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ADDENDUM

REDACTED

DUKE ENERGY CAROLINAS

Docket Nos.: E-7, Sub 1213

E-7, Sub 1214

E-7, Sub 1187

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E X H I B I T S

- Williams Rebuttal Exhibit 2
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- Bednarcik Rebuttal Confidential Public Staff
- Cross Examination Exhibit 8
- Bednarcik Rebuttal Public Staff Cross
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- Lucas/Maness Public Staff Redirect Exhibit 2
- DEC Correction Action Plans for Belews Creek,  
Marshall, Allen, and Cliffside

1 (WHEREUPON, the prefiled  
2 supplemental rebuttal testimony of  
3 JAY W. OLIVER is copied into the  
4 record as if given orally from the  
5 stand.)  
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**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
NORTH CAROLINA**

**DOCKET NO. E-7 SUB 1214**

In the Matter of: )  
 )  
Application of Duke Energy Carolinas, LLC )  
For Adjustment of Rates and Charges )  
Applicable to Electric Service in North )  
Carolina )

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**SUPPLEMENTAL REBUTTAL  
TESTIMONY OF  
JAY W. OLIVER  
FOR DUKE ENERGY  
CAROLINAS, LLC**

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

3 A. My name is Jay W. Oliver. My business address is 400 South Tryon Street,  
4 Charlotte, North Carolina. I am employed by Duke Energy Business Services, LLC  
5 (“DEBS”) as General Manager, Grid Strategy and Asset Management Governance  
6 for Duke Energy Corporation (“Duke Energy”), the parent holding company for  
7 Duke Energy Carolinas, LLC (“DE Carolinas” or the “Company”).

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**  
9 **TESTIMONY?**

10 A. I am responding to the Supplemental Testimony of Jeff T. Thomas filed on behalf  
11 of the Public Staff regarding transmission and distribution (“T&D”) assets placed  
12 in service from February 1, 2020 thorough May 31, 2020 for DEC (“Update  
13 Period”).

14 **Q. WITNESS THOMAS NOTED IN HIS TESTIMONY THAT DE**  
15 **CAROLINAS HAD COMPLETED CONSTRUCTION ON 30 CIRCUITS**  
16 **THAT WERE PENDING SOG “ENABLEMENT.” WHAT IS THE**  
17 **COMPANY’S TARGETED TIMEFRAME FOR COMPLETING THE SOG**  
18 **“ENABLEMENT” WORKSCOPE?**

19 A. Currently, the timeframe is longer than we would like between construction  
20 completion and SOG enablement. As noted in witness Thomas’s testimony,  
21 prior to this year the Company had been proceeding at a slower pace; however,  
22 as the number of circuits targeted for SOG has increased, the demand for more  
23 highly skilled personnel to perform the enablement work has increased. Once

1 fully staffed we anticipate it will take approximately 12 weeks between the  
2 point construction work is complete and full SOG enablement. This 12-week  
3 timeframe is needed for scheduling multiple interdependencies between the  
4 reliability engineers who create the device settings; the ADMS Model Builders  
5 who will program the devices into the software and facilitate testing and  
6 validation; and coordination with the with the Grid Management technicians to  
7 ensure devices are showing up correctly in the Distribution Control Center  
8 (DCC).

9 **Q. WHAT ARE THE COMPANY'S PLANS FOR ACHIEVING THE**  
10 **TARGETED TWELVE WEEK SOG ENABLEMENT TIMEFRAME?**

11 A. As COVID restrictions ease, we intend to begin building the staff required to reach  
12 the targeted 12-week timeframe. Modelling resources are a highly specialized skill  
13 set, but we are confident in our ability to find those resources with the additions  
14 likely being a combination of company and contract personnel. Training the  
15 resources will include sitting with our experienced team, reviewing the work of  
16 others and being productive along the way as they complete the needed training  
17 which we anticipate will take approximately four months.

18 **Q. WILL SOG ENABLEMENT BE INCLUDED AMONG THE KEY**  
19 **METRICS FOR GIP REPORTING?**

20 A. Yes. As noted in the Second Agreement and Stipulation of Partial Settlement  
21 in this case, DE Carolinas, in conjunction with the concurrent commitment of  
22 DE Progress, and the Public Staff will work together to develop biannual  
23 reporting on scope, schedule, costs, and benefits on the programs agreed upon



1           for GIP deferral. Today the company's project management team is already  
2           tracking on a circuit by circuit basis the 1) Capacity and tie work        completed;  
3           2) Reclosers installed; 3) Reclosers commissioned (programmed and  
4           verified the recloser can safely operate in switch mode; and 4) Enablement of  
5           the self-healing team. The timeframe for how long it is taking from construction  
6           complete to SOG enablement can be an additional metric.

7   **Q.    DOES THIS COMPLETE YOUR TESTIMONY?**

      A.    Yes.

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(WHEREUPON, DEP-specific Sub 1219  
testimony in Volume 16, p. 222,  
line 1 through p. 232, line 9 of  
JAY W. OLIVER is copied into the  
record as if given orally from the  
stand.)

1 MR. JEFFRIES: Thank you, Mr. Chairman.  
2 Mr. Oliver -- I will note for the record that  
3 Mr. Oliver's prior testimonies have already been  
4 admitted into the record in both rate case dockets,  
5 so that concludes moving his testimony into the  
6 record, and he's available for cross examination  
7 and questions by the Commission.

8 COMMISSIONER CLODFELTER: According to  
9 my notes, Mr. Page, we're back with you.

10 MR. PAGE: Thank you,  
11 Commissioner Clodfelter.

12 CROSS EXAMINATION BY MR. PAGE:

13 Q. Mr. Oliver, were you able to listen to the  
14 Cross examination that I had and the conversation with  
15 Mr. Williamson of the Public Staff?

16 A. I was, Mr. Page, yes.

17 Q. I think the good news is -- good afternoon.  
18 I should have said that to start with.

19 Good news is, I think that conversation is  
20 going to limit the questions I have for you to maybe  
21 one or two. We were talking about the enablement of  
22 these circuits, and from I understood from  
23 Mr. Williamson, your team is in place. You may have to  
24 add a few members because the number of circuits is

1 large.

2 But my real question -- I'll just skip all  
3 the intermediate steps and get to the bottom line, if  
4 that's all right with you. Is there a drop-dead date  
5 you can give us today for when all of this enabling  
6 work will be done and all of these circuits will be  
7 fully automatic?

8 A. Well, our goal is to get to a 12-week time  
9 frame from the time that all the work in the field is  
10 complete, the SCADA control, which is the remote  
11 control that goes back to the control center, is  
12 enabled, and we have the capacity and connectivity  
13 complete. So when that happens, it's ready for the  
14 modeling exercise to happen, which is the resources  
15 we're talking about, and we're working to get that to  
16 12 weeks.

17 We're averaging right now in Duke Energy  
18 Progress about three to four months before that  
19 enablement of these teams, so we got to get that down  
20 about a month or two. We are in the process of adding  
21 those resources. I don't have an exact date for when  
22 each of these current networks will be enabled, but I  
23 feel very confident we'll get to that 12 weeks in  
24 relatively short order.

1 Q. But would you agree with Mr. Williamson it's  
2 likely to be sometime in 2021, at least not by the end  
3 of the hearings in this case?

4 A. I would say it's possible some of those may  
5 go to '21, but others will be done in 2020. I don't  
6 know which. I don't know an exact date. I had a  
7 conversation with the leader of that organization last  
8 week just to make sure I was familiar with where they  
9 were at, and understood that they were already making  
10 progress on this backlog with the current staff and are  
11 getting ready to bring on additional staff to move this  
12 process forward.

13 Q. Thank you very much, Mr. Oliver. Good to see  
14 you again. That's all the questions I have for you.

15 A. Good to see you, sir.

16 COMMISSIONER CLODFELTER: All right. Is  
17 there any other party who wishes cross examination  
18 of Mr. Oliver?

19 (No response.)

20 COMMISSIONER CLODFELTER: If not,  
21 Mr. Jeffries, is there any redirect?

22 MR. JEFFRIES: Just two quick questions,  
23 Mr. Chairman.

24 REDIRECT EXAMINATION BY MR. JEFFRIES:

1 Q. Mr. Oliver, you could briefly explain the  
2 modeling exercise you referenced that the Company will  
3 have to go through after the physical components of SOG  
4 are installed for any particular circuit segment?

5 A. Yes, certainly. So I think to do that, it's  
6 best to explain all the work that takes place up front  
7 before we get to that stage. So let's take a typical  
8 circuit that we have today, maybe it's 5 or 6 miles  
9 long and serves 2,000 or so customers. We would first  
10 install the segmentation devices. These are protective  
11 devices and also switches. We put about -- we put a  
12 segmentation device about every 400 customers or so, or  
13 every 2 miles, depending -- depending on the circuit.  
14 So you're going to segment that circuit into individual  
15 sections of about 400 customers.

16 That work takes place first. If there is any  
17 capacity work that needs to be done at the substation,  
18 that will happen. We'll then install the ties to the  
19 adjacent circuit and also segment that adjacent  
20 circuit. As we segment that adjacent circuit, we now  
21 have what was two individual circuits that were not  
22 necessarily connected, they are now connected via  
23 automatic controllable devices, and the circuits are  
24 segmented to about 400 customers or so.

1           That is the point at which it moves to the  
2 modeling exercise where the restoration activities  
3 become automatic. Now, when all that work is done, we  
4 have created -- and that's the work we're talking about  
5 going into service -- we have, in fact, created  
6 reliability benefits for customers that are out there  
7 today. Because, in Mr. Page's example earlier where it  
8 was a radial circuit, if we installed one of those  
9 segmentation devices, which we are, it would, in fact,  
10 operate in about two to three seconds and save all the  
11 customers upstream, and isolate that out as to just the  
12 customers downstream. In that example, though, there  
13 was no backfeed capability.

14           So we do have all of that. We would isolate  
15 and less customers would be affected in that state, and  
16 we could actually backfeed because we've installed the  
17 capacity and connectivity to do so, it just doesn't  
18 happen automatically. So depending on the situation,  
19 because each situation is different, we may send a crew  
20 out to take a look, or the control center may look at  
21 it and manually -- because they can do it -- when I say  
22 manually, envision clicking a mouse. That's what  
23 manually means in this case. Click the mouse a couple  
24 of times and reconfigure the circuit manually via their

1 commuter screen.

2           What's missing is the automatic control, and  
3 that's the part that takes a little bit of time. So  
4 envision all these segments -- I might have 10 to 100  
5 segments that have to be enabled. Each of those -- for  
6 each of those segments we need to think about an  
7 if-then statement, that's probably the best way to put  
8 it. If a fault happens here, then this is how we  
9 configure; if the fault is here, then this is how we  
10 configure. And we also do some checks to ensure that  
11 we have enough load to backfeed.

12           That's the modeling exercise. It takes quite  
13 a bit of time to do that to get it right. We need to  
14 run it through testing scenarios. And it takes some  
15 specialized resources to do that. So that's that  
16 12-week time frame that we're working on. We're not  
17 there yet, but we're closing that gap.

18           Q.     And thank you, Mr. Oliver, for that  
19 explanation. Mr. Page asked you about when you thought  
20 the work might be done to close that gap, and  
21 specifically in reference to the SOG equipment that's  
22 been included in rate base in the DEP case.

23                   When would you anticipate having most of that  
24 fully functional?



1           A.       So the equipment that's in the field now is  
2 fully functional. That equipment is operated -- can be  
3 operated by SCADA, it has been enabled with protection  
4 and control to limit the number of customers affected.  
5 The only thing that's missing is the automated control,  
6 and that is the final piece that takes a little bit of  
7 time. We are working on that. It's going to take  
8 us -- I would estimate we will have all the resources  
9 in place before the end of the year, and we'll be  
10 training those resources as they come along. And, in  
11 fact, using them as they come along. But it will take  
12 a little bit of time to get that done, and then we got  
13 to make sure they get trained.

