

1 PLACE: Held Via Videoconference

2 DATE: Wednesday, September 16, 2020

3 TIME: 8:30 A.M. - 12:27 P.M.

4 DOCKET NO.: E-7, Sub 1214

5 E-7, Sub 1213

6 E-7, Sub 1187

7 BEFORE: Chair Charlotte A. Mitchell, Presiding

8 Commissioner ToNola D. Brown-Bland

9 Commissioner Daniel G. Clodfelter

10 Commissioner Lyons Gray

11 Commissioner Kimberly W. Duffley

12 Commissioner Jeffrey A. Hughes

13 Commissioner Floyd B. McKissick, Jr.

14

15 IN THE MATTER OF:

16 DOCKET NO. E-7, SUB 1214

17 In the Matter of

18 Application by Duke Energy Carolinas, LLC,

19 for Adjustment of Rates and Charges Applicable to

20 Electric Utility Service in North Carolina

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DOCKET NO. E-7, SUB 1213

In the Matter of

Petition of Duke Energy Carolinas, LLC,
for Approval of Prepaid Advantage Program

DOCKET NO. E-7, SUB 1187

In the Matter of

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

VOLUME 25

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1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		PAGE
4	JESSICA L. BEDNARCIK Cont'd.	
5	Continued Cross Examination by Ms. Jost.....	18
6	Redirect Examination by Mr. Marzo.....	47
7	Examination by Commissioner McKissick.....	60
8	Examination by Commissioner Clodfelter.....	74
9	Examination by Ms. Jost.....	76
10	Examination by Mr. Marzo.....	80
11	Cross Examination by Ms. Townsend.....	92
12	Cross Examination by Ms. Cralle Jones.....	115
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E X H I B I T S

IDENTIFIED/ADMITTED

Confidential Public Staff Bednarcik
Rebuttal Cross Examination Exhibit 4.....39/--
Confidential Public Staff Bednarcik
Rebuttal Cross Examination Exhibit 5.....44/--
AGO Bednarcik Rebuttal Cross
Examination Exhibit 1.....93/--
Sierra Club Bednarcik Rebuttal
Cross Examination Exhibit 1.....124/--

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

2 CHAIR MITCHELL: Let's go on the record,
3 please. All right. Good morning, everybody. We are now
4 on the record. Any preliminary items for me to consider
5 before we get back to cross examination?

6 MR. ROBINSON: Yes, Chair Mitchell. Camal
7 Robinson.

8 CHAIR MITCHELL: All right, Mr. Robinson.

9 MR. ROBINSON: Thank you. Two briefly from
10 Duke. So yesterday afternoon the Company filed
11 supplemental rebuttal testimony of Mr. Jay Oliver in
12 response to Public Staff witness Thomas' supplemental
13 testimony filed on September 8th. The Company reached
14 out to all parties over the evening to see whether any
15 parties had cross for Mr. Oliver on his supplemental
16 testimony, and to my knowledge, no party stated they have
17 cross for Mr. Oliver or would oppose a motion to excuse
18 him. So accordingly, the Company now moves to excuse Mr.
19 Oliver from the DEC-specific hearing and to enter his
20 supplemental rebuttal testimony consisting of four pages
21 into the record.

22 CHAIR MITCHELL: All right, Mr. Robinson. I
23 would like to check in with my colleagues just to confirm
24 whether any of them has questions for the witness or any

1 of the Commission staff have questions for the witness,
2 and I will -- I will respond to your motion after our
3 first break this morning.

4 MR. ROBINSON: Thank you, Chair Mitchell. I
5 have one more. So the Company also formally moves to
6 excuse Mr. Stephen Immel who previously testified, but
7 was not excused in the event he needed to return to
8 testify in response to the Public Staff's supplemental
9 testimony, which is now no longer necessary, so we'd move
10 to excuse him.

11 CHAIR MITCHELL: All right, Mr. Robinson.
12 Hearing no objection to that motion, Mr. Immel will be
13 excused.

14 All right. Any additional matters for my
15 consideration before we begin?

16 (No response.)

17 CHAIR MITCHELL: Okay. At this point let's
18 leave the video conference. We will join the phone line.
19 We will go through the process of ensuring participation
20 on the phone line and then we will get started. Please
21 mute your lines and turn off your video.

22 (Due to the proprietary nature of the
23 testimony found on pages 15 through
24 90, it was filed under seal.)

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

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

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

16 MS. TOWNSEND: Thank you, Chair Mitchell.

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

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

23 MR. ROBINSON: Thank you, Chair Mitchell.

24 CHAIR MITCHELL: All right, Ms. Townsend.

1 You're up.

2 MS. TOWNSEND: Thank you again.

3 CROSS EXAMINATION BY MS. TOWNSEND:

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

5 A Good morning, Ms. Townsend.

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

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

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

15 A I have it in front of me.

16 Q All right.

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

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

23 MS. TOWNSEND: Thank you.

24 (Whereupon, AGO Bednarcik Rebuttal

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

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

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

11 Q That's correct.

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

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

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

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

1 A I see both of those.

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

7 A Yes. I do see that.

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

11 A Yes. I am there.

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

20 A That is correct.

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

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

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

5 Q Absolutely.

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

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

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

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

22 A They are loading right now.

23 Q All right.

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

1 tab being 1991.

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

5 A Yes.

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

9 A Yes.

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

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

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

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

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

1 MR. MARZO: Okay. Yeah.

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

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

8 A If you'll give me one moment, I'll open it up.

9 Q Yeah. Sure. Do you have it?

10 A I have it in front of me now.

11 Q All right.

12 A Thank you.

13 Q Sure. On the first page of your summary at the
14 very last paragraph, first sentence, you state that
15 "Moreover, while the Company agreed to excavate ash as
16 part of the Settlement Agreement, it also secured key
17 representations from" -- DEQ -- "and the special interest
18 groups that will allow the Company to proceed with
19 excavation as expeditiously as possible." Is that
20 correct?

21 A Yes. That's correct.

22 Q All right. Would you please identify and
23 explain what these "key representations" are?

24 A Yes, Ms. Townsend. So if you go to the actual

1 supplemental testimony that was submitted, they're called
2 out in those areas what -- the paragraphs in the exactly
3 -- in the Settlement Agreement and what those areas are.
4 So let me open that up and make sure I can give you those
5 paragraphs.

