

1 PLACE: Via Videoconference

2 DATE: Monday, November 2, 2020

3 TIME: 2:00 p.m. - 4:57 p.m.

4 DOCKET NO: SP-13695, Sub 1

5 BEFORE: Commissioner Daniel G. Clodfelter, Presiding

6 Commissioner Lyons Gray

7 Commissioner Kimberly W. Duffley

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10 IN THE MATTER OF:

11 Petition for Relief of

12 Orion Renewable Resources LLC

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NORTH CAROLINA UTILITIES COMMISSION

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

As a panel,

HAROLD T. JUDD, PHILLIP LAYFIELD, RALPH

MONSALVATGE, DAVID BALL and GAREY ROZIER

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P R O C E E D I N G S

COMMISSIONER CLODFELTER: Good afternoon everyone. We'll be in order at this point and we'll open the record in this matter. I am Commissioner Dan Clodfelter and I have been assigned by Chair Charlotte Mitchell to preside over this panel hearing. Joining me this afternoon are the other panelists, joining by remote connection are Commissioners Lyons Gray and Kim Duffley.

As is required by the State Government Ethics Act I remind the members of the panel of our duty to avoid conflicts of interest and inquire at this time from Commissioners Gray and Duffley whether they have identified any conflicts of interest.

(No response)

Okay. Madam Court Reporter, let the record reflect that on conflicts have been identified and we will proceed now to call for hearing Docket Number SP-13695, Sub 1, which is the Verified Petition for Relief filed by Orion Renewable Resources LLC, which I will refer to as Orion.

On March 9 of this year, Orion filed a Verified Petition for Relief including attachments, designated Attachments A through E. In the Petition

1 Orion complained that its proposal for a contract in
2 Tranche 1 of the Competitive Procurement Renewable
3 Energy Program of Duke Energy Carolinas, LLC, had been
4 improperly eliminated from consideration. The
5 Petition was verified by Tim Lasocki. Did I get the
6 pronunciation correct, Mr. Lasocki?

7 MR. LASOCKI: (No audible response.)

8 COMMISSIONER CLODFELTER: Got it. He is the
9 vice president of Origination Finance for Orion.
10 Certain information within that Verified Petition was
11 designated as confidential and has been so indicated
12 in the Clerk's records.

13 On April 9, 2020, the Independent
14 Administrator of the CPRE program, Accion Group, LLC,
15 which I will refer to as Accion or sometimes the
16 Administrator, filed a response to Orion's Verified
17 Petition. That response was not sworn under oath.

18 On May 26 Orion filed a reply in support of
19 the Verified Petition.

20 And on May 29th, 2020, the Public Staff of
21 the Utilities Commission filed a Motion for Leave to
22 File Comments along with unsworn comments containing
23 certain pages designated as confidential along with an
24 Exhibit Number 1 which was also designated as

1 confidential.

2 On June 12, 2020, Accion filed an additional
3 reply to the Verified Petition. That reply was also
4 unsworn.

5 In accordance with the General Statute G.S.
6 62-15(d) and Commission Rule R1-19(e) the Public
7 Staff's right to intervene in this action and
8 participate herein is recognized.

9 On October 21, the Commission accepted the
10 Public Staff's comments, granted the motion, and
11 accepted the comments and the exhibit.

12 No other parties have intervened in this
13 matter; however, on October 21, 2020 the Commission
14 ordered the joinder of Duke Energy Carolinas as party
15 to the proceeding in order that certain evidence may
16 be obtained if necessary from Duke Energy Carolinas
17 pertinent to the issues in the proceeding.

18 The Commission's October 21 Order further
19 scheduled this hearing for this date and time via a
20 remote means for the purpose of receiving testimony
21 regarding the facts and circumstances of the
22 evaluation of Orion's proposal following the time that
23 it was submitted for evaluation.

24 I want to make a few points on the record in

1 light of the fact that we are conducting the hearing
2 remotely. And I understand, unless I hear objection
3 otherwise, it's my understanding that the Clerk's
4 records reflect that all parties have consented to the
5 remote hearing. If not, let me know please now. All
6 right. By the way of an access link provided on the
7 Commission's website, each of the parties has
8 consented. In the interest of ensuring efficient use
9 of the hearing time and minimizing the potential for
10 technical difficulties, the Commission has provided an
11 opportunity for the parties to verify that they are
12 able to access this remote hearing using technology
13 provided by the Commission for the hearing including
14 the offering of technology checks of all parties in
15 advance of the hearing date.

16 We have further requested that the parties
17 connect to the remote hearing 30 minutes prior to
18 going on the record in order to check connections.
19 Throughout the course of the hearing the link will
20 remain live, so you should have no problem rejoining
21 the hearing if you are disconnected. Your link will
22 still be live. You'll come right back into the
23 meeting if you get disconnected in the same way you
24 initially joined.

1 Although we are connected through the
2 videoconference and we are not in the hearing room, it
3 is Commission's expectation that the hearing will be
4 conducted as if we were present together in the
5 hearing room and this means that we must maintain
6 order and not interfere with the court reporter's
7 ability to transcribe the hearing accurately.

8 To that end, just a few housekeeping
9 reminders about the remote hearing procedures. When
10 you are not speaking, please keep your microphone on
11 mute in order to avoid feedback. If you are not
12 participating in the examination or cross examination
13 of a particular witness, if you're not the witness or
14 you're not participating in the examination or cross
15 examination of that witness, please turn off your
16 video. That will make it easier for me and for the
17 other parties to keep track of those who are
18 participating in a particular examination.

19 If you need to be recognized or you need to
20 interrupt for an objection or any other good reason,
21 please let me and the court reporter know your name
22 before you launch into your intervention.

23 If you're going to be using a potential
24 exhibit, please for the benefit of everyone on the

1 hearing state the name of the exhibit or its title or
2 how it's customarily referred to, give the date of the
3 exhibit as it appears in the list of potential
4 exhibits filed prior to the hearing in order to enable
5 everyone to locate the document. We will then mark
6 the document for identification in the record and that
7 needs to be done before you ask any questions about
8 the document.

9 I would caution the parties that the
10 admission of any live testimony in the record in this
11 docket will not automatically bring into the record
12 any exhibits that may have been discussed or referred
13 to in that live testimony. The extent the parties
14 wish to rely on exhibits and have those made part of
15 the official record those exhibits must be identified,
16 designated, and moved into the record by the
17 sponsoring party in accordance with the Commission's
18 practice.

19 Also due to the fact that the hearing is
20 being held remotely, in the event that a party must
21 reference confidential information, we will leave the
22 video conference and we will join a private
23 teleconference line. Let me ask the counsel for the
24 parties and on behalf of themselves and their clients,

1 do all of you have the private conference line dial-in
2 information? Has that been provided to everyone?

3 MR. CRISP: Yes, we do.

4 MR. SNOWDEN: We do.

5 COMMISSIONER CLODFELTER: Okay. Great.

6 MR. SNOWDEN: Yes, we do. Thank you.

7 COMMISSIONER CLODFELTER: The party whose
8 confidential information is being discussed is
9 responsible for ensuring that only those who have
10 executed confidentiality agreements are on the
11 teleconference line. When discussion of the
12 confidential information is complete, we will then
13 leave the teleconference line and we'll go back into
14 this video conference.

15 Let me say, I know that there is
16 confidential information that the parties had
17 designated. I believe it might be possible to get
18 through this hearing this afternoon without
19 specifically referring to anything that is
20 confidential. There are numbers related to Orion's
21 bid and to the evaluation of Orion's bid that I know
22 are confidential and have been marked as such in the
23 record. However, it may be possible to talk about
24 those numbers without actually sharing the numbers

1 themselves. So if you can ask a question and give an
2 answer without referring to any of the confidential
3 numbers, we're going to try as best we can to do that.

4 At this point let me call upon the parties
5 to announce their appearances, and we'll begin with
6 the Applicant Orion or the Petitioner, I should say,
7 Orion.

8 MR. SNOWDEN: Good afternoon, Commissioner
9 Clodfelter, Commissioner Duffley, Commissioner Gray.
10 My name is Ben Snowden. I represent Orion Renewable
11 Resources LLC, the Applicant.

12 COMMISSIONER CLODFELTER: Thank you.

13 MR. LASOCKI: Hello everyone, this is Tim
14 Lasocki. I'm here also for Orion Renewable Resources
15 LLC.

16 COMMISSIONER CLODFELTER: Thanks. Mr.
17 Lasocki, you are appearing as a witness and not as
18 counsel as I understand it, correct?

19 MR. LASOCKI: Correct.

20 COMMISSIONER CLODFELTER: All right. Let me
21 just ask counsel to announce appearances and we'll
22 hear the witnesses when they're sworn in. Mr.
23 Higgins, I think you're probably next.

24 MR. HIGGINS: Thank you. Good afternoon,

1 Commissioners. Dan Higgins for the Accion Group.

2 COMMISSIONER CLODFELTER: Mr. Crisp? Can we
3 get your appearance for the record, Mr. Crisp? You're
4 on mute. You're on mute, Mr. Crisp. We can't hear
5 you, Mr. Crisp.

6 (Un-transcribable Voices)

7 MR. McCOY: We can hear you now.
8 Commissioner, they're unmuted.

9 COMMISSIONER CLODFELTER: Mr. Crisp, will
10 you announce your appearance for the record, please?

11 MR. CRISP: Yes. We seem to have lost our
12 video. I apologize.

13 COMMISSIONER CLODFELTER: We can see you
14 fine.

15 MR. CRISP: Oh, that's good. Attorney Jack
16 Crisp appearing for Accion Group.

17 COMMISSIONER CLODFELTER: Again, Mr. Crisp,
18 as I stated before we opened the hearing, we have a
19 motion for your appearance pro hac vice in this
20 proceeding. That motion has been granted and you are
21 authorized to appear pro hac vice for this proceeding.

22 MR. CRISP: I appreciate the Commission's
23 consideration. Thank you.

24 COMMISSIONER CLODFELTER: Thank you. Mr.

1 Jirak?

2 MR. JIRAK: Thank you. Good afternoon.

3 This is Jack Jirak, Associate General Counsel of
4 behalf of Duke Energy Carolinas, LLC.

5 COMMISSIONER CLODFELTER: And Mr. Dodge?

6 MR. DODGE: Good afternoon, Commissioner
7 Clodfelter, Commissioner Gray, Commissioner Duffley.
8 I'm Tim Dodge with the Public Staff. Also appearing
9 with me is Layla Cummings.

10 COMMISSIONER CLODFELTER: Thank you. Any
11 other parties need to announce their appearances? All
12 right. Thank you. Let me say a few words about the
13 scope of this hearing.

14 We really want this to be a fairly focused
15 inquiry. We have your papers and your submissions
16 that were filed prior to the hearing. You may assume
17 that the Panel has read those written submissions.
18 Now, some of those are unsworn, so I'll need to rely
19 upon counsel, to the extent you want the Commission to
20 rely upon those in making its decision you will need
21 to at the appropriate point, you will need to move for
22 those to be admitted into the record as statements to
23 the extent you need to offer those as supplemental
24 statements to supplement your oral testimony given

1 this afternoon.

2 The Commission's focus initially when we
3 noticed the hearing was on what happened to the Orion
4 proposal in step two of the evaluation process during
5 Tranche 1 of the CPRE program. As a result of some
6 late filings, there may now be a somewhat different
7 take on what the issues are going to be, so we'll hear
8 you on whatever you want to tell us this afternoon.
9 I'm not going to artificially limit you, again,
10 because there seems to be some new information in the
11 latest filings. But I would ask you -- again, you do
12 not need to repeat things that you've already put into
13 the record by sworn testimony.

14 In the normal course of the proceedings we
15 would ordinarily hear first from Orion followed by the
16 Independent Administrator, then by Duke Energy
17 Carolinas, and lastly the Public Staff, and then come
18 back to Orion for any rebuttal testimony. However,
19 given the circumstances of this limited hearing, we
20 have suggested to you through counsel that it may be
21 most efficient if we change the order of presentation
22 and instead commence with presentation from the
23 Independent Administrator, then move to Duke, the
24 Public Staff, and lastly give Orion a chance to offer

1 rebuttal. I say that in part because Orion's petition
2 is verified, and so we do have the Verified Petition
3 in this case.

4 Let me inquire, however, before we launch
5 off in that direction, whether any of the parties have
6 any objection to proceeding in that manner?

7 MR. SNOWDEN: Orion has no objection.

8 COMMISSIONER CLODFELTER: Thank you.

9 MR. CRISP: Accion has no objection.

10 COMMISSIONER CLODFELTER: Thank you.

11 MR. JIRAK: No objections from Duke Energy
12 Carolinas.

13 COMMISSIONER CLODFELTER: Great. Thank you.

14 MR. DODGE: No objection from the Public
15 Staff.

16 COMMISSIONER CLODFELTER: Fine. Mr.
17 Snowden, even though your materials -- prehearing
18 materials are verified, I think for good order sake,
19 when we get to you, I will ask you even though it will
20 be on the rebuttal case, I'll ask you to move the
21 admission of your exhibits and your sworn testimony at
22 that point just so for purposes of having a complete
23 record, we get those materials officially into the
24 record.

1 I can do that now or I can wait and do it in
2 your rebuttal case. I don't think the sequence really
3 matters.

4 MR. SNOWDEN: Yes, sir. We can do it on the
5 rebuttal case.

6 COMMISSIONER CLODFELTER: That's great. Let
7 me also advise the parties you have submitted lists of
8 proposed exhibits that you may use during the hearing.
9 I know that I have those lists here, but let me advise
10 you just because we've -- can get this out of the way
11 and you may not need to handle as much paper, the
12 Panel proposes to take judicial notice of the
13 following documents, so you do not need to move these
14 into evidence unless there is some objection.

15 The Panel proposes to take judicial notice
16 of these documents: The Request for Proposals for
17 Tranche 1 of the CPRE Program. That was not filed in
18 this docket, but it does appear in Docket SP-9590, Sub
19 0 as Attachment A to a pleading filed March 13th, 2020
20 by Stanley Solar. It's in a different proceeding, but
21 it is the Request for Proposal for Tranche 1. The
22 Commission proposes to take judicial notice of that.

23 The Commission also proposes to take
24 judicial notice of the Independent Administrator's

1 April 9, 2019 Conclusion Report on the Conclusion of
2 the Step 2 Evaluation in Tranche 1, and that was filed
3 in Docket E-7, Sub 1156. That is the docket for Duke
4 Energy Carolinas on the CPRE Program.

5 The Panel also proposes to take judicial
6 notice of the Independent Administrator's Final
7 Updated Report filed on July 23rd, 2019, on the
8 results of Tranche 1 of the CPRE Program. That was
9 also filed in Docket E-7, Sub 1156.

10 If there's any objection to the Commission
11 taking notice of those three documents, I'll hear you
12 now. If not, you can rest assured that those are --
13 will be in the record and you do not need to
14 separately move the admission of those items as
15 exhibits.

16 All right. Hearing no objection, let me ask
17 the parties are there any other preliminary motions or
18 other matters we need to take up before we begin the
19 evidentiary presentations?

20 MR. SNOWDEN: None for Orion, sir.

21 COMMISSIONER CLODFELTER: Okay. All right.
22 Then with that, Mr. Higgins and Mr. Crisp, I'll turn
23 the matter over to you.

24 MR. CRISP: Thank you. Greetings from New

1 Hampshire where we're getting snow flurries today.

2 COMMISSIONER CLODFELTER: It's bright and
3 sunny here in Charlotte. It's bright and sunny.

4 MR. CRISP: Glad to hear it. What I'd like
5 to do is introduce the witnesses for Accion and have
6 each of them in a very brief statement give their
7 background to the Commission. And then I would like
8 to have Mr. Judd offer some comments regarding two
9 particular issues that I think are of importance. And
10 then we would simply like to take questions from
11 Commissioners.

12 COMMISSIONER CLODFELTER: So Mr. Crisp, will
13 you be offering the witnesses all at the same time or
14 do you intend to take them up sequentially?

15 MR. CRISP: We're going to do it as a panel
16 if that is satisfactory to you.

17 COMMISSIONER CLODFELTER: That's great.
18 Well, then let's get them all sworn collectively. So
19 will you call their names? And if your name is called
20 as part of the Accion panel, will you please raise
21 your right hand so I can administer the oath to you?

22 MR. CRISP: Harold Judd.

23 COMMISSIONER CLODFELTER: Okay. Mr. Judd, I
24 see you.

1 MR. CRISP: David Ball.

2 COMMISSIONER CLODFELTER: Mr. Ball, I see
3 you.

4 MR. CRISP: Phillip Layfield.

5 COMMISSIONER CLODFELTER: Mr. Layfield, I
6 see you.

7 MR. CRISP: Ralph Monsalvatge.

8 COMMISSIONER CLODFELTER: Mr. Monsalvatge, I
9 see you. All right.

10 MR. CRISP: One more. Garey Rozier.

11 COMMISSIONER CLODFELTER: Keep your hands
12 up. Mr. Rozier, you are not on my screen but I see
13 that you are in attendance. I see you now. All
14 right. Will you take the oath now, please?

15 Madam Court Reporter, let the record reflect
16 that all witnesses took the oath and gave the
17 affirmation.

18 HAROLD T. JUDD, PHILLIP LAYFIELD,
19 RALPH MONSALVATGE, DAVID BALL and GAREY ROZIER;
20 having been duly affirmed,
21 testified as follows:

22 COMMISSIONER CLODFELTER: All right, Mr.
23 Crisp, you may proceed.

24 MR. CRISP: The way I would like to start is

1 just for each of our panelists to give a very brief
2 background for the benefit of the Commissioners so
3 they will understand the qualifications of these
4 individuals.

5 DIRECT EXAMINATION BY MR. CRISP:

6 Q Beginning by Mr. Judd.

7 A (Mr. Judd) Good afternoon, Commissioners. I'm
8 pleased to be with you again even though it's
9 remote. I am Harry Judd. I'm the Independent
10 Administrator of the program. I started in the
11 electric utility field as a state consumer
12 advocate back in the -- I suppose I should be
13 embarrassed to say back in the late '70s. Since
14 then I served as an energy counsel in the White
15 House. I served in the solicitor's office at the
16 Department of Energy. And I was a senior citizen
17 attorney general for a state where I represented
18 the Public Utility Commission among other
19 agencies.

20 In 2000, I cofounded Accion Group.
21 Since then we have served as independent
22 evaluator or in this case Independent
23 Administrator of over 100 solicitations for
24 commissions across the country. We have done so

1 in twenty -- in evaluating power supplies in 23
2 different states and from three different
3 countries.

4 We were honored to be selected to
5 be your Independent Administrator and we're
6 pleased to be here today to address this issue.
7 Thank you.

8 Q Next I'll call on David Ball.

9 A (Mr. Ball) Hello. I'm David Ball. I have an
10 undergraduate degree in economics and a master's
11 in business administration and over 40 years of
12 experience in the electric utility industry with
13 economic analysis as my primary focus.

14 Q Thank you, David. Phil Layfield?

15 COMMISSIONER CLODFELTER: Mr. Layfield, you
16 are muted. You will need to unmute yourself.

17 (Pause)

18 We're not able to hear you, Mr. Layfield.

19 MR. CRISP: Why don't I -- why don't I move
20 onto another panelist and in the meantime maybe Phil
21 can get his audio going. It appears to be muted at
22 the moment.

23 COMMISSIONER CLODFELTER: All right.

24 Q The next is Ralph Monsalvatge. I apologize,

1 Ralph.

2 MR. JUDD: Monsalvatge.

3 A (Mr. Monsalvatge) No. Quite okay. I'm Ralph
4 Monsalvatge and I've got approximately 35 years
5 worth of utility experience, 22 years in
6 generation planning cost of benefit modeling.
7 And with respect to academics, I have a masters
8 in electrical engineering.

9 Q Thank you, Ralph. And last Garey Rozier.

10 COMMISSIONER CLODFELTER: Mr. Rozier, you
11 are also on mute.

12 A (Mr. Rozier) Thank you. Good afternoon.
13 Commissioners, I worked 45 years at Southern
14 Company in roles in system planning, integrated
15 resource planning, power procurement, power
16 sales, certifications, and a lot of appearances
17 before everyone of the retail operating company,
18 Public Service Commissions in that role.

19 Q Thank you, Garey. Phil, let's try you again.
20 Phil, we're still not able to hear you.

21 COMMISSIONER CLODFELTER: It's not working.

22 MR. JUDD: Commissioner, would it be -- this
23 is Harry Judd. Would it be beneficial if I simply
24 stated Phil's background?

1 COMMISSIONER CLODFELTER: That would be
2 fine. Let's make sure that he has the -- if he's
3 trying to use a dial-in number for the audio
4 connection, if he's trying to use a phone, we may need
5 him to check with John McCoy to be sure he has the
6 correct phone number.

7 MR. JUDD: It appears, Commissioner, that he
8 is attempting to join by telephone.

9 COMMISSIONER CLODFELTER: It appears that he
10 is as well, but somehow or another that's not coming
11 through. I'm not sure whether he had the right phone
12 number or not.

13 MR. JUDD: Well, I'm going to suggest again
14 that I simply state Phil is our lead transmission
15 analyst and has worked across the country as well as
16 internationally on system designs for transmission and
17 distribution systems. He works through Tranche 1 and
18 Tranche 2 with us as well as has worked with us across
19 the country for a better part of 20 years. You can
20 tell by the hairline that he's been at this a long
21 time.