14                 So we're looking to get the resources in  
15 place by the end of this year. We've had to slow down  
16 because of COVID. There are some important  
17 restrictions we need to follow, obviously, during this  
18 time. As those restrictions ease, it will be a little  
19 bit easier to bring resources on and get them trained.

20           Q.       So I realize you're an engineer and not a  
21 rates guy, but do you have an understanding about when  
22 rates might be effective or this rate case -- when new  
23 rates might go into effect?

24           A.       Unfortunately, Mr. Jeffries, I do not.

1 Q. Okay. That's fine.

2 MR. JEFFRIES: That's all the questions  
3 I have, Mr. Chair.

4 COMMISSIONER CLODFELTER: All right.  
5 Thank you, Mr. Jeffries. Let's see if we have  
6 questions from Commissioners.

7 Commissioner Brown-Bland?

8 COMMISSIONER BROWN-BLAND: No, I do not  
9 have any questions. Thank you.

10 COMMISSIONER CLODFELTER: Commissioner  
11 Gray?

12 COMMISSIONER GRAY: No questions.

13 COMMISSIONER CLODFELTER: Chair

14 Mitchell?

15 CHAIR MITCHELL: No questions.

16 COMMISSIONER CLODFELTER: Commissioner  
17 Duffley?

18 COMMISSIONER DUFFLEY: No questions.

19 COMMISSIONER CLODFELTER: Commissioner  
20 Hughes?

21 COMMISSIONER HUGHES: No questions.

22 COMMISSIONER CLODFELTER: Okay.

23 Commissioner McKissick?

24 COMMISSIONER MCKISSICK: No questions.

1                   COMMISSIONER CLODFELTER: All right.

2                   Mr. Oliver, I have one question for you, and it's  
3                   just really a matter of curiosity.

4                   EXAMINATION BY COMMISSIONER CLODFELTER:

5                   Q.       I'm not an engineer, so I'm going to ask you  
6                   a question in layman's terms so you can back -- answer  
7                   back in layman's terms. The DSDR system that Duke  
8                   Progress currently operates, as I understand it from  
9                   your testimony in the consolidated case, is going to be  
10                  reprogrammed or repurposed. I'm not sure whether you  
11                  got to add software or whether you just turn some  
12                  switches or what, but it's going to be repurposed, as  
13                  it were, so it operates in the volt/VAR control mode,  
14                  if I'm expressing it right. I hope I am.

15                  I'm really curious about, will you lose or  
16                  will you retain the ability to reconvert, if you saw  
17                  any benefit or reason to do so and operated in what I  
18                  think is the peaking mode now where you're using the  
19                  DSDR system for management of peak loads; will you be  
20                  able to go backwards if you want to?

21                  A.       Yes. That is the intention.

22                  Q.       Okay.

23                  A.       And we feel would provide the most benefit  
24                  that way. So we'll look to what we call conservation

1 voltage reduction mode, or CVR, and we'll operate the  
2 vast majority of the hours of the year in that mode.  
3 We'll still have the ability to do peak-shaving mode on  
4 top of that to get that benefit. Now, what we need to  
5 do is do some testing to see what that benefit would be  
6 compared to what we currently get in DSDR peak-shaving  
7 mode and do some discussion about that, work with the  
8 Public Staff and others so we come to an understanding  
9 of what the right mode of operation is. But we do feel  
10 that the CVR mode with the ability to implement peak  
11 shaving when needed is the most beneficial for our  
12 customers.

13 Q. That answers my question. You will not lose  
14 any existing functionality you have in the existing  
15 system?

16 A. Yes, Commissioner Clodfelter, that is true.  
17 The one thing I want to make sure we do, though, is  
18 take a look at the difference in peak-shaving value  
19 that we're going to get because we're starting at a  
20 different voltage point. We've already lowered voltage  
21 and it's staying there. This will be in the  
22 conservation voltage reduction mode. And then now when  
23 we do peak shaving, we'll lower it a little more. So  
24 may not get as much, and we need to take a look and see

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what that looks like and make sure that it makes sense for all parties.

Q. Thank you. Helpful to my education, I appreciate it. That's all I have.

COMMISSIONER CLODFELTER: Questions on the Commission's questions? Ms. Cummings, Mr. Jeffries?

MR. JEFFRIES: Nothing for the Company, Mr. Chairman.

1 (WHEREUPON, DEP-specific Sub 1219  
2 testimony in Volume 19, p. 700,  
3 lines 12 - 24; p. 701, line 1  
4 through p. 710, line 11; p. 712,  
5 line 8 through p. 717, line 15;  
6 and p. 721, line 17 through p.  
7 723, line 1; Volume 20, p. 19,  
8 line 8 through p. 33, line 11 of  
9 witnesses MARCIA WILLIAMS and  
10 JAMES WELLS is copied into the  
11 record as if given orally from the  
12 stand.)  
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But secondly, and I think really importantly, the EPA office of solid waste continued to look at this whole issue of whether or not unlined ponds were protective throughout the 1980s, as I had mentioned earlier today, and also looked at the question of groundwater monitoring, and continued to find both unlined ash ponds and the need for groundwater monitoring to be site specific, and did not find them to be -- and found them to be the industry standard and not unreasonable with respect to impacts on groundwater through the 1980s. And you can even take it beyond that, because EPA did not really make its determination until it finalized the CCR rule in 2015.

1 Q. Thank you, Ms. Williams. Similarly, earlier  
2 this week, witness Quarles talked about groundwater  
3 monitoring ash ponds industry standards and what the  
4 EPA knew in the 1980s time frame. Were you here when  
5 he testified; were you listening to that?

6 A. Yes, I was.

7 Q. Do you have any comments about his testimony  
8 as to those issues similar to what you've just talked  
9 about now?

10 A. Yes. I was really somewhat disturbed by his  
11 comments. He -- I was at EPA throughout this whole  
12 time frame. I started in 1970. I left in 1988. He  
13 made -- expressed his opinions that he disagreed with  
14 what I had to say about the state of groundwater  
15 monitoring. He also stated that it --

16 MS. LUHR: Objection.

17 Commissioner Clodfelter, Ms. Williams' opinion on  
18 the testimony of Mr. Quarles is not appropriate for  
19 redirect.

20 (Reporter interruption due to feedback.)

21 MS. LUHR: Is that better?

22 COMMISSIONER CLODFELTER: It's better.

23 MS. LUHR: Okay. Ms. Williams' opinion  
24 on the testimony of Mr. Quarles is not appropriate



1 for redirect.

2 MR. MARZO: Commissioner -- I'm sorry,  
3 Commissioner, go ahead.

4 COMMISSIONER CLODFELTER: Go ahead,  
5 Mr. Marzo.

6 MR. MARZO: Commissioner Clodfel ter,  
7 one, I tied that opinion exactly to what was asked  
8 during the cross, but I also would let the  
9 Commissioner know, as I know he's well aware, that  
10 earlier this week and part of last week, I think,  
11 with Mr. Robinson -- not this week but last week,  
12 Mr. Robinson, was a discussion about allowing a  
13 broader redirect should issues that we believed  
14 should have been raised during cross were not  
15 raised. This is in line with that. I only have a  
16 few more issues, Commissioner Clodfel ter. I  
17 promise to be efficient on that.

18 COMMISSIONER CLODFELTER: Mr. Marzo, I'm  
19 going to allow you to continue, because you are  
20 indeed correct. We had a conversation about that  
21 last week, and it was an understanding that  
22 redirect would be a little bit broader so that  
23 there wasn't areas that were left unexplored  
24 through the cross examination. I'm going to allow

1 you to continue.

2 Let me check in with you, though, given  
3 the time. I do not know how many questions my  
4 colleagues may have for this panel. So let's put  
5 that to one side, because I can't predict that.  
6 But if we were to push on to 5:00, do you think we  
7 might be able to wrap up today, or do we need to  
8 come back tomorrow?

9 MR. MARZO: It's -- I may be able to get  
10 done, Commissioner Clodfelter, but I can't make a  
11 promise to that.

12 COMMISSIONER CLODFELTER: All right.  
13 Let's try to go until 5:00. I've got our court  
14 reporter with us until 5:00. She could stay a  
15 little later. And we know Ms. Williams is on the  
16 West Coast, and that means a late start in the  
17 morning. So if we can't get done by 5:00, we'll  
18 push on 'til 5:00 and see where we are at that  
19 point. Okay?

20 MR. MARZO: Yes, sir. And I will try my  
21 best to be really efficient.

22 COMMISSIONER CLODFELTER: Please  
23 continue.

24 Q. Ms. Williams, if you would continue your

1 response.

2 A. Okay. I think what I was saying is that he  
3 also expressed the opinions strongly about the state of  
4 groundwater monitoring and whether that monitoring was  
5 required by EPA. He didn't cite references in his  
6 response, nor were there supporting references in his  
7 testimony on that. And I would just say, again, I  
8 lived this for a very long time at EPA. And I will  
9 tell you that groundwater monitoring was very different  
10 in terms of the knowledge level in the 1980s than what  
11 it is today.

12 And that included things like the definition  
13 of what a perched aquifer was that was defined as part  
14 of the uppermost aquifer. But it also included whether  
15 or not groundwater monitoring on a site-specific basis  
16 was deemed to be high priority and appropriate. And it  
17 was specifically deferred to the state to make those  
18 determinations.

19 So I would just say, if you want to compare  
20 both to what EPA knew and to what industry practices  
21 were, I'm not going to repeat all the statistics that I  
22 put on the record in the DEC case, but unlined ponds  
23 were the most prevalent and common type of pond that  
24 was in use throughout the 1980s, well into the 2000s at

1 the time of the CCR final rule. And that DEP was ahead  
2 of the curve, in terms of industry standards, of  
3 starting its groundwater monitoring, before it was  
4 required, before the majority of the industry had it at  
5 all sites. And DEP did begin undertaking coordination  
6 with DEQ to react to the results of the groundwater  
7 monitoring. I think they were a leader in this  
8 particular situation.

9 Q. Thank you, Ms. Williams. Is there still an  
10 echo? Can you hear me clearer? Okay.

11 Ms. Williams and Mr. Wells, did you hear the  
12 testimony of Doss/Spanos/Riley panel earlier this week  
13 on Friday? Last week, I'm sorry. I keep thinking this  
14 week, but last week on Friday?

15 A. I think I heard most of it.

16 Q. Okay. I'm just going to ask you one or two  
17 questions about this. But Ms. Force had introduced AGO  
18 Cross Exhibit 1, which is a 2004 decommissioning  
19 handbook for coal-fired power plants to Mr. Doss, and  
20 asked him to read a particular sentence in that  
21 document. At that point in time, I conferred with her  
22 and told her that this panel would be a panel that  
23 could give more context to that paper.

24 Can you provide your understanding of that

1 report and its purpose?

2 A. Well, if I start -- it's my -- I mean, that  
3 report was definitely focused on full facility  
4 decommissioning. And it did look at ash pond closure  
5 as one item in decommissioning. What I do think is  
6 important is to trace sort of the knowledge as to what  
7 was appropriate with regard to ash pond  
8 decommissioning. The report to Congress did -- the '88  
9 report to Congress, EPA discussed that, and I think I  
10 generally referenced it, but it is Exhibit 4-2 of the  
11 EPA report to Congress.

12 But I also think it's important that, in  
13 2001, there was an explicit report put out by EPRI on  
14 ash pond closure, and that report focused on the  
15 importance of dewatering of the basin. And really it  
16 was dewatering of the basin as opposed to any other  
17 aspect, including caps of it, that would be the most  
18 important in terms of appropriate closure of the basin  
19 for protectiveness reasons.

