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DATE: Wednesday, September 16, 2020

TIME: 1:31 P.M. - 4:25 P.M.

DOCKET NO.: E-7, Sub 1214

E-7, Sub 1213

E-7, Sub 1187

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner Tolola D. Brown-Blair

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

DOCKET NO. E-7, SUB 1214

Application of Duke Energy Carolinas, LLC,
for Adjustment of Rates and Charges Applicable to
Electric Utility Service in North Carolina

DOCKET NO. E-7, SUB 1213

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

DOCKET NO. E-7, SUB 1187

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 26

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P R O C E E D I N G S

CHAIR MITCHELL: Let's go back on the record, please. Ms. Bednarcik, Mr. Marzo, we are at redirect of your witness.

MR. MARZO: Thank you, Chair Mitchell.
Whereupon,

JESSICA L. BEDNARCIK,
having previously been duly affirmed, was examined
and testified as follows:

REDIRECT EXAMINATION BY MR. MARZO:

Q. Ms. Bednarcik, you were asked -- and I think we'll go in reverse order with Ms. Cralle Jones being the last cross examiner from Sierra Club.

You were asked several questions from Ms. Cralle Jones regarding prior testimony for witness Kerin, and in that regard I think she tied it to the Company's historical practices as well as some questions on industry standard. Do you recall those?

A. Yes, I do.

Q. And I think Ms. Cralle Jones had asked you, even more specifically than that, regarding your -- I think she said your experience, in terms firsthand knowledge of the historical practices of the Company. And I want to ask you some questions related to that.

1 Okay?

2 A. Okay.

3 Q. Now, can you describe for me how you reviewed
4 the historical documents in this case to assess the
5 prudence of the Company's historical practices as it
6 pertains to coal ash management?

7 A. So, specifically on the historical documents,
8 same documents I know that the intervenors looked at as
9 well, I read through them. I read through them trying
10 to understand what is the purpose of the document, what
11 was the goals of the document, and the type of people
12 who actually produced those documents. And really --
13 did not really look at taking out points here and
14 there, but understand the entire context of the
15 document, and why it was written, and what it was being
16 used for at that time.

17 I mean, a great example is there was -- in
18 the 1984 document, there was some discussion on that, I
19 know, a couple of days ago. There was a discussion on
20 the placement of the wells and were they screened in
21 the perched water or below the perched water. When I
22 read that document -- I think that was Joint Exhibit
23 Number 9. I read through that document and said, what
24 is the purpose? The purpose of this document was to

1 determine is there groundwater contamination. And the
2 wells, the placement of the wells, is supposed to be
3 where we can gather groundwater data in order to make
4 sure and determine if we have contamination.

5 And I remember there was a lot of discussion
6 on what the placement of one well, and it was below the
7 perched water table right where you can grab
8 groundwater. And reading further, I saw that well was
9 perfectly placed, because it was confirmed that that
10 well actually was in the groundwater plume. It was in
11 the leachate plume.

12 So it's reading through and connecting all
13 the dots in the document for the purpose, the how they
14 did what they did, why they did what they did, and what
15 the conclusions were.

16 Another great example is there was a lot of
17 discussion on filter versus unfiltered samples.
18 Digging in and going -- I know now, today, we do take
19 unfiltered samples. That is the standard today. But
20 reading through the documents and going, why; why in
21 the 1980s would they be taking filtered samples? Did
22 some research online. Talked to Ms. Williams who is
23 going to be coming up. And it was clear to me that in
24 the 1980s, 1990s, there was a lot of discussion on, do

1 you filter the sample, or do you not filter the sample.
2 And understanding that that was something that was an
3 evolving science during that time period. A lot of
4 good discussion on why you would or why you would not.

5 So yes, today, today's standards on filtered
6 samples is what you do. But back in the '80s, that was
7 one of the things that was done. So putting everything
8 into context, and that is how I attacked and researched
9 each and every one of these documents. I know that one
10 of the witnesses said, I think they were --

11 MS. CRALLE JONES: Your Honor --
12 Chair Mitchell, I'd like to object. This response
13 has gone way past any questions that I asked.

14 MR. MARZO: Chair Mitchell, if I can
15 respond. This is exactly what Ms. Cralle Jones
16 asked. She asked about Ms. Bednarci k's knowledge,
17 her ability to speak to both the industry standard
18 and historical practices of Duke Energy. And
19 that's exactly what she's explaining, is what she's
20 done, what she's read to be able to talk
21 authoritatively on those two things that she was
22 questioned about.

23 CHAIR MITCHELL: All right. I'll allow
24 the witness to proceed.

1 THE WITNESS: So I think where I was,
2 was that it's -- looking at the documents, it's
3 very hard not to think about what we know today and
4 apply what we know today in the history. And I
5 think there was even a comment made that I wouldn't
6 have changed anything in the past based upon what I
7 know today. Well, that's not true. Based upon
8 what I know today, if I could have transport myself
9 back with today's knowledge, of course I would have
10 made changes. But I did the research based upon
11 what I could find online, what I could find in
12 these historical documents. Looking at objectives,
13 looking at what they did what they did, what were
14 the conclusions. Who are the people who are
15 actually doing these studies?

16 The A. D. Little study is a great one.
17 A. D. Little was a highly respected consulting
18 firm. That A. D. Little study, which is Joint
19 Exhibit 10, 49 people worked on that project,
20 including people from universities and highly
21 respected engineering and consulting firms.
22 Looking at all that and putting it in perspective
23 and going, are these people reputable? Are these
24 people leaders in the industry at that time looking

1 at what they did over the years? Putting all that
2 into context, understand historical aspects, what
3 the Company had done in the history based upon the
4 information available to us.

5 Q. And you just mentioned the Arthur D. Little
6 report, the 1985 report the EPA commissioned, and you
7 said something about the credibility of those who put
8 together the reports.

9 In looking at the Arthur D. Little report,
10 you thought about that credibility; is that --

11 MS. CRALLE JONES: Objection.

12 Chair Mitchell, we're going into a line of
13 questioning now that is more appropriately --
14 they're trying to rebut witness Quarles' testimony.
15 I didn't mention the A. D. Little report, and he's
16 providing an opportunity for her to dig deeply into
17 that. She's answered with great care and
18 specificity as to what she did to review the
19 documents. That's been asked and answered, and
20 this is just going way beyond the scope of any
21 question I requested.

22 MR. MARZO: Chair Mitchell, I would
23 reiterate that this is well within the scope of
24 what was asked. She was asked about how she can

1 make the determinations that she's making in her
2 testimony. I would add to that, you know, that
3 there had been several things said since even, you
4 know, rebuttal testimony was filed in this case.
5 And the Company, having the burden of proof, should
6 have the ability to respond to that.

7 Now, with that said, the questions that
8 I have asked Ms. Bednarcik are squarely in line
9 with showing her expertise in this particular area
10 and her ability to give an opinion.

11 CHAIR MITCHELL: All right. Mr. Marzo,
12 I will overrule the objection, but I'll say this:
13 We're on redirect. Please limit your questions to
14 those appropriate for redirect examination of your
15 witness. And, you know, when you can, help us
16 remember, you know, the cross examination question
17 or line of questions that you're -- that you are
18 responding to with your questions to your witness.
19 All right. You may proceed.

20 MR. MARZO: Thank you, Chair Mitchell.
21 And I only have a couple -- a few more related to
22 this area.

23 Q. You said you looked at a lot of historical
24 documents.

1 Did you look at means and methods when you
2 reviewed those documents?

3 A. Yes, I did look at the means and methods.
4 And again, a great one was that filtered/unfiltered
5 that I talked about, trying to understand why the means
6 and methods were used in each one of the documents
7 based upon the objectives, conclusions, why they did
8 what they did.

9 Q. And there are a number of documents that you
10 referenced that are related to the joint exhibits in
11 particular, and I want to ask the question that I was
12 going to ask before I got interrupted with
13 Arthur D. Little.

14 Did you look at who produced those documents?
15 Did you -- did that affect how you reviewed and gave
16 credit to the opinions in those documents?

17 A. Yes, it did. There -- a lot of people were
18 part of those documents. It was also done under the
19 direction of the U.S. EPA Office of Research and
20 Development who was overseeing the work that was being
21 done. So as a utility engineer in the 1980s, of course
22 I would have given credence and credibility to the U.S.
23 EPA, the Office of Development and Research, and the
24 consultants that they hired to do their research for

1 them.

2 Q. And one last question. The Company has done
3 its own research in some of these historical documents
4 that you've looked at; is that correct?

5 A. Yes.

6 Q. Okay. For example, the 1987 Duke Power
7 report, can you tell me a little bit about that report
8 and how that may have affected your determinations
9 including the --

10 MS. CRALLE JONES: Objection. This is
11 not at all part of the line of cross examination.

12 MR. MARZO: Chair Mitchell, if I could
13 just quickly respond. This is one of my last
14 questions in this line. I'm simply asking -- we
15 asked about historical documents that were not
16 produced by the Company. I'm asking her how she
17 reviewed historical documents that were produced by
18 the Company to make sure that we have both those
19 views out, including the providers of those
20 reports. I'm just asking the same question. I'm
21 just asking it in context of the Company reports.

22 CHAIR MITCHELL: I'm going to overrule
23 the objection. But, Mr. Marzo, stick to redirect.
24 You may proceed with your question.

1 Q. Do you want me to ask that again,
2 Ms. Bednarcik? And what I was asking -- did you
3 understand the question?

4 A. Please do.

5 Q. Okay. What I was asking you was about the --
6 in particular, I talked about the 1987 Duke Power
7 report, but I'm generally asking you, in terms of
8 reviewing these reports, and in particular maybe that
9 report. One, did you review the Company reports? How
10 did you review the Company reports? And how did the
11 opinions in those reports and who provided those
12 reports affect your determinations of your review?

13 A. So reviewing those reports, I did take into
14 account the people that the Company hired also to
15 produce those reports. The Kilkelly report I believe
16 is the one that you are referencing. It's -- I think
17 it's either 12 or 13 in the joint exhibits. One of the
18 gentlemen that is the author of that report is
19 Harry LeGrand. When I took my -- I went a couple days
20 to take some hydrology courses --

21 MS. CRALLE JONES: Your Honor --

22 Chair Mitchell, I just want to object again. We're
23 going into documents that were not even addressed
24 on direct. This is an opportunity -- he's taking

1 this as an opportunity to rebut again, and --

2 MR. MARZO: Chair Mitchell, she's only
3 talking about how she reviewed this specific -- the
4 specific Duke Power documents that she reviewed to
5 do her testimony. I think it's a fair question.
6 Ms. Cralle Jones asked a question about how she can
7 make an opinion if she doesn't have firsthand
8 knowledge. She shouldn't have asked the question
9 if she didn't want the answer. And the answer is,
10 this is how she knows what she knows to be able to
11 give testimony in this case.

12 MS. CRALLE JONES: I did not ask a
13 question about what documents she reviewed.

14 CHAIR MITCHELL: All right. I'm --

15 MS. CRALLE JONES: She responded to my
16 question.

17 CHAIR MITCHELL: All right.

18 Ms. Cralle Jones, I'm going to overrule the
19 objection. I'm going to allow Ms. Bednarcik to
20 complete her sentence so that she can answer her
21 attorney's redirect question, and then, Mr. Marzo,
22 move on.

23 MR. MARZO: Thank you, Chair Mitchell.

24 THE WITNESS: So I was discussing the

1 Kil Kelly report. And one of the authors of that is
2 a gentleman named Henry LeGrand [sic], who, when I
3 went and took a hydrology course on -- a conference
4 on hydrology, that was actually the textbook they
5 gave me was by -- he was one of the authors.

6 So I do include all of that in
7 understanding of are these people to -- to rely
8 upon on their history when I reviewed the reports
9 in order to determine can I account -- can I look
10 at these and rely upon these and say yes, that what
11 the Company did and who they relied upon were
12 appropriate.

13 Q. Thank you, Ms. Bednarci k.

14 Ms. Bednarci k, you were asked several
15 questions yesterday by the Public Staff related to
16 groundwater wells and receptors; do you recall those?

17 A. Yes, I do.

18 Q. And I'm going to ask you, do you have DEC
19 Cross Exhibit 19 available?

20 A. Yes, I do.

21 Q. Okay. And just for the record, this is the
22 senior management committee report from
23 January 13, 2014, the ash basin closure update report?

24 A. That is correct.

1 MR. MARZO: And, Chair Mitchell, I
2 guess, for the record, I would just go ahead and
3 mark this as Bednarci k Redirect -- Rebuttal
4 Redirect Exhibit Number 1.

5 CHAIR MITCHELL: The document will be
6 marked DEC Bednarci k Rebuttal Redirect Examination
7 Exhibit Number 1. And just for purposes of the
8 record, Mr. Marzo, there is a handwritten notation
9 at the top that says the document is not
10 confidential. That notation does not occur on
11 every single page. So I just want you to confirm
12 that the document is not confidential, does not
13 contain confidential information.

14 MR. MARZO: I can confirm for the Chair
15 it does not.

16 CHAIR MITCHELL: Okay. Thank you,
17 Mr. Marzo.

18 (DEC Bednarci k Rebuttal Redirect
19 Examination Exhibit Number 1 was marked
20 for identification.)

21 Q. Ms. Bednarci k, would you mind turning to
22 docket exhibit page 6283, which they're marked at the
23 top of the page. First I just ask you, now, on 6282,
24 the title of this slide, what is the title?

1 A. "Groundwater Monitoring Methodology."

2 Q. Okay. And if I look at page 83 -- 683, could
3 you read that for me, the sentence at the top of the
4 page?

5 A. It states:

6 "Based on best available knowledge, we do not
7 have any receptors at any of our sites that currently
8 in danger of being impacted by groundwater above 2L
9 standards."

10 Q. Okay. And this report predates Dan River;
11 it's in early 2014, correct?

12 A. Correct.

13 Q. Okay. And is that statement consistent with
14 your understanding at the time?

15 A. Yes, it is.

16 Q. Okay. And could you also turn to page 684 of
17 the document?

18 A. I am there.

19 Q. And could you read the heading on that page
20 for me?

21 A. "Generating station ash pond groundwater
22 sampling overview."

23 Q. Okay. And if I look at that table, that's a
24 table of various exceedance samples. And if I look

1 down at the bottom into the notes, there is a sentence
2 that begins with the word "primary standard." Do you
3 see that?

4 A. Yes. It says:

5 "Primary standard violation are in
6 downgradient wells that does not have a receptor
7 between the well location and any drinking water
8 receptors."

9 Q. Okay. Thank you. And all results are
10 communicated -- are all results communicated as
11 required to state agencies in that next note; is that
12 what that reads?

13 A. Yes. It goes on to say:

14 "And no remedial actions are currently
15 outstanding."

16 Q. Okay. Thank you. Just one more. If you
17 would turn to -- or maybe two more. Would you turn to
18 page 693? And could you read the title of that first
19 slide on 693?

20 A. "River Bend Station."

21 Q. Okay. And if you flip over to 694, once
22 again, there's a picture and then there are some notes
23 below the slide. And I'm looking at -- specifically at
24 the notes that begin with the highest groundwater

1 indications; do you see that?

2 A. I do. It says:

3 "Highest groundwater indications, iron,
4 manganese, are at well MW13 circled in red," which my
5 picture is in black and white, so it doesn't show up
6 the red, but "boron starting the show" -- "boron
7 starting to show up in MW11 downstream of ash pond just
8 before groundwater enters the Catawba River. No
9 receptors."

10 Q. Okay. And if you would, for me, would you
11 turn to -- well, it also ends with all receptors in
12 pink boxes and all upgradient; is that the last bullet
13 there?

14 A. Yes, are all upgradient of ash ponds.

15 Q. Okay. Could you turn to page 709 for me?

16 A. I am there.

17 Q. Okay. And could you read that slide for me.
18 What is the title of that slide? Not the bullets but
19 just the slide title.

20 A. "Receptor Impacts and Actions."

21 Q. And is this whole section, as far as you
22 know, is that related to receptor impacts and actions
23 that have been taken by the Company?

24 A. Yes.

1 Q. Okay. And would you turn to page 712 for me?

2 And what's the title of this slide?

3 A. "Potentially Impacted Receptors. Action
4 Taken to Date."

5 Q. Okay. And it identifies different stations.
6 And is Allen one of those stations?

7 A. Yes.

8 Q. Okay. And what is the -- what is the
9 determination on Allen? Is that --

10 A. Under constituent, it says:

11 "No impacts identified."

12 And under the response, it says:

13 "NC DENR sampled neighbor's wells. Results
14 showed no 2L impacts."

15 Q. And if you look down at the notes, I see one
16 note that starts with "no current concerns." Would you
17 mind reading that for me?

18 A. "No current concerns at any sites where
19 specific receptor testing should be done."

20 Q. And I guess my -- one of my questions to you,
21 Ms. Bednarcik, is, you know, even pre-Dan River, our
22 investigation was robust and advanced, and the
23 Company's was in terms of reviewing and understanding
24 the impacts from groundwater; is that correct?

1 A. Yes, that is correct. We take our
2 neighbors -- they're our neighbors, and so we wanted to
3 make sure that groundwater impacts were not going
4 towards receptor wells. And as you can see in this
5 table, there are some stations where we were providing
6 a permanent water solution because of that potential
7 sometime in the future something might be going towards
8 there, let's connect them.

9 Q. Thank you, Ms. Bednarcik.

10 MR. MARZO: Chair Mitchell, that is all
11 the redirect that I have.

12 CHAIR MITCHELL: All right. Questions
13 from Commissioners, beginning with
14 Commissioner Brown-Bland.

15 COMMISSIONER BROWN-BLAND: Yes, I have
16 just a couple.

17 EXAMINATION BY COMMISSIONER BROWN-BLAND:

18 Q. Ms. Bednarcik, I think this has been the
19 second time we've had an opportunity to go over how
20 you've learned what you've learned. And first I just
21 commend you. I think that you have mastered a great
22 deal of information in a relatively short period of
23 time and be able to be so conversant on it, so that's
24 just a compliment to your good work.

1 But along those lines, what I would like to
2 know is whether -- for example, when you were
3 discussing with Mr. Marzo the reports that you looked
4 at and those who authored them, and I know in many
5 cases people may now be unavailable, but did you or --
6 and/or to your knowledge, Mr. Kerin, if you know, did
7 you have an opportunity to check or do investigation
8 and actually converse with or contact those people who
9 are either with the Company were hands on with the CCR
10 handling, making decisions, and/or those who may have
11 been consulted or were contracted to advise and work on
12 such matters?

13 A. Commissioner Brown-Blair, first of all, thank
14 you for the compliment. While I -- the -- we were not
15 able to find the authors of the documents that are
16 included in the joint factual agreements, or the joint
17 factual exhibits. But I will say that -- I think it
18 was Joint Factual Exhibit 11 which talked about water
19 quality at Belews Creek, and specifically related to
20 some selenium impacts that were in the surface water.

21 One of the authors was actually my boss at
22 one time, so I did know him. I worked under him for a
23 number of years. So as much as I could say that I knew
24 him, worked with him, and reading through that

1 document, that is the only person that I know
2 personally.

3 Q. And did you go back and, as part of your
4 becoming conversant and familiar with all of this in
5 the terms of the coal ash, the Company's response in
6 handling of coal ash and dealing with environmental,
7 did you go back and have discussions with him about
8 this?

9 A. Unfortunately the gentleman, William McKay,
10 passed away a number of years ago, so I was unable to.

11 Q. And in that regard, did you -- I think my
12 question was a little broader.

13 Beyond just the reports, but just in general,
14 as part of your coming up to speed in these matters and
15 preparing yourself for dockets such as this, did you
16 have occasion to check or do investigation to determine
17 those who handled and worked with CCRs, basins, ponds,
18 those kinds of things?

19 A. Commissioner Brown-Bland, we tried. We tried
20 to find some people that we could talk to to get more
21 information. But Ms. Williams, who's coming up in a
22 panel in a little bit, that's one of the reasons why --
23 because we got a lot more questions about historical
24 through data requests. We said let's -- who can we

1 find, and we were able to find Ms. Williams who was
2 with U.S. EPA in the 1980s. So that is one of the
3 reasons we have her as a panelist, to make her
4 available for you.

5 Q. Did you speak with anyone, you know, internal
6 to Duke that you knew had actual experience, whether
7 it's through -- I mean, as far back as you could go,
8 but at least from the '80s up through 2015?

9 A. So for -- Mr. Immel, who was on earlier, has
10 been with the Company for a very long time, so I did
11 have conversations with him based upon his knowledge of
12 operations at the plants, specifically related to when
13 we went dry ash in certain locations at certain times
14 to understand what was the thought process behind that,
15 why it was done. But beyond that, when we were going
16 back through the records trying to understand the
17 history, we were not able to find anyone on that
18 historical knowledge going back many, many years.

19 Of course, as I mentioned earlier, there are
20 people who are current operators of the basins that I
21 did have conversations with, but not for operations
22 historical.

23 Q. With regard to the current operators, are you
24 able to recall, or do you have information where you

1 could provide their names, titles, and periods of
2 employment? Is that something you could provide?

