

1 PLACE: Dobbs Building
2 Raleigh, North Carolina
3 DATE: Wednesday, September 25, 2019
4 DOCKET NO.: E-22, Sub 562 and E-22, Sub 566
5 TIME IN SESSION: 1:02 p.m. - 2:32 p.m.
6 BEFORE: Chair Charlotte A. Mitchell, Presiding
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Lyons Gray
9 Commissioner Daniel G. Clodfelter

10
11 IN THE MATTER OF:
12 Application of Virginia Electric and Power Company,
13 d/b/a Dominion Energy North Carolina,
14 for Adjustment of Rates and Charges Applicable to
15 Electric Service in North Carolina
16 and
17 Petition of Virginia Electric and Power Company,
18 d/b/a Dominion Energy North Carolina,
19 for an Accounting Order to Defer Certain Capital and
20 Operating Costs Associated with Greensville County
21 Combined Cycle Addition

22
23 Volume 8
24

1 A P P E A R A N C E S:
2 FOR VIRGINIA ELECTRIC AND POWER COMPANY d/b/a
3 DOMINION ENERGY NORTH CAROLINA:
4 Mary Lynne Grigg, Esq.
5 Andrea R. Kells, Esq.
6 William Dixon Snukals, Esq.
7 McGuireWoods LLP
8 434 Fayetteville Street, Suite 2600
9 Raleigh, North Carolina 27601
10
11 Robert W. Kaylor, Esq.
12 Law Office of Robert W. Kaylor, P.A.
13 353 East Six Forks Road
14 Raleigh, North Carolina 27609
15
16 Horace P. Payne, Jr., Esq.
17 Assistant General Counsel
18 Dominion Energy Services, Inc., Law Department
19 120 Tredegar Street
20 Richmond, Virginia 23219
21
22
23
24

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

2 FOR THE CAROLINA INDUSTRIAL GROUP

3 FOR FAIR UTILITY RATES I:

4 Warren K. Hicks, Esq.

5 Bailey & Dixon, LLP

6 Post Office Box 1351

7 Raleigh, North Carolina 27602-1351

8

9 FOR NUCOR STEEL-HERTFORD:

10 Joseph W. Eason, Esq.

11 Nelson Mullins Riley & Scarborough, LLP

12 4140 Parklake Avenue

13 Suite 200

14 Raleigh, North Carolina 27612

15

16 Damon E. Xenopoulos, Esq.

17 Stone Mattheis Xenopoulos & Brew, P.C.

18 1025 Thomas Jefferson Street, NW

19 Washington, DC 20007

20

21

22

23

24

OFFICIAL COPY

Sep 30 2019

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

2

3 FOR THE USING AND CONSUMING PUBLIC, THE STATE

4 AND ITS CITIZENS:

5 Jennifer Harrod, Esq.

6 Margaret A. Force, Esq.

7 Theresa Townsend, Esq.

8 Office of the North Carolina Attorney General

9 114 West Edenton Street

10 Raleigh, North Carolina 27603

11

12 FOR THE USING AND CONSUMING PUBLIC:

13 David Drooz, Esq.

14 Dianna Downey, Esq.

15 Lucy Edmondson, Esq.

16 Heather Fennell, Esq.

17 Layla Cummings, Esq.

18 Gina Holt, Esq.

19 Public Staff - North Carolina Utilities Commission

20 4326 Mail Service Center

21 Raleigh, North Carolina 27699-4300

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

T A B L E O F C O N T E N T S
E X A M I N A T I O N S

PAGE

JASON E. WILLIAMS

Continued Cross by Ms. Cummings.....	7
Examination by Commissioner Clodfelter.....	12
Examination by Commissioner Brown-Bland.....	42
Examination by Ms. Townsend.....	71

E X H I B I T S

IDENTIFIED/ADMITTED

Public Staff Cross Examination	
Jason Williams Exhibit 1.....	--/77
Public Staff Cross Examination	
Jason Williams Exhibit 2.....	6/77
(Previously marked as Exhibit 4 in Volume 7)	
Public Staff Cross Examination	
Jason Williams Exhibit 3.....	6/77

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

2 CHAIR MITCHELL: Okay. Let's go back on the
3 record, please. Ms. Cummings?

4 MS. CUMMINGS: I guess before we start I would
5 just like to clarify the exhibit numbers. In the morning
6 session I referred to Exhibit Number 1, which was the
7 Executive Order and attached report. That is Exhibit
8 Number 1. And Exhibit -- I referred to in the morning
9 session Exhibit Number 4. I would like to change that to
10 Exhibit Number 2, which is Volumes 1 and 2 of the EPA
11 1999 report.

12 CHAIR MITCHELL: Okay. We will make sure that
13 change is made. Thank you.

14 (Whereupon, Public Staff Cross
15 Examination Jason Williams Exhibit
16 Number 4 was re-marked as Public
17 Staff Cross Examination Jason
18 Williams Exhibit Number 2.)

19 MS. CUMMINGS: And at this time I would like to
20 ask to enter Exhibit 3, and I will pass that out.

21 CHAIR MITCHELL: Please do so. The exhibit
22 will be marked Public Staff Cross Examination Jason
23 Williams Exhibit 3.

24 (Whereupon, Public Staff Cross

1 Examination Jason Williams Exhibit
2 Number 3 was marked for
3 identification.)

4 JASON E. WILLIAMS; Having been previously sworn,
5 Testified as follows:

6 CONTINUED CROSS EXAMINATION BY MS. CUMMINGS:

7 Q Mr. Williams, when we went off the record
8 earlier we were talking about Possum Point, and we were
9 talking about the year 1991 and the last letter in that -
10 - in that set after the cancellation of the special
11 Order. Also in those Virginia DEQ documents there was a
12 letter from 1992 that I've just passed out, and this was
13 from the State Water Control Board -- or to the State
14 Water Control Board, and it was regarding a quarterly
15 update at the Possum Point power station. Do you see on
16 this letter the bullet point marked April 24th, 1992?

17 A Yes, I do.

18 Q And that says that construction was temporarily
19 halted, and the permit to proceed with the dry ash site
20 construction was still being processed by Waste
21 Management?

22 A That is what it says.

23 Q So this quarterly report indicates that the
24 conditions of the special Order were still in progress?

1 A Well, as I stated before and provide in
2 discovery, no, the conditions were not still in progress
3 because the State had closed out that Order, and in doing
4 so incorporated any applicable requirements that were
5 remaining into the permit action which would be the 1991
6 50's permit. So, no, there were no requirements still
7 outstanding of the Order because the Order itself had
8 been terminated --

9 Q But --

10 A -- as complete.

11 Q But the conditions, I guess, of the Order were
12 ongoing?

13 A Again, for a condition to continue ongoing, it
14 has to be an actual condition, and those conditions were
15 all terminated.

16 Q Okay. I'll move on. Thank you.

17 A Okay.

18 Q Did the EPA call Possum Point a proven damage
19 case?

20 A I'm not familiar with that in front of me.

21 Q Okay.

22 A Would you reference where that is?

23 Q Well, that's mentioned in a 1999 report, but if
24 you're not familiar, I can just move on from that as

1 well. Dominion has reported 490 exceedances under the
2 CCR Rule and it has reported an additional 58 exceedances
3 at Chesapeake. Are you familiar with Mr. Lucas' exhibits
4 to that effect?

5 A Yes. I am familiar with those. It is a little
6 confusing to me, though, a couple things. One, the
7 exhibit gives no bearing to detection versus assessment
8 monitoring parameters, which is part of the CCR Rule, so
9 a large portion of those referenced exceedances for that
10 number, I can't remember what you quoted, 400 and some or
11 whatever it was, are the detection indicators which then
12 don't drive any corrective action. They just drive that
13 you go to the next monitoring.

14 Also, it was odd that there was no discussion
15 or relevance to all the prior samples. One thing I
16 thought was interesting, as stated yesterday from Mr.
17 Lucas, which you referenced his testimony, you know, he
18 said the only thing that they could make a determination
19 on was the 2016 through 2018 data we provided, and that's
20 surprising because the Company actually provided
21 spreadsheets of all groundwater monitoring going back
22 into the '80s, one spreadsheet for each site that had
23 every result, and also 20 years -- for most sites 20
24 years, 18 years' worth of annual groundwater monitoring

1 reports which evaluated SSI.

2 So it was interesting that none of that was
3 evaluated, and even the testimony or rebuttal where they
4 talk about the mismanagement or disorganization of our
5 data was such that you couldn't run trend analysis, but
6 yet some of those annual reports that we provided the
7 Public Staff, in fact, had trend analysis in them.

8 So, yeah, I'm aware of that statement. You
9 know, I'm confused as to why that number was picked and
10 not very much context put to it.

11 Q Going back to the exceedances, those are
12 standards -- groundwater protection standards based on
13 MCLs which are promulgated based on human health
14 protection?

15 A Well, not -- not only that. So the interesting
16 thing with the CCR Rule is when it was originally passed,
17 it had two standards. One was exceedances were
18 determined if there was an MCL exceedance. That's the
19 federally promulgated. For those that are familiar with
20 that list, there aren't MCLs for every metal or every
21 constituent. There's a subset. And so what the CCR Rule
22 said was if there's not an MCL, then there's a
23 statistical background analysis done to determine if
24 you've had an exceedance.

