

1 PLACE: Via Videoconference
2 DATE: Wednesday, March 3, 2021
3 DOCKET NO.: E-2, Sub 1177
4 E-2, Sub 1172
5 TIME: 1:30 P.M. TO 4:38 P.M.
6 BEFORE: Commissioner Daniel G. Clodfelter, Presiding
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Lyons Gray
9 Commissioner Kimberly W. Duffley
10 Commissioner Jeffrey A. Hughes
11 Commissioner Floyd B. McKissick, Jr.
12

13 IN THE MATTER OF:
14 Cube Yadkin Generation, LLC, Complainant
15 v.
16 Duke Energy Progress, LLC,
17 and
18 Duke Energy Carolinas, LLC, Respondents
19

20 Volume 2
21
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E X H I B I T S

IDENTIFIED/ADMITTED

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Duke Panel Cross Examination

Exhibit Number 1..... 49/170

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

2 COMMISSIONER CLODFELTER: All right. Ms.
3 Fentress, I believe the case is yours now.

4 MR. KAYLOR: Thank you, Mr. Chairman. Bob
5 Kaylor. I'll be with these witnesses.

6 COMMISSIONER CLODFELTER: All right. You
7 guys are doing the switch hitting today and I don't
8 know the batting order.

9 MR. KAYLOR: That's okay.

10 COMMISSIONER CLODFELTER: So Mr. Kaylor,
11 you're on.

12 MR. KAYLOR: So we would call our panel of
13 witnesses of Mike Keen and Glen Snider.

14 COMMISSIONER CLODFELTER: Okay. Mr. Snider,
15 I see you, and Mr. Keen's box is there, but his video
16 is not on. There he is. I got it. Okay.

17 MICHAEL KEEN AND GLEN SNIDER;

18 Having first been duly affirmed,
19 Testified as follows:

20 COMMISSIONER CLODFELTER: All right. We got
21 yes's from both. Mr. Kaylor.

22 MR. KAYLOR: Thank you, Mr. Chairman.

23 DIRECT EXAMINATION BY MR. KAYLOR:

24 Q Mr. Keen, would you state your

North Carolina Utilities Commission

1 name and address for the record, please?

2 A (Keen) It's Michael Keen, 299 1st
3 Avenue North, St. Petersburg, Florida, 33703.

4 Q And you are employed by Duke
5 Energy in what capacity?

6 A I am a business development
7 manager.

8 Q In preparation for this hearing,
9 did you prepare prefiled testimony consisting of eight
10 -- 18 pages?

11 A Yes.

12 Q Do you have any additions or
13 corrections to that testimony?

14 A I do not.

15 Q And you had four exhibits, I
16 believe; is that correct?

17 A Yes.

18 Q And do you have any additions or
19 changes to those exhibits?

20 A No, sir.

21 MR. KAYLOR: So I'll go ahead, if it's okay,
22 Mr. Chair, and let Mr. Keen give his summary, then
23 I'll go to Mr. Snider.

24 COMMISSIONER CLODFELTER: That's fine.

1 Q Mr. Keen, I believe you prepared a
2 summary of your direct testimony; is that correct?

3 A Yes, sir.

4 Q Would you proceed to give that
5 summary to the Commission and the parties?

6 A Yes, sir. Good afternoon. The
7 purpose of my direct testimony is to discuss the
8 Companies' position in this case and respond to the
9 testimony of Cube Yadkin's witness John R. Collins.
10 The Companies acted in good faith and negotiated with
11 Cube Yadkin in the interest of our customers and
12 consistent with the Commission's PURPA policies and
13 orders. Put simply, Cube Yadkin demanded and still
14 demands we trade prices for its capacity and energy
15 that are inconsistent with the Commission's policies
16 and far in excess of what is just and reasonable for
17 our customers to pay.

18 I was assigned commercial responsibility for
19 this project in August of 2016 after Cube Yadkin
20 reached out to one of our executives, Regis Repko, let
21 him know that Cube Yadkin intended to purchase four
22 hydroelectric facilities along the Yadkin River, High
23 Rock, Tuckertown, Falls, and Narrows, known as the
24 Facilities, from Alcoa Power Generating, Incorporated.

1 Typically, I would not discuss matters of this type
2 with anyone other than the owner of the facilities
3 because Duke does not want to provide information that
4 might impact whether assets are ultimately purchased.

5 On September 16, 2016, I had a conversation
6 with Mr. Collins, which I followed up with a letter on
7 September 21st, 2016, providing Duke's position on
8 purchasing the output of the facilities. I noted that
9 Alcoa owned the facilities, and I advised that Duke
10 did not have any need for energy and capacity at that
11 time, but if need arose in the future, Duke would
12 likely issue a Request for Proposals, or RFP, and Cube
13 Yadkin could submit a bid. I further informed them
14 that to the extent that Cube Yadkin approached Duke
15 under PURPA, Duke would likely have no obligation to
16 purchase the energy or capacity from the facilities
17 that may be certified as QFs.

18 On October 11th, 2016, I received an undated
19 letter from Mr. Collins in response to my September
20 21st, 2016 letter. In the undated letter Mr. Collins
21 indicated that Alcoa had certified the three smaller
22 facilities as QFs and that Cube Yadkin anticipated
23 closing before the end of 2016. The letter also
24 recommended meeting to discuss the process for making

1 sales from these projects to Duke pursuant to PURPA,
2 noting that Duke had not petitioned to be relieved of
3 the mandatory obligation of PURPA to purchase output
4 from the QFs.

5 It should be noted that while Mr. Collins
6 projected closing the purchase of the facilities in
7 November -- November 1st, 2016, the transaction was
8 not completed until February 1st, 2017. Cube Yadkin
9 never offered an explanation of what caused the delay.
10 I did not begin negotiations with Cube Yadkin in the
11 fall of 2016 because Cube Yadkin did not own the
12 facilities in question and the first step in this
13 process for the owner to submit a Notice of Commitment
14 Form.

15 Company witness Snider will provide details
16 about Commission's requirements for the
17 developer/owner of a facility to establish a legally
18 enforceable obligation, or LEO, in North Carolina.
19 Typically, once a company has received a Notice of
20 Commitment Form, we calculate the appropriate avoided
21 cost rates in effect at that time and lock in those
22 rates for the duration of a Power Purchase Agreement,
23 or PPA. Cube Yadkin has not, to this day, submitted a
24 Notice of Commitment Form. While Cube Yadkin contends

1 that part of the NoC Form did not apply to them, it is
2 unreasonable to conclude that a sophisticated company
3 like Cube Yadkin, and an experienced employee like Mr.
4 Collins, with access to legal experience, would have
5 reached the default position of not submitting
6 anything. The Companies require the NoC Form from all
7 potential PURPA suppliers and cannot complete the
8 required analysis until we receive this form.

9 After Cube Yadkin closed on the purchase in
10 February of 27 (sic), Duke negotiated in good faith
11 and provided firm proposals to Cube Yadkin on two
12 occasions. On August 10th, 2017, Duke proposed a
13 two-year energy only transaction, with energy pricing
14 based on a detailed analysis of the energy market at
15 the time, and offered to purchase the full output, 200
16 MW, from Cube Yadkin, including the non-PURPA facility
17 Narrows. Cube Yadkin rejected this offer.

18 On September 25th, 2017, Duke proposed to
19 purchase the output from all three QFs, for a total of
20 108 MW for a five-year term, with pricing based on
21 DEC's avoided cost, \$39 a MWh on peak, \$32 a MW off
22 peak, with an average price of \$34 a MWh using the
23 regulatory methodology in place at that time. Cube
24 Yadkin rejected this offer as well. Cube Yadkin also

1 made two proposals to Duke. Duke rejected both offers
2 because the pricing was significantly above Duke's
3 avoided cost and exceeded current market prices.
4 Also, the term was not consistent with the limits
5 contained in North Carolina House Bill 589, and Duke
6 was granted no dispatch rights or environmental
7 attributes.

8 In 2018, DEP issued an RFP to solicit
9 capacity and energy to meet its future capacity needs.
10 Cube Yadkin was invited to participate and did submit
11 a proposal. DEP executed five PPAs to secure
12 approximately 1,800 MW of capacity and energy.
13 However, Cube Yadkin's proposal was not accepted
14 because it was not competitive.
15 Subsequently, both DEP and DEC executed PURPA
16 as-available agreements with Cube Yadkin in April and
17 May of 2019 respectively.

18 In response to Mr. Collins' statements about
19 Alcoa's approval and authorization of PPA negotiations
20 prior to Cube Yadkin's purchase of the facilities, I
21 respectfully disagree. Even if Alcoa might have
22 approved negotiations, Alcoa never contacted Duke
23 about PURPA sales to the Companies. And even if Cube
24 Yadkin were authorized to negotiate on behalf of

1 Alcoa, they could not have made any commitment to sell
2 output from the Alcoa-owned assets. Furthermore, Duke
3 did not draw out the negotiations with Cube Yadkin.

4 A detailed review of the timeline clearly
5 shows that Duke was responsive and that any long
6 pauses were caused by Cube Yadkin, which basically
7 disappeared for the five months during the critical
8 time October 2016 through March of 2017. I'm not
9 aware what caused the delay in Cube Yadkin's purchase
10 of the facilities or the financial details of the
11 purchases. However, Cube Yadkin's unrealistic and
12 outdated demands for excessive pricing did not help
13 move the process along.

14 This concludes the summary of my prefiled
15 direct testimony.

16 Q Thank you, Mr. Keen. Mr. Snider,
17 would you state your name and address for the record,
18 please?

19 A (Snider) Yes, sir. My name is
20 Glen Snider. I'm employed at 526 South Church Street,
21 Charlotte, North Carolina, 28202.

22 Q And what is your position with
23 Duke Energy?

24 A I am Director of Integrated

1 Resource Planning and Analytics for the Carolinas
2 utilities.

3 Q And I believe you've testified
4 before this Commission on many occasions before; is
5 that correct?

6 A Yes, I have. It's good to see the
7 Commissioners again, albeit in virtual format.

8 Q So Mr. Snider, did you prepare and
9 cause to be prefiled on your behalf direct testimony
10 consisting of 10 pages?

11 A Yes, I did.

12 Q Do you have any additions or
13 corrections to that testimony?

14 A I do not.

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

17 A Yes, they would.

18 Q And do you have a summary of your
19 prefiled testimony?

20 A I do.

21 Q Would you proceed to give that to
22 the Commission at this time?

23 A Yes. The purpose of my direct
24 testimony is to respond to the contention of Cube

1 Yadkin's witness John R. Collins that Cube Yadkin is
2 entitled to a waiver of the Commission's requirements
3 to establish a legally enforceable obligation, or LEO.
4 My testimony focuses on the development of the
5 Commission's LEO requirements and how those
6 requirements are significant in this case and
7 important for the efficient administration of the LEO
8 process in future cases.

9 First, I explain what a LEO is and how it
10 works. Under the Public Utility Regulatory Policy Act
11 of 1978, or PURPA, a qualifying facility, or QF, has
12 the unconditional right to choose whether to sell its
13 power as available, or pursuant to a LEO at a
14 forecasted avoided cost rate determined at the QF's
15 option either at the time of delivery or at the time
16 the obligation is incurred.

17 Regulations of the Federal Energy Regulatory
18 Commission, or the FERC, set forth in 18 CFR 292.304,
19 subsection (d)(2), are intended to protect the QF's
20 rights to sell power to the Utility under PURPA where
21 the QF and the Utility cannot agree to the form,
22 terms, or rates, a Purchase Power Agreement, or PPA.
23 Put simply, FERC's LEO concept provides that the QF
24 and the Utility can either negotiate and enter into a

1 PPA, or if the Utility refuses to enter into a
2 contract, the QF can seek the assistance of the state
3 regulatory authority to bind the Utility to purchase
4 power from the QF by establishing a noncontractual,
5 but still binding, LEO prior to the execution of a
6 PPA.

7 If a QF establishes a LEO in North Carolina,
8 there's a bifurcated approach to determining the
9 applicable avoided cost rates. Generally, smaller QFs
10 may qualify for the standard rate which is established
11 by the Commission every two years. Larger QFs that do
12 not qualify for the standard rates have their avoided
13 cost rates calculated on a regular basis to reflect
14 economic and regulatory conditions that exist at the
15 time those calculations are made. As a general rule,
16 a QF in North Carolina chooses the avoided cost rate
17 in effect at the time the LEO is established.

18 Next, I describe how the Commission
19 established LEO requirements. Prior to 2015, the
20 Commission's policy provided that a LEO is established
21 when a QF has 1), obtained a Certificate of Public
22 Convenience and Necessity, CPCN, or filed a Report of
23 Proposed Construction, if applicable; and 2),
24 indicated to the relevant North Carolina Utility that

1 is seeking to commit itself to sell the output of that
2 facility.

3 The second prong was too vague to be
4 implemented fairly for all QFs, and there was not
5 enough guidance on what it meant for the QF to commit
6 itself to sell its output. Complaints and request for
7 arbitration resulted and costly litigation and
8 unnecessary utilization of resources by the Commission
9 and the parties, and ultimately led the Commission to
10 establish new LEO requirements effective January 16th,
11 2016, which include three prongs, 1),
12 self-certification as a QF with the FERC, 2), making a
13 commitment to sell the facility's output to a Utility
14 pursuant to PURPA via the use of approved Notice of
15 Commitment Form, and 3), receipt of a Public
16 Convenience and Necessity for construction of a
17 facility.

18 Finally, I discuss how the LEO requirements
19 impact the Companies' customers. In the final
20 analysis, the Companies' customers pay the avoided
21 cost rates that the Companies pay to the QFs. The LEO
22 helps align the avoided cost rates that our customers
23 ultimately pay to the QFs with the Companies' current
24 avoided cost. Allowing QFs to establish LEOs that do

1 not reflect current avoided cost places the risk and
2 burden of overpayment on our customers. This risk is
3 exacerbated if the QF has the latitude to
4 retrospectively select a LEO date that provides the QF
5 the highest possible revenues at the expense of our
6 customers. The Commission has attempted to mitigate
7 this risk through the LEO requirements.

8 This concludes the summary of my prefiled
9 rebuttal testimony.

10 MR. KAYLOR: Mr. Chairman, at this time I
11 would move the direct testimony of Mr. Keen and Mr.
12 Snider into the record and ask that their exhibits be
13 marked as identified.

14 COMMISSIONER CLODFELTER: Unless there is
15 objection?

16 (No response.)

17 COMMISSIONER CLODFELTER: And hearing no
18 objection, the motion is granted.

19 (Whereupon, the prefiled
20 testimony of Michael Keen was
21 copied into the record as if
22 given orally from the stand.)