3 A. We could provide that. A lot of the people
4 who are managing the basins, of course, in the last
5 number of years are in the coal combustion products
6 organization. People that actually report to me and
7 through my organization and now are fossil hydra. So
8 the current operators, we could provide those names to
9 you.

10 Q. And specifically the ones that you spoke with
11 to become educated about things that had transpired and
12 the reasons for those.

13 So what about former employees, or
14 contractors, or consultants, or people of that nature;
15 did you reach out to anyone? Did you attempt to?

16 A. We attempted to find people that we could
17 talk to, and were unable to locate former employees or
18 former consultants that we were able to talk to. So
19 no, I did not talk to anybody formally.

20 Q. So were you able to determine, or could you
21 not, whether, you know, internal to Duke, people with
22 different -- different opinions or unanimous opinions
23 about the Company's handling of CCRs and what should
24 have been done and what was done?

1 A. So, Commissioner Brown-Bland, I think you're
2 asking internal to Duke, talking to different people,
3 is there different ideas.

4 Q. And then when I say internal, that includes
5 anybody that you spoke to with the Company. Just in
6 terms of the Company's coming to decisions and
7 positions, how well were these issues examined and, you
8 know, whether it was thorough discussion back and
9 forth, and whether there was differences or unanimous
10 opinions?

11 A. Well, Commissioner Brown-Bland, as you can
12 imagine, pulling together information for this case,
13 pulling information together to answer all the data
14 requests that we received that was going into the
15 historical information, I did talk to a lot of people
16 in our environmental health and safety organization,
17 our fossil hydra organization to try and be as
18 responsive as we possibly could to all the data
19 requests. And that is also how I came up to speed on
20 what the past practices were.

21 And one of the things that I -- I'm
22 inquisitive, so I asked lots of questions, and I --
23 over, and over, and over again until I can understand
24 what is going on. And I did ask the question that I

1 think that you're getting at, is was there anything
2 different; should we -- I mean, where are we going with
3 this? And I could not find anybody in the Company that
4 said no. No -- everyone that I talked to in the
5 Company, based upon looking at all the documents we
6 have available to us, came up with anything that said
7 different than what I'm saying today, which is the
8 Company's practices were prudent. We followed what we
9 knew at the time based upon the information at the
10 time.

11 So I would say I've asked lots of questions
12 of lots of people within the Company. I have not found
13 anybody in the Company that would disagree with the
14 position I'm taking here and the Company's position
15 based upon our practices.

16 Q. And I appreciate that. And am I
17 understanding correctly, though, that these are still
18 conversations with current employees or people who were
19 current as you went about the business of trying to
20 learn?

21 A. You are --

22 Q. Not former?

23 A. You are correct. They are people that are
24 current employees. Because we were unable to track

1 down former employees who would have been operating at
2 that time. As I said, the one gentleman I know passed
3 away, unfortunately, a number of years ago.

4 Q. But was -- do you know -- if you know, was
5 the effort made by you and those in your organization
6 to reach out to some of the former -- I mean, you know,
7 the 1990s are not that far away, speaking as one who
8 lived through it.

9 A. Yes, there was an effort made. I know that,
10 as we were looking back through -- I've been with the
11 Company since 2005, so I was going through who I knew
12 who was over the fossil hydra organization. And we
13 tried through LinkedIn, through internet searches; we
14 tried to find those people to be able to sit down and
15 talk to them, and we were unable to.

16 Q. All right. I think with regard to the
17 current employees, I would ask, if you could, if you
18 could provide -- to the extent you're able to be as
19 complete as possible, provide a list of those current
20 employees that you consulted in your -- in your
21 bringing yourself up to speed on these coal ash
22 matters. I'd like to have their name, their title, and
23 at least assuming they are all still current, but
24 something that indicates their time period of

1 employment. All right. So I'll request that as a
2 late-filed exhibit.

3 COMMISSIONER BROWN-BLAND: That's all
4 the questions I have, Madam Chair. Thank you,
5 Ms. Bednarick.

6 CHAIR MITCHELL: All right.
7 Commissioner Gray?

8 COMMISSIONER GRAY: No questions.

9 CHAIR MITCHELL: Commissioner
10 Clodfelter?

11 COMMISSIONER CLODFELTER: Yes, thank
12 you. I hit the wrong button.

13 EXAMINATION BY COMMISSIONER CLODFELTER:

14 Q. Ms. Bednarick, welcome back. I know you're
15 probably tired of this. Last year, I asked you a
16 couple of questions that you didn't know the answers to
17 immediately, but were going to check into, and we
18 agreed we would talk about them again when you came
19 back.

20 One of those questions was with respect to
21 the W.S. Lee plant. And the question was whether any
22 of the costs for which the Company is seeking recovery
23 in this case were costs that related to activities in
24 connection with the inactive ash basin or the ash fill

1 area at the W.S. Lee plant. Have you been able to
2 determine that?

3 A. Yes, Commissioner Clodfelter.

4 Q. Great.

5 A. And my recollection was -- what I believe I
6 told you last time is that we did have some small
7 amounts related to report writing and final reports
8 that were going to the Department of Environmental
9 Health down in South Carolina. And so that is true,
10 they're small, but the dates of when excavation was
11 completed for the inactive ash basin and the ash fill
12 area, the IAB, inactive ash basin, was completed in
13 10 -- October of 2017; and the ash fill area was
14 completed in November of 2017. So those costs are not
15 included for the excavation costs in this case.

16 Q. Great. Thank you for that. And the second
17 one was with respect to Dan River.

18 Were there any portion of the costs for which
19 recovery is being requested in this case were related
20 to excavation and off-site transportation for off-site
21 disposal? Or was all that work done before the costs
22 that are involved in this case?

23 A. The off-site disposal that we discussed last
24 time, I dug into that, what that off-site disposal was

1 for, and it was, again, what I remember, but a little
2 bit more. So there was vegetation. There was about
3 30,000 tons for vegetation that had to go offsite
4 because we could not put it in our landfill. And about
5 4,000 tons of what we call foreign material. It had
6 some petroleum, latent CCR, and some discharge material
7 that couldn't go to our landfill, but not ash that was
8 going for offsite disposal. It was only for that
9 material that could not be placed in our landfill.

10 Q. Thank you for that also. I appreciate
11 confirming those answers, and thank you for that.
12 You've been asked a lot of questions in the last half
13 hour or so about your homework, and so I got to get on
14 the train too. So I want to ask you just a few.

15 In connection with the work you did and the
16 review you did, did you talk to the authors of the 2012
17 plant retirement comprehensive program plan?

18 A. So the -- I don't have that in front of me.
19 There are a few people I do know, I remember names on
20 there. One was a gentleman we talked about, I believe,
21 before Mr. Issa Zarzar.

22 Q. You did talk with him?

23 A. I did talk to him.

24 Q. Great.

1 A. And I also talked to, I believe,
2 Mr. Paul Draovitch's name is on there as well.

3 Q. Yes.

4 A. I did talk with him.

5 Q. You talked with Mr. Draovitch too?

6 A. Yes.

7 Q. Okay. What about the authors of the
8 May 29, 2017, environmental management program for coal
9 combustion products; did you talk to the authors of
10 that study?

11 A. I don't know if I have that in front of me.
12 I would have to look and see who the people are. I
13 believe -- what was date of that document again?

14 Q. May 29, 2007.

15 A. I would have to go back through. If they are
16 people that are still employed with the Company, then I
17 would have talked to them. If they are not employed,
18 then, of course, I would not have talked to them. But
19 all those historical documents, if people are still
20 around. A few, I think, are people that either -- some
21 of them, there was -- I think a gentleman named
22 Tony Mathis may have been on that document. He
23 actually reported to me for a while before he retired,
24 so, of course, he would have been someone I talked to.

1 Q. I don't see Mr. Mathis' name on the document.
2 Perhaps he was part of it, but you would know if you
3 talked to him. What about the authors of the 2008 coal
4 combustion products 10-year plan; did you talk to the
5 authors of that 10-year plan?

6 A. I would say it's the same thing,
7 Commissioner Clodfelter.

8 Q. Okay.

9 A. I don't have it in front of me. But if
10 they're still with the Company, I talked to them.

11 Q. Okay. And so they would be on the list that
12 you're going to provide in response to
13 Commissioner Brown-Blair's questions, I assume?

14 A. We will include them on the list.

15 Q. Okay. And what about the 2003 10-year coal
16 combustion products plan? Do you recall talking to
17 anyone about that plan?

18 A. It would be the same as the other plans. I
19 don't know the -- I don't have the list in front of me,
20 but if they were in the Company, I would have talked to
21 them.

22 Q. Okay. Thank you, Ms. Bednarcik, I appreciate
23 that.

24 COMMISSIONER CLODFELTER: Madam Chair, I

1 will confess that, because of a lot of the
2 questioning about who said what to whom when and
3 who did what, and who read what when, I'm a little
4 lost. And so I want to renew, in this case again,
5 the request that the Commission made in the last
6 rate case, for the production of all of these
7 reports and studies, especially including the ones
8 Ms. Bednarcik reviewed -- may have reviewed.

9 Additional documents have appeared in
10 this case, additional exhibits have been provided
11 in this case that were not furnished in response to
12 that request in the prior case. And so just for
13 the interest of completeness, I don't want to have
14 to guess as to whether I've got a complete set or
15 not of the documents Ms. Bednarcik may have studied
16 as part of her historical review. I don't want to
17 have to guess on that, I don't want to have to make
18 assumptions about whether the record in the last
19 case was or was not complete, or whether these new
20 documents may have been produced somewhere in the
21 last case and I can't find them.

22 I'd just like to review the request
23 again, and this time I'll work with Commission
24 counsel to formulate that request in written form

1 so that the Company has it clearly stated and
2 clearly set out, if that's acceptable.

3 CHAIR MITCHELL: It is. Mr. Marzo, you
4 are now on notice. Commissioner Clodfelter will
5 work with Commission counsel and we will make the
6 request for late-filed exhibits at the appropriate
7 time.

8 MR. MARZO: Thank you, Chair Mitchell.
9 We're happy to work with the Commission on that
10 request.

11 COMMISSIONER CLODFELTER: Thank you.

12 CHAIR MITCHELL: All right. Thank you,
13 sir.

14 Q. Ms. Bednarcik, that's all I have for you.
15 Thank you. Appreciate it.

16 CHAIR MITCHELL: All right.
17 Commissioner Duffley?

18 COMMISSIONER DUFFLEY: No questions.

19 CHAIR MITCHELL: All right.
20 Commissioner Hughes?

21 COMMISSIONER HUGHES: No additional
22 questions. Thanks.

23 CHAIR MITCHELL: Commissioner McKissick?

24 COMMISSIONER MCKISSICK: No additional

1 questions at this time.

2 CHAIR MITCHELL: All right. Any
3 questions on Commissioners' questions, beginning
4 with the Public Staff?

5 MS. JOST: No questions from the Public
6 Staff. Thank you.

7 CHAIR MITCHELL: Okay. Attorney
8 General's Office?

9 MS. TOWNSEND: No questions.

10 CHAIR MITCHELL: Sierra Club?

11 MS. CRALLE JONES: Yes. Thank you,
12 Chair Mitchell.

13 CHAIR MITCHELL: Okay.

14 EXAMINATION BY MS. CRALLE-JONES:

15 Q. Ms. Bednarcik, you recall
16 Commissioner Brown-Blair just asked you about efforts
17 to talk with folks with firsthand knowledge, and I
18 wrote down in my notes that, quote, we tried to talk
19 with folks with firsthand knowledge, but we were,
20 quote, unable to track down former employees.

21 Are you aware that the Company was involved
22 in the deposition of Steve Townsend, the former manager
23 of Dan River site in January of 2019? And was also
24 involved in the deposition of Don Faulkner, the vice

1 president for fossil fuels in January of 2019?

2 MR. MARZO: Objection. Just relevance.

3 I'm not sure where this question is going from
4 Ms. Cralle Jones.

5 MS. CRALLE JONES: Ms. Bednarcik
6 testified that the Company tried to track down
7 former employees with firsthand knowledge and said
8 they were unable to. Yet, at the same time, the
9 Company was involved in the deposition of these two
10 former employees.

11 CHAIR MITCHELL: All right. I'm going
12 to overrule the objection. I'll allow the question
13 to proceed. It responds to a question from
14 Commissioner Brown-Bland, so please proceed,
15 Ms. Cralle Jones.

16 Q. The question, were you aware that the Company
17 was involved in the deposition of these two former
18 employees of Duke Energy in January of 2019?

19 A. I was not aware of that.

20 MS. CRALLE JONES: No more questions.

21 CHAIR MITCHELL: All right. Questions
22 for the witness on Commissioners' questions from
23 any other intervening party?

24 (No response.)

1 CHAIR MITCHELL: All right. Mr. Marzo?

2 MR. MARZO: Just a couple,

3 Chair Mitchell.

4 EXAMINATION BY MR. MARZO:

5 Q. Ms. Bednarcik, first off, I want to ask you.

6 You were asked several questions by

7 Commissioner Brown-Blair and I think some follow-ups by

8 Commissioner Clodfelter referring to persons you talked
9 to.

10 And I believe, for clarity, you have reached
11 out and talked to some people within the Company that
12 you identified in those conversations, I believe, with
13 Commissioner Clodfelter; is that -- did I hear that
14 right?

15 A. Yes. As I read through the documents, if was
16 there was a name that I knew was still with the
17 Company, I reached out to them.

18 Q. Okay. And, Ms. Bednarcik, you're testifying
19 today as an expert witness in this case. And is it
20 your understanding that, as an expert witness, you are
21 able to get up to speed on a topic and to understand
22 that topic without having lived through the era that
23 that topic occurred?

24 A. Yes. And that is what I tried to do by

1 reviewing the documents and understanding what we had
2 talked about before of looking at the history of the
3 Company and reviewing the documents and talking to
4 those that I was able to talk to. But looking at the
5 documents on hand.

6 Q. And did you respond to over thousands of data
7 requests in this case?

8 A. Yes.

9 Q. Okay. And did that expose you to a breadth
10 of the Company's history around the ash management
11 systems that comprehensively covered several decades?

12 A. Yes, it did. Absolutely.

13 Q. Okay. And in reviewing the history in that
14 format in preparing both for this case and for your
15 job, is it -- can I ask this, do you have several
16 decades of understanding the Company's coal ash
17 management practices?

18 A. After reviewing all the data requests and the
19 requests that came through, yes, I would say that I
20 have -- I have experience and the knowledge of multiple
21 years of the Company's practices.

22 Q. Okay. And you visited sites, correct?

23 A. Yes. I visited all the sites. Many of them
24 I had visited before in my current role, but I visited

1 all the sites that are included in this DEC case.

2 Q. And do you have significant employees that
3 work under you who have been involved in coal ash
4 management for some time.

5 A. Yes.

6 Q. Okay. And so you have -- have you learned
7 through oversight of those employees about the history
8 of coal ash management by Duke Energy Carolinas?

9 A. Yes.

10 Q. Okay. And is it fair to say in -- on top of
11 all that you learned internally, have you also reviewed
12 a multitude of papers? And I think
13 Commissioner Clodfelter quite -- put it frankly that
14 there is continuing production of papers that can be
15 found if one were to continue to look and try to find
16 papers and assert the relevance of this case; you have
17 reviewed a number of those, correct?

18 A. Yes. I have reviewed the documents that are
19 available that have been produced, the historical
20 documents, I have reviewed those.

21 Q. Do you believe that gives you an expertise
22 regarding coal ash management practices of Duke Energy
23 Carolinas, unlike any other individual, in regards to
24 what you know as occurred over the history of this

1 Company?

2 A. Yes.

3 Q. Okay. Thank you, Ms. Bednarci k.

4 MR. MARZO: Thank you, Chair Mi tchell l.

5 CHAIR MITCHELL: All right. At this
6 time, I will entertain motions from counsel.

7 MS. JOST: Chair Mi tchell l, this is
8 Megan Jost with the Public Staff. I move that
9 Public Staff Bednarci k Rebuttal Cross Exami nation
10 Exhibi ts 1 through 3, and Confidential Public Staff
11 Bednarci k Rebuttal Cross Exami nation Exhibi ts 4 and
12 5 be admi tted into evidence as they are i denti fied
13 for the record.

14 CHAIR MITCHELL: All right. Ms. Jost,
15 hearing no objection to your motion, it will be
16 allowed.

17 MS. JOST: Thank you.

18 (Public Staff Bednarci k Rebuttal Cross
19 Exami nation Exhibi ts 1 through 3, and
20 Confidential Public Staff Bednarci k
21 Rebuttal Cross Exami nation Exhibi ts 4
22 and 5 were admi tted into evidence.)

23 MS. TOWNSEND: Chair Mi tchell l, this is
24 Teresa Townsend with the AG's office. We would ask

1 for the entry into the record of AGO Bednarci k
2 Rebuttal Cross Exam Exhi bi t Number 1.

3 CHAIR MITCHELL: All right.

4 Ms. Townsend, hearing no objection, your motion is
5 allowed.

6 MS. TOWNSEND: Thank you.

7 (AGO Bednarci k Rebuttal Cross
8 Examination Exhi bi t Number 1 was
9 admitted into evidence.)

10 MR. MARZO: Chair Mi tchel l, I, I ikewi se,
11 wou ld ask that Ms. Bednarci k's rebuttal
12 testimony -- rebuttal exhi bi ts and supplemental
13 exhi bi ts be moved into the record.

14 CHAIR MITCHELL: All right. Hearing no
15 objection, Mr. Marzo, the exhi bi ts to
16 Ms. Bednarci k's prefiled testimony will be admitted
17 into the record.

18 (Bednarci k Rebuttal Exhi bi ts 1, 2, and
19 4; Confidential Bednarci k Rebuttal
20 Exhi bi t 3; and Bednarci k Supplemental
21 Exhi bi ts 1 through 4 were admitted into
22 evidence.)

23 MS. CRALLE JONES: Chai r Mi tchel l,
24 Cathy Cralle Jones on behal f of Sierra Club.

1 CHAIR MITCHELL: All right,
2 Ms. Cralle Jones.

3 MS. CRALLE JONES: We would now move
4 that Sierra Club Bednarci k Rebuttal Cross Exhibi t 1
5 be moved into the record.

6 CHAIR MITCHELL: All right.
7 Ms. Cralle Jones, hearing no objection to your
8 motion, it is allowed.

9 MS. CRALLE JONES: Thank you.
10 (Sierra Club Bednarci k Rebuttal Cross
11 Examination Exhibi t 1 was admitted into
12 evidence.)

13 CHAIR MITCHELL: All right. Let's see.
14 Mr. Marzo, you had a redirect examination exhibi t,
15 I believe.

16 MR. MARZO: I did, Chair Mitchell.
17 Thank you for reminding me of that. It was
18 Redirect Cross Exhibi t -- Redirect Exhibi t Number 1
19 for Bednarci k rebuttal , and it was DEC
20 Exhibi t 19 -- Cross Exhibi t 19.

21 CHAIR MITCHELL: All right. Hearing no
22 objection, Mr. Marzo, that motion is allowed.

23 MR. MARZO: Thank you, Chair.

24 (DEC Bednarci k Rebuttal Redirect

1 Examination Exhibit Number 1 was
2 admitted into evidence.)

3 CHAIR MITCHELL: All right. If there is
4 nothing further, Ms. Bednarcik, we appreciate your
5 being here with us today and your testimony today.
6 You may step down, and you are excused. Thank you,
7 ma'am.

8 All right. At this point I would ask --
9 I believe, Mr. Robinson, you moved for the --
10 for -- you made the motion regarding excusing
11 witness Oliver.

12 MR. ROBINSON: Yes, Chair Mitchell, I
13 did.

14 CHAIR MITCHELL: And this would be an
15 appropriate time for you to move that testimony
16 into the record.

17 MR. ROBINSON: Sure, Chair Mitchell.
18 So, at this time, I ask that witness Oliver's
19 supplemental rebuttal testimony consisting of
20 four pages be moved into the record.

21 CHAIR MITCHELL: All right. Hearing no
22 objection, Mr. Oliver's testimony will be --
23 supplemental testimony will be copied into the
24 record as if given orally from the stand.

1 MR. ROBINSON: Thank you.

2 (Whereupon, the prefilled supplemental
3 rebuttal testimony of Jay W. Oliver
4 was copied into the record as if given
5 orally from the stand.)
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1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**
2 **POSITION.**

3 A. My name is Jay W. Oliver. My business address is 400 South Tryon Street,
4 Charlotte, North Carolina. I am employed by Duke Energy Business Services, LLC
5 (“DEBS”) as General Manager, Grid Strategy and Asset Management Governance
6 for Duke Energy Corporation (“Duke Energy”), the parent holding company for
7 Duke Energy Carolinas, LLC (“DE Carolinas” or the “Company”).

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**
9 **TESTIMONY?**

10 A. I am responding to the Supplemental Testimony of Jeff T. Thomas filed on behalf
11 of the Public Staff regarding transmission and distribution (“T&D”) assets placed
12 in service from February 1, 2020 thorough May 31, 2020 for DEC (“Update
13 Period”).