1 The interesting part in Virginia is that
2 Virginia adopted that version and has kept it. Since
3 that time the federal government has amended the CCR Rule
4 such that the background, those that don't have MCLs,
5 they promulgated new limits that would be considered for
6 exceedance. And as we've covered in my testimony a
7 number of times under the CCR Rule, if you exceed one of
8 those numbers for detection monitoring, for example, even
9 though most of those don't have MCLs, it's all
10 background, you'd move on to the next level. If you
11 exceed there, you move on to do a characterization
12 report, an analysis of the risk, and then you would
13 eventually land a corrective action which is not
14 necessarily an active remediation.

15 Q And in the times since those 548 exceedances
16 were reported, Dominion has reported additional
17 exceedances for its inactive service impoundments?

18 A Yeah. So an interesting part about the CCR
19 Rule is that when it was passed for the whole country,
20 you know, there were going to be -- for the most part,
21 the majority of the country, there was going to be new
22 constituents monitored for, so certain metals that hadn't
23 been monitored for for many years or ever. And so the
24 DEQ had you take -- or I'm sorry -- the EPA had you take

1 in the first two years eight rounds of samples.

2 And so one thing, again, with context of those
3 400 or whatever the number is specific referenced, is
4 that, you know, many of those are the result of the same
5 well, the same constituent, you know, nine, 10 times that
6 we've had the sample in the last two years, so that
7 raises the number up a lot when in reality it might only
8 be a handful of wells versus all, say, 30 wells at a
9 particular site.

10 MS. CUMMINGS: That's all my questions. Thank
11 you.

12 CHAIR MITCHELL: Any additional cross for the
13 witness?

14 MR. SNUKALS: I don't have any questions.

15 CHAIR MITCHELL: Questions from Commissioners?
16 Commissioner Clodfelter.

17 EXAMINATION BY COMMISSIONER CLODFELTER:

18 Q Mr. Williams, good afternoon.

19 A Good afternoon.

20 Q You've covered a lot of ground, and I want to
21 try to avoid repeating anything, but we'll come to a
22 couple topics that we've talked about before, perhaps.
23 And I -- there was testimony on cross exam--- on your
24 cross examination about prudence and the relationship

1 between the notion of prudence and compliance with law
2 and regulation. And I just want to hear you give me a
3 good crisp statement again what the relationship is
4 between those two things. Are they an equivalence? That
5 is to say if you comply with the law, you're prudent,
6 period, end of discussion?

7 A No. What I was referencing was the tie-in to
8 the legality. So, again, my understanding is outside of
9 my environmental expertise, but my understanding is that
10 an action must first be legal before you could consider
11 that it's prudent.

12 Q In other words, if it's -- if it's not
13 permitted or it's contrary to law or regulation, that
14 would be -- rule it out as being prudence altogether?

15 A Again, that's my limited understanding.

16 Q Got it.

17 A Yes, sir.

18 Q But if you've complied with the law and that's
19 all you've done, have you acted prudently? No further
20 inquiry is required?

21 A I believe as it pertains to this case and the
22 rate recovery that we're seeking between these years,
23 yes, I believe that is a key factor to the prudence.

24 Q A key factor, but it's not sufficient by

1 itself. It's a key factor?

2 A Of course. I would imagine there are other
3 factor--- or I know there are other factors such as cost
4 which is a big impact to the decision on what the prudent
5 pathway would be.

6 Q Right. You were asked some questions on cross
7 examination about the 1982 EPRI manual for upgrading
8 existing disposal facilities. When did you first have
9 some contact with that manual? When did you first become
10 acquainted with that?

11 A I personally have been invol--- or came in
12 contact with this report in the context of this case, so
13 during that time.

14 Q In connection with this litigation?

15 A No. In connection with the rate case. It was
16 part of the information I reviewed before preparing my
17 testimony.

18 Q Well, so before the rate case that's not a
19 document you'd had any familiarity with?

20 A Well, again, I joined the Company in 2015. I
21 wouldn't have reviewed that. However --

22 Q I understand.

23 A -- those making the decisions at the time would
24 have likely had access to this report.

1 Q That's -- "would have likely had access,"
2 that's based upon what?

3 A That we were, in the past, members of EPRI, and
4 so it's presumable that we would have gotten a copy of
5 it. That being said, I can't say for certain, but I can
6 say that the Company would have made their decisions on
7 the path forward based on all the criteria in front of
8 them, not just a single report.

9 Q Not just a single report, but certainly a
10 manual issued by the Electric Power Research Institute,
11 an important trade association, would have been something
12 they would have considered?

13 A Certainly. I think it's not a clearly
14 conclusive document on a path forward, but certainly it
15 could have been one of the many factors that were
16 reviewed.

17 Q I want to read you a statement from that 1982
18 manual, and then I'll ask you a question about the
19 statement. I'm sorry I don't have a copy to hand to you.

20 A I've got it, if you just --

21 Q You've got it?

22 A -- reference where we're at.

23 Q Okay. Well, let's see if I can find the page.

24 It's --

1 A Or I believe I've got most of it.

2 Q It's early in the manual and, unfortunately,
3 what I have in front of me doesn't give me a page to the
4 manual. It gives me a page to another -- it references
5 an exhibit, so I don't have the correct page. It's very
6 early in the preliminary statement, and I'll read it to
7 you and perhaps you can find it. This is the statement.
8 "Potential deficiencies in utility waste disposal
9 practices may be defined by two sets of standards." And
10 the first, "The disposal practice does not comply with
11 specific federal and/or state regulatory requirements."
12 And then the second bullet, "The site has the potential
13 to contaminate the environment." Have you been able to
14 find that?

15 A I found -- I'm sorry. I found the first
16 statement where it references checking compliance status
17 against federal and state. Let me just look for the --

18 Q Okay.

19 A -- additional one. Yeah. I'm having trouble
20 on this page finding it. I mean, I do -- I do see where
21 it says "Depending on the deficiencies identified, the
22 degree of upgrading could vary from minor modifications,
23 such as posting signs, to remedial action to correct the
24 environmental damage at the site. These modifications or

1 remedial actions should be developed with reference to
2 the site's unique characteristics" --

3 Q Right.

4 A -- "and subsurface conditions."

5 Q Absolutely right. And I apologize. Again, I
6 don't have the report here with you. Let me continue to
7 read --

8 A Oh, okay. I'm sorry.

9 Q -- the statement that I'm interested in. It
10 says -- let me read it again from scratch. "Potential
11 deficiencies in utility waste disposal practices may be
12 defined by two sets of standards. The disposal practice
13 does not comply with specific federal and/or state
14 regulatory requirements," and then a second bullet says
15 "The site has the potential to contaminate the
16 environment." The statement then continues, "This
17 seemingly redundant statement is important to any
18 assessment of disposal site deficiencies. Identification
19 and correction of regulatory deficiencies do not
20 necessarily preclude the possibility of past or future
21 environmental degradation by the site. Conversely, known
22 degradation cannot be corrected by simply conforming to
23 regulations."

24 Would you agree with that statement?

1 A I'm not sure I can agree in entirety to that
2 statement. That statement seems to apply to -- broadly
3 to all impoundments, but --

4 Q It does.

5 A -- but I think the specific characteristics of
6 individual sites would need to be applied.

7 Q All right. That's fair. I'm going to ask you
8 another question about that manual, but let me first ask
9 you, because we had some general discussion about these
10 EPRI manuals, do you have any familiarity with EPRI's
11 Coal Ash Disposal Manual, Second Edition?

12 A I do not have that document.

13 Q You don't have the document. Do you have any
14 familiarity with the document?

15 A I'm not familiar with particular document.

16 Q Not a document you reviewed before or are
17 familiar with?

18 A That's -- if you give me more detail, perhaps,
19 but --

20 Q Well, but --

21 A -- just based off of that information, no, sir.

22 Q -- if I told you that EPRI published a Coal Ash
23 Disposal Manual, Second Edition, in October 1981, would
24 you have any reason to think that the Company might --

1 anyone at the Company might in the past have had
2 familiarity with that document or known anything about
3 that document?

4 A So we're talking about in addition to this
5 manual that was issued in 1982?

6 Q Yes, sir.

7 A So you're talking about prior to this manual
8 here?

9 Q I'm talking about a document published in
10 October 1981 by the Electric Power Research Institute
11 titled Coal Ash Disposal Manual, Second Edition.

12 A Not that I'm aware of.

13 Q Not something you can talk about?

14 A I would not be able to talk about that
15 document. Certainly, due to my background and expertise
16 I can answer questions from it.

17 Q That's fair. No. I don't want you to
18 speculate or talk about a document you don't know
19 anything about or haven't read. That's fine.

20 Let me ask you this, did you read -- by any
21 chance did you read the testimony given by Witness John
22 Kerin in Duke Energy Carolinas' last rate case?

23 A I have not read the testimony --

24 Q Have not? That's all right.

1 A -- in entirety.

2 Q Okay. I want to go back to the 1982 manual,
3 and one of -- I'm going to ask you a question, but I just
4 want to reference what the manual says and then I'm going
5 to ask you a question in reference to that. The EPRI
6 manual reported the results of some field research about
7 practices, existing industry practices with respect to
8 coal waste management, and one of the things that the
9 report noted was that one of the most common deficiencies
10 discovered in field investigations was "Closure/post-
11 closure plans were inadequate or nonexistent." That was
12 one of the top deficiencies that they discovered in field
13 investigations, the writers of the manual.

