

PLACE: Held via Videoconference

DATE: Monday, September 14, 2020

TIME: 9:01 A.M. - 1:30 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-Bland

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 21

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T A B L E O F C O N T E N T S
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P R O C E E D I N G S

CHAIR MITCHELL: All right. Good morning. It's a little bit after 9:00. Let's go on the record, please. Before we resume with the Public Staff panel, I will entertain motions or questions, if there are any, from counsel.

(No response.)

CHAIR MITCHELL: All right. Hearing none, Mr. Mehta, you may proceed. Mr. Junis, Mr. Maness, I just remind you, gentlemen, that you are under oath.

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

CHARLES JUNIS AND MICHAEL C. MANESS,
having previously been duly affirmed, was examined
and continued testifying as follows:

CONTINUED CROSS EXAMINATION BY MR. MEHTA:

Q. And good morning, Mr. Maness. Good morning, Mr. Junis.

A. (Michael C. Maness) Good morning.

A. (Charles Junis) Good morning.

Q. Mr. Junis, if you would turn to page 7 of your testimony.

A. I'm there.

1 Q. And you indicate on line 11 that there are
2 10,940 groundwater exceedances confirmed by DEC's
3 groundwater monitoring data, correct?

4 A. Yes, sir.

5 Q. And that data, all of that data, was
6 submitted by DEC to the environmental regulator, the
7 DEQ, correct?

8 A. Yes, sir.

9 Q. And if you flip over to page 46 of your
10 testimony.

11 A. (Witness peruses document.)

12 I'm there.

13 Q. And again, on page 10 and 11, you indicate
14 that the cumulative total of groundwater, quote,
15 violations has reached 10,940, correct?

16 A. Yes, sir. And those are specific to the
17 North Carolina sites. And I think that is one of the
18 key differences, as we talked about on Friday, between
19 the records of Dominion and Duke, and that there is
20 this plethora of data that is confirmed groundwater
21 violations in violation of the 2L standards that --
22 degrading the natural quality of the groundwater.

23 Q. All right. And I'm looking at footnote 57,
24 and you indicate that, of that 10,940, it looks like

1 3,091 were located, or discovered, or reported, or
2 whatever word you want to use in the prior case,
3 correct?

4 A. That's correct.

5 Q. And then -- and 10,940 is the cumulative
6 total, so it would include that 3,091, correct?

7 A. Yes, sir.

8 Q. And what that represents, Mr. Junis, the
9 10,940 number, it represents the number of sampling
10 events across the entirety of DEC's ash basins, the
11 whole groundwater system across the ash basins in which
12 the monitoring results exceed the 2L standards; did I
13 get that correct?

14 A. Yes. The -- around the North Carolina
15 basins, those are violations of the standard in
16 exceedance of also the background at or beyond the
17 compliance boundary.

18 Q. Mr. Junis, I want you to imagine a
19 groundwater plume that covers an area near one of these
20 basins, and we'll say it's a -- it's one of the retired
21 basins. So it's been dewatered. There's no longer any
22 hydraulic head that you were talking about earlier and
23 Mr. Hart talked about the other day, and I think
24 Mr. Quarles too. And let's also assume that, just like

1 Mr. Hart was talking about, this is a heavy clay soil
2 and the contaminants in the plume are metals, so
3 they're not really moving much.

4 Are you with me so far?

5 A. I don't think you can assume that they're not
6 moving much because they're clay soils, because a lot
7 of these basins have been in service for decades. And
8 so those attenuative [sic] properties or the capacity
9 of those soils to retain those metals can be exhausted,
10 so they're not going to retain them as much. I will
11 agree that the hydraulic head would be lower because
12 you don't have a standing level of surface water, but
13 there still is some push. I would say that the
14 groundwater would be a little bit slower at that point,
15 though.

16 Q. Okay. If it's moving, it's moving very
17 slowly, as Mr. Hart indicated, when you have metal
18 contamination and heavy clay soils, whether it's a
19 lessened attenuation, but it's still attenuated, right?

20 A. And I would add that it is site specific
21 regarding the amount of clay soil and then the layers
22 of the soil levels, you know, the mix of sand or silty
23 soils. And it can even be specific to each basin.

24 Q. Well, that's a very good point, Mr. Junis.

1 So in our imaginary plume, we're in one in
2 which the contaminants are really not moving very much
3 based on all of the factors that Mr. Hart and
4 Mr. Quarles have already testified about; are you with
5 me?

6 A. In general, groundwater moves slowly.
7 Obviously, if there is that hydraulic pressure from a
8 standing surface water, then it would move quicker, but
9 I think we can keep moving with the scenario.

10 Q. Thanks. So let's say, Mr. Hart [sic], in
11 this area, in our imaginary area, there's a single
12 groundwater monitoring well, and it is sampled under
13 protocols established by the DEQ once a year. With me?

14 A. Yes, sir.

15 Q. So you have, at the end of the year in which
16 this well is sampled, one exceedance, or in your terms,
17 a, quote, a violation of the 2L standards, correct?

18 A. Yes, sir.

19 Q. Well, let's say, as a result of that
20 exceedance, the DEQ says, well, we need more wells.
21 And so they spend another year putting in 49 more wells
22 and they say we're going to sample these once a week,
23 except just to make the math easier, we'll let you off
24 on Christmas week, and we'll let you off on the week of

1 the 4th of July, correct? With me so far?

2 A. I am. I would say that that is not a typical
3 procedure, in recognition that there's usually a site
4 analysis of those subsurface conditions. And usually
5 there's recognition that that frequency would be
6 quarterly, or twice a year, or annually. Weekly would
7 be a very high frequency.

8 Q. All right. But still, we're operating in
9 this site-specific example in which, for whatever
10 reason, the DEQ wants it weekly.

11 And you're right, it's an iterative process,
12 correct, Mr. Junis?

13 A. Yes, sir.

14 Q. So you put in some wells, you do some
15 analysis of the results, you might put in some more
16 wells, and it goes on like that, correct?

17 A. Yes, because you're trying to assess the
18 extent and severity of the pollution.

19 Q. Okay. And so by the end of the year -- now
20 we're sort of in year two, but as per the requirements
21 of the DEQ, we've got 50, not just one wells, and
22 they're being sampled weekly, except we're not doing it
23 during Christmas week and during the week of the
24 4th of July. Are you with me?

1 A. I'm following.

2 Q. So you've gone -- and then they, you know,
3 continue to sample through the third year, and so now
4 we've not just one exceedance or violation, in your
5 terms, we have 2,500; do we not?

6 A. So you're saying, in each of those 50 wells,
7 you have an exceedance or violation happening 50 weeks
8 of the year, so in one year, yes, you would rack up
9 2,500 violations.

10 Q. Okay. And so basically you have a 2,500-fold
11 increase in the number of, quote, violations, but the
12 plume is basically exactly the same as it was two years
13 ago; is that right?

14 A. I would not characterize it like that.
15 That -- you have now much more defined the extent of
16 that plume, because you're not going to put all 50
17 wells on top of each other, you are going to spread
18 them out to determine are there other pathways for
19 these pollutants to travel. And because that
20 groundwater is constantly moving, sometimes slower than
21 others, you are sampling new contaminants. This is not
22 the same column of water.

23 So that is recognition also that, if you've
24 put them farther out, has this plume increased in size?

1 But it is more defined in terms of a shape and also the
2 severity in terms of the concentration of those
3 contaminants.

4 Q. I understand, Mr. Junis, but, you know, I
5 didn't tell you how big the area was. Maybe the area
6 is a very large area and can easily accommodate
7 well-spaced-out 50 wells.

8 So regardless, you still have, under your
9 math, 2,500 violations at the end of year three,
10 whereas at the end of year one, you had one violation,
11 correct?

12 A. Well, I would just like to clarify that it's
13 not my math. This is the application of the standard.
14 That if you exceed the standard and background at or
15 beyond the compliance boundary, that is a violation
16 which is supported by the amicus brief filed by the
17 DEQ.

18 Q. I understand your position on this,
19 Mr. Junis, and maybe I shouldn't use "your math."

20 According to the math, you now have 2,500,
21 quote, violations whereas a couple years before, you
22 had one, quote, violation, correct?

23 A. Yes, sir.

24 Q. So, Mr. Junis, the number of, quote,

1 violations just by itself is not a meaningful data
2 point all by itself, is it?

3 A. There is always important context, and I
4 think that's recognized in the description of what the
5 procedures are within the state, and that you're not
6 just sinking wells right on top of each other. Again,
7 you are trying -- the intent is to define the extent
8 and severity of the pollution, and that's what's
9 happening in the past two-plus years.

10 Q. And I agree with you, Mr. Junis, that you
11 should be looking at the context, but the context with
12 regard to this example is, you know, 49 more wells and
13 a lot more frequent sampling, isn't it?

14 A. In that example, yes, but I don't think that
15 parallels very well to the reality that we're facing.

16 Q. So you don't think that the reality that
17 we're facing includes many more wells at each site and
18 more frequent sampling at each site?

19 A. There are more wells and there are more
20 iterations of sampling, but the example of weekly at
21 one site I don't think is an appropriate parallel or
22 comparison.

23 Q. Well, if you just made it quarterly, would it
24 be?

1 A. I think that would be more realistic. But I
2 think you'll see -- and this is discussed in some of
3 the historic documents -- that they may start at a
4 higher frequency, and then based on what they're
5 seeing, and their greater determination of what those
6 groundwater flows are, you may see a decrease in that
7 frequency; but then, as you're adding more wells,
8 obviously, there's more sampling events.

9 Q. And as you're adding more wells and adding
10 more sampling events, and assuming they're hitting the
11 same plume, Mr. Junis, your number of, quote,
12 violations is increasing whether or not the plume is
13 getting any worse, correct?

14 A. Well, and that's where you're dealing with
15 the iterative process, that typically, if you're seeing
16 a violation in one well, then you are going to add
17 wells further out or in points where you think that
18 pollution could be kind of sneaking through, another
19 pathway. So you're really confirming the existence of
20 that plume and, again, the extent and severity.

21 Q. Mr. Maness, let's turn back to you for a
22 moment. And as I understand your position, the coal
23 ash costs that DEC has incurred and it seeks to recover
24 in this proceeding are what you call, I think, deferred

1 expenses, correct?

2 A. (Michael C. Maness) (No audible response.)

3 Q. Mr. Maness, you are on mute.

4 A. I apologize. Deferred expenses, yes, I
5 believe that's the term I use. And given the
6 controversy that we had in the last case regarding the
7 use of that term, and I made a point to submit a data
8 request to the Company in this case, Data Request 159,
9 to untangle many of the statements that were made in
10 the last case. And that -- the response to that data
11 request clearly illustrates that when the Company makes
12 the deferral entries on its books, it isn't, in fact,
13 deferring the GAAP ARO depreciation expense that it
14 records for financial statement purposes. It makes a
15 deferral entry for regulatory accounting purposes of
16 that expense. And so yes, I think the term "deferred
17 expenses" is correct.

18 Q. Well, we did, as you indicated, go through
19 all that in the last case, the last DEC case, certainly
20 at -- in great detail in the last DEC case, probably in
21 less detail in the last DEP case. And the Commission
22 disagreed with your characterization of these costs as
23 deferred expenses; did it not?

24 A. Yes. But I did not feel that that

1 determination really reflected the true facts of the
2 matter, and that's why I elicited additional facts from
3 the Company in this case that I believe do clearly
4 illustrate that what the Company is deferring on its
5 books are, in fact, its ARO depreciation expenses that
6 it records for financial accounting purposes before
7 consideration of regulatory accounting entries.

8 Q. And if you -- if you look at page 289 of the
9 prior DEC order, the order issued in Docket
10 E-7, Sub 1146. Do you have that with you by any
11 chance, Mr. Maness? Or you could pull it up.

12 A. I'm pulling it up, if you can give me the
13 page reference again.

14 Q. 289.

15 A. Yes, sir.

16 Q. And in the last full paragraph there, would
17 you agree with me that the Commission determined that
18 your characterization of the costs as deferred expenses
19 was, quote -- very last sentence, quote, not
20 persuasive, not supported by authority, and not
21 determinative, correct?

22 A. Yes. And I guess I would apologize to the
23 Commission for not being persuasive in the last case,
24 but when it said that it was not supported by

1 authority, as I said, that was the reason that I
2 elicited additional information from the Company in
3 this case that, to me, clearly demonstrates that that
4 regulatory asset that's recorded on the Company's books
5 for North Carolina retail accounting and ratemaking
6 purposes is, in fact, a deferral of depreciation -- ARO
7 depreciation expense charges that the Company makes to
8 account for a three depreciation expense.

9 Q. Okay. And in the very next sentence,
10 Mr. Maness, the Commission said -- this is the last
11 paragraph on 289 that carries over to the next page --
12 quote:

13 "It is also incorrect as a matter of
14 accounting."

15 Is that what the Commission said?

16 A. It is what it says, and, unfortunately I
17 disagree with that conclusion.

18 Q. Well, Mr. Maness --

19 A. If you read along -- if you read along --
20 excuse me, I'm sorry.

21 Q. No. Go ahead and finish your answer.

22 A. So if you read along in that paragraph, it
23 says:

24 "As witness Doss testified, the Company has

1 accounted for these costs, is required under GAAP and
2 FERC uniform system of accounts."

3 Now, I agree with that, but that only tells
4 part of the story. The -- of course, if you ignore and
5 pretend it doesn't exist, the regulatory accounting
6 entries that the Company has made on its books, you
7 would say that use an ARO depreciation expense is in
8 compliance with GAAP and the FERC uniform system of
9 accounts. But the part of the story that that sentence
10 did not tell is that GAAP and the FERC uniform system
11 of accounts also allow for the recognition of
12 regulatory assets and liabilities when rate-setting
13 authorities, such as this Commission, make entries that
14 indicate that they are not going to have revenue
15 recovery at the same time that that expense is
16 reported; that they are going to, in effect, provide
17 for recovery in the future.

18 And when that happens, the Company is
19 allowed, under GAAP and under FERC uniform system of
20 accounts purposes, to reflect those deferrals in the
21 Company's financial statements. And that is, in
22 effect, what the Company is doing. The Commission,
23 beginning back with the order in Docket Number
24 E-7, 723 about AROs and nuclear decommissioning

1 expense, told the Company -- instructed the Company in
2 that case to, in effect -- North Carolina retail
3 regulatory accounting purposes, to essentially reverse
4 the income statement effects of AROs. And furthermore,
5 instructed the Company not to reflect those in its
6 financial statements for North Carolina retail
7 regulatory accounting purposes.

8 That's one of the reasons that, in addition
9 to this deferral accounting, the ARO asset and the ARO
10 liability that the Company records for financial
11 statement purposes are not reflected in rate base.

12 And therefore, I still stand by the -- my
13 assertion that what I am saying is correct as a matter
14 of accounting, that they make these deferrals of
15 expenses as a result of the Commission's order, if not
16 in Sub 723 and E-7, Sub 1110, and that those are in
17 accordance with GAAP and FERC systems of accounts and
18 required principles. And furthermore, that those
19 entries, themselves, have the effect of removing GAAP
20 and FERC ARO accounting from consideration as to how
21 rates are set by this Commission.

22 Q. All right. Thank you, Mr. Maness. And I
23 would like, if you would, to turn to DEC Cross
24 Exhibit 25, if you could pull that up for me.

