the Company's designated "low-risk" CCR basins.

3 The questions for me are posed against the backdrop of the Company's
4 January 2020 settlement with the North Carolina Department of Environmental
5 Quality ("NCDEQ") and several community groups, and so I will also briefly
6 provide information concerning that settlement.

7 **Q. HOW DO YOU RESPOND TO THE COMMISSION'S REQUEST FOR**
8 **PROJECTED CCR REMEDIATION COSTS FROM 2019 THROUGH**
9 **2057?**

10 A. I am providing the information requested in spreadsheet form, which is attached
11 to my testimony as Bednarcik Supplemental Exhibit 1. The Exhibit responds
12 to three of the Commission's four questions, as described above.¹ Although the
13 Commission asked for estimated CCR remediation costs through 2057, my
14 Exhibit 1 provides estimated costs through 2065 to reflect that the Company
15 will continue to incur closure-related costs beyond 2057 due to the applicable
16 thirty-year post-closure care requirements for basins and landfills set forth by
17 the Federal CCR Rule and the North Carolina Coal Ash Management Act
18 ("CAMA").

19 The costs presented in my Exhibit 1 represent the actual costs incurred
20 for CCR remediation activities undertaken from January 1, 2015, through
21 February 28, 2020, as well as the projected costs that will be incurred through

¹ Although my Exhibit 1 includes the Commission-requested information regarding cost allocation, the Exhibit merely applies the cost of service allocation factor to each category of identified costs. I defer to the testimony of Witness Kim Smith for any questions regarding the allocation factor, itself.

1 the completion of post-closure requirements. The cost projections presented
2 from March 1, 2020, forward are robust and are based on the extensive
3 experience and lessons learned from the engineering, design, excavation and
4 landfill construction of three completed ash basin projects at the Dan River,
5 Riverbend, and Sutton sites, and at the Asheville site, where excavation is in its
6 final phase and an on-site landfill is currently being constructed. This
7 experience included the construction of a 58-acre landfill at Sutton, a 25-acre
8 landfill at Dan River, and the excavation of approximately 20 million tons of
9 ash across all four locations. The significant excavation activities the Company
10 has successfully undertaken to-date have enhanced its ability to reliably
11 estimate future costs.

12 Indeed, my Supplemental Exhibit 2 demonstrates that the Company has
13 been successful at estimating projected CCR costs within a reasonable margin
14 of error. The Company follows the Association for the Advancement of Cost
15 Engineers (“AACE”) cost-estimating classification system. Using this
16 construction industry generally accepted tool, estimates prepared before the
17 Company has received any contractor bids for work necessary to complete each
18 project are considered Class 5, with a +/- 25% margin of error. That margin of
19 error continues to decrease as the details of the project become more defined
20 (+/-20%), bids are obtained (+/-15%), and contracts are executed (+/-10%). My
21 Exhibit 2 demonstrates this progression by comparing the estimates for total
22 CCR remediation costs at the Asheville and Sutton sites at various points in
23 time. For both sites, the estimates contained in Jon Kerin’s Exhibit 11 in the

1 2017 rate case, Docket No. E-2 Sub 1142, compared with the revised fourth
2 quarter of 2019 estimates were within or below our expected margin of error—
3 as some work scopes in 2017 were still based upon Class 5 estimates. Likewise,
4 one can see that the margin continued to decrease as work was awarded and
5 field work progressed, by comparing the third quarter 2018 and fourth quarter
6 2019.

7 As evidenced by these exhibits, the Company has a demonstrated
8 history of reliable estimates, albeit within expected margins of error, in its CCR
9 remediation cost estimates, and its ability to project these costs has been further
10 enhanced by the lessons learned through the work completed at the Asheville,
11 Dan River, Riverbend, and Sutton sites.

12 **Q. HOW DO YOU RESPOND TO THE COMMISSION’S REQUEST TO**
13 **DESIGNATE WHETHER EACH COST IS A CAPITAL, OPERATING,**
14 **OR MAINTENANCE COST?**

15 A. Witness Doss is responding to this question, and I defer to him, but note that
16 each of the remediation costs identified in my Exhibit 1 were charged to ARO.
17 It is my understanding, based on my review of Mr. Doss’s testimony, that costs
18 required to fulfill the Company’s obligations under the CAMA and the Federal
19 CCR Rule are charged to ARO regardless of the type of work described as the
20 remediation activity. Thus, the remediation activities, no matter the type, are
21 AROs when designated as such through the process described fully by Mr. Doss
22 in his testimony.

1 **Q. CAN YOU GIVE SOME ADDITIONAL CONTEXT REGARDING THE**
2 **SETTLEMENT AGREEMENT THE COMPANY REACHED WITH**
3 **NCDEQ IN JANUARY 2020?**

4 A. Yes. As I explained in my rebuttal testimony, the settlement agreement the
5 Company reached with NCDEQ and a variety of special interest groups
6 represented by the Southern Environmental Law Center (“SELC”) was the
7 result of a thoroughly vetted process by which the parties agreed upon a
8 reasonable and prudent plan for the closure of the nine remaining CCR basins
9 owned by DE Progress and DE Carolinas (together “Duke Energy”). To give
10 some additional background, NCDEQ is vested with the statutory authority to
11 enforce North Carolina’s environmental protection laws, including laws
12 enacted to protect the water quality of the State. In keeping with this authority,
13 CAMA grants NCDEQ the authority to direct that surface impoundments
14 designated as “low-risk” to be closed by excavation, capping in place, or closing
15 in compliance with the CCR Rule.² While Duke Energy initially planned to
16 close its designated “low-risk” basins by capping in place, on April 1, 2019,
17 NCDEQ issued Coal Combustion Residuals Surface Impoundment Closure
18 Determinations (“Closure Determinations”) for Duke Energy’s “low-risk”
19 impoundments at Allen, Belews Creek, Cliffside, Marshall, Mayo, and Roxboro
20 Steam Stations (collectively, the “Sites”), directing that each be closed through
21 excavation.

² N.C. Gen. Stat. § 130A-309.214(a)(3).

1 As I explained in my direct testimony, Duke Energy filed Petitions for
2 Contested Case Hearing on April 26, 2019, in the North Carolina Office of
3 Administrative Hearings (“OAH”) challenging NCDEQ’s Closure
4 Determinations. SELC, on behalf of several community and citizen groups,
5 intervened in the case in support of NCDEQ’s Closure Determinations,
6 agreeing with NCDEQ that excavation of the Facilities’ impoundments would
7 be most protective of the environment. As I explained in my rebuttal testimony,
8 Duke Energy entered into a settlement agreement with NCDEQ and the groups
9 represented by SELC on December 31, 2019, following extensive settlement
10 negotiations. The Settlement Agreement requires Duke Energy to excavate the
11 ash at seven of the nine basins at these Sites – including two at the Allen Steam
12 Station, one at Belews Creek Steam Station, one at the Mayo Plant, one at the
13 Roxboro Plant, and two at the Cliffside Energy Complex – in their entirety with
14 ash moved to on-site lined landfills. For the other two basins, at Marshall Steam
15 Station and the Roxboro Plant, uncapped basin ash will be excavated and moved
16 to lined landfills. While Duke Energy agreed to excavate this remaining ash, it
17 also secured key representations from NCDEQ and the community and citizen
18 groups that would allow the Company to proceed with excavation as
19 expeditiously as possible and without the threat of further challenges from
20 either group. In particular, the Agreement calls for expedited state permit
21 approvals, which would keep projects on a rapid timeline, while at the same
22 time reducing the total estimated cost to close the remaining basins by roughly

1 \$1.76 billion³ as compared to the cost to excavate under the April 1, 2019 DEQ
2 order which required full excavation at all sites. Entering the Settlement
3 Agreement also allowed the parties to resolve other pending litigation in state
4 and federal courts, thereby ensuring that the impoundments are excavated on
5 an expedited basis and to remove the uncertainty associated with litigation.

6 A key underlying premise of the Settlement Agreement was that Duke
7 Energy “DEQ and the Community Groups agree that closing the CCR
8 impoundments at the Allen, Belews Creek, Cliffside, Marshall, Mayo, and
9 Roxboro Steam Stations in accord with this Agreement . . . is reasonable,
10 prudent, in the public interest, and consistent with law.”⁴ Removing the coal
11 ash from unlined CCR impoundments will be more protective than leaving the
12 material in place, will reduce regulatory uncertainty going forward for the
13 Companies and their customers, and will allow for flexibility in the deployment
14 of future remedial measures. The parties filed a Consent Order memorializing
15 their agreement in Wake County Superior Court on January 31, 2020, and the
16 Order was approved in its entirety by Judge Paul. C. Ridgeway on February 5,
17 2020.

³ Approximately \$425,000 of the \$1.76 billion savings include landfill cost avoidance due to anticipated extension of the CAMA deadline to beneficiate ash at Buck, Cape Fear, and H.F. Lee.

⁴ Settlement Agreement ¶ 53(a), attached as Bednarcik Supplemental Exhibit 3.

1 **Q. DOES DE PROGRESS HAVE THE ABILITY TO REASONABLY**
2 **IDENTIFY THE INCREMENTAL COSTS IT INCURRED AS A**
3 **RESULT OF THE SETTLEMENT AGREEMENT IT REACHED WITH**
4 **NCDEQ IN DECEMBER?**

5 A. As I explained on pages 13 and 14 of my direct testimony, the Company did
6 not incur any incremental cost as a result of the Settlement Agreement with
7 respect to the costs it is seeking to recover in the instant rate case. With the
8 exception of closure plan development, none of the site work that has been
9 conducted at the Mayo or Roxboro sites is specific to cap-in-place closure. In
10 other words, all of the site work included as part of this case at these sites would
11 also be required to complete closure by excavation. To the extent the
12 Commission considers closure plan development as a potential incremental
13 cost, the costs the Company incurred to prepare plans for closure by excavation
14 were approximately \$140,000 to \$480,000 more per site than the costs it
15 incurred to prepare plans for closure by cap-in-place.

16 **Q. DOES DE PROGRESS HAVE THE ABILITY TO REASONABLY**
17 **IDENTIFY THE INCREMENTAL COSTS IT LIKELY WILL INCUR**
18 **AS A RESULT OF THE SETTLEMENT AGREEMENT IT REACHED**
19 **WITH NCDEQ IN DECEMBER?**

20 A. It is impossible to identify with any degree of certainty the incremental costs
21 that the Company is likely to incur as it proceeds to excavate, rather than cap-
22 in-place, the CCR basins at Mayo and Roxboro. Aside from expected margins
23 of error between any estimate the Company might make for the cost of cap-in-

1 place vs. excavation and the actual costs of closure by either method, the
2 Settlement Agreement paves the way for a smoother regulatory approval
3 process. In particular, the Settlement Agreement secured commitments from
4 NCDEQ that it will, among other things, “conduct an expeditious review and
5 act expeditiously” as to review of the Company’s closure plans and permit
6 applications.⁵ Likewise, the Settlement Agreement secured commitments that
7 the community groups will not oppose or otherwise challenge the Company’s
8 closure plans or requests for variances on closure deadlines set forth in CAMA
9 [Paragraphs 42 and 45].⁶ In the absence of such representations, the Company
10 could have expected to meet delays at various points in the approval process
11 and also to expend cost opposing challenges from the community groups. Even
12 without the Settlement Agreement, it is not at all clear that the Company could
13 have moved forward with its original plans for closure by cap-in-place. To the
14 contrary, the Company could have been *ordered* to excavate ash either at the
15 conclusion of the Company’s judicial challenge to NCDEQ’s Order or by a state
16 or federal judge presiding over the litigation brought by the community groups
17 demanding excavation. The uncertainty of ongoing litigation and the explicit
18 opposition by NCDEQ for a cap-in-place compliance strategy that would span
19 several decades from implementation to monitoring placed significant risks on
20 the cap-in-place strategy that cannot be fully contemplated or readily estimated.
21 In light of these variables, it is impossible to calculate incremental costs or

⁵ Settlement Agreement ¶ 38.

⁶ *Id.* ¶¶ 42 & 45.

1 savings between a cap-in-place plan and excavation plan approved in the
2 Settlement Agreement for the Company's "low-risk" basins.

3 Notwithstanding these challenges, however, the Company has
4 undertaken to make a comparison of the cost projections for each closure
5 methodology in keeping with the Commission's request for this information.
6 Bednarcik Supplemental Exhibit 4 demonstrates the Company's best closure
7 cost estimates at several different points in time at the Mayo and Roxboro sites,
8 including: (1) the estimated cost of cap-in-place closure based on the
9 Company's best approximation at the time of Jon Kerin's testimony in the 2017
10 rate case and spanning the years 2015-2057; (2) a revised estimate of cap-in-
11 place closure costs calculated in the third quarter of 2018 and spanning the years
12 2015-2059; (3) the estimated cost of closure by excavation calculated in the
13 third quarter of 2019 based upon the requirements set forth in NCDEQ's
14 April 1, 2019 Order and spanning the years 2015-2078; and (4) the estimated
15 cost of closure calculated in the fourth quarter of 2019 based upon the closure
16 terms set forth in the Settlement Agreement, again spanning the years 2015-
17 2078. The variation in date range between each estimate reflects the
18 Company's evolving projection of the time required to close the basins and
19 complete post-closure requirements pursuant to CAMA, the CCR Rule, and
20 requirements of NCDEQ.

21 It is important to note that each of these estimations are subject to a
22 margin of error. For the fourth quarter 2019 estimates, the Company assumed
23 a +/- 25% margin for the magnitude cost estimates it prepared in advance of

1 and following the Settlement Agreement based on the design stage for closure
2 by excavation at the “low-risk” sites and associated engineering data for each
3 site. The Company also referred to historic and ongoing projects, bids,
4 contracts, and other related data for work of similar scope being performed for
5 the Company at other sites along with certain other estimating references,
6 including but not limited to, the opinion of internal subject matter experts,
7 external expert opinion, and the Company’s industrial estimating database.

8 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

9 **A. Yes.**

1 MR. MARZO: And I'd ask that her
2 Exhibits 1 through 9 to her rebuttal testimony and
3 Exhibits 1 through 4 to her supplemental testimony
4 be marked for identification as indicated and
5 confidential where appropriate.

6 COMMISSIONER CLODFELTER: They will be
7 so marked, including confidentiality designations
8 as made.

9 (Confidential Bednarci k Rebuttal
10 Exhibits 1 through 7 and 9; Bednarci k
11 Rebuttal Exhibit 8; Bednarci k
12 Supplemental Exhibits 1, 2, and 4; and
13 Bednarci k Corrected Supplemental Exhibit
14 3 were identified as they were marked
15 when prefiled.)

16 Q. Ms. Bednarci k, do you also have a summary of
17 your testimony that you prepared?

18 A. Yes.

19 MR. MARZO: Commissioner Clodfel ter,
20 Ms. Bednarci k's summary was provided to the
21 Commission and all parties, and I just ask that it
22 be included in the record as if given orally.

23 COMMISSIONER CLODFELTER: Without
24 objection, the summary will also be brought into

1 the record.

2 (Whereupon, the prefilled testimony
3 summary of Jessica L. Bednarcik was
4 copied into the record as if given
5 orally from the stand.)
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Duke Energy Progress, LLC
Summary of Rebuttal Testimony of Jessica Bednarcik
Docket No. E-2, Sub 1219

My rebuttal testimony responds to issues raised in the testimonies of Public Staff witnesses Jay B. Lucas, L. Bernard Garrett, and Vance F. Moore, Carolina Utility Customer Association (“CUCA”) witness Kevin W. O’Donnell, Attorney General Office (“AGO”) witness Steven C. Hart, and Sierra Club witness Mark Quarles.

The purpose of my rebuttal testimony is to respond to the Public Staff’s proposed prudence-based disallowances at the Company’s Sutton, Asheville, H.F. Lee, Cape Fear, Weatherspoon, and Mayo sites as well as certain expenses associated with the Company’s fulfillment of CAMA’s provision requiring permanent water supplies. For these proposed disallowances, my rebuttal testimony establishes that each challenged expense was the result of the Company’s reasonable and prudent efforts to comply with applicable laws and regulations.

In particular, I show that the fulfillment fee paid to Charah terminating the Company’s commitment to store 20 million tons of ash at Charah’s Brickhaven and Sanford mines was incurred as a result of amendments to CAMA. These amendments, which required beneficiation of ash at certain of the Company’s sites, could not have been anticipated by the Company at the time that the contract was written. Considering the amount of capital that Charah invested to effectuate the contract, it reasonably needed assurances that those costs would be covered. The ultimate fulfillment fee that the Company paid was the result of negotiation that allowed a payment well below the contractual maximum and that, on balance, saved money for the customer.

At the H.F. Lee and Cape Fear sites, my testimony shows that the Company acted reasonably and prudently when it selected Zachry as its engineering, procurement, and construction contractor. Zachry’s quoted rates, obtained through a competitive bid process,

were better than its competitors, and Zachry had performed successful work for the Company in the past. In addition, I show that the Public Staff's suggestion that the Company should have sought statutory relief from CAMA requirements for the beneficiation sites is unrealistic and would have placed the Company in violation of CAMA deadlines.

At the Asheville site, the Commission approved rate recovery of DE Progress' costs to transport CCR from Asheville to the R&B Landfill in docket No. E-2, Sub 1142. I show that the challenged costs for which the Company is currently seeking reimbursement were incurred pursuant to the same purchase orders that the Commission found to be reasonable in 2018. Accordingly, recovery should be permitted consistent with Commission precedent.

In addition to these prudence disallowances, my rebuttal testimony also responds to the testimony of witnesses Lucas, Hart, and Quarles and shows that the Company's historical CCR practices were in line with those of similarly situated utilities in neighboring states, and before the promulgation of the CCR Rule and/or the enactment of CAMA, there was no reasonable or prudent justification for the Company to change its CCR operations.

Finally, my rebuttal testimony shows that, in suggesting the Company could have reduced cost by beginning closure at an earlier date, AGO witness Hart fails to consider that an earlier closure of the Company's CCR basins may have necessitated a different approach given the then-existing regulatory landscape, evolving industry knowledge and available technology, and that it is impossible to predict with any certainty what such costs might have been.

This concludes my summary of my rebuttal testimony.

1 MR. MARZO: Commissioner Clodfelter, per
2 the stipulation entered into between the Public
3 Staff and the Attorney General and Sierra Club on
4 September 28, 2020, I ask that the rebuttal
5 testimony of Ms. Bednarcik from Docket Number
6 E-7, 1214 located -- do you want me to give the
7 following transcript cites?

8 COMMISSIONER CLODFELTER: Please do.

9 MR. MARZO: Transcript Volume 24,
10 page 125, line 1 through page 204, line 16; and
11 transcript Volume 25, page 14, line 17 through
12 page 138, line 5; and transcript Volume 26,
13 page 12, line 2 through page 52, line 7.

14 I also ask that the cross examination
15 exhibits admitted during the live testimony be
16 moved into the record. And for identification,
17 those are Public Staff Bednarcik Rebuttal Cross
18 Exhibit Number 1 through 5, and AGO Bednarcik
19 Rebuttal Cross Exhibit Number 1, Sierra Club
20 Bednarcik Rebuttal Exhibit Number 1, and Duke
21 Energy Carolinas Bednarcik Rebuttal Redirect
22 Exhibit Number 1.

23 COMMISSIONER CLODFELTER: You've heard
24 the motion. Is there any objection?

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(No response.)

COMMISSIONER CLODFELTER: Hearing none,
the motion is allowed.

(Public Staff Bednarcik Rebuttal Cross
Exhibit Number 1 through 5, AGO
Bednarcik Rebuttal Cross Exhibit
Number 1, Sierra Club Bednarcik Rebuttal
Exhibit Number 1, and Duke Energy
Carolinas Bednarcik Rebuttal Redirect
Exhibit Number 1 were admitted into
evidence.)

(Whereupon, the testimony from Docket
Number E-7, Sub 1214, transcript Volume
24, page 125, line 1 through page 204,
line 16; Volume 25, page 14, line 17
through page 138, line 5; and Volume 26,
page 12, line 2 through page 52, line 7
were copied into the record as if given
orally from the stand.)

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1 MR. MARZO: Thank you, Chair Mitchell.
2 Ms. Bednarcik is available for cross examination.

3 CHAIR MITCHELL: All right. I would
4 note, before we begin cross examination of the
5 witness, that to the extent you need to, you --
6 counsel, you anticipate asking questions that will
7 elicit confidential information, you must alert me
8 to that, and we will leave the video conference
9 technology and join the telephone line that has
10 been provided to you or will be provided to you
11 shortly. Again, I will rely on you, counsel, to
12 alert me when we get to that point in time.

13 All right. With that, I believe, Public
14 Staff, you were up first.

15 MS. LUHR: Thank you, Chair Mitchell.
16 This is Nadia Luhr with the Public Staff. And I
17 will be asking Ms. Bednarcik questions related to
18 groundwater extraction and treatment, permanent
19 water supplies, and equitable sharing. And my
20 colleague, Ms. Jost, will be asking questions
21 related to the Charah fulfillment fee, the Dan
22 River excavation transportation costs, and the Buck
23 beneficiation project. And it's our understanding
24 that the Company does not object.

1 MR. MARZO: That's correct,
2 Chair Mitchell.

3 CHAIR MITCHELL: All right. You-all may
4 proceed.

5 MS. LUHR: Thanks.

6 CROSS EXAMINATION BY MS. LUHR:

7 Q. Good afternoon, Ms. Bednarcik.

8 A. Good afternoon.

9 Q. In your rebuttal testimony on pages 48
10 through 50, you discuss Mr. Junis' proposed
11 disallowance for the cost of groundwater extraction and
12 treatment at Belews Creek. I'll give you a moment to
13 get there.

14 A. Ms. Luhr, can you give me the page number
15 again, please?

16 Q. Yes. So I was referring to pages 48 through
17 50, but now I'll refer you directly to page 49.

18 A. I'm on page 49.

19 Q. Okay. So on lines 4 through 6, you state
20 that:

21 "DE Carolinas would have installed extraction
22 wells at Belews Creek in order to comply with CAMA even
23 without the Sutton settlement agreements."

24 And, Ms. Bednarcik, that's because Belews

1 Creek had exceedances at or beyond the compliance
2 boundary at Belews Creek; is that right?

3 A. That is correct.

4 Q. Okay. And if the Company did not have
5 exceedances at or beyond the compliance boundary,
6 neither CAMA nor the CCR rule would have required those
7 extraction and treatment wells; is that right?

8 A. So my understanding is that it is because we
9 had -- we had exceedances beyond the compliance
10 boundary, that is why those extraction wells were
11 installed.

12 Q. Okay. And starting on page -- we're still on
13 page 49, on line 22 going through page 50, you state
14 that:

15 "An increase in measured exceedances does not
16 suggest an increase in groundwater contamination at
17 Belews Creek"; is that correct?

18 A. Yes, that is correct.

19 Q. And, Ms. Bednarcik, groundwater flows over
20 time, correct?

21 A. Yes. In each station, in each site,
22 depending on geology, it flows at different rates, but
23 relatively a slow rate, yes.