23 (Keen Exhibits 1 through 4 were
24 identified as premarked.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1177
DOCKET NO. E-7, SUB 1172

In the Matter of Cube Yadkin Generation, LLC,)
Complainant)
v.)
Duke Energy Progress, LLC, and Duke Energy)
Carolinas, LLC, Respondents)

**DIRECT TESTIMONY OF
MICHAEL KEEN ON BEHALF
OF DUKE ENERGY
CAROLINAS, LLC AND DUKE
ENERGY PROGRESS, LLC**

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

2 **A.** My name is Michael Keen, and my business address is 299 1st Ave. N., St.
3 Petersburg, Florida 33701.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 **A.** I am employed by Duke Energy Business Services (“DEBS”) as a Business
6 Development Manager. As an employee of DEBS, I allocate my time among Duke
7 Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”,
8 collectively, “Duke” or the “Companies”) and Duke Energy Florida, LLC (“DEF”).
9 I negotiate and structure new PURPA and non-PURPA purchase power agreements
10 for Duke’s regulated utilities. In addition, I manage an existing purchase power
11 portfolio of approximately 4,000 MW.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
13 **EXPERIENCE.**

14 **A.** In 1987 I received a Bachelor of Science in Mechanical Engineering from
15 University of South Florida. In 1993, I received a Master’s in Business from
16 Florida Institute of Technology. I joined Florida Power Corporation as a
17 cooperative education student in 1984. Upon graduation in 1987, I became a full-
18 time employee of Florida Power. I worked in the power plant side of the business
19 until 1996. In 1996 I became an energy trader for Florida Power. In 1998 I was
20 promoted to business development manager. I have been negotiating new PURPA
21 and non-PURPA power purchase agreements and managing existing agreements in
22 the southeast and Florida for the last 22 years.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
2 **CAROLINA UTILITIES COMMISSION (“COMMISSION”)?**

3 **A.** No.

4 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY OTHER STATE**
5 **REGULATORY PROCEEDINGS?**

6 **A.** No.

7 **Q. MR. KEEN, WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
8 **PROCEEDING?**

9 **A.** The purpose of my testimony is to discuss the Companies’ position in this case and
10 respond to the testimony of Cube Yadkin Generation, LLC’s (“Cube Yadkin”)
11 witness John R. Collins. I should also note that the ownership of Cube Yadkin has
12 changed since the assets were initially purchased from Alcoa and that the name has
13 changed from Cube Hydro to Cube Yadkin. For ease of reference, I will refer to
14 the company as Cube Yadkin.

15 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR DIRECT**
16 **TESTIMONY?**

17 **A.** Yes. Exhibit 1 is a copy of an email that Cube Yadkin attached to its initial
18 Complaint that is from John Collins to Regis Repko. Exhibit 2 is a letter from me
19 to Mr. Collins, dated September 21, 2016, which was also attached to the initial
20 Complaint. Exhibit 3 is an undated letter from Mr. Collins to me which I received
21 on October 11, 2016. Exhibit 4 is a letter from me to Mr. Collins, dated October

1 14, 2016. These exhibits were also included in Cube Yadkin's initial complaint to
2 the Commission, but I am attaching them here for the Commission's convenience.

3 **Q. MR. KEEN, PLEASE SUMMARIZE THE COMPANIES' POSITION.**

4 **A.** A detailed review of the facts will show that the Companies acted in good faith to
5 negotiate with Cube Yadkin in the interests of our customers and consistent with
6 the Commission's PURPA policies and orders. Put simply, Cube Yadkin
7 demanded, and still demands, to be paid prices for its capacity and energy that are
8 inconsistent with the Commission's policies and far in excess of what is just and
9 reasonable for our customers to pay. Cube Yadkin's self-serving assertion that it
10 is entitled to a waiver of the Commission's mandatory requirements for establishing
11 a legally enforceable obligation ("LEO") has no merit. Cube Yadkin claims that it
12 established a LEO months before it even finalized the purchase of the facilities in
13 question so that the Companies, and their customers, will pay them avoided cost
14 rates in effect from more than four years ago. It is an attempt to evade application
15 of the Commission's updated determination of the Companies' avoided cost rates
16 under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and to impose
17 excessive, out-of-date avoided cost rates on our Companies' customers, such as
18 residential customers and small businesses, who ultimately will pay these costs.

19 **Q. MR. KEEN, CAN YOU PLEASE DESCRIBE YOUR INITIAL**
20 **INVOLVEMENT WITH CUBE YADKIN?**

21 **A.** Yes. On August 25, 2016, I was assigned commercial responsibility for this project.
22 Cube Yadkin had reached out to one of our executives, Mr. Regis Repko, on or

1 about August 23, 2016, to let him know that Cube Yadkin intended to purchase the
2 four hydroelectric facilities along the Yadkin River – High Rock, Tuckertown,
3 Falls, and Narrows - from Alcoa Power Generating Inc. (“Yadkin Facilities”).

4 **Q. WAS THIS TYPICAL OF THE WAY THAT YOU ARE ASSIGNED**
5 **COMMERCIAL RESPONSIBILITY FOR A PROJECT OF THIS TYPE?**

6 **A.** No. it is not. As a general rule, I do not discuss matters of this type with anyone
7 other than the owner of the facilities because we do not want to provide any
8 information that might impact whether the assets are ultimately purchased.
9 However, executives of Duke had established relationships with I-Squared Capital,
10 the then owners of Cube Yadkin, and Cube Yadkin had contacted our executives to
11 discuss the possible acquisition of the Yadkin hydroelectric assets.

12 **Q. HOW WAS THE INITIAL CONTACT MADE WITH THE COMPANIES**
13 **BY CUBE YADKIN?**

14 **A.** I have since seen the email that Mr. Collins sent to Mr. Repko, which was attached
15 to Cube Yadkin’s initial complaint as Exhibit 1 and to Mr. Collins’s direct
16 testimony as Exhibit 5. In it, Mr. Collins states to Mr. Repko that Cube Yadkin
17 was purchasing the Yadkin Facilities, and had plans to register three of them – High
18 Rock, Tuckertown, and Falls – as qualifying facilities (“QFs”). The email then
19 presents a couple of options for future consideration. The email stated that Mr.
20 Collins would like to have further discussions with Duke regarding (i) longer-term
21 QF contracts for the three smaller Facilities, (ii) as well as further discussions about

1 the possibility of a long-term power purchase agreement (“PPA”) arrangement for
2 all *four* of the Facilities, including the Narrows facility. The Narrows facility, at
3 approximately 119 megawatts (“MW”), exceeds the 80 MW capacity limit to be a
4 QF; therefore, it is not eligible for a long-term PPA under PURPA. In his email,
5 Mr. Collins asked who he could contact to begin discussions related to long-term
6 PPAs for the Yadkin Facilities. I ultimately became Mr. Collins’s contact at Duke
7 for those discussions.

8 **Q. DID YOU THEN DISCUSS WITH MR. COLLINS THE POSSIBILITY OF**
9 **CUBE YADKIN AND DUKE ENTERING INTO A LONG-TERM PPA FOR**
10 **THE PURCHASE OF ENERGY AND CAPACITY FROM THE**
11 **FACILITIES?**

12 **A.** Yes, I did. On September 16, 2016, I had a conversation with Mr. Collins, in which
13 I provided to him DEC’s and DEP’s positions in response to his inquiry soliciting
14 Duke’s interest in purchasing the output of the Yadkin Facilities. This conversation
15 is summarized in a letter dated September 21, 2016 from me to Mr. Collins (Exhibit
16 2). As I noted at the time, Alcoa, and not Cube Yadkin, owned the Facilities. Cube
17 Yadkin did not own or operate the Facilities in September 2016. Mr. Collins had
18 informed me that Cube Yadkin expected to close on the Facilities around November
19 1, 2016. I informed Mr. Collins that Duke did not have any need for energy and
20 capacity at that time, but if need arose in the future, Duke would likely issue a
21 request for proposals, and Cube Yadkin could submit a bid. This option could have
22 involved all four of the facilities. However, I further informed him that, to the

1 extent that Cube Yadkin approached Duke under PURPA, Duke would likely have
2 no obligation to purchase the energy or capacity from the Facilities that may be
3 certified as QFs (Exhibit 2).

4 **Q. WHY DID YOU NOT BEGIN TO NEGOTIATE A PPA WITH MR.**
5 **COLLINS AT THAT TIME?**

6 **A.** As previously noted, in my role at Duke, I do not negotiate PPAs with parties that
7 do not yet own the generating facilities in question. It would not be appropriate for
8 the Companies to influence ongoing purchase negotiations between a buyer and
9 seller before a sale closes by offering terms and pricing for a PPA that could impact
10 those negotiations. In other words, Duke does not want to get in the middle of, or
11 otherwise influence, ongoing purchase negotiations between a buyer and a seller.
12 If the owner of these assets had expressed an interest in entering a PPA with Duke
13 under PURPA, we would have entered into negotiations with them. The first step
14 in this process is for the owner to submit a Notice of Commitment form, and this
15 never happened.

16 **Q. AT THE TIME YOU SENT THIS LETTER TO MR. COLLINS, DID CUBE**
17 **YADKIN OWN THE FACILITIES?**

18 **A.** No, Cube Yadkin did not own the Facilities. Mr. Collins projected closing on the
19 purchase on November 1, 2016. However, the purchase of the four hydroelectric
20 facilities was not completed until February 1, 2017. Cube Yadkin never offered
21 an explanation on what caused this delay.

1 **Q. AT THE TIME YOU SENT THIS LETTER TO MR. COLLINS, WERE ANY**
2 **OF THE FACILITIES CERTIFIED AS QFS?**

3 **A.** They were not. Mr. Collins had indicated that Cube Yadkin was considering
4 certifying the three smaller units as QFs, but Cube Yadkin had not done so at that
5 time.

6 **Q. DID YOU TELL MR. COLLINS THAT DUKE HAD NO OBLIGATION TO**
7 **PURCHASE FROM CUBE YADKIN UNDER PURPA?**

8 **A.** In my September 21, 2016 letter to Mr. Collins, I informed him that if the smaller
9 facilities were certified as QFs, Duke would likely have no obligation to purchase
10 the capacity or energy from them under PURPA. This was because Alcoa still
11 owned the facilities and because the output of the Yadkin facilities was being sold
12 on the open market and the Companies might qualify for an exemption under
13 PURPA as to the smaller facilities.

14 **Q. WHY DID YOU INFORM MR. COLLINS THAT DUKE WOULD LIKELY**
15 **HAVE NO OBLIGATION TO PURCHASE ENERGY AND CAPACITY**
16 **FROM THE FACILITIES IF THEY WERE CERTIFIED AS QFS?**

17 **A.** Out of an abundance of caution and because Cube Yadkin did not own the facilities,
18 I wanted to inform Cube Yadkin in advance of any future discussions that Duke
19 believed that an exemption may have applied to its potential purchase of energy
20 and capacity from Cube Yadkin. I wanted to make sure that Cube Yadkin had time
21 to review this potential issue independently prior to their ownership of the Yadkin
22 facilities.

1 **Q. IN YOUR LETTER DATED SEPTEMBER 21, 2016 TO MR. COLLINS,**
2 **YOU STATED THAT IF DUKE HAD A CAPACITY NEED IT WOULD**
3 **INVITE CUBE YADKIN TO PARTICIPATE IN THE RFP. WAS AN RFP**
4 **ISSUED, AND DID CUBE YADKIN PARTICIPATE?**

5 **A.** Yes, in 2018 DEP issued an RFP to solicit capacity and energy to meet DEP's future
6 capacity needs. Cube Yadkin was invited to participate and did submit a proposal.
7 DEP executed five PPAs to secure approximately 1,800 MW of capacity and
8 energy. However, Cube Yadkin's proposal was not accepted because it was not
9 competitive.

10 **Q. AFTER YOU TOLD CUBE YADKIN ABOUT THE POTENTIAL**
11 **EXEMPTION, DID CUBE YADKIN CONTINUE ITS ATTEMPT TO**
12 **DISCUSS SELLING ENERGY AND CAPACITY FROM THE FACILITIES**
13 **TO DUKE?**

14 **A.** Yes. On October 11, 2016 I received an undated letter from Mr. Collins in response
15 to my September 21, 2016 letter. This letter was attached to the Complaint and is
16 Exhibit 3 hereto. In that letter, Mr. Collins indicated that Alcoa had certified the
17 three smaller Facilities as QFs. Mr. Collins also confirmed that Cube Yadkin did
18 not own the Facilities and stated that the "acquisition is anticipated to occur before
19 the end of 2016." This is one of the problems with negotiating with prospective
20 buyers. On September 16, 2016 Mr. Collins told me they expected to close on
21 November 1, 2016. Just a few weeks later he informed me that they expect to close
22 by the end of the year. From our perspective, not only did we not know when they

1 were going to own the assets, we did not know if they were going to own the assets.
2 In all likelihood, Mr. Collins did not know when or if they were going to own the
3 assets. As previously noted, the purchase was not completed until February 1,
4 2017.

5 **Q. DO YOU KNOW WHY CUBE YADKIN'S PURCHASE OF THE YADKIN**
6 **ASSETS WAS DELAYED FROM NOVEMBER 1, 2016 TO FEBRUARY 1,**
7 **2017?**

8 **A.** No, I do not, and we never received an explanation from Cube Yadkin.

9 **Q. WERE THERE ANY SIGNIFICANT CHANGES TO NORTH**
10 **CAROLINA'S CALCULATIONS OF AVOIDED COSTS DURING THIS**
11 **TIMEFRAME?**

12 Yes, on or about November 16, 2016 Duke filed the Joint Initial Statement and
13 Proposed Standard Avoided Cost Rate Tariffs.

14 **Q. DID MR. COLLINS MAKE ANY OTHER RECOMMENDATIONS IN HIS**
15 **UNDATED LETTER TO YOU?**

16 **A.** Yes. Although Cube Yadkin did not yet own the facilities, Mr. Collins
17 recommended meeting to discuss the process for making sales from these projects
18 to Duke pursuant to PURPA, noting that Duke had not petitioned to be relieved of
19 the mandatory purchase obligation to purchase any output of energy or capacity
20 from the QFs under PURPA. He also copied Dhiaa M. Jamil and Kristina Johnson.

21 **Q. WHO IS DHIAA M. JAMIL?**

1 A. Mr. Jamil is the Executive Vice President and Chief Operating Officer of Duke
2 Energy Corporation.

3 Q. **DID YOU WORK WITH MR. JAMIL IN DEALING WITH CUBE**
4 **YADKIN?**

5 A. No, I did not. However, during this period, I was aware that Cube Yadkin would
6 frequently reach out to highly placed executives that worked at Duke. At this time,
7 as I previously discussed, Duke had been involved with a significant business
8 transaction with I-Squared Capital, the principal owner of Cube Yadkin. Because
9 of these executive contacts, I continued communications with Cube Yadkin
10 although it was contrary to my usual policy of not communicating with anyone that
11 did not own the facilities that were the subject of the discussions.

12 Q. **THIS LETTER FROM MR. COLLINS REFERS TO FERC'S**
13 **REGULATIONS SPECIFYING THAT A QF SHALL HAVE THE OPTION**
14 **OF MAKING SALES TO AN ELECTRIC UTILITY PURSUANT TO A**
15 **LEGALLY ENFORCEABLE OBLIGATION. CAN YOU EXPLAIN WHAT**
16 **A LEGALLY ENFORCEABLE OBLIGATION OR LEO IS?**

17 A. Yes, however, I should note that Witness Glen Snider is also testifying in this
18 proceeding and will address the specific policies adopted by this Commission to
19 establish a LEO. Nonetheless, it is my responsibility to assure that, prior to
20 beginning extensive discussions, any party seeking to provide capacity or energy
21 under PURPA actually own the facilities and has established a LEO. The date that
22 the LEO is established is important because it determines what avoided cost rates

1 will be paid to the QF. Due to the size of the Cube Yadkin facilities, Cube Yadkin
2 would not be eligible for the standard tariff offer. Duke will calculate the avoided
3 cost rates based on when the QF establishes the LEO. Avoided cost rates are not
4 frozen in time – they are updated every two years for smaller QFs and monthly for
5 larger ones, like Cube Yadkin, to reflect changing economic and regulatory
6 circumstances.