20 So I'm sure Mr. Wells might want to  
21 supplement, but that's a few comments I would have.

22 A. (James Wells) I think the only thing -- I  
23 agree with that. The only thing I would add, one of  
24 the sites that was studied there was the Arkwright

1 facility, and I had looked at that just to understand a  
2 little bit more, and also tied a little bit to one of  
3 the questions that had been asked of me with respect  
4 to -- I think Arkwright -- you know, one of the focuses  
5 of the 2004 report is that this is kind of the  
6 beginning of some decommissioning of coal facilities.  
7 And it's referencing several different facilities. But  
8 the Arkwright facility, in particular, they had moved  
9 toward closure. And I've done some follow-up to  
10 understand what they -- under the current standards,  
11 whether that closure was adequate, and understand that  
12 it's being re- -- that has now been -- although it had  
13 been closed under prior rule, under the state rule,  
14 under the current rule it's being reworked and found  
15 that ash as being excavated and put into a smaller  
16 footprint and closed in a different manner. So there's  
17 additional -- at first additional closure wasn't  
18 adequate to meet today's standard, so it's being  
19 reworked is what I had noted.

20 Q. And is -- and was that closed in accordance  
21 with -- at the time, accordance with the state rules;  
22 is that your understanding?

23 A. That is my understanding, that I think  
24 we're -- I believe it was Georgia. The state had its

1 rules there. They had clarity on -- they had a  
2 requirement with respect to what the closure  
3 requirements were, and -- so the initial closure was  
4 pursuant to state rules, and then follow-up closure was  
5 pursuant to the state CCR rule.

6 Q. Okay. And when we talk about closure, just  
7 one last set of questions on this. We talk about  
8 closure and what was understood and expected during the  
9 time.

10 Are you both -- I believe, Ms. Williams,  
11 Mr. Wells, you both are familiar with the 1988 EPA  
12 report to Congress?

13 A. Yes.

14 A. (Marcia E. Williams) Yes.

15 Q. Is there a -- there is a diagram that's been  
16 talked about in this case in that report, and I believe  
17 it's referred to as Diagram 4-3; are you familiar with  
18 that?

19 A. I think it's Exhibit 4-2.

20 Q. 4-2, that's right. And do you have that,  
21 Ms. Williams?

22 A. I don't have it in front of me, but I can get  
23 it. It's out of the joint exhibits, I believe.

24 Q. That's right. In fact, it is Joint

1       Exhibit 13.

2           A.     (Witness peruses document.)

3           I have it.

4           Q.     Now, before we go to the actual exhibit,  
5       could you turn to page 411 of that report?

6           A.     Yes.

7           Q.     And would you mind -- to give context to the  
8       discussion we're about to have, could you read the  
9       paragraph starting at the bottom with the word  
10      "historically," and just read up to the 45 percent,  
11      last sentence, it's like a sentence and a half.

12          A.     It says:

13                "Historically, wet ponding has been one of  
14      the most widely used disposal methods for coal ash and  
15      FGD waste because it is simple and easily implemented.  
16      In 1983, about 80 percent of the waste management  
17      facilities used by utilities employed some type of  
18      sedimentation treatment pond. Most of these treatment  
19      ponds were used directly as final disposal impoundments  
20      (about 45 percent of all facilities. See Section  
21      4.2.1.2.)"

22          Q.     Now, if you look at the diagram which is, as  
23      you pointed out, Exhibit 4.2, can you describe for me  
24      what that depicts?



1           A.     It just shows essentially the typical stages  
2     in the life of a pond. So it starts out with a pond  
3     that's active, and then a closed storage with the waste  
4     removed, which is one scenario, and then the last  
5     picture is a closed disposal pond with waste remaining  
6     in it. And it just shows that, essentially, you end up  
7     with soil over the filled solids and then some type of  
8     vegetation that ends up growing.

9           Q.     And that was a widely accepted approach?

10          A.     That was the standard -- pretty much the  
11     standard approach at that time.

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Q. All right. And I think you also testified that EPA had attempted to define the perch zone from 1978 until 1986, and that they ended up advising the utility to, quote, work with your agency on the issue, end quote.

Was there no definition of perch water or perch zone prior to '78?

A. There was a definition, but it's a very general definition. In 1978 there was a definition that talked about a particular volume of water that would have to be able to be -- come out of a perch zone for it to be part of an uppermost aquifer. And that got rescinded. That did not stay in effect. And EPA put a definition in that basically said there needs to be sufficient water in order to -- sufficient water, and then -- but it couldn't define any number. So again -- and it was in that context that they said that

1 you should work with your regulatory agency on whether  
2 any particular perch zone would qualify.

3 And I think particularly we spent a lot of  
4 time talking about this in light of the Allen facility,  
5 and I realize that's DEC. But the reason that I think  
6 that's important is, if you look at the report that was  
7 being cited with regard to Allen, it was quite clear  
8 that they couldn't get water out of that perch zone,  
9 and it's why they went below that perch zone in order  
10 to get a monitoring well where they could get water.  
11 And EPA certainly looked at the Allen data in detail  
12 when the A.D. Little report was completed, and felt  
13 that it had been done appropriately.

14 So I think it's very hard to sit here today  
15 and try and determine that there was something improper  
16 about the selection of the uppermost aquifer in the  
17 particular case of the Allen facility.

18 A. (James Wells) If I could add to that.

19 Q. Yes.

20 A. Because I had looked at that as well and had  
21 seen the perched water discussion was getting a lot  
22 more weight than when I was evaluating when was perched  
23 water being referenced in the prior reports. There  
24 were really two reports that were relevant during that

1 discussion. It was the A.D. Little study as well as  
2 the internal Allen study. And between those two  
3 reports, there were 25 wells installed. The reference  
4 to perched water only occurred in 5 out of the 25. Two  
5 of those five were background wells. So they're  
6 upgradient of the basin, so there's -- and there seems  
7 to be implied that we should have put it deeper to be  
8 closer. But two of those were background wells. The  
9 other three, the first out of those three, the first  
10 time it's referenced it does have in it the parentheses  
11 that specifically calls out that it went below that  
12 perch zone for the purposes of ensuring adequate sample  
13 volume.

14 So point is, you know, you put in a well. If  
15 you can't pull a sample out of it, it's not adding any  
16 value. The other thing I'd mention is there are times,  
17 I mean, even today, when it could be perfectly -- you  
18 should install into the aquifer for purposes of getting  
19 an adequate sample to ensure you're getting results  
20 reflective of what you're -- the question you're  
21 asking. So, for instance, here if you're doing a  
22 downgradient sample to understand if potential  
23 contaminants are migrating beyond the basin, then it's  
24 possible -- and again it's all site specific, but it's

1 possible if you put that well in in a perch zone, which  
2 isn't seeing that lateral aquifer flow necessarily,  
3 then you may miss exactly what you're sampling for.

4 And I say that only because I'm not -- I'm  
5 not asking -- with respect to those studies, they are  
6 what they are, but we're doing a 35-year -- plus-year  
7 look-back on that expertise. And I think that's -- I  
8 just think it's very, very difficult to do this  
9 accurately. And some of the things I've heard in the  
10 prior testimony, to me, are just not fully technically  
11 accurate in all instances, or at least accurately  
12 representation of the issue as a whole.

13 Q. So, Mr. Wells, in your opinion, back in 1978,  
14 would a reasonably competent engineer or hydrologist  
15 been able to -- been capable of designing an effective  
16 groundwater monitoring system for a CCR basin?

17 A. Well, I think they did that at those basins  
18 where they did it. They did what was consistent with  
19 their understanding and the science that had developed  
20 to that point and the groundwater that they put in. I  
21 believe it was consistent with the technical standards  
22 at the time. And it was relied on by a lot of folks  
23 who were -- had expertise to do it. So they were the  
24 experts at the time.

1 Q. Ms. Williams, that same question. Would a  
2 reasonably competent engineer or hydrologist would have  
3 been capable of designing an effective groundwater  
4 monitoring system for a CCR basin?

5 A. (Marcia E. Williams) Well, I guess the way I  
6 would answer it is they did the best they could to put  
7 in a system based upon the knowledge at the time. If  
8 you're going to do 20/20 hindsight and look back at  
9 that, you probably will be able to conclude that that  
10 wasn't, certainly by more recent standards, an  
11 acceptable or good system. But it was, if you evaluate  
12 it against what was known at the time.

13 And I think, in particular, it really was  
14 believed at that time that a relatively limited number  
15 of wells, groundwater wells, could help you understand  
16 the system. And it was not until many decades later,  
17 really, that we understand that it takes a very large  
18 number of wells to truly understand the complexity of  
19 what's going on in the subsurface adequately. And  
20 that -- you know, so you have to evaluate the 1978  
21 system with what was done at the time. And against  
22 that system, I agree with Mr. Wells, it would have been  
23 considered adequate.

24 Q. And so back on the perched water or perch

1 zone; in your opinion, would it have been prudent for  
2 DEP to wait to perform groundwater monitoring at its  
3 CCR basins until someday after DEQ had defined perch  
4 water or perch zone?

5 A. No. I'm not saying that. What I'm saying is  
6 that, if it was determined that there was an important  
7 reason, based on site-specific characteristics, to put  
8 a well system in, you would have done the best job you  
9 could to put a well system in. Whether that would have  
10 been a particularly effective well system is a  
11 different issue. But if, based on site-specific  
12 parameters, it seemed important, you would have put one  
13 in, like was done at Sutton. But -- but it may not be  
14 fully accurate by what you might know 10 years or  
15 20 years later.

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Q. Well, I was just looking as to whether DEP did anything with a synthetic liner. Go ahead, Ms. Williams.

A. (Marcia E. Williams) Sorry. I was just going to say they were not particularly prevalent in that time frame at any -- not only coal ash ponds. They weren't prevalent in any industrial surface impoundments. And I think EPA in a recent -- in



1 March of 2020, in a federal register notice, I noted  
2 this, because EPA said even where they looked at the  
3 ponds that were lined today, 2020, very few had  
4 composite synthetic -- again, there's a synthetic liner  
5 and then there's a composite liner. And EPA feels the  
6 composite liner, which is a combination of clay and a  
7 synthetic liner, is the most protective. But very few  
8 ponds, including new ponds, have been built with  
9 composite liners.

10 So I think -- I don't know whether -- I  
11 haven't seen anything to go to the issue of whether DEP  
12 considered putting in a synthetic liner, but I can tell  
13 you that EPA was still doing a tremendous amount of  
14 research in our office of research and development in  
15 the early 1980s as to the best kinds of liners,  
16 synthetic liners that could be used with different  
17 types of waste streams.

18 Because you have a couple of problems with  
19 synthetic liners. One problem you have is just  
20 installation issues, and if you get a tear or something  
21 as you're trying to put in a massive synthetic liner.  
22 But the second issue you have was whether or not there  
23 would be interactions between the waste and the liner  
24 material. So a lot of research was still going on that

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in the early 1980s.

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8 EXAMINATION BY MR. MARZO:

9 Q Starting with you, Mr. Wells, you were asked  
10 some questions by Commissioner Brown-Bland regarding your  
11 testimony and how much of it was based upon your review  
12 of historical documents versus your direct personal  
13 knowledge. Do you recall those questions? You're on  
14 mute, Mr. --

15 A (Wells) I do.

16 Q Okay. And did you testify in Docket E-7, Sub  
17 1146, which was DE Carolinas' 2017 rate case?

18 A I did.

19 Q Okay. And did you also testify in Docket E-2,  
20 Sub 1142, which was DE Progress' 2017 rate case?

21 A I did.

22 Q And did you also testify most recently in  
23 Docket E-7, Sub 1214, which is DE Carolinas' current rate  
24 case?

1           A     Yes, I did.

2           Q     And obviously you're here again on behalf of DE  
3 Progress, correct?

4           A     I am.

5           Q     And in all the cases that I just identified,  
6 has the Company's historical compliance with regulations  
7 regarding the treatment and disposal of coal ash cost  
8 been a central issue for cost recovery?

9           A     They have. It has been a central issue.

10          Q     And is it fair to say that you've lived and  
11 breathed the record, the documents, and exhibits in all  
12 these cases that you've been a part of?

13          A     I have in a number of ways. I want to be  
14 clear, it -- beyond just document review, also. You  
15 know, my involvement and my knowledge has been based on a  
16 number of factors.