24 Q. Okay. So when you sample groundwater at the

1 same well over time, you're not just sampling the same
2 water over and over again; is that right?

3 A. So it depends on when you do the sampling and
4 the flow rate of that specific site. That is one of
5 the reasons why you do take samples, whether it is a
6 quarterly basis or a semi annual basis, because the
7 geology also depends upon the seasons and what is going
8 on in geology as a whole.

9 Q. Okay. So -- but, generally, would you agree
10 that your sampling essentially constituents that are
11 flowing through and past the wells over time?

12 A. I would say generally, but also that's why
13 you put groundwater monitor wells in, to see what is in
14 that area and whether or not the constituents are
15 stable, because that will sometimes tell you that you
16 have a stable plume, whether they're increasing or
17 decreasing. And that is why you put in groundwater
18 monitoring wells in order -- once you've done the
19 original assessment, and you do your assessment over a
20 long time, sometimes it's many, many years -- in order
21 to determine really what is going on in the ground.

22 Q. Okay. So if you continue to conduct
23 groundwater monitoring, you know, in those wells over a
24 period of time and you continue to see exceedances,

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1 would you agree that that's an indication that the
2 contamination is continuing to spread?

3 A. So I would say not necessarily. It could
4 mean that the contamination is stagnant and is not
5 spreading; it could mean that it is spreading. So
6 again, that is why you take multiple samples, in order
7 to determine what is going on in the groundwater. Each
8 site is different, each plume is different. So it
9 could mean that it's spreading; it could mean that it's
10 stable. That is why you're looking and evaluating, and
11 you do not make determinations off of one groundwater
12 monitoring event.

13 Q. Thank you. Now, turning to page 51 of your
14 testimony, lines 2 through 6, you state that:

15 "The requirement for permanent alternative
16 water supplies and water treatment systems exists even
17 absent the existence of a 2L exceedance."

18 But, Ms. Bednarcik, doesn't the Company
19 actually have 2L exceedances at or beyond the
20 compliance boundary at each of its sites?

21 A. So, Ms. Luhr, I think the main difference is
22 that the permanent water supply requirement in CAMA
23 said that it did not tie the need to provide permanent
24 water to homeowners based upon an exceedance at the

1 homeowner's wells. So that is the nuance related to
2 the requirement for permanent water.

3 Typically -- and this is something I
4 discussed also last week, is if we saw a plume, we saw
5 something that was going towards a homeowner's, and it
6 may get there sometime in the future, then, of course,
7 we would have put that homeowner on a permanent water.
8 But what we saw really at all of our locations in the
9 Carolinas is that that we're covered underneath CAMA,
10 and the provision of permanent water supply is that
11 groundwater was not flowing towards those homeowners.
12 Or if there were exceedances of the 2L standard at a
13 homeowner's house, it was not attributed to coal ash
14 constituents because of the way the groundwater was
15 flowing.

16 So I think that's the key nuance, to be able
17 to look at the permanent water provision. If you look
18 at the words in CAMA itself, or in House Bill 630, it
19 clearly calls out that you do not have to show that the
20 groundwater at the homeowners' homes was impacted by
21 coal ash constituents, that it didn't matter. That the
22 Company would have to provide a permanent water
23 solution to those homeowners.

24 Q. Understood. Would you -- would you agree

1 that the requirement to provide -- to provide those
2 water supplies to those homeowners was tied to the risk
3 of that contamination eventually reaching those water
4 supplies?

5 A. So I would say that I don't know exactly why
6 the legislature added that in. I do know that there
7 was a lot of discussion with the Department of Health
8 and Human Services, department of -- DEQ, Department of
9 Environmental Quality, as to what was going on around
10 the coal ash basins and what was a protective level.
11 Starting in, I believe it was 2014, we did receptor
12 studies and confirmed what we had seen prior to 2014,
13 that groundwater was not going towards these homeowners
14 and was not being impacted by coal ash constituents.

15 So when the House Bill 630 passed, and I
16 believe it was in the 2016 time period, we already had
17 a lot of data actually working with the state agency
18 showing that coal ash constituents were not going
19 towards homeowners, were not affecting homeowners'
20 wells; but the legislature still determined that they
21 needed to add this provision within House Bill 630. So
22 that -- that's my -- I don't know why they did, but
23 that's the history as I know it.

24 Q. And then, in your opinion -- not speculating

1 as to what the legislature was thinking at the time,
2 but in your opinion, is there a risk in the future of
3 contamination from the coal ash impoundments reaching
4 any nearby neighboring wells?

5 A. No. I do not believe that there is a risk in
6 the groundwater models we have shown that we have
7 developed. The groundwater data that was collected
8 both by ourselves and by DEQ has not led to an
9 indication that we are going to have a risk related to
10 our homeowners, or towards the homeowners surrounding
11 our plants.

12 Q. And that's your contention, despite the
13 continuing spread of contaminants from the coal ash
14 impoundments?

15 A. So yes, because you have to look and see
16 where the groundwater models are showing and how the
17 groundwater is flowing. And Mr. Wells will be able to
18 talk -- will probably be able to talk about this a
19 little bit more. But our groundwater models are
20 showing that -- the groundwater flow, where things are
21 going. And we are doing a groundwater corrective
22 action program. Because there is a couple of locations
23 where we'll be pooling the groundwater back inside the
24 compliance boundary. But there are no homeowners in

1 that area that are being affected adversely by
2 groundwater. And the models are not showing that it's
3 going to go there either.

4 Q. Do you know whether background levels had
5 been established and approved by DEQ prior to the
6 requirement to provide permanent water supplies?

7 A. So specifically background -- background
8 levels at each one of the locations was being
9 evaluated, I do know, by DEQ during the 2014/2015 time
10 period. Background levels, I do remember during that
11 time period, because I was the person that was actually
12 implementing the provision of permanent water and
13 talking to all the homeowners. So I do know in that
14 time period there was a lot of discussion on
15 background, a lot of working with DEQ on what was
16 background and what was not background.

17 So it was something that had to come out of
18 the agency. We were providing them a lot of data.
19 When they actually kind of put the line in the sand and
20 said this is background, I don't know that date. But I
21 do know, in the 2015/2016 time period when the House
22 Bill 630 was passed, is that background was -- I don't
23 know if I could say 100 percent established, but I do
24 remember very clearly talking to DEQ at that time and

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1 understanding what is background and what the risk was
2 to the homeowners.

3 Q. Okay. We can move on. On pages 53 to 55 of
4 your rebuttal testimony, you discuss the Public Staff's
5 equitable sharing proposal. And on page 55,
6 specifically lines 5 through 9, you state that:

7 "In the 2017 rate case, neither the Public
8 Staff nor any intervenor was able to quantify any
9 discrete costs throughout the Company's considerable
10 history managing CCR that was deemed to be imprudent or
11 connected to an imprudent action."

12 And then you continue:

13 "The same is true in this case."

14 Are you aware that the Public Staff's
15 recommended equitable sharing adjustment is based on
16 General Statute 62-133(d), which does not require
17 showing of imprudence?

18 A. So I do not have the exact statutes memorized
19 as to what is in there, but I do know that equitable
20 sharing was discussed in the last case. And when we
21 moved forward with what was presented this time around,
22 we did take into account what had been ruled on by the
23 Commission in the previous case.

24 Q. Okay. And on page 58 of your testimony,

1 beginning on line 5, you state that:

2 "Before the CCR rule and CAMA, the Company's
3 operation of its CCR impoundments was consistent with
4 existing federal and state law."

5 Is that an accurate restatement of your
6 testimony?

7 A. Yes.

8 Q. Isn't it true that, prior to CAMA and the CCR
9 rule, the Company's coal ash impoundments caused
10 exceedances of the groundwater standards at or beyond
11 the compliance boundary?

12 A. Yes. But I would also say that we were
13 working the state agencies. So it was that 2011 policy
14 memorandum that came out from NCDEQ that shows that the
15 Company was working with regulators trying to
16 understand with these legacy -- with these -- not
17 legacy, but with these past -- these operating units
18 that were utilized and had been historic operating
19 units, in many cases still operating units, what do we
20 need to do in order to move forward, based upon the
21 groundwater exceedances.

22 So it's a yes, we did have exceedances, but
23 we were working with the state agencies in order to
24 determine what are those next steps, and what are the

1 corrective actions that need to take place at those
2 locations.

3 Q. Isn't it also true that the state's 2L rules,
4 which have been in effect since 1979, prohibit
5 exceedances of groundwater standards?

6 A. So that is my understanding of 2L, but I have
7 been working in North Carolina with -- well, I had
8 many, many years working on remediation sites, and
9 where there were exceedances of 2L, what we did with
10 those CCR sites is exactly the same that we've done
11 with other sites.

12 It's not very -- although there is an
13 exceedance, there is the, okay, this is something
14 that's been going on based upon an operating unit, or
15 in some cases like an underground storage tank. So
16 what do we do? How do we move forward with figuring
17 out what are those steps that we need to take in order
18 to manage the risk, address the risk, and address
19 whatever is -- whatever those next steps need to be?

20 So what I have seen in my history of working
21 in the state of North Carolina on remediation sites,
22 specifically with groundwater cleanup, is what we did
23 in the CCR -- around our CCR ponds, this is exactly the
24 same that we do in other areas. We see that we have an

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1 issue. We see that we have an exceedance. We work
2 with the regulators in order to determine what are
3 those next steps that we need to do in order to
4 manage -- manage the risk. First thing you want to do
5 is, of course, manage risk to human health, and then
6 also determine what are the appropriate steps you need
7 to take or -- take next in order to address what is
8 going on in the environment.

9 Q. But it appears, in this case, that it took
10 approximately three decades for the Company to begin
11 that process, if they began working DEQ around 2011; is
12 that right?

13 A. So I mentioned the 2011 policy memo as a --
14 many years before that -- and Mr. Wells knows a lot
15 more about the history of our groundwater compliance in
16 the Company, so I would say that please ask him. He
17 will be able to provide you a better, fuller picture.

18 But my understanding is that, starting in
19 the -- I think it was the 1970s, 1980s, we did take
20 groundwater samples and we provided those to states.
21 And if there was an issue that felt -- that needed to
22 be addressed, we addressed it.

23 Q. Okay. We can move on to another question in
24 this same theme.

1 Isn't it true that Duke Energy Carolinas also
2 had constructed seeps to channel coal ash wastewater
3 into waters of the state without NPDES permits?

4 A. So I believe that was discussed a lot in the
5 last case, and was addressed in the last case. Again,
6 Mr. Wells may be able to talk a lot more about seeps.
7 I do know that the Company did negotiate a resolution
8 on the seeps through revised SOC permits and NPDES
9 permits, but that would be a better question for
10 Mr. Wells specifically on the seeps.

11 Q. Understood. And just one quick follow-up on
12 that, and then I'll discuss with Mr. Wells as well.

13 And are you aware that General Statute
14 143-215.1 prohibits wastewater discharges into waters
15 of the state without approval under an appropriate
16 permit?

17 A. So again, I would state that that's a better
18 question for Mr. Wells. He understands a lot more
19 about the seeps, since I know that he addressed it at
20 length in the last case.

21 Q. Okay. And is it still your contention, as
22 you stated in your rebuttal testimony, that the
23 Company's operation of its coal ash impoundments was
24 consistent with the law?

1 A. Yes.

2 Q. And that's all I have. I believe my
3 colleague, Ms. Jost, has some questions as well. Thank
4 you.

5 CROSS EXAMINATION BY MS. JOST:

6 Q. Good afternoon, Ms. Bednarcik. I tried to
7 organize my questions such that I'll get a few in
8 before we get to confidential, but I'll certainly
9 signal to you when I think we are going to get into
10 some confidential information. I'd like to begin with
11 some questions about your rebuttal testimony regarding
12 the phase 2 excavation and transportation of coal ash
13 at the Company's Dan River site.

14 Now, the contract for this work was
15 originally awarded by the Company to Parsons
16 Environment and Infrastructure Group, Inc.; is that
17 correct?

18 A. That is correct.

19 Q. And Duke set the schedule that Parsons was to
20 follow to complete the excavation at Dan River; is that
21 right?

22 A. Yes. That was a schedule that was included
23 in the contract documents.

24 Q. All right. I'd like to turn, at this point,

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1 to what was premarked as Public Staff 56. The page
2 number on the bottom of the page should be 1597. And
3 this is the semi annual report on closure and
4 excavation, and there's a graph and spreadsheet based
5 on the data contained in that document at the very end.
6 And again, that was Public Staff 56, page 1597. I'll
7 give you a moment to get there.

8 MS. JOST: And, Chair Mitchell, I would
9 request that this exhibit be marked as Public Staff
10 Bednarci k Rebuttal Cross Exhibit 1.

11 CHAIR MITCHELL: All right. The
12 document will be marked Public Staff Bednarci k
13 Rebuttal Cross Examination Exhibit Number 1.

14 (Public Staff Bednarci k Rebuttal Cross
15 Examination Exhibit Number 1 was marked
16 for identification.)

17 Q. Ms. Bednarci k, have you been able to locate
18 that document?

19 A. Sorry, my mute button was not working. Yes,
20 I have it in front of me.

21 Q. Great. All right. If you could, please turn
22 to the last page of that exhibit. And would you agree
23 that on the left side of the page there, there is some
24 data based on planned and actual tons excavated at Dan

1 River, and on the right side there is a line graph
2 that's titled "Dan River Parsons excavation tracking"?

3 A. Yes, I see that.

4 Q. And would you agree that the -- when we're
5 talking about excavating ash from an impoundment,
6 the -- it's the ash at the top of the impoundment that
7 is excavated first, and then the excavation would
8 proceed down through the layers of ash to the bottom;
9 is that your understanding?

10 A. Yes. You would need to remove the material
11 on top before you moved the material on the bottom.

12 Q. So would you agree that the line that
13 represents the planned cumulative excavation yards, and
14 that's the line that's shown in red -- do you have a
15 color copy?

16 A. Yes, I do.

17 Q. Okay. Great. So that's the line shown in
18 red. It proceeds from June 2017 towards August 2018 on
19 the graph. And then the slope of the line goes up
20 representing an increase in the rate of excavation, and
21 there's an uptick in that right around April 2018.

22 Would you agree that's what's reflected?

23 A. Yes. It does show that there's a slight
24 increase, or an increase in the slope of the line

1 around April 2018.

2 Q. Okay. Would you agree, and this could be
3 subject to check, that the red line is based on
4 production rates that are set out in the contract
5 between Duke and Parsons?

6 A. So the red line would typically be. What I
7 don't know is, as we move forward, we did, of course,
8 have to re-baseline some of our production rates. So
9 what I don't know, as I look at this document in front
10 of me, is if that red line was from the beginning or
11 was -- or had been based about the re-baseline. Just
12 by looking at it right now, I can't remember.

13 Q. Okay. Well, let's -- I believe it would be
14 based on the contract, so the beginning point. And
15 Duke, as I think we've established, was involved in
16 formulating those production rates in connection with
17 executing the contract; is that right?

18 A. So we had milestones that we included within
19 the -- within the contract.

20 Q. Okay. And then the blue line represents the
21 actual cumulative excavated yards. And that also goes
22 up over the period that's represented on the graph.
23 But would you agree that the rate does not increase as
24 significantly as the red line?

1 A. Yes. Looking at it, is that the line looks
2 pretty consistent after the February 2018 time period.

3 Q. All right. You indicated, I believe in your
4 direct testimonies, that as excavation progresses down
5 and lower parts of the impoundments are encountered,
6 the ash becomes wetter; is that generally true?

7 A. That is generally true. But there is also,
8 as you are moving on, that the contractor, of course,
9 gains efficiencies as they're working on the site.
10 They're understanding the site and moving forward. So
11 what we typically see that, while there may be wetter
12 ash in certain areas, that the contractor is able to
13 address that in order to keep their production up to
14 where it needs to be.

15 Q. I believe that you actually testified in your
16 direct testimony that -- and specific to this instance,
17 the excavation at Dan River, the ash that was
18 encountered lower in the impoundment was actually
19 wetter than had been anticipated. And that this caused
20 delays because additional actions had to be taken to
21 dry that ash out; is that right?

22 A. Yes. That is true, that it was wetter than
23 had been anticipated. And we were working with the
24 contractor in order to see what are the actions you're

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1 going to take in order to dry out, be able to manage
2 this ash so that you can maintain your production
3 rates. And actually in the contract itself -- I'm
4 going off of memory, I could pull it out if it's
5 helpful -- but I believe it also does describe what the
6 moisture content of the ash needs to be in order to
7 have proper placement within the landfill. And that
8 was called out in the contract as a requirement.

9 So the contractor knew going into the
10 contract and signing it what the moisture content
11 needed to be in order to properly place the ash in the
12 landfill.

13 Q. Was it reasonable, though, for Duke to agree
14 to an excavation schedule that called for wetter ash to
15 be excavated at a faster rate when, as you've
16 explained, it's more difficult to excavate wet ash?

17 A. So I would go back to say that we had
18 milestones in the contract, and what the rate was is
19 what -- working with the contractor, and if the
20 contractor did not feel that they could meet that rate,
21 of course, when we go out for bid, we say these are our
22 milestones. And if they have concerns over meeting the
23 contractual obligations within the bid, then they
24 would, of course, be able to say that to us. And that

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1 goes in the back and forth before a bid is awarded in
2 order to make sure that, if we were to put something in
3 and the contractor did not feel could be met, then they
4 tell us things like that so that we be make sure, when
5 we enter into the contract, it's clear what the
6 expectations are and that the contractor believes that
7 they can meet those expectations.

8 Q. All right. And we'll get into that a little
9 bit later. But, unfortunately, at this point, I think
10 we are going to hit some confidential information. So
11 I believe this is the appropriate point to leave the
12 Webex and go to the phone line.

13 CHAIR MITCHELL: All right. Thank you,
14 Ms. Jost. We will leave the Webex, turn off your
15 cameras and microphones. And those who are under
16 confidentiality agreements with the Company may
17 join the line at this time -- the teleconference
18 line at this time.

19 (Due to the proprietary nature of the
20 testimony found on pages 146 to 204, it
21 was filed under seal.)
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CHAIR MITCHELL: Okay. At this point let's
leave the video conference. We will join the phone line.
We will go through the process of ensuring participation
on the phone line and then we will get started. Please
mute your lines and turn off your video.

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(Due to the proprietary nature of the
testimony found on pages 15 through
90, it was filed under seal.)

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1 (Recess taken from 10:55 a.m. to 11:12 a.m.)

2 CHAIR MITCHELL: All right. Let's go back on
3 the record, please. We are now out of confidential
4 session. We will return to public session. We are with
5 Duke's witness Bednarcik. We are now at the point in
6 time -- so I'm going to -- Ms. Cralle, you indicated you
7 had a question for the witness on one of the
8 Commissioner's questions asked during the confidential
9 session. We're going to hold your question until we get
10 to the point in time in this public session with the
11 witness where she'll take questions on Commissioners'
12 questions, so just hang on to your question. Don't
13 forget it.

14 All right. Attorney General's Office, you may
15 proceed.

16 MS. TOWNSEND: Thank you, Chair Mitchell.

17 CHAIR MITCHELL: Actually, Ms. Townsend, I
18 apologize. I'm going to interrupt you. I need to
19 address one procedural issue before you begin. I'm sorry
20 for the interruption.

21 Mr. Robinson, as to your motion related to DEC
22 witness Oliver, he may be excused.

23 MR. ROBINSON: Thank you, Chair Mitchell.

24 CHAIR MITCHELL: All right, Ms. Townsend.

1 You're up.

2 MS. TOWNSEND: Thank you again.

3 CROSS EXAMINATION BY MS. TOWNSEND:

4 Q Good morning, Ms. Bednarcik. Welcome back.

5 A Good morning, Ms. Townsend.

6 Q We're going to start with a data request that
7 the AGO served on Duke, DEC, requesting details about the
8 amounts of coal ash disposed of by Duke Carolinas over
9 time for current and former coal generating stations in
10 tons and cubic yards. Are you aware of that request?

11 A I do remember that that was a request. If you
12 could give me the -- the number, I will find it.

13 Q Certainly. If you will go to Cross Exhibit
14 Number 38.

15 A I have it in front of me.

16 Q All right.

17 MS. TOWNSEND: Yes. Chair Mitchell, we would
18 like to mark this exhibit as AGO Bednarcik Rebuttal
19 Exhibit 1.

20 CHAIR MITCHELL: All right. The document will
21 be marked as AGO Bednarcik Rebuttal Cross Examination
22 Exhibit Number 1.

23 MS. TOWNSEND: Thank you.

24 (Whereupon, AGO Bednarcik Rebuttal

1 Cross Examination Exhibit 1 was
2 marked for identification.)

3 Q All right. Ms. Bednarcik, could you go, just
4 to review the document quickly first, the first two pages
5 of the exhibit is DEC's narrative response to AGO Data
6 Request 6-1, which is dated January 17th, 2020, again,
7 which asks for information about the disposal of coal ash
8 over time. Do you see that?

9 A Ms. Townsend, just to make sure, I'm in AGO 38;
10 is that correct?

11 Q That's correct.

12 A The one I have just has tables associated with
13 it. It actually has multiple pages in it. I think this
14 was a very large data request, so let me find -- if you
15 give me one moment, I'll find the actual data request.
16 Thank you.

17 Q It was evidently put together a little
18 differently when Duke put it together.

19 A I found the page with the actual request on it.
20 Thank you.

21 Q All right. You'll actually find there's two
22 requests, so the first is -- the response was January
23 17th, 2020, and then we have a supplemental response
24 that's dated January 31st, 2020. Do you see that?

1 A I see both of those.

2 Q Okay. And the first one, the response has an
3 attached file which is a spreadsheet that you -- well,
4 it's just one long spreadsheet which shows disposal of
5 coal ash from 2010 through January -- I'm sorry --
6 through July 31st, 2019. Do you see that?

7 A Yes. I do see that.

8 Q All right. And then if we go to the
9 supplemental one, we have a narrative on the response,
10 and it says that -- are you with me on the --

11 A Yes. I am there.

12 Q Okay. All right. Informit--- I'm sorry --
13 "Information responsive to this request for years
14 1997-2009 can be find in document 'Duke_USAO_00272241,'
15 available on Relativity," and then "Information
16 responsive to this request for years" -- '85 through 2003
17 -- "is also publicly available on the U.S. Energy
18 Information Administration's website, available at," and
19 then it gives the website address, correct?

20 A That is correct.

21 Q All right. And if you will go to the next page
22 which shows the first table under that response, it
23 indicates at the top Duke Power Company, 1991 Monthly
24 Coal Ash Production and Utilization Tracking (as of

1 12/31/91). Do you see that?

2 A Ms. Townsend, as you mentioned earlier, it's
3 put together very differently, so if you'd give me a
4 moment.

5 Q Absolutely.

6 A I'm going to try and look at the actual Excel
7 table, so is this the table for the first one or the
8 supplemental that we're discussing?