7 **Q. PLEASE EXPLAIN THE REQUIREMENTS THAT A DEVELOPER OR**
8 **OWNER OF A GENERATING FACILITY MUST MEET TO ESTABLISH**
9 **A LEO IN NORTH CAROLINA.**

10 **A.** Again, Mr. Snider is testifying about the details of the North Carolina LEO
11 requirements but, for purposes of my role at Duke, the most important requirement
12 with which I am familiar is that the developer or owner of a generator submit a
13 Notice of Commitment form to the Companies to indicate the commitment to sell
14 100 percent of their output to the Companies under PURPA. Once the Companies
15 receive that form, then we can calculate the appropriate avoided cost rates in effect
16 at that time and lock those cost rates in for the duration of a PPA.

17 **Q. DID CUBE YADKIN SUBMIT A NOTICE OF COMMITMENT FORM TO**
18 **THE COMPANIES PRIOR TO PURCHASING THE FACILITIES IN**
19 **FEBRUARY 2017?**

20 **A.** No, it did not. Cube Yadkin has not, to this day, ever submitted a Notice of
21 Commitment form.

1 **Q. ARE YOU AWARE THAT MR. COLLINS HAS TESTIFIED THAT IT**
2 **WOULD BE IMPOSSIBLE FOR CUBE YADKIN TO COMPLETE A NOC**
3 **FORM?**

4 **A.** Yes, I am. However, with his thirty (30) years of experience, I am quite certain Mr.
5 Collins could figure out how to complete the five-page form. I would have helped
6 him with it if he had only asked. These forms are completed by our small
7 hydroelectrics all the time who are not afforded the luxury of being represented by
8 some of the most experienced energy attorneys in North Carolina. The reason Mr.
9 Collins could not properly complete the form is because Cube Yadkin was not the
10 owner at that time in which he wanted to establish a LEO. While Cube Yadkin
11 contends that part of the NOC form did not apply to them, it is unreasonable to
12 conclude that a sophisticated company like Cube Yadkin and an experienced
13 employee like Mr. Collins with access to legal expertise, would have reached the
14 default position of just not submitting anything. It should be noted that we require
15 the NOC form from all potential PURPA suppliers. We cannot complete the
16 required analysis until we receive this form. It would be unfair and discriminatory
17 to require some suppliers to submit the NOC forms and not require it from others.

18 **Q. CAN A PARTY THAT DOES NOT OWN GENERATING FACILITIES**
19 **COMMIT TO SELL 100 PERCENT OF THE OUTPUT TO THE**
20 **COMPANIES?**

1 **A.** No. Duke only accepts Notice of Commitment forms from the owner of the assets.
2 It is not reasonable to conclude that any entity that does not own a facility can
3 commit to sell the output of that facility.

4 **Q. WHAT ACTION DID YOU TAKE, IF ANY, AFTER YOU RECEIVED THE**
5 **UNDATED LETTER FROM JOHN COLLINS ON OCTOBER 11, 2016?**

6 **A.** I sent Mr. Collins a letter on October 14, 2016 in which I reviewed our previous
7 stated positions and confirmed that Cube Yadkin did not own the Yadkin facilities.
8 In addition, I stated that Duke would be glad to meet with Cube Yadkin to discuss
9 a PURPA transaction once they owned the facilities. This letter is attached as
10 Exhibit 4.

11 **Q. WHAT WAS CUBE YADKIN'S RESPONSE TO YOUR OCTOBER 14, 2016**
12 **LETTER?**

13 I received no response from Mr. Collins. In fact, I did not hear from Cube Yadkin
14 again for 5 months, until March of the following year.

15 **Q. DID DUKE NEGOTIATE IN GOOD FAITH WITH CUBE YADKIN?**

16 **A.** Yes. After Cube Yadkin had closed on the purchase in February 2017, Duke
17 provided firm proposals to Cube Yadkin on two different occasions. One offer was
18 based on market pricing and the other on Duke's avoided costs. In addition, Cube
19 Yadkin had unprecedented access to Duke leadership throughout this process
20 because of Duke's previous relationship with the owners of Cube Yadkin and the
21 contact with the Companies' executives. Indeed, Cube Yadkin's senior
22 management met with the entire Duke team in our Raleigh offices. In addition, as

1 previously stated, Cube Yadkin was invited to participate in DEP's 2018 Market
2 Solicitation.

3 **Q. PLEASE DESCRIBE DUKE'S FIRST OFFER.**

4 **A.** The first proposal was provided to Cube Yadkin on August 10, 2017. This was a
5 two-year energy only transaction. Duke agreed to purchase the full output (~200
6 MW) from Cube Yadkin including the non-PURPA facility Narrows. The energy
7 pricing was based on a detailed analysis of the energy market at that time. This
8 offer was rejected by Cube Yadkin.

9 **Q. PLEASE DESCRIBE DUKE'S SECOND OFFER**

10 **A.** Duke's second offer was presented to Cube Yadkin on September 25, 2017. This
11 offer was based on DEC's avoided costs. These costs were calculated on a non-
12 discriminatory basis using the most current avoided costs for DEC and based on
13 the regulatory methodology in-place at that time. This offer was for the output for
14 all three QFs for a total of 108 MW and included a five-year term. The pricing was
15 \$39/MWh on-peak and \$32/MWh off-peak with an average price of \$34/MWh.
16 This offer was rejected by Cube Yadkin.

17 **Q. DID CUBE YADKIN PROVIDE DUKE WITH ANY OFFERS?**

18 **A.** Yes. Cube Yadkin provided proposals to Duke on two different occasions.

19 **Q. PLEASE DESCRIBE CUBE YADKIN'S FIRST OFFER.**

20

1 **A.** This offer was received by Duke on September 5, 2017. The offer was for the full
2 output for all three QFs and the non-PURPA Narrows facility for a total of 215
3 MW. The term was for 15 years. The price was ~~[BEGIN CONFIDENTIAL]~~
4 \$59.50/MWh ~~[END CONFIDENTIAL]~~ escalating as much as 3% per year. This
5 offer was rejected by Duke because the pricing was **significantly** above Duke's
6 avoided costs and exceeded current market prices, the term was not consistent with
7 the limits contained in North Carolina House Bill 589 ("HB589"), and Duke was
8 granted no dispatch rights or any environmental attributes.

9 **Q. PLEASE DESCRIBE CUBE YADKIN'S SECOND OFFER.**

10 **A.** Cube Yadkin's second offer was received by Duke on January 3, 2018. This offer
11 was similar to Cube Yadkin's first offer. The offer was for the full output of all
12 three QFs and the non-PURPA Narrows facility for a total of 215 MW. The term
13 was for 10 years. The price was ~~[BEGIN CONFIDENTIAL]~~ \$47.49/MWh ~~[END~~
14 **CONFIDENTIAL]** escalating at 3% per year. Again, this offer was rejected by
15 Duke because the pricing was **significantly** above Duke's avoided costs and
16 exceeded current market prices, the term was not consistent with the limits
17 contained in HB589, and Duke was granted no dispatch rights or any environmental
18 attributes.

19 **Q. DOES DUKE CURRENTLY HAVE ANY PURPA AGREEMENTS WITH**
20 **CUBE YADKIN?**

1 A. Yes. DEP executed a PURPA As-Available Agreement with Cube Yadkin on or
2 about April 24, 2019. DEC executed a PURPA As-Available Agreement with Cube
3 Yadkin on May 16, 2019.

4 **Q. ARE YOU AWARE THAT MR. COLLINS HAS TESTIFIED THAT THE**
5 **RIGHTFUL OWNER OF THE YADKIN ASSETS, ALCOA, “WAS AWARE**
6 **OF, INVOLVED IN, AND APPROVED” THE PPA DISCUSSIONS**
7 **BETWEEN DUKE AND CUBE YADKIN BEFORE THEY OWNED THESE**
8 **ASSETS?**

9 A. As the individual working with Cube Yadkin on this project for more than four
10 years, this is the first I have heard of this. Even if this were true, Alcoa owned the
11 assets and, while Alcoa might have approved the discussions, Alcoa never
12 contacted Duke about PURPA sales to the Companies.

13 **Q. ARE YOU AWARE THAT MR. COLLINS HAS TESTIFIED THAT DUKE**
14 **WAS AWARE THAT ALCOA HAD FULLY AUTHORIZED CUBE**
15 **YADKIN TO NEGOTIATE PPAS ON THEIR BEHALF PRIOR TO CUBE**
16 **YADKIN’S OWNERSHIP?**

17 A. As the individual responsible for negotiating PPAs for Duke for these assets, I can
18 tell you this is not an accurate statement and is false. Even if Cube Yadkin were
19 authorized to negotiate on behalf of Alcoa, it could not have made any commitment
20 to sell the Alcoa-owned assets.

21 **Q. ARE YOU AWARE THAT MR. COLLINS HAS TESTIFIED THAT DUKE**
22 **‘DREW OUT THE NEGOTIATIONS?’**

1 **A.** Yes, and that statement is simply not true. A detailed review of the timeline clearly
2 shows that Duke was responsive and that any long pauses in the timeline were
3 caused Cube Yadkin. The reason these negotiations went on for so long was that
4 Cube Yadkin's purchase of these assets took much longer than they said it would.
5 They also basically disappeared for five months during a critical time in these
6 negotiations (October 2016 through March 2017). I am not aware of what caused
7 the delay in purchasing the facilities or the financial details of the purchase;
8 however, Cube Yadkin's unrealistic and outdated demands for excessive pricing
9 did not help move the process along.

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

11 **A.** Yes.

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(Whereupon, the prefiled
testimony of Glen Snider was
copied into the record as if
given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1177

DOCKET NO. E-7, SUB 1172

In the Matter of)
Cube Yadkin Generation, LLC, Complainant)

v.)

Duke Energy Progress, LLC, and Duke)
Energy Carolinas, LLC, Respondents)

**DIRECT TESTIMONY OF
GLEN A. SNIDER
ON BEHALF OF DUKE ENERGY
CAROLINAS, LLC AND DUKE
ENERGY PROGRESS, LLC**

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

2 **A.** My name is Glen A. Snider. My business address is 400 South Tryon Street,
3 Charlotte, North Carolina 28202.

4 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES IN YOUR**
5 **POSITION WITH DEC AND DEP.**

6 **A.** I am responsible for the development of the Integrated Resource Plans (“IRPs”)
7 for both Duke Energy Carolinas (“DEC”) and Duke Energy Progress (“DEP”),
8 (collectively, the “Companies”). In addition to the production of the IRPs, I
9 have responsibility for overseeing the analytic functions related to resource
10 planning for the Carolinas region. Examples of such analytic functions include
11 unit retirement analysis, developing the analytical support for certificate of
12 public convenience and necessity (“CPCN”) filings for new generation, and
13 production of analysis required to support the Companies’ avoided cost
14 calculations that are used in the biennial avoided cost rate proceedings.

15 **Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL AND**
16 **PROFESSIONAL EXPERIENCE.**

17 **A.** My educational background includes a Bachelor of Science in Mathematics and
18 a Bachelor of Science in Economics from Illinois State University. With
19 respect to professional experience, I have been in the utility industry for 30
20 years. I started as an associate analyst with the Illinois Department of Energy
21 and Natural Resources, responsible for assisting in the review of Illinois
22 utilities’ integrated resource plans. In 1992, I accepted a planning analyst
23 position with Florida Power Corporation and for the past 20 years have held

1 various management positions within the utility industry. These positions have
2 included managing the Risk Analytics group for Progress Ventures and the
3 Wholesale Transaction Structuring group for ArcLight Energy Marketing.
4 Prior to my current role and immediately prior to the merger of Duke Energy
5 and Progress Energy Corporation, I was Manager of Resource Planning for
6 Progress Energy Carolinas.

7 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

8 **A.** Yes. I have testified on many occasions, including the 2009 Integrated Resource
9 Plan proceeding in Docket No. E-100, Sub 124 and all of the biennial avoided
10 cost proceedings from the 2012, including the biennial avoided cost proceeding
11 in Docket No. E-100, Sub 136, the 2014 biennial avoided cost proceeding in
12 Docket No. E-100, Sub 140, the 2016 biennial avoided cost proceeding in
13 Docket No. E-100, Sub 148, and the 2018 avoided cost proceeding in Docket
14 No. E-100, Sub 158.

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

16 **A.** The purpose of my testimony is to respond to the testimony of Cube Yadkin's
17 witness, Mr. Collins in which he contends that Cube Yadkin is entitled to a
18 waiver of this Commission's requirements to establish a Legally Enforceable
19 Obligation or LEO.

20 **Q. WERE YOU INVOLVED IN THE DISCUSSIONS WITH CUBE**
21 **YADKIN IN 2016-2018?**

22 **A.** I provided some support to Michael Keen and others with respect to the
23 discussions with Cube Yadkin, but Mr. Keen, who is also filing testimony in

1 this matter at the Commission, led the discussions with Cube Yadkin. My
2 testimony focuses more on the development of the Commission's LEO
3 requirements and how those requirements are significant in this case and
4 important for the efficient administration of the LEO process in future cases. I
5 have been directly involved in numerous avoided cost and other proceedings
6 that addressed LEOs and, most importantly, I was directly involved in the
7 avoided cost dockets where Commission articulated and updated its LEO
8 requirements.

9 **Q. MR. SNIDER, CAN YOU EXPLAIN WHAT A LEO IS AND HOW IT**
10 **WORKS?**

11 **A.** Yes. Under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), a
12 qualifying facilities ("QF") has the unconditional right to choose whether to sell
13 its power "as available" or pursuant to a LEO at a forecasted avoided cost rate
14 determined, at the QF's option, either at the time of delivery or at the time the
15 obligation is incurred. While I am not an attorney, it is my understanding that
16 the LEO concept was intended "to prevent a utility from circumventing the
17 requirement that provides capacity credit for an eligible qualifying facility
18 merely by refusing to enter into a contract with the qualifying facility."¹ FERC
19 has explained that the concept of a LEO recognizes that a QF may commit to
20 sell its electric output through execution of a contract or, "if the electric utility
21 refuses to sign a contract, the QF may seek state regulatory authority assistance

¹ *Final Rule Regarding the Implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 12224 (1980) ("Order No. 69").

1 to enforce the PURPA-imposed obligation on the electric utility to purchase
 2 from the QF, and a non-contractual, but still legally enforceable, obligation will
 3 be created pursuant to the state's implementation of PURPA.”² Thus, the
 4 unique non-contractual LEO concept created in FERC's regulations is intended
 5 to protect the QF's right to sell power to the utility under PURPA where the QF
 6 and the utility cannot agree to a form of PPA, the specified term of PPA, the
 7 avoided cost rates to be paid for the QF's power under the PPA or some other
 8 aspect of the contractual relationship between the QF and the utility.

9 Put simply, FERC's LEO concept set forth in 18 C.F.R. 292.304(d)(2)
 10 provides that the QF and the utility can either negotiate and enter into to a PPA
 11 or, if the utility refuses to enter into a contract, the QF can still bind the utility
 12 to purchase power from the QF by establishing a non-contractual, but still
 13 binding, LEO prior to executing a PPA.

14 **Q. IF A QF ESTABLISHES A LEO IN NORTH CAROLINA, WHAT DOES**
 15 **THAT MEAN WITH RESPECT TO WHAT AVOIDED COST RATES**
 16 **THAT QF MAY RECEIVE FROM THE COMPANIES?**

17 **A.** There is basically a bifurcated approach to determining the avoided cost rates
 18 that are applicable to a specific QF. Generally, some smaller QFs may qualify
 19 for the standard rate which is established by the Commission every two years.
 20 Larger QFs that do not qualify for standard rates have their avoided cost rates

² *Grouse Creek Wind Park, LLC*, 142 FERC ¶ 61, 187 at P 40 (2013) (citing *JD Wind I, LLC*, 129 FERC ¶ 61,148, at P 25 (2009)).

