

1 PLACE: Held Via Videoconference

2 DATE: Tuesday, October 6, 2020

3 DOCKET NO.: E-2, Sub 1219

4 E-2, Sub 1193

5 TIME IN SESSION: 9:00 A.M. TO 9:42 A.M.

6 BEFORE: Commissioner Daniel G. Clodfelter, Presiding

7 Chair Charlotte A. Mitchell

8 Commissioner ToNola D. Brown-Bland

9 Commissioner Daniel G. Clodfelter

10 Commissioner Lyons Gray

11 Commissioner Kimberly W. Duffley

12 Commissioner Jeffrey A. Hughes

13 Commissioner Floyd B. McKissick, Jr.

14

15 IN THE MATTER OF:

16 DOCKET NO. E-2, SUB 1219

17 Application by Duke Energy Progress, LLC,

18 for Adjustment of Rates and Charges Applicable to

19 Electric Utility Service in North Carolina

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DOCKET NO. E-2, SUB 1193

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

VOLUME 20

1 A P P E A R A N C E S:

2 FOR DUKE ENERGY PROGRESS, LLC:

3 Camal Robinson, Esq., Associate General Counsel

4 Brian Heslin, Esq., Deputy General Counsel

5 Duke Energy Corporation

6 550 South Tryon Street

7 Charlotte, North Carolina 28202

8

9 Lawrence B. Somers, Esq., Deputy General Counsel

10 Duke Energy Corporation

11 410 South Wilmington Street

12 Raleigh, North Carolina 27601

13

14 James H. Jeffries, IV, Esq.

15 McGuireWoods LLP

16 201 North Tryon Street, Suite 3000

17 Charlotte, North Carolina 28202

18

19 Andrea Kells, Esq.

20 McGuireWoods LLP

21 501 Fayetteville Street, Suite 500

22 Raleigh, North Carolina 27601

23

24

1 A P P E A R A N C E S Cont'd:

2 Molly McIntosh Jagannathan, Esq., Partner

3 Kiran H. Mehta, Esq., Partner

4 Troutman Pepper Hamilton Sanders LLP

5 301 South College Street, Suite 3400

6 Charlotte, North Carolina 28202

7

8 Brando F. Marzo, Esq.

9 Troutman Pepper

10 600 Peachtree Street, E, Suite 3000

11 Atlanta, Georgia 30308

12

13 FOR CAROLINA INDUSTRIAL GROUP FOR FAIR UTILITY RATES

14 II AND III:

15 Christina D. Cress, Esq.

16 Bailey & Dixon, LLP

17 Post Office Box 1351

18 Raleigh, North Carolina 27602

19

20 FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:

21 Robert F. Page, Esq.

22 Crisp & Page, PLLC

23 4010 Barrett Drive, Suite 205

24 Raleigh, North Carolina 27609

1 A P P E A R A N C E S Cont'd:

2 FOR NC JUSTICE CENTER, NC HOUSING COALITION, NATURAL
3 RESOURCES DEFENSE COUNCIL and SOUTHERN ALLIANCE FOR CLEAN
4 ENERGY:

5 Gudrun Thompson, Esq., Senior Attorney

6 David L. Neal, Esq., Senior Attorney

7 Tirrill Moore, Esq., Associate Attorney

8 Southern Environmental Law Center

9 601 West Rosemary Street, Suite 220

10 Chapel Hill, North Carolina 27516

11 FOR SIERRA CLUB:

12 Bridget Lee, Esq.

13 Sierra Club

14 9 Pine Street

15 New York, New York 10005

16

17 Catherine Cralle Jones, Esq.

18 Law Office of F. Bryan Brice, Jr.

19 127 W. Hargett Street

20 Raleigh, North Carolina 27601

21

22

23

24

1 A P P E A R A N C E S Cont'd:

2 FOR NC WARN:

3 Matthew D. Quinn, Esq.

4 Lewis & Roberts PLLC

5 3700 Glenwood Avenue, Suite 410

6 Raleigh, North Carolina 27612

7

8 FOR FAYETTEVILLE PUBLIC WORKS COMMISSION:

9 James West, Esq., General Counsel

10 955 Old Wilmington Road

11 Fayetteville, North Carolina 28301

12

13 FOR UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER

14 FEDERAL EXECUTIVE AGENCIES:

15 Emily Medlyn, Esq., General Attorney

16 United States Army Legal Services Agency

17 9275 Gunston Road, Suite 4300 (ELD)