14 **Q. WITNESS THOMAS NOTED IN HIS TESTIMONY THAT DE**
15 **CAROLINAS HAD COMPLETED CONSTRUCTION ON 30 CIRCUITS**
16 **THAT WERE PENDING SOG “ENABLEMENT.” WHAT IS THE**
17 **COMPANY’S TARGETED TIMEFRAME FOR COMPLETING THE SOG**
18 **“ENABLEMENT” WORKSCOPE?**

19 A. Currently, the timeframe is longer than we would like between construction
20 completion and SOG enablement. As noted in witness Thomas’s testimony,
21 prior to this year the Company had been proceeding at a slower pace; however,
22 as the number of circuits targeted for SOG has increased, the demand for more
23 highly skilled personnel to perform the enablement work has increased. Once

1 fully staffed we anticipate it will take approximately 12 weeks between the
2 point construction work is complete and full SOG enablement. This 12-week
3 timeframe is needed for scheduling multiple interdependencies between the
4 reliability engineers who create the device settings; the ADMS Model Builders
5 who will program the devices into the software and facilitate testing and
6 validation; and coordination with the with the Grid Management technicians to
7 ensure devices are showing up correctly in the Distribution Control Center
8 (DCC).

9 **Q. WHAT ARE THE COMPANY'S PLANS FOR ACHIEVING THE**
10 **TARGETED TWELVE WEEK SOG ENABLEMENT TIMEFRAME?**

11 A. As COVID restrictions ease, we intend to begin building the staff required to reach
12 the targeted 12-week timeframe. Modelling resources are a highly specialized skill
13 set, but we are confident in our ability to find those resources with the additions
14 likely being a combination of company and contract personnel. Training the
15 resources will include sitting with our experienced team, reviewing the work of
16 others and being productive along the way as they complete the needed training
17 which we anticipate will take approximately four months.

18 **Q. WILL SOG ENABLEMENT BE INCLUDED AMONG THE KEY**
19 **METRICS FOR GIP REPORTING?**

20 A. Yes. As noted in the Second Agreement and Stipulation of Partial Settlement
21 in this case, DE Carolinas, in conjunction with the concurrent commitment of
22 DE Progress, and the Public Staff will work together to develop biannual
23 reporting on scope, schedule, costs, and benefits on the programs agreed upon

1 for GIP deferral. Today the company's project management team is already
2 tracking on a circuit by circuit basis the 1) Capacity and tie work completed;
3 2) Reclosers installed; 3) Reclosers commissioned (programmed and
4 verified the recloser can safely operate in switch mode; and 4) Enablement of
5 the self-healing team. The timeframe for how long it is taking from construction
6 complete to SOG enablement can be an additional metric.

7 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

 A. Yes.

1 CHAIR MITCHELL: All right. Any
2 additional procedural matters before we proceed
3 with Duke's next witnesses?

4 (No response.)

5 CHAIR MITCHELL: All right. Hearing
6 none, Duke, you may call your next witness.

7 MR. MEHTA: Thank you, Chair Mitchell.
8 This is Kiran Mehta, and the Company calls
9 Steven Fetter to the stand, and I see him now.

10 CHAIR MITCHELL: All right. Mr. Fetter,
11 let's see, there you are.

12 Whereupon,

13 STEVEN M. FETTER,
14 having first been duly affirmed, was examined
15 and testified as follows:

16 CHAIR MITCHELL: All right. You may
17 proceed, Mr. Mehta.

18 MR. MEHTA: Thank you, Chair Mitchell.

19 DIRECT EXAMINATION BY MR. MEHTA:

20 Q. Mr. Fetter, would you please state your name
21 and business address for the record?

22 A. Steven M. Fetter. My business address is
23 1240 West Sims Way, Port Townsend, Washington 98368.

24 Q. And are you employed, Mr. Fetter?

1 A. I have my own energy advisory firm called
2 Regulation UnFettered, and I am the president of that
3 Company.

4 Q. And do you have prior experience that you
5 bring to bear in connection with your testimony in this
6 case?

7 A. I served as commissioner and then chairman of
8 the Michigan Public Service Commission between 1987 and
9 1993. I then worked at Fitch Ratings and ended up as
10 head of the utility ratings practice at that credit
11 rating agency. In 2002, I went on to the board of
12 Central Hudson Gas and Electric at the same time I
13 started my energy advisory firm. And during the past
14 18 years, I have participated in over 100
15 administrative and judicial proceedings -- and
16 legislative proceedings, mostly on behalf of regulated
17 utilities, but also I'm somewhat unusual as a
18 consultant in that I've also been hired by public
19 utility commissions and also consumer advocates.

20 CHAIR MITCHELL: Mr. Mehta, you're
21 muted. We're picking up a little feedback on the
22 line when Mr. Fetter speaks, so, Mr. Mehta, we're
23 going to mute you as soon as you're finished
24 speaking so that there is -- just in an effort to

1 try to minimize the feedback. We may have to
2 address it if it does not resolve or if this
3 continues. But proceed, Mr. Mehta, and we'll see
4 how it goes.

5 MR. MEHTA: All right. Thank you,
6 Chair Mitchell.

7 Q. Mr. Fetter, on March 4, 2020, did you cause
8 to be prefiled in this docket, rebuttal testimony
9 consisting of 24 pages along with attachment A?

10 A. Yes, sir.

11 Q. Do you have any changes or corrections to
12 your prefiled rebuttal testimony?

13 A. No, I do not.

14 Q. If I asked you the same questions here today,
15 would your answers be the same?

16 A. Yes.

17 Q. Mr. Fetter -- Mr. Fetter, did you also
18 prepare a summary of your testimony which has been
19 previously provided to the Commission and the parties?

20 A. Yes, I did.

21 Q. Do you have any changes or corrections to
22 your summary?

23 A. No, I do not.

24 MR. MEHTA: Chair Mitchell, I move that

1 Mr. Fetter's prefiled rebuttal testimony, including
2 Attachment A, and the summary of his testimony be
3 admitted into evidence and copied into the record
4 in this proceeding as though given orally from the
5 stand.

6 CHAIR MITCHELL: All right. Mr. Mehta,
7 hearing no objection, your motion is allowed.

8 (Whereupon, the prefiled rebuttal
9 testimony with Attachment A and summary
10 of the testimony of Steven M. Fetter
11 were copied into the record as if given
12 orally from the stand.)
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I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is Steven M. Fetter. I am President of Regulation UnFettered. My business
3 address is 1240 West Sims Way, Port Townsend, Washington 98368.

4 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

5 A. I am providing rebuttal testimony on behalf of Duke Energy Carolinas, LLC (“Duke
6 Carolinas” or “the Company”) before the North Carolina Utilities Commission
7 (“Commission” or “NCUC”).

8 **Q. PLEASE DESCRIBE THE ISSUES UPON WHICH YOU ARE PROVIDING**
9 **REBUTTAL TESTIMONY.**

10 A. Utilizing my past experience as a state utility commission chairman and head of a major
11 utility credit rating practice, my rebuttal testimony responds to Public Staff witnesses
12 Charles M. Junis and Michael C. Maness who recommend an “equitable sharing” of coal
13 combustion residual (“CCR”) compliance costs, as well as Public Staff witness John R.
14 Hinton who testifies that financial positions incorporated into the overall Public Staff filing
15 will not result in a downgrade for the Company. I note that with regard to responding to
16 Public Staff’s arguments related to specific instances of alleged imprudence and
17 unreasonableness related to CCR compliance activities, I defer to the rebuttal testimony of
18 Company witnesses Jessica Bednarcik, James Wells and Marcia Williams.

II. BACKGROUND

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am President of Regulation UnFettered, a utility advisory firm I started in April 2002. Prior to that, I was employed by Fitch, Inc. ("Fitch"), a credit rating agency based in New York and London. Prior to that, I served as Chairman of the Michigan Public Service Commission ("Michigan PSC"). I am also an attorney, having graduated from the University of Michigan Law School in 1979.

Q. PLEASE DESCRIBE YOUR SERVICE ON THE MICHIGAN PSC.

A. I was appointed as a Commissioner to the three-member Michigan PSC in October 1987 by Democratic Governor James Blanchard. In January 1991, I was promoted to Chairman by incoming Republican Governor John Engler, a designation that I retained following reappointment in 1993. During my tenure as Chairman, timeliness of commission processes was a major focus, and my colleagues and I achieved the goal of eliminating the agency's case backlog for the first time in 23 years. While on the Michigan PSC, I also served as Chairman of the Board of the National Regulatory Research Institute ("NRRI"), the research arm of the National Association of Regulatory Utility Commissioners ("NARUC"). After leaving regulatory service, I was appointed to the NRRI Board as a public member. I have also served as a lecturer at Michigan State University's Institute of Public Utilities Annual Regulatory Studies Program ("Camp NARUC") and at NARUC's New Commissioner Regulatory Orientation.

1 **Q. PLEASE DESCRIBE YOUR ROLE AS PRESIDENT OF REGULATION**
2 **UNFETTERED.**

3 A. I formed a utility advisory firm to use my financial, regulatory, legislative, and legal
4 expertise to aid the deliberations of regulators, legislative bodies, and the courts, and to
5 assist them in evaluating regulatory issues. My clients have included investor-owned and
6 municipal electric, natural gas and water utilities, state public utility commissions and
7 consumer advocates, non-utility energy suppliers, international financial services and
8 consulting firms, and investors.

9 **Q. WHAT WAS YOUR ROLE IN YOUR EMPLOYMENT BY FITCH?**

10 A. I was Group Head and Managing Director of the Global Power Group within Fitch. In that
11 role, I served as group manager of the combined 18-person New York and Chicago utility
12 team. I was originally hired to interpret the impact of regulatory and legislative
13 developments on utility credit ratings, a responsibility I continued to have throughout my
14 tenure at the rating agency. In April 2002, I left Fitch to start Regulation UnFettered.

15 **Q. HOW LONG WERE YOU EMPLOYED BY FITCH?**

16 A. I was employed by Fitch from October 1993 until April 2002. In addition, shortly after I
17 resigned to start Regulation UnFettered, Fitch retained me as a consultant for a period of
18 approximately six months.

19 **Q. HOW DOES YOUR EXPERIENCE RELATE TO YOUR TESTIMONY IN THIS**
20 **PROCEEDING?**

21 A. My experience as Chairman and Commissioner on the Michigan PSC and my subsequent
22 professional experience with financial analysis and ratings of the U.S. electric and natural
23 gas sectors – in jurisdictions involved in restructuring activity as well as those still

1 following a traditional regulated path – have given me solid insight into the importance of
2 a regulator’s role vis-à-vis regulated utilities, both in setting their rates as well as the
3 appropriate terms and conditions for the service they provide. In addition, for the past 20
4 years I have been a member of the Wall Street Utility Group, an organization comprised of
5 debt and equity analysts assigned to cover and make assessments of companies within the
6 utility sector.

7 **Q. HAVE YOU PREVIOUSLY GIVEN TESTIMONY BEFORE REGULATORY AND**
8 **LEGISLATIVE BODIES?**

9 A. Since 1990, I have testified before the U.S. Senate, the U.S. House of Representatives, the
10 Federal Energy Regulatory Commission, federal district and bankruptcy courts, and
11 various state and provincial legislative, judicial, and regulatory bodies in more than 100
12 proceedings or hearings on the subjects of credit risk and cost of capital within the utility
13 sector, electric and natural gas utility restructuring, fuel and other energy cost adjustment
14 mechanisms, regulated utility mergers and acquisitions, construction work in progress and
15 other interim rate recovery structures, utility securitization bonds, and nuclear energy.
16 I have previously testified and been accepted as an expert witness before this Commission
17 on behalf of Duke Energy Carolinas in Docket Nos. E-7, Sub 828 and E-7, Sub 909. My
18 full educational and professional background is presented in Attachment A hereto.

19 **III. CREDIT RATINGS AND THEIR IMPORTANCE**
20 **TO REGULATED UTILITIES**

21 **Q. WHAT IS A CREDIT RATING AND WHY IS IT IMPORTANT?**

22 A. A credit rating reflects an independent judgment of the general creditworthiness of an
23 obligor or of a specific debt instrument. While credit ratings are important to both debt and

1 equity investors for a variety of reasons, their most important purpose is to communicate
2 to investors the financial strength of a company or the underlying credit quality of a
3 particular debt security issued by that company.

4 Credit rating determinations are made by rating agencies through a committee
5 process involving individuals with knowledge of a company, its industry, and its regulatory
6 environment. Corporate rating designations of S&P and Fitch have 'AAA,' 'AA,' 'A,' and
7 'BBB' category ratings within the investment-grade ratings sphere, with 'BBB-' as the
8 lowest investment-grade rating and 'BB+' as the highest non-investment-grade rating.
9 Comparable rating designations of Moody's at the investment-grade dividing line are
10 'Baa3' and 'Ba1,' respectively. In addition, the agencies seek to make their rating
11 judgments even more precise by dividing each of the rating categories into three levels
12 ('+', 'neutral,' and '-' at S&P and Fitch, and 1, 2 & 3 at Moody's). The following chart
13 illustrates the comparability of ratings among the three agencies.

CHART 1**Ratings Categories – Comparability Between Agencies**

Investment Grade		Below Investment Grade	
<u>S&P and Fitch</u>	<u>Moody's</u>	<u>S&P and Fitch</u>	<u>Moody's</u>
AAA	Aaa	BB+	Ba1
AA+	Aa1	BB	Ba2
AA	Aa2	BB-	Ba3
AA-	Aa3	B+	B1
A+	A1 ⁽¹⁾	B	B2
A	A2	B-	B3
A- ⁽²⁾	A3	CCC	Caa
BBB+	Baa1	CC	Ca
BBB	Baa2	C	C
BBB-	Baa3	D	[C]

Corporate credit rating analysis considers both qualitative and quantitative factors to assess the financial and business risks of fixed-income debt issuers. A credit rating is an indication of an issuer's ability to service its debt, both principal and interest, on a timely basis. It also at times incorporates some consideration of ultimate recovery of investment in case of default or insolvency. Ratings can also be used by contractual counterparties to gauge both the short-term and longer-term financial health and viability of a company, including decisions related to required collateral levels, with higher-rated entities facing lower requirements.

¹ Moody's rating of Duke Carolinas is A1 with a Stable outlook.

² S&P rating of Duke Carolinas is A- with a Stable outlook.

Q. HOW WOULD YOU DESCRIBE DUKE CAROLINAS' CREDIT RATINGS STATUS?

A. Duke Carolinas' corporate issuer credit ratings span between the highest level (A1, Stable outlook at Moody's) and the lowest level (A-, Stable outlook at S&P) of the 'A' category.³ I have long testified that a regulated utility should endeavor to hold ratings no lower than 'Baa1 / BBB+', with a longer-term goal of moving into (or maintaining in) the 'A' category. Accordingly, I encourage both the Commission and the Company to seek to maintain those credit ratings in the 'A' category after the conclusion of this proceeding.

Q. WHY ARE CREDIT RATINGS IMPORTANT FOR REGULATED UTILITIES AND THEIR CUSTOMERS?

A. A utility's credit ratings have a significant impact on its ability to raise capital on a timely basis and upon reasonable terms. As economist Charles F. Phillips states in his highly-respected treatise on utility regulation:

Bond ratings are important for at least four reasons: (1) they are used by investors in determining the quality of debt investment; (2) they are used in determining the breadth of the market, since some large institutional investors are prohibited from investing in the lower grades; (3) they determine, in part, the cost of new debt, since both the interest charges on new debt and the degree of difficulty in marketing new issues tend to rise as the rating decreases; and (4) they have an indirect bearing on the status of a utility's stock and on its acceptance in the market.⁴

³ Corporate or issuer utility credit ratings reflect the intrinsic financial strength of the utility being rated, with no backing from or recourse against specific utility assets. At times, regulated utilities issue secured debt, representing utility borrowings that are backed by collateral, usually in the form of utility real property. In almost all instances, secured credit ratings are higher than corporate/issuer credit ratings because, in the case of a utility defaulting on its bond payment obligations, secured debtholders have recovery priority on the defined collateral as compared to the claims of unsecured debtholders.

⁴ Phillips, Charles F., Jr., *The Regulation of Public Utilities*, 250 (3rd Ed. 1993)(Emphasis supplied). *See also* Public Utilities Reports Guide: "Finance," Public Utilities Reports, Inc., 6-7 (2004)("Generally, the higher the rating of the bond, the better the access to capital markets and the lower the interest to be paid.").

1 Thus, a utility with strong credit ratings is not only able to access the capital markets on a
2 timely basis at reasonable rates, it is also able to share the benefit from those attractive
3 interest rate levels with customers since cost of capital gets factored into utility rates.
4 Conversely, but of equal importance, the lower a utility's credit rating, the more the utility
5 must pay to raise funds from debt and equity investors, and those higher capital costs get
6 factored into the rates that consumers are required to pay. Electric utilities like Duke
7 Energy are among the most capital-intensive industries. As such, maintaining Duke
8 Carolinas' credit profile is especially important in view of its need to access substantial
9 amounts of debt and equity, on a near daily basis, to fund its ongoing operations, including
10 capital investments. This includes coal ash remediation activities, along with capital
11 investment related to day-to-day maintenance and infrastructure enhancement related to its
12 ongoing duty to serve customers in a safe and reliable manner. Significantly, a regulated
13 utility is required to raise funding even if the markets are in turmoil and costs are escalating
14 wildly. Strong credit ratings, like those currently held by the Company, limit the negative
15 effects of having to finance at times of great volatility within the capital markets, as was
16 seen back during the 2008-2009 recession when 'BBB'-rated utilities were subject to
17 significantly higher interest rates than 'A'-rated utilities, along with more restricted access,
18 if available at all, along with stricter financing terms.

19 **Q. WHAT QUALITATIVE FACTORS ARE USED BY THE RATING AGENCIES TO**
20 **ESTABLISH UTILITY CREDIT RATINGS?**

21 A. The most important qualitative factors are regulation, management and business strategy,
22 and access to energy, gas and fuel supply with timely recovery of associated costs.

1 **Q. WHAT ARE THE KEY QUANTITATIVE MEASURES?**

2 A. The major rating agencies use several financial measures within their utility financial
3 analysis. S&P currently highlights the following two core financial ratios as its key
4 indicators: Funds from Operations to Debt (FFO / Debt), which focuses on cash flow; and
5 Debt to Earnings Before Interest, Taxes, Depreciation and Amortization (Debt / EBITDA),
6 which provides a comparative profitability measure.⁵

7 **Q. WHY IS REGULATION A KEY QUALITATIVE COMPONENT OF THE**
8 **UTILITY CREDIT RATING PROCESS?**

9 A. Regulation is a key factor in assessing the financial strength of a utility because a state
10 public utility commission determines revenue levels (recoverable expenses including
11 depreciation and operations and maintenance, fuel cost recovery, and return on investment)
12 and the terms and conditions of service that affect a utility's cost of service. As Moody's
13 has noted, "A utility's ability to recover its costs and earn an adequate return are among
14 the most important analytical considerations when assessing utility credit quality and
15 assigning credit ratings."⁶

16 The quality and direction of regulation play a key role in shaping investors' expectations
17 of how these factors may change in the future. With the era of restructuring now in its third
18 decade, regulation has had to evolve as the nature of a utility's responsibilities in providing
19 energy services to customers has undergone dramatic change.

⁵ S&P Research: "Corporate Methodology," November 19, 2013 (republished with nonmaterial changes December 7, 2018).

⁶ Moody's Research: "Cost Recovery Provisions Key to Investor Owned Utility Ratings and Credit Quality: Evaluating a Utility's Ability to Recover Costs and Earn Returns," June 18, 2010.

1 The regulatory environment affects utility investors' decisions because, before they are
2 willing to put forward substantial sums of money, they must assess the degree to which
3 regulators understand and accommodate the economic requirements and the financial and
4 operational risks of a rapidly changing industry. Utility investors understand and accept the
5 role of extensive regulation, but they seek from the regulatory process decision-making
6 that is fair, with a significant degree of predictability.

7 For these reasons, rating agencies look for the consistent application of sound economic
8 and regulatory principles by utility regulators. If a regulatory body were to encourage a
9 utility to make investments based upon an expectation of the opportunity to earn a
10 reasonable return, and then did not apply regulatory principles in a manner consistent with
11 those expectations, investor interest in providing funds to the utility would decline, debt
12 ratings would likely suffer, and the utility's cost of capital would increase, to the detriment
13 of ratepayers.

14 **Q. AT THE CORE OF SUCH REGULATORY REVIEW IS THE CONCEPT OF**
15 **PRUDENCY. WOULD YOU EXPLAIN "PRUDENCY" WITHIN THE CONTEXT**
16 **OF UTILITY REGULATION?**

17 A. The concept of "prudency" is present in the legislative and/or administrative rules of every
18 utility commission across the U.S. In their reference book Fundamentals of Energy
19 Regulation, authors (and Ph.D. economists) Lesser & Giacchino discuss prudence both in
20 terms of the deference accorded utility management decisions, as well as the review
21 process before imprudent behavior is found to have occurred:

22 "...utility management is given the benefit of the doubt, and management's
23 decisions are presumed reasonable unless the facts show otherwise.