1 calculated on a regular basis to reflect economic and regulatory conditions that
2 exist at the time those calculations are made. As a general rule, the QF in North
3 Carolina chooses the avoided cost rate in effect at the time the LEO is
4 established. This likely occurs because natural gas prices have generally been
5 declining in recent years, and they are an important input in calculating avoided
6 cost rates. Using the LEO date as the effective date for determining avoided
7 costs also likely helps the QF to develop a current business case. In short, the
8 date the QF establishes a LEO ordinarily determines the avoided cost rates that
9 a QF receives from the Companies.

10 **Q. CAN YOU BRIEFLY DESCRIBE THE COMMISSION'S**
11 **ESTABLISHMENT OF LEO REQUIREMENTS?**

12 **A.** Yes. Prior to 2015, the Commission's policy provided that a LEO is established
13 when the QF has (1) obtained a certificate of public convenience and necessity
14 ("CPCN") (or filed a Report of Proposed Construction if applicable) and (2)
15 indicated to the relevant North Carolina utility that it is seeking to commit itself
16 to sell its output to that utility.

17 **Q. WAS THAT A SATISFACTORY ARRANGEMENT?**

18 **A.** No, not in my opinion. The second prong of those requirements was too vague
19 to be implemented fairly for all QFs, and there was not enough guidance on
20 what it meant for a QF to "commit itself" to sell its output. The second prong
21 was also confusing for utilities. I am aware that there had been complaints and
22 requests for arbitration filed at the Commission to determine at what point in
23 time a commitment had occurred. In some cases, the intent was communicated

1 verbally and in others, the Commission was required to sort through various
 2 events to determine if, and when, a binding commitment had been made. This
 3 resulted in costly litigation and the unnecessary utilization of resources by the
 4 Commission and the parties. Because of these issues, the Commission
 5 determined in its *Order Setting Avoided Cost Input Parameters*, in Docket No.
 6 E-100, Sub 140, issued December 31, 2014, that in the next phase of the avoided
 7 cost proceeding, it would address the creation of a simple form, to be completed
 8 by a QF seeking to sell its output to the utilities in order to establish that a
 9 particular date is the date of the LEO.

10 **Q. WHAT REASONS DID THE COMMISSION CITE IN SUPPORT OF**
 11 **ITS DECISION TO ADOPT THIS NOTICE OF COMMITMENT FORM**
 12 **TO DEMONSTRATE A QF'S COMMITMENT TO SELL?**

13 **A.** The Commission indicated that it adopted this Notice of Commitment Form to
 14 provide clarity and reduce the increasing number of complaints before the
 15 Commission pertaining to the establishment of a LEO.³ In so doing, the
 16 Commission expressly concluded that

17 a simple form clearly establishing a QF's commitment to sell its
 18 electric output to a utility to establish the notice of commitment to
 19 sell prong for the creation of a LEO would provide clarity to both
 20 QFs and the Utilities and would, therefore, reduce the number of
 21 disputes between the parties and the number of complaints brought
 22 before the Commission for adjudication as to when an LEO is
 23 established.⁴
 24

³ *Order Establishing Standard Rates and Terms and Conditions for Qualifying Facilities*, Docket No. E-100, Sub 140, issued December 17, 2015, at 51.

⁴*Id.*

1 **Q. DID THE COMMISSION APPROVE THE CONTENT OF THE FORM?**

2 **A.** Yes, it did. The Commission's Order in the second phase of Sub 140 discusses
3 the Commission's review of the contents of the Notice of Commitment form.
4 The Commission stated that the form that they reviewed contained the
5 information necessary to satisfy the second prong of the Commission's LEO
6 test – the commitment to sell – and that it was not unduly burdensome for the
7 QF to complete.⁵ Although some parties suggested that the use of the form
8 should be permissive and not mandatory, the Commission made use of the
9 Notice of Commitment form mandatory.⁶ The Commission ordered this
10 mandatory second prong of the new LEO requirements to begin 30 days after
11 the issuance of the Commission's Order.⁷ Therefore, the use of the Notice of
12 Commitment form became mandatory on January 16, 2016.

13 **Q. DO YOU AGREE WITH THE COMMISSION'S DECISION TO**
14 **REQUIRE THE FILING OF THE FORM TO BE MANDATORY?**

15 **A.** Yes, I do. The primary purpose of adopting the filing of the form to establish a
16 LEO was to eliminate uncertainty and the recurring disagreement that occurred
17 under the previous system. In effect, Cube Yadkin's request to waive the filing
18 of the form puts the Commission and the parties in the same position as they
19 were prior to the adoption of the new process.

⁵ *Id.*

⁶ *Id. at 51.*

⁷ *Id. at 52.*

1 **Q. IN ADDITION TO THE COMMITMENT TO SELL REQUIREMENT,**
2 **DID THE COMMISSION ADDRESS ANY OTHER LEO**
3 **REQUIREMENTS IN THIS ORDER?**

4 **A.** Yes. The Commission also noted that it had previously determined in a
5 Complaint proceeding involving Virginia Electric and Power Company, d/b/a
6 Dominion North Carolina Power that a developer was not required to obtain QF
7 status to satisfy the Commission's LEO test. The Commission no longer agreed
8 that this was appropriate and announced that, in order to "provide a standardized
9 and clearly stated method to establish an LEO," it would require "a developer
10 to have obtained QF status in order to establish a LEO" along with use of the
11 Notice of Commitment form.⁸

12 **Q. WHAT DID THE COMMISSION FINALLY CONCLUDE WITH**
13 **RESPECT TO THE REQUIREMENTS OF THE LEO TEST?**

14 **A.** The Commission concluded that the LEO test had three prongs. A developer
15 would be required to: (1) have self-certified with the FERC as a QF; (2) have
16 made a commitment to sell the facility's output to a utility pursuant to PURPA
17 via the use of the approved Notice of Commitment Form, and (3) have received
18 a CPCN for the construction of the facility.

19 **Q. MR. SNIDER, IN YOUR OPINION, HOW DOES THE LEO IMPACT**
20 **THE COMPANIES' CUSTOMERS?**

⁸ *Id.* at 52.

1 **A.** In the final analysis, the Companies' customers pay for the avoided cost rates
2 that the Companies pay the QFs. The LEO helps align the avoided cost rates
3 our customers ultimately pay to the QFs with the Companies' current avoided
4 costs. Allowing QFs to establish LEOs that do not reflect current avoided costs
5 places the risk and burden of overpayment on consumers. This risk is
6 exacerbated if the QF has the latitude to retrospectively select a LEO date that
7 provides the QF the highest possible revenues at the expense of customers. It
8 is my understanding that the Commission has attempted to mitigate this risk
9 through its LEO guidelines that have been developed in the manner I previously
10 described.

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

12 **A.** Yes, it does.

13

1 MR. KAYLOR: And the Panel is available for
2 cross examination.

3 COMMISSIONER CLODFELTER: All right. Thank
4 you, Mr. Kaylor. Mr. Kaylor, your audio was choppy a
5 little bit there. You might just want to next time
6 you speak, check it.

7 MR. KAYLOR: Will do. Thank you.

8 COMMISSIONER CLODFELTER: Okay. All right.
9 Who is going to be cross examining the Panel?

10 MR. DOWDY: I will, Commissioner Clodfelter.

11 COMMISSIONER CLODFELTER: Very good. Thank
12 you. You may proceed.

13 MR. DOWDY: Thank you.

14 CROSS EXAMINATION BY MR. DOWDY:

15 Q And good afternoon, gentlemen.
16 Thank you for appearing today. I'll do my best to
17 designate who I'm asking the question of.

18 If I could start with you, Mr. Keen. On
19 pages 13 and 14 of your prefiled testimony and again
20 in your summary, you stated that Duke only accepts NoC
21 Forms from a facility's owner; is that correct?

22 A (Keen) That's correct.

23 Q And so if Cube had submitted a NoC
24 Form in 2016, is it then fair to say that Duke would

1 not have treated it as a valid submission?

2 A That's true.

3 Q And, in fact, you testify on page
4 13 of your prefiled testimony that the -- in your
5 view, the real reason Cube could not complete the NoC
6 Form was that it was not the Owner at the time it
7 wished to establish a LEO; is that true?

8 A That's correct.

9 Q Now, if we could, let's look at
10 what has been marked or what we submitted as
11 Attachment 1 to our potential cross examination list,
12 and I'll ask that it be marked for identification
13 purposes as Exhibit 1.

14 COMMISSIONER CLODFELTER: All right. This
15 will be marked for identification as Duke Panel Cross
16 Examination Exhibit 1. Let's just call them all Duke
17 Panel and do them sequentially rather than worry about
18 whether they're with Mr. Snider or Mr. Keen. All
19 right?

20 MR. DOWDY: Yes. Yes. Thank you, sir.

21 COMMISSIONER CLODFELTER: All right. It'll
22 be marked for identification as Panel Cross
23 Examination Exhibit Number 1.

24 MR. DOWDY: Okay.

1 (Whereupon, Duke Panel Cross
2 Examination Exhibit Number 1 was
3 marked for identification.)

4 Q Okay. Would you let me know when
5 you have access to that, Mr. Keen?

6 A Is this the NoC Form?

7 Q Yes, sir.

8 A Yes. I do have access to that.

9 Q Okay. And so I take it, then,
10 that you do recognize what it is?

11 A I do recognize it, yes.

12 Q Okay. And is it Duke's NoC Form?

13 A It is Duke's NoC Form.

14 Q Okay.

15 A I will tell you that I think Mr.
16 Snider was planning to answer questions as it relates
17 to the NoC Form.

18 Q Okay. And in interest of time,
19 whoever has the answer, I am fine with that, so I'll
20 ask Mr. Snider, if you don't mind. Do you have access
21 to the exhibit?

22 A (Snider) Yes, I do.

23 Q Okay. Thank you. And do you
24 recognize it?

1 A I do.

2 Q Okay. And is it, in fact, Duke's
3 NoC Form?

4 A It is the NoC Form that Duke has
5 adopted per the Commission's Order, and I believe it
6 was Dominion that developed this NoC Form. We adopted
7 it per the Commission Order.

8 Q Okay. So --

9 A It's the NoC Form we use at Duke,
10 per the direction of the Commission.

11 Q Right. Does that mean that, if I
12 understood right, someone at Dominion perhaps drafted
13 it and it was submitted for approval by the
14 Commission; is that right?

15 A Yes. If I remember, the -- this
16 NoC Form was adopted. The Commission adopted the
17 Dominion NoC Form in the Sub 140 Order, and we
18 accepted that and use that internally to follow the
19 directives of establishing a Notice of Commitment.

20 Q Okay. And does this form use the
21 word "Owner"?

22 A I believe it uses the word
23 "Seller."

24 Q And if you look at the signatory

1 block, that's page 3 of 3, all it asks is that -- it
2 says, "The undersigned is duly authorized to execute
3 this Notice of Commitment for the Seller." Is that
4 correct?

5 A That's what it says.

6 Q Okay. And I don't believe it was
7 called as an exhibit, but if you could pull up what
8 was Attachment 9 in Duke's potential cross examination
9 exhibits.

10 MR. DOWDY: And Chairman Clodfelter, I'll
11 ask that it be marked for identification purposes as
12 Duke Panel Exhibit Number 2.

13 COMMISSIONER CLODFELTER: Okay. It will be
14 so marked.

15 (Whereupon, Duke Panel Cross
16 Examination Exhibit Number 2 was
17 marked for identification.)

18 Q You look a little panicked there.
19 Let me know when you have access to it, Mr. Snider.

20 A I'm -- I'm challenged virtually
21 here. My Exhibit 9 that I'm looking at was a letter
22 from Kristina Johnson to Dhiaa Jamil, so I'm assuming
23 I might be looking at the wrong Exhibit 9.

24 Q This was Duke's cross examination

1 exhibit. And you may not need it. If I can
2 represent, this is Duke's Compliance filing of the NoC
3 Form and copies of its websites.

4 A Okay.

5 Q Do you know if those use the term
6 "Owner"?

7 A I believe they use the word
8 "Seller."

9 Q Okay. Thank you. Now, the Cube
10 facilities were constructed before the enactment of
11 the CPCN; is that correct?

12 A Yes, they were.

13 Q If we you go back and look at the
14 NoC Form which was the first exhibit we had -- sorry
15 to bounce around; that will stop -- but if we look at
16 the -- if we look at the first exhibit and Section 5
17 of the NoC Form, it requires the submitting party to
18 agree that the LEO date is either the date of
19 submission, if there's a CPCN or a Report of Proposed
20 Construction, or the date that the facility possesses
21 a CPCN or Report of Construction if it's after the
22 submission, whichever is later; is that correct?

23 A Yes.

24 Q So if Cube did not have a CPCN,

1 how should it have completed this form?

2 A I think it could have written not
3 applicable, CPCN is implicit given the age of the
4 units.

5 Q I missed that last part. I'm
6 sorry.

7 A I think they could have just put
8 N/A and said CPCN is implicit given the age of the
9 units.

10 Q And if I can ask, under Section 5
11 do you know if they had written it, what would be the
12 LEO date for the facility?

13 A I think it would have still had to
14 be when you owned the facility, because a Seller has
15 to be an Owner. I mean, we can mince words around
16 Seller and Owner, but you have to own something before
17 you have the right to sell it, and I think Seller is
18 intended implicitly to mean Owner in this case.

19 Q I just want to make sure I
20 understand the answer, though. It's that it would
21 have taken effect when Cube owned the facility?

22 A I believe that would have been our
23 contention. Or had Alcoa submitted it, it would have
24 been when they submitted it, depending on whoever

1 owned it, since the assets have changed hands.

2 Q Well -- and I'll ask this of
3 either you or Mr. Keen, whomever the right person is
4 to answer it. Why not, then, tell Cube you need to
5 get Alcoa to submit this form?

6 A The form was posted, and I think
7 we've already heard testimony that your witness knew
8 of this well in advance of talking to Mr. Keen. I
9 think he testified to the fact that he was aware of
10 this form prior to any discussion with Duke.

11 Q Right. But if it was -- if it was
12 Duke's position that it needed to receive the form
13 from Alcoa, why not so indicate?

14 A Because Alcoa never expressed an
15 interest -- Alcoa had owned these assets for decades
16 upon decades and had had ample opportunity long before
17 the sale of the asset to attempt to sell these as a
18 QF, but elected to sell these at the highest available
19 price to whatever buyer was buying for that day.

20 Q So let me ask you this. Is it --
21 do you believe that Cube was required to obtain a CPCN
22 from the Commission to complete the NoC Form?

23 A I think had Cube submitted the NoC
24 Form with an N/A and said these facilities predated

1 the CPCN and have met the intent of this section of
2 the NoC Form, the Commission could have taken that and
3 done as it saw appropriate with it, and I'm not sure
4 we would have had issue with it.

5 Q Okay. Now, if you -- in your
6 testimony you speak about the risk of allowing a
7 facility to establish a LEO without the NoC Form. Do
8 you recall that?

9 A I do.

10 Q And do you know how many
11 facilities there are that predate the CPCN
12 requirement? In other words, do you have a sense of
13 how many facilities that risk applies to?

