

1 PLACE: Via Webex  
2 DATE: June 30, 2021  
3 DOCKET NO.: SP-13695, Sub 1  
4 TIME IN SESSION: 9:00 A.M. TO 11:40 P.M.  
5 BEFORE: Commissioner Daniel G. Clodfelter, Presiding  
6 Commissioner Lyons Gray  
7 Commissioner Kimberly W. Duffley  
8  
9  
10

11 IN THE MATTER OF:  
12 Verified Petition for Relief  
13 by Orion Renewable Resources, LLC  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1     A P P E A R A N C E S:  
2     FOR ORION RENEWABLE RESOURCES, LLC:  
3     Benjamin L. Snowden, Esq.  
4     Kilpatrick Townsend Stockton, LLP  
5     4208 Six Forks Road, Suite 1400  
6     Raleigh, North Carolina   27609  
7  
8     FOR ACCION GROUP, LLC:  
9     Daniel C. Higgins, Esq.  
10    Burns, Day & Presnell, PA  
11    Post Office Box 10867  
12    Raleigh, North Carolina   27605  
13  
14    Jack P. Crisp, Jr., Esq.  
15    The Crisp Law Firm, PLLC  
16    15 North Main Street, #208  
17    Concord, New Hampshire   03301  
18  
19    FOR DUKE ENERGY CAROLINAS, LLC:  
20    Jack E. Jirak, Esq.  
21    Duke Energy Corporation  
22    410 South Wilmington Street  
23    Raleigh, North Carolina   27602  
24

1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		PAGE
4	TIMOTHY LASOCKI	
5	Direct Examination by Mr. Snowden.....	18
6	Cross Examination by Mr. Jirak.....	35
7		
8	PANEL - DAVID BALL, HAROLD T. JUDD, PHILIP LAYFIELD,	
9	RALPH MONSALVATGE, GARY ROZIER	
10	Direct Examination by Mr. Higgins.....	47
11	Cross Examination by Mr. Snowden.....	58
12	Redirect Examination by Mr. Higgins.....	91
13	Examination by Commissioner Duffley.....	92
14	Examination by Commissioner Clodfelter.....	96
15		
16	PANEL - PHILLIP CATHCART, ORVANE PIPER	
17	Direct Examination by Mr. Jirak.....	110
18	Cross Examination by Mr. Snowden.....	119
19	Redirect Examination by Mr. Jirak.....	134
20	Examination by Commissioner Duffley.....	135
21	Examination by Commissioner Clodfelter.....	140
22	Examination by Mr. Snowden.....	142
23	Examination by Mr. Jirak.....	146
24		

1	T A B L E O F C O N T E N T S	
2	E X H I B I T S	
3		IDENTIFIED/ADMITTED
4	Attachment A - Lasocki Supplemental	
5	Rebuttal Testimony.....	20/44
6	Attachment B - Lasocki Second	
7	Supplemental Rebuttal Testimony.....	30/44
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

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

2 COMMISSIONER CLODFELTER: Madam Court Reporter,  
3 if you will please open the record, and everyone please  
4 come to order.

5 Good morning. I'm Commissioner Dan Clodfelter,  
6 and I'm assigned to preside over this proceeding. And  
7 joining me this morning by a remote connection are  
8 Commissioners Lyons Gray and Kim Duffley.

9 We'll take up now for hearing Docket Number  
10 SP-13695, Sub 1, which is In the Matter of the Petition  
11 for Relief by Orion Renewable Resources, LLC, challenging  
12 a decision by the Independent Administrator of the  
13 Competitive Procurement Renewable Energy Program, Accion  
14 Group, Inc., to Disqualify Orion's Proposal Number 129-01  
15 from Tranche 1 of the CPRE Program.

16 At this point, pursuant to the State Government  
17 Ethics Act, I will remind members of the panel that it is  
18 our duty to avoid conflicts of interest, and inquire at  
19 this time as to whether any member of the panel has a  
20 known conflict of interest with respect to the proceeding  
21 this morning?

22 (No response.)

23 COMMISSIONER CLODFELTER: Madam Court Reporter,  
24 please let the record indicate that no member of the

1 panel identified any conflict.

2 We are here this morning for the limited  
3 purpose of considering certain additional evidence that  
4 has been presented or has come to the parties and the  
5 panel's attention since the original hearing held on  
6 November 2nd, 2020.

7 I'm going to try to shortcut some of the  
8 procedural folderol this morning, so let me proceed and  
9 ask counsel to announce their appearances for the record,  
10 please, and then we've got some procedural matters we do  
11 need to take up, so we'll begin with the Applicant.

12 MR. SNOWDEN: Good morning, Commissioner  
13 Clodfelter, Commissioner Gray, Commissioner Duffley. I'm  
14 Ben Snowden with Kilpatrick Townsend for the Applicant  
15 Orion Renewable Resources, LLC.

16 COMMISSIONER CLODFELTER: Good morning. Who's  
17 next?

18 MR. JIRAK: Good morning, Commissioner  
19 Clodfelter. Jack Jirak on behalf of Duke Energy  
20 Carolinas, LLC.

21 COMMISSIONER CLODFELTER: Great. Good morning.

22 MR. HIGGINS: Commissioner Clodfelter, Dan  
23 Higgins with Burns, Day & Presnell appearing along with  
24 Mr. Jack Crisp on behalf of the Accion Group.

1                   COMMISSIONER CLODFELTER: Good morning to you  
2 both. Let me just ask for completeness, I don't see  
3 anyone appearing on behalf of the Public Staff, but I'll  
4 ask, is there anyone making an appearance on behalf of  
5 the Public Staff this morning?

6                                   (No response.)

7                   COMMISSIONER CLODFELTER: Let the record  
8 reflect that no further appearances have been announced.  
9 Gentlemen, I'm going to assume that each -- unless you  
10 tell me differently by objection, I'm going to assume  
11 that each of you has had an adequate opportunity to  
12 inspect the Clerk's docket and have satisfied yourselves  
13 that all matters are properly filed in the docket, belong  
14 in the docket, that they are correct and complete, that  
15 all confidentiality designations have been properly made  
16 by the Clerk's filings, and that there are no extraneous  
17 or immaterial matters filed in the docket. If any of you  
18 disagrees with my characterization of the docket entries,  
19 please speak now.

20                                   (No response.)

21                   COMMISSIONER CLODFELTER: All right, then. We  
22 will proceed this morning and without a recitation of the  
23 procedural history. I know you're appreciative of that.

24                                   We've got a couple of procedural matters to

1 take up before we begin, and there may be others that I'm  
2 not aware of. Let me start with the first matter that is  
3 the Commission -- or the panel's matter, really, the  
4 Commission's matter. Commissioner Gray has a conflict  
5 that begins at 12:30 p.m., and I understand that the  
6 parties have previously advised counsel for the  
7 Commission that in the event the hearing today needs to  
8 continue past 12:30 p.m., that your clients consent to  
9 allowing Commissioner Gray, should he need to do so, to  
10 read into the transcript the remainder of the transcript  
11 for which he's not personally present. And will you  
12 please confirm to me that that is your understanding, or  
13 if that is not your understanding, let me hear your  
14 objection now.

15 MR. SNOWDEN: No objection from Orion,  
16 Commissioner.

17 MR. JIRAK: No objection from DEC.

18 MR. HIGGINS: No objection for Accion Group.

19 COMMISSIONER CLODFELTER: Thank you for that.

20 The second matter also involves Commissioner Gray.  
21 You're popular this morning, Lyons. As many of you know,  
22 Commissioners Gray -- Commissioner Gray's term expires  
23 today, June the 30th; however, the confirmation of his  
24 successor is still pending in the General Assembly, and



1 under the law, Commissioner Gray will continue to hold  
2 over and serve as Commissioner until his successor is  
3 confirmed. It is our hope and our expectation that the  
4 panel will be able to decide this matter before  
5 Commissioner Gray leaves office; however, Chair Mitchell  
6 has appointed an alternate Commissioner, Commissioner  
7 Brown-Bland, for this matter in the event that we do not  
8 have a decision prior to the time Commissioner Gray's  
9 successor is confirmed and his term ends. So long as  
10 Commissioner Gray is continuing to serve, Commissioner  
11 Brown-Bland will not participate in this matter; however,  
12 if Commissioner Gray's term ends before the panel renders  
13 its decision in this matter, then I'm going to invite the  
14 parties to consider the following proposal.

15 I will not ask you to respond to it today, not  
16 presently, but the proposal that we have for you is that  
17 if Commissioner Gray is unable to complete his complete  
18 decision and before his term expires, that Commissioner  
19 Brown-Bland would then step in, and that the parties  
20 would agree that the requirements that she have attended  
21 in person the hearings on November 2nd and the hearings  
22 of today are waived, and that she be allowed to read in  
23 the transcript of those hearings and to examine the  
24 evidence and the exhibits offered and admitted into

1 evidence on November 2nd and today. I'm not going to ask  
2 you to agree to that this morning, you may want some time  
3 to consider that with your client, but we do need a  
4 decision from you on that so we can know what happens and  
5 what other contingencies we might need to examine in the  
6 event we don't have a decision before Commissioner Gray  
7 leaves us. So I'm going to ask you if you would --  
8 sorry? I thought I heard someone speak. If not, I'm  
9 going to ask you if you would confer with your clients,  
10 and please advise us by a letter filed in the docket no  
11 later than the close of business on July 6th, that's next  
12 Tuesday, as to whether your client consents to allowing  
13 Commissioner Brown-Bland, in the event she has to step in  
14 and replace Commissioner Gray, to read into the record of  
15 the case without having participated in person in the two  
16 hearings. If there are objections to that, then the  
17 panel will consider further options for how to proceed.  
18 I won't ask you to comment on that today.

19 I understand that there is an additional  
20 procedural matter this morning, and that concerns the  
21 sequence of the witnesses. And Mr. Snowden, since that  
22 matter was raised by you, I'm going to hear you first on  
23 it.

24 MR. SNOWDEN: Thank you, Commissioner

1 Clodfelter. As you mentioned, Orion requested Mr.  
2 Lasocki be allowed to provide his testimony first,  
3 followed by Duke and Accion witnesses. And there are a  
4 couple of reasons that we make that request. Orion is  
5 the Petitioner in this matter, and it's customary for the  
6 Petitioner's witnesses to go first in order. Although  
7 Mr. Lasocki's testimony is characterized or is captioned  
8 rebuttal testimony, that was really driven by -- that  
9 characterization was pursuant to the Court's -- I'm sorry  
10 -- to the Commission's Order citing the testimony  
11 scheduled for this hearing. Mr. Lasocki's testimony  
12 isn't really rebuttal to the testimony of the Duke and  
13 Accion witnesses, so much as it is a rebuttal to the  
14 Late-Filed Exhibit which has been in the record since  
15 November. Duke and Accion's witnesses really don't  
16 provide much in the way of substantive testimony, other  
17 than simply to verify the contents of the Late-Filed  
18 Exhibit, so we think it's appropriate for Mr. Lasocki to  
19 -- to provide his testimony first, followed by Duke and  
20 Accion witnesses.

21 The other reason that we would make this  
22 request goes to Commissioner Gray's scheduling  
23 constraint. All indications are that the main variable  
24 in how long this hearing is going to take is not going to

1 be the examination of Mr. Lasocki. I'm not sure whether  
2 the other parties have cross examination for him, but as  
3 far as I can tell, I don't believe they do, or at least  
4 not significant cross, and so it's really going to be my  
5 cross of their witnesses that drives the length here. I  
6 don't think that we're going to be going anywhere near  
7 the time constraint, but it would be a lot easier to make  
8 sure that we don't go past 12:30 if we can get Mr.  
9 Lasocki's testimony out of the way, and then I'd have a  
10 very good idea of how much more there is to be done while  
11 I'm examining the other witnesses.

12 COMMISSIONER CLODFELTER: Mr. Snowden, before I  
13 hear if there are any objections, and I understand there  
14 may be, let me ask you this question. If you were to put  
15 Mr. Lasocki up first, do I take it that you would not  
16 then be expecting to call him again in rebuttal, you  
17 would not be seeking permission to call him in rebuttal  
18 later?

19 MR. SNOWDEN: That's correct.

20 COMMISSIONER CLODFELTER: That is correct?

21 MR. SNOWDEN: Yes.

22 COMMISSIONER CLODFELTER: Thanks for clarifying  
23 that. Are there objections to the request?

24 MR. JIRAK: Yes, there are, Commissioner

1 Clodfelter.

2 COMMISSIONER CLODFELTER: All right. Mr.  
3 Jirak, I'll hear you.

4 MR. JIRAK: Thank you. As we indicated in our  
5 communications yesterday to the Commission, we believe  
6 it's appropriate for the DEC and IA witnesses to go  
7 first. When the Commission set this particular aspect of  
8 this proceeding for hearing, they ordered DEC to file --  
9 and the IA to file testimony first, followed by  
10 responsive testimony of Mr. Lasocki on behalf of Orion.  
11 And we think it makes procedural sense to follow that  
12 Order in this hearing this morning, that the party that  
13 filed testimony first should be put on the stand first,  
14 followed by the party that filed responsive testimony.  
15 The substance and procedural posture of the testimony as  
16 it was filed should control in this case, we believe.

17 To respond to Mr. Snowden's concerns about  
18 timing, we are absolutely sensitive to the timing  
19 constraints we are operating under. We have no  
20 expectation that we will come anywhere close to the noon  
21 deadline. In fact, Mr. Snowden has previously indicated  
22 in an email that he only has an hour's worth of planned  
23 cross. We don't have anywhere close to an hour's worth  
24 of planned cross at this point. And so, therefore, the

1 timing concern is a nonissue, from our perspective, based  
2 on the schedule that's been laid out. So we think that,  
3 again, the manner in which the Commission set this matter  
4 and requested testimony should control in this case,  
5 particularly given that Mr. Lasocki's testimony is very  
6 much responsive. It was labeled rebuttal testimony to  
7 the testimony of -- to the direct testimony of the IA and  
8 DEC.

9 COMMISSIONER CLODFELTER: Mr. Crisp, Mr.  
10 Higgins, anything you want to add or say differently?

11 MR. HIGGINS: Nothing to add, Commissioner  
12 Clodfelter. As we indicated in the communications  
13 yesterday, the Independent Administrator supports Duke's  
14 position on this issue.

15 COMMISSIONER CLODFELTER: Mr. Jirak, let me ask  
16 you this question. I think everything you say is quite  
17 correct and in line with the way we normally run these  
18 things. This is a bit odd in a number of respects, with  
19 the Late-Filed Exhibit and so forth. Mr. Lasocki's  
20 testimony draws certain inferences about that he believes  
21 that the panel should draw from the Late-Filed Exhibit,  
22 and so I think one of the -- I predict that it's likely  
23 that one of the most important questions that will be  
24 posed to the Duke witnesses and the IA witnesses is do

1     you agree or do you not agree with the inferences Mr.  
2     Lasocki has drawn from the Late-Filed Exhibit, and if you  
3     disagree, why?

4             It seems to be -- even though it's not the  
5     normal order of things, as you correctly point out, it  
6     seems to be somewhat logical to just get the pieces put  
7     out first from Mr. Lasocki so that your witnesses can  
8     then respond to questions about whether they agree or  
9     disagree, without us having to ask a lot of predicate  
10    questions, such as have you read the exhibit, do you  
11    understand the exhibit, does the exhibit say this, does  
12    Mr. Lasocki's testimony say this, does he do this and so  
13    forth. It just might be more efficient to put him up,  
14    let him put the pieces out there about the exhibit, and  
15    then have your witnesses respond. I recognize that  
16    that's not the normal procedural posture, but it seems to  
17    me that might be most efficient in this case.

18            MR. JIRAK: I understand that perspective,  
19    Commissioner Clodfelter. Obviously, our witnesses have  
20    reviewed the testimonies of Lasocki, so I think we can  
21    really -- even if our witnesses, DEC and IA witnesses go  
22    first, I think we can minimize the predicate foundation-  
23    laying type questions, given their familiarity with those  
24    positions, and so I wouldn't think that that's going to

1 materially change the amount of time we're here this  
2 morning. And, again, I -- you know, again, just  
3 procedurally, I think it would be more appropriate for us  
4 to be able to have an opportunity to evaluate the  
5 discussion that occurs on the direct testimony in order  
6 to evaluate what's appropriately needed in terms of cross  
7 examination of rebuttal testimony.

8 COMMISSIONER CLODFELTER: Mr. Snowden, as I  
9 understand your proposal, if you put Mr. Lasocki up  
10 first, you will forego any chance for him to respond to  
11 things that may be said in the Accion and Duke testimony,  
12 and you're comfortable with that?

13 MR. SNOWDEN: (Nods affirmatively.) (Sound  
14 muted; no verbal response heard.)

15 COMMISSIONER CLODFELTER: All right. Mr.  
16 Jirak, with respect to your observations, I think they're  
17 all perfectly correct, but I, again, think there may be a  
18 reason to sort of vary the procedure this morning, and so  
19 I'm going to allow Mr. Snowden to put up his witness  
20 first, and then we'll take the panel witnesses in  
21 whatever order that you want and go from there. I think  
22 that may be the most efficient way to proceed this  
23 morning.

24 Are there -- let me ask counsel, are there any



1 other preliminary procedural matters we need to take up?  
2 I understand that all parties have consented that the  
3 Accion witnesses and the Duke witnesses may be put up as  
4 a panel; is that correct?

5 MR. JIRAK: I think the -- that's correct,  
6 Commissioner Clodfelter. At this point I think the plan  
7 is to have the IA witnesses present separately from the  
8 DEC witnesses.

9 COMMISSIONER CLODFELTER: I understand, but for  
10 each party they'll be put up as panels?

11 MR. JIRAK: Oh. Yeah. My apologies. That's  
12 correct.

13 COMMISSIONER CLODFELTER: No. Great. That's  
14 great. Anything else by way of preliminaries?

15 MR. HIGGINS: Nothing else for here.

16 COMMISSIONER CLODFELTER: All right. Mr.  
17 Snowden, you may call your witness.

18 MR. SNOWDEN: Thank you, Commissioner. Orion  
19 Renewable Resources, LLC calls Timothy Lasocki to the  
20 stand.

21 TIMOTHY LASOCKI; Having been first duly affirmed,  
22 Testified as follows:

23 COMMISSIONER CLODFELTER: Mr. Snowden, proceed.

24 MR. SNOWDEN: Thank you.

1 DIRECT EXAMINATION BY MR. SNOWDEN:

2 Q Mr. Lasocki, can you please state your full  
3 name and business address?

4 A Full name is Timothy James Lasocki. Business  
5 address is 155 Grand Avenue, Suite 706, Oakland,  
6 California, 94612.

7 Q And by whom are you employed and in what  
8 capacity?

9 A I am employed by Orion Renewable Energy Group,  
10 LLC, as the Vice President of Origination and Finance.

11 Q And did you cause to be filed in this docket  
12 prefiled supplemental rebuttal testimony consisting of  
13 nine pages and one attachment filed on May 12th, 2021?

14 A Yes, I did.

15 Q And if I were to ask you the same questions  
16 today, would your answers be the same?

17 A Yes, they would.

18 Q And did you also cau--- sorry. And did you  
19 also caused to be filed prefiled second supplemental  
20 rebuttal testimony consisting of three pages and one  
21 attachment filed in this docket on June 21st, 2021?

22 A Yes.

23 Q And if I were to ask you the same questions  
24 today, would your answers be the same?

1           A       Yes.

2           Q       Do you have any corrections to your prefiled  
3       supplemental rebuttal testimony or your prefiled second  
4       supplemental rebuttal testimony?

5           A       No.

6                   MR. SNOWDEN: Commissioner Clodfelter, I would  
7       ask that Mr. Lasocki's prefiled supplemental rebuttal  
8       testimony, as well as his prefiled second supplemental  
9       rebuttal testimony, be received into the record as if  
10      given orally from the stand.

11                  COMMISSIONER CLODFELTER: Without objection,  
12      they are so received.

13                  MR. SNOWDEN: Thank you. I would further ask  
14      that the attachments to Mr. Lasocki's testimony be moved  
15      into evidence at this time.

16                  COMMISSIONER CLODFELTER: Do you want to move  
17      them into evidence or do you want to mark them for  
18      identification?

19                  MR. SNOWDEN: I'd like to mark them for  
20      identification.

21                  COMMISSIONER CLODFELTER: They will be marked  
22      as -- so marked as filed.

23

24

1 (Whereupon, the prefiled supplemental  
2 rebuttal testimony of Timothy Lasocki  
3 was copied into the record as if  
4 given orally from the stand.)

5 (Whereupon, Attachment A was  
6 identified as premarked.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. SP-13695, SUB 1  
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Orion Renewable Resources LLC

)  
) **PREFILED SUPPLEMENTAL**  
) **REBUTTAL TESTIMONY OF**  
) **TIMOTHY LASOCKI ON BEHALF OF**  
) **ORION RENEWABLE RESOURCES**  
) **LLC**  
)

OFFICIAL COPY

May 19, 2021

**INTRODUCTION**

**Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

A. My name is Timothy Lasocki. I am Vice President for Origination and Finance with Orion Renewable Energy Group LLC ("OREG"), located at 155 Grand Avenue, Suite 706, Oakland, California. OREG is an affiliate of Orion Renewable Resources LLC ("Orion").

