

1 PLACE: Held Via Videoconference  
2 DATE: Friday, September 18, 2020  
3 TIME: 9:30 A.M. - 11:13 A.M.  
4 DOCKET NO.: E-7, Sub 1214  
5 E-7, Sub 1213  
6 E-7, Sub 1187  
7 BEFORE: Chair Charlotte A. Mitchell, Presiding  
8 Commissioner ToNola D. Brown-Bland  
9 Commissioner Daniel G. Clodfelter  
10 Commissioner Lyons Gray  
11 Commissioner Kimberly W. Duffley  
12 Commissioner Jeffrey A. Hughes  
13 Commissioner Floyd B. McKissick, Jr.  
14

15 IN THE MATTER OF:  
16 DOCKET NO. E-7, SUB 1214  
17 In the Matter of  
18 Application by Duke Energy Carolinas, LLC,  
19 for Adjustment of Rates and Charges Applicable to  
20 Electric Utility Service in North Carolina  
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DOCKET NO. E-7, SUB 1213

In the Matter of

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

DOCKET NO. E-7, SUB 1187

In the Matter of

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

VOLUME 29

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T A B L E O F C O N T E N T S  
E X A M I N A T I O N S

PAGE

PANEL Cont'd.

MARCIA E. WILLIAMS, JAMES WELLS

Continued Examination by Commissioner Brown-Bland.....15

Examination by Commissioner Clodfelter.....32

Examination by Commissioner Duffley.....36

Examination by Commissioner Hughes.....44

Examination by Commissioner McKissick.....54

Further Examination by Commissioner Brown-Bland.....69

Examination by Ms. Luhr.....76

1  
2  
3  
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E X H I B I T S

IDENTIFIED/ADMITTED

Wells Rebuttal Exhibits 1-2.....--/79

Williams Rebuttal Exhibit 1.....--/79

AGO Wells/Williams Rebuttal Cross

Examination Exhibit Numbers 1-2.....--/80

Public Staff Wells/Williams Rebuttal

Cross Examination Exhibits 1-6.....--/80

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

2 CHAIR MITCHELL: All right. Good morning,  
3 everyone. It's 9:30. Let's go on the record, please.  
4 Before we resume with questions from Commissioners for  
5 the Duke witness panel, I will ask if there are any  
6 preliminary procedural matters or other housekeeping  
7 issues for my attention this morning?

8 (No response.)

9 CHAIR MITCHELL: Anything from you, Mr.  
10 Robinson?

11 MR. ROBINSON: Not today, Chair Mitchell.

12 CHAIR MITCHELL: Okay. Sounds good. All  
13 right. Well, before we get started, I do have a request  
14 to Duke for some late-filed information. This is coming  
15 from Commission Staff, so I'm going to read the request  
16 so that I don't -- so that I get it right. All right.  
17 So we would like for the Company to provide in a late-  
18 filed exhibit the total annual revenue requirement  
19 requested by DEC in this proceeding related to the  
20 recovery of the deferred CCR costs allowed by the  
21 Commission in Docket Number E-7, Sub 1146. And in that  
22 late-filed exhibit it would be helpful to us if you would  
23 provide citations to DEC's testimony and exhibits in this  
24 proceeding showing the calculation of this total annual

1 revenue requirement and include the total North Carolina  
2 retail amount of deferred CCR costs allowed in Sub 1146,  
3 the amount of the annual amortization for those costs,  
4 and the amount of the return on the unamortized balance  
5 of those costs, and if necessary and to the extent  
6 applicable, the amount of any other component of the  
7 costs included in the determination of that total  
8 requested revenue requirement.

9 All right. Additionally, our Staff would like  
10 to know what total annual revenue requirement requested  
11 by the Company in this proceeding is related to the  
12 recovery of the deferred CCR costs incurred from January  
13 1st, 2018, through January 31st, 2020. Please provide  
14 the same information showing the calculation of this  
15 total annual revenue requirement, as I previously  
16 requested for the Sub 1146 revenue requirement.

17 And sort of as an additional piece of  
18 information, please provide the total North Carolina  
19 retail amount of deferred CCR costs incurred from January  
20 1st, 2018, through January 31st, 2020, as most recently  
21 updated.

22 All right. With that, unless there are any  
23 matters for my attention, we will proceed with  
24 Commissioner Brown-Bland. All right. Commissioner

1 Brown-Bland, you may proceed.

2 COMMISSIONER BROWN-BLAND: Thank you, Chair  
3 Mitchell.

4 MARCIA E. WILLIAMS and

5 JAMES WELLS: Having been previously affirmed,  
6 Testified as follows:

7 CONTINUED EXAMINATION BY COMMISSIONER BROWN-BLAND:

8 Q Good morning, Ms. Williams. I was just about  
9 to ask you a question when we stopped yesterday.

10 A (Williams) Good morning, Commissioner.

11 Q And I apologize. I guess you're up and ready  
12 over there at 6:30. My first question was in your  
13 testimony on page 54, after you spoke about regulatory  
14 uncertainty as a basis for waiting before taking action  
15 with regard to the Company's CCRs, you had a statement  
16 there -- in my copy it's down near the bottom of that  
17 page, but it says "Closing or upgrading an ash basin  
18 before issuance of the final requirements could easily  
19 lead to actions that would, a relatively short time later  
20 when the rules were finalized, be either insufficiently  
21 rigorous or overly stringent. In either case, this could  
22 lead to expenditures that would be imprudent absent a  
23 situation where environmental damage would occur or be  
24 exacerbated if the ash pond was not upgraded or closed

1 prior to the deadlines in the final CAMA CCR Rule."

2           There, are you taking the position that DEC  
3 acted prudently if it made no change in the manner in  
4 which it disposed of its CCRs unless such a change was  
5 required by statute, regulation, or an Agency directive  
6 from a regulatory agency having jurisdiction?

7           A     No. That wasn't my position. My position was  
8 that if there was an environmental issue that was  
9 understood at the time, that the Company, to be prudently  
10 behaving, would need to take some kind of action. But in  
11 the absence of either a regulatory requirement or an  
12 environmental issue that was understood, then I believe  
13 it was prudent to wait because the uncertainty that was  
14 put into play by the 2010 EPA proposed rule was quite  
15 extreme, and the three choices that were discussed in  
16 that rule in terms of where EPA might finalize the  
17 requirements were order -- at least well over an order of  
18 magnitude of cost differences. And EPA was clearly still  
19 trying to evaluate all the comments that it was receiving  
20 from all the parties and complete its risk work to decide  
21 what at least the Agency felt was necessary to be  
22 protective of health and the environment as a generalized  
23 standard.

24           So in answer directly to your question, I

1 believe that if there was an environmental issue that was  
2 -- they were aware of, for example, an exposure to  
3 somebody's drinking water well, they needed to move to  
4 address that, but I think, as Mr. Wells was explaining,  
5 they had been doing that throughout the period of time  
6 after the proposed rule. So given that they addressed  
7 environmental issues that were known in terms of risks, I  
8 think it was very prudent for them to wait for this rule  
9 to finalize.

10 Q So you -- but you are saying, then, that if  
11 there was a situation where there -- environmental damage  
12 would occur or be exacerbated by waiting, then earlier  
13 spending or taking action could have been prudent?

14 A Well, I think the starting point would have  
15 been to have continued to try and identify if such a  
16 situation existed, which in my review of the Company's  
17 activities in that time frame they were doing, and then  
18 to work with DEQ to figure out what kind of an action was  
19 appropriate.

20 Given the complexity of doing -- of selecting  
21 appropriate remedial measures, the appropriate action may  
22 have been additional groundwater monitoring at that time  
23 to get better information. So it's very taste specific,  
24 site specific, but I do think it would have -- I mean, it

1 is my opinion that they would have needed to work with  
2 DEQ to figure out what the next steps of appropriate  
3 action were. As I say in my review of the Company's  
4 activities in that window of time between 2010 and when  
5 the final rule came out, it looked to me they were doing  
6 precisely that.

7 Q And I want to ask you the same question I asked  
8 Mr. Wells yesterday. Based on your review and what you  
9 know about what the Company was doing through having done  
10 your review, your homework, based on your knowledge and  
11 professional judgment, when or on what date did it become  
12 reasonably known that it would have been prudent for the  
13 Company to dispose of CCRs by means other than unlined  
14 basins?

15 A I don't think that you would reach that date  
16 until EPA effectively completed its work to finalize the  
17 rule, which was late 2014. I think it was known and  
18 prudent to have groundwater monitoring well systems in  
19 place at facilities in the 2010 time frame. Many coal  
20 ash facilities across the country did not have  
21 groundwater monitoring in place in that time frame. DEC  
22 did have it in -- at all of its facilities in that time  
23 frame. So I think I would distinguish between when it  
24 was appropriate to make sure you had groundwater

1 monitoring systems in and when it was clear that a  
2 separate or a different approach was appropriate for  
3 managing CCR.

4           As I said in answer to your previous question,  
5 though, on a case-specific basis, if -- if the Company  
6 was working with DEQ on a particular issue with regard to  
7 a particular pond and that led to a determination that  
8 for a given ash pond something different should be done,  
9 then obviously it would have been prudent to proceed, but  
10 from what I can see, they were working with DEQ and they  
11 were taking actions to do the next proper step, which  
12 was, for the most part, improve the monitoring system to  
13 get a better understanding of what was really going on.  
14 So I didn't see any specific date prior to the  
15 finalization of the CCR Rule that I could give you.

16           Q     From a nation -- national point of view, since  
17 you were at the EPA level and even though, you know, you  
18 left the EPA around 1988, did -- but as you watched and  
19 followed these issues even after that, start to occur to  
20 the industry and folks who work in the area like yourself  
21 that there was the possibility, a reasonable possibility,  
22 that the waste in the unlined basins would have to be  
23 moved, that the unlined basins would not remain a  
24 permanent site?

1           A     I think, if I'm speaking for EPA, EPA, and I  
2 think they discuss this in the preamble through either  
3 the final rule or one of the supplemental rules that have  
4 come out after 2015, EPA actually thought that most of  
5 these ponds would probably close in place. So it wasn't  
6 -- I think EPA did think a number of the existing ponds  
7 would close, but in place. I think EPA was actually  
8 somewhat surprised by the direction taken by many states  
9 to require as much excavation as they did. So I guess  
10 that's really the way I would answer that. I don't think  
11 that it was predictable that Duke would need to excavate  
12 all of its ash basins as a result of this rule.