14 A I do not know of the -- all the
15 QFs we have, how many that would apply to. I do
16 remember 10 years ago being in a very similar
17 arbitration to this with a couple of QFs who there was
18 a large debate over when the LEO was established. And
19 they may have predated because those facilities were
20 existing for a long time, but I don't know exactly how
21 many we have that predate it.

22 Q When you say "they may have," do
23 you recall specifically?

24 A I don't. They were the -- I think

1 the Commission noted it -- were the -- some of the
2 cogeneration facilities that we had served -- that it
3 served us as QFs leading up to 2011 when that court
4 proceeding took place.

5 Q Thank you. Mr. Keen, on page 11
6 of your prefiled testimony you state that it's your
7 responsibility to assure that prior to beginning
8 extensive discussions, any parties seeking to provide
9 capacity or energy under PURPA actually owns the
10 facilities and has established a LEO; is that right?
11 I think you may be on mute, sir.

12 A (Keen) Sorry about that. It's my
13 responsibility to make sure that they have a NoC Form
14 in place and that they own the facility, yes.
15 Typically, the NoC Form is the beginning of the
16 analysis, so what we do is once we get the NoC Form, I
17 get the commercial -- the analytical people together,
18 the regulatory attorney, say, hey, we got the NoC
19 Form, and that's basically the start of us of putting
20 a PPA and calculating the avoided cost. So from my
21 perspective, as a commercial representative for these
22 types of transactions, the NoC Form is really sort of
23 the start of the whole process for me.

24 Q I understand. And in terms of

1 assuring ownership, what's the source of that
2 responsibility? Is it a Duke internal policy?

3 A I don't know that we have a policy
4 to make sure we're talking to the owner of someone
5 trying to sell the output. I mean, I think one of the
6 key things I do from a commercial perspective is --
7 especially in the process that Cube had, is to deal
8 with anyone that's a prospective buyer on an
9 arm's-length basis. We don't want to say or do
10 anything that could impact the purchase or sale of a
11 major acquisition like that. If I were to say
12 something or give them some type of information that
13 was inaccurate or could change over time, it could
14 impact that transaction. So we're very careful of
15 that befo---

16 You know, we did this a lot because we have
17 a lot of power plants. We have 60 hydro PPAs just in
18 the Carolinas itself. And these assets are smaller
19 and they tend to change hands, so we have to keep
20 track of who owns them, who is mainly going to buy
21 them, who's -- you know, prospective buyout, who is
22 looking at it. There's a lot of people out there
23 trying to learn information from us before they bid on
24 a plant, so we've got to be careful of that, that we

1 don't somehow impact those transactions in a negative
2 way. So typically, from my perspective it seems
3 somewhat obvious that if someone is going to sell the
4 output of a power plant, that they own it.

5 Q I understand. I'm just trying to
6 understand if you say it's your responsibility, why
7 you say it's your responsibility. Is it --

8 A Why it's my responsibility to make
9 sure that people selling me something own it? I don't
10 understand the question.

11 Q I just mean where does it -- where
12 does it come from? Do you believe you're doing it in
13 furtherance of a Commission Order? Do you believe
14 you're doing it pursuant to a --

15 A I just think it's a -- I think
16 it's a good business practice to make sure that the
17 people you're talking to own something if they're
18 trying to sell it to you. I mean, we get a lot of
19 people who may own a plant someday, and that doesn't
20 work for us. You have to actually own it before we're
21 going to deal with you.

22 Q Okay. It's fair to say you've
23 negotiated PURPA PPAs with many, haven't you?

24 A I don't know what you mean by

1 "many."

2 Q How many -- if you had to
3 estimate, how many times have you negotiated PURPA
4 PPAs?

5 A Maybe 25 of them or so. Maybe
6 more.

7 Q What steps do you --

8 A Probably more than that.

9 Q I'm sorry. I didn't mean to cut
10 you off.

11 A No. That's okay. Probably more
12 than that, but --

13 Q Okay. What steps do you normally
14 take to ensure the party you're negotiating with is
15 the actual owner?

16 A I've got a contract administration
17 individual that will contact the contact information,
18 and he does the paperwork to make sure of that. He
19 also handles any change of ownership, change in
20 control. He also handles the NoC Form.

21 To give you an example, of those 60 hydro
22 PPAs we currently have in the Carolinas, four of those
23 expired on Sunday, and a couple of months ago those
24 four hydros submitted their NoC Forms, and the new PPA

1 started on Monday. We have four more that it will be
2 starting on March 15th. So I work with the contract
3 administrator to make sure that we have the NoC Form,
4 that they've established a LEO, that -- and then I
5 meet with the analyst and we start putting the PPAs
6 together based on, you know, is it a DEC, is it DEP,
7 is it South Carolina, is it North Carolina, what rules
8 are in place in that time, make sure we get them the
9 correct avoided cost and a PPA.

10 Q And when the Company receives a
11 NoC Form from the QF seeking to contract under the
12 standard offer, does the Company do anything to ensure
13 the form is filled out by the actual owner?

14 A I don't know the answer. I don't
15 know what the contract guy does as it relates to that.
16 I do know that he will reach out to them if there are
17 problems with it. The corporate structure of some
18 facilities can get kind of complicated, so getting the
19 right owners on the paperwork is sometimes
20 complicated, but we need to have the right owner
21 because we're going to be sending them invoices or
22 sending them money, so we've got to make sure we have
23 the right owners. But the contract administration
24 group handles that. I don't really get that involved.

1 I do know that if the NoC Form is -- if
2 there's an issue with it, they'll contact the owner
3 and make sure that it gets fixed and -- and then once
4 it's complete, we'll put it in a file and then we'll
5 begin essentially the commercial process of
6 calculating avoided cost and putting a PPA together.

7 Q And when it comes to
8 interconnection matters, does Duke deal with companies
9 who aren't the actual owners of projects when it comes
10 to Interconnection Agreements?

11 A I don't know much about
12 Interconnection Agreements. We have -- we have folks
13 that man all that. We have one group that does the
14 transmission interconnections. We have another group
15 that does the distribution interconnections. That's
16 handled by that group. I don't get involved in that.
17 I do make sure that we have Interconnection Agreements
18 in place before we do a PPA with someone if they're,
19 you know, directly connected to us.

20 In your situation, Cube Hydro, they're in
21 their own BA, so the Interconnection Agreements
22 between, I guess, Cube Yadkin transmission and your
23 own power plants, but -- so I don't know that
24 Interconnection Agreements would impact this

1 transaction at all.

2 Q Yeah. I'll just ask Mr. Snider if
3 he knows the answer to that question. When dealing
4 with an Interconnection Agreement, does Duke require
5 to deal with the actual owner or does it just have to
6 be someone authorized by the actual owner?

7 A (Snider) I have the same response
8 as Mr. Keen. I'm not the department that processes
9 interconnection requests.

10 Q Okay. Thank you very much. All
11 right. Mr. Keen, if we could let's look at -- let's
12 go back to my actual list here. Let's look at the
13 Attachment Number 6, which I ask to be marked for
14 identification purposes as Duke Panel Cross
15 Examination Exhibit Number 2.

16 COMMISSIONER CLODFELTER: Mr. Dowdy, you had
17 earlier wanted to mark the NoC Form as Number 2. Are
18 you withdrawing that or -- are you withdrawing that
19 earlier marking or you want to make this one Number 3?

20 MR. DOWDY: I apologize for my bad counting,
21 Commissioner Clodfelter. I'd like to make it Number
22 3.

23 COMMISSIONER CLODFELTER: All right. It
24 will be so marked.

1 (Whereupon, Duke Panel Cross
2 Examination Exhibit Number 3 was
3 marked for identification.)

4 A (Keen) Did you want me to pull up
5 a document, Mr. Dowdy?

6 Q Yes. Attachment 6.

7 A Okay. Give me a second.

8 Q Yes, sir.

9 A Is this a August 2016 email?

10 Q Yes, sir. August 23rd, 2016
11 email.

12 A Yeah. I've got that up.

13 Q It's a multi-page exhibit,
14 actually, but let's start with the one at the top.
15 You indicated earlier that Mr. Collins reached out to
16 someone at Duke, Regis Repko; is that correct?

17 A Yes.

18 Q Okay. And is this the email you
19 were referring to there?

20 A Yes.

21 Q Okay. If you look at the -- look
22 at the first paragraph, the third sentence, it says --
23 I'll just read it for everyone's benefit, "As we
24 discussed in our meeting, we plan of registering 3 of

1 the assets, High Rock, Tuckertown, and Falls, as
2 Qualifying Facilities and would like to have further
3 discussions with Duke regarding longer-term QF
4 contracts for these facilities."

5 A I see that.

6 Q Doesn't that indicate to you that
7 at a minimum, Cube plans to sell the output of the
8 three facilities that could be certified as QFs
9 pursuant to QF contracts?

10 A When I read this, it does sound to
11 me like they are trying -- when I read this email, it
12 does sound like they're not only trying to sell those
13 three, but also the Narrows one, too, at some point in
14 the future.

15 Q Yeah, that they would -- so it's
16 your understanding they would like to do both, they
17 would like to sell all four.

18 A Uh-huh. Yes. Yes.

19 Q But my question was that at a
20 minimum, they wanted to sell from the three?

21 A Yes. It looks that in the future
22 they would like to sell either the three or all four.

23 Q Okay. Then if you'll -- if you'll
24 flip to the next page of Exhibit 3, it's a -- it

1 appears that if you go all the way to the back of that
2 exhibit, it's Duke 001722 is the Bates number.

3 A Yeah. I'm there.

4 Q Is this the email --

5 A I'm there.

6 Q -- making you the point of
7 contact, the commercial contact for a potential PPA?

8 A Yes. I was assigned commercial
9 contact on August 25th, 2016, yes.

10 Q Okay. And then moving forward,
11 Mr. Collins followed up with you about a -- about a
12 meeting?

13 A Where is that? I'm sorry.

14 Q The next email at the bottom of
15 1721. If you flip forward a page. I'm sorry.

16 A Oh, okay. Yeah, yeah. I see it.
17 Sure.

18 Q Yeah. The email chain starts at
19 the back.

20 A Yeah, yeah. I see it. Sure.

21 Q Okay. And, you know, fair to say
22 he sends you a very similar email to what he sent Mr.
23 Repko?

24 A Okay.

1 Q And then above that it looks like
2 there's some internal discussion at Duke about whether
3 or not you've gotten back to him. Do you see that?

4 A Let's see here. I got introduced
5 to John, it looks like, on August 26, '16; is that
6 right? And then on August 30th Matt asked me -- left
7 him a voicemail, have internal meeting with the
8 analysts tomorrow, may not have an obligation -- under
9 PURPA. Yeah. I do see that. Are you talking about
10 the August 30, 2016 email at 1:36 p.m.?

11 Q Yeah. Let's look at that one.

12 A Okay.

13 Q There's a second sentence there
14 that you read quickly. Let me read it and see if you
15 agree this is what it says.

16 A Sure.

17 Q "We may not have an obligation to
18 take their units under PURPA if they have access to an
19 organized market."

20 A Right.

21 Q And it says, "Just getting started
22 on the initial review."

23 A Sure. Right.

24 Q And I guess my question is this

1 doesn't reference anything about a lack of ownership,
2 does it?

3 A No.

4 Q And it doesn't reference the lack
5 of a NoC Form?

6 A No.

7 Q Or the lack of a CPCN?

8 A No.

9 Q Okay. And -- okay. Now, let's
10 look at Attachment Number 3 to our cross examination
11 list.

12 A All right. Let me get to that,
13 please.

14 Q Okay.

15 MR. DOWDY: And I'll ask that it be marked
16 for identification purposes as Number 4, Commissioner
17 Clodfelter.

18 COMMISSIONER CLODFELTER: It shall be marked
19 as Duke Panel Cross Examination Exhibit Number 4.

20 MR. DOWDY: Thank you.

21 (Whereupon, Duke Panel Cross
22 Examination Exhibit Number 4 was
23 marked for identification.)

24 A Is this the memo dated September

1 21st, 2016?

2 Q Yes, sir.

3 A Okay. I've got it up.

4 Q All right. And do you recognize
5 this letter?

6 A Say it one more time.

7 Q Do you recognize this letter?

8 A I do.

9 Q And is it your response to Mr.
10 Collins?

11 A Yes.

12 Q It also indicates that it follows
13 a discussion you had with Mr. Collins, correct?

14 A Yeah. We had conversation on
15 September 16th, and this memo basically tried to
16 summarize that conversation.

17 Q Okay. And -- just one moment.
18 All right. So the letter references Alcoa being the
19 current owner; is that correct?

20 A Yes. I was basically reminding
21 Mr. Collins, based on the conversation of September
22 16th, that, again, they didn't own the facility yet
23 and it would be -- you know, I didn't use this word --
24 that it would be inappropriate for us to deal with

1 them and not the owner of the facility on any
2 potential sales, but basically reminding him that they
3 didn't own it yet.

4 Q You said you did or didn't use
5 those words that it would be inappropriate to --

6 A I don't think I used the word
7 inappropriate, no, but it would have been
8 inappropriate to deal with, you know, someone who
9 didn't own the facility.

10 Q But the letter doesn't -- I mean,
11 the letter doesn't actually state that, does it?

12 A No. Let me read it. It's been a
13 while since I've --

14 Q Oh, yeah, please, please. I'm not
15 trying to rush you.

16 A That's okay. (Reviewing
17 document.) Yeah. I don't use the word inappropriate
18 in there, no. It just basically reminds them that
19 Alcoa is the owner of that facility.

20 Q Well, the letter doesn't state
21 that Duke won't have discussions with Cube because
22 Alcoa is the current owner, does it?

23 A No. I don't think it does, no.

24 Q And it doesn't say anything about

1 a NoC Form, does it?

2 A No.

3 Q All right. At the end of
4 paragraph 2 you reference Cube's plans to certify the
5 facilities as QFs. Do you see that?

6 A Yes, I do.

7 Q And you indicate that if Cube
8 does, Duke would likely have no obligation to purchase
9 the facilities' output; is that correct?

10 A That's correct.

11 Q And at the time you wrote that,
12 had Duke obtained an exemption from any PURPA purchase
13 obligations?

14 A No. I just really wanted to let
15 Mr. Collins know that we at least received some
16 internal discussion that the organized market
17 exception could apply. We felt that it was, you know,
18 a way to demonstrate good faith and say, hey, look,
19 you need to go look at this because there is an
20 organized market exception in PURPA. These assets are
21 frequently sold. The output is sold into organized
22 markets. That's a fact. And so that it's a
23 possibility that this may apply. We would have had to
24 go to FERC to get approved for this exemption, and

1 we've never done that.

2 We really just wanted to give them a heads
3 up to do their due diligence on this issue, but we
4 never actually went to FERC and did that. At this
5 stage in the game before they owned the plant, we just
6 wanted to make sure they did all their own homework
7 themselves.

8 Q Okay. And -- see one thing. Your
9 letter references that the facilities were not yet
10 certified as QFs; is that correct? It notes it.

11 A Yes.

12 Q And were you present for the
13 testimony this morning?

14 A I was.

15 Q Okay. And do you recall the
16 testimony that on September 28, 2016, Alcoa
17 self-certified Falls, Tuckertown, and High Rock as
18 QFs?

19 A Yes. I expect that this letter
20 probably had something to do with that, yes.

21 Q Yeah.

22 A Within a week to the day after
23 this letter was issued, then they were certified. We
24 weren't surprised by that, you know.