6 Q Thank you.

7 A So if you go to my supplemental testimony on
8 page 10, this is where the -- there are a couple things
9 that are called out in the footnote down at the bottom in
10 paragraph 38, 42, and 45. So on page 10, line 3, it
11 starts "In particular, the Settlement Agreement secured
12 commitments from NCDEQ that it will, among other things,
13 conduct an expeditious review and act expeditiously as to
14 review of the Company's closure plans and permit
15 applications. Likewise, the Settlement Agreement secured
16 commitments that the community groups will not oppose or
17 otherwise challenge the Company's closure plans or
18 requests for variances on closure deadlines set forth in
19 CAMA."

20 Q Thank you. Excuse me. Would you please
21 explain why the Company was seeking permission to proceed
22 with excavation as "expeditiously" as possible?

23 A So we were -- as you know, that there are
24 deadlines that are laid out in CAMA and also in the CCR

1 Rule in order -- for closure dates or when excavation has
2 to be completed. So as we were entering into
3 negotiations with the parties on the excavation of the
4 remaining sites, we were looking at the deadlines and how
5 are we going to meet those deadlines. So we looked at it
6 and said if we can get expeditious review of permits and
7 move forward, that will help us to be able to meet those
8 deadlines not only in the CCR Rule -- and there are a
9 couple places where we're working with the Agency and
10 with EPA because we will not be able to excavate to meet
11 the deadlines in the CCR Rule -- but in order to meet
12 those deadlines, it's a fair amount of ash that we're
13 going to be moving, and there's a sequence to do all of
14 that. So if you can -- by the Agency saying that they
15 would expedite the review of the plans and procedures, it
16 allows us to get started sooner, and allowing us to get
17 started sooner, we will be able to work through the
18 project, work through to make sure that we can meet not
19 only the deadlines that are in the Settlement Agreement,
20 but deadlines in CAMA, and also be able to show EPA that
21 we are moving forward in order to meet the deadlines
22 where we can, and also to show EPA that as EPA and DEQ
23 are working on a permit program of whether or not EPA or
24 DEQ will adopt the Federal CCR Rule, that will allow them

1 to modify the final closure dates. All of this is to
2 help show that we're not -- we're not holding things up,
3 that we want to move forward to excavate these basins and
4 to get closure of them at the end of the day.

5 Q And you were negotiating this with DEQ and some
6 special interest groups, so there was some discussion
7 about "pushing back" some of those deadlines; is that
8 correct?

9 A There was discussions of the deadlines and how
10 those deadlines match up with the deadlines in CAMA, as
11 well as the Federal CCR Rule deadlines.

12 Q All right. If you'll go to your second page,
13 you state in about the middle of the full paragraph there
14 "I next explain that it is impossible to identify with
15 any degree of certainty the incremental cost that the
16 Company is likely to incur as it proceeds to excavate
17 rather than cap-in-place the Company's remaining CCR
18 basins under the favorable terms of the settlement." Is
19 that accurate? Did I read that accurately?

20 A Yes.

21 Q All right. Can you identify and explain what
22 incremental cost that the Company is likely to incur as
23 it proceeds to excavate rather than cap-in-place?

24 A So in determining what those incremental costs

1 were, how at least the Company interpreted that request
2 is that there is a -- there are activities that have to
3 be conducted for cap-in-place, there are activities that
4 have to be conducted for excavation. Now, we have not
5 gone out for bids yet for cap-in-place. We did not do
6 that, of course. We did have estimates that we provided
7 in a previous rate case that we had forward that we did
8 provide with Mr. Kerin's testimony as to what we
9 anticipated, estimates, but when you look at what that
10 difference is to meet the Federal CCR Rule, meet CAMA,
11 meet what's in the settlement, looking at it and going
12 absolutely do we know what we would have spent if we
13 would have capped-in-place, absolutely, no. We can't go
14 back. We can't look forward and estimate going forward.
15 We cannot go and say because we haven't had bids, we
16 haven't executed work on cap-in-place or excavation.

17 So the request asks for incremental cost for
18 the current case, and when we went back and we said,
19 well, what -- what did we do that we did for excavation
20 that we would not have had to do for cap-in-place or vice
21 versa, what are those kind of double costs, and that's
22 really -- that's why we called out the closure plans. We
23 did do two sets of closure plans. We prepared a set of
24 closure plans for cap-in-place, we prepared a set of

1 closure plans for excavation, had those both ready
2 because we were required to submit a closure plan by the
3 end of 2019. So, really, those were the only costs that,
4 looking at it, that we could say what is that incremental
5 -- what is that? If we had said -- if we had the Order,
6 if we had gone forward with excavation at the beginning,
7 what those additional costs would have been but for us
8 having the discussions with DEQ and the disagreement with
9 DEQ between cap-in-place and excavation, the only thing
10 that we could come up with was these additional -- these
11 from what we actually spent, were these closure plans
12 that we submitted because we did do duplicates.
13 Everything else that we've done to date will actually
14 meet the needs of both, and then going out in the future
15 we do have the estimates, but we can't come up with a
16 firm, hard number of actual cost for excavation versus
17 cap-in-place.

18 Q Let me bring in another sentence in your
19 statement or summary which is right before that one, that
20 says "I explain that the Company did not incur any
21 incremental cost as a result of the Settlement Agreement
22 with respect to the cost it is seeking to recover in the
23 instant rate case." Is that correct? Did I read that
24 correctly?

1 A Well, the summary does say that. I'm trying to
2 find -- I thought this was in the summary, and if it was
3 not, I do know it was clear in the actual submittal,
4 where we called out those closure plan costs
5 specifically. So if it was not in the summary of my
6 supplemental testimony, it's clearly called out in the
7 supplemental testimony.

8 Q All right. So it is your understanding at this
9 point that the only costs that were different than would
10 have been done if you were excavating are those two
11 closure plans rather than one closure plan?

12 A Yes.

13 Q All right. So based on what your testimony is,
14 is that the steps towards excavation are identical to
15 that the Company took for -- would have taken for cap-in-
16 place to a certain level or to a certain stage, but would
17 you please summarily identify what these steps are that
18 were done through the cap-in-place ones prior to being
19 told they had to be excavated?

20 A Yes. So the steps that were taken, of course,
21 was the groundwater monitoring that is required
22 underneath CAMA and the development of groundwater
23 corrective action plans. And the sampling of groundwater
24 wells, of course, that would take place for both.

