

ERRATA

To: Kimberley A. Campbell, Chief Clerk
From: Kim Mitchell, Court Reporter
CC:
Date: November 30, 2020
Re: Duke Energy Progress, LLC
Docket Number E-2, Sub 1219, Volume 11

The purpose of this errata is to provide the stipulated testimony of Stephen G. De May from Docket No. E-7, Sub 1214, Transcript Volume 11 that was omitted from DEP Transcript Volume 11.

Attached stipulated testimony includes the following: page 932, line 9 through page 949, line 9; page 979, line 11 through page 1012, line 17; and page 1019, line 13 through page 1048, line 6.

Steven G. De May
Stipulated Testimony from DEC Evidentiary Hearing

Duke Energy Progress, LLC
Docket No. E-2, Sub 1219

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CROSS EXAMINATION BY MS. TOWNSEND:

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Q. Good morning, gentlemen. My name is

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Teresa Townsend. I am with the Attorney General's

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Office. Most of my questions will be -- all of my

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questions will be for Mr. De May; and Ms. Force will

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direct questions to Mr. Hatcher when I am done.

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Mr. De May, on page 3 of your direct

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testimony, you listed several responsibilities of your

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position as North Carolina president for Duke Energy

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since you took that position in November of 2018,

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correct?

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A. (Stephen G. De May) Correct.

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Q. In that list, you don't mention any

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responsibility regarding litigation either brought on

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behalf of the Company or against the Company.

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Would you describe your role in any

1 litigations brought against the Company or when the
2 Company brings litigation against the third party?

3 A. My role is limited when it comes to
4 litigation, Ms. Townsend. I, of course, am responsible
5 for the performance and issues that arise, and the
6 regulatory incremental affairs, success of our two
7 utilities here in North Carolina. When litigation is
8 entered into or we are receiving litigation, I am made
9 aware of that litigation, generally, when it rises to
10 the level of materiality. And I will be updated on
11 that periodically when there are updates -- material
12 updates to be made. But that would be the extent of
13 it.

14 If decisions have to be made, either
15 settlement decisions or any other decisions related to
16 the litigation, I will be involved in those
17 discussions.

18 Q. Thank you. At the moment, there is
19 litigation -- active litigation going on and/or that
20 has recently been settled; is that correct?

21 A. Are you able to rephrase? There's a lot of
22 litigation. Are you speaking with regard to coal ash?

23 Q. Yes, sir.

24 A. Okay. That is correct.

1 Q. Okay. If I may go through the lawsuits of
2 which I'm aware, and if you could provide us an update
3 or a status report on that litigation as best you know.
4 I understand you don't know -- I'm not asking for the
5 weeds. I'm just asking in general what the status of
6 those lawsuits are.

7 A. If you're referring to the litigation where
8 Duke is suing a group of insurance companies -- are you
9 referring to that?

10 Q. We will get there, yes. Let me go through
11 the list starting with --

12 A. Okay.

13 Q. -- the 2013 action that was brought against
14 Duke by DEQ, and that was about unpermitted discharges
15 of wastewater, VSP breach, plus the 2L groundwater
16 exceedances at the DEC plant, correct?

17 A. I'm not aware of that litigation.

18 Q. Okay. I'm sorry, I didn't mean to interrupt.
19 Is that not part of the of 12/31/19
20 settlement agreement, that action, to your knowledge?

21 A. I don't know.

22 Q. All right. We'll get there. The second
23 lawsuit was brought in February of 2017 by a Dr. Nigel
24 and Donna Beust (phonetic spelling) alleging a lost

1 sale of their property and property diminution due to
2 the alleged stigma of the Dan River coal ash spill in
3 February of 2014.

4 Do you know anything about that litigation?

5 A. Not specifically.

6 Q. But that was brought to a head, and it was
7 settled, correct?

8 A. Ms. Townsend, I'm not familiar with these
9 lawsuits that you're naming.

10 Q. Okay. Let me try the next one for you. In
11 February again in 2017, there was a suit brought
12 against DEC by individuals owning property in varied
13 proximity the Dan River plant for private nuisance,
14 trespass, negligence, gross negligence, and willful
15 misconduct, and violations of the North Carolina Oil
16 Pollution and Hazardous Substances Control Act related
17 to the coal ash spill from the Dan River plant.

18 Are you familiar with that lawsuit?

19 A. I am vaguely familiar with that lawsuit
20 because I recall that it occurred, but I don't have any
21 updates for you.

22 Q. Okay. So you don't know if it was settled?

23 A. I don't.

24 CHAIR MITCHELL: Ms. Townsend, I

1 apologize, I'm going to interrupt you. Mr. De May,
2 would you please adjust the volume of your mic or
3 move it closer to you, if that's possible. Your
4 volume is just -- is low, and I want to make sure
5 that the court reporter and the parties can hear
6 you.

7 THE WITNESS: I'm going to try earbuds
8 to see if that improves it.

9 (Pause.)

10 Q. Okay. Try them out.

11 CHAIR MITCHELL: All right. Mr. De May,
12 let's see if that's an improved situation. Can
13 you -- let's just hear from you for a test.

14 MS. TOWNSEND: You're on mute,
15 Mr. De May.

16 THE WITNESS: Can you hear me now? Is
17 this any better?

18 CHAIR MITCHELL: It may be better.
19 Let's go ahead and proceed. Please proceed,
20 Ms. Townsend.

21 MS. TOWNSEND: Thank you.

22 Q. In talking about the lawsuit you mentioned
23 came in March 2017 when DEC filed suit for recovery
24 under -- I believe there were 38 excess level

1 third-party liability insurance policies issued between
2 1971 and '86 alleging breach of contract for denying
3 coverage related to DCR cleanup and -- at 15 power
4 plants in North Carolina and South Carolina arising out
5 of CAMA, and the federal CCR rule and South Carolina
6 laws seeking recovery of dollars already spent as well
7 as dollars to be spent in the future.

8 Is that the case that you are referring to?

9 A. Yes, it is.

10 Q. Okay. And going on, in August of 2017, there
11 was a class action suit in Wake County by Amy Brown
12 against both DEC and DEP on behalf of property owners
13 living near nine coal ash impoundments at Allen,
14 Asheville, Belews Creek, Buck, Cliffside, Lee,
15 Marshall, Mayo, and Roxboro for groundwater
16 contamination.

17 Are you familiar with that one?

18 A. No, I'm not.

19 Q. All right. And then on December of 2017,
20 SEOC filed a citizen suit on behalf of Appalachian
21 Voices, the North Carolina State Conference of the
22 NAACP, and Stokes County branch of NAACP against DEC
23 alleging violations of the Clean Water Act related to
24 alleged unpermitted discharges to surface water and

1 groundwater violations as Belews Creek steam station.

2 Do you know the -- do you know about that?

3 A. I vaguely recall that lawsuit because of the
4 parties involved, but I do not have any update on it.

5 Q. All right. And just two others. On
6 December 15, 2017, Cindy Braswell, a plant Allen
7 neighbor, filed a pro se complaint against DEC for
8 alleged well contamination on two parcels of that
9 land -- of her land.

10 Do you know anything about that lawsuit?

11 A. No.

12 Q. Okay. And last, on April 21, 2019, DEQ
13 ordered Duke Energy to excavate coal ash at six
14 remaining sites in North Carolina. That was Allen,
15 Belews Creek, Cliffside, Marshall, Mayo, and Roxboro.
16 Duke Energy filed petitions for contested cases in the
17 Office of Administrative Hearings to appeal that order.

18 You are familiar with that action, correct?

19 A. Yes.

20 Q. All right. We mentioned the insurance
21 lawsuit brought by Duke against -- of its
22 insurance carriers, correct?

23 A. Yes.

24 Q. All right. Now, if I may refer to AGO Cross

1 Exhibit 13.

2 A. I'm ready.

3 Q. All right.

4 MS. TOWNSEND: Chair Mitchell, we would
5 like to identify that and have it marked as De May
6 AGO Direct Exhibit 1 [sic].

7 CHAIR MITCHELL: All right.

8 Ms. Townsend, the document shall be marked De May
9 AGO Direct Exhibit Number 1[sic].

10 MS. TOWNSEND: Thank you.

11 (AGO De May Cross Exhibit 1 was marked
12 for identification.)

13 Q. And this is the March 2017 complaint of Duke
14 Energy versus the insurance companies, correct,
15 Mr. De May?

16 A. Yes.

17 Q. All right. And on page 3 there is a section
18 entitled "Nature of the Action."

19 Can you please read for us the paragraphs 1
20 and 2 related to that section?

21 A. Paragraph 1:

22 "This is a civil action seeking insurance
23 coverage under certain third-party liability insurance
24 policies, the policies, sold to Duke by the defendant

1 insurance companies. Each of the policies provides
2 coverage for liability for property damage caused by an
3 occurrence.

4 Paragraph 2:

5 "In particular, Duke seeks damages for breach
6 of contract and an order declaring the present and
7 future rights, duties, and liabilities of the parties
8 under the policies and directing the defendant insurers
9 to identify -- indemnify Duke for damages suffered by
10 Duke for certain environmental claims, known as the
11 environmental claims, asserted against Duke arising out
12 of coal combustion residuals, CCRs, at 14 Duke power
13 plants in North Carolina and one Duke power plant in
14 South Carolina."

15 Q. Thank you, sir. The only power plant not
16 included was the W.S. Lee plant in South Carolina; is
17 that correct? Is that your memory?

18 A. Not included in what?

19 Q. In the complaint asking for relief.

20 A. Yes, I believe that may be true.

21 Q. Thank you. The complaint provides some
22 background on the environmental claims starting on
23 page 9 of the document. In paragraph 40 -- are you
24 there?

1 A. I am.

2 Q. All right. Paragraph 40 explains that power
3 plants generating electricity through the combustion of
4 coal create a number of waste byproducts, one of which
5 is CCR or coal combustion residual, or more simply coal
6 ash, yes?

7 A. Yes.

8 Q. All right. Would you please read for the
9 record how the Company's complaint described coal ash
10 in paragraph 40? It's on page 10 if you want to start
11 with the words "coal ash," second sentence.

