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DATE: Tuesday, September 15, 2020

TIME: 1:30 P.M. - 4:32 P.M.

DOCKET NO.: E-7, Sub 1214

E-7, Sub 1213

E-7, Sub 1187

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner Tonia D. Brown-Bland

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

DOCKET NO. E-7, SUB 1214

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



DOCKET NO. E-7, SUB 1213

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

DOCKET NO. E-7, SUB 1187

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

VOLUME 24

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P R O C E E D I N G S

CHAIR MITCHELL: All right. Let's go back on the record, please. We are on questions on Commissioners' questions for Mr. Riley. Mr. Grantmyre had just finished his questions. Let me check one more time to see if any other intervening parties have questions on Commissioners' questions for the witness?

(No response.)

CHAIR MITCHELL: All right. Hearing none, Mr. Heslin -- oh, Ms. Townsend, did you --

MS. TOWNSEND: I was just saying no questions from the Attorney General's Office.

CHAIR MITCHELL: Okay. Thank you, Ms. Townsend.

All right. Mr. Heslin, you're up.

MR. HESLIN: Thank you, Chair Mitchell.

Whereupon,

SEAN P. RILEY,  
having previously been duly affirmed, was examined  
and continued testifying as follows:

EXAMINATION BY MR. HESLIN:

Q. Mr. Riley, Commissioner McKissick asked you whether other states were wrestling with these coal ash

1 recovery issues, and you said no.

2 In your observations, how are other  
3 jurisdictions handling coal ash recovery?

4 A. In general, what I observed is that they have  
5 not followed cost of removal accounting. What they  
6 followed is just traditional ARO accounting. Similar  
7 to how Mr. Doss described their ARO accounting at DEC.  
8 To the extent that expenditures are made, companies are  
9 recording regulatory assets and earning a return on  
10 unrecovered regulatory assets. I think that's, in  
11 general, what I'm seeing.

12 Q. Are you aware of any jurisdictions that have  
13 approved or adopted an equitable sharing theory with  
14 significant disallowances such as that proposed by --

15 A. No. No, I'm not aware.

16 Q. And based on your review of coal ash recovery  
17 decisions across the jurisdictions, why have these  
18 other jurisdictions not wrestled with this coal ash  
19 accounting ARO issue?

20 A. I would respond by saying that, clearly,  
21 these are costs that need to be dealt with, and  
22 Commissioners are looking at over what period will they  
23 be recovered from ratepayers. And, in general, you see  
24 them being recovered more towards the retirement

1 activities occurring. So, in other words, you're not  
2 recovering it through cost removal in advance, but  
3 rather in later periods. So it's more of a timing of  
4 recovery question for Commissions as opposed to whether  
5 costs should be recovered.

6 Q. And are the other jurisdictions allowing  
7 recovery of and on these coal ash costs?

8 A. We haven't seen -- and I mentioned  
9 disallowances earlier. We haven't seen disallowances  
10 in this area, so the answer to that is yes.

11 Q. And Chair Mitchell asked you questions  
12 dealing with accounting -- the accounting perspective  
13 of potential regulatory disallowances.

14 If the Commission were to adopt the Public  
15 Staff's equitable sharing theory, which it denied in  
16 the prior DEC rate case, but in this case disallowed  
17 billions of dollars of recovery in coal ash costs, in  
18 your opinion based, on your experience and  
19 observations, what would be the perception of and the  
20 impact to the Company?

21 A. Well, maybe we can start with the impact to  
22 the Company financially. Obviously, there would be, as  
23 I talked about earlier, a charge to earnings  
24 immediately in the income statement, and that would

1 flow through to a significant reduction in equity of  
2 the Company. Ultimately, the strength of the financial  
3 position of the Company would be severely impacted  
4 given that dollar size or the magnitude of that level  
5 of disallowance.

6 In terms of the perception, you have to think  
7 about it in terms of investors. Investors are  
8 comparing regulated utilities across the country. They  
9 have choices to make in terms of who they invest in.  
10 And they compare one utility versus another, and in  
11 terms of perceived risk. So the question investors  
12 would ask is: Is the regulatory compact in  
13 North Carolina working? Is there greater risk in  
14 North Carolina as compared to other utilities elsewhere  
15 in the United States?

16 And with that level of a disallowance, it's  
17 reasonable to assume that they would perceive a greater  
18 level of risk. And as a result, if they were to invest  
19 in Duke, they would expect a higher level of return.  
20 So all things being equal, they would expect a higher  
21 level from Duke than from others. The impact of that  
22 is that it would increase the overall cost of capital  
23 of Duke, which when you think of ratemaking theory,  
24 that ultimately would result in increased rates to

1 North Carolina customers.

2 MR. HESLIN: Chair Mitchell, I have no  
3 further questions.

4 CHAIR MITCHELL: All right. I actually  
5 have one additional question for the witness.

6 EXAMINATION BY CHAIR MITCHELL:

7 Q. Just that we are all clear, when you say  
8 "cost of removal accounting," can you explain exactly  
9 what you mean by that?

10 A. Certainly. I'm sorry I was unclear. Cost of  
11 removal accounting is -- is a mechanism that is  
12 employed by regulators to allow for recovery of  
13 retirements in advance of them occurring. So it's just  
14 a matter of being able to build up a reserve to be able  
15 to pay for the retirement when it happens. You  
16 typically see, and I think Doss talked -- witness Doss  
17 talked about this related to nonlegal retirement  
18 obligations.

19 The point around cost of removal is that  
20 you're recovering costs in advance of the actual  
21 expenditures from ratepayers; i.e., building up a  
22 reserve. And typically what you see as it relates to  
23 the AROs that we're talking about is that they're  
24 typically recovered after the expenditures occur from

1 ratepayers, as opposed to recovering it in advance.

2 CHAIR MITCHELL: All right. Thank you,  
3 Mr. Riley. Any questions on my question just asked  
4 of Mr. Riley? And I actually see  
5 Commissioner Duffley with her hand raised, so she  
6 must have an additional question for the witness as  
7 well. So I'll let Duffley proceed, and then we'll  
8 take questions on my question and Duffley's  
9 questions.

10 COMMISSIONER DUFFLEY: Thank you,  
11 Chair Mitchell.

12 EXAMINATION BY COMMISSIONER DUFFLEY:

13 Q. I just would like to clarify the record with  
14 this question. So you mentioned that the disallowance  
15 is recognized immediately, and then I thought I heard a  
16 response that could be billions of dollars. But is the  
17 disallowance just related -- so let's say,  
18 hypothetically, there was a disallowance in this case.  
19 The full recognition would only be for the costs sought  
20 in this case, it would not be for the entire estimated  
21 ARO, correct?

22 A. I'll try to answer your question with an  
23 example. If the utility were seeking -- were in need  
24 to recover \$1,000 -- just going back to my earlier

1 example -- to recover a \$1,000 asset, and the  
2 Commission were to conclude that it could only recover  
3 \$800 of that \$1,000 asset, and say they said they could  
4 recover it over a four-year period with a return, then  
5 in that case, the disallowance in my example would be  
6 \$200.

7 Q. Okay. I understand that. Let's just use  
8 hypothetical numbers. Let's say that the estimated  
9 asset retirement obligation is \$1 billion, but the  
10 utility comes in for a rate case as they spend,  
11 deferral and spend, and let's say, in case number one,  
12 they come in and seek \$500 million. And the regulatory  
13 agency disallowed 50 percent of that \$500 million.

14 The Company's then not required to recognize  
15 a full loss on that \$1 billion; it would just have to  
16 immediately recognize the disallowance of \$250 million;  
17 is that correct?

18 A. Excluding considerations of return. The  
19 immediate disallowance with the explicit disallowance  
20 in your example would be \$250 million. I think then  
21 what the Company would need to assess is, is it exposed  
22 to non-recovery of the remaining \$500 million; what  
23 caused the \$250 million charge on the first  
24 \$500 million. So it would have to consider the

1 potential ripple effect on the remaining balance as  
2 well.

3 Q. Okay. But that would be in the context of  
4 the credit metrics versus accounting?

5 A. No, it's an accounting consideration. So if  
6 they needed to recover \$1 billion, they were only going  
7 in for the first \$500 million, and there was an order  
8 to say share the first \$500 million, 250 and 250, the  
9 Company would need to say is it probable that we'll  
10 recover the remaining \$500 million, or do we think it's  
11 likely that we'll have a charge -- actually, is it  
12 probable that we will incur an additional disallowance  
13 on the remaining \$500 million? In which case, if it  
14 concluded that it was probable that it would also have  
15 a disallowance on the second \$500 million, it would  
16 also have to accelerate that charge as well.

17 Q. At that point of the first disallowance?

18 A. That's correct.

19 Q. Okay. Thank you for that explanation.

20 COMMISSIONER HUGHES: Commissioner -- I  
21 mean, Chair Mitchell, before you go, I have a  
22 question based on these questions too.

23 CHAIR MITCHELL: All right. You may  
24 proceed, Commissioner Hughes.

1 EXAMINATION BY COMMISSIONER HUGHES:

2 Q. Mr. Riley, you referred to the word  
3 "disallowance" a number of different times, and you've  
4 used an example of, you know, \$1,000. From what I  
5 understand here, the, quote, disallowance that the  
6 Public Staff is requesting, again, is a net present  
7 value disallowance. So it's a disallowance of a net  
8 present value in some cases over 25 years. So what I  
9 can see on a cash flow diagram that they presented  
10 is -- you know, they're disallowing amounts way into  
11 the future.

12 And I'm just curious, again, your example of  
13 it being shown right away, and you gave an example of  
14 \$500 million and \$250 million is disallowed. Could you  
15 just say how it would work mathematically, if it  
16 instead was \$500 million was sought after and  
17 \$500 million was granted, but over a period of time  
18 that caused a net present value disallowance? That's  
19 just way into the future, and I'm having a hard time  
20 wrapping my head around what would actually show up  
21 today. Does that make sense?

22 A. Yes, it does. I'll try to answer your  
23 question. So in your example, if the Company's seeking  
24 \$500 million in recovery and they're granted

1 \$500 million in recovery, except if the Company is  
2 out-of-pocket cash today \$500 million and they're not  
3 going to recover that for, say, a period of time, call  
4 it 25 years, they have used shareholder monies today,  
5 and shareholders expect a return on the use of their  
6 funds.

7 So to the extent that the Commission were to  
8 only grant recovery over a 25-year period,  
9 \$500 million, in present value dollars it's something  
10 less than \$500 million.

11 Q. Okay.

12 A. And what the accounting would require is for  
13 the Company to assume or to assess what return would it  
14 have expected to get on those dollars, and I would have  
15 expected weighted average cost of capital. They  
16 would present value of those dollars back to today's  
17 dollars to today. Using your example, say that  
18 discounts back to \$400 million. They would take a  
19 charge of \$100 million for that implied disallowance in  
20 accordance with the accounting standard.

21 So, in effect, because they're not getting a  
22 return on their money, that has to be recognized today  
23 as a charge.

24 Q. So what you're saying is the net present

1 value of the difference between the assumed return by  
2 standard accounting has to be calculated and charged  
3 off in the next calendar year?

4 A. That's right. In other words, if the  
5 Commission were to allow a recovery of but not on  
6 assets that were the result of expenditures, there's an  
7 accounting consequence for the conclusion that they  
8 should not get a return on expended funds, and that's  
9 called an applied disallowance.

10 Q. So -- but figuring out -- figuring out the  
11 amount of that disallowance, then you have to, again,  
12 have the default, and you're saying that you would use  
13 a weighted average capital. Is that in the discretion  
14 of the Company or the audit firm to decide what is the  
15 default for calculating that net present value?  
16 Because when you're talking about net present value,  
17 people are throwing around all different types of  
18 discount factors.

19 A. No. There are specific accounting standards  
20 on exactly how that accounting would work. And so the  
21 Company -- it's the Company's books and records would  
22 apply, and forgive me, I don't remember the ASC  
23 reference, but it's the accounting standard number 90,  
24 FASB 90. The Company would apply that to calculate the

1 disallowance. So it's specific right in the accounting  
2 standard.

3 Q. What did you say that was again, that  
4 accounting standard? Can you repeat that?

5 A. It's SFAS 90, I believe.

6 Q. Thank you.

7 CHAIR MITCHELL: All right. Thanks,  
8 Commissioner Hughes.

9 COMMISSIONER HUGHES: No further  
10 questions.

11 CHAIR MITCHELL: I see  
12 Commissioner McKissick has a question.

13 EXAMINATION BY COMMISSIONER MCKISSICK:

14 Q. And it's simply this: I mean, I raised the  
15 question earlier about what other utilities were doing,  
16 in terms of addressing issues similar or comparable to  
17 this, and whether they had -- how they had addressed it  
18 from an accounting perspective.

19 The thing I'm curious in knowing is simply  
20 this: In light of the history of what was going on  
21 with coal ash and the ability to know that these  
22 facilities were going to have to be retired at some  
23 point, we later see the CRR rule being adopted, I mean,  
24 what exactly can you tell me other utilities were doing

1       that Duke did not do that perhaps was not wise in  
2       hindsight?

3           A.       I guess my answer to that question would be  
4       that I don't see Duke doing things that are different  
5       than other utilities are doing. Every jurisdiction,  
6       regulators are dealing with rates in an overall  
7       context, in terms of managing current rates versus  
8       future rates, dealing with known costs, dealing with  
9       estimates, dealing with things currently versus pushing  
10      them off into the future, depending on how questionable  
11      certain estimates are. I would say that I don't see  
12      Duke doing things differently than what I've seen  
13      elsewhere.

14          Q.       And at what point in time were most of these  
15      entities beginning to, you know, handle their  
16      accounting in a way that adequately would allow them to  
17      accumulate funds to address the coal ash impoundment  
18      issues, you know, in advance of the way we're  
19      approaching it here in North Carolina?

20          A.       Well, in terms of the accounting,  
21      essentially, utilities really didn't recognize their  
22      asset retirement obligations until CCR came out. Your  
23      CAMA came out slightly before CCR, so you -- I say  
24      "you" being Duke started to make their estimates of its

1       asset retirement obligations at that time.

2                   And then, as I mentioned, generally speaking,  
3       utilities were deferring the expense that was being  
4       recognized as a period expense, the depreciation and  
5       accretion to be recovered in the future, and that  
6       recovery period was generally after expenditures were  
7       being made for utilities.

8           Q.     Okay. And are you familiar with the  
9       estimates that Duke obtained as it related to  
10      retirement of their coal-generating assets?

11          A.     In terms of the specifics of the calculation,  
12      no, I haven't reviewed those estimates.

13          Q.     You have not. So you're familiar with them  
14      in general, in terms of what the total projected dollar  
15      value would have been, I take it; is that correct?

16          A.     Correct.

17          Q.     And were other utilities basically taking  
18      these issues into account significantly in advance of  
19      the adoption of CRR [sic]? I mean, from what I read,  
20      they were.

21          A.     In terms of the -- in terms of the  
22      recognition of the obligation?

23          Q.     Uh-huh.

24          A.     No. No, the obligations were generally

1 recognized as a result of CRR -- CCR.

2 Q. Okay. So you were not saying nationally  
3 recognition of what those potentially contingent  
4 liabilities would be, for lack of a better way of  
5 saying it, in advance of the CRR's [sic] adoption?

6 A. That's correct. To the extent that utilities  
7 did recognize the liability prior to CCR, was a very --  
8 typically a very minor amount, and it was increased  
9 significantly at CCR.

10 Q. And based upon what was going on, in terms of  
11 coal ash and in terms of groundwater contamination or  
12 the potential for it, do you think that it would have  
13 been wise for Duke or for other utilities to have gone  
14 ahead and established those reserves in advance of the  
15 adoption of CRR [sic]?

16 A. When you say "reserves," are you talking  
17 financial liabilities or collecting cash in advance?

18 Q. Well, beginning to collect cash in advance  
19 and likewise recognizing, for lack of a better way of  
20 putting it, the contingent liabilities that would have  
21 been associated either with the retirement of those  
22 coal-generating facilities or based upon the potential  
23 for, you know, groundwater contamination, which,  
24 obviously, there was a record in history of it

1 occurring, perhaps not as expansive and pervasive as it  
2 was, you know, but it was out there.

3 I mean, at some point have you to say, if  
4 you're aware these problems are out there, they're  
5 existing, they're occurring, at what point do you sit  
6 back and say, hey, this is something we need to  
7 address, we need to be prepared for, and we need to go  
8 ahead and either address it, in terms of it being a  
9 contingent liability or in terms of creating adequate  
10 reserves to address it?

11 A. I would answer it by -- answer your questions  
12 by saying that, on the accounting side, generally  
13 speaking, the utilities that I'm aware of did not  
14 really establish their asset retirement obligations  
15 until those CCR rules came out. Prior to that, it was  
16 very difficult to make that estimate. And really it  
17 was CCR that triggered that estimate or the recognition  
18 of the significant retirement obligations.

19 In terms of recovering cash in advance, and  
20 this is just my personal opinion, I think it's a matter  
21 of not having very specific estimates, in terms of what  
22 those costs would be and when they would be incurred.  
23 And so as a result, they would not include it in  
24 depreciation rates to be recovered in advance from

1 customers.

2 Q. Okay. And I think you said Pricewaterhouse  
3 was not the auditor for Duke?

4 A. That's correct.

5 Q. I guess the thing I'm trying to it  
6 determine -- and this has been something I've wrestled  
7 with for quite some time, and that's simply this: If  
8 I'm a utility, and I'm out there, and I'm aware that  
9 there are potential issues, problems -- or, you know,  
10 if you were any other corporation, their management  
11 team should be able to -- be able to identify and be  
12 aware of things that are, for lack of a better way of  
13 putting it, in a more traditional sense, outside of the  
14 utility segment, contingent liabilities or issues or  
15 problems that are identified which you attach some cost  
16 to, and which are actually revealed in your audits and  
17 in your financials. Because, you know, it's a duty to  
18 disclose it, particularly if it's a publicly traded  
19 company.

20 So the thing I'm trying to wrestle with is,  
21 at what point in time kind of the utility -- the  
22 utilities that are out there conducting business today  
23 really became aware of what they were wrestling with  
24 and dealing with to be able to address it, aware would

1 have been reasonably and responsible to do it. And I  
2 have -- and I wonder if it was before the adoption CRR  
3 [sic]. Maybe CRR, you know -- excuse me, CCR provided  
4 a framework, gave them a basis for going out and  
5 getting the estimates done and coming up with policies  
6 to address it.

7 But would there have been enough awareness  
8 prior to that time to have reasonably taken action?  
9 And, I mean, I know that's a bit of a long question and  
10 got the acronym, abbreviations a little bit twisted  
11 there, but help me out with that.

12 A. Sure. I would respond by saying that  
13 companies have specific footnotes. They talk about  
14 environmental exposure, contingent liabilities. Public  
15 company filings have what's called an MDNA that talk  
16 about matters that the company is looking at in the  
17 future that could have an impact on the company. So  
18 prior to the issuance of CCR, it took years for those  
19 rules to come into effect.