1 A. Is that the --

2 Q. I think that's --

3 A. -- response to 156?

4 Q. Yes. In response to a Data Request Number
5 156.

6 MR. MEHTA: Chair Mitchell, the
7 document, itself, is marked as confidential. It
8 is, in fact, no longer viewed as confidential. It
9 was originally marked as confidential because the
10 information contained within the document was, sort
11 of, between earnings releases, but those -- the
12 earnings releases have now been made, and so the
13 financial information is no longer confidential.
14 And so there needs to be -- there does not need to
15 be any special handling with respect to this
16 document or the testimony regarding the document.

17 CHAIR MITCHELL: All right. Thank you,
18 Mr. Mehta. I would also note, just the note at the
19 top of the document that appears on each page
20 indicates that the response and the embedded
21 information are no longer considered confidential.
22 So let's go ahead and mark this document, if you so
23 choose, Mr. Mehta.

24 MR. MEHTA: Yes, Chair Mitchell. We'll

1 mark it as DEC Junis/Maness Cross Examination
2 Exhi bi t 3.

3 CHAIR MITCHELL: All right. The
4 document will be marked DEC Junis/Maness Cross
5 Examination Exhi bi t Number 3.

6 (DEC Junis/Maness Cross Examination
7 Exhi bi t 3 marked for i denti fi ca ti on.)

8 Q. And as you noted, Mr. Maness, this document
9 is DEC's response to a data request from the Public
10 Staff, Data Request 156-2, that if you look on the
11 second page, I guess, of the document, the request is
12 listed there:

13 "Please provide a total estimated cost,
14 including an estimated breakdown of the costs for CCR
15 remediation for each site and for each impoundment
16 pursuant to the settlement agreement entered into by
17 and between DEC and the Department of Environmental
18 Quality."

19 Did I read that correctly?

20 A. Yes. I'm a little bit confused because
21 there's more than one page that's listed as being the
22 response to 156-2. So I want to make sure I'm looking
23 at the right one. There's page 2 of the exhi bi t, and
24 then it says it again on page 5. So I just want to

1 make sure I'm in the right place.

2 Q. You could actually look at either one of
3 them, because I think there was a supplemental
4 response. And the spreadsheets that begin at page 6 of
5 the exhibit are really the spreadsheets that were
6 submitted in connection with the supplemental response.

7 A. All right. Thank you.

8 Q. Now, Mr. Maness, I don't know if you're a fan
9 of alternative history, you know, like what would have
10 happened if the South won the Civil War or if the Nazis
11 had one World War II and things of that nature, but
12 we're going to engage in some alternative history, and
13 we're going to assume that the Commission did not
14 reject your characterization of coal ash costs as
15 expense. And, in fact, we're going to call them
16 expense.

17 And if you would, Mr. Maness, take a look
18 at -- I guess it's the seventh page of the -- of the
19 exhibit.

20 A. Yes, sir.

21 Q. And, of course, this exhibit was submitted
22 back in, looks like January or February, so the column
23 for 2020 is a forecast number; do you see that?

24 A. Yes, sir.

1 Q. And it -- just rounding, it essentially says
2 174 million forecast for 2020, correct?

3 A. Yes, sir.

4 Q. And I want you to assume, Mr. Maness, that
5 your friends, Mr. Garrett and Mr. Moore, have been
6 through these expenses with a fine-tooth comb and not
7 even they can find anything wrong with them. Are you
8 with me?

9 A. I could assume that as a hypothetical. I
10 will point out that this particular request was, I
11 believe, submitted by Mr. Junis and maybe Mr. Lucas as
12 well on the technical side, and I presume was used in
13 conjunction with Garrett and Moore's investigation.
14 But, beyond that, I really can't make any firm
15 conclusions about anyone's opinions regarding the
16 accuracy of the numbers.

17 Q. Okay. And I'm not concerned right now about
18 the accuracy of the numbers. I'm just going to say
19 let's assume that the Company actually expended,
20 essentially, \$174 million in calendar year 2020, and
21 Mr. Garrett and Mr. Moore have been through those costs
22 and not even they have found anything wrong with a
23 single dollar of those costs.

24 A. All right. As you say, those are forecasts.

1 But I will -- on that basis, I will accept your
2 hypothetical.

3 Q. Sure. So, Mr. Maness, the Company files a
4 rate case on, let's say, April 1st of 2021, and its
5 test year coal ash basin remediation expenses are
6 approximately \$174 million. And --

7 A. So --

8 Q. -- Mr. --

9 A. I'm sorry.

10 Q. -- Mr. Moore and Mr. Garrett have said to the
11 Public Staff, those dollars are perfectly fine, there's
12 nothing wrong with any one of them.

13 Would the Public Staff accept that those
14 expenses should be brought into rates as part of the --
15 as part of the rate case that is filed in
16 April of 2021?

17 A. So, Mr. Mehta, this is where things get a
18 little bit complex. For GAAP and FERC financial
19 reporting purposes, before you consider the impact of
20 the Commission's -- or this Commission's orders for
21 regulatory accounting and ratemaking, for GAAP and FERC
22 purposes, that \$174 million for 2020 is not an expense.
23 It is simply the cash flow for settling a portion of
24 the ARO liability on the books. So characterize -- in

1 fact, I think the title says cash flow summary. It
2 doesn't say expense summary.

3 So when you start out with ARO accounting
4 without reflecting yet the impact of this Commission's
5 orders, this would not be the expense for the year.
6 The expense for the year would be a straight line
7 depreciation amount of the ARO asset, which consists of
8 an estimate of the present value of all of the
9 expenditures that the Company is forecasting to have
10 regarding the retirement of these coal ash basins.
11 What happens then is that depreciation expense gets
12 recorded as ARO depreciation expense. When they
13 actually spend the cash, that is simply recorded -- and
14 I am simplifying here, but generally, it's recorded as
15 a credit to cash, as we would call it, and a charge or
16 reduction to the ARO liability.

17 Now, when you consider the Commission's
18 deferral orders, that switches the whole thing around.
19 What the Company does, as I understand it from the
20 response to Data Request 159, is that that depreciation
21 expense that we talked about just a minute ago is
22 reversed on its regulatory accounting books for
23 purposes of accounting and ratemaking for this
24 jurisdiction, and is, in fact, recorded as a regulatory

1 asset.

2 But that entire regulatory asset is not
3 proposed by the Company to be included in rate base at
4 this time. What the Company does is they look at how
5 much cash is actually spent during the year, and they
6 move that amount from that initial regulatory asset
7 account to a regulatory asset account that they want to
8 put in rate base in this case and amortize over a
9 certain number of years.

10 So the genesis of that regulatory asset
11 account is cash that has been spent. And then they
12 want to take that cash that has been spent and amortize
13 it over a certain number of years for recovery.

14 Q. I understand --

15 A. I don't know if I need to start over because
16 I know that was a long explanation, but --

17 Q. I think I understand, and, Mr. Maness, you
18 may be perfectly right in terms of the coal ash costs
19 that are being sought for recovery in this case. I'm
20 talking about --

21 A. If I could -- if I could just add -- I'm
22 sorry, but add to the end of that answer is that, for
23 regulatory accounting purposes, therefore, when the
24 Company amortizes this pursuant to the Commission's

1 orders, that is the regulatory expense. So it starts
2 out as a deferred expense from the utility's, I'll say
3 default ARO accounting books, and then as cash is
4 spent, they convert part of that regulatory expense, or
5 that regulatory asset, to a deferred expense that they
6 then want to amortize over a certain number of years
7 and include in rate base.

8 Q. Okay. And again, Mr. Maness, I understand
9 that what you just described is how the Company is
10 seeking recovery of coal ash costs that it has incurred
11 in the period from, I think, January 1, 2018, through
12 January 31st of 2020 in this case. I'm talking about
13 next year's case.

14 A. Okay.

15 Q. In next year's case, they have actually spent
16 \$174 million, and you say that those \$174 million are
17 expenses. And why wouldn't, then, the Company be
18 entitled to include in rates that \$174 million as a
19 test year expense once Garrett and Moore have told us
20 that there's nothing wrong with any of those
21 expenditures?

22 A. Well, since we're talking about next year's
23 expense, the Company could propose that. Historically,
24 the Commission -- the Company and -- has proposed, and

1 the Commission has approved to place those cash
2 expenditures into a regulatory asset account and
3 amortize them over a certain period of time. So I
4 think it's clear that the Company could propose to do
5 that.

6 CHAIR MITCHELL: All right. Mr. Maness,
7 I'm going to interrupt you. I apologize. Someone
8 is typing sort of furiously here, and they're not
9 on mute, and so it's creating a lot of --

10 COMMISSIONER GRAY: I think it was
11 Mr. Marzo.

12 CHAIR MITCHELL: All right. Well,
13 whomever it is, please check your line and mute it.
14 Thank you. All right. Mr. Maness, Mr. Mehta, I
15 apologize. Please proceed.

16 THE WITNESS: Did you want me to proceed
17 with my answer, or does Mr. Mehta need to --

18 CHAIR MITCHELL: Let's start over just
19 for purposes of the record and so everyone can
20 follow along. Mr. Mehta, if you would, could you
21 ask your question again.

22 Q. I'll try to remember what it was. But
23 essentially, Mr. Maness, the question -- the question
24 was premised on -- we're really talking in this

1 hypothetical about not this year's rate case, or the
2 case that we're currently in, but next year's rate
3 case, in which the Company has, in fact, expended
4 \$174 million of test year expense, in your words, with
5 respect to coal ash costs.

6 And my question, I think fairly simply, was
7 why isn't the Company entitled under that circumstance,
8 particularly when Mr. Garrett and Mr. Moore have said
9 there is not a dollar's worth wrong in that
10 \$174 million? Why isn't the Company entitled to bring
11 those \$174 million of test year expense into rates at
12 the conclusion of the -- of the rate case that we've
13 hypothetically said would be filed April 1 of 2021?

14 A. So there are several levels of response to
15 that. I think, as I started my answer out, the Company
16 could certainly propose to do that. And at least
17 theoretically Commission could approve it. However,
18 that would be at odds with what the Company has
19 proposed to date to do with these expenditures, and so
20 it would be a change in what the Commission has
21 decided.

22 Now, the next thing you have to consider is
23 what would treating the expenditures in that way do to
24 what the Public Staff has proposed, because it could

1 present and potentially, at least, in contemplation of
2 62-133(b) that deals with rate -- that deals with what
3 can be in rate base, it could complicate the Public
4 Staff's assertion regarding equitable sharing. And so
5 that might create some actions on the Public Staff's
6 part that would be a little bit different.

7 Now, the other thing that would have to be
8 considered -- and I have no idea of the answer to this
9 question; it's certainly a legal matter -- is what does
10 it say about the action that the Commission has taken
11 in Dominion's recent rate case with regard to -- they
12 don't use the term equitable sharing, but with regard
13 to making a decision to exclude the unamortized
14 expenses for rate base for the purposes of setting just
15 and reasonable rates. So that would, I think, have to
16 be considered as well.

17 And then the last thing, if what I am
18 inferring would be you saying that the Company would
19 propose this, is, if you were just going to include
20 that as a test year expense, is it, in fact, the
21 reasonable ongoing level of expenses. Because, as you
22 can see looking at this work paper, those expenses
23 change over time. So would the \$174 million be the
24 appropriate amount to include on a normalized basis?

1 If you look at this worksheet, it looks like that might
2 be a little low.

3 Would the Commission, if they're simply going
4 to set this as test year expenses, would it be within
5 the -- what's permitted by 62-133, would it be
6 permitted to base its expenses on a forecast. And so
7 if it wanted to normalize expenses, you'd be looking
8 at, well, for the next five or six years, we've got
9 forecasted expenses over \$200 million. I think the
10 Public Staff would certainly look at that with great
11 uncertainty as whether that forecast could be used to
12 simply set test year expenses without some accounting
13 methodology to make sure that we're not simply setting
14 rates based on a forecast; which at least we've -- I
15 would say 99 percent of the time said was not
16 appropriate for ratemaking purposes.

17 Q. All right.

18 A. Might also be in a separate situation where
19 the expense might appear high in comparison to what you
20 might be forecasting for future years, and you'd have
21 to consider, well, what do I do in that eventuality?
22 Do I simply say, well, that's too high and some of this
23 expense is not going to be allowed to be put into
24 rates? Do I set up another type of regulatory asset?

1 So there are just so many questions about
2 that. But I think fundamentally, to answer your
3 fundamental question, the Company could propose it, and
4 then the intervenors and the Commission would have to
5 figure out what to do with that proposal.

6 Q. All right. So, Mr. Maness, I understand that
7 it's a very complicated -- complicated situation. If I
8 understood your answer correctly -- and it was a long
9 answer, and I was trying to write some notes.

10 A. I'm sorry.

11 Q. That's fine. You indicated it might
12 complicate the Public Staff's equitable sharing
13 argument that, and I understand that.

14 A. It might.

15 Q. And you indicate that it might implicate the
16 Commission's recent Dominion order, and I understand
17 that.

18 But you're not saying, Mr. Maness, are you,
19 that the Commission's Dominion order would necessarily
20 govern the result in this case; this case would be
21 decided, I assume, Mr. Maness, on the facts as the
22 Commission finds them in this case and the application
23 of law to those facts, correct?

24 A. I agree. I guess the first thing is we were

1 talking about future cases, so we would have to assume
2 something about how this case is going to turn out.
3 We'd have to assume something about how the appeal of
4 the last case is going to turn out. How any appeal
5 that might come about in this case is going to turn
6 out. So it is entirely hypothetical.

7 I think the one thing that you didn't mention
8 with regard to the Commission that I did is, of course,
9 the Commission would, and they certainly are -- have
10 the discretion to do this. They would be departing
11 from the approach that they've taken in, at this point,
12 at least four general rate cases, if I'm counting
13 correctly, going all the way back to the DENC rate case
14 prior to the most recent one.

15 Q. All right. And that's what your point was
16 with respect to the historical treatment actually that
17 the Company proposed and the Commission approved in
18 prior cases; did I capture that correctly?

19 A. Yes, sir.

20 Q. And the -- and what the Company proposed
21 is -- is in what we've been calling, I think for the
22 last few years, the Savoy letter, correct?

23 A. Well, I think it was first -- the Company
24 first stated they were going to follow that practice in

1 the Savoy letter, but then they came back later and
2 actually asked the Commission to approve that
3 treatment.

4 Q. Okay. And the Savoy letter -- I think if you
5 look at DEC Cross Exhibit 26, that is the Savoy letter,
6 correct?

7 A. Hold on one second, let me -- I got off my
8 exhibit page here. Let me get back to it.

9 (Witness peruses document.)

10 From looking at the first page, that does
11 appear to be what we term the Savoy letter.

12 MR. MEHTA: And, Madam Chair, I'd like
13 to go ahead and mark what was DEC Exhibit 26 as DEC
14 Junis/Maness Cross Examination Exhibit 4.

15 CHAIR MITCHELL: All right. Mr. Mehta,
16 the document will be marked DEC Junis/Maness Cross
17 Examination Exhibit Number 4.

18 MR. MEHTA: Thank you, Chair Mitchell.

19 (DEC Junis/Maness Cross Examination
20 Exhibit 4 was marked for
21 identification.)

22 THE WITNESS: Mr. Mehta, could I ask you
23 a quick question?

24 Q. Sure.

1 A. I neglected to write down the previous DEC
2 Exhibit 25 that was the 150 response, can you tell me,
3 just for taking my own notes, what number cross exhibit
4 that is for this panel?

5 Q. Number 3.

6 A. All right. Thank you.

7 Q. So -- and, Mr. Maness, we don't have to spend
8 a lot of time with the Savoy letter. The Commission
9 spent a lot of time with the Savoy letter in the prior
10 order.