22 COMMISSIONER CLODFELTER: Likewise.

23 MR. CRISP: (Laughing) Phil, if you're able
24 to hear me, I'd like to suggest that you get in touch

1 with John McCoy to make sure you have the correct
2 number to dial in if you're going to try to
3 communicate by phone.

4 All right. Moving along, the memo that we
5 received from Attorney Hicks indicates that there are
6 three questions that the Commission is primarily
7 concerned with. In an effort to move this along as
8 efficiently as possible, I'm going to try to address
9 each of those questions. First is whether the
10 proposal is evaluated by the DEC T&D Team and if so,
11 under what processes and standards.

12 The answer to that question is that it was
13 evaluated by the DEC T&D Team. The evaluation was
14 done after Accion had mistakenly requested security
15 from Orion and it was done without Accion's knowledge
16 and the information was never shared with Accion. So
17 we could inquire of Duke as to what their team did.
18 That is what happened.

19 What resulted from the DEC T&D Team's review
20 of the proposal in Step 2 since it never reached
21 Accion? As far as Accion is concerned nothing ever
22 happened with it.

23 How the results of the DEC T&D Team's review
24 were then used by the Independent Administrator in its

1 final evaluation of the proposal? And since the
2 information never arrived to Accion it was never used
3 by Accion in its evaluation. And that's the answer to
4 those three questions.

5 COMMISSIONER CLODFELTER: Mr. Judd, I need
6 to ask you since you are the witness whether you adopt
7 your counsel's summary of the statement as your own
8 testimony?

9 MR. JUDD: I do, sir.

10 COMMISSIONER CLODFELTER: All right. Very
11 good.

12 MR. CRISP: What I would next like to do
13 unless, sir, you have a question of Mr. Judd, I think
14 that one of the important considerations here is
15 forming a clear understanding of two terms that are
16 being used in this situation. One is "net benefit"
17 and the other is "avoided cost". And I'm not
18 suggesting that the Commission is not familiar with
19 those terms, but I think it's important to have a
20 clear understanding of their meaning in the context of
21 this particular project and in terms of the Accion
22 methodology.

23 So I will ask Mr. Judd to address that
24 particular issue.

1 A (Mr. Judd) Thank you, Commissioner. As Attorney
2 Crisp said, we understood going beyond the three
3 questions that were laid out for us to address
4 that the issue before the Commission is how we
5 could -- avoided costs be defined for purposes of
6 CPRE. And that is should it be the net benefit
7 to customers based on a detailed hourly analysis
8 over the 20-year PPA contract for the CPA --
9 excuse me -- CPRE context or if the pre-earned
10 definition should be used. And as we said in our
11 initial pleadings, we will welcome the
12 Commission's guidance on how to proceed.

13 In the CPRE program we rank bids
14 using the pricing and the hourly production
15 profiles provided by the bidders, and then we
16 compare that with the hourly avoided cost data
17 that we received from Duke for every hour of
18 every day for a 20-year period. That was
19 different than the guidance given in the RFP and
20 on a bid form, but I think it's useful for the
21 Commissioners to understand that we did an hourly
22 analysis, 8760 minus 20 years. In doing that our
23 goal was to meet the requirements that all the
24 bids that we selected and recommended to Duke for

1 contract are at or below Duke's forecast of
2 avoided cost for the entire 20-year period.

3 The statute, the relevant statute
4 here for CPRE does not require Duke or the IA to
5 select each and every bid that is presented as
6 being below avoided cost, but rather we
7 understand our goal is to seek the least cost
8 alternative for ratepayers. We understand that
9 the 20-year avoided cost projections that were
10 provided to us by Duke are in keeping with the
11 Commission's approved methodology as required by
12 the statute.

13 Further, we understand that in
14 identifying the least-cost option for customers,
15 that is less -- the least cost compared to the
16 alternative which was the avoided cost defined by
17 Duke, but noted we used the data provided by the
18 bidders. And I think it might -- the
19 Commissioners might appreciate that what we
20 require of bidders was an 8760, that is the
21 hourly data, for every year of the 20 years. We
22 didn't simply take one year and extrapolate, but
23 rather we said you tell us what you think your
24 production profile will look like for the entire

1 term. Therefore, we were able to compare that
2 and align it with the data we received from Duke
3 and doing that produced the net benefit.

4 That is the calculation of the
5 cost of the bid comparing it with avoided cost
6 for the entire year and that net benefit is
7 synonymous with the term "avoided cost" as it's
8 used in the electric utility industry. Putting a
9 little finer point on it, a positive net benefit
10 provides savings for a customer -- customers of
11 all, and a negative net benefit does not provide
12 that benefit.

13 We've used this methodology, this
14 industry-recognized standard, because I know in
15 over a hundred RFPs across the country included
16 --

17 MR. SNOWDEN: Mr. Clodfelter, I'm sorry,
18 this is Ben Snowden. I'm from Orion.

19 COMMISSIONER CLODFELTER: Yes, Mr. Snowden.

20 MR. SNOWDEN: I'd like to object to
21 Mr. Judd's testimony at this point. The Commission
22 noticed this hearing to address certain specific
23 factual issues and Mr. Judd appears to be taking the
24 opportunity to offer additional argument beyond what

1 was contained in the briefs. Thus far he's been
2 discussing and trying to clarify, I think, issues that
3 were previously discussed in the briefs and in the
4 IA's filings, and I have not objected, but Mr. Judd
5 appears to be going to entirely new territory with
6 this discussion.

7 COMMISSIONER CLODFELTER: Mr. Crisp, do you
8 want to respond?

9 MR. CRISP: I think that the two critical
10 issues that the Commission is wrestling with or may be
11 wrestling with or is certainly considering are net
12 benefit and avoided cost. And I think Mr. Judd is
13 trying to explain to the Commission exactly how those
14 terms were utilized in their review and analysis of
15 each of the biddings including Orion's. And I think
16 that the explanation will be a benefit to the
17 Commission if Mr. Judd is allowed to conclude. And I
18 will assure the Commission that he is almost done
19 because I know exactly what he has left to say.

20 (Laughing)

21 COMMISSIONER CLODFELTER: Let me tell you
22 what I think we need to do here. Mr. Snowden, I
23 appreciate your objection, but in part we're having
24 this hearing, we asked the parties to address some

1 very specific questions and that is correct, but we're
2 also having this hearing in part because a lot of what
3 we had was not sworn testimony in the record and we
4 needed to be sure we had it under oath before we
5 started making decisions based upon that. So I'm
6 going to allow Mr. Judd to complete his answer. I'm
7 going to give you similar latitude of course. Again,
8 your testimony was put in in a sworn form, but I'm
9 going to give you similar latitude when we get to you.
10 I think Mr. Judd has answered the specific questions
11 we wanted to explore, but again, he's also talking
12 about matters that were covered in the prehearing
13 unsworn filings, so I'm going to let him conclude
14 that.

15 MR. SNOWDEN: Thank you, Commissioner.

16 A (Mr. Judd) As I said we used net benefit and
17 avoided cost synonymously. In Tranche 1, the
18 Orion bid as it was presented in our filings
19 already was ranked last of the 55 bids. In
20 Tranche 2, Orion again bid the project and was
21 awarded a PPA on October 15th of this year.

22 If the Tranche 2 executed PPA is
23 replaced with a contract using the pricing that
24 was bid in Tranche 1, there will be significant

1 increase in total cost to customers. No --

2 MR. SNOWDEN: Commissioner Clodfelter, I'm
3 sorry. This is Ben Snowden, again.

4 COMMISSIONER CLODFELTER: Mr. Snowden?

5 MR. SNOWDEN: I apologize. I will object,
6 again. This is definitely going beyond the scope.
7 Orion's participation in Tranche 2 is a matter that is
8 outside the scope of any of the filings so far in this
9 matter. If the Commission has questions regarding
10 Orion's participation in Tranche 2, we're happy to
11 have that discussed at this hearing. However, we
12 would ask if we go into those issues that we be
13 allowed to -- excuse me -- to file a supplemental
14 response if it's necessary.

15 COMMISSIONER CLODFELTER: Mr. Snowden, I am
16 going to let Mr. Judd just finish out the current
17 answer. I think I -- I think he's almost done. But I
18 think it's a pertinent topic because when we get to
19 your case, I think we will have some questions with
20 you about how the outcome of Tranche 2 might come into
21 play in this proceeding.

22 MR. SNOWDEN: Thank you.

23 COMMISSIONER CLODFELTER: We're going to
24 give you a chance to address the topic as well.

1 MR. CRISP: I would only add that it is
2 relevant since it relates specifically to the remedy
3 that they're asking for, so -- I think Mr. Judd is
4 done.

5 A I am Commissioner. Thank you.

6 MR. CRISP: The last thing I would like to
7 do is ask that the written submissions that were not
8 under oath be admitted as exhibits or considered
9 submitted. I don't know the appropriate terminology
10 in North Carolina. But we would like to have them
11 fully considered. And --

12 COMMISSIONER CLODFELTER: All right.

13 MR. CRISP: -- Mr. Judd is the author of
14 each of those filings.

15 COMMISSIONER CLODFELTER: Mr. Crisp, I had
16 several of those that we referred to in the opening
17 statement, and so we're going to need to identify
18 those for the record and get them designated. The
19 first of those would be -- let me retrieve my notes
20 from that.

21 MR. CRISP: It would be the Independent
22 Administrator Response to the Verified Petition and --

23 COMMISSIONER CLODFELTER: And that was
24 dated --

1 MR. CRISP: April 9th.

2 COMMISSIONER CLODFELTER: -- April 9, 2020.

3 All right. It will be designated as Accion Exhibit 1
4 for purposes of this proceeding.

5 (WHEREUPON, Accion Exhibit 1 is
6 marked for identification.)

7 MR. CRISP: And there is the Independent
8 Administrator's Response to an Additional Reply by
9 Orion, and that is dated June 12th -- June 11th.

10 COMMISSIONER CLODFELTER: All right. And
11 that document then will be designated as Accion
12 Exhibit Number 2.

13 And these are matters that are of record in
14 the Clerk's office, Ms. Mitchell, so we'll be able to
15 retrieve those from the Clerk's docket and get them
16 appropriately designated in the record. Okay.

17 (WHEREUPON, Accion Exhibit 2 is
18 marked for identification.)

19 MR. CRISP: And --

20 COMMISSIONER CLODFELTER: Mr. Crisp --

21 MR. CRISP: -- the confidential attachment
22 filed on October 28.

23 COMMISSIONER CLODFELTER: All right. And
24 that is the submission made on October 28, 2020 and

1 that will be designated as Accion Exhibit Number 3.

2 (WHEREUPON, Accion Exhibit 3 is
3 marked for identification.)

4 MR. CRISP: And at this point I'm hoping
5 that Mr. Layfield has resolved his audio / technical
6 problems. I am here to entertain questions from the
7 Commission so that it can get the information and the
8 answers it needs to make a fully-informed and
9 appropriate decision.

10 COMMISSIONER CLODFELTER: Let's see if we
11 have Mr. Layfield back with us. Mr. Layfield, can you
12 hear us?

13 MR. CRISP: I see him -- well, I see his
14 name here. I don't know what that means. We're
15 certainly prepared to go forward whether he is able to
16 join us or not.

17 COMMISSIONER CLODFELTER: All right. Well,
18 it appears he is having, again, difficulty with the
19 audio. All right. Let's proceed then and hopefully
20 we'll get Mr. Layfield with us shortly. Let me ask
21 the other parties are there any questions for this
22 panel? Mr. Jirak, do you have any questions?

23 MR. JIRAK: I do not have any questions at
24 this time, Commissioner.

1 COMMISSIONER CLODFELTER: Okay. I'm going
2 to go a little bit out of order. Mr. Dodge, because
3 of the odd procedural posture we're in here, I'm going
4 to take you next rather than last. Does the Public
5 Staff have any questions for the Panel?

6 MR. DODGE: We do not have any questions.
7 Thank you.

8 COMMISSIONER CLODFELTER: All right. Mr.
9 Snowden, we're with you then. Any questions for the
10 Panel?

11 MR. SNOWDEN: Yes, sir, I do.

12 COMMISSIONER CLODFELTER: Okay.

13 CROSS EXAMINATION BY MR. SNOWDEN:

14 Q Okay. And I guess I will address these questions
15 to the panel where in general and if I have
16 questions for a specific witness, I'll address
17 the specific witness.

18 So can you all confirm the Orion
19 proposal was advanced to Step 2 of the CPRE
20 Tranche 1 process. We established that; is that
21 right?

22 A (Mr. Judd) Yes.

23 Q And they posted their \$1.488 million in bid
24 security to advance to Step 2?

1 A Subject to check on the number, that is correct.
2 They did post bid security -- proposal security.

3 Q Thank you. And under the terms of the RFP, the
4 Step 2 analysis was intended to determine the
5 upgrade cost that would be associated with each
6 proposal; is that right?

7 A Yes.

8 Q And that analysis would be done by Duke's
9 Transmission and Distribution Evaluation Team?

10 A Yes.

11 Q And that would be done in the Grouping Study; is
12 that right?

13 A It would be done in the DEC's T&D team's
14 approach. You know Ben, that we've had some
15 discussion in the stakeholders' sessions and
16 otherwise as to when a Grouping Study is
17 required, so if you want to go deeply into that,
18 we certainly can, but it was to be evaluated by
19 the T&D Team.

20 Q Thank you. And it was necessary to determine a
21 project's upgrade cost in order to rank the CPRE
22 proposals in terms of their total benefit to
23 ratepayers; is that right?

24 A I'm sorry. I don't think that is correct. It

1 was -- we did our evaluation and our ranking in
2 Step 1. If it were evaluated in Step 2,
3 identified system upgrade costs would be imputed
4 and provided to the IA for reranking. But as you
5 know, it was not reranked, because we did not
6 receive any system upgrade costs on the Step 2
7 analysis.

8 Q Understood. I'm sorry. I'm speaking generally.
9 In that reranking that you mentioned, the T&D
10 system upgrade costs were part of the data used
11 to do the reranking; is that right?

12 A For those proposals that were reviewed in Step 2
13 and the data provided back in -- yes. I don't
14 mean to be semantical, Ben, but you know there
15 were a whole lot of bids that dropped out and
16 they weren't ranked either, so beyond Step 1.

17 Q Thank you. And the reranking for the projects
18 that were reranked would be done by the
19 Independent Administrator using the information
20 on upgrade costs provided by the Duke T&D Team;
21 is that right?

22 A if I understand your question, it's -- when a
23 Step 2 analysis was done and provided to us, we
24 would then rerank the bids, yes.

1 Q Using the information -- in addition to using the
2 information generated by the IA, you'd also use
3 the system upgrade cost provided by Duke; is that
4 right?

5 A Yes.

6 Q Okay. And calculation of upgrade cost was also
7 necessary to determine whether particular bids
8 exceeded the awarded cost cap, wasn't it?

9 A I don't agree with that statement. As you know,
10 if it wasn't evaluated, we didn't use the data.

11 Q Okay. You did say earlier didn't you that when
12 you were -- Mr. Crisp was asking you questions
13 that the Independent Administrator used net
14 benefit and avoided cost synonymously; is that
15 right?

16 A I did state that, yes.

17 Q Okay. And you're aware though that the
18 Commission's Rules on CPRE state avoided costs
19 could be assessed by reference to the published
20 avoided cost rate, are you?

21 MR. CRISP: I couldn't understand your
22 question. You kind of broke up.

23 Q I'm sorry. Okay. You're aware that North
24 Carolina -- I mean -- I'll back up. You stated

1 that you used net benefit and avoided cost
2 synonymously because that's how you would employ
3 those terms in previous RFPs; is that right?

4 A (Mr. Judd) In other RFPs and in this one, yes.

5 Q But you're aware that North Carolina has its own
6 definition of avoided cost for purposes of CPRE,
7 are you not?

8 A It's our understanding the definition is the
9 avoided cost in 20 years that use the methodology
10 for determining avoided cost that was approved by
11 the Commission. That's the data that we used.

12 Q Are you aware that -- or would you agree that the
13 Commission Rules provide that avoided cost is to
14 be assessed relative to the published avoided
15 cost rate?

16 A I candidly, Ben, don't know the difference
17 between what was approved by the Commission and
18 what was published. And I think perhaps you can
19 help me with the definition. The dependency
20 of -- again, data provided by Duke that was, we
21 understand, calculated using the approved
22 methodology.

23 Q Understood. So when you say the data provided by
24 Duke, you're talking about an 8760 20-year hourly

1 forecast of avoided cost; is that right?

2 A Yes.

3 Q But that data, those hourly data, are not
4 published, are they?

5 A I can't answer that. I don't know that.

6 Q Have you not stated in the past that it would be
7 inappropriate to make that data available to
8 bidders because it would allow bidders to gain
9 the system with their bid construction?

10 A We have supported Duke's position of not
11 releasing that information the 8760 --

12 (WHEREUPON, due to audio feedback,
13 the Court Reporter requested the
14 witness to repeat his answer for
15 the record.)

16 A Okay. I understand the question to be whether we
17 understood that the 20-year 8760s were published,
18 and then further on the question was that we said
19 that we did not support releasing that data
20 because that was Duke's position because it could
21 be used to gain the system in providing
22 production profiles that matched up with that
23 information. And, yes, we did take that
24 position. And the buckets if you will in Tranche

1 1, there were three, there were nine in Tranche
2 2, were a compilation of many periods reduced to
3 provide values on avoided cost for a limited
4 number of pricing periods.

5 Q So you're aware that the 8760 hourly data was not
6 made public to bidders; is that right?

7 A You know, Tim -- I'm sorry -- Ben, I'm not sure
8 of that because I'm never certain of what
9 information has been released under protective
10 orders of the Commission because I do know that
11 data that is provided confidentially can be
12 provided to parties who execute confidentiality
13 agreements. So it was not published as part of
14 the RFP though and it was not published on our
15 website and made available to all bidders.

16 Again, I'm not trying to be
17 difficult. I'm saying I don't know what each of
18 the --

19 Q Understood. Understood.

20 A -- (inaudible).

21 Q But your understanding is that it was not made
22 generally available; is that right?

23 A It was not made available as part of the RFP;
24 that is correct.

1 Q And the published avoided cost rate is as the
2 name suggests, a published rate; is that right?

3 A I would hope so, yes.

4 Q Okay. So those are two different things, aren't
5 they?

6 A They may or may not be, but I don't -- again, the
7 definition of what's published as opposed to what
8 is released as confidential information I suggest
9 you might ask counsel for DEC or someone who does
10 more practice before this Commission.

11 Q But you don't disagree that there is such a thing
12 as a published avoided cost rate?

13 A The terminology is out there so there must be,
14 yes.

15 Q Okay. Thank you. Going back, you indicated
16 previously that Orion's proposal was erroneously
17 advanced to Step 2; is that right?

18 A That is correct.

19 Q And it's your understanding that DEC did, in
20 fact, include Orion's proposal in the Step 2
21 analysis but you never received the information?

22 A Actually, Ben, I was -- I was premature in my
23 answer. Permit me to correct. They were asked
24 to post proposal security as were others, and

1 that was the error. We should not have been
2 asked for the proposal security. They were not
3 advanced to Step 2. We did not ask the Duke T&D
4 Team to analyze the proposal.

5 Q Okay. I'm sorry. I must've misunderstood. I
6 thought you testified a few minutes that Duke
7 did, in fact, conduct a Step 2 analysis of the
8 proposal but that you never saw the results. Is
9 that not your testimony?

10 A We -- well, I believe that counsel said that.
11 But we were told subsequently that in
12 anticipation of the proposal being submitted to
13 the Step 2 T&D Evaluation that the T&D Team had
14 done some preliminary review. We did not ask
15 them to do that. We advised them that we had
16 requested proposal security, which was in keeping
17 with our practice that for all proposals when we
18 asked for proposal security we advised the T&D
19 Team so they could isolate if you will those
20 particular projects and have them teed up for
21 review. But we did not ask for it and we did not
22 receive that information during our Tranche 1
23 evaluation.

24 Q So you informed Duke that the project had been --

1 had posted its proposal security; is that right?

2 A No, sir. We advised them that we had requested
3 the security. We did not advise them that it had
4 been posted.

5 Q Okay. Did you advise Duke to withdraw the
6 project from the Step 2 T&D evaluation?

7 A We didn't ask them to include it, so therefore
8 no, we did not ask them to withdraw it.

9 Q So you never received any information about
10 system upgrade costs for the project from Duke?

11 A Not exactly. We understood that there was a
12 baseline cost that any project company at the T&D
13 level -- excuse me -- at transmission level would
14 incur. And that was a blanket across the board.
15 It was not specific to that proposal.

16 Q And what was that baseline cost?

17 A Approximately \$450,000.

18 Q And you received that information from DEC; is
19 that right?

20 A Yes.

21 Q Okay. But that was not specific to the Orion
22 project; is that right?

23 A That is correct.

24 Q So to your knowledge no determination of the

1 system upgrade cost associated with the Orion
2 project was made by Duke?

3 A I didn't say that, I said that it wasn't shared
4 with us. So I think Mr. Piper is a witness and I
5 think he can tell you what they did. I can tell
6 you what we knew and when we knew it, but I
7 can't -- he's not my witness. I can't testify to
8 what he did.