20 Companies, in general, in the utilities  
21 sector were talking about CCR and the potential impact  
22 that it would have on the companies. And they had  
23 to -- they talk -- in general, they would talk about  
24 how that -- those rules were evolving up to them

1 becoming formal and final. At the time they became  
2 formal and final is when the accounting entries  
3 happened. Prior to that, utilities were talking about  
4 the potential impact on utilities across the sector.

5 But that doesn't necessarily mean that they  
6 had very hard numbers that they could point to to say  
7 we should start collecting this now. So I'm  
8 differentiating ratemaking and disclosures as well as  
9 financial accounting.

10 [Reporter interruption due to sound  
11 failure.]

12 Q. I understand what you're here to testify  
13 about. And perhaps some of the other questions that I  
14 have in the back of my mind that would help me clarify  
15 my thoughts about some of these issues can be addressed  
16 by other witnesses that I think are going to be coming  
17 up shortly. So thank you.

18 A. You're welcome.

19 CHAIR MITCHELL: All right. Let's go  
20 back to questions on Commissioners' questions.  
21 Let's start with the Public Staff.

22 MR. GRANTMYRE: Yes. Bill Grantmyre.

23 EXAMINATION BY MR. GRANTMYRE:

24 Q. Mr. Riley, you were asked questions by

1        Commissioner Duffley and Commissioner Hughes, and you  
2        were talking about potential write-offs. I think you  
3        used the word "billions of dollars." And then there  
4        were some examples where it was less than that.

5                But aren't you aware that, in this case, the  
6        difference -- between based on Public Staff Exhibit 79,  
7        which is Public Staff Doss/Spanos Rebuttal Cross  
8        Examination Exhibit Number 4, that the real  
9        differential in total dollars between what the Public  
10       Staff says they should recover, which is \$262 million,  
11       and what Duke Carolinas wants to recover, being  
12       \$430 million, that's only \$168 million differential  
13       rather than the billions that you were discussing;  
14       would you agree with that?

15        A.       I don't have that -- I don't have that  
16        exhibit in front of me here, but I think the billions  
17        was a hypothetical.

18        Q.       And also you said if you -- if Duke gets an  
19        adverse ruling in this case, they may have to write off  
20        some stuff in the future.

21                Would it only apply to the dollars in this  
22        case that we're discussing in this case, the deferral  
23        amounts for the last two years?

24        A.       As I mentioned earlier, to the extent that

1       there is a disallowance in this case, the Company would  
2       also need to make an assessment as to whether or not  
3       there are other disallowances that are now probable as  
4       a result of a determination like that in this case.

5           Q.       Well, should Duke Carolinas decide to appeal  
6       that, that would indicate that they think that future  
7       disallowances are not probable because the Commission  
8       erred, and therefore they would not have to do a  
9       write-off, would they?

10          A.       I can't testify as to what they think. They  
11       would have to go through that thought process as to  
12       whether or not it is probable.

13          Q.       Thank you.

14                   CHAIR MITCHELL: All right.

15          Ms. Townsend?

16                   MR. GRANTMYRE: No further questions.

17                   CHAIR MITCHELL: All right. Thank you,  
18       Mr. Grantmyre.

19                   Ms. Townsend, anything from the Attorney  
20       General's Office? Or Ms. Force.

21                   MS. FORCE: Yes. I have a couple of  
22       questions for Mr. Riley.

23       EXAMINATION BY MS. FORCE:

24          Q.       Mr. Riley, I'm Margaret Force. To follow up

1 on the questions that you were asked by -- well,  
2 several Commissioners, but last Commissioner McKissick.  
3 You've talked about shareholder dollars being  
4 disallowed.

5 If a commission were to determine that some  
6 of the dollars had already been accumulated in the past  
7 for the Company, would that be something that you would  
8 consider shareholder dollars being spent? Is that a  
9 disallowance in that case, or is that just not --

10 A. I apologize. I'm a little confused on your  
11 question. Are you saying that they would have -- if  
12 they've recovered monies already from ratepayers?

13 Q. Well, here, I'll give you a hypothetical. If  
14 you have a situation where a company has included in  
15 incremented rates to recover -- to put aside some of  
16 the cost of dismantling the plants involved, and then,  
17 at some point, that situation becomes a legal asset  
18 retirement obligation, do you -- when you identify the  
19 amount of the obligation, how do you treat the amount  
20 that has been accumulated in the past where it was not  
21 at that point yet and a legal obligation?

22 A. So the amount recovered in advance from  
23 ratepayers would be accumulated as a regulatory  
24 liability. In other words, if those monies were not

1       spent as intended, then it would have to be refunded to  
2       ratepayers. So to the extent that the Company has a  
3       retirement obligation and it spends money on those  
4       retirement activities, then it would relieve the  
5       obligation. It would also be relieving that regulatory  
6       liability, because it would no longer have to refund  
7       those monies to ratepayers.

8           Q.       So for accounting purposes, I think what  
9       you're saying is it should already be reflected on the  
10      books as a liability because it's been accumulating; is  
11      that right?

12      A.       I would agree.

13      Q.       I see. Okay. And could you tell me, if you  
14      have a nonregulated entity that -- including a utility  
15      that's not regulated that, for instance, has a coal  
16      plant that bids into a power exchange, and the rules  
17      came out that indicated that the cost of closure of  
18      those coal ash impoundments is going to be more than  
19      what was previously anticipated, is that something  
20      that, for accounting purposes, would be written off?

21      A.       No, you would not write it off. What you  
22      would do is recognize that change at the time it  
23      happens. And I used the phrase earlier, it's a change  
24      in estimate. So you would revise your obligation

1 estimate, record an associated asset retirement cost.  
2 So you would add to your asset retirement cost, and  
3 then amortize that asset retirement cost over the  
4 remaining life of the related asset.

5 Q. I see. But in terms of how that would be  
6 handled, then, since the -- it doesn't have regulated  
7 rates, it would be, perhaps, written off because the  
8 entity doesn't want to carry that going forward on its  
9 books since it's a non-obligation?

10 A. I think -- I think what you're thinking of,  
11 and tell me if I'm wrong, is that Generally Accepted  
12 Accounting Principles require companies to evaluate  
13 whether or not an asset is impaired. Now, this is an  
14 unregulated business, and so there are very specific  
15 rules around evaluating assets for impairment. But it  
16 would have to be evaluated. The future cash flows that  
17 would be generated from that facility undiscounted  
18 would be compared to the carrying value of those  
19 assets, and to the extent that the assets on the books  
20 were greater than the gross cash flows to be recovered  
21 from that facility through sales, then you would have  
22 an impairment to recognize.

23 Q. Okay. I appreciate the terminology.

24 MS. FORCE: Thank you. I don't have any

1 other questions.

2 CHAIR MITCHELL: All right. Any other  
3 questions from intervenors on Commissioners'  
4 questions?

5 (No response.)

6 CHAIR MITCHELL: All right. Mr. Heslin?

7 MR. HESLIN: Yes, just a few,  
8 Chair Mitchell.

9 EXAMINATION BY MR. HESLIN:

10 Q. This refers to Commissioner Duffley's  
11 questions, Mr. Riley, and a little bit to what  
12 Mr. Grantmyre tried to walk you through. But in the  
13 event in this case, were the Commission to adopt and  
14 approve the Public Staff's proposal of equitable  
15 sharing, and in doing so, use that as the justification  
16 to disallow 50 percent of the coal ash costs in this  
17 case for the amounts that are requested in this case,  
18 can you explain again what the impact would be on the  
19 estimated costs in the future, from an accounting  
20 perspective, and how the Company would have to look at  
21 that and treat it?

22 A. So as I tried to state earlier, the Company  
23 has to evaluate if there's a disallowance, and if it's  
24 probable that there's a disallowance -- and as a result

1 of a rate order, you may have an explicit disallowance.  
2 Or we also talked about with Commissioner Hughes how it  
3 could be an implicit disallowance where you're  
4 recovering of but not on expended amounts.

5 I also tried to indicate that it's -- a  
6 disallowance assessment is not specific to just the  
7 costs that are in question related to this particular  
8 rate case, but rather the Company would have to  
9 evaluate, based on this particular accounting rate  
10 order that they're receiving, what are the implications  
11 to the Company overall; and does it create a situation  
12 where it's not probable that other amounts that have  
13 been recognized will not be recovered from ratepayers?  
14 And if that's the case, then they would also have to  
15 take a charge for those costs as well.

16 Q. So in understanding we were talking a little  
17 bit hypothetically, we weren't talking precise numbers,  
18 and you're not familiar with the exact numbers in this  
19 case.

20 Those future cost and those future impacts,  
21 is that where the -- perhaps the billions was coming  
22 from in your testimony in responses to questions?

23 A. I believe so, yes.

24 Q. And then Commissioner McKissick asked

1 questions about what the Company may have done prior to  
2 the legal obligations that arose in North Carolina with  
3 the CAMA and then the CCR rules. And you talked about,  
4 with Commissioner McKissick, the idea or the theory of  
5 building up a cash reserve perhaps in depreciation  
6 rates prior to the legal obligations and the creation  
7 of those AROs.

8 But what is the process for a company to do  
9 something like that, to build up a cash reserves and  
10 its depreciation, and what does it have to know at that  
11 time to do so and ultimately to recover that cash from  
12 customers in advance?

13 A. Well, I think witness Spanos talked about  
14 that. My observation is that, generally speaking, you  
15 have to have an ability to have a good estimate of what  
16 those costs are and when they will be incurred in order  
17 to get them to convince a regulator to include them in  
18 depreciation rates. To the extent that they are  
19 included in depreciation rates, you'll be building up a  
20 reserve which would be reflected in the accumulated  
21 depreciation. But really what it represents -- and for  
22 a financial statement purposes, it's reclassified to  
23 rates that accumulated -- depreciation balance is  
24 reclassified to a regulatory liability. As I mentioned

1 earlier, whereby to the extent that those expenditures,  
2 the retirement expenditures do not occur, then those  
3 amounts would be refunded back to ratepayers. But it's  
4 really collecting money -- it would be a situation  
5 where you'd be collecting money in advance of  
6 ratepayers for specific known costs.

7 Q. And then would you accept, as far as the CCR  
8 rule, subject to check, that that came out in 2015?

9 A. Yes.

10 MR. HESLIN: No further questions,  
11 Chair Mitchell.

12 CHAIR MITCHELL: All right. At this  
13 point, I will entertain motions of counsel.

14 MR. HESLIN: Chair Mitchell, Duke Energy  
15 moves for admission of the one exhibit, Riley  
16 Rebuttal Exhibit Number 1 into evidence.

17 CHAIR MITCHELL: All right. Mr. Heslin,  
18 hearing no objection to your motion, it is allowed.

19 (Riley Rebuttal Exhibit Number 1 was  
20 admitted into evidence.)

21 CHAIR MITCHELL: All right. Mr. Riley,  
22 we've come to the end of your testimony. You may  
23 step down, sir. Thank you very much for being with  
24 us today.

1 THE WITNESS: Thank you.

2 CHAIR MITCHELL: All right, Duke, you  
3 may call your next witness. I assume you don't  
4 need a break in time at this point to get her  
5 ready?

6 (Reporter interruption due to sound  
7 failure.)

8 CHAIR MITCHELL: Let's just say a little  
9 prayer that the Internet service in the Dobbs  
10 Building doesn't let us down. All right.

11 MR. MARZO: Chair Mitchell, I think  
12 we're ready.

13 CHAIR MITCHELL: You're ready to go? I  
14 just wanted to make sure you didn't need time to  
15 get your witness in. I see her, so she's ready to  
16 go. All right. Ms. Bednarci k, just for an  
17 abundance of caution, let's go ahead and get you --  
18 affirm you one more time.

19 Whereupon,

20 JESSICA L. BEDNARCI K,  
21 having first been duly affirmed, was examined  
22 and testified as follows:

23 CHAIR MITCHELL: All right. Mr. Marzo,  
24 you may proceed with your witness.

1 MR. MARZO: Thank you, Chair Mitchell.

2 DIRECT EXAMINATION BY MR. MARZO:

3 Q. Ms. Bednarcik, once again, would you please  
4 state your name and your business address for the  
5 record?

6 A. My name is Jessica L. Bednarcik, and my  
7 business address is 400 South Tryon Street, Charlotte,  
8 North Carolina 28202.

9 Q. And again, by whom are you employed and in  
10 what capacity?

11 A. I am employed by Duke Energy Business  
12 Services, LLC, and I'm the vice president of the coal  
13 combustion products, operations, maintenance, and  
14 governance organization.

15 Q. Thank you. And did you cause to be prefilled  
16 in this docket, rebuttal testimony consisting of  
17 60 pages?

18 A. Yes.

19 Q. And do you have any changes or corrections  
20 that you need to make to your prefilled rebuttal?

21 A. Yes.

22 Q. Okay. And an errata identifying those  
23 changes to your testimony has been filed with the  
24 Commission. And if I asked you the same questions

1 today, would your answers be the same as corrected by  
2 the errata?

3 A. Yes.

4 Q. And did you also cause to be prefilled,  
5 Bednarci k Rebutt al Exhi bi ts 1, 2, 3, and 4 to your  
6 rebuttal testimony?

7 A. Yes.

8 Q. And do you have any changes or corrections  
9 that you need to make to your prefilled rebuttal  
10 exhi bi ts?

11 A. No.

12 Q. And for the record, portions of the testimony  
13 and exhi bi ts are marked confidential ; is that correct?

14 A. Yes, that is correct.

15 Q. Okay. And, Ms. Bednarci k, did you also cause  
16 to be prefilled in this docket, supplemental rebuttal  
17 testimony consi sting of five pages?

18 A. Yes, I di d.

19 Q. And do you have any changes or corrections to  
20 your prefilled supplemental rebuttal testimony?

21 A. No, I do not.

22 Q. And if I asked you the same questions today,  
23 would your answers be the same?

24 A. Yes, they woul d.

1 Q. Okay. And finally, did you cause to be  
2 prefiled, 12 pages of supplemental testimony on  
3 August 28, 2020, in response to Commission's order?

4 A. Yes, I did.

5 Q. And do you have any changes or corrections to  
6 that prefiled supplemental testimony?

7 A. No, I do not.

8 Q. And if asked you the same questions today,  
9 would your answers be the same?

10 A. Yes, they would.

11 Q. And did you also cause to be prefiled,  
12 Bednarci k Supplemental Exhibi ts 1, 2, 3, and 4 to your  
13 supplemental testimony?

14 A. Yes, I did.

15 Q. And I note for the record that a correction  
16 was filed to Exhibit Number 3 to that supplemental  
17 testimony; is that correct?

18 A. Yes, that is correct.

19 Q. And with that correction, do you have any  
20 other changes or corrections to your prefiled  
21 supplemental exhi bi ts?

22 A. No, I do not.

23 MR. MARZO: Chair Mitchell, at this time  
24 I move that Ms. Bednarci k's prefiled rebuttal

1 testimony, her supplemental rebuttal testimony, and  
2 her supplemental testimony be entered into the  
3 record as if given orally from the stand.

4 CHAIR MITCHELL: All right. Mr. Marzo,  
5 hearing no objection, Ms. Bednarcik's rebuttal,  
6 supplemental rebuttal, and supplemental testimonies  
7 will be entered into the record as if given orally  
8 from the stand.

9 (Whereupon, the prefilled rebuttal and  
10 errata, supplemental rebuttal, and  
11 supplemental testimony of  
12 Jessica L. Bednarcik were copied into  
13 the record as if given orally from the  
14 stand.)  
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**I. INTRODUCTION AND PURPOSE**

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

A. My name is Jessica L. Bednarcik. My business address is 400 South Tryon Street, Charlotte, North Carolina, 28202. I am employed by Duke Energy Business Services, LLC, as Vice President, Coal Combustion Products (“CCP”) Operations, Maintenance and Governance. In this docket, I am submitting this rebuttal testimony on behalf of Duke Energy Carolinas, LLC (“DE Carolinas,” or the “Company”).

**Q. ARE YOU THE SAME JESSICA BEDNARCIK WHO FILED DIRECT TESTIMONY IN THIS CASE?**

A. Yes.

**Q. PLEASE DISCUSS THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

A. The purpose of my rebuttal testimony is to address several issues discussed in the direct testimony of intervenors that are related to the recovery of costs associated with coal ash expenses. Specifically, I will address issues raised in the testimonies of Public Staff witnesses Charles M. Junis (“Junis”), L. Bernard Garrett (“Garrett”), and Vance F. Moore (“Moore”), Carolina Utility Customer Association (“CUCA”) witness Kevin W. O’Donnell (“O’Donnell”), Attorney General Office (“AGO”) witness Steven C. Hart (“Hart”), and Sierra Club witness Mark Quarles (“Quarles”).

1    **Q.    ARE YOU PROVIDING ANY EXHIBITS WITH YOUR TESTIMONY?**

2    A.    Yes. I have attached four total exhibits that I discuss further herein.

3    **Q.    WERE EXHIBITS 1 THROUGH 4 PREPARED OR PROVIDED**  
4       **HEREIN BY YOU, UNDER YOUR DIRECTION AND SUPERVISION?**

5    A.    Yes.

6    **Q.    PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

7    A.    My rebuttal testimony will begin by providing a brief update on developments  
8       in the Company's basin closure plans that have occurred since I filed my direct  
9       testimony. I will then turn to the primary focus of my testimony – addressing  
10      the position of the Public Staff with respect to the Company's request to recover  
11      costs related to coal combustion residuals ("CCR") compliance and ash pond  
12      closure. Through the testimony of witnesses Junis, Moore, and Garrett, the  
13      Public Staff recommends that the Commission impose two distinct  
14      disallowance mechanisms on the Company's CCR-related expenses: (1) the  
15      Public Staff recommends a number of specific, prudence-based disallowances  
16      related to closure activities at the Company's Riverbend, Dan River, and Buck  
17      sites as well as certain expenses associated with the Company's fulfillment of  
18      CAMA's provision requiring permanent water supplies; and (2) for all  
19      remaining expenses, the Public Staff recommends a purported "equitable  
20      sharing" approach which effectively amounts to a 50% disallowance across the  
21      board which is not tied to any specific finding of imprudence. My testimony  
22      will first focus on rebutting the specific disallowances proposed by witnesses  
23      Junis, Garrett, and Moore to show that each expense was the result of the

1 Company's reasonable and prudent efforts to comply with applicable laws and  
2 regulations. I note, as Jon Kerin did in our last rate case in Docket No. E-7,  
3 Sub 1146, that Public Staff witnesses Garrett and Moore engaged in a thorough  
4 analysis and investigation. However, I believe that they have again missed or  
5 overlooked key facts in several of their recommendations that I will address  
6 specifically in my testimony. In summary, I do not believe that their suggested  
7 disallowances are warranted based on a complete view of the applicable facts.