17                 Certainly, one has been since I've been with  
18 the Company, my scope of responsibilities required  
19 interaction in the coal ash area with folks and people  
20 and employees that are knowledgeable and that manage  
21 these issues, whether it's compliance or ash management  
22 at each of the different sites. I visit all of the  
23 sites. I visit many sites numerous times.

24                 I -- in my current capacity I'm responsible for

1 our environmental obligations across the board, and  
2 that's involved a need to have a clear understanding of  
3 the history, history of compliance, history of  
4 operations, you know, what the current state is as a  
5 reflection of that history, interaction with senior  
6 regulators, and I'm also responsible for a large team of  
7 environmental specialists and subject matter experts, so  
8 understanding -- including groundwater, surface water,  
9 all of our compliance obligations across the fleet. So  
10 those teams report up to me, and as part of my decision  
11 making, history, historical documents, knowledgeable  
12 personnel, including the reliance on the current  
13 expertise in each of these areas, is relevant and  
14 informative to my need to make good decisions.

15 So that whole picture is part of my  
16 understanding of the history, so it's the historical  
17 documents which I've looked at at length, and then it's  
18 also those interactions with people and regulators and  
19 the records that are relevant to my need to do my work  
20 today.

21 Q Thank you, Mr. Wells. And we just talked a  
22 moment ago that you had testified in the prior DE  
23 Carolinas' and prior DE Progress' rate cases. Did the  
24 Commission find your testimony persuasive in those cases?

1           A       They did cite to my testimony and indicated  
2 they found it persuasive.

3           Q       Okay. Thank you, Mr. Wells. Mr. Wells, in  
4 response to a question from Commissioner Brown-Bland, you  
5 discussed a process of identification, assessment, and  
6 remediation. In regards to those three steps, when  
7 dealing with the complex issues like assessing  
8 groundwater impacts, does it take time to get through  
9 each of those steps that you discussed?

10          A       It does, and it can vary significantly with the  
11 complexity of the site and what the data is telling you,  
12 and whether that data is indicating a potential risk that  
13 needs to be addressed very quickly or whether -- or  
14 whether additional monitoring is appropriate to continue  
15 to investigate and understand the appropriate actions, if  
16 any, with respect to corrective action. So the detection  
17 process, you know, I refer to it as detection,  
18 assessment, and then corrective action. Those are  
19 commonly sort of three areas, you know, almost within  
20 almost any groundwater regulatory regime that you'd find  
21 those type -- those three steps, and sometimes using  
22 different terms.

23                   But, in essence, the detection is the early  
24 wells to see if you're detecting anything that might

1 warrant assessment. The detection monitoring that went  
2 on with the Company began through late '70s at -- again,  
3 Roxboro is where that started, but then into the '80s  
4 with Sutton and then Weatherspoon and Robinson in the  
5 '90s. And throughout that detection period at those  
6 facilities where that monitoring was installed, they were  
7 not seeing something that triggered additional  
8 assessment, with the exception of Sutton which had the  
9 chloride issue, which drove additional work to understand  
10 that chloride issue, which ultimately led to more wells  
11 in '86, more wells in '90, and ultimately was determined  
12 to be the cooling, you know, the cooling pond. The  
13 corrective action ended up being moving the intake for  
14 the cooling pond versus the ash pond being the source.

15 But in any event, that was the detection that  
16 occurred over those years, and there were not indicators  
17 of a need for additional assessment. In fact, the  
18 regulators reduced the monitoring requirement at those  
19 facilities, at two of those facilities, in terms of  
20 periodicity because under the permit requirement to  
21 monitor, they had reduced because there was not an  
22 indication of an issue that was being detected with  
23 respect to groundwater.

24 And then you move into the 2000s, that

1 detection monitoring is expanded to all of the sites  
2 through the USWAG voluntary monitoring. That data began  
3 to get more and more review 2009, 2010, where we began to  
4 move into an assessment. That's when we were beginning  
5 to see indications that warranted additional assessment  
6 to understand what is the extent -- we're seeing an  
7 impact, we believe we have an impact, what's the extent  
8 of the assessment? So now the assessment is a broader  
9 look, more wells, many wells.

10           And assessment can be -- that's very iterative.  
11 It is very much you put in some wells, you look at the  
12 data you get back, then you may need to install  
13 additional wells, but ultimately you're trying to  
14 understand the extent of the impact, and that can take a  
15 significant amount of time, and there are multiple  
16 factors that come into play, and you're working typically  
17 very closely with your regulator in that time frame. And  
18 if, as part of that process, anywhere along this process  
19 if you see something that indicates a risk, meaning a  
20 public health concern, then you can enter interim action  
21 to take action specifically to address that issue while  
22 you still do a broader investigation as part of the  
23 assessment to inform the appropriate broader corrective  
24 action. And all of this can take a very significant



1 amount of time.

2           It's a lot of work that goes on with the  
3 regulator, too, to ensure they understand what you're  
4 seeing and they are in alignment with the right next  
5 steps. And ultimately, even -- even in the assessment  
6 phase, it's not like one sample, one well suddenly drives  
7 you to something, unless you really see a risk to the  
8 public health. It's typical that you need multiple  
9 rounds of sampling of a given well to understand, make --  
10 ensure that data is reliable. And when I say multiple  
11 rounds, you're typically talking over different seasons.

12       You know, we want seasonal -- you want to capture  
13 seasonal variations in the water, how it's behaving, you  
14 want multiple rounds of sampling so that the statistics  
15 can begin to become reliable. Background sampling, for  
16 instance, EPA talks about nine or 10 rounds of sampling  
17 of a background well that captures those seasonal  
18 variations, so you're easily into a couple years just to  
19 really get reliable data that supports your background  
20 determination, then it continues to be iterative even  
21 after that.

22           And then that will drive the next step which is  
23 development of a corrective action that you submit to a  
24 regulator, and that, too, can take significant back and

1     forth with a regulator before you land on what the right  
2     next steps are.

3             And I would point out, because I think it is  
4     important to understand, when we say corrective action,  
5     the range of what can be corrective action is extremely  
6     broad and a very common remedy. For instance, where  
7     there is no indication of a public health risk is  
8     monitored natural attenuation, which means additional  
9     monitoring ongoing to ensure that risk continues to be  
10    managed, meaning the plume is stable, it's not presenting  
11    a risk, and it continues to be monitored and attenuates  
12    with time. Or it can go to an active remediation, which  
13    is more traditional of some of the things we've talked  
14    about here with, for instance, a pumping operation.

15            So the range of corrective action can also be  
16    extremely broad. The cost can vary significantly between  
17    those different remedies, so it's very important -- and  
18    the timing to implement and complete. So it's very  
19    important that that investigation, that assessment phase,  
20    be very thorough to ensure that the appropriate  
21    corrective actions are planned, so that does take a  
22    significant amount of time.

23            Q     Thank you, Mr. Wells. And Ms. Williams, would  
24    you turn to your prefiled Exhibit 2?

1           A       (Williams) Yes. I have it here.

2                   MR. MARZO: And for the record, Commissioner  
3 Clodfelter, that document which I will not remark again  
4 is RCA--- RCRA Hazardous Waste Corrective Action  
5 Facilities - Remedy Selection Date document. It's  
6 prefiled Exhibit 2.

7           Q       Can you explain to me, in regards to the  
8 conversation I just had with Mr. Wells regarding the  
9 timing that it takes from identification to corrective  
10 action, can you explain to me, Ms. Wells, I mean, Ms.  
11 Williams, what this exhibit depicts?

12           A       Yes. Well, I was trying to find a way to  
13 explain sort of exactly what Mr. Wells just discussed,  
14 which is it takes a very long time once you start doing  
15 groundwater monitoring to get to a place where you know  
16 what your corrective action might need to be. And so I  
17 took data from EPA's website back in March, I think it  
18 was, and I looked at North Carolina, I also looked at  
19 South Carolina. The results are relatively similar. So  
20 there are two graphics.

21                   The first graphic looks at how long it takes  
22 for hazardous waste facilities to get from the point in  
23 time that they had all installed some type of a  
24 monitoring system, likely a one-up, three-down kind of

1 monitoring system, till the time that they determined  
2 what remedy would be necessary for their site. And so  
3 what this graphic shows is that at these sites, hazardous  
4 waste sites generally put in their initial groundwater  
5 monitoring systems in 1985. And this graph shows what  
6 the median time was before they had gone through  
7 detection, assessment mon--- detection monitoring,  
8 assessment monitoring, evaluated all the options for  
9 corrective action, and actually reached a final approved  
10 corrective action plan.

11 Now, as Mr. Wells said, that doesn't mean there  
12 wasn't an interim action if something was necessary for  
13 protection of health or the environment. But the time it  
14 took to get to an approved corrective action plan, you  
15 can see the median time, for 66 of the 90 facilities that  
16 are in the corrective action process, the median time was  
17 23 years. And the graph shows sort of most of those are  
18 occurring sort of between 2007 and today, but all of  
19 these sites started with groundwater monitoring because  
20 they were hazardous waste sites back in 1985.

21 And then the second -- the second graphic is  
22 just looking -- once you have a corrective action plan,  
23 you still have to get the corrective action implemented,  
24 and that takes additional time. So the second chart

1 shows that if you want to know when corrective action is  
2 finished, the median time for that, for the 24 facilities  
3 -- so only 24 of the 66 facilities that had a final  
4 corrective action plan have finished implementation. And  
5 for those 24, it took 21 years, but obviously there's a  
6 lot that started in 1985, and they're not -- they haven't  
7 implemented yet.

8           So, again, my reason for putting this together  
9 is I just thought it provided a good kind of snapshot  
10 context for exactly what Mr. Wells went through. It is a  
11 very long process, but it is a protective process because  
12 of the concept of interim measures. And the regulatory  
13 agency and the Company will take action to do some more  
14 limited thing any time there's an indication that there's  
15 exposures that would result in unacceptable risks. So I  
16 think that -- that was the intent of the exhibit.

17           Q     Thank you, Ms. Williams. And does the fact  
18 that corrective action may have taken years mean that the  
19 facility owners have been imprudent in responding to the  
20 issues identified?

21           A     No, because the prudent thing to do is to make  
22 sure that your corrective action is appropriate and that  
23 health is being protected during that process. So that  
24 is exactly how -- I mean, I was involved with the design

1 of this program back in the '80s, and that's how this  
2 program was designed. It was designed to get the right  
3 corrective action, but to make sure that you were able to  
4 take intermediate steps, if necessary, to protect health  
5 of the environment.

6 Q Thank you, Ms. Williams. And I think you just  
7 mentioned a moment ago about making sure the corrective  
8 action, that the steps you take are appropriate. And you  
9 were asked some questions, I believe a moment ago, by Ms.  
10 -- by Commissioner Brown-Bland regarding whether or not  
11 EPA might oppose an action taken by DEP, and I think she  
12 had used the unlined -- putting a liner in a basin as an  
13 example. Is that example -- is that an example of  
14 whether or not -- and I think you said there's a  
15 different question, a better question should be asked --  
16 is the issue there that whether or not the EPA opposes  
17 something doesn't mean that EPA may actually -- should  
18 they, in the future, decide to proceed with a different  
19 method or approach might make you redo that work. Is  
20 that -- is that a concern with that issue?

21 A Well, certainly -- again, certainly here, if  
22 the Company had closed in a way that was inconsistent  
23 with how the rulemaking came out, yes, the work would  
24 have to get redone to be consistent with the rule. I

1 mean, one doesn't know if it would be inconsistent, but  
2 it certainly could be inconsistent. I think on  
3 corrective actions, EPA -- I can generally think of some  
4 examples where EPA has not wanted to see very rapid  
5 corrective action without adequate data because --  
6 because EPA does not want any of these to take corrective  
7 actions that would, in fact, potentially not adequately  
8 correct the problem. And that's why EPA wants to see  
9 significant data. They want to see risk assessment.  
10 They want to see options analysis. And that's what the  
11 states want to see, too, to make sure the right remedy  
12 gets selected.