1 ...Moreover, the prudence of managerial decisions must be judged on their
 2 reasonableness at the time those decisions were made and based on
 3 information then available. Prudence is not meant as an exercise in
 4 hindsight regulation. In essence, a prudent decision is one that a reasonable
 5 person could have made in good faith, given the information and decision
 6 tools available at the time of the decision.”⁷

7 In support of that position, economist Charles F. Phillips in his utility regulation treatise
 8 referenced above quotes the views of the Massachusetts and New York commissions:

9 “A prudence review must determine whether the company’s actions, based
 10 on all that it knew or should have known at the time were reasonable and
 11 prudent in light of the circumstances which then existed. It is clear that such
 12 a determination may not properly be made on the basis of hindsight
 13 judgments, nor is it appropriate for the [commission] merely to substitute
 14 its best judgment for the judgments made by the company’s managers.” [*In re Western Mass. Elec. Co.*, 80 PUR4th at 501.]

15
 16
 17 “The company’s conduct should be judged by asking whether the conduct
 18 was reasonable at the time, under all the circumstances, considering that the
 19 company had to solve its problems prospectively rather than in reliance on
 20 hindsight. In effect, our responsibility is to determine how reasonable
 21 people would have performed the task that confronted the company.” [*In re Consolidated Edison Co. of N.Y. Inc.*, Opinion No. 79-1 (N.Y. 1979), 5-6.]⁸
 22
 23

24 **Q. OTHER ASPECTS OF UTILITY REGULATION THAT YOU HAVE OFTEN**
 25 **TESTIFIED ABOUT ARE THE “REGULATORY COMPACT” AND ALSO**
 26 **“CONSTRUCTIVE UTILITY REGULATION.” COULD YOU PROVIDE A**
 27 **DESCRIPTION OF WHAT THESE KEY CONCEPTS ENTAIL?**

28 A. There is an unwritten but core concept within the regulatory process known as the
 29 “regulatory compact.” Since there is no hard and fast universal rule or regulation
 30 delineating the “regulatory compact,” it has been described in many different ways. In the

⁷ Jonathan A. Lesser & Leonardo R. Giacchino, Fundamentals of Energy Regulation, 42 (1st Ed. 2007).

⁸ Phillips, The Regulation of Public Utilities, 340-341.

1 above-noted reference book, Lesser & Giacchino describe that under the “regulatory
2 compact.”

3 ... the regulator grants the company a protected monopoly, essentially a
4 franchise, for the sale and distribution of electricity or natural gas to
5 customers in its defined service territory. In return, the company commits
6 to supply the full quantities demanded by those customers at a price
7 calculated to cover all operating costs plus a “reasonable” return on the
8 capital invested in the enterprise. The first half of this “compact” protects
9 the company from would-be competitors and secures for the public the
10 substantial economies of scale available in the large-scale production of
11 electricity. The second half of the “compact” counteracts the injurious
12 tendency of monopolies to raise prices above the level that would prevail in
13 a competitive market.⁹

14 In my experience advising a range of utility industry stakeholders across the U.S., I have
15 found that every utility commission adheres to some conception of the “regulatory
16 compact” in concert with the constitutionally-and-statutorily-mandated prudence
17 standards.

18 In addition, my own conception of “constructive utility regulation” is that which aligns the
19 seemingly competitive interests of utility investors and utility customers in a manner that
20 is consistent and steady over time, so that all parties have reasonable expectations about
21 how regulatory policy will be effectuated. Importantly, it supports a utility’s ability to
22 provide safe and clean utility service to its customers with a high level of reliability at
23 reasonable rates. Constructive regulation is efficient and predictable with a long-term focus
24 on stable rates, while also recognizing the need for timely recovery of costs and the value
25 to customers of a financially-strong utility with ready access to the capital markets at
26 attractive rates, even when the financial markets are under stress. It recognizes that utility

⁹ Lesser & Giacchino, Fundamentals of Energy Regulation, 43-44.

investors react negatively to major, frequent or sudden changes in regulatory policy and that such uncertainty ultimately has an adverse effect on customers. In sum, longstanding constructive regulatory policy should provide a utility with the confidence to make capital-intensive investments and incur O&M expenses for the benefit of its customers, with the reasonable expectation that those costs would be recovered in a timely manner, including a fair return on investment, consistent with that stable and consistent regulatory policy.

Q. HAVE THE RATING AGENCIES DISCUSSED THE IMPORTANCE OF “CONSTRUCTIVE REGULATION” IN THEIR ASSESSMENT OF UTILITY CREDIT PROFILES?

A. Yes. I saw firsthand how important constructive regulation is to agencies when Fitch recruited me to provide regulatory analysis after I had decided to move on from the Michigan PSC. Moody’s has highlighted the critical role that regulators play in a June 23, 2017 report entitled “Rating Methodology: Regulated Electric and Gas Utilities:”

An over-arching consideration for regulated utilities is the regulatory environment in which they operate. While regulation is also a key consideration for networks, a utility’s regulatory environment is in comparison often more dynamic and more subject to political intervention. The direct relationship that a regulated utility has with the retail customer ... can lead to a more politically charged rate-setting environment. ...Our views of regulatory environments evolve over time in accordance with our observations of regulatory, political, and judicial events that affect issuers in the sector.¹⁰

And S&P has long held the same view:

Regulatory advantage is the most heavily weighted factor in [S&P’s] analysis of a regulated utility’s business risk profile. ...An established, dependable approach to regulating utilities is a hallmark of a credit-supportive jurisdiction. ...Major or frequent changes to the regulatory model invariably raise risk due to the possibility of future changes. Steady

¹⁰ Moody’s Research: “Rating Methodology: Regulated Electric and Gas Utilities,” June 23, 2017.

1 application of transparent, comprehensible policies and practices lowers
 2 risk. ...We adjust the assessment downward if the development of the
 3 framework was contentious due to policy disputes or legal actions,
 4 indicating that the political consensus regarding utility regulation is fragile.
 5 ... [A] regulatory approach that allows utilities the opportunity to
 6 consistently earn a reasonable return as a positive credit factor in our
 7 regulatory assessments. ...We measure the timeliness of rate decisions, the
 8 obsolescence of the costs on which the rates are based, the timing of interim
 9 rates, and other practices (such as allowing rates to automatically change in
 10 a future period based on inflation) that affect a utility's ability to earn its
 11 authorized return. ...Practices such as legislative or regulatory recognition
 12 of the need for preapproval of [large capital projects], periodic reviews that
 13 substantively involve the regulator in the progress of the project, and rolling
 14 prudence determinations during construction can reduce the general level
 15 of risk...[W]e consider financial stability to be of substantial importance
 16 [with cash taking] precedence in credit analysis. ...We assess a jurisdiction
 17 most strongly if all large expense items are recoverable through an
 18 automatic tariff clause that is based on projected costs, adjusts frequently,
 19 and has no record of any significant disallowances. ... [A] primary factor
 20 ... is the political independence of regulators.¹¹

21 **IV. FINANCIAL COMMUNITY PERCEPTIONS OF THE NCUC**

22 **Q. HOW IS THE COMMISSION VIEWED BY THE FINANCIAL COMMUNITY?**

23 A. The financial community's view of the North Carolina Utilities Commission has been
 24 relatively positive. Probably the most objective and respected commentator on regulatory
 25 policy and activities from a financial community perspective is Regulatory Research
 26 Associates ("RRA"). RRA currently rates the North Carolina regulatory environment
 27 (which goes beyond the Commission to also include legislative and executive branch
 28 policies) as Average 1, among the top one-third of the 53 regulatory jurisdictions upon
 29 which RRA currently opines. RRA's view of the state's regulation as overall relatively
 30 constructive from an investor viewpoint serves as a positive factor in the credit rating
 31 analytical process.

¹¹ S&P Research: "Assessing U.S. Investor-Owned Utility Regulatory Environments," January 7, 2014.

1 **Q. DOES MOODY'S SHARE THE FAVORABLE ASSESSMENT OF NORTH**
 2 **CAROLINA REGULATION?**

3 A. Yes. Specifically, Moody's states that its "stable rating outlook considers the utility's
 4 relatively low business risk profile and primarily credit supportive regulatory frameworks."
 5 Of note, the agency cautions that a downgrade could occur if there is a "decline in the credit
 6 supportiveness of Duke Carolinas' regulatory relationships ..., particularly with regards to
 7 coal ash remediation recovery in North Carolina."¹²

8 **Q. AND HOW DOES S&P VIEW REGULATION IN NORTH CAROLINA?**

9 A. S&P assesses Duke Carolinas' rate-regulated utility assets as lower-risk, and views that the
 10 Company has effectively managed its regulatory risk. Similar to Moody's, S&P stated that
 11 the agency could lower the ratings if Duke Energy's business risk increases because of
 12 additional regulatory lag, more stringent environmental rules related to its coal exposure,
 13 [or] if we conclude that the company's regulatory risk management ... has weakened."¹³

14 **V. REBUTTAL OF PUBLIC STAFF TESTIMONY**

15 **Q. WOULD YOU DISCUSS THE "EQUITABLE SHARING" PROPOSAL OF**
 16 **PUBLIC STAFF WITNESSES JUNIS AND MANESS?**

17 A. Yes. First, let me provide an excerpt from the testimony of Mr. Junis which, together with
 18 Mr. Maness's testimony, recommends the adoption of an equitable sharing of CCR
 19 compliance costs between the Company and its shareholders:

20 The Public Staff did not conduct a prudence review of DEC decision-
 21 making at the time the ash basins were constructed... Instead, the Public

¹² Moody's Research, "Duke Energy Carolinas, LLC," October 31, 2019.

¹³ S&P Research, "Duke Energy Corp. and Subsidiaries Outlooks Revised to Stable on Announced Equity Offering; Ratings Affirmed," November 20, 2019.

Staff focused its investigation on the area where the Company's performance has been measured against its legal duty... Even where some Company actions or omissions appear imprudent,...quantification of costs directly resulting from the acts or omissions would be speculative. Also, even where DEC's management was arguably prudent in light of the knowledge they had at the time, the Company bears some degree of responsibility for its extensive environmental violations. In this situation, an equitable sharing of those costs is reasonable and appropriate, both as a reflection of DEC's culpability for environmental violations and as a proxy for costs of violations that exist but cannot be precisely quantified. An equitable sharing is particularly appropriate in light of the extent of the Company's failure to prevent environmental contamination from its CCR impoundments, in violation of state and federal laws. (Junis at 65)

Q. WHAT ARE YOUR CONCERNS WITH THE RATIONALE FOR EQUITABLE SHARING PUT FORWARD BY THESE PUBLIC STAFF WITNESSES?

A. First off, it is inconsistent with the principle that prudently-incurred costs should be recovered in rates. That principle is fundamental to the regulatory compact that undergirds investor willingness to provide needed funding for public utilities in exchange for a fair return on their investment. Indeed, the Commission's Order in Docket No. E-7, Sub 1146 expressly reaffirms that understanding as it pertains to the CCR costs that are at issue in this proceeding. On page 257 of that Order, the Commission stated explicitly that "A central operating principle underlying utility rate regulation in North Carolina (and virtually all other jurisdictions) is that the utility's costs are recoverable in rates." The Commission's Order goes on to quote from the above-referenced Fundamentals of Utility Regulation to expand upon this principle:

As two of the leading modern commentators on utility regulation put it in the opening paragraphs to a chapter (titled "The Role of the Revenue Requirement") in their treatise on utility regulation:

No firm can operate as a charity and withstand the rigors of the marketplace. To survive, any firm must take in sufficient

1 revenues from customers to pay its bills and provide its
2 investors with a reasonable expectation of profit....Regulated
3 firms are no exception. They face the same constraints....

4 A basic concept underlying all forms of economic regulation
5 is that a regulated firm must have the opportunity to recover
6 its costs.... Without the opportunity to recover all of its costs
7 and earn a reasonable return, no regulated private company
8 can attract the capital necessary to operate.

9 Jonathan A. Lesser & Leonardo R. Giacchino, Fundamentals of Utility
10 Regulation 39 (Pub. Utils. Reports, Inc., ed., 2007) (Lesser & Giacchino).

11
12 **Q. HOW DOES THE CONCEPT THAT PRUDENTLY-INCURRED COSTS SHOULD**
13 **BE RECOVERED FIT WITHIN THE JUNIS-MANESS SHARING PROPOSAL?**

14 A. It does not. Such prudent cost recoverability is a fundamental principle as the NCUC noted
15 in its order, and it is a key aspect of the business relationship between investors (those with
16 the funds) and regulated utilities (those who require those funds). For almost 40 years,
17 initially as a gubernatorial and legislative counsel, later as a utility chairman and
18 commissioner, and more recently as a consultant to regulated utilities, utility commissions
19 and consumer advocates, I have been involved with the concept of prudence. In everyday
20 language, I view a prudent decision as one that is made by a person with skills appropriate
21 for the subject matter that falls within a range of reasonable results based upon the
22 circumstances that exist at the time the decision is made. It does not need to be a perfect
23 decision or one that ultimately turns out to be correct. There can be more than one prudent
24 alternative. Witnesses Junis and Maness have abandoned that standard, and instead propose
25 that the Commission adopt an arbitrary cost recovery standard that would allow for
26 disallowances without any finding of imprudence.

27 **Q. PLEASE EXPLAIN.**

1 A. Mr. Junis admits that Public Staff did not conduct a prudence review, and acknowledges
2 that it is possible that no imprudence occurred back when the Company's decisions were
3 made. Moreover, whether imprudence occurred or not, Mr. Junis indicates that any
4 quantification of costs related to such decisions "would be speculative." Nevertheless, Mr.
5 Junis proceeds to offer his opinion that environmental violations under other state and
6 federal laws did occur. Then, while ignoring any relevant sanctions that might exist under
7 those statutes, he calls on the Commission to take action on its own accord within its own
8 defined authority. Mr. Junis encourages the Commission to order ratepayers and
9 shareholders to share in paying for CCR costs, not because imprudency can be identified –
10 which it cannot -- nor that improper costs can be quantified – which they cannot, but
11 because "an equitable sharing of those costs is reasonable and appropriate."

1 **Q. WHAT DO YOU BELIEVE WOULD BE THE LIKELY REACTION FROM THE**
2 **FINANCIAL COMMUNITY IF THE PUBLIC STAFF’S PROPOSED STANDARD**
3 **WERE TO BE ADOPTED BY THE NCUC?**

4 A. Stark movement away from traditional ratemaking principles, including the well-
5 established prudency standard, would not be received well by either the credit rating
6 agencies or equity and debt investors. Investors deciding where their funds should flow
7 will take into consideration the increased level of risk that would accompany adoption of
8 a regulatory standard that sidesteps prudency reviews and allows for disallowances based
9 upon speculation and concerns about cost levels rather than findings supporting
10 inappropriate decision-making related to spending. Such a policy would certainly increase
11 the costs of both equity and debt capital, an impact that ultimately lands at the doorstep of
12 the customer.

13 **Q. HOW DOES THE MANNER IN WHICH OTHER SOUTHEASTERN**
14 **JURISDICTIONS HAVE BEEN ADDRESSING COAL ASH RECOVERY**
15 **INFORM CREDIT RATINGS AND INVESTORS?**

16 A. To the extent that neighboring jurisdictions to North Carolina have been actively
17 addressing coal ash remediation cost recovery constructively and with predictable
18 consistent regulation, NCUC deviation from both traditional ratemaking principles and
19 constructive regulation here would be viewed negatively by the financial community. For
20 example, legislative efforts in Virginia resulted in the 2019 coal ash statute that delineated
21 procedures for closing and remediating CCR units, along with instructions for the utility’s
22 recovery of costs through a rate adjustment clause with some deferral ability for any under-
23 recovery amount and for carrying costs. Under the Virginia statute, recoverable costs are

1 allocated to all Virginia customers served by the utility as a non-bypassable charge.¹⁴ In
 2 addition, the Commission in Georgia recently considered Georgia Power Company's 2019
 3 rate case, which also included significant spending for CCR compliance. In that
 4 proceeding, the Commission allowed for recovery of Georgia Power's CCR Compliance
 5 costs, as well as a full weighted average cost of capital return during the 3-year amortization
 6 period approved by the Commission for such costs.¹⁵

7 **Q. DOES PUBLIC STAFF WITNESS HINTON SIMILARLY DISCUSS THE**
 8 **IMPORTANCE OF TRADITIONAL RATEMAKING PRINCIPLES?**

9 A. Yes, he does. While I differ with Public Staff witness John Hinton on some issues, I do
 10 find support within Mr. Hinton's testimony for my conclusion about the importance of
 11 regulators not moving away from traditional ratemaking principles. Mr. Hinton states:

12 The ability to recover costs and earn returns on its investments relates to the
 13 assurance that the regulated rates will be based on prescriptive and clear
 14 ratemaking methods." (Hinton at 6)

15 Thus, Mr. Hinton has described the very process for rate-setting that both investors and
 16 customers rely upon. In addition, my description earlier in this testimony about what
 17 motivates investors to support a specific utility's funding needs – regulatory predictability,
 18 consistency, transparency, and a positive outlook with regard to constructive utility
 19 regulation – would not seem to be present within the predicate Mr. Junis and Mr. Maness
 20 provide for this Commission to order this unprecedented sharing plan.

¹⁴ Va. Code Ann. § 10.1-1402.03 (July 1, 2019).

¹⁵ Order Adopting Settlement Agreement as Modified, *In re: Georgia Power Company's 2019 Rate Case*, Docket No. 42516, Georgia Public Service Commission (February 6, 2020).

1 Q. NOTWITHSTANDING MR. HINTON'S APPARENT SUPPORT FOR YOUR
2 POSITION ON SHARING, YOU ALSO REFER TO DIFFERENCES YOU HAVE
3 WITH OTHER OF HIS VIEWS?

4 A. Yes, I do. In commenting about potential credit rating impacts flowing from this case, Mr.
5 Hinton states:

6 I believe that **unexpected financial developments** would have to occur that
7 reduced DEC's cash flow from operations or cause the Company to issue
8 more debt to trigger a downgrade. (Hinton at 5)(Emphasis supplied)

9 I respectfully disagree with Mr. Hinton. I have already noted the letdown investors would
10 feel if the Commission were to order the Public Staff sharing plan. Let me add that I expect
11 that since Mr. Hinton's testimony was part of an overall Public Staff package of proposals
12 in this case, he would not characterize any positions put forward by Public Staff as
13 "unexpected financial developments." Accordingly, Mr. Hinton is testifying that a
14 downgrade would not occur, notwithstanding the following Public Staff positions:

- 15 ▪ a reduction in return on equity from the current 9.90% to 9.00% (Woolridge);
- 16 ▪ a reduction in equity layer from 53% to 50% (Woolridge);
- 17 ▪ EDIT refunding over five years rather than 20 years (Hinton);
- 18 ▪ limitation of return for some CCR expenditures (Maness);
- 19 ▪ significant coal ash basin closure disallowances (multiple witnesses);
- 20 ▪ an unprecedented CCR cost sharing program between ratepayers and
21 shareholders that would deny recovery of a substantial amount of coal ash
22 remediation costs with no finding of imprudence (Junis and Maness); and

- potential adoption of a landmark utility regulatory standard of review that a finding of imprudence would not be required for the ordering of disallowances based upon speculation or the size of the expenditures under review.

I respectfully disagree. To the contrary, I believe that if this package of Public Staff positions were to be adopted by the Commission, it would lead to an immediate re-assessment of the North Carolina regulatory climate in a downward direction by the financial community. Both Mr. Hinton and I agree that virtually 50% of weight is given to qualitative factors within the credit rating analytical process, primarily related to regulatory climate.¹⁶ Where I disagree with Mr. Hinton, however, is that I believe that a reduction in regulatory support on the qualitative side would amplify the negative effects of the Public Staff case on the quantitative side, and undoubtedly would lead to a downgrade, even if the cash flow numbers migrated near the borderline between “A” and “BBB” category status. I am in good company in holding this view – as discussed above, both S&P and Moody’s have stated that a weakening in regulatory support could lead to a downgrade.

VI. CONCLUSION

Q. DO YOU HAVE CONCLUDING THOUGHTS?

A. Yes. As I have testified to utility commissions across the U.S., I believe that utilities and their regulators should strive to attain corporate / issuer credit ratings no lower than ‘BBB+’ / ‘Baa1,’ with a longer-range strategy to achieve ratings within the “A” category. A utility that holds “A” category rating status, as Duke Carolinas now does, should possess sufficient financial strength to access the capital markets even under the most stressful of

¹⁶ Testimony of John Hinton at 5-6.

1 conditions. Accordingly, my recommendation in this testimony is that the Company should
2 seek to achieve excellent operational performance going forward, and the Commission
3 should sustain the ongoing constructive regulatory environment, which together should
4 maintain the Company's credit ratings no lower than their current levels within the "A"
5 category.

6 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 A. Yes, it does.

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Education University of Michigan Law School, J.D. 1979
 Bar Memberships: U.S. Supreme Court, New York, Michigan
 University of Michigan, A.B. Media (Communications) 1974

April 2002 – Present

President - Regulation UnFettered -- Port Townsend, Washington

Founder of advisory firm providing regulatory, legislative, financial, legal and strategic planning advisory services for the energy, water and telecommunications sectors, including public utility commissions and consumer advocates; federal and state testimony; credit rating advisory services; negotiation, arbitration and mediation services; skills training in ethics, negotiation, and management efficiency.