11 But did you hear Mr. Young's testimony? It
12 seems like a very long time ago, but it probably was
13 only a few weeks.

14 A. I heard -- I heard parts of his testimony, so
15 yes, in general, I did hear a lot of his testimony.

16 Q. And he, essentially, characterized the
17 program that DEC has been on, really since the Savoy
18 letter, as one of spend, defer, and recover; do you
19 recall him saying something like that?

20 A. I don't directly recall that, but I certainly
21 will accept it, because I agree that that is the
22 program that they have been on.

23 Q. And that is the program that is actually laid
24 out in the Savoy letter, correct?

1 A. Sometimes I get a little bit mixed up between
2 what's in the Savoy letter, what's in the Commission's
3 order approving deferral, which, essentially, I guess,
4 for the most part affirmed what's in the Savoy letter,
5 and then what the Commission approved in the 1142 and
6 1146 general rate cases. I think that the approval of
7 the ratemaking treatment really didn't occur until
8 those rate cases, but I could be wrong about that. But
9 that's what we assumed would be what the Company would
10 be doing based on the Savoy letter and the Commission's
11 later approval in E-7, Sub 1110.

12 Q. Okay. Understood. And the -- and,
13 obviously, whatever the Commission did in
14 E-7, Sub 1110, which was consolidated with
15 E-7, Sub 1146, is a matter of record in the
16 Commission's order approving the deferral and approving
17 the recovery, correct?

18 A. Yes, sir.

19 Q. And the other thing you mentioned in that
20 very long answer -- very long and very complete answer,
21 I must say; thank you, Mr. Maness -- is that it's not
22 necessarily true that \$174 million is representative
23 of, sort of, normal coal ash spend, and so it's not
24 clear whether that's the correct number to be used as

1 the historical test year number; did I get that more or
2 less correct?

3 A. Generally once -- if you get past all the
4 other, sort of, obstacles and different hairpin-curve
5 turns that you might have to take in reaching that
6 point is determining what would be representative on an
7 ongoing basis, you would get to the point that you
8 would say, well, while it's historical, it might not be
9 representative.

10 Q. Okay. And the Commission actually in the
11 prior order dealt with the notion that the test year
12 expense might be historically accurate but not
13 necessarily representative; did it not? And I'm
14 looking particularly, Mr. Maness, at the bottom of
15 page 322 of the Commission's order in the prior case,
16 E-7, 1146, where the Commission is dealing with the
17 proposal made by the Company of a run rate.

18 A. That last paragraph, I can see the term run
19 rate there; is that where you're directing me?

20 Q. Yes. And let me just read it to you, and you
21 can tell me if I read it correctly.

22 "With respect to CCR remediation costs to be
23 incurred during the period rates approved in this case
24 will be in effect, the Commission determines that the,

1 quote, run rate or the, quote, ongoing compliance costs
2 mechanism advocated by DEC will not be approved. By
3 requesting the creation of an ARO in addition to the
4 run rate, DEC concedes that treating CCR expenditures
5 as a recurring test year expense is inadequate."

6 So the Commission actually agreed with
7 your -- the position you just stated with respect to
8 the adequacy of treating CCR expenses in a given year
9 as representative of what those expenses would be,
10 correct?

11 A. I agree. Now, and the Public Staff's
12 opposition to the run rate in the last case was also
13 connected to complications it might present to our
14 equitable sharing proposal.

15 Q. Yeah, understood. I'm certainly very
16 cognizant that the Public Staff is very fond of its
17 equitable proposal.

18 MR. GRANTMYRE: This is Bill Grantmyre.

19 I don't believe Mike Maness finished his answer.

20 Q. Well, I apologize, Mr. Maness. Go right
21 ahead and finish it.

22 A. As you know, Mr. Mehta, I'll never turn down
23 an opportunity to elaborate. The -- as I said, that it
24 was our assertion, our position was partly at least due

1 to a concern that it might complicate our equitable
2 sharings proposal. But I'm not saying that that's my
3 conclusion that it does. I think that would be a legal
4 matter to see if there was a complication.

5 Now, I would also say that a run rate would
6 also present challenging but not insurmountable
7 accounting and ratemaking questions from a technical
8 sense with doing equitable sharing or some sort of
9 other reduction in revenue requirements similar to what
10 the Commission has done in the Dominion case.

11 Q. All right. And, Mr. Maness, just to go back
12 to the prior order.

13 After the Commission said that, in effect,
14 DEC concedes that treating them as a recurring test
15 year expense is inadequate, it goes on to say, quote,
16 future annual costs, the evidence shows, are predicted
17 to vary substantially from year to year, correct?

18 A. Yes.

19 Q. And so the Commission says that, instead of a
20 run rate, quote, CCR remediation costs incurred by DEC
21 during the period rates approved in this case will be
22 in effect, shall be booked to an ARO that shall accrue
23 carrying costs at the approved overall cost of capital
24 approved in this case net of sum deductions, correct?

1 A. Yes.

2 Q. And those costs that DEC has incurred during
3 the, quote, period rates approved in the prior case
4 will be in effect, are the costs that are now being
5 sought for recovery, correct?

6 A. Can you -- I lost you there a little bit.

7 Q. All right. At the very top of page 323.

8 A. Yes, sir.

9 Q. So the costs that DEC incurred during the
10 period rates approved in this case, quote, unquote,
11 meaning the prior case. With me?

12 A. Yes, sir. Thank you.

13 Q. So those costs shall, according to the
14 Commission, be booked to an ARO and shall accrue
15 carrying costs at the weighted average cost of capital,
16 correct?

17 A. Yes, sir.

18 Q. And then the order goes on to say the
19 Commission will address the appropriate amortization
20 period in DEC's next general rate case, correct?

21 A. Yes.

22 Q. And the next general rate case is this case,
23 correct?

24 A. Yes, sir.

1 Q. And the Commission goes on to say, quote, and
2 unless future imprudence is established, will permit
3 earning a full return on the unamortized balance.

4 That's what the Commission said in the prior
5 case, correct?

6 A. That is what they said. Now, I'm not an
7 attorney, but it sounds a little bit like they were
8 trying to bind the Commissions to a certain decision in
9 this case. So I guess just from a layperson's
10 understanding of how things work here before the
11 Commission, I don't know that that actually is a fact.

12 Q. Well, it's a fact that they said what they
13 said?

14 A. They said what they said; yes, sir.

15 Q. The legal implication of what they said is,
16 of course, something that is a matter of law, correct?

17 A. Yes, sir. Could I point out -- could I make
18 a little tangential point with regard to --

19 Q. Mr. Maness, even if I said no, you can't, you
20 would, so why don't you go ahead.

21 A. There's something in some of the terminology
22 that I think all of us have used from time to time up
23 here that disturbs me a little bit, and that is to use
24 the term ARO or asset retirement obligation for what

1 the Commission is doing.

2 Now, the Commission is certainly free to call
3 what it is doing what it thinks is appropriate. What
4 all always bothers me a little bit is I think it can be
5 a little bit confusing because ARO is a very
6 GAAP-specific, I guess a term of art, as you would say.
7 It typically is taken to refer to how the FASB says
8 these sort of costs, these legal -- legally required
9 costs of removal should be accounted for. And so it
10 always, I think, can be a little bit confusing to use
11 that terminology for regulatory treatment.

12 And so I guess I would just -- I would like
13 it if we sort of stayed away from that in the future,
14 but I totally understand, you know, that the Commission
15 is certainly free to call its defer -- as you said,
16 spend, defer, and amortize, or recover, they can call
17 it what they wish to call it.

18 Q. All right. Just like Mr. Junis can call an
19 exceedance a violation or a violation an exceedance or
20 whatever the term is; is that right?

21 A. No.

22 Q. All right. I'll turn back to you, Mr. Junis.

23 Now, on page 37 of your testimony, you
24 indicate that you are incorporating by reference your

1 testimony and exhibits from the last rate case,
2 correct?

3 A. (Charles Junis) That's correct.

4 Q. And you indicate that the testimony and the
5 exhibits are voluminous, which they sure are.

6 A. That's correct.

7 Q. And you indicate that, basically, the
8 principal topic is the history of known environmental
9 impacts associated with coal ash, correct?

10 A. That's correct.

11 Q. And you wouldn't actually hold yourself out
12 as an expert on that topic, would you?

13 A. I mean, I'm providing expert testimony. I
14 dove very far into this. I've worked on now the past
15 two Duke cases, the Dominion case, and then these two
16 Duke cases, and I would say, you know, in my DEC
17 testimony was the first real deep dive into what was
18 known at the time and trying to put on that hat of that
19 1980s or 1970s Duke engineer decision-maker of what
20 should they have known and what should -- and what they
21 should have done based on that knowledge.

22 Q. All right. I understand. I mean, you've
23 done a whole lot of reading, and I appreciate that you
24 have done a whole lot of reading, correct?

1 A. A whole lot of reading that also has the
2 context of my engineering experience and education.
3 And so I think, just as good as anyone else, I could
4 provide substantial insights regarding this subject
5 matter.

6 Q. Tell me, Mr. Junis, what were you doing in
7 the 1980s?

8 A. That's a good question. For a very brief
9 portion of the 1980s, I was alive, so.

10 Q. Well, I guess I was not expecting that
11 answer, but thank you. That's a very candid answer.

12 When were you born?

13 A. I was born in 1989.

14 Q. And in the reading that you did, Mr. -- all
15 kidding aside, the reading that you did included, as
16 you've testified in your prefiled testimony, you cite
17 to the 1981 EPRI manual, which is Joint Exhibit 7?

18 A. Yes, sir.

19 Q. And the 1982 EPRI manual, which is Joint
20 Exhibit 8?

21 A. Yes, sir.

22 Q. And we went over those with Mr. Quarles at
23 some length the other day. It may have been Thursday
24 or Friday, I don't remember exactly which, but I last

1 week some time, correct?

2 A. Yes. And I was listening to that testimony
3 and wouldn't mind the opportunity to provide some
4 additional context to those documents also.

5 Q. Okay. And you also mentioned the 1988 EPA
6 report to Congress, and we looked at that one with both
7 Mr. Hart and Mr. Quarles last week, correct?

8 A. Yes, sir.

9 Q. And you conclude first -- and this is on
10 page 39 of your testimony, around line 17, that these
11 studies indicate that the electric generating industry
12 knew or should have known that unlined ash ponds,
13 quote, posed a serious risk to the quality of
14 surrounding groundwater and surface water, correct?

15 A. That's correct.

16 Q. And what do you mean by a serious risk?

17 A. Well, conveniently, DEC sent us a data
18 request, and we sent them back a definition. And I'd
19 just like to read that to make sure there's no
20 confusion.

21 "The Public Staff understands serious to mean
22 having important or dangerous possible consequences and
23 risk as the possibility of loss or injury."

24 So in the context of my testimony, serious

1 risk means that unlined surface impoundments presented
2 a strong possibility of degrading the quality of
3 surrounding groundwater and surface water.

4 Q. Well, when you said "having important or
5 dangerous," what do you mean by dangerous?

6 A. So dangerous would be the potential health
7 effects of exceeding these standards. Many of the 2L
8 standards are based on drinking water standards,
9 because that is the assumed best use of these
10 groundwaters, according to the 2L standard.

11 Q. Okay. All right. So you conclude further --
12 and this is on page 42 of your testimony, and I will
13 paraphrase. You just tell me if I'm being fair. That
14 DEC, being a large player in the industry, either knew
15 or should have known about these EPA and EPRI documents
16 and should have improved and modernized its practices
17 in the 1980s in accordance with that available
18 knowledge.

19 Did I essentially capture what you're trying
20 to say there?

21 A. Yes, sir. And I would just add that, you
22 know, given its prominence, DEC and DEP and their
23 historic companies basically helped set industry
24 standard. So it's kind of a cyclical defense of, well,

1 we were using the industry standard while setting the
2 industry standard. And in a number of these documents,
3 it talks about, in these late '70s, early '80s time
4 frame, a recognition of the potential risks tied to
5 unlined impoundments and that there was a national
6 trend moving away from wet to dry handling.

7 Q. Okay. And -- but DEC and DEP are not the
8 only players in the industry, correct, Mr. Junis?

9 A. Certainly not.

10 Q. And there were certainly other utilities in
11 the industry that were doing essentially exactly the
12 same thing that DEC and DEP were doing back in the
13 1980s; were they not?

14 A. Yes. However, if you look at, like, the '88
15 report to Congress, it breaks down by EPA region. And
16 region 4, which covers a significant chunk of Duke
17 Energy's portfolio, was significantly skewed towards
18 wet handling as opposed to other EPA regions.

19 Q. And that was because of the availability of
20 water resources to support wet handling; is it not,
21 Mr. Junis?

22 A. That's certainly a component, but I would not
23 say that's the lone determination.

24 Q. Mr. Junis, I guess maybe to use Mr. Hart's

1 word, you also believe that DEC should have been more
2 proactive with the knowledge that it possessed back in
3 the 1980s, correct?

4 A. I would say -- I'm sorry, I got a little
5 feedback here. But yes, my only kind of recommendation
6 of what they should have done differently is that they
7 should have performed groundwater monitoring and
8 comprehensive groundwater monitoring through an
9 iterative process. Because you cannot make any other
10 decisions without that information. That's kind of the
11 starting point that is referred to in the '81 manual,
12 the '82 EPRI manual, it's discussed about the
13 deficiency of groundwater data available to the 1988
14 report to Congress.

15 This is a repeated issue. And that's -- I
16 know you went into this with Mr. Hart, but the studies
17 at Allen, my main issue with the outcome from that is
18 Duke stopped. They got done with those studies, and
19 they stopped monitoring the groundwater there, as
20 opposed to seeing the red flags of certain exceedances
21 and then making -- drawing those conclusions and
22 extrapolating them to all their other sites.

23 Instead of recognizing, okay, for a
24 relatively low cost, we can monitor and know for a fact

1 is there or isn't there degradation of the groundwater.
2 And they chose not to. So that's my biggest problem
3 with the historic handling of coal ash.

4 Q. So, Mr. Junis, let me make sure I understand.

5 Is it your opinion that DEC should have
6 closed ash basins and shifted to dry handling of coal
7 ash, bottom coal ash as well as fly coal ash, sometime
8 in the decade of the 1980s?

9 A. Again, you cannot make that decision without
10 the underlying information. You needed groundwater
11 monitoring and comprehensive groundwater monitoring to
12 make that determination of whether there was or wasn't
13 impacts that necessitated that change, or the
14 possibility of other corrective actions to limit that
15 spread.

16 Q. So -- but, Mr. Junis, if you were actually
17 looking at it in 20/20 hindsight, you would agree that,
18 had they done what you called comprehensive groundwater
19 monitoring, they would have decided that it would be
20 prudent to switch to dry ash handling as opposed to wet
21 ash handling, correct?

22 A. Well, you never want to get into a position
23 of applying hindsight. I mean, that's a key critique
24 of this analysis, is you're supposed to provide an

1 alternative based on what was known and available at
2 the time. And so trying to go back, you needed to do
3 that assessment, that site-specific assessment, to then
4 determine the right -- the course of action. And
5 that's where you could have utilized the 1982 EPRI
6 manual on upgrading these facilities, potentially. And
7 that it was offering, you know, maybe a slurry wall was
8 the appropriate action, or extraction wells were the
9 appropriate action to help contain this potential
10 seepage and groundwater contamination.

11 Or, you know, a further choice, if those
12 didn't work, or you decided it was significant enough,
13 maybe you do shift to dry ash handling, but there's
14 certainly a trend towards that.

15 Q. And so, Mr. Junis, if the decision is made to
16 switch to dry ash handling, that would involve the
17 closure of an ash basin, correct?