14 So here's the question I want to put to you, is
15 did Dominion have in place from, say, 1982, 1983, mid-
16 1984, for each of its coal waste management units, did it
17 have in place a -- an approved closure and post-closure
18 plan? By approved, I mean Company approved closure and
19 post-closure plan.

20 A Yeah. So in the state of Virginia back at that
21 time in the regulation under the VPDES permits, the VPDES
22 permit and the way that program was designed is that a
23 closure plan would not be submitted and incorporated in
24 the permit or developed until you got within -- I believe

1 it was 180 days or something of that of closure, at which
2 time you would submit your plans to the State and get
3 that approval. I can say, you know, internally, as far
4 as I've been able to ascertain, the plan was always to
5 close in place.

6 Q That was the Company's plan?

7 A That was the Company's plan. That was a
8 regulatory allowed option. In fact, even as late as 2017
9 the Virginia Department of Environmental Quality issued a
10 permit to close in place an ash pond directly on the
11 Clinch River in Virginia, so we had reason to believe
12 that that would never change.

13 Q Well, let me -- let me make sure I'm very clear
14 on the question that I'm asking you. The EPRI manual is
15 talking about industry practice, not about regulatory
16 requirements.

17 A Uh-huh.

18 Q And it noted that a deficiency in industry
19 practice was closure/post-closure plans inadequate or
20 nonexistent, and my question to you is not what you were
21 required to do by the Virginia Department, but whether
22 the Company had adopted closure or post-closure plans on
23 its own.

24 A We had closure plans that we would be closing

1 these in place, those ponds.

2 Q And were those written?

3 A No. They were -- that was the common knowledge
4 of this is how we're going to close this out, and we
5 would document it in the plan when we got to that point
6 for closure.

7 Q That was sort of like an operating
8 understanding of the operations personnel who were
9 responsible for managing these waste management units,
10 but it wasn't reduced to writing anywhere?

11 A Not that I have located in records, but it was
12 a clear understanding in the Company that that would be
13 the path forward.

14 Q Okay. And that's really what I was going to
15 ask you, was have you located anything in the records
16 that documents the plans for closure and post-closure
17 activity?

18 A No, not -- not back in that time period, if
19 you're asking of the '80s.

20 Q Got it.

21 A Not in that time period.

22 Q Okay. All right. Thank you.

23 A Sure.

24 Q Let me shift a little to another topic, then.

1 When -- let me use an example, and that will help us with
2 the illustration. When the -- let's use Possum Point.
3 When ponds A, B, and C got to the point where you were
4 needing additional capacity to manage the coal waste, the
5 Company had to make a decision, presumably, at that point
6 about what to do to get that additional capacity when
7 ponds A, B, and C were no longer sufficient for your
8 needs. The Company had to make a decision.

9 A Correct.

10 Q Right. So what was the decision process? Did
11 it involve a study? Did it involve any research? Did it
12 involve any consideration of options?

13 A So it's presumable it would have looked at
14 options. The thing to remember is that that was in 1967,
15 and so in 1967 there was not a Clean Air Act, and so
16 there would not have been any serious consideration of
17 switching to, say, pneumatic or something of that nature
18 because there was no requirement at that point, there was
19 no, you know -- wasn't a viable decision at that station
20 to make some sort of conversion.

21 So when looking at that station where you have
22 all the sluicing equipment, all the investment in the
23 sluicing pumps, the pipelines, everything, you know, the
24 decision was made to move forward with the creation of

1 another pond since the property was available. We had
2 operated a pond for many years. We had no reason at that
3 time in 1967 to suspect that there was anything wrong
4 with that approach, nor is there anything wrong with it
5 now, and then the decision was made to move forward with
6 a new pond and continue sluicing.

7 So, again -- and that was done under, you know,
8 permitting with Virginia and consultation with the
9 regulators as to how to protectively do that.

10 Q The Company -- I understand what the Company
11 decided to do. The Company had other options,
12 technologies it could have considered at the time.

13 A Could you elaborate on what those would be?

14 Q Consider landfilling.

15 A Well, again, that would require a conversion to
16 dry, and I struggle with the idea of 1967 coming before
17 the Commission and asking for many millions of dollars to
18 convert wet to dry, when there was no other reason to
19 convert to dry or any negative implication or cause that
20 sluicing was not okay and a -- and a viable option.

21 Q I'm not going to ask you, I do not ask you, and
22 I would not presume to ask you to second guess what --
23 the judgment was made in 1967. I really want to know
24 about the decision making process. And what I'm really

1 getting at is were there any internal documents generated
2 that reviewed the available alternatives, the optional
3 technologies that considered the cost benefits of
4 different choices the Company could make? The Company
5 selected one. I understand what the Company selected. I
6 understand what the regulations permitted at the time.
7 My question is a different one, is did the Company
8 generate any kind of internal analysis and reduce that to
9 writing that explored the options the Company had and
10 evaluated the pros and cons of those options?

11 A So in my record search I have not identified
12 such a document. However, in talking to historic
13 personnel, I knew that they -- each time they expanded
14 they would have done some level of analysis. When things
15 are so clear black and white, I don't know that there's
16 always a requirement to do an extensive analysis. The
17 construction of an ash pond, when you already had the
18 property, owned it, had all the infrastructure to sluice
19 that ash to that pond, just a very short extension of the
20 pipe, no reason to believe that that would be a negative
21 path forward to take fully in compliance versus a very
22 expensive conversion to dry management. I'm not sure
23 that you need a spreadsheet to tell you that that's
24 significantly more costly.

1 And at that time in 1967, let's recall -- let's
2 say hypothetically we built a landfill. Well, until 1971
3 in Virginia municipal waste landfills -- I'm sorry --
4 1988 in Virginia municipal landfills did not have liners.
5 Industrial landfills trickled in after that in 1993. So
6 even if we did switch, hypothetically, to a landfill,
7 there would have been no consideration for a liner at
8 that time because industry standard, not just our
9 industry standard, but world -- or America industry
10 standard was to do unlined.

11 So, again, you're adding all these costs to
12 convert from wet to dry, and at the end of the day you're
13 going to build an unlined landfill instead of unlined
14 impoundment. It just doesn't seem that the engineers who
15 were experts in utility and coal combustion generation,
16 you know, they would not have needed a detailed analysis
17 and cost comparison to make that decision. It was
18 extremely blatant.

19 Q Your answer to my question, as I recollect it,
20 was that likely there would have been an analysis, but
21 you've not been able to locate one.

22 A And then I explained what that analysis would
23 look like. Yes, sir.

24 Q The one you haven't been able to locate.

1 A But based on conversations with the people that
2 were involved in the decisions.

3 Q Who did you talk to?

4 A I've talked to a lot of people over the last
5 four years because it's been my job to know --

6 Q About that issue.

7 A -- all the detail.

8 Q About the -- about the decision about what to
9 do when you needed to expand capacity at Possum Point.

10 A So I talked with John Cima, former engineer --

11 Q Can you spell his name?

12 A -- now retired. Cima, C-I-M-A.

13 Q Okay.

14 A I also talked with Doug Wight, spelled
15 W-I-G-H-T --

16 Q Okay.

17 A -- who was an engineer for many, many years
18 with the Company; Charles DeBusk who was in charge of all
19 of the -- largely, air pollution and ash management over
20 the Company's years, and based on information they have
21 given me, has amassed my historical knowledge of
22 operations at that site.

23 Q Did you ask any of those gentlemen whether they
24 had generated any memo or writing with respect to the

1 decisions they made based upon the analysis they did?

2 A As to -- and I realize you don't have access to
3 the discovery requests from Public Staff --

4 Q All right.

5 A -- but --

6 Q Let's save some time, then, because really
7 where I was going to go with all this is have you been
8 asked in discovery, in data requests, to produce any
9 available studies or analyses about the options for
10 additional coal ash management capacity and, if so, if
11 you were asked, did you produce them?

12 A Yeah. So there were --

13 Q It could save some time --

14 A There were a number --

15 Q -- if you can answer that question.

16 A -- of very broad requests --

17 Q Yeah.

18 A -- of anything having to do with decisions
19 around coal ash. Some were very specific to Chesterfield
20 -- I'm sorry -- Chesterfield and, I believe, Chesapeake
21 -- no -- Chesterfield, Bremo, and Possum, but in response
22 to that I reached out to a large number of people, over
23 240 hours spent pulling thousands of records together,
24 and provided them. I did not get any sort of response of

1 a decision document circulating around ABC pond at that
2 time.

3 Q Okay. I may have used an example that was not
4 a good example, but I think really where I was trying to
5 get to was --

6 A Right.

7 Q -- where we just have arrived at, which is were
8 you asked in discovery to produce any available documents
9 about those decisions, and you did do the research and
10 you did produce what you found?

11 A In the context of the question. It wasn't
12 quite as broad spectrum as what you've described -- or
13 I'm sorry. It wasn't as specific as what you've
14 described for the decision making. They only highlighted
15 -- and I'd have to go back through it all. They only
16 highlighted a couple stations where they wanted the
17 decisions leading immediately up to and beginning with --
18 I think it was the CCR Rule decision or something along
19 those lines or a certain date.