18 Fort Belvoir, Virginia 22060

19

20 FOR VOTE SOLAR:

21 Thadeus B. Culley, Esq., Regulatory Counsel

22 Senior Regional Director

23 1911 Ephesus Church Road

24 Chapel Hill, North Carolina 27517

1 A P P E A R A N C E S Cont'd:

2 FOR NC LEAGUE OF MUNICIPALITIES:

3 Deborah Ross, Esq.

4 Fox Rothschild LLP

5 434 Fayetteville Street, Suite 2800

6 Raleigh, North Carolina 27601

7

8 FOR NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION:

9 Peter H. Ledford, Esq., General Counsel

10 Benjamin Smith, Esq., Regulatory Counsel

11 North Carolina Sustainable Energy Association

12 4800 Six Forks Road, Suite 300

13 Raleigh, North Carolina 27609

14

15 FOR THE COMMERCIAL GROUP:

16 Alan R. Jenkins, Esq.

17 Jenkins At Law, LLC

18 2950 Yellowtail Avenue

19 Marathon, Florida 33050

20

21 Brian O. Beverly, Esq.

22 Young Moore and Henderson, P.A.

23 3101 Glenwood Avenue

24 Raleigh, North Carolina 27622

1 A P P E A R A N C E S Cont'd:

2 FOR THE NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE:

3 Karen Kemerait, Esq.

4 Fox Rothschild LLP

5 434 Fayetteville Street, Suite 2800

6 Raleigh, North Carolina 27601

7

8 FOR HARRIS TEETER:

9 Kurt J. Boehm, Esq.

10 Jody Kyler Cohn, Esq.

11 Boehm, Kurtz & Lowry

12 36 East Seventh Street, Suite 1510

13 Cincinnati, Ohio 45202

14

15 Benjamin Royster, Esq.

16 Royster and Royster, PLLC

17 851 Marshall Street

18 Mount Airy, North Carolina 27030

19

20

21

22

23

24

1 A P P E A R A N C E S Cont'd:

2 FOR HORNWOOD, INC.:

3 Janessa Goldstein, Esq.

4 Corporate Counsel

5 Utility Management Services, Inc.

6 6317 Oleander Drive, Suite C

7 Wilmington, North Carolina 28403

8

9 FOR THE USING AND CONSUMING PUBLIC AND ON BEHALF OF
10 THE STATE AND ITS CITIZENS IN THIS MATTER THAT AFFECTS
11 THE PUBLIC INTEREST:

12 Margaret A. Force, Esq., Assistant Attorney General

13 Teresa Townsend, Esq., Special Deputy Attorney General

14 North Carolina Department of Justice

15 Post Office Box 629

16 Raleigh, North Carolina 27603

17

18

19

20

21

22

23

24

1 A P P E A R A N C E S Cont'd:

2 FOR THE USING AND CONSUMING PUBLIC:

3 Dianna W. Downey, Esq.

4 Elizabeth D. Culpepper, Esq.

5 Layla Cummings, Esq.

6 Lucy E. Edmondson, Esq.

7 William E. Grantmyre, Esq.

8 Gina C. Holt, Esq.

9 Tim R. Dodge, Esq.

10 Megan Jost, Esq.

11 John D. Little, Esq.

12 Nadia L. Luhr, Esq.

13 Public Staff - North Carolina Utilities Commission

14 4326 Mail Service Center

15 Raleigh, North Carolina 27699-4300

16

17

18

19

20

21

22

23

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1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		PAGE
4	PANEL Cont'd.:	
5	MARCIA E. WILLIAMS, JAMES WELLS	
6	Continued Examination by Commissioner Brown-Bland.....	13
7	Examination by Commissioner Clodfelter.....	17
8	Examination by Mr. Marzo.....	19

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E X H I B I T S

IDENTIFIED/ADMITTED

Williams Rebuttal Exhibits 1-2.....--/33
Wells Rebuttal Exhibits 1-4.....--/33
Public Staff Wells/Williams Rebuttal
Cross Examination Exhibits 1-6.....--/33
AGO Wells/Williams Rebuttal Cross
Examination Exhibits 1-2.....--/33

1 P R O C E E D I N G S

2 COMMISSIONER CLODFELTER: Let's come back to
3 order. Mr. Wells, I see you. And I saw that Ms.
4 Williams was with us earlier, but she has -- I don't see
5 her now. There she is. A good early morning to you.
6 All right. I think, Commissioner Brown-Bland, we're back
7 to you.