1 Q Uh-huh.

2 A There was also all of the work that we did to
3 dewater the basin. So that is a significant amount of
4 the work that has been going on over the last couple
5 years, is dewatering the basins, setting those basins up
6 for dewatering, also, the removal of all the flows from
7 the basins that had to be done by a date certain in CAMA.
8 So regardless if it was cap-in-place or excavation, we
9 still would have had to do groundwater monitoring, we
10 still would have had to remove all flows to the basin, we
11 still would have had to dewater and decant the basins and
12 put in water treatment systems for the dewatering and
13 decanting.

14 Q And you did all those things at Allen, Belews
15 Creek, Cliffside, and Marshall; is that correct?

16 A Yes.

17 Q You said you also did corrective action plans
18 when you thought you might be capping-in-place. Aren't
19 those corrective action plans going to change when you
20 excavate?

21 A No. The corrective action plans for those
22 sites that were submitted to the State were -- did not
23 change between capping-in-place and excavation, so what
24 was submitted to the State included -- was exactly the

1 same for excavation and cap-in-place.

2 Q Now, the cap-in-place -- I'm sorry. The
3 corrective action plans were not given to the State until
4 after the April 1st determination and even after the
5 Settlement Agreement; is that right?

6 A Yes. The corrective action plans were
7 submitted to the State. I don't remember the date off
8 the top of my head right now, but they were submitted to
9 the State after the settlement date.

10 Q Okay. And then going to your discussion with
11 Ms. Luhr from the Public Staff yesterday, you stated that
12 the Company was currently "doing some corrective action
13 plans." Where are those particular corrective action
14 plans being conducted?

15 A So I don't remember the exact nature of the
16 discussion and where I said that. So we are -- we did
17 submit corrective action plans for Allen, Belews Creek,
18 Cliffside, and Marshall, as there was some discussion
19 yesterday about extraction, and so there is extraction
20 at, of course, Belews Creek that is going on right now in
21 that extraction well that was part of what we call the
22 Sutton settlement, where we had to do the accelerated
23 extraction. I did mention other corrective actions. I
24 think I was talking in general for non-CCR that we did --

1 Q Uh-huh.

2 A -- corrective actions. We have had groundwater
3 corrective actions at other types of sites, but not CCR
4 ones, but those corrective action plans specifically for
5 those, except for the one, the extraction well at Belews
6 Creek, we've submitted those plans, and we're working
7 right now, going out for bid, to do patent studies on the
8 groundwater corrective action programs for the sites that
9 I mentioned.

10 Q So I'm assuming the corrective action plans
11 were required based on the fact that there were
12 exceedances of groundwater? Is that correct?

13 A Yes.

14 Q And what plants that were not coal ash related
15 are you referring to?

16 A I think I was talking in general about
17 underground storage tank sites and others when I was -- I
18 believe, going off of memory, what the discussion with
19 her was more on groundwater remediation at other type of
20 sites. I do remember bringing up underground storage
21 tanks, so not things that are included, of course, in
22 this case.

23 Q All right. Also, if my notes reflect
24 correctly, during that discussion with Ms. Luhr, you

1 stated that background -- "background levels for
2 groundwater well monitoring were being evaluated by DEQ
3 in 2014, and that -- and I believe these were your words,
4 that a "line has been drawn in the sand regarding
5 background." Would that be accurate?

6 A I think what I said was that background is ever
7 evolving. You find out more information so that a line
8 has not been drawn as, say, absolutely, this is
9 background, this is -- that that has not been
10 definitively determined yet. Mr. Wells may be able to
11 talk about this a little bit more, but I do know that we
12 are continuing to have discussions with DEQ about final
13 background and how that will be utilized, but, again,
14 that -- I know Mr. Wells knows a lot more about those
15 discussions with DEQ on the background levels. I believe
16 my discussion with her was more on impacts to homeowners
17 in the area, and that we had not seen impacts from the
18 coal ash basins to the -- our homeowners around our
19 basins, around our plants.

20 Q So who is -- based on your comments, it would
21 appear that DEQ was the one that set those background
22 levels. Is it DEQ or DEC that is setting them now?

23 A So it's a discussion between DEQ -- DEQ has the
24 final authority as to say this is what is going to be

1 utilized in our -- in determination of the final -- when
2 we say we're done with our groundwater corrective action,
3 DEQ, of course, has final authority of that. The
4 Company, of course, has taken lots of groundwater data,
5 has provided that to DEQ. DEQ has also, I believe, taken
6 a lot of data. They took a lot of groundwater samples as
7 well of the surrounding area. So all of that goes
8 together in determining what the background levels were.
9 But this is discussion back and forth with DEQ and the
10 Company, but DEQ has the final authority.

11 Q And if you would, go to page 6 of your rebuttal
12 testimony. Well, you actually don't need to go. You
13 mention the Settlement Agreement with DEQ and the special
14 interest groups. And on page 7 you indicate that the
15 agreement details a reasonable and prudent plan for
16 closure of the six remaining CCR basins owned by Duke
17 Energy, Allen, Belews Creek, Mayo, Roxboro, Marshall, and
18 Cliffside. Are you there?

19 A Yes. I'm there.

20 Q All right. Is that an accurate summary of your
21 thoughts on that matter?

22 A Yes. That is a good summary.

23 Q Okay. However, in your direct testimony, you
24 stated, as we discussed last time we were together, that

1 cap-in-place is the Company's preferred closure method
2 for Allen and the others because it's environmentally
3 protective, unobtrusive, and economical, correct?

4 A Correct.

5 Q All right. So which plan for closure of the
6 Allen, Belews Creek, Cliffside, and Marshall sites do you
7 consider truly reasonable and prudent, the cap-in-place
8 or the excavation?

9 A So when you -- that's a good question. Looking
10 at before the settlement, we did, and we still believe,
11 that cap-in-place is what will be protective, and moving
12 forward, being protective of the environment and a good
13 option to go forward to close the sites.