18 A. That's correct.

19 Q. And how would -- Mr. Junis, how would that
20 occur back in the 1980s?

21 A. It depends on how the Company proposed to do
22 it.

23 Q. Well, if you look, Mr. Junis, at -- we'll
24 look at Joint Exhibit 7.

1 A. All right.

2 Q. Page 3-3, which if you're looking at it on a
3 PDF, is page 102.

4 A. I'm there.

5 Q. The first full paragraph on the page
6 indicates, next-to-last sentence:

7 "Site closure normally involves the placement
8 of a soil cover over the pond surface and the diversion
9 of surface water from the site," correct?

10 A. That is what it says.

11 Q. And if you look at the 1988 report to
12 Congress, Mr. Junis, and the page reference is 4-12.

13 A. All right. Give me one second while I get
14 that open. Do you know what page of the PDF that is?

15 Q. Yeah. I'm looking for it. I'll get it to
16 you in just a second. Page 151 of the PDF. It's
17 also -- if you're looking at the joint exhibit, itself,
18 it's DOCX 6516. Sorry, I'm on the wrong page. You
19 need to go to page 148 of the PDF, DOCX 6513.

20 A. Okay. One second. All right.

21 Q. And you see here the EPA drew us a picture of
22 what closed disposal pond with waste remaining looks
23 like. It's the lower of the three pictures, correct?

24 A. Yes, sir. So that is one method of closure.

1 If this closure happened back in the late '70s, or
2 early '80s, or anywhere historically, there would have
3 been less ash in those impoundments than there is
4 today.

5 Q. But they would still have -- if they closed
6 them in accordance with how the EPRI manual said is
7 normal and the EPA has said is normal, they would have
8 closed or could have closed them with the ash there
9 covered by soil, covered by a vegetative covering on
10 top of the soil, correct?

11 A. Correct. And that would eliminate that
12 hydraulic head. You're still going to -- if it's just
13 a soil cover, obviously, any precipitation is going to
14 soak in and create seepage that could mobilize those
15 contaminants. But I would say that this, while
16 typical, is still one of the options. So, for example,
17 at Allen, prior to the study, there was ash that was
18 dredged from one area and moved to another. So you
19 could have closed that impoundment, dewatered it, and
20 then moved the contents of that unlined impoundment
21 into the new lined landfill for dry ash handling.

22 Q. And, Mr. Junis, the -- what's depicted at the
23 lower, the lowest picture, the third picture on the EPA
24 report to Congress, page 4-12, is, in fact, what

1 happened with respect to the inactive basin at the
2 W. S. Lee site, correct?

3 A. You said W. S. Lee? I mean, we were talking
4 about Allen, but subject to check, that's what happened
5 at W. S. Lee.

6 Q. And for that matter, it's what happened at
7 the H. F. Lee site for Duke Energy Progress, correct?
8 Again, subject to check.

9 A. Yes.

10 Q. And today, as a result of the DEQ's orders,
11 both inactive basins are being excavated, correct?

12 A. Yes, sir. But that's where I do want to
13 emphasize what I said before, that that quantity in
14 those retired ponds is less if you had -- you had
15 retired them earlier instead of meeting the capacity.
16 If you had recognized, okay, there is a risk and there
17 is groundwater degradation. If we stop using this,
18 that quantity could have been significantly less.

19 Q. Mr. Junis, you're speaking of all this from
20 the standpoint of a utility engineer, correct? Not a
21 hydrogeologist, which you're not, correct?

22 A. That's correct.

23 Q. Okay. I just want to make sure I understand
24 where you're coming from in your testimony. And you

1 mentioned the landfill at Allen. Today, Mr. Junis, the
2 landfill at Allen is being excavated in accordance with
3 the settlement agreement between the Company and the
4 DEQ, correct?

5 A. Can you refer to that, because I was not
6 referring to the Allen landfill, I was referring to --
7 that impoundment area was broken down into areas A, B,
8 and C, and ash was moved or dredged from area B into A
9 prior to the use of area C.

10 Q. Well, all of areas A, B, and C are being
11 excavated today, or will be excavated in accordance
12 with the originally dictates of the DEQ and now the
13 settlement between the DEQ and DEC and DEP and the
14 environmental groups, correct?

15 A. Yes, sir.

16 Q. And back then in the 1980s, Mr. Junis, the
17 DEQ did not actually have any rules or regulations
18 regarding how to close an ash basin, did it?

19 A. That is correct. I will say, though, that
20 many of these documents talk about the authority to
21 make sure that there was safe practices. And so with
22 the existence of 2L, with the existence of the Clean
23 Water Act, with the existence -- at least beginning of
24 RCRA, even though they weren't included for a

1 portion -- a period of time, there were laws in place
2 to allow the regulator to make sure that this was a
3 safe practice, and a prohibition on the degradation of
4 groundwater which the Company had a duty to adhere to.

5 Q. And, in fact, Mr. Junis, isn't it true that
6 even as late at 2013, the DEQ, the agency entrusted
7 with the enforcement of the groundwater standards, had
8 not, as late as that date, come to a conclusion on how
9 to close an ash basin, had they?

10 A. That's correct that they did not provide
11 strict guidelines or instructions of how you were
12 supposed to do it, but they still had those laws to
13 have the authority to make sure that the current
14 practice was appropriate.

15 Q. And, Mr. Junis, if you'd just look at DEC
16 Exhibit 8, Cross Exhibit 8. Have you got that in front
17 of you?

18 A. Yes, I do.

19 MR. MEHTA: And, Chair Mitchell, what
20 Cross Exhibit 8 is, is an email chain from March
21 and April of 2013 with attachments. And if we
22 could mark that as DEC Junis/Maness Cross
23 Examination Exhibit Number 5, that would be great.

24 CHAIR MITCHELL: All right. Mr. Mehta,

1 the document will be marked DEC Junis/Maness Cross
2 Examination Exhibit Number 5.

3 (DEC Junis/Maness Cross Examination
4 Exhibit Number 5 was marked for
5 identification.)

6 Q. And, Mr. Junis, looking at Cross Examination
7 Exhibit Number 5, again, it's an email chain, so you
8 start at the bottom and work up, correct?

9 A. Typically, yes.

10 Q. And going from the bottom to top, we first
11 have an email from Debra Watts, who is at DEQ, correct?

12 A. Yes.

13 Q. And she's sending it to Allen Stowe, who is
14 with Duke Energy, correct?

15 A. Yes, sir.

16 Q. And she states in the first sentence of her
17 email that she's enclosing ash pond closure guidelines
18 that DEQ staff, particularly the aquifer protection
19 section, has developed over the preceding year,
20 correct?

21 A. Yes, sir.

22 Q. And she goes on to state that much of their
23 draft guidelines were based on what was previously
24 discussed with DEQ regarding Weatherspoon closure,

1 correct?

2 A. Yes, sir.

3 Q. And Weatherspoon is one of, at the time, DEP
4 Progress' retired coal-fired plants, correct?

5 A. Yes, sir.

6 Q. So sometime back in 2012, Duke Energy had
7 engaged in discussions -- at least in 2012, engaged in
8 discussions with DEQ with regard to closure of
9 Weatherspoon, correct?

10 A. Yes, sir.

11 Q. And Ms. Watts states further that she would
12 like Duke Energy's feedback on their draft guidelines,
13 correct?

14 A. Yes.

15 Q. And, in fact, the email at the top is
16 Mr. Stowe's response saying, "I have attached our
17 feedback," correct?

18 A. That's correct.

19 Q. And Ms. Watts also says that, after she's
20 received the feedback from DEC and DEP, she's going to
21 solicit feedback from the environmental groups,
22 correct?

23 A. What page are you on at this point? I'm
24 sorry.

1 Q. Still -- I guess it's still her email, so
2 it's the bottom of the first page, and it's the second
3 full paragraph.

4 A. (Witness peruses document.)

5 Okay. I see that, yes.

6 Q. And, now, when you look at the feedback, and,
7 unfortunately, when you copy these as a PDF, the -- you
8 know, all of the interlineations that you get in a
9 redline sort of disappear, but if you just go to page 3
10 of 4 of the draft guidelines, which I guess is the
11 fifth page of the PDF.

12 A. I'm there.

13 Q. Let's actually go up, page 2 of 4, so the
14 fourth page of the PDF.

15 A. Okay.

16 Q. And the -- at least the draft that was
17 presented back to the DEQ presents three closure
18 options, correct? Close in place, clean, and hybrid?

19 A. Yes, sir.

20 Q. In two of those options, the closure in place
21 and the hybrid, involve leaving ash in the pond,
22 correct?

23 A. (Witness peruses document.)

24 Yeah. So there's actually four options

1 listed. There's closure in place, clean closure,
2 hybrid closure, and then any other closure methods as
3 approved by the aquifer protection section chief that
4 must be demonstrated to be effective at protecting
5 water quality.

6 Q. But the three that are on page 3 of 4, two of
7 them involve leaving ash in the basins, correct?

8 A. Correct.

9 Q. It doesn't take a rocket scientist to
10 surmise, Mr. Junis, that the environmental groups would
11 not agree to that, would they?

12 A. I'm not going to speculate for the
13 environmental groups, but I think everyone's concern,
14 including the regulator and hopefully the Company,
15 would be that that would be safe closure. That there
16 is direct evidence, both scientific and engineering,
17 that shows that that can be protective of the
18 environment.

19 Q. Well, the position of the Sierra Club in Duke
20 Energy Progress and Duke Energy Carolinas' last rate
21 cases was leaving ash in the basins would not be
22 protective of the environment, correct?

23 A. That is my understanding, yes.

24 Q. And it certainly was their position in the

1 Office of Administrative Hearing challenge by both DEC
2 and DEP to the DEQ's order requiring full excavation of
3 all of the ash basins, correct?

4 A. Yes. Based on my understanding, I would
5 agree.

6 Q. So let's see, Mr. Junis, I guess we're in the
7 spring of 2013, so not quite a year before the Dan
8 River, and a little over a year before the passage of
9 CAMA, correct?

10 A. Will you repeat that? I'm sorry, I lost you
11 there.

12 Q. This email chain is the spring of 2013,
13 right?

14 A. Yes.

15 Q. So not quite a year before the Dan River
16 incident, and a little over a year before passage of
17 the CAMA legislation, correct?

18 A. That's correct.

19 Q. And at that point, DEQ not only had no
20 finalized set of rules regarding basin closure, but
21 also no new real prospect of achieving consensus
22 regarding finalized rules; would you agree with that?

23 A. I mean, I don't necessarily want to draw a
24 conclusion from this lone set of documents. Obviously,

1 that's docked for protection, section, but there are
2 multiple divisions within the Department of
3 Environmental Quality that would be of interest or
4 concerned about pond closure and the construction of
5 new storage units.

6 Q. But certainly the aquifer protection section
7 was in that position, correct, Mr. Junis?

8 A. Yes.

9 Q. Mr. Junis, is it any wonder that, in enacting
10 CAMA, the General Assembly undertook to tell DEQ
11 precisely how DEQ should supervise and implement the
12 closure and specify the time frame for closure of what
13 the General Assembly deemed to be high-priority sites?

14 A. Can you repeat that again? I'm not sure I
15 caught what the question is.

16 Q. My question, Mr. Junis, is, is it any wonder
17 that, in enacting CAMA, the General Assembly undertook
18 to tell DEQ precisely how DEQ should supervise and
19 implement basin closure, and specified the time frame
20 for closure of what the General Assembly deemed to be
21 high-priority sites?

22 A. Yes. The high-priority sites were determined
23 to be excavation within a relatively short period of
24 time.

1 Q. That wasn't my question, Mr. Junis.

2 My question was, is it any wonder that the
3 legislature told the DEQ how to do it in CAMA?

4 A. To make sure I understand what you're asking
5 of me, you're saying, because of this document, and
6 that they had not determined exactly how closure should
7 happen, that then that is why the legislature
8 predetermined it for their high-priority sites?

9 Q. Well, I guess my question is, this is a
10 conversation that had been going on for a long time,
11 correct? That is, how to close the basin had been
12 going on for a long time?

13 A. Yes.

14 Q. And there was no clarity about it back in the
15 1980s, correct, from the DEQ?

16 A. That's correct.

17 Q. And there was no clarity about it 30-plus
18 years later in 2013 either, was there?

19 A. While there was no strict guidance of how to
20 do it, there were regulations in place that had to be
21 adhered to. So it kind of -- the benchmark of success
22 or the goals to be accomplished were prescribed by law.
23 That you were not to degrade the groundwater or surface
24 water. And so that would probably be the guiding

1 principles when trying to determine proper closure.

2 And, obviously, the Company did close some impoundments
3 during that period of time.

4 Q. Well, which period of time are you talking
5 about, Mr. Junis?

6 A. Well, you said the '80s and '90s, and
7 obviously some of these impoundments were at least made
8 inactive or a surface cover put on.

9 Q. Okay. You're talking the W.S. Lee- and
10 H.F. Lee-type closures, correct?

11 A. Yes, sir.

12 Q. Okay. I think it was a rhetorical question,
13 and we could move on, Mr. Junis.

14 A. All right. I apologize for not understanding
15 there.

16 Q. That's perfectly fine. Mr. Junis, let's go
17 back to the 1980s. And I realize that you were not
18 born for most of it. But let's say your proactive
19 utility decided to go ahead and close the basins, or
20 decided to retrofit the ash ponds, something of -- some
21 impact like that, okay? You with me?

22 A. I understand.

23 Q. And actually, on the subject of retrofitting
24 and -- the ash ponds to line them, Mr. Junis, you know,

1 do you not, that the Sutton -- in 1984, the Sutton
2 plant built a new ash pond, correct?

3 A. Yes, that sounds correct.

4 Q. And the new ash pond was lined with a clay
5 liner, correct?

6 A. That sounds familiar. Maybe like a 1-foot
7 clay liner.

8 Q. And whatever the thickness of the liner was,
9 it was proposed and done in conjunction with the DEQ at
10 the time, correct?

11 A. Yes. And I'm trying to recall. Obviously,
12 that's a DEP site, but I recall there was even some
13 interaction with the Corps of Engineers on that site.

14 Q. So there were lots of regulators involved in
15 the selection of the clay liner for that site, correct?

16 A. I wouldn't say every party necessarily signed
17 off on that selection, but that is what resulted.

18 Q. Well, who didn't sign off? Who from the
19 regulatory community didn't sign off?

20 A. Again, this is a DEP site not subject to this
21 case, but my recollection is that the Corps of
22 Engineers expressed some concerns, but, obviously, it
23 was the duty of the North Carolina DEQ to have final
24 say in that.

1 Q. And it had final say, and it signed off,
2 right?

3 A. That's correct.

4 Q. And 30 years later, Mr. Junis, DEP is
5 required to excavate the Sutton ponds, all of them,
6 including the one that had the clay liner, correct?

7 A. That is correct.

8 Q. And, Mr. Junis, again, putting yourself back
9 in the 1980s, you know, closing ponds, converting to
10 dry ash, building landfills, installing groundwater
11 monitoring systems, all of that thing, those things
12 cost money, correct?

13 A. Those certainly do cost money.

14 Q. And if your proactive utility back in the
15 1980s had incurred those costs and then went into a
16 rate case to try to recover those costs, it's the
17 Public Staff that would be the guardian of the wallets
18 of the using and consuming public, correct?

19 A. That's correct. And the Commission is also
20 trying to balance and protect customers and the
21 Company.

22 Q. And the first thing that the Public Staff
23 would have asked that proactive utility is, "Have you
24 investigated your own ponds," correct?