13           Q     Right. But I guess my question is, were people  
14 even looking to and thinking that this was a reasonable  
15 possibility in EPA's or anybody else's wheelhouse that  
16 these -- that there would come directives, orders,  
17 regulatory situations where a pond would have to be  
18 excavated?

19           A     Well, I mean, I think there's always the  
20 possibility, but if you're asking me was that something  
21 that was generally thought would be the direction that  
22 would -- people would go because it was necessary for  
23 protection of -- risk-based protection, I think I would  
24 tell you, no, not on a generalized basis. There might be

1 an individual pond or an individual landfill where a  
2 determination was made that that was the appropriate  
3 thing to do, but it would have been very site specific  
4 and it would have been as a result of analysis of the  
5 information available on a given pond. It was not a  
6 generalized belief that that was going to be necessary.

7 Q All right. Thank you for that. Mr. Wells, are  
8 you still with me?

9 A (Wells) Yes, ma'am.

10 Q I did have one question. So part of what we've  
11 heard about maybe taking action too early, as referenced  
12 there in Ms. Williams' testimony, was a concern that  
13 somehow the regulatory body would frown upon or not  
14 approve cost recovery because it might be looked at as  
15 gold plating. Do you recall that argument as being made?

16 A Honestly, I had not had that argument in my --  
17 I'm not familiar with that. I'm not on the rates side of  
18 it in terms of that recovery, so I'm not familiar with  
19 that argument.

20 Q Would you have thought that would be a possible  
21 risk, that somehow if it were not a requirement in the  
22 law, that the Commission might not allow recovery?

23 A Well, I just -- I mean, I view it from the  
24 reasonableness of the Utility's action, the Company's

1 actions, and that's what I was reviewing it from. And  
2 from that -- in that context I look at the regulatory  
3 requirements as well as where there is a potential threat  
4 to public health, whether that would drive some actions  
5 and then all of that would have to be worked through the  
6 appropriate cost recovery mechanism. My point throughout  
7 is that that's not what we see if we look at the history  
8 of basins in terms of construction, operation from the  
9 early days to today. There was a lot of actions taken to  
10 evaluate that risk, and it was not seen -- they weren't  
11 realizing anything of that nature, so I was viewing the  
12 steps taken to the point we are today have been  
13 reasonable.

14 Q Do you have any reason to think that with --  
15 even without a requirement or directive or order,  
16 regulation or statute, that if -- let's just pick a date  
17 and say 2001 -- if the Company had come to the Commission  
18 saying we're digging up these ponds because we now think  
19 this is the thing to do and they make the case for it, do  
20 you have some reason to think that it would be the  
21 absence of a law that would possibly cause the Commission  
22 to deny coverage or recovery?

23 A I think that's outside of my area.

24 Q All right. Do you think it would have been

1 reasonable if the Company is coming and making a case to  
2 the Commission for this is the reason we want to do it,  
3 this is the exposure, this is a safety issue, do you  
4 think it would be reasonable that the Company would be  
5 allowed to recover its cost?

6 A In my review, I didn't see where there was  
7 anything that rose to the level that would suggest there  
8 was a threat or a risk to the public health. There was  
9 ongoing monitoring, ongoing verification of that. And if  
10 there was something like that, then I would expect the  
11 Company to evaluate all options. So, for instance, let's  
12 -- if there were, say, potential impact where we believe  
13 that we have --

14 Q We just -- we just talking hypothetical, so --

15 A Okay.

16 Q Okay.

17 A So if there were like groundwater impact that  
18 we thought modeled to potentially in the future affect,  
19 say, a receptor well, that would be something the Company  
20 would need -- reasonably need to take action to evaluate,  
21 but when in doing that it would be to evaluate all those  
22 options and that -- and to ensure that it's balancing the  
23 risk it's seeing with the cost and understanding the  
24 extent of the options.

1           So in that instance it may be a water line or  
2     it could be an interceptor well or some means of  
3     intercepting what we believe may be a potential impact.  
4     The Company didn't see any of that and still doesn't see  
5     that to this point, but so -- but hypothetically, it  
6     wouldn't be a wholesale, you know -- I wouldn't -- I  
7     think if you looked at and said we have this, therefore,  
8     we need to look at the things that would be necessary  
9     for, you know, an extreme solution, like excavate the  
10    basin in light of this potential risk, all those would be  
11    the measure.

12           Q     Right. So if I'm understanding you correct,  
13    you're saying there would be an analysis and a balancing,  
14    and then whatever you decided on as a proper, reasonable  
15    thing to do, you would -- you would proceed from there  
16    and bring the case to the regulator. Is that fair to  
17    say?

18           A     If there were a risk of that nature presenting  
19    itself, the Company would evaluate options and take the  
20    appropriate action.

21           Q     Right.

22           A     And that's what the Company has done.

23           Q     Thank you. And then I'd just like to get an  
24    opinion or basically just feel out and get some

1 information from the two of you, and that is do either of  
2 you know of any instance since the CCR Rule or CAMA where  
3 a regulated utility was required by a regulatory agency  
4 to remove CCR from a basin that included a synthetic  
5 liner and then move the CCR somewhere because that liner  
6 was not acceptable under a CCR or CAMA type of statute?  
7 Are you familiar with any such thing?

8 A If you state -- I may ask -- I'll rephrase. I  
9 think I heard you say did -- do you mind --

10 Q If you -- yeah. If you are aware of any  
11 instance anywhere, doesn't have to be just here in North  
12 Carolina, but where after the adoption of the CCR Rule or  
13 a CAMA type of statute an electric utility was required  
14 by a state regulatory agency to remove the CCRs from a  
15 basin that had a synthetic liner and move that because  
16 the synthetic liner was somehow unacceptable under a CCR  
17 Rule or a CAMA type rule?

18 A I'll let Marcia answer on a broader level. My  
19 familiarity is with North Carolina, and there my  
20 experience is with the '84 basin at Sutton which is --  
21 well, which was designed to be a liner which was  
22 acceptable at the time, it was a clay-lined facility, and  
23 that basin was ordered for excavation. I do know liners  
24 have progressed over time and over the last few decades,

1 but that was one lined facility that was ordered  
2 excavated.

3 Q But that was -- but that was prior to the CCR  
4 or CAMA type rule.

5 A The -- you mean when the basin was required to  
6 excavated?

7 Q Yes.

8 A It was required to be excavated in 2014 with  
9 the passage of CAMA.

10 Q With the passage of CAMA, and it was a  
11 synthetic liner?

12 A It was as a -- it was a clay liner.

13 Q All right. And Ms. Williams?

14 A (Williams) Just, I don't think I can answer  
15 your question directly with regard to a CCR pond. What I  
16 thought I might share with you is that only 30 percent of  
17 ponds had the kind of composite liner by 2020 that EPA  
18 had talked about as a requirement of the CCR Rule. And  
19 secondly, what I also can tell you is I am aware of quite  
20 a large number of hazardous waste facilities, whether it  
21 be a pond or a landfill, that did have synthetic liners  
22 where those liners did leak because unfortunately liners  
23 are better than no liners, but they do, in fact, often  
24 leak, both at the time of installation and later. So I

1 certainly can give you examples where those kinds of  
2 issues have come up for hazardous waste facilities, but I  
3 can't tell you about CCR ponds being required to  
4 excavate. And normally in that case if that happens, if  
5 you have a liner leak, okay, then you would have to  
6 remove waste and repair the liner.

7 But what I would say with regard to excavation  
8 is if that pond had been placed in an area that -- even  
9 if it was lined, that didn't meet EPA's location  
10 standards, then it's certainly very possible that it  
11 would have had to have been excavated if the State felt  
12 that failure to meet those location standards was not  
13 fully protective. So I think you're dealing both with  
14 the issue of liners and the issue of a long list of  
15 location-related factors.

16 Q But you are not -- so you're not aware of an  
17 actual case where that's happened, though, at this point?

18 A I can't cite you a specific case because I  
19 haven't followed the individual site-specific decisions.  
20 I think it's possible that we could, you know, look at  
21 that, but I haven't looked at it.

22 Q What about --

23 COMMISSIONER BROWN-BLAND: Madam Court  
24 Reporter, did you hear the end of that answer as she

1       trailed off? I know what she said, but did you get --

2                   COURT REPORTER: Yes, I did.

3                   COMMISSIONER BROWN-BLAND: All right. Good.

4           Q       Do you know of any instance since the adoption  
5 of the CCR Rule or the CAMA where a regulated utility,  
6 electric utility, was required by a state agency to  
7 remove an existing cap on a CCR basin and replace it with  
8 some other type of cap because that existing cap was not  
9 acceptable under the CCR Rule or in a CAMA type statute?

10          A       I think it may be too early to really give an  
11 answer to that because a lot of this is still evolving in  
12 the states at different locations. The final CCR Rule  
13 has really been in litigation since the Rule was  
14 finalized. EPA has issued a number of amendments to  
15 those -- to the Rule. For the most part, the amendments  
16 are going more stringent, not less stringent. There have  
17 been a few places where EPA has allowed some site-  
18 specific variances to go in, but they're very limited.  
19 So I can't give you an example, but I don't think we're  
20 at the end of this yet. I think it's still evolving all  
21 over the country in terms of how this is being applied.

22          A       (Wells) And the only thing I might add on that,  
23 I think with respect to the North Carolina sites where we  
24 do have some of the historical basins that were capped in

1 the sense of what may have been deemed capped in the day,  
2 typically inactivated in the sense that they no longer  
3 received ash, those -- and instances where they may have  
4 had soil cover applied in the form of, you know, what may  
5 have been viewed as a cap at the time and revegetated,  
6 that would be -- I mean, currently, that -- those will  
7 all have to be removed and excavated.

8 Q All right. And do you know of an instance  
9 since the adoption of CCR and CAMA where the regulated  
10 utility was required by law or state agency to cease  
11 using the dry ash handling system and replace it with  
12 some other type of system because the dry ash system  
13 wasn't acceptable under the new CCR or CAMA type statute?