9 Q Understood. Thank you. What did you know and
10 when did you know it?

11 A Howard Baker lives on. (Laughing) Again, we --
12 or you're asking the date on when we learned
13 that?

14 Q Approximately. The precise dates are really not
15 necessary at this point.

16 A Mr. Ball, do you remember? I don't. Because
17 again, we didn't ask for the evaluation. My
18 memory is it was after we had concluded Tranche
19 1, but perhaps someone else on the panel recalls.

20 A (Mr. Ball) This is Dave Ball. Mr. Judd, I think
21 you're asking me -- (technology feedback) -- cost
22 estimate for Orion on Tranche 1?

23 A (Mr. Judd) You're breaking up, David. Could you
24 repeat?

1 A (Mr. Ball) I'm sorry. Is the audio okay now? I
2 think I followed the question to be when did
3 Accion --

4 COMMISSIONER CLODFELTER: Mr. Ball, our
5 court reporter is still having trouble with you, still
6 having trouble hearing you.

7 A I apologize. It all checked out fine on the
8 audio test.

9 COURT REPORTER: I think -- excuse me just
10 one second. I see several people are unmuted and I
11 think that's the problem.

12 COMMISSIONER CLODFELTER: Again, if you are
13 not speaking, please put your microphone on mute.

14 A (Mr. Ball) Okay. Thank you. Can you hear me
15 now? Thank you. I think the part -- I wanted to
16 clarify that the question was when did Accion
17 receive the T&D evaluation for Orion's Tranche 1
18 proposal. Is that the question?

19 Q That will do, yes.

20 A And I have general knowledge of that. It's not
21 my technical area. Mr. Layfield is the T&D
22 person, but I think the answer is well past the
23 conclusion of Tranche 1.

24 Q Okay. So Mr. Ball, Accion did ultimately receive

1 a calculation of upgrade costs for the Orion
2 proposal?

3 A Like I said earlier, it's not my area of
4 expertise, that Mr. Layfield could answer that.
5 But I do know it was well past the conclusion of
6 Tranche 1 and it may have been as recently as
7 last month or two. I'm just not sure.

8 Q Okay. So you don't recall specifically whether
9 Accion received information about the Tranche 1
10 Step 2 analysis for the Orion proposal?

11 A I do know that we did not receive the Tranche 1
12 Step 2 cost estimate for Orion during Tranche 1.

13 Q Understood. So just to be -- I apologize if I'm
14 going over this ad nauseam, but just to be clear,
15 I guess this question will be for Mr. Judd, it's
16 your understanding that Duke would not have
17 included the Orion proposal in the Step 2
18 analysis because you didn't ask them to?

19 A (Mr. Judd) They only included in the Step 2
20 analysis bills, proposals that we passed over to
21 them and that's in keeping with the process. You
22 know, again, a number of proposals withdrew,
23 didn't post proposal security, so we were -- we
24 had to rank them. We provided them to the T&D

1 Team in rank order as we presented them. So I
2 believe that is responsive to your question. If
3 you want to try again --

4 Q Just one follow-up. So you did not pass on the
5 Orion proposal to DEC to be evaluated; is that
6 right?

7 A That is correct.

8 Q Okay. Thank you. And why didn't you?

9 A Because we determined that it was net negative
10 for a benefit that it would cost customers more
11 than the long-term avoided cost provided to us by
12 Duke.

13 Q Well, when you say it was net negative, you mean
14 that the value of the project was negative
15 relative to that 8760 20-year hourly avoided cost
16 projection; is that right?

17 A It is. And as we stated before, we should not
18 have asked them for proposal security. That was
19 an error on our part.

20 Q So you did not evaluate the project's bid price
21 relative to the published avoided cost rates; is
22 that correct?

23 A I'm sorry. I'm not understanding your question.

24 Q Okay. Well, returning to the Duke's or DEC's

1 published avoided cost rates, if I understand you
2 correctly, you did not evaluate whether the
3 project's bid price would've been above the
4 published avoided cost rates; is that right?
5 With include system upgrade cost.

6 MR. CRISP: Respectfully -- yeah,
7 respectfully I think we've gone over this and the
8 witness has answered this previously.

9 MR. SNOWDEN: I'm -- Mr. Judd has testified
10 to what he did do, but I just want to -- I for one am
11 still a little bit unclear and just want to make sure
12 I understand that what he did not do, so I will make
13 this concise.

14 MR. CRISP: He's indicated that he is
15 unfamiliar with what the published rate was, so I
16 don't think he can answer that question.

17 COMMISSIONER CLODFELTER: All right. Let's
18 see if he can answer the question.

19 Mr. Judd, if you can answer the question,
20 please do so.

21 A (Mr. Judd) Commissioner, I stated what we did and
22 now I'm being asked for another part, we didn't
23 do. Is that -- would you like me to answer that?

24 COMMISSIONER CLODFELTER: If you can do so.

1 A We used the data we were provided for the 8760
2 for 20 years. I'm not able to say whether that
3 information was released to respective bidders.
4 I can say we did not provide it. We did not post
5 it on the website that was used for bidding. And
6 whether they received that information otherwise,
7 I'm sorry, sir, I'm not capable to -- of
8 addressing that.

9 Q Thank you. And Mr. Judd, Mr. Crisp indicated
10 that you were not familiar with the published
11 avoided cost rates; is that accurate?

12 A I think that I've said distinctly between the
13 published and what was available to bidders is
14 beyond my knowledge.

15 Q Okay.

16 A I know what we used and I know how we did it. I
17 think we've accurately described the evaluation
18 methodology that was used.

19 Q Thank you. And Mr. Judd, you understand that the
20 published avoided cost rates are included in
21 pages 11 and 12 of the RFP document?

22 A It's subject to check on the pages and I trust
23 you're talking about Tranche 1 RFP. I know that
24 we published information on avoided cost as

1 guidance to the bidders, yes.

2 Q So you certainly had access to information about
3 what the published avoided cost rates would've
4 been?

5 A I had access to what information was being
6 provided. Again, I'm not comfortable with
7 identifying and defining whether that was the
8 published or it was otherwise advisory
9 information.

10 MR. CRISP: I'd like to ask for
11 clarification. If Attorney Snowden, you're equating
12 that avoided cost figures that were provided in the
13 RFP as public, that's what you mean, by virtual of
14 their being in the RFP they were published, if you
15 could clarify that.

16 MR. SNOWDEN: Sure. I'll ask one final
17 question on this and it'll help to clarify that.

18 MR. CRISP: I'd like to know if that's what
19 you mean.

20 MR. SNOWDEN: Okay. Yes. Thank you.

21 Q So Mr. Judd, if I understand correctly --

22 MR. CRISP: I think we need to clarify that,
23 because it seems to me that there's a real -- at least
24 for me there's a real ambiguity here.

1 MR. SNOWDEN: Understood.

2 MR. CRISP: What is it you mean by published
3 rate? Are you referring to what's in the RFP?

4 MR. SNOWDEN: Yes, but I'll just ask the
5 question in another way and hopefully that'll clear it
6 up.

7 Q So Mr. Judd, am I correct in my understanding
8 that you did not -- that in deciding to release
9 the Orion proposal you did not consider whether
10 Orion's bid price inclusive of system upgrades
11 would exceed the avoided cost rates that are
12 included in the RFP document?

13 A Correct.

14 Q Thank you.

15 A Because we did not have the system upgrade
16 numbers.

17 A (Mr. Rozier) Perhaps I could add a clarification
18 on that to help you, Mr. Snowden.

19 A (Mr. Judd) Please Garey, go ahead.

20 A (Mr. Rozier) The -- we're talking avoided cost
21 rates that are published as you say. I'll take
22 your word for what that means. Those are in
23 three buckets that take a great deal of data,
24 8760 over 20 years, present value, constructing

1 what you call a published rate. What Accion used
2 was essentially a deconstructed part of that. It
3 went from where all those numbers began to roll
4 up into that overall published rate. So they're
5 not inconsistent in being the avoided cost --

6 Q Understood. Thank you.

7 MR. CRISP: Thank you, Garey.

8 Q So Orion was notified in April 2019 that its
9 proposal had been released; is that right?

10 A (Mr. Judd) Its proposal or its security?

11 Q Its proposal had been released from CPRE Tranche
12 1. If I'm using the wrong term, please correct
13 me.

14 A Subject to check on the date, yes, they were
15 notified.

16 Q But Accion did not inform Orion when they were
17 released why they were released, did it?

18 A Sorry. The beginning of your statement was --

19 Q I'm sorry. Accion -- I'm sorry. Accion did not
20 inform Orion when they were released why the
21 proposal was being released, did it?

22 A That is correct, we did not.

23 Q Okay. But Orion did ask for more information
24 about why they were released, didn't they?

1 A Yes.

2 Q And on April 9th, 2019, Orion specifically asked
3 the IA to confirm the accuracy of the T&D
4 upgraded cost assigned to the project, didn't
5 they?

6 A I'd have to check the record. Sorry, man, I
7 don't have the printout sheet in front of me.

8 Q Thank you. Understood. I'd like to --

9 MR. SNOWDEN: Commissioner Clodfelter, I
10 would like to have marked for identification
11 Petitioner's first cross examination exhibit. This
12 would be the document dated July 15th, 2019, DEC
13 Tranche 1 Message Board, and it consists of 15 pages
14 with alternating white and gray rectangles. And at
15 the top it says "Your conversation with DE
16 Administrator."

17 COMMISSIONER CLODFELTER: The document will
18 be marked as Orion Accion Cross Examination Exhibit
19 Number 1.

20 MR. SNOWDEN: Thank you.

21 (WHEREUPON, Orion Accion Cross
22 Examination Exhibit 1 is marked
23 for identification.)

24 MR. CRISP: I'm sorry. If I could just to

1 make sure I'm looking at the same document, is that
2 the one that has -- what's the first date stamp on it,
3 please?

4 MR. SNOWDEN: The first date stamp is
5 7/15/2019 and there's a heading that says "Your
6 conversation with DE Administrator."

7 MR. CRISP: 11:28 a.m.; is that correct?

8 MR. SNOWDEN: Yes.

9 MR. CRISP: Great. Thank you.

10 MR. SNOWDEN: Thank you.

11 BY MR. SNOWDEN:

12 Q Mr. Judd or any of the witnesses in the panel, do
13 you all recognize this as a printout of
14 correspondence between Orion and the
15 Administrator?

16 A (Mr. Judd) Yes.

17 Q Thank you. I'd like to direct your attention
18 to -- and I apologize that these pages are not
19 numbered. I'd like to direct your attention to
20 page -- page 7 please.

21 A Can you give us a reference? The pages are not
22 numbered?

23 MR. SNOWDEN: Sure. Page 7 it would be --
24 the date stamp would be 4/9/2019. Please tell me when

1 you got that.

2 A All right. I have it open. Thank you.

3 Q Okay. Thank you. So looking at the entry with
4 the date stamp 4/9/2019, 8:32 a.m., it states
5 here and I just ask you to follow as I read
6 along. It states here that *Orion has reviewed*
7 *the Final Notification Letter and read the IA*
8 *Step 2 Report. We believe there might be some*
9 *misunderstandings or misallocations of the*
10 *interconnection facility's cost included in our*
11 *proposal decrement. Could the IA please confirm*
12 *as soon as possible what T&D Upgrade Cost was*
13 *assigned to our proposal? Do you see that?*

14 A I do.

15 Q Do you recall what the IA's response was to -- or
16 does anyone on the panel recall what the IA's
17 response was to this request for confirmation of
18 the T&D upgrade cost?

19 A I believe it's the next item on page 7.

20 Q Okay. And what does say?

21 A We responded to Orion in the same way we did for
22 all others. We treated all bidders the same way
23 and that is we could offer up a debrief after the
24 conclusion of Tranche 1, which was by definition

1 after the contracting period was finished. So we
2 did offer to talk with them and to review their
3 -- what they had -- what they had submitted.

4 Q It does state here -- the IA does state here that
5 *the Step 2 process evaluated the transmission*
6 *system impact of all CPRE proposals relative to*
7 *other projects in the transmission queue, doesn't*
8 it?

9 A I'm not seeing that language. Can you provide a
10 reference?

11 Q Okay. Sure. I'm sorry. Looking at the last --
12 the block with the timestamp 7:21:45 a.m. It
13 says here *As discussed in the RFP and in other*
14 *explanatory information provided on the IA*
15 *website --*

16 A Next page.

17 Q Yeah, we're on page 6. Sorry, yeah, the previous
18 page.

19 A Okay. Okay.

20 Q Sorry about that.

21 A I was still referencing page 7. Thank you.

22 Q All right. Just tell me when you -- tell me when
23 you -- it's the bottom entry. Do you see where
24 it says *The Step 2 process evaluated the*

1 *transmission system impact of all CPRE project*
2 *and proposals relative to other projects in the*
3 *transmission queue?*

4 A I do see that language and that refers to those
5 that we referred to the Step 2 analysis to be
6 reviewed. Obviously, we I suppose could have
7 provided more qualification there and all CPRE
8 proposals that were referred to the Step 2
9 evaluation process but we didn't, but that's it.

10 Q Clearly you didn't indicate to Orion that their
11 proposal had not been moved to Step 2, did you?

12 A That is correct. It's correct.

13 Q Okay. And then looking up on page 3 of the
14 exhibit. The entry it's date stamped 6/5/2019,
15 2:24 p.m. Just please tell me when you see that.

16 MR. CRISP: 2:24?

17 MR. SNOWDEN: Six -- page 3 of this
18 document. Yeah, 2:24 p.m. That's right.

19 A 2:24 p.m. Yes, I see the --

20 Q Okay.

21 A -- it starts with a note from Tim. Uh-huh.

22 Q Okay. And Tim -- Orion here is making a
23 follow-up request for information about the Step
24 2 analysis, aren't they?

1 A Yes.

2 Q All right. And then looking to the top of the
3 page, the IA responds and says here that in the
4 first bullet point, or halfway through it says
5 *Network upgrade costs were calculated by the T&D*
6 *Evaluation Team, and were decremented from the*
7 *dollar per megawatt value of each proposal --*

8 A Got you.

9 Q -- in the competitive tier. Do you see that?

10 MR. CRISP: Ben, you're talking about June
11 6th at 10:34?

12 MR. SNOWDEN: Yes. I'm sorry. Yes. The
13 top block on the page, June 6th at 10:34.

14 A I see that now.

15 Q Okay. It says there that *Network upgrade costs*
16 *were calculated by the T&D Evaluation Team and*
17 *were decremented from the dollar per megawatt*
18 *value of each proposal in the competitive tier;*
19 *is that right?*

20 A That is what it says, yes.

21 Q And Orion's proposal was in the competitive tier,
22 wasn't it?

23 A Yes.

24 Q And then it says *The proposals were individually*

1 *analyzed since there were no transmission*
2 *inter-dependencies among any of the proposals in*
3 *the competitive tier; is that right?*

4 A That is what it says. Again, I've explained we
5 did not analyze a Step -- we did not have a Step
6 2 analysis done for your client's proposal.

7 Q Understood. I guess I'm -- these responses from
8 the IA tend to suggest that to Orion that a Step
9 2 analysis was done, don't they?

10 A One could infer that, absolutely. We are
11 speaking correctly and should have been more
12 precise.

13 Q Understood. And so you all -- Accion did offer
14 to discuss the proposal but not until after the
15 contracting period was completed; is that right?

16 A Consistent with how we responded to all bidders
17 who asked for a debrief and a full back, yes.

18 Q Understood. And that discussion actually
19 happened in August 2019; is that right?

20 A I believe that it was in August, yes.

21 Q And that was -- that was after contracting had
22 been completed, wasn't it?

23 A Yes.

24 Q And in communications with Orion while Tranche 1

1 was still pending, the IA never indicated to
2 Orion that its proposal was eliminated based on a
3 Net Energy Benefit analysis, did it?

4 A I'm not saying that we used that language,
5 correct.

6 Q Okay. But the IA did inform Orion in August that
7 its proposal had been eliminated based on the Net
8 Energy Benefit analysis; is that right?

9 A Yes.

10 Q And at the time -- well, let me just take a step
11 back.

12 Mr. Ball, were you on a telephone
13 call with Orion on August -- around August 20th,
14 2019, to discuss the release of their proposal?

15 A (Mr. Ball) I don't have the date in front of me,
16 but yes, Mr. Layfield and I conducted the debrief
17 with Orion.

18 Q Okay. Thank you. And in that debrief Accion
19 informed Orion that they had been eliminated
20 based on the Net Energy Benefit analysis; is that
21 right?

22 A That's correct. We confirmed the information
23 that we sent over to them in advance of the
24 debrief session which states that.

1 Q Okay. And did they disagree at that time that
2 this was consistent with the rules of the Tranche
3 1 RFP?

4 A Well, they were not happy with that. I can
5 recall that for sure. I don't know that about
6 what you said as far as it complying with the
7 rules of --

8 Q But you recall that they didn't think that it was
9 appropriate that they had been eliminated from
10 the RFP?

11 COMMISSIONER DUFFLEY: Mr. Layfield, may I
12 interrupt? Can you turn on your camera please?

13 MR. MCCOY: Commissioner, this is John
14 McCoy. We are working with him right now. He is
15 definitely having technical difficulties, so I think
16 his video off.

17 COMMISSIONER DUFFLEY: I apologize. I will
18 leave it be. Thank you.

19 Q So -- okay. Thank you for that. Mr. Judd --
20 well, anyone on the panel, you are aware that
21 Orion contacted the Public Staff in October of
22 2020 to discuss the disqualification of the
23 project; is that right?

24 A (Mr. Judd) We learned that after the fact, yes.

1 Q Uh-huh (yes). And you're aware that Orion sent
2 the Public Staff a letter regarding their
3 disqualification or their release from Tranche 1?

4 A That too we learned after the fact, yes.

5 Q Okay. And you received a copy of that letter,
6 didn't you?

7 A We did.

8 Q And that letter specifically addresses Orion's
9 concerns about the use of the Net Energy Benefit
10 analysis, doesn't it?

11 A Yes.

12 Q Okay. So you were aware at that time of Orion's
13 specific concerns about the use of Net Energy
14 Benefit analysis to release -- to disqualify the
15 project?

16 A We were when we received the letter, yes.

17 Q Okay.

18 A And I don't recall how contemporaneous to the
19 date we received the letter.

20 Q Understood. Understood. Thank you. Did the
21 Public Staff ask you any questions about the
22 analysis that Orion -- that Accion performed on
23 the Orion proposal?

24 A Yes, and I believe you have our written response

1 to the Staff on that point.

2 Q Okay. Well, could you tell me generally what
3 your response was?

4 A That it was eliminated. We used the net benefit
5 analysis approach and as we found that it was --
6 it was negative net benefit. That is it did not
7 provide benefit to ratepayers.

8 Q Did you tell the Public Staff that the project
9 had been eliminated based on a conclusion that it
10 was above avoided cost?

11 A We did using our definition that avoided cost and
12 net benefit was synonymous.

13 Q Did you tell the Public Staff that you had
14 entered the cost of network system improvement
15 support in -- for the project in concluding that
16 it was above avoided cost?

17 A Well, we told them that we were aware of the
18 \$450,000 cost being assigned to -- or would be
19 assigned to all proposals coming into
20 transmission level and, yes, we were aware that
21 that would be assigned.

22 Q And you're aware that Orion has asserted in its
23 filings in this docket that based on its bid
24 decrement it could've accommodated

1 interconnection or upgrade costs considerably
2 higher than that \$455,000, are you not?

3 A I'm aware that's their position, yes.

4 Q Have you responded to that assertion in any of
5 your filings in this docket?

6 A I'm sorry. In an email response?

7 Q No. In any filing in this docket?

8 A I'd have to review what we submitted, Ben. I
9 don't recall.

10 COMMISSIONER CLODFELTER: Mr. Snowden, let
11 me interrupt your questioning for just a second to see
12 if we have Mr. Layfield connected now.

13 MR. LAYFIELD: It's quite possible that
14 you'll be able to hear me now.

15 COMMISSIONER CLODFELTER: I think we can
16 hear you now and we can also see you now. Welcome
17 back, Mr. Layfield.

18 MR. LAYFIELD: I've had to change computers.
19 I went down the street and asked my neighbor to bring
20 his up and now we're here, so I apologize for the
21 difficulties.

22 COMMISSIONER CLODFELTER: All right. You've
23 come back at an appropriate time. I'm sorry to
24 interrupt, Mr. Snowden. You may continue.

1 MR. SNOWDEN: Thank you.

2 BY MR. SNOWDEN:

3 Q Mr. Judd, you indicated in your response to the
4 Public Staff that it was determined that the
5 Orion proposal would require \$450,000 of network
6 system improvements; is that right?

7 A As I've stated, we expected any project coming in
8 at the transmission level would incur that
9 minimum amount of cost, yes.

10 Q Did you indicate to the Public Staff that that
11 number was not based on the Steps 2 T&D analysis?

12 A I don't recall.

13 Q Did you tell the Public Staff that it was
14 determined that the Orion proposal would require
15 a minimum of \$450,000 of network system
16 improvements in light of the decrement bid? I'm
17 sorry. Let me rephrase that. Did you tell the
18 Public Staff that in light of the decrement bid
19 the IA determined that imputing the costs of
20 network upgrade -- network improvements would
21 result in the proposal being above avoided cost?

22 MR. CRISP: If the question relates -- if
23 the question relates to what's in the memo and the
24 memo is an exhibit, I mean, the memo speaks for

1 itself. And having this witness testify as to what it
2 -- he recalled in terms of what's in the memo, you
3 know, it seems like it's really unnecessary. If
4 everyone has the memo, the memo is there, it says what
5 it says.