9 Q Oh, this is for the supplemental. It starts
10 with 1991.

11 A If you give me one moment. I'm going to try to
12 pull it up on my computer since the printouts are not
13 easy to find that way.

14 Q I'm sorry for the problem there. What it
15 shows, if it helps any, is that it's a 1991 Monthly Coal
16 Ash Production Utilization Tracking, and what it shows,
17 then, in the table is the month and each of the various
18 sites, Allen, Belews Creek, Buck, Cliffside, Dan River,
19 Lee, Marshall, Riverbend, Incremental Total and then
20 Cumulative Total. That's what each of the tabs should
21 show from 1991 through 2009.

22 A They are loading right now.

23 Q All right.

24 A So I do have them up now that has -- the first

1 tab being 1991.

2 Q Perfect. And the note at the top indicates
3 that "All ash production utilization quantities are in
4 1,000's of dry tons," correct?

5 A Yes.

6 Q Okay. And do you have a tab for 1991 through
7 2009? You don't need to look at every one of them, but
8 just do you have tabs for those dates?

9 A Yes.

10 Q All right. Awesome. Okay. I'm not going to
11 actually ask you any questions regarding those documents,
12 which should give everybody a sigh of relief, but I will
13 let them speak for themselves.

14 Let's go on to another topic, if you will. I
15 have a few questions regarding statements that you made
16 in your summary of supplemental testimony. Do you have
17 it -- do you have it?

18 A For my -- the summary that was submitted a few
19 weeks ago or the summary of my overall supplemental
20 testimony or my --

21 Q No. The one we just received via email from
22 your counsel. This is the supplemental testimony
23 summary.

24 A Okay. Thank you. I wasn't sure --

1 MR. MARZO: Okay. Yeah.

2 A Thank you. Yeah. I do have my supplemental
3 testimony that was recently filed, yes.

4 Q All right. And I'm talking about the summary
5 now of the supplemental testimony that was just served on
6 everyone a day or so ago. Do you have that? It's a two-
7 page document.

8 A If you'll give me one moment, I'll open it up.

9 Q Yeah. Sure. Do you have it?

10 A I have it in front of me now.

11 Q All right.

12 A Thank you.

13 Q Sure. On the first page of your summary at the
14 very last paragraph, first sentence, you state that
15 "Moreover, while the Company agreed to excavate ash as
16 part of the Settlement Agreement, it also secured key
17 representations from" -- DEQ -- "and the special interest
18 groups that will allow the Company to proceed with
19 excavation as expeditiously as possible." Is that
20 correct?

21 A Yes. That's correct.

22 Q All right. Would you please identify and
23 explain what these "key representations" are?

24 A Yes, Ms. Townsend. So if you go to the actual

1 supplemental testimony that was submitted, they're called
2 out in those areas what -- the paragraphs in the exactly
3 -- in the Settlement Agreement and what those areas are.
4 So let me open that up and make sure I can give you those
5 paragraphs.

6 Q Thank you.

7 A So if you go to my supplemental testimony on
8 page 10, this is where the -- there are a couple things
9 that are called out in the footnote down at the bottom in
10 paragraph 38, 42, and 45. So on page 10, line 3, it
11 starts "In particular, the Settlement Agreement secured
12 commitments from NCDEQ that it will, among other things,
13 conduct an expeditious review and act expeditiously as to
14 review of the Company's closure plans and permit
15 applications. Likewise, the Settlement Agreement secured
16 commitments that the community groups will not oppose or
17 otherwise challenge the Company's closure plans or
18 requests for variances on closure deadlines set forth in
19 CAMA."

20 Q Thank you. Excuse me. Would you please
21 explain why the Company was seeking permission to proceed
22 with excavation as "expeditiously" as possible?

23 A So we were -- as you know, that there are
24 deadlines that are laid out in CAMA and also in the CCR

1 Rule in order -- for closure dates or when excavation has
2 to be completed. So as we were entering into
3 negotiations with the parties on the excavation of the
4 remaining sites, we were looking at the deadlines and how
5 are we going to meet those deadlines. So we looked at it
6 and said if we can get expeditious review of permits and
7 move forward, that will help us to be able to meet those
8 deadlines not only in the CCR Rule -- and there are a
9 couple places where we're working with the Agency and
10 with EPA because we will not be able to excavate to meet
11 the deadlines in the CCR Rule -- but in order to meet
12 those deadlines, it's a fair amount of ash that we're
13 going to be moving, and there's a sequence to do all of
14 that. So if you can -- by the Agency saying that they
15 would expedite the review of the plans and procedures, it
16 allows us to get started sooner, and allowing us to get
17 started sooner, we will be able to work through the
18 project, work through to make sure that we can meet not
19 only the deadlines that are in the Settlement Agreement,
20 but deadlines in CAMA, and also be able to show EPA that
21 we are moving forward in order to meet the deadlines
22 where we can, and also to show EPA that as EPA and DEQ
23 are working on a permit program of whether or not EPA or
24 DEQ will adopt the Federal CCR Rule, that will allow them

1 to modify the final closure dates. All of this is to
2 help show that we're not -- we're not holding things up,
3 that we want to move forward to excavate these basins and
4 to get closure of them at the end of the day.

5 Q And you were negotiating this with DEQ and some
6 special interest groups, so there was some discussion
7 about "pushing back" some of those deadlines; is that
8 correct?

9 A There was discussions of the deadlines and how
10 those deadlines match up with the deadlines in CAMA, as
11 well as the Federal CCR Rule deadlines.

12 Q All right. If you'll go to your second page,
13 you state in about the middle of the full paragraph there
14 "I next explain that it is impossible to identify with
15 any degree of certainty the incremental cost that the
16 Company is likely to incur as it proceeds to excavate
17 rather than cap-in-place the Company's remaining CCR
18 basins under the favorable terms of the settlement." Is
19 that accurate? Did I read that accurately?

20 A Yes.

21 Q All right. Can you identify and explain what
22 incremental cost that the Company is likely to incur as
23 it proceeds to excavate rather than cap-in-place?

24 A So in determining what those incremental costs

1 were, how at least the Company interpreted that request
2 is that there is a -- there are activities that have to
3 be conducted for cap-in-place, there are activities that
4 have to be conducted for excavation. Now, we have not
5 gone out for bids yet for cap-in-place. We did not do
6 that, of course. We did have estimates that we provided
7 in a previous rate case that we had forward that we did
8 provide with Mr. Kerin's testimony as to what we
9 anticipated, estimates, but when you look at what that
10 difference is to meet the Federal CCR Rule, meet CAMA,
11 meet what's in the settlement, looking at it and going
12 absolutely do we know what we would have spent if we
13 would have capped-in-place, absolutely, no. We can't go
14 back. We can't look forward and estimate going forward.
15 We cannot go and say because we haven't had bids, we
16 haven't executed work on cap-in-place or excavation.

17 So the request asks for incremental cost for
18 the current case, and when we went back and we said,
19 well, what -- what did we do that we did for excavation
20 that we would not have had to do for cap-in-place or vice
21 versa, what are those kind of double costs, and that's
22 really -- that's why we called out the closure plans. We
23 did do two sets of closure plans. We prepared a set of
24 closure plans for cap-in-place, we prepared a set of

1 closure plans for excavation, had those both ready
2 because we were required to submit a closure plan by the
3 end of 2019. So, really, those were the only costs that,
4 looking at it, that we could say what is that incremental
5 -- what is that? If we had said -- if we had the Order,
6 if we had gone forward with excavation at the beginning,
7 what those additional costs would have been but for us
8 having the discussions with DEQ and the disagreement with
9 DEQ between cap-in-place and excavation, the only thing
10 that we could come up with was these additional -- these
11 from what we actually spent, were these closure plans
12 that we submitted because we did do duplicates.
13 Everything else that we've done to date will actually
14 meet the needs of both, and then going out in the future
15 we do have the estimates, but we can't come up with a
16 firm, hard number of actual cost for excavation versus
17 cap-in-place.

18 Q Let me bring in another sentence in your
19 statement or summary which is right before that one, that
20 says "I explain that the Company did not incur any
21 incremental cost as a result of the Settlement Agreement
22 with respect to the cost it is seeking to recover in the
23 instant rate case." Is that correct? Did I read that
24 correctly?

1 A Well, the summary does say that. I'm trying to
2 find -- I thought this was in the summary, and if it was
3 not, I do know it was clear in the actual submittal,
4 where we called out those closure plan costs
5 specifically. So if it was not in the summary of my
6 supplemental testimony, it's clearly called out in the
7 supplemental testimony.

8 Q All right. So it is your understanding at this
9 point that the only costs that were different than would
10 have been done if you were excavating are those two
11 closure plans rather than one closure plan?

12 A Yes.

13 Q All right. So based on what your testimony is,
14 is that the steps towards excavation are identical to
15 that the Company took for -- would have taken for cap-in-
16 place to a certain level or to a certain stage, but would
17 you please summarily identify what these steps are that
18 were done through the cap-in-place ones prior to being
19 told they had to be excavated?

20 A Yes. So the steps that were taken, of course,
21 was the groundwater monitoring that is required
22 underneath CAMA and the development of groundwater
23 corrective action plans. And the sampling of groundwater
24 wells, of course, that would take place for both.

1 Q Uh-huh.

2 A There was also all of the work that we did to
3 dewater the basin. So that is a significant amount of
4 the work that has been going on over the last couple
5 years, is dewatering the basins, setting those basins up
6 for dewatering, also, the removal of all the flows from
7 the basins that had to be done by a date certain in CAMA.
8 So regardless if it was cap-in-place or excavation, we
9 still would have had to do groundwater monitoring, we
10 still would have had to remove all flows to the basin, we
11 still would have had to dewater and decant the basins and
12 put in water treatment systems for the dewatering and
13 decanting.

14 Q And you did all those things at Allen, Belews
15 Creek, Cliffside, and Marshall; is that correct?

16 A Yes.

17 Q You said you also did corrective action plans
18 when you thought you might be capping-in-place. Aren't
19 those corrective action plans going to change when you
20 excavate?

21 A No. The corrective action plans for those
22 sites that were submitted to the State were -- did not
23 change between capping-in-place and excavation, so what
24 was submitted to the State included -- was exactly the

1 same for excavation and cap-in-place.

2 Q Now, the cap-in-place -- I'm sorry. The
3 corrective action plans were not given to the State until
4 after the April 1st determination and even after the
5 Settlement Agreement; is that right?

6 A Yes. The corrective action plans were
7 submitted to the State. I don't remember the date off
8 the top of my head right now, but they were submitted to
9 the State after the settlement date.

10 Q Okay. And then going to your discussion with
11 Ms. Luhr from the Public Staff yesterday, you stated that
12 the Company was currently "doing some corrective action
13 plans." Where are those particular corrective action
14 plans being conducted?

15 A So I don't remember the exact nature of the
16 discussion and where I said that. So we are -- we did
17 submit corrective action plans for Allen, Belews Creek,
18 Cliffside, and Marshall, as there was some discussion
19 yesterday about extraction, and so there is extraction
20 at, of course, Belews Creek that is going on right now in
21 that extraction well that was part of what we call the
22 Sutton settlement, where we had to do the accelerated
23 extraction. I did mention other corrective actions. I
24 think I was talking in general for non-CCR that we did --

1 Q Uh-huh.

2 A -- corrective actions. We have had groundwater
3 corrective actions at other types of sites, but not CCR
4 ones, but those corrective action plans specifically for
5 those, except for the one, the extraction well at Belews
6 Creek, we've submitted those plans, and we're working
7 right now, going out for bid, to do patent studies on the
8 groundwater corrective action programs for the sites that
9 I mentioned.

10 Q So I'm assuming the corrective action plans
11 were required based on the fact that there were
12 exceedances of groundwater? Is that correct?

13 A Yes.

14 Q And what plants that were not coal ash related
15 are you referring to?

16 A I think I was talking in general about
17 underground storage tank sites and others when I was -- I
18 believe, going off of memory, what the discussion with
19 her was more on groundwater remediation at other type of
20 sites. I do remember bringing up underground storage
21 tanks, so not things that are included, of course, in
22 this case.

23 Q All right. Also, if my notes reflect
24 correctly, during that discussion with Ms. Luhr, you

1 stated that background -- "background levels for
2 groundwater well monitoring were being evaluated by DEQ
3 in 2014, and that -- and I believe these were your words,
4 that a "line has been drawn in the sand regarding
5 background." Would that be accurate?

6 A I think what I said was that background is ever
7 evolving. You find out more information so that a line
8 has not been drawn as, say, absolutely, this is
9 background, this is -- that that has not been
10 definitively determined yet. Mr. Wells may be able to
11 talk about this a little bit more, but I do know that we
12 are continuing to have discussions with DEQ about final
13 background and how that will be utilized, but, again,
14 that -- I know Mr. Wells knows a lot more about those
15 discussions with DEQ on the background levels. I believe
16 my discussion with her was more on impacts to homeowners
17 in the area, and that we had not seen impacts from the
18 coal ash basins to the -- our homeowners around our
19 basins, around our plants.

20 Q So who is -- based on your comments, it would
21 appear that DEQ was the one that set those background
22 levels. Is it DEQ or DEC that is setting them now?

23 A So it's a discussion between DEQ -- DEQ has the
24 final authority as to say this is what is going to be

1 utilized in our -- in determination of the final -- when
2 we say we're done with our groundwater corrective action,
3 DEQ, of course, has final authority of that. The
4 Company, of course, has taken lots of groundwater data,
5 has provided that to DEQ. DEQ has also, I believe, taken
6 a lot of data. They took a lot of groundwater samples as
7 well of the surrounding area. So all of that goes
8 together in determining what the background levels were.
9 But this is discussion back and forth with DEQ and the
10 Company, but DEQ has the final authority.

11 Q And if you would, go to page 6 of your rebuttal
12 testimony. Well, you actually don't need to go. You
13 mention the Settlement Agreement with DEQ and the special
14 interest groups. And on page 7 you indicate that the
15 agreement details a reasonable and prudent plan for
16 closure of the six remaining CCR basins owned by Duke
17 Energy, Allen, Belews Creek, Mayo, Roxboro, Marshall, and
18 Cliffside. Are you there?

19 A Yes. I'm there.

20 Q All right. Is that an accurate summary of your
21 thoughts on that matter?

22 A Yes. That is a good summary.

23 Q Okay. However, in your direct testimony, you
24 stated, as we discussed last time we were together, that

1 cap-in-place is the Company's preferred closure method
2 for Allen and the others because it's environmentally
3 protective, unobtrusive, and economical, correct?

4 A Correct.

5 Q All right. So which plan for closure of the
6 Allen, Belews Creek, Cliffside, and Marshall sites do you
7 consider truly reasonable and prudent, the cap-in-place
8 or the excavation?

9 A So when you -- that's a good question. Looking
10 at before the settlement, we did, and we still believe,
11 that cap-in-place is what will be protective, and moving
12 forward, being protective of the environment and a good
13 option to go forward to close the sites.

14 As you know, DEQ, on April 1st, 2019, came back
15 and gave us the Order to excavate all of our basins.
16 Now, in the Order -- in CAMA, DEQ is the final authority.
17 So while the Company did put forward cap-in-place and we
18 did actually challenge DEQ's Order on April 1st, 2019, in
19 order to say there are some things that are -- that need
20 to be taken into account by the Company's viewpoint, one
21 of which was the groundwater corrective action plans.
22 And we discussed that the other day, Ms. Townsend, when
23 we went through the DEQ Orders, that DEQ even said that
24 they did not take into account any type of groundwater

1 corrective actions in their determination. But at the
2 end of the day, DEQ is given the authority to make the
3 determination as to what needs to happen. So through the
4 Settlement Agreement, what the Company was able to get
5 through some of those provisions that you had me quote
6 the paragraphs earlier, as well as in the discussion with
7 DEQ -- excuse me -- in the final agreement, we were
8 allowed to leave in place areas at Marshall and at
9 Roxboro that are capped. They have a permitted landfill
10 on top of them. So we were able to leave those material
11 in place. So the fact that we were able negotiate with
12 DEQ, come up with a settlement that allowed us all to
13 move forward outside of litigation, and yet DEQ has the
14 final authority as to determine what needs to occur at
15 the sites, and we were successful in allowing that the
16 cap material at Marshall and at Roxboro remain in place,
17 all of those things together, I would say, is why the
18 Company looks at it and says this is -- this is a good
19 settlement, and this is why we agreed to the settlement
20 and said let's move forward and execute the settlement.

21 Q Do you have an approximate cost number of what
22 it would have cost for those four DEC sites to be capped-
23 in-place versus what it's going to cost to have them
24 excavated, even though some of the material is being --

1 whether or not the material was being waived off or not,
2 the extra material?

3 A So Ms. Townsend, if you go to that supplemental
4 testimony that was submitted --

5 Q Uh-huh.

6 A -- one of my exhibits actually shows that. I'm
7 trying to pull it up. I believe it's Exhibit 4. And the
8 question that you are asking is really what I was trying
9 to show in this exhibit, is that it kind of takes you
10 through time, but in the -- if you have -- do you have
11 Exhibit 4 in front of you from my supplemental?

12 Q Yes, I do.

13 A So what we were trying to show in the sites
14 that are listed here, Allen, Belews Creek, Cliffside, and
15 Marshall, and we did include Buck, and I'll explain why
16 we included Buck, but these were all part of -- these
17 were all the sites that were included in the
18 settlement --

19 Q Uh-huh.

20 A -- in the Consent Order that went on file with
21 the Court.

22 Q Uh-huh.

23 A If you look at -- and I'll leave for right now
24 the Kerin Exhibit 11 from the last case, but the third

1 quarter 2018 estimate, if you look at Note 1, Note 1 says
2 that estimate assumes cap-in-place for Allen, Belews
3 Creek, Cliffside, and Marshall, going out from 2015, so
4 costs we've already incurred, through our estimate of
5 2059. So the overall cost for the sites that are shown
6 on this table was \$1.8 billion, generally, for cap-in-
7 place of what we were estimating at that time, third
8 quarter 2018.

9 When DEQ's Order came out to excavate the
10 basins, including those areas specifically for Marshall
11 since it's on here, including those areas that the
12 Company does not have to excavate now because of the
13 Settlement Agreement, we were looking at an excavation
14 cost of \$4.7 billion. And then with the settlement, by
15 allowing some of the material to remain in place at
16 Marshall, and also -- and this is why we include Buck in
17 here, if you look at Note 3, and then -- no -- actually,
18 more Note 4, Buck is included due to paragraph 39 of the
19 Settlement Agreement concerning variances requests for
20 beneficial -- beneficiation sites. So at the end of the
21 day, specifically for DEC with the settlement, the
22 estimated cost went from \$4.7 billion down to \$4 billion
23 for DEC. So that is the overall kind of -- if you look
24 at it and say between what DEQ was requiring us to do

1 April 1st, 2019, and where we landed at the end of the
2 settlement, because of the settlement, the estimated cost
3 went down by roughly \$700 million.

4 Q All right. So my take from this, my
5 understanding is, is that excavation would have cost \$4.8
6 billion, approximately, and cap-in-place would have cost
7 \$1.8 billion, so instead of capping-in-place, you will be
8 spending \$3 billion more to excavate; is that correct?

9 A Well, again, we never had the actual approval
10 of DEQ to cap-in-place, so the way the process goes is
11 that we submitted plans to DEQ, DEQ has the ultimate
12 authority under CAMA to choose what the Company is going
13 to do, and DEQ chose excavation. We did go back and have
14 -- this is why we did the settlement and why we did not
15 just say yes. We did have a position and we worked with
16 the Agencies to come up with a settlement, and the
17 settlement was less than what DEQ was ordering us to do.

18 Q All right. Understood, and settlements are
19 always good, but it could have been litigated if you felt
20 that cap-in-place was, indeed, the best way to go, could
21 have been litigated, could have come out in a different
22 -- with a different decision, correct?

23 A Yes. It could have been litigated, but with
24 litigation -- and I'm not a lawyer, but I do know with

1 litigation there are risks. There are risks that, at the
2 end of the day, we could have been ordered by a judge to
3 say excavate everything, including the areas that we got
4 underneath the settlement, that we don't have to
5 excavate. And the other risk, I would say, is that if it
6 had gone to full litigation, we still have dates in CAMA
7 and CCR that we have to meet, so there's a time lag
8 between when -- how long it would take to do litigation.
9 Again, I'm not an attorney, but you know how long
10 litigations usually take, so we have to take that into
11 account as well, is that the Company cannot wait, knowing
12 we have deadlines which have consequences if we don't
13 meet those deadlines while we are going through the
14 process. So that's why we did enter into the agreement
15 with DEQ, and looking at it and saying the risks of
16 litigation, the risk of litigation at the end of the day
17 saying excavate everything, all of that was taken into
18 account by the Company in the determination that the
19 settlement was the proper thing to do and to move
20 forward.

21 Q Thank you.

22 MS. TOWNSEND: And no further questions, Chair
23 Mitchell.

24 CHAIR MITCHELL: All right. Sierra Club?

1 MS. CRALLE JONES: Good morning, Chair
2 Mitchell, and good morning, Ms. Bednarcik. We're once
3 again going to make it before the lunch break for a time
4 to visit.

5 CROSS EXAMINATION BY MS. CRALLE JONES:

6 Q I wanted to go back and discuss, yesterday when
7 you were discussing alternative water supplies with Ms.
8 Luhr, I believe you said we're covered under CAMA
9 relating to the provision of those alterative water
10 supplies. Based on your testimony, CAMA is the reason
11 the Company believes that it's entitled to be compensated
12 for permanent water supplies in this hearing; is that
13 right?

14 A Yes. So, and if I said CAMA, it's the
15 revisions to CAMA, the House Bill 630, of course, but,
16 yes, of course.

17 Q And you also said that you didn't know what
18 legislators were thinking when they passed the
19 alternative water supply provisions. Do you recall that
20 testimony?

21 A I do.

22 Q Does the Company employ lobbyists to
23 communicate with North Carolina legislators and work to
24 obtain favorable terms for the Company in that

1 legislation?

2 A I do know that the Company does have -- I guess
3 you would call them lobbyists, but people that do work
4 and interact with people in the State Legislature.

5 Q And they had lobbyists at the time that those
6 amendments to CAMA were passed, correct?

7 A Yes.

8 Q And those amendments to CAMA were signed by
9 Governor McCrory and effective in July of 2014 (sic); is
10 that correct? It's your Exhibit 1 on PDF page 70 of 73,
11 if you'd like to check.

12 A So the reason I'm looking around, I know CAMA
13 originally was 2014, but the House Bill 630, I want to
14 make sure I have the date correct for you on that. I
15 know I mentioned that to Commissioner McKissick, but I
16 want to make sure.

17 Q I may have misspoken. I believe it was July
18 14th, 2016.

19 A Yes. So CAMA was 2014, and that's why I wanted
20 to make sure we got it correct. CAMA was in 2014, but
21 House Bill 630 was in 2016.

22 Q So prior to July of 2016, had the Company
23 received demands from landowners across the state to
24 provide alternative water supplies?