14 A (Williams) Again, I would just say that it  
15 wouldn't necessarily be the issue of whether the dry ash  
16 handling system was installed at the plant, but it would  
17 be the question of how the ash from the dry ash handling  
18 system was managed and if that ash was put into a  
19 location either in the landfill whose liner wasn't  
20 appropriate or in the landfill whose location standards  
21 weren't appropriate -- were inappropriate. It would not  
22 be surprising to have that unit have to be remediated in  
23 some fashion.

24 Q All right. But today, is it fair to say that

1 you -- that your answer means you're not aware of a  
2 situation where either the CCR Rule itself or the CAMA  
3 type rule anywhere else in the nation has required these  
4 type actions that I'm asking about, the switch from an  
5 existing dry ash system or a switch or change from a cap-  
6 in-place?

7 A I can give you examples where the Rule would  
8 require that. I haven't done a national survey of all  
9 the different ash ponds to be able to answer your  
10 question, so I can't answer it one way or the other  
11 because I haven't done that kind of review. I can talk  
12 to you about there are situations in the Rule that that  
13 would be required. They're -- you know, they're  
14 hypothetical. If a company had done A, B, and C, then  
15 under the Rule they would not be able to leave it there  
16 and be in compliance with the Rule. I haven't done a  
17 national survey.

18 Q Subject to --

19 MR. SOMERS: This is Bo Somers. I apologize,  
20 Commissioner Brown-Bland. I wanted to point out, Ms.  
21 Williams, I believe we've lost your video. Would you  
22 check that, please?

23 COMMISSIONER BROWN-BLAND: She's back.

24 MR. SOMERS: Pardon the interruption. Thank

1 you.

2 COMMISSIONER BROWN-BLAND: That's all right.

3 Thank you, Mr. Somers.

4 Q But sitting here today and subject to whatever  
5 -- call it homework, but other study or knowledge that  
6 you have just sitting here today, you're not aware of  
7 such?

8 A I'm not aware of such, but I don't think you  
9 can take that to assume that it's not happening. It just  
10 means I haven't done a thorough look at the 600 ash --  
11 700 ash basins to understand what's happening to each of  
12 them in all the different states.

13 Q As a result of the CCR Rule or, you know, as a  
14 result of recent legislation?

15 A Correct. Recent regulations or state  
16 legislation.

17 Q And Mr. Wells, do you have anything you want to  
18 add to that or are you in agreement?

19 A (Wells) I have nothing to add on that, no. I  
20 also have not looked nationally.

21 Q Let me see. One more thing.

22 COMMISSIONER BROWN-BLAND: All right. I think  
23 that's all the questions I have. Thank you.

24 CHAIR MITCHELL: All right. I'll check in with

1 Commissioner Gray again to see if he has questions.

2 COMMISSIONER GRAY: No. No questions, Ms.

3 Chair. Thank you.

4 CHAIR MITCHELL: Commissioner Clodfelter?

5 COMMISSIONER CLODFELTER: Yes. Just a couple  
6 things.

7 EXAMINATION BY COMMISSIONER CLODFELTER:

8 Q Mr. Wells, can you hear me okay?

9 A (Wells) Yes, sir.

10 Q Okay. I really have just a few loose ends for  
11 you. In the Company's 2003 10-Year Coal Combustion  
12 Products Plan there are a number of action items -- and  
13 you don't need to have the document in front you. It's  
14 just several -- for several of the plants the action  
15 items in the plan included performing evaluations of  
16 conversion to dry ash handling. Two stick out in my  
17 memory. It was a recommendation to do that kind of  
18 evaluation for Dan River and for W.S. Lee plant. My  
19 question -- they have names of who was supposed to do the  
20 study and target dates for when they were supposed to be  
21 completed. My question to you is, do you know whether  
22 those studies can be found in the record in this case or  
23 in the data requests that were served on the Company? Do  
24 you know if those studies have been produced and made

1 available?

2 A I don't know if they have, Commissioner.  
3 Witness Bednarcik was -- had some information on that,  
4 I'm understanding. She had talked with some of those  
5 folks. But on that specific issue, I don't know that --  
6 what's in the record on that.

7 Q Do you know whether the studies were even done?

8 A I don't know the details on that. I'm aware  
9 that ultimately decisions were made, and what the  
10 documentation was related to those, I'm not aware.

11 Q Okay. Well, okay. Thank you. I'll pursue  
12 that in my laundry list of late-filed exhibits that we're  
13 working on compiling, so I won't bother you with that  
14 anymore, but I am curious about one thing. Do you know  
15 -- and I know this is maybe outside your area, but you  
16 might know it, so I'll ask it. Do you know when the  
17 Company began to seriously explore converting units from  
18 coal to gas or, for example, Cliffside, Dan River, when  
19 did the consideration of converting Dan River to gas, for  
20 example, when did that start?

21 A I apologize. That is not -- I'm not familiar  
22 with that --

23 Q Okay.

24 A -- the details.

1           Q     All right.  Again, as I stated, just a few  
2     loose ends here.  The other one is are you familiar with  
3     the Company's 2007 Environmental Management Program for  
4     coal combustion products?

5           A     I'm familiar with that document, yes.

6           Q     Okay.  Was there any earlier iteration of that  
7     program/plan, whether it had a different name?  It might  
8     have had a different name.  Might have been called  
9     something else, but anything, earlier iteration or  
10    similar to that, that you know of?

11          A     I've not seen anything of that ilk or things of  
12    that nature.

13          Q     Okay.  All right.  Well, I know you don't have  
14    it in front of you, and what -- I want to ask you a  
15    question really about the earlier period than that  
16    document, but in order to do that, I've got to read you  
17    something from the document, so bear with me --

18          A     Okay.

19          Q     -- and I'm going to try to read it out.  In the  
20    2007 Environmental Management Program, the statement of  
21    principle or philosophy of the Company I'm going to read  
22    to you.  It says "Duke is committed to CCP management and  
23    disposal strategies which comply with all applicable  
24    state and federal regulations, are protective of human

1 health and the environment, and reduce future risk  
2 associated with groundwater contamination. This  
3 compliance includes not only the specific requirements  
4 contained in the applicable regulations, environmental  
5 statutes, and environmental permits, but also the general  
6 regulatory requirement to ensure that ash reuse and  
7 disposal activities do not contribute to future  
8 exceedances of surface water or groundwater standards."

9           And my question to you is, do you know whether  
10 that statement of philosophy or principle represented any  
11 change from what the Company's prior policy and practices  
12 had been?

13           A     I don't think that's a change. I think it was  
14 documenting and restating the philosophy of what the  
15 Company's policy was on those issues.

16           Q     And that had been the policy before it was  
17 formalized in a written document?

18           A     Correct.

19           Q     Okay. Thank you, Mr. Wells.

20           COMMISSIONER CLODFELTER: That's all I have.  
21 Thank you. Madam Chair, that's all I have.

22           CHAIR MITCHELL: All right. Commissioner  
23 Duffley?

24           COMMISSIONER DUFFLEY: Yes. I just have a few

1 questions.

2 EXAMINATION BY COMMISSIONER DUFFLEY:

3 Q So the first is for Mr. Wells. You were  
4 talking about regional offices. I assume a lot of the  
5 sites are in the Mooresville Regional Office, but what is  
6 the other -- are there other regional offices involved,  
7 and what are they?

8 A (Wells) Oh. I am not as well versed in the  
9 different regions. I typically think of the Raleigh  
10 Regional Office and the Mooresville office, and then  
11 Raleigh being the headquarters for DEQ, but as I think  
12 about it, based on your question, I believe the Raleigh  
13 Regional Office probably covered more of the Progress  
14 Energy sites versus the DEC sites.

15 I do believe there are other -- a couple other  
16 regional offices that would have been involved, but I  
17 can't remember, honestly, the structure of DEQ, the other  
18 regionals -- the other regions.

19 Q Okay. That's fine.

20 A Asheville. Maybe -- I just remembered,  
21 Mooresville Office; Asheville Regional would be another  
22 one I think would be applicable to DEC.

23 Q Okay. Thank you. And at one point in your  
24 testimony you were describing the monitoring system that

1 was being put in after 2015, I believe, and you were  
2 talking about how the groundwater monitoring system was  
3 very comprehensive. How would you describe the  
4 assessment with the wells that were installed in the  
5 2009/2010 time frame?

6 A I think that was all part of that evolution of  
7 watching the groundwater, so I would describe it as the  
8 -- remember, the 2004 to 2008 time frame USWAG voluntary  
9 wells go in, and that is somewhat of a detection concept.  
10 And as you get into the 2009/'10 time frame, that data is  
11 being shared and reviewed with DEQ. And that's where DEQ  
12 is working with the Attorney General's Office on some  
13 specific interpretations of the 2L Rule and there's some  
14 back and forth going on with respect to interpretations.  
15 But in parallel, DEC is adding additional wells at that  
16 time and working with the State on where they go, and  
17 that added a whole 'nother set of wells and moved a lot  
18 of the monitoring to the compliance boundary.

19 Prior to that, the monitoring was inside the  
20 compliance boundary, and that was a big move to evaluate  
21 the status of the plume and whether or not it was moving  
22 beyond the compliance boundary. So that was a big -- you  
23 know, a next sort of iterative and comprehensive step, to  
24 understand the status of the area of impact.

1           And then that moved even further, you know, as  
2 you saw the '09/'10 data and the '11 data develop  
3 additional work with DEQ to establish further assessment,  
4 and all of that was memorialized, that process is what  
5 was memorialized in the DEQ Policy Memorandum of 2011  
6 that I was referring to.

7           Q     Okay. Thank you. And then I think the last  
8 question for you is you also testified maybe once or  
9 twice that you stated "If we see a risk to public health,  
10 we take action." So what specific actions in the past  
11 can you name to support that statement?

12           A     Well, with respect to DEC, Duke Energy  
13 Carolinas, Belews Creek is, I think, a very good example,  
14 early '80s, where there was monitoring of the fishery  
15 going on to detect what, if any, impacts we would be  
16 having, similar to surface water monitoring that was  
17 going on elsewhere. And when that was detected, then the  
18 Company moved to evaluate how it could minimize that  
19 risk. And it looked at wastewater treatment concepts.  
20 You know, they investigated, determined it was a selenium  
21 issue, looked at wastewater treatment, looked at moving  
22 the outfall, and looked at -- and ended up moving toward  
23 dry fly on that project, now, based in part on the  
24 environmental, but also the economics, based on the

1 market of the ability -- other factors that came into  
2 play.