12 A. Are you asking me to read to the end of that
13 paragraph?

14 Q. Yes, please.

15 A. "Coal ash contains various heavy metals and
16 potentially hazardous constituents including arsenic,
17 barium, cadmium, chromium, lead, manganese, mercury,
18 nitrates, sulfates, selenium, and thallium. Coal ash
19 has not been defined, itself, as a hazardous substance
20 or hazardous waste under federal law, although some
21 constituents of coal ash may be hazardous in sufficient
22 quantities or concentrations."

23 Q. Thank you, Mr. De May. And if you would,
24 turn to paragraph 44 on page 11.

1 A. Okay. I'm there.

2 Q. All right. It says:

3 "It's alleged, without regard to historical
4 awareness of harm, that coal ash constituents from coal
5 ash basins and other areas have been infiltrating into
6 groundwater over a long period of time. State
7 environmental regulators have alleged there have been
8 environmental impacts or potential impacts to
9 groundwater beneath each of Duke's North Carolina and
10 South Carolina coal-fired power plants that are part of
11 this claim."

12 Have I read that correctly?

13 A. Yes, you did.

14 Q. All right. And if we could move to
15 paragraph 22 of the complaint, which is on -- I mean 52
16 of the complaint, which is on page 14.

17 A. I'm there.

18 Q. All right. Starting with paragraph 52, it
19 provides that the North Carolina power plants in which
20 Duke faces liability on account of alleged
21 environmental property damage allegedly caused by CRR
22 are as follows, correct?

23 A. Yes.

24 Q. All right. And then they list Allen,

1 Asheville, Belows Creek, Cape Fear, Rogers, Dan River,
2 H.F. Lee, Marshall, Mayo, River Bend, Roxboro, L.V.
3 Sutton, Weatherspoon, and H.B. Robinson in
4 South Carolina, correct?

5 A. Yes.

6 Q. All right. For each power plant listed, one
7 of the paragraphs -- like paragraph 55 states that Duke
8 has incurred substantial cost on account of its
9 liability for alleged CCR-related environmental
10 property damage arising out of impoundments and/or
11 other areas at the Allen plant for which Duke makes a
12 claim under the policies issued to Duke Power. Duke is
13 incurring substantial additional cost on an ongoing
14 basis and will continue to incur substantial additional
15 cost in the future, correct?

16 A. You read that correctly.

17 Q. Thank you. Do you know what the current
18 status of this insurance litigation is, Mr. De May?

19 A. I do. They are in various phases of
20 discovery. I understand that that will conclude this
21 year. Hearings will begin in 2020 -- 2020, and a trial
22 is expected in the beginning of 2021.

23 Q. Thank you. Have -- there have been some
24 settlements, but those are confidential, correct?

1 A. You broke up, I'm sorry. There have been
2 some settlements?

3 Q. Right. But those are confidential; we will
4 not get into those, correct?

5 A. Confidential but limited -- limited in nature
6 and scope.

7 Q. Thank you. Now, if I may refer you to an
8 exhibit that's already in play, it is Public Staff
9 Juni s Direct Exhibit 1. That is the DEQ settlement
10 agreement dated December 31, 2019.

11 (Reporter interruption due to sound
12 failure.)

13 Q. Okay. Mr. De May, I believe you said that
14 you were aware of the settlement agreement; is that
15 correct?

16 A. Yes, I am aware of the settlement agreement.
17 I don't have it in front of me.

18 Q. I'm sorry, you broke up. I missed you there.

19 A. I do not have it in front of me.

20 Q. Oh, you don't have Juni s --

21 A. Juni s --

22 Q. -- the direct -- the Exhibit 1?

23 A. I'm going to try and pull the -- to correct
24 my audio. Just give me one minute, please.

1 (Pause.)

2 THE WITNESS: Ms. Townsend, would you
3 please repeat the exhibit name? I apologize.

4 Q. No problem. It is the 12/31/19 settlement
5 agreement, and it has been filed under Public Staff
6 Junis Direct Exhibit 1.

7 A. Okay. Coming.

8 Q. Thank you.

9 (Pause.)

10 THE WITNESS: Okay. I have it.

11 Q. Great.

12 A. Sorry for that.

13 Q. No problem. What role, if any, did you have
14 in negotiating this settlement, Mr. De May?

15 A. I was involved along the way.

16 Q. Okay. Were any other staff members involved
17 in the negotiation?

18 A. There were quite a number, and there were
19 very technical details involved in the settlement that
20 I had very little input on it.

21 Q. Understood.

22 A. And a limited understanding of it.

23 Q. Okay. And this settlement is not only with
24 DEQ, is it; it's with -- deals with some of the other

1 lawsuits or disputes that we talked about earlier,
2 correct?

3 A. Yes.

4 Q. Okay. If we look at paragraph 9 -- I'm
5 sorry, 5 on page 2, it talks about the litigation that
6 is involved in this settlement, and that's quite a
7 list. I believe that entails most of the ones that we
8 talked about, correct?

9 A. I will accept that, yes.

10 Q. Thank you. It looks like it was the
11 two-state law enforcement actions brought by DEQ. In
12 fact, they talk about it in 6. It says it desires to
13 resolve and settle any disputes between them in
14 connection with the OAH proceedings. And that would be
15 those 4/1/19 closure determinations, correct?

16 A. It would, yes.

17 Q. All right. The state enforcement action,
18 those would be the ones brought in 2013 and thereafter.
19 The Federal Clean Water Act (sound failure). And then
20 there are evidently some --

21 (Reporter interruption due to sound
22 failure.)

23 Q. So just go back to paragraph 6, we dealt with
24 the fact that they were the OAH proceedings, the state

1 enforcement actions, the Federal Clean Water Act
2 lawsuit, and PJRs, which are petitions for judicial
3 review.

4 In order to ensure that the impoundments are
5 excavated on an expedited basis and to remove the
6 uncertainty associated with litigation; is that what
7 the paragraph tells us?

8 A. Yes, I see that.

9 Q. All right. And then on paragraph 7, this
10 talks about the actual impoundments at the facilities
11 regulated under CAMA. And it deals with -- A says it's
12 about Allen, and it says Allen has two CCR
13 impoundments, a retired ash basin, and an active ash
14 basin, and that it's approximately 123 acres, correct?

15 A. That's what it says, yes.

16 Q. All right. And then B was the Belows Creek
17 steam station, C is the Cliffside steam station, and D
18 is the Marshall steam station, correct?

19 A. Yes.

20 Q. And then we have E and F being the Mayo and
21 the Roxboro, correct?

22 A. That's correct.

23 Q. DEP, correct?

24 A. Correct.

1 Q. All right. And if we'll go to paragraph 50,
2 this is on page 24, it states that DEQ is the only
3 state entity that is bound by this agreement and
4 consent order, correct?

5 A. Yes.

6 Q. All right. And if you go to paragraph 53, it
7 has some stipulations -- I'm sorry, it's on page 25.
8 Are you there?

9 A. I am.

10 Q. All right. It talks about stipulations
11 between only the parties to this agreement regarding
12 their rate recovery proceedings, correct?

13 A. Yes.

14 Q. All right. And it says on page 26, under the
15 first full sentence:

16 "For example, and without limitation, the
17 agreement in this subparagraph does not extend nor
18 shall it be construed to apply to the issues of; one,
19 whether Duke Energy acted prudently and reasonably in
20 the past; or two, whether Duke Energy prudently and
21 reasonably performs its obligations under this
22 agreement."

23 Is that correct?

24 A. It does say that. But it is saying that, if

1 we do perform these actions, that those are deemed
2 prudent unless we imprudently execute on that.

3 Q. By the parties to this agreement only,
4 though, correct?

5 A. Yes.

6 Q. All right. And that is all the questions I
7 have, Mr. De May, thank you for your patience and for
8 your answers.

9 A. Thank you, Ms. Townsend.

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CROSS EXAMINATION BY MR. PAGE:

Q. In any event, let me address the panel for just a second. Mr. Hatcher, I'm sorry to tell you, I don't have any questions for you this morning.

A. (Larry E. Hatcher) That's okay. That's certainly fine, thank you.

Q. And, Mr. De May, some of the questions that I had intended to ask you have already been covered by the Attorney General, so I'm not going to go over that again. But I do have a couple of lines of questions that I wanted to ask you, that I understand you have another witnesses to testify in these areas, but the questions that I have are not, kind of, down-in-the-weeds-type questions or very high granular

1 questions, they're broad-overview types of questions.
2 But if I should have to ask you something where you
3 don't know the answer, you can just simply say, "I'm
4 sorry, I don't know," and I will accept that; is that
5 okay with you this morning?

6 A. (Stephen G. De May) Sounds good. Thank you.

7 Q. All right. Would I be correct in saying,
8 Mr. De May, that, other than directives that come down
9 to you from the parent corporation, Duke Energy, as
10 president, you are pretty well where the buck stops for
11 Duke Energy Carolinas in North and South Carolina?

12 A. Yes, I would agree with the way you worded
13 that.

14 Q. And as you discussed with Ms. Townsend -- my
15 first series of questions have to do with coal ash.

16 So you discussed with Ms. Townsend, did you
17 not, Duke's present engagement in what is a somewhat
18 extensive and somewhat expensive process and program
19 for cleaning up the remaining coal ash ponds and
20 repositories; is that correct?

21 A. Well, I wouldn't call it much of a
22 discussion. We talked about the numerous lawsuits that
23 are pending related to that matter.

24 Q. All right. Then would you agree with the

1 statement I just made, that, currently, Duke is
2 engaged, as a result of litigation and settlements and
3 that sort of thing, in a fairly complex and expensive
4 program to clean up those coal ash basins?

5 A. Yes. We are undertaking the kind of program
6 you just described, but it's to comply with federal,
7 state -- federal and state requirements. We are also
8 operating under a settlement agreement with DEQ and the
9 Southern Environmental Law Center.