14 As you know, DEQ, on April 1st, 2019, came back
15 and gave us the Order to excavate all of our basins.
16 Now, in the Order -- in CAMA, DEQ is the final authority.
17 So while the Company did put forward cap-in-place and we
18 did actually challenge DEQ's Order on April 1st, 2019, in
19 order to say there are some things that are -- that need
20 to be taken into account by the Company's viewpoint, one
21 of which was the groundwater corrective action plans.
22 And we discussed that the other day, Ms. Townsend, when
23 we went through the DEQ Orders, that DEQ even said that
24 they did not take into account any type of groundwater

1 corrective actions in their determination. But at the
2 end of the day, DEQ is given the authority to make the
3 determination as to what needs to happen. So through the
4 Settlement Agreement, what the Company was able to get
5 through some of those provisions that you had me quote
6 the paragraphs earlier, as well as in the discussion with
7 DEQ -- excuse me -- in the final agreement, we were
8 allowed to leave in place areas at Marshall and at
9 Roxboro that are capped. They have a permitted landfill
10 on top of them. So we were able to leave those material
11 in place. So the fact that we were able negotiate with
12 DEQ, come up with a settlement that allowed us all to
13 move forward outside of litigation, and yet DEQ has the
14 final authority as to determine what needs to occur at
15 the sites, and we were successful in allowing that the
16 cap material at Marshall and at Roxboro remain in place,
17 all of those things together, I would say, is why the
18 Company looks at it and says this is -- this is a good
19 settlement, and this is why we agreed to the settlement
20 and said let's move forward and execute the settlement.

21 Q Do you have an approximate cost number of what
22 it would have cost for those four DEC sites to be capped-
23 in-place versus what it's going to cost to have them
24 excavated, even though some of the material is being --

1 whether or not the material was being waived off or not,
2 the extra material?

3 A So Ms. Townsend, if you go to that supplemental
4 testimony that was submitted --

5 Q Uh-huh.

6 A -- one of my exhibits actually shows that. I'm
7 trying to pull it up. I believe it's Exhibit 4. And the
8 question that you are asking is really what I was trying
9 to show in this exhibit, is that it kind of takes you
10 through time, but in the -- if you have -- do you have
11 Exhibit 4 in front of you from my supplemental?

12 Q Yes, I do.

13 A So what we were trying to show in the sites
14 that are listed here, Allen, Belews Creek, Cliffside, and
15 Marshall, and we did include Buck, and I'll explain why
16 we included Buck, but these were all part of -- these
17 were all the sites that were included in the
18 settlement --

19 Q Uh-huh.

20 A -- in the Consent Order that went on file with
21 the Court.

22 Q Uh-huh.

23 A If you look at -- and I'll leave for right now
24 the Kerin Exhibit 11 from the last case, but the third

1 quarter 2018 estimate, if you look at Note 1, Note 1 says
2 that estimate assumes cap-in-place for Allen, Belews
3 Creek, Cliffside, and Marshall, going out from 2015, so
4 costs we've already incurred, through our estimate of
5 2059. So the overall cost for the sites that are shown
6 on this table was \$1.8 billion, generally, for cap-in-
7 place of what we were estimating at that time, third
8 quarter 2018.

9 When DEQ's Order came out to excavate the
10 basins, including those areas specifically for Marshall
11 since it's on here, including those areas that the
12 Company does not have to excavate now because of the
13 Settlement Agreement, we were looking at an excavation
14 cost of \$4.7 billion. And then with the settlement, by
15 allowing some of the material to remain in place at
16 Marshall, and also -- and this is why we include Buck in
17 here, if you look at Note 3, and then -- no -- actually,
18 more Note 4, Buck is included due to paragraph 39 of the
19 Settlement Agreement concerning variances requests for
20 beneficial -- beneficiation sites. So at the end of the
21 day, specifically for DEC with the settlement, the
22 estimated cost went from \$4.7 billion down to \$4 billion
23 for DEC. So that is the overall kind of -- if you look
24 at it and say between what DEQ was requiring us to do

1 April 1st, 2019, and where we landed at the end of the
2 settlement, because of the settlement, the estimated cost
3 went down by roughly \$700 million.

4 Q All right. So my take from this, my
5 understanding is, is that excavation would have cost \$4.8
6 billion, approximately, and cap-in-place would have cost
7 \$1.8 billion, so instead of capping-in-place, you will be
8 spending \$3 billion more to excavate; is that correct?

9 A Well, again, we never had the actual approval
10 of DEQ to cap-in-place, so the way the process goes is
11 that we submitted plans to DEQ, DEQ has the ultimate
12 authority under CAMA to choose what the Company is going
13 to do, and DEQ chose excavation. We did go back and have
14 -- this is why we did the settlement and why we did not
15 just say yes. We did have a position and we worked with
16 the Agencies to come up with a settlement, and the
17 settlement was less than what DEQ was ordering us to do.

18 Q All right. Understood, and settlements are
19 always good, but it could have been litigated if you felt
20 that cap-in-place was, indeed, the best way to go, could
21 have been litigated, could have come out in a different
22 -- with a different decision, correct?

23 A Yes. It could have been litigated, but with
24 litigation -- and I'm not a lawyer, but I do know with

1 litigation there are risks. There are risks that, at the
2 end of the day, we could have been ordered by a judge to
3 say excavate everything, including the areas that we got
4 underneath the settlement, that we don't have to
5 excavate. And the other risk, I would say, is that if it
6 had gone to full litigation, we still have dates in CAMA
7 and CCR that we have to meet, so there's a time lag
8 between when -- how long it would take to do litigation.
9 Again, I'm not an attorney, but you know how long
10 litigations usually take, so we have to take that into
11 account as well, is that the Company cannot wait, knowing
12 we have deadlines which have consequences if we don't
13 meet those deadlines while we are going through the
14 process. So that's why we did enter into the agreement
15 with DEQ, and looking at it and saying the risks of
16 litigation, the risk of litigation at the end of the day
17 saying excavate everything, all of that was taken into
18 account by the Company in the determination that the
19 settlement was the proper thing to do and to move
20 forward.

21 Q Thank you.

22 MS. TOWNSEND: And no further questions, Chair
23 Mitchell.

24 CHAIR MITCHELL: All right. Sierra Club?

1 MS. CRALLE JONES: Good morning, Chair
2 Mitchell, and good morning, Ms. Bednarcik. We're once
3 again going to make it before the lunch break for a time
4 to visit.

5 CROSS EXAMINATION BY MS. CRALLE JONES:

6 Q I wanted to go back and discuss, yesterday when
7 you were discussing alternative water supplies with Ms.
8 Luhr, I believe you said we're covered under CAMA
9 relating to the provision of those alterative water
10 supplies. Based on your testimony, CAMA is the reason
11 the Company believes that it's entitled to be compensated
12 for permanent water supplies in this hearing; is that
13 right?