3 But that was an instance where the Company  
4 detected an issue and moved based on a risk to the  
5 surface water, to the ecosystem, and if -- if they had  
6 also seen an issue elsewhere like that, then that would  
7 have been an appropriate type step.

8 The other issue is evaluating the risk to  
9 receptors, meaning an offsite well or a well that someone  
10 may be drinking, a private well, and there the Company,  
11 if you look as early as the '80s, you see an analysis of  
12 the groundwater direction of what's going on and an  
13 understanding of the groundwater flow in these areas and  
14 how it's flowing. Never -- there was never an indication  
15 that that risk was being realized, that there was a risk  
16 to the public health.

17 Now, when we moved into the 2014 monitoring,  
18 additional steps pursuant to the 2011 policy, we did  
19 additional evaluations at that time for further  
20 verification with respect to offsite wells and then did  
21 follow-up sampling, even, at all of those wells. And  
22 those wells -- I mean, the result was there was no  
23 evidence of impact from site operations, so no action  
24 needed to be taken. But that's an example of the type of

1 analysis that would have been done -- is done. If there  
2 was an issue, we would have made -- taken action to  
3 address it.

4           There are examples elsewhere outside of DEC  
5 where we did see that. And, for instance, I'm familiar  
6 with actions we've taken in the Midwest. I'm familiar  
7 with actions we've taken in Ohio and Indiana where some  
8 of those risks were realized. I'm familiar with where  
9 steps were taken in Progress Energy where we put in water  
10 lines proactively, voluntarily, in order to address what  
11 we viewed as a potential issue before there was an  
12 impact.

13           But those are some examples of what -- if there  
14 was a risk that warranted it, the Company would have  
15 taken action. I saw that in Progress Energy sites. I  
16 saw it in the Midwest sites. And with respect to DEC, we  
17 didn't have indications that those were -- outside --  
18 Belews Creek is an example of where we saw it, but we  
19 weren't seeing that from the monitoring that was ongoing,  
20 the additional wells that were going in in the '90s, the  
21 additional wells that went in in the 2000s, the  
22 additional monitoring that went in in 2010, the  
23 additional monitoring that's going on in 2014. Again,  
24 it's not presenting that risk to the public health in

1 terms of surface water impacts, ecosystem, or the public  
2 wells. So the action is not there, the analysis to  
3 verify it's not there -- to verify it's not there has  
4 been done.

5 Q Okay. Thank you, Mr. Wells. And then Mrs.  
6 Williams, you test--- good morning.

7 A (Williams) Good morning.

8 Q I know it's early for you. So you testified  
9 twice yesterday that Duke was ahead of the industry with  
10 regard to groundwater monitoring. And can you provide  
11 specific facts that support that statement?

12 A Well, again, the facts that I rely on for that  
13 are a lot of the national surveys that EPA did over time  
14 that talked about how many locations had groundwater  
15 monitoring. So I tried to go through some of them  
16 yesterday. I have a number of them in my testimony.  
17 But, for example, in the 1988 Report to Congress on coal  
18 ash EPA talked about it, but more importantly, EPA did a  
19 very broad and complete study of how many sites had  
20 groundwater monitoring in 1986 for all types of surface  
21 impoundments. And included in that were coal ash ponds,  
22 but it was much broader than just coal ash ponds. So I  
23 used those statistics, okay? And those statistics,  
24 again, consistently, from the '80s all the way through to

1 the time frame when EPA was doing its proposed rule, you  
2 were seeing numbers like 33 -- 32 percent, 33 percent, 35  
3 percent of these facilities had groundwater monitoring  
4 installed, and so I think it really is noteworthy that by  
5 the time you get to 2008, you know, when Duke had  
6 completed installing initial well systems at all of its  
7 facilities that hadn't already installed them due to a  
8 requirement in an NPDES permit, they installed it at the  
9 rest of the facilities by 2008.

10 And so they had already started to generate  
11 this groundwater data at all these sites, and it is  
12 iterative, as we've talked about. So, of course, after  
13 the first system went in, additional wells would be added  
14 to begin to answer more questions. As Mr. Wells said,  
15 the groundwater system wells were moved out further to  
16 the compliance boundary, additional compounds were added  
17 to the analysis, additional -- I guess I would say you  
18 had a better sense of groundwater flow once you put a  
19 system in, so you may find out you need additional  
20 upgradient wells or additional downgradient wells.

21 So that's what was happening then post 2008,  
22 and that was not happening, as I say, at a very large  
23 number of coal ash facilities, both landfills and ponds.  
24 But speaking of ponds, you know, it wasn't happening at

1 70 percent of the ponds.

2 Now, it was happening more at newly constructed  
3 ash ponds. There weren't a lot of newly constructed ash  
4 ponds, but it was happening more, but even with the newly  
5 constructed ash ponds I believe that something like 80  
6 percent of them may have put monitoring in and 20 percent  
7 hadn't put monitoring in.

8 So the statistics that I'm sharing with you are  
9 coming either out of EPA's coal ash documents, the  
10 proposed rule, the final rule, some information that EPA  
11 has published in additional proposed rules post 2015, or  
12 they're coming from studies that EPA did back in 1977,  
13 studies EPA did and published in 1983, 1986, 1991, all of  
14 which looked at ponds, industrial ponds, across the  
15 country, and all of which found that there were very --  
16 reasonably limited groundwater monitoring at those  
17 facilities.

18 Q And you just -- there are a lot of documents  
19 filed in this case. You mentioned, though, in your  
20 testimony that -- and I guess this was probably -- I just  
21 want to confirm that it was around the 2009 time frame --  
22 you mentioned that Duke had groundwater monitoring at all  
23 of its ash basins compared to industry which only had  
24 groundwater monitoring in 42 percent of its basins. Can

1 you direct me to where you obtained that statistic?

2 A Yes. That would be from EPA's June 2010  
3 proposed rulemaking for this final CCR Rule, but it was  
4 the proposed rule.

5 Q Okay. Thank you.

6 COMMISSIONER DUFFLEY: Those are all of my  
7 questions, Chair Mitchell. Thank you.

8 CHAIR MITCHELL: All right. Commissioner  
9 Hughes?

10 COMMISSIONER HUGHES: Yes. I've got a few  
11 questions about closure-in-place.

12 EXAMINATION BY COMMISSIONER HUGHES:

13 Q And feel free, either one of the Panel -- you  
14 know, I'm assuming Ms. Williams, you would give me the  
15 national perspective, but also to the extent that you're  
16 aware of what Duke was going through, please, Mr. Wells,  
17 chime in. I know Duke didn't close a lot of ash ponds  
18 prior to when a lot of this stuff that we've been talking  
19 about started to transpire, but I think there were a few,  
20 if I'm not mistaken, Allen maybe in 1973, and then maybe  
21 one or two in the '80s. Could you tell me what was  
22 happening with the closure-in-place regime going back as  
23 long as you can, but at least for sure starting in the  
24 '80s, '90s, 2000s? What was happening with closure-in-

1 place? You had said, I think, Ms. Williams, there's an  
2 order of magnitude between closure-in-place and excavate.  
3 Was closure-in-place getting any more stringent? Was a  
4 closure in place in 1980 looking anything different than  
5 1973, 1990, 2000? Do they look different?

6 A (Williams) Well, I think from a -- let me give  
7 a national response and Mr. Wells can tailor it. But the  
8 -- you know, the typical closure for ash ponds in the  
9 '70s, the '80s, wasn't really changing. I mean, first of  
10 all, you have to realize that even if an ash pond was no  
11 longer accepting, let's say, new or additional fly ash,  
12 it often was continuing to accept stormwater or other  
13 waste streams from the site. But once it was no longer  
14 receiving waste streams, typically it would be dewatered  
15 either naturally or aggressively, and it would be  
16 revegetated, and that was generally what was going on.  
17 And I think there is a picture of sort of that in the  
18 1988 EPA Report to Congress that sort of showed that was  
19 really the national practice for closure at that time.

20 And I think even if you look at the -- one of  
21 those early EPRI manuals, it talks about revegetation,  
22 you know, after a pond is no longer in operation. So it  
23 wasn't the kind of capping that started to be discussed  
24 in the -- in the post-2000 time frame. And so I think

1 nationally the primary closure at that point was  
2 dewatering and putting a different kind of cap. You  
3 know, not just soil vegetation, but a different kind of  
4 cap.

5           But that was largely in the time frame when  
6 you're talking post-2010 when people are starting to  
7 think about what kind of a protective regime could exist  
8 for closure of these ponds. And in my response to  
9 Commissioner Brown-Bland, I tried to suggest, you know, I  
10 think EPA clearly allowed for the concept of excavation  
11 as a site-specific closure requirement, but the general  
12 thought is that these ponds would, for the most part,  
13 dewater, close in place with a cap system that was more  
14 of a clay based and possibly a synthetic clay based cap  
15 system. Excavation was available, but not what EPA  
16 believed was likely to be done at a high percentage of  
17 the ponds.

18           And I guess the cost figure I had given out  
19 previously when I said at least an order of magnitude  
20 difference was really a choice about whether EPA had  
21 chosen to regulate these ponds under its hazardous waste  
22 framework versus its solid waste framework, so that's --  
23 it wasn't strictly just closure. It was the entire set  
24 of regulations that would apply if you were doing it

1 under its hazardous waste framework, which would have  
2 been extremely -- much more expensive because not only  
3 the closure requirements would have been different, but  
4 the permitting requirements would have been different and  
5 there would have been a requirement to treat all ash in a  
6 different way before it could be even put into a land  
7 disposal unit to start with.

8 So the requirements that EPA was considering,  
9 both for the closure design and for the ongoing  
10 management of ash in either a landfill or a pond, would  
11 have been dramatically different if EPA had chosen a  
12 hazardous waste framework for these CCR units than where  
13 they ultimately came out, which was a solid waste  
14 framework.

15 And, in fact, the other big difference between  
16 EPA's choices in 2010 was under one of the frameworks EPA  
17 would have allowed federally these ponds to continue to  
18 operate for the remainder of their useful life, whereas  
19 in the selection and the framework that they did select,  
20 they had a more limited operation allowance under certain  
21 conditions for existing ponds.