20 So there -- they didn't ask questions about,
21 from my recollection, of a record for decision analysis
22 around the historic ponds. They did ask some very broad
23 questions about groundwater, very broad questions about
24 hazard assessments, structural assessments, things like

1 that, and construction information, so we provided what
2 construction information we had. But I don't know that
3 there was a question, and if they did, I apologize for
4 misstating, but based on the 140-some discovery requests
5 full of endless questions, I don't believe they asked
6 that specific question, Commissioner.

7 However, to understand fully what we've done
8 with our ash ponds, I have asked questions around these
9 historic decisions at the sites and have not turned up
10 records.

11 Q And you have not turned up what I would call
12 analyses or a decision memoranda or options analysis or
13 cost-benefit analysis about the choices each time those
14 decisions got made. You haven't been able to locate
15 records about that?

16 A Not for the historic ponds. For the more
17 recent decisions around closure options which are the
18 subject of this rate case --

19 Q Right.

20 A -- those I have been able to find and provided
21 and were also provided in the late-filed exhibit for your
22 review.

23 Q All right. All right. Thank you. I'm sorry
24 it took me a while to get there. It was probably the way

1 I started the questioning. We could have gotten it done
2 a little more efficiently, but thank you.

3 Let me ask more generally, in connection with
4 other cases where we've considered this issue of coal
5 waste management, we've seen examples of a company, a
6 utility having generated long-term planning documents for
7 the management of coal ash waste. Did Dominion do any
8 regular planning process about its long-term strategies
9 for managing coal waste?

10 A So as a component, obviously, with our annual
11 or every two years, I forget exactly how it works, but we
12 have our integrated resource plan where we project the
13 unit operation, and in the background of that any time
14 that we project a continued operation, there would have
15 been a review of, you know, what storage would remain and
16 whether or not we would need to build additional
17 capacity. A good example is Chesterfield, where a
18 decision was made that the landfi--- or I'm sorry -- the
19 upper ash pond would reach capacity and, as such, it was
20 determined to build a landfill at that particular site in
21 the late 2000s, mid 2000s, and so that would be always an
22 integral part of continued operation.

23 Q And help me understand. Was that analysis
24 generated as part of IRP process; is that right?

1 A It would have been part of the operational
2 procedure, so the IRP would have looked at the continued
3 economics of that unit and if it would continue to
4 operate --

5 Q Okay.

6 A -- and the need to build additional storage
7 facilities would likely be a component of that, as that
8 would be a cost and a factor into the economic reasons of
9 whether we would keep operating that unit or not. I'm
10 stating that, but that's clearly not my area of
11 expertise.

12 Q But from the results of that process there
13 would have been a decision rendered that we need to do
14 something operationally at the site with respect to the
15 wastes, and that would have led to some further action or
16 analysis of what are our options at the site?

17 A That would be my understanding.

18 Q And was that documented?

19 A I can't answer that for all the ponds. I don't
20 have access --

21 Q Well, what about in the case of the
22 Chesterfield one that you use as an example?

23 A In the Chesterfield one, yes, there was
24 analysis done of -- we did not have room for a new pond,

1 so that wasn't an option. With the talk of EPA adding
2 new regulations, we didn't think a pond would be a viable
3 option in the mid 2000s to move forward with, and so
4 there was extensive analysis done on the cost of offsite
5 versus the cost of constructing a landfill and converting
6 to dry. And, again, that's outside of my expertise, but
7 my understanding is the path forward of constructing a
8 landfill and converting to dry was part of that, but,
9 again, I think some of that information is stipulated in
10 this case, so I'm not sure how further I can comment on
11 that.

12 Q Were you asked to produce in discovery -- do
13 you know if the Company was asked to produce in discovery
14 that analysis, internal analysis that was done of the
15 options for managing coal ash waste at Chesapeake in that
16 time period?

17 A Well, Chesterfield.

18 Q Chesterfield.

19 A So there --

20 Q I'm sorry.

21 A -- there were questions around the analysis and
22 the decisions that were pulled together, and we did
23 provide some information to Public Staff. I'm not sure
24 if it's every detail you're requesting, but there was a

1 request regarding the decision leading up to "x" date, I
2 believe is how they framed it.

3 Q And the Company produced in response to the
4 data request it got from Public Staff?

5 A We produced what was responsive to that
6 request. Whether or not it encompasses everything you're
7 looking for, I can't say, but certainly we have records
8 on that decision and the cost analysis because they've
9 been the subject of other cases.

10 Q Do you -- we were talking earlier about Possum
11 Point and, again, that was the earliest one. I probably
12 shouldn't have picked the earliest one, but let's start
13 with the later ones. Do you remember from more recent
14 time periods any other similar analyses or studies or
15 options analysis or cost-benefit analysis with respect to
16 the management of coal ash waste at any of the other
17 operating plants other -- or closed plants, for that
18 matter, other than Chesterfield?

19 A Yeah. In response to the late-filed request
20 there were four reports, one for Possum, Bremo,
21 Chesterfield, and Chesapeake that all analyze the options
22 during the pending CCR regs, not totally knowing what was
23 going to happen, where a cost analysis was done on the
24 closure options for those units, and that was provided.

1 And then on top of that, also provided was the
2 report for Senate Bill 1398 which was a comprehensive
3 review of all the different options for closure for
4 removal to an offsite landfill for sites that had room
5 for an onsite evaluation of what it is to build an onsite
6 landfill there, as well as just simply closing in place.

7 Q Okay. Do I understand you correctly, that
8 those, though, were generated in anticipation of the
9 effective date of the CCR Rule?

10 A Yes, sir.

11 Q Okay. What about in decade prior to that, in
12 the decade of "the aughts"? Were there any similar
13 studies or analyses of the options the Company had for
14 managing coal ash waste going forward from that point
15 that you're familiar with?

16 A Not that I'm familiar with. I can't say
17 whether or not they exist. They weren't part of the --
18 in that context of the search. Again, you know, many of
19 these ponds, you know, built in the '80s still had
20 remaining capacity to go many, many years, and so, you
21 know, at that time, let's say 10 years earlier in the
22 '90s or 2000, we would have still had -- in the case of
23 Brema I think we still had 50 or 60 years of capacity or
24 something like that in the north pond. So I'm not clear

1 where there would have been a triggering action that
2 would have made us go we need to analyze the options
3 there, because we continued to operating a lawful,
4 permitted, protective operation.

5 Q All right. And just to circle back again,
6 because I may not have been crisp enough in my question
7 about it, but in terms of the -- let's not limit it to a
8 single plant or a single waste management unit.

9 A Right.

10 Q Just as a general matter, do you recall whether
11 the Company, or do you know whether the Company had any
12 general policies or internal policies or goals or
13 strategic plans with respect to the management of coal
14 ash waste, say, in the time period from 1994 -- let's say
15 from 1994?

16 A I'm not sure I'm 100 percent clear. I'm not
17 sure if we would have had a strategic plan for the
18 management. Again, the management of each pond would
19 have been managed individually based on the station's
20 needs and operation and the power generation engineering
21 team that would have --

22 Q Right.

23 A -- projected that, so I'm not sure that I'm
24 equipped to answer that question.

1 Q Okay. Well, let me try it this way. And
2 understand that by asking the question this way, I'm not
3 making any judgment. I'm really using this to illustrate
4 for purposes of making my question clear. So one of the
5 North Carolina utilities -- one of the North Carolina
6 Duke utilities had something called a five-year strategic
7 plan for the management of coal ash which it updated on a
8 regular basis every five years, and it was a
9 comprehensive look at the management of that waste stream
10 on a company-wide basis. Did Dominion have anything like
11 that?

12 A So I really can't --

13 Q I'm making no judgment --

14 A Right.

15 Q -- when I ask the question about whether that's
16 good or bad; I just want know if you had anything like
17 that.

18 A Understood. And, you know, again, I can't
19 speak on Duke. I'm not sure what Duke had or what Duke
20 did. What I can say is that each station would have been
21 planning not just coal ash, but all their waste -- all of
22 their waste streams, where they were going to go, how
23 they were going to manage them. You know, a
24 comprehensive strategic plan, I'm unclear if we had that

1 or not. That's not something that's been requested of
2 us.

3 Q That's fair. Well, would each individual
4 generating plant have had such a plan?

5 A Each generating plant would have had a plan of
6 what they were going to do with their waste, how they
7 were going to operate in order to be able to operate
8 their station. That's the standard operating of a
9 station. You've got to have a plan for where your waste
10 is going to go.

11 Q That would have been part of the larger
12 operations plan for the entire facility, the generating
13 plant.

14 A That would be my understanding, but, again, I
15 -- you know, I don't have those here for you or have
16 requested those to go dig through find them.

17 Q Were those prepared on a regular basis and
18 reduced to writing and updated on a regular basis?

19 A I -- you know, again, I don't know that I'm
20 really equipped to answer that question, but, again, they
21 had to plan for all of their waste disposal in order to
22 operate the station.

23 Q Is there somebody who would be -- who you could
24 identify who would be well equipped to answer that

1 question?

2 A No, not off the top of my head, that would know
3 all the stations and all of these practices going back
4 through that time. If it's something the Commission is
5 requesting, it can be looked for.

6 Q I'm just asking you today.

7 A Understood.

8 Q I'm not sure what I want to ask for going
9 forward, but I'll talk to your counsel about that. We'll
10 see where we go from there. Give me a second here to
11 look at a couple of other things.