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH CAROLINA UTILITIES COMMISSION?**

A. Yes. I provided direct testimony on behalf of Orion at the evidentiary hearing held in this matter on November 2, 2020.

**Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL REBUTTAL TESTIMONY?**

A. The purpose of my testimony is to respond to factual statements made in the Corrected Late-Filed Exhibit filed in this docket by Duke Energy Carolinas, LLC ("Duke") on November 25, 2020 ("LFE"); to the Direct Testimony of Phillip H. Cathcart and Orvane Piper on behalf of Duke, filed on April 20, 2021; and to the Direct Testimony Of David Ball, Harold T. Judd, Philip Layfield, Ralph Monsalvatge, and Garey Rozier on behalf of Accion Group, LLC ("Accion"), the CPRE Independent Administrator, filed on April 28, 2021.

**Q. IS THE SCOPE OF YOUR TESTIMONY LIMITED TO FACTS AND MATTERS CONTAINED IN THE LFE?**

A. Yes, it is. Pursuant to the Commission's Order Denying Motion to Strike and Reopening Record, Allowing Testimony Or Comments On Late-Filed Exhibit, And Scheduling Further Hearing, issued on April 14, 2021, my testimony is limited to facts and matters contained in the LFE. Per the Commission's directive, I do not address additional factual issues raised only

1 in the Post-Hearing Briefs of Duke and/or Accion, such as those relating to the February 28, 2020  
2 Memorandum published by Accion and discussed in Orion's Verified Petition for Relief.

3 **Q. PLEASE SUMMARIZE THE CONTENTS OF YOUR TESTIMONY.**

4 A. My testimony addresses the following issues raised or discussed in the LFE:  
5 (1) whether the existence of other projects eliminated from CPRE Tranche 1 based on Accion's  
6 Net Benefit Analysis creates undue complications or requires further analysis; (2) whether  
7 granting Orion's request for relief would create a risk of "over-procurement" of CPRE resources  
8 by Duke; (3) the implications of Duke's reclassification of POI switching equipment as Network  
9 Upgrades between the Tranche 1 RFP and Tranche 2 RFP; and (4) Duke's claim that a PPA award  
10 for Orion's proposal in the Tranche 1 RFP ("Proposal") would be "detrimental to customers."

11 **RESPONSE TO FACTS AND MATTERS CONTAINED IN LFE**

12 1. Other Tranche 1 proposals eliminated based on Net Benefit analysis

13 **Q. DOES THE LFE DISCUSS PROPOSALS OTHER THAN ORION'S THAT**  
14 **WERE ELIMINATED FROM TRANCHE 1 BASED ON A "NET BENEFIT" ANALYSIS?**

15 A. Yes. The LFE describes two categories of such projects. First, there are two  
16 proposals that, like Orion's Proposal, were eliminated in Step 1.<sup>1</sup> Second, the LFE describes  
17 fifteen projects that were advanced to Step 2 and eliminated based on a Net Benefit analysis "after  
18 the application of T&D costs determined in Step 2."<sup>2</sup>

19 **Q. DUKE CLAIMS THAT THE EXISTENCE OF THESE OTHER PROJECTS**  
20 **SIGNIFICANTLY COMPLICATES ORION'S REQUEST FOR RELIEF. IS THAT**  
21 **TRUE?**

---

<sup>1</sup> Duke Energy Carolinas, LLC's Corrected Late-Filed Exhibit (Nov. 25, 2020) at 6.

<sup>2</sup> LFE at 6-7.

1           A.     No. Relying on the LFE, Duke claims in its Post-Hearing brief that a Commission  
2     finding that elimination of Orion's Proposal based on Net Benefit was improper "will set off a  
3     cascading series of questions and likely challenges that will take months to resolve, requiring the  
4     resolution of a series of complex conceptual questions concerning the retroactively-assessed  
5     hypothetical outcome of Tranche 1."<sup>3</sup> But the existence of these other projects does not  
6     significantly complicate Orion's request for relief.

7           As to the two other proposals eliminated in Step 1: The total capacity of those two  
8     proposals plus Orion's is only 127 MW, meaning that even if all three projects were awarded  
9     Tranche 1 PPAs, DEC would still be below its 600 MW procurement goal for Tranche 1.<sup>4</sup>

10          With regard to the fifteen proposals eliminated based on Net Benefit in Step 2, DEC  
11     determined that their Net Benefit was negative after consideration of T&D Upgrade costs. The  
12     LFE raises the question of whether any of those projects would have been below Avoided Cost  
13     after T&D Upgrade costs were considered.

14           **Q.     PLEASE EXPLAIN HOW YOU CAME TO THAT CONCLUSION.**

15          A.     Attachment A to my testimony is Accion's response to a data request from Orion,  
16     asking for information about the fifteen proposals that were eliminated in Step 2 of Tranche 1.  
17     The information provided by Accion includes, among other things, each proposal's net benefit  
18     without its T&D Upgrade costs and the Upgrade costs as determined by Duke's T&D Team.<sup>5</sup>

19          As indicated in footnote 1 to Accion's response, the proposals with rank numbers 9, 14,  
20     17, 21, 24, and 26 were located within or near a constrained area of the grid, and were dependent

---

<sup>3</sup> Duke Post-Hearing Brief at 3.

<sup>4</sup> Hearing Tr. at 79-80; Step 2 Report at 5 (127 MW of Proposals found to be "Above avoided cost" in Step 1); Final Report at Attachment 1; CPRE Program Update at 6.

<sup>5</sup> Accion has thus far refused to disclose to Orion information requested concerning the generating capacity, proposal decrement, and "Maximum Allowable T&D Upgrade Costs" of each proposal. Orion attempting to negotiate a resolution of this issue with Accion and may seek leave from the Commission to file additional testimony pending resolution of this dispute.



1 on substantial Network Upgrades assigned to earlier queued upgrades. According to Accion's  
2 response, these projects were not (contrary to Duke's claims) eliminated from consideration based  
3 on a negative Net Benefit. Rather, they were eliminated because of transmission constraints and  
4 "potential uncertainty regarding the ultimate cost responsibility for such Upgrades."

5 The other nine proposals (those ranked 10, 15, 16, 20, 28, 34, 38, 47, and 48) would only  
6 have been below the Avoided Cost Cap if the cost of their Upgrades was less than the "Maximum  
7 Allowable T&D Upgrade Costs," a term defined in the Tranche 2 memorandum and calculated by  
8 Accion based on the proposal's decrement to avoided cost. Accion calculated the Maximum  
9 Allowable T&D Upgrade Costs for Orion's Proposal and for the two other Proposals eliminated  
10 in Step 1 based on Net Benefit ("Bid A" and "Bid B"), and included that information in the LFE.<sup>6</sup>  
11 Orion requested a calculation of Maximum Allowable T&D Upgrade Costs for these proposals in  
12 discovery but unfortunately, Accion has not provided this information.<sup>7</sup> This information is  
13 needed to provide a definitive answer to whether any of these proposals were below the Avoided  
14 Cost Cap.

### 15 3. Impact on CPRE Procurement Targets

16 **Q. WHAT DOES THE LFE SAY ABOUT DUKE'S PROGRESS TOWARDS**  
17 **ITS OVERALL PROCUREMENT TARGET?**

18 A. The LFE states that Duke is not currently certain about the total amount of MW  
19 that will be procured under the CPRE program, because the total amount of "Transition MW" (as  
20 that term is used under HB 589) is determined. However, Duke states that "under certain realistic

---

<sup>6</sup> LFE at 8.

<sup>7</sup> Orion continues to seek this information through the discovery process, and may seek leave from the Commission to file supplemental testimony if and when it is provided.

1 scenarios, the Company (together with DEP) is already over-procured for CPRE based on Tranche  
2 1 and Tranche 2 due to higher than projected amounts of Transition MWs.”

3 **Q. WHAT IS THE RELEVANCE OF THIS FACT TO ORION’S REQUEST**  
4 **FOR RELIEF?**

5 A. None that I am aware of. As Duke notes, Orion’s Project was awarded a PPA in  
6 CPRE Tranche 2, so that granting Orion’s request for relief (a PPA corresponding to its Tranche  
7 1 proposal pricing) would have no impact on Duke’s overall CPRE procurement targets. Duke  
8 claims that “the retroactive procurement of two additional projects from Tranche 1 [*i.e.*, those that  
9 were eliminated in Step 1 based on Net Benefit] ... would further increase risk of over-  
10 procurement.” However, no other Tranche 1 participant, including those corresponding to the two  
11 other bids eliminated in Step 1, has requested any relief from the Commission, and no other party  
12 has requested that the Commission authorize or require such a “retroactive procurement.”

13 4. Reclassification of POI Switching Equipment

14 **Q. THE LFE SPENDS SEVERAL PAGES DISCUSSING “CHANGES IN**  
15 **EQUIPMENT CLASSIFICATION BETWEEN TRANCHE 1 AND TRANCHE 2.” CAN**  
16 **YOU SUM UP WHAT DUKE APPEARS TO BE SAYING IN THIS DISCUSSION?**

17 A. Duke says that after Tranche 1 concluded, it changed the classification of certain  
18 interconnection equipment required by all projects – “POI Switching Equipment” from  
19 Interconnection Facilities to Upgrades. CPRE participants bear the cost of Interconnection  
20 Facilities (which costs are factored into their proposal pricing), while Upgrade costs are borne by  
21 the utility, and ultimately the ratepayer.<sup>8</sup> The cost of POI Switching Equipment is approximately  
22 \$1M – \$1.25M.

---

<sup>8</sup> LFE at 2-3.

Orion submitted its Tranche 1 Proposal pricing based on the assumption that POI Switching Equipment would be considered Interconnection Facilities and the Project would have to pay for them. However, Orion's actual Interconnection Agreement will, pursuant to this change in policy, classify POI Switching Equipment as an Upgrade. According to Duke, if Orion is awarded a Tranche 1 PPA based on its Tranche 1 bid price, Orion would receive a "windfall" because its Tranche 1 bid price assumed cost responsibility for POI Switching Equipment while its Interconnection Agreement) will not assign Orion cost responsibility for POI Switching Equipment.<sup>9</sup>

**Q. HAS DUKE EXPLAINED WHY IT BELIEVES THAT FERC AUTHORITY REQUIRES IT TO CLASSIFY POI SWITCHING EQUIPMENT AS A NETWORK UPGRADE?**

A. No. Orion asked Duke in discovery to identify the "FERC Guidance" referenced in the LFE, and to explain why that guidance required the Company to change its classification of POI switching equipment. In response, Duke refused to explain its rationale but did provide copies of the "relevant FERC guidance," which consisted of a 2019 FERC Order rejecting a proposed FERC-jurisdictional Network Integration Transmission Service Agreement between Duke and the North Carolina Electric Membership Corporation ("NCEMC") based on Duke's assignment of costs for a transmission tap line to NCEMC,<sup>10</sup> and three FERC filings dating back to 2007 or earlier.

Although these documents do relate to the classification of interconnection equipment as either Upgrades or Interconnection Facilities, it's not clear how they apply to POI Switching equipment. More importantly, these documents don't explain why general FERC guidance should

---

<sup>9</sup> LFE at 5.

<sup>10</sup> *Duke Energy Carolinas, LLC*, Docket No. ER19-2459-000, 168 FERC ¶ 61,190 (Sept. 23, 2019).

1 constrain this Commission's ability either to administer its state-jurisdictional interconnection  
2 procedures or to fashion an appropriate remedy in this proceeding.

3 **Q. CAN DUKE'S CONCERN ABOUT A "WINDFALL" BE ADDRESSED IF**  
4 **THE PROJECT IS AWARDED A TRANCHE 1 PPA?**

5 A. Yes, easily. There are at least three ways to do this without impacting ratepayers  
6 or treating Orion's proposal unfairly. First, Orion could be awarded a PPA with Tranche 1 bid  
7 pricing reduced by an amount corresponding to the 20-year levelized cost of POI Switching  
8 Equipment treated as Upgrades. This would prevent any "windfall" to the Project or any negative  
9 impact to ratepayers from the reclassification. Second, the Project's Interconnection Agreement  
10 could follow the Tranche 1 policy and classify POI Switching Equipment as Interconnection  
11 Facilities rather than Upgrades, so that the Project would bear this cost. Finally, Orion could  
12 voluntarily assume the cost of the POI Switching Equipment, regardless of how it is classified  
13 under the Interconnection Agreement. Orion would have no objection to bearing those costs if its  
14 request for relief were granted, as they were factored into its Tranche 1 Proposal.

15 Because this is fundamentally an accounting issue that will have no material impact on  
16 either Orion's Project or ratepayers, any of these alternatives would be acceptable to Orion.

17 5. Assertion that the Proposal is "Detrimental to Customers"

18 **Q. ON PAGE 1 OF THE LFE, DUKE CLAIMS THAT ORION'S TRANCHE 1**  
19 **PROPOSAL IS "DETRIMENTAL TO CUSTOMERS" BECAUSE ACCION**  
20 **CONCLUDED THAT IT HAD A NEGATIVE "NET BENEFIT." WHAT IS YOUR**  
21 **RESPONSE?**

22 A. The claim that the Proposal is "detrimental to customers" makes very little sense,  
23 and at most shows that Duke is opposed to Orion's request for relief. As Orion discussed in its

1 filings, H.B. 589 sets the standard of “cost-effectiveness” for resources procured under CPRE: the  
2 utility’s published Avoided Cost rate.<sup>11</sup> The Public Staff, whose job it is to look out for ratepayers,  
3 agrees.<sup>12</sup> I am not a lawyer, but I my assumption is that the North Carolina General Assembly  
4 wouldn’t have chosen this metric for cost-effectiveness if they had thought it would be detrimental  
5 to Duke’s customers, or otherwise not in the public interest.

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

7 **A.** Yes, it does.

---

<sup>11</sup> Post-Hearing Brief of Orion Renewable Resources LLC (Jan. 4, 2021) at 4, 9; G.S. § 62-110.8(b)(2).

<sup>12</sup> Motion For Leave To File Comments And Comments Of The Public Staff (May 29, 2020) at 7-9.

1 (Whereupon, the prefiled second  
2 supplemental rebuttal testimony of  
3 Timothy Lasocki was copied into the  
4 record as if given orally from  
5 the stand.)

6 (Whereupon, Attachment B was  
7 identified as premarked.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## **INTRODUCTION**

**Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

A. My name is Timothy Lasocki. I am Vice President for Origination and Finance with Orion Renewable Energy Group LLC (“OREG”), located at 155 Grand Avenue, Suite 706, Oakland, California. OREG is an affiliate of Orion Renewable Resources LLC (“Orion”).

**Q. ARE YOU THE SAME TIMOTHY LASOCKI THAT PROVIDED DIRECT TESTIMONY AT THE NOVEMBER 2, 2020 EVIDENTIARY HEARING, AND PREFILED SUPPLEMENTAL REBUTTAL TESTIMONY ON MAY 12, 2021?**

A. I am.

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

A. The purpose of my testimony is discuss additional information provided to Orion by Accion Group, LLC (“Accion”), the CPRE Independent Administrator, pursuant to the Commission’s June 4, 2021 *Order Postponing Hearing, Granting Orion's Motion to Compel, and Permitting Orion to File Limited Supplemental Testimony* (the “Order”). This information relates to certain representations made in the corrected Late-Filed Exhibit prepared by Duke and Accion and filed in this docket on November 25, 2020 (“LFE”). Specifically, the LFE stated that:

15 projects were also eliminated in Tranche 1 based on a determination of negative Net Benefits *after* the application of T&D costs determined in Step 2. Extensive further analysis would therefore be needed to assess each such Proposal to determine whether the applicable T&D costs, in addition to causing the Proposals to have a negative Net Benefit, also would have exceeded the Maximum Allowable T&D Upgrade Cost. Depending on the outcome of such hypothetical analysis, all of the questions above would then need to be resolved with respect to such additional Proposals. (LFE at 7)

The LFE went on to state that:

Some of these 15 Proposals may pass “Maximum Allowable T&D Upgrade Costs” screen. (LFE at 8).

In my Supplemental Rebuttal Testimony, I noted that information about the “Maximum Allowable T&D Upgrade Costs” would be required to determine whether any of the 15 projects referenced in the LFE were, in fact, below the Avoided Cost Cap, but that Orion did not have that information in its possession.

**Q. WHAT ADDITIONAL INFORMATION DID ACCION PROVIDE, AND WHEN DID ORION RECEIVE IT?**

A. On June 14, 2021, Accion delivered to Orion a document (Attachment B) setting forth: (1) a narrative “clarification” regarding the statement in the LFE that 15 proposals were eliminated from the Step 2 T&D analysis on the basis of having a negative net benefit, “as compared to [Accion’s] representation on the table produced in response to Orion’s DR 1-1, that proposals 9, 14, 17, 21, 24, and 26, were impacted by a transmission constraint and therefore were not selected in Step 2 despite having a positive net benefit”; and (2) additional information about those 15 proposals, as required by the Commission’s Order.<sup>1</sup>

**Q. PLEASE SHARE YOUR ANALYSIS OF THE ADDITIONAL INFORMATION RECEIVED FROM ACCION.**

A. In my Prefiled Supplemental Rebuttal Testimony, I discussed the 15 projects that were, according to the Late-Filed Exhibit, eliminated from Step 2 because they had a negative Net Benefit. In my previous testimony I noted that according to information provided by Accion, the proposals with rank numbers 9, 14, 17, 21, 24, and 26 were eliminated not based on a Net Benefit analysis, but because they were impacted by transmission constraints on Duke’s system. Attachment B, provided by Accion in response to the Commission’s Order, confirms this analysis,

---

<sup>1</sup> Information designated by Accion as confidential is not relevant to my testimony, and has been redacted from Attachment B so that the document can be filed on the public record.



stating that these six proposals “were subject to fatal transmission constraints” and thus the Duke T&D team never calculated their T&D Upgrade costs.

**Q. WHAT ABOUT THE OTHER PROJECTS?**

A. In addition to the six proposals eliminated from Tranche 1 due to fatal transmission constraints, nine proposals (nos. 10, 15, 16, 20, 28, 34, 38, 47, and 48) were eliminated because they had a negative Net Benefit after T&D Upgrade costs were considered. In the LFE, Duke raised the question of whether T&D Upgrade costs, “in addition to causing [these] Proposals to have a negative Net Benefit, also would have exceeded the Maximum Allowable T&D Upgrade Cost.” LFE at 7. For any given proposal, only if the cost of its Upgrades was less than the “Maximum Allowable T&D Upgrade Costs” would the proposal be below the Avoided Cost Cap.

Accion has now provided calculations of the Maximum Allowable T&D Upgrade Costs for each of these nine projects, as set forth in the table on page 3 of Attachment B. This information confirms that for each of the nine proposals not eliminated due to transmission constraints, the cost of T&D Upgrades exceeded the Maximum Allowable T&D Upgrade costs. In other words, each of these proposals not only had a negative Net Benefit, but was also above the Avoided Cost Cap and was properly eliminated from consideration in Tranche 1.

**Q. WHAT DOES THIS MEAN FOR ORION’S TRANCHE 1 PROPOSAL?**

A. This means that if Accion had correctly (in Orion’s view) employed the Avoided Cost Cap, rather than Net Benefit, as the cost-effectiveness standard in Tranche 1, none of the 15 proposals referenced in the LFE would have been selected, and Orion’s proposal would have been offered a PPA. No further analysis of interconnection issues is required.

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

A. Yes, it does.

1           COMMISSIONER CLODFELTER: Someone's got a  
2 microphone on because I'm getting feedback and an echo of  
3 my voice. If you're not speaking, please put your  
4 microphone on mute. Thank you. That cured it. Thank  
5 you.

6           All right, Mr. Snowden. I think I just granted  
7 the motion to admit the testimony and mark the exhibits.  
8 Let me advise counsel that you can presume that the panel  
9 have received and have read or will read your summaries,  
10 and that it is not necessary this morning to read  
11 summaries of the testimony.

12           MR. SNOWDEN: Okay. Well, we can -- if the  
13 Commission would -- or the panel would prefer to skip the  
14 summaries, we can skip Mr. Lasocki's summary. Would that  
15 be your preference?

16           COMMISSIONER CLODFELTER: We're all good  
17 readers.

18           MR. SNOWDEN: Okay. Thank you, Commissioner --

19           COMMISSIONER CLODFELTER: It would be the  
20 preference.

21           MR. SNOWDEN: Okay. Well, then, at this time  
22 -- actually, Commissioner Clodfelter, Mr. Lasocki is  
23 available for cross examination and Commissioner  
24 questions.

1 COMMISSIONER CLODFELTER: Okay. I'm not sure  
2 who wants to go first, but I'll let you go in whatever  
3 order you choose.