22 So that's why there was so much uncertainty  
23 between what was going on in 2010 and what was known  
24 after EPA finalized its CCR Rule, and certainly was

1 dramatic because EPA hadn't yet signaled where it was  
2 going. And I think while that's a national role and  
3 North Carolina had its options under State rules to do  
4 what it wanted, I think North Carolina, like many states,  
5 really was interested in understanding where EPA was  
6 going to come out because North Carolina clearly didn't  
7 want to come out in a position that it would be  
8 inconsistent where the federal rules would come out.

9 Q Well, I appreciate that. Just a couple of  
10 follow ups, but really, I'm just really focused on the  
11 closure-in-place, so all of the, you know, all of the  
12 other parts are what we've already, I think, talked a lot  
13 about -- about that. The 2004 or '05 EPRI closure manual  
14 has a comment that closure surface impoundments will  
15 probably be the most expensive task undertaken during a  
16 commission process. Is that -- would that be true even  
17 if there had been closure-in-place to the standards that  
18 you're talking about in 2004 or was it still going to be  
19 -- and this might be a question for Mr. Wells -- was it  
20 still a very expensive, maybe the most significant, most  
21 expensive part of decommissioning of the dewatering and  
22 the capping as of, say, 2003, '04, '05?

23 A Let me -- I mean, first of all, I think the  
24 type of decommissioning that's being discussed in the

1 2004 EPRI manual is sites that are decommissioning. In  
2 other words, it's not just the -- it's not ash pond  
3 closure solely. It's decommission of -- decommissioning  
4 of a utility station. So that's what it was looking at,  
5 and that document makes the very strong point that how  
6 expensive it is, in part, depends on how you want to  
7 reuse this property.

8           So one of the examples that they gave in that  
9 manual involved reusing the property, you know, trying to  
10 essentially reuse the property for something entirely  
11 different than what it was currently being used for. So  
12 that drives, to a large extent, what the cost will be of  
13 closure and decommissioning of the whole facility.

14           I think there's another EPRI manual that came  
15 out, I think, in around 2001 that actually did discuss  
16 specifically closure of ash basins and talked about the  
17 fact that the closure of ash basins, it wasn't clear that  
18 any kind of capping beyond just vegetation was really  
19 going to -- and dewatering was actually going to  
20 accomplish any additional protection. So I think this  
21 concept of a capping the way we're talking about in the  
22 final CCR Rule, a closure-in-place with a more  
23 significant cap, really wasn't what was being thought  
24 about in the 2000 to 2006 time frame.

1 Q So Mr. Wells, just a quick question. So what  
2 was likely to be being thought about by your colleagues  
3 back then, this last extensive capping, was that still  
4 going to be one of the most expensive tasks undertaken  
5 during a decommissioning process?

6 A (Wells) Right. I think --

7 Q And I know we're rushing for time, so maybe a  
8 quicker answer.

9 A You got it. I think it very much was unknown.  
10 I mean, I think it was highly speculative as to what the  
11 appropriate closure requirements were going to be at that  
12 time and --

13 Q If it was -- if it was a cap-in-place, so if --

14 A It would be -- it'd be --

15 Q -- like what was the -- you know, on the left  
16 side of the spectrum of the cost, so you don't have --

17 A I think on the left side --

18 Q I know lots of people are asking you to imagine  
19 the future.

20 A I understand.

21 Q I don't want you to imagine the future; just  
22 imagine the so-called, I guess, best-case scenario from a  
23 cost standpoint. What did that look like?

24 A Okay. And I can tell you what the practice was

1 at that point with respect to Duke, at least what I've  
2 seen. And I think you mentioned a couple of the ponds,  
3 you know, what were they doing, were they closed?

4 So the practice at that point was what was  
5 described, what Ms. Williams described almost nationally,  
6 the basins that had been deactivated or inactivated, they  
7 were closed in place, in essence, just no longer  
8 sluicing, allowed dewatering, soil cap, and reestablish  
9 vegetation. That's what I've seen in the various ponds  
10 that were -- that went inactive over the period, and  
11 that's with respect to both what I saw with Progress, I  
12 saw with Carolinas, and what I also saw up in some of the  
13 ponds in the Midwest. So that seemed to be sort of where  
14 things were.

15 Now, there's -- I think what you're asking, to  
16 me, I mean, there's one question I think certainly in  
17 that time period, is that enough? And then if that's the  
18 case, then, you know, what is the additional cost? And  
19 it would be very minimal. On the other hand, and I do  
20 think this is the time when there's a lot of discu--- I  
21 mean, not the time, but this is representative of the  
22 ongoing sort of evolution of discussion of what is the  
23 pond future, and there is some planning going on with  
24 respect to that. And I believe what you're seeing in

1 that type of comment is where the ponds end up in terms  
2 of cost is a large -- it can be -- it can vary  
3 significantly based on what it ends up being, this future  
4 closure, what's adequate under the regs, what are the  
5 needs of the facility for reuse or how that might be  
6 viewed. It could be significant.

7 But, again, on the left side of the spectrum,  
8 it could also be relatively consistent with what was  
9 being done at that time, perhaps with some additional  
10 review or verification that whatever is installed meets  
11 what -- a cap standard that may be established or that an  
12 additional cap could be added. I mean, there is a lot --  
13 at that point a lot of uncertainty or instability in what  
14 that would look like. That's my sense of it. And I  
15 think --

16 Q If I ask you in 2002 if the decommissioning of  
17 some of your facilities was closure going to be  
18 significant or insignificant, if you only had to choose  
19 those two words, would you say -- well, you can say  
20 relatively if you want, relatively insignificant,  
21 relatively significant. I'm just trying to get an idea  
22 of where it was in the world of planning.

23 A I think that's a tough -- would be very  
24 difficult for me to estimate. I don't think they saw it

1 as significant if it did not involve the need for re---  
2 it depended on the reuse of the property and the need to  
3 have that closure be a piece -- need -- meet the needs  
4 for future reuse of the property. If it was just a basin  
5 that was sitting retired at the time, additional actions  
6 potentially necessary for closure, my view at that time  
7 would have been, I believe, that it wasn't -- it could be  
8 significant if driven to some of the higher end  
9 discussion of what may be required, but if it was  
10 consistent with status quo or something close, then that  
11 would be more -- that would be insignificant. Not  
12 insignificant, but less significant.

13 Q Okay. Thank you.

14 COMMISSIONER HUGHES: No more questions.

15 CHAIR MITCHELL: All right. Commissioner  
16 Hughes? I mean, I'm sorry. Commissioner McKissick?

17 COMMISSIONER MCKISSICK: Just one or two  
18 questions. I appreciate the testimony these witnesses  
19 have provided over the last day or so and it's certainly  
20 been exhaustive and they've covered things very  
21 thoroughly, so I think I pretty well understand the scope  
22 of their testimony and the issues in terms of their  
23 perspective, the way they -- the way they believe things  
24 occurred during this entire time frame.

1 EXAMINATION BY COMMISSIONER McKISSICK:

2 Q A couple of quick questions, though, and I  
3 guess the first one would be of Ms. Williams. I know you  
4 were at the EPA and you were there from 1970 up to  
5 February of '88; is that correct, ma'am?

6 A Yes. I actually started at what's now EPA a  
7 little bit before EPA was formed, and then it got folded  
8 into EPA, and I left at the end of Feb--- I actually left  
9 the last day of February of '88.

10 Q Okay. And you were Director of the Office of  
11 Solid Waste from, I guess, September of '85 up through  
12 February '88, so I guess that was your title during that  
13 entire window of time?

14 A During the window of September of '85 through  
15 the end of February of '88, yes.

16 Q And from what I gather, there were like 250  
17 people that were -- fell under that unit; is that  
18 correct?

19 A Yes. That's correct. And, of course, we had  
20 lots of other support from our research office and other  
21 places, but those are the people that were directly in  
22 the Office of Solid Waste.

23 Q Now, the Report to Congress that was entitled  
24 Waste from the Combustion of Coal by the, you know,

1 electric utility power plants, what date was that  
2 actually released? Do you recall?

3 A I believe it was released in February of 1988.

4 Q So it was right as you were leaving; is that  
5 correct?

6 A I was there through February, but that's -- I  
7 mean, and the work for the report was clearly done for a  
8 period of time before that time in order for it to be  
9 released on that date, but I was there, as I recall, for  
10 the release date.

11 Q Did you actually participate in work that was  
12 in that report? I mean, who was actually delegated  
13 responsibility for, I guess, doing the, I guess the  
14 research and what was required that went into the  
15 drafting of the report? Were you involved with that, and  
16 if you were, to what extent?

17 A Well, I was responsible for everything that  
18 left my office. I mean, I managed that office. And  
19 while I wasn't doing drafting, I was doing reviews of the  
20 document asking questions of, at the time, things I felt  
21 weren't thoroughly vetted or discussed and trying to make  
22 sure that we were producing the best report we could to  
23 Congress. I mean, I was -- in my position I was meeting  
24 with congressional staff on a pretty regular basis

1 because during this whole period of time, from really  
2 when I took over that position until when I left, we had  
3 been implementing a whole set of requirements that  
4 Congress had put on the Agency in late 1984, and so I was  
5 constantly at The Hill trying to answer all the questions  
6 about when is this going to be done, and where are you on  
7 this, and how are you doing on this, and where are all  
8 the facilities in their performance? So the answer is I  
9 was involved. I did not draft the report, but I did  
10 review the report more than once.

11 Q Were there members of staff that did not concur  
12 with the recommendations set forth in the report?

13 A As I'm sitting here today, I do not have a  
14 recollection of that. I'm not saying there weren't  
15 because there were always staff that potentially could  
16 raise concerns, and I certainly can think of one or two  
17 issues that came out of my office where staff did raise  
18 concerns, but I don't have a recollection of any  
19 disagreement on the results of this report from the  
20 people that were working on it.

21 Q Were there any recommendations and findings  
22 that came forth from staff that you revised or -- you  
23 know, in any respect before the final report was  
24 released?

1           A     I just don't have a recollection of that today,  
2 Commissioner. I mean, I'm -- it's possible, I suppose,  
3 because those things would happen and they were vetted  
4 carefully, you know, while people had different opinions,  
5 but I don't have a recollection of that as I'm sitting  
6 here right now.