10 Q. And that's the 2019 settlement that you and
11 Ms. Townsend did talk about a little bit?

12 A. Yes.

13 Q. And so your settlement with DEQ, would I be
14 correct in saying that, among other things, DEQ was
15 following the mandates of the North Carolina Coal Ash
16 Management Act?

17 A. In what regard are you asking whether they
18 were following?

19 Q. Well, as a state regulatory agency, they've
20 got to have statutory authority to do what they do --

21 A. They did have statutory -- yes, thank you.
22 They do have statutory authority, and they have great
23 discretion, actually, as the environmental regulator,
24 both as a regulator, but also by virtue what the

1 statute gave them.

2 Q. And that agreement, the 2019 agreement, is
3 what is driving the timing of the cleanup of the
4 remaining basins, and to a certain extent the cost of
5 the cleanup; is that correct?

6 A. I would say that some of the timing,
7 certainly, a large degree of the costs were determined
8 by CAMA and the federal CCR rules. I would say that
9 there were a number of coal ash basins that were
10 previously classified as low risk that DEQ have
11 discretion on. They exercised their discretion and
12 issued an order on April 1st directing the -- of 2019,
13 directing the Company to fully excavate all those
14 remaining basins.

15 And the settlement is the result of a
16 collaborative process between the Company and the DEQ
17 and other parties to arrive at a -- what I would say, a
18 more middling position.

19 Q. It was the DEQ action in requiring the
20 cleanup of even the low-risk basins, which, if my
21 memory serves correctly, increased the estimated cost
22 of cleanup from somewhere in or around the \$5 billion
23 area to somewhere in or around the 8- to \$9 billion
24 area; is that -- do you recall the same thing?

1 A. Yeah. Although, you know, my numbers are a
2 little different. It took the figure to about
3 \$10 billion, their full excavation order. The
4 settlement actually reduced that total estimated cost
5 by about a billion and a half dollars. The settlement,
6 in our opinion, brought benefits for our customers to
7 the tune of about a billion and a half dollars.

8 Q. Thank you for that clarification.

9 Duke Energy Carolinas operates in both
10 North and South Carolina; do they not?

11 A. We do.

12 Q. To your knowledge, does South Carolina have
13 any sort of statute that is functionally the equivalent
14 to the North Carolina Coal Ash Management Act?

15 A. South Carolina is effectively conforming, at
16 this point in time, with the federal CCR rules; and so
17 we operate as one system, as you know, across borders,
18 and the generation system is not separated by a border,
19 it is a shared system. And so South Carolina does have
20 coal ash remediation costs in its current rates for the
21 North Carolina facilities. So they are covering their
22 CRR -- federal CRR costs.

23 Q. In your last general rate case in
24 South Carolina, would I be correct in saying that the

1 South Carolina Public Service Commission stated, among
2 other things with regard to coal ash cleanup, that it
3 simply did not consider itself bound by the
4 North Carolina Coal Ash Management Act?

5 A. To the extent that the Coal Ash Management
6 Act did require a mitigation plan that resulted in a
7 higher cost, South Carolina did say that; that's
8 correct. We are currently appealing that.

9 Q. And as a result of their making that
10 decision, they -- they basically disallowed some of the
11 coal ash cleanup costs that you had asked to be able to
12 collect from South Carolina consumers; is that correct?

13 A. That is correct. Again, the subject of
14 ongoing challenge.

15 Q. I understand that that is under appeal.

16 Do you know whether or not there is anything
17 approximately equivalent or similar to the
18 North Carolina Coal Ash Management Act that impacts
19 Duke's operations in Florida?

20 A. Are you asking if Florida has a CAMA
21 equivalent?

22 Q. Yes.

23 A. I do not believe they do.

24 Q. How about the same question as to Duke's

1 operations in Ohio?

2 A. Well, I see where you're going with this. I
3 don't believe there is legislation like CAMA in the
4 other states that we are operating in. That is not --
5 that is my understanding. However, each state is
6 dealing with compliance with the CCR rules in their own
7 individual way.

8 Q. All right. So this is really my last
9 question on this particular point.

10 So the same -- your answer would be the same
11 if I were to ask you about Indiana and Kentucky?

12 A. Yes.

13 Q. All right. Well, let's leave coal ash in the
14 rearview mirror, then, and move on to another topic.

15 I am correct in saying, am I not, that Duke
16 serves a number of industrial and manufacturing
17 customers in North Carolina?

18 A. Yes, you are.

19 Q. Are those customers and their loads important
20 to Duke's operations and finances in North Carolina?

21 A. Of course they are. The -- in the Carolinas,
22 the commercial and industrial sector is -- or the
23 industrial sector is about a third of our load.

24 Q. Can you list any other reasons why these

1 types of high-load-factor customers are important to
2 Duke's operations? For example, don't customers like
3 that buy an awful lot of energy from Duke and a lot of
4 it off peak?

5 A. Well, yes. And I would say, among the
6 reasons our industrial customers are important to us is
7 they are efficient users of power; and they are, of
8 course, a really great source of economic development
9 for our state, which is -- you know, has those kind of
10 follow-on impacts for the electric utility that serves
11 this state.

12 Q. And they don't usually fail to pay their
13 bills or pay those bills late; would that be a true
14 statement?

15 A. It's not 100 percent true, but it is
16 generally true.

17 Q. All right. And those industrial and
18 manufacturing customers provide relatively good-paying
19 jobs which help to support laundries, and grocery
20 stores, and automobile dealers, and other service
21 industries; do they not?

22 A. They do. And Duke is quite active in helping
23 attract more industrial customers to the state.

24 Q. As opposed to, say, 20 years ago, 2000, does

1 Duke have more or fewer manufacturing and industrial
2 customers than it did 20 years ago?

3 A. I don't know the answer as terms -- in terms
4 of numbers of customers, but I imagine our entire
5 system has grown significantly. And I imagine the
6 industrial load has grown significantly as well. In
7 terms of numbers of customers, I can't say.

8 Q. All right. Do you know how Duke's sales to
9 manufacturing and industrial customers today compares
10 to the level of such sales 20 years ago?

11 A. Not in any, you know, specific sense, no.

12 Q. All right. Were you the Duke president at
13 the time of the last Duke general rate case about two
14 years ago?

15 A. I was not.

16 Q. Did you participate in that rate case?

17 A. I did, as a witness for treasury-related
18 issues, cost of capital, credit quality, et cetera.

19 CHAIR MITCHELL: Mr. Page, I apologize.
20 I have to interrupt you. I need to inquire as to
21 whether Commissioner Clodfelter is still on the
22 line. I no longer see him.

23 Commissioner Clodfelter, are you on the
24 line?

1 COMMISSIONER CLODFELTER: Yes, I am.

2 Sorry, I forgot to turn the video back on after the
3 break, but I'm here and have been here consistently
4 since 10:30.

5 CHAIR MITCHELL: Okay. Thank you, sir.

6 Mr. Page, I apologize, you may proceed.

7 MR. PAGE: That's quite all right,
8 Chairman Mitchell. Commissioner Clodfelter, I see
9 that your blinds haven't gotten any younger than
10 they were earlier this morning.

11 COMMISSIONER CLODFELTER: They have not.

12 Q. So, Mr. De May, again, the question for you
13 is, do you know whether or not Duke's sales to
14 manufacturing and industrial customers are more or less
15 in 2020 than they were in 2000?

16 A. And my answer is I don't have those
17 statistics; but I would guess that it is higher than it
18 was in 20 -- than it was.

19 Q. Do you recall, in the last rate case, reading
20 Mr. O'Donnell's testimony?

21 A. From the 2017 rate case?

22 Q. Yes, sir.

23 A. I recall having read it, but I don't recall
24 what I read.

1 Q. Would you accept, subject to check, that he
2 presented evidence showing that, in the 20-year period
3 from 2000 or 1997 to 2017, Duke had lost an awful lot
4 of its industrial and manufacturing load? Would you
5 accept that subject to check?

6 A. Yes.

7 Q. Have you had a chance to review
8 Mr. O'Donnell's testimony in this case?

9 A. I did.

10 Q. And he offers some evidence, does he not,
11 tending to show that recently the trend of Duke's
12 retail rates has been to move closer to the regional
13 and national averages than it was, say, five years ago?

14 A. I will accept that he said that, if that's
15 your question.

16 Q. Yes. Do you have any reason to disagree with
17 that conclusion?

18 A. Well, I don't know whether to agree or
19 disagree with the conclusion. I'll agree that he said
20 it. I don't have those specific facts available to me.

21 Q. Will you agree that --

22 A. I would just say, sometimes when people see
23 us increasing rates, they assume that the average is
24 staying stag, but that other companies, utility

1 companies, are not increasing their rates, which isn't
2 true.

3 Q. All right. Did you review the tables and
4 charts that Mr. O'Donnell included in his testimony to
5 illustrate that point?

6 A. I reviewed Mr. O'Donnell's testimony at a
7 cursory level, but I did look at it; and I have not
8 committed those tables or the information you're
9 describing to memory.

10 Q. All right, sir. Will you agree that the
11 types of customers we're talking about, the
12 high-load-factor manufacturing and industrial
13 customers, that they operate in a highly competitive
14 environment compared to the regulatory environment in
15 which Duke operates?

16 A. That's comparing an apple and an orange.
17 They are in competitive businesses, and Duke Energy is
18 a regulated utility. Two different things.

19 Q. Yeah. I wasn't trying to --

20 A. But I would agree they operate in competitive
21 environments.

22 Q. Thank you, sir. Since they operate in a
23 competitive environment, would you agree that
24 manufacturers are always looking for ways to put their

1 production in the areas where their costs of production
2 are the lowest?

3 A. Well, there are a lot of reasons that go into
4 the siting of a facility, and I think their location to
5 their markets is one. You know, maybe of proximity to
6 commodities that are used in and their processes and so
7 on. I agree that their cost structure is very
8 important, and an industry that uses a lot of electric
9 power does look for -- to that index when they decide
10 where to settle.