13 Q Thank you, Ms. Williams.

14 MR. MARZO: I have no further questions,  
15 Commissioner Clodfelter.

16 COMMISSIONER CLODFELTER: Thank you, Mr. Marzo.  
17 Let's see if we're ready for motions relative to  
18 exhibits. Ms. Lee, I don't have an indication, and  
19 perhaps it's because my note taking was less than it  
20 should have been, that you had any additional exhibits  
21 for the witness.

22 MS. LEE: No. That's right, Commissioner. No  
23 additional exhibits. Thank you.

24 COMMISSIONER CLODFELTER: And Ms. Townsend, I

1 believe Mr. Marzo will be moving in the stipulated  
2 exhibits from the Attorney General's Office, so -- again,  
3 I don't have a note that you had any other than that; am  
4 I correct?

5 MS. TOWNSEND: That's correct. Thank you.

6 COMMISSIONER CLODFELTER: So, and Public Staff,  
7 again, maybe I wasn't taking good notes, but I don't have  
8 any additional exhibits marked for you.

9 MS. LUHR: That's correct.

10 COMMISSIONER CLODFELTER: Great. My notes are  
11 so far, so good. So Mr. Marzo, we're with you.

12 MR. MARZO: So thank you, Commissioner  
13 Clodfelter. I would ask that Ms. Williams' prefiled  
14 Exhibits 1 through 2, Mr. Wells' prefiled Exhibits 1  
15 through 4, Williams/Wells Redirect Exhibit 1 all be moved  
16 into the record. I'd also ask that the stipulated  
17 exhibits, and if you need me to give you the numbers of  
18 those, I can -- I'm trying to locate that -- but I'd move  
19 the stipulated exhibits identified yesterday be moved  
20 into the record as well.

21 COMMISSIONER CLODFELTER: I have them as Duke  
22 Energy Progress 1 through 6, and Attorney General's  
23 Office 1 and 2.

24 MR. MARZO: That's right.



1                   COMMISSIONER CLODFELTER: Do I have them  
2 correct?

3                   MR. MARZO: That's right.

4                   COMMISSIONER CLODFELTER: Okay. You've heard  
5 Mr. Marzo's motion with respect to the introduction of  
6 those exhibits. Is there any objection?

7   (No response.)

8                   COMMISSIONER CLODFELTER: Hearing no objection,  
9 the motion is granted.

10                                       (Whereupon, Williams Rebuttal Exhibits  
11                                       1-2, Wells Rebuttal Exhibits 1-4,  
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1 (WHEREUPON, DEP-specific Sub 1219  
2 testimony in Volume 12, p. 319,  
3 line 17 through p. 320, line 7;  
4 Volume 13, p. 41, line 5 through  
5 p. 43, line 15; p. 52, line 9  
6 through p. 65, line 15; and p. 67,  
7 line 17 through p. 70, line 4;  
8 Volume 17, CONFIDENTIAL p. 432,  
9 line 12 through p. 462, line 10;  
10 and p. 477, line 15 through p.  
11 481, line 3; Volume 18, p. 43,  
12 line 12 through p. 44, line 9; and  
13 p. 48, line 4 through p. 50, line  
14 15 of witness JESSICA L. BEDNARCIK  
15 is copied into the record as if  
16 given orally from the stand.)  
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Q. Okay. And the reason we're going through each of these sites, Ms. Bednarcik, is I just wanted to focus on whether, in looking at this from a larger telescope, whether or not each of the sites, in fact, were operating reasonably and prudently over the years. So that's why I'm giving kind of a historical background here to talk about each one, to see if we both agree whether the things that were happening at

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each of these sites was, in fact, reasonable and prudent. Okay?

A. I would say that the fact that we were working with our state regulators and the fact that we were addressing as issues came up in order to determine what those next steps needed to be does show that we were operating in a reasonable and prudent manner.

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5 Q. Okay. Did you or anyone else at the Company  
6 ever attempt to evaluate whether current costs would be  
7 lower if the Company had switched to dry ash handling  
8 earlier at any of the DEP sites?

9 A. No, ma'am, we did not, because, again, change  
10 in regulation, change in rule, new requirements that we  
11 had to move forward. The operation of the basins, as  
12 we have testified in the DEC case, in the 2017 case,  
13 operations of those were done under the rules and  
14 regulations at the time that they were constructed and  
15 operated.

16 So the evaluation that I did for the recovery  
17 of the costs in this case were based upon how those  
18 costs were executed, and addressed, and implemented.

19 Q. So that would confirm that you did not look  
20 at whether or not current costs would be lower if the  
21 Company had implemented dry ash handling at the  
22 Asheville plant in lieu of constructing that 1982 ash  
23 pond?

24 A. So, Ms. Cralle Jones, of course, what we are

1 to do is to try to evaluate the decisions that are made  
2 at the time with the information known at the time. It  
3 is impossible to go back and do a hypothetical  
4 evaluation of lots of what-ifs. What if we would have  
5 done something at some undetermined time in some  
6 undetermined area? That is an evaluation that is  
7 unfruitful and really doesn't have any -- I would look  
8 at it and say no merit, because we moved forward and we  
9 executed the work that we needed to execute based upon  
10 what we knew at the time that we knew it.

11 So moving forward with, again, costs that we  
12 are asking as part of this case, change in law, change  
13 in regulation, new requirements in the Company, we made  
14 that determination of what needs to happen, and we're  
15 moving forward to execute that work appropriately.

16 Q. But you could determine the cost related to  
17 excavation and closure of the 1982 ash pond, correct?

18 A. Based upon what the -- what we have today and  
19 what we know what the costs are to excavate, we have a  
20 cost for it today. What we don't have is -- there's  
21 lots of factors, unknown factors that we have to try to  
22 take into account looking back so many years. You  
23 don't know what the price of steel was, you don't know  
24 what the price of labor, you don't know what new

1 regulations would have come through at that time. It  
2 is impossible to do a hindsight review and do an  
3 evaluation of lots of what-ifs because it's not just a  
4 change in one item and looking back in time.

5 You don't know what -- you don't know what  
6 would have happened and what other consequences might  
7 have been if we did go to dry ash handling in 19 --  
8 just pick a date. It's impossible to do that type of  
9 hindsight review. We did evaluate, when I looked at  
10 the information and looking at what I saw what a  
11 utility engineer would have known at the time, we  
12 executed, we worked, we operated the basins within the  
13 rules and regulations at the time. And now, of course,  
14 we are new rules, new regulations addressing those  
15 appropriately.

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Q. And you just let me know when you're able to find that, Ms. Bednarci k.

A. I have it in front of me now.

Q. Now, does this letter describe the policy that DEQ had in place?

A. Yes, it does.

Q. And can you tell me your understanding of that policy, as laid out in this letter and the flow chart that's attached to this letter?

A. So the policy, in general, what it lays out and it shows really well in this flow chart, it starts off with use sampling to determine its groundwater quality in established compliance boundary. And if the groundwater concentration is greater than 2L, and it has been reported to the division, results are greater than naturally occurring concentrations, it really just



1 shows that, if we are reporting to the agency and  
2 working with the agencies in order to address the  
3 impacts, then a fine or a penalty may not be necessary.

4 Actually, the last full paragraph on the  
5 previous page talks about that. It states that:

6 "However, as long as the permittee is  
7 cooperating with the division and taking all necessary  
8 steps to bring the facility into compliance, a notice  
9 of violation may not be necessary. The overall  
10 determination of whether or not a notice of violation  
11 is necessary will largely be based on the overall  
12 compliance history of the facility and the potential  
13 for impacts to human health and the environment."

14 So we were working underneath this policy,  
15 which is why when we received that NOV on Sutton, we  
16 were fully prepared to litigate it, because we were  
17 working under this guidance document with the agencies  
18 in order to address the groundwater.

19 Q. Now, you mentioned you were prepared to  
20 litigate it, but did the -- did that ultimately result  
21 in a settlement agreement in 2015?

22 A. Yes, it did. And what I just described about  
23 the 2011 policy and the fact that we were working under  
24 it is one of the reasons why we ended up; A, going

1 into litigation, extensive discovery, and -- well, I  
2 said going into litigation, but we appealed it to the  
3 Office of Administrative Hearing, went into the  
4 extensive discovery, and it came clear that, yes, the  
5 Company was working underneath this policy, and it was  
6 a policy that was in effect at the time that the NOV  
7 was issued.

8 Q. And just for clarity, could you please refer  
9 to Duke Energy Progress' Cross Exhibit Number 20.

10 MR. MARZO: And for the record,  
11 Commissioner Clodfelter, this is the September 2015  
12 settlement agreement between DEP and DEQ. I would  
13 ask to also that this be marked as Bednarci k DEP  
14 Redirect Exhibit Number 2.

15 COMMISSIONER CLODFELTER: It will be so  
16 marked.

17 MR. MARZO: Thank you, sir.

18 (Bednarci k DEP Redirect Exhibit Number 2  
19 was marked for identification.)

20 MR. MEHTA: Chair --

21 Commissioner Clodfelter, this is Kiran Mehta, and I  
22 hate to interrupt the examination of my colleague,  
23 but yesterday we were calling exhibits that were  
24 referenced -- that are being referenced in

1 Ms. Bednarci k' s di rect testi mony, Bednarci k Di rect  
2 Cross Or Redi rect.

3 COMMI SSIONER CLODFELTER: That i s  
4 correct.

5 MR. MEHTA: Woul d you -- woul d we be  
6 remiss in trying to number these exhi bits in the  
7 same way? So thi s one woul d be Bednarci k Di rect  
8 DEP Redi rect Exhi bi t 2, and the previ ous one woul d  
9 be Bednarci k Di rect DEP Redi rect Exhi bi t Number 1.

10 COMMI SSIONER CLODFELTER: Mr. Mehta, I' m  
11 going to put you on as an assi tant to the  
12 Commi ssi on here. You are correct. Ms. Bednarci k  
13 will appear later in rebuttal , so we need to be  
14 able to di fferenti ate redi rect exhi bits in her  
15 di rect testi mony from redi rect exhi bits in her  
16 rebuttal testi mony, and I' m sure Mr. Marzo will  
17 agree wi th you. And so both hi s pri or Exhi bi t  
18 Number 1 and thi s exhi bi t will be prefaced pri or to  
19 the number as Bednarci k Di rect DEP Redi rect Exhi bi t  
20 Number 1 and Number 2.

21 (Bednarci k DEP Redi rect Exhi bi t Numbers  
22 1 and 2 were remarked as Bednarci k  
23 Di rect DEP Redi rect Exhi bi t Numbers 1  
24 and 2.)

1 MR. MEHTA: Thank you,  
2 Commissioner Clodfel ter. And just to paraphrase  
3 General Sherman, if somebody's going to give me  
4 that job; i.e., staff to make sure the exhibits are  
5 right, if nominated, I will not run; if elected, I  
6 will not serve.

7 COMMISSIONER CLODFELTER: Mr. Mehta, I  
8 should have added that it's a nonpaying job in any  
9 event. Let's understand it's a nonpaying job in  
10 any event.

11 MR. MEHTA: Thank you, sir.

12 COMMISSIONER CLODFELTER: All right.  
13 Mr. Marzo, with that bit of levity from your  
14 colleague, are you ready to proceed?

15 MR. MARZO: I am,  
16 Commissioner Clodfel ter, thank you. And I  
17 appreciate that correction.

18 Q. Have you reviewed this document previously,  
19 Ms. Bednarci k?

20 A. Yes.

21 Q. And we've been discussing Sutton. But  
22 looking at page 1 of the settlement, it covers more  
23 facilities than just Sutton; is that -- is that  
24 accurate?

1           A.     Yes.  It covers all of the plant properties  
2     that have coal ash basins that are being addressed in  
3     North Carolina, so both for Duke Energy Carolinas and  
4     Duke Energy Progress, each and every one of those  
5     plants.

6           Q.     So when Ms. Townsend referred to the  
7     \$7 million amount that was agreed to in the settlement,  
8     that agreement included all current, prior, and future  
9     claims related to all of these facilities; is that a  
10    correct understanding of it?