8 I will then rebut witness Junis's contention that the Public Staff's  
9 proposed "equitable sharing" approach is appropriate because the Company is  
10 "culpable" for environmental degradation that now requires expensive  
11 compliance costs to be incurred. In addressing his arguments on this point, I  
12 will also respond to related allegations in the testimony of witnesses Hart and  
13 Quarles suggesting that the Company's CCR practices lagged behind industry  
14 standards. Next, my rebuttal testimony will address the argument made by  
15 Sierra Club witness Quarles that the costs the Company has incurred related to  
16 CCR excavation and groundwater monitoring would be lower if the Company  
17 had converted to dry disposal in lined landfills sooner. Finally, my rebuttal will  
18 address CUCA witness O'Donnell's arguments for disallowance - which have  
19 not been updated from his testimony in the 2017 rate case and are, therefore,  
20 not credible – through reliance upon the testimony of Company witness Jon  
21 Kerin in the 2017 case.

22 Despite making sweeping suggestions that the Company should have  
23 converted to lined basins and/or generally increased groundwater monitoring,

1 no party has identified any concrete, specific action the Company should have  
2 taken at any certain point in history with respect to specific CCR  
3 impoundments. Nor has any party put forth a concrete number in testimony to  
4 quantify the purported reduction in CCR costs the Company might currently be  
5 realizing had it pursued another avenue for CCR disposal and storage at some  
6 unspecified time in the past. In the absence of a specifically identified action  
7 or inaction alleged to be unreasonable or imprudent, the Public Staff and  
8 intervenors have simply failed to provide the Commission with a sound reason  
9 to support any sweeping disallowance of costs that incorporate applicable  
10 regulatory principles. Indeed, as recently as last week, the Commission rejected  
11 this type of baseless request to disallow recovery of CCR costs, holding that:

12 [N]o party presented evidence to attempt to quantify which, if  
13 any, of the CCR Costs might have been avoided if [Dominion  
14 Energy North Carolina (“DENC”)] had used a different  
15 approach to managing its CCRs at some point during the last  
16 several decades. Indeed, it would be very difficult to go back  
17 and recreate the timing and cost of such different approaches.  
18 For example, one could argue that DENC should have converted  
19 all of its coal-fired plants to dry ash handling at least at some  
20 time during the 1990s. However, to quantify the costs and  
21 benefits of this strategy would require establishing, with some  
22 level of certainty, the costs that DENC would have incurred for  
23 such conversions, and the savings in present CCR remediation  
24 costs that would have resulted from such conversions. In  
25 addition, DENC could have been entitled to recover those  
26 conversion costs, plus a return on its increased rate base, from  
27 its ratepayers over the past several decades. On the present  
28 record, the Commission has no substantial evidence on which to  
29 make such determinations.<sup>1</sup>

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<sup>1</sup> *Order Accepting Public Staff Stipulation in Part, Accepting CIGFUR Stipulation, Deciding Contested Issues, and Granting Partial Rate Increase*, at 129, Docket No. E-22, Subs 562Sub 566 (Feb. 24, 2020).

1           The Commission has now rejected the Public Staff's equitable sharing  
2           proposal on three distinct occasions - the 2017 DE Progress rate case, the 2017  
3           DE Carolinas rate case; and the 2019 DENC rate case. Because neither the  
4           Public Staff nor any intervenor has put forth new, concrete evidence with  
5           respect to what the Company should have done at each impoundment and how  
6           such action would have decreased closure costs, they have given the  
7           Commission no reason to part with past precedent.

8           In sum, my direct testimony established the reasonableness and  
9           prudence of the Company's current CCR practices,<sup>2</sup> and my rebuttal will show  
10          that the Public Staff and intervenors have done nothing more than advocate for  
11          a wide-reaching, categorical disallowance that avoids established regulatory  
12          principles and have failed to present any concrete evidence to support  
13          disallowance of any distinct CCR cost.

## 14                           **II. UPDATE TO DIRECT TESTIMONY**

15   **Q.    SINCE THE FILING OF YOUR DIRECT TESTIMONY, HAS THE**  
16   **COMPANY TAKEN ANY SIGNIFICANT ACTIONS WITH RESPECT**  
17   **TO BASIN CLOSURE?**

18   **A.    Yes.   On December 31, 2019, the Company entered into a Settlement**  
19   **Agreement (the "Agreement") with the North Carolina Department of**  
20   **Environmental Quality ("DEQ") and a variety of special interest groups**  
21   **represented by the Southern Environmental Law Center ("SELC"). The**

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<sup>2</sup> Company witness Jon Kerin established the reasonableness and prudence of the Company's historical practices in his 2017 direct testimony in Docket No. E-7, Sub 1146, which the Commission found to be convincing, and I understand that Company witness Jim Wells will again address the Company's historical practices in his rebuttal testimony in this case.

1 Agreement details a reasonable and prudent plan for closure of the nine  
2 remaining CCR basins owned by DE Carolinas and Duke Energy Progress,  
3 LLC (“DE Progress”) (together, “Duke Energy”). Seven of the nine basins –  
4 including two at the Allen Steam Station, one at Belews Creek Steam Station,  
5 one at the Mayo Plant, one at the Roxboro Plant, and two at the Cliffside Energy  
6 Complex – will be excavated in their entirety with ash moved to on-site lined  
7 landfills. For the other two basins, at Marshall Steam Station and the Roxboro  
8 Plant, uncapped basin ash will be excavated and moved to lined landfills. The  
9 Agreement calls for expedited state permit approvals, which would keep  
10 projects on a rapid timeline, while at the same time reducing the total estimated  
11 cost to close the remaining basins by roughly \$1.5 billion as compared to the  
12 April 1, 2019 DEQ order requiring full excavation at all sites. An official  
13 consent order was filed with the courts on January 31, 2020 (the “Consent  
14 Order”).

15 **Q. DOES THE AGREEMENT ADDRESS ANY POTENTIAL IMPACTS TO**  
16 **GROUNDWATER?**

17 A. Yes. The Agreement and Consent Order ensures that impacted groundwater is  
18 addressed and includes provisions to streamline the process for this work  
19 through corrective action plans at each site.

1   **Q.    DOES THE AGREEMENT AND/OR CONSENT ORDER ADDRESS**  
2       **THE LITIGATION REGARDING CLOSURE PLANS THAT HAS**  
3       **BEEN INITIATED IN VARIOUS COURTS THROUGHOUT THE**  
4       **STATE?**

5    A.    Yes. The Consent Order completely resolves all pending disputes between the  
6       parties over basin closure plans.

7       **III. RESPONSE TO THE PUBLIC STAFF'S SPECIFIC RECOMMENDED**  
8       **DISALLOWANCES**

9   **Q.    PLEASE DESCRIBE THE SPECIFIC, PRUDENCE-BASED**  
10       **DISALLOWANCES RECOMMENDED BY THE PUBLIC STAFF.**

11   A.    The Public Staff has recommended prudence-based disallowances in the  
12       following areas: (1) payment of a fulfillment fee to Charah, Inc. ("Charah")  
13       related to the disposal of ash from the Riverbend plant at the Brickhaven  
14       structural fill (\$46,142,699); (2) payment of "premium rates" for ash excavation  
15       and disposal at the Dan River Steam Station (\$29,250,905); (3) construction  
16       costs at the Buck Beneficiation plant (\$67,809,160); (4) expenditures for  
17       groundwater extraction and treatment at the Belews Creek plant (\$298,433 on  
18       a system basis); and (5) costs incurred to connect eligible residential properties  
19       to permanent alternative water supplies (\$16,882,665 on a system basis) and/or  
20       install and maintain water treatment systems (\$962,524 on a system basis). I  
21       will address each of these recommended disallowances separately below.

**A. CHARAH FULFILLMENT FEE**

**Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION REGARDING THE CHARAH CONTRACT.**

A. As I explained in my direct testimony, DE Carolinas and DE Progress executed eMax Master Contract Number 8323 (the “Charah Master Contract”) with Charah to dispose of CCR from DE Carolinas’ Riverbend plant and DE Progress’ Sutton, Cape Fear, H.F. Lee, and Weatherspoon plants. The contracts required DE Carolinas and DE Progress, together, to provide a minimum amount of coal ash for disposal at Charah’s mines. With respect to DE Carolinas, the Company agreed to this term because for Riverbend, a designated high priority site, it was important to know that there would be a guaranteed, immediate place in which to relocate the excavated CCR to ensure compliance with CAMA deadlines.

**Q. HAS THE PUBLIC STAFF OR ANY INTERVENOR SUGGESTED THAT IT WAS IMPRUDENT FOR DE CAROLINAS TO ENTER INTO THE CONTRACT WITH CHARAH?**

A. No. No party has challenged the prudence of the Company’s decision to contract with Charah. The sole issue before the Commission with respect to the Company’s engagement of Charah is whether the fulfillment fee the Company paid to Charah pursuant to the contract terms was reasonable.

1   **Q.     PLEASE EXPLAIN WITNESS GARRETT’S RECOMMENDATIONS**  
2       **AS THEY RELATE TO THE CHARAH FULFILLMENT FEE.**

3   A.     Mr. Garrett argues that the fulfillment fee paid to Charah for the disposal of ash  
4       at the Brickhaven mine was unreasonable and imprudent, and therefore  
5       recommends a disallowance of \$46,142,699. In support of his  
6       recommendation, Mr. Garrett points to a single number in the fulfillment fee  
7       calculation provisions of the Charah Master Contract that he contends creates a  
8       “fundamental flaw” in the contract. In somewhat of a contradiction, he also  
9       argues that DE Carolinas acted imprudently because it “did not use the pricing  
10      [terms and conditions] established in [the Charah Master Contract]” to calculate  
11      the fulfillment fee.

12               Despite these criticisms, however, Mr. Garrett does not recommend any  
13      specific adjustments to the charged and paid fulfillment fee that would comport  
14      with the terms of the Master Contract, purportedly because, as he sees it, there  
15      are “too many flaws” in Duke Energy’s calculation method to do so. Instead,  
16      he calculates a separate, hypothetical fulfillment fee – one that is entirely  
17      detached from the terms, conditions, and calculation methodology set forth in  
18      the Charah Master Contract - to support his disallowance proposal.

19   **Q.     PLEASE PROVIDE SOME BACKGROUND REGARDING THE**  
20       **PARTIES’ DECISION TO INCLUDE THE FULFILLMENT FEE**  
21       **PROVISIONS IN THE CHARAH MASTER CONTRACT.**

22   A.     As I explained in my direct testimony, the Charah Master Contract required  
23      Duke Energy to provide a minimum amount of coal ash for disposal at Charah’s

[illegible]

<sup>3</sup> The Sanford Clay Mines were earmarked for storing CCR from DE Progress sites and, accordingly, DE Carolinas is not seeking recovery for the portion of the fulfillment fee that is attributable to the costs of land acquisition and development at Sanford in the DE Carolinas filing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

11 Q. DO YOU AGREE WITH MR. GARRETT'S CONCLUSION THAT THE  
12 TERMINATION PROVISIONS OF THE CHARAH MASTER  
13 CONTRACT WERE TRIGGERED ON MAY 29, 2019?

14 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END]

5     **Q.     HOW DO YOU RESPOND TO MR. GARRETT'S CONTENTION THAT**  
6     **THE COMPANY INCORRECTLY CALCULATED THE PRORATED**  
7     **PERCENTAGE AND, BY EXTENSION, THE PRORATED COSTS?**



[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

3 Mr. Garrett's proposal demonstrates a fundamental misunderstanding of  
4 both general contractual construction and the rationale behind the termination  
5 provisions to which the parties agreed. In particular, while Mr. Garrett is  
6 correct that DE Carolinas was not financially committed to provide Charah with  
7 quantities of ash for *excavation* beyond those identified in the purchase orders,  
8 the Company was still financially obligated to make Charah whole for prorated  
9 costs per the prorated cost triggering event definition in the Master Contract.

10 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 [END CONFIDENTIAL]

18 **Q. CAN YOU POINT TO ANY OTHER TERMS IN THE CHARAH**  
19 **MASTER CONTRACT THAT SUPPORTS YOUR UNDERSTANDING?**

20 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[illegible]

1   **Q.    IS IT COMMON PRACTICE TO INCLUDE FULFILLMENT FEE-**  
2       **RELATED TERMS AND CONDITIONS IN CONTRACTS?**

3    A.    Yes. For contracts that require a contractor to invest a large amount of capital,  
4       such as in the development of significant infrastructure in order to be able to  
5       perform the needed contracted service, it is common practice and reasonable to  
6       require a minimum investment by the company requesting the contracted  
7       service. This is particularly common where the market does not indicate a  
8       readily “next available client.” In this case, the large infrastructure  
9       development by Charah involved land purchase, permitting cost, rail spur and  
10      unloading system construction.

11   **Q.    DID THE COMPANY TAKE ANY STEPS TO MITIGATE THE**  
12       **POTENTIAL MAGNITUDE OF THE FULFILLMENT FEE?**

13   A.    Yes. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [END

4 CONFIDENTIAL]

5 Q. MR. GARRETT ALSO ARGUES THE "METHODOLOGY"  
6 EMPLOYED BY DUKE TO CALCULATE THE FULFILLMENT FEE  
7 IS UNREASONABLE. DO YOU AGREE WITH HIS ARGUMENTS?

8 A. No. As an initial matter, Mr. Garrett does not provide support for his argument  
9 regarding the methodology used by the Company. [BEGIN  
10 CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

20 Mr. Garrett's unsupported argument again misunderstands the meaning  
21 of Prorated Costs and the purpose of the cost cap. [BEGIN CONFIDENTIAL]

22 [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

13 Q. WHAT IS THE TOTAL SAVINGS THE COMPANY ACHIEVED FOR  
14 ITS CUSTOMERS BY INCLUDING THOSE MITIGATING TERMS  
15 INTO THE CONTRACT?

16 A. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[END CONFIDENTIAL]

**B. “PREMIUM RATES” AT DAN RIVER STEAM STATION**

**Q. CAN YOU PLEASE PROVIDE SOME BACKGROUND INFORMATION REGARDING THE COMPANY’S DECISION TO HIRE PARSONS?**

**A.** Yes. On October 3, 2016, DE Carolinas issued an invitation to bid for the Phase 2 excavation and transportation of coal ash from the Dan River plant impoundments to the on-site landfill area. [BEGIN CONFIDENTIAL]

1 [REDACTED]  
2 [END CONFIDENTIAL]

3 Q. WHAT WAS THE TIMEFRAME FOR COMPLETING EXCAVATION  
4 OF CCR AT THE DAN RIVER SITE UNDER THE PARSONS MASTER  
5 CONTRACT?

6 A. Because Dan River was classified as a high priority site under CAMA, the  
7 deadline to complete excavation at the site was August 1, 2019.  
8 Notwithstanding the statutory deadline, the Company's contract with Parsons  
9 contemplated that excavation would be completed by January 1, 2019, to allow  
10 margin for uncertainties, including those related to weather, ash condition (i.e.  
11 wetness), and depth of ash (i.e. amount).

12 Q. HOW MUCH ASH WAS EARMARKED FOR EXCAVATION AT THE  
13 DAN RIVER IMPOUNDMENTS?

14 A. The Company originally projected that [BEGIN CONFIDENTIAL] [REDACTED]  
15 [REDACTED] [END CONFIDENTIAL] would be excavated from the  
16 Dan River impoundments. At the time, it was difficult to accurately quantify  
17 the ash to be excavated because much of it was not visible and located under  
18 vertical embankment soil. Recognizing the importance of obtaining an accurate  
19 CCR quantification to Parsons' ability to appropriately allocate resources to  
20 meet both internal and CAMA-mandated deadlines, the Company regularly  
21 engaged in analyses targeted to refine the total ash estimate. [BEGIN  
22 CONFIDENTIAL] [REDACTED]  
23 [REDACTED]

[REDACTED]  
[REDACTED] [END

3 **CONFIDENTIAL]** Mr. Garrett characterizes the discovery of this additional  
4 ash as a “significant contributing factor to the cost premiums” discussed in his  
5 testimony. However, one of the reasons the Company included a margin in the  
6 estimated time to complete the CAMA related excavation was to account for  
7 the fact that additional ash may be encountered. Therefore, this additional ash  
8 was not a “significant contributing factor” to the overall project.

9 **Q. PLEASE DESCRIBE THE DELAYS TO PARSONS’ PLANNED**  
10 **EXCAVATION WORK AT DAN RIVER.**

11 At the outset of the project, Parsons encountered a variety of delays that slowed  
12 its excavation work. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 [END CONFIDENTIAL]

21 Moreover, in a season of unusually heavy rainfall, Parsons’ operations  
22 were impacted by even the smallest amount of precipitation. [BEGIN  
23 **CONFIDENTIAL]** [REDACTED]

7 [END CONFIDENTIAL]

11 A. Yes. The Company actively worked with Parsons to address and remediate the  
12 continued delays to the CCR excavation project.

REBUTTAL TESTIMONY OF JESSICA L. BEDNARCIK  
DUKE ENERGY CAROLINAS, LLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

19 **Q. WHEN DID THE COMPANY FIRST INFORM PARSONS THAT IT**  
20 **WAS CONSIDERING TERMINATION?**

21 A. On August 20, 2018, the Company formally informed Parsons that it needed to  
22 demonstrate immediate improvement or the Company would be forced to  
23 consider all options, including termination, under the Parsons Master Contract.

1 In response, Parsons submitted a sequenced excavation plan of the Secondary  
2 Basin in early September that was, essentially, an update to a Recovery Plan.  
3 By this time, however, DE Carolinas had considerable doubts with respect to  
4 Parsons' ability to implement its plan, and CCP Management and the CCP  
5 Project Team compared Parsons' sequenced excavation plan with a sequenced  
6 excavation proposal submitted by Trans-Ash. Over the course of the project,  
7 Parsons had never demonstrated the ability to process saturated ash with any  
8 predictability or certainty at Dan River, and its proposed excavation plan did  
9 not address the specifics of how it planned to do so in the future.

10 Following receipt of the sequenced excavation plan, DE Carolinas  
11 participated in several face-to-face meetings with Parsons executive leadership  
12 to understand Parsons' recovery plans and the associated costs. However,  
13 Parsons was ultimately unable to demonstrate to Duke Energy CCP  
14 Management and the CCP Project Team that it was equipped to properly  
15 excavate the CCR impoundments at Dan River, let alone in accordance with  
16 CAMA's required timeline. Accordingly, on September 14, 2018, the  
17 Company informed Parsons that it was terminating the Parsons Master Contract  
18 effective October 12, 2018.