11 Q. Yeah. If I misled you with the question, I
12 apologize. I didn't mean to imply that manufacturers
13 base decisions solely on the cost of electricity,
14 but --

15 A. You didn't.

16 Q. Okay. I'm glad that I didn't.

17 Let's say that you have a hypothetical
18 manufacturing customer in North Carolina which either
19 shuts down operations in North Carolina or reduces its
20 level of production in North Carolina. Would that have
21 a positive or negative impact on Duke's earnings and
22 finances?

23 A. Of course it would have a negative impact if
24 we lost any of our industrial.

1 Q. All right. To an extent, Duke can offset
2 such a hypothetical customer's variable revenues
3 against the variable costs that they impose, but what
4 about the fixed costs; what happens to them if that
5 hypothetical customer goes away or ceases production?

6 A. I didn't follow the question. Do you mind
7 repeating it?

8 Q. Don't mind a bit.

9 Each of the industrial and manufacturing
10 customers that you have imposes both fixed and variable
11 costs on Duke's system; is that correct?

12 A. All customers do.

13 Q. All right. So I'm not interested here in
14 following the variable costs, I'm interested in
15 following the fixed costs. If a customer on whom Duke
16 has relied through the rate-setting process to pay
17 certain fixed costs goes away, then those fixed costs
18 don't go away, do they?

19 A. No, they don't.

20 Q. And those fixed costs are ultimately going to
21 have to find a place to land so that, in fact, they are
22 recovered by Duke, will they not?

23 A. That's correct.

24 Q. And in the hypothetical we're discussing,

1 that landing spot could be with another customer or
2 another class of customers; would you agree with that?

3 A. Yes, I would.

4 Q. Thank you very much, sir, that's all the
5 questions I have.

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CROSS EXAMINATION BY MS. LEE:

Q. Good morning, Mr. De May and Mr. Hatcher. My name is Bridget Lee. I represent the Sierra Club in these proceedings, and all of my questions will be for Mr. De May.

A. (Stephen G. De May) Good morning.

1 Q. Mr. De May, you've testified that the Company
2 took a fresh look at the viability of several of its
3 coal fired plants; is that right?

4 A. At the viability of our coal plants?

5 Q. Yeah. I'm looking at page 7 of your direct,
6 line 15.

7 A. All right.

8 (Witness peruses document.)

9 I see it.

10 Q. Can you let me know, which of the plants did
11 the Company give that fresh look?

12 A. Well, we are evaluating our fleet
13 continuously. Witness Steve Immel, who is in this part
14 of our Company, will be taking the stand in the
15 not-too-distant future, and he can definitely give you
16 some details around which part of the fleet, you know,
17 measures up against what metrics. But I will tell you
18 that we are consistently and continuously evaluating
19 our fleet for efficiency, for economic effectiveness,
20 and what place it plays in the portfolio both in the
21 near term and the long term.

22 Q. Okay. So just to be to be clear about your
23 testimony here, when you mentioned that the Company has
24 taken a fresh look, are you referring to that ongoing

1 evaluation of the fleet, or are you referring to
2 something else?

3 A. I'm referring to the ongoing look.

4 Q. Okay. Great. I have a number of questions
5 about this. They might be better suited for witness
6 Immel, so I'm going to go ahead and ask a couple, but
7 you can push them to him if that will be more
8 appropriate.

9 A. And I will try, and it may not be Steve in
10 every case.

11 Q. Okay. So if you could just -- you mentioned
12 this -- the ongoing look which included an evaluation
13 of the economic viability of coal units.

14 Could you describe that in a little bit more
15 detail?

16 A. You know, probably not in the detail that
17 you're looking for. But you may know that we recently
18 filed on September 1st, just a couple of days ago, a
19 new IRP for both DEC and DEP. In advance of that, we
20 did any evaluation of our coal fleet. And we do that
21 routinely, so it's not the first time we've ever done
22 such a look. But we recently did, or took that fresh
23 look at the place that they serve in our generation
24 portfolio. So I don't have details on the operational

1 results of that review.

2 I can tell you, though, between their
3 economic effectiveness and efficiency as a generating
4 source is declining, climate policies, both at the
5 state level and our own climate policies as a Company,
6 are also pushing this fleet to an earlier retirement
7 than we believed even just a couple of years ago.

8 Q. Thank you. So just to be crystal clear on
9 this, the fresh look at the viability that's mentioned
10 in your direct, there are you also referring to the
11 analysis that the Company connected per the
12 Commission's 2018 IRP order calling for a more robust
13 look at coal-fired unit economics?

14 A. You know, the words in my testimony are
15 really just referring to an ongoing review of our
16 portfolio; and we have taken fresh looks at that. And
17 if we're having this conversation a year from now, we
18 will probably have another fresh look at it. So I'm
19 really just referring to something that's ongoing.

20 And the state of play, the place that those
21 assets serve in our portfolio is shifting for the
22 reasons I described. There are economic reasons they
23 are shifting, and there are climate and clean energy
24 goals as reasons why they are shifting.

1 Q. Okay. Thanks. When the Company identifies
2 capital expenditures that it needs to conduct at a
3 plant, whether to comply with a regulatory requirement
4 or just to keep an older plant up and running, how does
5 it decide whether those capital expenditures are a
6 reasonable choice to make?

7 A. Well, generally, we evaluate options. And
8 the investments that we've made in our coal fleet since
9 the last rate case are a good case study for the
10 question you're asking. We made investments in that
11 fleet because those investments -- because we need
12 those assets to be available to serve load. Those
13 assets, in order to be available, have requirements,
14 regulatory requirements placed upon them that we have
15 to meet to be able to run them.

16 And so we look at alternatives. Before we
17 make an investment, we look at alternatives, and nobody
18 has suggested that we -- there was a lower-cost
19 alternative to replace that generation. And so we do
20 that analysis routinely. It's just part of what we do
21 in decision-making at the Company. And those were made
22 because they were the least-costly option for
23 maintaining that generating capacity.

24 Q. Okay. And maybe we could just talk about one

1 plant as an example of what you've just described. I'm
2 thinking of the Allen plant. And I believe, in the
3 Company's application in this case, the Company has
4 requested recovery of costs somewhere in the ballpark
5 of \$100 million for upgrades at the Allen plant.

6 Does that sound about right?

7 A. I will accept that.

8 Q. Okay. And would you also accept, subject to
9 check, and ballpark for sure is fine, that a large part
10 of those costs were incurred to convert the bottom ash
11 handling system from wet handling to dry handling,
12 maybe about \$70 million?

13 A. Specifically in the case of Allen?

14 Q. Correct.

15 A. Okay. I don't know that.

16 Q. Okay.

17 A. You know, subject to check, I think that's
18 fine.

19 Q. Sure. Okay.

20 A. I would suggest that those investments were
21 made to keep out the Allen plant running because we
22 needed it.

23 Q. Okay. And the Company is required to close
24 units 1, 2, and 3 at the Allen plant by 2024 per court

1 order; is that right?

2 A. I don't know. Steven can tell you that.

3 Q. Okay. You mentioned the 2020 integrated
4 resource plan that was filed earlier this week. I
5 believe that indicated that the most economic
6 retirement year for Allen units 2, 3, and 4 was 2022;
7 does that sound right?

8 A. So I'm not sure if it's 2 and 3 or 2, 3, and
9 4. So I don't know. But we did move two units up to
10 the end of -- or to 2022, and the other units are
11 still, I think, 2024. And that's for really voltage
12 support and giving us time to replace them.

13 Q. Okay. And would you accept, subject to
14 check, that on page 175 of the 2020 IRP, it was
15 indicated that Allen units 2, 3, and 4 could be retired
16 by 2022 without any additional transmission or any
17 additional generation being built?

18 A. Yes.

19 Q. Okay. And you mentioned the other units
20 there, units 1 and 5, I believe the new most economic
21 retirement year indicated in the IRP is now 2024 for
22 those units. In prior IRPs I think unit 5 had a 2028
23 retirement date; does that sound about right?

24 A. That's right. And you have the unit numbers

1 correct, thank you.

2 Q. Okay. Of course. So is it the Company's
3 position, then, that the investment in upgrades that
4 will only be utilized at Allen units 2, 3, and 4 for
5 five years at most is prudent?

6 A. I'm saying that we needed those units. We
7 continue to need those units. We did not have a
8 less-costly way of replacing that generation, and we
9 will continue to make that kind of analysis on this
10 fleet. I would also point out Public Staff, who takes
11 a great interest in the same questions you're asking,
12 has recommended -- recommended no disallowance on these
13 coal investments.

14 Q. So I guess my question may be a little bit
15 different. For the -- in particular, let's talk about
16 this -- the conversion of bottom ash handling from wet
17 to dry.

18 The Company undertook that in compliance with
19 CAMA; is that correct?

20 A. I know that it took those steps in compliance
21 with, whether it's CAMA or CCR.

22 Q. Okay. And is it your understanding that CAMA
23 allows for variances in any of its deadlines?

24 A. I don't know those kind of details.

1 Q. Okay.

2 A. Suggestion is we had an alternative; and I'm
3 proposing to you that we chose the best alternatives in
4 making the investments we made. And Steven Immel can
5 definitely give you more details on the question you
6 just asked.

7 Q. Okay. Great. And just to close out that run
8 of questioning, and maybe this is for Mr. Immel.

9 Do you know if the Company attempted to seek
10 a variance from any of the CAMA deadlines with respect
11 to the Allen plant?

12 A. Steven.

13 Q. Okay. Switching gears a little bit. In
14 support of its application in this case, the only
15 direct testimony relating to coal ash cleanup
16 activities was that of Jessica Bednarcik; is that
17 correct?

18 A. She is our coal ash compliance witness,
19 correct.

20 Q. Okay. And Ms. Bednarcik's direct testimony
21 didn't present any information regarding the Company's
22 waste management policies, decision-making, or
23 operating practices prior to 2014, did it?

24 A. How much prior to 2014? Do you mean anytime

1 prior to 2014?

2 Q. Anytime.

3 A. If you are saying that, then I will accept
4 that.

5 Q. Okay. Subject to check. I didn't see any
6 mention of that in her direct.

7 A. Okay. I don't know if there is.

8 Q. Okay. And, Mr. De May, when you were
9 speaking earlier this morning with Mr. Page, you
10 mentioned that you had participated in the Company's
11 prior rate case; is that right?