11          A.     Yes.

12          Q.     Okay.  Now, when I look at page 4 of the  
13    settlement agreement, does it specifically acknowledge  
14    the 2011 policy we were discussing previously?

15          A.     Yes, it does.  And that "whereas" where it  
16    talked about the 2011 policy was a current policy that  
17    was in effect, and that the 2011 policy applies to each  
18    one of the facilities that had been listed in it.  
19    Again, all the facilities in North Carolina.

20          Q.     And does the settlement agreement's reliance  
21    on the 2011 DEQ policy acknowledge the Company's  
22    longstanding effort to work with the environmental  
23    regulator?

24          A.     Yes, it does.

1 Q. Did the settlement allow the Company to  
2 implement CAMA more efficiently, from a regulatory  
3 perspective?

4 A. Yes, it does. It added clarity,  
5 understanding that we would -- both the Company and DEQ  
6 would be able to execute the groundwater work  
7 underneath the requirements of CAMA. And Mr. Wells can  
8 talk a lot more about groundwater, but that is included  
9 in this settlement agreement.

10 Q. Thank you. Now, Ms. Townsend referred you to  
11 Hart Exhibit 40 as well, which I believe is AGO's  
12 Exhibit 16 in this case. That document was titled "Ash  
13 basin closure strategy" developed I think in the 2013  
14 time frame; do you recall those questions?

15 A. Yes. If I recall, that was a Duke Energy  
16 document, yes.

17 Q. Okay. And I believe you were asked some  
18 questions about the Company's evaluation of closure  
19 options at Weatherspoon in that time frame; do you  
20 recall that?

21 A. Yes, I do.

22 Q. And on page 2 of the document, in referring  
23 to Weatherspoon, it states that this design will be  
24 submitted to NCDENR in May 2013 expecting final

1 approval in July of 2013.

2 Was final approval ever received?

3 A. No, it was not. So during that time period,  
4 DEQ also tried to finalize their guidance or their  
5 policy related to ash basin closure. So I mentioned  
6 yesterday that we were also waiting for the federal CCR  
7 rule to come out. DEQ was still grappling with what  
8 their closure policy would look like during that time  
9 period as well.

10 Q. And in that regard, can you tell me why it's  
11 important to have the full buy-in of the regulator  
12 before moving forward with the closure strategy?

13 A. It's important because what you don't want to  
14 do is to choose a closure strategy and move forward  
15 with executing that work without the buy-in because  
16 then that the agency may come back and say no, that's  
17 not what we want you to do, we want you to do something  
18 else. And those costs that would have been executed,  
19 or those costs that would have been gone to execute  
20 that work that hadn't been approved by the agency,  
21 some -- including some probably as part of this  
22 hearing, would have said that that was imprudent to do.

23 So we want to make sure that in order for us  
24 to initiate work and that moves forward in a way that

1 is prudent, that we have buy-in from our regulators,  
2 especially on things that the regulators have direct  
3 oversight on.

4 Q. And did DEP try to get certainty from its  
5 state regulators around closure?

6 A. Yes. So we were working with the state  
7 regulators asking them questions. I believe I  
8 mentioned that in my discussion with Ms. Townsend, that  
9 we had discussions with DEQ using the Weatherspoon as  
10 kind of our template going forward. And so we were  
11 asking them questions as to what do we need to do,  
12 where do we need to go, so we were not working a  
13 vacuum.

14 Q. Are you familiar with witness Jim wells'  
15 rebuttal Exhibit Number 4 in this case?

16 A. Yes. But if you give me a moment, I'll open  
17 it up.

18 MR. MARZO: And for the record,  
19 Commissioner Clodfelter, this is the Progress  
20 Energy memo titled "Progress Energy, Duke Energy,  
21 and DENR meeting on July 2009." Would I would mark  
22 it for purposes of my redirect examination here  
23 as -- I believe we said it's Bednarcik Direct --

24 COMMISSIONER CLODFELTER: DEP Redirect



1 Examination Exhibit Number 3.

2 MR. MARZO: Thank you, sir, I'm trying  
3 to not get in trouble with Mr. Mehta.

4 COMMISSIONER CLODFELTER: It will be so  
5 marked.

6 MR. MARZO: Thank you.

7 (Bednarcik Direct DEP Redirect Exhibit  
8 Number 3 was marked for identification.)

9 THE WITNESS: I now have Wells' Exhibit  
10 Number 4 in front of me.

11 Q. Okay. So on page 2 of the memo, there is a  
12 paragraph number 3. And it's titled, "How does DEQ  
13 plan to address inactive sites that are not permitted  
14 and not operating: Give over to DWM, leave alone,  
15 monitor, and if sites are permitted and receiving  
16 waste, what are the closure requirements?"

17 Do you see that?

18 A. Yes, that's certainly what question number 3  
19 asks.

20 Q. Now, would you read the second paragraph?  
21 And I want to ask you some questions about that.

22 A. "DEQ had on-site lagoon closure requirements,  
23 but admit they are light on specifics and open to a  
24 wide interpretation. These interpretations would be

1 made by the appropriate regions on site-by-site basis.  
2 Both APS," which is the aquifer protection system --  
3 section, aquifer protection section underneath DEQ.  
4 "So both APS and NPDES said they would get together  
5 internally to discuss closure requirements for ash  
6 ponds. They did not state by when they would issue  
7 closure requirements for ash ponds."

8 Q. Now, does this memo represent the fact that  
9 Duke Energy Progress was seeking guidance from its  
10 state regulator in this time frame?

11 A. Yes.

12 Q. And did Duke Energy Progress continue to try  
13 to work with the regulator to gain certainty around  
14 what closures would be permitted and what the  
15 requirements would be?

16 A. Yes, they did.

17 Q. Okay. And can I refer you to Duke Energy  
18 Progress Exhibit 8? It's amongst the potential cross  
19 exhibits.

20 MR. MARZO: And for the record, Chairman  
21 Clod- -- Commissioner Clodfelter, this is the  
22 March 26, 2013, email from Debra Watts with NCDENR  
23 to Mr. Stowe Allen (phonetic spelling) titled "Ash  
24 pond closure draft," and I would like to have that

1 marked as Bednarci k Di rect DEP Redi rect 4; is that  
2 the right --

3 COMMISSIONER CLODFELTER: That would be  
4 correct, and it will be so marked.

5 MR. MARZO: Thank you, sir.

6 (Bednarci k Di rect DEP Redi rect Exhi bi t  
7 Number 4 was marked for i denti fi ca ti on.)

8 THE WITNESS: Mr. Marzo, I have that in  
9 front of me now.

10 Q. Now, are you familiar with this document?

11 A. Yes, I am.

12 Q. Now, does this email attachment refer to a  
13 draft ash pond closure plan requirement being developed  
14 by NCDENR?

15 A. Yes.

16 Q. And does the email indicate the Company  
17 provided comments and inputs to NCDENR on the closure  
18 guidelines that are presented in this draft?

19 A. Yes, it does. And it is in the 2013 period,  
20 so that shows that 29 -- 2009 memo that we just  
21 discussed, the 2013, it's not a -- it wasn't a simple  
22 process. It has taken a long time just between those  
23 two for DEQ to provide a draft guidance for our  
24 comments on.

1 Q. And were these guidelines, were they ever  
2 finalized, Ms. Bednarci k?

3 A. No, they were not.

4 Q. Now, have you reviewed Mr. Bonaparte's  
5 reports submitted with his testimony in this case?

6 A. Yes.

7 Q. And I won't mark this, but can you -- do you  
8 have that with you?

9 A. Yes, I do.

10 Q. Would you mind turning to page 5 of that  
11 report, which is titled "Section 3 results of review."  
12 And in that portion of the report, Mr. Bonaparte gives  
13 an overview of the basins that he reviewed from  
14 Georgia, North Carolina, South Carolina, and Virginia.  
15 And you let me know when you get -- do you have that?

16 A. I do. And it's Exhibit 2 to Mr. Bonaparte's  
17 rebuttal testimony.

18 Q. Okay. Now, he identifies only three  
19 impoundments out of the 93 that he reviewed as having  
20 any sort of historical closure planning; is that -- am  
21 I reading that correctly?

22 A. Yes. And he has a footnote in there that  
23 says historical in this context refers to the time  
24 frame 2009 to 2011 or earlier.

1 Q. Is that consistent with where you understood  
2 the industry to be in terms of any sort of closure  
3 planning that -- during that time period?

4 A. Yes.

5 Q. And can you tell me your opinion as to  
6 whether it would be reasonable to proceed with the  
7 closure strategy while your regulator is still trying  
8 to determine the rules and requirements for closure?

9 A. It would not be prudent. As I mentioned  
10 earlier, having that certainty, having that clarity as  
11 to what we would need to do to have approval for  
12 closure ends up taking away any -- anything that we  
13 might have executed on that had to be redone or taken  
14 back. So having that clarity makes sure that we are  
15 executing the work per our rules and regulations.

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A. I do.

Q. Okay. Is the location restriction for placement above the uppermost aquifer a requirement in the CCR rule?

A. It is specifically called out in the 2015 final CCR rule.

Q. Now, is that a new requirement with the CCR rule? Is that -- the CCR rule is new. Is that a new

1 requirement?

2 A. Sorry, having issues with my spacebar again.  
3 Yes, it was a requirement -- a new requirement under  
4 the CCR rule.

5 Q. And is the location restriction for wetlands  
6 part of the CCR rule as well?

7 A. Yes.

8 Q. And is that also a new requirement with the  
9 CCR rule?

10 A. Yes. Those requirements were, again, to  
11 initiate, to trigger closure under the CCR rule. That  
12 was how the CCR rule -- that the federal CCR rule did  
13 the evaluation to say whether or not closure needed to  
14 be triggered of those basins.

15 Q. And when did that rule go into effect?

16 A. It was in 2015. I can't remember the exact  
17 date. But that's why we refer to it as the 2015 rule.  
18 But it was sometime in the middle of the year of 2015.

19 Q. Now, with that in mind, when the Company's  
20 various ash impoundments were first developed, were  
21 they lawfully permitted at the time they were built?

22 A. Yes, they were.

23 Q. Okay. And have they been subject to permit  
24 renewals over time?

1 A. Yes.

2 Q. And with the passage of the CCR rule and  
3 CAMA, is the Company similarly complying with the rules  
4 and regulations in effect at this time?

5 A. Yes. New change, new rule, new regulations.  
6 We have to comply with the new rules and regulations,  
7 and that is what we are doing.

8 Q. Now, in your expert opinion, does the fact  
9 that an impoundment may not meet the criteria of a  
10 newly created location or restriction standard say  
11 anything relevant about the historical prudent or  
12 reasonable operation of that impoundment?

13 A. No, it does not.

14 Q. And are there CCR surface impoundments in  
15 other jurisdictions that don't meet newly created  
16 restrictions like the location restrictions established  
17 in the CCR rule?

18 A. Yes. This is something that all the  
19 utilities across the nation are doing evaluations on,  
20 and there are numerous impoundments that do not meet  
21 those location restrictions.

22 Q. And is it your understanding, at least from  
23 your peers, that those other utilities are also taking  
24 the steps necessary to comply?



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A. Yes. So I'm part of a peer group of a number of utilities, and based upon discussions with them, they are complying by the CCR rule and having to move forward with closure.

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Q. All right. I'd like to move now to some questions about beneficiation. If you could please turn to page 45 of your rebuttal testimony.

A. (Witness peruses document.)  
I have that in front of me now.

Q. Great. Do you agree that footnote 7 on that page states, quote:

"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 Waste360 that neither provides a source for this number nor gives any 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 Bednarci k Public Staff Rebuttal Cross Examination  
9 Exhi bi t 7.

10 COMMISSIONER CLODFELTER: It will be  
11 marked as be Bednarci k Rebuttal Public Staff Cross  
12 Exami nati on Exhi bi t 7.

13 (Bednarci k Rebuttal Public Staff Cross  
14 Exami nati on Exhi bi t 7 marked for  
15 i denti fi cati on. )

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 exami nati on exhi bi ts, 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 exhi bi t agai n, please?