1 A Yes. We had received -- we had discussions,
2 and there was demands through -- through legal counsel
3 for permanent water supplies.

4 Q And prior to July '16, had the Company agreed
5 to provide alterative water to all properties for DEC and
6 DEP basins?

7 A Prior to the passage of House Bill 630, no, but
8 we had provided some bottled water to customers while we
9 were evaluating whether or not we needed to -- whether
10 their wells had been impacted by coal ash constituents.
11 We had not agreed to provide permanent water, other than
12 there were a few in the 2014 time period where there was
13 some connections made years past, and those are the ones
14 that I discussed in my direct testimony with you or with
15 -- I don't remember if it was you or if it was with
16 someone else, but my direct testimony -- is that when we
17 did see that there was a possibility that there might be,
18 at some time in the future, groundwater going anywhere
19 towards a homeowner's well, we did connect them, and
20 that's what we did in Asheville prior to 2014, as well as
21 at Sutton, but for the homeowners that were connected
22 that are part of the House Bill 630, we did not -- we did
23 not see any impacts related to coal ash constituents, and
24 we had not agreed to connect any of those homeowners, but

1 we did provide some bottled water while we were doing
2 those evaluations.

3 Q Thank you. Now, on your rebuttal testimony on
4 page 6, in the second footnote you -- you stated "Company
5 witness Jon Kerin established the reasonableness and
6 prudence of the Company's historical practices in his
7 2017 direct testimony in Docket E-7," -- "1146." Did I
8 read that correctly?

9 A Yes.

10 Q But witness Kerin didn't have any firsthand
11 knowledge or experience regarding the Company's
12 management policy decision making or operating practices
13 prior to 2014, did he?

14 A He did not, but I do believe, and I'm going off
15 memory, that in the Commission's Order, they did address
16 Mr. Kerin and his testimony, and they found him credible,
17 and they included in the ruling something about
18 historical practices and what the Company did. So I
19 don't have it committed to memory, but I do remember that
20 in the ruling.

21 Q And then on page 55 of your testimony, line 14
22 through 16, you stated that you "believe that DE
23 Carolinas' coal ash management practices were and
24 continue to be consistent with industry standards at the

1 time." Is that correct?

2 A Yes.

3 Q When you say at that time, do you mean every
4 point in time between the construction of the first ash
5 pond and now?

6 A Yes.

7 Q But you don't have any firsthand experience
8 with how -- in respect to how the Company's coal basins
9 were maintained prior to 2013, do you?

10 A So I do not have firsthand knowledge. What I
11 did, very similar to what Mr. Kerin did, is I reviewed
12 the historical documents or I talked to people that are
13 operating it now. I do have people that report to me now
14 who are managing a number of our coal ash practices at
15 our operating sites, at our landfills and working on
16 closing the basins. So I did a review of the available
17 documentation, and I -- and I believe I discuss this in
18 my direct testimony, also -- I used that weight of
19 evidence approach, looking at what is available, what do
20 I see, what do I read looking through historical
21 documents and saying if I had in my mind -- not what I
22 know today; of course, not what I know today -- but if I
23 try my hardest to put myself in the shoes of somebody at
24 that time period with the information that I have

1 available to review today and say does it -- does it seem
2 appropriate the actions that were taken, again, not
3 looking at what I know today, then were the actions
4 appropriate? And that is the evaluation that I did, and
5 I do believe that the actions that the Company has taken
6 over the years -- as we got more information, of course,
7 we pivoted and changed over the years, but you can't use
8 the knowledge you have today to judge people in the past,
9 of course. So that is the evaluation I did, best of my
10 ability, try and put myself in those shoes of those
11 people at the time based upon historical documents I
12 reviewed.

13 Q And in several places you refer to industry
14 standards. Do you mean what other utilities happened to
15 be doing at the time?

16 A Yes.

17 Q Does Duke Energy consider itself to be an
18 industry leader?

19 A Very broad question. I would say, yes, in some
20 areas. So we do talk to other industries, other
21 utilities in our industry. One of the reasons -- I know
22 EPRI's been brought up a couple times. That's one of the
23 reasons we participate with -- with EPRI, is to be able
24 to understand what other -- others in the industry are

1 doing and share those best practices, yeah.

2 Q And does the Company strive to be better than
3 its competitors with respect to the performance of its
4 facilities?

5 A I guess, Ms. Cralle Jones, I would say that's a
6 big question and a very subjective question. I would say
7 that, of course, the Company is meeting our regulatory
8 obligations. Of course, the Company is looking and
9 seeing what needs to be done in order to make sure that
10 we have the lowest cost requirements by what is required
11 through the Commission Orders, which is my understanding
12 of one of the things we, of course, have to evaluate. So
13 looking at all -- all the things that the Company has to
14 evaluate along the way, yes, I do think that the Company
15 has operated appropriately, has been operating along with
16 industry standards, and depending upon what we have in
17 front of us at the time, I can't say if we were the
18 leaders or if we were all the way along, but I do -- my
19 review of historical documents is that we -- we did
20 things appropriately.

21 Q Okay. Have you seen, or can you cite any
22 evidence of the Company's coal ash management being
23 better than others?

24 A As I sit here today, I cannot recall that

1 specific information, but that's -- I've reviewed a lot
2 of documents, but I don't see anything that I could say
3 specifically related to that.

4 Q Other than the Company's Dan River spill and
5 the TVA's Kingston spill, are you aware of any other
6 major coal ash spills?

7 A I am aware of at least one other. I believe
8 there was one in the Pennsylvania region that happened.
9 I can't remember what year or which utility, but I do
10 believe that there was another one in Pennsylvania.

11 Q Do findings by groups like E-P-R-I, EPRI, form
12 those industry standards we've been talking about?

13 A Ms. Cralle Jones, I think I missed the first
14 part of your question, if you could restate it, please.

15 Q Do -- and I think you addressed this before,
16 but findings by groups like EPRI, those inform what
17 "industry standards" are, don't they?

18 A So groups like EPRI are -- we utilize in order
19 to do research on behalf of all the utilities and to help
20 us understand what is going on in the industry, and also
21 doing research as to what is -- a lot of environmental
22 research as well -- as to help inform the industry and
23 the utilities as to what is going on in society, what is
24 going on at the operation in our plants and what we need

1 to do. So I would not say that EPRI sets out
2 requirements that needs to be done, but it helps inform,
3 as part of that weight of evidence, as part of the
4 information that the Company takes in when we make our
5 decision.

6 Q Okay. Now, on page 56 of your testimony, you
7 stated that DE Carolinas last constructed a new ash basin
8 in 1982. Where was that new basin constructed in 1982?

9 A At the Buck location.

10 Q Would you please pull Sierra Club 7? And for
11 purposes of identification, it's the DEC Revised Exhibit
12 5 to Jon Kerin's direct testimony in Docket 1146 in 2017.

13 A I do -- I have that in front of me.

14 Q And this provides a list of when the Company's
15 ash basins were constructed; is that correct?

16 A I do see that.

17 MS. CRALLE JONES: Chair Mitchell, we would
18 request that this exhibit be marked as Sierra Club
19 Bednarcik Rebuttal Cross Exhibit 2.

20 CHAIR MITCHELL: All right. The document will
21 be marked Sierra Club Bednarcik Rebuttal Cross
22 Examination Exhibit Number 2.

23 MS. CRALLE JONES: Thank you.

24 CHAIR MITCHELL: Actually, Ms. Cralle, is this

1 Exhibit 1 or 2?

2 MS. CRALLE JONES: I believe it's 2 because --
3 well, I'll need to go back, but I'm almost certain it's
4 2, and I can check about 1 in our break.

5 CHAIR MITCHELL: Well, you have Direct Cross
6 Examination Exhibit Number 1, Bednarcik Direct.

7 MS. CRALLE JONES: You're correct. You're
8 correct. This would be Cross Exhibit 1. My apologies.

9 CHAIR MITCHELL: All right. Just for -- just
10 for clarity and purposes of the record, the document will
11 be marked Sierra Club Bednarcik Rebuttal Cross
12 Examination Exhibit Number 1.

13 MS. CRALLE JONES: Thank you.

14 (Whereupon, Sierra Club Bednarcik
15 Rebuttal Cross Examination Exhibit
16 Number 1 was marked for
17 identification.)

18 CHAIR MITCHELL: You may proceed.

19 Q This chart says that the last basin at Buck was
20 constructed in 1977; is that correct?

21 A So that is what this document shows, but I do
22 know that we have provided -- I don't remember
23 specifically updating this Exhibit 7, but I do know that
24 as part of Public Staff Data Request 2-1, and I have that

1 available, which is -- which is why I have it, it does
2 show that the Ash Basin 1, also called the additional
3 primary pond, was -- the date of construction was 1982.

4 Q Okay. Do you see -- based upon your most
5 current information are there any other incorrect
6 construction dates on this document?

7 A If you give me a moment, I will double check.

8 Q Okay.

9 A So in my review, I did see that the active ash
10 basin, it looks like they put the date of beginning
11 construction is 1972/1973 time period. I see both of
12 those dates.

13 Q I'm sorry. Can you clarify which facility?

14 A Allen. Sorry. Allen.

15 Q Okay.

16 A Active ash basin started construction in the
17 1972/'73 time period, so that -- that one has both of
18 those dates in documents, but only one year difference.
19 The only other one that I see is Buck, so that there is,
20 as we already discussed, that Basin 1 -- Ash Basin 1, the
21 additional primary pond, the initial construction date
22 was 1982. Ash Basin 2, which is also called the primary
23 pond, was 1957, and Ash Basin 3, which is also called the
24 secondary pond, does have the correct date of 1977. So

1 really it appears that Buck is -- did have -- it looked
2 like the Basin 1 date was supposed to be listed for Basin
3 2, and then there was a 1982 date. And Buck is a little
4 confusing because they have two names for each one of
5 their basins, so that's why I wanted to make sure I gave
6 you both names.

7 Q Okay. Thank you. After 1982, did the Company
8 expand the footprint of any of its ash ponds?

9 A Let me look at my document just to make sure.
10 So I do see that there was an expansion at the W.S. Lee
11 site in the primary and secondary ash basins that
12 happened in 1985. And, again, this is all information in
13 that -- that Public Staff Data Request 2-1.

14 Q Thank you. And so 1985 at W.S. Lee, that was
15 the only expansion after 1982?

16 A Yes.

17 Q Okay. And then after 1982, did the Company
18 raise the height of any of its ash ponds?

19 A I do not see that in front of me of any
20 expansions in heights. I'm sorry, I do not have that --
21 I don't believe so. That's why we have this data
22 request, because it has a lot of good information in it.
23 It does not indicate that.

24 Q Okay. All right. You'd agree with me,

1 wouldn't you, that it's important to take into account
2 site-specific conditions when making CCR-unit specific
3 determinations?

4 A Yes.

5 Q Is the proximity of the bottom of an unlined
6 ash pond to an aquifer a site-specific condition worth
7 considering?

8 A So we know today, because that is actually
9 something that is called out in the CCR Rule, that that
10 is a consideration that needs to be -- that was one of
11 the location restrictions that the Company had to
12 evaluate as part of the CCR Rule. So in the time frame
13 when these basins were built, location to groundwater, I
14 don't know how that evaluation was done in setting up
15 these basins and the -- when they were sited and
16 initially constructed in the 1950s, around that time
17 period. So I don't know if that was one of the items
18 that was contemplated or not.

19 Q Do you know -- of the 17 unlined coal ash
20 ponds, do you know how many of those are located within
21 five feet of an aquifer?

22 A Yes. If you give me one moment.

23 Q Okay.

24 A So the basins in the DEC sites, all of those

1 sites did not meet the upper most aquifer location
2 restriction or meet the CCR Rule.

3 Q Okay. And would that be -- well, I believe on
4 the CCR Rule, are you aware that the Company certified
5 that two ash ponds at plant Allen are located within 15
6 feet so do not meet -- I'm sorry, within five feet? I'm
7 sorry.

8 A So I wanted to make sure when -- when I made
9 sure that whether or not we met that location
10 restriction. The exact depth from the aquifer to the
11 bottom of the ponds, for each and every pond, I don't
12 have that in front of me and don't have that committed to
13 memory, but I do know that our basins did not meet that
14 location restriction under the CCR Rule.

15 Q Okay. Fair enough. So looking back at the
16 exhibit, Cross Exhibit 1 -- or Rebuttal Cross Exhibit 1,
17 the first pond the Company constructed was built in 1951,
18 correct, W.S. Lee?

19 A Yes.

20 Q From 1951 until now, did operation of the
21 Company's ash ponds involve sluicing ash water into the
22 ponds, allowing heavier ash particles to settle to the
23 bottom of the pond and then allowing the water to
24 evaporate or discharge into an adjacent water body?

1 A Yes. Discharge, of course, through the NPDES
2 permit, but yes.

3 Q But the ponds were designed to treat discharged
4 water by allowing pollutants to settle out, correct?

5 A The ash basins were water treatment systems,
6 yes.

7 Q Looking again at the exhibit, by my count, I
8 count nine ponds constructed before 1972. Allen there's
9 one, Buck there's one, Cliffside there's two, Dan River
10 there's one, and Marshall.

11 A Yes.

12 Q Okay. So nine built in or after 1972. Would
13 the same general engineering design -- engineering and
14 design principles used for ponds built in or after 1972
15 be the same as those built before 1972?

16 A Ms. Cralle Jones, I do not have -- I did not
17 have available to me the exact details of what they --
18 what the principles were and how they designed those, but
19 -- so let me ask -- let me rephrase. I'm not quite sure
20 what you're asking, so I want to make sure I answer
21 appropriately, so maybe if you can ask it again.

22 Q Let me ask it this way. After 1972, the
23 Company continued to construct ash ponds within five feet
24 of groundwater, correct?

1 A Yes.

2 Q And the Clean Water Act was passed in 1972,
3 correct?

4 A Yes.

5 Q So you would agree with me, wouldn't you, that
6 the engineering and design of the nine ponds constructed
7 before 1972 didn't contemplate the Clean Water Act or its
8 implementing regulations, correct?

9 A I would -- I would agree with you because it
10 could not contemplate something that had not happened
11 yet.

12 Q Right. And the Clean Water Act prohibits the
13 discharge of pollutants without a NPDES permit, correct?

14 A Correct.

15 Q And the NPDES permits issued for the ash ponds
16 allowed for discharge of pollutants through defined
17 outfalls, correct?

18 A Correct.

19 Q And that the concentration of pollutants would
20 be measured at those outfalls, correct?

21 A Correct.

22 Q And NPDES permits do not authorize the
23 discharge of pollutants into groundwater, do they?

24 A The -- I do know that today the NPDES permits

1 do require groundwater monitoring, but the NPDES on the
2 discharge, they do not specifically say anything around a
3 point source discharge. I mean, a NPDES is a point
4 source discharge point where we take samples, so it does
5 not have language in it related to, of course, when they
6 were issued related to groundwater.

7 Q The standard conditions don't prevent -- don't
8 prohibit discharge to groundwater?

9 A So maybe you've gone beyond my level of
10 expertise in this, so it may be better for you to talk to
11 Mr. Wells. He has a lot more information about the NPDES
12 permits than I do, so that -- it would probably be best
13 to talk to him about this.

14 Q Let me move slightly. But are you aware enough
15 that the NPDES permits rely largely on self-monitoring
16 and self-reporting, don't they?

17 A I do know that the NPDES permits do have
18 provisions for monitoring those discharge points and
19 submitting those reports to the Agency. Beyond that, I
20 would direct the question to Mr. Wells.

21 Q And just I'll see if there's another -- do you
22 know -- well, the Company was aware of unpermitted
23 discharges from its coal ash pond since at least 2010,
24 correct?

1 A Again, Mr. Wells has a lot more about the
2 history of our groundwater compliance and NPDES
3 compliance, so dates I don't have in front of me, so that
4 would be a better question for Mr. Wells.

5 Q Okay. Well, let's -- let's turn to what was
6 previously identified as Sierra Club 4, which is the
7 Joint Factual Statement. I believe it's currently in the
8 record as Hart Direct Exhibit 3. Do you have that
9 document?

10 A I do have the Sierra Club identified 4 in front
11 of me.

12 Q Okay. And do you recognize that document?

13 A Yes.

14 Q It's the Joint Factual Statement in federal
15 criminal proceedings against the Company during which
16 Duke Energy Carolinas pled guilty to criminal violations
17 of the Clean Water Act, correct?

18 A Correct.

19 Q You would agree, would you not, that the plea
20 agreement the Company entered into includes admissions by
21 the Company that it acted negligently with respect to
22 operation of four of its coal ash sites, Dan River,
23 Riverbend, Belews, Cliffside?

24 A If you could -- that's a summary, so I would

1 have to -- it's been a while since I've looked at this
2 document, so if you can -- I do know that there was --

3 MR. MARZO: Chair Mitchell, I would just
4 object. The document states what it states. We'll
5 stipulate that it says what it says. Is she asking a
6 question about something other than the content of the
7 document?

8 CHAIR MITCHELL: All right. Ms. Cralle?

9 MS. CRALLE JONES: I'm asking questions about
10 the Company's knowledge of unpermitted discharges and
11 failure to report those unpermitted discharges. And
12 she's -- she's deferred on questions that I think are
13 stated clearly in the document, that there were
14 violations of the permits and that the Company knew of
15 those at least as early as 2010.

16 MR. MARZO: Chair Mitchell, on the NPDES
17 questions, I think she deferred to Mr. Wells. So I guess
18 to the extent that those questions are questions Ms.
19 Cralle Jones wants to ask, Mr. Wells is coming up after.

20 CHAIR MITCHELL: All right. I'm going to
21 overrule the objection. I'm going to allow the questions
22 to proceed. Ms. Cralle Jones, I will allow the questions
23 to proceed, recognizing the credentials of this witness
24 and her -- her ability to answer your questions. I would

1 ask, Ms. Cralle -- Cralle Jones, to the extent possible,
2 avoid having the witness simply read the document,
3 rather, ask her questions of the -- on the document.

4 MS. CRALLE JONES: All right.

5 CHAIR MITCHELL: But you may proceed.

6 Q Well, let me just kind of -- based upon the
7 document which outlines a number of practices that ended
8 up in a criminal plea, would it be fair to say that
9 Duke's ash handling practices have not been consistent
10 with applicable requirements 100 percent of the time?

11 A I would say that Duke Energy has a long history
12 and, yes, there are things that are laid out in this
13 Joint Factual document that shows things that we did say
14 that we did not -- did not follow compliance. It's a
15 small amount of time over -- a few things over the
16 lifetime of the Company's operations. And I believe this
17 was also addressed in the last rate case about our
18 historical practices. And I know that this Joint Factual
19 Statement did come up multiple times in the last case.
20 It was addressed there.

21 Q Now I'd like to turn your attention to your
22 supplemental testimony regarding the December 2019
23 Settlement Agreement between the Company, DEQ, and
24 certain community groups.

1 A I have it in front of me now.

2 Q All right. When discussing the supplemental
3 testimony with Ms. Townsend, you mentioned a couple of
4 sites where you are working with EPA because the Company
5 can't meet the CCR deadlines. Which deadlines is the
6 Company not able to meet and at which site?

7 A So the CCR deadlines, there are certain
8 deadlines that you can also ask for extensions, based
9 upon the volume of the acreage of the site. So if you
10 look at the acreage of the site and, say, we get all of
11 the extensions that are allowed, so for CCR units of 40
12 acres or less, the closure of time that's laid out in the
13 CCR rule can be extended by one two-year extension, and
14 for those larger than 10 acres, closure can be extended
15 by a total of five two-year extensions.

16 So looking at all the -- we received all of the
17 extensions that were allowed under the CCR Rule, based
18 upon our calculations of how long it's going to take us
19 to excavate the basins, and there are -- the dates are
20 laid out in the Settlement Agreement. We would not be
21 able to meet a February 20--- 2034 date by the CCR Rule
22 that's a requirement date at Allen. We would not be able
23 to -- because our -- our agreement date in the closure is
24 that we would have all ash excavated by December of 2037,

1 so there is a gap of a couple years there. Also, at
2 Belews Creek, the -- the date -- actually, not Belews
3 Creek. We can meet that date. Buck, there is one area
4 that we may have to get an extension of a number of
5 months. There's a few months beyond excavation of the
6 entire Buck site for beneficiation that would be beyond
7 the CCR date. And then also Marshall, the CCR date is
8 March of 2034, and in the agreement we have stated that
9 we believe we can get all the excavation done by December
10 of 2034.

11 Q Thank you. Now, on your supplemental testimony
12 on page 8, starting at line 6, you state "A key
13 underlying premise of the Settlement Agreement was that
14 Duke Energy, 'DEQ and the community groups agree that
15 closing the CCR impoundments at the Allen, Belews Creek,
16 Cliffside, Marshall, Mayo, and Roxboro Steam Stations in
17 accord with this Agreement...is reasonable, prudent, in
18 the public interest, and consistent with law.'" Did I
19 read that correctly?

20 A Yes.

21 Q And you are reciting from paragraph 53(a) of
22 the Settlement Agreement, correct?

23 A Yes.

24 Q Would you please turn to paragraph 53(a) now,

1 if you could? And for clarity of the record, would mind
2 reading the remaining language of 53, sub (a), beginning
3 with "This subparagraph applies only to"?

4 A "This subparagraph applies only to the actions
5 of Duke Energy in entering into this Agreement and
6 assuming the obligations under this Agreement. For
7 example, and without limitation, the Agreement in this
8 subparagraph does not extend, nor shall it be construed
9 to apply, to the issues of, (1), whether Duke Energy
10 acted prudently and reasonably in the past or (2),
11 whether Duke Energy prudently and reasonably performs its
12 obligations under this Agreement. Nothing in this
13 Agreement shall be taken as an admission of any imprudent
14 or unreasonable action by Duke Energy."

15 Q Thank you.

16 MS. CRALLE JONES: I have no further questions,
17 cross on rebuttal or the supplemental testimony.

18 CHAIR MITCHELL: All right. Any additional
19 cross examination for this witness?

20 (No response.)

21 CHAIR MITCHELL: All right. Hearing none, Mr.
22 Marzo, you may redirect.

23 MR. MARZO: Chair Mitchell, I have a little bit
24 of redirect. It may take some -- take a few minutes. Do

1 you want to take a lunch break now or --

2 CHAIR MITCHELL: Yeah. That's a great
3 suggestion, Mr. Marzo. Let's -- let's go off the record.
4 We will be in recess for our lunch break. We'll go back
5 on at 1:30.

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CHAIR MITCHELL: Let's go back on the record, please. Ms. Bednarcik, Mr. Marzo, we are at redirect of your witness.

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MR. MARZO: Thank you, Chair Mitchell.

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Whereupon,

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JESSICA L. BEDNARCIK,
having previously been duly affirmed, was examined
and testified as follows:

10

REDIRECT EXAMINATION BY MR. MARZO:

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Q. Ms. Bednarcik, you were asked -- and I think we'll go in reverse order with Ms. Cralle Jones being the last cross examiner from Sierra Club.