12 A. Yes.

13 Q. Okay. So are you familiar with the testimony
14 of Jon Kerin in that case?

15 A. I don't -- I read some of Jon Kerin's
16 testimony in the order, itself, but I don't recall
17 hearing his testimony live.

18 Q. Okay. But is it right to say that you are
19 aware that Mr. Kerin was the Company's primary witness
20 for coal ash issues in that case?

21 A. Yes.

22 Q. Okay. And is Jon Kerin still the vice
23 president of coal combustion products for the Company?

24 A. I don't know.

1 Q. Okay. Who might know the answer to that?

2 A. Well, I'm certain he's not, because I knew
3 the head of coal combustion products until he moved to
4 a different job just recently.

5 Q. Okay.

6 A. (Larry E. Hatcher) So this is Larry. I can
7 answer that. He's not currently in that role, and
8 Jessica is in that role.

9 Q. Oh, thank you so much. And does -- and,
10 Larry, if you know this better, please jump in, but the
11 question was for Mr. De May, so I'll put it to him
12 first.

13 Does Ms. Bednarci k have more fir sthand
14 knowl edge about the Company's coal ash management
15 practices than Mr. Kerin had?

16 A. (Stephen G. De May) I think that's a
17 questi on you shoul d ask the Jessi ca Bednarci k.

18 Q. Okay. Does the Company consider its pre-2014
19 actions with respect to coal ash management relevant to
20 this appli cation?

21 A. Not especi ally. And, you know, the pre-2014
22 actions were liti gated, I think, quite signi ficantly in
23 the last rate case. Part of the order of the
24 Commi ssion on this matter said as much, that they dealt

1 with issues like management penalty and moving forward.
2 The question was, are your expenditures going forward
3 prudent; and when a determination of prudence is made,
4 then we will be able to recover our costs. So that
5 would be my answer to that question.

6 Q. Okay. And subject to check, would you agree
7 with me that Mr. Kerin's direct testimony in the prior
8 rate case, Docket, E-7, Sub 1146, included conclusions
9 about the Company's pre-2014 actions with respect to
10 coal ash management?

11 A. Are you going to be more specific or just --

12 Q. Sure. Yeah. I can -- I didn't have the
13 testimony handy for you, but subject to check I'll just
14 read you one line. This is page 12 of John Kerin's
15 direct, lines 14:

16 "At each step of the environmental regulatory
17 evolution process, DE Carolinas was in line with
18 industry standards, and reasonably and prudently
19 managed CCRs and coal ash basins."

20 A. I remember that line. Your question is? I'm
21 sorry.

22 Q. Just the question is, so in the prior case,
23 the Company did put forth direct testimony regarding
24 conclusions about the Company's position on whether it

1 had handled coal ash reasonably in the past.

2 A. Yes. Because that question was relevant in
3 that case.

4 Q. Okay.

5 A. You asked me if I thought it was relevant in
6 this one, and I'm saying no.

7 Q. Okay. So -- but isn't it true that some of
8 the rebuttal testimony in this case gets at the
9 Company's conclusions on pre-2014 coal ash management?

10 A. You asked me what the Company's position is.
11 You asked me what my position was. And my position is
12 those issues are not as relevant in this case as they
13 were in 2018 or 2017.

14 Q. Okay. Similar question, but just to put a
15 little bit of a finer point on it.

16 Does the Company consider the history of
17 design, construction, operation, maintenance of its
18 coal ash ponds relevant to the question of whether the
19 costs for which it now seeks recovery could have been
20 lower had the Company acted differently in the past?

21 MR. ROBINSON: Chair Mitchell, if I may,
22 I may object. That calls for a legal conclusion.

23 CHAIR MITCHELL: All right. Ms. Lee,
24 what's your response?

1 MS. LEE: If Mr. De May has a -- he's
2 just spoken to the Company's position with respect
3 to the relevance of conclusions, so this is along
4 the same lines, if he's able to answer.

5 CHAIR MITCHELL: All right. I'll allow
6 the question, recognizing that the witness is not
7 an attorney.

8 THE WITNESS: Would you repeat the
9 question, Ms. Lee?

10 Q. Of course. Does the Company consider the
11 history of design, construction, operation, and
12 maintenance of its coal ash ponds relevant to the
13 question of whether the costs for which it now seeks
14 recovery could have been lower had the Company acted
15 differently in the past?

16 A. Well, I will say -- and it might even have
17 been Mr. Kerin who said it first -- that it's the
18 Company's position that no decision, action, or lack of
19 action historically on the management of our coal ash
20 basins is causing any unjustified cost today. And so I
21 don't know if that answers your question of relevance,
22 but I feel like our past actions, how we got from the
23 very first coal ash basin to the coal ash management
24 enacted CCR were dealt with from the last rate case.

1 And there are residual and lingering issues,
2 and things like the litigation with insurance companies
3 and so on; but in terms of the regulatory questions
4 that are in play in this rate case, we believe it's
5 whether or not the expenditures we have made are
6 prudent, whether we are effectively and responsibly
7 closing the ash basins in compliance with the state,
8 federal and -- state and federal law, but I would also
9 say in compliance with direction from the environmental
10 regulator.

11 And so the question is, are we doing that and
12 are we doing that well. That's a legitimate question.
13 And there may be people who think not all of our costs
14 are legitimate. That is not our position. I would say
15 that there is also a matter of cost recovery that has
16 just been evident in all of the testimony so far. But
17 I think those are the issues at stake here.

18 Q. Okay. Thank you for that answer.

19 Mr. De May, would you agree with me that,
20 when the Company elects to file an application
21 requesting a rate increase, the burden of proof rests
22 with the Company alone?

23 MR. ROBINSON: Chair Mitchell, I object
24 again. That calls for a legal conclusion as well.

1 CHAIR MITCHELL: I'll allow the
2 question. I recognize -- we recognize Mr. De May
3 is not an attorney, but I'll allow the question to
4 stand.

5 THE WITNESS: The burden of proof for
6 prudence is ours. However, if a party challenges
7 that assertion of prudence, that party needs to
8 establish it in no uncertain terms in a
9 quantifiable way. And then we must rebut that,
10 effectively, in order to ultimately prevail in a
11 prudence decision. But I think the initial burden
12 of proof, and I guess ultimate burden of proof, is
13 ours.

14 Q. Okay. And for that initial burden of proof
15 for the evidence necessary to substantiate the
16 Company's prima facie case, you would agree with me
17 that it's not required of either the Commission, or the
18 Public Staff, or any intervening parties to fill in the
19 gaps of lacking evidence, and that that does rest with
20 the Company?

21 MR. ROBINSON: Chair Mitchell, I'm just
22 going to continue my objection.

23 THE WITNESS: Yeah. On that, I don't
24 have an answer.

1 Q. Okay.

2 A. Subject to legal.

3 Q. Sure.

4 CHAIR MITCHELL: For purposes of the
5 record, let me rule on Mr. Robinson's objection.
6 I'm going to overrule it. Ms. Lee, please ask the
7 question one more time, and I will ask the witness
8 to respond.

9 MS. LEE: Thank you, Chair Mitchell.

10 Q. Mr. De May, would you agree with me that it
11 is not required of, nor would it be appropriate for the
12 Commission, the Public Staff, or any intervening
13 parties to fill in the gaps of any lacking evidence
14 which may be necessary to substantiate the Company's
15 prima facie case?

16 A. I don't know the answer to your question,
17 because if there is no such evidence, or evidence
18 doesn't exist, or -- you know, I just don't know. I'm
19 sorry.

20 Q. Okay. No problem. I believe you mentioned
21 earlier, perhaps when you were talking with Mr. Page,
22 that you had read the Commission's orders in the prior
23 rate cases; is that correct?

24 A. (No audible response.)

1 Q. Okay. Are you familiar with certain
2 commissioners --

3 (Reporter interruption due to no audible
4 response.)

5 THE WITNESS: Yes, I'm sorry. I think I
6 was on mute. Yes was my answer.

7 Q. Thank you. And are you familiar with certain
8 Commissioners' dissents in those cases calling into
9 question the sufficiency of the evidence introduced by
10 the Company at those hearings regarding the
11 reasonableness and prudence of the Company's coal ash
12 expenses or the proper ratemaking treatment for those
13 expenses?

14 A. I am aware of that, yes.

15 Q. Okay. And just finally, would you consider
16 the Company's evidentiary presentation in those cases
17 satisfactory?

18 MR. ROBINSON: Chair Mitchell, I would
19 just ask for a continuing objection to this line of
20 questioning, please.

21 CHAIR MITCHELL: And the objection is
22 overruled. The question may stand. Mr. De May,
23 you may answer.

24 THE WITNESS: I do think it was

1 satisfactory and reasonable in a Commission
2 decision.

3 Q. Okay. And final question. I'm just looking
4 at your rebuttal testimony on page 5, line 14. You
5 mentioned that there is never a good time for a rate
6 increase.

7 Mr. De May, do you think that during the
8 middle of a global pandemic and a national recession a
9 rate increase is appropriate?

10 A. Well, I will answer that question in this
11 way. I do think rate increases are hard anytime, and
12 there are a significant number of our customers who
13 struggle with their bills today. We only come in for a
14 rate increase when rates no longer reflect the costs
15 and the investments that we have incurred that benefit
16 our customers.

17 And we have done a lot in this rate case to
18 mitigate the impact on our customers, especially those
19 who are hardest hit. And we started off this rate case
20 with our initial filing. Net of EDIT -- net of a
21 return of EDIT that we had proposed, at a 6 percent
22 customer rate, retail average rate increase, and under
23 the terms of the settlement, making certain assumptions
24 around coal ash, et cetera, the rate increase is

1 2.1 percent.