19 **Q. WHAT WAS THE COMPANY'S PLAN FOR COMPLETING**  
20 **EXCAVATION AT DAN RIVER FOLLOWING TERMINATION OF**  
21 **THE PARSONS CONTRACT?**

22 **A.** To finish excavation of the Dan River impoundments in a timely manner, the  
23 Company contracted with Trans Ash, which had demonstrated a successful

1 track record at the Company's Sutton location. [BEGIN CONFIDENTIAL]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] [END CONFIDENTIAL]

5 **Q. PLEASE EXPLAIN MR. GARRETT'S ARGUMENTS AS THEY**  
6 **RELATE TO THE DAN RIVER EXCAVATION COSTS.**

7 A. Mr. Garrett argues that the Commission should disallow \$29,250,905 on a  
8 system basis from the Asset Retirement Obligation ("ARO") cost for basin  
9 closure at the Dan River plant. In support of his recommended disallowance,  
10 he argues that DE Carolinas incurred additional, unreasonable costs because the  
11 Company:

12 (1) Had the opportunity to set a performance bond in the initial  
13 contract with Parsons Environment & Infrastructure Group Inc.  
14 ("Parsons"), the first contractor DE Carolinas hired to excavate  
15 ash at Dan River, but did not do so;

16 (2) Had the opportunity to require security when it realized  
17 Parsons was falling behind schedule set for ash excavation, but  
18 did not;

19 (3) Could have imposed back-charges on Parsons for work  
20 completed by Trans Ash, a contractor hired to finish the  
21 excavation work Parsons was unable to complete, but did not  
22 impose such charges;

23 (4) Overpaid Parsons for contract revisions;

24 (5) Paid an unreasonable "premium" as a result of firing Parsons  
25 and hiring Trans Ash, including settlement costs paid to Parsons;

26 (6) [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL]

1 (7) Paid a premium to complete the excavation of ash that was  
2 not subject to CAMA requirements before the CAMA closure  
3 deadline; and,

4 (8) Paid a premium to complete excavation of ash that was not  
5 in the original plan before the CAMA closure deadline rather  
6 than seek a variance to the statutory deadline.

7 I rebut each of Mr. Garrett's reasons for recommending a disallowance below  
8 and explain why the Company's costs incurred for the excavation of ash at Dan  
9 River were reasonable and prudent.

10 **Q. DO YOU AGREE WITH MR. GARRETT'S ARGUMENT THAT DE**  
11 **CAROLINAS SHOULD HAVE NEGOTIATED A PERFORMANCE**  
12 **BOND IN THE INITIAL CONTRACT WITH PARSONS?**

13 A. No, I disagree with Mr. Garrett.

14 **Q. CAN YOU EXPLAIN THE CONCEPT OF A PERFORMANCE BOND?**

15 A. In a nutshell, a performance bond requires a contracting entity to enter into a  
16 separate contract with a third-party surety to assume, for a fee, the obligations  
17 of the contracting entity in the event it fails to perform its duties under the  
18 contract.

19 **Q. CAN YOU EXPLAIN WHY A PERFORMANCE BOND WOULD NOT**  
20 **HAVE MITIGATED DAMAGES WITH RESPECT TO EXCAVATION**  
21 **OF THE CCR LOCATED AT DAN RIVER?**

22 A. As a threshold matter, performance bonds are notoriously difficult to enforce,  
23 and there are numerous legal defenses that a third-party surety can attempt to  
24 use to argue that there is some reason it should not have to perform. Moreover,  
25 even if the surety agrees to take over performance, there is a delay involved  
26 while the surety decides how to proceed, notwithstanding any requirement to

1 meet a certain completion date. Accordingly, a performance bond does not  
2 mitigate schedule risk, and it would be inappropriate in this situation where a  
3 statutorily mandated deadline is a driving force behind the excavation activity.  
4 Essentially, the Company would be surrendering control of the problem  
5 resolution to some third-party surety selected by the contractor with no  
6 assurance that the work would be completed on time.

7 **Q. CAN YOU EXPLAIN WHY IT WAS REASONABLE FOR THE**  
8 **COMPANY TO NOT REQUEST SECURITY FROM PARSONS**  
9 **PURSUANT TO SECTION 4.12 OF THE PARSONS MASTER**  
10 **CONTRACT?**

11 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [END CONFIDENTIAL]

3 Q. HOW DO YOU RESPOND TO MR. GARRETT'S CONTENTION THAT  
4 THE COMPANY SHOULD HAVE IMPOSED BACK-CHARGES ON  
5 PARSONS FOR WORK COMPLETED BY TRANS ASH.

6 A. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27 [END CONFIDENTIAL]

1 Q. WERE THERE OTHER PROTECTIVE TERMS IN THE PARSONS  
2 MASTER CONTRACT THAT MITIGATED COSTS RESULTING  
3 FROM DELAYS CAUSED BY PARSONS?

4 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

14 Q. HOW DO YOU RESPOND TO MR. GARRETT'S ARGUMENT THAT  
15 THE COMPANY OVERPAID FOR REVISIONS TO PARSONS  
16 PURCHASE ORDERS?

17 A. I disagree with Mr. Garrett's conclusion. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END]

10 **CONFIDENTIAL]** Accordingly, Mr. Garrett's recommended disallowance  
11 with respect to the Parsons revisions should be rejected as inaccurate and  
12 unreliable.

13 **Q. DO YOU AGREE WITH MR. GARRETT THAT DE CAROLINAS**  
14 **"PAID AN UNREASONABLE PREMIUM" TO TERMINATE THE**  
15 **CONTRACT WITH PARSONS, INCLUDING THE SETTLEMENT**  
16 **PAYMENT TO PARSONS?**

17 **A. No. [BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 **CONFIDENTIAL]** Therefore, based on these factors, the “premium”  
22 associated with the Trans Ash agreement as compared to the Parsons Master  
23 Contract is reasonable.

1

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

9 Q. DO YOU AGREE WITH MR. GARRETT'S CONTENTION THAT THE  
10 COMPANY "PAID A PREMIUM" TO EXCAVATE ASH "THAT WAS  
11 NOT SUBJECT TO CAMA REQUIREMENTS BEFORE THE CAMA  
12 CLOSURE DEADLINE?"

13 A. No. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 [END CONFIDENTIAL]

22 More importantly, Mr. Garrett's assertion regarding dam  
23 decommissioning is factually incorrect. The only non-basin ash that was

1 associated with dam decommission was excavated in June 2019 following  
2 completion of basin ash excavation. All dam decommissioning excavation  
3 prior to May 2019 was performed in order to access the ash underneath the  
4 Intermediate Dike and Primary Basin vertical expansions. Accordingly, this  
5 portion of Mr. Garrett's testimony should be ignored, and his associated  
6 recommended disallowances rejected.

7 **Q. DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY**  
8 **SHOULD HAVE SOUGHT A VARIANCE FROM DEQ AND THAT**  
9 **SUCH A VARIANCE WOULD OFFER "POTENTIAL COST**  
10 **SAVINGS"?**

11 **A.** No. Although I agree that it was possible for the Company to request an  
12 extension, there was no guarantee that an extension would even be granted to  
13 the Company to allow additional time to excavate the ash. Also, even if DEQ  
14 were to grant an extension, there was no guarantee that Parsons would have  
15 been able to increase its ash excavation rate and meet an extended deadline  
16 given its past performance.

17 Additionally, Mr. Garrett implies that requesting a variance to the  
18 deadline would have enabled the Company to reduce the production  
19 requirements of its contractors in order to save money. However, pursuant to  
20 N.C.G.S. § 130A-309.215(a1), where a variance is requested by an  
21 impoundment owner, the impoundment owner must "continue to apply best  
22 efforts to minimize any delays in meeting the Deadline." The efforts Mr.  
23 Garrett details on pages 44-49 of his testimony outline the change orders

1 associated with the implementation of “best available technology found to be  
2 economically reasonable at the time.” N.C.G.S. § 130A-309.215(a1). For  
3 example, employing Trans Ash to work 24/7 and utilize lime for moisture  
4 conditioning are proven means and methods for expediting excavation of CCR  
5 to meet the CAMA deadlines. As exemplified throughout my testimony, the  
6 implementation of these changes enabled the Company and its contractor to  
7 recover schedule without producing “serious hardship” as required by the law.

8 For example, DE Progress did in fact request a variance to the CAMA  
9 deadline applicable to Sutton. Before doing so, however, DE Progress  
10 implemented the “best available technology” in an attempt to meet the deadline,  
11 such as requiring work 24 hours a day five days a week to exemplify DE  
12 Progress’ need for a variance. Despite implementing these efforts and  
13 requesting a six-month extension, however, DEQ only granted DE Progress a  
14 four-month extension. See Bednarcik Rebuttal 3 for a copy of NC DEQ’s  
15 *Decision Granting in Part Variance with Conditions*, issued on March 26, 2019.  
16 Thus, it is reasonable to conclude that in order for DE Carolinas to request an  
17 extension from DEQ, DE Carolinas would have had to execute the types of  
18 recovery mechanism implemented, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

22 Accordingly, Mr. Garrett’s argument that DE Carolinas would have saved costs

1 if it continued working with Parsons and requested a variance from DEQ is  
2 without merit and fails to consider the statutory requirements of CAMA.

3 **C. BUCK BENEFICIATION PROJECT**

4 **Q. PLEASE EXPLAIN MR. MOORE'S RECOMMENDATIONS AS THEY**  
5 **RELATE TO THE COMPANY'S ASH BENEFICIATION PROJECT AT**  
6 **THE BUCK PLANT.**

7 A. Mr. Moore recommends a disallowance of \$67,809,160, which represents the  
8 costs incurred by subcontractor Zachry Industrial Inc. ("Zachry") for  
9 Engineering, Procurement, and Construction ("EPC") expenses at the Buck  
10 beneficiation site. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Accordingly, Mr.

17 Moore suggests that the Company should have taken the following steps before

18 contracting with Zachry:

19 1) Upon receiving the estimate from Zachry, the Company  
20 should have sent the construction contract out for bid again to a  
21 broader group of companies;

22 2) instead of contracting with a single company to construct all  
23 three STAR facilities, the Company could have entered into  
24 three separate contracts for the construction of one STAR  
25 facility each, which he alleges would have been cheaper;

26 3) before entering into the construction contract with Zachry, the  
27 Company should have sought statutory relief from the CAMA

1 Amendment's beneficiation requirements from the General  
2 Assembly, and,

3 4) upon receiving the estimate from Zachry and learning that the  
4 estimated cost of the beneficiation projects would be far higher  
5 than originally estimated, the Company should have sought  
6 guidance from the regulator, DEQ, as to whether some waiver  
7 or compromise would be possible, and what the consequences  
8 would be if it did not comply with the beneficiation requirements  
9 of the CAMA Amendment.

10 As I detail below, Mr. Moore's recommended disallowance should be  
11 rejected, as the Company's choice of Zachry as the EPC subcontractor was  
12 reasonable, prudent, and supported by law.

13 **Q. CAN YOU EXPLAIN WHY IT IS UNREASONABLE FOR MR. MOORE**  
14 **TO COMPARE THE CONSTRUCTION ESTIMATE INCLUDED IN**  
15 **SEFA'S RFI RESPONSE TO THOSE INCLUDED IN ZACHRY'S EPC**  
16 **CONTRACT.**

17 **A.** Yes. First, the purpose of an RFI is to collect general written information about  
18 the capabilities of various contractors in an effort to screen contractors and help  
19 the Company make a decision on what steps to take next about a potential  
20 project. From the contractor's standpoint, the purpose of an RFI is also to help  
21 prepare the contractor to submit a formal Request for Proposal and develop an  
22 appropriate strategy to do so. Accordingly, the RFI promulgated by the  
23 Company in August of 2016 for technologies that would be able to beneficiate  
24 ponded ash for the concrete industry requested general information regarding  
25 ash beneficiation, was not site-specific, and did not identify the scope of the  
26 beneficiation projects to be completed – in large part because the Company was  
27 still developing the project's precise scope and determining the locations for

1           beneficiation. **[BEGIN CONFIDENTIAL]** [REDACTED]

[illegible]

26 [END CONFIDENTIAL] In short, the Company's RFI did not ask  
27 responding contractors for any site-specific estimate of the EPC costs to be  
28 incurred for the beneficiation sites, nor did it provide project details that would  
29 be necessary to calculate such an estimate. Instead, SEFA provided estimated  
30 construction costs based on the costs it incurred to construct the Winyah STAR  
31 Facility in South Carolina.

1 N.C. House Bill 630 § 130A-309.216 required the Company to execute  
2 a binding agreement for the installation and operation of ash beneficiation  
3 projects by January 1, 2017. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 [END CONFIDENTIAL]

1   **Q.     HOW DO YOU RESPOND TO MR. MOORE’S COMPARISON OF THE**  
2       **EPC COSTS AT BUCK TO THOSE INCURRED TO CONSTRUCT THE**  
3       **WINYAH BENEFICIATION UNIT?**

4   A.    Mr. Moore attempts to support his argument that the Buck beneficiation EPC  
5       costs are unreasonable by comparing the costs incurred at Buck to his  
6       understanding of the capital costs for SEFA’s beneficiation unit at Winyah  
7       Station in South Carolina.<sup>4</sup> However, the Winyah plant and the beneficiation  
8       units SEFA constructed for the Company have a number of key differences.  
9       First, the Winyah plant is designed to produce 200,000 tons of ash product per  
10      year (a 120 MMBtu facility), while the Buck beneficiation unit must produce  
11      300,000 tons of ash product per year (a 140 MMBtu facility) to meet the  
12      requirements of CAMA. CAMA’s output requirement necessitated installation  
13      of a second external heat exchanger at Buck along with all associated  
14      equipment. In addition, Winyah typically uses 70 percent ponded ash and 30  
15      percent production ash. Ash at the Company’s plants, on the other hand, is 100  
16      percent ponded ash and required the addition of a grinding circuit to meet  
17      American Society for Testing Materials (“ASTM”) standards for concrete. The  
18      two facilities also differ in the type of scrubbers each utilizes. Winyah has a  
19      wet scrubber, while Buck is equipped with dry scrubbers, which required a  
20      second bag house with additional induced draft fans. Finally, the Winyah  
21      STAR facility was a refurbishment/addition to an existing carbon burn-out

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<sup>4</sup> Mr. Moore suggests that SEFA expended only \$40 million on capital costs for the Winyah Station. From what I can tell, however, his cost analysis is based on a single 2013 article from Waste 360 that neither provides a source for this number, nor gives any specificity as to what costs were included/excluded in the \$40 million number.

1 facility and SEFA was able to reuse a significant part of the carbon burn-out  
2 facility when constructing Winyah's STAR unit. The Company's facilities are  
3 new construction. In short, there is little to no instructive value in comparing  
4 construction costs for the beneficiation units at Winyah and Buck given the  
5 significant, fundamental differences between the two facilities.

6 **Q DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY**  
7 **SHOULD HAVE SIGNED AN EPC CONTRACT WITH SEFA FOR THE**  
8 **CONSTRUCTION OF THE BENEFICIATION SITES, BASED UPON**  
9 **THE INITIAL CONSTRUCTION ESTIMATE PROVIDED BY H&M IN**  
10 **THE RFI RESPONSE?**

11 A. No. [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END]  
20 CONFIDENTIAL]

1    **Q.    DO YOU AGREE WITH MR. GARRETT THAT THE COMPANY**  
2           **SHOULD HAVE SENT AN ADDITIONAL BID TO A BROADER**  
3           **GROUP OF SUBCONTRACTORS AFTER RECEIVING ZACHRY'S**  
4           **BID?**

5    A.    No. Due to the size and scope of the beneficitation projects as well as the  
6           deadlines required under CAMA, the Company wished to contract with a  
7           familiar contractor upon which it knew it could depend based on past  
8           engagements. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END

13       **CONFIDENTIAL]**

14               In addition, as recognized in the Commission's *Order Requesting*  
15       *Additional Information* dated November 9, 2018 in Docket Nos. E-2, Sub 1142  
16       and E-7, Sub 1146, the Company has a long history and policy of supporting  
17       local suppliers. Therefore, the Company also chose to target contractors with a  
18       North Carolina presence like Zachry, which maintains an industrial and power  
19       office in Charlotte. It is also worth noting that it is now the defined policy of  
20       the state of North Carolina for utilities to maximize the use of resident  
21       contractors for utility projects undertaken in the State of North Carolina, as  
22       stated in new NCUC Rule R25-1(a).

1    **Q.    DO YOU AGREE WITH MR. MOORE’S ARGUMENT THAT THE**  
2       **BUCK EPC COSTS WOULD HAVE BEEN LOWER IF THE**  
3       **COMPANY HAD CONTRACTED WITH THREE SEPARATE**  
4       **CONTRACTORS FOR EACH BENEFICIATION PROJECT?**

5    A.   No. As an initial matter, Mr. Moore provides no support for this argument, and  
6       the Commission should therefore dismiss it. Further, there is no certainty that  
7       SEFA would have been able to support three separate EPC subcontractors at  
8       once, particularly in light of its smaller size.

9           More importantly, Mr. Moore ignores the fact that by contracting with  
10       Zachry, the Company was able to realize extensive cost savings through  
11       economies of scale. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] **[END**

21       **CONFIDENTIAL]** Therefore, it was reasonable, prudent, and maximized  
22       savings for customers for the Company to contract with a single contractor for  
23       all three sites.

1   **Q.    HOW DO YOU RESPOND TO MR. MOORE’S ARGUMENT THAT**  
2       **THE COMPANY SHOULD HAVE SOUGHT STATUTORY RELIEF**  
3       **FROM CAMA’S BENEFICIATION REQUIREMENTS?**

4    A.    I disagree. If the Company had sought statutory relief from the General  
5       Assembly, there would have been no guarantee that the General Assembly  
6       would have actually granted such relief. Moreover, even if the General  
7       Assembly were inclined to grant such relief, there would have been the risk of  
8       the original CAMA deadline being realized before such a bill could be drafted,  
9       vetted, and passed.

10           Moreover, although I am not an attorney, the relevant CAMA section  
11       requiring beneficiation, N.C.G.S. § 130A-309.216, makes no mention of the  
12       word “cost.” In fact, N.C.G.S. § 130A-309.211(c1) is the only section within  
13       CAMA I have found that provides alternative means if an action is “cost-  
14       prohibitive.” It is therefore reasonable to conclude that the General Assembly  
15       did not intend for the costs of beneficiation to be considered in requiring the  
16       Company’s environmental compliance.

17           Finally, Mr. Moore’s comparison to the North Carolina utilities’ receipt  
18       of statutory relief in the context of the Renewable Energy and Portfolio  
19       Standards under N.C.G.S. § 62-133.8(i)(2) is misplaced. In that case, the  
20       General Assembly granted the utilities relief from achieving an environmental  
21       *mandate* of buying renewable energy *from a specific resource that was*  
22       *unavailable in the initially enacted statute.* In this case, the Company would be  
23       asking the General Assembly for relief from an environmental regulation

1 requiring the cleanup of areas identified by the General Assembly as posing  
2 risks to groundwater via an amendment to CAMA. It is my opinion that it  
3 would be unreasonable to establish precedent in this state where utilities are  
4 granted “relief” from adhering to environmental regulations meant to address  
5 identified risks on the basis of costs where such statutes do not already  
6 specifically contemplate costs.