4 MR. JIRAK: Thank you, Commissioner Clodfelter.  
5 If it's all right, I will proceed with some brief cross  
6 examination.

7 COMMISSIONER CLODFELTER: Please proceed.

8 MR. JIRAK: Thank you.

9 CROSS EXAMINATION BY MR. JIRAK:

10 Q Mr. Lasocki, I want to just ask a few brief  
11 questions regarding your initial rebuttal testimony, and  
12 this concerns assertion statements made on page 8 of your  
13 rebuttal -- initial rebuttal testimony. Do you have a  
14 copy of that in front of you?

15 A I'm going to open it now.

16 Q Thanks. Let me know when you're ready.

17 A What was the date of the document you're  
18 referring to?

19 Q I don't have a date of filing. It's your  
20 Prefiled Supplemental Rebuttal Testimony of Timothy  
21 Lasocki on Behalf of Orion Renewable Resources.

22 MR. HIGGINS: I believe it's May 12th.

23 A Okay. Yes. I have that open now.

24 Q Can you please turn to page 8, line 18?

1           A     Yes. I have that.

2           Q     And I want to specifically ask about your  
3     statement beginning on page 22, but to begin with here,  
4     you're -- you are responding, I believe, in this portion  
5     of testimony to the assertions or the statement in the  
6     Late-Filed Exhibit that asserted that the Orion's Tranche  
7     1 proposal was "detrimental to customers." Do you recall  
8     that portion of your testimony?

9           A     I do.

10          Q     Okay. And your -- your statement in your  
11     testimony here, beginning on line 22, says "The claim  
12     that the proposal is detrimental to customers makes very  
13     little sense." Can you explain what you mean by "makes  
14     very little sense"?

15          A     Yes. My view on that is that there was a  
16     standard set, that it was the avoided cost standard under  
17     House Bill 589, and it is the Public Staff whose job it  
18     is to look out for ratepayers, agrees with this  
19     definition of what makes sense for the customers.

20          Q     So you understand, do you not, that the  
21     statement that the project would be detrimental to  
22     customers was based on the results of the IA's net  
23     benefit analysis?

1           A     I do not believe that was the standard that was  
2     to be used under the RFP.

3           Q     The question, though, I'm asking, is the  
4     statement that was made that the project was going to be  
5     detrimental to customers was based on the results of the  
6     IA's net benefit analysis? Putting aside the legal  
7     question of what is the perfect standard, that statement  
8     itself was based on the results of the IA's net benefit  
9     analysis?

10          A     I do not believe our project was going to be  
11     detrimental to our customers based on the established  
12     definitions of cost effectiveness and our bid decrement  
13     that was below avoided cost, so mathematically, I believe  
14     our project was beneficial to customers.

15          Q     Okay. Are you familiar with the net benefit  
16     analysis and the mathematical outcome of that analysis?

17          A     I am familiar with that analysis, as well as  
18     the fact that it was to be used for rank order only.

19          Q     So you're aware of how the net -- are you  
20     familiar with how the net benefit analysis worked, Mr.  
21     Lasocki?

22          A     I'm familiar with the mathematical calculation  
23     and how it was applied.

1           Q     So you're aware that the net benefit analysis  
2     assessed the value of the output of the project against  
3     the -- over -- on an hourly basis against the avoided  
4     costs on the DE system over that same period of time,  
5     correct?

6           A     I believe that it was used to assess the hourly  
7     values. In terms of how that compares to avoided cost,  
8     our project was bid at a decrement to avoided cost.

9           Q     But you're not -- you don't disagree with the  
10    fact that the IA's analysis was an hourly comparison of  
11    the cost of your project against the hourly avoided cost  
12    in the Duke system over the same -- over the 20-year  
13    period of the PPA?

14          A     What doesn't make sense to me is how you can  
15    have two different mathematical outcomes using similar  
16    data. So I do understand that an 8760 of hourly rates  
17    were used by the independent evaluator. These -- that  
18    same 8760 hourly rates were not provided to bidders, so I  
19    did not have a copy of that. I only had a copy of the  
20    avoided cost amounts, to which I was only able to bid a  
21    decrement of \$1.00.

22          Q     Were you aware that the avoided cost amounts  
23    that the IA used in its net benefit analysis were the

1 same avoided costs that were rolled up into the levelized  
2 price caps proffered in the RFP?

3 A I was not aware of it. I also, to me, see a  
4 mathematical discrepancy in that how could one bid be  
5 both above and below the same thing. So if we're talking  
6 about avoided cost, we bid a decrement of \$1.00 below  
7 avoided cost.

8 Q Can you point me to your testimony anywhere  
9 where you've identified a mathematical error in the IA's  
10 net benefit analysis?

11 A I don't believe there was a mathematical error.  
12 I think that net benefit potentially used figures that  
13 weren't part of the RFP or made available to bidders.

14 Q So you agree there was no mathematical error.  
15 Do you have any evidence or do you have any testimony to  
16 indicate that -- to counter the IA's assertion that the  
17 same set of avoided costs that were used to establish the  
18 avoided cost cap were the same avoided costs that were  
19 used in the IA's net benefit analysis?

20 A I believe that's a question that should be  
21 directed to the IA and not to me. What I am aware of is  
22 that our project bid a decrement to the avoided cost  
23 standard.

1           Q     Okay. So do you disagree with the assertion  
2     that when the IA conducted its net benefit analysis and  
3     stacked up the costs of the Orion PPA that would be  
4     incurred by customers, if the Orion PPA was executed in  
5     Tranche 1, against the cost that customers would incur in  
6     the absence of the Orion PPA, that customers would pay  
7     more cost on a projected basis for the Ori-- to have the  
8     Orion PPA serving system needs than were it not the case  
9     that the Orion PPA were serving customer needs?

10          A     I believe we're revisiting material that was  
11     discussed in November 2020 at this point.

12          Q     I'm sorry. Could you repeat that, Mr. Lasocki?

13          A     I believe we're revisiting the topics and  
14     material that was already covered in the November 2020  
15     hearing. And it's also my understanding that this is  
16     only related to the Late-Filed Exhibit where we -- there  
17     was a statement that 15 other projects, if they had been  
18     subject to the same avoided cost standard that was  
19     discussed in November 2020, may have been instead been  
20     awarded a PPA.

21          Q     Actually, Mr. Lasocki, I'm asking you questions  
22     related to your rebuttal testimony in which you have  
23     asserted that the statement that the proposal is  
24     detrimental to customers makes no -- very little sense.



1 That's the -- that's the testimony that we're -- I'm  
2 discussing with you right now. Would you agree that  
3 that's your testimony?

4 A As Orion discussed in its filings, under House  
5 Bill 589, that sets the standard of cost effectiveness  
6 for resources procured under the CPRE Program, the  
7 Utility's published avoided cost rate.

8 Q Okay. But Mr. Lasocki, the IA's net benefit  
9 analysis, looking at the cost of the Orion project over  
10 20 years and comparing it against the cost that would  
11 otherwise be incurred for customers, showed that  
12 customers would pay more by executing the Orion Tranche 1  
13 PPA than if it did not. Do you -- do you think it's --  
14 do you have -- would you agree that you have not  
15 identified any mathematical error in the IA's analysis  
16 that came to that conclusion?

17 MR. SNOWDEN: I'm going to object to --

18 A Our proposal would not result --

19 MR. SNOWDEN: Mr. Jirak has already asked this  
20 question. Excuse me?

21 A Our proposal would not result in customers  
22 paying more than the avoided cost. It was only --

23 COMMISSIONER CLODFELTER: Mr. Lasocki --

24 A -- possible --

1 COMMISSIONER CLODFELTER: Mr. Lasocki, hold a  
2 second. There's an objection to the question. I need to  
3 hear the objection. Mr. Snowden?

4 MR. SNOWDEN: Thank you, Commissioner. I'll  
5 just object to this question. It has been asked -- this  
6 precise question was asked a few moments ago, and the  
7 previous question has also been asked. I think we're  
8 treading -- sort of retreading ground that Mr. Jirak has  
9 asked questions on several times.

10 COMMISSIONER CLODFELTER: I think we are  
11 drifting a little bit here, but I'm going to allow the  
12 question and let's get an answer, and then, again, let's  
13 try to stay focused as much as we can on the new matters  
14 and not revisit matters that we debated in November. But  
15 Mr. Jirak, I'll allow your question and I'll allow the  
16 answer. Do you want to restate your question?

17 MR. JIRAK: Sure.

18 Q Mr. Lasocki, have you identified any  
19 mathematical error in the IA's net benefit analysis that  
20 showed that customers would pay more money under a  
21 scenario in which it executed this -- the Orion Tranche 1  
22 PPA than if the Company did not execute the Orion Tranche  
23 1 PPA?

1           A     A two-part answer. First of all, that  
2     mathema--- that mathematics that you're describing has  
3     not been made available to me. And second of all, our  
4     proposal was below -- a decrement bid below the avoided  
5     cost, which is the standard that was established under  
6     House Bill 589 to set the cost effectiveness for  
7     resources procured.

8           Q     Okay.

9           MR. JIRAK: I have no further questions at this  
10    time.

11           COMMISSIONER CLODFELTER: All right. Thank  
12    you. Mr. Crisp, Mr. Higgins, I'm not sure who is going  
13    to be examining this morning, so whichever of you.

14           MR. HIGGINS: Commissioner Clodfelter, we don't  
15    have any questions for Mr. Lasocki.

16           COMMISSIONER CLODFELTER: All right. Thank  
17    you. Mr. Snowden, any redirect?

18           MR. SNOWDEN: No, sir. I do not have any  
19    redirect.

20           COMMISSIONER CLODFELTER: All right. Let's  
21    see. Commissioner Gray or Commissioner Duffley, any  
22    questions?

23           COMMISSIONER GRAY: I have no questions at this  
24    time.

1 COMMISSIONER CLODFELTER: Thank you.

2 COMMISSIONER DUFFLEY: No questions for Mr.  
3 Lasocki.

4 COMMISSIONER CLODFELTER: All right. And,  
5 likewise, I have no questions, either, so Mr. Snowden?

6 MR. SNOWDEN: Commissioner, we would ask that  
7 the attachments to Mr. Lasocki's testimony be moved into  
8 evidence at this time.

9 COMMISSIONER CLODFELTER: Without objection,  
10 they will be admitted into evidence. Thank you.

11 (Whereupon, Attachment A and  
12 Attachment B were admitted into  
13 evidence.)

14 COMMISSIONER CLODFELTER: Anything further, Mr.  
15 Snowden?

16 MR. SNOWDEN: No, sir, not for Mr. Lasocki.

17 COMMISSIONER CLODFELTER: All right. Any other  
18 witnesses? I'm not aware of any, but I have to ask.

19 MR. SNOWDEN: No, sir. We have no other  
20 witnesses for Orion.

21 COMMISSIONER CLODFELTER: Thank you. All  
22 right. Now, we discussed at the beginning the order of  
23 proceeding as to Orion, but we didn't really discuss who

1 is going to go next. So I'm indifferent, and we'll take  
2 it at your pleasure. Who's going to go next?

3 MR. JIRAK: Mr. Higgins, any particular  
4 preference on your end? We did not coordinate ahead of  
5 time.

6 MR. HIGGINS: I couldn't hear you.

7 MR. JIRAK: Mr. Higgins or Mr. Crisp, any  
8 particular preference? We --

9 MR. HIGGINS: None here. We're fine with --  
10 we're fine either way.

11 MR. JIRAK: Duke would recommend the IA  
12 witnesses go first, if that's acceptable.

13 COMMISSIONER CLODFELTER: All right. Let's --  
14 Mr. Higgins, let's take your witnesses first. Let's get  
15 them all up on the screen and be sure we have them all.  
16 Why don't you just read off the names of the panel  
17 members so we'll be sure we have everybody.

18 MR. HIGGINS: All right, sir. The panel will  
19 be Harry Judd, David Ball, Philip Layfield, Ralph  
20 Monsalvatge, and Gary Rozier, with my apologies for  
21 mispronouncing anyone's name.

22 COMMISSIONER CLODFELTER: All right. I think I  
23 see everyone.

24 MR. HIGGINS: And --

1 COMMISSIONER CLODFELTER: Go ahead.

2 MR. HIGGINS: Do we have everyone on the  
3 screen?

4 COMMISSIONER CLODFELTER: I think I see  
5 everyone on the screen.

6 HAROLD T. JUDD, DAVID BALL, PHILIP LAYFIELD,  
7 RALPH MONSALVATGE, AND GARY ROZIER;

8 Having first been duly affirmed,  
9 Testified as follows:

10 COMMISSIONER CLODFELTER: Madam Court  
11 Reporter --

12 MR. HIGGINS: Commissioner Clodfelter --

13 COMMISSIONER CLODFELTER: Mr. -- Madam Court  
14 Reporter, just so the record is clear, let's be sure that  
15 the record reflects that each one of the panel members  
16 affirmed, gave the necessary signal. All right. Mr.  
17 Higgins?

18 MR. HIGGINS: Commissioner Clodfelter, since  
19 we're putting these folks up as a panel, I would propose  
20 to sort of get each one of them to authenticate their  
21 testimony and then move it to admission because their  
22 testimony was consolidated, if that's acceptable to you.

23 COMMISSIONER CLODFELTER: That is acceptable.  
24 Please proceed.

1 MR. HIGGINS: All right. I'll start with Mr.  
2 Harry Judd.

3 DIRECT EXAMINATION BY MR. HIGGINS:

4 Q Mr. Judd, are you with me?

5 A (Judd) Yes, sir.

6 Q Please state your name for the record.

7 A Harold Judd, J-U-D-D.

8 Q And were you part of the Accion team that  
9 worked on Tranche 1 and 2 of the CPRE Program?

10 A Yes.

11 Q Did you participate in the hearing that was  
12 held in this docket on November 2 of last year?

13 A I did.

14 Q Did you file testimony in this docket in April  
15 of this year?

16 A I did.

17 Q All right. Do you have any -- did that --  
18 excuse me. Do you have any changes or revisions to your  
19 testimony?

20 A No, sir. I do not.

21 Q If I asked you the questions that are set forth  
22 in your prefiled testimony, would your answers be the  
23 same as those appearing in your prefiled testimony?

24 A Yes.

1                   MR. HIGGINS: Next, Commissioner Clodfelter, I  
2 would move to David Ball.

3                   COMMISSIONER CLODFELTER: You may continue.

4           Q       Mr. Ball, are you with me?

5           A       (Ball) Yes.

6           Q       Would you please state your name for the  
7 record?

8           A       David Ball.

9           Q       And were you part of the Accion team that  
10 worked on the Tranche 1 and Tranche 2 parts of the CPRE  
11 Program?

12          A       Yes.

13          Q       Mr. Ball, did you participate in the hearing  
14 last November?

15          A       Yes, I did.

16          Q       Did you later file testimony in this docket in  
17 April of this year?

18          A       Yes.

19          Q       Do you have any changes to your testimony that  
20 was prefiled?

21          A       No.

22          Q       If I was to ask you the questions that are set  
23 forth in your prefiled testimony, would your answers be  
24 the same as those appearing in the prefiled testimony?



1 A Yes.

2 Q All right, sir. Thank you.

3 MR. HIGGINS: Now I'll move to Mr. Philip  
4 Layfield.

5 Q Mr. Layfield, are you with me?

6 A (Layfield) Yes, sir.

7 Q State your name for the record, please, sir.

8 A Philip Layfield.

9 Q And were you part of the Accion team that  
10 worked on Tranche 1 and Tranche 2 of the CPRE Program?

11 A Yes, I was.

12 Q And did you also participate in the hearing in  
13 this docket last November?

14 A I did.

15 Q Did you later file testimony in this docket in  
16 April of this year?

17 A I did.

18 Q If I was to ask you the questions that were put  
19 to you in the prefiled testimony, would your answers be  
20 the same as those appearing in the prefiled testimony?

21 A Yes, they would.

22 Q Any changes or corrections?

23 A No, sir.

24 Q Thank you, sir.

1 MR. HIGGINS: Next, Mr. Ralph Monsalvatge.

2 Q Mr. Monsalvatge, are you with me?

3 A I am with you.

4 Q Please state your name for the record.

5 A My name is Ralph Monsalvatge.

6 Q And were you also part of the team, the Accion  
7 team, that worked on Tranche 1 and Tranche 2 of the CPRE  
8 Program?

9 A Yes.

10 Q Did you participate in the hearing held in this  
11 docket last November?

12 A Yes, I did.

13 Q Did you prefile testimony in this docket in  
14 April of this year that consisted of some written  
15 questions and answers?

16 A Yes.

17 Q Do you have any changes or corrections to your  
18 prefiled testimony?

19 A No, I do not.

20 Q If I was to ask you the questions that are set  
21 forth in your prefiled testimony, would your answers be  
22 the same as those that appear in the prefiled testimony?

23 A Yes.

24 Q All right, sir. Thank you.

1 MR. HIGGINS: Now I'll move to Mr. Gary Rozier.

2 Q Mr. Rozier, are you with me?

3 A (Rozier) Yes. I'm here. Can you not see me?

4 Q Please state your name for the record.

5 A My name is Gary Rozier.

6 Q All right, sir. Were you part of the Accion  
7 team that worked on Tranche 1 and Tranche 2 of the CPRE  
8 Program?

9 A Yes, sir.

10 Q Did you participate in the hearing in this  
11 docket last November?

12 A Yes.

13 Q Did you later file -- prefile written testimony  
14 in this docket in April of this year?

15 A Yes.

16 Q Any changes or corrections to your testimony?

17 A No, sir.

18 Q If I was to ask you the questions that appear  
19 in your prefiled testimony, would your answers be the  
20 same as those that are set forth for you in that prefiled  
21 testimony?

22 A Yes, they would.

23 MR. HIGGINS: Commissioner Clodfelter, at this  
24 point that's all five members of the Accion panel. I

1 would move the admission of their prefiled testimony into  
2 the record as if given orally from the stand.

3 COMMISSIONER CLODFELTER: All right. Unless I  
4 hear an objection, and I hear none, the testimony will be  
5 so admitted.

6 MR. HIGGINS: All right, sir.

7 (Whereupon, the prefiled direct  
8 testimony of David Ball, Harold T.  
9 Judd, Philip Layfield, Ralph  
10 Monsalvatge, and Gary Rozier was  
11 copied into the record as if given  
12 orally from the stand.)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. SP-13695, SUB 1

In the Matter of	)	<b>DIRECT TESTIMONY OF DAVID</b>
	)	<b>BALL, HAROLD T. JUDD, PHILIP</b>
Petition for Relief of Orion	)	<b>LAYFIELD, RALPH MONSALVATGE,</b>
Renewable Resources LLC	)	<b>AND GAREY ROZIER</b>
	)	<b>ON BEHALF OF ACCION GROUP,</b>
	)	<b>LLC., THE CPRE INDEPENDENT</b>
	)	<b>ADMINISTRATOR</b>
	)	

---

**Filed April 28, 2021**

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is name is David Ball. Accion Group's business address is 244 North  
3 Main Street, Concord, NH 03301.

4 Q. DID YOU PREVIOUSLY TESTIFY IN THIS DOCKET?

5 A. Yes, I participated in the November 2, 2020, hearing where my experience and  
6 education were identified.

7 Q. WOULD YOU PLEASE DESCRIBE YOUR ROLE IN THIS  
8 PROCEEDING?

9 A. I am a member of the Independent Administrator's team that conducted the CPRE  
10 program. I participated in the preparation of the Late Filed Exhibit item #6.

11 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

12 A. I am available to address questions from the Commission.

13 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

14 A. Yes, it does.

15 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

16 A. My name is name is Harold T. Judd. Accion Group's business address is 244 North  
17 Main Street, Concord, NH 03301.

18 Q. DID YOU PREVIOUSLY TESTIFY IN THIS DOCKET?

19 A. Yes, I participated in the November 2, 2020, hearing where my experience and  
20 education were identified.

21 Q. WOULD YOU PLEASE DESCRIBE YOUR ROLE IN THIS  
22 PROCEEDING?

1 A. I am the lead member of the Independent Administrator's team that conducted the  
2 CPRE program. I participated in the preparation of the Late Filed Exhibit.

3 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

4 A. The Independent Administrator, also known as the "IA", was asked by the  
5 Commission to work with Duke to produce the Late Filed Exhibit ("LFE") to  
6 address the specific issues identified by the Commission. The IA provided the table  
7 in item #6 of the LFE. As requested by the Commission, the IA calculated the  
8 Allowable System Upgrade cost that would have been applicable in Tranche 1 for  
9 three bids (*i.e.*, the maximum amount of Upgrade costs that could be absorbed by  
10 the Proposal before exceeding the avoided cost price cap, though the projects had  
11 a negative Net Benefit) and included that information in the LFE. The IA affirms  
12 that the information provided in item #6 of the LFE is correct.