1 A. I mean, I certainly think that that would be
2 a question asked if I was in that position at that
3 time. We would certainly want to know, is this a
4 reasonable and prudent business decision necessitated
5 by science and engineering evidence. You know, what is
6 the basis for that decision?

7 Q. And the answer, Mr. Junis, would have been,
8 why, yes, we, DEC, have investigated our own ponds.
9 And not only us, but a contractor contracted for by the
10 EPA, and a contractor contracted for by EPRI have
11 investigated at least the Allen ponds, correct?

12 A. All right. So are we still talking a
13 hypothetical situation or now are we talking
14 specifically about Allen?

15 Q. Well, what I'm asking you is, if the Public
16 Staff had asked the question, "Have you investigated
17 your ponds," the answer would be, "Yes, we have, Duke
18 Energy Carolinas, plus the EPA through
19 Arthur D. Little, plus EPRI," correct?

20 A. They investigated the ponds at Allen, not
21 every single Duke site.

22 Q. And the ponds at Allen were assumed, at the
23 time, to be representative of other Duke sites; were
24 they not?

1 A. That was a key assumption in the conclusions
2 made by those reports, and I think that was a faulty
3 assumption, especially given how so many documents
4 referred to as site specific analysis. Even the Duke
5 witnesses in this case, Mr. Wells, Ms. Williams, and
6 Ms. Bednarcik have all referred to, to my knowledge,
7 the site specific, the necessity of site-specific
8 analysis to determine the right course of action.

9 I will also add that the Allen study, if you
10 look at the analytical methods used for that
11 groundwater analysis, those were prefiltered samples.
12 That's actually a practice that is prohibited by the
13 CCR rule and was prohibited in the state prior to that,
14 because you are then quantifying -- and the Commission
15 is very familiar with this from discussions in the Aqua
16 rate cases. You get into soluble and insoluble, or
17 what is dissolved and suspended. And so they were
18 prefiltering out those insoluble or suspended
19 constituents, which would underquantify the total
20 concentration level of those constituents.

21 So while there were exceedances that were
22 identified in the Allen studies, those could have been
23 higher and for more constituents had the sampling been
24 done differently. And in addition, if I may.

1 Q. No, go ahead. I thought you were finished.

2 A. That's all right. The leachate testing, that
3 is a methodology to estimate. And it is very clear in
4 the Allen study that they say there has not been a
5 steady state reached for the actual leachate. And so
6 the study states that, while the current conditions are
7 approximately 80 percent groundwater and 20 percent
8 leachate, they expected that to conservatively flip to
9 80 percent leachate, 20 percent groundwater. And so
10 that means that they expected -- and they state in the
11 report, that they expected the concentrations to go up.
12 And from that, Duke stopped looking. They stopped
13 monitoring groundwater despite that conclusion within
14 the data.

15 So -- and I just want to make sure that
16 that's clear, this breakdown between 80/20 and then
17 flip-flopping. I want you to think about you have a
18 cup, and you put 20 -- or 80 percent water, it's almost
19 close to full, and then you power 20 percent coffee.
20 So it's going to tint a little bit, but it would be
21 closer to water than coffee. Now, in the reverse, if
22 it's 80 percent coffee and then you add 20 percent of
23 water, that's still going to look a lot like coffee.
24 It might have lightened it up a little bit, but that

1 would be characteristic of coffee. And that's the
2 switch here between the amount of leachate, 20 percent,
3 to then the expected being 80 percent leachate that is
4 seeping into the groundwater at the Allen site. And
5 what did Duke do in 1985 after that study? They did
6 not monitor at that site for multiple decades.

7 Q. All right. So, Mr. Junis, as -- what you've
8 just told me, essentially, is the -- looking at that
9 study from the vantage point of 2020, in which you are,
10 you have all kinds of criticisms regarding that study,
11 and I assume the EPA Arthur D. Little study, and I
12 assume the EPRI study that was done by a different
13 environmental contractor; is that correct?

14 A. So that was the culmination. The 1985 report
15 addressed that. And while the sampling, the analytical
16 methods, is some hindsight, but it was recognized in
17 the past, because the Federal Register in 1976 clearly
18 delineates between total and dissolved. And that's
19 this difference of what is mobilized or soluble and
20 insoluble. So that is not completely guilty of
21 hindsight analysis.

22 And then you could have certainly, from a
23 1985 eye, reading that report, made that conclusion
24 about the leachate. That is clear as day. There is no

1 20/20 hindsight in that analysis.

2 Q. And so, Mr. Junis, again, going back to the
3 Public Staff being the guardian of the wallets, the
4 Public Staff would have also asked DEC at that time,
5 what does the EPA think about all this, correct?

6 A. Yes. And I would say that the EPA was still
7 looking at it. The difficulty for the EPA -- and
8 Ms. Williams has some great experience and insights
9 into that -- is that they were trying to create a
10 regulatory construct that fit the entire nation. And
11 the '88 report makes it very clear that there is
12 varying practices of how to store or dispose of coal
13 ash. And that's a clear distinction.

14 I would say a landfill is more indicative of
15 disposal, while a wet impoundment is more storage,
16 because that -- there was a lot of actions necessary to
17 consider kind of the final closure of those
18 impoundments.

19 Q. And, Mr. Junis, when we look at what the EPA
20 concluded in its years-long study of coal ash in the
21 1988 report, it concluded, did it not, that the current
22 waste management practices were adequate, correct?

23 A. Can you point me to where it says that?

24 Q. If you look at page 7-11, I'll try to get you

1 the PDF page in just a moment.

2 A. Appreciate that.

3 CHAIR MITCHELL: Mr. Mehta, just for
4 purposes of the record, which document are you
5 looking at right now?

6 MR. MEHTA: Joint Exhibit 13,
7 Chair Mitchell.

8 CHAIR MITCHELL: All right. Thank you.
9 (Pause.)

10 THE WITNESS: So I believe that is
11 DOCX 6720.

12 Q. I believe that is correct. You're right.

13 A. Okay.

14 Q. And doesn't it say there:

15 "The EPA reaches a conclusion that current
16 waste management practices are adequate to protect the
17 environment?

18 A. Yes, sir. And I included all three of these
19 conclusions in my Sub 1146 testimony that I do
20 reference or incorporate by reference. I would add,
21 though, that that is based on the information they had.
22 And one of the key pieces in this document is how
23 little groundwater monitoring was occurring at the
24 sites they were surveyed. I believe it was about a

1 quarter of the impoundments and landfills -- this is
2 not just specific to impoundments -- had groundwater
3 monitoring. That is deficient. And the EPA recognized
4 that, and that's why, you know, they continue to study
5 this issue.

6 And it's interesting, this document says
7 we'll issue a determination in six months; that
8 determination didn't come out until 1993.

9 Q. And they did continue to study this issue,
10 didn't they, Mr. Junis?

11 A. Yes, sir.

12 Q. And they continued to study it up until 2015
13 when they came out with a rule on how utilities are
14 supposed to operate, correct?

15 A. Yes, sir. And even so, it's even continuing
16 to be modified, because I think the EPA was striving
17 for better. And that's one of the most concerning
18 parts of Ms. Bednarcik's testimony, I believe -- was
19 that last week? It's been so long. She stated very
20 authoritatively that, based on reviewing all of this
21 historic documentation, that if she was in a position
22 to decide, she would have done nothing different in the
23 management of coal ash over that period. I have great
24 concerns about a scientist or engineer looking back

1 over decades of time and not finding one thing that
2 could have been done better or differently.

3 I can say in my testimony I could go back,
4 that was filed this year, there is always room for
5 improvement. And that's pretty scary to conclude that
6 nothing would have been done differently.

7 Q. Well, Mr. Junis, I'm very gratified to hear
8 that the Public Staff has this attitude towards a
9 proactive utility.

10 Would you accept, Mr. Junis, that climate
11 change presents a serious risk to our environment?

12 A. I think we're getting --

13 MS. LUHR: Objection. Chair Mitchell,
14 that goes beyond the scope of Mr. Junis' testimony.

15 MR. MEHTA: Chair Mitchell, I have
16 listened time, and time, and time again to cross
17 examination that is, quote, wide open in
18 North Carolina, and I believe that any question is
19 not beyond the scope of cross examination in
20 North Carolina.

21 CHAIR MITCHELL: Well, I don't know if I
22 necessarily agree with you, Mr. Mehta, about that,
23 but I will overrule the objection and I will allow
24 it to proceed. But first, we're going to take a

1 break. We will go off the record. We will come
2 back on the record at 11:00. Thank you.

3 (At this time, a recess was taken from
4 10:46 a.m. to 11:00 a.m.)

5 CHAIR MITCHELL: All right. Let's go
6 back on the record, please. Mr. Mehta, you may
7 proceed.

8 MR. MEHTA: Thank you, Chair Mitchell.

9 MS. DOWNEY: Chair Mitchell, I'm sorry.
10 This is Dianna Downey, if I might?

11 CHAIR MITCHELL: All right. Ms. Downey,
12 you may proceed.

13 MS. DOWNEY: We had two pending motions
14 to excuse Mr. Metz and Mr. Thomas, and wanted to
15 know if there was an update on those.

16 CHAIR MITCHELL: Yes. Ms. Downey, we
17 have been working to get an order out, and to the
18 extent that it has not yet been issued, Public
19 Staff witnesses Thomas and Metz have been excused.
20 Ms. Downey, you are on mute.

21 MS. DOWNEY: In the light of that,
22 Chair Mitchell, would now be the appropriate time
23 to move their testimony into evidence, or do you
24 want me to wait?

1 CHAIR MITCHELL: You may proceed and
2 move their testimony at this time.

3 MS. DOWNEY: Than you, Chair Mitchell.
4 I would move that the second supplemental testimony
5 of Dustin R. Metz filed September 8 --

6 CHAIR MITCHELL: Actually, I'm going to
7 interrupt you, Ms. Downey. Just thinking this
8 through, let's hold your motion until the
9 conclusion of the current panel, and then after
10 we've moved in any evidence with respect to the
11 panel, then we can get to your motions for the
12 Public Staff witnesses Metz and Thomas. So please
13 help me remember that when we get to that point in
14 time.

15 MS. DOWNEY: Will do. Thank you.

16 CHAIR MITCHELL: All right. Mr. Mehta,
17 with you, please.

18 MR. MEHTA: Thank you, Chair Mitchell.

19 Q. So, Mr. Junis, when we were -- just before we
20 broke for the morning break, I asked you if Public
21 Staff accepts that climate change presents a, quote,
22 serious risk to our environment?

23 A. And I would respond to that that the Public
24 Staff hasn't taken a position on climate change, and we

1 would defer to the expertise of the environmental
2 regulator. And our role is that we seek the least-cost
3 method of compliance with environmental regulations
4 typically.

5 Q. And you would have sought the least-cost
6 method of dealing with coal ash back in the 1980s,
7 wouldn't you have?

8 A. Least-cost compliance with the environmental
9 regulations is how that was termed.

10 Q. Okay. And the compliance with environmental
11 regulations is in the purview of the DEQ, correct?

12 A. That's correct. But, obviously, that speaks
13 to the material evidence. When a utility comes in for
14 recovery of their expenditures, that the environmental
15 aspect would be part of the considerations of the
16 Commission.

17 Q. So, Mr. Junis, do you, personally, believe
18 that climate change presents a serious risk to our
19 environment?

20 MS. LUHR: Objection again,
21 Chair Mitchell. This goes beyond the scope of
22 Mr. Junis' testimony.

23 MR. MEHTA: Chair Mitchell, again, I
24 mean, without going to the extreme, cross

1 examination in North Carolina is not confined
2 necessarily to the scope of direct -- of the direct
3 testimony.

4 CHAIR MITCHELL: All right. I'm going
5 to overrule the objection, and I'm going to allow
6 Mr. Junis to answer the question.

7 THE WITNESS: All right. Mr. Mehta, do
8 you mind repeating the question?

9 Q. Do you personally believe that climate change
10 presents a serious risk to our environment?

11 A. And, Mr. Mehta, how do you define "serious
12 risk."

13 Q. The same way you do, Mr. Junis.

14 A. All right. And when you refer to climate
15 change, you're -- that's a pretty broad term, in terms
16 of the potential impacts of it; is that correct?

17 Q. Well, how do you define climate change?

18 A. I would say that's -- I would determine -- or
19 my definition would be fairly broad of climate change,
20 and, personally, I do believe that it poses a serious
21 risk.

22 Q. And one way to address that serious risk is
23 to decarbonize, correct, the generation of energy?

24 A. That is one method; yes, sir.

1 Q. So why, Mr. Junis, does the Public Staff
2 oppose the increased depreciation expense associated
3 with early retirement of DEC's remaining coal plants in
4 this case?

5 A. I would just say that that is not in my
6 testimony. You would have to refer to another Public
7 Staff witness regarding that issue.

8 A. (Michael C. Maness) May I respond, in part,
9 to Mr. Mehta's question?

10 Q. Well, Mr. Maness, you would do it whether I
11 said yes or no, so go ahead.

12 A. No, I'm asking permission of the Commission
13 and you, Mr. Mehta.

14 Q. Go ahead. We're not into restricting the
15 record in these proceeds, Mr. Maness. Please go ahead.

16 A. In the DEC case, that is an accounting issue
17 being testified to by Public Staff witness Boswell. In
18 the DEP case, it's a little bit different, it's
19 primarily an issue that's being addressed by our energy
20 division employees. So I just wanted to make that
21 clear on the record.

22 Q. Sure. But, Mr. Maness and Mr. Junis, it is
23 an issue -- it is a proposition that the Company has
24 made, early retirement of the remaining coal-fired

1 plants, that the Public Staff opposes, correct?

2 A. The public -- in the DEC case, the Public
3 Staff is opposed to imposing on ratepayers in the very
4 next few years the entire undepreciated cost of the
5 plants. It's not an argument about whether or not the
6 plants should be retired.

7 Q. But it's an argument about who should pay for
8 them and when, correct?

9 A. It's an argument that, obviously, we cannot
10 go back and charge past ratepayers for those costs.
11 It's an argument about what would -- what pattern of
12 cost recovery would result in fair and reasonable rates
13 for the customers now and going into the future.

14 Q. Okay. And, Mr. Junis, another way to
15 decarbonize is to build really large battery systems,
16 utility-scale battery systems, correct?

17 A. (Charles Junis) There are a multitude of
18 methods to help address climate change. There are some
19 questions -- and I'm speaking about this personally now
20 at this point, because that's how you framed the
21 beginning of this line of questioning -- and there
22 are -- you have to weigh the impacts of any path. So a
23 battery has its own impacts, so that's how I would
24 answer that.

1 Q. Well, you are aware, Mr. Junis, are you not,
2 that utility-scale battery systems, while they're under
3 development, have not really been tested out and shown
4 to work at that scale, correct?

5 A. I am not familiar with utility-scale battery
6 storage.

7 Q. Well, if you -- would you accept, subject to
8 check, that utility-scale batteries are a technology
9 that is available -- well, let me put it this way.

10 Batteries are a technology that is available
11 today, correct?

12 A. Can you refer to me -- to my testimony of how
13 this is related? I'm drawing a little bit of
14 difficulty in answering this line of questioning.

15 Q. Mr. Junis, I'm just asking you a question
16 based on your experience with the Public Staff, okay?

17 The Public Staff understands, does it not,
18 batteries today are an available technology that could
19 assist in the decarbonization of the generation of
20 electricity, correct?