Service on Boards of Directors of: Central Hudson (Fortis Inc. subsidiary) (Chairman, Governance and Human Resources Committee); and Previously CH Energy Group (Lead Independent Director; Chairman, Audit Committee, Compensation Committee, and Governance and Nominating Committee); National Regulatory Research Institute (Chairman); Keystone Energy Board; and Regulatory Information Technology Consortium; Member, Wall Street Utility Group; Participant, Keystone Center Dialogues on RTOs and on Financial Trading and Energy Markets.

October 1993 – April 2002

Group Head and Managing Director; Senior Director -- Global Power Group, Fitch IBCA Duff & Phelps -- New York / Chicago

Manager of 18-employee (\$15 million revenue) group responsible for credit research and rating of fixed income securities of U.S. and foreign electric and natural gas companies and project finance; Member, Fitch Utility Securitization Team.

Led an effort to restructure the global power group that in three years' time resulted in 75% new personnel and over 100% increase in revenues, transforming a group operating at a substantial deficit into a team-oriented profit center through a combination of revenue growth and expense reduction.

Achieved national recognition as a speaker and commentator evaluating the effects of regulatory developments on the financial condition of the utility sector and individual

companies; Cited by Institutional Investor (9/97) as one of top utility analysts at rating agencies; Frequently quoted in national newspapers and trade publications including The New York Times, The Wall Street Journal, International Herald Tribune, Los Angeles Times, Atlanta Journal-Constitution, Forbes and Energy Daily; Featured speaker at conferences sponsored by Edison Electric Institute, Nuclear Energy Institute, American Gas Assn., Natural Gas Supply Assn., National Assn. of Regulatory Utility Commissioners (NARUC), Canadian Electricity Assn.; Frequent invitations to testify before U.S. Senate (on C-Span) and House of Representatives, and state legislatures and utility commissions.

Participant, Keystone Center Dialogue on Regional Transmission Organizations; Member, International Advisory Council, Eisenhower Fellowships; Author, "A Rating Agency's Perspective on Regulatory Reform," book chapter published by Public Utilities Reports, Summer 1995; Advisory Committee, Public Utilities Fortnightly.

March 1994 – April 2002

Consultant -- NYNEX -- New York, Ameritech -- Chicago, Weatherwise USA -- Pittsburgh

Provided testimony before the Federal Communications Commission and state public utility commissions; Formulated and taught specialized ethics and negotiation skills training program for employees in positions of a sensitive nature due to responsibilities involving interface with government officials, marketing, sales or purchasing; Developed amendments to NYNEX Code of Business Conduct.

October 1987 - October 1993

Chairman; Commissioner -- Michigan Public Service Commission -- Lansing

Administrator of \$15-million agency responsible for regulating Michigan's public utilities, telecommunications services, and intrastate trucking, and establishing an effective state energy policy; Appointed by Democratic Governor James Blanchard; Promoted to Chairman by Republican Governor John Engler (1991) and reappointed (1993).

Initiated case-handling guideline that eliminated agency backlog for first time in 23 years while reorganizing to downsize agency from 240 employees to 205 and eliminate top tier of management; MPSC received national recognition for fashioning incentive plans in all regulated industries based on performance, service quality, and infrastructure improvement.

Closely involved in formulation and passage of regulatory reform law (Michigan Telecommunications Act of 1991) that has served as a model for other states; rejuvenated dormant twelve-year effort and successfully lobbied the Michigan Legislature to exempt the Commission from the Open Meetings Act, a controversial step that shifted power from the career staff to the three commissioners.

Elected Chairman of the Board of the National Regulatory Research Institute (at Ohio State University); Adjunct Professor of Legislation, American University's Washington College of Law and Thomas M. Cooley Law School; Member of NARUC Executive, Gas, and International Relations Committees, Steering Committee of U.S. Environmental Protection Agency/State of Michigan Relative Risk Analysis Project, and Federal Energy Regulatory Commission Task Force on Natural Gas Deliverability; Eisenhower Exchange Fellow to Japan and NARUC Fellow to the Kennedy School of Government; Ethics Lecturer for NARUC.

August 1985 - October 1987

Acting Associate Deputy Under Secretary of Labor; Executive Assistant to the Deputy Under Secretary -- U.S. Department of Labor -- Washington DC

Member of three-person management team directing the activities of 60-employee agency responsible for promoting use of labor-management cooperation programs. Supervised a legal team in a study of the effects of U.S. labor laws on labor-management cooperation that has received national recognition and been frequently cited in law reviews (U.S. Labor Law and the Future of Labor-Management Cooperation, w/S. Schlossberg, 1986).

January 1983 - August 1985

Senate Majority General Counsel; Chief Republican Counsel -- Michigan Senate -- Lansing

Legal Advisor to the Majority Republican Caucus and Secretary of the Senate; Created and directed 7-employee Office of Majority General Counsel; Counsel, Senate Rules and Ethics Committees; Appointed to the Michigan Criminal Justice Commission, Ann Arbor Human Rights Commission and Washtenaw County Consumer Mediation Committee.

March 1982 - January 1983

Assistant Legal Counsel -- Michigan Governor William Milliken -- Lansing

Legal and Labor Advisor (member of collective bargaining team); Director, Extradition and Clemency; Appointed to Michigan Supreme Court Sentencing Guidelines Committee, Prison Overcrowding Project, Coordination of Law Enforcement Services Task Force.

October 1979 - March 1982

Appellate Litigation Attorney -- National Labor Relations Board -- Washington DC

Other Significant Speeches and Publications

Filing for Bankruptcy Isn't the Right Solution for Puerto Rico (Forbes Online, November 2015)

The "A" Rating (Edison Electric Institute Perspectives, May/June 2009)

Perspective: Don't Fence Me Out (Public Utilities Fortnightly, October 2004)

Climate Change and the Electric Power Sector: What Role for the Global Financial Community (during Fourth Session of UN Framework Convention on Climate Change Conference of Parties, Buenos Aires, Argentina, November 3, 1998)(unpublished)

Regulation UnFettered: The Fray By the Bay, Revisited (National Regulatory Research Institute Quarterly Bulletin, December 1997)

The Feds Can Lead...By Getting Out of the Way (Public Utilities Fortnightly, June 1, 1996)

Ethical Considerations Within Utility Regulation, w/M. Cummins (National Regulatory Research Institute Quarterly Bulletin, December 1993)

Legal Challenges to Employee Participation Programs (American Bar Association, Atlanta, Georgia, August 1991) (unpublished)

Proprietary Information, Confidentiality, and Regulation's Continuing Information Needs: A State Commissioner's Perspective (Washington Legal Foundation, July 1990)

Duke Energy Carolinas, LLC
Summary of Rebuttal Testimony of Steven M. Fetter
Docket No. E-7, Sub 1214

Utilizing my past experience as a state utility commission chairman and head of a major utility ratings practice, I respond to Public Staff's recommendation for an "equitable 50-50 sharing" of coal combustion residual compliance costs and discuss how the adoption of such a recommendation would be inappropriate and would be viewed negatively by the credit rating agencies and investors.

To begin with, there is no dispute that strong credit ratings are beneficial for both utility customers and investors. Thus, I have long testified that a regulated utility should endeavor to hold ratings no lower than 'Baa1' / 'BBB+', with a longer-term goal of moving into (or maintaining in) the 'A' category. Accordingly, with the Company now holding S&P and Moody's ratings in the 'A' category, I encourage both the Commission and the Company to seek to maintain those ratings at current levels after conclusion of this proceeding.

Support for Duke Energy Carolinas' credit ratings comes from both quantitative and qualitative factors, both of which are positive factors in the agencies' assessments of the Company's ratings. Unfortunately, the Public Staff's "sharing" recommendation undercuts both of these aspects of the Company's credit profile. The "equitable 50-50 sharing" proposal is inconsistent with the core regulatory principle that prudently incurred costs should be recovered in customer rates. That principle is fundamental to the regulatory compact that undergirds investor willingness to provide needed funding for public utilities in exchange for a fair return on investment. Public Staff witnesses would abandon that principle, and instead propose that the Commission adopt an arbitrary cost recovery standard that would allow for disallowances without any finding of imprudence, and with the quantification of what they view to be inappropriate costs being "speculative." Based upon my background as a regulator and member of the financial community, I believe that stark movement away from traditional ratemaking principles, which

Duke Energy Carolinas, LLC
Summary of Rebuttal Testimony of Steven M. Fetter
Docket No. E-7, Sub 1214

would be a clear break with past Commission precedent, would shake the perceptions of investors and increase the costs of both equity and debt capital, an impact that ultimately lands at the doorstep of the customer.

Since the filing of my testimony in this case, several Parties have reached partial settlements on several issues. Although settlements are often viewed positively by the rating agencies, the key issue of cost recovery treatment of coal ash remains unsettled. The financial community will continue to closely watch and assess the resolution of that issue. An adverse decision on coal ash recovery would weigh against the positive views afforded the partial settlements that have been executed between the Parties. If Public Staff's equitable sharing recommendation were to be coupled with the negative impact from the current pandemic on the utility sector, I see a weakening in both quantitative measures and qualitative confidence that would likely jeopardize the Company's current ratings status, as the rating agencies have so indicated.

Accordingly, my recommendation is that the Company should seek to achieve excellent operational performance going forward, and the Commission should sustain the ongoing constructive regulatory environment, which together should maintain the Company's credit ratings no lower than their current levels within the 'A' category.

1 MR. MEHTA: Chair Mitchell, Mr. Fetter
2 is available for cross examination and examination
3 by the Commission.

4 CROSS EXAMINATION BY MR. GRANTMYRE:

5 Q. Mr. Fetter, this is Bill Grantmyre with the
6 Public Staff. If you could turn to page 19 of your
7 testimony.

8 A. I am there.

9 Q. Could you read the first sentence -- full
10 sentence into the record, please?

11 A. "Mr. Junis admits that Public Staff did not
12 conduct a prudence review and acknowledges that it is
13 possible that no imprudence occurred back when the
14 Company's decisions were made."

15 Q. Can you point to the exact page and line
16 number in Mr. Junis' testimony where he states it is
17 possible that no imprudence occurred back when the
18 Company's decisions were made?

19 A. (Witness peruses document.)

20 Okay. On page 16 of my testimony, I give a
21 response about the equitable sharing proposal. And I
22 say:

23 "First let me provide an excerpt from the
24 testimony of Mr. Junis, which together with Mr. Maness'

1 testimony, recommends the adoption of an equitable
2 sharing of CCR compliance costs between the Company and
3 its shareholders. "

4 And then I go to the quote:

5 "The Public Staff did not conduct a prudence
6 review of DEC decision-making at the time the ash
7 basins were constructed. "

8 Q. But where in Mr. Junis' testimony does he
9 state that it is possible, or acknowledges that it is
10 possible that there was no imprudence? That's the part
11 I'm looking for. And if I could help you, I could go
12 through Mr. Junis' testimony with you, and I would
13 direct you to -- sorry, do you have Mr. Junis'
14 testimony?

15 A. I do not have it right in hand. But I think
16 the sentence I read matches what I said in my answer on
17 page 19.

18 Q. Well, you said that Mr. Junis acknowledges
19 that there was no imprudence, and I'm looking for where
20 he said that.

21 A. I'm sorry, sir. "Mr. Junis admits that
22 Public Staff did not conduct a prudence review. " And
23 then I go back to Junis' words, "the Public Staff did
24 not conduct a prudence review. "

1 Q. But he did not acknowledge that there was no
2 imprudence. Okay. Let me read to you out of
3 Mr. Junis' testimony, and perhaps you could tell me
4 which one of these clauses that he says there was no
5 imprudence.

6 Now, I'll start on page 7, lines 13 through
7 19. It says:

8 "DEC," that is Duke Energy Carolinas, "has
9 culpability for environmental violations, even without
10 a traditional imprudence. The Company had a duty to
11 comply with long-standing North Carolina environmental
12 regulations, and it failed that duty many times over
13 many years at every coal-fired power plant it owns in
14 North Carolina. The Company should not be able to
15 claim, in order to generate electricity, it had to
16 create groundwater contamination."

17 Now, where in that statement does it say that
18 there was no imprudence -- he acknowledges there was no
19 imprudence?

20 A. I think in the words you said, that he came
21 up with the standard of culpability, and he pointed to
22 other environmental regulations or statutes. Nowhere
23 in that sentence that you read indicates that they
24 found imprudence. They found this thing called

1 culpability. And when Mr. Junis was on the stand, I
2 listened. And since I was not familiar with the
3 concept of culpability, I went to my -- one of my
4 reference volumes, "The Process of Ratemaking," and
5 this is volume 2. There are two volumes of this size.
6 And I looked in the back on prudent investment and
7 prudent management in the index, and there were 35
8 subcategories discussing various means of assessing
9 prudence and what it means. And I found nowhere in the
10 two-volume text any mention of culpable or culpability.

11 So it appeared to me that Mr. Junis had not
12 thought to do a prudence review, and indeed admitted
13 that he did not do a prudence review, and that he had
14 this new theory of culpability. And since prudence --
15 the concept of prudence began in 1923 in a dissent from
16 Justice Brandeis of the US Supreme Court, and so in
17 three years we're going to have the centennial of
18 commemorating prudence reviews.

19 Culpability would be a new concept. And if
20 the Commission were to adopt that concept, it would be
21 movement away from what I was familiar as chairman of
22 the Michigan Commission where produce was a bright line
23 standard, and I believe all of the other Commissions
24 across the country.

1 Q. Well, I'll read you another quote he has, and
2 it's on page 13, and he says:

3 "I note that the equitable sharing
4 recommendation is not based on the imprudence standard,
5 which would result in 100 percent disallowance. But
6 instead is based in part on DEC's culpability for
7 failure to comply with environmental regulations for
8 the protection of groundwater and surface water.
9 Therefore, a summary of those environmental regulations
10 is important for understanding how DEC has been
11 culpable."

12 Now, don't you agree that failure to comply
13 with environmental regulations and contaminating the
14 groundwater is imprudence?

15 A. Mr. Junis did not find that it was imprudent.
16 He cited other environmental statutes and tried to
17 bring them into a ratemaking process. And I know
18 yesterday Public Staff counsel pointed to statutory
19 citation 62-133(d) and stated which does not require a
20 showing of imprudence.

21 And so I went back -- I went to that statute,
22 because I was kind of surprised at that statement, and
23 (d), which is a catchall at the end of the statute,
24 says:

1 "The Commission shall consider all other
2 material facts of record that will enable it to
3 determine what are reasonable and just rates."

4 I read that sentence to mean reasonable and
5 just rates falling in both directions, toward consumers
6 and also the utility. And then I went to the very
7 first provision of that statute:

8 "In fixing the rates for any public utility
9 subject to the provisions of this chapter," and then I
10 leave out language that doesn't apply, "the Commission
11 shall fix such rates as shall be fair both to the
12 public utilities and to the consumer."

13 And so ever since I started reading the
14 documents in this proceeding, beginning with Garrett
15 and Moore, this floating idea that counsel has told the
16 witnesses -- that Public Staff has told the witnesses
17 that prudence doesn't matter in coming to the
18 determinations here, I felt uncomfortable. And now,
19 looking at the statutory cite that Ms. Luhr gave
20 yesterday, to me, the specific language of provision
21 (a) carries much more weight than the catchall of
22 provision (d) at the end of that statute. And to go in
23 another direction would be a departure from what
24 virtually every Commission is doing in the country.

1 Q. And I will also read to you from page 65,
2 lines 10 to 13 where it states -- Mr. Junis states:

3 "Even where some Company actions or omissions
4 appear imprudent, such a failure to employ a
5 comprehensive groundwater monitoring system at a much
6 earlier date, quantification of costs directly
7 resulting from the acts or omission would be
8 speculative."

9 A. Yes, I understand. I have a problem with
10 that as well.

11 Q. Okay. Now, in this case, there was
12 presentation, and he cites in his testimony the EPA
13 studies in the early 1980s showing that there was
14 leachate from the coal ash ponds and they recommended
15 increased monitoring. But yet Duke Energy Carolinas
16 did not do any additional monitoring, install any
17 monitoring wells. Now, wouldn't you call that
18 imprudent that they didn't -- when they knew that this
19 was an issue, that EPA had presented it, and they had
20 not taken any action and instead continued to put ash
21 into unlined ponds?

22 MR. MEHTA: Objection, Chair Mitchell.

23 I mean, again, this witness is not here with
24 respect to whatever the EPA or -- in fact,

1 Mr. Grantmyre's question really, I think, deals
2 with EPRI. But regardless, he's not here for that
3 purpose. We have other witnesses here for that
4 purpose. One of them we just heard from. Two of
5 them are coming up. I don't believe that it is a
6 proper question to be posed to this witness.

7 MR. GRANTMYRE: Well, I'll move on to my
8 other lines of testimony.

9 Q. Could you go to page 7 of your testimony.

10 A. (Witness peruses document.)

11 I'm there.

12 Q. Now, at the top, you have the chart. It says
13 "comparability between agencies' rating categories"; do
14 you see that?

15 A. Yes, sir.

16 Q. And would you agree that Duke Energy
17 Carolinas, under Moody's, has an Aa2 rating for senior
18 secured; would you agree to that?

19 A. I believe that's true. But when I do my
20 analysis, I look at the unsecured rating because that
21 tells the true intrinsic financial strength of a
22 utility. And so that rating on an unsecured basis
23 would be the A1 rating.

24 Q. Now, in North Carolina, you heard -- you may

1 or may not have heard testimony, but there was earlier
2 testimony from one of the witnesses on cross
3 examination that Duke Energy Carolinas has 81 percent
4 of its long-term debt as first mortgage taxable bonds.
5 Were you -- did you hear that?

6 A. I listened or read a lot of testimony, but I
7 will accept -- I mean, the record speaks for itself, so
8 if that's what the record says, I'll accept that.

9 Q. Now, if there was 81 percent first mortgage
10 bonds, wouldn't the fact that the first mortgage bond
11 rating be very important if that's what they're
12 issuing?

13 A. Well, here's the situation. The difference
14 between a secure debt like you described, the first
15 mortgage bonds, versus the A1 rating I talked about is
16 that, if the Company were to go into bankruptcy, then
17 the individuals who hold the first mortgage bonds have
18 collateral that they can go after. The bondholders who
19 do not have a secured interest and bought based on the
20 A1 rating would have -- would get online as a creditor
21 behind that 81 percent of first mortgage bondholders.

22 And that's why, in the hundred proceedings
23 I've been in, if they relate to ratings, I look at the
24 unsecured rating because it tells the intrinsic

1 financial worth of that entity and the odds that it
2 might someday go into bankruptcy or default.

3 Q. Would you accept, subject to check, that, in
4 Duke Energy Carolinas' E-1, Item 34, which they filed
5 in this case, when they listed the first mortgage bond
6 ratings that were all their debts, that they listed the
7 AA -- Aa2 rating which is the first mortgage bond
8 rating for senior secured rather than the issuer
9 rating?

10 A. They listed that as the rating for the first
11 mortgage bonds?

12 Q. Yes.

13 A. Yeah. That was very accurate what they did.

14 Q. Okay. Now, you will admit that, if Aa2 --
15 Duke Energy -- Duke Energy Corporation has a Baa1
16 Moody's rating for issuer; would you agree to that?

17 A. This is the parent company, you're saying?

18 Q. Yes.

19 A. Yes, I believe that's accurate.

20 Q. And your Duke Energy Carolinas issuer rating
21 at A1 on Moody's is three ratings above Duke Energy
22 Corporation; would you agree to that?

23 A. That would be accurate.

24 Q. Now, isn't it true that Duke Energy Carolinas

1 has an advantage over some other electric utilities in
2 issuing bonds because, in not every state, utilities
3 are able to issue first mortgage bonds?

4 A. Well, I think utilities are able to issue
5 first mortgage bonds. Over the past 10 or 15 years
6 they've moved away from that because it allows them
7 greater flexibility with regard to internal
8 structuring. So Duke has made a strategic decision to
9 issue first mortgage bonds for its own reasons. But
10 almost every utility can issue a first mortgage bond.
11 Most of them choose not to at this point.

12 Q. The -- as I understand it, Duke Energy
13 Kentucky does not have a senior secured credit rating;
14 are you aware of that?

15 A. I didn't look at -- I didn't look at Duke
16 Energy Kentucky.

17 Q. Now, with respect to -- I know that you'll be
18 testifying next week or thereafter on Progress Energy,
19 but Progress Energy has a senior secured rating of Aa3;
20 are you aware of that?

21 A. Yeah. One notch below on all the ratings
22 except for the S&P rating, I think.

23 Q. And their issuer rating is A2, which again is
24 one rating below Duke Energy Carolinas; are you aware

1 of that?

2 A. Yes, I agree with you.

3 Q. And would you accept, subject to check, that
4 the stipulation -- stipulations entered into by the
5 Public Staff and Duke Energy Carolinas and Duke Energy
6 Progress show that Duke Energy Carolinas has a
7 4.27 percent embedded cost rate of debt in this case as
8 of May 31, 2020?