7           Q     Okay. Thank you. And, of course, Mr. Wells,  
8 one or two quick questions of you. I know there was a  
9 report that was dated September 27th, 2012, that Duke  
10 Energy prepared beginning with guidance on developing  
11 closure plans for ash basins. Are you familiar with  
12 that?

13          A     (Wells) I'm somewhat familiar with that.

14          Q     You're somewhat familiar with it?

15          A     I don't remember specifics.

16          Q     Because among the things that it talked about  
17 was closure plans, particular -- you know, potential  
18 regulatory issue requirements, planning consideration,  
19 development of closure plans, environmental  
20 characterizations, and selection of closure options, and  
21 it even went as far as dealing with some cost. Do you  
22 remember any of that?

23          A     It sounds familiar. I believe I have seen  
24 that; I just don't remember the specifics.

1           Q     Okay. Well, if you don't remember the  
2           specifics, it would be difficult to ask you questions  
3           about it. Perhaps what I'll -- I'm going to go back and  
4           review a number of the exhibits which have been referred  
5           to during the course of this hearing, and there may be a  
6           request for a late-filed exhibit to get some additional  
7           explanations and clarity. The thing that I'm concerned  
8           about or interested in knowing, I should say, is --

9           A     Uh-huh.

10          Q     -- if this report was prepared in 2012,  
11          granted, it was late in the game, but what actions were  
12          taken as a direct result of the recommendations that it  
13          suggested and the scope of issues that it covered that  
14          could have perhaps resulted in actions being taken before  
15          we had CCR approved and before CAMA?

16          A     I could speak generally. I'm familiar with  
17          the time frame.

18          Q     Okay. Well, go ahead and speak generally, if  
19          you could.

20          A     Okay. So in that time frame there was no  
21          guidance on closure at either the federal or the state  
22          level, yet the Company is pushing toward that and pushing  
23          toward closure. There is -- and, you know, starting to  
24          try to move that in terms of what are -- what are the

1 specifications, what are the -- what's the criteria with  
2 respect to closure, what are the options, what needs to  
3 be proven, all those type things, what will be the  
4 design. So those details are important for purposes of  
5 planning and execution. And those were in a state of  
6 flux at that time, meaning there was no State standard,  
7 there was no federal standard. There was a recognition  
8 that the federal standards were -- was a draft rule in  
9 anticipation that a final was coming, but it had options  
10 that cover a very broad spectrum. That's what's in the  
11 draft rule, but not yet finalized.

12 On the other hand, on the State level, this  
13 document and the interaction that was going on with the  
14 State was to drive some State standards with respect to  
15 closure, while recognizing also that the federal rule was  
16 out there, too, so they will have to marry up at some  
17 time. And the Company is moving this in that direction,  
18 while also recognizing there's this uncertainty, and --  
19 but it is also working with the State on important  
20 criteria with respect to closure, which is protection of  
21 the environment and stability, all the things that are  
22 important. So that's all being developed sort of in  
23 parallel, recognizing that we will move toward a point  
24 where we'll have that clarity and then be able to execute

1 on closure.

2 Q And that draft CCR Rule, when was that first  
3 released? Refresh my recollection.

4 A That -- the draft rule, I believe, was 2010.

5 Q That's what I thought.

6 A Ms. Williams, is that -- could you confirm?

7 A (Williams) Yes. It was mid-year 2010 when the  
8 proposed rule came out.

9 Q And perhaps, Mr. Wells, you can tell me, what  
10 was Duke's response to the proposed rule going back to  
11 2010? I mean, what actions did they take when that rule  
12 was first published to make comment publicly or,  
13 likewise, what it might have done that was not public?

14 A So first, we would have certainly reviewed the  
15 rule, all of that. I mean, normal course is to  
16 understand what might be the movements in the regulatory  
17 front for purposes of assisting with planning and  
18 ensuring we're making the right decisions moving forward.  
19 With respect to that rule, it would have -- it was  
20 anticipated, I think, around that time that there were  
21 some continued developments that EPA would be coming out  
22 with, and so it would have been an important rule. We  
23 would have reviewed it. And I believe the Company may  
24 have submitted comments, but I don't know, but there

1 would have been interaction also with our utility peers,  
2 how they were viewing it, you know, some benchmark  
3 potentially. These are the -- I think those are the type  
4 of actions that are typical for us to do to understand  
5 what we think, is that the rule is headed where we think  
6 it's headed and what the timing might be.

7 Q And what were the most significant differences  
8 between the proposed rule and the final adopted rule?

9 A I'll speak generally, and then Ms. Williams may  
10 be able help. She's very familiar with EPA regs, of  
11 course, and process. The proposed rule, my recollection,  
12 and it is in Ms. Williams' testimony, there -- it had  
13 several options, but one was a hazardous waste Subtitle C  
14 that you hear referred to, and a Subtitle D, and then a  
15 Subtitle D Prime. So, in part, what the federal  
16 government was doing is saying we are looking at and we  
17 want comment on these type options.

18 The implication, from my perspective, of those  
19 three options is very, very extreme, meaning if it goes  
20 Subtitle C, that is a very big deal. I mean, it's all  
21 good regulatory, important, the way it was developed and  
22 founded, but the Subtitle C would be the most -- the  
23 highest level of control in a hazardous waste level, a  
24 regime, so that's very -- I think very stringent, very

1 costly, a whole lot of unknowns of what that would really  
2 mean on a scale. I don't know if -- I mean, there were a  
3 lot of -- there was a lot of discussion about what that  
4 would mean because that's a very big -- hard to even  
5 understand how you'd implement that level of detail in  
6 something of this -- ash ponds of the scale that we were  
7 working with.

8           The other one, Subtitle D, which was more like  
9 a solid waste, what you would see for a -- a municipal  
10 solid waste, it developed over time similar to this in  
11 the sense of how it's managed, a traditional solid waste  
12 facility.

13           And then Subtitle D Prime, which I'll let Ms.  
14 Williams build on a little bit, but that was, I believe,  
15 just allowing continued operations of basins under  
16 certain conditions, in other words, as is, continued ops  
17 would be acceptable under the reg, but perhaps some  
18 additional regulations to manage that.

19           Those were the three in my mind, the big  
20 difference. And then the final rule is where some of  
21 that was resolved, but then it also added some additional  
22 requirements that were in there and performance criteria  
23 and other things that we ultimately are implementing.

24           And Ms. Williams, I'd welcome if you could add

1 any detail to that that's relevant.

2 A (Williams) Thanks, Mr. Wells. Just a couple  
3 things that I would add. I certainly agree with all the  
4 examples that Mr. Wells provided. I think one of the  
5 other significant differences besides the fact there was  
6 just so much uncertainty and which regulatory scheme EPA  
7 would base the final rule on is dealing with addressing  
8 ponds that had not yet closed. In other words, perhaps  
9 they were taking stormwater, but they hadn't fully closed  
10 and there was still liquid in the ponds. So that, EPA  
11 was very -- was completely silent on that under Subtitle  
12 D solid waste framework when they did the proposed rule,  
13 but they clarified and covered in the final rule that  
14 inactive ponds that still had liquid in them would be  
15 subject to the closure requirements under the final rule.  
16 So that was a pretty significant change and one that I  
17 think people had not really been able to fully evaluate  
18 because they hadn't fully understood what EPA's position  
19 was at the time of the proposed rule.

20 Another one is some of the location standards  
21 changed. So I know Ms. Bednarcik discussed the final  
22 location standards that said if a pond wasn't five foot  
23 sep--- five feet separated from the aquifer that it would  
24 have to close. Well, in the proposed rule that was two

1 feet, so it was a significant change, for example, in  
2 that provision. And there was also a change in which of  
3 the low-volume waste streams were allowed to be managed  
4 in ponds between the proposed rule and the final rule.  
5 So those are just some other examples. There were quite  
6 a few changes, really.

7 And certainly, the most important change is  
8 there was now certainty, or at least EPA thought there  
9 was certainty until there was all the litigation that  
10 occurred after the rule and the changes are continuing.

11 Q Let me ask you this. I mean, considering the  
12 range that EPA was examining between the proposed rule up  
13 until the rule -- the final was adopted in the way that,  
14 you know, coal ash residuals and the impoundments could  
15 have been treated, do you think that there was more that  
16 Duke could have done to have mitigated the impact of the  
17 impoundments based upon the knowledge that was available  
18 at that time?

19 A It's my opinion that Duke was actively  
20 investigating the groundwater at that time, and that -- I  
21 alluded to this, but that is not a quick process. That  
22 is a long process. EPA's experience and North Carolina's  
23 experience on hazardous waste facilities is the time,  
24 first, to get a fully adequate system in, and then to use

1 that system to evaluate what is an appropriate corrective  
2 action, which could include closure, it could include  
3 excavation, it could not include those things and just  
4 include some type of a groundwater pump and treat or a  
5 slurry wall or something else, okay, but the time frame  
6 to get that process done is really, on average, 20 years.  
7 It is not quick, okay? And it's not quick because you're  
8 trying to understand a subsurface environment that is not  
9 easy to understand.

10 So I believe in my review what Duke was doing,  
11 starting by 2008 when it had all the wells in, was -- all  
12 the initial wells in -- was working with DEQ in an  
13 iterative fashion to improve that system to begin to  
14 answer the question of what was appropriate and  
15 protective and necessary. And I don't know what else  
16 would have been appropriate because you have to do that  
17 work before you can come to a final determination as to  
18 what the right remedy is.

19 So in my opinion, Duke was doing precisely the  
20 kind of work -- they weren't just sitting there waiting  
21 for the rule to be final. They were working with DEQ to  
22 investigate the full range of the impacts and what would  
23 be the appropriate action based on that, and ultimately,  
24 even though the final rule that EPA put out provided

1 flexibility in the closure method, North Carolina used  
2 all the data that it had and made a determination that it  
3 thought it was more appropriate to excavate, but they  
4 couldn't have gotten to the right decision if Duke hadn't  
5 been doing all the work that had started back in the 2008  
6 time -- and, really, it started before, but it started  
7 aggressively in the post 2008 time frame. So that would  
8 -- that's my opinion.