6 COMMISSIONER CLODFELTER: Mr. Crisp, the
7 problem we have at this point is the memo is not in
8 evidence, so the question is an appropriate question.
9 The memo is not sworn. It's not sworn evidence. So
10 Mr. Snowden, you may proceed with --

11 MR. SNOWDEN: And to be clear, I'm trying to
12 avoid us having to go into confidential session.

13 COMMISSIONER CLODFELTER: I understand what
14 you're trying to do. Continue.

15 MR. SNOWDEN: Thank you.

16 MR. CRISP: Thank you.

17 BY MR. SNOWDEN:

18 Q Mr. Judd, did you tell the Public Staff that the
19 IA oversaw the Step 2 process and as that -- as
20 part of that process an estimate of transmission
21 upgrade cost was established?

22 A (Mr. Judd) Excuse me. If you're referring to
23 your client's proposal that we established a
24 system upgrade cost for them, we identified the

1 \$450,000 baseline cost that would be incurred by
2 any transmission level project.

3 Q Well, let me ask this again, and if I may do this
4 without introducing the memorandum into evidence
5 right now. But Mr. Judd, you have a copy of that
6 memorandum before you; is that right?

7 A Is that the one dated November 20, Ben?

8 Q Yes, sir.

9 A Got it in front of me.

10 Q Okay. Great. Thank you. And I'm looking at
11 page 4.

12 A I'm there.

13 Q Okay. Does it say sort of in the middle of the
14 page that the IA oversaw the Step 2 process. As
15 *part of that process the estimate of transmission*
16 *system upgrade cost was established. The Orion*
17 *proposal was above avoided cost when the*
18 *estimated transmission system upgrade cost was*
19 *imputed.* Is that what the IA told the Public
20 Staff?

21 A That is what it says and that references the
22 \$450,000, yes.

23 Q Okay. But there's no reference there to the net
24 benefit cost; is there?

1 A There isn't. And in context, Ben, this was
2 subsequent to a number of conversations with the
3 Staff, some meetings with them to discuss it, so
4 we synthesized our response this way to not
5 include all the qualifiers one might do if we
6 were doing this as hostile questions, and they
7 were already aware of our process. They had run
8 the model with us that we used for net benefit
9 analysis. They understood how it worked. They
10 understood how sophisticated and detailed it was,
11 so we didn't feel the need to revisit that --
12 replow that field in response to these questions.

13 Q Thank you. But you were responding here to
14 questions that Orion brought to the Public Staff;
15 is that right?

16 A Yes.

17 Q And in the letter that you saw from Orion, Orion
18 did specifically express concern about whether
19 the use of the net benefit analysis was
20 consistent with the rules of the RFP, didn't
21 they?

22 A Subject to check. I don't have that letter in
23 front of me, but I believe that was raised, yes.

24 Q Okay. Did you think it would've been appropriate

1 to make clear in communications with the Public
2 Staff when the IA was using the net benefit
3 analysis and when it was using some other
4 analysis?

5 A The net benefit analysis is the only methodology
6 that we used, Ben, and the Staff was well aware
7 of that.

8 Q Thank you. Did the IA ever provide either to the
9 Public Staff or to Orion the details of its
10 analysis or of the analysis by which it concluded
11 that \$455,000 in upgrade costs would put the
12 Orion bid over avoided cost?

13 A Ben, no, because since it was already net
14 negative any additional cost was not going to
15 improve the bid, so we did not provide that to
16 say add additional cost, it's going to make it
17 worse. That was our reasoning.

18 Q Thank you. So just to be clear, you all never
19 analyzed whether Orion's bid decrement relative
20 to the published avoided cost rates in the RFP
21 could accommodate \$455,000 of upgrade cost before
22 going over avoided cost?

23 A Correct.

24 Q All right. Thank you.

1 MR. SNOWDEN: Those are all the questions I
2 have. Thank you.

3 COMMISSIONER CLODFELTER: Thank you, Mr.
4 Snowden. It's our practice to give our court reporter
5 a break. She's the one working the hardest this
6 afternoon and so we're going to take a short break.
7 But before I do that I'm going to ask Mr. Crisp if you
8 have any redirect of the panel that you'd like to ask
9 before we take our break?

10 MR. CRISP: Can I consider that during our
11 break?

12 COMMISSIONER CLODFELTER: I will allow the
13 consideration during the break. Let's take a -- it's
14 3:28 p.m. Let's come back at 3:40 p.m.

15 MR. CRISP: Thank you.

16 COMMISSIONER CLODFELTER: And if you'll go
17 on mute and stop your video while we're on break,
18 please.

19 (A recess was taken at 3:28 p.m.,
20 until 3:40 p.m.)

21 COMMISSIONER CLODFELTER: All right. Mr.
22 Crisp, any redirect for the panel?

23 MR. CRISP: None. Thank you.

24 COMMISSIONER CLODFELTER: All right. We'll

1 go then to questions from the Commissioners. Let me
2 ask Commissioner Gray do you have questions?

3 COMMISSIONER GRAY: I have no questions for
4 this panel.

5 COMMISSIONER CLODFELTER: Commissioner
6 Duffley, do you have questions?

7 COMMISSIONER DUFFLEY: No, Commissioner
8 Clodfelter. I defer to you.

9 COMMISSIONER CLODFELTER: Okay. Let me ask
10 just a couple, gentlemen.

11 EXAMINATION BY COMMISSIONER CLODFELTER:

12 Q Mr. Judd, when you first began speaking, I made a
13 note, and I wasn't sure I understood you
14 correctly, and my note was to the effect that you
15 said something to the effect that the Net Energy
16 Benefit tool that you used differed somewhat from
17 what was described in the RFP. Did I get that
18 correct?

19 A (Mr. Judd) I'm sorry, Commissioner. I think that
20 might've been Mr. Rozier, but I'm happy to
21 address -- if I said it that way, then let me
22 address it.

23 Q Well, it was part of the -- it was part of the
24 summary -- it was part of the general summary you

1 were giving. I'll take the answer from either
2 you or Mr. Rozier.

3 A Fair enough. The -- well, let me refer back,
4 because I did write it out to make sure that I
5 didn't take too much of your time. I'm not --
6 well, let me just say it this way that, again, we
7 used net benefit synonymously with avoided cost.
8 We used a detailed analysis how it differs. In
9 Tranche 2 there were some differences because of
10 changes that were done and perhaps that was the
11 context that we had three pricing buckets in
12 Tranche 1 and we had nine pricing buckets in
13 Tranche 2.

14 Q That's fine. I'll take that. I just wanted to
15 be sure I hadn't misunderstood you and perhaps I
16 did.

17 A (Mr. Rozier) Commissioner --

18 Q Yes.

19 A -- this is Garey Rozier.

20 Q Mr. Rozier.

21 A I think I can answer that directly. We did the
22 cost benefit analysis exactly the way we wrote it
23 up in the RFP and described it to the Staff and
24 all of the adjustments.

1 Q That's the answer. You've cleared up my
2 confusion. Thank you. My follow-up question to
3 that was I -- in reading your RFP, I cannot find
4 myself -- perhaps I'm not skilled enough and
5 that's why I ask the question -- a place where a
6 reader of the RFP is told that the output of the
7 net benefit evaluation is the determinative
8 factor for whether you're above or below avoided
9 cost. Is that contained in the RFP? And if so,
10 where is it so stated?

11 A (Mr. Judd) David, did you want to answer that or
12 shall I?

13 A (Mr. Ball) I'm not exactly sure where it would be
14 in the RFP. I think we described the process of
15 taking the production profiles and evaluating it
16 on a 8760 and also with noneconomic factors, so
17 there are noneconomic factors. It could also
18 result in the elimination project. And then the
19 imputing of the system -- T&D system cost if
20 something went to Step 2 was also described. So
21 I would have to refer back to the RFP to see if
22 we, you know, said specifically that energy
23 benefit was going to be the determinant.

24 Again, our context coming in from

1 other places is that a model built on detailed
2 8760 times 20 years of Duke's forecast of avoided
3 costs that the result of that model would be
4 avoided cost. And so that may be part of the
5 lack of clarity in that when we calculated the
6 production profile against Duke's avoided cost,
7 the result of that would be is it above or below
8 avoided cost.

9 And I certainly appreciate the
10 distinction that's being made about the avoided
11 prices. Those three levelized prices which by
12 its nature average a lot of hours into smaller
13 buckets, and then it levelizes it across 20 years
14 into a single figure for those three prices. So
15 it doesn't surprise me that the result of an
16 analysis of the detailed 8760 over 20 years for a
17 proposal that had a really, really small price
18 decrement, it doesn't surprise me at all that it
19 would end up with a negative result on the
20 avoided cost.

21 And just to clarify that avoided
22 costs we think are perfectly appropriately
23 developed by Duke, therefore, a standard generic
24 QF, qualifying facility, and it assumes that the

1 production is in every hour of the every day of
2 every month of every year, and it is not the same
3 as a solar production profile. So the avoided
4 costs are Duke's avoided costs. The solar
5 production profile that is put into the model is
6 the proposal solar production profile. And when
7 you compare the two that's when you get the net
8 result, and if it's positive it's good for
9 customers, if it's negative it's not.

10 A (Mr. Judd) For my, Commissioner --

11 Q Thank you. Yes.

12 A -- page 12 of the Tranche 1 RFP, the second
13 paragraph, if I might read just briefly two
14 sentences from that. Would that help you?

15 Q If it answers the question, please do so.

16 A *The economic value of each proposal will be*
17 *determined based on modeling developed and*
18 *performed by the IA. Dropping down a few lines.*
19 *Each proposal price used in evaluation will be*
20 *projected revenues based on net energy cost at*
21 *the MP's pricing. And then the rest of the*
22 *paragraph is a -- and that page is a summary of*
23 *how we would perform the evaluation.*

24 Q Right. And that was page 12, the second

1 paragraph?

2 A Yes, sir.

3 Q Thank you. Let me ask the next question then.

4 Were there -- I'm going to have a lot of
5 variables in this, so I'm going to try to take it
6 slowly so you can keep up with me. Were there
7 any other Tranche 1 proposals that were ranked
8 higher on the Net Energy Benefit calculation than
9 Orion is, that it did not voluntarily withdraw,
10 that were not eliminated for noneconomic reasons,
11 that did not fail to post proposal security, but
12 that were nonetheless eliminated because they
13 were net negative? Is there any higher ranked
14 proposals that were eliminated for the same
15 reason that Orion's proposals were -- was
16 eliminated?

17 A Yes. And you did an excellent job of putting in
18 all the correct qualifiers, sir. Well done.
19 It's not easy, so thank you.

20 Q How many were there? One or more than one that
21 meet that --

22 A Two.

23 Q Two.

24 A Two, sir.

1 Q Were both of those proposals asked to post
2 proposal security for Step 2?

3 A Yes, they were.

4 Q Did they do so?

5 A Yes.

6 Q And were those two proposals evaluated by the
7 Duke T&D Team?

8 A They were not.

9 Q They were not evaluated by the Duke T&D Team for
10 the same reason that Orion's proposal was not
11 evaluated; is that correct?

12 A Sir, they were not evaluated because we didn't
13 ask for it. If I could put a slight
14 clarification in, we don't know if independently
15 the T&D Team --

16 Q Right.

17 A Thank you.

18 Q I'm sorry. Yes, I understood your answer
19 earlier. You didn't ask for them to be
20 evaluated. They were higher ranked than Orion's
21 but they were eliminated from further
22 consideration because they also failed the net
23 benefit calculation?

24 A Yes, sir.

1 Q They were net negative. This is interesting.
2 Gentlemen, I'm going to ask Mr. Crisp for a
3 late-filed exhibit. It will be a confidential
4 exhibit. I ask that it be filed confidentially.
5 I ask that it disclose the identity of the two
6 proposals we've just learned about. And then I
7 need to find out what else I need to know about
8 them. Well, I can't know anything else about
9 them because as far as Accion knows they were not
10 reviewed by Duke, but you just don't know?

11 A Correct, we do not know, but I'm sure that Mr.
12 Jirak can help you with that question.

13 Q But the decrement -- were there price decrements
14 as bid higher or lower than Orion's?

15 A They bid a greater decrement than Orion.

16 Q They bid a greater decrement than Orion did?
17 Both of them did?

18 A Yes, sir. Again, of all the bids that were
19 received that were conforming but putting aside
20 there were a couple that, you know, they didn't
21 post their initial bid fee, that sort of thing,
22 that the Orion bid was the last out of all bids
23 in the ranking. Does that help you with what
24 else you'd like to know?

1 Q Well, it --

2 A (Mr. Rozier) Excuse me, Commissioner.

3 Q Yes, Mr. Rozier.

4 A On that point, that's getting into a great deal
5 of detail about what the decrement was and what
6 the cost benefit ranking was, which are two
7 different things. So if we -- I think we ought
8 to take this as subject to us checking on those
9 things. It can show up in the material that
10 Mr. Crisp can provide.

11 Q Well, I think I understand your answer, Mr.
12 Rozier. Thank you for that. I think the
13 late-filed exhibit should disclose, and it will
14 be confidential, it will be treated
15 confidentially, the identity of the other two
16 proposals, what their ranking was on the Net
17 Energy Benefit ranking, and what the decrement
18 was that they bid.

19 A Maybe Mr. Ball or Mr. Monsalvatge can answer it
20 with certainty now.

21 A (Mr. Ball) Yes, we have that information and I
22 might suggest that the megawatts, the capacity
23 might be useful, but we have that information.

24 Q Right. The size of the project, the capacity bid

1 would also be useful. Apologies gentlemen, but
2 this is a new plight like this so I'm trying to
3 think as we go about what I need to know.

4 A (Mr. Rozier) We understand.

5 Q All right.

6 A No problem.

7 Q All right. Mr. Ball, a question for you. When
8 you learned recently as I understand it that the
9 Duke Transmission & Distribution Evaluation Team
10 had done a system upgrade evaluation of the Orion
11 proposal in Tranche 1, did you learn at that time
12 what the results of that had been?

13 A (Mr. Ball) Yes. And, in fact, it was just -- I
14 think for me it was just last week that I learned
15 that, so --

16 Q All right.

17 A And I think the dollar amount that's in -- that's
18 been spoken of recently is the figure that I'm
19 aware of of 450,000.

20 Q Well, you've anticipated my next question which
21 was going to be when you learned that recently,
22 did you learn the amount that Duke's T&D Team had
23 determined?

24 A Yes.

1 Q And so let me ask this -- see if I can ask this
2 question in an intelligible way. After learning
3 that fact, did you undertake the exercise of
4 determining what would've happened if you had
5 applied that additional cost factor to the Orion
6 Tranche 1 bid and measured the result against the
7 three levelized price buckets?

8 A Well, yes. Indirectly we did not have an
9 evaluation methodology in Tranche 1 to do that
10 analysis. The -- there is a -- I think what you
11 might be referring to is the change in Tranche 2
12 where we added another criteria for passing
13 through and if that's what you're referring to
14 with the allowable T&D costs, we did look at
15 that. So you would have to assume that Tranche
16 2's method was applied to the Tranche 1 proposal.

17 Q Well, that's -- I think you're more precise than
18 my question and that really is the question. If
19 you applied what you learned recently about the
20 T&D number to the bid decrement that Orion quoted
21 in Tranche 1, where would things have come out?

22 A Well, I don't know where all things would come
23 out. The Orion's bid would have passed that
24 threshold. However, I don't know what would've

1 happened to all the other bids in Tranche 1 that
2 were failed that might've passed also. Several
3 projects -- as we just discussed two projects had
4 negative net benefits. We don't have Step 2
5 analyses of those so those might've passed. And
6 also other projects may have been failed due to
7 their system upgrade costs that in this new
8 method might've also passed.

9 A (Mr. Judd) If I could Commissioner --

10 Q Please.

11 A -- just to clarify what Mr. Ball said. Not to
12 contradict but we used -- well, he said there's a
13 different methodology in Tranche 2, we used the
14 net benefit analysis approach in Tranche 2 as
15 well in Tranche 1. But by agreement, at the
16 request of the Public Staff an agreement with
17 Duke we also agreed that if we didn't reach our
18 program goal for that tranche, we would identify
19 projects that were Net Negative Benefits but
20 passed the -- did not have significant system
21 upgrade costs. So I don't know if that
22 clarification is helpful, but I wanted to share
23 it with you.

24 Q Thank you. I understand that. Thank you.

1 COMMISSIONER CLODFELTER: All right. I
2 think those are the questions I have. Thank you,
3 gentlemen. You answered a lot of other questions that
4 I would've had, but you answered them in the course of
5 your testimony. So again, Commissioner Duffley or
6 Commissioner Gray, anything? Commissioner Duffley?

7 COMMISSIONER DUFFLEY: Sure. I just have
8 some follow-up questions from what I just heard.

9 EXAMINATION BY COMMISSIONER DUFFLEY:

10 Q In the Tranche 2 were there any awarded projects
11 that did fail that net benefit test but were
12 awarded or went on to Step 2 or awarded? Or is
13 that a confidential question?

14 A (Mr. Judd) I understand the question and let me
15 -- permit me to answer it this way. We provided
16 to Duke the list of projects that we recommended
17 for PPAs based on having a net positive benefit
18 for ratepayers. We also identified which
19 additional projects would though we found them to
20 be more costly and not -- and they were negative
21 net benefit which would be required to meet the
22 megawatt program goal for that tranche. Duke
23 made their decision as to whether they would
24 extend offers of PPAs to them without our

1 recommendation on those projects. I'm not trying
2 to be semantical. I'm just trying to give you a
3 full answer of the process that we use.

4 Q Okay. Thank you. And a follow-up question for
5 Mr. Ball. In response to one of Commissioner
6 Clodfelter's questions, specifically could you go
7 back and analyze -- now that you have the
8 \$450,000 upgrade can you go back and analyze it
9 with the three buckets, the method -- the
10 different methodology to determine whether it
11 would pass through. And I heard you say that yes
12 it would pass through; however, it would
13 potentially affect where you had the other
14 projects that you would need look to. And then
15 you talked about it might affect system upgrade
16 costs. But in -- and so I just want
17 clarification. In looking at the analysis, it
18 seems that all of the projects were not
19 interdependent of each other. I think I read
20 that somewhere. So would it really affect other
21 system upgrade costs or could you explain to me
22 how it could since they all seem to be not
23 interdependent?

24 A (Mr. Ball) Yeah.

1 MR. CRISP: David, is that a question that
2 would be better for Ralph or --

3 A Well, let me clarify, because I think there's
4 some -- I miscommunicated or there's some
5 misunderstanding. When I talked about the --
6 there were the two other that had negative net
7 benefits which did not do Step 2 analysis, so we
8 would have to evaluate them. And then the other
9 projects that were failed based on their Net
10 Energy Benefits being positive, let's see if
11 there are additional Step 2 system upgrade costs
12 making them negative, we would have to look at
13 all of those to see if any of those would've
14 passed under this alternate method.

15 So yes, they're all independently
16 calculated. Step 2 there weren't
17 interdependencies. I was just referring to
18 trying to unscramble the egg of Tranche 1 that's
19 already been scrambled and trying to unpack which
20 projects were dropped in Tranche 1 that might
21 have to be reevaluated. Does that help?

22 Q Yes, that does help.

23 MR. CRISP: Commissioner --

24 Q So what you're assuming in response was that that

1 when you were talking about the system upgrades,
2 you were speaking of the system upgrade cost for
3 those other two projects that was similar to the
4 present project?

5 A Yes, for those two which we don't know because
6 they weren't evaluated, but there were other
7 projects in Tranche 1 that were evaluated in Step
8 2. When the cost came back, their projects were
9 no longer economic or beneficial to customers.

10 Now, some of those might have been
11 in a really narrow category where they would've
12 been negative on our net benefits including the
13 system upgrade cost, but might also pass this
14 alternative method where you just look at the
15 price decrement.

16 Q Okay. I understand that. Thank you.

17 A Thank you.

18 MR. CRISP: Commissioner, with respect to
19 your question about the methodology and calculating it
20 through the three pricing actions, would you like
21 Ralph to speak to that because he's really the
22 authority on that issue?

23 COMMISSIONER DUFFLEY: Yes, please.

24 MR. CRISP: Ralph?

1 A (Mr. Monsalvatge) Yeah, so I'm off mute.

2 COMMISSIONER CLODFELTER: Mr. Layfield, can
3 you turn your video -- oh, I see you. Mr.
4 Monsalvatge, I got you. Thank you.

5 A And what is the specific question with respect to
6 the pricing buckets?

7 MR. CRISP: Could you -- if you had the 450
8 T&D, could you calculate the pricing for each bucket
9 to see how it made out in terms of avoided cost or net
10 benefit.

11 A Well, in terms of the net benefit what was
12 introduced in Tranche 2, what occurs is if
13 someone bid for instance a \$2 decrement and their
14 energy is 100,000 MWh a year, that's \$200,000 per
15 year that could fund transmission if you allowed
16 the decrement to be placed solely against
17 transmission without regard to how it stood on
18 Net Energy Benefits. Did I make myself clear?

19 A (Mr. Rozier) Commissioner, I heard you to ask did
20 the -- could Accion use that Tranche 2
21 methodology and determine whether these other
22 projects would have passed if we had a Step 2
23 analysis. The answer to that is yes. And we --
24 sort of in anticipation of that question we've

1 done that for the Orion proposal and determined
2 they would've passed and I think Mr. Judd has
3 already testified to that.