2 So, you know, we have done a lot of things to
3 mitigate the impact for customers. You may have read
4 just recently that, because of a -- kind of an
5 innovative approach to our fuel filling, we rolled
6 forward the period of time for the fuel cost adjustment
7 in DEC from year end 2019 to the end of the first
8 quarter; and we were able to deliver an average retail
9 rate decrease of more than 2.1 percent. And so we are
10 doing things -- and I can go into the whole COVID thing
11 of what we've done for our customers. We recognize
12 rate increases are hard, especially for a certain
13 segment of our customer base; but we have to reflect
14 the investments we've made in rates, and we have to be
15 able to achieve our targeted rate of return.

16 Q. Thank you, Mr. De May, for your time. I have
17 no more questions.

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Q. Thank you, Mr. Hatcher. I have some questions now for Mr. De May.

So first off, Mr. De May, just for the benefit of the record, as you may not have heard Mr. Bob Page's first question. You are the North Carolina president for Duke Energy Carolinas; isn't that correct?

A. (Stephen G. De May) Yes.

Q. Thank you. Mr. De May, in addition, do you recall questions from the Sierra Club and the Tech Customers regarding the Company's rate case in the context of the current pandemic?

1 A. Yes.

2 Q. And, Mr. De May, I know you gave some of the
3 things that the Company has done when it filed its
4 case.

5 Do you recall, Mr. De May, when the Company
6 actually filed these rate cases?

7 A. The DEC rate case was filed almost a year
8 ago, September 30th of 2019.

9 Q. And -- thank you. And do you recall what the
10 test year was, Mr. De May?

11 A. 2018.

12 Q. Mr. De May, so the majority of the costs that
13 are included in this case is reflected in cost of
14 service. When did they actually occur?

15 A. In 2018.

16 Q. But --

17 A. Perhaps I didn't understand your question.
18 I'm sorry.

19 Q. No, you answered the question, Mr. De May.

20 A. Okay.

21 Q. Okay. Mr. De May, since the Company
22 postponed its rate case, can you describe some of the
23 additional steps the Company has taken to try to
24 mitigate the rate increase for customers?

1 A. Well, I think we -- to start, we have entered
2 into some very constructive settlement agreements. In
3 particular, the agreement with Public Staff that
4 culminated in May. 9.6 percent ROE, a return of excess
5 deferred income taxes over the five-year period of time
6 are examples of some mitigation -- mitigations towards
7 the rate increase for our customers.

8 In the intervening time between when this
9 rate case was filed and today, of course, we've been
10 dealing with the COVID situation. And we have really
11 done a lot of great things for our customers in that
12 regard. I acknowledge that that's not part and parcel
13 of this rate case, but it is at least an illustration
14 of the Company's ongoing efforts to help our customers
15 when we can.

16 Q. Thank you, Mr. De May. One other line of
17 questions.

18 So do you recall questions from the Sierra
19 Club counsel on the Company's investment in its coal
20 units?

21 A. I do.

22 Q. Mr. De May, are the Company's investments in
23 its coal units, or its generation fleet in general,
24 based on information available to the Company at the

1 time those decisions are made?

2 A. Well, that's -- when we make a decision,
3 we're making it with all the material information known
4 to us at the time, and we evaluate all the alternatives
5 to -- seeking a solution to the problem at hand.

6 Q. Okay.

7 A. Yes. You know, we made the decision in the
8 moment with the best information we had under the
9 circumstances.

10 Q. Thank you, Mr. De May. And in addition, as
11 it pertains to the Company's coal plant investments in
12 this case, were many of the investments needed to
13 maintain compliance with environmental laws such as
14 CAMA?

15 A. They all were. You know, they were all
16 compliance related. Or, you know, they included the
17 dry ash handling, wastewater and stormwater systems,
18 lined retention ponds, et cetera. So quite a bit of
19 required investments just to keep those plants running.

20 Q. Mr. De May, are remaining coal plants
21 currently important to serve load at this time through
22 the obligations?

23 A. Well, they're critical to serving load. And
24 in the cases as we discussed in Allen, couple of those

1 units are necessary for transmission support. And so
2 until that support can be replaced with something else,
3 we'll need to keep those around a little longer.

4 Q. Thank you. And before you used Allen as an
5 example.

6 Mr. De May, can you elaborate on how
7 important Allen was during this summer's heat wave?

8 A. Well, you know, our coal fleet isn't always
9 the first to dispatch, and I think we all know that at
10 this point, but those plants ran a healthy amount. I
11 don't have the specifics here, but we were running our
12 coal fleet during the heat wave.

13 Q. Thank you. No further questions.
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CHAIR MITCHELL: All right. Thank you,
Mr. Robinson. We'll proceed to questions from
Commissioners.

Commissioner Brown-Bland?

COMMISSIONER BROWN-BLAND: I don't have
any questions.

CHAIR MITCHELL: All right.
Commissioner Gray?

COMMISSIONER GRAY: No questions.

CHAIR MITCHELL: Commissioner
Clodfelter?

1 COMMISSIONER CLODFELTER: Yes, thank
2 you.

3 EXAMINATION BY COMMISSIONER CLODFELTER:

4 Q. Mr. De May, I think we're still good morning,
5 yes, looking at the clock. Good morning.

6 A. (Stephen G. De May) Good morning.

7 Q. I have a few questions, and they're a bit
8 scattered, but I'm filling in some gaps here.

9 I'm curious, Ms. Lee asked you about the
10 current assignments with responsibility for coal
11 combustion residuals, and you discussed with her the
12 transition, I think, from Mr. Kerin to Bednarcik; do
13 you recall that?

14 A. I wasn't very smooth in that, but I was
15 focusing on titles, and I -- rather than the role.

16 Q. Well, did I misunderstand the roles?

17 A. No.

18 Q. Okay. Well, thank you. I want to ask you
19 about another name, and actually, if Mr. Hatcher knows
20 the answer to this, too, that will be fine.

21 In the record in the 2018 rate case, which,
22 by the way, the Commission has taken judicial notice of
23 that record, one name that consistently appears over
24 and over again with respect to such things as

1 long-range planning for waste coal ash, strategic
2 planning for waste coal ash, and identification of
3 options for disposal of coal ash is an individual name,
4 and apologies for pronunciation, Issa Zarzar. Do you
5 know that name?

6 A. (Larry E. Hatcher) So this is Larry. Yes,
7 sir, I'm familiar with that name.

8 Q. Did I get it close to being right?

9 A. Yes, sir.

10 Q. Is Mr. Zarzar still employed by the Company?

11 A. My understanding, he is. Mr. Immel could
12 confirm that for you for sure.

13 Q. Is he employed by Duke Carolinas or by Duke
14 Progress?

15 A. That, I do not know.

16 Q. Do you know what Mr. Zarzar's current title
17 and scope of responsibilities are?

18 A. No, sir, I do not.

19 Q. Do you know when Mr. Zarzar last had
20 assignments related to coal combustion residuals?

21 A. No, sir, I don't. Again, I think Mr. Immel
22 or Ms. Bednarci k would have a better handle on that.

23 Q. Thank you, sir. I'll leave you alone on
24 that. Thank you.

1 Mr. De May, back to you. Are you still with
2 me?

3 A. (Stephen G. De May) Yes, sir.

4 Q. I asked a question of Mr. Newlin, and,
5 unfortunately for you, he tagged you as possibly a
6 person who might know something about this. But I
7 asked Mr. Newlin what he knew about the regulatory
8 agreement in Florida in 2017 with respect to Duke's
9 Florida affiliate whereby the Commission in Florida
10 directed or permitted -- I'm not sure whether it was a
11 direction or a permission -- Duke Florida to
12 redeploy -- my word, not theirs -- redeploy some of the
13 EDIT in order to accomplish other objectives, cost
14 recovery objectives. I think they -- my understanding
15 is they may have related to early retirement of the
16 Crystal River plant. Are you familiar with that?

17 A. I am.

18 Q. Can you just give me a more detailed
19 description of it, put some boxes around it and give me
20 some corners and things like that?

21 A. Yes, I can. When tax reform occurred, or the
22 Jobs Cut and Tax Act occurred, whenever tax reduction
23 occurs, our customers, all utility customers, generally
24 benefit in two ways. One is from the lower tax rate

1 lowering cost of service as a -- you know, on an
2 ongoing basis; the other is converting accumulated
3 deferred income taxes into excess deferred income
4 taxes, which at some point and in some way, customers
5 will ultimately benefit from.

6 The way the Florida Utilities Commission and
7 our Duke Energy Florida utility dealt with it was
8 actually more of a kind of an agreement. You know, I
9 don't know who came up with the ideas first. But let
10 me just give you orders of magnitude, rough orders of
11 magnitude. The lower tax rate delivered about
12 \$130 million a year in lower tax expense for Duke
13 Florida's customers. The excess deferred income tax
14 benefit was about \$70 million a year, and that was both
15 protected and unprotected.

16 And the \$70 million was an ARAM flow back for
17 the protected, and a five-year flow back for the
18 unprotected. So you do that math, and it was about
19 \$70 million a year for quite a number of years.

20 And what they chose to do with those funds,
21 the \$200 million -- 130 from the tax rate, 70 from the
22 EDIT -- was to apply \$50 million of that benefit to the
23 accelerated depreciation of Crystal River's units 4 and
24 5, which was a nonoperating coal plant that had

1 remaining book value on it. The \$150 million was used
2 to recover storm costs from Hurricanes Irma and
3 Michael. And they had significant balances there. I
4 think the combination of those two was about \$750
5 million, give or take.

6 And that \$150 million a year went to
7 return -- or to recover those storm costs and replenish
8 the utility's storm reserve, which I think -- this one
9 I can't remember, but it was about \$125 million. So
10 that's how they did that.

11 And let me just add that the storm flow back
12 or recovery piece will end in mid-2022. The
13 accelerated depreciation component will continue until
14 their next general rate case, at which time it will be
15 revisited through depreciation studies and in the
16 ordinary course. And that rate case, I think, is a '22
17 rate case.

18 Q. Thank you for that. What I'm curious about
19 is, in the absence of that agreement with the
20 regulators, would I be correct to think that Duke
21 Florida would have been seeking to recoup those costs,
22 the excess book value and the storm costs, by seeking
23 recovery through rates?