14 A Yes. So, and if I said CAMA, it's the
15 revisions to CAMA, the House Bill 630, of course, but,
16 yes, of course.

17 Q And you also said that you didn't know what
18 legislators were thinking when they passed the
19 alternative water supply provisions. Do you recall that
20 testimony?

21 A I do.

22 Q Does the Company employ lobbyists to
23 communicate with North Carolina legislators and work to
24 obtain favorable terms for the Company in that

1 legislation?

2 A I do know that the Company does have -- I guess
3 you would call them lobbyists, but people that do work
4 and interact with people in the State Legislature.

5 Q And they had lobbyists at the time that those
6 amendments to CAMA were passed, correct?

7 A Yes.

8 Q And those amendments to CAMA were signed by
9 Governor McCrory and effective in July of 2014 (sic); is
10 that correct? It's your Exhibit 1 on PDF page 70 of 73,
11 if you'd like to check.

12 A So the reason I'm looking around, I know CAMA
13 originally was 2014, but the House Bill 630, I want to
14 make sure I have the date correct for you on that. I
15 know I mentioned that to Commissioner McKissick, but I
16 want to make sure.

17 Q I may have misspoken. I believe it was July
18 14th, 2016.

19 A Yes. So CAMA was 2014, and that's why I wanted
20 to make sure we got it correct. CAMA was in 2014, but
21 House Bill 630 was in 2016.

22 Q So prior to July of 2016, had the Company
23 received demands from landowners across the state to
24 provide alternative water supplies?

1 A Yes. We had received -- we had discussions,
2 and there was demands through -- through legal counsel
3 for permanent water supplies.

4 Q And prior to July '16, had the Company agreed
5 to provide alternative water to all properties for DEC and
6 DEP basins?

7 A Prior to the passage of House Bill 630, no, but
8 we had provided some bottled water to customers while we
9 were evaluating whether or not we needed to -- whether
10 their wells had been impacted by coal ash constituents.
11 We had not agreed to provide permanent water, other than
12 there were a few in the 2014 time period where there was
13 some connections made years past, and those are the ones
14 that I discussed in my direct testimony with you or with
15 -- I don't remember if it was you or if it was with
16 someone else, but my direct testimony -- is that when we
17 did see that there was a possibility that there might be,
18 at some time in the future, groundwater going anywhere
19 towards a homeowner's well, we did connect them, and
20 that's what we did in Asheville prior to 2014, as well as
21 at Sutton, but for the homeowners that were connected
22 that are part of the House Bill 630, we did not -- we did
23 not see any impacts related to coal ash constituents, and
24 we had not agreed to connect any of those homeowners, but

1 we did provide some bottled water while we were doing
2 those evaluations.

3 Q Thank you. Now, on your rebuttal testimony on
4 page 6, in the second footnote you -- you stated "Company
5 witness Jon Kerin established the reasonableness and
6 prudence of the Company's historical practices in his
7 2017 direct testimony in Docket E-7," -- "1146." Did I
8 read that correctly?

9 A Yes.

10 Q But witness Kerin didn't have any firsthand
11 knowledge or experience regarding the Company's
12 management policy decision making or operating practices
13 prior to 2014, did he?

14 A He did not, but I do believe, and I'm going off
15 memory, that in the Commission's Order, they did address
16 Mr. Kerin and his testimony, and they found him credible,
17 and they included in the ruling something about
18 historical practices and what the Company did. So I
19 don't have it committed to memory, but I do remember that
20 in the ruling.

21 Q And then on page 55 of your testimony, line 14
22 through 16, you stated that you "believe that DE
23 Carolinas' coal ash management practices were and
24 continue to be consistent with industry standards at the

1 time." Is that correct?

2 A Yes.

3 Q When you say at that time, do you mean every
4 point in time between the construction of the first ash
5 pond and now?

6 A Yes.

7 Q But you don't have any firsthand experience
8 with how -- in respect to how the Company's coal basins
9 were maintained prior to 2013, do you?

10 A So I do not have firsthand knowledge. What I
11 did, very similar to what Mr. Kerin did, is I reviewed
12 the historical documents or I talked to people that are
13 operating it now. I do have people that report to me now
14 who are managing a number of our coal ash practices at
15 our operating sites, at our landfills and working on
16 closing the basins. So I did a review of the available
17 documentation, and I -- and I believe I discuss this in
18 my direct testimony, also -- I used that weight of
19 evidence approach, looking at what is available, what do
20 I see, what do I read looking through historical
21 documents and saying if I had in my mind -- not what I
22 know today; of course, not what I know today -- but if I
23 try my hardest to put myself in the shoes of somebody at
24 that time period with the information that I have

1 available to review today and say does it -- does it seem
2 appropriate the actions that were taken, again, not
3 looking at what I know today, then were the actions
4 appropriate? And that is the evaluation that I did, and
5 I do believe that the actions that the Company has taken
6 over the years -- as we got more information, of course,
7 we pivoted and changed over the years, but you can't use
8 the knowledge you have today to judge people in the past,
9 of course. So that is the evaluation I did, best of my
10 ability, try and put myself in those shoes of those
11 people at the time based upon historical documents I
12 reviewed.

13 Q And in several places you refer to industry
14 standards. Do you mean what other utilities happened to
15 be doing at the time?

16 A Yes.

17 Q Does Duke Energy consider itself to be an
18 industry leader?

19 A Very broad question. I would say, yes, in some
20 areas. So we do talk to other industries, other
21 utilities in our industry. One of the reasons -- I know
22 EPRI's been brought up a couple times. That's one of the
23 reasons we participate with -- with EPRI, is to be able
24 to understand what other -- others in the industry are

1 doing and share those best practices, yeah.

2 Q And does the Company strive to be better than
3 its competitors with respect to the performance of its
4 facilities?

5 A I guess, Ms. Cralle Jones, I would say that's a
6 big question and a very subjective question. I would say
7 that, of course, the Company is meeting our regulatory
8 obligations. Of course, the Company is looking and
9 seeing what needs to be done in order to make sure that
10 we have the lowest cost requirements by what is required
11 through the Commission Orders, which is my understanding
12 of one of the things we, of course, have to evaluate. So
13 looking at all -- all the things that the Company has to
14 evaluate along the way, yes, I do think that the Company
15 has operated appropriately, has been operating along with
16 industry standards, and depending upon what we have in
17 front of us at the time, I can't say if we were the
18 leaders or if we were all the way along, but I do -- my
19 review of historical documents is that we -- we did
20 things appropriately.