7 **Q. MR. MOORE ALSO ARGUES THAT THE COMPANY SHOULD HAVE**  
8 **SOUGHT GUIDANCE FROM DEQ UPON LEARNING OF ZACHRY’S**  
9 **ESTIMATED EPC COSTS. HOW DO YOU RESPOND?**

10 A. I disagree. As an initial matter, DEQ is responsible for enforcing the State’s  
11 environmental laws irrespective of an entity’s cost of compliance. While the  
12 Company often works with DEQ on its own initiative and as required by law  
13 regarding compliance, it would be outside of DEQ’s purview to consider costs.  
14 Indeed, there are no cost considerations in the beneficitation provisions of  
15 CAMA and it would therefore be inappropriate for DEQ to make such  
16 considerations as part of its enforcement. **[BEGIN CONFIDENTIAL]**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] **[END CONFIDENTIAL]**

22 Therefore, even assuming the Company were to “seek guidance” from  
23 DEQ, the Company would have no argument supporting why the beneficitation

1 project should be modified based on the cost estimates included in the Zachry  
2 EPC contract.

3 As Mr. Moore did not detail what “waiver or compromise” he believes  
4 would have been possible to obtain from DEQ and under what authority, I can  
5 only assume he was referencing N.C.G.S. § 130A-309.215 Variance Request  
6 within CAMA. However, as I have already explained, DEQ has the authority  
7 to grant variances to deadlines *only* when “compliance with the deadline cannot  
8 be achieved by application of best available technology found to be  
9 economically reasonable at the time and would produce serious hardships  
10 without equal or greater benefits to the public.” Because the Company believed  
11 it could meet the existing deadline through application of the best available  
12 technology and without serious hardship, it did not believe it had strong grounds  
13 upon which to request a variance.

14 **Q. ARE THE COMPANY’S EPC COSTS PAID TO ZACHRY FOR THE**  
15 **BUCK BENEFICIATION PROJECT REASONABLE AND PRUDENT?**

16 A. Yes. Given the scope, novelty, and difficulty of the project, the regulatory  
17 requirements, and for all of the reasons already articulated in my testimony, the  
18 EPC costs paid to Zachry were reasonable and prudent. Moreover, there are  
19 major differences in the scope and requirements of the Winyah STAR Facility  
20 project and the Buck beneficiation project. These differences explain the  
21 difference between the initial estimate provided in the RFI and the actual EPC  
22 costs and support the Zachry EPC contract as reasonable.

1 **D. EXTRACTION WELLS AT BELEWS CREEK**

2 **Q. WHAT COSTS ARE THE COMPANY PRESENTLY SEEKING TO**  
3 **RECOVER RELATED TO ITS EXTRACTION WELL SYSTEM AT**  
4 **BELEWS CREEK?**

5 A. In total, the Company has incurred \$1,793,511.72 related to its extraction well  
6 system at Belews Creek. A large portion of these costs – \$1,495,078.43 – were  
7 recovered as part of the 2017 rate case, and the Company is seeking to recover  
8 the remaining costs of \$298,433.29 in the instant case.

9 **Q. DID THE COMMISSION ADDRESS THE COMPANY’S RECOVERY**  
10 **OF COSTS ASSOCIATED WITH EXTRACTION WELLS AND**  
11 **GROUNDWATER TREATMENT IN ITS 2017 ORDER<sup>5</sup>?**

12 A. Yes. In 2017, through the nearly identical testimony of Mr. Junis, the Public  
13 Staff recommended that the Commission disallow recovery of the cost of  
14 extraction wells and groundwater treatment at Belews Creek. The Commission  
15 rightly rejected the proposed disallowance, finding that the Company’s CCR  
16 expenses, including those related to the Belews Creek extraction wells, were  
17 reasonably and prudently incurred.

18 **Q. WHAT IS YOUR RESPONSE TO MR. JUNIS’S CONTENTION THAT**  
19 **THE COST OF EXTRACTION WELLS AND GROUNDWATER**  
20 **TREATMENT AT BELEWS CREEK SHOULD BE DISALLOWED?**

21 A. The premise of Mr. Junis’ argument for disallowance of these costs, that the  
22 Company should not be allowed recovery because these costs would not have

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<sup>5</sup> *Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction*, Docket No. E-7, Sub 1146 (June 22, 2018) (“2017 Order”)

1        been necessary under CAMA without violations of the state's groundwater  
2        standards, is incorrect. Because the measures undertaken at Belews Creek were  
3        reflected in the Sutton Settlement Agreement, they were moved up in time from  
4        when they would have otherwise been required, but DE Carolinas would have  
5        installed extraction wells at Belews Creek in order to comply with CAMA even  
6        without the Sutton Settlement Agreement.

7                As Mr. Junis acknowledges in his testimony, the Commission directly  
8        addressed the Sutton Settlement Agreement in its 2017 Order, stating that it  
9        “declines to find that [the Sutton Settlement Agreement] evidences violation of  
10       environmental obligations” and that “there is insufficient evidence that [DE  
11       Carolinas] would have had to engage in any groundwater extraction and  
12       treatment activities absent the obligations imposed upon it by CAMA and/or  
13       the CCR Rule.”<sup>6</sup> Importantly, the Commission found that “the assertion that  
14       DE Carolinas’ ‘violations’ resulted in the [Sutton Settlement Agreement] and  
15       in groundwater extraction and treatment costs that would not otherwise have  
16       been incurred is incorrect and not supported by the evidence.”<sup>7</sup>

17               In the face of this clear directive from the 2017 Order, Mr. Junis asks  
18       this Commission to “take a fresh look” at the extraction well costs. In  
19       particular, Mr. Junis points to the fact that groundwater exceedances measured  
20       at Belews Creek have increased from 1,926 in 2017 to 3,972 today. Mr. Junis’s  
21       reliance on these numbers, however, is indicative of a basic misunderstanding  
22       of the 2L exceedance/violation process. An increase in measured exceedances

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<sup>6</sup> 2017 DE Carolinas Order at 297, 300.

<sup>7</sup> *Id.* at 300.

1 does *not*, as Mr. Junis contends, suggest an increase in groundwater  
2 contamination in and around the Belews Creek plant. Rather, because it is  
3 impossible to flip a switch and reverse the existence of exceedances, the  
4 increased number simply indicates that sampling is ongoing at both pre-existing  
5 and new wells while the Company engages in preparing and implementing a  
6 corrective action plan in cooperation with DEQ and as required under CAMA.  
7 In this way, an increased number of exceedances is not unexpected while the  
8 Company works with DEQ toward corrective action. This concept is discussed  
9 further in the testimony of Company witness Wells, and I agree with and adopt  
10 his analysis.

11 **E. PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**  
12 **TREATMENT SYSTEMS**

13 **Q. WHAT IS YOUR RESPONSE TO WITNESS JUNIS'S CONTENTION**  
14 **THAT THE COSTS THE COMPANY INCURRED TO INSTALL**  
15 **PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**  
16 **TREATMENT SYSTEMS SHOULD BE DISALLOWED?**

17 **A.** DE Carolinas' efforts with respect to installation of permanent alternative water  
18 supplies and water treatment systems were undertaken to comply with  
19 applicable law. In particular, N.C.G.S. § 130A-309.211(c1) obligated the  
20 Company to establish permanent replacement water supplies for each  
21 household that has a drinking water supply well located within a one-half mile  
22 radius from the established compliance boundary of a CCR impoundment, and  
23 is not separated from the impoundment by a river. The statute goes on to  
24 provide that the requisite replacement water supply can be achieved either

1 through connection to public water supplies or, in certain circumstances,  
2 through installation of a filtration system at the household. The requirement  
3 exists even absent the existence of a 2L exceedance for qualifying households  
4 and also applies to households outside the half-mile radius where such  
5 exceedances were identified. Through its efforts, DE Carolinas complied with  
6 the letter of the law.

7 In this case, as witness Junis acknowledges, the Company is not seeking  
8 to recover the costs it voluntarily incurred to connect uncovered properties to  
9 alternative water supplies that were not subject to the requirements of CAMA.  
10 Instead, the Company simply seeks recovery of the costs it incurred pursuant to  
11 the statute.

12 **Q. DID THE COMMISSION ADDRESS THE COMPANY'S RECOVERY**  
13 **OF COSTS ASSOCIATED WITH ALTERNATIVE WATER SUPPLIES**  
14 **AND WATER TREATMENT IN ITS 2017 ORDER?**

15 A. Yes. Although the Commission did not directly comment on the Public Staff's  
16 position in its 2017 Order, the Commission rightly rejected the proposed  
17 disallowance, finding that the Company's CCR expenses, including those  
18 related to providing permanent alternative water supplies, were reasonably and  
19 prudently incurred.

20 **Q. WHAT IS YOUR RESPONSE TO WITNESS JUNIS'S CONTENTION**  
21 **THAT THE COSTS THE COMPANY INCURRED TO INSTALL**

1           **PERMANENT ALTERNATIVE WATER SUPPLIES AND WATER**  
2           **TREATMENT SYSTEMS SHOULD BE DISALLOWED?**

3       A.     Witness Junis argues that the permanent alternative water supply expenses are  
4           analogous to the costs the Company incurred to provide temporary bottled water  
5           supplies to customers and should, therefore, be disallowed. However, the  
6           Commission had the opportunity to deny recovery of these costs on such  
7           grounds in the last case but declined to do so. Consistent with that decision, the  
8           Company has not sought recovery for bottled water expenses in this case, as  
9           Mr. Junis acknowledges, but the Commission majority's decision to grant  
10          recovery of alternative water supplies and treatment expenses in 2017 reflects  
11          that the expenses were incurred to comply with the law and are equally  
12          appropriate for recovery in the instant case.

13   **Q.     WHAT IS YOUR RESPONSE TO WITNESS HART'S CONTENTION**  
14   **THAT THE REQUIREMENTS SET FORTH IN SECTION N.C.G.S. §**  
15   **130A-309.211(c1) WERE LIKELY ENACTED IN RESPONSE TO THE**  
16   **COMPANY'S "DELAY IN ADDRESSING GROUNDWATER**  
17   **IMPACTS"?**

18   A.     Subsection (c1) was enacted as an amendment to CAMA in July 2016, less than  
19           two years after the General Assembly passed the original law. Because CAMA  
20           contains detailed provisions outlining how and when the Company may  
21           undertake corrective action, including by addressing any groundwater impacts,  
22           and requires that any such action must first be subject to the review and  
23           approval of DEQ, it is nonsensical to suggest that the Company delayed taking

1 action following the passage of CAMA. To the extent witness Hart is  
2 suggesting that the actions or inactions of DE Carolinas were the root cause of  
3 CAMA, history demonstrates that the environmental regulatory regime is an  
4 ever-evolving body of law, and it would be impossible to connect CAMA or  
5 any of its provisions to any singular underlying act. This issue is addressed in  
6 more detail by Company witness Wells and was extensively discussed by  
7 witnesses Kerin and Wells in the 2017 case, and I agree with all of those  
8 arguments.

9 **IV. RESPONSE TO THE PUBLIC STAFF'S PURPORTED "EQUITABLE**  
10 **SHARING" DISALLOWANCE**

11 **Q. WHAT IS YOUR UNDERSTANDING OF THE PUBLIC STAFF'S**  
12 **RECOMMENDED "EQUITABLE SHARING" DISALLOWANCE?**

13 A. As discussed in detail by Company witness McManeus, the Public Staff's  
14 "equitable sharing" recommendation amounts to a wholesale 50% disallowance  
15 of the CCR-related costs for which DE Carolinas requests recovery in this case.  
16 Unlike the specific disallowances discussed in Section III of my testimony, the  
17 Public Staff's "equitable sharing" proposal is not tied to any finding of  
18 unreasonableness or imprudence on behalf of the Company. In fact, Mr. Junis  
19 admits in his testimony that it would be impossible to conduct a prudence  
20 analysis on the Company's historical CCR-related activities.

21 Instead, the Public Staff cites two purported justifications for its  
22 equitable sharing approach. First, Mr. Junis alleges that DE Carolinas is  
23 culpable for environmental degradation that now requires expensive  
24 remediation, the costs of which should be shared between the Company and its

1 customers. Second, Public Staff witness Maness argues that even in the absence  
2 of evidence of environmental culpability, the Public Staff would recommend  
3 equitable sharing due to the enormity of the costs. Company witness  
4 McManeus will address the latter justification. My testimony will focus on  
5 rebutting Mr. Junis's contention that DE Carolinas is "culpable" for the CCR-  
6 related costs that the Company has incurred to comply with applicable laws –  
7 including the CCR Rule and CAMA as well as regulations promulgated by the  
8 South Carolina Department of Health and Environmental Control ("SCDHEC")  
9 – in light of available historical knowledge and industry standards. Company  
10 witnesses Marcia Williams and Jim Wells will provide greater detail regarding  
11 the history of CCR regulations and applicable laws and standards, and I agree  
12 with the positions taken by those witnesses.

13 **Q. DO YOU HAVE A GENERAL RESPONSE TO MR. JUNIS'S**  
14 **CONTENTION THAT 50% OF THE COMPANY'S CCR EXPENSES**  
15 **SHOULD BE DISALLOWED BECAUSE THE COMPANY IS**  
16 **"CULPABLE" FOR THE COSTS IT HAS INCURRED IN CCR**  
17 **COMPLIANCE COSTS?**

18 **A.** Yes. As I briefly mentioned in the introduction to my rebuttal testimony, the  
19 Commission has now rejected the Public Staff's equitable sharing proposal  
20 three times in the last two years. Indeed, the Commission correctly identified  
21 the proposal as "standard-less" and "arbitrary" in the 2017 Order.<sup>8</sup> Turning to  
22 Mr. Junis's contention in 2017 that the Company's historical actions with

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<sup>8</sup> 2017 Order at 273.

1 respect to CCR storage were “culpable,” the Commission further noted that  
2 “[p]ast actions, even if imprudent . . . must result in quantifiable costs, which  
3 the Public Staff has not shown. Therefore, identification of an imprudent action  
4 or inaction is not by itself sufficient; rather, there must be a demonstration of  
5 the economic impact.”<sup>9</sup> In other words, after days and days of CCR testimony  
6 in the 2017 case, neither the Public Staff nor any intervenor was able to quantify  
7 any discrete cost throughout the Company’s considerable history managing  
8 CCR that was deemed to be imprudent or connected to an imprudent action.  
9 The same is true in this case.

10 **Q. WHAT IS YOUR RESPONSE TO THE CONTENTION OF MR. JUNIS,**  
11 **MR. HART, AND MR. QUARLES THAT THE COMPANY’S CCR**  
12 **HANDLING PRACTICES LAGGED BEHIND INDUSTRY**  
13 **STANDARDS?**

14 **A.** I disagree with Mr. Junis and the other witnesses and believe that DE Carolinas’  
15 coal ash management practices were and continue to be consistent with industry  
16 standards at the time.

17 In an apparent attempt to cast doubt over DE Carolinas’ use of unlined  
18 basins, Mr. Junis, Mr. Hart, and Mr. Quarles cite a small handful of papers  
19 published between 1967 and 1985 which discuss potential issues associated  
20 with coal ash disposal and the importance of developing and implementing  
21 appropriate controls. Company witnesses Williams and Wells will more  
22 thoroughly address the findings of these publications, but, together, the

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<sup>9</sup> *Id.*

1 publications do not provide sufficient, if any, conclusions or certainty to prompt  
2 a utility to undertake the costly effort of changing its storage practices. For  
3 example, Mr. Junis cites statistics on the use of lined surface impoundments  
4 and landfills for new construction contained in the 1988 EPA Report. This  
5 report shows increases in the percentages of *new* landfills and surface  
6 impoundments that were lined. However, DE Carolinas last constructed a new  
7 ash basin in 1982. In addition, Mr. Junis's assertion fails to account for site-  
8 specific conditions, which, as EPA explains in the preamble to the CCR Rule  
9 and guidance, is an essential consideration when making CCR unit-specific  
10 determinations. Mr. Junis likewise presents no credible evidence to show that  
11 DE Carolinas' engineering and design of its impoundments was not consistent  
12 with industry practice and regulatory requirements at the time other than Mr.  
13 Junis's subjective allegations.

14 Finally, the conclusions Mr. Junis and other intervenors make on this  
15 point were viewed through the filter of a 21<sup>st</sup> century lens when no such clarity  
16 existed in real time.

17 **Q. HOW DO THE COMPANY'S HISTORICAL CCR PRACTICES**  
18 **COMPARE TO THE PRACTICES OF SIMILARLY SITUATED**  
19 **UTILITIES IN NEIGHBORING STATES?**

20 A. Based upon a review of the materials and report prepared by Geosyntec  
21 Consultants of NC, P.C. and presented by Company witness Rudy Bonaparte  
22 analyzing coal-fired power plants in South Carolina, Virginia and Georgia, it  
23 appears that of the 63 CCR impoundments identified in the reports, only five

1 had liners. Of the 53 CCR impoundments that were constructed in or before  
2 1982, the year that the last of DE Carolina's ash basins was constructed at Buck,  
3 only one basin is reported as having a liner, and that was due to site specific  
4 conditions (located in karst terrain). Through this assessment, DE Carolina's  
5 practices were similar to our neighboring states.

6 **Q. BASED ON YOUR REVIEW OF THE DOCUMENTS PRESENTED BY**  
7 **THE PUBLIC STAFF AND OTHER INTERVENORS, DO YOU**  
8 **BELIEVE THAT DE CAROLINAS SHOULD HAVE BUILT NEW**  
9 **LINED IMPOUNDMENTS AS OPPOSED TO EXPANDING EXISTING**  
10 **UNLINED IMPOUNDMENTS?**

11 A. No. The construction of new lined impoundments would have entailed  
12 significant expense to the Company, while not removing the need to maintain  
13 the existing unlined impoundments. Even if the Company had built new lined  
14 impoundments, it would still have had the old unlined impoundments to manage  
15 and would thus have ended up with double the sites to manage. This is aside  
16 from the fact that such action would have been taken before it was consistent  
17 with industry standards to do so, and would have put the Company at risk of  
18 disallowance of those costs.

1   **Q.   DO YOU BELIEVE THE COSTS TO BUILD NEW LINED**  
2       **IMPOUNDMENTS TO RETIRE EXISTING CCR IMPOUNDMENTS**  
3       **WOULD HAVE BEEN RECOVERABLE IN RATES BEFORE THE**  
4       **ENACTMENT OF THE CCR RULE AND/OR CAMA?**

5   A.   No. Before the promulgation of the CCR Rule and/or the enactment of CAMA,  
6       there was no reasonable or prudent justification for the Company to change its  
7       operation with respect to CCR impoundments. The Company's operation of its  
8       various CCR impoundments was consistent with existing federal and state  
9       (including North Carolina and South Carolina) law, and no federal or state  
10      regulator or intervenor suggested that the Company should change its historical  
11      practices during those previous cases. In the absence of any such authority, I,  
12      as a witness for the Company, would have had no basis upon which to advocate  
13      for recovery of costs.

14               Indeed, the Public Staff and each of the intervenors offering testimony  
15      regarding CCR costs in this proceeding seem to implicitly acknowledge this  
16      challenge as none have been able to propose a concrete alternate course the  
17      Company should have taken.