12 I asked you yesterday, I think, about the -- we
13 had some discussion, did we not, about the 2004 EPRI
14 decommissioning study?

15 A Yes, sir.

16 Q We did discuss that. You are familiar with
17 that because you have looked at it before, correct?

18 A Yes, sir.

19 Q And the 1988 EPA Report to Congress -- you were
20 asked on cross examination about the 1999 report -- you
21 are familiar with the 1988 report, are you not?

22 A Yes, sir.

23 Q And you've attached portions of that to your --
24 portions of it to -- as exhibits to your rebuttal

1 testimony --

2 A Correct.

3 Q -- correct? Okay. So that's a report the
4 Company is familiar with, and you have personal
5 familiarity with it?

6 A Yes, sir.

7 Q Great. Okay. Mr. Williams, I don't have a
8 particular point in time for this question, but it's
9 certainly a question that's pertinent to the time periods
10 before the adoption of the CCR Rule. So let's just say
11 at points in time prior to the option of the CCR Rule,
12 when the Company was using wet ponds, wet management of
13 the coal ash waste, did the Company have any
14 understanding of whether the sluicing of that ash waste
15 to the storage pond was a temporary storage or a
16 permanent disposal?

17 A So with our sites the expectation was that
18 those would be permanent disposal areas. There was never
19 a plan to redevelop or sell that property or use it for
20 another purpose.

21 Q So it was temporary storage, and then it would
22 become permanent disposal at the time of closure?

23 A I guess you could describe it that way. I
24 mean, it was intended to be permanent disposal from the

1 beginning, once that ash entered the pond, unless it was
2 transferred to another pond, as I talked about some of
3 the stations did, to manage it.

4 Q But, again, if I understand our dialogue here a
5 little -- a few minutes ago, the Company didn't develop
6 formal written closure plans for permanent disposal until
7 the time leading up to the CCR Rule, correct?

8 A There were some before that. Chesterfield had
9 a closure plan, I believe, in the 1990s that was part of
10 their VPDES permit, and that had to do with we were
11 converting from, you know, dredging and sluicing from the
12 lower pond to the upper pond because the upper pond was
13 full; we now wanted to be able to build with dry ash kind
14 of above grade and so we switched to excavating ash,
15 allowing it to set, then loading it in trucks and driving
16 it up there. So that was documented in a closure plan
17 because it was a change from what the assumed operation
18 was in the VPDES permitting of operation of a sluice pond
19 and eventual closure.

20 Q And that closure plan has been provided in
21 discovery, or was it even asked for --

22 A Yes.

23 Q -- in discovery? It has.

24 A Uh-huh.

1 Q Okay. Do you remember any others like that?

2 A They did not exist, to my knowledge, at the
3 other stations --

4 Q Okay.

5 A -- until CCR Rule drove those.

6 Q Okay.

7 COMMISSIONER CLODFELTER: Mr. Williams, thank
8 you for your time.

9 THE WITNESS: Thank you.

10 COMMISSIONER CLODFELTER: Appreciate it.

11 THE WITNESS: Thank you, sir.

12 CHAIR MITCHELL: Commissioner Brown-Bland.

13 EXAMINATION BY COMMISSIONER BROWN-BLAND:

14 Q Mr. Williams, I just have a few questions and
15 some that our staff wanted to be sure we got on the
16 record as well. I wanted to ask you about the Public
17 Staff Lucas Exhibit Number 6 which is a spreadsheet that
18 shows the installation of wastewater treatment equipment
19 at Chesterfield Units 5 and 6 and Clover Units 1 and 2.

20 A Excuse me. I'm just trying to locate those
21 exhibits. Which number did you say again? I'm sorry.

22 Q Lucas Exhibit Number 6.

23 A Number 6. Is that -- and, again, I just want
24 to make sure I have the right one. Is that the

1 spreadsheet entitled Attachment Public Staff Set 162-1?

2 Is that what it says at the top?

3 Q I believe so. I hadn't stopped to pull it out
4 myself.

5 A Yeah. Okay. They have -- my counsel has
6 confirmed that's what you're referencing.

7 Q And there it shows wastewater treatment being
8 installed for Chesterfield Units 5 and 6 in 2008 and 2017
9 and the Clover Units 1 and 2 in 2013. My question is
10 could you describe the wastewater equipment that was
11 installed, and what was its purpose and function?

12 A And, again, it's a busy spreadsheet. I just
13 want to make sure I'm answering your question. So you're
14 asking about Ches--- or let's start with Clover first.
15 You're asking about Clover 1 and 2 --

16 Q Uh-huh, in 2013.

17 A -- and the 2013. Oh, okay. Water manganese
18 removal, wastewater manganese removal, that was actually
19 -- there was a limit added to the permit that didn't
20 exist prior for discharges from the station, not ash
21 discharges. It's not associated with ash because the --
22 the FGD system is closed circuit and the other goes to
23 the landfill, but we did have a limit added for
24 magnesium (sic) that was based on, as I recall --

1 Q Manganese, right?

2 A -- or I'm sorry -- manganese, yes, that was
3 based on a new requirement placed on the receiving water,
4 where it was going. I'd have to subject to check this,
5 but I believe in subsequent permit renewals that limit
6 was altered or changed. But there was an upgrade
7 required at that point in time to meet the new permit
8 requirements that were issued under our VPDES permit,
9 again, because of a -- I believe it was a TMDL or some
10 sort of standard established for the receiving water.

11 Q And so that was for Clover, so you are -- your
12 testimony is the equipment was installed to meet new
13 regulatory requirements?

14 A That's correct. Yes, ma'am.

15 Q All right. And that took care of both units
16 there. That's what that wastewater treatment equipment
17 was about?

18 A Yes, ma'am.

19 Q Okay. And the same question with regard to
20 Chesterfield Units 5 and 6, both in 2008 and 2017.

21 A So the 2008 was the wastewater treatment for
22 the FGD. That was to comply with the new permit and the
23 installation of that unit. If you look above, there's a
24 line called Wet Scrubber that was also installed in 2008,

1 so that would have been when we began generating FGD and,
2 as such, we would have had to have had an accompanying
3 wastewater treatment system to be able to manage that
4 because we remove the gypsum. When we inject the
5 limestone, it converts -- the FGD process converts into
6 gypsum. We then recycle that into wallboard. But that's
7 a separation process, so there's a wastewater that had to
8 be managed as a result of that. So that's what the 2008
9 was.

10 The 2017 is wastewater low volume, so as I may
11 have talked about a little bit, most of these ash ponds
12 had other wastewaters that went to them, and this
13 particular case at Chesterfield is what we call low-
14 volume waste, so that would be washed down inside of the
15 station, other ancillary areas that wastewater, including
16 the FGD wastewater stream, those things went to the lower
17 ash pond. And so in knowing that the CCR Rule was being
18 issued and ultimately issued in 2015, that would require
19 the closure of those ponds. We had to install a new low
20 volume wastewater treatment system to handle all those
21 other things because they could no longer go to the low-
22 volume -- or I'm sorry -- the lower ash pond since that
23 pond would have to be closed.

24 Q Did that relate to 2008? Is that why?

1 A No. They're --

2 Q Or is this for --

3 A -- they're --

4 Q -- two --

5 A -- two separate actions.

6 Q This is 2017?

7 A Yeah. 2008 was simply because now we were
8 generating FGD, a byproduct, and then 2017 was because
9 the ponds would have to close and we had to have another
10 treatment system to meet our VPDES permit. And it all
11 coincided in 27 (sic) with significant changes and
12 upgrades to our VPDES water permit, and this was one of
13 them.

14 Q So the overall reason is still compliance with
15 change in regulations --

16 A Yes, ma'am. Yes, ma'am.

17 Q Okay. Were there studies or reports or cost-
18 benefit analysis done as a part of these decisions on how
19 to install, what to install, what was needed?

20 A I'm sure that there are. I don't have those
21 available to me. They weren't previously requested. But
22 in the case of the wet scrubber, that was a significant
23 cost and investment, so that would have been certainly --
24 potentially even provided to the Commission prior,

1 certainly have been referenced in our IRP for future
2 development due to the substantial cost.

3 And then for the low volume there was many
4 analyses because it was a piece of the overall integrated
5 ash project at Chesterfield that included the low volume
6 pond, the landfill, the conversion from wet to dry, all
7 of those steps were one project, and so those would have
8 been evaluated thoroughly.

9 Q And this goes back to the ash, although I
10 understand the explanation so far, but were there facts
11 leading to the opposite decision by Dominion not to
12 install wastewater at other coal-fired plants, wastewater
13 equipment?

14 A So with these two particular ones, the -- there
15 was not a requirement to install the wet scrubber which
16 generated the FGD at the other stations, with the
17 exception of Mount Storm went to FGD, I believe, actually
18 before Chesterfield did. So there wouldn't have been
19 that same requirement at the other stations to make those
20 upgrades to handle that.

21 And then as far as the low volume, there were
22 other changes made in the case of Possum Point where some
23 low volume went to the ash ponds, there was new low
24 volume ponds within the station footprint that were

1 added.