21 Q Okay. Have you seen, or can you cite any
22 evidence of the Company's coal ash management being
23 better than others?

24 A As I sit here today, I cannot recall that

1 specific information, but that's -- I've reviewed a lot
2 of documents, but I don't see anything that I could say
3 specifically related to that.

4 Q Other than the Company's Dan River spill and
5 the TVA's Kingston spill, are you aware of any other
6 major coal ash spills?

7 A I am aware of at least one other. I believe
8 there was one in the Pennsylvania region that happened.
9 I can't remember what year or which utility, but I do
10 believe that there was another one in Pennsylvania.

11 Q Do findings by groups like E-P-R-I, EPRI, form
12 those industry standards we've been talking about?

13 A Ms. Cralle Jones, I think I missed the first
14 part of your question, if you could restate it, please.

15 Q Do -- and I think you addressed this before,
16 but findings by groups like EPRI, those inform what
17 "industry standards" are, don't they?

18 A So groups like EPRI are -- we utilize in order
19 to do research on behalf of all the utilities and to help
20 us understand what is going on in the industry, and also
21 doing research as to what is -- a lot of environmental
22 research as well -- as to help inform the industry and
23 the utilities as to what is going on in society, what is
24 going on at the operation in our plants and what we need

1 to do. So I would not say that EPRI sets out
2 requirements that needs to be done, but it helps inform,
3 as part of that weight of evidence, as part of the
4 information that the Company takes in when we make our
5 decision.

6 Q Okay. Now, on page 56 of your testimony, you
7 stated that DE Carolinas last constructed a new ash basin
8 in 1982. Where was that new basin constructed in 1982?

9 A At the Buck location.

10 Q Would you please pull Sierra Club 7? And for
11 purposes of identification, it's the DEC Revised Exhibit
12 5 to Jon Kerin's direct testimony in Docket 1146 in 2017.

13 A I do -- I have that in front of me.

14 Q And this provides a list of when the Company's
15 ash basins were constructed; is that correct?

16 A I do see that.

17 MS. CRALLE JONES: Chair Mitchell, we would
18 request that this exhibit be marked as Sierra Club
19 Bednarcik Rebuttal Cross Exhibit 2.

20 CHAIR MITCHELL: All right. The document will
21 be marked Sierra Club Bednarcik Rebuttal Cross
22 Examination Exhibit Number 2.

23 MS. CRALLE JONES: Thank you.

24 CHAIR MITCHELL: Actually, Ms. Cralle, is this

1 Exhibit 1 or 2?

2 MS. CRALLE JONES: I believe it's 2 because --
3 well, I'll need to go back, but I'm almost certain it's
4 2, and I can check about 1 in our break.

5 CHAIR MITCHELL: Well, you have Direct Cross
6 Examination Exhibit Number 1, Bednarcik Direct.

7 MS. CRALLE JONES: You're correct. You're
8 correct. This would be Cross Exhibit 1. My apologies.

9 CHAIR MITCHELL: All right. Just for -- just
10 for clarity and purposes of the record, the document will
11 be marked Sierra Club Bednarcik Rebuttal Cross
12 Examination Exhibit Number 1.

13 MS. CRALLE JONES: Thank you.

14 (Whereupon, Sierra Club Bednarcik
15 Rebuttal Cross Examination Exhibit
16 Number 1 was marked for
17 identification.)

18 CHAIR MITCHELL: You may proceed.

19 Q This chart says that the last basin at Buck was
20 constructed in 1977; is that correct?

21 A So that is what this document shows, but I do
22 know that we have provided -- I don't remember
23 specifically updating this Exhibit 7, but I do know that
24 as part of Public Staff Data Request 2-1, and I have that

1 available, which is -- which is why I have it, it does
2 show that the Ash Basin 1, also called the additional
3 primary pond, was -- the date of construction was 1982.

4 Q Okay. Do you see -- based upon your most
5 current information are there any other incorrect
6 construction dates on this document?

7 A If you give me a moment, I will double check.

8 Q Okay.

9 A So in my review, I did see that the active ash
10 basin, it looks like they put the date of beginning
11 construction is 1972/1973 time period. I see both of
12 those dates.

13 Q I'm sorry. Can you clarify which facility?

14 A Allen. Sorry. Allen.

15 Q Okay.

16 A Active ash basin started construction in the
17 1972/'73 time period, so that -- that one has both of
18 those dates in documents, but only one year difference.
19 The only other one that I see is Buck, so that there is,
20 as we already discussed, that Basin 1 -- Ash Basin 1, the
21 additional primary pond, the initial construction date
22 was 1982. Ash Basin 2, which is also called the primary
23 pond, was 1957, and Ash Basin 3, which is also called the
24 secondary pond, does have the correct date of 1977. So

1 really it appears that Buck is -- did have -- it looked
2 like the Basin 1 date was supposed to be listed for Basin
3 2, and then there was a 1982 date. And Buck is a little
4 confusing because they have two names for each one of
5 their basins, so that's why I wanted to make sure I gave
6 you both names.

7 Q Okay. Thank you. After 1982, did the Company
8 expand the footprint of any of its ash ponds?

9 A Let me look at my document just to make sure.
10 So I do see that there was an expansion at the W.S. Lee
11 site in the primary and secondary ash basins that
12 happened in 1985. And, again, this is all information in
13 that -- that Public Staff Data Request 2-1.

14 Q Thank you. And so 1985 at W.S. Lee, that was
15 the only expansion after 1982?

16 A Yes.

17 Q Okay. And then after 1982, did the Company
18 raise the height of any of its ash ponds?

19 A I do not see that in front of me of any
20 expansions in heights. I'm sorry, I do not have that --
21 I don't believe so. That's why we have this data
22 request, because it has a lot of good information in it.
23 It does not indicate that.

24 Q Okay. All right. You'd agree with me,

1 wouldn't you, that it's important to take into account
2 site-specific conditions when making CCR-unit specific
3 determinations?