9 A. I'll accept that.

10 Q. And Duke Energy Progress has a 4.05 percent
11 embedded cost to debt; would you accept that?

12 A. I will accept that.

13 Q. And based on my lawyer math, that's a 22
14 basis-point differential; would you agree? 27 minus 5
15 is 22?

16 A. Well, I'm a lawyer too, so you better say
17 those numbers slowly so I can keep up.

18 Q. Okay. We'll work on it.

19 And can you explain why Duke Energy Progress,
20 even though it has a lower credit rating, has a,
21 significantly, 22 basis-point lower cost of debt?

22 A. So that's a good question, because it -- the
23 difference turns on when the debt has been issued. And
24 that's why, when I talk about trying to avoid a

1 downgrade. Because after the downgrade has occurred,
2 any debt that is issued keeps its cost for the life of
3 the debt, even if the credit rating is then once again
4 upgraded. And so you provided the classic example
5 where timely -- when you -- the time that you issue
6 debt, that's the cost of debt from anywhere from 5, to
7 10, to 30 years.

8 Q. Well, if Duke Energy Carolinas was downgraded
9 one grade, it would be the same grade, whether it's
10 first mortgage debt or issuer rating, as Duke Energy
11 Progress; is that correct?

12 A. If it was downgraded one notch on the Moody's
13 scale, that is an accurate statement.

14 Q. And will you accept, subject to check, that,
15 although Duke Energy Progress is one grade lower, in
16 late August of this year they issued \$600 million in
17 first mortgage bonds at a 2-and-a-half percent interest
18 rate?

19 A. I mean, I haven't checked it, but if you tell
20 me that, I'll accept that.

21 Q. Excuse me just one minute.

22 A. Yes, sir.

23 Q. Now, this is not in the cross examination
24 package in this case, but you'll see it in your

1 Progress case, and I'll just go through it very
2 briefly. It is the credit ratings that -- listed by
3 Dr. Woolridge in the Progress Energy case being
4 Rebuttal Exhibit RBH-15, page 1 of 2. And what it does
5 is --

6 MR. MEHTA: Chair Mitchell, if
7 Mr. Grantmyre is going to be asking Mr. Fetter
8 about a document, he needs to put the document in
9 front of Mr. Fetter. And if the document is in the
10 Progress case or in the Progress exhibits, it's
11 still got a number, we can still find it, we can
12 still send it to Mr. Fetter. There's actually a
13 process that the Commission set up for this very
14 purpose which the Public Staff seems to have
15 forgotten about. And it's time that the Public
16 Staff actually followed the process that the
17 Commission established for getting documents in
18 front of witnesses.

19 MR. GRANTMYRE: Okay. It's Public Staff
20 Number 96 for Progress Energy.

21 MR. MEHTA: Would you send it to --
22 well, you can send it to me, I'll --

23 MR. GRANTMYRE: I believe you already
24 have it, don't you?

1 MR. MEHTA: I'm not sure I've got it set
2 up the way that it's that easy to send. But I will
3 find it or try to find it.

4 MR. GRANTMYRE: In 30 seconds I'm going
5 to be finished with the exhibit.

6 CHAIR MITCHELL: All right. Let's --
7 Mr. Grantmyre, ask your question, and then we can
8 determine if the witness needs to see the document.

9 Q. Okay. Will you accept, subject to check,
10 that on this, Duke Energy Carolinas has an issuer
11 rating of A1, which we've already talked about?

12 A. I believe that Duke Energy Carolinas has an
13 issuer rating for Moody's of A1.

14 Q. And that on this whole list of 78 companies,
15 operating companies, there were only five A1 companies
16 with issuer ratings and none above A1?

17 CHAIR MITCHELL: All right.

18 Mr. Grantmyre, we need to put the document in front
19 of the witness. Mr. Grantmyre, identify the
20 document for DEC counsel so he can find it and put
21 it in front of his witness.

22 MR. GRANTMYRE: Public Staff Number 96,
23 rebuttal -- potential rebuttal witness in 1219.

24 MR. MEHTA: Mr. Grantmyre, is that in

1 the consolidated hearing section or --

2 MR. GRANTMYRE: This is in the Duke
3 Energy Progress section.

4 MR. MEHTA: Duke Energy Progress Public
5 Staff Number 96 Rebuttal?

6 MR. GRANTMYRE: Yes.

7 MR. MEHTA: Chair Mitchell, I'll try to
8 locate it. Thank you.

9 (Pause.)

10 Q. Now, we'll come back to that. But on page 9
11 of your testimony --

12 A. I'm there.

13 Q. Now, on pages 15 and 16, you talk about
14 volatility and capital markets and the 2008, 2009
15 recession. Some people call it the great recession.

16 You're not implying that this an ordinary
17 circumstance that happens frequently, are you?

18 A. I'm not. But I think, since I filed this
19 testimony and before I filed the Progress testimony, we
20 had COVID-19 arise. Which, if the 2008, 2009 was a
21 once-in-60- or 80-year event, COVID-19 appears to be
22 the first such pandemic since 1918. So we're talking
23 more than a -- in fact, the pandemic occurred even
24 before prudent investment was an issue in cases.

1 That is why I will acknowledge Duke Energy
2 Carolinas has a strong credit rating. My concern
3 comes, we don't know how COVID-19 will play out over
4 time. I read an article that Dominion in Virginia, on
5 June 30th when the stimulus was still going on -- you
6 know, the extraordinary stimulus from the federal
7 government was going on -- they had \$116.6 million in
8 uncollectibles. I know that Duke Energy Carolinas and
9 I think Progress have made a filing about what -- how
10 their uncollectibles are going. I think, until we know
11 about how COVID-19 plays out, my advice to every
12 utility and every regulator, whether utility has a
13 strong rating, or even more importantly a weak rating,
14 not to drive a downgrade. And that would be my
15 position here.

16 I acknowledge that there was a strong rating,
17 but I think it would be a mistake to just take as a
18 given that a downgrade doesn't matter.

19 Q. Now, you read portions of North Carolina
20 General Statute 62-133; did you not?

21 A. I read it?

22 Q. Didn't you read -- just read it into the
23 record?

24 A. Yeah, I read it out to you, yes.

1 Q. Yeah. Now, you will admit that nowhere in
2 the statute does it say that rates have to be set to
3 avoid a downgrade, do you?

4 A. No, it does not.

5 Q. And nowhere in it does it say that rates have
6 to be set to increase the stock price of utilities or
7 maintain stock prices of utilities?

8 A. No, it does not say that.

9 Q. Now, you understand that Duke Energy
10 Corporation has a great deal of liquidity, don't you,
11 in case they needed to borrow during the 60-day
12 downturn of the COVID?

13 A. I read the testimony of Mr. Young and
14 Mr. Newlin, so I will accept what they say on the
15 record with regard to liquidity. I haven't studied it.

16 Q. Now, you also talk on that same page at the
17 bottom about timely recovery of associated costs. And
18 isn't it true that rating agencies look very favorably
19 upon riders?

20 A. Yes, riders are viewed positively by the
21 rating agency.

22 Q. And I'm going to read to you four riders that
23 Duke Energy Carolinas has, and if you would acknowledge
24 or not acknowledge whether these -- each of these would

1 be positive for Duke Energy Carolinas.

2 Annual fuel costs adjustment rider?

3 A. Virtually every utility in the U.S. has that,
4 so it's a positive.

5 Q. Annual renewable energy adjustment rider,
6 frequently called REPS?

7 A. I think, for utilities that are faced with
8 having to meet renewable goals within a certain time
9 frame, I think that's popular among the utilities that
10 are in that situation.

11 Q. Annual demand-side management in energy
12 efficiency rider; are you familiar with that?

13 A. Has it frozen for everyone or just on my
14 screen?

15 Q. I think you're up and running again. We can
16 hear you.

17 CHAIR MITCHELL: Mr. Fetter, we're able
18 to hear you. Would you please answer the question?

19 THE WITNESS: My screen just went blank
20 for about 15 seconds. Could I hear the question
21 again?

22 Q. Yeah. The rider I was talking about is the
23 annual demand-side management and energy efficiency
24 rider.

1 A. That would be a positive. And like I said
2 with regard to renewables, for those utilities that
3 have that as a target, many of them have that kind of
4 rider.

5 Q. And also the last of the four is the annual
6 competitive procurement of renewable energy rider.

7 A. I would say it's a positive. I'm less
8 familiar with that kind of rider. I do know that, over
9 the last 10 years, rider -- riders are much more
10 popular as regulatory policy across the country.

11 Q. Now, it also -- on line 22 of your testimony,
12 same page, page number 9, you talk about timely
13 recovery.

14 And are you aware that there was an agreement
15 for, I believe, \$1.6 billion to go into a deferred
16 account for grid improvements in this case between the
17 Public Staff and Duke Energy Carolinas, although it has
18 not yet been approved by the Commission? Are you aware
19 of that?

20 A. I reviewed the settlement terms, so I would
21 have read that there was a grid component.

22 Q. Now, wouldn't that be credit positive?

23 A. I would say the settlement overall would be
24 viewed positively by the rating agency.

1 Q. And --

2 A. But the big issue, of course, is the coal ash
3 decision. That would lead the rating agencies to await
4 the conclusion of this whole proceeding.

5 Q. Now, when you said the overall settlement was
6 positive, that would include the 9.6 percent ROE that
7 Company agreed to with the Public Staff?

8 A. The rating agencies give great deference to
9 decision-making made by a utility with regard to a
10 settlement.

11 Q. And also the 52 percent common equity that
12 was part of the agreement?

13 A. It would be the same answer, that to the
14 extent that the remaining portions of this case come in
15 in a positive direction in the eyes of the rating
16 agencies, they would view that settlement agreement,
17 once approved, as a positive element as well.

18 Q. Now, with regard to also Duke Energy
19 Carolinas and Duke Energy Progress, there was enacted
20 in the legislature securitization of storm costs. And
21 Duke Energy Carolinas has stated they intend to file a
22 securitization petition.

23 Now, would you agree that that is a -- credit
24 agency's like securitization and view it favorably,

1 al though i t may not affect the FF0 to debt cal cul a ti on?

2 A. Yeah. I was on the securi ti zation team in
3 Fitch, and so we viewed it -- we viewed securi ti zation
4 when structured properly as a posi ti ve element.

5 Q. And also, in this case, Duke Energy Carolinas
6 agreed to a five-year flowback for the unprotected
7 EDIT.

8 And would that be viewed that there was a
9 settlement on that as a posi ti ve by the rating
10 agenci es?

11 A. Well, I think there's always give-and-take in
12 a settlement, so the rating agency would look at the
13 settlement as a whole.

14 Q. Now, on page 11 --

15 CHAIR MITCHELL: All right.

16 Mr. Grantmyre, before you start your next line of
17 questions, we're going to take our afternoon break.
18 So let's go off the record. And we're going to go
19 back on the record at 3:15.

20 (At this time, a recess was taken from
21 2:57 p.m. to 3:15 p.m.)

22 CHAIR MITCHELL: All right. Mr. Fetter,
23 Mr. Grantmyre.

24 THE WITNESS: I'm here.

1 Q. Mr. Fetter, if we could go to --

2 MR. MEHTA: Chair Mitchell, this is
3 Kiran Mehta. Sorry to interrupt, Mr. Grantmyre,
4 but I did want you to know, Mr. Grantmyre, that
5 Mr. Fetter does have now available the -- I think
6 it was PS 90 that we were searching for. To the
7 extent that you have any questions regarding that
8 document, he should have it.

9 CHAIR MITCHELL: All right.
10 Mr. Grantmyre, you may proceed.

11 Q. Yes. It would be Public Staff 96.

12 And would you accept, subject to check, that
13 Duke Energy Carolinas, by Moody's, is only one of five
14 A1-rated companies out of the 78?

15 A. I haven't looked across it, but I'll accept
16 that it's one of five on this list.

17 Q. And there were no companies listed higher
18 than A1 on this list consisting of two pages?

19 A. Yeah. I mean, the list speaks for itself,
20 but I'll accept your description.

21 Q. Now, if we could turn to page 11 of your
22 testimony, I believe you're already there.

23 A. I'm there.

24 Q. When you talk about predictability in line

1 6 --

2 A. Yes.

3 Q. Now, wouldn't you agree that the Commission's
4 February 2020 Dominion Energy North Carolina rate
5 decision -- rate case decision provides predictability?

6 A. Well, I would point out what the investment
7 community looked at was the 2018 decision in which the
8 Commission spoke and said:

9 "The Commission will address the appropriate
10 amortization period in DEC's next general rate case.
11 And unless future imprudence is established, will
12 permit earning a full return on the unamortized
13 balance. "

14 I must say, when the Dominion order came out
15 talking about a smaller utility in the North Carolina
16 utility universe, it has caused some concern on the
17 part of the financial community, and that's why they
18 are watching so closely this case, apart from the
19 settlement, to see how the coal ash issues come out.

20 Q. Now, you've heard of BofA Securities, have
21 you not, the former Merrill Lynch?

22 A. I have heard of them.

23 Q. And Mr. Young, in his direct testimony -- I'm
24 sorry, his rebuttal testimony, included an exhibit by

1 BofA Securities; are you aware of that?

2 A. I didn't notice what exhibits Mr. Young put
3 in. I just reviewed some of his -- either -- I think I
4 mostly listened to his testimony.

5 Q. Okay. But you would agree, then, that BofA
6 Securities is a reputable securities company dealing
7 with particularly Duke Energy?

8 A. I would say they're a reputable entity within
9 the financial community.

10 Q. Now, would you accept, subject to check, that
11 on September 9th of 2020, BofA Securities issued a
12 paper -- a research paper stating -- and I'll give it
13 to you before you testify --

14 MR. MEHTA: Chair Mitchell, again,
15 Mr. Grantmyre is reading from a document that he
16 has not put in front of the witness, and I object.

17 CHAIR MITCHELL: All right.

18 Mr. Grantmyre, where are you going with your
19 question?

20 MR. GRANTMYRE: I'm just going to give a
21 quick summary of what it says.

22 MR. MEHTA: Well, I mean, a quick
23 summary of what it says for Mr. Grantmyre doesn't
24 substitute for the witness being able to review the

1 document, review the context and whatever is being
2 said in the document for himself. And I do not
3 believe that it is appropriate for Mr. Grantmyre,
4 particularly in the circumstances in which we find
5 ourselves in, operating remotely, to proceed in
6 this fashion, and I object.

7 CHAIR MITCHELL: All right. Let me --
8 let me hear the question before I rule on the
9 objection. Mr. Grantmyre, ask the question so I
10 can determine how to rule on Mr. Mehta's objection.

11 MR. GRANTMYRE: Well, first of all, this
12 was just issued last Thursday, so it could not be
13 part of our cross examination exhibits, but --

14 MR. MEHTA: I understand that. But
15 again, Chair Mitchell, there's a process for that
16 which the Public Staff has not followed.

17 CHAIR MITCHELL: All right. Mr. Mehta,
18 let me --

19 MR. GRANTMYRE: Where -- where's the
20 Commission order saying we have to provide it?

21 CHAIR MITCHELL: All right. Gentlemen,
22 I need you to not talk over one another. We have a
23 court reporter who is transcribing this
24 conversation, and she cannot do so when you guys

1 are talking over one another.

2 All right. Mr. Grantmyre, let me know
3 what your question is for the witness so I can
4 determine how to rule on Mr. Mehta's objection.

5 MR. GRANTMYRE: Are you aware that BofA
6 Securities updated Duke Energy Corporation to a buy
7 for its stock from a neutral citing the expected
8 outcome of this case being similar to the Dominion
9 North -- Energy North Carolina decision by the
10 North Carolina Utilities Commission?

11 CHAIR MITCHELL: All right. I'm going
12 to overrule Mr. Mehta's objection as to this
13 specific question. Mr. Grantmyre, if you go beyond
14 this question, I'll have to ask that you put the
15 document in the witness' hands.

16 MR. GRANTMYRE: This is my last question
17 on the document.

18 CHAIR MITCHELL: All right. Mr. Fetter,
19 you may answer the question, please, sir.

20 THE WITNESS: Until I read everything
21 that that document says about coal ash
22 decision-making, I cannot offer an opinion on the
23 one sentence that counsel read.

24 Q. Mr. Fetter, we will agree that, before you

1 testify next time, you'll have a full copy. Okay?

2 A. I appreciate that, Counsel.

3 Q. Now, on line 12 of page 11, you state that
4 Duke Energy Carolinas is likely to suffer a detriment
5 or downgrade, but there's no certainty, is there, that
6 there's going to be any credit downgrade?

7 A. I'm going to read the paragraph to myself, if
8 that's okay.

9 Q. Okay. That's fine.

10 A. (Witness peruses document.)

11 Okay. I've read it to myself. It's my
12 generalized description of the utility industry and as
13 it relates to financial issues. And if you'll ask your
14 question again, I'm ready to answer.

15 Q. The question is really there's no certainty
16 whatsoever that, if the Commission rules as they did in
17 Duke -- Dominion Energy North Carolina, that there
18 would be any downgrade to Duke Energy Carolinas' credit
19 rating; is that correct?

20 A. Okay. Let me say, if they rule like they did
21 in the Dominion case, a downgrade would be possible.
22 But what would be certain is that Duke Energy
23 Carolinas' credit profile will weaken. So it will move
24 towards a negative outlook or a downgrade. And one or

1 both of those might occur, but the certainty is that
2 Duke Energy Carolinas' financial profile, credit
3 profile, would be weaker than it is as we sit here
4 today.

5 Q. Now, you may or may not have been listening,
6 but earlier there was an exhibit which showed that, by
7 adopting the Public Staff position of a 25- or 27-year
8 amortization with no return, versus Duke's position of
9 a five-year amortization with a return, that over three
10 years, the difference between the increased interest
11 cost and the reduction in the revenue requirement was
12 going to be \$241 million to the benefit of the
13 customers.

14 Now, how is it to the customer -- you say
15 that to the detriment of ratepayers. How is it to the
16 detriment of ratepayers that they have a \$241 million
17 revenue requirement reduction over a period of three
18 years?

19 A. Because investors would look at the sentence
20 I read for the 2018 decision, and they would say the
21 Commission has gone completely in the opposite
22 direction. And so even though you describe the impact
23 of \$241 million, I think you said, investors will say,
24 what can we rely on with regard to this Commission in

1 the future. And as you've heard already this week from
2 some of the Company's financial people and included in
3 my testimony, the qualitative aspects of the credit
4 rating process are just as important as the
5 quantitative aspects. And this would strike a severe
6 blow to the financial community relying on the words of
7 this Commission in 2018.

8 Q. But you will agree, on pages 14 of 15, you
9 talk about constructive regulation; is that correct?

10 A. I do, yes.

11 Q. And would you agree that when the Wall Street
12 analysis and rating agencies talk about constructive
13 regulation, they're talking about constructive from the
14 perspective of investors and not customers; is that
15 correct?

16 A. But when I'm talking about it, it's from the
17 perspective of everyone who is involved in my
18 regulatory experience in Michigan, which would be
19 utilities, other stakeholders, and consumers.

20 Q. Okay. But the Wall Street, Moody's, and S&P
21 as I read it, and Wall Street analysts, they're talking
22 about the perspective of investors as far as the credit
23 rating, isn't it?

24 A. Well, let me divide what you just said.

1 Credit rating agencies don't have a dog in that fight.
2 Credit rating agencies don't make more money if Duke
3 Energy or any of its subsidiaries does well, or lose
4 money if a decision comes down that harms the utility
5 stockholders. Credit rating agencies' credibility
6 comes from offering their views on the current
7 financial credit profile of its various utility
8 industry issuers and the things that could happen
9 either positively or negatively.

10 So that's what the credit rating -- that's
11 what Moody's and S&P are doing. They -- I view -- as I
12 said, they don't have a dog in this fight. I view them
13 as umpires calling balls and strikes. And if the
14 Commission were to go back from its 2018 statement and
15 go full bore towards its Dominion treatment that it did
16 a couple months ago, a few months ago, the rating
17 agencies won't lose any money. They will write a
18 report talking about how that affects their view of
19 regulation in North Carolina and the impact on the
20 utilities that are regulated by that body in
21 North Carolina.

22 Q. But aren't the rating agencies, S&P and
23 Moody's, they're paid by Duke and all the companies
24 they rate; isn't that correct?

1 A. The structure is that they have a rating
2 relationship. And so they receive fees, but it's not
3 based on a success fee or a negative fee. They are
4 paid to do independent research and put out accurate
5 information to investors. And if they just took the
6 money and said what the companies wanted them to say,
7 their insights would be worthless.

8 Q. Now, in your testimony on page 18, you talk
9 about prudently incurred costs.

10 And aren't you aware that this Commission, in
11 multiple cases, has decided that some prudently
12 incurred costs should be shared between ratepayers and
13 investors?

14 A. Which cases are you talking about?

15 Q. Various cases before the North Carolina
16 Utility Commission. I'll give you an example.
17 Executive compensation. In this case, it's going to be
18 shared between the top five executives between
19 ratepayers and the shareholders; are you aware of that?

