

ERRATA

To: Kimberley A. Campbell, Chief Clerk
From: Kim Mitchell, Court Reporter
CC:
Date: September 25, 2020
Re: Duke Energy Carolinas, LLC
Docket Number E-7, Sub 1214, Volume 21 and Volume 22

This is to correct transcript pages in the following volumes:

Volume 21:

Page 21, line 12 - "isn't" should be "is"

Page 23, line 8 - "for a three" should be "403"

Page 67, line 1 - "docked for protection, section" should be "the aquifer protection section"

Page 74, line 19 - "power" should be "pour"

Page 92, line 11 - "River Bend" should be "Riverbend"

Page 95, line 5 - "River Bend" should be "Riverbend"

Page 110, lines 3 and 4 - "perspectively" should be "prospectively"

Volume 22:

Page 40, line 13 - "unequitable" should be "an equitable"

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 is, 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 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 403 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 that's the aquifer protection section, but there are
2 multiple divisions within the Department of Environmental
3 Quality that would be of interest or concerned about pond
4 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. 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 pour 20 percent coffee. So
20 it's going to tint a little bit, but it would be closer
21 to water than coffee. Now, in the reverse, if it's 80
22 percent coffee and then you add 20 percent of water,
23 that's still going to look a lot like coffee. It might
24 have lightened it up a little bit, but that

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 Belows 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 Riverbend. So the records
12 for DEC and DENC are quite different regarding seeps.

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

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

19
20
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 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 Riverbend, 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 Q. That's once that has occurred, correct? Once
2 that excavation; is that what you mean? I mean, more
3 prospectively. I'm asking you about more
4 prospectively. 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 known or reasonably should have been known, and what
2 actions they might have failed to have taken, you know,
3 in terms of environmental measures to mitigate things
4 somewhere many, many decades ago? That's it.

5 A. (Charles Junis) Mr. Maness, do you want to
6 start or me?

7 A. (Michael C. Maness) Well, I was going to
8 say, if you're specifically talking about culpability,
9 it probably does start with you. If we're talking more
10 generally about sharing, it would probably start with
11 those cases in the early '80s, in 1983 forward where
12 the Commission first, to my knowledge, started discussing
13 an equitable sharing of those abandonment costs. Those
14 did not involve the concept of culpability.

15 A. (Charles Junis) And, Commissioner McKissick, if
16 I understand, your question is geared towards culpability;
17 is that correct?

18 Q. Correct. Because I gather here there has
19 been discussion about there being culpability, that
20 Duke did not intervene at an appropriate time knowing that
21 information was out there in dealing with the impoundment
22 facilities for coal ash, and that they did not take
23 appropriate measures. There were the
24