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You were asked several questions from Ms. Cralle Jones regarding prior testimony for witness Kerin, and in that regard I think she tied it to the Company's historical practices as well as some questions on industry standard. Do you recall those?

19

A. Yes, I do.

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Q. And I think Ms. Cralle Jones had asked you, even more specifically than that, regarding your -- I think she said your experience, in terms firsthand knowledge of the historical practices of the Company. And I want to ask you some questions related to that.

1 Okay?

2 A. Okay.

3 Q. Now, can you describe for me how you reviewed
4 the historical documents in this case to assess the
5 prudence of the Company's historical practices as it
6 pertains to coal ash management?

7 A. So, specifically on the historical documents,
8 same documents I know that the intervenors looked at as
9 well, I read through them. I read through them trying
10 to understand what is the purpose of the document, what
11 was the goals of the document, and the type of people
12 who actually produced those documents. And really --
13 did not really look at taking out points here and
14 there, but understand the entire context of the
15 document, and why it was written, and what it was being
16 used for at that time.

17 I mean, a great example is there was -- in
18 the 1984 document, there was some discussion on that, I
19 know, a couple of days ago. There was a discussion on
20 the placement of the wells and were they screened in
21 the perched water or below the perched water. When I
22 read that document -- I think that was Joint Exhibit
23 Number 9. I read through that document and said, what
24 is the purpose? The purpose of this document was to

1 determine is there groundwater contamination. And the
2 wells, the placement of the wells, is supposed to be
3 where we can gather groundwater data in order to make
4 sure and determine if we have contamination.

5 And I remember there was a lot of discussion
6 on what the placement of one well, and it was below the
7 perched water table right where you can grab
8 groundwater. And reading further, I saw that well was
9 perfectly placed, because it was confirmed that that
10 well actually was in the groundwater plume. It was in
11 the leachate plume.

12 So it's reading through and connecting all
13 the dots in the document for the purpose, the how they
14 did what they did, why they did what they did, and what
15 the conclusions were.

16 Another great example is there was a lot of
17 discussion on filter versus unfiltered samples.
18 Digging in and going -- I know now, today, we do take
19 unfiltered samples. That is the standard today. But
20 reading through the documents and going, why; why in
21 the 1980s would they be taking filtered samples? Did
22 some research online. Talked to Ms. Williams who is
23 going to be coming up. And it was clear to me that in
24 the 1980s, 1990s, there was a lot of discussion on, do

1 you filter the sample, or do you not filter the sample.
2 And understanding that that was something that was an
3 evolving science during that time period. A lot of
4 good discussion on why you would or why you would not.

5 So yes, today, today's standards on filtered
6 samples is what you do. But back in the '80s, that was
7 one of the things that was done. So putting everything
8 into context, and that is how I attacked and researched
9 each and every one of these documents. I know that one
10 of the witnesses said, I think they were --

11 MS. CRALLE JONES: Your Honor --
12 Chair Mitchell, I'd like to object. This response
13 has gone way past any questions that I asked.

14 MR. MARZO: Chair Mitchell, if I can
15 respond. This is exactly what Ms. Cralle Jones
16 asked. She asked about Ms. Bednarci k's knowledge,
17 her ability to speak to both the industry standard
18 and historical practices of Duke Energy. And
19 that's exactly what she's explaining, is what she's
20 done, what she's read to be able to talk
21 authoritatively on those two things that she was
22 questioned about.

23 CHAIR MITCHELL: All right. I'll allow
24 the witness to proceed.

1 THE WITNESS: So I think where I was,
2 was that it's -- looking at the documents, it's
3 very hard not to think about what we know today and
4 apply what we know today in the history. And I
5 think there was even a comment made that I wouldn't
6 have changed anything in the past based upon what I
7 know today. Well, that's not true. Based upon
8 what I know today, if I could have transport myself
9 back with today's knowledge, of course I would have
10 made changes. But I did the research based upon
11 what I could find online, what I could find in
12 these historical documents. Looking at objectives,
13 looking at what they did what they did, what were
14 the conclusions. Who are the people who are
15 actually doing these studies?

16 The A. D. Little study is a great one.
17 A. D. Little was a highly respected consulting
18 firm. That A. D. Little study, which is Joint
19 Exhibit 10, 49 people worked on that project,
20 including people from universities and highly
21 respected engineering and consulting firms.
22 Looking at all that and putting it in perspective
23 and going, are these people reputable? Are these
24 people leaders in the industry at that time looking

1 at what they did over the years? Putting all that
2 into context, understand historical aspects, what
3 the Company had done in the history based upon the
4 information available to us.

5 Q. And you just mentioned the Arthur D. Little
6 report, the 1985 report the EPA commissioned, and you
7 said something about the credibility of those who put
8 together the reports.

9 In looking at the Arthur D. Little report,
10 you thought about that credibility; is that --

11 MS. CRALLE JONES: Objection.

12 Chair Mitchell, we're going into a line of
13 questioning now that is more appropriately --
14 they're trying to rebut witness Quarles' testimony.
15 I didn't mention the A. D. Little report, and he's
16 providing an opportunity for her to dig deeply into
17 that. She's answered with great care and
18 specificity as to what she did to review the
19 documents. That's been asked and answered, and
20 this is just going way beyond the scope of any
21 question I requested.

22 MR. MARZO: Chair Mitchell, I would
23 reiterate that this is well within the scope of
24 what was asked. She was asked about how she can

1 make the determinations that she's making in her
2 testimony. I would add to that, you know, that
3 there had been several things said since even, you
4 know, rebuttal testimony was filed in this case.
5 And the Company, having the burden of proof, should
6 have the ability to respond to that.

7 Now, with that said, the questions that
8 I have asked Ms. Bednarcik are squarely in line
9 with showing her expertise in this particular area
10 and her ability to give an opinion.

11 CHAIR MITCHELL: All right. Mr. Marzo,
12 I will overrule the objection, but I'll say this:
13 We're on redirect. Please limit your questions to
14 those appropriate for redirect examination of your
15 witness. And, you know, when you can, help us
16 remember, you know, the cross examination question
17 or line of questions that you're -- that you are
18 responding to with your questions to your witness.
19 All right. You may proceed.

20 MR. MARZO: Thank you, Chair Mitchell.
21 And I only have a couple -- a few more related to
22 this area.

23 Q. You said you looked at a lot of historical
24 documents.

1 Did you look at means and methods when you
2 reviewed those documents?

3 A. Yes, I did look at the means and methods.
4 And again, a great one was that filtered/unfiltered
5 that I talked about, trying to understand why the means
6 and methods were used in each one of the documents
7 based upon the objectives, conclusions, why they did
8 what they did.

9 Q. And there are a number of documents that you
10 referenced that are related to the joint exhibits in
11 particular, and I want to ask the question that I was
12 going to ask before I got interrupted with
13 Arthur D. Little.

14 Did you look at who produced those documents?
15 Did you -- did that affect how you reviewed and gave
16 credit to the opinions in those documents?

17 A. Yes, it did. There -- a lot of people were
18 part of those documents. It was also done under the
19 direction of the U.S. EPA Office of Research and
20 Development who was overseeing the work that was being
21 done. So as a utility engineer in the 1980s, of course
22 I would have given credence and credibility to the U.S.
23 EPA, the Office of Development and Research, and the
24 consultants that they hired to do their research for

1 them.

2 Q. And one last question. The Company has done
3 its own research in some of these historical documents
4 that you've looked at; is that correct?

5 A. Yes.

6 Q. Okay. For example, the 1987 Duke Power
7 report, can you tell me a little bit about that report
8 and how that may have affected your determinations
9 including the --

10 MS. CRALLE JONES: Objection. This is
11 not at all part of the line of cross examination.

12 MR. MARZO: Chair Mitchell, if I could
13 just quickly respond. This is one of my last
14 questions in this line. I'm simply asking -- we
15 asked about historical documents that were not
16 produced by the Company. I'm asking her how she
17 reviewed historical documents that were produced by
18 the Company to make sure that we have both those
19 views out, including the providers of those
20 reports. I'm just asking the same question. I'm
21 just asking it in context of the Company reports.

22 CHAIR MITCHELL: I'm going to overrule
23 the objection. But, Mr. Marzo, stick to redirect.
24 You may proceed with your question.

1 Q. Do you want me to ask that again,
2 Ms. Bednarcik? And what I was asking -- did you
3 understand the question?

4 A. Please do.

5 Q. Okay. What I was asking you was about the --
6 in particular, I talked about the 1987 Duke Power
7 report, but I'm generally asking you, in terms of
8 reviewing these reports, and in particular maybe that
9 report. One, did you review the Company reports? How
10 did you review the Company reports? And how did the
11 opinions in those reports and who provided those
12 reports affect your determinations of your review?

13 A. So reviewing those reports, I did take into
14 account the people that the Company hired also to
15 produce those reports. The Kilkelly report I believe
16 is the one that you are referencing. It's -- I think
17 it's either 12 or 13 in the joint exhibits. One of the
18 gentlemen that is the author of that report is
19 Harry LeGrand. When I took my -- I went a couple days
20 to take some hydrology courses --

21 MS. CRALLE JONES: Your Honor --

22 Chair Mitchell, I just want to object again. We're
23 going into documents that were not even addressed
24 on direct. This is an opportunity -- he's taking

1 this as an opportunity to rebut again, and --

2 MR. MARZO: Chair Mitchell, she's only
3 talking about how she reviewed this specific -- the
4 specific Duke Power documents that she reviewed to
5 do her testimony. I think it's a fair question.
6 Ms. Cralle Jones asked a question about how she can
7 make an opinion if she doesn't have firsthand
8 knowledge. She shouldn't have asked the question
9 if she didn't want the answer. And the answer is,
10 this is how she knows what she knows to be able to
11 give testimony in this case.

12 MS. CRALLE JONES: I did not ask a
13 question about what documents she reviewed.

14 CHAIR MITCHELL: All right. I'm --

15 MS. CRALLE JONES: She responded to my
16 question.

17 CHAIR MITCHELL: All right.

18 Ms. Cralle Jones, I'm going to overrule the
19 objection. I'm going to allow Ms. Bednarcik to
20 complete her sentence so that she can answer her
21 attorney's redirect question, and then, Mr. Marzo,
22 move on.

23 MR. MARZO: Thank you, Chair Mitchell.

24 THE WITNESS: So I was discussing the

1 Kil Kelly report. And one of the authors of that is
2 a gentleman named Henry LeGrand [sic], who, when I
3 went and took a hydrology course on -- a conference
4 on hydrology, that was actually the textbook they
5 gave me was by -- he was one of the authors.

6 So I do include all of that in
7 understanding of are these people to -- to rely
8 upon on their history when I reviewed the reports
9 in order to determine can I account -- can I look
10 at these and rely upon these and say yes, that what
11 the Company did and who they relied upon were
12 appropriate.

13 Q. Thank you, Ms. Bednarci k.

14 Ms. Bednarci k, you were asked several
15 questions yesterday by the Public Staff related to
16 groundwater wells and receptors; do you recall those?

17 A. Yes, I do.

18 Q. And I'm going to ask you, do you have DEC
19 Cross Exhibit 19 available?

20 A. Yes, I do.

21 Q. Okay. And just for the record, this is the
22 senior management committee report from
23 January 13, 2014, the ash basin closure update report?

24 A. That is correct.

1 MR. MARZO: And, Chair Mitchell, I
2 guess, for the record, I would just go ahead and
3 mark this as Bednarci k Redi rect -- Rebuttal
4 Redi rect Exhi bi t Number 1.

5 CHAIR MITCHELL: The document will be
6 marked DEC Bednarci k Rebuttal Redi rect Examination
7 Exhi bi t Number 1. And just for purposes of the
8 record, Mr. Marzo, there is a handwritten notation
9 at the top that says the document is not
10 confidential. That notation does not occur on
11 every single page. So I just want you to confirm
12 that the document is not confidential, does not
13 contain confidential information.

14 MR. MARZO: I can confirm for the Chair
15 it does not.

16 CHAIR MITCHELL: Okay. Thank you,
17 Mr. Marzo.

18 (DEC Bednarci k Rebuttal Redi rect
19 Examination Exhi bi t Number 1 was marked
20 for i denti fi ca ti on.)

21 Q. Ms. Bednarci k, would you mind turning to
22 docket exhi bi t page 6283, which they're marked at the
23 top of the page. First I just ask you, now, on 6282,
24 the title of this slide, what is the title?

1 A. "Groundwater Monitoring Methodology."

2 Q. Okay. And if I look at page 83 -- 683, could
3 you read that for me, the sentence at the top of the
4 page?

5 A. It states:

6 "Based on best available knowledge, we do not
7 have any receptors at any of our sites that currently
8 in danger of being impacted by groundwater above 2L
9 standards."

10 Q. Okay. And this report predates Dan River;
11 it's in early 2014, correct?

12 A. Correct.

13 Q. Okay. And is that statement consistent with
14 your understanding at the time?

15 A. Yes, it is.

16 Q. Okay. And could you also turn to page 684 of
17 the document?

18 A. I am there.

19 Q. And could you read the heading on that page
20 for me?

21 A. "Generating station ash pond groundwater
22 sampling overview."

23 Q. Okay. And if I look at that table, that's a
24 table of various exceedance samples. And if I look

1 down at the bottom into the notes, there is a sentence
2 that begins with the word "primary standard." Do you
3 see that?

4 A. Yes. It says:

5 "Primary standard violation are in
6 downgradient wells that does not have a receptor
7 between the well location and any drinking water
8 receptors."

9 Q. Okay. Thank you. And all results are
10 communicated -- are all results communicated as
11 required to state agencies in that next note; is that
12 what that reads?

13 A. Yes. It goes on to say:

14 "And no remedial actions are currently
15 outstanding."

16 Q. Okay. Thank you. Just one more. If you
17 would turn to -- or maybe two more. Would you turn to
18 page 693? And could you read the title of that first
19 slide on 693?

20 A. "River Bend Station."

21 Q. Okay. And if you flip over to 694, once
22 again, there's a picture and then there are some notes
23 below the slide. And I'm looking at -- specifically at
24 the notes that begin with the highest groundwater

1 indications; do you see that?

2 A. I do. It says:

3 "Highest groundwater indications, iron,
4 manganese, are at well MW13 circled in red," which my
5 picture is in black and white, so it doesn't show up
6 the red, but "boron starting the show" -- "boron
7 starting to show up in MW11 downstream of ash pond just
8 before groundwater enters the Catawba River. No
9 receptors."

10 Q. Okay. And if you would, for me, would you
11 turn to -- well, it also ends with all receptors in
12 pink boxes and all upgradient; is that the last bullet
13 there?

14 A. Yes, are all upgradient of ash ponds.

15 Q. Okay. Could you turn to page 709 for me?

16 A. I am there.

17 Q. Okay. And could you read that slide for me.
18 What is the title of that slide? Not the bullets but
19 just the slide title.

20 A. "Receptor Impacts and Actions."

21 Q. And is this whole section, as far as you
22 know, is that related to receptor impacts and actions
23 that have been taken by the Company?

24 A. Yes.

1 Q. Okay. And would you turn to page 712 for me?

2 And what's the title of this slide?

3 A. "Potentially Impacted Receptors. Action
4 Taken to Date."

5 Q. Okay. And it identifies different stations.
6 And is Allen one of those stations?

7 A. Yes.

8 Q. Okay. And what is the -- what is the
9 determination on Allen? Is that --

10 A. Under constituent, it says:

11 "No impacts identified."

12 And under the response, it says:

13 "NC DENR sampled neighbor's wells. Results
14 showed no 2L impacts."

15 Q. And if you look down at the notes, I see one
16 note that starts with "no current concerns." Would you
17 mind reading that for me?

18 A. "No current concerns at any sites where
19 specific receptor testing should be done."

20 Q. And I guess my -- one of my questions to you,
21 Ms. Bednarcik, is, you know, even pre-Dan River, our
22 investigation was robust and advanced, and the
23 Company's was in terms of reviewing and understanding
24 the impacts from groundwater; is that correct?

1 A. Yes, that is correct. We take our
2 neighbors -- they're our neighbors, and so we wanted to
3 make sure that groundwater impacts were not going
4 towards receptor wells. And as you can see in this
5 table, there are some stations where we were providing
6 a permanent water solution because of that potential
7 sometime in the future something might be going towards
8 there, let's connect them.

9 Q. Thank you, Ms. Bednarcik.

10 MR. MARZO: Chair Mitchell, that is all
11 the redirect that I have.

12 CHAIR MITCHELL: All right. Questions
13 from Commissioners, beginning with
14 Commissioner Brown-Bland.

15 COMMISSIONER BROWN-BLAND: Yes, I have
16 just a couple.

17 EXAMINATION BY COMMISSIONER BROWN-BLAND:

18 Q. Ms. Bednarcik, I think this has been the
19 second time we've had an opportunity to go over how
20 you've learned what you've learned. And first I just
21 commend you. I think that you have mastered a great
22 deal of information in a relatively short period of
23 time and be able to be so conversant on it, so that's
24 just a compliment to your good work.

1 But along those lines, what I would like to
2 know is whether -- for example, when you were
3 discussing with Mr. Marzo the reports that you looked
4 at and those who authored them, and I know in many
5 cases people may now be unavailable, but did you or --
6 and/or to your knowledge, Mr. Kerin, if you know, did
7 you have an opportunity to check or do investigation
8 and actually converse with or contact those people who
9 are either with the Company were hands on with the CCR
10 handling, making decisions, and/or those who may have
11 been consulted or were contracted to advise and work on
12 such matters?

13 A. Commissioner Brown-Blair, first of all, thank
14 you for the compliment. While I -- the -- we were not
15 able to find the authors of the documents that are
16 included in the joint factual agreements, or the joint
17 factual exhibits. But I will say that -- I think it
18 was Joint Factual Exhibit 11 which talked about water
19 quality at Belews Creek, and specifically related to
20 some selenium impacts that were in the surface water.

21 One of the authors was actually my boss at
22 one time, so I did know him. I worked under him for a
23 number of years. So as much as I could say that I knew
24 him, worked with him, and reading through that

1 document, that is the only person that I know
2 personally.

3 Q. And did you go back and, as part of your
4 becoming conversant and familiar with all of this in
5 the terms of the coal ash, the Company's response in
6 handling of coal ash and dealing with environmental,
7 did you go back and have discussions with him about
8 this?

9 A. Unfortunately the gentleman, William McKay,
10 passed away a number of years ago, so I was unable to.

11 Q. And in that regard, did you -- I think my
12 question was a little broader.

13 Beyond just the reports, but just in general,
14 as part of your coming up to speed in these matters and
15 preparing yourself for dockets such as this, did you
16 have occasion to check or do investigation to determine
17 those who handled and worked with CCRs, basins, ponds,
18 those kinds of things?

19 A. Commissioner Brown-Bland, we tried. We tried
20 to find some people that we could talk to to get more
21 information. But Ms. Williams, who's coming up in a
22 panel in a little bit, that's one of the reasons why --
23 because we got a lot more questions about historical
24 through data requests. We said let's -- who can we

1 find, and we were able to find Ms. Williams who was
2 with U.S. EPA in the 1980s. So that is one of the
3 reasons we have her as a panelist, to make her
4 available for you.

5 Q. Did you speak with anyone, you know, internal
6 to Duke that you knew had actual experience, whether
7 it's through -- I mean, as far back as you could go,
8 but at least from the '80s up through 2015?

9 A. So for -- Mr. Immel, who was on earlier, has
10 been with the Company for a very long time, so I did
11 have conversations with him based upon his knowledge of
12 operations at the plants, specifically related to when
13 we went dry ash in certain locations at certain times
14 to understand what was the thought process behind that,
15 why it was done. But beyond that, when we were going
16 back through the records trying to understand the
17 history, we were not able to find anyone on that
18 historical knowledge going back many, many years.

19 Of course, as I mentioned earlier, there are
20 people who are current operators of the basins that I
21 did have conversations with, but not for operations
22 historical.

23 Q. With regard to the current operators, are you
24 able to recall, or do you have information where you

1 could provide their names, titles, and periods of
2 employment? Is that something you could provide?

3 A. We could provide that. A lot of the people
4 who are managing the basins, of course, in the last
5 number of years are in the coal combustion products
6 organization. People that actually report to me and
7 through my organization and now are fossil hydra. So
8 the current operators, we could provide those names to
9 you.

10 Q. And specifically the ones that you spoke with
11 to become educated about things that had transpired and
12 the reasons for those.

13 So what about former employees, or
14 contractors, or consultants, or people of that nature;
15 did you reach out to anyone? Did you attempt to?

16 A. We attempted to find people that we could
17 talk to, and were unable to locate former employees or
18 former consultants that we were able to talk to. So
19 no, I did not talk to anybody formally.

20 Q. So were you able to determine, or could you
21 not, whether, you know, internal to Duke, people with
22 different -- different opinions or unanimous opinions
23 about the Company's handling of CCRs and what should
24 have been done and what was done?

1 A. So, Commissioner Brown-Bland, I think you're
2 asking internal to Duke, talking to different people,
3 is there different ideas.

4 Q. And then when I say internal, that includes
5 anybody that you spoke to with the Company. Just in
6 terms of the Company's coming to decisions and
7 positions, how well were these issues examined and, you
8 know, whether it was thorough discussion back and
9 forth, and whether there was differences or unanimous
10 opinions?

11 A. Well, Commissioner Brown-Bland, as you can
12 imagine, pulling together information for this case,
13 pulling information together to answer all the data
14 requests that we received that was going into the
15 historical information, I did talk to a lot of people
16 in our environmental health and safety organization,
17 our fossil hydra organization to try and be as
18 responsive as we possibly could to all the data
19 requests. And that is also how I came up to speed on
20 what the past practices were.

21 And one of the things that I -- I'm
22 inquisitive, so I asked lots of questions, and I --
23 over, and over, and over again until I can understand
24 what is going on. And I did ask the question that I

1 think that you're getting at, is was there anything
2 different; should we -- I mean, where are we going with
3 this? And I could not find anybody in the Company that
4 said no. No -- everyone that I talked to in the
5 Company, based upon looking at all the documents we
6 have available to us, came up with anything that said
7 different than what I'm saying today, which is the
8 Company's practices were prudent. We followed what we
9 knew at the time based upon the information at the
10 time.

11 So I would say I've asked lots of questions
12 of lots of people within the Company. I have not found
13 anybody in the Company that would disagree with the
14 position I'm taking here and the Company's position
15 based upon our practices.

16 Q. And I appreciate that. And am I
17 understanding correctly, though, that these are still
18 conversations with current employees or people who were
19 current as you went about the business of trying to
20 learn?

21 A. You are --

22 Q. Not former?

23 A. You are correct. They are people that are
24 current employees. Because we were unable to track

1 down former employees who would have been operating at
2 that time. As I said, the one gentleman I know passed
3 away, unfortunately, a number of years ago.