18   **Q.   DO YOU BELIEVE THE COMPANY SHOULD HAVE SOUGHT**  
19       **RECOVERY OF THE COST OF CCR REMOVAL IN A DEFERRED**  
20       **ACCOUNT PRIOR TO ITS 2017 RATE CASE?**

21   A.   No. Before the promulgation of the CCR Rule and CAMA and, in South  
22       Carolina, the Company's entrance into settlement agreements with the  
23       Department of Health and Environmental Control ("DHEC") and various

1 environmental groups regarding closure of CCR impoundments – all of which  
2 set forth clear procedures for the Company, in concert with its regulators, to  
3 follow to develop and implement closure plans for each of its CCR  
4 impoundments – there was little certainty in the regulatory landscape regarding  
5 basin closure. Before 2015, no law or regulation mandated closure or  
6 excavation of CCR impoundments and there was no guidance from regulators  
7 regarding how or when the Company should undertake such an effort. In the  
8 absence of any such authority, I, as a witness for the Company, would have had  
9 no basis upon which to testify that CCR removal was a prudent step for the  
10 Company to take, let alone to advocate for recovery of associated costs.

11 **V. RESPONSE TO CUCA WITNESS O'DONNELL**

12 **Q. HOW DO YOU RESPOND TO THE RECOMMENDATIONS OF CUCA**  
13 **WITNESS O'DONNELL?**

14 A. CUCA witness O'Donnell has submitted testimony that is virtually identical to  
15 his written testimony in the 2017 DE Carolinas Rate Case. Because his  
16 arguments are unchanged from the 2017 case, the Company's response to it is  
17 likewise unchanged. Accordingly, I adopt and incorporate by reference the  
18 responsive points and arguments set forth in the rebuttal testimony of Company  
19 witness Jon Kerin in Docket No. E-7 Sub 1146.

**VI. RESPONSE TO SIERRA CLUB WITNESS QUARLES**

1                   **VI. RESPONSE TO SIERRA CLUB WITNESS QUARLES**  
2   **Q.   DO YOU AGREE WITH SIERRA CLUB WITNESS QUARLES’**  
3                   **CONTENTION THAT COSTS ASSOCIATED WITH EXCAVATION**  
4                   **AND GROUNDWATER MONITORING LIKELY WOULD BE LOWER**  
5                   **IF THE COMPANY HAD CONVERTED TO DRY DISPOSAL IN**  
6                   **LINED LANDFILLS SOONER?**

7   A.   No. As I explained in response to Mr. Junis’s testimony, the increased  
8           percentage of basins that were lined during the 1970s and 1980s still  
9           represented a minority of the new basins being constructed, showing that  
10          unlined basins were still the industry standard at that time. And again, the EPA  
11          report focused on *new* landfills and surface impoundments, while DE Carolinas  
12          last constructed a new ash basin in 1982. In addition, like Mr. Junis, Mr.  
13          Quarles presents no specific evidence to show that DE Carolinas’ engineering  
14          and design of its impoundments was not consistent with industry practice and  
15          regulatory requirements at the time. Moreover, witness Quarles completely  
16          fails to identify any specific action the Company should have taken at any  
17          specific time that would have decreased closure costs. Nor does he even  
18          attempt to assign a value to the purportedly “lower” costs for the purpose of  
19          proposing a disallowance. In the absence of any concrete testimony on this  
20          point, witness Quarles’ testimony is not useful to the Commission and should  
21          be disregarded.

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

23   A.   Yes.

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. E-7, SUB 1214**

In the Matter of:	)	
	)	
Application of Duke Energy Carolinas, LLC	)	<b>DUKE ENERGY CAROLINAS,</b>
For Adjustment of Rates and Charges Applicable	)	<b>LLC’S CORRECTIONS TO THE</b>
to Electric Service in North Carolina	)	<b>REBUTTAL TESTIMONY OF</b>
	)	<b>JESSICA L. BEDNARCIK</b>
	)	
	)	
	)	

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**CORRECTIONS TO THE DIRECT TESTIMONY OF JESSICA L. BEDNARCIK**

Duke Energy Carolinas, LLC (“DE Carolinas” or “Company”) provides the following Corrections to the Direct Testimony of Jessica L. Bednarcik:

1. Correct representations regarding the capabilities of the Winyah STAR facility. The following corrections to Witness Bednarcik’s testimony addresses this issue:
  - a. Page 41, Line 9 Change “200,000” to “250,000.”
  - b. Page 41, Line 14 Change “70” to “67.”
  - c. Page 41, Line 14 Change “30” to “33.”

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

3   A.   My name is Jessica L. Bednarcik. My business address is 400 South Tryon  
4       Street, Charlotte, North Carolina, 28202. I am employed by Duke Energy  
5       Business Services, LLC, as Vice President, Coal Combustion Products  
6       (“CCP”) Operations, Maintenance and Governance. In this docket, I am  
7       submitting this supplemental rebuttal testimony on behalf of Duke Energy  
8       Progress, LLC (“DE Progress,” or the “Company”).

9   **Q.   PLEASE DISCUSS THE PURPOSE OF YOUR SUPPLEMENTAL**  
10       **REBUTTAL TESTIMONY.**

11   A.   The purpose of my supplemental rebuttal testimony is to address certain issues  
12       discussed in the supplemental testimony of Steven L. Hart on behalf of the  
13       Attorney General’s Office (“AGO”).

14   **Q.   WHAT IS YOUR UNDERSTANDING OF THE AGO’S**  
15       **RECOMMENDED DISALLOWANCE?**

16   A.   AGO witness Hart has not recommended any concrete disallowance. Instead,  
17       he simply contends that the CCR closure costs for which DE Carolinas is  
18       seeking recovery in rates “would be reduced by approximately \$50MM to  
19       \$190MM” had the Company undertaken to close its ash basins in 1989, 1993,  
20       2003, 2010. To arrive at this conclusion, witness Hart discounted the actual  
21       system closure expenditures set forth in and supported by my direct testimony  
22       in two ways. First, like Mr. Junis, Mr. Hart removed the costs to install  
23       permanent water supplies, which were required by statute, as well as the

1 Charah fulfillment fee. Second, he purportedly adjusted the remaining, non-  
2 excluded costs for the “time value of money” assuming closure activities had  
3 been conducted at four different points between 1989 and 2010. In doing so,  
4 he implicitly assumed that the Company’s current closure activities are  
5 identical to closure activities the Company would have taken had it chosen or  
6 otherwise been compelled to close ash basins in 1989, 1993, 2003, and 2010.  
7 His unclear conclusion – which covers a staggeringly imprecise span of  
8 approximately \$150 million – fails to provide the Commission with any  
9 tangible recommendation for a reduction in the Company’s cost recovery.

10 **Q. DOES MR. HART CONSIDER ANY VARIATION IN THE CLOSURE**  
11 **APPROACHES THAT THE COMPANY MIGHT HAVE ADOPTED**  
12 **HAD IT BEGUN CLOSURE OF ITS ASH BASINS AT ANY TIME IN**  
13 **THE PAST?**

14 A. He does not. By adjusting the Company’s closure costs only for the purported  
15 “time value of money,” Mr. Hart implicitly rejects the idea that the Company  
16 could have pursued different closure strategies had it begun such activities in  
17 1989, 1993, 2003, and/or 2010.

18 **Q. DO YOU AGREE WITH WITNESS HART’S ASSUMPTION THAT**  
19 **ACTIONS REQUIRED TO CLOSE THE COMPANY’S BASINS AT AN**  
20 **EARLIER DATE ARE THE SAME OR SUBSTANTIALLY SIMILAR**  
21 **TO THE CLOSURE ACTIVITIES FOR WHICH THE COMPANY IS**  
22 **SEEKING REIMBURSEMENT IN THIS PROCEEDING?**

23 A. I do not. In fact, Mr. Hart appears to disagree with his own assumption. In

1 testimony filed in the parallel Duke Energy Progress proceeding, No. E-2,  
2 Sub. 1142, Mr. Hart acknowledged that “[i]t is difficult at this point in time to  
3 estimate what costs would have been incurred 10 or more years ago.” (E-2,  
4 Sub. 1142, Hart at 167.) I could not agree more. Such an analysis would be  
5 futile as it is impossible to retroactively predict with any degree of certainty  
6 what options the Company might have pursued had it chosen to close its  
7 inactive basins in 1989, 1996, 2003, and/or 2010 given the historical  
8 regulatory landscape, available technology, and evolving industry best  
9 practices, among other factors.

10 **Q. DO YOU HAVE ANY OTHER COMMENTS ON WITNESS HART’S**  
11 **PURPORTED RECOMMENDATION?**

12 A. Yes. As Company witness Liroy explains in his testimony, Mr. Hart’s time  
13 value of money calculations do not, as Mr. Hart contends, demonstrate any  
14 savings the Company could have achieved by engaging in closure activities at  
15 an earlier date. Instead, they simply show the equivalent of those closure  
16 costs in 1989, 1996, 2003, and 2010 dollars. This concept and the flaws in  
17 Mr. Hart’s approach are thoroughly discussed in Mr. Liroy’s testimony, and I  
18 agree with his conclusions.

19 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL**  
20 **TESTIMONY?**

21 A. Yes.

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

3   A.   My name is Jessica L. Bednarcik. My business address is 400 South Tryon  
4       Street, Charlotte, North Carolina, 28202. I am employed by Duke Energy  
5       Business Services, LLC, as Vice President, Coal Combustion Products (“CCP”)  
6       Operations, Maintenance and Governance. In this docket, I am submitting this  
7       supplemental rebuttal testimony on behalf of Duke Energy Carolinas, LLC  
8       (“DE Carolinas,” or the “Company”).

9   **Q.   PLEASE DISCUSS THE PURPOSE OF YOUR SUPPLEMENTAL**  
10       **TESTIMONY.**

11   A.   The purpose of my supplemental testimony is to respond to the Commission’s  
12       July 23, 2020 Order Requiring Duke Energy Carolinas, LLC and Duke Energy  
13       Progress, LLC to File Additional Testimony on Grid Improvement Plans and  
14       Coal Combustion Residual Costs. In particular, my supplemental testimony  
15       will address the Commission’s request for additional information regarding  
16       costs associated with closure of the Company’s coal combustion residual  
17       (“CCR”) basins. My testimony responds to three of the Commission’s  
18       questions, specifically (1) projected annual CCR remediation costs on a plant-  
19       by-plant basis from 2019 through 2057; (2) for each plant and year, a break-  
20       down of the costs by remediation activities; and (3) for each plant’s annual total  
21       cost an allocation to North Carolina retail based on the applicable energy factor.  
22       I will also respond to the Commission’s question regarding the Company’s

1 ability to estimate the incremental costs of excavating, rather than capping-in-  
2 place, remaining ash at the Company's designated "low-risk" CCR basins.

3 The questions for me are posed against the backdrop of the Company's  
4 January 2020 settlement with the North Carolina Department of Environmental  
5 Quality ("NCDEQ") and several community groups, and so I will also briefly  
6 provide information concerning that settlement.

7 **Q. HOW DO YOU RESPOND TO THE COMMISSION'S REQUEST FOR**  
8 **PROJECTED CCR REMEDIATION COSTS FROM 2019 THROUGH**  
9 **2057?**

10 A. I am providing the information requested in spreadsheet form, which is attached  
11 to my testimony as Bednarcik Supplemental Exhibit 1. The Exhibit responds  
12 to three of the Commission's four questions, as described above.<sup>1</sup> Although the  
13 Commission asked for estimated CCR remediation costs through 2057, my  
14 Exhibit 1 provides estimated costs through 2078 to reflect that the Company  
15 will continue to incur closure-related costs beyond 2057 due to the applicable  
16 thirty-year post-closure care requirements for basins and landfills set forth by  
17 the Federal CCR Rule and the North Carolina Coal Ash Management Act  
18 ("CAMA").

19 The costs presented in my Exhibit 1 represent the actual costs incurred  
20 for CCR remediation activities undertaken from January 1, 2015, through  
21 January 31, 2020, as well as the projected costs that will be incurred through

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<sup>1</sup> Although my Exhibit 1 includes the Commission-requested information regarding cost allocation, the Exhibit merely applies the cost of service allocation factor to each category of identified costs. I defer to the testimony of Witness Jane McManeus for any questions regarding the allocation factor, itself.

1 the completion of post-closure requirements. The cost projections from  
2 February 1, 2020, forward are robust and are based on the extensive experience  
3 and lessons learned from the engineering, design, the excavation and landfill  
4 construction of three completed ash basin projects at Dan River, Riverbend and  
5 Sutton sites, and at the Asheville site, where excavation is in its final phase and  
6 an on-site landfill is currently being constructed. This experience included the  
7 construction of a 58-acre landfill at Sutton, a 25-acre landfill at Dan River, and  
8 the excavation of approximately 20 million tons of ash across all four locations.  
9 The significant excavation activities the Company has successfully undertaken  
10 to-date have enhanced its ability to reliably estimate future costs.

11 Indeed, my Supplemental Exhibit 2 demonstrates that the Company has  
12 been successful at estimating projected CCR costs within a reasonable margin  
13 of error. The Company follows the Association for the Advancement of Cost  
14 Engineers (“AACE”) cost-estimating classification system. Using this  
15 construction industry generally accepted tool, estimates prepared before the  
16 Company has received any contractor bids for work necessary to complete each  
17 project are considered Class 5, with a +/- 25% margin of error. That margin of  
18 error continues to decrease as the details of the project become more defined  
19 (+/-20%), bids are obtained (+/-15%), and contracts are executed (+/-10%). My  
20 Exhibit 2 demonstrates this progression by comparing the estimates for total  
21 CCR remediation costs at the Dan River and Riverbend sites—where the  
22 Company has completed all excavation work—at various points in time. For  
23 both sites, the estimates contained in Jon Kerin’s Exhibit 11 in the 2017 rate

1 case, Docket No. E-7 Sub 1146, compared with the revised fourth quarter of  
2 2019 estimates were within or below our expected margin of error—as some  
3 work scopes in 2017 were still based upon Class 5 estimates. Likewise, one  
4 can see that the margin continued to decrease as work was awarded and field  
5 work progressed, by comparing the third quarter 2018 and fourth quarter 2019.

6 As evidenced by these exhibits, the Company has a demonstrated  
7 history of reliable estimates, albeit within expected margins of error, in its CCR  
8 remediation cost estimates, and its ability to project these costs has been further  
9 enhanced by the lessons learned through the work completed at the Asheville,  
10 Dan River, Riverbend and Sutton sites.

11 **Q. HOW DO YOU RESPOND TO THE COMMISSION’S REQUEST TO**  
12 **DESIGNATE WHETHER EACH COST IS A CAPITAL, OPERATING,**  
13 **OR MAINTENANCE COST?**

14 A. Witness Doss is responding to this question, and I defer to him, but note that  
15 each of the remediation costs identified in my Exhibit 1 were charged to ARO.  
16 It is my understanding, based on my review of Mr. Doss’s testimony, that costs  
17 required to fulfill the Company’s obligations under CAMA and the Federal  
18 CCR Rule are charged to ARO regardless of the type of work described as the  
19 remediation activity. Thus, the remediation activities, no matter the type, are  
20 AROs when designated as such through the process described fully by Mr. Doss  
21 in his testimony.

1   **Q.     CAN YOU GIVE SOME ADDITIONAL CONTEXT REGARDING THE**  
2       **SETTLEMENT AGREEMENT THE COMPANY REACHED WITH**  
3       **NCDEQ IN JANUARY 2020?**

4   A.    Yes. As I explained in my rebuttal testimony, the settlement agreement the  
5       Company reached with NCDEQ and a variety of special interest groups  
6       represented by the Southern Environmental Law Center (“SELC”) was the  
7       result of a thoroughly vetted process by which the parties agreed upon a  
8       reasonable and prudent plan for the closure of the nine remaining CCR basins  
9       owned by DE Carolinas and DE Progress (together “Duke Energy”). To give  
10      some additional background, NCDEQ is vested with the statutory authority to  
11      enforce North Carolina’s environmental protection laws, including laws  
12      enacted to protect the water quality of the State. In keeping with this authority,  
13      CAMA grants NCDEQ the authority to direct that surface impoundments  
14      designated as “low-risk” to be closed by excavation, capping in place, or closing  
15      in compliance with the CCR Rule.<sup>2</sup> While Duke Energy initially planned to  
16      close its designated “low-risk” basins by capping in place, on April 1, 2019,  
17      NCDEQ issued Coal Combustion Residuals Surface Impoundment Closure  
18      Determinations (“Closure Determinations”) for Duke Energy’s “low-risk”  
19      impoundments at Allen, Belews Creek, Cliffside, Marshall, Mayo, and Roxboro  
20      Steam Stations (collectively, the “Sites”), directing that each be closed through  
21      excavation.

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<sup>2</sup> N.C. Gen. Stat. § 130A-309.214(a)(3).

1           As I explained in my direct testimony, Duke Energy filed Petitions for  
2           Contested Case Hearing on April 26, 2019, in the North Carolina Office of  
3           Administrative Hearings (“OAH”) challenging NCDEQ’s Closure  
4           Determinations. SELC, on behalf of several community and citizen groups,  
5           intervened in the case in support of NCDEQ’s Closure Determinations,  
6           agreeing with NCDEQ that excavation of the Facilities’ impoundments would  
7           be most protective of the environment. As I explained in my rebuttal testimony,  
8           Duke Energy entered into a settlement agreement with NCDEQ and the groups  
9           represented by SELC on December 31, 2019 following extensive settlement  
10          negotiations. The Settlement Agreement requires Duke Energy to excavate the  
11          ash at seven of the nine basins at these Sites – including two at the Allen Steam  
12          Station, one at Belews Creek Steam Station, one at the Mayo Plant, one at the  
13          Roxboro Plant, and two at the Cliffside Energy Complex – in their entirety with  
14          ash moved to on-site lined landfills. For the other two basins, at Marshall Steam  
15          Station and the Roxboro Plant, uncapped basin ash will be excavated and moved  
16          to lined landfills. While Duke Energy agreed to excavate this remaining ash, it  
17          also secured key representations from NCDEQ and the community and citizen  
18          groups that would allow the Company to proceed with excavation as  
19          expeditiously as possible and without the threat of further challenges from  
20          either group. In particular, the Agreement calls for expedited state permit  
21          approvals, which would keep projects on a rapid timeline, while at the same  
22          time reducing the total estimated cost to close the remaining basins by roughly

1       \$1.76 billion<sup>3</sup> as compared to the cost to excavate under the April 1, 2019 DEQ  
 2       order which required full excavation at all sites. Entering the Settlement  
 3       Agreement also allowed the parties to resolve other pending litigation in state  
 4       and federal courts, thereby ensuring that the impoundments are excavated on  
 5       an expedited basis and to remove the uncertainty associated with litigation.

6               A key underlying premise of the Settlement Agreement was that Duke  
 7       Energy “DEQ and the Community Groups agree that closing the CCR  
 8       impoundments at the Allen, Belews Creek, Cliffside, Marshall, Mayo, and  
 9       Roxboro Steam Stations in accord with this Agreement . . . is reasonable,  
 10      prudent, in the public interest, and consistent with law.”<sup>4</sup> Removing the coal  
 11      ash from unlined CCR impoundments will be more protective than leaving the  
 12      material in place, will reduce regulatory uncertainty going forward for the  
 13      Companies and their customers, and will allow for flexibility in the deployment  
 14      of future remedial measures. The parties filed a Consent Order memorializing  
 15      their agreement in Wake County Superior Court on January 31, 2020, and the  
 16      Order was approved in its entirety by Judge Paul. C. Ridgeway on February 5,  
 17      2020.