4 A Yes.

5 Q Is the proximity of the bottom of an unlined
6 ash pond to an aquifer a site-specific condition worth
7 considering?

8 A So we know today, because that is actually
9 something that is called out in the CCR Rule, that that
10 is a consideration that needs to be -- that was one of
11 the location restrictions that the Company had to
12 evaluate as part of the CCR Rule. So in the time frame
13 when these basins were built, location to groundwater, I
14 don't know how that evaluation was done in setting up
15 these basins and the -- when they were sited and
16 initially constructed in the 1950s, around that time
17 period. So I don't know if that was one of the items
18 that was contemplated or not.

19 Q Do you know -- of the 17 unlined coal ash
20 ponds, do you know how many of those are located within
21 five feet of an aquifer?

22 A Yes. If you give me one moment.

23 Q Okay.

24 A So the basins in the DEC sites, all of those

1 sites did not meet the upper most aquifer location
2 restriction or meet the CCR Rule.

3 Q Okay. And would that be -- well, I believe on
4 the CCR Rule, are you aware that the Company certified
5 that two ash ponds at plant Allen are located within 15
6 feet so do not meet -- I'm sorry, within five feet? I'm
7 sorry.

8 A So I wanted to make sure when -- when I made
9 sure that whether or not we met that location
10 restriction. The exact depth from the aquifer to the
11 bottom of the ponds, for each and every pond, I don't
12 have that in front of me and don't have that committed to
13 memory, but I do know that our basins did not meet that
14 location restriction under the CCR Rule.

15 Q Okay. Fair enough. So looking back at the
16 exhibit, Cross Exhibit 1 -- or Rebuttal Cross Exhibit 1,
17 the first pond the Company constructed was built in 1951,
18 correct, W.S. Lee?

19 A Yes.

20 Q From 1951 until now, did operation of the
21 Company's ash ponds involve sluicing ash water into the
22 ponds, allowing heavier ash particles to settle to the
23 bottom of the pond and then allowing the water to
24 evaporate or discharge into an adjacent water body?

1 A Yes. Discharge, of course, through the NPDES
2 permit, but yes.

3 Q But the ponds were designed to treat discharged
4 water by allowing pollutants to settle out, correct?

5 A The ash basins were water treatment systems,
6 yes.

7 Q Looking again at the exhibit, by my count, I
8 count nine ponds constructed before 1972. Allen there's
9 one, Buck there's one, Cliffside there's two, Dan River
10 there's one, and Marshall.

11 A Yes.

12 Q Okay. So nine built in or after 1972. Would
13 the same general engineering design -- engineering and
14 design principles used for ponds built in or after 1972
15 be the same as those built before 1972?

16 A Ms. Cralle Jones, I do not have -- I did not
17 have available to me the exact details of what they --
18 what the principles were and how they designed those, but
19 -- so let me ask -- let me rephrase. I'm not quite sure
20 what you're asking, so I want to make sure I answer
21 appropriately, so maybe if you can ask it again.

22 Q Let me ask it this way. After 1972, the
23 Company continued to construct ash ponds within five feet
24 of groundwater, correct?

1 A Yes.

2 Q And the Clean Water Act was passed in 1972,
3 correct?

4 A Yes.

5 Q So you would agree with me, wouldn't you, that
6 the engineering and design of the nine ponds constructed
7 before 1972 didn't contemplate the Clean Water Act or its
8 implementing regulations, correct?

9 A I would -- I would agree with you because it
10 could not contemplate something that had not happened
11 yet.

12 Q Right. And the Clean Water Act prohibits the
13 discharge of pollutants without a NPDES permit, correct?

14 A Correct.

15 Q And the NPDES permits issued for the ash ponds
16 allowed for discharge of pollutants through defined
17 outfalls, correct?

18 A Correct.

19 Q And that the concentration of pollutants would
20 be measured at those outfalls, correct?

21 A Correct.

22 Q And NPDES permits do not authorize the
23 discharge of pollutants into groundwater, do they?

24 A The -- I do know that today the NPDES permits

1 do require groundwater monitoring, but the NPDES on the
2 discharge, they do not specifically say anything around a
3 point source discharge. I mean, a NPDES is a point
4 source discharge point where we take samples, so it does
5 not have language in it related to, of course, when they
6 were issued related to groundwater.

7 Q The standard conditions don't prevent -- don't
8 prohibit discharge to groundwater?

9 A So maybe you've gone beyond my level of
10 expertise in this, so it may be better for you to talk to
11 Mr. Wells. He has a lot more information about the NPDES
12 permits than I do, so that -- it would probably be best
13 to talk to him about this.

14 Q Let me move slightly. But are you aware enough
15 that the NPDES permits rely largely on self-monitoring
16 and self-reporting, don't they?

17 A I do know that the NPDES permits do have
18 provisions for monitoring those discharge points and
19 submitting those reports to the Agency. Beyond that, I
20 would direct the question to Mr. Wells.

21 Q And just I'll see if there's another -- do you
22 know -- well, the Company was aware of unpermitted
23 discharges from its coal ash pond since at least 2010,
24 correct?

1 A Again, Mr. Wells has a lot more about the
2 history of our groundwater compliance and NPDES
3 compliance, so dates I don't have in front of me, so that
4 would be a better question for Mr. Wells.

5 Q Okay. Well, let's -- let's turn to what was
6 previously identified as Sierra Club 4, which is the
7 Joint Factual Statement. I believe it's currently in the
8 record as Hart Direct Exhibit 3. Do you have that
9 document?

10 A I do have the Sierra Club identified 4 in front
11 of me.

12 Q Okay. And do you recognize that document?

13 A Yes.

14 Q It's the Joint Factual Statement in federal
15 criminal proceedings against the Company during which
16 Duke Energy Carolinas pled guilty to criminal violations
17 of the Clean Water Act, correct?

18 A Correct.

19 Q You would agree, would you not, that the plea
20 agreement the Company entered into includes admissions by
21 the Company that it acted negligently with respect to
22 operation of four of its coal ash sites, Dan River,
23 Riverbend, Belews, Cliffside?

24 A If you could -- that's a summary, so I would

1 have to -- it's been a while since I've looked at this
2 document, so if you can -- I do know that there was --

3 MR. MARZO: Chair Mitchell, I would just
4 object. The document states what it states. We'll
5 stipulate that it says what it says. Is she asking a
6 question about something other than the content of the
7 document?