21 A. I would say that that is a question better
22 suited for one of my colleagues in the energy division.

23 Q. Do you know or not, you personally,
24 Mr. Junis?

1 MS. LUHR: Chair Mitchell, this has been
2 asked and answered.

3 CHAIR MITCHELL: Mr. Mehta?

4 MR. MEHTA: Well, I'm not quite sure
5 that it, in fact, has been answered, which is why
6 I've asked it.

7 CHAIR MITCHELL: All right. Mr. Junis,
8 answer the question, please, sir.

9 THE WITNESS: All right. Mr. Mehta,
10 would you mind repeating the question?

11 Q. Do you, Charles Junis, or Chuck Junis, know
12 whether or not battery technology is available today to
13 assist with the decarbonization of the generation of
14 electricity?

15 A. To my knowledge -- and this is again my
16 personal knowledge, and it depends on also how you
17 define battery, because there is storage of energy in
18 different forms, be it in compressed air, compressed
19 water, in the movement of water, or in a more typical
20 battery, that that is one tool available to utilities.

21 Q. Okay. And do you know, Mr. Junis, you
22 personally, whether the battery -- and I'm really
23 talking about the latter battery that you mentioned,
24 the more, quote, typical battery.

1 Do you know whether that technology, while
2 available, has been proven out at utility scale?

3 A. I do not know that.

4 Q. Okay. Would you accept, subject to check,
5 that it has not?

6 A. Is that generally on a, you know, worldwide
7 and -- you know, at what -- when you say "utility
8 scale," are you -- there is just so many factors there
9 that I'm not sure I can agree with that.

10 Q. Okay. Well, let me try to narrow it down.

11 Would you accept, Mr. Junis, subject to
12 check, that in the United States, utility-scale battery
13 storage has not been proven out as a technology?

14 A. Subject to check, I would accept that.

15 Q. Okay. Would the Public Staff, Mr. Junis, be
16 in favor of a utility within its -- its, the Public
17 Staff's, regulatory ambit of being an early adopter of
18 utility-scale battery technology, even though that
19 technology is not proven, might not work, and would
20 probably cost more money?

21 A. Again, I believe that that question would be
22 better suited for one of my colleagues in the energy
23 division.

24 Q. You can't answer that question?

1 A. You asked me to answer that question on --
2 regarding the Public Staff's opinion, and I am not
3 comfortable making that determination. That that is
4 more suited to one of my colleagues in the energy
5 division.

6 Q. Okay.

7 MR. MEHTA: Chair Mitchell, I have no
8 further questions of this panel at this time.

9 CHAIR MITCHELL: All right. Any
10 additional cross examination for the panel?

11 (No response.)

12 CHAIR MITCHELL: All right. Redirect
13 for the panel?

14 MS. LUHR: Thank you, Chair Mitchell. I
15 have several questions for Mr. Junis.

16 REDIRECT EXAMINATION BY MS. LUHR:

17 Q. Mr. Junis, counsel for DEC asked you about
18 your comparison of the environmental compliance record
19 of Duke Energy Carolinas with that of Dominion; do you
20 recall that?

21 A. (Charles Junis) I do.

22 Q. And have you had the opportunity to refresh
23 your recollection with regard to the Public Staff's
24 investigation during the Dominion rate case?

1 A. Yes, I have.

2 Q. So let's start with the discussion you had
3 with Mr. Mehta about the Dominion complaint and consent
4 order, which he introduced as DEC Junis/Maness Cross
5 Exhibits 1 and 2.

6 A. Yes. And let me make sure I have those
7 pulled up. So those were DEC Potential Exhibits 22 and
8 23, correct?

9 Q. Yes, that's right.

10 A. All right. And --

11 Q. So --

12 A. Go ahead. I'm sorry.

13 Q. So, Mr. Junis, with regard to the seeps
14 referenced in those documents that Mr. Mehta asked you
15 about, if I can get you to turn to the consent decree,
16 which was DEC Potential Cross Exhibit 23, and if you
17 can please turn to page 3.

18 A. Yes.

19 Q. Which is page 6 of the PDF. And can I have
20 you read paragraph H?

21 A. Yes.

22 "On July 21, 2017, the Virginia Department of
23 Game and Inland Fisheries identified an area of
24 groundwater seepage along the James River shoreline

1 adjacent to defendant's Chesterfield power station, and
2 subsequently notified both DEQ and defendant of the
3 same. Defendant investigated and later determined that
4 the groundwater seepage identified by DGIS, which is
5 the Virginia Department of Game and Inland Fisheries,
6 which contained elevated concentrations of constituents
7 and was daylighting to the James River originated from
8 an existing coal pile. In addition, on May 11, 2018,
9 Dominion self-reported to DEQ its observation at low
10 tide of a small area of groundwater seepage south of
11 the coal ash impoundment at the Chesterfield power
12 station, which contained elevated concentrations of
13 constituents and was daylighting along the James River
14 shoreline, close quote.

15 I would just like to clarify that Mr. Mehta
16 asked if we were aware of said seeps in the DENC
17 investigation, and I helped Mr. Lucas with his
18 testimony. And Mr. Lucas' testimony in Docket
19 E-22, Sub 562, Exhibits 10 and 11 detail our knowledge
20 of these seeps related to the Chesterfield power plant.

21 In comparison or contrast, DEC and DEP, in
22 the joint factual statement, had identified nearly 200
23 seeps. And then, if you look at my page 44 of my
24 testimony in this case, you will see a description of

1 the SOC's, or special orders by consent, that were
2 entered into by DEC. And they paid up-front penalties
3 for -- at Cliffside -- I'm sorry. Allen, Cliffside,
4 and Marshall, they paid an up-front penalty of \$156,000
5 due to the alleged violations of seepage from five
6 deliberately constructed seeps and 16 nonconstructed
7 seeps. And then at Belews Creek and Buck, they paid an
8 up-front penalty of \$84,000 for two deliberately
9 constructed seeps and 10 nonconstructed seeps.

10 And then, in addition, the federal plea
11 agreement addresses seepage at River Bend. So the
12 records for DEC and DENC are quite different regarding
13 seeps.

14 Q. Thank you. And the seeps you just read about
15 in the consent decree, did you take those seeps into
16 account when you made your recommendation in this rate
17 case?

18 A. I did, as part of our comparison of the
19 environmental records and the determination of our
20 equitable share.

21 MS. LUHR: And, Chair Mitchell, I would
22 request at this time that judicial notice be taken
23 of the direct testimony and exhibits of
24 Jay B. Lucas filed on August 23, 2019, in Docket

1 Number E-22, Sub 562.

2 CHAIR MITCHELL: All right. Hearing no
3 objection, the Commission will take judicial notice
4 of the Lucas testimony filed in E-22, Sub 562 on
5 August 23, 2019.

6 MS. LUHR: Thank you.

7 Q. And, Mr. Junis, taking a step back, you and
8 Mr. Mehta had discussed the Public Staff's overall
9 investigation into the environmental compliance record
10 of Dominion during the Dominion rate case.

11 Can you -- can you briefly describe the
12 Public Staff's investigation?

13 A. Yes. So I want to be very clear, and when we
14 talked about this trying to be better. So you had
15 significant coal ash closure costs in the 2017 DEC and
16 DEP rate cases, and DEP was filed first in that
17 iteration. And so we progressively improved our
18 discovery. And I'm sure Ms. Morris and Mr. Robinson
19 are very aware of all of these data requests, but we
20 tried to refine that process.

21 And so we went from the Duke cases into the
22 Dominion rate case, and we used a lot of the same
23 questions. Perhaps changing, obviously, the state
24 involved and certain circumstances and the Company

1 name, but we're asking for a lot of the same
2 information. For example, regarding seeps, we sent a
3 data request asking Dominion if they had seeps of
4 unauthorized discharges or unpermitted discharges of
5 wastewater from the coal ash impoundments. They said
6 no.

7 We sent a follow-up data request that
8 actually widened the scope of the request, and again,
9 they said no. And then we followed up as an additional
10 step, which should not be necessary. We followed up
11 with the Virginia DEQ, and they informed us of the
12 seeps at Chesterfield, which were, in fact, addressed
13 to Mr. Williams, who was the environmental witness for
14 Dominion.

15 So that is the level of investigation that
16 we're doing, not only for Duke, but for Dominion also
17 regarding coal ash costs.

18 Q. Thank you. And would you describe your
19 comparison between Duke Energy Carolinas and Dominion,
20 the comparison between their two environmental
21 compliance records as being qualitative or
22 quantitative?

23 A. So it would be qualitative because of the
24 complexities and challenges of a quantitative

1 comparison. If you just looked at, well, who has more
2 exceedances or who has more seeps, and didn't look at
3 the context or weight those factors such as, you know,
4 the federal plea agreement that Duke entered into
5 regarding Dan River, regarding River Bend, that was
6 criminal negligence, so that would be weighted pretty
7 significantly. But you had to do that in a qualitative
8 manner because it is so complex. And the differences
9 of the regulatory regime in two states, and the history
10 of the sites, and the number of sites.

11 Q. Thank you. And along those lines, do you
12 recall counsel asking you whether Duke Energy Carolinas
13 had entered a guilty plea with respect to groundwater
14 violations?

15 A. Yes, I do recall that. And it -- while it is
16 not a guilty plea in the plea agreement, groundwater
17 exceedances are addressed in the joint factual
18 statement.

19 Q. And if we can just take a look at that
20 quickly, I believe the joint factual statement is in
21 the record as Hart Exhibit 3.

22 Do you have that with you, Mr. Junis?

23 A. Yes. Give me one second to pull that up.
24 And that was also incorporated by reference into my

1 testimony from the Sub 1146 case as Junis Exhibit 31
2 was the joint factual statement.

3 (Pause.)

4 Q. Just let me know when you have that.

5 A. Yes, I have it. I'm sorry.

6 Q. Okay. If you can turn to page 43, and I'm at
7 the bottom of the page looking at paragraph 138.

8 A. Yes, I have it.

9 Q. If you could, for me, begin reading about
10 halfway through the paragraph beginning with
11 "monitoring of groundwater."

12 A. Yes.

13 "Monitoring of groundwater at coal ash basins
14 owned by Duke Energy Carolinas and Duke Energy Progress
15 has shown exceedances of groundwater quality standards
16 for pollutants under and near the basins including
17 arsenic, boron, cadmium, chromium, iron, manganese,
18 nickel, nitrate, selenium, sulfate, thallium, and total
19 dissolved solids, close quote.

20 And I would just add, you know, based on my
21 understanding, not as an attorney, the joint factual
22 statement is the basis of the criminal conduct that
23 then resulted in the plea agreement. So this is all
24 the information that was agreed to by Duke -- both Duke

1 entities and the prosecutor, that this is the
2 information that is relied on for that plea.

3 Q. Thank you. And moving on, Mr. Mehta
4 presented you with a scenario regarding groundwater
5 testing at a hypothetical facility; do you recall that?

6 A. Yes, I do.

7 Q. And under this scenario, a facility would be
8 testing wells on a weekly basis except for two holidays
9 every year; is that right?

10 A. Yes. That was the hypothetical scenario.

11 Q. Okay. Do you know if DEQ typically requires
12 testing on a weekly basis?

13 A. That would not be typical.

14 Q. And do you recall counsel stating in a
15 question that exceedances are, in your terms,
16 violations?

17 A. He did say that.

18 Q. Do you know whether DEQ considers them to be
19 violations?

20 A. It is my understanding, based on the amicus
21 brief, that DEQ agrees.

22 Q. Okay. And let's just quickly refer to that
23 amicus brief, which is Public Staff Potential Redirect
24 Exhibit 31.

1 MS. LUHR: And, Chair Mitchell, let's
2 see, I'd like for Public Staff Redirect Exhibit 31
3 to be identified as Public Staff Junis/Maness
4 Redirect Exhibit Number 1.

5 CHAIR MITCHELL: All right. The
6 document will be so marked.

7 (Public Staff Junis/Maness Redirect
8 Exhibit Number 1 was marked for
9 identification.)

10 Q. Okay. And, Mr. Junis, are you -- well, let's
11 start with the document. This is an amicus brief filed
12 by DEQ on September 25, 2019, in the current appeal
13 before the North Carolina Supreme Court from the 2017
14 DEC and DEP rate cases; and are you familiar with this
15 document?

16 A. Yes. This is also Junis Exhibit 10 to my
17 testimony in this rate case.

18 Q. And can you please turn to page 7, which
19 is -- well, page 7. Let me know if you need the PDF
20 page number.

21 A. Page 7 according to the numbering at the top
22 of the page?

23 Q. Yes, the top middle of the page.

24 A. Yes, I'm there.

1 Q. Okay. And can you read for me the sentence
2 beginning with "accordingly," and it's the third
3 paragraph on the page.

4 A. Yes. Quote:

5 Accordingly, a violation occurs at a
6 permitted facility if the permitted activity causes
7 contaminate levels at or beyond the compliance boundary
8 that exceed the 2L standards. For an unpermitted
9 activity, a violation occurs if the activity results in
10 an exceedance of the 2L standard anywhere, close quote.

11 Q. Thank you. So based on DEQ's amicus brief,
12 does it appear that DEC also believes that an
13 exceedance is a violation of the 2L rules?

14 A. Yes.

15 Q. Thank you. Mr. Mehta also asked you if other
16 industry members throughout the 1980s were doing the
17 same thing as Duke Energy Carolinas with respect to
18 coal ash management; do you recall that question?

19 A. He did.

20 Q. Okay. Was Duke Energy Carolinas responsible
21 for complying with the 2L rules during that time
22 regardless of whether other industry members were doing
23 the same?

24 A. Yes. Duke was -- did have to adhere to the

1 2L standards since 1979. The degradation of
2 groundwater was prohibited.

3 Q. And I believe Mr. Mehta also asked you
4 whether you believe Duke Energy Carolinas should have
5 been more proactive in the 1980s/1990s time period.

6 A. Yes. A few times he used the term
7 "proactive" regarding a utility -- hypothetical
8 utility.

9 Q. And is that your position, that Duke Energy
10 Carolinas should have been more proactive?

11 A. It's my opinion that Duke Energy should have
12 been a responsible utility, and that it would have been
13 reasonable, based on the information available, to
14 start groundwater monitoring earlier.

15 Q. Thank you. Those are all my questions.

16 CHAIR MITCHELL: All right. Questions
17 from the Commissioners beginning with Commissioner
18 Brown-Bland.

19 COMMISSIONER BROWN-BLAND: Yes.

20 EXAMINATION BY COMMISSIONER BROWN-BLAND:

21 Q. Mr. Junis, I have a few questions, and some
22 of them are just clarifying about what's meant or
23 intended. But we'll just kind of walk through it. So,
24 Mr. Junis, you -- once again, this is the third time,

1 or maybe the fourth, that we've heard about the
2 culpability versus the not imprudence position of the
3 Public Staff.

4 Can you succinctly state what the culpability
5 is and how it's different from imprudence?

6 A. Yes. So culpability is Duke's responsibility
7 or duty to comply with environmental regulations, and
8 they have failed to do so. That is evidenced by the
9 groundwater violations; that is evidenced by the
10 violations of G.S. 143-215.1, which is the unpermitted
11 discharge of wastewater; and that is evidenced by the
12 federal plea agreement, amongst other things.

13 With that duty, you get into the complexity
14 of determining what the costs would have been incurred
15 if CAMA and the CCR rule didn't happen, or are these
16 costs exceeding what would have been the minimum
17 requirement of the CAMA or the CCR rule had there not
18 been environmental violations. And this distinction
19 and the complexity of how you recreate a record, and
20 that's the issue.