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

14 A. Yes, it does.

15 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

16 A. My name is name is Philip Layfield. Accion Group's business address is 244 North  
17 Main Street, Concord, NH 03301.

18 **Q. DID YOU PREVIOUSLY TESTIFY IN THIS DOCKET?**

19 A. Yes, I participated in the November 2, 2020, hearing where my experience and  
20 education were identified.

21 **Q. WOULD YOU PLEASE DESCRIBE YOUR ROLE IN THIS**  
22 **PROCEEDING?**

1 A. I was responsible along with the Duke transmission evaluation team for  
2 establishing, executing, and verifying the transmission evaluation process for bids  
3 in Tranche 1. Thus, as the DEC late filed exhibit for docket No SP-13695, Sub 1  
4 was being drafted, I reviewed the transmission evaluation content for accuracy and  
5 completeness prior to its being filed.

6 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

7 A. I am available to address questions from the Commission.

8 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

9 A. Yes, it does.

10 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

11 A. My name is Ralph Monsalvatge. Accion Group's business address is 244 North  
12 Main Street, Concord, NH 03301.

13 **Q. DID YOU PREVIOUSLY TESTIFY IN THIS DOCKET?**

14 A. Yes, I participated in the November 2, 2020, hearing where my experience and  
15 education were identified.

16 **Q. WOULD YOU PLEASE DESCRIBE YOUR ROLE IN THIS**  
17 **PROCEEDING?**

18 A. I am a member of the Independent Administrator's team that conducted the CPRE  
19 program. I conducted the initial cost/benefit analysis that determined the relative  
20 ranking of the proposals represented in the Late Filed Exhibit. I also participated  
21 in the calculation of the "Maximum Allowable T&D Upgrade Costs" for the two  
22 other proposals represented in the exhibit as requested by the Presiding  
23 Commissioner.



1 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

2 A. I am available to address questions from the Commission.

3 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

4 A. Yes, it does.

5 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

6 A. My name is name is Garey Rozier. Accion Group's business address is 244 North  
7 Main Street, Concord, NH 03301.

8 Q. DID YOU PREVIOUSLY TESTIFY IN THIS DOCKET?

9 A. Yes, I participated in the November 2, 2020, hearing where my experience and  
10 education were identified.

11 Q. WOULD YOU PLEASE DESCRIBE YOUR ROLE IN THIS  
12 PROCEEDING?

13 A. I am a member of the Independent Administrator's team that conducted the CPRE  
14 program. Although I did not participate in the preparation of the Late Filed Exhibit,  
15 I am aware of its contents.

16 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

17 A. I am available to address questions from the Commission.

18 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

19 A. Yes, it does.

1 MR. HIGGINS: Also, given the -- given your  
2 insight regarding the summaries, we'll dispense with the  
3 reading of any summaries, and the panel is available for  
4 questions.

5 COMMISSIONER CLODFELTER: Very good. Who's up  
6 first? Mr. Jirak, do you have any questions for this  
7 panel?

8 MR. JIRAK: No. DEC does not have any  
9 questions of this panel. Thank you.

10 COMMISSIONER CLODFELTER: Thank you. All  
11 right. Mr. Snowden, we're with you. Mr. Snowden, you're  
12 on mute. Mr. Snowden, you're on mute.

13 MR. SNOWDEN: Thank you, sir. Sorry about  
14 that. Good morning, gentlemen. It's nice to see you  
15 all. And I am -- for the most part, my questions are  
16 going to be directed just simply to the panel, so  
17 whoever, you know, is best suited to answer those, please  
18 pipe up.

19 DIRECT EXAMINATION BY MR. SNOWDEN:

20 Q So, and this is -- I guess this is a sort of  
21 general question about the Late-Filed Exhibit. Is it  
22 your understanding that at the hearing in November, the  
23 Commission directed Accion and Duke to collaborate on the  
24 development of the Late-Filed Exhibit?

1           A     (Judd) This is Harry Judd. I'll answer that.  
2     Yes. That's how we read the Order.

3           Q     Okay. Thank you, Mr. Judd. And what was the  
4     purpose of that Late-Filed Exhibit?

5           A     To address concerns of the Commissioners, as  
6     raised during the hearing.

7           Q     And -- but the Late-Filed Exhibit did go beyond  
8     answering sort of specific concerns raised by the  
9     Commission at the hearing, didn't it?

10          A     Be happy to answer your questions if you want  
11     to, Ben, help me understand where you're going with that.

12          Q     Sure. Let me ask it this way. So as you say,  
13     there were specific questions that the Commission had or  
14     that the panel had during the hearing that were addressed  
15     in the Late-Filed Exhibit; is that right?

16          A     Yes.

17          Q     But the Late-Filed Exhibit included a lot of  
18     information that went beyond the specific concerns that  
19     were raised by the Commission at the hearing; is that  
20     correct?

21          A     I don't see it that way, but continue, please.

22          Q     So you don't think that the Late-Filed Exhibit  
23     included information that went beyond addressing the  
24     specific questions raised by the Commission?

1           A     I think the Late-Filed Exhibit speaks for  
2     itself, Ben. The information is there to be used by the  
3     Commission.

4           Q     Okay. Could you describe the collaboration  
5     process between Accion and Duke in the development of the  
6     Late-Filed Exhibit?

7           A     And the same process that was used -- and  
8     permit me to stop for a moment.

9           THE WITNESS: Commissioner Clodfelter, I, too,  
10    am getting feedback. If that's not disturbing to you,  
11    I'll simply continue. Thank you.

12          COMMISSIONER CLODFELTER: It appears someone  
13    may have a microphone open who's not speaking, so if you  
14    are not speaking, please mute your microphone.

15          MR. SNOWDEN: I think I am the culprit with  
16    that, so I will try --

17          COMMISSIONER CLODFELTER: All right.

18          MR. SNOWDEN: -- to mute myself.

19          THE WITNESS: Ben, if you want to stay muted  
20    for the rest of the hearing, we won't object.

21          A     So in the same way that we conducted CPRE,  
22    which is through Step 1, Step 2, we -- in creation of the  
23    Late-Filed Exhibit table, which was strictly the role of

1 the IA, we looked to the Duke personnel to assist in the  
2 system upgrade cost calculations.

3 Q All right. And you're getting to where I'm  
4 going. The Late-Filed Exhibit consists both of several  
5 pages of narrative and also a table of information about  
6 certain Tranche 1 proposals; is that right?

7 A Yes, because that's what we understood that the  
8 Commissioners wanted us to include.

9 Q And Accion provided the information for that  
10 table, I think, with some input from Duke; is that right?

11 A The table was created by Accion and, yes, as I  
12 just stated, we looked to Duke T&D evaluation team to  
13 assist us in the numbers that we didn't have previously,  
14 yes.

15 Q Okay. Was Accion involved in the preparation  
16 of the narrative portions of the Late-Filed Exhibit?

17 A Only to the extent that it referenced the  
18 table, but the rest of it was produced by Duke.

19 Q Did Duke -- so Duke drafted the narrative  
20 portions of the Late-Filed Exhibit; is that right?

21 A They provided that part of the Late-Filed  
22 Exhibit, yes.

1           Q     Okay. And did Duke share the narrative  
2 portions of the Late-Filed Exhibit with Accion prior to  
3 it being filed?

4           A     I don't recall, actually. I don't recall.

5           Q     Okay. So you don't recall whether anyone from  
6 -- well, does anybody else on the panel recall whether  
7 Accion reviewed the narrative portions of the Late-Filed  
8 Exhibit for accuracy or for any other reason before it  
9 was filed?

10          A     (Rozier) This is Gary Rozier. I did not.

11          A     (Ball) Gary Ball. I did not.

12          A     (Monsalvatge) Ralph Monsalvatge. I did not.

13          A     (Layfield) And Phil Layfield. Did not.

14          Q     Okay. Thank you. That's very helpful. So Mr.  
15 Judd, you don't recall whether you reviewed the narrative  
16 portions of the Late-Filed Exhibit?

17          A     (Judd) That is my testimony, yes.

18          Q     Okay. So the Late-Filed Exhibit discusses the  
19 fact that other proposals besides Orion were eliminated  
20 from CPRE based on a net benefit analysis, doesn't it?

21          A     Yes. And if you're getting to the  
22 clarification we provided on June 14th, where we  
23 clarified the -- our response to the Commission's  
24 request, yes, absolutely.

1           Q     Okay. Well, we'll -- I'm not quite there yet.  
2     We'll get to that in a minute. So two projects besides  
3     Orion's were eliminated in Step 1 based on the net  
4     benefit analysis, correct?

5           A     Yes.

6           Q     Okay. And other projects were eliminated in  
7     Step 2 based on that net benefit analysis, correct?

8           A     As we presented in our clarification -- Ben,  
9     I'm not quite sure I understand your question, so I'm  
10    going to answer what I -- what I heard. As we presented  
11    in our clarification, there were a number of projects  
12    that were not evaluated in Step 2 by Accion because we  
13    did not get back the -- a system upgrade cost to be  
14    imputed to the bids, but were eliminated because they  
15    would be above the avoided cost limit.

16          Q     Okay.

17          A     If that's not the question, I apologize and  
18    please restate it, but that's what I thought you were  
19    asking.

20          Q     That's not the question, but I think we can  
21    streamline this a little bit. Mr. Judd, if you don't  
22    mind -- do you have a copy of the Late-Filed Exhibit?

23          A     I do.

24          Q     Okay. And if you don't mind looking at page 7.

1           A     I have it in front of me.

2           Q     Okay. Do you see where it says "...15 projects  
3     were also eliminated in Tranche 1 based on a  
4     determination of negative net benefits after the  
5     application of T&D costs determined in Step 2. Extensive  
6     further analysis would therefore be needed to assess each  
7     such proposal to determine whether the applicable T&D  
8     costs, in addition to causing the proposals to have a  
9     negative net benefit, also would have exceeded the  
10    maximum allowable T&D upgrade cost." Do you see that?

11          A     I -- you read very well. Yes. I see that.

12          Q     Thank you. I try. So is it -- would I be  
13    correct in understanding that this statement was drafted  
14    by Duke -- by Duke?

15          A     Yes.

16          Q     All right. And you don't recall whether you  
17    would have reviewed this statement prior to the Late-  
18    Filed Exhibit being filed?

19          A     That is correct.

20          Q     All right. And I read this to say that it  
21    would take extensive further analysis to determine  
22    whether any of the 15 projects eliminated during Step 2  
23    were actually below avoided cost? Is that how you  
24    interpret that as well?



1           A     I'm pausing, Ben, because it's actually written  
2     as they would exceed the allowable; not that they would  
3     be below avoided cost, but, rather, how far above avoided  
4     cost is the --

5           Q     Okay.

6           A     -- approach that we used.

7           Q     Okay.

8           A     That's why we stopped doing initial analysis,  
9     because we were assured that the system upgrade costs  
10    would be so extensive that they would be above avoided  
11    cost as well as fail our net benefit analysis.

12          Q     Uh-huh, uh-huh. And just to be clear, I'm not  
13    -- we will talk in a minute about the six projects that  
14    were eliminated due to transmission constraints. I'm not  
15    -- I'm not trying to get at that right now. I'm just  
16    confirming that we have a mutual understanding of what  
17    the statement means in this -- in this context. And I  
18    interpret this to say -- or this to be a claim that  
19    extensive further analysis would be required to determine  
20    whether any of the 15 projects eliminated in Step 2,  
21    based on the net benefit analysis, would actually be  
22    below avoided cost. Is that your understanding of that  
23    statement?

1           A     Ben, we addressed this in our clarification,  
2     that we didn't analyze those 15 projects, with the  
3     understanding because they were cited in the  
4     preidentified constrained areas, that the system upgrade  
5     cost to meet the RCOD would be extensive and, therefore,  
6     they would fail on both bases.

7           Q     Okay. Well, okay. So let me -- let me ask you  
8     this. So you're talking about the six projects  
9     eliminated due to a transmission constraint; is that  
10    right?

11          A     We were talking about all 15, but as far as the  
12    six go, the -- yes, they were in constrained areas, which  
13    it was not physically impossible for a system to be built  
14    to meet their need, but the cost of that system upgrade  
15    would be so extensive, that once those costs were imputed  
16    to the bids, they would, of course, fail both our net  
17    benefit test and the avoided cost piece.

18          Q     Okay. Thank you. So for those six projects,  
19    we now know, without any further analysis, that those  
20    projects are not below avoided cost. Would you agree  
21    with that?

22          A     Yes.

23          Q     Okay. Thank you. If you don't mind, I'd like  
24    to -- do you have Mr. Lasocki's second sup--- prefilled

1 second supplemental rebuttal testimony and its  
2 attachment?

3 A I do. Yeah. It will take a moment, please.

4 Q Okay.

5 A Was that the May 12th, Ben?

6 Q No. That was the --

7 MR. HIGGINS: June 21.

8 Q June 21. Thank you. Yes.

9 A Thank you.

10 Q And I'm specifically looking at the attachment,  
11 Attachment B to that testimony.

12 A I have it in front of me.

13 Q Thank you. And you recognize this document?

14 A I do.

15 Q Okay. And this was the document that was  
16 produced by Accion in response to the Order of the  
17 Commission on the Motion to Compel?

18 A That is our June 14th clarification filing to  
19 the Commission. It's -- it's part of it, yes.

20 Q Okay. Thank you. And could you please look at  
21 page 3 of that? That's the table.

22 A Yes. I have it in front of me.

23 Q Okay. And going back to the six projects that  
24 were eliminated due to transmission constraints, those

1 are the ones that are bolded in the column marked Duke  
2 T&D Evaluation Team - Step 2 System Upgrade Costs, right?

3 A Yes. The bolding, the copy I have it's a  
4 little faint, but yes, I see the three -- yes.

5 Q Okay. Thank you. And those are proposals -- I  
6 have those as being Proposals 9, 14, 17, 21, 24, and 26.  
7 Would you agree with that?

8 A Okay. Let's -- let's do our cross reference.  
9 You're a little quicker than I am, but that's not  
10 unusual. Number 9, Number 21, Number 24, Number 26.

11 Q Yes. And also Number 14 and Number 17. And I  
12 think an easy way to tell was those are all the projects  
13 that have a positive net benefit number in the Net  
14 Benefit column.

15 A I --

16 Q Would you --

17 A I have them identified them, yes.

18 Q Okay. So 14 and 17 on that list; is that  
19 right?

20 A Yes, they are.

21 Q Okay. And so we know now that those projects  
22 are not below avoided cost. Is that -- would you agree  
23 with that?

24 A Below avoided cost.

1                   WITNESS ROZIER: Could I possibly help clarify  
2 this?

3                   WITNESS JUDD: That's Mr. Rozier, and I would  
4 appreciate, since we are sitting in a panel, then, if we  
5 have Gary join us.

6                   MR. SNOWDEN: Absolutely. Thank you.

7           A       (Rozier) I just want to be sure we're using the  
8 correct terminology here. So where Mr. Judd is talking  
9 about below avoided cost, that's specifically this  
10 additional test that came up in Tranche 2, not in Tranche  
11 1. That was to basically pass along projects that passed  
12 this -- what I would call the statutory avoided cost as  
13 perhaps Duke and the Staff agree with that, but from an  
14 Accion perspective, every project that didn't pass our  
15 detailed 8760 cost benefit was above avoided cost for  
16 Duke customers.

17           Q       Thank you, Mr. Rozier, for that clarification,  
18 and I appreciate that. I am -- when I say below avoided  
19 cost, above avoided cost, I am referring to the statutory  
20 avoided cost cap and not to the net benefit analysis, so  
21 I appreciate that clarification.

22                   So -- and so Mr. Rozier, I'm not sure whether  
23 you or Mr. Judd or someone else is the right person to  
24 answer this, but would you all agree that we now know,

1 with the information provided in this table, and I think  
2 in a prior -- previ--- the predecessor to this table that  
3 was produced by Accion, that those six projects were --  
4 or those six proposals were not below -- at or below the  
5 statutory avoided cost cap; is that right?

6 A (Rozier) Yeah. Mr. Snowden, I did not  
7 participate in that table, so perhaps Mr. Monsalvatge and  
8 Mr. Ball can answer that question.

9 A (Judd) Ralph, did you want to contribute?

10 A (Monsalvatge) Yes. I would like to. With  
11 respect to -- Mr. Snowden, I'm not sure which columns  
12 you're comparing, and I'll be glad to answer the  
13 question.

14 Q Thank you. Well, maybe I'll ask it another  
15 way. Would you agree that those six projects that we are  
16 referring to right now would have been eliminated from  
17 CPRE even if they were below avoided cost? Actually,  
18 strike that. Let me -- let me rephrase that.

19 Those projects were eliminated from CPRE  
20 because of uncertainty associated with their  
21 interconnection. Is that fair to say?

22 A That's outside my scope and knowledge,  
23 but --

1           A       (Judd) Well, permit me, Ben. As I said a few  
2       moments ago, because of the cost of system upgrades that  
3       would be needed to overcome the constraints for where  
4       those projects were loaded -- or excuse me -- would load  
5       the system, the circuits into which they would deliver,  
6       the system upgrade costs would be so dramatic that the  
7       projects would be above avoided cost, and beca---  
8       referring to the time constraint, you know, if we put  
9       three shifts of workers on it and brought in the Army  
10      Corps of Engineers and the Commission was prepared to  
11      approve significant system upgrade costs, they could have  
12      been constructed, but that added cost would have  
13      necessitated a significant imputed cost to those  
14      projects, which is why we stopped and did not have those  
15      in our Step 2 analysis.

16           Q       Okay. Thank you for that. I'd like to talk  
17      about the other nine projects on this chart, then. And  
18      would you agree that those projects were the ones that  
19      were eliminated based on their having a negative net  
20      benefit analysis?

21           A       Those were all part of projects that were not  
22      passed back to us, as we said in our clarification, from  
23      Duke, with the representation that the system upgrade  
24      costs would be quite significant if you look at the

1 numbers involved here, 40,000 -- excuse me -- 40 million,  
2 44 million, 20 million, and then you look at the column  
3 Maximum Allowable T&D, the analysis was stopped as being  
4 unlikely to produce a positive result for the projects,  
5 so we did not -- Ralph did not include those in our Step  
6 2 reranking.

7 Q Well, Mr. Judd, I'm sorry. I am not talking  
8 about -- the six projects that we have just been  
9 discussing, I am not talking about those; I am talking  
10 about the other nine projects of the 15 on the list. Are  
11 you with me?

12 A I -- I underst--- I understood your question.

13 Q Okay. So it's my understanding that those nine  
14 projects were eliminated based on their having a negative  
15 net benefit with T&D costs; is that right?

16 WITNESS JUDD: Ralph, were the other nine  
17 projects passed back to you with T&D costs assigned to  
18 them?

19 WITNESS MONSALVATGE: Not -- not prior to  
20 construction of this table.

21 WITNESS JUDD: And this table was the one --  
22 we're referring to is the one produced in response to the  
23 Commission's request, and the date on it is October --  
24 strike that -- June 21st, 2021, well -- two years past



1 our conclusion of Tranche 1; is that correct? Am I  
2 understanding you?

3 MR. SNOWDEN: That's when the document is  
4 dated. Well, let me -- let me back up.

5 Q So the Late-Filed Exhibit raises -- the Late-  
6 Filed Exhibit references 15 projects that were eliminated  
7 from Step 2 based on their having a negative net benefit  
8 analysis; is that right?

9 A (Judd) Yes.

10 Q Okay. And this table provides information  
11 about those 15 projects; is that right?

12 A It does.

13 Q Okay. And we've already discussed six projects  
14 that were -- although they were grouped with those 15 in  
15 the Late-Filed Exhibit, they were actually eliminated for  
16 reasons related to transmission constraint; presumably  
17 they would have had a negative net benefit analysis  
18 because their interconnection costs were very, very high;  
19 is that fair to say?

20 A I'll say again, just to be clear for the  
21 Commissioners, as Ralph just said, they were not passed  
22 back to us with system upgrade costs assigned to them, so  
23 he did not complete a -- the Step 2 reranking of bids for  
24 those 15 projects because we -- they were identified as

1 ones that would have very large system upgrade costs and  
2 therefore -- excuse me -- would be above avoided cost,  
3 and therefore he did not use his modeling to rank them.

4 Q Thank you.

5 A (Rozier) And Mr. Snowden, just, again --

6 Q Yes.

7 A (Rozier) -- to clarify, you're using the term  
8 interconnection costs. Mr. Judd is talking system  
9 upgrade costs. System upgrade costs are paid by the  
10 customer. Interconnection costs are paid by the market  
11 participants. So when Mr. Judd is talking these costs,  
12 that's the bucket he's putting it in.

13 Q Yes. Understood. Thank you. Yeah. We're not  
14 -- if I say interconnection costs, I am -- I apologize  
15 for being imprecise. I'm referring specifically to  
16 upgrade costs. And I really do want to move on from  
17 these six projects. I think we've discussed those.  
18 We've had plenty discussion on those.