8 CHAIR MITCHELL: All right. Ms. Cralle?

9 MS. CRALLE JONES: I'm asking questions about
10 the Company's knowledge of unpermitted discharges and
11 failure to report those unpermitted discharges. And
12 she's -- she's deferred on questions that I think are
13 stated clearly in the document, that there were
14 violations of the permits and that the Company knew of
15 those at least as early as 2010.

16 MR. MARZO: Chair Mitchell, on the NPDES
17 questions, I think she deferred to Mr. Wells. So I guess
18 to the extent that those questions are questions Ms.
19 Cralle Jones wants to ask, Mr. Wells is coming up after.

20 CHAIR MITCHELL: All right. I'm going to
21 overrule the objection. I'm going to allow the questions
22 to proceed. Ms. Cralle Jones, I will allow the questions
23 to proceed, recognizing the credentials of this witness
24 and her -- her ability to answer your questions. I would

1 ask, Ms. Cralle -- Cralle Jones, to the extent possible,
2 avoid having the witness simply read the document,
3 rather, ask her questions of the -- on the document.

4 MS. CRALLE JONES: All right.

5 CHAIR MITCHELL: But you may proceed.

6 Q Well, let me just kind of -- based upon the
7 document which outlines a number of practices that ended
8 up in a criminal plea, would it be fair to say that
9 Duke's ash handling practices have not been consistent
10 with applicable requirements 100 percent of the time?

11 A I would say that Duke Energy has a long history
12 and, yes, there are things that are laid out in this
13 Joint Factual document that shows things that we did say
14 that we did not -- did not follow compliance. It's a
15 small amount of time over -- a few things over the
16 lifetime of the Company's operations. And I believe this
17 was also addressed in the last rate case about our
18 historical practices. And I know that this Joint Factual
19 Statement did come up multiple times in the last case.
20 It was addressed there.

21 Q Now I'd like to turn your attention to your
22 supplemental testimony regarding the December 2019
23 Settlement Agreement between the Company, DEQ, and
24 certain community groups.

1 A I have it in front of me now.

2 Q All right. When discussing the supplemental
3 testimony with Ms. Townsend, you mentioned a couple of
4 sites where you are working with EPA because the Company
5 can't meet the CCR deadlines. Which deadlines is the
6 Company not able to meet and at which site?

7 A So the CCR deadlines, there are certain
8 deadlines that you can also ask for extensions, based
9 upon the volume of the acreage of the site. So if you
10 look at the acreage of the site and, say, we get all of
11 the extensions that are allowed, so for CCR units of 40
12 acres or less, the closure of time that's laid out in the
13 CCR rule can be extended by one two-year extension, and
14 for those larger than 10 acres, closure can be extended
15 by a total of five two-year extensions.

16 So looking at all the -- we received all of the
17 extensions that were allowed under the CCR Rule, based
18 upon our calculations of how long it's going to take us
19 to excavate the basins, and there are -- the dates are
20 laid out in the Settlement Agreement. We would not be
21 able to meet a February 20--- 2034 date by the CCR Rule
22 that's a requirement date at Allen. We would not be able
23 to -- because our -- our agreement date in the closure is
24 that we would have all ash excavated by December of 2037,

1 so there is a gap of a couple years there. Also, at
2 Belews Creek, the -- the date -- actually, not Belews
3 Creek. We can meet that date. Buck, there is one area
4 that we may have to get an extension of a number of
5 months. There's a few months beyond excavation of the
6 entire Buck site for beneficiation that would be beyond
7 the CCR date. And then also Marshall, the CCR date is
8 March of 2034, and in the agreement we have stated that
9 we believe we can get all the excavation done by December
10 of 2034.

11 Q Thank you. Now, on your supplemental testimony
12 on page 8, starting at line 6, you state "A key
13 underlying premise of the Settlement Agreement was that
14 Duke Energy, 'DEQ and the community groups agree that
15 closing the CCR impoundments at the Allen, Belews Creek,
16 Cliffside, Marshall, Mayo, and Roxboro Steam Stations in
17 accord with this Agreement...is reasonable, prudent, in
18 the public interest, and consistent with law.'" Did I
19 read that correctly?

20 A Yes.

21 Q And you are reciting from paragraph 53(a) of
22 the Settlement Agreement, correct?

23 A Yes.

24 Q Would you please turn to paragraph 53(a) now,

1 if you could? And for clarity of the record, would mind
2 reading the remaining language of 53, sub (a), beginning
3 with "This subparagraph applies only to"?

4 A "This subparagraph applies only to the actions
5 of Duke Energy in entering into this Agreement and
6 assuming the obligations under this Agreement. For
7 example, and without limitation, the Agreement in this
8 subparagraph does not extend, nor shall it be construed
9 to apply, to the issues of, (1), whether Duke Energy
10 acted prudently and reasonably in the past or (2),
11 whether Duke Energy prudently and reasonably performs its
12 obligations under this Agreement. Nothing in this
13 Agreement shall be taken as an admission of any imprudent
14 or unreasonable action by Duke Energy."

15 Q Thank you.

16 MS. CRALLE JONES: I have no further questions,
17 cross on rebuttal or the supplemental testimony.

18 CHAIR MITCHELL: All right. Any additional
19 cross examination for this witness?

20 (No response.)

21 CHAIR MITCHELL: All right. Hearing none, Mr.
22 Marzo, you may redirect.

23 MR. MARZO: Chair Mitchell, I have a little bit
24 of redirect. It may take some -- take a few minutes. Do

1 you want to take a lunch break now or --

2 CHAIR MITCHELL: Yeah. That's a great
3 suggestion, Mr. Marzo. Let's -- let's go off the record.
4 We will be in recess for our lunch break. We'll go back
5 on at 1:30.

6 (The hearing was recessed at 12:27 p.m.,
7 to be continued on September 16, 2020,
8 at 1:30 p.m.)

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STATE OF NORTH CAROLINA

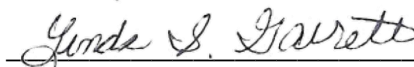
COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,
do hereby certify that the foregoing hearing before the
North Carolina Utilities Commission in Docket Nos. E-7,
Sub 1214, E-7, Sub 1213, and E-7, Sub 1187, was taken and
transcribed under my supervision; and that the foregoing
pages constitute a true and accurate transcript of said
Hearing.

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

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 20th day of September, 2020.



Linda S. Garrett, CCR

Notary Public No. 19971700150