4 Q Thank you, Mr. Rozier.

5 COMMISSIONER CLODFELTER: But we don't know
6 -- but you haven't done that analysis for the other
7 two projects that were higher ranked?

8 MR. CRISP: That is correct. And the other
9 factor is how recalculating those may impact everybody
10 else who was in the tranche that was calculated
11 somewhat differently.

12 MR. JIRAK: Yeah, this is Jack Jirak,
13 counsel for Duke Energy Carolinas. I might also add
14 if we're going to go down that path of unscrambling
15 the egg as was mentioned in trying to capture that
16 late-filed exhibit, there's a lot of other information
17 that we should perhaps consider included in that such
18 as whether there was additional bids participating in
19 Tranche 2, whether they were selected and how the
20 selections would've changed our current CPRE
21 procurement target goals. I mean, there's a lot of
22 threads one needs to pull if you start to go down this
23 path. So maybe if I have some latitude to work with
24 the IA to make it the most informative late-filed

1 exhibit I think we can, we'll attempt to do that.

2 MR. CRISP: I think -- I'm sorry.

3 COMMISSIONER CLODFELTER: I think we're
4 going to give you that latitude, because frankly doing
5 it on the fly sitting here in the middle of the
6 hearing is not the best way to do that kind of thing,
7 exercise, so --

8 MR. JIRAK: Okay.

9 MR. CRISP: Commissioner, another factor
10 would be if for any reason Orion ended up with a PPA
11 in Tranche 1 instead of Tranche 2, then you'd need to
12 think about the impact that that's going to have on
13 both tranches.

14 COMMISSIONER CLODFELTER: We understand the
15 point, Mr. Crisp. Let me see if there are any other
16 questions from Commissioners. If not, I'll go back
17 and ask the counsel if you want to ask follow-up
18 questions on what the Commission has just opened up.
19 And I'll start with you, Mr. Crisp? Do you have any
20 questions you want to ask the panel based upon what
21 the questions the Commission has been asking?

22 MR. CRISP: Thank you. I do not.

23 COMMISSIONER CLODFELTER: Okay. Mr. Jirak?

24 MR. JIRAK: I do not have any further

1 questions. Thank you.

2 COMMISSIONER CLODFELTER: Mr. Dodge?

3 MR. DODGE: Thank you, Commissioner
4 Clodfelter. I do have just a couple of questions.

5 EXAMINATION BY MR. DODGE:

6 Q Commissioner Clodfelter a few moments ago --
7 these questions I think are directed to I believe
8 to Mr. Judd. Commissioner Clodfelter started
9 with a question regarding the difference between
10 the Net Energy Benefit tool and what was --
11 whether it was a difference in what was stated in
12 the RFP. And Mr. Judd, you pointed to the
13 discussion on pages 13 of the Tranche 1 RFP. I
14 just wanted to clarify a couple of points about
15 the use of the terms net benefit in the Tranche 1
16 RFP and then the Commission's approved avoided
17 cost rates. Mr. Judd, do you have that Tranche 1
18 RFP in front of you?

19 MR. CRISP: You're asking Mr. Judd?

20 MR. DODGE: Yes.

21 MR. CRISP: Yes, he does.

22 A (Mr. Judd) Page 12 of the Tranche 1 RFP, that's
23 what you're referring to, correct?

24 Q Correct, yes. I think pages 11 and 12 describe

1 the Commission-approved avoided cost rates and
2 the proposal evaluation starts on the copy I
3 have, the version that was taken under judicial
4 notice, has the proposal evaluation section
5 starting on page 13.

6 A I think you have a different version of the MS4
7 than I do, but in Subsection Roman V, Subsection
8 Alpha, correct?

9 Q Correct, yes. And you read a couple of sentences
10 from the second paragraph there. And I just
11 wanted to make sure to be clear some of the
12 inputs, that there are some discrepancies between
13 how the net benefit calculation views that 8760
14 profile and for avoided cost purposes. Your net
15 benefit calculation does also -- you've
16 discussed -- RFP discusses this on the following
17 page. It takes into consideration the
18 curtailment rates or that the utility receives
19 under the CPRE bid; is that correct?

20 A It does, Tim. As you know, there's a whole lot
21 of components and sophistication that goes into
22 that including the curtailment rights that were
23 identified in the RFP.

24 Q Okay. And you read kind of the statement on --

1 in that second paragraph in Subsection V. We'll
2 read the last sentence as well and that indicates
3 -- it reads as follows: *The benefit to the*
4 *DEC/DEP system is determined using two metrics:*
5 *(1) the Proposal's output contributes towards the*
6 *ability to defer future DEC/DEP generating unit*
7 *capacity and (2) the Proposal's energy output*
8 *replaces energy that would have been supplied at*
9 *DEC/DEP system cost for that particular hour.*
10 That statement, again, is referring to the net
11 benefit calculation. This is all describing that
12 -- the net benefit calculation that's used for
13 proposal evaluation, correct?

14 A I'm sorry. Tim, were you purporting to read the
15 last sentence of the second paragraph of Roman V?

16 Q I was.

17 A You were?

18 Q I read it a little quickly. I'm sorry. I was
19 just trying to move things along.

20 A Well because the last sentence that I'm looking
21 at discusses how we would deal with storage. I'm
22 wondering if you're looking at the T2 RFP.

23 Q I'm referring I believe to the CPRE Tranche 1
24 RFP, the same paragraph you read from it's just

1 the last sentence of the same paragraph you were
2 reading from.

3 A Are you reading a sentence that begins with *The*
4 *benefit to the DEC/DEP system* et cetera?

5 Q Yes.

6 A Tim, that's the Tranche 2 RFP. But we'd be happy
7 to explore that language as well.

8 Q Oh, so am I referring to the wrong version here?

9 A Well, it depends on what you want to talk about.

10 Q I'm referring -- I've opened up the copy that was
11 taken under judicial notice I believe from the
12 Stanley Solar -- the Stanley Solar proceeding.

13 MR. SNOWDEN: And Tim, if I may interject,
14 my copy of the Tranche 1 RFP has the same language;
15 it's just on page 13.

16 MR. DODGE: And mine actually has it on 13
17 as well so we may be referring to separate documents.

18 Q But subject to check, Mr. Judd, would you agree
19 that the Tranche 1 RFP that the Commission took
20 judicial notice of today in the Stanley Solar
21 proceeding, that was the PDF that was submitted
22 in Docket SP-9590, Sub 0 includes that language
23 in the PDF on page 13?

24 A With the intent to help move this along, subject

1 to check, yes. I was not familiar with a cite to
2 that other docket which specifically identified
3 the document for which judicial notice was taken,
4 but I'm reading the language. Again, I'm finding
5 it on the Tranche 2 RFP and I pulled the language
6 I read from the Tranche 1 website. But I don't
7 challenge you on the language. Please
8 understand.

9 Q Sure. Sure. And just to jump up to the top of
10 what's my page 13, but it's the last sentence
11 before Subsection V, the proposal of evaluation
12 in the Tranche 1 RFP. The last sentence there
13 prior to the start of Section V reads *For the*
14 *avoidance of doubt for purposes of determining*
15 *the satisfaction of the avoided cost threshold,*
16 *the System Upgrade Costs determined by the T&D*
17 *Sub-Team shall be converted to a 20-year \$/MWh*
18 *pricing and incorporated into the proposal price.*

19 A I find that -- I'm sorry. I didn't mean to
20 interrupt you.

21 Q Go ahead, Harry. I'm sorry.

22 A I find that language at the top of right above
23 Subsection V I find that in the Tranche 2 RFP. I
24 don't have that prior page from my -- the copy of

1 the -- the excerpts I took from the Tranche 1
2 RFP. Perhaps Mr. -- again, Brother Jirak is on
3 the line, maybe he can verify which -- if I'm
4 looking at the wrong RFP.

5 Q I think, you know -- again, the statement I
6 believe it may be in both and I think the version
7 that we're looking at today. And it's my
8 understanding that the pages may not line up just
9 based on this being an exhibit in a different
10 proceeding, so there may have been some --

11 A Sure.

12 Q -- the pages changed slightly, but the language I
13 believe is from the Tranche 1 RFP.

14 Just to move things along, I think
15 the point I just wanted to come back to here is
16 to the extent there is an analysis of system
17 upgrade costs determined by the T&D Sub-Team,
18 those would be added back into the proposal or
19 the bid price, and that proposal or bid price is
20 the decrement from the Commission's
21 administratively approved avoided cost; is that
22 correct?

23 A I --

24 A (Mr. Rozier) Garey Rozier. I don't think that is

1 correct. They get added back to the --

2 A (Mr. Judd) Upgrade --

3 A (Mr. Rozier) Well, maybe Mr. Monsalvatge can
4 answer it. Whether it's an adder on one or a
5 negative on another in the model that has that
6 effect that you're --

7 A (Mr. Monsalvatge) Exactly. So the net benefit
8 analysis is benefits less cost, and then you're
9 adding the transmission cost, so it has an effect
10 of reducing the benefit on a dollar per
11 megawatt-hour basis.

12 Q I think I was just trying to clarify if it was
13 added back into the 20-year dollar per
14 megawatt-hour pricing that's reflected as the
15 proposal price versus the -- I guess the cost of
16 the part of the net benefit calculation. That
17 was the point I was just trying to clarify with
18 the term "proposal price" that it -- whether it
19 was referring to the Commission's approved
20 avoided cost rates, the threshold that those
21 represent or the Net Energy Benefit cost
22 effectiveness threshold.

23 A (Mr. Rozier) This is Garey again. That's
24 entirely correct. I think the confusion in

1 answering the question was you used the term
2 "decrement" in that rather than the prices, net
3 prices. Like the decrement off of the three
4 tools that produces prices. This is being added
5 into those prices that go into all of the
6 calculations in the 8760 model.

7 Q And one last follow-up and this was a question
8 Commissioner -- in response to a question from
9 Commissioner Clodfelter about the changes that
10 were made in the Tranche 2 window and the
11 different treatment of projects that had a
12 negative -- a net negative benefit. Mr. Judd, I
13 believe you indicated that the change that was
14 made would be that if a project had a net
15 negative benefit but did not have significant
16 system upgrade costs that you would provide those
17 prior -- if the utility had not reached it's
18 procurement target for that tranche, you would
19 provide those ranked projects to DEC for
20 determining whether to issue a PPA to those,
21 those bids; is that correct?

22 A (Mr. Judd) Yes, Tim. What we said was and what
23 we tried to lay out in the memo that we posted on
24 the Tranche 2 website is if we got to the point

1 where the projects that were positive net benefit
2 did not reach in the case of DEC 600 megawatts,
3 we would keep going and we would identify for
4 Duke's consideration projects that with
5 additional megawatts would be needing to reach
6 the 600 MW goal.

7 Q But you would not provide to Duke a list of any
8 projects that had a cost that exceeded
9 administratively determined avoided cost rates,
10 correct?

11 MR. CRISP: I think the problem there is
12 it's a semantic problem or it's a problem in terms of
13 how you're defining. If you mean the avoided cost
14 based on 8760 20 then that and net benefit is the same
15 thing.

16 A (Mr. Judd) Right. So we just -- again, Tim, you
17 helped us work with Duke to come up with this
18 approach to try to meet the program goals and it
19 was we'll keep going until we reach the 600
20 megawatts, and Duke can consider whether the net
21 benefit as we calculated it even though it's net
22 negative still it's worthwhile to move forward
23 with a PPA.

24 I think that's responsive to your

1 question. I hope it is.

2 A (Mr. Rozier) Well, and can I add something?
3 Because it is possible that a project can bid
4 with a decrement and pass that new additional
5 decrement test and have a -- I mean fail that
6 test and have a positive net benefit, that would
7 be one we would want to move forward and not
8 throw out.

9 Q Yes, I think that would be in the first bucket up
10 to if you -- to the extent you haven't reached
11 the procurement target, even still a positive net
12 benefit. Mr. Judd had described a scenario where
13 projects with a negative net benefit may be also
14 provided, and I was just trying to clarify. He
15 indicated that projects that didn't have
16 significant upgrade costs may also be provided
17 and I was just trying to clarify what was meant
18 by significant upgrade costs. And my reading of
19 the language in the RFP that we were discussing a
20 few moments ago is that would mean projects that
21 when you add the imputed upgrade costs to
22 those -- to that bid did not exceed the
23 administratively determined avoided cost rates.

24 A (Mr. Judd) I'm not seeing the administratively --

1 Tim, I was -- the pause, the hesitation you're
2 hearing is I don't see the administratively
3 determined avoided cost rates in the RFP, and
4 before testifying under oath to the Commission
5 that's what's in the RFP I have to define the
6 language. I'm not trying to be difficult. I'm
7 just trying to be responsive.

8 Q Sure. And one last question and just to clarify
9 that point. This is on page 12, so I know
10 where -- of the RFP. The first paragraph after
11 the table of avoided cost threshold for Tranche
12 1, you have the table -- actually I'm sorry --
13 that's page 11 spills over to page 12, the first
14 full paragraph following that table. Subject to
15 check would you agree it reads *Proposal pricing*
16 *must be in the same format of 20-year avoided*
17 *cost pricing periods shown as the tables above,*
18 and it describes the three categories?

19 A Well, Tim, I'm not going to challenge your
20 ability to read. And I didn't have that page in
21 front of me. And I think -- so what would you
22 like?

23 Q I'm just indicating that that statement indicates
24 the -- asking you if that statement indicates

1 that the proposal pricing is based on the 20-year
2 avoided cost pricing periods for the three
3 buckets.

4 A It is indicating that we had three buckets and
5 you -- if you can remember back that far, when we
6 helped set up Tranche 1, originally, we were
7 thinking of one bucket, but then we were able to
8 get three, and subsequently in Tranche 2 we had
9 even greater granularity. But those were the
10 guideposts if you will for the bidders of what
11 for those different pricing periods the -- as a
12 combined synthesized avoided cost for those
13 periods what it would be. And if you recall on
14 the actual bid form there's a one decrement entry
15 by the bidder and it then -- the website shows
16 them what the pricing would be in each of the
17 buckets when they put in that decrement as a
18 guide to say this is the pricing that would -- if
19 you're successful it'll be in a PPA.

20 Again, I think that's responsive
21 to your question.

22 Q It is. Thank you, Mr. Judd.

23 MR. DODGE: I don't have any further
24 questions, Commissioner Clodfelter.

1 COMMISSIONER CLODFELTER: Sure. All right.
2 Mr. -- I'm sorry. Mr. Jirak, was that you?

3 MR. JIRAK: (Shakes head no).

4 COMMISSIONER CLODFELTER: Okay. Mr.
5 Snowden?

6 MR. SNOWDEN: Yes. And Commissioner
7 Clodfelter, before I get to my questions, I just
8 wanted to refer back to the late-filed exhibit that
9 the panel was asked for. I would anticipate that the
10 IA fairly would want to not disclose the information
11 about the other bidders and their pricing to Orion.
12 It's sort of been -- it's consistent with the approach
13 that's been taken thus far. I would, however, ask
14 that the remainder of that document be made available
15 to Orion. We've entered into NDAs with the Public
16 Staff and also with the IA.

17 COMMISSIONER CLODFELTER: I think that's
18 perfectly appropriate, Mr. Snowden. We would need to
19 mask the identity of those other bidders from Orion.

20 MR. SNOWDEN: Thank you.

21 COMMISSIONER CLODFELTER: I'm going to
22 suggest that Commission counsel, Ms. Hicks, will work
23 with Mr. Crisp, Mr. Jirak, Mr. Dodge, and you in terms
24 of any formatting issues and presentation issues on

1 that exhibit, or the exhibit is actually delivered to
2 anybody.

3 MR. CRISP: Glad to do that.

4 COMMISSIONER CLODFELTER: And again, trying
5 to do this on the fly is not what we're going to do.
6 So Warren Hicks who's Commission counsel, we'll be
7 talking with Mr. Crisp, Mr. Snowden, Mr. Jirak, and
8 Mr. Dodge about formatting and presentation on that
9 exhibit, so --

10 MR. SNOWDEN: Okay. Thank you, Commissioner
11 Clodfelter.

12 COMMISSIONER CLODFELTER: You may proceed
13 with the questions on Commission questions.

14 MR. SNOWDEN: All right. Thank you, sir.
15 And I just have a handful here. And I'm going to take
16 a step and we'll refer back to the Tranche 1 RFP.
17 I've got I think the same pagination as Mr. Dodge, so
18 we'll just have to work through it.

19 EXAMINATION BY MR. SNOWDEN:

20 Q But Mr. Judd and Mr. Rozier, I'd like to direct
21 your attention to Section IV of the Tranche 1
22 RFP. It's on page 11 of my draft or my copy.

23 A (Mr. Judd) Ben, I'm going to ask you to give me a
24 chance to get there.

1 Q Absolutely.

2 A Just so you know and the Commission knows, the
3 text that I was reading is directly from the --
4 what is on the IA website for Tranche 1 and
5 listed as final RFP. So I'm on page 11 as you
6 asked.

7 Q Okay. Do you see Section Roman IV "Avoided Cost
8 Threshold And Proposal Pricing"?

9 A Yeah. On my version that begins at the bottom of
10 page 10.

11 Q Okay. Thank you. And you'd agree that this
12 section of the RFP provides the guideposts for
13 bidders for compliance with the avoided cost
14 threshold; is that right?

15 A It provides guidance for the three pricing
16 buckets and defines there on the page, so it
17 speaks for itself of how those periods are
18 defined.

19 Q All right. But the section is headed "Avoided
20 Cost Thresholds"; isn't that right?

21 A I'm sorry. Could you repeat that?

22 Q Sorry. The section is headed Avoided Cost
23 Thresholds; isn't that right?

24 A One moment. "And Proposal Pricing". Yes, it is.

1 Q Okay. Thank you. And so if a bidder were
2 seeking guidance as to how they would be
3 evaluated for compliance with the avoided cost
4 threshold, this would be the place to look,
5 wouldn't it?

6 A I don't think that's accurate. I think the next
7 section where we describe the evaluation
8 methodology would be that. What this says is and
9 what it was intended to be was how the different
10 pricing periods were identified and the periods
11 that are covered by each of those pricing
12 periods. Again, when a -- there was a single
13 decrement entry on the bid form, and then it
14 calculated for the bidder what say about looking
15 at the chart the summer avoided -- what the rate
16 would be, the decrement against the summer rate
17 for DEC. So I think combined the entire RFP
18 provided what we thought was the necessary
19 guidance.

20 Also, if you recall, we went
21 through stakeholder process. We also asked -- we
22 put the RFP up for comment and asked for guidance
23 from bidders to help us make it possible to get
24 them to give us their most robust bids and this

1 is the guidance that we provided and we thought
2 it was sufficient and sure had a lot of bidders
3 not challenge their ability to bid successfully.

4 Q Could you please just read the first sentence of
5 the second paragraph for this section? I'm
6 sorry. Could you please read it aloud? Sorry.

7 A I've got to get to it, Ben. The sentence
8 beginning with *All Proposals*?

9 Q Yes.

10 A Yeah. *All proposals (including the cost of*
11 *system upgrades as described herein) must be at*
12 *or below the applicable 20-year dollar per*
13 *megawatt-hour (megawatt -- \$/MWh) avoided cost*
14 *specified in the table below. For simplicity,*
15 *the avoided cost rates have the energy and*
16 *capacity rates combined into one \$/MWh rate for*
17 *the Summer On-Peak pricing period and one \$/MW*
18 *rate with a Non-Summer On-Peak pricing period.*
19 End of paragraph.

20 Q Thank you. And the avoided cost rates that are
21 as set forth in the table are those cost rates in
22 buckets that we've been talking about, aren't
23 they?

24 A Yes.

1 Q Okay. So isn't this the guidance that was
2 provided or the guideposts provided to bidders
3 for how the cost of system upgrades would be
4 added to their bid costs for purposes of
5 evaluating compliance with the avoided cost
6 threshold?

7 A I'm sorry. I think --

8 Q Sorry.

9 A -- a leap from the -- how -- what the avoided
10 cost guidance was provided to what would be done
11 with T&D upgrades, if I heard your question
12 correctly.

13 Q Well, this sentence indicates that inclusive of
14 system upgrades bidders' proposals would have to
15 be below the avoided cost rates that are
16 specified in this table, doesn't it?

17 A Must be at or below -- specified below. Again,
18 that's when you take the entire 8760 and -- by 20
19 and you reduce it to three buckets. Yes, that's
20 the guidance that was given so that they would
21 have some appreciation for how to bid.

22 Q Thank you. And this section of the RFP doesn't
23 -- this Section IV entitled "Avoided Cost
24 Threshold And Proposal Pricing" doesn't say

1 anything about the net benefit analysis, does it?

2 A It does not. The methodology for evaluation
3 starts in Section V.

4 Q Thank you.

5 MR. SNOWDEN: Those are all the questions I
6 have.

7 COMMISSIONER CLODFELTER: All right. We're
8 at the point where we need to get the exhibits moved
9 into the record, and just to move us along I'm not
10 going to ask for motions. I'm going to do it this
11 way. I'm going to say that unless there is some
12 objection from a party, we will admit into the record
13 Accion Direct Exhibits 1, 2, and 3. I see no
14 objection. And we will also, unless there is
15 objection admit into evidence Orion Accion Cross
16 Examination Exhibit Number 1. And let the record
17 reflect there's no objection there.

18 (WHEREUPON, Accion Exhibits 1 - 3
19 and Orion Accion Cross Examination
20 Exhibit 1 are received into
21 evidence.)