23 Q. Yes. It's Public Staff 138. So this is in  
24 our packet of potential cross exhi bi ts.

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 i denti fied as project engi neer  
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 uti l i zation?

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 recirculated 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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Q. Great. All righty. Now I wanted to go to page 61 of your testimony where you are discussing that DEP's coal ash management practices and your beliefs were consistent with industry standards at the time. And on that page, on lines 11 and 13, you criticize witnesses Lucas, Hart, and Quarles for relying on, quote, a small handful of papers published between 1967 and '85 to call into question the prudence of the Company's use of unlined ash basin.

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

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lens what's known today when they tried to look at  
historical practices. And that is -- that's what I was  
calling out.

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

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

18 A. Yes, it is.

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

21 A. Yes, I am.

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

24 A. Correct.

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

A. Yes, there were.

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

A. Yes.

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

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

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



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

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

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

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

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

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

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

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1 (WHEREUPON, DEP-specific Sub 1219  
2 testimony in Volume 16, p. 408,  
3 line 18 through p. 413, line 16;  
4 Volume 17, p. 38, line 17 through  
5 p. 48, line 3; and p. 49, line 1  
6 through p. 50, line 20 of  
7 witnesses DAVID DOSS, SEAN RILEY,  
8 and JOHN SPANOS is copied into the  
9 record as if given orally from the  
10 stand.)  
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Q. Yes, Mr. Doss. Now we will go to your testimony. I have several questions. I turn you to page 3.

A. Yes, Mr. Grantmyre, I'm on page 3.

Q. And you talk about -- you're basically rebutting Mr. Maness' testimony; is that correct? Towards the bottom of the page. And you're saying he

1 was wrong to call it a deferred expense, these ARO ash  
2 basin removal costs?

3 A. Yes. I -- well, two things I disagreed with.  
4 Number one, the classification or his characterization  
5 of this as a deferred expense where clearly the  
6 accounting rules as laid out in my testimony, as laid  
7 out in the testimony of witness Riley as well, that  
8 these costs are part of the -- they're integral to the  
9 plant that gave rise to the costs. They're capitalized  
10 when we record our asset retirement obligation. It's  
11 clear in both GAAP, General Accepted Accounting  
12 Principles, and the Federal Energy Regulatory  
13 Commission rules that, when we have established that  
14 asset retirement obligation, the offset to that is  
15 proper plant and equipment where we capitalize that  
16 cost as an integral part of the plant that gave rise to  
17 that retirement obligation.

18 Q. But you realize that, in the Dominion Energy  
19 case order February 24, 2020, the Commission ruled that  
20 they were deferred operating expenses; do you -- have  
21 you read that order?

22 A. I scanned that order. You know, as an  
23 employee of Duke Energy, I'm not that familiar with  
24 Dominion. I do know that in the previous Duke Energy

1 Progress and Duke Energy Carolinas cases, that's not  
2 what was found for our companies. The Commission  
3 agreed with our position that these are not deferred  
4 expenses, and was very clear in its orders in that  
5 regard.

6 Q. Now, with regard -- moving on to -- so  
7 basically, Mr. Maness' position that they're deferred  
8 operating expenses is the same as the Commission's  
9 February 24, 2020, Dominion order, as far as deferred  
10 operating expenses?

11 A. I would have to -- I would have to go read  
12 that order. Again, I'm not that familiar with it.

13 Q. Now, on the top of page 4, he -- you quote  
14 Mr. Maness where he says:

15 "If it was not for the approval of the  
16 deferral expenses, these expenses would have been  
17 written off already."

18 Do you agree with that? Do you agree that  
19 they would have been written off had they not been  
20 deferred?

21 A. Well, let's step back for a minute, as far as  
22 being immediately written off. What we have to do in  
23 the accounts of a regulated utility, we have to make an  
24 assessment for costs. We have to determine if there

1 should be recognized an expense as an expense in the  
2 current period, or if they should be deferred to a  
3 future period to be matched with future revenues. So  
4 in that -- in making that determination, there's an  
5 assessment that we have to make. So what we look at is  
6 we look for some evidence, and we look for -- the best  
7 evidence that we can get, obviously, is a rate order  
8 from the Commission allowing deferral of the cost.  
9 Maybe the next best thing that you can look for is a  
10 deferral order from the Commission allowing deferral of  
11 the cost and just come back later to seek recovery of  
12 the cost.

13 You can look at any number of the things for  
14 evidence around whether you should put these costs into  
15 a regulatory asset as opposed to expensing them. So  
16 that would be things like what is -- what is past  
17 precedent within that state of jurisdiction. So what  
18 the Commission has followed in the past; what have they  
19 done for other utilities; what's happening around the  
20 industry. All sorts of other forms of evidence that  
21 you would look at, and you have to make an assessment  
22 as to whether it would be expensed or not, regardless  
23 of whether you have a Commission directive or a  
24 Commission order in hand.

1           There's lots of times when we do not  
2 necessarily have a Commission directive, whether it's a  
3 deferral order or a rate order, where we are required  
4 by GAAP rules and by FERC rules to make an assessment  
5 about the probability of recovery. Meaning the  
6 probability that that cost will be matched with a  
7 future revenue.

8           That's what we do all the time. A common  
9 example would be storm costs, storm expenses. There  
10 may be a hurricane, a large storm, a lot of expenses.  
11 We don't necessarily have all the costs accumulated  
12 yet, we don't necessarily have time to go seek a  
13 deferral order, but we look at the history within that  
14 jurisdiction and what that Commission has done in the  
15 past and make an assessment of whether we think that's  
16 probable of recovery.

17           So what I would say here is that it may be a  
18 common thought that, absent a deferral request, amounts  
19 are immediately written off. That's a pretty common  
20 thought, but there's a lot of nuances to it. And it  
21 really boils down to what is the evidence that the  
22 accountants have to look at to determine whether it's  
23 probable that cost would be deferred to a future period  
24 to the matched revenues in a future period.



1 Q. But won't you agree that normally the cost of  
2 excavating coal ash out of a basin and hauling it away  
3 by truck or train is normally an operating expense?

4 A. No. No, absolutely not. If it's done in  
5 connection with an asset retirement obligation, which is a  
6 legal obligation as we put upon the Company to associate  
7 it with the retirement of an asset, it's very clear, from  
8 an accounting perspective, that's not an expense. That's  
9 an amount that's capitalized as part of the plant that  
10 gave rise to that obligation, and that's the entry that we  
11 make to property plant and equipment. That's the offset.  
12 It's an equal and offset -- equal offsetting amount to the  
13 amount that you record as the obligation. So it's very  
14 clear from the accounting rules that GAAP and FERC both  
15 view that as a capitalized cost.

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REDIRECT EXAMINATION BY MR. MARZO:

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

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.

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

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.

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1 (WHEREUPON, DEP-specific Sub 1219  
2 testimony in Volume 14, p. 357,  
3 line 1 through p. 367, line 6 of  
4 witness NICHOLAS PHILLIPS, JR., is  
5 copied into the record as if given  
6 orally from the stand.)  
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1 MS. CRESS: Thank you,  
2 Commissioner Clodfelter.

3 Q. Mr. Phillips, have you had occasion to read  
4 Mr. Floyd's second supplemental testimony filed in this  
5 case on September 16, 2020?

6 A. Yes, I have.

7 Q. And have you had occasion to read DEP witness  
8 Pirro's rebuttal testimony responding, in part, to  
9 witness Floyd's second supplemental testimony?

10 A. Yes, I have.

11 Q. Do you agree with the positions taken by  
12 Mr. Floyd in his second supplemental testimony as they  
13 relate to CIGFUR's settlement with DEP?

14 A. I do not. Some of the reasons are the same  
15 as given in my live testimony before, and, in addition,  
16 he -- his testimony is similar to the DEC. And I think  
17 some of that's premature, because Duke is going to  
18 propose some things in its next case, and everybody  
19 will have a chance to comment. There's nothing  
20 predetermined.

21 And I'm not going to repeat all that again  
22 today, but in addition, he takes issue with passing  
23 back the tax refunds, as it was done before in the  
24 Progress cases, and I don't agree with him. And I



1 think it's a mechanism to move rates closer to costs in  
2 a way that you can do when it's a decrease instead of  
3 an increase.

4 Q. Okay. And did witness Pirro address some of  
5 those same positions taken in his rebuttal testimony?

6 A. Yes. He basically said that the industrial  
7 sector, as a whole, is paying subsidies to other  
8 classes and passing back the tax money on a uniform  
9 charge or credit per kilowatt hour is as it was done --  
10 I had looked that up recently. I think, in  
11 November of 2018, the 100-and-something million was  
12 passed back on a uniform amount per kilowatt hour. And  
13 the Public Staff did not oppose that, and the  
14 Commission approved it, and we're basically asking for  
15 the same treatment here.

16 Q. And so is it fair to say that you agree with  
17 Mr. Pirro's explanation for flowing back the EDIT on a  
18 per-kilowatt-hour basis?

19 A. Yes, I do. I should explain Mr. Pirro's  
20 method of allocating the increase to classes is a  
21 reduction in current subsidies paid or received by  
22 25 percent. The 25 percent is a way of moderating any  
23 rate increases to classes, but it only gets you  
24 one-fourth of the way toward cost. So the method

1 he's -- he and CIGFUR have agreed to and the Commission  
2 has previously approved to pass back the tax credits  
3 moves a little bit farther than the 25 percent and  
4 would help get rates closer to cost.

5 Q. And you've already sort of alluded to this in  
6 your answers to some of my prior questions, but do you  
7 know whether the Commission has previously approved a  
8 flowback of EDIT to DEP customers on a uniform  
9 cents-per-kilowatt hour basis?

10 A. Yes, they have. It was, I believe, Docket  
11 E-2, Sub 1188 where they passed back more than  
12 \$100 million on that method, and I think that order  
13 says it was previously done in a previous case on some  
14 state taxes in that same way.

15 Q. Okay. And do you know whether it was also  
16 done in Docket Number E-2, Sub 1174 and E-2, Sub 1192?

17 A. I believe so. I think that order I'm  
18 referring to, the Sub 1188, refers to those dockets.

19 Q. Is there anything about CIGFUR's settlement  
20 with DEP that precludes, prevents, or otherwise hinders  
21 Mr. Floyd's wish list for his rate design study should  
22 the Commission agree with that recommendation and  
23 direct Duke to undertake such a study?

24 A. Not to my knowledge. Some of the things in

1       there that CIGFUR and Duke have agreed to do would be  
2       presented in a subsequent rate case or studied between  
3       now and the next rate case. So they would be proposed  
4       in a subsequent case, and the Public Staff and all  
5       parties can comment as they see fit. And then it's up  
6       to the Commission to approve or not approve at that  
7       time.

8           Q.       Is there any provision in CIGFUR's settlement  
9       with DEP that, if approved by the Commission, would in  
10      any way bind the Commission to decisions -- future  
11      decisions in future rate cases related to cost  
12      allocation or rate design?

13          A.       No. I don't know of any way two parties can  
14      enter into a settlement that binds the Commission to  
15      some finding in a future case, frankly.

16          Q.       Is there anything, in your opinion, that is  
17      inconsistent as between CIGFUR's settlement with DEP  
18      and the Public Staff settlements with DEP?

19          A.       I don't see any inconsistency, no. I think  
20      they're -- they help each other, frankly.

21          Q.       And do you think that the CIGFUR settlement  
22      with DEP is beneficial to all ratepayers, should the  
23      Commission approve it?

24          A.       In my opinion, it is, yes.

1 MS. CRESS: Commissioner Clodfel ter,  
2 witness Phillips is now available for cross.

3 COMMISSIONER CLODFELTER: Thank you,  
4 Ms. Cress.

5 Ms. Downey, cross?

6 MS. DOWNEY: I just have one questi on --  
7 or a couple of questi ons.

8 CROSS EXAMINATION BY MS. DOWNEY:

9 Q. Mr. Phillips, good afternoon.

10 A. Good afternoon.

11 Q. Mr. Phillips, do you know what the LGS class  
12 rate of return was under summer CP?

13 A. (Witness peruses document.)

14 Well, the LGS index that I have for the  
15 summer CP in the 2018 test year was 104.

16 Q. And that's within the plus or minus  
17 10 percent band of reasonableness that the Commission  
18 has historically found appropriate; isn't that correct?