19 I really want to talk about the other nine  
20 projects that are on this table. So would you agree that  
21 those other nine projects were -- were eliminated, as  
22 described in the Late-Filed Exhibit, based on their  
23 having a negative net benefit?

1           A       (Judd) I would refer you again to our  
2       clarification, where we -- you know, that  
3       characterization in Late-Filed Exhibit was -- excuse me  
4       -- a summary statement of we understood they would be  
5       above avoided cost, but we, as stated now again and as  
6       clarified in our filing, we did not rank them, rerank  
7       them because we did not get back system upgrade costs for  
8       those projects for our Step 2 analysis.

9           Q       But you did get that system upgrade cost for  
10      these other nine projects, didn't you?

11          A       When -- as Ralph testified, when this table in  
12      our clarification was produced, yes, at that point, in  
13      preparation of this table, we received those numbers, the  
14      ones --

15          Q       So you have information about the upgrade costs  
16      for the nine projects on here that are not the ones we've  
17      been discussing, the six that we've been discussing; is  
18      that right?

19          A       The information we have is presented on this  
20      chart that we provided in our clarification on October  
21      28th.

22          Q       Okay. Mr. Judd or anyone else on the panel,  
23      can you explain to me the concept of maximum allowable  
24      T&D upgrade costs?

1 A Let me take --

2 A (Monsalvatge) I'm Ralph --

3 A (Judd) I'm sorry.

4 A (Monsalvatge) I'm Ralph Monsalvatge. I'll be  
5 glad to explain.

6 A (Judd) Thank you.

7 A (Monsalvatge) The maximum allowable  
8 transmission calculation is specifically a calculation of  
9 the decrement and the amount of energy coming from the  
10 facility. For instance, a 50 MW facility bidding a \$2.00  
11 decrement would have approximately 110,000 MWh of output.  
12 And, therefore, with a \$2.00 decrement, it has \$220,000  
13 to fund transmission over a 20-year period, and that  
14 basically equates to a net present value of about 2.35  
15 million, and then you have to take that to a capital cost  
16 which is approximately 2 million --

17 Q Okay. Thank you --

18 A -- so --

19 Q -- for that -- thank you for that explanation.

20 A Thank you.

21 Q I'm sorry. Are you finished with your answer?

22 A Yes. Thank you.

23 Q Okay. The Late-Filed Exhibit, and I'm looking  
24 at page 1 here, describes this as the maximum amount of

1 upgrade costs that could be absorbed by a proposal before  
2 exceeding the avoided price cost cap. Is that -- is that  
3 accurate, or is that an accurate description of what  
4 maximum allowable T&D upgrade costs is?

5 MR. HIGGINS: Excuse me, Ben. Dan Higgins.

6 MR. SNOWDEN: Yes.

7 MR. HIGGINS: Could you give me a reference in  
8 the Late-Filed Exhibit --

9 MR. SNOWDEN: Sure. Sorry.

10 MR. HIGGINS: -- to where you're referring to?

11 MR. SNOWDEN: I am looking at page 1 of the  
12 Late-Filed Exhibit. It is in the third paragraph, and  
13 I'll just go ahead and read it. It says "As requested by  
14 the Commission, the IA has also calculated the allowable  
15 system upgrade costs that would have been applicable in  
16 Tranche 1 for these three bids" -- those were the ones  
17 that were eliminated in Step 1 -- "i.e., the maximum  
18 amount of upgrade costs that could be absorbed by the  
19 proposal before exceeding the avoided price cost cap,  
20 though the projects had a negative net benefit." Do you  
21 see that?

22 MR. HIGGINS: Yeah. I see it. I'm with you. I  
23 was just asking for a reference.

24 MR. SNOWDEN: Yes. Okay.

1 Q And Mr. Monsalvat--- I'm sorry. Is it  
2 Monsalvatge?

3 A (Monsalvatge) Yes. Monsalvatge.

4 Q Monsalvatge. Okay. Thank you. Mr.  
5 Monsalvatge, do you see that description in the Late-  
6 Filed Exhibit?

7 A Yes.

8 Q Okay. And is that -- is that -- it appears to  
9 me that that is describing the maximum allowable T&D  
10 upgrade cost figure; is that right?

11 A As -- as it was drafted for Tranche 2, and now  
12 it's being retroactively applied to Tranche 1.

13 Q Okay. Thank you. So Accion calculated the  
14 maximum allowable T&D upgrade cost for each project that  
15 was advanced to Step 2 of Tranche 2; is that right?

16 A That is correct.

17 Q Okay. And why did it do that?

18 A Because that was part of -- of Tranche 2. That  
19 was stated that we would do that in Tranche 2.

20 Q Okay.

21 A (Judd) And if I -- Ben, the goal there was to  
22 avoid unnecessary continued analysis and evaluation and  
23 pricing assignment by the T&D evaluation team. As you  
24 well know, if you put a challenge in front of engineers,

1 they'll come up with a solution, but it does come to a  
2 point where if they keep on analyzing, keep on  
3 identifying additional cost, it was not going to better  
4 the bid, as it were. So in an interest of efficiency,  
5 the numbers were given as a benchmark to say if you hit  
6 this, you really don't have to take it out and, you know,  
7 find the millions and millions of dollars beyond that to  
8 establish the impact.

9 Q Okay. Thank you for that. So as I understand  
10 what you're saying, or this is my interpretation of what  
11 I am hearing from you, is that for purposes of Tranche 2,  
12 this figure was calculated so that Accion or Duke's team  
13 could easily tell whether a particular proposal was going  
14 to go over the avoided cost cap, the statutory avoided  
15 cost cap; is that right?

16 A It was a benchmark for guidance, yes.

17 Q Okay. And so if the upgrade costs associated  
18 with a particular proposal exceeded the maximum allowable  
19 T&D upgrade costs, you would know that that proposal was  
20 going to be above the statutory avoided cost cap; is that  
21 right?

22 A (Rozier) This is Gary Rozier again. Yes, you  
23 would know that, but the cost benefit is separate. In  
24 fact, there are projects that might have been bid in that

1 had greater energies and hit the sweet spots on avoided  
2 cost hour to hour, and you could actually pass the cost  
3 benefit test and not the statutory avoided cost test.  
4 That was the value we had of looking at every project on  
5 its on with its energies, and that's why we recommended  
6 the ones that only passed the cost benefit test went  
7 forward in Tranche 1. Subsequent to that, these issues  
8 about the statute, et cetera, came up, and that created  
9 this Tranche 2 additional calculation.

10 Q All right. Understood. Thank you. But just  
11 -- I want to make sure I'm clear on this. For a  
12 particular proposal in Tranche 2, if the upgrade costs,  
13 as calculated by Duke, are in excess of the maximum  
14 allowable T&D upgrade costs, then that proposal is above  
15 the statutory avoided cost cap; is that right?

16 A (Judd) In Tranche -- just to clarify, Ben, you  
17 want us to talk about what we did in Tranche 2. That's  
18 what I just heard, right?

19 Q Start with Tranche 2, yes.

20 A Gary? Ralph?

21 A (Rozier) I wasn't -- could you repeat the  
22 question, Ben?

23 Q Sure. So for Tranche -- for any given Tranche  
24 2 proposal that made it to Step 2, if the T&D upgrade



1 costs, as calculated by Duke, exceed the maximum  
2 allowable T&D upgrade costs, then that proposal is above  
3 the statutory avoided cost cap; is that right? I think  
4 you're on mute. So Mr. Rozier --

5 A I hit the wrong one.

6 Q Mr. Rozier, you're on mute.

7 A I know. I went the wrong way with it, Ben.

8 Q Okay.

9 A That is absolutely true, with the caveat that  
10 we would not have eliminated it if the detailed cost  
11 benefit showed it was positive for customers. In other  
12 words, you have to fail both tests in Tranche 2.

13 Q Okay. Thank you. So I want to look back at  
14 Tranche 1. For a given Tranche 1 proposal, it would also  
15 be the case, wouldn't it, that if the maximum allowable  
16 -- well, for a given Tranche 1 proposal, it would also be  
17 the case, wouldn't it, that if the upgrade costs, as  
18 calculated by Duke, exceeded the maximum allowable T&D  
19 upgrade costs, then that proposal was over the statutory  
20 avoided cost cap, right?

21 A I guess I'll answer that. Yes, with the same  
22 caveat I said about Tranche 2, which is the way Tranche 2  
23 worked.

24 Q Okay. Thank you. So I want to go back to

1 Attachment B to Mr. Lasocki's testimony, the table we  
2 were looking at, the table with 15 projects. Are you  
3 with me?

4 A (Judd) March on.

5 Q Okay. So if we look at this table and we  
6 compare the Duke T&D Evaluation Team - Step 2 System  
7 Upgrade Costs column to the Maximum Allowable T&D Upgrade  
8 Costs column here, we know that if the Upgrade Costs  
9 column exceeds the Maximum Allowable T&D Upgrade Costs  
10 column, we know that that proposal is above the statutory  
11 avoided cost cap, correct?

12 A Let me just say, Ben, none of these panelists  
13 are testifying as attorneys, and including myself because  
14 I am hardly an expert on North Carolina law and you know  
15 I'm not admitted there, so to say the statutory -- to the  
16 extent that gets into the whole argument that you're  
17 having with -- that you and Duke counsel have weighed in  
18 on the interpretation of the statute, we're really not  
19 going to weigh in on that. I trust that's not what  
20 you're asking us to do.

21 Q Yeah. No. Understood. Yes.

22 A Yeah.

23 Q I am not assuming that you are agreeing with  
24 our legal position on the avoided --

1           A     Right.

2           Q     -- cost cap. I want to be absolutely clear  
3 about that. Not playing gotcha. I just --

4           A     No. I didn't think you would, but I -- for the  
5 benefit of -- look, you and I don't have that  
6 relationship. We don't play gotcha with each other. But  
7 for the benefit of the Commissioners, I just wanted to  
8 clarify that. Thank you.

9           Q     Absolutely. So do I need to repeat -- do I  
10 need to repeat my question? It was --

11          A     Is the question, as I -- I believe the question  
12 was if the maximum allowable T&D upgrade costs, as shown  
13 on our table in our clarification filing, exceeded the  
14 T&D evaluation Step 2 upgrade costs, as also shown on the  
15 table, that there was not further analysis and it was  
16 deemed that imputing that cost would put it above avoided  
17 cost. That was the question, I believe.

18          Q     Yes. That's my question.

19          A     The answer is yes.

20          Q     Okay. Great, great. Thank you. So let's go  
21 to the table. So of these 15 projects, six projects were  
22 eliminated from CPRE because they had not analyzed, but  
23 -- but very, very high system upgrade costs; is that  
24 right?

1 A Yes.

2 Q Okay. And nine projects -- the remaining nine  
3 projects were all above the avoided cost cap because  
4 their upgrade costs exceeded the maximum allowable T&D  
5 upgrade costs; is that right?

6 A Yes.

7 Q Okay.

8 A I believe so, yes.

9 Q Okay.

10 A Uh-huh.

11 Q So going back to this -- looking back at the  
12 Late-Filed Exhibit, at the statement in the Late-Filed  
13 Exhibit that says "Extensive further analysis would be  
14 needed to assess each proposal to determine whether the  
15 applicable T&D costs, in addition to causing the  
16 proposals to have a negative net benefit, also would have  
17 exceeded the maximum allowable T&D upgrade costs," so we  
18 now know the answer to that question, don't we?

19 A Well, we know what's shown on the table and,  
20 again, Ben, you know, there comes a point where the  
21 pencil is down because the extent of the impact wasn't  
22 calculated, but --

23 Q Uh-huh, uh-huh. Okay. Well, let me ask  
24 another question. At the hearing in November, and I'm

1 not -- Mr. Ball, it might have been -- it's not clear  
2 from the transcript, Mr. Ball, I'm not sure if it was you  
3 or another witness from Accion, who briefly discussed the  
4 possibility that there were projects eliminated in Step  
5 2, based on net benefit analysis, that would have been  
6 below avoided cost. Do you recall that?

7 A (Ball) Yes, I do.

8 Q Okay. And that's what this whole discussion is  
9 about, right, whether any of those projects that were  
10 eliminated in Step 2 would have passed the avoided cost  
11 -- the statutory avoided cost cap test?

12 A Yes. It was uncertain at that point in time.

13 Q Okay, okay. And we now know, based on the  
14 information in this table, that the answer to that  
15 question is no; is that correct?

16 A If you're saying that of the 15 proposals,  
17 would any of them be eligible to move forward, I think  
18 the conclusion from the table is, no, none of them could  
19 move forward.

20 Q Okay. Thank you. And let me ask one further  
21 question.

22 A Please, I'd like to add --

23 Q Okay.

24 A I'd like to add, we did not know that in

1 November when we had the hearing.

2 Q Okay. Understood. Did you know that when the  
3 Late-Filed Exhibit was filed?

4 A No, as we -- no, we did not.

5 Q Okay.

6 A But a true extensive analysis needed to be done  
7 to analyze that and to prepare that table --

8 Q Okay. And when --

9 A -- that subsequent table that is in Lasocki's  
10 testimony.

11 Q Okay. And when you say "extensive analysis,"  
12 what do you mean?

13 A We had to prepare the table and run the  
14 analysis through our model and all that.

15 Q Okay. So you had to calculate the maximum  
16 allowable T&D upgrade costs for each of these projects?

17 A (Rozier) Mr. Snowden, I think that --

18 A (Ball) That's correct.

19 A (Rozier) -- the extensive analysis is what Mr.  
20 Judd was talking about, of taking -- knowing there are a  
21 lot of transmission improvements to be made, et cetera,  
22 getting a detailed, quantified number for that was the  
23 extensive analysis that would need to be done.

24 Q Okay. But you concluded during Step 2, sort of

1 based on -- I don't want to say eyeballing, but based on  
2 -- well, in Step 2 you or Duke drew the conclusion, based  
3 on the -- I guess a preliminary analysis of the  
4 transmission constraints attached to those projects, that  
5 they would have been far above avoided cost; is that  
6 right?

7 A (Judd) Permit me to come back to that, Ben,  
8 because as I have said and Ralph has said, I believe Gary  
9 has said, and now Dave has said, we did not get back data  
10 on those 15 projects. We understood that they'd be very  
11 expensive to complete system upgrades, therefore they  
12 were not passed back to us, so in Step 2 we did not do  
13 the analysis. And as I believe you are aware, we worked  
14 with the Duke T&D evaluation team, but as CPRE is  
15 fashioned, we didn't do their system analysis. We --  
16 they had their own identified team, they did those  
17 numbers, and they did not pass those back to us for our  
18 Step 2 analysis, you know, the reranking that occurs in  
19 CPRE --

20 Q Okay. Thank you.

21 A -- you know.

22 Q Understood. Well, let me ask another question.  
23 If in Tranche 1 Accion had followed the test that Orion  
24 requested, if it had used the statutory avoided cost cap

1 as the test for cost effectiveness and not the net  
2 benefit analysis, and I understand that that's -- you  
3 don't agree that that was correct, but if Accion had done  
4 the analysis, as Orion maintains it should have been  
5 done, all 15 of these projects on this table would still  
6 have been eliminated, wouldn't they?

7 A Ben, they -- as I understand Mr. Lasocki's  
8 testimony, as long as they bid a decrement, they should  
9 get a PPA, and that's not the process. As Gary has said  
10 and others have said, we analyzed 8760 by 20 years of  
11 avoided cost. Those summary three indicative collapsed  
12 guidance numbers that were provided was simply a  
13 threshold to be able to participate. It's not the same  
14 as saying if you bid a decrement, you win. It takes the  
15 further analysis. So these 15 projects, yes, they paid  
16 their security so they could be analyzed in Step 2, we  
17 passed them over for Step 2 analysis to the T&D team, we  
18 did not get them back. So I --

19 Q Understood. Thank you.

20 A -- think it's circular here. I don't -- I  
21 don't think you can draw the conclusion that if a -- in  
22 the Step 1, if we had done anything differently other  
23 than, I suppose, not do the 8760 by 20 years of projected  
24 avoided cost, which we firmly believe is appropriate to



1 determine the benefit to ratepayers.

2 Q Okay. Let me see if I can narrow my question,  
3 and I -- I will preface this by saying I absolutely  
4 understand and acknowledge that it's Accion's position  
5 that its analysis -- the analysis it did was appropriate.  
6 I am not asking you to agree that Orion's version is  
7 correct. I understand that. I'm simply trying to -- to  
8 explore the ramifications of Orion's view of how the cost  
9 effectiveness test should have been done, and so I'll ask  
10 it this way.

11 In Step 2 of Tranche 1, Accion applied the net  
12 benefit analysis as the metric of cost effective --  
13 effectiveness, correct?

14 A For the projects that came back to us from Duke  
15 with an assigned system upgrade cost.

16 Q Okay. Understood. And it eliminated projects  
17 that had a negative net benefit after T&D upgrade costs  
18 were considered, correct?

19 A And projects that were not sent back to us were  
20 eliminated, as we were advised that they would be very  
21 expensive to serve --

22 Q Understood.

23 A -- (Inaudible).

24 Q And I am not -- I am not arguing that --

1           A     (Inaudible).

2           Q     Sorry. I understood that projects were  
3     eliminated for other reasons besides cost benefit, net  
4     ben--- you know, net benefit. I understood that there  
5     are other legitimate reasons for eliminating projects  
6     from Tranche 1.

7                     If, instead of the net benefit analysis, Accion  
8     had used the statutory avoided cost cap as the metric for  
9     cost effectiveness and only eliminated projects that had  
10    a negative -- or that were above avoided cost from Step  
11    2, the 15 projects on this table, none of them would have  
12    gotten a PPA, right?

13          A     I tried to answer your question. Gary, do  
14    you --

15          A     (Rozier) I think --

16          A     (Judd) Apparently, I'm failing.

17          A     (Rozier) I think. And, Harry, subject to a  
18    different opinion from someone else on the team, I think  
19    that is the conclusion based on applying something  
20    retroactively to Tranche 1 and getting additional  
21    information to Accion to prepare the tables that have  
22    been filed and the Late-Filed Exhibit, one could make  
23    that determination, that none of those would have passed  
24    that test if it had been applied and nothing else changed

1 from Tranche 1 to Tranche 2, but you just kind of go back  
2 and just change the rule, I think that is Accion's  
3 opinion, that, yes, none of those would have passed that  
4 additional test.

5 Q Okay. Thank you, Mr. Rozier.

6 MR. SNOWDEN: Sorry. Please indulge me for a  
7 moment. I'm seeing what I can cut from my cross  
8 examination. I have no further questions for Accion's  
9 witnesses. Thank you.

10 COMMISSIONER CLODFELTER: Thank you, Mr.  
11 Snowden. Mr. Higgins, any redirect examination?

12 MR. HIGGINS: Perhaps one question for Mr.  
13 Judd, just to be clear.

14 REDIRECT EXAMINATION BY MR. HIGGINS:

15 Q Mr. Judd, you got some questions from counsel  
16 about Attachment B to Mr. Lasocki's second supplemental  
17 testimony, which I will represent to you is the  
18 clarification that Accion provided pursuant to the  
19 Commission's ruling on the Orion Motion to Compel. Do  
20 you have that document?

21 A (Judd) I have both documents in front of me.

22 Q All right, sir. And I'm specifically  
23 referencing page 3 of the clarification, which is the  
24 table.

1 A Yes.

2 Q My question is this, just to be clear, when did  
3 Accion receive information as to the system upgrade costs  
4 shown in that table from Duke -- the Duke T&D team?

5 A It would have been --

6 Q Was it before or after the Motion to Compel was  
7 issued by the Commission?

8 A Oh. It was after. It would have been in June  
9 of this year.

10 Q All right, sir.

11 MR. HIGGINS: Thank you. No other questions.

12 COMMISSIONER CLODFELTER: Thank you, Mr.

13 Higgins. Commissioner Gray, any questions?

14 COMMISSIONER GRAY: No questions. Thank you.

15 COMMISSIONER CLODFELTER: Commissioner Duffley?

16 COMMISSIONER DUFFLEY: I just have one  
17 clarifying question.

18 EXAMINATION BY COMMISSIONER DUFFLEY:

19 Q So there was a lot of back and forth between --  
20 and this is to Mr. Judd -- back and forth between you and  
21 Mr. Snowden about the six projects and the other nine  
22 projects, but I think that -- I just want to make sure I  
23 heard your testimony correctly. There's no distinction  
24 in your mind between the six projects and the nine

1 projects that all 15 projects were above the statutory  
2 avoided cost, or when you were reviewing all 15 projects  
3 when they came back from the Duke team, those 15 projects  
4 were all the same in the sense that you understood that  
5 the network upgrades were going to push them above the  
6 avoided cost cap; is that correct?

7 A (Judd) Commissioner, with one slight  
8 clarification, and that is when you say we got the  
9 information back, of course, you're referring to when we  
10 got that in June of this year, because initially we were  
11 simply not given back data associated with those 15  
12 saying that they were going to be very expensive and  
13 therefore we did not include them in our Tranche 1, Step  
14 2 analysis. That's what I believe you were asking, but  
15 I'm -- so I'm trying to be responsive to your question.