22 COMMISSIONER CLODFELTER: Gentlemen, did I
23 get all of the exhibits that were identified by this
24 panel?

1 MR. CRISP: Yes.

2 COMMISSIONER CLODFELTER: Okay. Mr. Crisp
3 then, anything further from Accion?

4 MR. CRISP: No. We look forward to
5 submitting to you the confidential information that
6 you requested.

7 COMMISSIONER CLODFELTER: And thank you for
8 that.

9 Ms. Mitchell, I want to do a reality check
10 with you. I may have underestimated the amount of
11 time this proceeding would take. How late can you go
12 today? And don't -- you get to make the call, Kim
13 Mitchell. How late?

14 COURT REPORTER: Commissioner Clodfelter,
15 I'm prepared to stay as late as you need.

16 COMMISSIONER CLODFELTER: All right.
17 Gentlemen, let's see if we can then finish. I don't
18 normally get that kind of response. I'm going to owe
19 Ms. Mitchell big time. So I think we'll move next,
20 Mr. Jirak, to you.

21 MR. JIRAK: We also always owe Ms. Mitchell
22 big time, so -- Commissioner Clodfelter, at this time
23 I believe we'll be calling just a single witness,
24 Orvane Piper on behalf --

1 COMMISSIONER CLODFELTER: Mr. Piper, will
2 you raise your right hand, please?

3 ORVANE PIPER;
4 having been duly affirmed,
5 testified as follows:

6 COMMISSIONER CLODFELTER: Mr. Jirak.

7 MR. JIRAK: Thank you. So obviously this is
8 somewhat a uniquely situated from a procedural
9 perspective. We were not an intervenor. We have not
10 made any formal filings nor filed testimony in this
11 proceeding, but we were asked to and had presented for
12 Commission questions and investigation, Mr. Piper.
13 And the initial Commission questions were focused on
14 the T&D evaluation in Tranche 1, and so that is the
15 witness we've called here. Mr. Piper is responsible
16 for that.

17 Obviously, the questions we've delved into
18 here have expanded quite a bit, so we don't have a
19 witness necessarily that can speak to the broader
20 issues. I will just sort of plant a flag that I think
21 I would have some interest in exploring at the end of
22 the hearing what the next steps in this process might
23 be like including the potential for us to -- Duke to
24 have an ability to file some sort of post-hearing

1 brief. You may already have that in your mind, but --

2 But with all that said, I'm going to -- I
3 think if it sounds good for you, I can ask Mr. Piper a
4 few very general questions to let him get started with
5 the conversation, and then turn it over to other
6 parties who may want to ask questions.

7 COMMISSIONER CLODFELTER: I'm going to give
8 you that opportunity. Again, this is a bit -- I mean,
9 again, it's well within the Commission's statutory
10 procedure, but it's one we don't follow in the normal
11 course of events. This happens to be a bit different,
12 so this is really a witness that's being called at the
13 Commission's request. And so I'll let you give us
14 Mr. Piper's background. And then folks, what I'm
15 going to do is then since this is really a witness
16 that's been called at the Commission's request, I'm
17 going to go first to questions from the Commission,
18 and then I will let the other parties ask questions on
19 the Commission's questions. But this witness is,
20 again, appearing for a limited purpose, so Mr. Jirak.

21 MR. JIRAK: Thank you.

22 DIRECT EXAMINATION BY MR. JIRAK:

23 Q Mr. Piper, if you want to begin just by stating
24 your name and just giving a brief -- your current

1 title and a brief overview of your current role
2 and how you were involved in the Tranche -- Step
3 2 of -- to Tranche 1 evaluation process?

4 A Good afternoon. My name is Orvane Piper. I'm a
5 Registered Professional Engineer with the State
6 of North Carolina. I'm employed by Duke Energy
7 where I'm civil engineer in transmission planning
8 for Duke Energy Carolinas. As it pertains to
9 CPRE, I'm a member of the T&D Sub-Team. In that
10 role, I'm one of the individuals who is
11 responsible for identifying network upgrades in
12 the shape of the bids as well as the estimated
13 cost.

14 Q Thank you, Mr. Piper. And you were directly
15 responsible I think you -- you said this for the
16 specific evaluation that occurred in Tranche 1,
17 correct, for Duke Energy Carolinas?

18 A Yes. Yes.

19 Q And you heard some discussion earlier about the
20 chain of events and the interactions that
21 occurred between the IA and the Duke T&D Sub-Team
22 as it related specifically to the Orion proposal.
23 And if you want to just briefly give a quick
24 overview regarding your role in being informed

1 about the status of the Orion proposal, then what
2 you and your team did in response to that in the
3 context of Tranche 1.

4 A Around February or March of 2019 the IA indicated
5 to the T&D Sub-Team that bid 12901 was asked to
6 post a bid security. At that point the T&D
7 Sub-Team on its own undertook the steps to
8 understand the potential network upgrades that
9 might be associated with Bid 12901. This was
10 done in anticipation that the IA was going to
11 reach out to us and formally request that we
12 evaluate 12901 as part of Step 2. However, that
13 formal request never came and we had conclusions
14 of the observations of what the T&D Sub-Team
15 observed was not shared with the IA as part of
16 Step 2 in Tranche 1.

17 Q Perfect. And just to clarify, the reason why you
18 started on the evaluation of Orion despite the
19 fact you hadn't been asked to do so was just for
20 purposes of efficiency. Is that the right way to
21 think about it?

22 A That's correct. One of the things with Tranche 1
23 internally we realized that we were up against a
24 tight timeline for Tranche 1, and so in an effort

1 to help to expedite the process and be efficient
2 and not cause any further delays in Tranche 1
3 internally it was T&D Sub-Team's judgment to go
4 ahead with running some analysis of Bid 12901.
5 It was our first time through the process, so we
6 didn't have a great understanding I would say of
7 how much work might be associated with it, so we
8 wanted to go ahead and try to get ahead of it as
9 much as possible.

10 Q All right. Thank you, Mr. Piper.

11 MR. JIRAK: Commissioner Clodfelter, I think
12 that's really all the introductory questions that we
13 probably need to cover and I will let the witness now
14 respond to questions from the Commissioners.

15 COMMISSIONER CLODFELTER: Thank you, Mr.
16 Jirak. Let me ask just a couple, Mr. Piper, and then
17 I'll see if Commissioner Gray and Commissioner Duffley
18 have questions too.

19 EXAMINATION BY COMMISSIONER CLODFELTER:

20 Q Were there other proposals like the Orion
21 proposal that you got information from the IA
22 that proposal security had been requested and you
23 went ahead and did the analysis even though they
24 never got formally submitted to you later by the

1 IA? Were there other proposals like that?

2 A We did receive notification of other proposals
3 who the Independent Administrator was going to
4 reach out to and request a bid security for. Off
5 the top of my head I do not recall whether or not
6 or how many other projects fit into the same
7 category as this Bid 12901.

8 Q Did the T&D Team undertake the same kind of
9 initiative to try to stay ahead of the curve with
10 those other proposals as it did with the Orion
11 proposal? Did you go ahead and start your work?

12 A If we would've -- if we -- for any bids that we
13 received that notification for at around that
14 same time we would've done that. For bids that
15 were earlier -- that were earlier in that
16 process, so the most competitive of the bids,
17 those we likely would have waited until receiving
18 official notice in the case from the IA, but as
19 we got towards the bottom of the list, we began
20 understanding that there was a crunch on time.
21 The last kind of wave of projects that the IA
22 indicated that they'd reached out to for bid
23 security we went ahead and initiated review on
24 some of those bids.

1 Q With respect to the Orion proposal, if you
2 remember, was that interdependent on any other
3 proposal that you were analyzing or was it
4 independent?

5 A At the time of Tranche 1 we did not identify any
6 interdependency associated with Bid 12901.
7 Again, that was based on the base case that was
8 established with some security made, but we did
9 not identify any known --

10 Q Did you conclude the T&D analysis on Bid 129, the
11 Orion proposal?

12 A We finished the thermal analysis that we would've
13 done that would've been similar to any other
14 blueprint I'd look at as far as Step 2.

15 Q But you did not provide that result to the
16 Independent Administrator?

17 A That is correct. That information was not
18 provided to the Independent Administrator as part
19 of Step 2 Tranche 1, because we were not formally
20 asked to provide that information. Again, we
21 undertook that so that we would be prepared to
22 provide that information as quickly as possible
23 in anticipation that the IA would've reached out
24 to us with that formal request that 12901 was

1 officially in Step 2 and then we would need to
2 commence with our evaluation.

3 Q I just want to confirm this. Thank you for that.
4 I just want to confirm this just for completeness
5 sake. It has been represented in the papers
6 filed by the parties that the Duke Carolinas' T&D
7 Team did not participate in the evaluation or
8 ranking of the proposals other than the work you
9 did on analyzing potential system upgrades; that
10 is correct, is it not?

11 A That is correct.

12 Q All right. That's fine.

13 COMMISSIONER CLODFELTER: Commissioner
14 Duffley, Commissioner Gray, any questions?

15 COMMISSIONER GRAY: No questions.

16 COMMISSIONER CLODFELTER: Okay.
17 Commissioner Duffley?

18 COMMISSIONER DUFFLEY: Yes.

19 EXAMINATION BY COMMISSIONER DUFFLEY:

20 Q So we heard today about the \$450,000 network
21 upgrade, and what I thought I heard in testimony
22 that this \$450,000 would be applied to each of
23 the proposal as a baseline network upgrade.
24 Could you please clarify that? And is that an

1 accurate statement?

2 A I will clarify that \$450,000 would've been the
3 baseline assumption that would be applied to bids
4 that were proposing interconnection on a network
5 transmission line. That \$450,000 would be
6 consistent with assuming three link (uncertain)
7 case modifications at the remote ends of those
8 lines, and so on a network transmission line
9 there would be at least two. And so using the
10 assumption of \$225,000 of each of those ongoing
11 bids that's where you get the \$450,000 for
12 network upgrades. Again, for projects that are
13 proposing interconnection on a network line, that
14 \$450,000 would not be inclusive of any additional
15 network upgrades primarily the thermal
16 constraints that were identified with the bid.

17 For bids that were proposing
18 interconnection on a radio line, that baseline
19 assumption would've been \$225,000 in Tranche 1.
20 And that would just be assuming that we would
21 only need relaying communication back to one end
22 of the line.

23 Again, both of those numbers are
24 baselines assuming for a radio that was only one

1 location and for network upgrades that it's only
2 two locations. For each specific bid depending
3 on the specific transmission line it was
4 connecting to, it could exceed that baseline
5 estimate of the number of terminals at which we
6 would need to do some work.

7 Q And the IA knew this information at the beginning
8 of Tranche 1 from DEC?

9 A I do not -- I do not know the extent of the IA's
10 knowledge of how many remote-end terminals might
11 be needed for the specific bids, but over the
12 course of interaction with the IA in Tranche 2 as
13 we provided feedback on network upgrades for
14 other bids, it would've been -- it would've
15 become apparent that that -- that some of the
16 bids had \$225,000, some of the bids had \$450,000.
17 And then the only ones that deviated from that
18 were the late-stage projects in Tranche 1 where
19 there was a completed facilities study, and so
20 where we had more accurate estimates done, it
21 would have to have been scoped and estimated.
22 And so for the projects that were late stage for
23 Tranche 1 and had those more up-to-date
24 estimates, those estimates that came out of the

1 facilities study were used.

2 Q Okay. Thank you, Mr. Piper. And my next
3 question is really for Mr. Jirak. I don't think
4 it would be fair to ask you, Mr. Piper.

5 COMMISSIONER DUFFLEY: But if you are going
6 to be -- if Duke is going to be filing some
7 late-filing or after-the-hearing filing, I would be
8 interested in understanding Duke's position if you
9 have not already made it clear about what Duke
10 believes was the avoided cost threshold that was to be
11 used for Tranche 1.

12 MR. JIRAK: Certainly, Commissioner Duffley.
13 And that's probably -- that policy legal question is
14 one we'd be glad to address in some form of briefing
15 at the Commission's discretion.

16 COMMISSIONER DUFFLEY: Thank you. I have
17 nothing further.

18 You're on mute, Commissioner Clodfelter.

19 COMMISSIONER CLODFELTER: Apologies.
20 Apologies. At this point, Mr. Piper is available for
21 questions, but the questions need to be based upon
22 something the Commission has asked about. So
23 Mr. Crisp, I'll start with you. Anything?

24 MR. CRISP: Nothing.

1 COMMISSIONER CLODFELTER: All right.

2 Mr. Dodge?

3 MR. DODGE: No questions.

4 COMMISSIONER CLODFELTER: All right.

5 Mr. Snowden?

6 MR. SNOWDEN: Just a question or two. Thank
7 you.

8 EXAMINATION BY MR. SNOWDEN:

9 Q Mr. Piper, thank you for being here. Did Duke
10 calculate the likely system upgrade costs for the
11 Orion project in Tranche 1?

12 A You're asking about the network upgrade?

13 Q Yes, I'm sorry. The network upgrade, yes.

14 A Yes, we did.

15 Q Okay. And was that that \$455,000 sort of basic
16 package?

17 A \$450,000? Yes.

18 Q Thank you. So the Orion project didn't trigger
19 any additional system upgrades as determined by
20 the DEC analysis?

21 A The analysis the T&D Sub-Team performed for Bid
22 12901 in Tranche 1 did not identify additional
23 network upgrades.

24 Q Okay. Thank you very much.

1 COMMISSIONER CLODFELTER: All right. Mr.
2 Piper, you got off easy. No exhibits, no motions. I
3 think that completes your appearance. We thank you
4 for being here.

5 COMMISSIONER DUFFLEY: Thank you.

6 (The witness is excused)

7 COMMISSIONER CLODFELTER: Mr. Snowden, we're
8 with you.

9 MR. SNOWDEN: All right. Thank you,
10 Commissioner Clodfelter. Orion Renewables calls Tim
11 Lasocki to the stand.

12 COMMISSIONER CLODFELTER: All right. Mr.
13 Lasocki, you've been patiently waiting. There you
14 are. Will you raise your right hand, please.

15 TIMOTHY LASOCKI;
16 having been duly affirmed,
17 testified as follows:

18 COMMISSIONER CLODFELTER: Mr. Snowden.

19 MR. SNOWDEN: Thank you.

20 DIRECT EXAMINATION BY MR. SNOWDEN:

21 Q Mr. Lasocki, can you please state your name for
22 the record?

23 A Timothy James Lasocki.

24 Q And by whom are you employed and in what

1 capacity?

2 A I am the vice president of origination and
3 finance for Orion Renewable Energy Group, which
4 is an owner of Orion Renewable Resources LLC.

5 Q Okay. And did you personally verify the Verified
6 Petition for Relief by Orion Renewable Resources
7 LLC, that was filed in this docket on March 9th,
8 2020?

9 A Yes, I did.

10 Q Okay. Do you have any changes to the factual
11 statements that are made in that verified
12 petition at this time?

13 A No, I do not.

14 Q Okay. And if you were to verify the Petition
15 again today, would the contents of the Petition
16 still be true and correct to the best of your
17 knowledge?

18 A Yes.

19 Q Okay. Have you reviewed the Reply in support of
20 Verified Petition for Relief by Orion Renewable
21 Resources LLC, that was filed in this docket on
22 May 26, 2020?

23 A Yes, I have.

24 Q And with the understanding that that filing

1 consists primarily of legal arguments, have you
2 reviewed the factual statements that are in that
3 filing?

4 A Yes, I have.

5 Q And are they true and correct to the best of your
6 knowledge?

7 A Yes, they are.

8 MR. SNOWDEN: And so, Commissioner
9 Clodfelter, Orion would move that the Verified
10 Petition for Relief filed by Orion on March 9th, and
11 the Reply in Support of Its Verified Petition filed on
12 May 26th and the statements therein be entered into
13 the record as if the contents were statements given
14 orally from the stand.

15 COMMISSIONER CLODFELTER: All right.
16 You've heard the motion. Is there any objection?
17 Hearing no objection, the Verified Petition and the --

18 MR. SNOWDEN: Okay. Commissioner
19 Clodfelter, you're on mute again. I'm sorry.

20 COMMISSIONER CLODFELTER: I'm sorry. It
21 accidentally hit. The Verified Petition and the
22 Verified Reply will be received into evidence and
23 taken into the record the same as if testified to
24 orally from the stand.

1 MR. SNOWDEN: Thank you, sir.

2 (WHEREUPON, the prefiled Verified
3 Petition for Relief and Reply in
4 Support of Verified Petition for
5 Relief is copied into the record
6 as if given orally from the
7 stand.)
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PUBLIC (REDACTED) VERSION

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-13695, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Orion Renewable Resources LLC

)
)
)
)
)

VERIFIED PETITION FOR RELIEF
BY ORION RENEWABLE
RESOURCES LLC

NOW COMES Orion Renewable Resources LLC (“Orion”), by and through the undersigned counsel and pursuant to sections 62-110.8 and 62-2(b) of the North Carolina General Statutes, and submits this verified petition (the “Petition”) to the North Carolina Utilities Commission (the “Commission”) to initiate a proceeding to remedy the impermissible disqualification of Orion’s Proposal 129-01 (“Proposal” or “Bid”) for an 80-megawatt solar project (“Project”) in Tranche 1 of the Competitive Procurement of Renewable Energy (“CPRE”) Program of Duke Energy Carolinas, LLC (“DEC”).

This Petition arises from elimination of Orion’s Proposal from CPRE Tranche 1 on the grounds that the “Net Benefit” of the Proposal to DEC was negative. Net Benefit is a measure, distinct from avoided cost, that the CPRE Independent Administrator (“IA”) created to rank the economic competitiveness of each eligible CPRE proposal. While Net Benefit was created for the purpose of ranking CPRE proposals for selection, the complete disqualification of a proposal based on that analysis - where DEC has not met its procurement goal - is inconsistent with North Carolina Gen. Stat. 62-110.8(b)(2), House Bill 589, S.L. 2017-192 (“HB 589”), the Rules and Orders of this Commission implementing the CPRE Program, and the terms and conditions of DEC’s Final Tranche 1 Request for Proposal published on July 11, 2018 (“Tranche 1 RFP”). Because DEC did

not meet its procurement goal of 600 megawatts in its final selection of proposals in the Tranche 1 RFP, every eligible proposal in Tranche 1 should have been offered a Power Purchase Agreement (“PPA”) if its bid price came in under avoided cost. Orion’s Proposal is therefore entitled to a Tranche 1 PPA if the total cost of the Proposal, inclusive of the cost of any required System Upgrades (as that term is defined in the Tranche 1 RFP), does not exceed DEC’s published avoided cost rates for Tranche 1.

In support of this Petition, Orion respectfully shows the Commission the following:

I. THE PARTIES

1. Orion Renewable Resources LLC is a limited liability corporation organized under the laws of Delaware and certified to transact business in North Carolina. Its principal place of business is located at 155 Grand Avenue, Suite 706, Oakland, California.

2. Orion Renewable Resources LLC is owned by affiliates of Orion Renewable Energy Group LLC (“OREG”) and MAP® Energy (“MAP”). OREG and MAP have a wealth of experience developing renewable energy projects, and OREG’s owners have been pioneers in expanding the use of renewable energy in the United States for nearly 25 years. OREG’s successful track record of completing projects is the result of expertise in siting, development, power sales, finance, construction, and operations. In the United States, approximately 5,000 megawatts (“MW”) of renewable energy projects in operation or under construction have been developed by OREG’s principals, affiliates and predecessor companies.

3. Orion's counsel in this proceeding, to whom all notices, pleadings, and other documents related to this proceeding should be directed, is:

Benjamin L. Snowden
Kilpatrick Townsend Stockton LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
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Email: bsnowden@kilpatricktownsend.com

II. BACKGROUND

A. The CPRE Program

4. HB 589 created the CPRE program, which obligates Duke Energy Progress, LLC ("DEP") and DEC¹ to competitively procure energy and capacity from renewable energy facilities. The purpose of CPRE is to "add[] renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs."

5. Under the Commission's Rules implementing CPRE, evaluation and selection of proposals proceed in a two-step process. In Step 1, the Independent Administrator appointed by the Commission evaluates all proposals based upon factors set forth in the published CPRE solicitation.² The IA eliminates proposals that "fail to meet the CPRE RFP Solicitation evaluation factors," and then delivers to the utility's "T&D Sub-Team" a list of proposals ranked in order from most competitive to least competitive.

¹ Although the two utilities took bids separately and have distinct procurement targets, for most purposes related to CPRE, DEP and DEC have made joint proposals and the same rules apply to both utilities. Because Orion bid into DEC's program, however, Orion herein refers exclusively to DEC.

² Rule R8-71(f)(3)(i).

6. In Step 2, the utility's T&D Sub-Team assesses the system impact of eligible proposals in the order ranked by the IA and assigns any System Upgrade costs attributable to each proposal on the list.³ After determining whether System Upgrade costs have been appropriately assigned and whether the list of projects needs to be re-ranked based on System Upgrade costs, the IA establishes a final ranking and DEC selects proposals in the order ranked by the IA until the total generating capacity sought in the CPRE RFP Solicitation is satisfied.⁴

B. The Avoided Cost Cap

7. To ensure the cost-effectiveness of energy resources procured under CPRE, HB 589 provides that each utility's procurement obligation is "capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement." The statute further provides that the utility's current forecast of its avoided cost for these purposes "shall be consistent with the Commission-approved avoided cost methodology."⁵

8. Under Commission rules, compliance with the avoided cost cap is determined by comparing a proposal's total bid price (inclusive of any System Upgrade costs) to the utility's calculation of its long-term, levelized avoided cost rates for energy and capacity ("Avoided Cost

³ Rule R8-71(f)(3)(iii).