20 A. Well, I'm very much aware of the executive
21 compensation issues, I'm on the -- I chair the
22 Governance and Human Resources Committee at Central
23 Hudson Gas & Electric board. When a regulator does not
24 allow full compensation to be charged against

1 ratepayers, whether you call it imprudent or
2 unreasonable, they are making a determination that they
3 don't think that amount of money is fair. And that's
4 why even, under your statute here, where fair to
5 utilities and consumers, they're making a judgment
6 that, you know, a utility executive that makes X
7 millions of dollars, it's not fair. And so they're
8 following the specific language of Section A of that of
9 that statute.

10 Q. Now, you'd also agree that there's many times
11 a sharing of the costs of board of directors'
12 compensation and board of directors' expenses between
13 shareholders and customers?

14 A. And I think it's a very similar reason where
15 they feel that the board has activities that are
16 outside the regulatory sphere, and so they feel that
17 if -- that fairness calls for it to be shared between
18 ratepayers and shareholders.

19 Q. And you're aware that this Commission, on
20 some nuclear construction abandonment cases whereby the
21 construction was abandoned, the Commission has ordered
22 that the Company amortize the balance and recover it
23 over a number of years but not earn a return?

24 A. Well, let me note something. During my six

1 years at the Michigan Commission, every day of those
2 six years, we were dealing with the Midland nuclear
3 plant abandonment in Midland, Michigan. And we ended
4 up, despite the fact that it was abandoned three years
5 before I went on the Commission, that we made our best
6 judgment as to what was prudent in what they did and
7 what was imprudent in what they did. And we gave a
8 partial recovery with a very substantial disallowance
9 for imprudent behavior.

10 And so I think my understanding of the
11 nuclear abandonment cases here, the court did review
12 and consider each concept. And I'd also note that,
13 unlike Michigan, my understanding here in
14 North Carolina is that there's a used and useful
15 concept, which complicates the issue greatly compared
16 to our prudency determination with regards to the
17 Midland plant abandonment.

18 Q. Now, I'll ask you to turn to Public Staff
19 Rebuttal Exhibit -- I mean Cross Examination Exhibit
20 Number 78. Do you happen to have that? It's the one
21 that says stock price close.

22 A. Would it be in -- let me see. Did you
23 provide it in advance?

24 Q. Yes. It was provided as -- it was in our

1 booklet as page 2549.

2 A. Okay. I'm going to see if this --

3 Q. It's Public Staff Number 78.

4 A. Okay. Public Staff. I have a work share, so
5 it would be Public Staff potential cross exhibits.

6 Q. Yes, Number 78.

7 A. Okay. I got it. I'm going click by click
8 here.

9 (Witness peruses document.)

10 I's got to go down. I think I might have it.
11 78, Public Staff Potential Cross Exhibit 78 to 85?

12 Q. It's entitled at the top, "Stock price
13 close."

14 A. Okay. I'm trying to open it now. Okay. I
15 believe it's opening.

16 Q. And do you have it in front of you now? Can
17 you read it?

18 A. It's spinning right now.

19 Q. Okay.

20 A. I mean, there are a lot of documents in this
21 work share. I've never used it before. Doesn't
22 make -- it says I may want to download it since it's so
23 large. Let me try --

24 Q. It's not large, it's only one page.

1 A. But I think they grouped 78 to 85 together.
2 I think that is what's going on.

3 MR. MEHTA: Chair Mitchell, I think I
4 can just email it to Mr. Fetter and that may be
5 easier.

6 THE WITNESS: Okay. I can see it right
7 away if you email it.

8 CHAIR MITCHELL: All right. Please do,
9 Mr. Mehta.

10 Mr. Grantmyre, in the meantime, do you
11 want to go ahead and mark the document?

12 MR. GRANTMYRE: Yes. We would request
13 that this be marked as Public Staff Fetter Rebuttal
14 Cross Examination Exhibit Number 1.

15 THE WITNESS: Okay. I'm on the verge of
16 having it, Counsel.

17 CHAIR MITCHELL: All right. The
18 document will be marked Public Staff Fetter
19 Rebuttal Cross Examination Exhibit Number 1.

20 (Public Staff Fetter Rebuttal Cross
21 Examination Exhibit Number 1 was marked
22 for identification.)

23 THE WITNESS: Okay. Chair Mitchell, I
24 have the document in front of me open.

1 Q. And I'll read the -- it says, "Stock price
2 close." And would you agree that one column has Duke
3 Energy Corporation and the S&P 500 Index?

4 A. Yes.

5 Q. And I'll call your attention to
6 February 24th. And there's a footnote at the bottom
7 basically saying that's the date that the
8 North Carolina Commission issued the Dominion Energy
9 North Carolina order. Do you see that?

10 A. Yes.

11 Q. And I call your attention to March 3rd. You
12 know, on February 24th, Duke was selling for \$102,
13 closed at \$102.30. And on March 3rd it was down to
14 \$95.61 --

15 A. Yup.

16 Q. -- do you see that? And I know -- lawyer's
17 math, I would represent that that's a drop of \$6.69 or
18 a 6.5 percent drop in price.

19 A. Yes.

20 Q. And over there on the other column, S&P 500,
21 on February 24th it was \$3,226, and then on March 3rd
22 it was down to \$3,003; do you see that?

23 A. Yup.

24 Q. And again with lawyer's math, it's 223 points

1 and it comes out to 6.9 percent.

2 A. Okay.

3 Q. Now, in previous testimony before the
4 Commission in this case, it was that the Dominion case
5 caused a drop in the Duke Energy Corporation's stock
6 price. Are you aware of that testimony?

7 A. Can you say that again, please, sir?

8 Q. There was testimony that the Duke -- that the
9 Dominion Energy North Carolina, or the VEPCO order
10 caused a downgrade in the Duke Energy Corporation stock
11 price.

12 A. You mean --

13 MR. MEHTA: Chair Mitchell, again,
14 Mr. Grantmyre is referring to testimony that he is
15 not putting in front of the witness.

16 MR. GRANTMYRE: It was verbal testimony
17 by your chief financial officer.

18 MR. MEHTA: Which has been transcribed.

19 CHAIR MITCHELL: All right. Mr. Mehta,
20 I'm not sure I heard you object, but I'm going to
21 overrule the objection. I'm going to allow the
22 question to proceed. Go ahead, Mr. Grantmyre.

23 Q. Are you aware there was testimony that it
24 caused a drop in the stock price of Duke Energy

1 Corporation?

2 A. I listened to Mr. Young's testimony, and he
3 might have said that. I could not pinpoint it.

4 Q. And would you say that the 6.5 percent drop
5 in the Duke price over those nine days or eight days,
6 whatever it is, is less than the 6.9 percent drop in
7 the S&P 500?

8 A. Okay. Here's a problem with just looking at
9 numbers like this. As you -- as you said to me about
10 10 minutes ago and pulled out a BofA report, and
11 they -- you indicate -- I guess I'll see it by next
12 week, but you indicate that they're not real worried.
13 And all during these days as these days go on, some
14 people -- some analyst put out a report saying I'm very
15 worried about the Dominion order. Others will put out
16 a report saying I'm not worried about the Dominion
17 order because it's a very small piece of North Carolina
18 landscape. And I think the Commission will live up to
19 what it said in 2018.

20 And so that's just examples of two or three
21 factors that could influence a stock price. At the
22 same time, Mr. Young talked about a collapse of the
23 bond market leading up in early to mid-March, which has
24 an impact on stocks. So it's hard to pinpoint any one

1 factor with regard to just taking stock price closures,
2 comparing it to the S&P. There's also a utility index;
3 I don't know what that would have said during this
4 time.

5 So I'm sure that the Dominion order would
6 have caused concern for some analysts and some
7 investors. I'm sure others thought how could they go
8 against what they said as recently as two years ago.
9 So it's what makes the market. You know, some
10 people -- every time a share of stock is sold, someone
11 sold it and someone bought it. So if everyone had the
12 same opinion, the stock market would not operate.

13 Q. And you would agree that, on this exhibit, on
14 March 4th Duke closed at \$101.65, which was only \$0.65
15 lower than the February 24th price?

16 A. I mean, that's what the number says. We
17 don't know what drove the stock up that day. I have a
18 pretty strong feeling that a portion of the drop
19 towards March 20 was the volatility in the bond market.
20 But it also might have been an analyst report coming
21 out and saying, you know, we've given the Dominion
22 opinion more analysis, and we're beginning to get very
23 much concerned about that decision.

24 So there are 50 or 100 factors that enter

1 into impacting a stock price on any one day, and I
2 think it's hard to just pinpoint one factor.

3 Q. But as we mentioned before, the volatility in
4 the bond market was only in the months of March and
5 April, and wouldn't it be true that, if Duke Energy
6 Progress could borrow \$600 million in first mortgage
7 bonds at 30 years at 2.5 percent, that they're not
8 affected by the volatility in the bond market, that
9 there is none right now?

10 A. Well, I'm not the person to describe that,
11 but I believe Mr. Young described the commercial paper
12 market was a concern during that period, because the
13 bond market just fell like a knife through butter, and
14 there was concern across the whole industry about the
15 ability to deal with commercial paper and other
16 short-term instruments.

17 Q. But that was a very short period of 60 days
18 or less; isn't that approximately correct?

19 A. Well, you can see what happened in the span
20 of 14 days here.

21 Q. Thank you. I have no further questions, and
22 I look forward to chatting with you in two weeks.

23 A. I'll look forward to that, Counsel. Thank
24 you.

1 CHAIR MITCHELL: All right. Any
2 additional cross examination for this witness?

3 (No response.)

4 CHAIR MITCHELL: All right. Mr. Mehta,
5 redirect for your witness?

6 MR. MEHTA: Thank you, Chair Mitchell,
7 just a few questions.

8 REDIRECT EXAMINATION BY MR. MEHTA:

9 Q. Mr. Fetter, I will start at the end.
10 Mr. Grantmyre was asking you questions concerning the
11 abandoned nuclear plant cases.

12 A. You're dropping out. Your voice is dropping
13 in and out.

14 Q. Let me try it again. Mr. Grantmyre was
15 asking you questions about the abandoned nuclear plant
16 cases, correct?

17 A. Yes.

18 Q. And you've mentioned that, in North Carolina,
19 there is a concept called used and useful that
20 complicates matters, correct?

21 A. Yes.

22 Q. And, in fact, those abandoned plant cases
23 were in -- in connection with facilities that did not
24 generate a single electron of power, correct?

1 A. That's my understanding.

2 Q. Because they were abandoned?

3 A. That's the same as our plant being abandoned.

4 Q. Now, coal ash, for example, Mr. Fetter, is
5 the byproduct of coal combustion which generated
6 electricity for decades in North Carolina, correct?

7 A. That is my understanding.

8 Q. Mr. Grantmyre asked you questions concerning
9 executive and board compensation, and at least his
10 questions implied that the Commission had disallowed
11 50 percent of the compensation for -- I'm not quite
12 sure why, but I think the implication was that
13 50 percent was disallowed. Did you get that
14 implication as well?

15 A. That appeared to be what he was saying, but I
16 offered my view that it would appear the regulators,
17 not only in North Carolina but across the entire
18 country, make a determination in their -- back of their
19 head about a fair allocation of what costs should go to
20 ratepayers.

21 Q. Would it affect your answer at all,
22 Mr. Fetter, if I told you that the Company voluntarily
23 reduces compensation for the top five executives and
24 for the board members in that fashion in order to take

1 care of that fairness issue that you raised?

2 A. Well, if they do that, and it's accepted by
3 regulators, then certainly that's fairness. And as I
4 said, even if the regulator were to think, you know, we
5 could be a little more fair, I would not call it an
6 imprudent action on the part of the Company.

7 Q. Mr. Grantmyre was asking you questions
8 concerning, you know, a bunch of riders that he listed:
9 fuel, REPS, demand-side management, other riders; do
10 you recall those questions?

11 A. Yes.

12 Q. And I think your answer was many, many, many
13 jurisdictions have similar riders or other riders,
14 correct?

15 A. And, in fact, in my answer I think over the
16 last 10 years, and upon further reflection sitting
17 here, I recall being invited to Indiana to talk about
18 trackers in 2007. So trackers have proliferated
19 probably over the past 15 to 20 years in a way that
20 have not been seen before. And when structured
21 properly to take into account fairness to the utility
22 and, also its customers, and also any other
23 stakeholders, like environmentalists that have a stake
24 in the issue, I think when structured properly, it's a

1 positive development within utility regulation.

2 Q. And it's a positive development within
3 utility regulation that impacts, maybe not uniformly,
4 but impacts across the entire industry all utilities,
5 because all utilities have some form of rider embedded
6 into their rate structures; is that fair?

7 A. Yeah. I'd say all -- I'd say all. You know,
8 maybe one or two drop out because of a certain
9 circumstance. But the intent of a rider is for costs
10 that are expected to occur not to require rate case to
11 get those costs, often with a true-up to make sure, if
12 the prediction is wrong, neither side suffers
13 unfairness.

14 Q. And then Mr. Grantmyre went through the DEC's
15 stipulation of settlement with the Public Staff, and he
16 pointed out to you various revisions and features of
17 that settlement, and he asked you whether they were
18 credit positive, and essentially most of them, I think,
19 you answered were credit positive, correct?

20 A. I did on this last one about the five-year
21 return. As part of an overall settlement, it probably
22 comes out as credit positive. If the big issue that
23 looms and which we have various language from 2018 and
24 2020, that is the issue that will determine whether the

1 rating agencies come to a conclusion that the final
2 decision in this case is credit positive, credit
3 neutral, or credit negative.

4 Q. And when you say "the big issue that looms,"
5 what are you talking about, Mr. Fetter?

6 A. That would be the coal ash remediation issue
7 and the large dollar figures attached to it.

8 Q. Now, Mr. Fetter, is it fair to say that
9 investors who contemplate where they're going to -- if
10 they're going to invest in the utility sector, for
11 example, what they're contemplating where they are
12 going to invest, in what companies they're going to
13 invest, I guess we could say they vote with their
14 wallets; is that right?

15 A. They do. And they have an incredible amount
16 of information that enters into their decision-making.
17 I held up my book on the process of ratemaking earlier.
18 Nowadays, investors -- institutional investors carry
19 around an iPhone that's about 6 inches tall that has
20 pretty much all information dating from the dawn of
21 history right up until a few seconds ago. So they
22 factor all of those issues in to whether they're going
23 to pull the lever on buying or selling a stock or bond
24 in the next 10 minutes.

1 Q. And utilities across the country are having
2 to deal with the implications of the federal EPA CCR
3 rule and any state-specific legislation in their
4 particular jurisdictions dealing with coal ash,
5 correct?

6 A. Yes, definitely. And, in fact, I testified
7 in Georgia Power's last rate case a year ago, and while
8 I was not involved on the coal ash issue, like here, I
9 got to hear a lot of testimony, I got to read a lot of
10 testimony, and ultimately the decision came out that
11 there would be a return of and on the coal ash
12 remediation expenditures by Georgia Power.

13 Q. And the -- did the testimony that you heard
14 in the Georgia Power case involve, for example, the
15 historical practices of Georgia Power --

16 MR. GRANTMYRE: I would object that I
17 don't remember any questions on Georgia Power or
18 the case. It's beyond the scope of cross
19 examination.

20 CHAIR MITCHELL: Mr. Mehta?

21 MR. MEHTA: Chair Mitchell, the cross
22 examination that Mr. Grantmyre proceeded with
23 involved a number of questions regarding Duke
24 Energy credit ratings, Duke Energy Carolinas'

1 credit ratings, how strong they are and things of
2 that nature. These -- this line of questioning
3 goes directly to that line of questioning to
4 demonstrate what might happen to those credit
5 ratings and the financial position of the Company
6 in terms of a potential outcome in this case.

7 CHAIR MITCHELL: All right. Well, I'm
8 going to allow your question to -- I'm going to
9 overrule Mr. Grantmyre's objection. I'm going to
10 allow your question to proceed, and I'm going to
11 ask you to move on and stick to redirect
12 examination here. Help us -- as you question your
13 witness, help us understand and stay on the same
14 page with you with respect to from where your
15 redirect examination flows, Mr. Mehta.

16 MR. MEHTA: Thank you, Chair Mitchell.
17 Chair Mitchell, we've lost -- okay. You're back.
18 Thank you. Looked like a moment of instability in
19 the video right there.

20 Q. All right. Mr. Fetter, I think the question
21 was in the -- on the evidence that you heard in the
22 Georgia Power case, was there evidence of historical
23 practices of Georgia Power much like there has been in
24 this case?

1 A. As I recall, it was very similar to types of
2 evidence put in.

3 Q. And nevertheless, the Georgia Commission, the
4 public service Commission came to a decision that
5 allowed a return of and on the coal ash costs at issue
6 in that case, correct?

7 A. Yes, they did.

8 Q. So, Mr. Fetter, if an investor is going to
9 vote with its wallet, and has in front of it a choice
10 with respect to a utility that received a return of and
11 on its coal ash costs versus a utility that did not
12 receive similar treatment, which one is the investor
13 likely to pick and vote for with his wallet?

14 A. Well, as I said, many factors go in, but this
15 would be a very big factor. And if they place great
16 weight on it, they would prefer to go to a jurisdiction
17 that would provide return of and on as opposed to one
18 if they provided just return of, or even cut back the
19 return of with no return.

20 Q. And, Mr. Fetter, I think last question.
21 The -- you indicated, I think in your testimony --
22 prefiled testimony and in answer to Mr. Fetter's [sic]
23 questions, the potential for a negative outlook or
24 downgrade of the Company's credit ratings.

1 What impact do those kinds of rating agency
2 actions have on the cost of capital for Duke Energy
3 Carolinas?

4 A. Well, if there's -- if there's a downgrade,
5 of course, there would be an immediate impact in the
6 markets. An outlook negative may be less of an impact
7 but also an impact. And as I said, when this decision
8 comes out, the rating agencies will study it, and they
9 may determine there is some negative aspects to this
10 decision, or the regulatory climate in North Carolina
11 is not quite as strong as it was in 2018. And the
12 Company's credit profile may weaken, which, while it
13 does not have an immediate impact on its outlook or
14 rating, but it makes it more susceptible to a negative
15 action later on because its credit profile would be
16 weaker than as we sit here today.

17 Q. Thank you, Mr. Fetter.

18 MR. MEHTA: Chair Mitchell, I have no
19 further questions of Mr. Fetter at this time.

20 CHAIR MITCHELL: All right. We are
21 going to move to questions on the Commission's --
22 questions from the Commissioners. I'll begin with
23 Commissioner Brown-Bland.

24 COMMISSIONER BROWN-BLAND: I have no

1 questi ons.

2 CHAIR MITCHELL: Okay.

3 Commi ssi oner Gray?

4 COMMI SSIONER GRAY: No questi ons.

5 CHAIR MITCHELL: Commi ssi oner

6 Cl odfel ter?

7 COMMI SSIONER CLODFELTER: Very bri efl y.

8 EXAMI NATION BY COMMI SSIONER CLODFELTER:

9 Q. Good afternoon, Mr. Fetter.

10 A. Good afternoon, Commi ssi oner.

11 Q. Mr. Fetter, I assume -- would I be correct in
12 assuming that the investment community and rating
13 agencies fully understand that the 2018 order of the
14 Commi ssi on is on appeal in the North Carolina Supreme
15 Court?

16 A. Yes. In fact, Moody's had voted in -- I
17 think in a May issuance that the appeals and also the
18 Domini on order would be viewed as changing their credi t
19 posi tive view of the si tuation, depending on how the
20 appeals turn out.

21 Q. And in those appeals, the rating agencies and
22 the investment community are aware that the parties who
23 have taken the appeal contend that the Commi ssi on
24 commi tted errors of law in its 2018 order. I assume

1 they're aware of that, that that's the ground for the
2 appeal?

3 A. Yes. That would be the reason for an appeal,
4 yes.

5 Q. Mr. Fetter, can I state with absolute
6 assurance that you do not take the position and you
7 would never take the position that the North Carolina
8 Supreme Court should decide those errors of law based
9 upon how the investment community might react?

10 A. I -- having been a chairman of a Commission
11 during contentious times, I line up 100 percent with
12 you, Commissioner.

13 Q. Thank you. Appreciate your appearing this
14 afternoon. Thank you, Mr. Fetter.

15 A. Thank you, sir.

16 CHAIR MITCHELL: Commissioner Duffley?

17 COMMISSIONER DUFFLEY: Yes, just a
18 couple of questions.

19 EXAMINATION BY COMMISSIONER DUFFLEY:

20 Q. So Mr. Grantmyre asked about riders and that
21 the riders would have a positive effect on credit
22 metrics. Do you remember that line of questioning?

23 A. Yes, I do.

24 Q. And what would -- hypothetically, what would

1 a creation of a coal ash rider, would that have a
2 similar positive effect?

3 A. Could you just give me a little description
4 of what you would envision within such a tracker?

5 Q. So just on a forward-going basis, having a
6 rider set up like other riders, where there would be --
7 like a fuel cost rider. Let's say it's set up similar
8 to a fuel cost rider.

9 A. Commissioner, if I could just try to describe
10 what it might be. So on an ongoing basis, it would
11 compensate the Company for prudent coal ash
12 expenditures with a true-up along the way to make sure
13 that there was not unfairness in either direction.