24 A. Well, I do know that Florida has a storm

1 securitization law, so I don't know whether --

2 Q. I apologize for interrupting you, but let me
3 focus really on just the piece, then, that related to
4 the Crystal River early retirement and the depreciation
5 that was still on the books that needed to be taken.

6 Am I correct that the Company, if it hadn't
7 reached that agreement with the use of the EDIT, would
8 have instead been asking to recover that book value in
9 rates?

10 A. Yes. But they are effectively recovering it
11 in rates still. And they're -- you know, so the
12 accelerated depreciation -- I mean, it's -- it's a
13 netting of sorts. It's a -- it's -- you know, these
14 revenues and expenses are fungible. So they could have
15 given the customer the benefit of the EDIT and then
16 increased rates for the accelerated depreciation.

17 This was an opportunity for the state to
18 achieve two policy -- really priorities. One was an
19 interest in accelerating the depreciation of their coal
20 fleet; and also to pay for the destructive storm
21 damage. But -- and tax reform allowed them to do it
22 without affecting customer rates.

23 Q. Thank you for that explanation. And I
24 understand the netting concept. That's exactly what I

1 was really focused on. And you could probably guess my
2 interest in the subjects. We'll leave it at that for
3 now. Let me move to a different topic.

4 A. Sure.

5 Q. On pages 9 and 10 of your direct testimony,
6 you discuss some ideas the Company has investigated.
7 You don't need to have this in front of you, but if you
8 want to get it, I'll give you a moment.

9 A. No, I have it.

10 Q. Great. You discuss some of the ideas the
11 Company's been exploring to bring forward programs that
12 might be of assistance to lower income customers. And
13 I appreciate that testimony, and I thank you for that
14 testimony. I'm just curious about why the Company
15 chose not to bring any of those forward to the
16 Commission in this rate case for consideration and
17 evaluation, possible either piloting or for
18 implementation. Why not bring them forward in this
19 rate case to -- at least for a good look-see?

20 A. Well, I have an answer for that, and the
21 answer is this: We have learned, and sometimes the
22 hard way, that to do really hard complicated things
23 requires a thoughtful, deliberate, and robust
24 stakeholder process. The numbers of stakeholders that

1 are interested in anything that we do is, as you can
2 just imagine, is great. When you start thinking about
3 low-income programs and the like, whatever is -- does
4 spring from that effort, other customers are going to
5 have to carry. And we thought that what this process
6 needed that Power Forward didn't do, and that frankly,
7 Commissioner Clodfelter, Senate Bill 559 didn't do
8 enough of, was stakeholder support.

9 We didn't build it in those efforts, and we
10 were effectively unsuccessful, at least in the
11 multiyear rate plan part and in Power Forward, because
12 our stakeholders want to be involved in those kinds of
13 major decisions. And so the whole idea of
14 collaboratives around low income was for the Commission
15 to put their imprimatur on this effort. Because I
16 think everybody thinks this is important.

17 You asked a question the other day, why now,
18 and why didn't it happen earlier. And there's not a
19 good answer for that. But it doesn't mean because Duke
20 didn't give, you know, a second thought to its
21 customers who were struggling, and it's not because
22 Public Staff didn't or the Commission didn't, we just
23 didn't -- just like why is the country just now
24 wrestling with systemic racism and social injustice.

1 Sometimes it just -- you just have to get there.

2 And I am suggesting that the Company is
3 serious about its interest in doing structural changes
4 to benefit our low-income customers. We are very -- we
5 are very generous in our contributions to things like
6 Share the Warmth, the Energy Neighbor Fund, the Helping
7 Home Fund. You know, I have statistics of all the
8 millions of dollars we've given to those programs over
9 time. But I think now is the time to think about
10 structural change to ratemaking, and rate design, and
11 just those kinds of things to help our customers in a
12 much more structural, enduring, lasting way.

13 Q. I want to say that I really appreciate the
14 seriousness of the sincerity of your answer in my
15 question. I appreciate it. And it takes me to what
16 may be my final question, really, because I believe
17 what you said; I agree with what you said about the
18 time being right and the time being now. And so I need
19 from you some comfort on one point.

20 So I'm being asked to have confidence that
21 this stakeholder process is being proposed -- have
22 confidence in that process going forward. And where I
23 struggle a bit is I then look at the fact that the
24 Company has, through various settlements, partial

1 settlement agreements, has made certain commitments to
2 support a particular proposal, or to oppose a
3 particular proposal, or not to put forward a certain
4 proposal. All of those actually really deal with cost
5 of service, but as we all know, cost of service issues
6 often are strong drivers of what happens in rates.

7 And so I look at those and say the Company's
8 tying its hands already in these settlements. What am
9 I to do with that, in terms of the integrity and the
10 confidence level I have in the stakeholder process? I
11 don't know if you want to respond to that question. It
12 may just be that I should leave that out there
13 rhetorically.

14 A. I'd like to, if I can. So, first of all, we
15 believe that our settlement agreements are
16 constructive, and we support them. We were careful, I
17 guess, in coming to some of the terms of those
18 settlement agreements to leave open and preserve the
19 true potential of this collaborative. The fact is a
20 number of the parties that we entered into these
21 agreements on will be important parties at that
22 collaborative table. So whether they brought those
23 ideas to us in the form of a settlement or whether they
24 brought them to us at this collaborative table, I think

1 all these ideas are worth exploring.

2 I -- you -- it was just a number of days ago
3 when there were a lot of discussion around this. And
4 you could hear a different sound out of the industrial
5 group, and you could hear a different sound out of the
6 low-income advocates. And so you can only imagine how
7 challenging this will be, which is why we didn't --
8 which is why we came to the Commission.

9 If we had just been silent about this and
10 decided to roll out a stakeholder process ourselves, I
11 think a number of parties would have looked at it like
12 they look at anything our Company does, with a
13 jaundiced eye; which is unfair but it's a fact. And --
14 but like I said, putting the Commission's seal of
15 approval on this with expectations, and I think -- I
16 hope that I am part of delivering back to the
17 Commission something that exceeds your expectations.
18 But more importantly, does something positive and
19 lasting to solve an issue that has been around way too
20 long.

21 Q. That's helpful. Thank you. And let me ask
22 you my final question, really.

23 Recognizing the pressure that the Company is
24 under, and for that matter the Commission as well, from

1 various interest groups, each of whom has their own
2 special view about how things should work to their
3 advantage, what would the Company think if -- and I
4 have not vetted this with any of my colleagues, this is
5 just me speaking as one Commissioner -- but what would
6 the Company think if the Commission were to suggest or
7 propose, perhaps, that the process could be assisted if
8 we had a third party involved as well? Some
9 independent expertise to assist in making sure that no
10 voice got to be the overriding dominant voice in the
11 discussions. Would the Company think that that was
12 helpful?

13 A. I commit to you now, the Company would
14 support that proposal. And I can tell you from my own
15 personal experience that the stakeholder processes that
16 have gone the best that we've been involved in have all
17 been professionally mediated, and structured, and run
18 by people who do that kind of thing. You look at the
19 clean energy plan process. You look at our own grid
20 improvement plan process. You know, Jay Oliver spoke a
21 lot about what we did leading up to this proposal. We
22 did a lot, but we didn't do it by ourselves, and I
23 think it would have been hard.

24 Q. Okay. Mr. De May, I appreciate your time

1 this morning. Thank you.

2 A. Thank you, Commissioner.

3 CHAIR MITCHELL: All right.

4 Commissioner Duffley?

5 COMMISSIONER CLODFELTER: That's all I

6 have.

7 CHAIR MITCHELL: Commissioner Duffley?

8 COMMISSIONER DUFFLEY: Yes. I have a

9 few questions.

10 EXAMINATION BY COMMISSIONER DUFFLEY:

11 Q. Good afternoon, gentlemen. Most of my
12 questions will be -- or all of my questions will be for
13 Mr. De May.

14 So you testified about many factors that is
15 causing upward pressure on rates. You have coal ash
16 expenditures, grid modernization, costs to meet your
17 carbon reduction goals, and you also attended the
18 public witness hearings and have committed to this
19 stakeholder process to discuss the issue of
20 affordability. And I think that I heard probably some
21 of the answer to my question, but I just want to make
22 sure if you have anything to add to this question.

23 Has the Company thought about, or is the
24 Company concerned about rate case fatigue? And what is

1 the Company actively doing to address that concern?

2 A. (Stephen G. De May) Yeah. You know, I will
3 just say something that I think anybody involved in
4 this process already knows. Rate cases are really
5 hard. They're very costly. They just sap
6 organizations of resources. And, you know, I think
7 rate case fatigue is a real issue.

8 We -- we made -- let me say it this way. We
9 supported legislation in 2019 that would have provided
10 a multiyear rate plan. And one of the virtues of
11 multiyear rate plan is the ability to put programs in
12 certain kind of identifiable and observable plans and
13 expenditures and so on, on the table, do a little bit
14 of the hard work of vetting it, and then letting it go
15 for a while.

16 And, you know, there's been a great deal of
17 resistance to that idea here in North Carolina. I
18 chalk up at least 50 percent of that resistance to the
19 way we rolled it out. But I can -- or I can just tell
20 you, though, that we are supportive of mechanisms that
21 diminish the need for frequent rate activity. But I
22 also want to add, though, that the level of investments
23 that are required to improve, to maintain, and to
24 expand our infrastructure are not decreasing. And so

1 there has to be some ability to bring these investments
2 into rates, and then -- in an easier fashion, and in
3 perhaps a more, you know, moderated fashion over time.
4 And so we continue to explore ideas that would get us
5 to that kind of place.

6 So I don't have the solution for you. If
7 it's worth anything to you, we agree with your view on
8 how hard these rate cases are. We have responded to
9 8,000 data requests in this rate case. We have 29
10 witnesses. Even with settlement agreements with 10
11 different parties, every issue is being litigated by
12 somebody. And, you know, I think some reform would be
13 great, I just haven't cracked that nut yet.