⁴ R8-71(f)(3)(iv).

⁵ G.S. § 62-110.8(b)(2).

Rates”).⁶ The utility is required to publish the Avoided Cost Rates against which proposals will be evaluated.⁷

9. DEC’s petition to the Commission for approval of its CPRE Program, as well as the Commission’s Order approving and modifying DEC’s proposal, confirm that each bid’s compliance with the avoided cost cap is judged solely by reference to DEC’s published Avoided Cost Rates.⁸ This is reiterated in other filings and Commission Orders relating to CPRE.⁹ Submittals and reports of the IA for Tranche 1, Accion Power (“Accion”), also confirm this understanding.¹⁰

⁶ “Avoided cost rates” are defined in Commission Rule R8-71(b)(2) as “an electric public utility’s calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility’s upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility’s avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation.”

⁷ R8-71(f)(1)(ii).

⁸ Docket Nos. E-2 Sub 1159 and E-7 Sub 1156, *Order Modifying and Approving Joint CPRE Program* (Feb. 21, 2018) at 3, 17, 20-21; *Duke Energy Carolinas, LLC’s & Duke Energy Progress, LLC’s Competitive Procurement of Renewable Energy Program Guidelines* (Nov. 27, 2017) at 6.

⁹ See, e.g., Docket No. E-100 Sub 151, *Order Adopting and Amending Rules* (Nov 2017) at 21 (“all prices in proposals must be compared to avoided cost rates, which are expressed in \$/MWh”); Docket Nos. E-2 Sub 1156 and E-7 Sub 1159, *Comments of Duke Energy Progress, LLC And Duke Energy Carolinas, LLC* (Mar. 22, 2019) at 9, 12-13 (“the CPRE Program statute provides that the cost-effectiveness cap on bids is to be based upon the ‘public utility’s current forecast of its avoided cost [and] shall be consistent with the Commission-approved avoided cost methodology.’”).

¹⁰ Docket Nos. E-2 Sub 1156 and E-7 Sub 1159, *CPRE IA Second Status Report* (Dec. 21, 2018) at 3; Docket No. E-100 Sub 151, *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Initial Comments And Independent Administrator Recommendation, Proposal To Duke Energy In Response To Bid Event #75103: CPRE Program Independent Administrator* (Dec. 8, 2017) (“Accion understands that the Commission and Duke have in place a methodology for determining avoided cost that will be reviewed for credibility in the instant solicitation, and then employed as a benchmark against which bids will be measured.”).

10. In the case of the Tranche 1 RFP, DEC informed bidders or Market Participants (“MPs”) that their bid prices were required to be at or below DEC’s Avoided Cost Rates, which were described in the Tranche 1 RFP as “the applicable 20-year dollar per megawatt-hour (\$/MWh) avoided cost specified in the tables” provided in the Tranche 1 RFP, after consideration of the cost of System Upgrades required for proposed projects.¹¹ Bidders were required to provide pricing for their Proposals in the form of a single price decrement to DEC’s published Avoided Cost Rates.

11. For purposes of this comparison of total proposal costs to Avoided Cost Rates, the cost of System Upgrades for each proposal was determined via a “grouping study” conducted by the utility’s T&D Sub-team in Step 2 of the CPRE process.¹²

12. Neither HB 589, the Commission’s CPRE rules, the DEC CPRE Program Plan, nor the Tranche 1 RFP establish any minimum “cost-effectiveness” threshold for proposals other than the utility’s published Avoided Cost Rates.

i. “Net Benefit” and the Ranking of CPRE Proposals

13. For purposes of ranking the economic competitiveness of each eligible bid, the Tranche 1 RFP established a quantitative measure referred to as “Net Benefit.” Although the Tranche 1 RFP does not describe in detail how Net Benefit would be calculated, at a high level it describes the calculation as follows:

In order to assess a Proposal’s net benefit, the evaluation must determine both the Proposal’s cost and the Proposal’s benefit to the DEC/DEP system. The cost of the Proposal is determined by taking the MP submitted \$/MWh rate and applying the rate to the Facility’s projected output (8760 hours x 20 years). The benefit to the DEC/DEP system is determined using two metrics: (1) the Proposal’s output contributes toward the ability to defer

¹¹ Tranche 1 RFP at 11-12, 14.

¹² Tranche 1 Final Report at 24; R8-71(f)(3)(iii).

future DEC/DEP generating unit capacity and (2) the Proposal's energy output replaces energy that would have been supplied at DEC/DEP system cost for that particular hour.¹³

Unlike compliance with the avoided cost cap, which is based only on the utility's published, levelized Avoided Cost Rates,¹⁴ the Net Benefit analysis in Step 1 compares the proposal's bid price against the utility's ability to defer future generating unit capacity and its projected cost of energy that would have been supplied, for each hour over the entire 20-year term of the CPRE PPA. The Net Benefit calculation differs significantly from published Avoided Cost Rates, and a proposal that complies with the avoided cost cap may nonetheless have a Net Benefit less than zero.

14. The IA has not disclosed the details of its methodology for calculating Net Benefit, nor DEC's projections of its system costs, and has consistently treated that information as proprietary and confidential, so bidders in Tranche 1 were unable to predict what the Net Benefit of their proposals would be, or to ensure that their Net Benefit would be positive.¹⁵

15. In its Final Report for Tranche 1, the IA reported that in "Step 1, the proposals were ranked based on the [Net Benefit], excluding T&D system upgrade costs. In the Step 2 process, the T&D system upgrade costs for projects were calculated in an iterative process starting with the most attractive proposals and then imputed to the Proposal in the final ranking of Proposals."¹⁶

¹³ Tranche 1 RFP at 13.

¹⁴ For purposes of determining compliance with the avoided cost cap, the IA converted the System Upgrade costs determined by the T&D Sub-Team to 20-year \$/MWh pricing and added them to the bid price. Tranche 1 RFP at 13.

¹⁵ Orion does not take issue with the IA's decision to keep the details of the Net Benefit calculation confidential, except insofar as Net Benefit is used as a basis for disqualifying otherwise-eligible proposals.

¹⁶ *CPRE Tranche 1 Final Independent Administrator Report*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (July 18, 2019) ("Tranche 1 Final Report") at 24.

16. Neither the Tranche 1 RFP, nor any filing or order in the CPRE dockets, nor any guidance provided by DEC or the IA in Tranche 1, suggests that the Net Benefit analysis will be used to determine whether a bidder's proposal complied with the avoided cost cap. Instead, the Tranche 1 RFP states that the "Net Benefit" analysis will be used only to rank proposals for purposes of selection. All guidance provided to Tranche 1 bidders indicated that the Net Benefit analysis was not relevant to a determination of whether a proposal's cost exceeded the avoided cost cap.

C. Orion's CPRE Proposal

17. Orion is the developer of the Misenheimer Solar project (the "Project"), a proposed 80 MW solar photovoltaic generating facility to be located in Stanly County, North Carolina. This Commission granted a Certificate of Public Convenience and Necessity for the Project on January 24, 2020, in Docket No. SP-13695, Sub 0.

18. The Project seeks interconnection to the DEC transmission grid. The proposed Project is not located in a constrained area of DEC's grid, and Orion has no reason to believe that the Project would require significant System Upgrades in order to interconnect safely to DEC's system.

19. Orion submitted its Proposal for the Project into the DEC Tranche 1 RFP on October 9, 2018. The bid price in Orion's Proposal is below DEC's Avoided Cost Rates published prior to the issuance of the Tranche 1 RFP. Orion's bid was in the fourth (least competitive) quartile of Tranche 1 proposals, but Orion's economic analysis of its bid showed that the total cost of the Proposal would be below DEC's Avoided Cost Rates so long as System Upgrade costs did not exceed approximately [REDACTED]

20. Although Orion's Proposal was not selected as part of the original Competitive Tier for Tranche 1, Orion was notified on January 9, 2019, that the Proposal had been placed on the "Competitive Tier Reserve" list, and on February 21, 2019, the IA identified the Proposal for additional Step 2 evaluation in the "Primary Competitive Tier." Before proceeding to Step 2, Orion was required to post Proposal Security of \$1,488,000, and the IA confirmed receipt of the required security on March 1, 2019.

21. On April 9, 2019, Orion received Final Notification from Accion, the IA (Attachment A), stating that Accion had "completed the evaluation of proposals in Tranche 1 of the [CPRE]. The IA determined that your proposal DEC_129-01 was not selected and has been released from consideration." Accion did not explain at that time why Orion's Proposal was disqualified. That same day, Orion requested a conference with Accion to better understand the ranking of its Proposal and the reason for its disqualification. Accion promised to provide more information at a "debrief" session after completion of the contracting period, which it expected to take 60 days.

22. Despite repeated requests from Orion, Accion was not available for the "debrief" session with Orion, and did not provide any other relevant information about the disqualification of Orion's Proposal, until August 2019.

23. As a result of being disqualified from Tranche 1, the Project lost its position in DEC's Interconnection Queue relative to the projects selected in Tranche 1 and any other projects ahead of them in the queue.¹⁷

¹⁷ North Carolina Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Generator Interconnections, § 1.7.3.

D. Conclusion of CPRE Tranche 1

24. The CPRE Tranche 1 selection and contracting process concluded on July 8, 2019.

25. On July 18, 2019, Accion published a Final Report on Tranche 1 which stated that DEC had procured only 465.5 MW of its 600 MW Tranche 1 goal. It also reported that all proposals that were priced below DEC's published Avoided Cost Rates had been offered a Tranche 1 PPA.¹⁸

E. Orion's Post-Tranche 1 Communications with the IA and the Public Staff

26. On August 19, 2019, Accion sent a message to Orion via the Tranche 1 portal (Attachment B), stating that the "Step 1 analysis determined that Net Energy Benefit Calculation (Energy Benefit less Proposal Cost) was negative." This was the first indication Orion had received from Accion that the Proposal was disqualified because of Accion's "Net Energy Benefit" ("NEB") calculation, rather than a determination of System Upgrade costs for the proposed Project which resulted in its total cost exceeding DEC's published Avoided Cost Rates.

27. Two days later, on August 21, 2019, the long-promised "debrief" session took place. On that day, Orion and Accion had a conference call to discuss the disqualification of the Proposal. During the call, Accion relayed the following information to Orion:

- a. The Proposal had been eliminated because the NEB calculation was negative, not because the bid cost exceeded Avoided Cost Rates.
- b. The IA performed the NEB calculation using its proprietary and confidential methodology.¹⁹

¹⁸ Tranche 1 Final Report at 60.

¹⁹ It is worth noting that Accion said it considered only the Project's Net **Energy** Benefit, and not the **total** Net Benefit (which would include a capacity component). Accion did not disclose the results of a full Net Benefit analysis for Orion's Proposal.

- c. Pricing in the Proposal (without considering System Upgrade costs) was below DEC's published Avoided Cost Rate in all three avoided cost periods specified in the RFP. However, because the bid price was projected to exceed DEC's projections of its hourly energy cost (not the published Avoided Cost Rate) during some hours over the 20-year term of the PPA, the overall Net Energy Benefit calculated for the Proposal was negative.
- d. Because the NEB calculation for the Proposal was negative, the Proposal was not included in DEC's Step 2 T&D System Upgrade cost analysis, even though the Proposal had been advanced to Step 2 and was required to post \$1,488,000 of Proposal Security. Consequently, no determination of System Upgrade costs for the Project had been made.

28. Based on the information provided at the “debrief” session, it appeared to Orion that its Proposal had been disqualified from Tranche 1 as a result of Accion’s Net Energy Benefit calculation, which was inconsistent with the terms of the Tranche 1 RFP.²⁰ On October 10, 2019, Orion requested the opportunity to further discuss the NEB calculation with Accion, with the goal of better understanding the basis for disqualification of the Proposal. Accion directed Orion to submit its questions to the message board on the IA web site. Following Accion’s directive, on October 11, 2019, Orion submitted a list of questions to the IA message board. On October 14, 2019, Accion sent back a message refusing to provide any further information, stating simply that the “information provided in the Tranche 1 final report, as filed with the NCUC, and the debrief

²⁰ Because DEC had failed to meet its procurement goal for Tranche 1, every otherwise-eligible Proposal that was below the avoided cost cap should have been offered a PPA. No proposal should have been disqualified based on economic factors other than compliance with the cap.

provided to this MP is the extent of what will be shared regarding the Tranche 1 evaluation process. We urge you to review those materials.”

29. Its attempts to obtain more information from Accion having been rejected, Orion then sent a letter to the Public Staff (Attachment C) on October 25, 2020, which laid out its concerns about the disqualification of its Proposal based on the Net Energy Benefit calculation in Step 1 of the CPRE.

30. On information and belief, the Public Staff communicated directly with Accion to discuss Orion’s concerns about the disqualification of its Proposal.

31. On November 22, 2019, Orion met with the Public Staff to discuss the information the Public Staff had received from Accion. The Public Staff stated at that meeting that, according to Accion, Orion’s Proposal had not been eliminated based on a Net Energy Benefit calculation in Step 1. Rather, Accion told the Public Staff that it had concluded in the Step 2 analysis that System Upgrade costs for the proposed Project (which Accion estimated would amount to at least \$455,000) would push the total cost of the Proposal over DEC’s published Avoided Cost Rates. Accion confirmed to the Public Staff that the Project was not included in the Step 2 interconnection T&D “grouping study,” but did not tell the Public Staff how System Upgrade costs for the Project had been determined.

32. Accion’s statements, as reported to Orion by the Public Staff, were inconsistent with Accion’s message to Orion in August (Attachment B) as well as its explanation at the August 21, 2019 “debrief” session that the Proposal had been disqualified based on a Net Energy Benefit calculation in Step 1. Consequently, Orion asked the Public Staff to request additional information from Accion about the basis for disqualification of Orion’s Proposal. These additional questions for Accion were sent to the Public Staff in a letter dated December 2, 2019 (Attachment D).

33. On information and belief, Accion and the Public Staff had further communications about the disqualification of Orion's Proposal in December 2019 and January 2020. Accion declined to provide further written information to Orion but offered to discuss Orion's concerns on a conference call.

34. Orion and Accion convened a conference call on February 15, 2020. The Public Staff was unable to join the call due to a scheduling conflict. On that call, Accion stated – contrary to the Public Staff's understanding – that Orion's Proposal had in fact been disqualified based on a Net Energy Benefit calculation in Step 1. Accion also acknowledged that DEC had not conducted an analysis of potential System Upgrade costs of the Project, and that neither Accion nor DEC had analyzed whether the total costs of the proposed Project exceeded DEC's published Avoided Cost Rates. Accion said they did not believe disqualification of Orion's Proposal based on a Net Energy Benefit calculation in Step 1 violated CPRE Rules or Orders or the Tranche 1 RFP, but conceded that there was a difference of opinion on the matter. They also acknowledged Orion's right to file this Petition with the Commission to resolve the disagreement.

F. Tranche 2

35. Proposals for CPRE Tranche 2 are due on March 9, 2020. Orion (or an affiliated entity) intends to submit a proposal for the Project into Tranche 2. However, even if Orion's Proposal were to be selected in Tranche 2 (which is by no means certain), this would not remedy the improper denial of Orion's opportunity to obtain a Tranche 1 PPA. This is true for several reasons, including but not limited to: (1) the lower avoided cost cap for Tranche 2; (2) imposition of a Solar Integration Services Charge on Tranche 2 projects; (3) potentially higher System Upgrade costs based on the later interconnection queue positions of Tranche 2 projects; and (4)

the significant delay in commercial benefits which would result from implementation of the Project in Tranche 2.

36. On February 28, 2020, Accion published a Memorandum to Tranche 2 participants (Attachment E) entitled “Duke CPRE Tranche 2 Screening and Selection Process” (“Tranche 2 Memo”). This memo purports to respond to requests from participants in the Tranche 2 Stakeholder process that Accion provide additional information regarding the CPRE evaluation process.

37. The Tranche 2 Memo contradicts Accion’s position regarding the Proposal in Tranche 1 and confirms that disqualification of proposals based on a Net Benefit analysis is not appropriate. It specifically states that in Tranche 2, “No Proposal will be eliminated from further consideration if the assigned upgrade costs do not exceed the maximum allowable T&D upgrade costs, even if it has a negative benefit in the IA evaluation.” Tranche 2 Memo at 1. It further states that “All Proposals will be considered for inclusion in the Step 2 evaluation based on their net benefit ranking, provided that the Tranche procurement targets are not met with better ranked Proposals[.]” Tranche 2 Memo at 1.

38. The Tranche 2 Memo also indicates that DEC agrees with this interpretation of state law *even as to Tranche 1*, stating:

Duke evaluation personnel believe that the Company is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP, notwithstanding a determination of net benefit under the IA Evaluation Methodology, if doing so is necessary to achieve the procurement targets established *for each tranche* during the 45 month CPRE procurement period.

Tranche 2 Memo at 2 (emphasis added).

III. GROUND'S FOR RELIEF

39. Accion improperly disqualified Orion's Proposal from CPRE Tranche 1, based on a conclusion that its "Net Energy Benefit" was negative. While Net Energy Benefit may be used for ranking a proposal relative to other proposals, it is not a permissible basis for disqualifying a proposal from CPRE where the utility has not met its procurement goal for that tranche. Accion did not consider whether the total cost of Orion's Proposal was below DEC's published Avoided Cost Rates, as required by HB 589, the implementing Rules and Orders of this Commission, and the terms of the Tranche 1 RFP.

40. Because DEC failed to meet its Tranche 1 600 MW procurement goal, any Tranche 1 proposal whose cost did not exceed DEC's published Avoided Cost Rates and was otherwise eligible under the Tranche 1 RFP should have been offered a Tranche 1 PPA, even if it was the last-ranked proposal. Orion's Proposal conformed to the requirements of CPRE Tranche 1. Therefore, if the total cost of the Proposal, inclusive of any System Upgrade costs, did not exceed DEC's published Avoided Cost Rates, the Proposal should have been awarded a Tranche 1 PPA.

41. As a result of Accion's improper disqualification of the Proposal from Tranche 1 before DEC conducted the Step 2 interconnection T&D "grouping study," DEC did not provide an estimate of the System Upgrade costs for the Proposal. However, preliminary analyses conducted by Orion strongly suggest that the Project would not have triggered System Upgrades sufficient to push the total cost of the Proposal over DEC's published Avoided Cost Rates.

42. To remedy Accion's improper disqualification of Orion's Proposal, DEC should be directed to conduct an interconnection T&D study (using an appropriate baseline that reflects the interconnection queue priority of the Project in the CPRE Tranche 1 grouping) to determine the cost of System Upgrades for the Project.

43. If the cost of System Upgrades, as determined in such a study, does not cause the total cost of Orion's Proposal to exceed DEC's published Avoided Cost Rates for Tranche 1, the Proposal should be awarded a Tranche 1 PPA.

IV. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Orion respectfully requests that the Commission grant the following relief in order to remedy the IA's improper disqualification of Orion's bid in violation of HB 589, the CPRE Rules and Orders, and the Tranche 1 RFP:

1. Join Accion, DEC, and/or any other persons the Commission deems necessary as Parties to this proceeding so that complete relief may be accorded.
2. Clarify that Net Benefit or Net Energy Benefit is not a permissible basis on which to determine whether the total cost of a CPRE proposal exceeds the utility's Avoided Cost Rates or to disqualify a proposal from an RFP.
3. Direct DEC to conduct an interconnection study to determine the cost of System Upgrades for the Project using an appropriate baseline that reflects the queue priority of the Project in the CPRE Tranche 1 grouping, and to file the results of such study with the Commission in this docket. Such study should use the same cost and other assumptions DEC's T&D Sub-Team applied to other Tranche 1 projects to determine their System Upgrade costs for this purpose. The system "baseline" for such interconnection study should replicate the baseline used for the Tranche 1, Step 2 T&D grouping study.
4. Direct Accion to determine, based on the results of such interconnection study, whether the cost of System Upgrades for the Project would result in the total costs of the Proposal exceeding DEC's published Avoided Cost Rates for Tranche 1. In making that determination, Accion should use the same cost and other assumptions it applied to


determining whether the total cost of other CPRE Tranche 1 bids exceeded DEC's published Avoided Cost Rates based on the Step 2 T&D study. Accion shall provide detailed information concerning this analysis to Orion, and shall file the results of its analysis with the Commission.

5. If, based on the foregoing analysis, the Commission determines that total cost of the Proposal does not exceed DEC's published Avoided Cost Rates, direct DEC to offer a Tranche 1 CPRE PPA to Orion. The terms and conditions of that PPA shall be adjusted as reasonably necessary to accommodate any delays in project development and construction as a result of Accion's improper disqualification of Orion's Proposal, Orion's prior attempts to resolve this issue with the IA, and this proceeding.

6. Award such other relief as the Commission deems just and proper.

Respectfully submitted this the 8th day of March 2020.

KILPATRICK TOWNSEND & STOCKTON LLP

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DOCKET NO. SP-13695, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Orion Renewable Resources LLC

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)
)
)

VERIFICATION

I, Tim Lasocki, being first duly sworn, depose and say that I am Vice President of Origination and Finance for Orion Renewable Energy Group LLC, and in such capacity, I have read the foregoing Petition for Relief and know the contents thereof, and by my signature below verify that the contents are true and correct to the best of my knowledge.