8 COMMISSIONER BROWN-BLAND: All right. Let's
9 see. Yeah. I'm on.

10 MARCIA E. WILLIAMS,

11 JAMES WELLS: Having been previously affirmed,
12 Testified as follows:

13 CONTINUED EXAMINATION BY COMMISSIONER BROWN-BLAND:

14 Q I was at the point where I was about to ask Mr.
15 Wells for a late-filed exhibit on those who he spoke with
16 in DEP to learn about the history of coal ash management
17 with that utility. Is that something you can provide for
18 me, Mr. Wells?

19 A (Wells) Yes, ma'am.

20 Q All right. I would like to know who they are
21 and what their capacities were, the reasons that you
22 spoke to them, in essence.

23 A Very well.

24 Q All right. And Ms. Williams, just -- just a

1 small question for you, and that is you mentioned that
2 DEP was ahead of the curve on groundwater monitoring --

3 A (Williams) Right.

4 Q -- you know, earlier and ahead of others in the
5 industry. Why didn't that translate into an
6 understanding that some type of liner was required to
7 stop or at least contain CCRs, you know, back sometime
8 earlier in the '70s or '80s?

9 A Commissioner, there just wasn't information at
10 that point to suggest that a liner was required to
11 protect groundwater in the '70s and '80s and, in fact,
12 even when EPA issued its proposed rule in 2010, EPA had
13 three potential options it was going to select for the
14 final rule. One of those options was a Subtitle C
15 approach that would have resulted in liners, but the
16 second option was a Subtitle D approach that would have
17 allowed existing ponds without liners to operate for five
18 additional years. And the third approach was what was
19 called a Subtitle D Prime approach, and that approach
20 allowed entities to continue to use unlined ash basins
21 for the remainder of their useful life. So even as late
22 as 2010, when EPA was putting out its proposed rule on
23 this, it had not yet determined that it was necessary
24 across the board to close unlined ponds prior to the end

1 of their useful life, so it -- the information just
2 wasn't there. And a lot of looking had been done at the
3 results of individual ponds, so it remained a site-
4 specific issue up until the rule was finalized.

5 Q And as a site-specific issue and otherwise,
6 there's no indication that EPA or any regulator would
7 have been opposed to a liner, is that right, a liner of
8 some sort?

9 A Well, I don't think the -- I guess, in my view,
10 that's probably not the right question. I mean, EPA
11 wouldn't have necessarily been opposed, but the question
12 is did EPA think it was necessary to protect --
13 adequately protect groundwater, and that was --

14 Q The question --

15 A Sorry.

16 Q Regardless of what EPA may have thought, it's
17 more about what the Company knew, right, and if they --
18 if they were ahead of the curve in the groundwater
19 monitoring, they could take some steps -- they were out
20 ahead of EPA -- could they not --

21 A They could --

22 Q -- and the EPA --

23 A -- but they --

24 Q -- and the EPA wouldn't have been opposed to.

1 A If the data supported that, but that's why
2 there were in a process of collecting extensive
3 groundwater data and working with DEQ to determine what
4 the data demonstrated. And so that process was not
5 complete and wasn't even close to being complete until
6 after the time that CAMA was issued and the final CCR was
7 issued.

8 Q All right. Thank you. Mr. Wells, last couple
9 of questions. Has -- to your knowledge, has the
10 Commission ever denied DEP or DEC any of their costs for
11 the groundwater monitoring at their CCR basins?