9 Q Okay. And I understand what occurred 2007/2008  
10 in terms of actions that were taken, but let me ask you  
11 this hypothetically. Let's say that CCR hadn't been  
12 adopted till 2019. Would it have still been reasonable,  
13 based upon information that was known, just to continue  
14 waiting and waiting and waiting until EPA made a  
15 decision? I mean, is that what I'm essentially hearing?  
16 I mean, and I don't --

17 A No. I hope you're not hearing that from me,  
18 Commissioner, because what I'm saying --

19 Q Well, at some point you said 20 years was what  
20 you thought might be reasonable, but --

21 A No. I'm saying that --

22 Q -- just clarify what you stated because I don't  
23 want to -- you know, maybe I misheard what you stated,  
24 yeah.

1           A       I'm saying that from the time -- from the time  
2       what EPA has determined, that even once you know that  
3       there is some contamination in groundwater -- and I'm  
4       giving EPA's experience, but I've looked at the North  
5       Carolina hazardous waste sites that have been doing these  
6       same kinds of investigations -- and to stay with North  
7       Carolina sites, hazardous waste sites, from the time that  
8       they were told if there's groundwater -- by regulation,  
9       if there's groundwater contamination, you need to figure  
10      out what's appropriate to do at your site. And if you  
11      look at North Carolina's data, it took, on average, until  
12      2020 for most of these facilities to get to a place that  
13      they could fully -- that they could begin to implement  
14      the requirements, and that's because it isn't that they  
15      were doing nothing; it's that they were investigating  
16      with the State what action would address and solve the  
17      problem. And different actions are selected for  
18      different facilities, and I'm just applying that same  
19      thing and saying I think once Duke was working with the  
20      State which is -- whether you say 2008, 2010, developing  
21      -- putting in more wells as needed, developing the  
22      models, understanding exactly what was going on in the  
23      subsurface, then whether EPA had finalized its rule or  
24      not, there would be a time where sufficient information

1 was available to the State of North Carolina to make its  
2 decision with regard to what should happen at those  
3 ponds.

4 But I don't think it would have been before the  
5 time the final rule finalized, just out of practical,  
6 looking at the nature of iterative evaluation to get your  
7 system right and to get your groundwater modeling right,  
8 which is the way decisions are being made today. They're  
9 being made based on very sophisticated groundwater models  
10 that are site specific and that evaluate not only what  
11 the groundwater looks like today, but what the  
12 groundwater will look like if you take various corrective  
13 actions, including closure in place, closure by  
14 excavation, not closure, but other types of potential  
15 remedies.

16 So Duke was in that process, and I think they  
17 would have reached the end of that process with North  
18 Carolina even if EPA hadn't finalized its rule, but I  
19 don't think they would have been able to finalize it  
20 before the date of finalization of the rule.

21 Q Thank you for that clarity.

22 COMMISSIONER McKISSICK: Madam Chair, I don't  
23 have any further questions at this time. Thank you.

24 CHAIR MITCHELL: All right. Commissioner

1 Brown-Bland?

2 COMMISSIONER BROWN-BLAND: Yes. Thank you.

3 FURTHER EXAMINATION BY COMMISSIONER BROWN-BLAND:

4 Q I just have one sort of follow up to what  
5 Commissioner McKissick was just asking. So as opposed to  
6 closing an existing facility, is it your testimony that  
7 you find it was prudent up through the final rule for the  
8 Company to continue to add CCR content to existing  
9 facilities as opposed to, at some point along the  
10 continuum of evolution that we've been discussing, start  
11 to put the current -- the current waste in a lined  
12 facility?

13 A (Williams) Commissioner, are you asking that  
14 question to me or to both of us or --

15 Q Both, both.

16 A Okay. Well, maybe I'll start and let Mr. Wells  
17 finish. My opinion is, again, I think in some of these  
18 sites they may not have been adding additional slurry  
19 material -- slurry coal ash in the window of time between  
20 2010 and 2015, but I think what was important is they  
21 were very closely working with the State agency, and I  
22 think to the extent that they were -- sorry (phone  
23 interruption) -- to the extent that they were finding  
24 that ceasing sluicing would have made a difference, I

1 think the State would have requested that at that point.  
2 They were working extremely closely together. So I don't  
3 think that at that point one can second guess the  
4 discussions that were going on between the regulatory  
5 agency and DEC at that point in time. So I believe that  
6 what they were doing, starting in 2010, was appropriate  
7 and prudent.

8 Q And even prior -- you know, we talk about the  
9 continuum. I assume that -- and maybe I'm wrong -- you  
10 can go ahead and correct me if I am -- that the continuum  
11 of discussion going back from '81 forward as it moved,  
12 even though that might be considered by some to be at a  
13 slow pace, but as it moved, the continuum was going in --  
14 in some direction, some fathomable direction that -- that  
15 was giving some clues away from the use of -- or the way  
16 we were storing our coal ash or our CCRs. So over that  
17 continuum, though, you don't think that it was prudent to  
18 consider or to take steps to lessen what was going on in  
19 the existing basins, to lessen the materials that were  
20 being added?

21 A I believe that if you look at the -- and I  
22 don't want to repeat all the things that we've said, so I  
23 believe if you look at the steps that DEC took in the  
24 1980s to evaluate whether there was a potential risk,

1 that those studies reasonably demonstrated to the Company  
2 in that time frame that its current practices would not  
3 have resulted in a reasonable risk of environmental  
4 problems.

5 I think, as Mr. Wells stated, and I looked at  
6 it as well, where they did see something, like at the  
7 Belews Creek facility in surface water, they did take  
8 action. And in my review of the documents I also saw  
9 that they were proactively looking at receptors once you  
10 got into the time frame of the 2008 and later kind of  
11 time frame and checking out that information.

12 So I believe in light of that, in light of the  
13 fact that they had installed groundwater monitoring  
14 systems before many of the industry had done it at all  
15 their facilities and were then improving them and working  
16 with them, I believe they did what you would reasonably  
17 expect a prudent utility to do. And so I guess that's  
18 the answer -- my answer to your question.

19 Q And the receptors, that's not the only measure,  
20 or is it, that you would be looking at, because it was my  
21 understanding that, you know, the Company bought a lot of  
22 property around, trying to create some type of buffer  
23 between them and the next property owner, so that would  
24 eliminate receptors. Wasn't it important to look, you

1 know, at more than just receptors?

2 A Well, again, first, we use -- I'm using  
3 receptors broadly. It's not just humans. It's  
4 ecological and so on. And in the framework that I guess  
5 I've spent my 50-year career with, the goal is to protect  
6 human health and the environment. You know, that's the  
7 goal of regulations. It's not to do more than that.  
8 It's to do that. And so it is my view that there are  
9 times where it is appropriate to buy additional property  
10 and allow monitored natural attenuation to occur because  
11 you will achieve environmental protection at less cost,  
12 and if you can achieve environmental protection with less  
13 cost, that's a good thing. So I -- that's my view on  
14 sort of that type of corrective action.

15 A (Wells) Right.

16 Q All right. Thank you. Mr. Wells, you got  
17 anything? You heard that part of our discussion.  
18 Anything you want to add to --

19 A No. I -- thank you. I agree that, you know,  
20 the Company did -- as you referenced, the continuum. In  
21 my review, I do -- my -- what I saw was the Company  
22 operated consistent with that evolution of the science,  
23 the regulatory requirements, regulatory priorities, you  
24 know, public policy, public commentary on these issues

1 because you're right, there is a -- there is a continuum,  
2 and if you look at the actions of the Company, it is  
3 consistent with that continuum or in some instances, you  
4 know, exceeding, for instance, industry standards where  
5 they're very practically doing things.

6 But -- and, you know, and I base that on, you  
7 know, the documents that you see. You see studies. You  
8 see analysis. You see conclusions. You see the  
9 monitoring ramping up. You know, we -- starting with  
10 Allen and you see Marshall and Belews in the late '80s  
11 and some Cliffside work and W.S. Lee, Dan River in the  
12 '90s. You know, by the time you get into the mid '90s,  
13 late '90s, there's been groundwater monitoring at all  
14 facilities with the exception of Buck. And then in the  
15 mid 2000s even more monitoring goes in on a voluntary  
16 basis. And then, of course, additional wells in 2010 and  
17 all those things.

18 And the important things that are always being  
19 looked at were the things that I think you -- you're  
20 looking at or you mentioned, which was receptors in the  
21 sense of wells, but also the public -- or the water, the  
22 receiving waterways and the monitoring that's ongoing  
23 with all of those, and continuing with all of that data  
24 telling us there's no -- there's no flag that is saying

1     there is this risk presenting itself.  It's verification  
2     that that risk is not there or that it's not being  
3     realized.

4             But then that's getting more and more rigorous  
5     with time along that continuum, and I found it consistent  
6     with what I viewed as all of the, you know, the science,  
7     the regulatory priorities, the regulations themselves, as  
8     well as the public movement in this direction.

9             Q     All right.  And I just wanted to clarify, Mr.  
10     Wells, from our previous discussion, when I was asking  
11     about had existing caps had to be moved post CCR Rule and  
12     CAMA, and you mentioned that, yes, CAMA had required the  
13     excavation of basins of pond -- unlined basins of ponds  
14     that were capped, but were you -- you were referring to a  
15     soil cap, right?  Soil caps?  You're not aware --

16             A     Correct.

17             Q     Okay.  And you're not aware of any that were a  
18     synthetic cap that had to be removed, were you, as a  
19     result of CAMA or the CCR Rule?

20             A     The only thing I think might be relevant there  
21     is the Allen.  There is a -- the retired ash basin at  
22     Allen.

23             Q     Had a synthetic cap?

24             A     Well, it had the landfill built on top of it

1    which had a cap, so that was kind of a unique situation,  
2    it was being viewed as a cap, but that was moving towards  
3    excavation.  And originally the -- we have other basins  
4    that look like that, and originally those were all  
5    required to be excavated under the original Order, but  
6    the ultimate settlement didn't require that for all.

7           Q     All right.  Thank you very much.

8           COMMISSIONER BROWN-BLAND:  That's all.

9           CHAIR MITCHELL:  All right.  Mr. Wells, I'd  
10   like to just follow up with you on one comment you made  
11   in response to one of the Commissioners.  You indicated  
12   that you didn't know if the Company or Duke Energy had  
13   submitted comments on the proposed CCR Rule, so I'd like  
14   for you to dig into y'all's records and see if you can  
15   determine whether the Company did submit comments during  
16   the rulemaking process and provide those comments as a  
17   late-filed exhibit, please.