14 Q. Okay. Thank you. And I'd like to give a
15 caveat to the next set of questions that I'm about to
16 ask you. No one should read anything into this, these
17 questions, or if I'm leaning one way or the other. I'm
18 just trying to obtain additional data points, and
19 really, as a new Commissioner, have some education on
20 the issues that I'm about to ask you about.

21 So in the last rate case in E-7, Sub 1146,
22 DEC put forth two proposals to the Commission in an
23 effort to assist with cash flow and credit metrics.
24 The first is what I call the run rate, other

1 Commissioners call it something different, but it was
2 approximately -- it was to add approximately
3 \$200 million to the revenue requirement in that case.

4 And then the second proposal was to increase
5 the revenue requirement by \$200 million as a cash flow
6 mitigation measure in response to the Company's
7 requirement to flow back the EDIT. So it was a total
8 of \$400 million.

9 Did I generally capture DEC's proposal in the
10 last rate case?

11 A. Yeah. I wasn't sure about the EDIT number,
12 but I totally accept your version of that.

13 Q. Okay. Thank you. And in the last rate case
14 in your post-hearing brief, and that was filed in
15 April of 2018, and specifically on page 42, the Company
16 suggested that, although the written proposal in De
17 May's Rebuttal Exhibit 5 did not identify specific use
18 of the \$200 million relating to the cash flow
19 mitigation measure, the brief suggested that the EDIT
20 flow back and the coal ash costs -- I think it was in
21 that case -- the ongoing coal ash costs, could offset
22 each other.

23 Did I accurately summarize the portion of
24 DEC's post-hearing brief?

1 A. Yes.

2 Q. Okay. And I am aware of the testimony by
3 both DEC and the Public Staff regarding their
4 respective positions on the return of the unprotected
5 federal EDIT totaling approximately \$982 million.
6 But -- so I'm aware that the parties had different
7 positions, right.

8 But in the end, in the second agreement and
9 stipulation of partial settlement, you and the Public
10 Staff have agreed to flow back the unprotected federal
11 EDIT over a five-year amortization period with a
12 return. Do I have that correct?

13 A. You do.

14 Q. Okay. And the deferred coal ash costs
15 through January of 2020 in this case is approximately
16 491 million. The Commission has not yet received the
17 audited revenue requirement reconciliation from the
18 Public Staff, but I'm assuming that those numbers have
19 been updated through May of 2020, or not?

20 A. Coal ash has only been updated through the
21 end of January for DEC.

22 Q. Okay. Thank you for that. And so it's --
23 and DEC's position related to the deferred coal ash
24 case through January of 2020 is to recover the cost

1 over a five-year amortization period with a return; am
2 I correct in that DEC position?

3 A. You are. You are correct.

4 Q. So both the unprotected federal EDIT and the
5 deferred coal ash expenditures have a five-year
6 amortization period under what you're currently
7 presenting to the Commission; is that accurate with the
8 settlement agreement with Public Staff?

9 A. That is a true statement, yes.

10 Q. So again -- I'm finally getting to my
11 question that I did caveat earlier.

12 Is the -- so, did the Company think about
13 requesting in this case what it requested in the
14 post-hearing brief in the last case, about doing a full
15 offset of the deferred coal ash expenditures with the
16 unprotected federal EDIT within the context of this
17 rate case? I mean, I just need a little education
18 why -- if there's some type of benefit to extending it
19 over five years, if it has to do with the revenue
20 requirement. Could you speak to me a little bit about
21 that issue?

22 A. Yeah. You know, I think our experience back
23 in 2018 where we made that proposal, and for very good
24 reasons the Commission said let's deal with this in the

1 next rate case. As I remember, we were compressed on
2 time from when the hearings were held, to when the tax
3 act became law, to when we had to deal with rate
4 reduction. And to get an order out, it just seemed
5 like that was a complicated way to resolve EDIT.

6 And -- but to answer your question did we
7 consider doing that in this case, yes, because we think
8 about all kinds of scenarios; but we chose to do it
9 just to keep the parts separate. In part, because the
10 impact to customer bills are -- is kind of the same.
11 Whether you just offset them or whether you are, you
12 know, letting each one kind of amortize over a
13 different period.

14 I guess what I'm trying to say is that we
15 knew EDIT was a powerful rate mitigation tool for our
16 customers. I mentioned before that it's taking our
17 original ask of net 6 percent down to net 2.1 percent.
18 That's the power of such a large EDIT balance. The
19 knowing, however, that EDIT -- you know, we thought
20 edit should be -- you know, let me say that there's a
21 school of thought that says EDIT should flow back at a
22 different rate than five years; that it should flow
23 like ARAM does. But we knew it to be also a tool and a
24 lever, and came to a very constructive settlement with

1 the Public Staff on that.

2 And so maybe I didn't answer the question
3 directly, but we considered it, we just didn't choose
4 to apply for a rate adjustment that way.

5 Q. Okay. Thank you for that.

6 A. I could have gotten there in less time,
7 sorry.

8 Q. Well, it took me a while to get to my initial
9 question, so we're even there. So -- but -- and I did
10 read your testimony, and part of your initial testimony
11 was with respect to the EDIT, the sense of gradualism,
12 and I'm just wondering, I mean, whether you handled it
13 the way you have with the Public Staff settlement
14 versus doing a full offset in this case. I mean, if --
15 either way would not necessarily be addressing the tax
16 issue in a haphazard manner, in your opinion, or do you
17 have -- do you have concerns that it would -- that
18 there could somehow be rate volatility and harm to the
19 customers or to the utility?

20 A. I'm going to rely on my colleague,
21 Jane McManeus, to clean up the answer I'm about to give
22 you. So if you are flowing back EDIT over a five-year
23 period and proposing to collect a like number on coal
24 ash expenditures, for instance, over that same

1 five-year period, there is no -- there is no difference
2 between that and just netting the two. In fact, in a
3 way that's kind of what you're doing.

4 I believe what Florida did was outside of a
5 general rate case. So what -- the situation we have
6 here is we have a general rate case with dozens and
7 dozens of moving pieces. You know, we would love to
8 collect our coal ash expenditures over a five-year
9 period of time. Steve Young was very clear about the
10 importance of cash flow generation to the Company. We
11 support the settlement of the five-year flow back of
12 EDIT to the customers.

13 I think, in a general rate case, the
14 Commission has the ability to change periods and arrive
15 at a targeted outcome, if you will. And so I think
16 that's kind of the beauty of doing these things in a
17 general rate case. And I don't know if that was
18 responsive to your question, but I don't -- I don't --
19 I am just not seeing the difference between dealing
20 with all these issues at the same time in the same
21 general rate case. I just think it's all happening.
22 This netting is happening.

23 Q. Okay. Thank you for that. And so now I'm
24 going to get to my additional data point that I would

1 I like to see, and if I could have a late-filed exhibit
2 on this. What I'd like to see is a revenue requirement
3 reconciliation, like a Boswell Exhibit 1.

4 COMMISSIONER DUFFLEY: And, Ms. Downey,
5 it might be more appropriate for Public Staff to do
6 this, but I'm going to ask Mr. De May.

7 And it sets forth this hypothetical
8 where the total amount of the deferred coal ash
9 expenditures is fully offset by a portion of the
10 unprotected federal EDIT, so that I can see any
11 type of revenue requirement impacts and the effects
12 to the EDIT rider that the Public Staff and the
13 Company have agreed to in their second stipulation
14 of partial settlement.

15 Which one of you would like to volunteer
16 for that late-filed exhibit?

17 MS. DOWNEY: Commissioner Duffley -- if
18 I may, Chair Mitchell, respond to that?

19 CHAIR MITCHELL: You may, Ms. Downey.

20 MS. DOWNEY: Commissioner Duffley,
21 Ms. Boswell will be filing full sets of schedules
22 with our update testimony, assuming the Commission
23 allows us to file it on September 8th, and we would
24 be glad to include such a reconciliation at that

1 time if that would be okay.

2 COMMISSIONER DUFFLEY: That is
3 acceptable to me. Thank you very much, Ms. Downey.
4 And I have no further questions.

5 THE WITNESS: Thank you, Commissioner.

6 COMMISSIONER DUFFLEY: Thank you.

7 CHAIR MITCHELL: All right.

8 Commissioner Hughes?

9 COMMISSIONER HUGHES: No questions at
10 this time. Thank you.

11 CHAIR MITCHELL: Okay. And
12 Commissioner McKissick?

13 COMMISSIONER MCKISSICK: Thank you,
14 Madam Chair, I do have a couple of questions.

15 EXAMINATION BY COMMISSIONER MCKISSICK:

16 Q. And I guess first I'd like to address them to
17 Mr. De May. And it's going to touch upon some of the
18 concerns that Commissioner Clodfelter spoke of when he
19 was discussing the policies that could be implemented
20 to impact affordability and issues of that sort.

21 I remember reading back in your -- I think it
22 was your direct testimony about programs such as a
23 low-income bill credit that would apply to your basic
24 facilities charges and as well as, you know, looking at

1 expansion and retooling of the supplemental security
2 income.

3 Are those types of initiatives already taking
4 place outside of North Carolina where Duke operates
5 today?

6 A. (Stephen G. De May) I don't know the answer
7 to that question. I don't know what low-income
8 assistance measures are in the rate structures the
9 other states we do business in. I'm sorry.

10 Q. Okay. But you are committed to working
11 diligently to try to see what we could do to facilitate
12 the consideration of various programs as expeditiously
13 as possible, rather than -- I know you talked about
14 pulling together groups of stakeholders to work through
15 things, but what is it that you're able to commit to
16 today, so that I understand that?

17 A. Well, we would like to undertake this
18 collaborative with Public Staff over the course of a
19 period of about a year and provide frequent updates to
20 the Commission as to our progress; and all along the
21 way, give the Commission an indication of where things
22 look promising, where we're hitting roadblocks with
23 stakeholders, et cetera.

24 We propose this collaborative in a very

1 thoughtful, serious way, Commissioner McKissick, and by
2 bringing it to the Commission for its seal of approval
3 and its imprimatur, I -- you know, if we wanted to just
4 be just all showy about it and not real substance, we
5 would've have done that. And so we want all
6 stakeholders to be held to the fire on this.

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