12 A (Wells) I do not have specific knowledge on
13 that.

14 Q All right.

15 COMMISSIONER BROWN-BLAND: All right. That's
16 all my questions. Thank you.

17 COMMISSIONER CLODFELTER: Thank you,
18 Commissioner Brown-Bland. Commissioner Gray, you're up
19 next.

20 COMMISSIONER GRAY: Thank you, sir. I think
21 I'm going to let the Panel pass.

22 COMMISSIONER CLODFELTER: All right. Chair
23 Mitchell.

24 CHAIR MITCHELL: I have no questions.

1 COMMISSIONER CLODFELTER: All right. We'll
2 move to Commissioner Duffley.

3 COMMISSIONER DUFFLEY: I have no questions.

4 COMMISSIONER CLODFELTER: Commissioner Hughes.

5 COMMISSIONER HUGHES. None for me.

6 COMMISSIONER CLODFELTER: Commissioner
7 McKissick?

8 COMMISSIONER McKISSICK: I have no questions.

9 COMMISSIONER CLODFELTER: All right. Ms.
10 Williams, I've got just one for you.

11 EXAMINATION BY COMMISSIONER CLODFELTER:

12 Q You referenced in your testimony yesterday, and
13 you had also referenced it back in the testimony you gave
14 in the Duke Energy Carolinas, a 2001 EPRI report. When I
15 searched for that, the only thing I have come up with is
16 a report that's titled Evaluation of Remedial Actions at
17 an Unlined Coal Ash Site. Is that the correct title of
18 the report?

19 A (Williams) No, it's not. I'm not sure I have
20 the complete title, but we can certainly make sure that
21 we provide the document.

22 Q I appreciate that greatly. I would make a
23 request to your counsel that that report be submitted as
24 a late-filed exhibit. I was just searching on the EPRI

1 site for 2001 reports related to coal ash, and that's the
2 only one I turned up, so if you can provide that to
3 counsel, I would appreciate it.

4 A Sure. It's a report that looks at three
5 different ash pond closures --

6 Q Ahh.

7 A -- and talks about whether or not cover is
8 helpful over and above dewatering.

9 Q Actually, I did see that one. Thank you. It
10 was three case studies. I had understood it to be a more
11 generic report. It's three case studies on a cap-in-
12 place closure.

13 COMMISSIONER CLODFELTER: I think for the
14 record, Mr. Marzo, it would still be good to get that in
15 the record as a late-filed exhibit, even though I now
16 know which one she was -- Ms. Williams was referencing.

17 MR. MARZO: We'll get that to you, Commissioner
18 Clodfelter.

19 COMMISSIONER CLODFELTER: Thank you very much.
20 And that's all I have, so we're at the point of questions
21 on Commission questions, and I'll start with Ms. Lee.

22 MS. LEE: No questions, Commissioner.

23 COMMISSIONER CLODFELTER: Thank you. Ms.
24 Townsend?

1 MS. TOWNSEND: No questions, Commissioner.

2 COMMISSIONER CLODFELTER: Okay. Public Staff?

3 MS. LUHR: No questions.

4 COMMISSIONER CLODFELTER: All right. Mr.

5 Marzo, back to you.

6 MR. MARZO: Commissioner Clodfelter, just a
7 few.

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 prefilled 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
11 Exhibits 1-2, Wells Rebuttal
12 Exhibits 1-4, Public Staff
13 Williams/Wells Rebuttal Cross
14 Exhibits 1-6, and AGO Wells/Williams
15 Rebuttal Cross Exhibits 1-2 were
16 admitted into evidence.)

17 COMMISSIONER CLODFELTER: With that, Mr. Marzo,
18 I've come to the end of the list of my witnesses, but I
19 believe you reserved the right to recall Ms. Bednarcik,
20 so I'll ask at this point if you wish to recall her.

21 MR. MARZO: We do not wish to recall Ms.
22 Bednarcik.

23 COMMISSIONER CLODFELTER: All right. How about
24 -- let's see if we can get Mr. Wells and Ms. Williams

1 excused. Ms. Williams may -- Ms. Williams, looks like
2 you have a choice either of another cup of coffee or you
3 might even be able to go back to sleep, so I'm sure you'd
4 like to get excused.

5 WITNESS WILLIAMS: Thank you. That would be
6 wonderful.

7 COMMISSIONER CLODFELTER: All right. Is there
8 any objection to excusing Ms. Williams and Mr. Wells?

9 (No response.)

10 COMMISSIONER CLODFELTER: If not, they are
11 excused, and thank you, especially Ms. Williams, for
12 being with us so early in the morning for you. We
13 appreciate it.