2 And then on top of that, at Bremono, you know,
3 with the closure of that station, there's -- there was
4 initially a plan to construct a low volume pond at Bremono
5 in the footprint of where the west pond currently was or
6 is, and so there was an analysis to build that to handle
7 future waste. However, once it became uncertain, the
8 future of the Bremono power station, those plans were put
9 on hold, and then ultimately now that we've decided end
10 of 2019 to, you know, shut down that station, we have not
11 moved forward with that plan, nor will we have a need to
12 move forward with those plans.

13 So the situations that you referenced here were
14 pretty -- or were quite unique to Chesterfield and
15 Clover.

16 Q And with regard to the other coal plants, you
17 didn't -- it was so -- is your testimony that it was so
18 unique with regard to Chesterfield and Clover that you
19 didn't need to do any studies with regard to the other
20 plants to determine whether they needed wastewater
21 treatment equipment or not?

22 A Yeah. So -- well, just to be clear, I mean,
23 every station has water treatment equipment, but these
24 specific examples, the air regulations drive whether or

1 not we need an FGD treatment, so there would have been
2 extensive analysis about what -- how we are going to
3 comply. Any time a new rule comes out or even a proposed
4 rule, you start to figure out how are we going to comply
5 with this rule. So there would have been an analysis to
6 decide -- that led to the decision of an FGD scrubber at
7 Chesterfield, but it would not have -- there were other
8 compliance mechanisms for the air pollution control. So
9 we didn't have to look at FGD treatment systems if the
10 station wasn't going to generate FGD.

11 And then for the treatment for the manganese,
12 that was specific to that waterway, and we didn't have
13 that requirement placed on the other stations so we
14 didn't need to address that.

15 Q To the extent that there are studies, reports,
16 or cost-benefit analysis leading to the decision to
17 install those wastewater treatment -- that equipment at
18 those loca--- at those plants, the Commission would
19 request that the Company find them and produce them as a
20 late-filed exhibit.

21 A So for the Clover Units 1 and 2 and the
22 Chesterfield 5 and 6?

23 Q Yes.

24 A Okay.

1 Q And also if there were studies -- I'm not quite
2 clear that we ruled that out, but if there were studies
3 that led to the decision not to install similar equipment
4 at other plants, at the other coal-fired plants --

5 A Okay.

6 Q -- we would like to get those --

7 A Yeah. And, again, I think there would not have
8 been an evaluation to install those treatments because
9 you -- those stations needed to generate those things in
10 order to do them, so -- but there would be analysis on
11 how we were complying -- how we were going to comply with
12 the air requirements, but we wouldn't have looked at the
13 waste options --

14 Q All right.

15 A -- if the waste were not going to be generated.

16 Q Okay. I follow.

17 A Okay.

18 Q Now, according to Public Staff Lucas Exhibit
19 Number 5, in 1985 the Company constructed dry ash
20 landfills at Yorktown and Chesapeake. Were those lined?

21 A Yes. Chesapeake and Yorktown have liners, so
22 at Yorktown -- and I believe we may have talked to this
23 some, but if not, I'll cover it just to make sure -- that
24 station in the early 1980s converted back to coal from

1 oil. And the previous time it had burned coal there was
2 not a Clean Air Act yet, so the Clean Air Act required
3 significant upgrades, and with those upgrades it made
4 sense that it would be collected dry. And so we
5 permitted a landfill in 1985. The regulations at that
6 time didn't require a landfill, but the county
7 conditional use permit required a liner.

8 The liner is not what you'd typically picture,
9 a synthetic liner or anything of that nature. It's
10 actually bentonite mixed in with the existing soil to
11 create a liner, but it is a liner system that we've
12 continued to operate as an existing landfill under the
13 CCR Rule, so it does meet the CCR Rules to continue
14 operating. And that site, because Yorktown has been shut
15 down, is nearly capped at this point. There's only a
16 small portion that needs to be capped.

17 Then at Chesapeake, very similar story in that
18 we wet sluiced coal, we went to oil. When we came back
19 off of oil to coal, now the Clean Air Act existed and
20 required substantial upgrades. And so we upgraded the
21 fly ash to pneumatic, completely rebuilt, I think, Units
22 1 and 2 at that time, and with it we had no space for any
23 ponds. The ponds were full. We built a landfill. And
24 that permitting was about the same time, 1985, and the

1 State required a liner there, which is a 20 mil, much
2 thinner than what's required now, HDPE liner, but
3 required that to give us separation between the historic
4 ponds it was built upon, because that peninsula was an
5 ash pond, and then the landfill was constructed on top of
6 it.

7 Q And that was which one?

8 A That was Chesapeake, ma'am.

9 Q Chesapeake. Okay. All right. So -- and
10 similar question as I asked before. Were there studies,
11 reports, and cost-benefit analysis prior to the decision
12 to make -- to construct those dry ash landfills?

13 A I would imagine there were. I don't have those
14 with me, but certainly it was a significant decision.
15 The Company, like many utilities, shifted to oil-fired
16 generation as a means to comply with the Clean Air Act.
17 And then unfortunately, due to the oil embargo starting
18 in '71, I believe, '72, the cost got so high that the
19 Company converted back because now it was justifiable to
20 do the investments that had to be done to do coal, so one
21 would presume that there was analysis done around that as
22 that was a key decision.

23 Q All right. And also on his -- Lucas' Exhibit 5
24 there, in 1995 it appears the Company constructed a dry

1 ash landfill at Clover.

2 A That's correct. Clover was commissioned in
3 1995, so that was a -- that was a brand new station, not
4 a legacy station. And by the time you fast forward to
5 the 1990s, the air requirements were such that it didn't
6 make sense to do -- the air requirements and the air
7 pollution controls that had to be in place made it much
8 more feasible to do dry management from the get go
9 because of all the collection materials or collection
10 technologies, and so a landfill was constructed because
11 that station was built with dry ash in 1995 --

12 Q And was that --

13 A -- for the fly --

14 Q -- landfill also lined?

15 A Yes. The state regulations required a liner
16 for industrial landfills when that was permitted.

17 Q And, similarly, there would have been studies
18 or cost-benefit analysis before the decision to construct
19 that?

20 A So that would have been part of the overall
21 design of the station, and yes. I mean, given the amount
22 of regulatory oversight that we would have to build a
23 brand new station, I'm confident there were cost analyses
24 on how to manage the ash, but, again -- again, most of

1 that was driven by the air pollution controls that you
2 have no option on, you have to do, to meet Clean Air Act.

3 So that was the main driver as to why we would have gone
4 dry at that site.

5 Q So with regard to the -- the dry ash landfills
6 at Yorktown, Chesapeake, and Clover, the Commission would
7 also request that any studies, cost-benefit analysis
8 related to those be submitted as a late-filed exhibit.

9 A And just to clarify, specific to the decision
10 of how CCR would be managed or coal ash managed?

11 Q Specific to the construction of those
12 landfills --

13 A Okay.

14 Q -- and making that decision to --

15 A Okay.

16 Q -- to construct them.

17 A Yes, ma'am.

18 Q And I guess similarly, would there have been
19 company analysis, reports, cost-benefit analysis as to
20 not building dry ash landfills at other locations for
21 other plants?

22 A I'm not 100 percent sure. So you're
23 referencing, say, Bremo, would there have been an
24 analysis to do a dry landfill there? That, I can't say

1 at this point.

2 Q At all the other coal-fired plants.

3 A Yeah. Again, that would have been, again,
4 based on they had room for the ponds, expansion of the
5 ponds, but as far as what analysis, I'm not 100 percent
6 sure, but we can certainly look.

7 Q Yes. If you could find out if there was, and
8 if you find that there was, we would request those
9 studies or cost-benefit analysis as a late filed exhibit
10 as well.

11 A Understood.

12 Q All right. And when I reference that the
13 Company did, that includes whether the Company had it to
14 be done by a third party or some other consultant or
15 group, if you know -- if the Company requested that there
16 be a study or an analysis, we'd also like that provided.

17 A Okay. On all the subjects we've discussed with
18 this?

19 Q Uh-huh.

20 A Okay. Yeah. I -- and I'm not sure. Some
21 analysis are done internal, some analyses are done
22 external. I'm not sure on that.

23 Q Another question, I think yesterday you told me
24 that the decommissioning plan for the landfill at

1 Chesapeake was cap in place. Do you recall?

2 A Yes. We had a solid waste permit for that
3 site, and it included a closure plan for closure in
4 place.

5 Q And what did the decommissioning plan say, if
6 anything, about the historic ash pond and the bottom ash
7 pond?

8 A Those are underneath the landfill, so the --
9 you know, those are all encompassed in that cap in place
10 of the landfill. So there was closure of, again, the
11 historic ash pond, the landfill is on top of it, so if
12 you're capping the landfill, you know, you're capping to
13 the berm, and so you're capping what's underneath it as
14 well.

15 Q So it wasn't specifically called out. It was
16 inclusive in?

17 A As it was underneath it, yes, ma'am.

18 Q All right. Is the Company currently sluicing
19 CCRs to any unlined impoundments, unlined landfills, or
20 non-CCR Rule compliant ponds or basins impoundments?

21 A We've not sluiced any ash since 2017 at
22 Chesterfield.

23 Q At all at any -- any coal-fired location?

24 A No, no. There's no longer any sluicing

1 operations of coal ash. I will just clarify one thing.
2 Under the rule, FGD is considered CCR, and so that is
3 delivered wet to ponds at Clover, but those ponds don't
4 discharge. They're closed-loop ponds. So periodically
5 the sludge is removed and disposed in the landfill, and
6 then the water is pulled back into the system to continue
7 operating the FGD system. So I just want to make sure
8 I'm fully responding.