4 Q. But was -- do you know -- if you know, was
5 the effort made by you and those in your organization
6 to reach out to some of the former -- I mean, you know,
7 the 1990s are not that far away, speaking as one who
8 lived through it.

9 A. Yes, there was an effort made. I know that,
10 as we were looking back through -- I've been with the
11 Company since 2005, so I was going through who I knew
12 who was over the fossil hydra organization. And we
13 tried through LinkedIn, through internet searches; we
14 tried to find those people to be able to sit down and
15 talk to them, and we were unable to.

16 Q. All right. I think with regard to the
17 current employees, I would ask, if you could, if you
18 could provide -- to the extent you're able to be as
19 complete as possible, provide a list of those current
20 employees that you consulted in your -- in your
21 bringing yourself up to speed on these coal ash
22 matters. I'd like to have their name, their title, and
23 at least assuming they are all still current, but
24 something that indicates their time period of

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1 employment. All right. So I'll request that as a
2 late-filed exhibit.

3 COMMISSIONER BROWN-BLAND: That's all
4 the questions I have, Madam Chair. Thank you,
5 Ms. Bednarick.

6 CHAIR MITCHELL: All right.
7 Commissioner Gray?

8 COMMISSIONER GRAY: No questions.

9 CHAIR MITCHELL: Commissioner
10 Clodfelter?

11 COMMISSIONER CLODFELTER: Yes, thank
12 you. I hit the wrong button.

13 EXAMINATION BY COMMISSIONER CLODFELTER:

14 Q. Ms. Bednarick, welcome back. I know you're
15 probably tired of this. Last year, I asked you a
16 couple of questions that you didn't know the answers to
17 immediately, but were going to check into, and we
18 agreed we would talk about them again when you came
19 back.

20 One of those questions was with respect to
21 the W.S. Lee plant. And the question was whether any
22 of the costs for which the Company is seeking recovery
23 in this case were costs that related to activities in
24 connection with the inactive ash basin or the ash fill

1 area at the W. S. Lee plant. Have you been able to
2 determine that?

3 A. Yes, Commissioner Clodfelter.

4 Q. Great.

5 A. And my recollection was -- what I believe I
6 told you last time is that we did have some small
7 amounts related to report writing and final reports
8 that were going to the Department of Environmental
9 Health down in South Carolina. And so that is true,
10 they're small, but the dates of when excavation was
11 completed for the inactive ash basin and the ash fill
12 area, the IAB, inactive ash basin, was completed in
13 10 -- October of 2017; and the ash fill area was
14 completed in November of 2017. So those costs are not
15 included for the excavation costs in this case.

16 Q. Great. Thank you for that. And the second
17 one was with respect to Dan River.

18 Were there any portion of the costs for which
19 recovery is being requested in this case were related
20 to excavation and off-site transportation for off-site
21 disposal? Or was all that work done before the costs
22 that are involved in this case?

23 A. The off-site disposal that we discussed last
24 time, I dug into that, what that off-site disposal was

1 for, and it was, again, what I remember, but a little
2 bit more. So there was vegetation. There was about
3 30,000 tons for vegetation that had to go offsite
4 because we could not put it in our landfill. And about
5 4,000 tons of what we call foreign material. It had
6 some petroleum, latent CCR, and some discharge material
7 that couldn't go to our landfill, but not ash that was
8 going for offsite disposal. It was only for that
9 material that could not be placed in our landfill.

10 Q. Thank you for that also. I appreciate
11 confirming those answers, and thank you for that.
12 You've been asked a lot of questions in the last half
13 hour or so about your homework, and so I got to get on
14 the train too. So I want to ask you just a few.

15 In connection with the work you did and the
16 review you did, did you talk to the authors of the 2012
17 plant retirement comprehensive program plan?

18 A. So the -- I don't have that in front of me.
19 There are a few people I do know, I remember names on
20 there. One was a gentleman we talked about, I believe,
21 before Mr. Issa Zarzar.

22 Q. You did talk with him?

23 A. I did talk to him.

24 Q. Great.

1 A. And I also talked to, I believe,
2 Mr. Paul Draovitch's name is on there as well.

3 Q. Yes.

4 A. I did talk with him.

5 Q. You talked with Mr. Draovitch too?

6 A. Yes.

7 Q. Okay. What about the authors of the
8 May 29, 2017, environmental management program for coal
9 combustion products; did you talk to the authors of
10 that study?

11 A. I don't know if I have that in front of me.
12 I would have to look and see who the people are. I
13 believe -- what was date of that document again?

14 Q. May 29, 2007.

15 A. I would have to go back through. If they are
16 people that are still employed with the Company, then I
17 would have talked to them. If they are not employed,
18 then, of course, I would not have talked to them. But
19 all those historical documents, if people are still
20 around. A few, I think, are people that either -- some
21 of them, there was -- I think a gentleman named
22 Tony Mathis may have been on that document. He
23 actually reported to me for a while before he retired,
24 so, of course, he would have been someone I talked to.

1 Q. I don't see Mr. Mathis' name on the document.
2 Perhaps he was part of it, but you would know if you
3 talked to him. What about the authors of the 2008 coal
4 combustion products 10-year plan; did you talk to the
5 authors of that 10-year plan?

6 A. I would say it's the same thing,
7 Commissioner Clodfelter.

8 Q. Okay.

9 A. I don't have it in front of me. But if
10 they're still with the Company, I talked to them.

11 Q. Okay. And so they would be on the list that
12 you're going to provide in response to
13 Commissioner Brown-Blair's questions, I assume?

14 A. We will include them on the list.

15 Q. Okay. And what about the 2003 10-year coal
16 combustion products plan? Do you recall talking to
17 anyone about that plan?

18 A. It would be the same as the other plans. I
19 don't know the -- I don't have the list in front of me,
20 but if they were in the Company, I would have talked to
21 them.

22 Q. Okay. Thank you, Ms. Bednarick, I appreciate
23 that.

24 COMMISSIONER CLODFELTER: Madam Chair, I

1 will confess that, because of a lot of the
2 questioning about who said what to whom when and
3 who did what, and who read what when, I'm a little
4 lost. And so I want to renew, in this case again,
5 the request that the Commission made in the last
6 rate case, for the production of all of these
7 reports and studies, especially including the ones
8 Ms. Bednarcik reviewed -- may have reviewed.

9 Additional documents have appeared in
10 this case, additional exhibits have been provided
11 in this case that were not furnished in response to
12 that request in the prior case. And so just for
13 the interest of completeness, I don't want to have
14 to guess as to whether I've got a complete set or
15 not of the documents Ms. Bednarcik may have studied
16 as part of her historical review. I don't want to
17 have to guess on that, I don't want to have to make
18 assumptions about whether the record in the last
19 case was or was not complete, or whether these new
20 documents may have been produced somewhere in the
21 last case and I can't find them.

22 I'd just like to review the request
23 again, and this time I'll work with Commission
24 counsel to formulate that request in written form

1 so that the Company has it clearly stated and
2 clearly set out, if that's acceptable.

3 CHAIR MITCHELL: It is. Mr. Marzo, you
4 are now on notice. Commissioner Clodfelter will
5 work with Commission counsel and we will make the
6 request for late-filed exhibits at the appropriate
7 time.

8 MR. MARZO: Thank you, Chair Mitchell.
9 We're happy to work with the Commission on that
10 request.

11 COMMISSIONER CLODFELTER: Thank you.

12 CHAIR MITCHELL: All right. Thank you,
13 sir.

14 Q. Ms. Bednarcik, that's all I have for you.
15 Thank you. Appreciate it.

16 CHAIR MITCHELL: All right.
17 Commissioner Duffley?

18 COMMISSIONER DUFFLEY: No questions.

19 CHAIR MITCHELL: All right.
20 Commissioner Hughes?

21 COMMISSIONER HUGHES: No additional
22 questions. Thanks.

23 CHAIR MITCHELL: Commissioner McKissick?

24 COMMISSIONER MCKISSICK: No additional

1 questions at this time.

2 CHAIR MITCHELL: All right. Any
3 questions on Commissioners' questions, beginning
4 with the Public Staff?

5 MS. JOST: No questions from the Public
6 Staff. Thank you.

7 CHAIR MITCHELL: Okay. Attorney
8 General's Office?

9 MS. TOWNSEND: No questions.

10 CHAIR MITCHELL: Sierra Club?

11 MS. CRALLE JONES: Yes. Thank you,
12 Chair Mitchell.

13 CHAIR MITCHELL: Okay.

14 EXAMINATION BY MS. CRALLE-JONES:

15 Q. Ms. Bednarcik, you recall
16 Commissioner Brown-Blair just asked you about efforts
17 to talk with folks with firsthand knowledge, and I
18 wrote down in my notes that, quote, we tried to talk
19 with folks with firsthand knowledge, but we were,
20 quote, unable to track down former employees.

21 Are you aware that the Company was involved
22 in the deposition of Steve Townsend, the former manager
23 of Dan River site in January of 2019? And was also
24 involved in the deposition of Don Faulkner, the vice

1 president for fossil fuels in January of 2019?

2 MR. MARZO: Objection. Just relevance.

3 I'm not sure where this question is going from
4 Ms. Cralle Jones.

5 MS. CRALLE JONES: Ms. Bednarci k
6 testified that the Company tried to track down
7 former employees with firsthand knowledge and said
8 they were unable to. Yet, at the same time, the
9 Company was involved in the deposition of these two
10 former employees.

11 CHAIR MITCHELL: All right. I'm going
12 to overrule the objection. I'll allow the question
13 to proceed. It responds to a question from
14 Commissioner Brown-Bland, so please proceed,
15 Ms. Cralle Jones.

16 Q. The question, were you aware that the Company
17 was involved in the deposition of these two former
18 employees of Duke Energy in January of 2019?

19 A. I was not aware of that.

20 MS. CRALLE JONES: No more questions.

21 CHAIR MITCHELL: All right. Questions
22 for the witness on Commissioners' questions from
23 any other intervening party?

24 (No response.)

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1 CHAIR MITCHELL: All right. Mr. Marzo?

2 MR. MARZO: Just a couple,

3 Chair Mitchell.

4 EXAMINATION BY MR. MARZO:

5 Q. Ms. Bednarcik, first off, I want to ask you.

6 You were asked several questions by

7 Commissioner Brown-Blair and I think some follow-ups by

8 Commissioner Clodfelter referring to persons you talked
9 to.

10 And I believe, for clarity, you have reached
11 out and talked to some people within the Company that
12 you identified in those conversations, I believe, with
13 Commissioner Clodfelter; is that -- did I hear that
14 right?

15 A. Yes. As I read through the documents, if was
16 there was a name that I knew was still with the
17 Company, I reached out to them.

18 Q. Okay. And, Ms. Bednarcik, you're testifying
19 today as an expert witness in this case. And is it
20 your understanding that, as an expert witness, you are
21 able to get up to speed on a topic and to understand
22 that topic without having lived through the era that
23 that topic occurred?

24 A. Yes. And that is what I tried to do by

1 reviewing the documents and understanding what we had
2 talked about before of looking at the history of the
3 Company and reviewing the documents and talking to
4 those that I was able to talk to. But looking at the
5 documents on hand.

6 Q. And did you respond to over thousands of data
7 requests in this case?

8 A. Yes.

9 Q. Okay. And did that expose you to a breadth
10 of the Company's history around the ash management
11 systems that comprehensively covered several decades?

12 A. Yes, it did. Absolutely.

13 Q. Okay. And in reviewing the history in that
14 format in preparing both for this case and for your
15 job, is it -- can I ask this, do you have several
16 decades of understanding the Company's coal ash
17 management practices?

18 A. After reviewing all the data requests and the
19 requests that came through, yes, I would say that I
20 have -- I have experience and the knowledge of multiple
21 years of the Company's practices.

22 Q. Okay. And you visited sites, correct?

23 A. Yes. I visited all the sites. Many of them
24 I had visited before in my current role, but I visited

1 all the sites that are included in this DEC case.

2 Q. And do you have significant employees that
3 work under you who have been involved in coal ash
4 management for some time.

5 A. Yes.

6 Q. Okay. And so you have -- have you learned
7 through oversight of those employees about the history
8 of coal ash management by Duke Energy Carolinas?

9 A. Yes.

10 Q. Okay. And is it fair to say in -- on top of
11 all that you learned internally, have you also reviewed
12 a multitude of papers? And I think
13 Commissioner Clodfelter quite -- put it frankly that
14 there is continuing production of papers that can be
15 found if one were to continue to look and try to find
16 papers and assert the relevance of this case; you have
17 reviewed a number of those, correct?

18 A. Yes. I have reviewed the documents that are
19 available that have been produced, the historical
20 documents, I have reviewed those.

21 Q. Do you believe that gives you an expertise
22 regarding coal ash management practices of Duke Energy
23 Carolinas, unlike any other individual, in regards to
24 what you know as occurred over the history of this

1 Company?

2 A. Yes.

3 Q. Okay. Thank you, Ms. Bednarci k.

4 MR. MARZO: Thank you, Chair Mi tchell l.

5 CHAIR MITCHELL: All right. At this
6 time, I will entertain motions from counsel.

7 MS. JOST: Chair Mi tchell l, this is
8 Megan Jost with the Public Staff. I move that
9 Public Staff Bednarci k Rebuttal Cross Exami nation
10 Exhibi ts 1 through 3, and Confidential Public Staff
11 Bednarci k Rebuttal Cross Exami nation Exhibi ts 4 and
12 5 be admi tted into evidence as they are i denti fied
13 for the record.

14 CHAIR MITCHELL: All right. Ms. Jost,
15 hearing no objection to your motion, it will be
16 allowed.

17 MS. JOST: Thank you.

18 (Public Staff Bednarci k Rebuttal Cross
19 Exami nation Exhibi ts 1 through 3, and
20 Confidential Public Staff Bednarci k
21 Rebuttal Cross Exami nation Exhibi ts 4
22 and 5 were admi tted into evidence.)

23 MS. TOWNSEND: Chair Mi tchell l, this is
24 Teresa Townsend with the AG's office. We would ask

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1 for the entry into the record of AGO Bednarci k
2 Rebuttal Cross Exam Exhi bi t Number 1.

3 CHAIR MITCHELL: All right.

4 Ms. Townsend, hearing no objection, your motion is
5 allowed.

6 MS. TOWNSEND: Thank you.

7 (AGO Bednarci k Rebuttal Cross
8 Examination Exhi bi t Number 1 was
9 admitted into evidence.)

10 MR. MARZO: Chair Mi tchel l, I, I ikewi se,
11 wou ld ask that Ms. Bednarci k's rebuttal
12 testimony -- rebuttal exhi bi ts and supplemental
13 exhi bi ts be moved into the record.

14 CHAIR MITCHELL: All right. Hearing no
15 objection, Mr. Marzo, the exhi bi ts to
16 Ms. Bednarci k's prefiled testimony will be admitted
17 into the record.

18 (Bednarci k Rebuttal Exhi bi ts 1, 2, and
19 4; Confidential Bednarci k Rebuttal
20 Exhi bi t 3; and Bednarci k Supplemental
21 Exhi bi ts 1 through 4 were admitted into
22 evidence.)

23 MS. CRALLE JONES: Chai r Mi tchel l,
24 Cathy Cral l e Jones on behal f of Si erra Cl ub.

1 CHAIR MITCHELL: All right,
2 Ms. Cralle Jones.

3 MS. CRALLE JONES: We would now move
4 that Sierra Club Bednarci k Rebuttal Cross Exhi bi t 1
5 be moved into the record.

6 CHAIR MITCHELL: All right.
7 Ms. Cralle Jones, hearing no objection to your
8 motion, it is allowed.

9 MS. CRALLE JONES: Thank you.
10 (Sierra Club Bednarci k Rebuttal Cross
11 Examination Exhi bi t 1 was admitted into
12 evidence.)

13 CHAIR MITCHELL: All right. Let's see.
14 Mr. Marzo, you had a redirect examination exhi bi t,
15 I believe.

16 MR. MARZO: I did, Chair Mitchell.
17 Thank you for reminding me of that. It was
18 Redirect Cross Exhi bi t -- Redirect Exhi bi t Number 1
19 for Bednarci k rebuttal , and it was DEC
20 Exhi bi t 19 -- Cross Exhi bi t 19.

21 CHAIR MITCHELL: All right. Hearing no
22 objection, Mr. Marzo, that motion is allowed.

23 MR. MARZO: Thank you, Chair.

24 (DEC Bednarci k Rebuttal Redirect

1 Examination Exhibit Number 1 was
2 admitted into evidence.)

3 CHAIR MITCHELL: All right. If there is
4 nothing further, Ms. Bednarcik, we appreciate your
5 being here with us today and your testimony today.
6 You may step down, and you are excused. Thank you,
7 ma'am.

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1 MR. MARZO: Thank you,
2 Commissioner Clodfelter. The witness is now
3 available for cross examination.

4 COMMISSIONER CLODFELTER: Okay. First
5 up on my list are Ms. Jost and Ms. Luhr. And I
6 assume we've got an agreement that we can have
7 multiple attorneys examining this one witness?

8 MR. MARZO: Yes, sir, we did.

9 COMMISSIONER CLODFELTER: Okay. That's
10 fine. Then proceed in whichever order you two have
11 agreed.

12 MS. LUHR: Thank you,
13 Commissioner Clodfelter.

14 CROSS EXAMINATION BY MS. LUHR:

15 Q. This is Nadia Luhr with the Public Staff.
16 Good morning, Ms. Bednarcik.

17 A. Good morning, Ms. Luhr.

18 Q. So in your rebuttal testimony, you discussed
19 Mr. Lucas' proposed disallowance for the cost of
20 groundwater extraction and treatment at the Asheville
21 and Sutton plants, and for land purchases at the Mayo
22 plant. And I'm looking on page 54 of your testimony.

23 A. (Witness peruses document.)

24 I'm there.

1 Q. Okay. I'm looking at lines 20 through 22
2 where you state that DE Progress would have installed
3 extraction wells to comply with CAMA even without the
4 Sutton settlement agreement.

5 And, Ms. Bednarcik, that's because DEP had
6 exceedances at or beyond the compliance boundary at
7 both Asheville and Sutton; is that correct?

8 A. Yes.

9 Q. Okay. And if the Company did not have
10 exceedances at or beyond the compliance boundary at
11 those two sites, neither CAMA nor the CCR rule would
12 have required extraction wells and treatment; isn't
13 that right?

14 A. Just to make sure I get it right, can you
15 please ask the question again.

16 Q. Yes. So if the Company did not have
17 exceedances at or beyond the compliance boundary at
18 Asheville and Sutton, then neither CAMA nor the CCR
19 rule would have required extraction wells and
20 treatments; is that correct?

21 A. That the extraction wells and treatment were
22 because of the exceedances beyond compliance boundary.

23 Q. Okay. Thank you. And then you briefly
24 discuss the land acquisition costs at the Mayo plant on

1 page 53 of your testimony. And at this point, if I
2 could have you refer to Public Staff Cross Exhibit 117,
3 and that begins on page 3696 of the PDF.

4 A. (Witness peruses document.)

5 Q. And this is a Duke Energy Progress response
6 to a Public Staff data request.

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

8 Q. Okay.

9 MS. LUHR: Commissioner Clodfelter, we
10 would ask that Public Staff Cross Exhibit 117 be
11 identified as Bednarcik Rebuttal Public Staff Cross
12 Examination Exhibit Number 6.

13 COMMISSIONER CLODFELTER: It will be so
14 marked.

15 (Bednarcik Rebuttal Public Staff Cross
16 Examination Exhibit Number 6 was marked
17 for identification.)

18 Q. Ms. Bednarcik, on the second page of this
19 document, under the heading "Mayo steam electric
20 plants," the Company discusses its purchase of
21 approximately 56 acres of property bordering the Mayo
22 plant; is that correct?

23 A. Yes.

24 Q. Okay. And that same paragraph states that:

1 "The property purchase allows Duke Energy to
2 control activities on the property, thereby managing
3 risks to property users downgradient of the Mayo ash
4 basin to the North Carolina-Virginia state line."

5 Ms. Bednarcik, what were the risks to
6 downgradient property users that the Company wanted to
7 manage?

8 A. Well, as it states later on, there was three
9 groundwater monitoring wells on the property. We did
10 not have any exceedances of the 2L. We were not buying
11 the property because of the exceedances of 2L, based on
12 my understanding, and Mr. Wells would be able to
13 clarify that. It was -- it allowed us to have a little
14 bit more room on our compliance boundary. Because the
15 compliance boundary is either based upon where your
16 property border is or that 500-foot compliance
17 boundary.

18 So this allowed that compliance boundary to
19 go a little bit further. And that allowed just a
20 little bit more distance between where other people who
21 owned different property in proximity to our ash basin.

22 Q. Okay. And so the -- I guess going back to my
23 question, what specifically were the risks that the
24 Company wanted to manage?

1 A. Access. And having additional area for us to
2 be able to have that larger -- a little bit more of a
3 compliance boundary. But again, not risks related to
4 groundwater, because we had no risks of groundwater on
5 that property. But it was access and making sure we
6 had more of a buffer around our basins and be able to
7 push out our property boundary around the basin.

8 Q. Okay. Thank you. And those are all my
9 questions. I believe my colleague Ms. Jost has some
10 additional questions.

11 COMMISSIONER CLODFELTER: Ms. Jost.

12 MS. JOST: Thank you.

13 DIRECT EXAMINATION BY MS. JOST:

14 Q. Good morning, Ms. Bednarski.

15 A. Good morning, Ms. Jost.

16 Q. So I have tried to organize my questions so
17 that we won't need to get into confidential information
18 until later in the questioning. But, of course, let me
19 know if you think that you need to touch on
20 confidential before I indicate that we will.

21 So I would like to begin by discussing
22 Asheville. And on page 187 of the Commission's final
23 order in the E-2, Sub 1142 rate case, the Commission
24 stated:

1 "The Commission determines, however, that
2 witness Kerin has lived this project since its
3 inception and relies upon his testimony regarding the
4 decisions he made," and it continues on.

5 Would say that you have lived the Asheville
6 project from the beginning as Mr. Kerin testified he
7 had?

8 A. Can you please give me the reference? I was
9 opening up the last case document when you were
10 talking. If you could give me that again so I could
11 make sure I have --

12 Q. Of course. I believe it's on page 87.

13 A. (Witness peruses document.)

14 The page 87 I have starts with the word
15 "pitfall"; is that the same page?

16 Q. The page 87 I have starts "prudently
17 incurred."

18 A. (Witness peruses document.)

19 Let's see.

20 MR. MARZO: Megan, could you give the
21 Public Staff exhibit number again just to make
22 sure.

23 MS. JOST: This is actually the
24 Company's Potential Cross Exhibit Number 2. And

1 I'm sorry, I'm looking on -- I must have had a
2 different version.

3 Q. Could you look on page 190, please, of that
4 order? And it's the first paragraph on the top.

5 COMMISSIONER CLODFELTER: Hold a second,
6 Ms. Jost. We've lost Ms. Bednarci k's video. We
7 have to get her back.

8 THE WITNESS: I think when I went to go
9 pick the binder up I must have hit the mouse
10 button. So I have -- I now have THE -- I have a
11 couple different versions of the order. So I now
12 have the Company's Potential Cross Exhibit
13 Number 2.