14 All right. Mr. Robinson, Mr. Marzo, anything
15 else on rebuttal?

16 MR. ROBINSON: Commissioner Clodfelter, Camal
17 Robinson. So nothing in particular, I think, at this
18 time. I believe we reserved the right to recall Ms.
19 Smith, as well as Mr. De May, so at this time we would
20 move to excuse them as well.

21 COMMISSIONER CLODFELTER: All right. You've
22 heard the motion to excuse Mr. De May and Ms. Smith.
23 Without objection, it will be so ordered.

24 Okay. Does that conclude the Company's

1 rebuttal case, then?

2 MR. ROBINSON: Commissioner Clodfelter, it does
3 conclude the Company's rebuttal case. I believe we do
4 have a few procedural things, so you let me know if you'd
5 like to --

6 COMMISSIONER CLODFELTER: We do, yeah. Let me
7 clean up a couple first, then I'll come back to you for
8 the ones that you think need to be cleaned up. Ms.
9 Downey, we have the motion by the Public Staff to file a
10 Corrected Exhibit Number 18 to Jay Lucas' testimony, and
11 did not receive any objection to that, so that motion
12 will be granted to file a Corrected Exhibit 18 to the
13 testimony of Jay Lucas.

14 MS. DOWNEY: Thank you, Commissioner.

15 COMMISSIONER CLODFELTER: Yes. Ms. Goldstein,
16 we also have the Stipulation among Hornwood, Inc., the
17 Applicant, and the Public Staff. As I review the
18 Stipulation, it really doesn't affect any party -- other
19 parties, but I'll hear if there's an objection, and if
20 there's not an objection, we will accept the Stipulation
21 that was filed either yesterday or on Friday, one of the
22 two.

23 MS. GOLDSTEIN: Thank you, Commissioner
24 Clodfelter. There's no objection from Hornwood, Inc.

1 COMMISSIONER CLODFELTER: Right. We will
2 accept that. It just clarifies Hornwood, Inc.'s status
3 under the appropriate tariff schedules, so we will accept
4 the Stipulation.

5 Mr. Robinson, you may have some other things,
6 so I'll take your other matters, but let me talk about
7 late-filed exhibits. We will -- at this point we will
8 close the record to additional witness live testimony.
9 And with respect to requests for late-filed exhibits, Mr.
10 Robinson, what I'd like to do, rather than do this
11 piecemeal and sequentially, is I've asked Commission
12 counsel to circulate among all the Commissioners a list
13 and descriptions of all of the late-filed exhibits that
14 Commissioners have requested in the case. I want to be
15 sure we got the Company a complete and thorough list.
16 And so in the next day or two you should expect
17 Commission counsel to reach out to you so that you can
18 compare notes with the notes after conferring with all
19 the Commissioners to be sure we got everything and nobody
20 has left anything out, and then we'll allow you, the
21 Company, and working with Commission counsel to proceed
22 to check off that list and be sure they're all verified.
23 So the record will remain open for receipt of those late-
24 filed exhibits, and I'm not -- Mr. Robinson, I don't

1 intend to set a deadline on that unless we think there's
2 going to be some problems with the transcript deadline
3 and the briefing deadline, which I don't anticipate, so
4 I'm not going to set a deadline on those, but as promptly
5 as the Company can get those back to us, that will just
6 help all the parties with their briefing and their
7 Proposed Orders.

8 CHAIR MITCHELL: Commissioner --

9 COMMISSIONER CLODFELTER: Yes.

10 CHAIR MITCHELL: Commissioner Clodfelter, if I
11 may --

12 COMMISSIONER CLODFELTER: Yes, Chair Mitchell.

13 CHAIR MITCHELL: -- on the issue of late-filed
14 exhibits requested by the Commissioners, I'd like to
15 request one at this time, if I may do so.

16 COMMISSIONER CLODFELTER: Please go ahead.

17 CHAIR MITCHELL: And it's the same -- I made an
18 identical request in the DEC case. Mr. Robinson, I'll
19 just direct this to you, and you all can -- you all can
20 take care of this for me, but we'd like the total annual
21 revenue requirement requested by DEP in this proceeding
22 related to the recovery of the deferred CCR costs allowed
23 by the Commission in Docket E-2, Sub 1142. Please
24 provide citations to DEP's testimony and exhibits in this

1 proceeding showing the calculation of this total annual
2 revenue requirement amount, and include the total NC
3 retail amount of the deferred CCR costs allowed in Sub
4 1142, the amount of annual amortization for those costs,
5 and the amount of the return on the unamortized balance
6 of those CCR costs.