1 Q Okay.

2 A Should have been done probably a
3 long time ago. We don't really know why Alcoa never
4 did it, but -- but, yeah, Alcoa certified them on
5 September 28th. I have that information.

6 Q Okay. Was that not an indication
7 to you that Alcoa was supportive of Cube's efforts to
8 have a discussion with you about PPAs --

9 A Not at all.

10 Q -- open PPAs?

11 A Absolutely not at all, no.

12 Q Why do you say that?

13 A Well, because I think at that
14 stage of the game Cube is just a prospective buyer.
15 They're not the owner of the asset. Maybe Alcoa
16 decided they want to do it, you know. I mean, they --
17 maybe they decide they want to be a QF. Maybe they
18 were concerned that the transaction was not going to
19 happen. Who knows? I don't know why, but that --
20 just because -- I figured Alcoa went and certified the
21 things as QF because you probably -- Cube might have
22 probably went back to them after they got our letter
23 of the 21st and said, hey, these things have never
24 been even -- been self-certified, and so they went and

1 did it, but it didn't mean to me that Alcoa wanted to
2 commit to sell these power plants to either DEC or DEP
3 under a long-term agreement, no. I wouldn't have
4 drawn that analogy at all.

5 Q Understand. Understand.

6 A Okay.

7 Q So did you ask anyone why Alcoa
8 did it?

9 A I did not. I -- you know, it's --
10 and we mention it in a letter and week later they do
11 it. We figured they're just probably doing that at
12 the request of Cube to get ready just in case they
13 actually own the thing in the future if the deal
14 actually closes.

15 Q Now, you refer to Cube as a
16 prospective purchaser, correct?

17 A That's correct.

18 Q But you spoke about the diligence
19 that you did in some of these transactions or had
20 someone do. Were you aware at the time that Cube was
21 under a contract to purchase the facilities?

22 A I can't remember when I became
23 aware that they had a contract under purchase, I know
24 that, but as I'm sure you do -- I'm sure as you know,

1 that getting from a purchase and sale agreement to a
2 closing can be a challenging process. There's a lot
3 of steps that we have to take, and especially with
4 assets where FERC is involved like this. There's no
5 guarantee that a purchase and sale agreement leads to
6 ownership. And, again, I cannot deal with people that
7 may own a plant someday.

8 Q Well, did you ask where they were
9 in the process?

10 A I can't recall. I would suspect
11 that Mr. Collins probably kept me in the loop. I
12 think he originally told me that he thought they'd be
13 done November 1st, and my answer was, great, let's
14 talk then.

15 Q Did you hear Mr. Collins
16 testify this morning that all that remained as of that
17 time were routine regulatory approvals?

18 A I heard him testify. I can't
19 remember him using the "routine regulatory approval"
20 language, but I don't know that -- I don't know what a
21 routine regulatory approval is, but I've been involved
22 in some purchase and sales of hydros before, and
23 there's -- there tends to be a lot of things that have
24 to get done from the PSA to the closing, and until
that happens, the owner is Alcoa. If Alcoa had told

1 us they wanted to sell output from those plants under
2 PURPA, we would have talked to them. They never did
3 that.

4 Q All right. Look at -- let's look
5 at what's been marked Attachment Number 4.

6 MR. DOWDY: And I'll ask that it be marked
7 for identification purposes as Duke Panel Cross
8 Examination Exhibit Number 5.

9 COMMISSIONER CLODFELTER: It will be so
10 marked.

11 (Whereupon, Duke Panel Cross
12 Examination Exhibit Number 5 was
13 marked for identification.)

14 A This is the October 11th, 2016
15 letter?

16 Q Yes.

17 A Well -- yeah. The undated letter,
18 but the email was dated October. Yeah. I'm there. I
19 got it.

20 Q Well, I don't. I grabbed the
21 wrong document. I'm sorry. All right. So in your
22 prefiled testimony there's -- you do not dispute, do
23 you, that you received this on October 11th?

24 A I do not dispute that, no.

1 Q And so this is a letter from Mr.
2 Collins to you; is that right?

3 A Yes.

4 Q And is he responding to your
5 September 21st letter?

6 A Yes.

7 Q And I want you to look at the
8 first sentence of paragraph 2.

9 A Yeah, I see that. Uh-huh.

10 Q Okay. It says that Cube hydro has
11 agreed to acquire the Yadkin projects from Alcoa.

12 A Right.

13 Q Is that correct?

14 A Is what correct?

15 Q Well, did I correctly read it?

16 A Yes.

17 Q And after reading that sentence,
18 were you aware that Cube had contracted for the
19 purchase of the facilities?

20 A Yes. I was aware that they agreed
21 to acquire the Yadkin projects from Alcoa.

22 Q And if you read the second
23 sentence, it says, "The acquisition is anticipated to
24 occur before the end of 2016."

1 A Right.

2 Q Did that indicate to you that it
3 was being finalized?

4 A Well, my takeaway on that when I
5 read that sentence is, well, when you own it, come and
6 talk to us because I have to calculate your avoided
7 cost based on when you meet the Commission
8 requirements, and you have to submit the NoC, you have
9 to establish a LEO, and you can't do that on a -- you
10 can't do that on a prospective date. In other words,
11 it's a perfect example of why we require the NoC Form,
12 to tell you the truth, because they're saying that
13 they're going to be -- you know, previously it was
14 November 1st, now it's the end of the year, and ended
15 up actually being February the following year. So
16 that's kind of the issue, is that I don't know when to
17 start the analysis because the dates kept moving.

18 So from our perspective, it's when they own
19 the plants, submit the NoC Form, is the date we
20 calculate it from. So that sentence to me is like,
21 okay, well, thanks, John, for the update, but when you
22 own the plant, let's talk and let's start negotiating.

23 Q And I'll ask either you or Mr.
24 Snider, are you aware of FERC ever stating that a LEO

1 cannot be established by a party who is contracted to
2 purchase a QF, but hasn't purchased it yet?

3 A That sounds like a legal question.
4 I can't answer that. I don't know if Glen can or not.

5 A (Snider) I'm not aware of a case
6 that's been before FERC where a prospective buyer has
7 tried to establish a LEO. I think it would be
8 interesting if there were multiple prospective buyers.
9 Maybe they could all try and establish LEOs.

10 Q And are you aware of any
11 Commission Order denying the LEO by a party that was
12 in a contract to purchase, but hadn't purchased as
13 yet, from this Commission?

14 A I'm not aware of anyone attempting
15 to establish a LEO without owning, therefore, I'm not
16 aware of them denying.

17 Q Well, and here's what I'm trying
18 to get at. So when we say that, you know -- I believe
19 this is your phrase, Mr. Keen -- come talk to me when
20 you own it, is that just Duke's interpretation? I
21 mean, where is that coming from?

22 A (Keen) Well, I think it's --
23 again, this is Keen. I think it's a good business
24 practice. I mean, I don't have any documents from

1 Alcoa or anyone else that gives Cube the right to sell
2 the output of their power plant. It's not Cube
3 Hydro's power plant. How can they sell the output
4 from it? It's Alcoa's power plant. They're the ones
5 I'm going to go talk to or they can come and talk to
6 me. You know, how do I even calculate avoided cost
7 when I don't know when they're going to own it, you
8 know? Like I said, it was November of '16, then it
9 was December of '16. It ended up being February of
10 '17. What number am I supposed to use? I need some
11 type of starting point for, you know, a fixed point
12 analysis.

13 I mean, the NoC Form protects both parties.
14 It's not there to protect one or the other. It
15 protects both parties. It's an unambiguous start to
16 the analysis, and I can't do it on a floating
17 potential acquisition. I don't understand why that's
18 -- you know, I don't know why that's a point of
19 contention. I mean, if Alcoa wanted to sell us the
20 output of the plant, we would have been happy to talk
21 to them about that.

22 Q So if I understand the answer to
23 my question, it's that you consider it a best business
24 practice; is that right?

1 A I consider it to be a good
2 business practice to talk to the owner of the plant
3 when someone is selling the output -- well, talk to
4 the owner of an asset when someone is trying to either
5 sell the asset or sell the output from the asset, that
6 the owner should be involved in those conversations,
7 yes.

8 Q Okay. So after reading the --
9 after reading the -- turning back to the exhibit,
10 after reading the third sentence of paragraph 2, were
11 you aware that the three facilities had been
12 self-certified as QFs?

13 A Yes. You previously asked that
14 question. I think it was September 28, 2016.

15 Q I apologize.

16 A That's okay.

17 Q Now look at paragraph 4.

18 A Okay.

19 Q And I'll give you a moment to look
20 at it.

21 A (Reviewing document.) Yes.

22 Q After reading that paragraph, were
23 you aware the Cube didn't agree with your contention
24 that Duke was not obligated to purchase the output of

1 the three facilities?

2 A I did, yes.

3 Q Gotcha. All right. Thank you.

4 A Uh-huh.

5 Q Now, let's look at Cross

6 Examination Attachment Number 5.

7 A Okay. Give me a second to find
8 that.

9 MR. DOWDY: While you're looking it up, I
10 will say I'll ask that for identification purposes it
11 be marked as Duke Panel Cross Examination Exhibit
12 Number 6.

13 COMMISSIONER CLODFELTER: It will be so
14 marked.

15 (Whereupon, Duke Panel Cross
16 Examination Exhibit Number 6 was
17 marked for identification.)

18 A All right, Mr. Dowdy. I have the
19 October 14th, 2016 memo up here.

20 Q Okay. And this is a letter from
21 you to John Collins three days later, correct?

22 A Yes.

23 Q Look at paragraph 2 about the
24 sixth line down. It says that --

1 A Paragraph --

2 Q I'm sorry.

3 A Paragraph 2?

4 Q I'm sorry. Yes. Second
5 paragraph.

6 A Okay. Go ahead.

7 Q The big paragraph. Sixth line
8 down, it says, "You" -- "inform us that Cube Hydro
9 seeks to purchase the Yadkin system from Alcoa..."

10 A Right. Yes.

11 Q But, again, at the time, you were
12 aware that Cube was under contract to purchase the
13 facility?

14 A I think what I said was I'm not
15 sure at what point it became clear to me that they had
16 a Purchase Agreement in place. I just know that they
17 didn't own it at that time.

18 Q Well, maybe I can save us some
19 time. It didn't matter to you what stage they were at
20 pre formal ownership. Is that a fair statement?

21 A That's correct. Yeah. Until they
22 owned the plant, I mean -- now -- yeah. I mean -- I
23 mean, there's a possibility that it never went to
24 closing, and until it went to closing, until it

1 happened, until they were the owners, until they were
2 handed the keys, you know, I felt it would have been
3 inappropriate to deal with the nonowner of the
4 facility. If the owner of the facility wanted to sell
5 the output, we would have been happy to sit down with
6 them and talk to them about it, but not someone who
7 might own the plant at some date uncertain in the
8 future.

9 Q Yeah. And so a couple of
10 questions there. What would you have required from
11 Alcoa in order to move forward with Cube? Is there
12 some kind of authorization that could have been given
13 that would have assuaged your concerns?

14 A I mean, I think if Alcoa expressed
15 an interest in either a PURPA or a non-PURPA
16 transaction, I would have brought in legal counsel,
17 and depending on whether it was PURPA or non-PURPA,
18 get back to -- get back to Alcoa and talk to them
19 about, you know, kind of which path they want, what
20 they were looking for. I mean, we would -- you know,
21 we would have no problem entering into a PPA from a
22 hydro like this. If they had expressed an interest in
23 that, we would have been happy to work it out.

24 If they wanted to do the PURPA transaction,

1 they would have had to meet the LEO obligations that
2 Glen spoke of a little while ago. If it was a
3 non-PURPA deal, we would talk about, you know, what we
4 see the market at and the type of pricing that we
5 would be able to justify to our leadership and to the
6 Commission. They just never did that.

7 Q And you, again, reference in this
8 letter, don't you, your position that Duke would be
9 exempt from purchasing from Cube under PURPA?

10 A We do. And, again, I wanted to
11 make sure Mr. Collins knew we were having those
12 conversations internally. We hadn't made a decision
13 whether to follow up on that, but, you know, there is
14 an organized market exception, they were selling into
15 organized market, had been, too, for a very long time,
16 but at the same point we never made the decision to
17 move forward with that. And, you know, as you can
18 tell, once -- you know, when you get to the timeline,
19 you'll see that once Cube actually did own the plants
20 in February of 2017, we did provide offers. Once the
21 NDA was in place and the letter agreement, we did
22 provide offers in the summer of '17.

23 Q And so if I understand, the reason
24 you included the language is that you wanted Cube to

1 be able to do its diligence and, you know, make sure
2 it had, you know, done whatever diligence it needed to
3 do.

4 A Yeah.

5 Q Is that correct?

6 A I wanted Mr. Collins to know that,
7 you know, we had had conversations internally, no
8 decision had been made on which path we'd like to take
9 as it relates to that. We wanted to make sure they
10 know it and did their work. I was brought into it
11 because as a commercial guy it was my responsibility
12 to try to determine if those assets had been sold into
13 organized markets.

14 Q Uh-huh. And the letter doesn't
15 reference the need to submit a NoC Form, does it?

16 A No, it does not.

17 Q And it doesn't request that Alcoa
18 submit any forms to Duke?

19 A No, it does not.

20 Q And it doesn't ask any questions
21 about status, does it?

22 A I apologize. I didn't hear that
23 last statement.

24 Q It doesn't ask any questions about

1 the status of the transaction, does it?

2 A No. I mean, it had been -- to us
3 now it was pretty obvious it was taking longer than
4 they expected.

5 Q Okay. Just one moment. All
6 right. Would you look with me at our Cross
7 Examination Exhibit Number 9.

8 A Is this the email from Kristina to
9 Dhiaa Jamil?

10 Q Yes, sir.

11 A Okay.

12 Q And if you would, just tell me, do
13 you have an understanding of who Kristina Johnson is?

14 A She was the well-connected CEO at
15 Cube Hydro during a lot of this time. I don't
16 remember when she left. During the summer of '16 she
17 was there. I can't recall when she left the company.

18 Q I understand. And who is Dhiaa
19 Jamil?

20 A That is one of our executives. I
21 don't remember his role at the time, but he was one of
22 the executives at Duke Energy.

23 Q I understand. And this email
24 attaches a press release, does it not?

1 A Yes, it does.

2 Q Okay. It's dated July 11, 2016?

3 A Yes.

4 Q And, you know, does that indicate
5 that there's an agreement to purchase the Yadkin
6 facilities?

7 A I will agree that it does. I
8 haven't read it.

9 Q Is it fair to say that, you know,
10 at least someone at Duke was aware --

11 A Yeah. You know, I think so. I
12 mean, we don't make business decisions on press
13 releases, though. Again, it goes back to what we've
14 talked about all along, and that is until the deal
15 closes, until they are the owner, they can't make a
16 commitment to sell those assets or sell the output
17 from those assets. So it doesn't really change
18 anything, from my perspective. Until Cube Hydro owned
19 it, there wasn't really much to talk about.

20 Q But you did have a number of
21 discussions with Cube in 2016; is that correct?

22 A Well, yes. And the reason for
23 that is that Cube Hydro managed I Squared Capital
24 which is the -- I think at that time was the owner of

1 Cube Hydro, had been working with our executives on
2 another large transaction, so they knew each other and
3 had relations that were well connected, so there was a
4 lot of interaction at the executive level. I Squared
5 is, as you know, a large private equity company, \$15
6 billion. I believe they owned Cube until maybe
7 October 2019 when they sent it -- sold it to Ontario
8 Hydro. So I think they were the owners at the time,
9 and I think they knew a lot of the executives at Duke.