21 Typically a prudence analysis involves not
22 only a recognition that it was imprudent or
23 unreasonable to make that decision, but then you have
24 to come up with a feasible alternative. And that is

1 nearly impossible to do with the amount of time that
2 we're covering, and the lack of information that would
3 have been necessary to determine that alternative path.

4 And I think -- I think there was one more
5 point. Oh, so in the DEP rate case, we sent a data
6 request to the Company highlighting a number of periods
7 in time and asking the Company of what it would have
8 cost to do each of those actions. That information
9 included groundwater monitoring, a certain number of
10 wells; that included different forms of corrective
11 action; and that also included dry ash handling. And
12 the Company said that they were unable to do that, and
13 also referred to it as impossible.

14 So that's where our inability to do a typical
15 prudence analysis leads us to the ability of the
16 Commission, within its discretion under G.S. 133-D in
17 setting just and reasonable rates, that an equitable
18 sharing is appropriate to balance the costs between the
19 Company and ratepayers.

20 Q. So am I understanding you correctly that you
21 equate and the Public Staff equates culpability with a
22 duty?

23 A. Yes.

24 Q. And notwithstanding Duke's answer to your

1 data request and other discovery attempts, if there was
2 unlimited time and resources, do you agree that other
3 feasible alternatives could not be determined based on
4 supporting evidence?

5 A. That's correct. That you cannot materialize
6 or create this information that would have been
7 necessary to properly develop and plan an alternative
8 course of action. And then you don't know how that
9 would have been effective. So the 1982 EPRI manual
10 talks about typically corrective action is not going to
11 be one method, one shoe fits all and then the problem
12 is solved. It may take a group or system of corrective
13 actions to solve the problem. And one of those
14 solutions is always close the impoundment and create a
15 new storage unit.

16 Q. So you agree with Duke's characterization of
17 possible or impossibility regardless of time resource
18 that you might have?

19 A. Correct. Which basically eliminates a
20 long-term prudence analysis, and to quantify the cost
21 difference or cost impact of their failure to meet that
22 duty to adhere to environmental regulations.

23 Q. Now, is the use of culpability, as the Public
24 Staff uses it, a term you've seen in regulatory rules,

1 or a statute, or other jurisdiction? Where did the
2 Public Staff come to settle on the word culpability?

3 A. So I would compare culpability to
4 responsibility, duty, basically the -- or the
5 requirement to adhere, and that they have some
6 accountability for that.

7 Q. All right. On page 8 of your direct
8 testimony -- let's see if I can point you to a line.
9 So right around, say, lines 13 forward.

10 A. Uh-huh.

11 Q. Are you distinguishing there between
12 remediation and corrective costs versus the actual
13 cleaning closure removal activities relative to basins
14 and landfills?

15 A. So what we're saying there is that CAMA and
16 CCR rule kind of superseded the existing regulations.
17 And so what we're saying is there was going to be
18 corrective action required without those new
19 regulations, but now you can't delineate the costs and
20 impacts of those two different regulations because CAMA
21 and the CCR are kind of superseded. And that
22 excavation and closure kind of already addresses some
23 of those issues.

24 Q. But is it the case that, or is there a case

1 to be made that remediation goes beyond just removing
2 and -- removing coal ash and closing an impoundment or
3 landfill?

4 A. Yes --

5 Q. Is there something more?

6 A. I'm sorry.

7 Q. Go ahead.

8 A. Yes. All right. Is it all right if I
9 answer?

10 Q. Yes.

11 A. I didn't mean to cut you off. For example,
12 we were able to delineate to cost of extraction and
13 treatment at Belews Creek. That is an example of
14 remediation that would not have been required without
15 the existence of groundwater violations, because
16 otherwise, you would be extracting and treating clean
17 water. But because there are violations, it was
18 necessitated, and then it was an accelerated corrective
19 action at Belews Creek.

20 Q. Did -- do remediation and corrective
21 action-type activities, do they somehow equate with,
22 say, fines and penalties that you mentioned like on
23 page 64 of your testimony? Fines, penalties or the
24 equivalent you say there.

1 A. I'm sorry. Let me flip to that page to make
2 sure.

3 (Witness peruses document.)

4 So that would be a direct cost. So like the
5 SOC up-front penalties, that would be something that
6 should absolutely not be allowed for cost recovery.
7 But remediation and corrective action can also be, like
8 I talked about, extraction and treatment, slurry walls,
9 and functionally, again tying back to CAMA and CCR kind
10 of superseding, the excavation and closure of these
11 sites that otherwise, had you continued to use these
12 and you had these violations, other costs would have
13 been incurred.

14 And who knows, DEQ may have already required
15 the closure and excavation of these sites had they been
16 allowed to progress without the creation of CAMA and
17 the CCR rule. So it kind of took away that option in
18 delineating what that costs would have been without.

19 Q. So if there were no closure and -- closure
20 and removal at issue here, if it was more some -- you
21 know, more run-of-the-mill remediation efforts that you
22 see, oversight that DEQ does, do -- is there some
23 notion that doing the remediation, itself, is part of
24 the -- I don't mean to say the punishment, because I

1 don't think the cleanup is intended to be punishment,
2 but is it part of the (sound failure) --

3 A. I missed that last word.

4 CHAIR MITCHELL: Yeah.

5 Commissioner Brown-Bland, would you ask the
6 question again, please, ma'am?

7 Q. Is it part of the -- is the remediation and
8 the cleanup part of the enforcement, without regard to
9 whether we're talking about actually physically
10 shutting down an impoundment? If it was remediation to
11 clean up water, some effort, some running of some air,
12 whether it's extraction, whatever might be the
13 corrective action; is that part of enforcement?

14 A. I think that's part of the accountability of
15 the Company; that you created or caused this
16 degradation of the natural environment, and now you are
17 required to remediate or correct that. And that's why
18 we would likely, if it was a more traditional
19 imprudence analysis, recommend disallowance of those
20 costs, like the extraction and treatment at Belews.

21 Q. So -- and another piece of it is after
22 closure -- cap in place, or total removal, or whatever
23 it may be -- after that basin or landfill is completely
24 closed, no longer in use, but there's still

1 contamination of groundwater or surface water, there
2 would still be separate remediation efforts?

3 A. That's part of the hard part of delineating.
4 But, for example, if you look at their corrective
5 action plans the Company's filed with DEQ, like at
6 Allen, they are proposing 87 vertical extraction wells
7 and 76 clean water vertical infiltration wells. So
8 functionally, they are going to pull out the
9 contaminated water and then put back in clean water.

10 That would be a comparable cost that could be
11 subject to more traditional imprudence analysis. So
12 yes, there -- I hope I answered that question. Yes,
13 there will continue to be costs that fall into this
14 category.

15 Q. And so going back to your testimony on
16 page 8, is that part of what you -- and correct me if
17 it's not, you know, your way of seeing it, but what you
18 would deem to be unfair in that there is remediation
19 that is the responsibility of the Company that goes
20 beyond mere closing and shutting down of facilities?

21 A. Yes. And I just I hope I'm being clear that
22 some of these are not clearly delineated from the
23 requirements of CAMA and the CCR rule. And so those
24 fall into our equitable sharing and support that

1 environmental piece of that equitable share.

2 Q. All right. And on page 9, line 4, there you
3 talk about the difficulty in identifying cost of
4 corrective actions for environmental violations.

5 So you're saying it's difficult to identify
6 the costs. Is it difficult or also to identify the
7 actions?

8 A. Yes. And that's the delineating the actions.
9 Because like, for example, digging up this coal ash in
10 some of the impacted soils changes what would have been
11 the corrective action if perhaps they stayed in place
12 or if that was required through an existing regulation.
13 The CAMA and CCR are much more prescriptive, and so,
14 again, it kind of supersedes the existing regulations
15 that the Company's been shown to be out of compliance
16 with.

17 Q. Do you not know the actions that need to be
18 taken? Can those not be identified, even if you can't
19 distinguish the costs?

20 A. Well, I think part of the problem is that it
21 has changed or determined what actions are being taken.
22 And so that's where excavation eliminates perhaps a
23 string of actions that would have been taken
24 alternatively.

1 Q. That's once that has occurred, correct? Once
2 that excavation; is that what you mean? I mean, more
3 perspectively. I'm asking you about more
4 perspectively. You go in, you're developing a
5 corrective action plan; is that not something that's
6 fairly easy to identify? And there may be several
7 methods to do that, but the actions that need to be
8 taken are, in a general way at least, known?

9 A. Well, I would say to that, that had these
10 been, let's say, capped in place, the corrective
11 actions to manage that would have been different than
12 in a situation where you excavate. While there may be
13 overlap and some similarities, there is a different
14 approach. So to kind of create these cost
15 alternatives, that creates the complexity.

16 Q. So in the terms of the use of the word
17 "difficulty," there's difficulty in determining cost,
18 as I understand it, because we're going back in time?

19 A. Yes.

20 Q. And we don't know what was available in terms
21 of cost; we can't find the cost numbers now or no one
22 will provide them; we have to update the costs to
23 today's dollars; or we have to push today's dollars
24 back to yesterday's dollars, whatever that may be. So

1 there's a whole magnitude of difficulty around the
2 cost.

3 Is there equal difficulty in determining the
4 actions, or does science -- state of science then and
5 now know -- is it easier to quantify, define what
6 the -- what corrective actions are?

7 A. So yes, there is equal difficulty if not more
8 difficulty in determining the possible actions
9 because -- and that's where we talked about
10 materializing information. Because you didn't do the
11 groundwater monitoring and assessment, you didn't know
12 which would be the best methods for corrective action
13 historically. And then, even if you did implement some
14 of that corrective action, we don't know how effective
15 it would have been. Would it have required additional
16 corrective action? Would at that point, while you're
17 continuing to monitor, would you have determined that
18 closure is required, or you're going to switch to dry
19 ash handling? There's so many different possibilities
20 that that's where you get into kind of the
21 impossibility.

22 Q. All right. And also -- I think we're on
23 page 9, down around line 18, there you refer to
24 62-133(d). And realizing that you're not an attorney,

1 but this is part of your testimony, and I believe
2 Mr. Maness has brought it up as well.

3 Is it the Public Staff's position, to your
4 knowledge, that 33-D allows the Commission discretion,
5 I guess, in how it reaches the just and reasonable
6 rates?

7 A. Yes. It is within the Commission's
8 discretion to consider these material facts, and then,
9 in that determination of reasonable and just rates,
10 that equitable sharing fits that. And I'd be happy if
11 Mr. Maness has anything to add.

12 A. (Michael C. Maness) I agree with what
13 Mr. Junis has said.

14 Q. But in doing so, the Commission always has to
15 be mindful, do you agree, of any constitutional
16 requirements against unlawful taking of property; is
17 that a limitation on the Commission's discretion?

18 A. (Charles Junis) So I recall a discussion
19 about that in the motion for reconsideration, I
20 believe, by Dominion. That is certainly a
21 consideration that the Commission has to take.
22 Obviously, in our equitable sharing, it is the recovery
23 of the costs, except it is a disallowance of the return
24 on that and a certain amortization period. I just want

1 to say they're still recovering the full amount of the
2 coal ash expenditures.

3 Q. All right. Now, is your 50/50 in here, I
4 guess, in general, the Public Staff's position you
5 brought to us three or four times now is equitable --
6 you call it equitable sharing. And in this case, in
7 fact, it's proposed as equal sharing, correct, 50/50?

8 A. Correct. We believe that that is both
9 equitable, and in this case it is equal, and that has
10 been our recommendation in all four Duke Energy rate
11 cases dealing with coal ash closure costs, remediation
12 and closure costs.

13 Q. And is that 50/50, is that more -- what's the
14 basis for the 50/50? Is that more than speculative or
15 arbitrary? What supports 50/50 versus 60/40, 70/30?
16 How is the Public Staff determining that exact sharing
17 amount, and what's that based on?

18 A. Yes, ma'am. So that is a qualitative figure
19 that is based on both Mr. Maness' testimony regarding
20 the abandonment of nuclear plants, and the cleanup
21 remediation of manufactured gas plants that
22 historically this Commission has done a sharing. So
23 there's a baseline based on the magnitude of the cost
24 in Mr. Maness' testimony, and then we are adding a

1 piece to that regarding this environmental culpability
2 for their noncompliance. And that's how we get to the
3 50/50.

4 And then with the difference of the
5 environmental records of the Companies, you see this
6 shift, and in Dominion we recommended a 40/60.

7 A. (Michael C. Maness) Commissioner
8 Brown-Bland, would it be all right if I added a little
9 bit to --

10 Q. Yes, I was going to ask you to, so right on
11 time.

12 A. Well, it seems that from -- and I can't
13 remember if it was the DEP or DEC order in the last two
14 rate cases, but there seemed to be a misunderstanding
15 perhaps of my testimony. I clearly -- and I think my
16 testimony on close reading reflects this, equitable
17 definitely does not mean equal. And I have tried to
18 reiterate that point in the Dominion and in these two
19 current rate cases.

20 In fact, if you look back in the history of
21 the Commission orders dealing the nuclear costs,
22 abandonment costs, there have been many references to
23 the Commission's decision in those cases being
24 equitable or to equitably share. And in those cases,

1 it referred and used the 10-year amortization with no
2 return on rate base, which in those days, with those
3 rates of return, was somewhere in the neighborhood of a
4 30 percent sharing to the -- being imposed upon the
5 shareholders.

6 So it can differ from case to case, depending
7 on the nature of the facts and circumstances in each
8 case, and it is -- it is a judgment. It is not
9 something that can be defined by a mathematical
10 formula. It is, by necessity, a qualitative judgment,
11 but it's one that the Commission has used many times in
12 the past.

13 Q. And so when you say there's a judgment that
14 both you and Mr. Junis -- I hear in there that there's,
15 you know, subjectivity, that there's some objectivity
16 based on some calculations and what's at stake, and
17 then on top of that there's some subjectivity applied
18 based on behaviors, actions coming, whatever it may be;
19 is that accurate, and do you have something else to
20 fill it out with?

21 A. Well, I think we also look at it in the
22 context of history. What has the Commission done
23 historically when it has approved its sharing, even
24 when there's been no evidence of wrongdoing or

1 culpability, such as with some of those nuclear cases
2 and a couple of other nonnuclear cases? And saying --
3 and sort of looking that as a qualitative baseline.

4 You know, what do you do, then, when you have a case
5 like this in which we believe culpability is present.

6 In the end, though, it is a judgment. Using
7 the word subjective, I don't want to make it appear
8 that it's an arbitrary judgment, but it is a
9 qualitative judgment.

10 Q. And so qualitative is the way of saying
11 there's not a hard and fast way to know to settle on
12 the exact proportion of sharing; is that accurate?

13 A. (Charles Junis) Yes.

14 A. (Michael C. Maness) Yes. Not in a
15 mathematical or -- I use the word quantitative way.

16 Q. All right. So, Mr. Junis, on page 12,
17 line 19, there you reference past management of coal
18 ash, and I would take that to mean past decisions and
19 past activities taken, has resulted in risk of future
20 contamination. I take it that addresses the ongoing
21 nature, the contamination continues?

22 A. (Charles Junis) Yes. And so that -- that
23 sentence is regarding the framework. And so the
24 Company's actions and omissions of actions resulted in

1 a regulatory environment that the EPA and
2 North Carolina addressed. That they created this risk,
3 and the contamination could continue to spread. And so
4 one way to fix that is excavation and then corrective
5 action.

6 Q. So today, are there new and discrete
7 instances of contamination, would you say, as opposed
8 to past contamination?

9 A. Yes. The -- until there is clean closure,
10 there will be the continued risk of the spread of
11 contamination. And I think that speaks to partially
12 why the legislature required alternative water sources.
13 That there was this untenable risk to surrounding
14 neighbors' water quality.