14 Q. Great. If you could turn to page 190,
15 please. And I'm looking at the page number on the
16 bottom, which is also -- for the PDF I have, it's page
17 190 of the PDF.

18 A. Just to make sure. So 190, I have it
19 starting off, the first words are "new generation"?

20 Q. No. I have "CEG 1988."

21 A. (Witness peruses document.)

22 MR. MARZO: Megan, if you could tell me
23 the reference that you're looking for, I'll try to
24 see if I can find it. I think the pagination was

1 off yesterday with Mr. -- there may be an issue.

2 MS. JOST: I wonder if this was the
3 result of maybe a corrected being filed.

4 Q. In any case, I'm looking, again, at page 190
5 of this. That should be the number of the Commission's
6 order, the page number of the original Commission
7 order, I would imagine.

8 MR. MEHTA: Ms. Jost, this is
9 Kiran Mehta, and I think, at least the electronic
10 version of Company Exhibit 2 that I have up, the
11 page that you are referencing is page 187.

12 MS. JOST: Okay.

13 MR. MEHTA: For some reason the PDF is
14 page 190. I do not know why.

15 Q. All right. So maybe try page 187, which is I
16 think the number I originally gave. Ms. Bednarcik,
17 when you get there, does that begin "CEG 1988"?

18 A. Yes. Actually, someone came in and put it in
19 front of me, so I am on the right page now.

20 Q. Super. So if you could, the sentence I was
21 referencing is the sentence which begins about midway
22 down that first paragraph. "The Commission determines,
23 however"; do you see that sentence?

24 A. Yes, I do.

1 Q. All right. So again, the order states:

2 "The Commission determines, however, that
3 witness Kerin has 'lived' this project since its
4 inception, and relies upon his testimony regarding the
5 decisions made." And then it goes on.

6 Would you say that you have lived the
7 Asheville project from its beginning, as Mr. Kerin is
8 quoted as having stated?

9 A. Well, I have not personally been involved
10 with the Asheville project since it began. I have had
11 numerous discussions with people who have, and so been
12 able to get up to speed and understand the decisions
13 that were made at the time they were made, with the
14 information made available to them at that time.

15 Q. All right. I'd like you to turn to page 29
16 of your testimony -- your rebuttal testimony, please.

17 A. (Witness peruses document.)

18 Q. And if you could just let me know when you're
19 there.

20 A. I'm there.

21 Q. All right. And beginning on line 5, you
22 discuss Mr. Kerin's testimony in the Sub 1142 rate
23 case, that a 3-million-ton on-site landfill was
24 technically infeasible; is that correct?

1 A. Yes.

2 Q. Do you agree that Mr. Kerin's conclusion was
3 made without the benefit of an evaluation to construct
4 an on-site landfill to permanently store the remaining
5 ponded ash and production ash after CAMA was passed in
6 2014?

7 A. So Mr. -- my understanding talking to
8 Mr. Kerin and also others at -- who have been involved
9 in the project is that the 3 million -- in order -- 3
10 million landfill was not feasible to build on site, and
11 for multiple reasons. As you know, we are building a
12 landfill on site right now for a 1.3-million-tonnage
13 landfill. And that's an area that was not available to
14 us beforehand. And there was previous studies of
15 looking at landfills potentially on sites, specifically
16 in the location of a 1964 basin, and there was concerns
17 related to the availability and the ability to
18 construct the landfill in that area because of the dam,
19 itself, some concerns from regulatory agencies, some
20 springs in the area.

21 So all of that went -- all of that
22 information and -- that we knew about the site went
23 into the decision of could we do a 3-million-ton
24 landfill on site knowing what we know at this time and

1 the areas we have to utilize at the time to be able to
2 continue operating the plant.

3 Q. And were these studies you're referring to
4 done after the passage of CAMA in 2014?

5 A. So the studies I was referencing were studies
6 that were done earlier when the plant was operating,
7 and they were looking at -- because the Company always
8 does preplanning on -- we need to make sure we have
9 enough room to handle the ash. So there are studies
10 that were conducted to say, if we are going to run out
11 of room, and based upon what they know at the time of
12 how long the plant is going to operate, they're looking
13 to what are the options we have available to make sure
14 we can handle the ash appropriately, and that we have
15 enough room on site, off site in order to manage it.

16 So one of the things that was looked at was a
17 landfill on site. And I also believe at one time they
18 started working through a potential putting a landfill
19 in the area of the '64 basin. And the local Buncombe
20 County zoning board had brought up concerns of having a
21 landfill in that area, especially as close to the
22 highway, and with the -- where the dam was and being
23 able to move forward with that.

24 So while a specific study was not done in the

1 time frame that Mr. Kerin was referencing, we did have
2 knowledge based upon past examples, or past studies,
3 past discussions with regulatory boards. And then --
4 and so Mr. Kerin, with what he said in 2015, we could
5 not put a 3-million-ton landfill on the site.

6 Q. And so these studies that you're referring
7 to, did those assume construction on top of the
8 existing ash in the 1964 and 1982 basins or off site?

9 A. I'm going off of memory here. Yes, I believe
10 they looked at off-site locations and also building a
11 landfill on top of the basins that were there.

12 Q. All right. Do you agree, getting back to
13 Mr. Kerin's conclusion, that it was made without the
14 benefit of an evaluation that took into account the
15 2015 passage of the Mountain Energy Act?

16 A. So you are referencing something specifically
17 with Mr. Kerin.

18 Q. Yes. His testimony that a 3-million-ton
19 on-site landfill was technically infeasible. I'm
20 asking was that conclusion made without the benefit of
21 an evaluation that took into account the passage of the
22 Mountain Energy Act in 2015?

23 A. Specifically as to the Mountain Energy Act, I
24 did not ask him that specifically with the Mountain

1 Energy Act and looking at it. But I do know that, with
2 the Mountain Energy Act, of course, we had to continue
3 operating the Asheville plant. We did -- we were
4 allowed to have a few more years in order to close the
5 basins. So we have to close the 1964 basin by
6 August 1st of 2022.

7 Also with the Mountain Energy Act, we had to
8 continue operations of the coal plant. The operations
9 of that coal plant ended end of January of this year.
10 So looking at -- we had to manage the ash for that
11 plant that was still operating, and that was going --
12 that ash that had to be managed, it to be dried, had to
13 be -- we had to do something with it while, of course,
14 we were generating ash. That happened inside of the
15 1964 basin while we were removing some of the material
16 and sending it for off-site disposal.

17 So maybe I'll say I'm not quite sure where
18 you're getting at, other than we had to, of course,
19 continue operating the plant, continue to have to have
20 a place to place the ash on site. And if you look at
21 constructing a new power plant, operating an old power
22 plant, excavating some of the material, trying to do
23 all of that on a small Asheville site, that -- there
24 was no way we could build a 3-million-ton landfill on

1 site -- on that site at all.

2 Q. Well, okay. What I was getting at, my
3 question was, was there an evaluation done after the
4 passage of the Mountain Energy Act?

5 A. An evaluation was not done because there was
6 no way we could have -- I would say based upon what I
7 know talking to the people at the site, visiting the
8 site while all that work was going on at the same time,
9 we could not have built a base -- a landfill at that
10 site during that time period.

11 Q. And would you also agree that no evaluation
12 was done in 2016 or 2017 prior to the Commission's
13 decision in the last rate case and the construction of
14 the combined cycle plant?

15 A. The decision to build the 1.3-million-ton was
16 made in April -- I think it was April of 2019 is when
17 we determined that we were able to build a much smaller
18 landfill in the location where the laydown area was for
19 the combined cycle. So that decision, that evaluation
20 happened in the late 2018, early 2019; it was
21 April of 2019 when it was determined to use smaller
22 landfill.

23 Q. And in making those determinations, isn't it
24 true that the Company was continuing to rely on an

1 evaluation, excuse me, done in 2017 for a much larger
2 landfill that was intended to store production ash on
3 top of impoundment ash stored in the 1982 and 1964
4 basins?

5 A. No. So the decision in April of 2019, being
6 able to put a landfill on site of 1.3 million tons in
7 the area where the laydown area was, outside of the
8 basin, we could not build a landfill inside of the 1982
9 basin while operating the combined cycle. It's a very
10 small footprint. We actually are going to, in a couple
11 of our sites, build a landfill inside the basin. For
12 example, at Allen, that's one of the things we are --
13 we have submitted to the state. But in order to do
14 that, it's a much bigger basin. And we are starting --
15 having starter landfills even outside of that basin in
16 order to help us get started.

17 So when you look just physically at the
18 acreage that you would need in order to try and even
19 start a landfill inside of a basin while operating a
20 coal plant and trying to manage that ash while building
21 a combined cycle on site, that's a recipe for
22 accidents. I mean, really physically there was no way,
23 small basin, to build a landfill while all those other
24 activities were going on at the ash basin.

1 Q. Okay. So again, my question is, did the
2 Company rely on a 2017 study -- or 27 -- 2007 study?

3 A. We did not rely upon an earlier study; what
4 we relied upon was physically being able to execute
5 work within that basin. And also looking knowing that
6 there were springs, knowing that in order to build a
7 basin in- -- or a landfill inside the basin, you would
8 have to excavate the ash and put it on a lined
9 something or other in order to do that. So again,
10 physically we did not have the space on site while all
11 that activity was going on to do a landfill inside the
12 basin. So a study was not needed to do -- to make that
13 evaluation.

14 Q. Okay. Let's move to page 28, please. I
15 guess it's taking -- going back by one page.

16 COMMISSIONER CLODFELTER: Ms. Jost?

17 MS. JOST: Yes.

18 COMMISSIONER CLODFELTER: Since you're
19 moving to another part of the document, let's take
20 our morning break, if we can.

21 MS. JOST: All right.

22 COMMISSIONER CLODFELTER: Is that okay
23 with you?

24 MS. JOST: Yes.

1 COMMISSIONER CLODFELTER: And we will
2 come back at 11:00.

3 (At this time, a recess was taken from
4 10:45 a.m. to 11:01 a.m.)

5 COMMISSIONER CLODFELTER: Ms. Jost,
6 we're back with you.

7 MS. JOST: Thank you.

8 Q. Ms. Bednarcik, before we move on to your page
9 28, just a couple of follow-up questions on that last
10 line of questioning.

11 You had indicated in response to my last
12 question that a liner would have to be put down before
13 ash was moved and that there wasn't enough room to do
14 that on the site; is that right?

15 A. Yes. So in order to build a landfill inside
16 of the basin, we would have had to, of course, move the
17 ash out of the way. Not enough room inside the basin
18 to move it, to dry it. And you can't move it and place
19 it on just soil. So a requirement of -- I can't
20 remember if it was CAMA or CCR, but if you move it, you
21 have to place it on a liner, and so you might as well
22 build a landfill. And again, the only place that we
23 have available was being utilized as the laydown area.

24 Q. Would you agree that the size of that 1964

1 basin was about 46 acres?

2 A. Yes.

3 Q. So are you saying that the Company couldn't
4 have done a phased excavation where they would excavate
5 ash, stack it within the basin, and then line the fully
6 excavated sections, and then replace the compacted ash
7 back into the lined sections?

8 A. That's a -- we could not do that. I lived
9 that site while the work was going on. For the
10 excavation, the handling of the ash that was being
11 produced at the power plant, and the construction of
12 the cycle, and the laydown area; there was not enough
13 room to do all of that. It was physically impossible.
14 And anyone who actually visited the site while all that
15 work was going on and seeing what you would need and
16 the volume of the -- the area that was needed to do all
17 of that, it could not be done.

18 Q. Did the Company evaluate the possibility of
19 leasing land near the site for the laydown area and
20 parking and shuttling employees back and forth to the
21 site to make some more room available?

22 A. I do not -- that would have been done by our
23 construction organization, and I did not review any
24 documents. So I would not be able to know whether that

1 was evaluated or not. But we did, of course, have the
2 area on site that we were able to use for as a laydown
3 area. I would also say that, in Mr. Garrett's -- he
4 used one of our data requests as part of his testimony.
5 So his Data Request Number 13 -- or not data request,
6 has Exhibit Number 13 actually lays out a number -- it
7 was a response, of course, from the Company that laid
8 out a number of things, concerns related to doing
9 anything of the '64 basin.

10 And it talks about things such as the
11 proximity of the proposed over-basin landfill, the
12 Buncombe County Zoning Board was concerned about the
13 proposed landfill's proximity to the French Broad River
14 given the seismic risk. So that was another thing
15 looking at building any type of a landfill inside of
16 specifically the Asheville '64 basin.

17 And then the answer also on the second page
18 of our response to question number D, the '64 basin is
19 not being used inside a landfill primarily because such
20 use would require double-handling of the material and
21 temporary out-of-the-basin stockpiling of the material.
22 And then later on, in order to build and operate a
23 landfill in the basin, ash would have to be stored
24 outside of the '64 basin in a lined facility. And the

1 in-basin landfill built, stormwater control feature
2 built, and the dam partially decommissioned before a
3 landfill could be operated within the basin.

4 So there was lots of things that we looked
5 at. While we may not have done a study, people who
6 were on the site looking at it, knowing the constraints
7 on site, said there was is no way we can do all that we
8 need to do on the Asheville site to be able to execute
9 the work appropriately. And again, I visited that
10 site, and saw it and went -- my biggest concern when I
11 visited was, "Oh, my goodness, so much going on, how
12 are we making sure people are safe?" So adding in a
13 construction of landfill does not make sense -- did not
14 make sense, which is why we did not do it.

15 Q. The seismic concerns that you just alluded
16 to, that was related to a plan that would have
17 construction on top of existing ash; isn't that
18 correct?

19 A. The seismic concerns was on top of the ash,
20 yes, that was one of the concerns. Also, where that
21 dam is located, and it's -- where we are building the
22 new landfill is on native ground, and we are doing
23 things like a mechanically stabilized wall, adding more
24 beef, I would say, to landfill to make sure that it is

1 meeting all the requirements of the state and the
2 zoning boards. So all of that goes into why it was
3 okay, and we did move forward with a 1.3-million-ton
4 landfill in the area where the laydown area was, and
5 why we cannot put in a landfill inside the '64 basin.

6 Q. All right. Let's move on to page 28 of your
7 testimony, please. Starting on, let's see, line 10,
8 you state:

9 "The maximum capacity of the on-site landfill
10 at Asheville currently being constructed is 1.3 million
11 tons of CCR"; is that correct?

12 A. Yes.

13 Q. That is based on the Company's needs as of
14 2019 in the location that the Company selected; is that
15 correct?

16 A. So that is based upon the area that is
17 available on site to do an on-site landfill, that is
18 the biggest landfill that we are able to build.
19 Actually, we are -- it's smaller than what we need, and
20 we were able to luckily find a cement kiln that is
21 taking, I think it's between 70- and 90,000 tons, and
22 we may end up sending more to them in order to make
23 sure that we can fit the remaining ash on site.

24 So the 1.3 million tons fits what's left on

1 site, and a little bit extra has to go off site, and we
2 found a beneficial use for that.

3 Q. On page 31, starting at line 7 and continuing
4 through the next page, you prevent -- or present a
5 quadrant evaluation of the site; is that right?

6 A. Yes.

7 Q. And am I correct that that was prepared
8 specifically for your rebuttal testimony?

9 A. Yes. And it was only prepared to help be
10 able to explain the site constraints on site and all
11 the activities that were going on at the same time.

12 Q. All right. I'd like to move now to some
13 questions about beneficiation. If you could please
14 turn to page 45 of your rebuttal testimony.

15 A. (Witness peruses document.)

16 I have that in front of me now.

17 Q. Great. Do you agree that footnote 7 on that
18 page states, quote:

19 "Mr. Moore suggests that SEFA expended only
20 \$40 million on capital costs for the Winyah station.
21 From what I can tell, however, his cost analysis is
22 based on a single 2013 article from Waste360 that
23 neither provides a source for this number nor gives any
24 specificity as to what costs were included/excluded in

1 the \$40 million number."

2 Is that a correct reading of the footnote?

3 A. Yes.

4 Q. All right.

5 MS. JOST: Commissioner Clodfelter, I
6 would request that Public Staff 138 -- this was one
7 of the potential cross exhibits -- be marked
8 Bednarcik Public Staff Rebuttal Cross Examination
9 Exhibit 7.

10 COMMISSIONER CLODFELTER: It will be
11 marked as be Bednarcik Rebuttal Public Staff Cross
12 Examination Exhibit 7.

13 (Bednarcik Rebuttal Public Staff Cross
14 Examination Exhibit 7 marked for
15 identification.)

16 MS. JOST: Thank you.

17 Q. And this is the document that begins on
18 page 4198 of the Public Staff's combined potential
19 cross examination exhibits, and I'm going by the number
20 on the center bottom of the page.

21 A. Ms. Jost, I was trying to find my book. Can
22 you give me the exhibit again, please?

23 Q. Yes. It's Public Staff 138. So this is in
24 our packet of potential cross exhibits.

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

2 Q. Okay. Do you agree that this appears to be a
3 presentation by SEFA about STAR benefi ciation process
4 byproducts utilization, and the name is -- on there is
5 Robert Erwin, who is identified as project engineer
6 with SEFA?

7 A. Yes, I do see that's what the document
8 states.

9 Q. All right. And do you agree that the web
10 address for the document that's printed at the bottom
11 includes the year 2014, or it states 2014 STAR
12 benefi ciation project -- process byproducts
13 utilization?

14 A. Yes, that is what is written at the bottom of
15 the document.

16 Q. All right. If you could please turn to
17 page 4219 of that document.

18 A. (Witness peruses document.)

19 Q. All right. Do you agree that the first
20 bullet point on the top slide states:

21 "The SEFA group is building a \$40 million
22 facility to recycle high carbon fly ash produced by the
23 power company Santee Cooper at its Winyah generating
24 station in Georgetown, SC"?

1 A. Yes, that is what that first bullet does. It
2 says it's building. But what I don't know is, off the
3 top of my head, when that project was completed, what
4 was included in there, and what the final price tag
5 was. But it says -- it does say that they -- is
6 building a \$40 million facility.

7 Q. All right. On page 46 of your rebuttal
8 testimony, I'm looking at lines 14 through 17.

9 A. I have that in front of me.

10 Q. Great. You state, quote:

11 In fact, however, SEFA vice president
12 William Fedorka has provided a sworn affidavit in this
13 case confirming that the Winyah facility has only
14 designated -- or was only designed to produce
15 250,000 tons of ash; is that correct?

16 A. Yes.

17 Q. And that affidavit was attached to your
18 rebuttal testimony as Exhibit 8; is that correct?

19 A. Yes.

20 Q. And do you have that in front of you?
21 Because I am going to ask a few questions about it.

22 A. (Witness peruses document.)

23 I have that in front of me now.

24 Q. Great. Do you agree that paragraph 5 of the

1 affidavit states, quote:

2 Based on an assumed average loss on ignition
3 or LOI factor of 9 percent for dry feed ash introduced
4 to the Winyah STAR, the annual fee-tons to be processed
5 by the Winyah STAR would be approximately 275,000 tons
6 under the original 250,000-ton designed specification,
7 and approximately 300,000 tons under the revised
8 275,000-ton design specification?

9 A. That is what's written in his sworn
10 affidavit, yes.

11 Q. Thank you. Do you agree that the term "to be
12 processed" in the context -- context of that excerpt
13 means input?

14 A. Yes. So you, of course, put more in, and --
15 than what you get out at the end of the process.

16 Q. And if you could look back at what we marked
17 as Bednarcik Public Staff Rebuttal Cross Exhibit 7,
18 that's the slide deck. Do you agree that the third
19 bullet point on the top slide states:

20 "The new facility is expected to recycle up
21 to 400,000 tons of fly ash per year"?

22 A. Yes, that is what is written in the
23 PowerPoint presentation. But that is also why, when we
24 went back to SEFA, and they provided the sworn

1 affidavit in order to clarify what we saw. And going
2 back to the request for information, that we had
3 received had slightly different numbers in it as well.
4 So that's when we went back to SEFA and said, can
5 you -- can you come up and let us know exactly what
6 happened at the Winyah site. And that is why the
7 Mr. -- make sure I get his name right -- Fedorka
8 provided the sworn affidavit, to make sure there was
9 clarity as to what was constructed.

10 Q. Would you agree that the response to the RFI,
11 as you just said, included different numbers, that
12 those numbers were also higher, in terms of the -- the
13 capacity to process than Mr. Fedorka's affidavit would
14 indicate?

15 A. For -- if you're talking specifically what
16 was in the RFI related to the Winyah site and what was
17 there, yes, it was different than in the sworn
18 affidavit. Which is why we, again, went back to
19 Mr. Fedorka and said we want to make sure that we
20 100 percent understand what's going on with the Winyah
21 site. And he provided the sworn affidavit.

22 Q. And more specifically than different, those
23 numbers were higher. The affidavit indicated that the
24 facility -- the Winyah facility could process more ash

1 than Mr. Fedorka's affidavit stated; is that correct?

2 A. I would have to look at the RFI specifically
3 to make sure that the numbers -- I don't have all the
4 different numbers memorized, but that's -- I do know
5 Mr. Fedorka's affidavit was his sworn affidavit. And
6 that's why we went back to him and said can you look at
7 these numbers again, because this is what we saw in
8 your RFI, this is what we heard from you as we had done
9 the construction and we visited the Winyah site. So
10 that is why we went back to him and got the sworn
11 affidavit.

12 Q. All right. Let's move on to some questions
13 about the Charah fulfillment fee which you discuss
14 beginning on page 18 of your testimony, I believe.

15 A. (Witness peruses document.)

16 I am there now.

17 Q. Okay. Just a moment. I just realized I have
18 a wrong page reference, so bear with me for just a
19 moment so I can find the correct page.

20 (Pause.)

21 Q. All right. If you could -- actually, just
22 taking a step back, look at page 15. And I'm looking
23 specifically at -- beginning at line 11. And here you
24 are discussing the allocation of prorated costs to the

1 Sanford site just by the fact that no ash was sent to
2 that location; is that right?

3 A. Yes. We ended up not sending any ash to that
4 location.

5 Q. And so on page -- on line 11, beginning at
6 the end of that line, you state:

7 "In any event, costs related to Sanford make
8 up only approximately 12 percent of the total
9 fulfillment fee"; is that correct?

10 A. Yes.

11 Q. And do you agree that 12 percent of
12 \$80 million is \$9.6 million?

13 A. I would say -- I can't do that math in my
14 head, but subject to check, I would say that sounds
15 about right.

16 Q. Is it your position that \$9.6 million is an
17 insignificant amount of money?

18 A. So the Sanford site had costs associated with
19 it for purchasing the property, and it's a mine site,
20 and there are requirements in that mine property. And
21 that was what was included in the -- when we did the
22 prorated percentage and received from Charah and our
23 evaluation as well looking at the projected costs to
24 manage what was needed at the site, that is what came

1 up was the 12 percent. So whether it's significant,
2 insignificant, it is what it is.