16 Q Right. So when you were actually conducting  
17 Tranche 1, you understood that all 15 projects were going  
18 to be cost prohibitive based upon network upgrades?

19 A Yes, ma'am.

20 Q Thank you.

21 A Oh, we did not -- but, again, we didn't have  
22 these numbers that you now see in our supplemental  
23 clarification filing.

24 Q Right, but -- and that's why you did not do any

1 type of additional analysis or net benefits test or  
2 reranking of all 15 projects?

3 A That is correct, Commissioner.

4 Q Okay. And so just going back to the previous  
5 hearing, then, I just want clarification. So with  
6 respect to any type of -- let's just assume that -- and  
7 this is a hypothetical -- that we agreed with Orion. The  
8 only similarly situated projects, then, would be the  
9 three projects that you stated were above your net  
10 benefit test in the first step; is that accurate?

11 A (Ball) If I might help Mr. Judd out, if you're  
12 referring to the November 25th Late-Filed Exhibit, there  
13 were three proposals that had negative net benefits as a  
14 result of Step 1, and Orion -- if you used the -- Orion's  
15 approach with the maximum allowable T&D, Orion's, as well  
16 as Project B, the middle proposal, would have passed that  
17 alternate screen of those three. Is that what you're  
18 asking about?

19 Q Right. I was trying to get clarification that  
20 -- which other projects would be similarly situated, that  
21 you would -- may need to go back, Duke might have to go  
22 back, and if we were to rule in Orion's favor, would have  
23 to go back and potentially negotiate a PPA. And so it's  
24 your testimony that it would only be two of those three

1 projects?

2 A That -- that's correct.

3 Q Okay. Thank you.

4 A (Judd) And if I could --

5 A (Ball) And I'd like to add --

6 A -- refer you -- refer you back and refresh you,  
7 on our October 28, 2020 confidential filing, we provided  
8 charts showing the impact of making the one change that's  
9 been requested by Orion. That was quite a while ago, and  
10 I just wanted to make sure that that's part of -- because  
11 I think you just alluded to what would be the impact.

12 Q Okay. Thank you.

13 COMMISSIONER DUFFLEY: And it looks like we may  
14 have -- Commissioner Clodfelter, I do not see you  
15 anymore.

16 (No response.)

17 COMMISSIONER DUFFLEY: Commissioner Clodfelter?

18 COMMISSIONER CLODFELTER: I am here.

19 COMMISSIONER DUFFLEY: Okay. You're there?

20 (No response.)

21 MS. HICKS: Commissioner Duffley, this is  
22 Warren. I'm seeing a yellow signal on his, but I'm in  
23 the Dobbs building and we just lost power.

24 COMMISSIONER DUFFLEY: Okay. There he is.

1 MS. HICKS: Okay.

2 COMMISSIONER DUFFLEY: Commissioner Clodfelter,  
3 you disappeared for a second.

4 COMMISSIONER CLODFELTER: I lost all of you. I  
5 was here, but couldn't see any of you. Yes. You have  
6 questions -- you had a question?

7 COMMISSIONER DUFFLEY: So I have finished all  
8 of my questioning. Thank you, Commissioner Clodfelter.

9 COMMISSIONER CLODFELTER: All right. Thank  
10 you. Gentlemen, there were times when I thought I had  
11 followed the sequence of this, but then there are other  
12 times when it got lost again, so I'm going to have to do  
13 it my way. I apologize to you for that.

14 EXAMINATION BY COMMISSIONER CLODFELTER:

15 Q Will you get before you all the Attachment B to  
16 Mr. Lasocki's supplemental testimony? That's -- and page  
17 3 of that is the attachment which is the chart dated June  
18 11, 2021, which was updated after the Commission's Order  
19 on the Motion to Compel. Do you all have that available?

20 A (Judd) Yes, sir.

21 A (Rozier) Yes, sir.

22 A (Ball) Yes, sir.

23 Q Okay. I have to do this my way, and that way I  
24 know I've got it clear. Look at the second proposal



1 which was ranked in Step 1 as Number 10, okay?

2 A (Judd) Yes, sir.

3 A (Rozier) Yes, sir.

4 Q All right. Moving across to the right, you  
5 come to two columns, both headed Step 1, Net Benefit  
6 Without T&D Costs. One of those columns is per MWh  
7 and the second one is a total.

8 A (Judd) Yes, sir.

9 A (Rozier) Yes, sir.

10 Q Am I correct that both of those calculations  
11 were done during Step 1 of Tranche 1?

12 A (Judd) I'm going to ask Mr. Monsalvatge, since  
13 he ran the model, to -- to address your question.

14 A (Monsalvatge) Commissioner, those calculations  
15 were done during the -- during the process.

16 Q They were done during this Tranche 1 process.

17 A That is correct, during the Tranche 1 process.

18 Q So you passed to Duke T&D team project ranked  
19 Number 10, which you calculated on your net benefit  
20 analysis at a net benefit without T&D costs of  
21 \$10,573,500, right?

22 A That -- that is correct.

23 Q All right.

24 A (Ball) Excuse me.

1 Q The next column -- yes?

2 A Excuse me. This is Dave Ball. I might add,  
3 the process in Tranche 1 provided Duke the proposal  
4 number, not the economic result, so the Duke T&D team  
5 just merely identified -- we identified proposals that  
6 should move forward for evaluation of Step 2. We didn't  
7 give them the economic results --

8 Q You told them --

9 A -- during Tranche 1.

10 Q You told them here is Project Number 10, ranked  
11 Number 10?

12 A That's right.

13 Q (Rozier) And Commissioner, I think --  
14 (simultaneous speaking) --

15 A (Layfield) (Simultaneous speaking) -- the  
16 ranking --

17 A (Rozier) I think --

18 Q Mr. Layfield?

19 A (Rozier) I think Mr. Layfield could address  
20 that --

21 A (Layfield) I'm here.

22 A (Rozier) -- but our process was generally to  
23 get back information from Duke about the transmission  
24 consequences, and Mr. Layfield and the team would then

1 determine whether it's necessary to go forward any  
2 further with that information.

3 Q Well, did you give them the ranking or did you  
4 just give them the group of projects and say these have  
5 passed Step 1?

6 A (Judd) I think Mr. Ball's point was,  
7 Commissioner, they did not get pricing information  
8 because under -- so they would give them the ranking, but  
9 not pricing information.

10 Q All right. So you gave them the projects that  
11 passed your net benefit analysis in Step 1 in a ranked  
12 order, correct?

13 A Yes, because the process was sequential. As  
14 projects were eliminated, of course, they came back to  
15 us, we then dipped into the reserve and passed new  
16 projects forward.

17 A (Layfield) Yes. That is correct.

18 Q All right. So they had a project that they  
19 knew was ranked Number 10. The T&D team received from  
20 you a project that they were told by you was ranked  
21 Number 10 after Step 1, correct?

22 A (Judd) Yes. The location, the size of the  
23 project and the like, yes.

24 Q Got it. All right. Next column moving to the

1 right, on Project Number 10, ranked Number 10 is the Duke  
2 T&D Evaluation Team -- Step 2 Upgrade Costs, and for  
3 Project Number 10 the number entered there is  
4 \$15,000,000. When did you first see that number?

5 A Ralph, could you step in, please, to confirm?

6 A (Monsalvatge) In preparation of the table -- in  
7 preparation of the table, the first I saw it was  
8 concurrent with preparing the table for the response in  
9 this proceeding.

10 Q And which response was that?

11 A (Ball) Excuse me. Excuse me, Commissioner.  
12 This is Dave Ball. I think Mr. Layfield may be able to  
13 provide clarity, but I wanted to say I think Accion  
14 received some of the transmission information during  
15 Tranche 1. And although the project didn't come back and  
16 get rerun, I think it was -- some cost information was  
17 shared, although it was -- since it was eliminated in  
18 Step 2 by Duke, the cost information was just whatever it  
19 was when they stopped.

20 A (Layfield) That is -- that is accurate.

21 Q Well, you've touched on really what I'm trying  
22 to explore with my questions, is I heard several times  
23 the general statement that for these 15 projects, you  
24 didn't get them back from the Duke T&D team. And the

1 question I'm trying to explore is that if that's correct,  
2 how then did you know whether or not any of them did or  
3 did not still pass the net economic benefit test after  
4 assignment of the Duke-determined T&D costs? If you  
5 didn't get the numbers back, how would you have known in  
6 Step 2 whether they should continue to be ranked or not?  
7 Project Number 10 had a net positive economic benefit  
8 before T&D of \$10,573,500. If you didn't get a T&D cost  
9 number back from the Duke T&D team, how would you know --

10 A (Judd) Commissioner --

11 Q -- if it failed the net benefit test at Step 2?

12 A Great question. Because, as we explored  
13 earlier in the testimony, the maximum allowable T&D cost  
14 was benchmark, and when the T&D evaluation team  
15 determined that the system upgrade cost would exceed  
16 that, it was pencils down and they stopped evaluating  
17 because that number, that maximum tells them that if we  
18 exceed that, it's going to fail our test.

19 Q Mr. Judd, you've now totally lost me --

20 A (Rozier) Commissioner, just --

21 Q -- because I thought that the maximum allowable  
22 T&D upgrade cost was a Tranche 2 construct.

23 A Exactly, Commissioner. That's what I wanted to  
24 clarify here, is what the Accion team had was a -- an

1 amount of net benefit from the project absent putting in  
2 transmission. The maximum allowable transmission cost  
3 component was solely a Tranche 2 thing.

4 Q I understand that.

5 A (Judd) I apologize, Commissioner. What you're  
6 asking --

7 Q I haven't -- I haven't gotten to that column  
8 yet. I have not even gotten to that column yet. I'm on  
9 the column Duke T&D Evaluation Team - Step 2 in Tranche 1  
10 System Upgrade Costs. And, again, I'm trying to  
11 determine when you got those numbers.

12 A (Judd) We did not get them --

13 A (Ball) Sorry. This is Dave. I think Mr.  
14 Layfield can answer that directly. I was involved in  
15 compiling information after the fact, but the -- my  
16 understanding is that Duke T&D Step 2 evaluation  
17 eliminated these proposals. And in the process of  
18 eliminating those proposals, they passed along some cost  
19 information, but they were deemed as not eligible to  
20 proceed, and therefore they didn't get run through our  
21 net benefit model in Tranche 1, but I think we did have  
22 possession of some cost information, and that's what's in  
23 this table.

24 Q Well, here's what I'm getting at, gentlemen, is

1 if the cost information they passed back to you, whatever  
2 it was, if you didn't then run that back through your net  
3 economic benefit model, how would you have known whether  
4 or not it passed the net benefit test in Step 2 if you  
5 didn't run it back through your model?

6 A (Judd) Because, Commissioner, we were not given  
7 the number included -- the projects were -- in 2 have  
8 been ones that could not go forward and, therefore, were  
9 not in our Step 2 reranking approach. Ralph, was that  
10 correct?

11 A (Monsalvatge) That's a fair assessment, Mr.  
12 Judd.

13 Q Is it fair, then, for me to conclude that you  
14 took Duke's word for it on the 15 projects, that they  
15 would fail if they were run back through the model on  
16 these 15?

17 A Commissioner, it is my -- it is my  
18 understanding that Duke was looking at each of these 15  
19 projects, the costs were being tallied, and the costs  
20 began to exceed the magnitude of the net benefit of Step  
21 1; however, those costs were not formalized and passed  
22 back to me, but they were passed in a preliminary form to  
23 the Accion team, was my understanding.

24 Q Was it your understanding that the Duke team

1 was running its own version of the T&D -- of the net  
2 benefit analysis as they were studying the T&D costs,  
3 and so --

4 A (Rozier) No, Commissioner. That is not true.

5 A (Judd) They did not have our model,  
6 Commissioner.

7 Q Sorry?

8 A They did not have our model.

9 Q Then who was making the determination, and on  
10 what basis, that the T&D costs would cause the Project  
11 Number 10 to fail the net benefit test at Step 2?

12 A (Rozier) Phil, do -- can you address that for  
13 the Commissioner?

14 A (Layfield) I can certainly try. We looked at  
15 each project in rank order. The T&D team followed the  
16 process that Accion had established for evaluating each  
17 individual bid. We have a standard document that is  
18 completed for each bid. You have seen those posted on  
19 the website. When those standard documents are  
20 completed, they are passed back to me on the Accion team.  
21 And we had information from Ralph Monsalvatge that gave  
22 us an indicator of how much room we had, and when we saw  
23 the cost that the Duke team had projected as being a  
24 magnitude above what we knew the bid could absorb, the



1 decision was made not to pass it back into the model, but  
2 to go to other bids and continue our ranked order  
3 evaluation.

4 Q That is helpful, Mr. Layfield. What I'm really  
5 trying to get at is what actually did you see from the  
6 Duke T&D team during the Step 2, Tranche 1 process?

7 A We saw the results of their analysis, which I  
8 participated in the formulation of by reviewing their  
9 results in the document. The document for each bid, the  
10 analysis that was completed, that's the official transfer  
11 of information back to us, and you have all of those  
12 posted on the website which you have been able to access.

13 A (Rozier) Commissioner, if I can kind of add to  
14 what Mr. Layfield is saying, I've had too many years, I  
15 guess, in transmission and generation planning with this  
16 interaction between doing the transmission work and the  
17 generation analysis and getting people to share  
18 information. And the process is that when you take a  
19 project and it's located here, the transmission people  
20 look for where is the problem on the system, is it in a  
21 constrained area, and then they start looking at  
22 magnitudes of, well, how many miles of transmission line  
23 do I have to build, do I need to build substations, this  
24 and all of that. And lots of times, once you go down

1 that path, you're not close enough to being cost  
2 effective. You just shut it down at a point in time and  
3 make a -- an experienced judgment based on the magnitudes  
4 of things of whether it's worthwhile to go forward. That  
5 was our process in this case, too.

6 Q Mr. Layfield, Mr. Rozier, thank you. That's  
7 very helpful. So looking again at the chart for Project  
8 Number 10, which was not one of the six constrained  
9 projects, it was not one of those, you would have had  
10 enough information, as I understand it, back from the T&D  
11 team for you to know this one wasn't going to make it,  
12 but you might not have had a \$15,000,000 number at that  
13 time; is that correct? Am I understanding it correctly?

14 A (Rozier) Bingo. That is exactly correct.

15 Q So when was the \$15,000,000 number first  
16 surfaced to you?

17 A (Judd) I believe, Commissioner, that Ralph  
18 testified that was June of this year.

19 Q Well, Mr. Judd, I apologize to you, but -- and  
20 I'm not sure if this has been marked as an exhibit, but  
21 it was part of the Motion to Compel, and there was an  
22 attachment which was the chart that you originally  
23 provided, not in June, but back in April, and it contains  
24 a column titled Duke T&D Evaluation Team - Step 2 System

1 Upgrade Costs, and for Project Number 10 it includes the  
2 number \$15,000,000. That was in April of this year  
3 before the June number.

4 A I apologize, Commissioner. I did not mean to  
5 deceive you or mislead you, but --

6 Q I don't think you did. I'm just trying to get  
7 to the answer of when you did get that number.

8 A And I'm with you as well. We got the  
9 information as part of this process, as part of these  
10 hearings, not during Tranche -- not during Tranche 1 of  
11 CPRE. And --

12 Q You didn't get it during Tranche 1.

13 A Correct.

14 Q Thank you. Mr. Judd, that's --

15 A (Ball) This is Dave Ball. I'd like to help --  
16 help on this as well. It was subsequent to the closing  
17 of Tranche 1 that we received a request from Duke for the  
18 system upgrade costs for all the projects that were  
19 eliminated, and we passed along information to Duke --  
20 and I can't recall, but I think it was in 2020 sometime  
21 -- on these projects. And what we did is we just pulled  
22 the available information that we had. They weren't  
23 completed studies, but they were the cost estimates in  
24 the files when they were eliminated, and we passed them

1 along to Duke at the time. And I think -- that's my  
2 memory of when I first became aware of those transmission  
3 costs.

4 Q So this \$15,000,000 number might have been a  
5 compilation of various bits of information that you had  
6 gotten during Tranche 1, but hadn't assembled or compiled  
7 until you were asked to do so?

8 A That's correct, as far as I'm concerned. And  
9 Mr. Layfield would have the direct knowledge of the  
10 information.

11 Q Is that correct, Mr. Layfield?

12 A Yes, sir. It is.

13 COMMISSIONER CLODFELTER: Well, gentlemen,  
14 you've solved my mystery, because it also helps explain  
15 why so many of those numbers are round numbers in there,  
16 is because they reflect approximations to data points  
17 that you had from an earlier period of time, but you --  
18 you compiled those at a later period of time. I'm sorry  
19 for wearing you guys out, but I think you've answered my  
20 questions. And so with that, we're back to questions on  
21 Commission questions.

22 MR. SNOWDEN: Orion does not have any questions  
23 on Commission questions.

24 MR. JIRAK: DEC does not have questions on

1 Commission questions.

2 COMMISSIONER CLODFELTER: Mr. Higgins?

3 MR. HIGGINS: No questions for me. Thank you.

4 COMMISSIONER CLODFELTER: I wore you all out,  
5 huh? Okay. Mr. Higgins, I understand that's the panel,  
6 and that there are no other witnesses for Ori--- Accion?

7 MR. HIGGINS: Yes, sir. That's correct.

8 COMMISSIONER CLODFELTER: Mr. Higgins, I don't  
9 remember, because I got lost in my own questions here,  
10 whether there were exhibits marked that we need to have  
11 admitted. Do you have any exhibits?

12 MR. HIGGINS: There are no exhibits that were  
13 marked or attached to the testimony.

14 COMMISSIONER CLODFELTER: That's great. If  
15 that's the case, then Mr. Jirak, we're with -- we're with  
16 you.

17 MR. JIRAK: Thank you, Commissioner Clodfelter.  
18 With your permission, at this time I'd like to the panel  
19 of Orvane Piper and Phil Cathcart on behalf of -- on  
20 behalf of Duke Energy Carolinas.

21 ORVANE PIPER AND PHILLIP CATHCART;

22 Having been first duly affirmed,

23 Testified as follows:

24 COMMISSIONER CLODFELTER: Madam Court Reporter,

1 let the record reflect that both witnesses gave the  
2 affirmation. Mr. Jirak.

3 MR. JIRAK: Thank you.

4 DIRECT EXAMINATION BY MR. JIRAK:

5 Q Just by way of introduction, Mr. Cathcart, will  
6 you please state your name and title for the record?

7 A (Cathcart) Phil Cathcart, Renewable Compliance  
8 Manager.

9 Q Thank you. Mr. Piper, would you please state  
10 your name and title for the record?

11 A (Piper) Orvane Piper, Senior Engineer in  
12 Transmission Planning.

13 Q Thank you very much. And Mr. Cathcart, along  
14 with Mr. Piper, did you prepare and cause to be filed in  
15 this proceeding direct testimony?

16 A (Cathcart) Yes.

17 Q Mr. Piper, did you assist in the preparation of  
18 that prefiled testimony?

19 A (Piper) Yes.

20 Q And do either of you have any changes to make  
21 to that prefiled testimony at this time?

22 A (Cathcart) No.

23 A (Piper) No.

24 Q Mr. Cathcart, if I were to ask you the same

1 questions contained in your testimony today, would your  
2 answers remain the same?

3 A (Cathcart) Yes.

4 Q Mr. Piper, if I were to ask you the same  
5 questions contained in your testimony, would your answers  
6 remain the same?

7 A (Piper) Yes.

8 Q Thank you.

9 MR. JIRAK: Commissioner Clodfelter, at this  
10 time, I'd request that the prefiled direct testimony of  
11 the panel of Orvane Piper and Phil Cathcart be copied  
12 into the record as if given orally from the stand.

13 COMMISSIONER CLODFELTER: Hearing no objection  
14 to the motion, the motion will be allowed. Mr. Jirak, we  
15 have previously admitted into evidence the Late-Filed  
16 Exhibit, so it's not necessary to mark or move that, and  
17 my recollection is that you don't have any additional  
18 exhibits that need to be marked for these witnesses,  
19 correct?

20 MR. JIRAK: That's correct.

21 COMMISSIONER CLODFELTER: Okay.

22

23

24

1 (Whereupon, the prefiled direct  
2 testimony of Phillip Cathcart  
3 and Orvane Piper was copied into  
4 record as if given orally from the  
5 stand.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-13695, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	<b>DIRECT TESTIMONY OF</b>
	)	<b>PHILLIP H. CATHCART AND</b>
Petition for Relief of Orion	)	<b>ORVANE PIPER</b>
Renewable Resources LLC	)	
	)	
	)	

---

OFFICIAL COPY

APR 13 2021

1   **Q.   MR. CATHCART, PLEASE STATE YOUR NAME AND BUSINESS**  
2       **ADDRESS.**

3   A.   My name is Phillip H. Cathcart, and my business address is 410 South  
4       Wilmington Street, Raleigh, North Carolina.