15 Q. And you indicated risk, but I guess my
16 question is, to your knowledge, are there actual new
17 instances of contamination that occurs today, or you
18 would not -- or you would consider it past
19 contamination, or is it new contamination?

20 A. So at certain sites where ash is still in the
21 impoundments, there continues to be seepage and the
22 spread of, I would say, new contamination. If the
23 plume grows, I would say that growth is new
24 contamination.

1 Q. So contamination is not all historical?

2 A. That's correct.

3 Q. All right. On -- and on page 13 there, you
4 talk about traditional imprudence leads to 100 percent
5 disallowance of cost.

6 Is that 100 percent disallowance for
7 instances? In other words, in this situation we have,
8 you know, a global big picture of coal ash handling
9 activities; could it be that there are instances within
10 that? Is that what you mean when you say 100 percent
11 disallowance?

12 A. Yes. Discrete disallowances of cost.

13 Q. So traditional imprudence would not require
14 that all the global costs be disallowed?

15 A. Correct.

16 Q. So if you found discrete instances that you
17 could address and show imprudence, it would be
18 100 percent of that discrete piece that would be
19 disallowed? But other portions of remedial cleanup and
20 those kinds of things, if they weren't found to be
21 imprudent, they would still be allowed; is that
22 correct?

23 A. Correct. And I think this is more catered to
24 just the big picture view of the complexity of

1 identifying the costs and actions and the potential
2 alternatives. And so we're saying, we didn't have that
3 opportunity to make the imprudence adjustment on a
4 significant portion of these costs. And so that's
5 what -- where we've then relied on the equitable
6 sharing.

7 Q. All right. And on page 66 of your testimony,
8 somewhere on there you refer to surface water
9 discharges as violations.

10 And my question is, when you say that, are
11 you referring to specific discharges that are -- that
12 have been discussed somewhere else in your testimony or
13 in your incorporated testimony, or are you referring to
14 something else?

15 A. So you're referring to the sentence that
16 starts on line 4 of page 66:

17 "For example, there are violations of NC Gen
18 Stat 143-214.1"?

19 Q. Yes.

20 A. Okay. Those would be seeps, specifically.
21 So those are the engineered, deliberately constructed
22 seeps, those are the nonconstructed seeps, those are
23 surface discharges, unpermitted surface discharges of
24 coal ash wastewater.

1 Q. And those that relate to surface water, you
2 know, as opposed to speaking to groundwater, those are
3 in your testimony or in the record?

4 A. Yes. And then you have the complexity, which
5 might have insinuated intentionally or unintentionally,
6 the Hawaii case before the Supreme Court dealing with
7 seepage into the groundwater that then reaches surface
8 water. That is not accounted for in our testimony,
9 because that was still a very, lack of better words,
10 fluid situation.

11 Q. And back for a minute to the concept of
12 imprudence. So cost of cleaning and remediation, the
13 actual activities necessary to do that, the cost
14 associated with it could be reasonable in that not a
15 single cent spent was improper or unnecessary to do the
16 job, correct?

17 A. Correct. So I would say the Belews Creek
18 extraction treatment was necessary to correct that
19 groundwater contamination, and they appropriately
20 incurred that cost; but it was imprudent from the very
21 beginning to have created a situation where that was
22 necessary, that remediation.

23 Q. All right. So imprudence is about both the
24 cost and the actions or the decisions?

1 A. Yes.

2 Q. One could be prudent, but the other
3 imprudent?

4 A. That's correct.

5 Q. They don't have to be the same?

6 A. I agree.

7 Q. Okay. Mr. Maness, on page 18 of your
8 testimony there, you use a phrase "speculative to some
9 degree."

10 A. (Michael C. Maness) Hold on, let me -- if I
11 can pull that up, hold on just a second.

12 Q. Sure.

13 A. (Witness peruses document.)

14 Yes, I see.

15 Q. Does that imply or do you mean to imply that
16 there is some degree to which -- to which some are not
17 speculative?

18 A. I actually there am just referring to what
19 Mr. Junis testifies to. Mr. Junis also testifies that
20 it's very difficult to quantify the costs for such
21 actions as the costs of taking an alternative course of
22 action in the past would be speculative to some degree.
23 And I don't know if I was directly quoting a word from
24 his testimony or just paraphrasing, but it was meant to

1 convey the meaning of Mr. Junis' testimony as to when
2 equitable sharing would be the path to take.

3 Q. I believe, and Mr. Junis can correct me if
4 I'm wrong, but I believe, in general, his testimony was
5 said more conjecture, as I said, more global. So I
6 think he used phrases sort of more along the lines of
7 100 percent, or impossible to quantify, or more
8 speculative. And so I'm asking you, I guess, was this
9 a full (sound failure) --

10 A. I'm sorry. Commissioner Brown-Bland is
11 frozen on my computer.

12 CHAIR MITCHELL: Commissioner
13 Brown-Bland is having connectivity issue at the
14 moment. Let's give her a few seconds. It may
15 resolve itself.

16 (Pause.)

17 CHAIR MITCHELL: All right.
18 Commissioner Brown-Bland, are you back? Can you
19 hear us?

20 (No response.)

21 CHAIR MITCHELL: Okay. At this point in
22 time, let's proceed with Commissioner Gray,
23 questions from you.

24 COMMISSIONER GRAY: No questions at this

1 time. Thank you.

2 CHAIR MITCHELL: All right. Thank you,
3 sir.

4 Commissioner Clodfelter?

5 COMMISSIONER CLODFELTER: I do not have
6 questions for the panel.

7 CHAIR MITCHELL: Okay.

8 MS. LUHR: Chair Mitchell, I apologize
9 for interrupting. It appears that Mr. Grantmyre
10 had some redirect questions for Mr. Maness but was
11 having some technical difficulties and was unable
12 to alert you at the time. Would it be acceptable
13 for him to ask those redirect questions now or at a
14 later time?

15 CHAIR MITCHELL: All right. We now have
16 Commissioner Brown-Bland back, so let's let her
17 finish her with her questions.

18 COMMISSIONER BROWN-BLAND: All right.
19 I'm just about at the end.

20 Q. So I was asking, Mr. Maness, is there some
21 degree there of indication that there's something built
22 in that's not so speculative?

23 A. Into equitable sharing or just in general?

24 Q. Just in general as to your testimony there at

1 the bottom of page 18.

2 A. Well, I think the implication is, you know,
3 there have been specific adjustments recommended in the
4 case to be disallowed from Mr. Garrett, Mr. Moore and
5 Mr. Junis. And so those would not be speculative.
6 So -- but the speculative here is meant to refer to the
7 difficulty to quantify costs to the extent that we
8 don't believe that the evidence can be generated to
9 determine a specific dollar amount prudence
10 disallowance. And therefore, it goes into -- I guess
11 in terminology we typically use, into the equitable
12 sharing bucket where we believe there's some
13 culpability but we can't identify the evidence to
14 generate a specific dollar amount for a prudence
15 disallowance.

16 Q. And on page 25 of your testimony, you
17 indicate there -- let me see if I have a line number.
18 Line up at the top, 1 through 4, you say it is your
19 understanding that equitable sharing of prudently
20 incurred utility costs has been ruled to be lawful in
21 past cases. I point you there to your use of the word
22 "prudently."

23 Does that indicate that you still need to
24 make some determination of prudence in order to

1 determine what costs can be shared?

2 A. Yes. And I think I would point to the
3 nuclear abandonment cases. And I can't recall in every
4 one of those cases. I know that, for example, in the
5 Harris unit 1 case, E-2, Sub 537, the Public Staff and
6 its consultants made assertions of imprudence that the
7 Commission eventually chose to share between the
8 customers rather than talking about the whole amount
9 being imprudent.

10 But in the earlier cases, there are several
11 cases where at least the Public Staff and the
12 Commission did not make allegations of imprudently
13 incurred costs, but instead said that those costs
14 should be equitably shared between the customers and
15 the stockholders of Duke CP&L at that time, or Virginia
16 Electric and Power Company. We would say -- and the
17 Commission's orders would reflect that the use, for
18 example, in those cases of the 10-year amortization
19 with no inclusion in rate base of the unamortized
20 balance would more equitably share the burden of those
21 costs between the ratepayers and the shareholders. So
22 that existed without any finding of imprudence on the
23 part of the companies.

24 Q. If the record supported some showing of

1 imprudence, and those costs could be pinned down in a
2 way that went beyond speculation, would it be, under
3 equitable sharing, that those imprudent portions of
4 cost, discrete items or what have you, would be pulled
5 out first before you would even look at the equitable
6 sharing --

7 A. Yes.

8 Q. -- what would be equitably shared?

9 A. Yes. And that, in fact, is our proposal, our
10 recommendation in this case, that the imprudence
11 adjustments recommended by other Public Staff witnesses
12 be removed from the balance and disallowed in their
13 entirety, and then the remainder be equitably shared.

14 Q. All right. That's all my questions.

15 CHAIR MITCHELL: All right.

16 Mr. Grantmyre, you may proceed with your redirect.

17 MR. GRANTMYRE: Yes, on redirect --

18 MR. MEHTA: Chair Mitchell, before we
19 get there, I believe that the proper procedure is
20 for the Public Staff to get all of its redirect
21 questions out and then we go to Commission's
22 questions. And I can certainly appreciate that
23 somebody can have technical difficulties, but
24 there's lots of people on the Public Staff that

1 could have drawn this to the Commission's intention
2 much earlier than right now. And I believe it's
3 improper for Mr. Grantmyre, having heard a whole
4 bunch of questions from Commissioner Brown-Bland,
5 to now go into redirect.

6 CHAIR MITCHELL: All right. Mr. Mehta,
7 I hear your objection. I'm going to allow
8 Mr. Grantmyre to proceed nevertheless.
9 Mr. Grantmyre, please -- going forward -- this goes
10 for all counsel. Going forward, given that we are
11 connected remotely and there are connectivity
12 issues from time to time here, if it is your turn
13 to present during the course of the proceeding and
14 you are unable to because you are not connected,
15 you must take action to alert me to that fact,
16 whether through co-counsel or waving your hands
17 around wildly so I can see you or some other
18 manner.

19 But, Mr. Grantmyre, we are going to
20 allow you to proceed here, and I would ask that you
21 please make efficient use of this time.

22 MR. GRANTMYRE: Yes.

23 REDIRECT EXAMINATION BY MR. GRANTMYRE:

24 Q. This is to Mr. Maness. You were asked also

1 by Commissioner Brown-Bland and how the 50/50 split was
2 devised. And in your direct testimony --

3 CHAIR MITCHELL: Mr. Grantmyre, I'm
4 going to interrupt you here. We are on redirect --
5 I'm allowing you to proceed with redirect
6 examinations, not questions --

7 MR. GRANTMYRE: Okay. Mr. Mehta also
8 asked this same question, how did they arrive at
9 50/50, so I'll go on redirect.

10 Q. Did you say in your testimony one is the
11 large amount of the coal ash costs they're trying to
12 recover?

13 MR. MEHTA: Objection. Leading.

14 CHAIR MITCHELL: Restate the question,
15 please.

16 Q. Did you or did you not refer to the large
17 amount of coal ash cost?

18 MR. MEHTA: Objection.

19 CHAIR MITCHELL: Basis for the
20 objection?

21 MR. MEHTA: Well, "did you or did you
22 not" is basically leading, Chair Mitchell.

23 CHAIR MITCHELL: All right.

24 Mr. Grantmyre, let's restate the question, please.

1 Ask it in a nonleading way.

2 Q. What were the other factors that you pointed
3 out in your direct testimony that contributed to the
4 50/50 split?

5 A. (Michael C. Maness) In addition to the
6 position of Mr. Junis regarding culpability, we talked
7 about -- I talked about the -- in general, there's a
8 history of approval of sharing for extremely large
9 costs that do not result in any new generation of
10 electricity for others. And that even if the reasons
11 for equitable sharing set forth by Mr. Junis were not
12 present, the Public Staff still believes that some
13 level of sharing, perhaps comparable to that previously
14 used for abandonment losses, uncanceled nuclear
15 generation facilities, would be appropriate and
16 reasonable for DEC's coal ash costs.

17 Q. Can you --

18 A. And one of the reasons for that -- I'm sorry?

19 Q. Go ahead.

20 A. The total amount of costs is extraordinarily
21 large, and this is referring to my original testimony,
22 so the balances have changed somewhat since then. But
23 the total amount of costs that were incurred during the
24 January 2018 through January 2020 period were

1 approximately \$330 million a system basis.

2 North Carolina retail amount that the Public Staff is
3 presenting, or the Company is presenting for
4 amortization was approximately \$243 million, which
5 would be about \$104 per North Carolina retail customer.

6 So even without -- even without the removal
7 of the unamortized amount from rate base, I would think
8 that a five-year period would be much too short for an
9 expense of this magnitude.

10 We also have to consider the fact that this
11 is just a small piece of the pie, so to speak, the
12 Company will most likely be asking for. In the next
13 few years we'll talking about billions of dollars that
14 most likely will come up in future rate cases related
15 to coal ash sharing.

16 Additionally, you have to keep in mind that
17 the incurrence of these costs is not really providing
18 any additional benefits to customers in terms of
19 additional electric service or improvements of service.
20 You also have to consider that these costs --
21 incurrence of these costs has not been the result of an
22 economic analysis that pointed toward an action that
23 will be economically advantageous to the ratepayers.

24 And finally we have to take into effect that

1 equitable sharing helps mitigate the intergenerational
2 inequity of present and future customers paying for
3 costs that, to the extent you can say that they were
4 the result of, at least you can say they were related
5 to service to customers in past decades. And it would
6 just not be fair to impose all of those costs on
7 present and future customers.

8 Q. Also, what, if anything, did you say in your
9 direct testimony about coal ash costs being used and
10 useful?

11 A. Well, the coal ash costs we're talking about
12 here, as I've testified previously, they're expenses,
13 and they're not property that would be used and useful
14 under 62-133(b). They're costs related to service that
15 was provided in the past. And for that reason, they
16 should be widely regarded as expenses related to past
17 service, and not in any way assets related to future
18 service to the customers.

19 Q. Now, you were asked about the Sub 142 Duke
20 Carolinas case, and if I were to summarize your
21 testimony, you respectfully disagreed with the
22 Commission's decision; is that correct?

23 A. The 1146 rate case?

24 Q. Yes, Duke Carolinas.

1 A. Yes, I did.

2 Q. And would it be fair to say that you agree
3 with -- that the Commission got it right in the
4 Dominion case, as far as the end result not necessarily
5 deciding on equitable sharing?

6 A. Well, I think that, personally, I was pleased
7 that the Commission did decide, in that case, that it
8 was within its discretion to exclude the unamortized
9 balance from rate base and not allow it to earn a
10 return. Of course, we believed that the amount of
11 sharing as an end result should have been higher in
12 that case, that it should have been 40 percent. I
13 think the Commission's order, in effect, shared about
14 26 percent with the shareholders.

15 But I would say that I was pleased that they
16 did deduct -- find it within their discretion to deduct
17 that amount from rate base and did, in fact, take that
18 action.

19 Q. Thank you. I have no further redirect.

20 CHAIR MITCHELL: All right. At this
21 point we've come to our lunch break. We will go
22 off the record. We will go back onto the record at
23 1:30.

24 (The hearing was adjourned at 12:21 p.m.)

1 and set to reconvene at 1:30 p.m. on
2 Monday, September 14, 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 16th day of September, 2020.



JOANN BUNZE, RPR

Notary Public #200707300112