Tim Lasocki

Alameda County, California

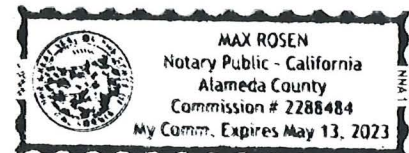
Signed and sworn before me this day by Tim Lasocki

Date: March 6, 2020


Notary Public

[SEAL]

My Commission Expires: May 13, 2023



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

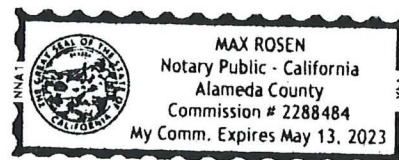
State of California
County of Alameda)

On March 6, 2020 before me, Max Rosen
(insert name and title of the officer)

personally appeared Timothy Lasocki,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Max Rosen* (Seal)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-13695, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Orion Renewable Resources LLC

)
) **REPLY IN SUPPORT OF VERIFIED**
) **PETITION FOR RELIEF**
) **BY ORION RENEWABLE**
) **RESOURCES LLC**
)

NOW COMES Orion Renewable Resources LLC (“Orion”), by and through the undersigned counsel and pursuant to sections 62-110.8 and 62-2(b) of the North Carolina General Statutes, and submits this Reply in support of its Verified Petition for Relief (the “Petition”), filed with this Commission on March 30, 2020.

Orion petitioned the Commission to challenge the disqualification of its Proposal 129-01 (the “Proposal”) for an 80-megawatt solar project (the “Project”) in Tranche 1 of the Competitive Procurement of Renewable Energy (“CPRE”) Program of Duke Energy Carolinas, LLC (“Duke”). Orion seeks relief on the grounds that the Independent Administrator, Accion Group LLC (“Accion” or the “IA”), disqualified the Proposal using an Evaluation Tool (“Evaluation Tool”) which was intended and authorized under the RFP to rank bids, but not to disqualify them from consideration. This relief is necessary and appropriate in this instance, where Duke did not meet its 600-megawatt procurement target for Tranche 1. Disqualification of Orion’s Proposal violated H.B. 589, this Commission’s CPRE rules, and the terms of the Tranche 1 RFP.

In its *Response To Verified Petition For Relief By Orion Renewable Resources LLC* (“Response”) filed on April 9, 2020, the IA acknowledges that even though Orion’s bid price met

the Commission's avoided cost-based test for cost-effectiveness, the IA used a different and additional "Net Benefit" test to disqualify Orion's otherwise qualified bid. The IA further acknowledges that the Tranche 1 RFP makes no mention of the use of a Net Benefit test to disqualify bids. The IA's use of a proprietary "cost-effectiveness" test to disqualify bids is fundamentally at odds with the measure of cost-effectiveness for CPRE proposals prescribed by the General Assembly and this Commission – a measure which relies on the utility's published avoided cost rates. G.S. § 62-110.8(b)(2); Rule R8-71(b)(2). While it may have been appropriate for the IA to use a Net Benefit analysis to rank CPRE proposals, it was not appropriate for the IA to use a Net Benefit analysis to disqualify a proposal that met this Commission's cost-effectiveness test if, as in this case, the utility's procurement target has not been met.

In its Response, the IA insinuates that Orion was somehow lax in failing to bring this challenge to the Commission earlier. But as discussed below, the timing of Orion's filing was not the result of any lack of diligence on Orion's part. To the contrary, Orion immediately sought an explanation for the disqualification of its bid in April 2019, but the IA refused to provide it until after Tranche 1 had concluded. This refusal was followed by Orion's persistent but unsuccessful efforts to resolve this dispute informally with the assistance of the Public Staff. In any case, the timing of Orion's Petition in no way prejudices the recipients of final PPA awards, or anyone else, and is not a basis for denying Orion relief.

1. The IA's Response ignores the critical difference between ranking CPRE Proposals based on "Net Benefit" and disqualifying them.

In its Response, the IA claims that:

the core of this dispute can be reduced to a simple question: Should the value of CPRE Proposals . . . be based on the IA's robust and detailed evaluation of the 8760 hourly impacts of each year of the 20-year analysis which determines the net benefit to customers, or on whether Proposals are at or below Duke's levelized avoided energy and capacity rates utilizing the methodology most recently approved by the Commission?

Response at 2. The IA’s Response goes on to extensively discuss the virtues of its Evaluation Tool for ranking projects in CPRE: e.g., “The IA Evaluation Tool ... produced a ranking of Proposals from the most beneficial to customers to the least beneficial,” “Duke and the Public Staff agreed that the IA Evaluation Tool was a vital tool to rank Proposals relative to each other.” Response at 3, 4 (emph. added). But nowhere in the Response does the IA defend the use of its Evaluation Tool as a means of disqualifying bids.

Orion does not dispute that CPRE proposals should be ranked according to their benefits to customers, and does not take issue with the IA’s use of its Evaluation Tool in determining the Net Benefit of each proposal.¹ The core question here is not whether the IA may use the Net Benefit analysis to rank a proposal, but whether it can use the Net Benefit analysis to disqualify an otherwise qualified proposal when other, higher-ranked proposals are insufficient to meet the utility’s procurement target. Nothing in H.B. 589, the Commission’s Rules, or the Tranche 1 RFP suggests that a proposal may be disqualified from CPRE based on the IA’s Net Benefit analysis.

As discussed in the Petition, H.B. 589 requires that resources procured under the CPRE program be “cost-effective.” Both the General Assembly and this Commission specifically require that cost-effectiveness be judged solely by reference to the utility’s published “avoided cost” rate, not by positive benefit for the utility’s customers. *See* G.S. § 62-110.8(b)(2) (“To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement.”); NCUC Rule R8-71(b)(2) (“The electric public

¹ Because the IA’s evaluation criteria, including the calculations underlying its Net Benefit analysis, are proprietary and confidential, Orion cannot formulate an informed opinion on the merits of those criteria.

utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation.”) (emph. added).

The IA's Response, however, concedes that Accion used the Evaluation Tool to determine each proposal's Net Benefit as a means of measuring the proposal's "cost-effectiveness", completely separate from and in addition to the measure of cost-effectiveness dictated by this Commission: e.g., "The IA believe [sic] that N.C. Gen. Stat. 62-110.8(b)(2) requires the IA to determine 'the cost-effectiveness of procured new renewable energy resources' of Proposals, and believes that the IA has the latitude to identify which Proposals are found to be cost effective relative to the system as determined by the IA Tool. . . .The IA measures cost effectiveness as whether a Proposal would provide a positive benefit for Duke's customers." Response at 4-5 (emph. added).

Although the IA is correct that it "is given wide latitude to evaluate Proposals based on its CPRE Program Methodology" (Response at 3), that discretion does not allow the IA to ignore the plain language of the statute and the Rules. Nothing in the statute, rules, CPRE Program Order, or Tranche 1 RFP allows the Independent Administrator to add additional "cost-effectiveness" criteria to those which this Commission has determined to use. Instead, the Tranche 1 RFP specifically states that a "Net Benefit" analysis will be used only to rank proposals for purposes of selection. Petition at 8. The IA does not dispute this in its Response. Allowing bidders to be disqualified by a ranking tool is arbitrary and unfair, and undermines the Commission's goal of requiring utilities to procure all cost-effective resources necessary to meet the utility's procurement targets.

The decision of the General Assembly and this Commission to measure cost-effectiveness by reference to the utility's published avoided cost rates should be strictly adhered to, because it

promotes fairness and efficiency in the CPRE process. Unlike the Net Benefit analysis, which is proprietary to the IA and based on confidential information about Duke's system costs to which Market Participants ("MPs") do not have access, the Avoided Cost Cap is a clear, transparent, and objective metric. With this metric in mind, MPs know exactly how to submit bids which will be deemed "cost-effective", and therefore eligible for consideration to meet the utility's CPRE procurement target.

2. Duke has acknowledged its responsibility to contract with all cost-effective proposals to achieve its procurement target.

Had Duke met its procurement obligation, the difference between ranking and disqualification of proposals based on Net Benefit might not be meaningful, because lower-ranked proposals such as Orion's might not have been awarded PPAs in any event due to the number of higher-ranked proposals available. But under Commission Rule R8-71(f)(3)(iii)-(iv), Duke is required to select CPRE proposals in the order ranked by the IA until its procurement target is satisfied. Duke fell short of its procurement obligation in Tranche 1, and in such a case even a lower-ranked bid is entitled to be offered a PPA award if its pricing is below the Avoided Cost Cap and it is therefore "cost-effective".

The IA contends that "where the IA determines that a Proposal is not in the best interest of customers based on the IA's CPRE Program Methodology, the IA and Duke are not required to select a Proposal simply because the Proposal is below the Avoided Cost Cap." But the IA is wrong, for the reasons discussed in the Petition.² And, as the IA has acknowledged, Duke itself agrees that the IA is wrong. According to the IA's own Memorandum published on February 28,

² Petition at 4-8, 14. Orion does not contend that CPRE Proposals cannot be disqualified based on non-economic factors disclosed in the RFP, such as lack of site control or inability to meet in-service deadlines.

2020 (Attachment E to the Petition), Duke accepts its responsibility to achieve the full procurement target established by this Commission for each tranche:

Duke evaluation personnel believe that [Duke] is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP, notwithstanding a determination of net benefit under the IA Evaluation Methodology, if doing so is necessary to achieve the procurement targets established for each tranche during the 45 month CPRE procurement period. The IA understands that [Duke] continues to support the IA Evaluation Methodology as the appropriate approach to ranking all proposals.

Tranche 2 Memo at 2.³ In fact, according to the Tranche 2 Memo, the IA has now agreed to change its approach to the elimination of bids, stating that “No Proposal will be eliminated from further consideration if the assigned upgrade costs do not exceed the maximum allowable T&D upgrade costs, even if it has a negative benefit in the IA evaluation.” Tranche 2 Memo at 1 (emphasis added). The IA provides no explanation in its Response as to why, if its Tranche 1 approach was justified, it is now willing in Tranche 2 to utilize the method urged by Petitioner, accepted by Duke, and required by the law.

3. Orion was not untimely and attempted in good faith to resolve this matter before filing the Petition.

The IA’s Response asks the Commission to “provide clarity and direction” concerning “Whether a challenge to the final determinations in a CPRE Tranche must be made before final PPAs are awarded, or whether the Commission will accept as timely challenges submitted eight months after the fact.” Response at 5. But as the IA knows, Orion could not have initiated this proceeding before final PPAs were awarded, because the IA refused to tell Orion why its Proposal was disqualified until August 2019, more than a month after Tranche 1 had been completed.

³ It is Orion’s understanding that the Public Staff intends to seek leave to file a memorandum regarding the Petition in this matter. Although the Public Staff can speak for itself, Counsel for the Public Staff have represented to Orion and its Counsel that they agree with Orion’s and Duke’s position on this question.

Moreover, no entity would in any way be prejudiced by the Commission's granting of the relief sought in the Petition.

In March 2019, the IA determined that Orion's Proposal was a competitive bid in Step 1 and required Orion to post \$1.5 million in security to enter Step 2.⁴ But in April 2019, the IA informed Orion that its Proposal had been eliminated, with no explanation why. Orion was left to assume that Duke had met its procurement target by signing PPAs with higher-ranked competitive bidders. Even so, Orion immediately requested a conference with the IA to understand why its bid had been eliminated. The IA refused to provide any information, stating that "The IA will conduct the conversation after Duke completes the contracting phase, which will be within 60 days." But, despite Orion's repeated follow-up requests, the IA did not conduct that conversation until August, more than a month after Duke had completed the contracting phase.

When the IA did finally explain to Orion that the Proposal's disqualification was based on the Net Benefit analysis, Orion promptly reached out to the Public Staff to facilitate a conversation with the IA in the hopes of persuading the IA that Orion's bid should not have been disqualified. But when the Public Staff contacted the IA, the IA offered an entirely different explanation for Orion's disqualification than it had previously given to Orion, stating that an analysis of the Project's likely interconnection costs had placed the cost of the Proposal above Duke's avoided cost rates. Petition ¶¶ 31-32. These inconsistent statements from the IA made it impossible for Orion to know why the IA had eliminated the Proposal, until February 15, 2020, when the IA finally communicated its current position directly to Orion.

In pursuing informal resolution before filing a complaint, Orion acted appropriately and in an attempt to conserve the parties' and the Commission's resources. Moreover, no entity is in any

⁴ A timeline of communications between Orion, the IA, and the Public Staff is set forth in the Petition, and shows Orion's diligence in filing the Petition. See Petition ¶¶ 17-34.

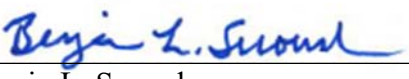
way prejudiced by the Commission's consideration of the Petition. The Petition does not challenge any of the final Tranche 1 PPA awards. It simply requests that there should be consideration of one additional PPA award, given the fact that Duke has not met its 600-megawatt procurement target for Tranche 1.

4. Relief Requested

Because Duke has not met its 600-megawatt procurement target for Tranche 1, Orion maintains that the Project should be awarded a Tranche 1 PPA if its pricing, inclusive of System Upgrade costs, is at or below the Avoided Cost Cap. Because Orion's Proposal was not included in the Step 2 T&D analysis (despite Orion being told it was selected for Step 2 and being required to post Proposal Security), further interconnection analysis is required to determine with certainty what System Upgrade costs would be.⁵ Orion submits that an appropriate path forward would be for Orion and Duke, with the assistance of the Public Staff, to obtain a Step 2 T&D analysis for the Project which is fair and non-discriminatory and respects the Project's Tranche 1 interconnection queue position.

Respectfully submitted this the 26th day of May, 2020.

KILPATRICK TOWNSEND & STOCKTON LLP

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 Counsel
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 Telephone: (919) 420-1719
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⁵ Orion's preliminary analyses strongly suggest that the Project would not have triggered System Upgrades sufficient to push the total cost of the Proposal over Duke's published Avoided Cost Rates.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **REPLY IN SUPPORT OF VERIFIED PETITION FOR RELIEF BY ORION RENEWABLE RESOURCES LLC** upon the following by electronic mail and/or first-class United States mail:

Accion Group, LLC
The Carriage House
244 North Main Street
Concord, New Hampshire 03301
hjudd@acciongroup.com

This the 26th day of May, 2020.



Benjamin L. Snowden

1 MR. SNOWDEN: Mr. Lasocki is now available
2 for questions.

3 COMMISSIONER CLODFELTER: Mr. Snowden, do
4 you want to move the admission of his Exhibits A
5 through E to the prefiled petition as well?

6 MR. SNOWDEN: Yes, indeed I would. Please.
7 Thank you.

8 COMMISSIONER CLODFELTER: We'll take that
9 motion and without objection we will also admit into
10 the record Exhibits A through E as attached to the
11 Verified Petition. Hearing no objection, it is so
12 ordered. They will retain their designation and their
13 confidentiality designations as they were filed.

14 (WHEREUPON, Exhibits A through E
15 are received into evidence.)

16 COMMISSIONER CLODFELTER: Okay.
17 Mr. Snowden, anything else?

18 MR. SNOWDEN: No. Mr. Lasocki is available
19 for questions by the Commission.

20 COMMISSIONER CLODFELTER: Okay. Mr.
21 Lasocki, let's see if there are questions for you from
22 Mr. Crisp.

23 MR. CRISP: No questions.

24 COMMISSIONER CLODFELTER: Mr. Jirak?

1 MR. JIRAK: No questions.

2 COMMISSIONER CLODFELTER: Mr. Dodge?

3 MR. DODGE: No questions.

4 COMMISSIONER CLODFELTER: Well, how about
5 that. So there's no redirect either. And let's see
6 if there are questions from the Commissioners.
7 Commissioner Gray?

8 COMMISSIONER GRAY: No, he may get off the
9 hook.

10 COMMISSIONER CLODFELTER: Commissioner
11 Duffley?

12 COMMISSIONER DUFFLEY: No questions.

13 COMMISSIONER CLODFELTER: Well Mr. Lasocki,
14 I have no questions for you either, so this was a long
15 wait for a very short appearance.

16 THE WITNESS: Okay.

17 COMMISSIONER CLODFELTER: All right.

18 THE WITNESS: Okay. Just happy to be here.
19 Thank you.

20 (The witness is excused)

21 COMMISSIONER CLODFELTER: Mr. Snowden,
22 anything else?

23 MR. SNOWDEN: Nothing further from Orion.

24 COMMISSIONER CLODFELTER: All right. Let me

1 ask for good order sake because I've been keeping my
2 own notes, but so have several of you. Have we gotten
3 all of the exhibits that anyone wishes to identify or
4 mark or take into the record?

5 MR. CRISP: I understand we do as far as we
6 are concerned, sir.

7 COMMISSIONER CLODFELTER: Okay.

8 MR. SNOWDEN: Yes, as far as Orion is
9 concerned.

10 COMMISSIONER CLODFELTER: All right. Then
11 let's talk about post-hearing submissions. This is
12 kind of an unusual proceeding a little bit, so I'm not
13 sure, do you need the full 30 days from the transcript
14 availability? What do you need?

15 MR. CRISP: Fifteen days would be
16 satisfactory for us.

17 COMMISSIONER CLODFELTER: Mr. Snowden, does
18 that work for you?

19 MR. SNOWDEN: I think that would be fine,
20 sir.

21 COMMISSIONER CLODFELTER: Mr. Dodge, you may
22 or may not be filing anything, but I ask you anyway.

23 MR. DODGE: Fifteen days, if it works for
24 the other parties we can make that happen. Again, we

1 may -- as you indicated, may not be filing anything.

2 COMMISSIONER CLODFELTER: Okay. Mr. Jirak,
3 does that work for you?

4 MR. JIRAK: Yes, 15 days from the transcript
5 should be fine. I'll just note though that obviously
6 we need to get the late-filed exhibit in and that is a
7 somewhat complex document, and so I'm not sure if we
8 can keep the record open until that's finished?

9 COMMISSIONER CLODFELTER: Let's do this.
10 Let's do this. Let's make it 15 days from the filing
11 of the late-filed exhibit. How about that?

12 MR. HIGGINS: That makes sense.

13 COMMISSIONER CLODFELTER: Does it work?

14 MR. JIRAK: I think it will just so long as
15 there's not a large time. I wouldn't expect it would
16 be, but from the time we file that late-filed exhibit,
17 you know, as long as we have the transcript in a
18 reasonable amount of time.

19 COMMISSIONER CLODFELTER: Fifteen days from
20 the later of --

21 MR. JIRAK: Yes.

22 COMMISSIONER CLODFELTER: -- the transcript
23 or the filing of the late-filed exhibit. Fifteen
24 days --

1 MR. JIRAK: Perfect.

2 COMMISSIONER CLODFELTER: -- from the later
3 of those two events. And again, that seems to be
4 acceptable to everybody, so that's what we'll do.

5 We will at this point close the record for
6 the testimony. We will keep the record open for
7 receipt of the late-filed exhibit, otherwise close the
8 record for testimony.

9 MR. SNOWDEN: Commissioner Clodfelter --

10 COMMISSIONER CLODFELTER: Yes, Mr. Snowden.

11 MR. SNOWDEN: -- sorry -- if I might before
12 we close, just given that unusual nature of this
13 proceeding, the fact that the evidentiary hearing was
14 initially focused on a couple of issues and obviously
15 gone beyond that, any guidance you have about the
16 scope of what you're expecting in the post-hearing
17 filings would be helpful.

18 COMMISSIONER CLODFELTER: Well, I would say
19 this. Again, you're right. I mean, some of the
20 things we may have assumed from the written papers
21 have we taken off in different directions than what we
22 might've assumed for the written papers, so let's just
23 say anything that we've discussed this afternoon is
24 open for you to discuss and argue if you wish, but you

1 do not need to repeat anything you have already filed.
2 You do not need to repeat anything you have already
3 said or filed with us. Okay.

4 MR. SNOWDEN: Thank you.

5 COMMISSIONER CLODFELTER: Beyond that,
6 you're on your own.

7 COMMISSIONER CLODFELTER: Okay. Do we have
8 anything else to take up then before we conclude? If
9 not, I thank everybody. And, Mr. Judd, I particularly
10 want to thank on behalf of the Commission. I mean,
11 we're in a little bit of a difference of opinion here
12 among several of the parties and that's why we're
13 having this discussion this afternoon to talk about
14 that difference of opinion. But on behalf of the
15 Commission we want to thank Accion for the hard work
16 you've done in Tranches 1 and Tranche 2 on helping
17 deliver what so far appears to be a fairly successful
18 product overall. So we want to say to you and since
19 we have all of your team assembled here with us thank
20 you on behalf of the Commission.

21 MR. JUDD: Happy to do the work. Thank you,
22 Commissioner.

23 COMMISSIONER CLODFELTER: Indeed. And with
24 that then, we are adjourned. Thank you all.

1 (The proceedings were adjourned)

2
3 C E R T I F I C A T E

4 I, KIM T. MITCHELL, DO HEREBY CERTIFY that
5 the Proceedings in the above-captioned matter were
6 taken before me, that I did report in stenographic
7 shorthand the Proceedings set forth herein, and the
8 foregoing pages are a true and correct transcription
9 to the best of my ability.

10
11 Kim T. Mitchell

12 Kim T. Mitchell
13 Court Reporter
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