7 And then a second part of the request is the
8 total annual revenue requirement requested by DEP in this
9 proceeding related to the recovery of the CCR costs
10 incurred from September 1, 2017, through February 29,
11 2020, broken down in the same way as the previous
12 question requested.

13 MR. ROBINSON: Understood, Chair Mitchell.
14 Thank you.

15 CHAIR MITCHELL: Thank you very much.

16 COMMISSIONER CLODFELTER: All right. Mr.
17 Robinson, you should anticipate that Commission counsel
18 will also have some additional similar exhibits --
19 exhibit requests. As I indicated earlier, anything that
20 was requested in the DEC case will probably have a
21 parallel request which uses the DEP data, so you should
22 anticipate that and, Commissioners, you should expect
23 that that will also be asked on your behalf.

24 So except for briefing deadlines and proposed

1 orders, Mr. Robinson, I don't have anything else, so
2 let's see what you've got.

3 MR. ROBINSON: Sure, Commissioner Clodfelter.

4 MS. FORCE: Excuse me. Commissioner -- I'm
5 sorry.

6 COMMISSIONER CLODFELTER: Ms. Force.

7 MS. FORCE: This is Margaret Force --

8 COMMISSIONER CLODFELTER: Yes.

9 MS. FORCE: -- with the Attorney General's
10 Office. Just to clarify -- it probably goes without
11 saying, but all of that communication will be on the
12 record, right, so that other parties have an opportunity,
13 if there's any concern about the requests and the
14 responses, since we're not going to have a hearing
15 afterward?

16 COMMISSIONER CLODFELTER: That's -- well, if
17 you need to make motions relative to late-filed exhibits,
18 I think we've experienced that in -- actually, in the
19 last round of cases. We'll entertain the motions. But
20 I'm going to -- it's a reasonable request. I'm going to
21 ask the Commission counsel, once Commission counsel has
22 conferred with Mr. Robinson and has a good list of the
23 finalized requests, as they both understand it, that that
24 be shared with -- served on all the other parties, so if

1 anyone sees anything that Company counsel has missed or
2 the Commission counsel have missed, you can call it to
3 our attention at that point, Ms. Force. Sound
4 reasonable?

5 MS. FORCE: Thank you. I appreciate that.

6 COMMISSIONER CLODFELTER: Thank you. Okay.

7 MS. DOWNEY: Commissioner Clodfelter?

8 COMMISSIONER CLODFELTER: Yes.

9 MS. DOWNEY: Dianna Downey.

10 COMMISSIONER CLODFELTER: Ms. Downey.

11 MS. DOWNEY: It's been pointed out to me,
12 before we move on to final matters, that there are some
13 stipulated cross exhibits that might not have been moved
14 in, Wells/Williams Cross Exhibits 1 through 6? I'm
15 looking at Mr. Marzo. I'm, just out of an abundance of
16 caution, raising that issue.

17 MR. MARZO: Yeah. I thought Commissioner
18 Clodfelter picked those up when we discussed it a moment
19 ago, we moved them in.

20 COMMISSIONER CLODFELTER: I think, in fact, we
21 did have a motion, and that was part of the motion from
22 Mr. Marzo was Exhibits 1 through 6. To the extent the
23 motion was not made or was not acted upon, the motion is
24 granted.

1 MR. MERTZ: Commissioner Clodfelter, this is
2 Derrick Mertz with Commission Staff.

3 COMMISSIONER CLODFELTER: Yes, Mr. Mertz.

4 MR. MERTZ: During that same motion for the
5 stipulated exhibits, I believe AGO's Cross Exhibits 1 and
6 2 were also admitted.