19 A. Yes, that is correct.

20 Q. That's all I had.

21 COMMISSIONER CLODFELTER: Okay,  
22 Ms. Downey.

23 Mr. Neal?

24 MR. NEAL: Thank you,

1           Commi ssi oner Cl odfel ter.

2           CROSS EXAMINATION BY MR. NEAL:

3           Q.     Good afternoon, Mr. Phillips.

4           A.     Good afternoon.

5           Q.     Just a couple of questions as well .

6                     The websi te for Brubaker & Associates is  
7           consul tbai .com; is that correct?

8           A.     I believe so.

9           Q.     And are you fami liar generally with the  
10          contents of your company' s websi te?

11          A.     I -- I'm kind of embarrassed to say I don't  
12          keep up that much with the websi te.

13          Q.     Would you agree that there is an "about us"  
14          tab which includes a selection for representative  
15          clients on the consul tbai .com websi te?

16          A.     I'll accept that. I haven't looked at it.

17          Q.     But you wouldn't be surprised that it would  
18          list as representative clients companies such as ALCOA,  
19          Marathon Oil or Exxon Mobile, correct?

20          A.     I wouldn't be surprised, if that's your  
21          questi on.

22          Q.     And you would agree that under representative  
23          clients, there' s no Brubaker & Associates clients  
24          listed who represent residential utility customers,

1 correct?

2 A. I would doubt that. I think we've done some  
3 work for Cub and we've done some work for hospitals,  
4 but I don't think specifically residential customers,  
5 as I recall.

6 Q. I have no further questions.

7 COMMISSIONER CLODFELTER: Thank you.  
8 Are there any other parties who have questions on  
9 cross examination for Mr. Phillips?

10 (No response.)

11 COMMISSIONER CLODFELTER: If there are  
12 not, Ms. Cress, do you have any redirect?

13 MS. CRESS: Just briefly.

14 REDIRECT EXAMINATION BY MS. CRESS:

15 Q. Mr. Phillips, I understand that you did not  
16 personally design your consulting firm's website, but  
17 can you tell us a little bit about some of your  
18 personal work as a witness.

19 Have you ever been retained on behalf of a  
20 consumer advocate?

21 A. I've been retained by the Office of  
22 Regulatory Staff, which is kind of like the Public  
23 Staff, but in South Carolina, to represent them in two  
24 different Duke cases. I, actually, when I was younger,

1 got hired by Ellen Ruff at Duke to represent them in an  
2 arbitration case involving the cost of splits in the  
3 Catawba plant.

4 Q. So you have, in fact, been an expert witness  
5 for consumer advocates very much like the Public  
6 Staff's role in this case?

7 A. Yes. And there's been others in my firm that  
8 do return on equity and different financial studies  
9 that have been hired by public advocates. Different  
10 people from Brubaker & Associates have been hired by  
11 public advocates.

12 Q. So would it be fair or unfair to say that you  
13 exclusively appear on behalf of commercial or  
14 industrial interests?

15 A. No. As I said, there's -- sometimes there's  
16 universities. I've represented, within Indiana, of  
17 University of Notre Dame, which has gotten some high  
18 profile lately due to the Supreme Court pick and so on.  
19 But we represent universities, hospitals, and others at  
20 different times.

21 Q. And the South Carolina consumer advocate?

22 A. Office of Regulatory Staff, I think they're  
23 called.

24 Q. Okay. Thank you.

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MS. CRESS: No further redirect.

COMMISSIONER CLODFELTER: All right.

Thank you.

Questions from Commissioners, starting with Commissioner Brown-Bland.

COMMISSIONER BROWN-BLAND: Mr. Phillips, it is good to see you again, but I don't have questions for you this time.

THE WITNESS: It's good to see you again as well.

COMMISSIONER CLODFELTER: Commissioner Gray?

COMMISSIONER GRAY: No, no questions.

COMMISSIONER CLODFELTER: All right. Chair Mitchell?

CHAIR MITCHELL: No questions.

COMMISSIONER CLODFELTER: Commissioner Duffley?

COMMISSIONER DUFFLEY: No questions.

COMMISSIONER CLODFELTER: Commissioner Hughes?

COMMISSIONER HUGHES: No questions.

COMMISSIONER CLODFELTER: Commissioner McKissick?



1 COMMISSIONER McKISSICK: No questions.

2 COMMISSIONER CLODFELTER: All right.

3 Ms. Cress, back to you with any additional motions  
4 you need to make, if there are any.

5 MS. CRESS: Thank you,  
6 Commissioner Clodfelter. I believe that  
7 Mr. Phillips' prefiled exhibits have already been  
8 moved and admitted into the record, but if that's  
9 not the case, then I move them in at this time.

10 COMMISSIONER CLODFELTER: Well, to the  
11 extent we need belt and suspenders, your motion is  
12 granted. Thank you.

13 (Phillips Direct Exhibits 1 through 5  
14 were admitted into evidence.)

15 MS. CRESS: Thank you.

16 COMMISSIONER CLODFELTER: All right.  
17 Anything further? Do you want Mr. Phillips to be  
18 excused, or do we need to keep him here?

19 MS. CRESS: That would be -- that would  
20 be fantastic. Would the Commission entertain a  
21 motion to excuse witness Phillips?

22 COMMISSIONER CLODFELTER: We will  
23 entertain a motion, and unless there's an  
24 objection, we'll grant the motion. Mr. Phillips,

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thank you, you are excused.

THE WITNESS: Thank you, Commissioner.

COMMISSIONER CLODFELTER: Okay.

Anything else from CIGFUR II?

MS. CRESS: Nothing else,  
Commissioner Clodfel ter. Thank you.

1 (WHEREUPON, DEP-specific Sub 1219  
2 testimony in Volume 15, p. 1818,  
3 line 20 through p. 1823, line 22  
4 of witnesses JAY B. LUCAS and  
5 MICHAEL C. MANESS is copied into  
6 the record as if given orally from  
7 the stand.)  
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CROSS EXAMINATION BY MR. MEHTA:

Q. Mr. Lucas, in this case, the Public Staff's prudence review of the costs actually sought for recovery by DEP in this case was undertaken by witnesses Garrett and Moore; is that correct?

1           A.     (Jay Lucas) In my testimony, I do also have  
2     some specific disallowances.

3           Q.     Yes. And apart from those specific  
4     disallowances, the prudence review by the Public Staff  
5     was conducted by Garrett and Moore, correct?

6           A.     Yes, yes.

7           Q.     And what you call -- or what the Public Staff  
8     calls, quote, equitable, close quote, sharing is  
9     premised not on a prudence review of the incurred  
10    costs, but rather on what you call your culpability  
11    analysis; is that correct?

12          A.     Yes. Public Staff -- I believe Duke Energy  
13    Progress was culpable for the environmental  
14    contamination it created. So we believe that the  
15    Company should share the re- -- excuse me, the  
16    remediation costs with its customers.

17          Q.     And the sharing that you propose is of  
18    incurred costs for which a specific imprudence  
19    disallowance has not been recommended by the Public  
20    Staff; is that correct?

21          A.     Yes. That equitable sharing is not based  
22    upon imprudence analysis.

23          Q.     And you did not do a prudence evaluation,  
24    because to go back and recreate the costs that DEP

1 could have incurred in the past was too speculative an  
2 exercise even for the Public Staff to engage in; is  
3 that correct?

4 A. Yeah. The Public -- well, the Public Staff  
5 did not have the resources or means to be able to  
6 reproduce costs from decades ago.

7 Q. And therefore, the Public Staff concluded  
8 that it would be too speculative to do that kind of  
9 analysis, correct?

10 A. Yes.

11 MR. MEHTA: Commissioner Clodfelter, I  
12 have no further questions of this panel.

13 COMMISSIONER CLODFELTER: All right.  
14 Let me inquire at this point, does any other party  
15 have any cross examination for this panel?

16 (No response.)

17 COMMISSIONER CLODFELTER: If not,  
18 Ms. Luhr, do you think you can get your redirect  
19 in?

20 MS. LUHR: I do. Thank you.

21 COMMISSIONER CLODFELTER: All right.

22 REDIRECT EXAMINATION BY MS. LUHR:

23 Q. Mr. Lucas, I just have one question.

24 Mr. Mehta asked you about the difficulty of quantifying

1 costs -- or the Public Staff's assessment of the  
2 difficulty of quantifying costs in this case. Can I  
3 please have you refer to Public Staff Redirect  
4 Exhibit 78?

5 A. (Jay Lucas) Okay.

6 Q. And this is a Duke Energy Progress response  
7 to a Public Staff data request.

8 MS. LUHR: And, Commissioner Clodfelter,  
9 I would like for Public Staff Redirect Exhibit  
10 Number 78, which starts on page 2362, to be  
11 identified as Lucas/Maness Public Staff Redirect  
12 Exhibit Number 2. I say 2 because there was a  
13 Junis/Maness Redirect Exhibit Number 1 in the DEC  
14 case.

15 COMMISSIONER CLODFELTER: Ms. Luhr,  
16 you've got it correct. I think we went through  
17 this once yesterday in a similar situation, so it  
18 will be so designated as Number 2.

19 MS. LUHR: Thank you.

20 (Lucas/Maness Public Staff Redirect  
21 Exhibit Number 2 was identified as they  
22 were marked when prefilled.)

23 THE WITNESS: And can you give me the  
24 exhibit number, please, again?

1 Q. That was Public Staff Potential Redirect  
2 Exhibit 78.

3 A. (Witness peruses document.)  
4 Okay. I've got it open.

5 Q. And are you familiar with this document?  
6 Have you reviewed this before?

7 A. Yes. This is a response to a Public Staff  
8 data request.

9 Q. Okay. And if you look at pages 2 through 4  
10 of this document, what information was the Public Staff  
11 requesting?

12 A. Public Staff was requesting Duke Energy to  
13 recreate costs from past years: 1979, 1984, 1988, 2000.  
14 I know it's costs for doing groundwater monitoring  
15 wells, downgradient, upgradients, cost of installing  
16 groundwater extraction and treatment systems, dry fly  
17 ash handling, as if Duke Energy would try to do dry fly  
18 ash handling during those years I mentioned.

19 Q. Thank you. And if you could for me, please  
20 read from the Company's response on page 4 beginning  
21 with "the Company agrees with the Public Staff  
22 statement."

23 A. At the very bottom of page 4:  
24 "The Company agrees with the Public Staff's



1 statement above. Estimates of the nature requested by  
2 the Public Staff would be speculative and therefore  
3 unreliable."

4 Do you want me to keep reading?

5 Q. One more sentence.

6 A. Oh, sure.

7 "Using 20/20 hindsight to develop  
8 site-specific estimates for activities covering a  
9 four-decade span of time would, as  
10 Commissioner Clodfelter indicates, require the  
11 impossible construction and evaluation of several  
12 different alternative histories and realities."

13 This is from the 2017 DEP rate case order,  
14 Clodfelter dissent at 13.

15 Q. Thank you. So, Mr. Lucas, does it appear  
16 from this response that Duke Energy Progress also  
17 believes it would be too speculative to attempt to  
18 quantify costs related to historical coal ash  
19 management practices in this case?

20 A. Yeah. It comes out to be speculative and  
21 therefore unreliable.

22 Q. Thank you. That's all the questions I have.  
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C E R T I F I C A T E

I, KIM T. MITCHELL, DO HEREBY CERTIFY that  
the foregoing pages in the above-captioned matter were  
compiled by me from the DEC-specific Sub 1214 docket  
and DEP-specific Sub 1219 transcripts, and the  
foregoing pages are a true and correct compilation to  
the best of my ability.

Kim T. Mitchell

Kim T. Mitchell  
Court Reporter II