9 Q And thank you for that. And when was the last
10 time that the Company sent CCRs to any unlined facility?

11 A So as a matter of operation we stopped sluicing
12 at Bremo in 2014, stopped in 2003 at Possum, at
13 Chesterfield -- I'm sorry -- in Chesapeake we would have
14 stopped in 2014 with the shutdown of the station. That
15 was the sluicing of the bottom ash. The fly ash was not
16 sluiced since the 1980s. Chesterfield we stopped
17 sluicing in 2017 once the wet-to-dry conversion was
18 complete and the landfill was certified by the State for
19 operation.

20 Q So the most recent time was 2017?

21 A Yes, for Chesterfield, because Chesterfield
22 required that new landfill to be constructed and the wet-
23 to-dry conversion.

24 Q So prior to that it was unlined and you were

1 sending CCRs there?

2 A Yes, ma'am. The lower ash pond, upper ash pond
3 are unlined, and we sluiced to them for a number of
4 years.

5 Q On page 16 of your rebuttal, there you talked
6 about the EPA had not regulated CCRs as hazardous waste.

7 A Yes, ma'am.

8 Q But then you state in 1980 Congress passed the
9 Bevill Amendment to exclude certain waste from regulation
10 as hazardous. Were they specifically -- were those
11 excluded ones specifically included between 1976 and
12 1980, or was it just that they had not been designated
13 until the Bevill Amendment?

14 A Yeah. As I understand the way the hazardous
15 waste reg was written initially, it was broad in nature,
16 and so some ashes with testing may have met that
17 criteria, and as such the Bevill Amendment was passed to
18 specifically exempt those materials. And then it also
19 required that EPA evaluate that decision, which is what
20 the 1988 report was in response to, which confirmed that
21 it should not be hazardous waste.

22 Q So do you know, had they been -- they had not
23 been hazardous waste before between --

24 A Well, again, to my recollection, they were not

1 specifically listed as hazardous waste, so it would have
2 been specific to the unique ash whether it would have
3 been or not. And I know there were a number of legal
4 challenges, so I'm not sure what was in effect, what was
5 not at that time. What I do know is that at the end the
6 EPA did confirm that it was actually confirmed on many
7 occasions throughout the years, most recently in 2015,
8 that it was nonhazardous.

9 Q And correct me if I'm wrong, but is it your
10 testimony that by 1988 Virginia required that all
11 Dominion stations, with the exception of Bremono, be
12 required to monitor groundwater, and not before 2000 that
13 every station was monitoring groundwater?

14 A In part, if I could just clarify a little bit.
15 The 1988 guidance was for -- broad across all
16 impoundments. It wasn't specific to Dominion's. As the
17 dates show, some of our stations started monitoring
18 groundwater before that '88. The real reason for that
19 '88 guidance was that every region was kind of making
20 their own interpretation based off of the regulations and
21 the conditions specific at the site, and so the State
22 came out with that guidance to set a standard across the
23 entire state as to how they determine if, in fact,
24 groundwater was required and how to proceed. And so that

1 was -- did come out at that time, '98, I believe, and
2 then following that --

3 Q Was it '98 or '88?

4 A Yeah. '98 is the guidance document that we
5 reference in here, I believe. Let me just double check.
6 We've got a lot of documents here. '98, yes, September
7 30, '98.

8 So our next permit renewal was when they
9 included the groundwater requirement for Bremono, which the
10 first sample wasn't taken until 2000, but that permit may
11 have been issued before that.

12 Q So I'm referencing on page 25, line 19. And
13 I'm trying to figure out if it took you 12 years to be
14 fully compliant with that -- with that guidance.

15 A No, because the guidance didn't come out until
16 '98. This is a statement that by 1988, all the stations
17 except for Bremono were required to monitor groundwater in
18 their VPDES permits. The guidance came out in '98. And
19 then that next round of permitting that was issued
20 included a groundwater requirement. And so by the time
21 that permit was issued, the wells were installed and they
22 were sampled, it was 2000 for Bremono.

23 Q So you were not required -- so by 1988, your
24 testimony is with the exception of Bremono, all the

1 stations were required to monitor groundwater. That's --
2 is that correct?

3 A That's correct. In their VPDES permits the
4 State had made a determination to require groundwater
5 monitoring at those stations, and then --

6 Q And then you say by 2000 all were monitoring.

7 A Right. So by 2000, the Bremo north pond
8 started monitoring. And then as shown, I think it's an
9 exhibit in both of our testimonies, but there's a full
10 list of the various states, because then there were
11 additional impoundments that were monitored after that.

12 Q Does that mean in between everybody -- all the
13 plants were not monitoring; is that indicating that there
14 was some noncompliance until 2000?

15 A No, no. We were never out of compliance with
16 regards to requirements to monitor groundwater. We
17 complied with our permits. The permits were the
18 mechanism to require groundwater monitoring.

19 Q I'm not clear on this one, but hopefully you
20 will be.

21 A Okay.

22 Q Are there any potential receptors near Mount
23 Storm, I guess, monitored from --

24 A No. Mount Storm is in a very remote location

1 in West Virginia. In fact, the landfill itself is over a
2 mile away from the station, that being the Phase B, and
3 there are no receptors. I believe we own thousands of
4 acres up there.

5 Q And on page 29 you stated as late as 1998,
6 Virginia DEQ's position was that extensive monitoring
7 networks were not an appropriate starting point for
8 assessing potential groundwater impacts at surface
9 impoundments. What's your support for that statement?

10 A That comes out of the 1998 guidance document
11 from DEQ, where they talk about the expenses associated
12 in this -- what I talked about earlier, the Public Staff
13 questions, about a measured step process where you
14 install an upgradient and one or two downgradients and
15 see what that tells you, and then you expand from there.
16 So that was the basis for that statement, DEQ's policy.

17 Q All right. And on page 35 you talk about
18 corrective action. What are the stations where the State
19 of Virginia has required corrective action, and when was
20 it required?

21 A With regards to the impoundments, the only
22 corrective action was at Possum Point in the mid '80s as
23 a result of the oil ash that was placed in the corner of
24 Pond Echo next to Pond Delta or Pond D. That was the

1 only corrective action required. And that material was
2 removed, and then the new Pond D was constructed in place
3 of the existing D.

4 Q And is that -- so that's all the stations?

5 A Yeah. We've had no other corrective action
6 requirements on the ponds. Now, at Chesapeake, under the
7 solid waste permit we triggered what's called corrective
8 action in the regulations. We did a risk analysis and
9 assessment of corrective measures, and the corrective
10 action selected there was monitored natural attenuation,
11 which is what the State issued a permit for us to do at
12 that station in response to groundwater concentration.
13 So there was no active remedy. There was no installation
14 of something or excavation of something. It was
15 continued monitoring for natural attenuation.

16 Q All right. And in North Carolina our DEQ --
17 our DEQ has the ability, authority to impose civil
18 penalties. Is that the same in Virginia? Does Virginia
19 DEQ do that?

20 A Yes, ma'am. They can impose penalties for
21 violations.

22 Q And has civil penalty ever been assessed by DEQ
23 -- Virginia DEQ or its predecessor against the Company?

24 A Across the entire Company or just in --

1 applicable to the ash facilities?

2 Q Applicable to the ash facilities, but in
3 Virginia.

4 A Yeah. I mean, in Virginia we've gotten
5 penalties for violations at stations across the state in
6 different locations. With regards to the coal ash
7 impoundments and the actions in front of the Commission
8 under this rate case, we have not gotten penalties for
9 those. So in the case of the Special Order in '85 or
10 '86, I'm sorry, there wasn't a penalty associated with
11 that. There was a corrective action that had to be
12 taken, but there was not a penalty, just like at
13 Chesapeake there were not penalties assessed.

14 Q So no civil penalties imposed with regard to
15 the eight plants that -- for which recovery is sought in
16 this case?

17 A No. They may have gotten penalties over the
18 years, but not penalties specific to the coal ash
19 facilities, in my memory. Again, they may have gotten
20 them for an air exceedance or perhaps a spill or
21 something of that nature, but, again, I don't have the
22 collective breadth. All I can say is that, yes, we've
23 received some level of penalties as every -- you know,
24 most companies have in the state throughout a long

1 history.

2 Q Does the Company keep documentation that would
3 show what those penalties were and why they were imposed?

4 A Yes. We do track that. As far back, I can't
5 say at this point, but, yeah, we do keep track of what
6 penalties are, and most of them are very small penalties
7 from hundreds to two, three thousand that have occurred,
8 but we do keep those and maintain that record.

9 Q All right.

10 A Again, those are -- when you look at the number
11 of permits, the number of facilities we have, the number
12 of, you know, conditions and requirements we have to
13 meet, they're by far the outlier that we have gotten a
14 penalty versus the norm. It's rare, but it does happen.

15 Q But it's your testimony that those penalties
16 had nothing to do with the Company's CCR handling?

17 A I'm not familiar, and I'm not familiar with any
18 that are tied to the CCR handling.

19 Q Do -- can you testify today of your own
20 knowledge that there were no civil penalties that dealt
21 with the CCR handling related to these eight facilities?