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<sup>3</sup> Approximately \$425,000 of the \$1.76 billion savings include landfill cost avoidance due to anticipated extension of the CAMA deadline to beneficiate ash at Buck, Cape Fear, and H.F. Lee.

<sup>4</sup> Settlement Agreement ¶ 53(a), attached as Bednarcik Supplemental Exhibit 3.

1   **Q.   DOES DE CAROLINAS HAVE THE ABILITY TO REASONABLY**  
2       **IDENTIFY THE INCREMENTAL COSTS IT INCURRED AS A**  
3       **RESULT OF THE SETTLEMENT AGREEMENT IT REACHED WITH**  
4       **NCDEQ IN DECEMBER?**

5   A.   As I explained on pages 13 and 14 of my direct testimony, the Company did  
6       not incur any incremental cost as a result of the Settlement Agreement with  
7       respect to the costs it is seeking to recover in the instant rate case. With the  
8       exception of closure plan development, none of the site work that has been  
9       conducted at the Allen, Belews Creek, Cliffside, or Marshall sites is specific to  
10      cap-in-place closure. In other words, all of the site work included as part of this  
11      case at these sites would also be required to complete closure by excavation.  
12      To the extent the Commission considers closure plan development as a potential  
13      incremental cost, the costs the Company incurred to prepare plans for closure  
14      by excavation were approximately \$140,000 to \$480,000 more per site than the  
15      costs it incurred to prepare plans for closure by cap-in-place.

16   **Q.   DOES DE CAROLINAS HAVE THE ABILITY TO REASONABLY**  
17      **IDENTIFY THE INCREMENTAL COSTS IT LIKELY WILL INCUR**  
18      **AS A RESULT OF THE SETTLEMENT AGREEMENT IT REACHED**  
19      **WITH NCDEQ IN DECEMBER?**

20   A.   It is impossible to identify with any degree of certainty the incremental costs  
21      that the Company is likely to incur as it proceeds to excavate, rather than cap-  
22      in-place, the CCR basins at Allen, Belews Creek, Cliffside, and Marshall.  
23      Aside from expected margins of error between any estimate the Company might

1 make for the cost of cap-in-place vs. excavation and the actual costs of closure  
2 by either method, the Settlement Agreement paves the way for a smoother  
3 regulatory approval process. In particular, the Settlement Agreement secured  
4 commitments from NCDEQ that it will, among other things, “conduct an  
5 expeditious review and act expeditiously” as to review of the Company’s  
6 closure plans and permit applications.<sup>5</sup> Likewise, the Settlement Agreement  
7 secured commitments that the community groups will not oppose or otherwise  
8 challenge the Company’s closure plans or requests for variances on closure  
9 deadlines set forth in CAMA [Paragraphs 42 and 45].<sup>6</sup> In the absence of such  
10 representations, the Company could have expected to meet delays at various  
11 points in the approval process and also to expend cost opposing challenges from  
12 the community groups. Even without the Settlement Agreement, it is not at all  
13 clear that the Company could have moved forward with its original plans for  
14 closure by cap-in-place. To the contrary, the Company could have been  
15 *ordered* to excavate ash either at the conclusion of the Company’s judicial  
16 challenge to NCDEQ’s Order or by a state or federal judge presiding over the  
17 litigation brought by the community groups demanding excavation. The  
18 uncertainty of ongoing litigation and the explicit opposition by NCDEQ for a  
19 cap-in-place compliance strategy that would span several decades from  
20 implementation to monitoring placed significant risks on the cap-in-place  
21 strategy that cannot be fully contemplated or readily estimated. In light of these  
22 variables, it is impossible to calculate incremental costs or savings between a

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<sup>5</sup> Settlement Agreement ¶ 38.

<sup>6</sup> *Id.* ¶¶ 42 & 45.

1 cap-in-place plan and excavation plan approved in the Settlement Agreement  
2 for the Company's "low-risk" basins.

3 Notwithstanding these challenges, however, the Company has  
4 undertaken to make a comparison of the cost projections for each closure  
5 methodology in keeping with the Commission's request for this information.  
6 Bednarcik Supplemental Exhibit 4 demonstrates the Company's best closure  
7 cost estimates at several different points in time at the Allen, Belews Creek,  
8 Cliffside, and Marshall sites, including: (1) the estimated cost of cap-in-place  
9 closure based on the Company's best approximation at the time of Jon Kerin's  
10 testimony in the 2017 rate case and spanning the years 2015-2057; (2) a revised  
11 estimate of cap-in-place closure costs calculated in the third quarter of 2018 and  
12 spanning the years 2015-2059; (3) the estimated cost of closure by excavation  
13 calculated in the third quarter of 2019 based upon the requirements set forth in  
14 NCDEQ's April 1, 2019 Order and spanning the years 2015-2078; and (4) the  
15 estimated cost of closure calculated in the fourth quarter of 2019 based upon  
16 the closure terms set forth in the Settlement Agreement, again spanning the  
17 years 2015-2078. The variation in date range between each estimate reflects  
18 the Company's evolving projection of the time required to close the basins and  
19 complete post-closure requirements pursuant to CAMA, the CCR Rule, and  
20 requirements of NCDEQ.

21 It is important to note that each of these estimations are subject to a  
22 margin of error. For the fourth quarter 2019 estimates, the Company assumed  
23 a +/- 25% margin for the magnitude cost estimates it prepared in advance of

1           and following the Settlement Agreement based on the design stage for closure  
2           by excavation at the “low-risk” sites and associated engineering data for each  
3           site. The Company also referred to historic and ongoing projects, bids,  
4           contracts, and other related data for work of similar scope being performed for  
5           the Company at other sites along with certain other estimating references,  
6           including but not limited to, the opinion of internal subject matter experts,  
7           external expert opinion, and the Company’s industrial estimating database.

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

9   **A.    Yes.**

1 MR. MARZO: And that Bednarci k Rebuttal  
2 Exhibi ts 1 through 4 to her rebuttal testimony be  
3 marked for i denti fi ca ti on, and as indicated  
4 confi den ti al where appropriate.

5 CHAIR MITCHELL: All right. Hearing no  
6 objection to that motion, her exhibi ts will be so  
7 marked with confi den ti al designations as  
8 appropriate.

9 (Confidential Bednarci k Rebuttal Exhibi ts  
10 1, 2 and 4; and Bednarci k Rebuttal  
11 Exhibi t 3 were i denti fi ed as they were  
12 marked when pref iled. )

13 MR. MARZO: Thank you, Chair Mi tchel l.

14 CHAIR MITCHELL: And, Mr. Marzo, just  
15 for purposes of the record, portions of her  
16 testimony that is confi den ti al shall be so  
17 designated when copied into the record.

18 MR. MARZO: Thank you, Chair Mi tchel l.  
19 I'd also ask that Ms. Bednarci k's supple men tal  
20 testimony be entered into the record as i f given  
21 orally from the stand today, and that Bednarci k  
22 Supple men tal Exhibi ts 1 through 4 be marked for  
23 i denti fi ca ti on.

24 CHAIR MITCHELL: Her supple men tal

1 exhibits will be marked for identification as they  
2 were when prefilled.

3 (Bednarci k Supplemental Exhibi ts 1  
4 through 4 were identi fied as they were  
5 marked when prefilled.)

6 MR. MARZO: Thank you, Chair Mi tchel l.

7 Q. Ms. Bednarci k, did you prepare summary of  
8 your rebuttal and supplemental testimony?

9 A. Yes, I did.

10 MR. MARZO: Chair Mi tchel l, that summary  
11 was provided to the Commission and parties to these  
12 dockets as required by the Commission's order, and  
13 I'd ask that the summary of Ms. Bednarci k be read  
14 into the record as if given orally here today.

15 CHAIR MITCHELL: All right. Hearing no  
16 objection, Mr. Marzo, Ms. Bednarci k's summary will  
17 be copied into the record as if given orally from  
18 the stand.

19 (Whereupon, the prefilled summary of  
20 rebuttal and supplemental rebuttal  
21 testimony and summary of supplemental  
22 testimony of Jessi ca L. Bednarci k was  
23 copied into the record as if given  
24 orally from the stand.)

**Duke Energy Carolinas, LLC**  
**Summary of Rebuttal and Supplemental Rebuttal Testimony of Jessica L. Bednarcik**  
**Docket No. E-7, Sub 1214**

My rebuttal testimony responds to issues raised in the testimonies of Public Staff witnesses Charles M. Junis, L. Bernard Garrett, and Vance F. Moore, Carolina Utility Customer Association (“CUCA”) witness Kevin W. O’Donnell, Attorney General Office (“AGO”) witness Steven C. Hart, and Sierra Club witness Mark Quarles.

The purpose of my rebuttal testimony is to respond to the Public Staff’s proposed prudence-based disallowances at the Company’s Riverbend, Dan River, and Buck sites as well as certain expenses associated with the Company’s fulfillment of CAMA’s provision requiring permanent water supplies. For these proposed disallowances, my rebuttal testimony establishes that each challenged expense was the result of the Company’s reasonable and prudent efforts to comply with applicable laws and regulations.

In particular, I show that the fulfillment fee paid to Charah, terminating the Company’s commitment to store 20 million tons of ash at Charah’s Brickhaven and Colon mines, was incurred as a result of amendments to CAMA that the Company could not have anticipated, which required beneficiation, rather than excavation, of ash at certain of the Company’s sites. Considering the amount of capital infrastructure that Charah invested to effectuate the contract, it reasonably needed assurances that those costs would be covered. The ultimate fulfillment fee that the Company paid was the result of negotiation that allowed a payment well below the contractual maximum and that, on balance, saved money for the customer.

At the Buck site, my testimony shows that the Company acted reasonably and prudently when it selected Zachry as its environmental, procurement, and construction contractor. Zachry’s quoted rates were better than its competitors, and it had performed successful work for the Company in the past. In addition, I show that the Public Staff’s suggestion that the Company

should have sought statutory relief from CAMA requirements is unrealistic and would have placed the Company in violation of CAMA deadlines.

At the Dan River site, I show that it was reasonable and prudent for the Company to enter into a contract with Parsons to complete excavation work, but that despite best efforts, it became apparent that Parsons would not be able to complete excavation by the CAMA-mandated deadline of August 1, 2019, in part due to struggles it faced excavating wet ash in an unusually rainy year. To meet this important statutory deadline, the Company removed Parsons from the project and contracted with Trans Ash, who had successfully excavated ash at the Sutton site, to complete the work. Using this strategy, the Company achieved closure before August 1, 2019.

My rebuttal testimony also responds to the testimony of witnesses Junis, Hart, and Quarles and shows that the Company's historical CCR practices were in line with those of similarly situated utilities in neighboring states, and before the promulgation of the CCR Rule and/or the enactment of CAMA, there was no reasonable or prudent justification for the Company to change its CCR operations.

Finally, my supplemental rebuttal testimony addresses the supplemental testimony of AGO witness Hart and shows that, in suggesting the Company could have reduced cost by beginning closure at an earlier date, Mr. Hart fails to consider that an earlier closure may have necessitated a different approach given the then-existing regulatory landscape, evolving industry knowledge and available technology, and that it is impossible to predict with any certainty what such costs might have been.

This concludes my summary of my rebuttal testimony.

**Duke Energy Carolinas, LLC**  
**Summary of Supplemental Testimony of Jessica L. Bednarcik**  
**Docket No. E-7, Sub 1214**

My supplemental testimony responds to the Commission's July 23, 2020 Order Requiring Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to File Additional Testimony on Grid Improvement Plans and Coal Combustion Residual Costs, which asked the Company to provide additional information regarding costs associated with closure of the Company's coal combustion residual ("CCR") basins.

First, as requested, I provide the projected annual CCR remediation costs on a plant-by-plant basis from 2019 through 2057. For each plant and year, I provide a breakdown of the costs by remediation activities, and for each plant's annual total cost, I provide an allocation to North Carolina retail based on the applicable energy factor. This information is provided to the Commission in spreadsheet form.

Next, I provide some context regarding settlement agreement the Company reached with the North Carolina Department of Environmental Quality ("NCDEQ") and a variety of special interest groups represented by the SELC on December 31, 2019 (the "Settlement Agreement"). The core underlying premise of the Agreement was that Duke Energy, "DEQ and the Community Groups agree that closing the CCR impoundments at the Allen, Belews Creek, Cliffside, Marshall, Mayo, and Roxboro Steam Stations in accord with this Agreement . . . is reasonable, prudent, in the public interest, and consistent with law."

Moreover, while the Company agreed to excavate ash as part of the Settlement Agreement, it also secured key representations from NCDEQ and the special interest groups that will allow the Company to proceed with excavation as expeditiously as possible. In particular, the Settlement Agreement secured promises for an expedited state permit approvals, which will keep projects on a rapid timeline, while at the same time reducing the total estimated cost to close the remaining basins by roughly \$1.76 billion as compared to the cost to excavate

under DEQ's April 1, 2019 order. The Settlement Agreement also resolved other pending litigation brought by the special interest groups that could have resulted in an order requiring excavation.

Finally, I respond to the Commission's question regarding the Company's ability to estimate the incremental costs of excavating, rather than capping-in-place, remaining ash at the Company's designated "low-risk" CCR basins. I explain that the Company did not incur any incremental cost as a result of the Settlement Agreement with respect to the costs it is seeking to recover in the instant rate case. All of the site work included as part of this case at these sites would also be required to complete closure by excavation. I next explain that it is impossible to identify with any degree of certainty the incremental costs that the Company is likely to incur as it proceeds to excavate, rather than cap-in-place, the Company's remaining CCR basins under the favorable terms of the settlement. I also note that, even without the Settlement Agreement, the Company could have been ordered by a state or federal judge to move forward with excavation rather than cap-in-place. Notwithstanding these challenges, however, the Company has undertaken to make a comparison of the evolving cost projections for each closure methodology per the Commission's request, and that estimate is presented in my Supplemental Exhibit 3.

This concludes my summary of my supplemental testimony.

1 MR. MARZO: Thank you, Chair Mitchell.  
2 Ms. Bednarcik is available for cross examination.

3 CHAIR MITCHELL: All right. I would  
4 note, before we begin cross examination of the  
5 witness, that to the extent you need to, you --  
6 counsel, you anticipate asking questions that will  
7 elicit confidential information, you must alert me  
8 to that, and we will leave the video conference  
9 technology and join the telephone line that has  
10 been provided to you or will be provided to you  
11 shortly. Again, I will rely on you, counsel, to  
12 alert me when we get to that point in time.

13 All right. With that, I believe, Public  
14 Staff, you were up first.

15 MS. LUHR: Thank you, Chair Mitchell.  
16 This is Nadia Luhr with the Public Staff. And I  
17 will be asking Ms. Bednarcik questions related to  
18 groundwater extraction and treatment, permanent  
19 water supplies, and equitable sharing. And my  
20 colleague, Ms. Jost, will be asking questions  
21 related to the Charah fulfillment fee, the Dan  
22 River excavation transportation costs, and the Buck  
23 beneficiation project. And it's our understanding  
24 that the Company does not object.

1 MR. MARZO: That's correct,  
2 Chair Mitchell.

3 CHAIR MITCHELL: All right. You-all may  
4 proceed.

5 MS. LUHR: Thanks.

6 CROSS EXAMINATION BY MS. LUHR:

7 Q. Good afternoon, Ms. Bednarcik.

8 A. Good afternoon.

9 Q. In your rebuttal testimony on pages 48  
10 through 50, you discuss Mr. Junis' proposed  
11 disallowance for the cost of groundwater extraction and  
12 treatment at Belews Creek. I'll give you a moment to  
13 get there.

14 A. Ms. Luhr, can you give me the page number  
15 again, please?

16 Q. Yes. So I was referring to pages 48 through  
17 50, but now I'll refer you directly to page 49.

18 A. I'm on page 49.

19 Q. Okay. So on lines 4 through 6, you state  
20 that:

21 "DE Carolinas would have installed extraction  
22 wells at Belews Creek in order to comply with CAMA even  
23 without the Sutton settlement agreements."

24 And, Ms. Bednarcik, that's because Belews

1 Creek had exceedances at or beyond the compliance  
2 boundary at Belows Creek; is that right?

3 A. That is correct.

4 Q. Okay. And if the Company did not have  
5 exceedances at or beyond the compliance boundary,  
6 neither CAMA nor the CCR rule would have required those  
7 extraction and treatment wells; is that right?

8 A. So my understanding is that it is because we  
9 had -- we had exceedances beyond the compliance  
10 boundary, that is why those extraction wells were  
11 installed.

12 Q. Okay. And starting on page -- we're still on  
13 page 49, on line 22 going through page 50, you state  
14 that:

15 "An increase in measured exceedances does not  
16 suggest an increase in groundwater contamination at  
17 Belows Creek"; is that correct?

18 A. Yes, that is correct.

19 Q. And, Ms. Bednarcik, groundwater flows over  
20 time, correct?

21 A. Yes. In each station, in each site,  
22 depending on geology, it flows at different rates, but  
23 relatively a slow rate, yes.

24 Q. Okay. So when you sample groundwater at the

1 same well over time, you're not just sampling the same  
2 water over and over again; is that right?

3 A. So it depends on when you do the sampling and  
4 the flow rate of that specific site. That is one of  
5 the reasons why you do take samples, whether it is a  
6 quarterly basis or a semi annual basis, because the  
7 geology also depends upon the seasons and what is going  
8 on in geology as a whole.

9 Q. Okay. So -- but, generally, would you agree  
10 that your sampling essentially constituents that are  
11 flowing through and past the wells over time?

12 A. I would say generally, but also that's why  
13 you put groundwater monitor wells in, to see what is in  
14 that area and whether or not the constituents are  
15 stable, because that will sometimes tell you that you  
16 have a stable plume, whether they're increasing or  
17 decreasing. And that is why you put in groundwater  
18 monitoring wells in order -- once you've done the  
19 original assessment, and you do your assessment over a  
20 long time, sometimes it's many, many years -- in order  
21 to determine really what is going on in the ground.

22 Q. Okay. So if you continue to conduct  
23 groundwater monitoring, you know, in those wells over a  
24 period of time and you continue to see exceedances,

1 would you agree that that's an indication that the  
2 contamination is continuing to spread?

3 A. So I would say not necessarily. It could  
4 mean that the contamination is stagnant and is not  
5 spreading; it could mean that it is spreading. So  
6 again, that is why you take multiple samples, in order  
7 to determine what is going on in the groundwater. Each  
8 site is different, each plume is different. So it  
9 could mean that it's spreading; it could mean that it's  
10 stable. That is why you're looking and evaluating, and  
11 you do not make determinations off of one groundwater  
12 monitoring event.

13 Q. Thank you. Now, turning to page 51 of your  
14 testimony, lines 2 through 6, you state that:

15 "The requirement for permanent alternative  
16 water supplies and water treatment systems exists even  
17 absent the existence of a 2L exceedance."