10 Q Okay. And that, in your view, is
11 what facilitated the discussions?

12 A Well, I think normally what would
13 happen is if there's an asset on the market and
14 someone is a prospective owner at some point, a
15 prospective buyer, they would reach out to us and we
16 would say, hey, look, if you close the deal, if you
17 get everything done you need to do, you own the
18 facility, come and talk to us and then we'll talk to
19 you. If not, we'll talk to whoever the current owner
20 is. And usually that's just one or two phone calls
21 and that's the end of it.

22 Here, because of the connections between I
23 Squared Capital and the Duke executives, there was a
24 lot of interaction at that level about this

1 transaction, and so there was a lot of effort put in
2 with letters and emails and phone calls and meetings
3 to try to keep Cube Hydro in the loop on what we were
4 doing, what was going on. When you buy the plant, let
5 us know. We'll put something in -- you know, we'll
6 start negotiations then. So there was a lot of effort
7 put in. We went -- we treated them, you know, in a
8 lot of ways more favorably than we do other people,
9 and we, you know, tried to be responsive to them, but
10 the bottom line, until they owned the power plant,
11 there wasn't a lot of things we could do with them at
12 that point. It would be -- you know, just wouldn't be
13 fair to Alcoa to be talking to someone else about
14 buying the output of their power plant.

15 Q Well, how many meetings would you
16 say you had with Cube in 2016?

17 A Well, maybe meetings is the -- I'd
18 have to go back and look. Maybe it was -- maybe
19 meetings is the right term, but I would say there was
20 a lot, a lot, of calls. I don't have a list of all
21 the meetings that were held. I'm sure the Cube Hydro
22 folks do. But there was a lot of internal meetings to
23 discuss, hey, you know, if they had gotten called or,
24 you know, if someone is reaching out to Lynn Good,

1 they want to know what the status is, or our state
2 president David Fountain, Regis Repko, they were
3 getting contacted, Kendall Bowman, by different Cube
4 people and Cube representatives pretty frequently, so
5 there was a lot of emails and meetings. And
6 typically, before someone owns the power plant, just
7 like, okay, call me when you close on the deal and
8 we'll put something in place. In this situation there
9 was a lot more prework. I wouldn't call it
10 negotiations, but there was a lot of discussions
11 before they owned it, which was not typical.

12 Q Well, and that's what I'm trying
13 to understand.

14 A Okay.

15 Q And I'm sorry I'm not putting it
16 well. I'm going to try again. Why all the
17 discussions if the answer is we can't really talk to
18 you until you own the facility?

19 A You would -- I mean, these
20 discussions were initiated by Cube Hydro. You should
21 ask them. They are the ones that continually
22 contacted, constantly contacted our executives, and
23 they were trying to be responsive. They had other
24 relationships, other business opportunities and, you

1 know, we -- I think really, if anything, I know it
2 demonstrated a good faith on our part to try to keep
3 you in the loop, what's going on, when you own it,
4 talk to us, we'll put something in place. They had,
5 really, access to our leaders that a lot of folks I've
6 dealt with over the years didn't have, so I would say
7 that you guys initiated all this.

8 Our answer was pretty much the same the
9 whole time. Tell us when you own the power plant and
10 we'll negotiate with you. If not, now Alcoa calls --
11 I didn't actually say that, but, I mean, if Alcoa had
12 ever called us, we would have negotiated with them.

13 Q Well, you said you didn't actually
14 say that. Why didn't you say that, have Alcoa call?

15 A It seemed -- I don't know. It
16 seemed obvious to me that the owner of a power plant
17 should be the people we're talking about selling the
18 output of the plant. I don't know that I had to
19 explain that, especially to someone with Mr. Collins'
20 experience.

21 Q Now, was it your understanding
22 that Cube was trying to negotiate a PPA where service
23 would start before Cube closed the transaction or
24 service would start under the PPA after Cube closed?

1 A Repeat the question again, please.

2 Q Sorry. Was it your understanding
3 that Cube was trying to negotiate a Power Purchase
4 Agreement where service would start before Cube closed
5 the transaction?

6 A I didn't -- yeah, I didn't know.
7 I didn't know if -- I did not know. I would assume --
8 I didn't ask them, but I would assume they would have
9 thought it would be after they owned it. I can't
10 imagine they would be trying to sell the output before
11 they owned it. That's kind of the problem. We didn't
12 really know if they were going to own it or when they
13 were going to own it, and once we knew that, then we
14 could begin negotiations with them.

15 Q Okay. So at some point you
16 learned that Duke -- I'm sorry -- that Cube owned the
17 facilities, right?

18 A Yes. I believe the closing was on
19 February 1st, 2017, thereabouts.

20 Q And -- and --

21 A Did I say February 1st, 2017?
22 Yeah. I meant to say February 1st, 2017. I don't
23 know if I misspoke or not.

24 A (Snider) That's what you said,

1 Mike.

2 Q Take a look with me, if you could,
3 at our Cross Examination Exhibit Attachment 7.

4 A (Keen) Number 7?

5 MR. DOWDY: And I'll ask that for
6 identification purposes it be marked as Duke Panel
7 Cross Examination Exhibit Number -- I believe that's
8 7.

9 COMMISSIONER CLODFELTER: This is 7? You
10 didn't mark the last email, but this -- so this would
11 be Number 7.

12 MR. DOWDY: Oh, I apologize.

13 COMMISSIONER CLODFELTER: It will be marked
14 as Duke Panel Cross Examination Exhibit Number 7.

15 (Whereupon, Duke Panel Cross
16 Examination Exhibit Number 7 was
17 marked for identification.)

18 A This is -- this looks like an
19 email maybe from Kendall Bowman to a gentleman by --
20 well, to several DEC and DEP people dated -- looks
21 like 2/3/17. Is that what I'm supposed to be looking
22 at?

23 Q Yes, sir. Yes, sir.

24 A Okay. Good. I got that up.

1 MR. DOWDY: Before we move on, just to keep
2 the record clean, Commissioner Clodfelter, may I mark
3 for identification purposes the prior exhibit we
4 discussed as Exhibit Number -- Duke Panel Cross
5 Examination Exhibit Number 8? I know it's out of
6 order, but I'd just like to keep it clean.

7 COMMISSIONER CLODFELTER: All right. I
8 wasn't sure you were going to introduce that one or
9 not, so I left that to you as to whether you wanted to
10 mark it. So that is the email dated July 11, 2016.

11 MR. DOWDY: Yes, sir.

12 COMMISSIONER CLODFELTER: Okay. And that
13 will be then marked Duke Panel Cross Examination
14 Exhibit Number 8.

15 MR. DOWDY: I apologize for that, sir.

16 (Whereupon, Duke Panel Cross
17 Examination Exhibit Number 8 was
18 marked for identification.)

19 Q Okay. We're looking at Number 7,
20 and so it appears Cube, the acquisition finally goes
21 through on -- on what did you say -- February 1st,
22 2017?

23 A Okay. I got it.

24 Q Okay. And so -- and it looks like

1 Cube immediately calls Duke and asks for a meeting; is
2 that fair?

3 A It looks like there is maybe a
4 press release attached to the bottom; is that correct?

5 Q Yeah. If you look at the email at
6 the top.

7 A Yeah. And it was forwarded to --
8 yes. So they asked for a meeting.

9 Q And when they asked for, did you
10 meet with them sometime shortly after their
11 acquisition closed?

12 A I don't -- I don't -- I don't
13 think I did, no. I think maybe some executives did,
14 but I don't think I did, no. If I did, I don't recall
15 that.

16 Q Based on the prior communications
17 you'd had, did you tell anyone at Cube that you --
18 that Cube needed to submit a NoC Form?

19 A No.

20 Q And why not?

21 A Well, they closed -- they closed
22 in February on the asset. In March it was decided to
23 -- between the parties, between Cube Hydro and Duke,
24 to enter into a letter agreement that would include

1 both the PURPA and non-PURPA assets, so at that stage
2 of the game there really wouldn't be a need for a NoC
3 since we were doing a non-PURPA transaction, because I
4 think both parties were -- instead of just doing a
5 deal for the 100 MW worth of QFs, why don't we try to
6 get a transaction done for the whole 200 MW. So there
7 wasn't a NoC Form required at that time because we
8 were doing a non-PURPA transaction.

9 Q You mentioned that Duke has been
10 -- Cube has been selling to Duke with as-available
11 rates since sometime in 2019; is that correct?

12 A We entered into an as-available
13 agreement with -- between Duke -- Duke Energy Progress
14 and Cube on April 24th, 2019, and DEC as-available
15 agreement was executed with that -- with Cube on May
16 16th of 2019.

17 Q Okay. And Cube didn't submit a
18 NoC Form prior to entering into those contracts, did
19 it?

20 A No. There's not a requirement for
21 an as-available agreement because there is no
22 commitment. So to give you an example of how that
23 works, it's completely different than the NoC Form
24 avoided cost. As an as-available agreement, it

1 actually works quite well for the QF, is it allows
2 them -- there is no commitment there, so the
3 as-available agreement -- so what Cube can do or what
4 the Cube Yadkin people can do, their traders, their
5 marketers can do, is every day they can check PJM,
6 they can check MISO, they can check SoCo, they can
7 check with DEC, SCANA, who they could sell it to. And
8 they could also look at these as-available agreements
9 which are basically free puts that they have, and they
10 can choose the best prices and move their power
11 anywhere they want to. Literally, they can flip it
12 from DEP one hour to DEC the next hour and back,
13 depending on what the as-available numbers are. So
14 there is not commitment on the QF's part, so there's
15 no NoC Form required for those.

16 Again, it's really a demonstration of our
17 good faith to say, hey, you guys might want to do an
18 as-available agreement. You don't have to do the
19 commitment form. And those agreements were put in
20 place, and I think they've turned out very well for
21 Cube.

22 Q When a QF sells as available, they
23 don't get capacity payments, do they?

24 A That's correct.

1 Q They only get paid for --

2 A Because -- and that makes sense,
3 right, because they're not making a commitment. So to
4 give you an example, if our next -- if our next hour
5 as-available agreement is \$35 a MWh, and it's 22
6 degrees in Charlotte and the power is going for \$9,000
7 at PJM, these guys are going to pull their power from
8 Duke and they're going to go sell to PJM and they have
9 every right to do that under an as-available
10 agreement. So that's why we don't count it as
11 capacity. It's a very beneficial agreement for the
12 QF, these as-available agreements, because it's
13 basically a free put. They basically have a floor in
14 place for every hour of the year they could put power
15 on our customers.

16 Q Okay. Now, after Cube had
17 finalized the acquisition of the facilities, you
18 indicated, did you not, that the first step would be
19 to sign a letter agreement governing what they were
20 negotiating?

21 A That's correct. I believe there
22 were -- I'm not a hundred percent sure, but I believe
23 there were meetings in maybe somewhere in March
24 between the executives of Cube and executives of Duke,

1 but I was given an indication in March by our state
2 president North Carolina that we had agreed to enter
3 into a letter agreement that the two parties would
4 negotiate and we would -- with them selling the entire
5 output of all four output facilities to us. And we
6 sent a draft of that letter agreement to Cube on March
7 22nd, 2017.

8 Q I'm sorry. What was the date?

9 A March 22nd, 2017.

10 Q Okay. And was it a condition of
11 Duke's that to have those negotiations under the
12 letter, Cube would not treat those negotiations as
13 establishing a LEO?

14 A I believe that is true, yes. I
15 think both parties -- unfortunately, it's kind of an
16 indication of things going forward. It took us a
17 while to get a language in place for a letter
18 agreement that both parties would agree to, but both
19 parties did negotiate this. Of course, legal counsel
20 was involved, and I think protections were built into
21 the letter agreement for both parties.

22 Q Do you recall what the protections
23 were for Cube?

24 A I don't. I'd have to read the

1 letter. I haven't read it in a while. We did read --
2 we submitted a redline to them, too, on that. It was
3 a give and take.

4 Q All right. Well, I think I can
5 save -- I know you're enjoying spending time with me,
6 but I think I can save us some time on the timeline
7 here.

8 A Okay.

9 Q Can you look at Attachment 2 to
10 our exhibit list?

11 A Sure.

12 MR. DOWDY: Which I'll ask to be marked for
13 identification purposes, Commissioner Clodfelter, as
14 -- I believe that's Exhibit 9.

15 COMMISSIONER CLODFELTER: This would be
16 Number 9. It will be so marked.

17 MR. DOWDY: Thank you, sir.

18 (Whereupon, Duke Panel Cross
19 Examination Exhibit Number 9 was
20 marked for identification.)

21 A Okay. Here we go. Okay. This is
22 my deposition?

23 Q Yeah. That's what I was going to
24 ask you. Do you recall giving a deposition in this

1 case?

2 A Oh, yes.

3 Q That was even worse, right?

4 A It was good.

5 Q And if you'll flip to the back, I
6 see you submitted an errata; is that true?

7 A I did submit an errata, yes.

8 Q Okay. And did you testify
9 accurately in your deposition?

10 A I tried to. I hope so.

11 Q Do you believe your testimony was
12 accurate, to the best of your ability at the time?

13 A Yes, I do.

14 Q Okay. And other than the errata,
15 was there anything in your deposition that you
16 testified to that you want to change or modify?

17 A Well, when I reviewed the errata,
18 I think that was the only things I remember wanting to
19 change at that point. I haven't looked at it since
20 December 8, since I did the errata which was I think
21 was in December sometime, but -- yes. I mean, I would
22 think it would be accurate, yes.

23 Q Okay.

24 A I'm sure not going to lie to you.

1 Q I don't think so, sir.

2 A No.

3 Q And does this appear to be -- does
4 this appear to be a condensed copy of your deposition;
5 is that correct?

6 A Yes, yeah.

7 Q Okay. All right. Let's -- let me
8 ask you just a few more questions, then I have a few
9 for Mr. Snider. We're getting there. You mentioned
10 that contract administration reviews ownership of QFs;
11 is that right?

12 A Yes.

13 Q Do you know if they reviewed
14 ownership of the QFs here in 2016?

15 A Can you say that -- say that
16 question again, please?

17 Q Do you know if contract
18 administration at Duke reviewed ownership of the three
19 QFs at issue in this case?

20 A I don't know the answer to that.

21 Q Okay. And so I take it you don't
22 know who they contacted or when?

23 A I don't know that. I don't know
24 the answer to that.

1 Q Okay. Mr. Snider, can I ask you
2 to look what is our Attachment Number 12?

3 MR. DOWDY: Which, Commissioner Clodfelter,
4 I will ask to be marked for identification purposes as
5 Duke Panel Cross Examination Exhibit Number 10.

6 COMMISSIONER CLODFELTER: It will be marked
7 accordingly.

8 (Whereupon, Duke Panel Cross
9 Examination Exhibit Number 10 was
10 marked for identification.)

11 Q Let me know once you have it up,
12 Mr. Snider.

13 A (Snider) Is it our Achieving a Net
14 Zero Carbon Future, our 2020 Climate Report?

15 Q Yes, sir.

16 A I have it.

17 Q Okay. And it sounds like you're
18 familiar with the document?

19 A I am.

20 Q And did you have a role in
21 preparing it?

22 A Not a direct role, but it does tie
23 into my group with our resource plan, so I'm very
24 familiar with it.

1 Q Okay. And is part of it -- does
2 it include a 2020 Integrated Resource Plans for DEC
3 and DEP?

4 A Yes. I have a direct role in
5 that. I'm responsible for the preparation of those
6 documents.

7 Q And does it discuss the steps the
8 Companies will need to take to achieve their carbon
9 reduction goal?

10 A Yes, it does.

11 Q And is it true that Duke has
12 announced a goal of reducing CO2 emissions by 50
13 percent from 2005 levels by 2030?