7 COMMISSIONER CLODFELTER: They were moved and
8 they were admitted, you are correct.

9 All right. At last, Mr. Robinson.

10 MR. ROBINSON: Commissioner Clodfelter, we just
11 have one more. You picked up almost every other issue.
12 I have -- my co-counsel, Jim Jefferies, will address it.
13 I think there is some overlap with some supplemental
14 rebuttal testimony for Jay Oliver that may have not been
15 admitted into the DEC case --

16 COMMISSIONER CLODFELTER: All right.

17 MR. ROBINSON: -- so I'll let Mr. Jeffries just
18 walk through the issue and make sure that it's on the
19 record.

20 COMMISSIONER CLODFELTER: Mr. Jeffries?

21 MR. JEFFRIES: Thank you, Commissioner
22 Clodfelter. In going back over Mr. Oliver's testimony,
23 we discovered sort of a glitch in our admission of his
24 testimony, and it resulted from the sequence and timing

1 of update testimony filed by the Public Staff and then
2 ultimately responsive testimony filed by Mr. Oliver.

3 As you're aware, Oliver testified on the
4 subject of grid improvement plan during Phase 1 of the
5 hearing, and that -- that terminated or ended on August
6 31st. A little more than a week later, Mr. Thomas for
7 the Public Staff filed update testimony, and part of that
8 testimony involves some discussion of the Company's SOG
9 enablement issues. And Mr. Oliver replied to that or
10 filed supplemental rebuttal testimony in response to Mr.
11 Thomas' testimony, and this was in the DEC case, on
12 September 15th, which was pursuant to Commission Order.
13 And as the Commission is aware, Mr. Oliver did not -- was
14 not scheduled to testify in Phase 2 of the proceeding
15 and, in fact, did not testify, was not called for cross
16 examination.

17 Subsequently, in Phase 3, we had the same
18 issue. Mr. Page requested that he have cross examination
19 of Mr. Oliver, so we were able to get DEP's supplemental
20 testimony relating to SOG enablement, which is, you know,
21 about four pages long, into the record.

22 In a perfect world, we probably should have
23 moved Mr. Oliver's supplemental rebuttal testimony in at
24 the end of the DEC case, but we have prepared a motion

1 which we intend to file this morning -- we've -- the only
2 -- requesting that his DEC supplemental rebuttal
3 testimony be allowed into the record. We've circulated
4 among the parties. The only change or condition was CUCA
5 consented, but wanted to move Mr. Oliver's live DEP
6 testimony, which was Mr. Page's cross and Commission
7 questions and my redirect, into the record in DEC, and
8 the Company doesn't have a problem with that. We've
9 heard from every other party who doesn't object, except
10 we have not heard from the Commercial Group or NCCEBA,
11 but we intend to file the motion this morning for the
12 Commission's consideration and just wanted to advise you
13 of that fact.

14 COMMISSINER CLODFELTER: Thank you, Mr.
15 Jeffries. I'm terribly disappointed to hear that this is
16 not a perfect world, but I guess I'll get over that
17 disappointment. You've heard from Mr. Jeffries. Unless
18 some party has an objection to the motion in the DEP
19 case, it will be allowed. It's my intent to grant that
20 motion when it is filed unless -- if anyone wants to
21 voice an objection now, I'll hear from you. As to --
22 we're on the record in the DEP case, Mr. Jeffries, so I'm
23 going to have to let you make that motion separately in
24 the DEC case, and the Presiding Commissioner, Chair

1 Mitchell, will rule on it in the DEC case, but I think
2 we've all heard you, and so speak up if anyone
3 anticipates that there will be an objection, but if not,
4 it's my intent to grant the motion in this case.

5 All right. Mr. Robinson, back to you again.

6 MR. ROBINSON: Commissioner Clodfelter, nothing
7 outside of Proposed Orders and briefs.

8 COMMISSIONER CLODFELTER: All right. Do you
9 have a suggestion that you'd like to put to the group?

10 MR. ROBINSON: Sure, Commissioner Clodfelter.
11 So the Company and the Public Staff previously conferred
12 and proposed the due date of December 4th for the filing
13 of Proposed Orders and briefs in this docket. It's my
14 understanding that this date was proposed to the parties,
15 and I'm not aware of any objection to this proposed date.

16 COMMISSIONER CLODFELTER: All right. You've
17 heard Mr. Robinson, that the date for -- proposed date
18 for Proposed Orders and Findings of Fact and Conclusions
19 of Law and for briefs would be December 4. Anybody have
20 any objection to that date?

21 (No response.)