18 But, Ms. Bednarcik, doesn't the Company  
19 actually have 2L exceedances at or beyond the  
20 compliance boundary at each of its sites?

21 A. So, Ms. Luhr, I think the main difference is  
22 that the permanent water supply requirement in CAMA  
23 said that it did not tie the need to provide permanent  
24 water to homeowners based upon an exceedance at the

1 homeowner's wells. So that is the nuance related to  
2 the requirement for permanent water.

3 Typically -- and this is something I  
4 discussed also last week, is if we saw a plume, we saw  
5 something that was going towards a homeowner's, and it  
6 may get there sometime in the future, then, of course,  
7 we would have put that homeowner on a permanent water.  
8 But what we saw really at all of our locations in the  
9 Carolinas is that that we're covered underneath CAMA,  
10 and the provision of permanent water supply is that  
11 groundwater was not flowing towards those homeowners.  
12 Or if there were exceedances of the 2L standard at a  
13 homeowner's house, it was not attributed to coal ash  
14 constituents because of the way the groundwater was  
15 flowing.

16 So I think that's the key nuance, to be able  
17 to look at the permanent water provision. If you look  
18 at the words in CAMA itself, or in House Bill 630, it  
19 clearly calls out that you do not have to show that the  
20 groundwater at the homeowners' homes was impacted by  
21 coal ash constituents, that it didn't matter. That the  
22 Company would have to provide a permanent water  
23 solution to those homeowners.

24 Q. Understood. Would you -- would you agree

1       that the requirement to provide -- to provide those  
2       water supplies to those homeowners was tied to the risk  
3       of that contamination eventually reaching those water  
4       supplies?

5           A.       So I would say that I don't know exactly why  
6       the legislature added that in. I do know that there  
7       was a lot of discussion with the Department of Health  
8       and Human Services, department of -- DEQ, Department of  
9       Environmental Quality, as to what was going on around  
10      the coal ash basins and what was a protective level.  
11      Starting in, I believe it was 2014, we did receptor  
12      studies and confirmed what we had seen prior to 2014,  
13      that groundwater was not going towards these homeowners  
14      and was not being impacted by coal ash constituents.

15                  So when the House Bill 630 passed, and I  
16      believe it was in the 2016 time period, we already had  
17      a lot of data actually working with the state agency  
18      showing that coal ash constituents were not going  
19      towards homeowners, were not affecting homeowners'  
20      wells; but the legislature still determined that they  
21      needed to add this provision within House Bill 630. So  
22      that -- that's my -- I don't know why they did, but  
23      that's the history as I know it.

24           Q.       And then, in your opinion -- not speculating

1 as to what the legislature was thinking at the time,  
2 but in your opinion, is there a risk in the future of  
3 contamination from the coal ash impoundments reaching  
4 any nearby neighboring wells?

5 A. No. I do not believe that there is a risk in  
6 the groundwater models we have shown that we have  
7 developed. The groundwater data that was collected  
8 both by ourselves and by DEQ has not led to an  
9 indication that we are going to have a risk related to  
10 our homeowners, or towards the homeowners surrounding  
11 our plants.

12 Q. And that's your contention, despite the  
13 continuing spread of contaminants from the coal ash  
14 impoundments?

15 A. So yes, because you have to look and see  
16 where the groundwater models are showing and how the  
17 groundwater is flowing. And Mr. Wells will be able to  
18 talk -- will probably be able to talk about this a  
19 little bit more. But our groundwater models are  
20 showing that -- the groundwater flow, where things are  
21 going. And we are doing a groundwater corrective  
22 action program. Because there is a couple of locations  
23 where we'll be pooling the groundwater back inside the  
24 compliance boundary. But there are no homeowners in

1       that area that are being affected adversely by  
2       groundwater. And the models are not showing that it's  
3       going to go there either.

4           Q.       Do you know whether background levels had  
5       been established and approved by DEQ prior to the  
6       requirement to provide permanent water supplies?

7           A.       So specifically background -- background  
8       levels at each one of the locations was being  
9       evaluated, I do know, by DEQ during the 2014/2015 time  
10      period. Background levels, I do remember during that  
11      time period, because I was the person that was actually  
12      implementing the provision of permanent water and  
13      talking to all the homeowners. So I do know in that  
14      time period there was a lot of discussion on  
15      background, a lot of working with DEQ on what was  
16      background and what was not background.

17                 So it was something that had to come out of  
18      the agency. We were providing them a lot of data.  
19      When they actually kind of put the line in the sand and  
20      said this is background, I don't know that date. But I  
21      do know, in the 2015/2016 time period when the House  
22      Bill 630 was passed, is that background was -- I don't  
23      know if I could say 100 percent established, but I do  
24      remember very clearly talking to DEQ at that time and

1 understanding what is background and what the risk was  
2 to the homeowners.

3 Q. Okay. We can move on. On pages 53 to 55 of  
4 your rebuttal testimony, you discuss the Public Staff's  
5 equitable sharing proposal. And on page 55,  
6 specifically lines 5 through 9, you state that:

7 "In the 2017 rate case, neither the Public  
8 Staff nor any intervenor was able to quantify any  
9 discrete costs throughout the Company's considerable  
10 history managing CCR that was deemed to be imprudent or  
11 connected to an imprudent action."

12 And then you continue:

13 "The same is true in this case."

14 Are you aware that the Public Staff's  
15 recommended equitable sharing adjustment is based on  
16 General Statute 62-133(d), which does not require  
17 showing of imprudence?

18 A. So I do not have the exact statutes memorized  
19 as to what is in there, but I do know that equitable  
20 sharing was discussed in the last case. And when we  
21 moved forward with what was presented this time around,  
22 we did take into account what had been ruled on by the  
23 Commission in the previous case.

24 Q. Okay. And on page 58 of your testimony,

1 beginning on line 5, you state that:

2 "Before the CCR rule and CAMA, the Company's  
3 operation of its CCR impoundments was consistent with  
4 existing federal and state law."

5 Is that an accurate restatement of your  
6 testimony?

7 A. Yes.

8 Q. Isn't it true that, prior to CAMA and the CCR  
9 rule, the Company's coal ash impoundments caused  
10 exceedances of the groundwater standards at or beyond  
11 the compliance boundary?

12 A. Yes. But I would also say that we were  
13 working the state agencies. So it was that 2011 policy  
14 memorandum that came out from NCDEQ that shows that the  
15 Company was working with regulators trying to  
16 understand with these legacy -- with these -- not  
17 legacy, but with these past -- these operating units  
18 that were utilized and had been historic operating  
19 units, in many cases still operating units, what do we  
20 need to do in order to move forward, based upon the  
21 groundwater exceedances.

22 So it's a yes, we did have exceedances, but  
23 we were working with the state agencies in order to  
24 determine what are those next steps, and what are the

1 corrective actions that need to take place at those  
2 locations.

3 Q. Isn't it also true that the state's 2L rules,  
4 which have been in effect since 1979, prohibit  
5 exceedances of groundwater standards?

6 A. So that is my understanding of 2L, but I have  
7 been working in North Carolina with -- well, I had  
8 many, many years working on remediation sites, and  
9 where there were exceedances of 2L, what we did with  
10 those CCR sites is exactly the same that we've done  
11 with other sites.

12 It's not very -- although there is an  
13 exceedance, there is the, okay, this is something  
14 that's been going on based upon an operating unit, or  
15 in some cases like an underground storage tank. So  
16 what do we do? How do we move forward with figuring  
17 out what are those steps that we need to take in order  
18 to manage the risk, address the risk, and address  
19 whatever is -- whatever those next steps need to be?

20 So what I have seen in my history of working  
21 in the state of North Carolina on remediation sites,  
22 specifically with groundwater cleanup, is what we did  
23 in the CCR -- around our CCR ponds, this is exactly the  
24 same that we do in other areas. We see that we have an

1 issue. We see that we have an exceedance. We work  
2 with the regulators in order to determine what are  
3 those next steps that we need to do in order to  
4 manage -- manage the risk. First thing you want to do  
5 is, of course, manage risk to human health, and then  
6 also determine what are the appropriate steps you need  
7 to take or -- take next in order to address what is  
8 going on in the environment.

9 Q. But it appears, in this case, that it took  
10 approximately three decades for the Company to begin  
11 that process, if they began working DEQ around 2011; is  
12 that right?

13 A. So I mentioned the 2011 policy memo as a --  
14 many years before that -- and Mr. Wells knows a lot  
15 more about the history of our groundwater compliance in  
16 the Company, so I would say that please ask him. He  
17 will be able to provide you a better, fuller picture.

18 But my understanding is that, starting in  
19 the -- I think it was the 1970s, 1980s, we did take  
20 groundwater samples and we provided those to states.  
21 And if there was an issue that felt -- that needed to  
22 be addressed, we addressed it.

23 Q. Okay. We can move on to another question in  
24 this same theme.

1           Isn't it true that Duke Energy Carolinas also  
2           had constructed seeps to channel coal ash wastewater  
3           into waters of the state without NPDES permits?

4           A.     So I believe that was discussed a lot in the  
5           last case, and was addressed in the last case. Again,  
6           Mr. Wells may be able to talk a lot more about seeps.  
7           I do know that the Company did negotiate a resolution  
8           on the seeps through revised SOC permits and NPDES  
9           permits, but that would be a better question for  
10          Mr. Wells specifically on the seeps.

11          Q.     Understood. And just one quick follow-up on  
12          that, and then I'll discuss with Mr. Wells as well.

13                 And are you aware that General Statute  
14                 143-215.1 prohibits wastewater discharges into waters  
15                 of the state without approval under an appropriate  
16                 permit?

17          A.     So again, I would state that that's a better  
18                 question for Mr. Wells. He understands a lot more  
19                 about the seeps, since I know that he addressed it at  
20                 length in the last case.

21          Q.     Okay. And is it still your contention, as  
22                 you stated in your rebuttal testimony, that the  
23                 Company's operation of its coal ash impoundments was  
24                 consistent with the law?

1 A. Yes.

2 Q. And that's all I have. I believe my  
3 colleague, Ms. Jost, has some questions as well. Thank  
4 you.

5 CROSS EXAMINATION BY MS. JOST:

6 Q. Good afternoon, Ms. Bednarcik. I tried to  
7 organize my questions such that I'll get a few in  
8 before we get to confidential, but I'll certainly  
9 signal to you when I think we are going to get into  
10 some confidential information. I'd like to begin with  
11 some questions about your rebuttal testimony regarding  
12 the phase 2 excavation and transportation of coal ash  
13 at the Company's Dan River site.

14 Now, the contract for this work was  
15 originally awarded by the Company to Parsons  
16 Environment and Infrastructure Group, Inc.; is that  
17 correct?

18 A. That is correct.

19 Q. And Duke set the schedule that Parsons was to  
20 follow to complete the excavation at Dan River; is that  
21 right?

22 A. Yes. That was a schedule that was included  
23 in the contract documents.

24 Q. All right. I'd like to turn, at this point,

1 to what was premarked as Public Staff 56. The page  
2 number on the bottom of the page should be 1597. And  
3 this is the semi annual report on closure and  
4 excavation, and there's a graph and spreadsheet based  
5 on the data contained in that document at the very end.  
6 And again, that was Public Staff 56, page 1597. I'll  
7 give you a moment to get there.

8 MS. JOST: And, Chair Mitchell, I would  
9 request that this exhibit be marked as Public Staff  
10 Bednarci k Rebuttal Cross Exhibit 1.

11 CHAIR MITCHELL: All right. The  
12 document will be marked Public Staff Bednarci k  
13 Rebuttal Cross Examination Exhibit Number 1.

14 (Public Staff Bednarci k Rebuttal Cross  
15 Examination Exhibit Number 1 was marked  
16 for identification.)

17 Q. Ms. Bednarci k, have you been able to locate  
18 that document?

19 A. Sorry, my mute button was not working. Yes,  
20 I have it in front of me.

21 Q. Great. All right. If you could, please turn  
22 to the last page of that exhibit. And would you agree  
23 that on the left side of the page there, there is some  
24 data based on planned and actual tons excavated at Dan

1 River, and on the right side there is a line graph  
2 that's titled "Dan River Parsons excavation tracking"?

3 A. Yes, I see that.

4 Q. And would you agree that the -- when we're  
5 talking about excavating ash from an impoundment,  
6 the -- it's the ash at the top of the impoundment that  
7 is excavated first, and then the excavation would  
8 proceed down through the layers of ash to the bottom;  
9 is that your understanding?

10 A. Yes. You would need to remove the material  
11 on top before you moved the material on the bottom.

12 Q. So would you agree that the line that  
13 represents the planned cumulative excavation yards, and  
14 that's the line that's shown in red -- do you have a  
15 color copy?

16 A. Yes, I do.

17 Q. Okay. Great. So that's the line shown in  
18 red. It proceeds from June 2017 towards August 2018 on  
19 the graph. And then the slope of the line goes up  
20 representing an increase in the rate of excavation, and  
21 there's an uptick in that right around April 2018.

22 Would you agree that's what's reflected?

23 A. Yes. It does show that there's a slight  
24 increase, or an increase in the slope of the line

1 around April 2018.

2 Q. Okay. Would you agree, and this could be  
3 subject to check, that the red line is based on  
4 production rates that are set out in the contract  
5 between Duke and Parsons?

6 A. So the red line would typically be. What I  
7 don't know is, as we move forward, we did, of course,  
8 have to re-baseline some of our production rates. So  
9 what I don't know, as I look at this document in front  
10 of me, is if that red line was from the beginning or  
11 was -- or had been based about the re-baseline. Just  
12 by looking at it right now, I can't remember.

13 Q. Okay. Well, let's -- I believe it would be  
14 based on the contract, so the beginning point. And  
15 Duke, as I think we've established, was involved in  
16 formulating those production rates in connection with  
17 executing the contract; is that right?

18 A. So we had milestones that we included within  
19 the -- within the contract.

20 Q. Okay. And then the blue line represents the  
21 actual cumulative excavated yards. And that also goes  
22 up over the period that's represented on the graph.  
23 But would you agree that the rate does not increase as  
24 significantly as the red line?

1           A.     Yes. Looking at it, is that the line looks  
2 pretty consistent after the February 2018 time period.

3           Q.     All right. You indicated, I believe in your  
4 direct testimonies, that as excavation progresses down  
5 and lower parts of the impoundments are encountered,  
6 the ash becomes wetter; is that generally true?

7           A.     That is generally true. But there is also,  
8 as you are moving on, that the contractor, of course,  
9 gains efficiencies as they're working on the site.  
10 They're understanding the site and moving forward. So  
11 what we typically see that, while there may be wetter  
12 ash in certain areas, that the contractor is able to  
13 address that in order to keep their production up to  
14 where it needs to be.

15          Q.     I believe that you actually testified in your  
16 direct testimony that -- and specific to this instance,  
17 the excavation at Dan River, the ash that was  
18 encountered lower in the impoundment was actually  
19 wetter than had been anticipated. And that this caused  
20 delays because additional actions had to be taken to  
21 dry that ash out; is that right?

22          A.     Yes. That is true, that it was wetter than  
23 had been anticipated. And we were working with the  
24 contractor in order to see what are the actions you're

1 going to take in order to dry out, be able to manage  
2 this ash so that you can maintain your production  
3 rates. And actually in the contract itself -- I'm  
4 going off of memory, I could pull it out if it's  
5 helpful -- but I believe it also does describe what the  
6 moisture content of the ash needs to be in order to  
7 have proper placement within the landfill. And that  
8 was called out in the contract as a requirement.

9 So the contractor knew going into the  
10 contract and signing it what the moisture content  
11 needed to be in order to properly place the ash in the  
12 landfill.

13 Q. Was it reasonable, though, for Duke to agree  
14 to an excavation schedule that called for wetter ash to  
15 be excavated at a faster rate when, as you've  
16 explained, it's more difficult to excavate wet ash?

17 A. So I would go back to say that we had  
18 milestones in the contract, and what the rate was is  
19 what -- working with the contractor, and if the  
20 contractor did not feel that they could meet that rate,  
21 of course, when we go out for bid, we say these are our  
22 milestones. And if they have concerns over meeting the  
23 contractual obligations within the bid, then they  
24 would, of course, be able to say that to us. And that

1 goes in the back and forth before a bid is awarded in  
2 order to make sure that, if we were to put something in  
3 and the contractor did not feel could be met, then they  
4 tell us things like that so that we be make sure, when  
5 we enter into the contract, it's clear what the  
6 expectations are and that the contractor believes that  
7 they can meet those expectations.

8 Q. All right. And we'll get into that a little  
9 bit later. But, unfortunately, at this point, I think  
10 we are going to hit some confidential information. So  
11 I believe this is the appropriate point to leave the  
12 Webex and go to the phone line.

13 CHAIR MITCHELL: All right. Thank you,  
14 Ms. Jost. We will leave the Webex, turn off your  
15 cameras and microphones. And those who are under  
16 confidentiality agreements with the Company may  
17 join the line at this time -- the teleconference  
18 line at this time.

19 (Due to the proprietary nature of the  
20 testimony found on pages 146 to 204, it  
21 was filed under seal.)  
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1 (Testimony on the open record resumed.)

2 CHAIR MITCHELL: All right. For  
3 purposes of the record we have come out of  
4 confidential session. We will we will be in recess  
5 until tomorrow morning at 9:00, at which point we  
6 will join the video conference technology, we will  
7 go on the record, and then we will immediately go  
8 into confidential session to complete the line of  
9 questions by the Public Staff.

10 Ms. Force or Ms. Townsend, I'm not sure  
11 which one of you will have responsibilities  
12 tomorrow with the witness. My notes --

13 MS. TOWNSEND: It's me, Chair Mitchell.

14 CHAIR MITCHELL: Okay. So let's -- I'm  
15 going to ask this of you. Since we will be in  
16 confidential session with the Public Staff  
17 questions, I would ask that you prepare your  
18 questions so that we can go straight into your  
19 confidential questions tomorrow and not have to  
20 leave the session and then get back into the  
21 session if you have questions that will elicit  
22 confidential information.

23 MS. TOWNSEND: I am happy to report that  
24 I will not be eliciting confidential

1 information.

2 CHAIR MITCHELL: Okay. All right.  
3 And -- all right. With that, are there any  
4 additional procedural questions or issues that I  
5 need to address before we go off the record for  
6 this afternoon? Anything from Duke?

7 MR. ROBINSON: Nothing from Duke,  
8 Chair Mitchell.

9 CHAIR MITCHELL: All right. With that,  
10 we will go off the record then. We are in recess  
11 until 9:00 in the morning. Thank you very much.

12 (The hearing was adjourned at 4:32 p.m.  
13 and set to reconvene at 9:00 a.m. on  
14 Wednesday, September 16, 2020.)  
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## CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was taken, do hereby certify that the witnesses whose testimony appear in the foregoing hearing were duly affirmed; that the testimony of said witnesses were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 18th day of September, 2020.



JOANN BUNZE, RPR

Notary Public #200707300112