3 Q. All right.

4 MS. JOST: I will need to move to
5 confidential, or I believe my questions will elicit
6 confidential information at this point. So I
7 believe we'll need to move to the phone line.

8 COMMISSIONER CLODFELTER: All right.

9 Ms. Jost, let me ask you this question before we do
10 that. Do you have other lines of questioning for
11 Ms. Bednarcik that we will take up that will be
12 nonconfidential?

13 MS. JOST: No. I have tried to, excuse
14 me, organize my questions so that the remaining
15 ones will touch on confidential.

16 COMMISSIONER CLODFELTER: Okay. That's
17 great. Thank you, then. At this point, everyone
18 should keep your connection, your Webex connection
19 open, but you should mute your mic and turn off
20 your video.

21 Mr. Robinson, I don't know whether the
22 number has been circulated this morning, but
23 probably wouldn't be a bad idea to do that. And
24 let's give folks -- let's give folks about five or

1 six minutes to call in before we start the roll
2 call. And so let's actually resume on the phone at
3 11:30 a.m. That should give everybody time to get
4 to their phones and dial in. Okay?

5 MS. JOST: Thank you.

6 COMMISSIONER CLODFELTER: Anything else
7 we need to do before we leave the Webex video and
8 go to the confidential phone line?

9 (No response.)

10 COMMISSIONER CLODFELTER: Okay. 11:30.

11 (At this time, a recess was taken from
12 11:22 a.m. to 11:30 a.m.)

13 (Due to the proprietary nature of the
14 testimony found on pages 442 through
15 463, it was filed under seal.)

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1 (Testimony on the open record resumed.)

2 COMMISSIONER CLODFELTER: Okay. We are
3 now back on the Webex video and audio connection.
4 The confidential portion of the cross examination
5 has concluded.

6 Ms. Jost and Ms. Luhr, I understand
7 there's no more cross examination from the Public
8 Staff. That being the case, we will now take cross
9 examination from the Attorney General's Office.
10 Ms. Townsend?

11 MS. TOWNSEND: Thank you,
12 Commissioner Clodfelter.

13 CROSS EXAMINATION BY MS. TOWNSEND:

14 Q. And good afternoon, Ms. Bednarci k.

15 A. Good afternoon, Ms. Townsend.

16 MS. TOWNSEND: First of all, I want to
17 advise the Commission that we are a party to the
18 amended joint stipulation that was identified by
19 Mr. Marzo during the introduction of Ms. Bednarci k.
20 In a review of my notes, I discovered that, during
21 my direct, I inadvertently failed to introduce into
22 evidence the Mayo April 1, 2019, closure
23 determination done by DEQ, which is prefiled as AGO
24 Exhibit 17, and we would like to mark that,

1 Commissioner Clodfelter, as Bednarcik Rebuttal AGO
2 Cross Exhibit Number 2.

3 COMMISSIONER CLODFELTER: It will be so
4 marked.

5 (Bednarcik Rebuttal AGO Cross Exhibit
6 Number 2 was marked for identification.)

7 MS. TOWNSEND: Thank you.

8 Q. Now, if you would, Ms. Bednarcik, turn to the
9 document that we attempted to discuss at the end of our
10 direct testimony, which was Hart 38, and which we then
11 marked and admitted as Bednarcik Direct AGO Cross Exam
12 Exhibit 28; do you have that in front of you?

13 A. Ms. Townsend, I have it actually up on the
14 screen so I can see all the tabs.

15 Q. Perfect. Thank you very much. This is a
16 significant -- what they call significance scoring
17 matrix, which is evidently developed by DEP in 2012 to
18 evaluate the priority of plant environmental impact
19 issues.

20 Would that be an accurate assessment of the
21 purpose of this document, Ms. Bednarcik?

22 A. That is my understanding of the purpose of
23 the document, yes.

24 Q. Okay. And during your historical review of

1 the environmental issues at DEP, did you review this
2 document?

3 A. I did. I remember looking at it at one time
4 and -- I remember looking at it at one time but did not
5 spend a significant amount of time with it.

6 Q. All right. So let's go to the document. And
7 if you would please go to the tab marked "Priority
8 ranking chart." It's to the left of the sites
9 themselves.

10 A. I am on that tab.

11 Q. All right. And that tab has a matrix, does
12 it not, showing the various levels and the -- what
13 levels would be which priority; is that correct?

14 A. Yes. This is a standard type of a risk
15 matrix.

16 Q. Right. All right. And so we see that 1
17 through 7 is the lowest priority; 8, 9, low priority --
18 whoops, we lost you. We lost your video,
19 Ms. Bednarcik. You there? Okay. Then 10 through 13
20 was moderate priority; and 14 to 25 is high priority.

21 Is that as you understand the matrix to be?

22 A. Yes, that is what the matrix states.

23 Q. Okay. And if you would now go to the tab
24 where we find the key to the significance rating, and I

1 believe it's tabbed as "Scoring criteria."

2 A. I am there.

3 Q. All right. And let's --

4 COMMISSIONER BROWN-BLAND:

5 Mr. Clodfelter and Ms. Townsend, I'm sorry to
6 interrupt, but we're lost on your document. Can
7 you help us find where you are in the documents?

8 MS. TOWNSEND: Yes. If you've got the
9 electronic version with the tabs; is that what you
10 have?

11 COMMISSIONER BROWN-BLAND: Well, tell me
12 which document, and then --

13 MS. TOWNSEND: Oh, I'm sorry. The
14 document is Hart 38, which --

15 COMMISSIONER BROWN-BLAND: Okay. And
16 then tab?

17 MS. TOWNSEND: And then notice the tabs.
18 And you'll see when you first look at it, the tabs
19 show you the sites, but if you go left, you'll find
20 the tab marked "Priority ranking chart," and
21 further left, the "Scoring criteria"; do you see
22 those tabs?

23 COMMISSIONER BROWN-BLAND: I'm not sure
24 I'm seeing tabs, but I think I'm -- find it.

1 What -- so what was the category again? You said
2 I'll see --

3 MS. TOWNSEND: Right. The one with the
4 matrix on it is a -- called "Priority ranking
5 chart."

6 COMMISSIONER BROWN-BLAND: All right.
7 That should be good. I'll find it.

8 MS. TOWNSEND: Okay. And the other is
9 "Scoring criteria." Those are the two identifying
10 elements reflected in the actual matrix for each
11 site.

12 COMMISSIONER BROWN-BLAND: Thank you.

13 MS. TOWNSEND: You're welcome. Sorry
14 for the confusion.

15 Q. If we go to the key, the significance rating,
16 Ms. Bednarcik, we won't go through this whole document,
17 but what I would like to do is just very briefly -- for
18 instance, the first, I guess, column is "Likelihood";
19 do you see that?

20 A. The first grouping is "Likelihood," yes.

21 Q. Grouping is a good word. All right. And so
22 the rating of 5 -- let's just talk about the 5s, and
23 then we can look at the actual ratings if we need to
24 for the others.

1 But likelihood for 5 means that it's very
2 likely, high probability, 90 percent or more that an
3 aspect will result in the described impact; is that how
4 you understand it?

5 A. That is what the document states.

6 Q. Okay. And then the next column evidently is
7 "Exposure/toxicity." Okay?

8 A. Yes, that is. And if you look in column A,
9 it has -- those are all kind of grouped together for
10 consequence.

11 Q. Right. Right. And again, for 5 is the
12 severe impact catastrophic, very harmful, potentially
13 fatal to humans and/or large portions of the ecosystem,
14 right?

15 A. Yes.

16 Q. Okay. And if we go to the business risk
17 cost, their 5 is the major impact is over \$1 million;
18 is that correct?

19 A. Yes.

20 Q. Okay. And public relations cost, 5 is
21 primary concern to all, most stakeholders, correct?

22 A. Yes.

23 Q. Okay. And the last one is regulatory, and 5
24 is -- stands for government fines and/or criminal

1 activity impact reportable to state, federal, or local
2 authority involving criminal activity, NOV issued,
3 and/or fine likely.

4 Does that adequately express what that 5
5 stands for?

6 A. Yes. And it's probably good to know, as you
7 can tell, some of those are prescriptive, some are
8 subjective, some actually have -- like, a dollar
9 amount's, a dollar amount, but some are based upon the
10 people who were doing the evaluation, their perception
11 of what it would be.

12 Q. And who would have done this evaluation for
13 DEP back in 2012? Who would have been responsible for
14 putting it together?

15 A. Based upon the conversations I had with
16 people who currently do these type of evaluations even
17 today, it would be a combination of site personnel.
18 That would include the station manager, the site
19 environmental consultants who were stationed at the
20 location, as well as other subject matter experts and
21 plant personnel.

22 Q. Thank you. If we go to the first site, which
23 is Asheville. Are you there?

24 A. Yes, I am there.

1 Q. Okay. And let's talk about what -- at this
2 time, the five top significant environmental impacts,
3 which are indicated on these documents prepared by DEP.

4 And if you would, if you could tell us what
5 the first one is at Asheville?

6 A. The first one is power plant operations is
7 the primary activity, secondary is control equipment
8 and monitor operations. And the --

9 Q. You don't have to worry about the aspect,
10 just --

11 A. Okay.

12 Q. -- jump over to potential impact would be
13 great, thank you.

14 A. The potential impact is positive reduction of
15 air impacts.

16 Q. Okay. And evidently, that was a strong
17 concern, because it was 5s all the way across; is that
18 correct?

19 A. That is what the document indicates.

20 Q. Okay. And do you know any differently?

21 A. I do not have any knowledge related to the
22 air, though it specifically is on that line.

23 Q. Okay. Let's go to the next line, and just go
24 to the potential impact, if you will, save us a little

1 time. And what is the second most -- whoops, we lost
2 you again, Ms. Bednarcik. Whoops.

3 A. This is the problem when you have two screens
4 and you go off on the screen, so I'm sorry about that.

5 Q. No, that's totally understandable.

6 So the second impact -- or the second
7 significant impact at Asheville in 2012 was -- it says
8 "ponds potential groundwater impacts"; is that correct?

9 A. Yes.

10 Q. Okay. Now, that doesn't have all 5s, but it
11 shows 5 for likelihood, a 3 for toxicity or exposure, 5
12 for cost, 5 for PR, and 4 for regulatory; is that
13 correct?

14 A. Yes.

15 Q. Okay. And the next one, number 3 is what?

16 A. Is groundwater impact.

17 Q. Okay. And it appears to have the very same
18 rankings as the second one; is that correct?

19 A. Yes.

20 Q. Okay. And number 3 -- I'm sorry, 4?

21 MR. MARZO: Mr. Chairman, I'm just going
22 to object to the extent if we're just going to read
23 the numbers, this is a Duke-generated document,
24 we'll stipulate it says what it says. If there's

1 questions related to each category, that's
2 something different.

3 COMMISSIONER CLODFELTER: Ms. Townsend,
4 you have a proposed stipulation from the Company
5 that the document is admissible and says what it
6 says. How do you respond?

7 MS. TOWNSEND: I have no objection to
8 that. That's fine. And we can shortcut
9 everything, and I will be done with my questions.

10 COMMISSIONER CLODFELTER: You have -- on
11 this document or on any other document?

12 MS. TOWNSEND: On this document. And
13 the only questions I would have is based on looking
14 at all these questions.

15 Q. You will find, Ms. Bednarcik, will you not,
16 that, obviously, ash management concerns and
17 groundwater impacts were one of the five top for every
18 single site; would you agree with that, subject to
19 check, based on it being your document?

20 A. I have not looked at every tab, but the
21 document states what the document states.

22 Q. All right.

23 MS. TOWNSEND: Then with that, I have no
24 further questions, Commissioner Clodfelter.

1 COMMISSIONER CLODFELTER: Thank you,
2 Ms. Townsend. Ms. Cralle Jones?

3 CROSS EXAMINATION BY MS. CRALLE JONES:

4 Q. Good afternoon, Ms. Bednarcik, we're getting
5 close at the end of this marathon.

6 MS. CRALLE JONES: Commissioners, I
7 would also note that Sierra Club is a party to the
8 stipulation, and so questions will focus on those
9 issues moved to the DEP plants.

10 Q. Ms. Bednarcik, on page 7 of your testimony,
11 you discuss Company actions relating to basin closure.

12 As part of the Company's closure of its ash
13 ponds, the Company has undertaken the rerouting of
14 processed water, stormwater, and other non-CCR waste
15 streams that have been sent to the pond; is that
16 correct?

17 A. Yes.

18 Q. Would it be fair to say that stormwater
19 represents the bulk of the volume of wastewaters being
20 rerouted?

21 A. So I would say it depends upon the plant.
22 So, of course, the bulk of the material that went into
23 the ponds was the sluiced ash and the water that came
24 from the sluiced ash. The stormwater that is

1 directly -- that we had to reroute and move away, of
2 course not the rain that comes down or what we call
3 sheet flow that is just from the gradual sloping of the
4 area ground there into the pond. The stormwater was
5 channelized flow. So any stormwater that hit what I
6 like to call as hardscape, is anything that didn't hit
7 the ground, but the soil, that hardscape inside the
8 power block, itself, was all channelized out to the ash
9 pond. Because the ash pond, of course, was our
10 treatment system, and all those streams were in the
11 NPDES permit as a permitted stream to go to that
12 treatment system.

13 So I would not say stormwater was the bulk.
14 It really depends upon the site, itself. Really, the
15 bulk was the sluiced ash.

16 Q. Okay. But at each of the ponds where closure
17 has taken place, there had to be some rerouting of that
18 stormwater flow, correct?

19 A. So at the ponds that had active operating
20 power plants, yes, because that was, again, that
21 channelized flow from the power block, from the
22 hardscapes of the power block could no longer, per the
23 CCR rule and CAMA, go to the basin. So that is why we
24 ended up constructing things called line retention

1 basins. Those were our new treatment systems. And if
2 they were moved that way for -- to make sure we can
3 continue to provide safe, reliable electricity, then
4 that was a capital cost.

5 Now, for the sites that were retired, Cape
6 Fear is a great example, those channelized stormwater
7 lines, of course, were taken out when those power
8 plants were retired. And so, therefore, we did not
9 have to do any stormwater reroutes around a -- around
10 the Cape Fear. Some locations where we may have
11 continued to use the basin for combined cycle and it
12 was continually used as a treatment system for the
13 combined cycle, Sutton is a good example, that -- of
14 course, then we would have had to reroute the
15 channelized water lines that went into the basin.

16 Q. Okay. So -- and I want to make sure I caught
17 up with you. So where the rerouting has been completed
18 in many of the plants, that was rerouted to newly
19 constructed line retention basins, correct?

20 A. Yes. So again, the NPDES was related to the
21 fact that the basins were our treatment system.

22 Q. Right.

23 A. Since we were no longer allowed to use them
24 as a treatment system, all -- where we needed to -- all

1 that hardscape and that stormwater, where it had to go
2 to a new treatment system, those, of course, were
3 constructed and are in operation.

4 Q. And if there are any ponds where rerouting
5 has not yet been completed, will that also be sent to
6 newly reconstructed lined retention basins?

7 A. So all of those activities are complete.
8 They had a date certain. I'd would have to look up the
9 date, but those -- we had to meet dates to have all
10 those done, and those have been completed.

11 Q. Okay. And those lined retention basins are
12 located on property that is already owned by the
13 Company, correct?

14 A. Yes.

15 Q. Great. All righty. Now I wanted to go to
16 page 61 of your testimony where you are discussing that
17 DEP's coal ash management practices and your beliefs
18 were consistent with industry standards at the time.
19 And on that page, on lines 11 and 13, you criticize
20 witnesses Lucas, Hart, and Quarles for relying on,
21 quote, a small handful of papers published between 1967
22 and '85 to call into question the prudence of the
23 Company's use of unlined ash basin.

24 So is that a good summary of kind of that

1 piece of the testimony?

2 A. Generally, yes.

3 Q. Okay. Do you consider the historical
4 documents cited by intervenor witnesses relevant in the
5 determination of what industry standards were?

6 A. I think that they're historical documents,
7 and there's a lot of information that is out there.
8 But I also would like to say that documents are -- a
9 few documents here and there -- you can't cherry-pick.
10 And you can't cherry-pick a few documents, you can't
11 cherry-pick a few lines out of documents.

12 One of the reasons we also look at it and say
13 this is historical practices, I would like to bring up
14 that the way Duke Energy is today, of course, is not
15 what Duke Energy was in the 1980s. So we -- another
16 way you can show that the historical practices -- that
17 we were following industry practices, is that Duke
18 Energy Progress and Duke Energy Carolinas merged in
19 2014. We followed the same historical practices before
20 we were one Company back in the day.

21 Also, Duke Energy Carolinas and Duke Energy
22 Indiana, we merged in 2000 -- and I have to go back
23 through my mind -- 2006. The practices of handling
24 coal ash in the legacy Duke Energy Carolinas practices

1 and the Duke Energy Indiana were exactly the same.
2 Duke Energy Indiana merged from two companies,
3 Cincinnati Gas & Electric and Public Service of
4 Indiana. Prior -- in the 20 -- in the 1980s, 1990s
5 before they merged, handled coal ash practices exactly
6 the same.

7 So I would say that the industry documents
8 are good. They're a piece of the puzzle. They're not
9 the whole puzzle. And being able to look at industry
10 practices from people on operations -- and I just
11 mentioned the companies that are now Duke Energy, let
12 alone the other companies that I talked to that are in
13 my peer group, neighboring companies. All of that
14 needs to be taken into account when you look at
15 historical practices.

16 So again, documents are good. They're one
17 piece of the pie. They are not the be-all, end-all.

18 Q. Okay. And on page 62, line 7, you again
19 criticize the intervenors and Mr. Lucas as their points
20 were viewed through a filter of a 21st century lens
21 when, quote, no such clarity existed in real time.

22 Is it your position that the Company had no
23 clarity regarding operation of any of its ash basins
24 until the adoption of the CCR rule?

1 A. No, ma'am, that -- I think you're
2 mischaracterizing what is meant there. It's -- what is
3 meant to say is that the Company has to make decisions
4 based upon what is known at the time that the decisions
5 are made. So, of course, what we know today about coal
6 ash and about groundwater has evolved over time. And I
7 believe Mr. Wells and Ms. Williams are great people to
8 talk to about this, and they provided also in DEC the
9 history of how things have progressed over time. So
10 what that comment meant is that you can't go back and
11 look at the "what ifs." What if we knew today what
12 we -- what if we knew back then what we know today.
13 When that is -- when I read through the intervenor's
14 testimony, that's what came out to me, is that they
15 were applying knowledge of today in reading these
16 historical documents and going, well, of course.

17 And that is not what you really need to do.
18 You need to go back and say how can I take away what I
19 know today and determine if the Company made decisions
20 based upon what they knew at the time that they made
21 those decisions. That is very difficult to do. And I
22 mentioned that and discuss that in the DEC part of the
23 testimony. But that is what I meant here, is that when
24 I reviewed their testimony, they were putting today's

1 lens what's known today when they tried to look at
2 historical practices. And that is -- that's what I was
3 calling out.

4 Q. Are you aware that, in 1978, at the time the
5 Company was making decisions, EPA had clearly stated
6 that water carriage of fly ash and bottom sluicing
7 systems are, quote, inconsistent with existing and
8 expected standards of performance for new sources?

9 A. Ms. Cralle Jones, that would be a better
10 question for Ms. Williams and also Mr. Wells. I know
11 that there was -- I think in one of the documents I
12 read that one line item, but I would also say that,
13 again, that's one item out of lots of documents. You
14 really have to look at the history of what was going on
15 at that time. So I would say please talk to
16 Ms. Williams and Mr. Wells about that specific item.

17 Q. Okay. Let me also ask you, let's look
18 together for a minute at what has been marked as Sierra
19 Club Potential Cross Exhibit 22. And, Ms. Bednarcik
20 and Commissioners, this is that large document that was
21 filed in four PDF sections. It was the Company's
22 response to Public Staff Data Request Number 57, and it
23 was more than 500 pages long provided by DEP in these
24 four separate files. And I believe those have been

1 made available to everyone.

2 MS. CRALLE JONES: We'd ask that -- for
3 completion, the Company asks that the whole thing
4 be marked or available, so we would ask that it be
5 marked for the record as Bednarci k Rebuttal Sierra
6 Club DEP Cross Exhibi t 2.

7 COMMISSIONER CLODFELTER: It will be so
8 marked.

9 (Bednarci k Rebuttal Sierra Club DEP
10 Cross Exhibi t 2 was marked for
11 identi fication.)

12 Q. Okay.

13 A. Ms. Cralle Jones, can you tell me that number
14 again? I don't know if I have the right one in front
15 of me.

16 Q. I think you're going to need a digital
17 document. I'm not sure how it's been provided to you.
18 It's Potential Cross Exhibi t 22. And it was -- it was
19 named as the Mayo 1977 EIS, and it's in four parts.

20 COMMISSIONER CLODFELTER: Mr. Marzo, I
21 believe this is the exhibit -- potential exhibit
22 that the Commission authorized to be served in
23 electronic form due to its length. Can you help
24 Ms. Bednarci k locate it?

1 MR. MARZO: That's correct, sir. Let me
2 see if I can help her find it, if I could just have
3 a couple of minutes.

4 COMMISSIONER CLODFELTER: All right. I
5 tell you what, just so we're clear about that, and
6 I need to do one other administrative matter
7 anyway, it's 12:25, let's go ahead and take our
8 lunch break. That way you can make sure
9 Ms. Bednarci k has the document, that everyone else
10 who wants to have access to it can get access to
11 it, and we'll take our lunch break and come back at
12 1:30.

13 Before we actually leave, Ms. Townsend,
14 I want to be sure we've got for the record the last
15 document you were using with Ms. Bednarci k, I want
16 to be sure we got it i denti fied and marked
17 correctly. I understand the Company is going to
18 stipulate it's admi ssibi lity, so you don't have to
19 worry about there being an objection to it, but I
20 want to be sure we did get it designated. And my
21 notes and staff notes here are not really clear on
22 that. Did you mark that exhi bi t?

23 MS. TOWNSEND: Yes, it was marked and
24 admi tted during her di rect exami nati on as Bednarci k

1 Direct AGO Cross Exam Exhibit Number 28.

2 COMMISSIONER CLODFELTER: Number 28.

3 And that's why we didn't pick it up here, it's
4 already in the record?

5 MS. TOWNSEND: Yes.

6 COMMISSIONER CLODFELTER: Correct.

7 Okay. Thank you for that clarity.

8 MS. TOWNSEND: Absolutely.

9 COMMISSIONER CLODFELTER: With that, we
10 will take our lunch break and come back at 1:30.
11 Please mute your mic and stop your video.

12 (The hearing was adjourned at 12:26 p.m.
13 and set to reconvene at 1:30 p.m. on
14 Friday, October 2, 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

23 JOANN BUNZE, RPR

24 Notary Public #200707300112