14 Q. Yes. Use that example of the rider.

15 A. And that would obviate -- to the extent it
16 would be done on a timely basis with very little lag
17 between expenditure and recovery, then there would be
18 less of a need for a return on those investments.
19 They'll get the money back much quicker.

20 Q. Okay. And can you think of --

21 A. Is that -- that was my description. And if
22 that's what you're envisioning, then a tracker or a
23 rider could help in provide -- in getting rid of
24 regulatory lag, obviating the need for a return because

1 of very long lag time.

2 Q. So my question to you is, as I hear your
3 testimony, you are saying that there's the potential
4 downgrade if the Commission ruled in this case similar
5 to the Dominion rate case with respect to coal ash.
6 And then I also heard you state that -- in the
7 testimony today, that -- and I just want to clarify
8 this. That if the Commission doesn't rule the same way
9 as in 2018, that there would be a downgrade.

10 And so I just want to make sure; is that an
11 accurate description of your testimony? Or -- well, go
12 ahead and answer that.

13 A. If the Commission were to alter in this
14 decision what it said in 2018, it could alter it
15 substantially; it could alter it a little bit. And so
16 there has to be some kind of quantitative analysis and
17 qualitative analysis. So I'm not one of these
18 witnesses who said -- who goes in and tells a
19 Commissioner or a Commission if you don't follow the
20 letter -- exactly every letter you wrote 2 years or
21 10 years ago, then the financial community is going to
22 come down on you, you know, with a hammer.

23 There'll be an analysis as to investor
24 expectation flowing from the 2018 decision, and then

1 the decision will be read certainly by the credit
2 rating agencies as far as the explanation that the
3 Commission gives if it moves a little bit or a lot off
4 of what it said before. It -- as a bond rater, I
5 didn't look at regulation as a strict liability
6 standard. That there never could be a factor that
7 might alter the situation from before.

8 And so my one piece of advice to the
9 Commission, if you're going to move away from what you
10 said so strongly 2018, provide the best explanation
11 that you can, because that would benefit the credit
12 rating agencies and the financial community to
13 understand what has occurred and what might occur in
14 the future.

15 Q. Okay. Thank you for that answer. I don't
16 have any further questions.

17 A. Thank you, Commissioner.

18 CHAIR MITCHELL: Commissioner Hughes?

19 COMMISSIONER HUGHES: Yes, just one
20 question.

21 EXAMINATION BY COMMISSIONER HUGHES:

22 Q. Thank you very much for your testimony. I'm
23 one of the new kids on the block, relatively new
24 regulator. So appreciated your perspective, you know.

1 And you've said you've worked for lots of the different
2 agencies and states. So you mentioned, like I hear
3 this term constructive regulation a lot, you mentioned
4 sort of with all your experience what your definition
5 of that is. So -- and then you mentioned used and
6 useful and kind of I saw you sort of -- body language,
7 like that's a heavy duty topic. You know, it's made
8 things complicated.

9 Can you just share some of your experience
10 with how you would define used and useful, or how
11 you've seen it defined in places you've worked?

12 A. Well, as I said, I consider it a gift that we
13 didn't have that in the Michigan statute. So when we
14 looked at our nuclear abandonment case, it was a pure
15 prudent versus imprudent decision. A bright line rule
16 on prudence. Across the country, used -- you know,
17 used and useful does vary from state to state depending
18 on the specific language in the law. I think it
19 complicates things because if a -- like I'll give an
20 example, and not taking it outside of North Carolina
21 and putting it in a mythical state.

22 A Company starts down -- and it kind of
23 relates to what happened in Michigan. A Company starts
24 down the path to build a nuclear plant, and then Three

1 Mile Island occurs, and everything changes in the
2 federal government. And so no matter how much planning
3 they put in and how they were moving along with
4 construction, everything changed and their old plans
5 don't apply anymore. And as a regulator, you know, I
6 was in a nonused or useful state, it was darn tough for
7 us to figure out what the impact of Three Mile Island
8 was on the Midland nuclear plant. So we factored that
9 into our decision-making.

10 For a state that has used and useful, if that
11 plant never comes to completion and does not provide
12 power, how do you factor in these external forces that
13 the utility could not expect and had difficulty
14 reacting to. And I think from state -- some states, it
15 might be hard and fast, if it doesn't produce
16 electricity, you know, they don't get anything. I
17 don't think there are many states like that.

18 Other states like yours, perhaps you can
19 factor in the pros and cons and come to a decision on
20 what the used and useful law means in that defined set
21 of circumstances.

22 Q. Okay. Thank you. Appreciate that.

23 A. Thank you.

24 COMMISSIONER HUGHES: No further

1 questi ons.

2 CHAIR MITCHELL: All right.

3 Commi ssi oner McKi ssi ck?

4 COMMI SSIONER McKI SSI CK: Thank you,
5 Madam Chair, just one or two questi ons.

6 EXAMI NATION BY COMMI SSIONER McKI SSI CK:

7 Q. Mr. Fetter, I know when you were respondi ng
8 to Commi ssi oner Duffley a few minutes ago about what
9 provi des certainty to the market, you talked about
10 having some predi ctabi lity. And you began your
11 testimony today speaking about the word "cul pabi lity"
12 and how that departed from a tradi ti onal imprudence --
13 imprudence type of eval uation or assessment, the
14 cri teri a would be tradi ti onal ly used.

15 If there were a somewhat clearly defined way
16 of defi ni ng the term cul pabi lity, I mean, there were
17 standards attached where it would perhaps be a brighter
18 line than what it is today where it appears to be
19 subj ective -- and, of course, I'm not here to say what
20 that would consist of or what those standards might be,
21 but they might be standards that could be used not only
22 for, say, this case, and the facts that are present
23 today, but that could be used in other cases in the
24 future -- do you think it would provide a framework and

1 structure that would offer more predictability where
2 markets might potentially feel more comfortable, even
3 if the decision made by our Commission deviated from
4 the traditional prudence/imprudence evaluation
5 assessment?

6 A. Okay. Here's my reaction. If you were going
7 to go based on a -- if the Commission is going to
8 decide based on a new standard called culpability, my
9 advice would be write as much as you can to explain it
10 and explain how it affects these particular
11 circumstances and how it would impact other potential
12 circumstances.

13 The difficulty will be -- I mentioned the
14 idea of prudent investment started in a dissent written
15 by Justice Brandeis in 1923 and developed over decades.
16 And so I think the biggest barrier you'll have is, no
17 matter how well you delineate in your decision, if the
18 financial community reads that decision and becomes
19 uncertain and uncomfortable about the future, you know,
20 there's another 180 utilities they could invest in
21 across the country outside North Carolina.

22 The one thing you don't want to do is to put
23 yourself out on an island as either they accept those
24 50 pages that you wrote, or they say it's just too

1 uncertain for us to invest major institutional dollars
2 on North Carolina utilities.

3 Q. And I guess the follow-up would simply be
4 this: Let's say, hypothetically, there was a
5 definition and a structure and a way of evaluating
6 culpability, as the term might be used. Would that not
7 perhaps have been helpful to you in Michigan if you
8 were assessing what occurred there with the nuclear
9 power plant? I think it was Midland --

10 A. Midland.

11 Q. -- where you employed kind of the traditional
12 prudence/imprudence type of evaluation and disallowed
13 certain components of cost as being imprudent, and then
14 allowed a partial recovery on other costs.

15 Would it not be helpful if that type of
16 structure or framework were available in a situation
17 such as the one you confronted?

18 A. I think we would have faced back then the
19 very issues you're going to face now, which is that it
20 will be brought up on appeal through the North Carolina
21 courts, and there's a very strong potential it will go
22 to the federal courts up to the U.S. Supreme Court on
23 whether it represents a confiscation or taking. And as
24 I described, even within your own statute, the language

1 about fairness in both directions and reasonable and
2 just, and I read reasonable and just as applying both
3 to the utility and also the customer, and so it's
4 difficult to create a new standard that has not been
5 tested elsewhere.

6 You know, like I said, prudent investment did
7 not exist before 1923, and over the course of 10 or
8 20 years, it became the defining standard. And it's
9 the one I lived with every day of my six years on the
10 Michigan Commission. Someone started it, it took hold,
11 it was found to be appropriate, and it withstood legal
12 attack. That is what you would face. And I'm not
13 saying you and your colleagues are not up to the
14 challenge, but it would be a substantial challenge, and
15 one where you would have to continue to attract the
16 interest of the financial community to fund the state's
17 utilities.

18 Q. One additional follow-up. I believe it was
19 Steve Young when he was testifying, and he was
20 discussing Moody's, and credit ratings, and the way
21 they might view what we might do in light of the -- in
22 our decision dealing with coal ash and what direction
23 we might take, if it might be more of like what
24 occurred in the Dominion case. And was question was

1 raised -- and I raised that question -- suppose there
2 was a decision made that was not consistent with what
3 Duke would prefer, without saying what that might
4 consist of, let's say it was more consistent with what
5 occurred in Dominion; and if that were to occur, if it
6 were to bump Moody's credit rating down one notch, what
7 impact would it make? His assessment was that one
8 notch would probably be tolerable, but two notches
9 would be problematic. Would you concur with that
10 assessment?

11 A. I would concur with what Mr. Young said,
12 except to the extent as I answered Mr. Grantmyre.
13 There is a possibility, notwithstanding what everyone
14 in Washington is saying, that there will not be a
15 vaccine. You know, in the worst case there will never
16 be a vaccine. I mean, just think about how life in
17 this country will change. You know, when people can't
18 pay rent, the legislators or the city councils put in a
19 moratorium on evictions for those individuals. What
20 they don't factor in is there are landlords who also
21 have mortgages, who also pay utility bills.

22 And so, in the current environment, my advice
23 across the board would be don't weaken the credit
24 profile of any utility. There will be plenty of time

1 to do that down the road. But I'm concerned about
2 what -- I mean, COVID-19 has already changed the way we
3 live, and I think -- you know, my wife said to me the
4 other day, why didn't we wear masks during flu season
5 in the past. And overseas in some countries they used
6 to wear masks, they do wear masks. I think life in
7 this country is going to be different for a very long
8 time.

9 So I would argue for a status quo with regard
10 to -- I mean, not only utilities. I think 25 percent
11 of restaurants are going to go out of business. I
12 think to the extent -- in Seattle, Amazon and
13 Microsoft, they're all doing remote working. Do you
14 know who's suffering the most in the city of Seattle?
15 The small sandwich shops. There are no workers
16 downtown anymore.

17 And so I don't think anyone can predict the
18 financial fallout coming from what we're going through
19 on a public health societal basis right now. And
20 that's why what I said to Mr. Grantmyre, you can't
21 measure a one-notch downgrade purely on the dollar
22 figure. It's unclear what is going to happen. You
23 know, I'm on the board of Central Hudson Gas &
24 Electric, we get an update every week about how COVID

1 is impacting and the potential deferred costs of
2 uncollectible.

3 So my advice, let's see if we survive the
4 virus before we create complications with regard to our
5 essential services like utilities.

6 Q. So I take from your response that you would
7 concur with Mr. Young's assessment, but that, based
8 upon the overall state of the economy in a very global
9 sense and the impact of COVID-19, that there are
10 probably many other variables that introduce
11 uncertainty that could have even a more profound and
12 significant impact than anything that we might decide
13 to do with coal ash as a Commission here in
14 North Carolina; would that be a correct restatement?

15 A. Yes. There are -- you know, if there was an
16 effective vaccine a month from now, then it kind of
17 clears the decks. We'll get out of it pretty quickly.
18 But if there's not, I don't know what society looks
19 like a year or two from now if it's spreading from, you
20 know, 6 percent of the country to 10. You know, I
21 guess Sweden tried this herd immunity where they don't
22 take any steps, and it was -- it had very negative
23 impacts on the amount of people catching it and the
24 amount of people dying. And if we don't get it under

1 control with a vaccine, you know, it's going to march
2 through the populous of this country and even worse
3 overseas, you know.

4 Right now we're worse because half the
5 country is not taking it seriously. But I think, as it
6 got worse and worse, eventually the whole country would
7 realize that there are steps to take to try to protect
8 oneself.

9 Q. And I believe from what I gather, I remember
10 asking Mr. Young also about the potential for a coal
11 ash rider, I take it from your response to
12 Commissioner Duffley's question that, based upon the
13 hypothetical that was structured, that, in your
14 opinion, that would likely work. Is there a way that
15 it could be structured that you would see as being
16 problematic?

17 A. Well, the only problematic would be if there
18 were expenditures and, under the tracker, a relatively
19 extended period of time went forward so that the
20 financial measures would be fading towards the negative
21 even though a tracker is in place. You know, when I
22 talked about earlier with Mr. Grantmyre and
23 Commissioner Duffley, a tracker properly structured I
24 think is positive because it avoids the need -- I mean,

1 look at the cost of this rate case for all parties.

2 You know, it's huge. To the extent you can avoid rate
3 cases, there's a benefit to all sides.

4 Q. In terms of potential for a run rate, how do
5 you think that might be utilized as a tool to deal with
6 the coal ash situation?

7 A. Well, as I understand run rate, it would be
8 expenditure and compensation on a relatively tight
9 basis. And I think some of the Duke people put in
10 numbers on potential impacts, and I think, to the
11 extent it's structured in a way that avoids some of the
12 negative, it's the use -- it could be useful.

13 COMMISSIONER McKISSICK: Thank you,
14 Madam Chair. I don't have any further questions.

15 THE WITNESS: Thank you, Commissioner.

16 CHAIR MITCHELL: All right. Questions
17 on the Commissioners' questions beginning with the
18 Public Staff.

19 MR. GRANTMYRE: The Public Staff has
20 none.

21 CHAIR MITCHELL: All right. Attorney
22 General's Office?

23 (No response.)

24 CHAIR MITCHELL: Okay. Any other

1 intervenors, questions on Commissioners' questions?

2 (No response.)

3 CHAIR MITCHELL: All right. Mr. Mehta,
4 questions on Commissioners' questions?

5 MR. MEHTA: The Company has no
6 questions, Chair Mitchell.

7 CHAIR MITCHELL: All right. At this
8 point, I will entertain motions.

9 MR. GRANTMYRE: The Public Staff moves
10 that Public Staff Fetter Cross Exam -- Rebuttal
11 Cross Examination Exhibit Number 1 be admitted into
12 evidence.

13 CHAIR MITCHELL: All right.
14 Mr. Grantmyre, your motion is allowed.

15 (Public Staff Fetter Rebuttal Cross
16 Examination Exhibit Number 1 was
17 admitted into evidence.)

18 CHAIR MITCHELL: Mr. Mehta?

19 MR. MEHTA: Chair Mitchell, I don't
20 think we had any exhibits to Mr. Fetter's
21 testimony. To the extent we did, I move them into
22 evidence, but I don't think there are any.

23 CHAIR MITCHELL: All right. And I'll
24 allow them in out of an abundance of caution.

1 All right. Mr. Fetter, you may step
2 down. We appreciate your being here with us today,
3 sir.

4 THE WITNESS: And I'll be back. Thank
5 you.

6 CHAIR MITCHELL: See you soon.

7 MS. FORCE: Chair Mitchell?

8 CHAIR MITCHELL: Yes, ma'am.

9 MS. FORCE: Margaret Force. Before we
10 go to the next witness, I have a couple of
11 questions, or one motion and a question. One is
12 that I'd ask through the Chair, if it's going to be
13 the practice from now on for the Company to go
14 through extensive questions about the credentials
15 of the new witnesses coming up, or if that's
16 something that's more properly addressed through
17 summary. We refrained from similar questions, and
18 I noticed that there were quite a few questions
19 asked of Mr. Fetter before he began.

20 CHAIR MITCHELL: Well, I mean, it's the
21 expectation that we'll follow sort of the typical
22 and traditional litany, Ms. Force. I don't know if
23 I'm responding to your question. But just in the
24 interest of judicial economy and keeping these

1 hearings moving along, we'd ask that the parties
2 follow the traditional litany that we always
3 observe.

4 MS. FORCE: Thank you. We all have
5 experts in the case, and I think that that is
6 something that's typically addressed through the
7 summary from the witnesses. I also wanted to ask,
8 yesterday I indicated that I would give a list of
9 orders that we would ask the Commission to take
10 judicial notice of. Is this a good time to do
11 that?

12 CHAIR MITCHELL: Yes, you may proceed.

13 MS. FORCE: Okay. The Commission's
14 Docket Number E-7, Sub 408, the Commission issued
15 an order on second remand adjusting rate of return
16 and requiring rate reductions and refunds. That
17 was issued October 26, 1992, from an application
18 for general rate increase by March 27, 1986.

19 The second one is in Docket Number
20 E-7, Sub 828. It's the order approving stipulation
21 and deciding nonsettled issues issued
22 December 20, 2007, from an investigation of
23 existing rates and charges initiated -- excuse me,
24 and the order on reconsideration issued

1 February 18, 2008. I guess that's two orders but
2 they're two different dockets.

3 The third one is Docket E-7, Sub 909,
4 order granting general rate increase and approving
5 amended stipulation issued December 7, 2009.

6 The fourth is Docket Number
7 E-7, Sub 989, order granting general rate increase
8 issued January 27, 2012. And there was also an
9 order on remand in that docket issued
10 October 23, 2013.

11 Next is Docket Number E-7, Sub 1026, the
12 order granting general rate increase issued
13 September 24, 2013.

14 And finally, Docket Number E-7, Sub 790,
15 the order granting certificate of public
16 convenience and necessity with conditions, issued
17 March 21, 2007.

18 CHAIR MITCHELL: All right. Ms. Force,
19 I'm going to read back these orders just so that
20 the record is clear.

21 The Commission will take judicial notice
22 of its order issued in Docket Number E-7, Sub 408
23 on October 26, 1992.

24 The Commission will take judicial notice

1 of its orders issued in E-7, Sub 828 on
2 December 20, 2007, and on February 18, 2008.

3 The Commission will take judicial notice
4 of its order issued in E-7, Sub 909 on
5 December 7, 2009.

6 The Commission will take judicial notice
7 of its order issued in E-7, Sub 989 on
8 January 27, 2012, and in that same docket on
9 October 23, 2013.

10 The Commission will take judicial notice
11 of its order issued in Docket E-7, Sub 1026 on
12 September 24, 2013.

13 And the Commission will take judicial
14 notice of its order issued in Docket Number
15 E-7, Sub 790 on March 21, 2007.

16 MS. FORCE: That's right. Thank you.

17 CHAIR MITCHELL: Okay. All right. Any
18 additional procedural or housekeeping matters for
19 my consideration?

20 MR. NEAL: Chair Mitchell, David Neal.

21 CHAIR MITCHELL: Mr. Neal, you may
22 proceed.

23 MR. NEAL: Briefly. Just following
24 Ms. Force's question, parties, I would assume, are

1 not limited to citing prior orders that are
2 published or publicly available in post-hearing
3 briefs even if they haven't been made
4 specifically -- a request to have them judicially
5 noticed; is that correct?

6 CHAIR MITCHELL: That is correct,
7 Mr. Neal.

8 MR. NEAL: Thank you. And second, I
9 just wanted to give a quick update out of the
10 consolidated hearing. Mr. Howat had other
11 deadlines, appearances, and then vacation. I'm
12 still working on pulling together the late-filed
13 exhibits that were requested, and just was curious
14 if there was a deadline for those.

15 CHAIR MITCHELL: There is no deadline,
16 Mr. Neal.

17 MR. NEAL: Thank you.

18 CHAIR MITCHELL: All right. Any
19 additional matters for my consideration?

20 (No response.)

21 CHAIR MITCHELL: All right. We have --
22 we are -- we've come to the end of our day, so we
23 will --

24 MR. MEHTA: Chair Mitchell, it's

1 Kiran Mehta, and I'm sorry. I was having
2 difficulty getting off of mute. But if we are at
3 the end of the day, and the next panel is the panel
4 of Marcia Williams and Jim Wells, and they're the
5 last panel of witnesses to be -- or last witnesses
6 in this particular proceeding, so hopefully we
7 will, in fact, finish tomorrow. Ms. Williams, as
8 you might know, is a resident of Los Angeles,
9 California, and when we start 9:00 in the morning,
10 it's pretty early out in California. It was even
11 darker in California than it was where
12 Commissioner Clodfelter was this morning. That may
13 have something to do with fire smoke, but anyway,
14 it was early. If there is any prospect that we
15 could start a little bit later in the morning, I
16 think that would accommodate Ms. Williams. And
17 plus, I don't believe there's any prospect that we
18 would not finish it even with a delayed start.

19 CHAIR MITCHELL: All right. We will --
20 thank you, Mr. Mehta. We will begin tomorrow at
21 10:00 in the morning. So we will be adjourned for
22 today, or we will be in recess for today. Let's --
23 and we will be back on the record in the morning at
24 10:00: All right. Thank you very much. We're off

1 the record.

2 (The hearing was adjourned at 4:25 p.m.
3 and set to reconvene at 10:00 a.m. on
4 Thursday, September 17, 2020.)
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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was taken, do hereby certify that the witnesses whose testimony appear in the foregoing hearing were duly affirmed; that the testimony of said witnesses were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 19th day of September, 2020.



JOANN BUNZE, RPR

Notary Public #200707300112