5   **Q.   PLEASE STATE YOUR POSITION WITH DUKE ENERGY AND**  
6       **DESCRIBE YOUR CURRENT RESPONSIBILITIES.**

7   A.   I am the Renewable Compliance Manager for Duke Energy within the  
8       Business Development & Compliance Department. In my current position,  
9       I am responsible for the development and implementation of the  
10      competitive procurement of renewable energy (“CPRE”) program  
11      established by Session Law 2017-192’s enactment of N.C. Gen. Stat. § 62-  
12      110.8 and applicable to both Duke Energy Carolinas, LLC (“DEC” or the  
13      “Company”) and Duke Energy Progress, LLC (“DEP”). My  
14      responsibilities include compliance with CPRE program requirements, as  
15      well as interface with the North Carolina Utilities Commission  
16      (“Commission”) approved CPRE Program independent administrator,  
17      Accion Group, LLC (“Accion Group”, “Independent Administrator”, or  
18      “IA”), on behalf of DEC and DEP.

19   **Q.   PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL**  
20       **BACKGROUND.**

21   A.   I received a Bachelor of Arts degree in Economics from the University of  
22      North Carolina in Chapel Hill.

1   **Q.   PLEASE DESCRIBE YOUR BUSINESS BACKGROUND AND**  
2       **EXPERIENCE.**

3   A.   I managed a small business from 2003 until 2008. Between 2009 and 2012,  
4       I held positions at Alabama Power as a Technical Analyst and Commercial  
5       Account Manager. I joined Duke Energy in 2015 as a Renewable Account  
6       Manager in the Distributed Energy Technology Department. In June of  
7       2019, I moved to my current position as Renewable Compliance Manager  
8       in the Business Development & Compliance Department.

9   **Q.   HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
10       **CAROLINA UTILITIES COMMISSION?**

11   A.   Yes, I previously submitted pre-filed direct testimony in CPRE rider  
12       proceedings.

13   **Q.   MR. PIPER, PLEASE STATE YOUR NAME AND BUSINESS**  
14       **ADDRESS.**

15   A.   My name is Orvane H. Piper, and my business address is 526 South Church  
16       Street, Charlotte, North Carolina.

17   **Q.   PLEASE STATE YOUR POSITION WITH DUKE ENERGY AND**  
18       **DESCRIBE YOUR CURRENT RESPONSIBILITIES.**

19   A.   I am a Senior Engineer in Transmission Planning for Duke Energy  
20       Carolinas. One of my primary responsibilities is coordinating generating  
21       interconnection studies, including the evaluations that were performed in  
22       association with CPRE.

1   **Q.   PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL**  
2       **BACKGROUND.**

3   A.   I received a Bachelor of Science degree in Electrical Engineering from  
4       Clemson University and a Master of Business Administration degree from  
5       Fayetteville State University.

6   **Q.   PLEASE DESCRIBE YOUR BUSINESS BACKGROUND AND**  
7       **EXPERIENCE.**

8   A.   I joined Duke Energy in 2010, and the entirety of my career has been in  
9       Transmission Planning. Additionally, I am a registered Professional  
10      Engineer in the state of North Carolina.

11   **Q.   HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
12      **CAROLINA UTILITIES COMMISSION?**

13   A.   Yes, I previously testified in this proceeding.

14   **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15   A.   The purpose of our testimony is to affirm the accuracy of the Late-Filed  
16      Exhibit that DEC filed in this docket on November 25, 2020 in response to  
17      questions from Commissioners at the November 2, 2020 hearing in this  
18      proceeding.

19   **Q.   WHY WAS THE LATE-FILED EXHIBIT FILED?**

20   A.   The Late-Filed Exhibit was submitted at the direction and request of the  
21      Commission during the November 2, 2020 hearing. During the hearing, the  
22      Commission panel questioned IA and DEC witnesses regarding  
23      consideration of Orion's CPRE bid, two other potentially similarly situated

1 bids, and the broader practical implications of the relief requested by Orion.  
2 As a result of those issues, the Commission directed DEC to work with the  
3 IA to produce a Late-Filed Exhibit to address other proposals that could be  
4 potentially impacted by the Commission's decision in this proceeding. The  
5 Commission granted DEC and Accion broad latitude to develop a late-filed  
6 exhibit to best address the issues raised in the proceeding and the potential  
7 impacts of a decision.

8 **Q. WAS THE LATE-FILED EXHIBIT RESPONSIVE TO THE**  
9 **COMMISSION'S REQUEST?**

10 A. Yes.

11 **Q. DID YOU BOTH ASSIST IN THE PREPARATION OF THE LATE-**  
12 **FILED EXHIBIT?**

13 A. Yes.

14 **Q. MR. CATHCART, IS THE LATE-FILED EXHIBIT TRUE AND**  
15 **CORRECT TO THE BEST OF YOUR KNOWLEDGE,**  
16 **INFORMATION AND BELIEF?**

17 A. Yes.

18 **Q. MR. PIPER, IS THE LATE-FILED EXHIBIT TRUE AND**  
19 **CORRECT TO THE BEST OF YOUR KNOWLEDGE,**  
20 **INFORMATION AND BELIEF?**

21 A. Yes.

22 **Q. ARE THERE ANY CHANGES THAT NEED TO BE MADE TO THE**  
23 **LATE-FILED EXHIBIT?**

1 A. No.

2 **Q. IN PREPARING THE LATE-FILED EXHIBIT, DID YOU BOTH**  
3 **WORK WITH THE INDEPENDENT ADMINISTRATOR (“IA”)?**

4 A. Yes.

5 **Q. PLEASE EXPLAIN.**

6 A. Commission Rule R8-71 establishes the CPRE evaluation process and  
7 delineates certain responsibilities to the IA and certain responsibilities to  
8 DEC (under the oversight of the IA). The subject matter of the Late-Filed  
9 Exhibit touches on aspects of the evaluation process for which the IA was  
10 responsible and aspects of the evaluation process for which DEC was  
11 responsible and, therefore, as was expressly contemplated by the  
12 Commission in requesting filing of the Late-Filed Exhibit, we collaborated  
13 with the IA in preparation of the entirety of the Late-Filed Exhibit.

14 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT**  
15 **TESTIMONY?**

16 A. Yes.

1 MR. JIRAK: And thank you, Commissioner  
2 Clodfelter. We do not have a witness summary, given the  
3 brevity of their testimony, so the witnesses are now  
4 available for cross examination.

5 COMMISSIONER CLODFELTER: Let's -- let's do  
6 this. Mr. Higgins, any cross examination, or Mr. Crisp,  
7 on behalf of Accion?

8 MR. HIGGINS: No. I have no cross examination  
9 for the Duke witnesses. Thank you.

10 COMMISSIONER CLODFELTER: Okay. Mr. Snowden,  
11 they're all yours.

12 MR. SNOWDEN: Thank you, Commissioner.

13 DIRECT EXAMINATION BY MR. SNOWDEN:

14 Q Mr. Cathcart, Mr. Piper, good morning. Mr.  
15 Cathcart, I have a couple questions for you. So your  
16 responsibilities, as described in your testimony, include  
17 compliance with CPRE Program requirements and interfacing  
18 with the CPRE Independent Administrator; is that right?

19 A (Cathcart) That's correct, Ben.

20 Q Okay. And you talk about the Late-Filed  
21 Exhibit in this docket in your testimony; is that right?

22 A That's right.

23 Q What was your role in the preparation of the  
24 Late-Filed Exhibit?

1           A       I collaborated in putting it together.

2           Q       Okay. Can you be a little more specific?

3           A       Our understanding was the exhibit was to  
4 identify some of the complexities if the Commission  
5 decided one way or another in the legal decision that was  
6 brought up in the hearing in November. So this Late-  
7 Filed Exhibit was an attempt to identify some of the  
8 complexities that could come up.

9           Q       Uh-huh. Okay. So you reviewed the statements  
10 in the Late-Filed Exhibit before it was filed, correct?

11          A       Correct.

12          Q       And in your testimony, you affirm the accuracy  
13 of the statements in the Late-Filed Exhibit; is that  
14 right?

15          A       Correct.

16          Q       Okay. Thank you. Mr. Piper, I have similar  
17 questions for you. In your testimony, you say that your  
18 responsibilities include coordinating generator  
19 interconnection studies, including the evaluations that  
20 were performed for CPRE; is that right?

21          A       Yes. That's correct.

22          Q       Thank you. And this would include the analysis  
23 of T&D upgrade costs that was perform--- performed during  
24 Step 2, correct?



1 A Yes. That's correct.

2 Q What was your role in the preparation of the  
3 Late-Filed Exhibit?

4 A Reviewing any information that I was asked to  
5 review, as well as helping to discuss some of the  
6 complexities that may come up.

7 Q Okay. Thank you. And in your testimony, you  
8 affirm the accuracy of the statements in the Late-Filed  
9 Exhibit; is that right?

10 A Yes. That's correct.

11 Q Okay. And I guess these questions would be for  
12 either Mr. Cathcart or Mr. Piper. As discussed, Duke  
13 collaborated with Accion in the development of the Late-  
14 Filed Exhibit; is that right?

15 A (Cathcart) That's right.

16 Q Okay. And could you describe that  
17 collaboration process a little bit?

18 A There was certainly collaboration in getting  
19 the table at the end of the Late-Filed Exhibit included.

20 Q Okay. So as I understand it and as we've  
21 discussed, Accion compiled the table at the end of the  
22 exhibit; is that right?

23 A That's right. So sort of the nature of the  
24 process is some separation, so there was some information

1 that Duke would have and some information Duke would not  
2 have.

3 Q Okay. And Duke discussed with Accion the  
4 contents of the table at the end of the exhibit; is that  
5 right?

6 A There was some Duke input on the table, yes.

7 Q Okay. Was Accion involved in the preparation  
8 of the narrative portions of the Late-Filed Exhibit?

9 A Not to any major extent.

10 Q Okay. Do you recall whether Accion reviewed  
11 the narrative portions of the Late-Filed Exhibit before  
12 it was filed?

13 A I don't recall. I understand from their  
14 testimony they did not.

15 Q Okay. Thank you.

16 MR. SNOWDEN: And if you all will indulge me  
17 for a moment, I'm going to breeze through a lot of my  
18 prepared cross since we've already covered it, so give me  
19 just a moment, please.

20 Q I believe this would be for Mr. Cathcart. Mr.  
21 Cathcart, would you take a look at page 6 of the Late-  
22 Filed Exhibit, it's Item 5, where it says Overall CPRE  
23 Target Procurements? Do you see that?

24 A Yes. I have it.

1 Q Okay. Now, it says here in the second  
2 paragraph that the retroactive procurement of two  
3 additional projects would increase the risk of  
4 overprocurement for CPRE; is that right?

5 A That's correct.

6 Q And by "two projects," that refers to the Orion  
7 project and the one other proposal that was eliminated in  
8 Step 1 that might have been or would have been below  
9 avoided cost after T&D upgrade costs were considered; is  
10 that right?

11 A There was potentially two projects similarly  
12 situated to Orion that were eliminated in Step 1 of  
13 Tranche 1.

14 Q Okay. Well, I'd like to turn your attention  
15 back to page 5 of the Late-Filed Exhibit, where -- you  
16 see where it discusses Bid A and Bid B?

17 A Yes.

18 Q Okay. And so Bid A and Bid B, those refer to  
19 those two other projects that were eliminated in Step 1;  
20 is that right?

21 A Those are the two I was referring to.

22 Q Okay. Okay. Actually, I'll move on from that.  
23 So going back to the statement about a retroac---  
24 hypothetical retroactive procurement of the two other

1 projects, you say that the hypothetical retroactive  
2 procurement of those two other projects would increase  
3 the risk of overprocurement for CPRE; is that right?

4 A That's right.

5 Q Okay. But not -- that's not in reference to  
6 the Orion project; is that right?

7 A So the undercollection or underprocurement in  
8 Tranche 1 was rolled into Tranche 2, and Orion was  
9 selected in Tranche 2, so in the overall CPRE procurement  
10 Orion is included. So a change of decision in this case,  
11 essentially only the Bid A and Bid B would be additions  
12 to the CPRE procurement.

13 Q Okay. So Orion's proposal was already factored  
14 into Duke's calculations of its progress toward CPRE  
15 targets; is that right?

16 A That's right.

17 Q Okay. And awarding Orion's -- if the  
18 Commission were to award Orion's -- or grant Orion's  
19 request for relief, that would have no effect on Duke's  
20 progress towards its procurement targets; is that right?

21 A It would not change procurement targets, only  
22 cost to customers.

23 Q Okay. And Orion has not requested that the  
24 Commission award PPAs to these other two projects that

1     were eliminated in Step 1, Tranche 1, has it?

2           A     I have not heard that request from Orion.

3           Q     Okay. And to your knowledge, those -- those  
4     projects have not come forward and requested Tranche 1  
5     PPAs, have they?

6           A     I am not aware of the two similarly situated  
7     projects requesting similar relief, but I would feel a  
8     bit of an obligation to -- because they are exactly  
9     similarly situated, if we unwound the tape and changed  
10    the rules, it would seem appropriate to do the further  
11    analysis on those two projects and determine if they  
12    would be eligible for a PPA.

13          Q     Okay. Well, just to -- but if we were to  
14    unwind the tape and go back to Tranche 1, even if those  
15    two other projects had been awarded PPAs in Tranche 1 and  
16    Orion were also awarded a PPA in Tranche 1, Duke would  
17    still be -- have been under its procurement target for  
18    CPRE Tranche 1; is that right?

19          A     I believe that is correct.

20          Q     Thank you.

21          A     I -- you know, I hate to not mention that  
22    whatever happened in Tranche 1 affects what our  
23    procurement target is for Tranche 2, so because we were  
24    low in Tranche 1, we had a higher amount in Tranche 2.

1 Q Understood. Thank you.

2 A Which has been --

3 Q I'd like to go back to page 1 of the Late-Filed  
4 Exhibit, if you've got that handy, and the third  
5 paragraph. As discussed in the third paragraph, the  
6 Late-Filed Exhibit includes a calculation of the maximum  
7 allowable T&D upgrade costs for the Orion proposal and  
8 for the two other proposals that were eliminated in Step  
9 1 based on the net benefit analysis; is that right?

10 A That's right.

11 Q Okay. What was the purpose of including that  
12 information in the Late-Filed Exhibit?

13 A I'm going to scroll down to the table. So I  
14 believe the -- the main intent of including that was to  
15 demonstrate that there were, in fact, two similarly  
16 situated projects to Orion.

17 Q Okay. Well, what was the purpose of including  
18 the maximum allowable T&D upgrade costs for those  
19 projects in the Late-Filed Exhibit?

20 A Let's see. Well, we -- so in the next  
21 sections, we go on to demonstrate that those projects,  
22 best we can tell under certain scenarios, may go on to  
23 fall under the avoided cost, but because we've had some  
24 changes in equipment classifications and the standard

1 upgrade package, that we would need to be told how to  
2 evaluate these projects, because under different  
3 scenarios they may not be able to move forward towards a  
4 PPA.

5 Q Okay. Thank you. So at the time this  
6 information was included in the Late-Filed Exhibit, as I  
7 understand, you're saying it was understood that the way  
8 to determine -- or one way to determine whether a  
9 particular proposal was below avoided cost would be to  
10 compare the maximum allowable T&D upgrade costs to the  
11 actual upgrade costs as determined by Duke; is that  
12 right?

13 A I'm a little hesitant to answer. That maximum  
14 allowable upgrade cost was determined by the Independent  
15 Administrator, and I think what I understood was it was  
16 based on net benefit when it was created during Tranche  
17 1.

18 Q Well, did you hear the testimony today that  
19 maximum allowable T&D upgrade cost was a Tranche 2  
20 construct?

21 A I did.

22 Q Okay. And my understanding is that -- and did  
23 you hear the testimony earlier today that -- of Accion's  
24 witnesses that that construct was created to determine

1 whether a particular project would be below the statutory  
2 avoided cost cap as -- after consideration of upgrade  
3 costs?

4 A That was a Tranche 2 concept applied to the 15  
5 proposals that were eliminated in Step 2 of Tranche 1. I  
6 don't recall hearing what that number in this table was  
7 -- what basis it was created on in the Late-Filed  
8 Exhibit, whether it was net benefit analysis or what I've  
9 heard you call the statutory avoided cost cap.

10 Q Okay. Well, let's look at the table, and this  
11 is in the last column on the last page of the Late-Filed  
12 Exhibit. Do you see where it says Maximum Allowable T&D  
13 Upgrade Costs?

14 A I do.

15 Q And then do you see where it says See February  
16 28, 2020 IA Memo?

17 A Yes.

18 Q Okay. Do you know what memorandum that is  
19 referring to?

20 A I'm familiar with that, yes.

21 Q Okay. So you recall that memorandum?

22 A I do.

23 Q Okay. Do you have a copy of Orion's Verified  
24 Petition in this matter?



1           A       I'm not certain. Can you describe it for me?

2           Q       Sure. It's the initial petition in Orion's --  
3       and there's a copy of that memorandum that's attached to  
4       that petition. It was also introduced --

5                   MR. SNOWDEN: For benefit of the Commission and  
6       the lawyers, that was also introduced as an exhibit  
7       during the November hearing, but the easiest way to find  
8       it is as an attachment to the Petition.

9           Q       Do you have a copy of that Petition?

10                  MR. JIRAK: Commissioner Clodfelter, if I may?

11                  COMMISSIONER CLODFELTER: Yes, Mr. Jirak.

12                  MR. JIRAK: To the extent that the questions --  
13       this line of questions tends to go down and ask questions  
14       regarding the contents of the February memo, we would  
15       object to those questions as being outside of the scope,  
16       the narrow scope set for this hearing. So I wanted to  
17       state that now --

18                  MR. SNOWDEN: I understand. Yes.

19                  MR. JIRAK: -- before we go down a long line of  
20       questions on that topic.

21                  MR. SNOWDEN: Thank you. Understood, Mr.  
22       Jirak. And just to be clear, I'm not -- do not intend to  
23       talk about the memo, other than to just establish what  
24       this maximum allowable T&D upgrade cost concept is, so

1 we're not going to be asking about the preparation of the  
2 memo or anything like that.

3 COMMISSIONER CLODFELTER: All right. Well,  
4 let's ask the question about what the concept is, and  
5 then we can move from there.

6 MR. SNOWDEN: Okay.

7 Q So Mr. Cathcart, I'll just read from this, and  
8 you can tell me if this sounds right. So I'm looking --  
9 this is Item 5. It says "The Step 2 evaluation will  
10 include a calculation of the maximum allowable T&D  
11 upgrade costs based on the Proposal's price decrement  
12 below the 20-year levelized avoided cost rates identified  
13 in the RFP." Does that sound right?

14 MR. JIRAK: Excuse me. Commissioner  
15 Clodfelter?

16 COMMISSIONER CLODFELTER: Mr. Jirak?

17 MR. JIRAK: I would object to this question.  
18 The witness does not have a copy of the Petition. Mr.  
19 Snowden is simply reading from the Petition, and you're  
20 asking the witness to confirm the accuracy of his  
21 reading. I'm not sure what the value is or relevance of  
22 this question.

23 COMMISSIONER CLODFELTER: Mr. Snowden, we don't  
24 have the document. It's not marked as an exhibit. It

1 hasn't been designated prior to the hearing. If your  
2 purpose is to ask him what he understands the concept to  
3 be, you can ask him what the concept to be, but reading  
4 to him from a document and asking him to verify what the  
5 document says is getting us a little far afield here.

6 MR. SNOWDEN: Understood. Thank you. Yes.  
7 And as I mentioned, this has been -- it was not included  
8 as a cross examination exhibit, but it was marked as an  
9 exhibit during the November hearing. If it would be  
10 helpful, I can simply share a copy of the exhibit. I  
11 don't need to have it marked at this point.

12 COMMISSIONER CLODFELTER: I think if the  
13 witness doesn't have access to the exhibit, you really  
14 shouldn't be asking questions about it. If you can  
15 provide access and it was marked in the November hearing,  
16 let's give the witness access to the document.

17 A I was not in the November hearing, and I don't  
18 know that I'm the Company expert on that memorandum.

19 Q Okay, okay. Well, we'll skip the memorandum,  
20 but -- and go back to the Late-Filed Exhibit. It's your  
21 understanding, though, Mr. Cathcart, would you agree,  
22 that this -- the last page of the Late-Filed Exhibit,  
23 where it says Maximum Allowable T&D Upgrade Costs,  
24 indicates that that metric is the same as described in

1 the February 28th, 2020 IA memo; is that right?

2 A I mean, kind of along the lines of the last few  
3 questions, that seems reasonable, but I cannot confirm  
4 that.

5 Q Okay, okay. So you don't know. Understood.  
6 So do you not know the -- let me ask you this. Would you  
7 agree with the testimony of Accion's witnesses, or would  
8 you agree that Accion's witnesses testified today that  
9 for a particular proposal, one way to determine whether  
10 that proposal is below the avoided cost cap is to compare  
11 the upgrade costs with the maximum allowable T&D upgrade  
12 costs?