22 A Again, I don't have knowledge of that, but I
23 haven't done an extensive review of any other ones. We
24 did respond with anything available of violations that we

1 had received in response to a discovery request, but as
2 far as the penalties, I'm not aware of those, but, again,
3 that's subject to confirmation as I've not gone through
4 all those records.

5 Q All right. And Commissioner Clodfelter was
6 asking you about some future long-range planning kinds of
7 things. Would there not have been capital planning --
8 long-range plans related to capital planning --

9 A Yeah.

10 Q -- for the Company?

11 A I'm sure there were. And --

12 Q Would they not have included ash ponds or
13 facilities?

14 A Yeah. All of the budgetary planning would have
15 encompassed waste management, how you're going to manage
16 waste. And then as I had stated earlier, based on that
17 planning process and through our IRP process of how long
18 that station would be operating or future of it, then if
19 it was going to require additional facilities, there
20 would have been some sort of evaluation of that and
21 planning for that.

22 Q When the Company does its capital planning,
23 what -- how long is the outlook? Do you know?

24 A I really can't answer that. It's outside of my

1 environmental expertise.

2 Q All right. You don't know if it's like five
3 years, 10 years, 20 years?

4 A I'm not familiar. That would be a question for
5 another one of the Company's witnesses that has purview
6 to that.

7 Q All right.

8 CHAIR MITCHELL: We have a few questions for
9 the Company that are of a confidential nature, so I'd ask
10 that we clear the room of anyone that is not under a
11 confidentiality agreement with the Company.

12 MS. GRIGG: I don't see anybody who doesn't
13 fall under the --

14 CHAIR MITCHELL: Okay.

15 MS. GRIGG: -- confidentiality agreement. I
16 believe all parties have signed. Nucor has signed,
17 CIGFUR signed, the AG's office has signed, the Public
18 Staff has signed.

19 CHAIR MITCHELL: The questions relate to
20 insurance policies. Okay.

21 COMMISSIONER BROWN-BLAND: All right.

22 MS. GRIGG: I think we're good.

23 COMMISSIONER BROWN-BLAND: No one is rushing
24 for the door, so we're good to go.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(Because of the proprietary nature of
of the testimony found on pages 69
through 70, it was filed under seal.)

OFFICIAL COPY

Sep 30 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(Because of the proprietary nature
of the following testimony, it was
filed under seal.)

OFFICIAL COPY

Sep 30 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(Testimony on the open record resumed.)

1 CHAIR MITCHELL: We'll go back on the public
2 record. Any additional questions from Commissioners?

3 (No response.)

4 CHAIR MITCHELL: Questions on Commissioners'
5 questions?

6 EXAMINATION BY MS. TOWNSEND:

7 Q Mr. Williams, I'm Terry Townsend with the
8 Attorney General's Office. And first, to clarify, I
9 understood there's to be a late-filed exhibit regarding
10 Exhibit 5 where they're going to give a detailed
11 description -- I don't know if the Commission has
12 received that -- that Mr. Clodfelter asked of this
13 witness yesterday. It was the exhibit --

14 MS. GRIGG: Late-Filed Exhibit 6?

15 MS. TOWNSEND: Yeah. You had Late -- you had
16 Late-Filed Exhibit 5, and you were going to give more
17 detailed descriptions.

18 MS. GRIGG: It has not been filed.

19 MS. TOWNSEND: Okay. Is it available?

20 MS. GRIGG: It will be, but it has not been
21 filed --

22 MS. TOWNSEND: Okay.

23 MS. GRIGG: -- as of now.

24 MS. TOWNSEND: Okay.

1 Q All right. Mr. Clod--- or Commissioner
2 Clodfelter asked you questions about the closure of some
3 of these ponds in the past, and you said that there was
4 no written documentation for a closure plan, but it was
5 common knowledge that they would be capped in place,
6 correct, or closed in place, correct?

7 A That's a little bit broader, but in the context
8 of the historic ponds, in particular ABC in 1967 and
9 those older times, I have not come across a written
10 closure plan at that time.

11 Q Okay. Do you know how many coal ash ponds have
12 been closed in place?

13 A So, obviously, our ponds have not been able to
14 close in place as a result of the moratoriums and then
15 now the Senate Bill 1355 going forward; however, I do
16 know that there are four ponds in southwest Virginia that
17 were approved for closure by Virginia DEQ in place
18 between 2014 and 2017. Those are ash impoundments along
19 the Clinch River in Virginia.

20 Q What about in the past prior to the CCR Rule?
21 Have there been any other closures in place?

22 A Only from the perspective of ABC and pond --
23 ABC and the east pond where they were partially covered
24 and then allowed to revegetate.

1 Q All right. And is that how you would define
2 close in place?

3 A At the time that those -- at the time of those
4 when we ceased operation, that would have been a means of
5 closure, would be to allow it to naturally attenuate.
6 But then as you move forward from there, '80s and past,
7 there would have been a more of a soil cover, and then
8 eventually as the regs evolved it would have been either
9 a clay or a synthetic cap that would have gone on. So
10 there's really, you know, a continuum as the regulations
11 developed of what that closure standard would have looked
12 like. But the assumption was always that they would be
13 closed in place based on what standard it was applicable
14 to, not that they would be removed from the site or that
15 we would have used the site for something else in the
16 future.

17 Q Do you know what, if any, post-closure
18 monitoring has been done at any of these sites that have
19 been closed in place?

20 A So the sites in southwest Virginia, I believe
21 one or two of those are subject to the CCR Rule, and so
22 they -- excuse me; just a moment -- so they are required
23 to do monitoring and post online --

24 Q For 30 years; is that correct?

1 COMMISSIONER CLODFELTER: Madam Chair, in
2 connection with this witness' testimony, I'd like to
3 request some late-filed exhibits, to the extent that they
4 were not specifically requested. Commissioner Brown-
5 Bland made a number of specific requests, and I have --
6 mine are a little more general.

7 Mr. Williams testified earlier that there may
8 have been studies in connection with the conversion of
9 Possum Point and Bremo from coal-fired to gas-fired
10 units, that there may have been some analysis of the
11 conversion of those plants, and I would like to ask the
12 Company to produce any studies or reports or cost-benefit
13 analysis or option analysis with respect to the
14 conversion of those two plants from coal to gas.

15 Mr. Williams also testified today that the
16 Company had produced in discovery to the Public Staff a
17 spreadsheet, I think he said, on historic groundwater
18 monitoring data prior to the last three years, and to the
19 extent that's correct and that was provided, I'd like to
20 have that discovery offered up as a late-filed exhibit.

21 Third, Mr. Williams testified that in the
22 1990s, in connection with a permit issuance to
23 Chesterfield in the 1990s, a closure plan for one of the
24 waste management units was approved as part of that

1 permit, and I would like to ask, to the extent that
2 that's not been already produced, that it be offered as a
3 late-filed exhibit.

4 And, finally, generalizing from Commissioner
5 Brown-Bland's specific questions, I'd like to request --
6 and if they've been produced in discovery, that's fine,
7 you can file what you filed in discovery, but if they
8 haven't been produced in discovery I'm still asking for
9 them as late-filed exhibits any studies, analyses, cost-
10 benefit analyses, options analyses with respect to the
11 construction of any new coal waste management unit or the
12 replacement or expansion of any existing coal waste
13 management unit that the Company has for any of its solid
14 waste management unit -- coal -- excuse me -- coal waste
15 management units. Finally -- those would be requested
16 for late-filed exhibits.

17 Madam Chair, I'd like to ask that the
18 Commission take judicial notice of several documents
19 about which there's been testimony or at least pieces of
20 them have been put into the record, if not completely,
21 and those would include the 1988 EPA Report to Congress,
22 the 2004 EPRI report titled Decommissioning Handbook for
23 Coal-Fired Power Plants, the 1982 EPRI Manual for
24 Upgrading Existing Disposal Facilities and the 1981 EPRI

1 manual Coal-Ash Disposal Manual, Second Edition.

2 CHAIR MITCHELL: The Commission will take
3 judicial notice of the documents identified by
4 Commissioner Clodfelter, and I'd ask that the Company
5 produce as late-filed exhibits those documents requested
6 by Commissioner Clodfelter and do so as soon as
7 reasonably practical.

8 Any additional housekeeping matters to attend
9 to?

10 MS. CUMMINGS: Yes. Can we move the Public
11 Staff Williams Cross -- Rebuttal Cross Exhibits into the
12 record?

13 CHAIR MITCHELL: Hearing no objection, your
14 motion will be allowed.

15 MS. CUMMINGS: Thank you.

16 (Whereupon, Public Staff Cross
17 Examination Jason Williams Exhibits
18 1-3 were admitted into evidence.)

19 CHAIR MITCHELL: Any additional matters?

20 (No response.)

21 CHAIR MITCHELL: We will accept Proposed Orders
22 30 days from the mailing of the notice of the mailing of
23 the transcript. And with that, hearing no other business
24 from the attorneys, we will be adjourned. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MS. GRIGG: Thank you.

MR. KAYLOR: Thank you.

(The hearing was adjourned.)

OFFICIAL COPY

Sep 30 2019

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 No. E-22, Sub 562 and E-22, Sub 566, 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 30th day of September, 2019.

Linda S. Garrett, CCR
Notary Public No. 19971700150