18          THE WITNESS:  Yes, ma'am.

19          CHAIR MITCHELL:  All right.  At this point we  
20   will take questions on the Commissioner's questions,  
21   beginning with intervening parties.  Public Staff, you  
22   may proceed if you have any.

23          MS. LUHR:  Thank you.  This is Nadia Luhr.  I  
24   just have a couple of questions for Mr. Wells.

1 EXAMINATION BY MS. LUHR:

2 Q Good morning, Mr. Wells.

3 A (Wells) Good morning.

4 Q So Commissioner Brown-Bland yesterday asked you  
5 questions regarding the selection of the Allen plant for  
6 both Duke's internal evaluation and participation in the  
7 EPA and Arthur D. Little studies. Do you remember that  
8 question?

9 A I do, yes.

10 Q And so the Allen site consists of the retired  
11 ash basin and the active ash basin; is that correct?

12 A Today, yes.

13 Q Okay.

14 A And the -- and the landfill.

15 Q Correct. And the retired ash basin stopped  
16 receiving sluiced ash and was filled and basically  
17 stopped operating in the 1972 to 1973 time frame; is that  
18 correct? And we can refer to documents if we need to or  
19 we can go off your recollection.

20 A If you let me take a quick look at something, I  
21 can -- I do not have the date in front of me of when the  
22 retired ash basin no longer received ash.

23 Q Okay. Do you have Junis Exhibit 4?

24 A I can look. Yes. I have that.

1 Q Okay. So if you -- I guess there's only one  
2 page to this exhibit, and you'll see on the left-hand  
3 side the table is broken out by facility, and Allen is  
4 the first one there. And it lists the retired ash basin  
5 and then years during which CCR storage area was in  
6 operation, receiving or storing CCR, and do you see the  
7 dates there?

8 A I do see it. My -- I'm having trouble,  
9 honestly. The doc -- the type -- the font is very small.

10 Q I think it's a lot easier to see on a screen  
11 when you can blow it up, but I apologize for that. But  
12 I'll --

13 A If you want to tell me what it is, I would  
14 concur, subject to check.

15 Q Absolutely. So it's 1957 to 1973.

16 A Okay.

17 Q Okay. And so turning to the active ash basin,  
18 that impoundment began receiving sluiced ash in 1972,  
19 and, again, that's on the spreadsheet, but if you want to  
20 confirm, subject to check.

21 A Okay. Subject to check, I would agree.

22 Q Okay. And is it correct that the groundwater  
23 data at Allen that was used for the Allen study and the  
24 Arthur D. Little study was collected between 1979 and

1 1982? I believe you're muted, Mr. Wells.

2 A I believe the -- I think my understanding is  
3 that the initial Allen study that was done by --  
4 performed by -- that culminated in the Duke '84 report,  
5 that those wells went in -- I think those wells were  
6 installed in '78, so I think they began in '78.

7 Q Okay. So the active ash basin had been  
8 receiving coal ash for approximately 10 years when the  
9 groundwater monitoring was done; is that right?

10 A When -- I don't remember the date in the report  
11 when the -- the back end of the monitoring period for the  
12 -- that supported the study.

13 Q And by comparison, if you look at, for example,  
14 Riverbend, which I believe was discussed yesterday as  
15 well, the two ash basins at Riverbend had been receiving  
16 sluiced coal ash since 1957; isn't that right?

17 A I believe that is correct. I believe it went  
18 into operation in 1957.

19 Q Okay.

20 MS. LUHR: And that's all my questions.

21 THE WITNESS: Very good. Thank you.

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

24 MS. TOWNSEND: No questions, Chair Mitchell.

1 CHAIR MITCHELL: Okay. Sierra Club?

2 MS. CRALLE JONES: No questions, Chair

3 Mitchell.

4 CHAIR MITCHELL: All right. Any other  
5 intervenors, questions on Commissioner's questions?

6 (No response.)

7 CHAIR MITCHELL: All right. Mr. Marzo?

8 MR. MARZO: Chair Mitchell, no redirect. I  
9 would ask at the appropriate time that the witnesses'  
10 exhibits be moved into the record.

11 CHAIR MITCHELL: All right. Mr. Marzo, if the  
12 Company has no questions on Commissioner's questions,  
13 then we will go ahead and move evidence into the record.  
14 You may begin. Make your motion, Mr. Marzo.

15 MR. MARZO: I would move -- thank you, Chair  
16 Mitchell. I would move that the exhibits of Mr. Wells  
17 and Ms. Williams be moved into the record.

18 CHAIR MITCHELL: All right. The prefiled  
19 exhibits of witnesses Wells and Williams will be admitted  
20 into evidence, marked as they were when prefiled.

21 (Whereupon, Wells Rebuttal Exhibits  
22 1-2 and Williams Rebuttal Exhibit 1  
23 were admitted into evidence.)

24 CHAIR MITCHELL: Any additional motions? I see

1 Ms. Townsend.

2 MS. TOWNSEND: Yes, Chair Mitchell.

3 CHAIR MITCHELL: Ms. Townsend, you may proceed.

4 MS. TOWNSEND: Thank you. We would move to  
5 admit AGO Wells/Williams Rebuttal Cross Examination  
6 Exhibits 1 and 2, please.

7 CHAIR MITCHELL: All right. Hearing no  
8 objection to that motion, Ms. Townsend, it will be  
9 allowed.

10 MS. TOWNSEND: Thank you.

11 (Whereupon, AGO Wells/Williams  
12 Rebuttal Cross Examination Exhibit  
13 Numbers 1-2 were admitted into  
14 evidence.)

15 CHAIR MITCHELL: All right. Ms. Luhr?

16 MS. LUHR: Chair Mitchell, I would like to move  
17 that Public Staff Wells/Williams Rebuttal Cross  
18 Examination Exhibit Numbers 1 through 6 be entered into  
19 the record as marked.

20 CHAIR MITCHELL: All right. Ms. Luhr, hearing  
21 no objection to your motion, it will be allowed.

22 (Whereupon, Public Staff  
23 Wells/Williams Rebuttal Cross  
24 Examination Exhibits 1-6 were

1 admitted into evidence.)

2 CHAIR MITCHELL: All right. Any additional  
3 procedural matters for my attention before we conclude?

4 MR. ROBINSON: Chair Mitchell, this is Camal  
5 Robinson. Just -- and I don't know if this is one of the  
6 ones that you're referencing, but we'd like to discuss,  
7 of course, the post-hearing brief and proposed order  
8 schedule, if this is an appropriate time, or whether  
9 you --

10 CHAIR MITCHELL: Now is the time, Mr. Robinson.  
11 Please proceed.

12 MR. ROBINSON: Sure. So Chair Mitchell, I  
13 think at this time, obviously, again, we really  
14 appreciate the court reporter being able to get our  
15 transcripts out timely. The Company's proposal would be  
16 that we would submit our post-hearing brief and proposed  
17 orders within 30 days upon receipt of the final  
18 transcript or October 26th, whichever is a later date.  
19 And I would note that we have not discussed that with any  
20 of the parties, so the other parties will obviously need  
21 to weigh in. That is the Company's proposal.

22 CHAIR MITCHELL: All right. Response from any  
23 of -- from counsel to Mr. Robinson's proposal?

24 (No response.)

1           CHAIR MITCHELL: All right. Then we will  
2 entertain proposed orders and briefs from the parties 30  
3 days from the notice of the mailing of the transcript or  
4 October 26, whichever is later. Any additional matters  
5 for my attention?

6           COMMISSIONER McKISSICK: Madam Chair?

7           CHAIR MITCHELL: Commissioner McKissick.

8           COMMISSIONER McKISSICK: Yeah. I did have one  
9 request for a late-filed exhibit, which would basically  
10 be a summarization of the way that Duke Energy computed  
11 its fulfillment fee in the contract termination dealing  
12 with Charah and how they also computed the fulfillment  
13 fee and a complete explanation of the differences between  
14 those computations, and that would be it. I know we  
15 discussed that in -- you know, we're dealing with  
16 confidential information, so I'm trying to be respectful  
17 and not get into any numbers, anything of that nature,  
18 but it would be helpful to get that data.

19           If there's need for clarity, I can provide it  
20 later. If there's a need for them to provide it  
21 confidential, that's fine, too. Thank you, Madam Chair.

22           CHAIR MITCHELL: All right, Commissioner  
23 McKissick. And Mr. Marzo, I believe those -- that  
24 request is directed at your witnesses. Any questions?

1           MR. MARZO: Chair Mitchell, I believe I  
2 understood the request --

3           CHAIR MITCHELL: All right.

4           MR. MARZO: -- so I think we have that. It may  
5 need to be filed confidential, but Commissioner McKissick  
6 will allow that, so thank you.

7           CHAIR MITCHELL: All right. Well, at this  
8 point we have come to the end of the DEC-specific expert  
9 witness hearing. I want to express my appreciation for  
10 the hard work, counsel, that each of you has put into  
11 this case. We have been at this for a long, long time.  
12 You all have been at this for a very long time and this  
13 has been an endeavor. So I want to thank you for your --  
14 for hanging in there, for your hard work, for your  
15 professionalism, and for the rigor that you all have  
16 brought to this work. It is admirable and it's  
17 appreciated.

18           I would like to thank the witnesses, those who  
19 are still on with us and those who are listening in.  
20 Thank you for your participation in this proceeding as  
21 well. And thanks to everyone out there who assists all  
22 of you in getting your work done. We would not be here  
23 right now, we wouldn't have been nearly as efficient and  
24 organized with our hearing time did we not -- if we would

1 not have had their assistance.

2 So with that, it is 11:13. We will be off the  
3 record. We are adjourned, and thank you very much  
4 everyone.

5 (The hearing was adjourned.)

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STATE OF NORTH CAROLINA

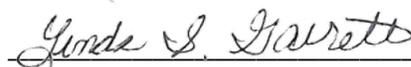
COUNTY OF WAKE

C E R T I F I C A T E

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

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

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



Linda S. Garrett, CCR  
Notary Public No. 19971700150