13 A I agree that that's a reasonable approach.

14 Q Okay. And so would you agree that the apparent  
15 purpose of including that information in -- for these  
16 three projects eliminated from -- in Step 1 in the Late-  
17 Filed Exhibit was to demonstrate or to elucidate or  
18 provide information on the question of whether those  
19 three projects might have been below the avoided cost  
20 cap?

21 A Yes. This information demonstrates that the  
22 three projects, Orion, Bid A, and Bid B, are similarly  
23 situated.

24 Q Okay. So my question is this -- well, wait

1 just a minute. Let's look at page 7 of the Late-Filed  
2 Exhibit, if we can. Are you with me?

3 A I am.

4 Q Okay. And it says here that 15 projects were  
5 also eliminated in Tranche 1 based on a determination of  
6 negative net benefits after the application of T&D costs,  
7 an extensive further analysis would be needed to assess  
8 each such proposal to determine whether the applicable  
9 T&D costs would have exceeded the maximum allowable T&D  
10 upgrade costs. Do you see that?

11 A I do.

12 Q Okay. Do you think that's still true today?

13 A So at the time this was written, it was  
14 certainly a concern. Based on the Commission Order to do  
15 the extensive research and determine, you know, what the  
16 numbers were that we needed to evaluate these projects, I  
17 would say these 15 projects are no longer a concern. And  
18 if I were -- the complexities I'd be most concerned about  
19 are the projects eliminated in Step 1.

20 Q Okay. Thank you. The question is this, if we  
21 were able to establish that these 15 projects are not a  
22 concern, based on looking at the maximum allowable T&D  
23 upgrade costs, why wasn't that information included in  
24 the Late-Filed Exhibit when it was filed back in

1 November?

2 A Duke did not have the calculation -- the  
3 calculations to determine if these projects would be  
4 above avoided cost.

5 Q Okay. And do you recall whether you discussed  
6 with Orion whether it would be -- I'm sorry -- with  
7 Accion whether it would be appropriate to include that  
8 information in the Late-Filed Exhibit at that time?

9 A It was our understanding that Accion did not  
10 have the calculations, and that to go through these  
11 extensive calculations was beyond the scope of creating a  
12 Late-Filed Exhibit.

13 Q Okay. Thank you.

14 MR. SNOWDEN: I have no further questions.  
15 Thank you very much.

16 WITNESS CATHCART: Thank you.

17 COMMISSIONER CLODFELTER: All right. Any  
18 redirect?

19 MR. JIRAK: Just one brief question, if I may,  
20 Commissioner Clodfelter.

21 COMMISSIONER CLODFELTER: Sure.

22 REDIRECT EXAMINATION BY MR. JIRAK:

23 Q Mr. Cathcart, Mr. Snowden was asking you a  
24 number of questions about the preparation of the Late-

1 Filed Exhibit. Do you happen to recall that Duke did, in  
2 fact, share the Late-Filed Exhibit with Orion in advance  
3 of filing it with the Commission?

4 A (Cathcart) Yes. I do recall that.

5 Q And do you recall whether Orion offered any  
6 substantive feedback or any feedback at all regarding the  
7 Late-Filed Exhibit at that time prior to filing?

8 A I do not recall that they gave any feedback.

9 MR. JIRAK: That's all the redirect I have,  
10 Commissioner Clodfelter.

11 COMMISSIONER CLODFELTER: Thank you, Mr. Jirak.  
12 Questions from Commissioners? Commissioner Gray?

13 COMMISSIONER GRAY: No questions.

14 COMMISSIONER CLODFELTER: Commissioner Duffley?

15 COMMISSIONER DUFFLEY: Yes. I have several.

16 EXAMINATION BY COMMISSIONER DUFFLEY:

17 Q So with respect to the similarly situated  
18 projects, I just want to obtain some clarification  
19 regarding that. We heard an Accion witness today state  
20 there was only one similarly situated project to Orion.  
21 And, also, if you can look at your January 4th, 2021  
22 filing.

23 MR. JIRAK: Commissioner Duffley, which  
24 document are you referring to?

1 WITNESS CATHCART: Yeah.

2 COMMISSIONER DUFFLEY: It is Post-Hearing Brief  
3 of DEC.

4 MR. JIRAK: I don't believe that witness  
5 Cathcart has a copy of that in front of him. I can  
6 certainly communicate it to him -- convey it to him  
7 electronically if it would be helpful to you,  
8 Commissioner Duffley.

9 Q Okay. I can read it to you. On page 13 of  
10 this brief submitted by DEC, it states "The challenge" --  
11 so on the previous page, it says "Other complexities and  
12 challenges associated with a retroactive change to  
13 Tranche 1 results include the following," and then if you  
14 go to page 13, it states "The challenge of retroactively  
15 assessing the T&D costs for the one similarly situated  
16 proposal that was not previously assessed."

17 A (Cathcart) Commissioner, I understand the  
18 confusion there. So there were two -- well, there were a  
19 total of three projects eliminated in Step 1, so one of  
20 those is Orion. Another of those was exactly similarly  
21 situated to Orion, where they were eliminated, but in an  
22 effort to expedite the process, the T&D sub-team did take  
23 a look at that project and determined that they did not  
24 have substantial network upgrades. Now --



1           Q     And which project was that, that you say is  
2 exactly similar to Orion?

3           A     This was Bid B, as described in the Late-Filed  
4 Exhibit.

5           Q     Okay.

6           A     So --

7           Q     I interrupted. I'll let you continue.

8           A     And then I think the confusion was my answer  
9 that there were two similarly situated, and you mentioned  
10 that an Accion witness described one. So when I said  
11 there were two others, I was referring to two others  
12 eliminated in Step 1. So one of those, exactly the same,  
13 Bid B, that had some thermal studies completed so that we  
14 understood they did not have major system upgrades. The  
15 third project is Bid A, which the Duke team, the sub-  
16 team, has not performed any study on, so there's  
17 potential that they have no upgrades and would be exactly  
18 similarly situated. There's potential that they have  
19 substantial network upgrades and may not be able to  
20 proceed with imputed upgrade cost.

21          Q     Okay. So the similarly situated proposal on  
22 page 13 of your Post-Hearing Brief is Bid B, correct?

23          A     That sounds correct.

24          Q     Okay. And then Bid A, you're stating that you

1 do not have the information currently that would suggest  
2 that it is similarly situated or not similarly situated  
3 to Orion?

4 A That's correct. That project was eliminated in  
5 Step 1, not passed to the T&D sub-team, so we've not  
6 performed any studies.

7 Q Okay. And so -- and going to the chart, that  
8 Late-Filed Exhibit with the three bids, if you could turn  
9 your attention to the far right-hand corner, and it says  
10 Duke T&D Evaluation Team - Step 2 System Upgrade Costs.  
11 Do you see that --

12 A That's right.

13 Q -- column?

14 A Yes.

15 Q And so that's what you're saying in that  
16 column, that that is unknown?

17 A That's correct.

18 Q Okay. Thank you. And in Duke's latest filings  
19 in Docket Numbers E-2, Sub 1159, and E-7, Sub 1156, are  
20 you familiar with those filings?

21 A I am.

22 Q You are. Okay. So -- and Duke's indicated in  
23 those filings, am I correct, that there's currently,  
24 based on current information, looking at the transmission

1 -- or transition MW, that currently there's approximately  
2 112 MW of additional projects to be procured through  
3 CPRE?

4 A I don't have it in front of me, but that  
5 magnitude sounds correct. I'd like to maybe stress a  
6 little more that there's a lot of assumptions that go  
7 into creating that number. It certainly could be across  
8 the greater range.

9 Q And do you see that changing significantly or  
10 not?

11 A Well, this Commission has recently asked us for  
12 an update, and we've done a lot of work towards it and  
13 identified a lot of potential projects that could come  
14 through before the end of the 45-month CPRE window. And  
15 I believe what we've requested is a little more time to  
16 take a look at these closer to September.

17 Q So it's still not clear with respect to  
18 overprocurement or underprocurement --

19 A That's correct.

20 Q -- currently? Okay. Thank you.

21 A It's unknown.

22 COMMISSIONER DUFFLEY: Okay. Those are all my  
23 questions. Thank you.

24 WITNESS CATHCART: Thank you.

1 EXAMINATION BY COMMISSIONER CLODFELTER:

2 Q Mr. Cathcart, Mr. Piper, I'm going to try to  
3 short circuit a lot of what I went through with the  
4 Accion witnesses, but I'm going to refer again to this  
5 Attachment B to Mr. Lasocki's supplemental rebuttal  
6 testimony. Do both of you have access to that?

7 A (Cathcart) I do.

8 Q And, again, I'm referring not to Tranche 1 -- I  
9 mean Tranche 2 -- forget Tranche 2. I'm referring only  
10 to the state of the world as it existed in Tranche 1, and  
11 I'm looking at the column that's titled -- it's the  
12 fourth column over from the right-hand side. It's titled  
13 Duke T&D Evaluation Team - Step 2 System Upgrade Costs.  
14 Do you have that column?

15 A (Cathcart) Nods affirmatively.

16 A (Piper) I do.

17 Q And it is my understanding of the testimony  
18 from the Accion witnesses that the numbers in that column  
19 represent Accion's informed and educated summary of cost  
20 information that they received from the Duke T&D  
21 evaluation team during Step 2; is that correct? Is that  
22 what those numbers are?

23 A (Cathcart) Orvane, I don't know if you want to  
24 speak up, or I can.

1           A     (Piper) It is my -- yes. It is my  
2 understanding that those numbers were provided by Duke  
3 via a T&D sub-team at some point in the process. I  
4 haven't cross referenced those numbers, but it's my  
5 understanding that they came from DEC.

6           Q     Well, okay. Look at the second line, which is  
7 the project ranked Number 10 in Step 1, and the number in  
8 that column was \$15,000,000, a perfectly round number.  
9 My understanding of the Accion witnesses' testimony is  
10 the Duke T&D team didn't give them a \$15,000,000 number;  
11 it gave them sufficient numbers and cost data from which  
12 they could determine that the order of magnitude of the  
13 cost was going to be in the range of \$15,000,000. Is  
14 that accurate or inaccurate?

15          A     Because I wasn't involved with the preparation  
16 of this specific table, I don't know the trail, but we  
17 did provide high-level feedback to Accion throughout the  
18 process regarding the bids that are included in this  
19 table and issues that they would be facing if they were  
20 to move forward in the evaluation process.

21          Q     Mr. Piper, that's a fair answer, and I think  
22 that answers the question that I was really getting at.

23                COMMISSIONER CLODFELTER: So that's all I have  
24 for you. Thank you. So let's see if there are questions

1 on the Commission's questions.

2 MR. SNOWDEN: Commissioner, I've got a few  
3 questions on -- on Commissioner Duffley's questions.

4 COMMISSIONER CLODFELTER: All right. Proceed.

5 MR. SNOWDEN: Thank you.

6 EXAMINATION BY MR. SNOWDEN:

7 Q Mr. Cathcart, Commissioner Duffley, you recall,  
8 asked you about the two other projects that were also  
9 eliminated in Step 1 of Tranche 1, Bid A and Bid B; is  
10 that right?

11 A (Cathcart) That's right.

12 Q Okay. Would you please take a look at page 2  
13 of the Late-Filed Exhibit?

14 A Just a moment.

15 Q Uh-huh.

16 A Okay. I have it.

17 Q Okay. And this is Item 2, and you see the  
18 bullets labeled Bid A and Bid B, right?

19 A Right.

20 Q Okay. And then you see in the Bid A bullet, it  
21 says that "The Company has confirmed that no Tranche 2  
22 projects would have been impacted had this project been  
23 selected in Tranche 1." Do you see that?

24 A Yes.

1           Q     Okay. And you see where it says "...this  
2     project was already assumed in the base case for studying  
3     Tranche 2 projects." Is that right?

4           A     This project would have been in the base case  
5     for Tranche 2, yes.

6           Q     Okay. So as I read this, the implication to me  
7     is that if this Bid A project were retroactively selected  
8     for a PPA, it would not cause any problems on the  
9     interconnection side because it was already assumed in  
10    the base case for Tranche 2; is that right?

11          A     That's right. Maybe another way to say it is  
12    it would not disadvantage any of the Tranche 2 projects.

13          Q     So you wouldn't have to rerun the Tranche 2  
14    study if this project retroactively got a PPA, right?

15          A     It was in the base case. We would not rerun  
16    the study.

17          Q     Okay. And that's also true of Bid B, correct?

18          A     That's right. That's how the CPRE rules were  
19    written, so that's correct.

20          Q     Okay. Thank you. So as I understand it, the  
21    only -- if these projects were to be retroactively  
22    awarded PPAs, the only complexity that would arise would  
23    -- would be the impact on Duke's overall CPRE procurement  
24    targets; is that right?

1           A     A little more than that. We would need to  
2 actually run the studies on Bid A, and we would certainly  
3 -- there's the PPA cost windfall to Orion for moving from  
4 the Tranche 2 PPA to the Tranche 1 PPA, so there's a cost  
5 impact.

6           Q     Okay. Well, I'm focusing on Bid A and Bid B  
7 here. What I think I heard you say was that you would  
8 still have to figure out -- to do some additional study  
9 to figure out if both these projects were below avoided  
10 cost; is that right?

11          A     Certainly for Bid A, and then for Bid B we  
12 would need clarification on whether we should  
13 retroactively apply some of the equipment classifications  
14 that have changed, what would be the most appropriate way  
15 to look at Bid B, similar to how we would go back and  
16 look at Orion and determine can we keep them below  
17 avoided cost.

18          Q     Understood. Thank you. So I guess what I'm  
19 hearing you say is that it might be complicated to figure  
20 out whether and how to deal with a PPA for these  
21 projects, but even if you went down that path, it  
22 wouldn't screw things up for everybody else in CPRE; is  
23 that fair?

24          A     DEC is not concerned about the other Tranche 2



1 winners.

2 Q Okay. Thank you. And going back very briefly,  
3 Commissioner Duffley had a couple of questions about  
4 where Duke is on its overall CPRE procurement targets.  
5 And I believe that she said, and you agreed, reading from  
6 Duke's recent filings in the CPRE dockets, that at this  
7 time, Duke's best guess is that about 112 MW of projects  
8 would still need to be procured through CPRE; is that  
9 correct?

10 A That magnitude sounds correct, yes.

11 Q Okay, okay. And if you don't mind looking at  
12 the last page of the Late-Filed Exhibit to the table.

13 A Yes.

14 Q Actually -- oh. I guess we don't know on this  
15 -- on this what the total generating capacity of Bid A  
16 and Bid B are, do we?

17 A It's confidential on this table.

18 Q Okay. On this table. Do you know what the --  
19 the total MW of those two projects are?

20 A What I don't know is my ability to discuss  
21 confidential information in this proceeding.

22 Q Okay. Do you know whether the -- if you can  
23 say, whether the total capacity of those two projects is  
24 over or under 112 MW?

1           A     This is my first time up here, so I don't know  
2     if I can call in my lawyer.

3                   MR. JIRAK: Yeah. I believe that information,  
4     the size of the project, is confidential, the other --  
5     Bid A and Bid B has been designated as confidential  
6     information.

7                   MR. SNOWDEN: Okay. Thank you.

8           Q     But -- okay.

9                   MR. SNOWDEN: I have no further questions.  
10    Thank you, Mr. Cathcart.

11                   WITNESS CATHCART: Thank you, Mr. Snowden.

12                   COMMISSIONER CLODFELTER: Mr. Higgins, anything  
13    from you on Commission's questions?

14                   COMMISSIONER HIGGINS: No, sir. Nothing for  
15    me. Thank you.

16                   COMMISSIONER CLODFELTER: All right. Mr.  
17    Jirak?

18                   MR. JIRAK: Yeah.

19    EXAMINATION BY MR. JIRAK:

20           Q     Mr. Cathcart, just briefly, some questions,  
21    questions from Mr. Snowden and others about sort of the  
22    retroactive treatment of these three projects, Orion and  
23    the other two --

24                   COMMISSIONER CLODFELTER: Now, hold on. These

1 are not questions in response to Mr. Snowden's questions;  
2 these are questions on the Commissioner's questions,  
3 okay?

4 MR. JIRAK: Okay. Very good. Thank you.  
5 Apologize.

6 Q So as we think about -- Commissioner Duffley  
7 was asking about the other two similarly situated  
8 projects. Do you recall those questions?

9 A (Cathcart) I do.

10 Q Okay. And those -- these are bid -- that were  
11 bid into Tranche 1, correct?

12 A Correct.

13 Q And the avoided cost cap in Tranche 1 was a  
14 higher avoided cost cap than was applied in Tranche 2,  
15 correct?

16 A Correct.

17 Q So all things being equal, the bids that were  
18 -- the bids that were submitted and potentially selected  
19 in Tranche 1 are higher-priced bids than were bid in and  
20 selected in Tranche 2, correct?

21 A That is correct.

22 MR. JIRAK: I have no further questions.

23 COMMISSIONER CLODFELTER: Okay. Mr. Jirak,  
24 anything further from Duke?

1 MR. JIRAK: No, sir. We have no further  
2 matters for the Commission. Thank you.

3 COMMISSIONER CLODFELTER: All right. I think  
4 that brings us to the end. Just for good order sake,  
5 let's just be sure that any exhibits that have been  
6 marked for identification, but that we haven't -- I  
7 haven't yet done the proper thing and allowed their  
8 admission, we'll admit them into the record now unless  
9 there's some objection. It may not be necessary to do  
10 that, but just in case it hasn't been done, we'll do it.

11 (No response.)

12 COMMISSIONER CLODFELTER: No objection. All  
13 right, folks. That brings us to the end. Again, we're  
14 trying to get a decision made here before we lose  
15 Commissioner Gray, and so I'm going to ask you if the  
16 parties would agree that we can shorten the time for  
17 briefs after you get the transcript of today's hearing to  
18 15 days from transcript, again, because you've already  
19 filed post-hearing briefs on most of the issues already.  
20 You've already done that. So your post-hearing briefs  
21 today should really just address the Late-Filed Exhibit  
22 questions, and I'm hoping you can get that done within 15  
23 days. I understand we've got a holiday; otherwise, I  
24 would have made it 10 days, but unless you've got serious

1 objections to that, somebody is going on vacation or  
2 whatever, will 15 days from transcript work?

3 MR. SNOWDEN: Yes, sir.

4 MR. JIRAK: Yes. That would be sufficient.  
5 Thank you, sir.

6 COMMISSIONER CLODFELTER: Thank you. Thank you  
7 both. Again, we're trying to hurry this along before we  
8 lose Commissioner Gray.

9 COMMISSIONER GRAY: Thank you.

10 COMMISSIONER CLODFELTER: And let me remind  
11 you, too, that I would like to hear from you by letter by  
12 the end of business Tuesday that if we lose Commissioner  
13 Gray before we've gotten our act together on a decision,  
14 that we can allow Commissioner Brown-Bland to participate  
15 in the decision by having read the record. You don't  
16 have to say yes, you don't have to say no, but I just  
17 want to know your position. If you do consent, we'll  
18 proceed on that basis; if not, we'll drop back and figure  
19 out what other options we may have.

20 MR. SNOWDEN: Commissioner Clodfelter, I'm  
21 sorry to interrupt. If I may, I previously discussed  
22 that with my clients, and Orion consents. Should we also  
23 go ahead and file a letter? Do you need that letter, or  
24 can we just say it here --

1 COMMISSIONER CLODFELTER: Well, we'll take  
2 your --

3 MR. SNOWDEN: -- here now?

4 COMMISSIONER CLODFELTER: We'll take your  
5 consent on the record. It's on the record, so that's  
6 sufficient.

7 MR. SNOWDEN: Thank you.

8 COMMISSIONER CLODFELTER: I'll accept that.  
9 That's fine.

10 All right. Are there any other matters that we  
11 need to take up this morning?

12 (No response.)

13 COMMISSIONER CLODFELTER: All right. I have  
14 only one. Linda Garrett, my apologies to you for not  
15 taking a break, but I had a hunch if we went a little  
16 longer this morning, we'd get to the end, so my apologies  
17 to the court reporter. And if there's nothing else, then  
18 we are adjourned. Thank you all for your participation  
19 this morning. Appreciate it. Thank you.

20 MR. SNOWDEN: Thank you.

21 MR. JIRAK: Thank you.

22 MR. HIGGINS: Thank you.

23 (The hearing was adjourned.)  
24

---

STATE OF NORTH CAROLINA

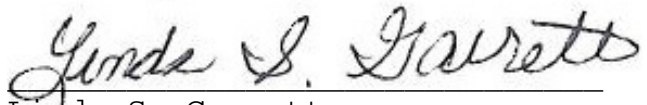
COUNTY OF WAKE

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 No. SP-13695, Sub 1, 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 12th day of July, 2021.



Linda S. Garrett  
Notary Public No. 19971700150