22 COMMISSIONER CLODFELTER: Going one, going
23 twice, sold.

24 COMMISSIONER DUFFLEY: Commissioner Clodfelter?

1 COMMISSIONER CLODFELTER: Yes. I'm sorry.

2 Commissioner Duffley.

3 COMMISSIONER DUFFLEY: May I hop in here?

4 COMMISSIONER CLODFELTER: Of course you can.

5 COMMISSIONER DUFFLEY: Okay. Since we're
6 discussing the issue of briefs, when we were discussing
7 the future coal ash recovery cost, the Commission brought
8 up several concepts through various Commissioners, and
9 they include, but they're not limited to, the
10 establishment of a run rate, the creation of a rider, and
11 I believe, but I'm not positive about a return of the
12 cost of debt. So if any party has views on these, I
13 request that they address those in the briefs.

14 COMMISSIONER CLODFELTER: That's a good
15 request. So you've heard Commissioner Duffley's
16 suggestion. If you care one way or the other on those
17 topics, the appropriate place to express yourself would
18 be in your Proposed Orders and in your briefs.

19 MR. ROBINSON: Commissioner Clodfelter?

20 COMMISSIONER CLODFELTER: Yes, Mr. Robinson.

21 MR. ROBINSON: I should also probably propose
22 this to Chair Mitchell as well. Is that a request that
23 should be bridged between both the DEC and DEP briefs, or
24 is that a DEP-specific request?

1 CHAIR MITCHELL: Commissioner Clodfelter, if I
2 may?

3 COMMISSIONER CLODFELTER: You may.

4 CHAIR MITCHELL: Okay. Mr. Robinson, you all
5 may address those issues in your briefs and post-hearing
6 filings in the DEC case, as well as in the DEP case.

7 MR. ROBINSON: Thank you.

8 COMMISSIONER CLODFELTER: All right. Anything
9 further from any party?

10 (No response.)

11 COMMISSIONER CLODFELTER: If not, I want to
12 echo, although I'm not going to repeat, the thanks that
13 Commissioner -- Chair Mitchell made at the conclusion of
14 the DEC portion of this hearing. I do want to, though,
15 repeat this special shout out that we all should give to
16 the IT staff and the legal staff here at the Commission
17 and the Public Staff and at the Company for making this
18 all possible. I, for one, could not have conceived the
19 possibility of the last six weeks back in April. It just
20 wasn't something I could have imagined if you'd asked me
21 to do so. So I think their heroic labors have really
22 made it possible for us to get through these six weeks,
23 and I especially want to acknowledge all of them. I
24 don't have all the names, I can't call all the names, but

1 you know who you are, and we owe you a special -- a
2 special debt of gratitude.

3 For this phase of case, too, I also want to
4 thank everyone involved, the attorneys, as well as all
5 the non-attorney staff, for your innovation and your
6 creativity in approaching the issue of the Stipulations.
7 As you can see from the result here, we've been able to
8 process a very great deal of material and get a good
9 record established for all parties, I think, in an
10 extraordinarily short amount of time relative to what we
11 might have anticipated otherwise. So you can take this
12 one into the future and remember it for the books, and
13 maybe you'll tell your grandchildren about having done
14 this last six weeks' worth of hearings, or maybe you've
15 got something more interesting to tell them. I hope you
16 have something more interesting to tell them when you get
17 to that point. But, again, it is a unique achievement,
18 and I want to personally thank you again for this third
19 phase for having made our life a lot simpler and shorter
20 than it might have been without those Stipulations, so
21 good work, everyone.

22 With that, we will go off the record. As I
23 say, we will remain open for receiving the late-filed
24 exhibits and for any post-hearing motions that any party

1 discovers they should have made, but need to make post-
2 hearing.

3 Thank you all. If you're traveling, travel
4 safe. If not, thank you all. We are off the record.

5 (The hearing was adjourned

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STATE OF NORTH CAROLINA

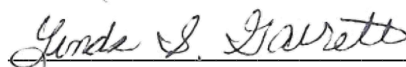
COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,
do hereby certify that the foregoing hearing before the
North Carolina Utilities Commission in Docket Nos. E-2,
Sub 1219 and E-2, Sub 1193 was taken and transcribed
under my supervision; and that the foregoing pages
constitute a true and accurate transcript of said
Hearing.

I do further certify that I am not of counsel for,
or in the employment of either of the parties to this
action, nor am I interested in the results of this
action.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 8th day of October, 2020.



Linda S. Garrett, CCR

Notary Public No. 19971700150