14 A Yes, we have.

15 Q And, also, the Companies have
16 committed to achieving net zero carbon emissions by
17 2050?

18 A That is correct.

19 Q These commitments are discussed in
20 the Integrated Resource Plans DEC and DEP filed with
21 the Commission in September 2020, also, aren't they?

22 A They are.

23 Q And this indicates on page 1 of
24 this exhibit, does it not, that achieving those goals

1 will require a significant growth in renewables and
2 energy storage?

3 A Correct.

4 Q And that achieving those goals
5 will depend on the availability of advanced low and
6 zero carbon technologies that can be dispatched to
7 meet energy need?

8 A Absolutely.

9 Q Would those include nuclear,
10 carbon capture and storage, hydrogen power, and
11 long-duration energy storage?

12 A Yes.

13 Q And some of these technologies are
14 listed on page 24 is this exhibit, aren't they?

15 A I'm seeing them on page 5. Let me
16 go to page 24. Yes.

17 Q And there's a table on page 24.
18 It also indicates -- includes estimated cost per kW of
19 capacity for these technologies, correct?

20 A It does.

21 Q Okay. And some advanced
22 technologies are expected to be more expensive than
23 traditional generation, correct?

24 A That can certainly be the case.

1 Q So I believe the chart indicates,
2 does it not, that natural gas combined cycle, carbon
3 capture and underground storage is \$2,000 a kW versus
4 650 a kW for natural gas combined cycle without carbon
5 capture?

6 A I'll agree that's what's in the
7 report.

8 Q And pumped hydro storage is \$2,500
9 a kW?

10 A I'll agree that that's what's in
11 the report.

12 Q And modular nuclear reactor is
13 \$5,500 per kW?

14 A That's an assumption within the
15 report, yes.

16 Q So all told, those are anywhere
17 from four to 10 times the cost of conventional
18 generation; is that right?

19 A I'll do subject to check. I don't
20 think they're all necessarily, depending on how you
21 look at the cost, but, yeah, I'll -- let's just say
22 I'll say subject to check that some of these
23 technologies are more expensive than traditional
24 generation.

1 Q And would that be before
2 considering interconnection costs which might add some
3 percentage?

4 A Yes. We would have to look at
5 what the interconnection costs would be.

6 Q And those are just capital costs,
7 right? It doesn't include operations and maintenance
8 costs or cost of fuel?

9 A Those numbers you listed were
10 capital -- over the capital cost, I believe.

11 Q Okay. And if I understand the
12 IRP, it's stating that the Company expects
13 interconnection of these new technologies to pose
14 challenges.

15 A They could, yes. Each --

16 Q I'm sorry. Go ahead.

17 A I was just going to say each of
18 the technologies can have its own challenges.

19 Q Okay. And on page 25, the Company
20 states that it expects these advanced technologies to
21 be commercially available for deployment in the
22 mid-2030s; is that correct?

23 A Yeah. Many of these are future
24 technologies.

1 Q So, you know, potentially the
2 Company is looking in investing in a good deal of
3 carbon free generation and energy storage that's
4 expensive, potentially difficult to interconnect, and
5 not likely to be available for some time; is that
6 true?

7 A No. I would say these are
8 potential technologies that are out there and, yes,
9 these are cost estimates of our best estimate at this
10 point in time. I think was -- we evolve our IRPs
11 every two years, we'll have new cost estimates for
12 this and new technologies and this -- at this snapshot
13 in time, these were meant to be representative of some
14 of the technologies and some of the costs that we're
15 seeing today, roughly.

16 Q Now, all told, the Cube QFs
17 represent approximately 110 MW of generating capacity;
18 is that true?

19 A Within the Cube balancing area,
20 they do, yes.

21 Q Okay. And within the constraints
22 of their FERC license, the Cube QFs could be
23 dispatched to meet energy demand, couldn't they?

24 A Subject to many of the issues we

1 just spoke about. I mean, we'd have to look at the
2 cost to interconnect the Cube assets to the DEP BA and
3 then whatever cost we paid for it, but yes.

4 Q But subject to those, they could
5 be?

6 A Potentially. They could meet the
7 capacity needs of DEP with -- subject to, you know,
8 securing the firm transmission to make those available
9 and subject to finding an appropriate price that is
10 representative of either the market on the non-PURPA
11 or the prevailing avoided cost when a LEO is
12 established.

13 Q And the Cube QFs do not generate
14 carbon emissions, do they?

15 A They do not. Importantly, though,
16 they do not generate them for Cube. DEP would not get
17 to count them as carbon free resources under a PURPA
18 agreement.

19 Q Say that last part again. You
20 said under a PURPA agreement?

21 A Under a PURPA agreement they would
22 not be considered carbon free.

23 Q Understand. And the Cube QFs are
24 in their own balancing area authority, right, which is

1 --

2 A Yeah.

3 Q -- already interconnected to the
4 Companies, so --

5 A There's a difference between being
6 an interconnected BA and having firm point-to-point
7 transmission that allows the firm delivery from the
8 Cube BA, as I understand it, subject to check. I'm
9 not the -- like I said, I'm not the transmission
10 expert, but they're their own balancing area. DEP is
11 its own balancing area. They are an interconnected BA.
12 DEP is interconnected to other balancing areas.
13 Simply being interconnected does not mean that
14 resources in an adjoining balancing area have firm
15 transmission capability to deliver firm from one BA to
16 the other.

17 So, yes, they're interconnected BAs, but
18 that does not assure the firm delivery of a resource
19 into the adjoining BA.

20 Q Right. I take it, then, that you
21 don't know whether additional work would be required
22 to interconnect with the Duke system?

23 A I do not. That would need to be
24 studied.

1 Q And is it the case that energy and
2 capacity from the Cube QFs is available right now?

3 A It's the case that energy is, not
4 capacity.

5 Q Well, not that it's being sold,
6 but it's available?

7 A It may not be available. You'd
8 have to -- to get it to count as capacity you need to
9 have the appropriate transmission to make the
10 transmission firm. When you're buying from a
11 neighboring BA, simply having an interconnected BA
12 does not guarantee that you can buy capacity. You
13 have to own the firm transmission to move capacity
14 from one balancing authority to the other.

15 Q Well, I'll put it this way. As
16 you sit here right now, you don't know if it has, you
17 know, firm capacity or not; is that right?

18 A I would say it would probably need
19 to be studied.

20 Q And you don't know whether there
21 are sufficient transmission ties?

22 A To allow it to be firm without the
23 need for upgrades? That's sort of a purpose of doing
24 the transmission studies. It may or may not be. I'm

1 not an expert in that, but it would need to be studied
2 before you could deem it as capacity, and that
3 transmission would need to be acquired.

4 Q Would having the energy and
5 capacity on the system help Duke achieve its carbon
6 reduction goals?

7 A Depending -- it may or may not,
8 depending on the form the legislation. Again, under a
9 PURPA agreement, the carbon-free attributes do not
10 come with the energy and the capacity. So if there
11 was federal legislation that passed that ascribed zero
12 carbon energy credits to Cube, Cube would have the
13 free latitude under a PURPA agreement to sell those
14 zero carbon energy credits to someone in Virginia,
15 South Carolina. If they sold it into DEP, it would be
16 at an additional cost above and beyond what we're
17 talking about, whatever price we pay for energy and
18 capacity.

19 So while it is a carbon-free resource, the
20 benefit of that carbon-free resource does not transfer
21 with the sale of the energy and capacity under a PURPA
22 agreement.

23 Q Could dispatchability facilitate
24 better use of intermittent resources like wind and

1 solar?

2 A You'd have to take a very close
3 look at -- certainly, hydro is more dispatchable than
4 intermittent resources, but it has its dispatchability
5 limits as well due to water availability, must run,
6 other constraints, so limited dispatchability that
7 comes with hydro, you know, would be better than
8 intermittent resources, but they are -- they -- in and
9 of themselves, hydro resources have their own
10 limitations on dispatchability.

11 Q I want to go back to one thing.
12 You know, if Cube does have firm transmission, then it
13 could qualify for capacity, correct?

14 A Yeah. The transmission would need
15 to be studied and it would have to be deemed firm, and
16 any upgrades that may or may not be needed would have
17 to be put in place.

18 Q But I'm asking if it were deemed
19 firm, it didn't need upgrades, it could qualify for
20 capacity, or if those upgrades were made, correct?

21 A Yeah. If you have firm
22 transmission from a resource in another BA, it can --
23 whether it's PURPA or non-PURPA, if you have firm
24 transmission into your BA, you can deem that as

1 capacity.

2 Q And under PURPA, a QF can enter
3 into a contract that allows it to be dispatched, can't
4 it?

5 A Yes.

6 Q And, in fact, Duke has PPAs with
7 cogeneration units that are QFs that allow them to be
8 dispatched, right?

9 A Yes. I believe they do.

10 Q Okay. Mr. Keen, I think you say
11 on page 15 of your testimony that Duke's first offer
12 to Cube was a two-year energy-only transaction at
13 market rate. So Duke didn't purchase capacity from
14 the -- didn't offer -- I'm sorry -- to purchase
15 capacity from the facilities, correct?

16 A (Keen) That's right. And the
17 reason for that, and I think we talked about whether
18 there was, I think, a question briefly about PURPA
19 versus non-PURPA, but at that time, you know, we were
20 trying to do a market agreement and we already had --
21 we had plenty of capacity, so for us to justify a
22 purchase like that, it has to work on an energy basis
23 only because we already had plenty capacity. So
24 that's why we tried to structure it as an energy-only

1 transaction.

2 Q I understand.

3 A The benefit is we could do the
4 whole 200 MW, but we didn't have a capacity need, so
5 that was sort of a market-based agreement, while a
6 PURPA agreement would be more of a regulatory driven
7 agreement.

8 Q And, you know, do you recall Cube
9 ever indicating that it was not receptive to a PPA
10 where Duke had dispatch rights?

11 A Yes.

12 Q You do recall that?

13 A I do recall that, yes.

14 Q That Cube said they were not open
15 to dispatch rights?

16 A Yes.

17 Q Okay. Who said that, if you
18 recall?

19 A I don't remember who it was. I
20 was just as -- I was just as surprised as you are. I
21 think eventually -- as I mentioned before, we issued
22 an RFP in 2018, and we negotiated all the way until
23 April of '20 with them with -- I think it was Mr.
24 Collins' commercial replacement, and even at that

1 stage there was still limited dispatch rights.

2 Q If either of you know, did Duke
3 ever perform a calculation of what the avoided cost
4 rates would have -- Cube would have been eligible for
5 if it established a LEO in September 2016?

6 A Glen, you might want to talk about
7 the difference between -- before you answer that,
8 Glen, though, I will tell you that on September 25th,
9 '17, we did offer them a PURPA offer, essentially a
10 PURPA offer in September of '17, based on our 2017
11 avoided cost. And just so everybody knows, at that
12 point that was around \$34 a MWh on average. But that
13 was rejected by -- that was rejected by Cube Hydro.
14 They had actually, two or three weeks before that, had
15 sent us an offer asking for \$60 a MWh, escalating at 2
16 to 3 percent, which was unrealistic in any shape.
17 There was just no market at \$60 a MWh anywhere at that
18 time, so --

19 But Glen may have an idea, Mr.
20 Dowdy, as far as what -- the September '16 offer. I
21 think back then it was maybe \$60 -- I don't know, Glen
22 -- in that time frame, and we offered, say, 35, just
23 to make the math easier. We offered 35 in the --
24 summer of '17 35, summer of '16 maybe 50 or 55. I

1 don't know. Glen, maybe you have a better feel for
2 that.

3 A (Snider) I want to be very careful
4 in saying make an offer. You know, what were avoided
5 cost rates? I think we have Commission -- you know,
6 we filed rates, doing negotiated deals with people who
7 did establish -- appropriately established a legally
8 enforceable obligation in 2016. For those periods, I
9 believe we were somewhere in the mid-50s, plus or
10 minus a few dollars, you know, is where avoided costs
11 were, if that's the question. You know, I think
12 there's a -- you know, we can go back and look at our
13 filed rates for, you know, Sub 136 and see where those
14 are, Sub 140, Sub 148. But as I recall, you know, the
15 all-in levelized cost was somewhere in the mid-50s.

16 Q So subject to check, in the
17 mid-50s. And would the same be true for October 2016?
18 If a company established a LEO in September or October
19 of 2016, the avoided cost rates for Duke were in
20 approximately the mid-50s?

21 A Before the rates were filed in '16
22 in November, in all likelihood that would be, subject
23 to check.

24 Q And in --

1 COMMISSIONER CLODFELTER: Mr. Dowdy, I don't
2 know how much more you have, but I want to give Ms.
3 Garrett an afternoon break here. So --

4 MR. DOWDY: If it's suitable -- I'm very
5 close to finishing, but I think if it's suitable that
6 we could take a quick break. I think it will make
7 everything go quicker. It'll give me a few minutes to
8 streamline --

9 COMMISSIONER CLODFELTER: If you think it'll
10 make things go quicker, we're all in favor of, so
11 let's take an afternoon break here. And let me also
12 check with all counsel. How are we moving generally
13 toward the afternoon? What's your prediction?

14 MR. KAYLOR: Mr. Chair, in terms of
15 redirect, I just have a few questions based on what
16 I've heard so far, so I don't anticipate that it would
17 take more than 15 to 20 minutes max.

18 COMMISSIONER CLODFELTER: All right. Well,
19 then let's take a 15-minute break, and we'll come back
20 at 3:30. We'll come back on the record at 3:30.
21 Again, while we're in recess please stop your video
22 and mute your microphone.

23 (Recess taken from 3:16 p.m. to 3:30 p.m.)

24 COMMISSIONER CLODFELTER: Let's resume. Mr.

1 Dowdy?

2 MR. DOWDY: Thank you.

3 CONTINUED CROSS EXAMINATION BY MR. DOWDY:

4 Q All right. I'm going to try to do
5 this quickly. We were talking earlier about the
6 avoided cost rates in September and October 2016. Do
7 you remember that, Mr. Snider?

8 A (Snider) I do.

9 Q Okay. And you referenced a rate
10 range; is that fair to say?

11 A Yeah. And it really is subject to
12 check because I don't have the numbers open in front
13 of me, but based on my recollection, I think I'm in
14 the ballpark.

15 Q Were those the standard rates? In
16 other words, they weren't --

17 A Yeah.

18 Q -- these QFs specific, right?

19 A This was not a rate given. I
20 think I spoke about the bifurcated process in my
21 testimony and in my opening statement, that we have
22 published rates that get updated every two years that
23 small QFs are eligible for. Larger QFs have the same
24 underlying premises go in, but fuel prices get

1 updated, and those prices are updated periodically
2 over time so that as they establish a LEO, they're
3 offered a PURPA rate that is commensurate with the
4 avoided cost value they are creating at the time the
5 LEO is established. But it's generally in line with
6 the published rates except for movements in fuel
7 prices between avoided cost filings.

8 Q Okay. And the establishment --
9 the avoided cost rates are determined based on the LEO
10 date, correct?

11 A Correct.

12 Q And is it fair to say that then
13 the consensus would be for the general rates, if you
14 will, they didn't account for whatever the specific --
15 or they would not account for whatever the specific
16 advantages or disadvantages the Cube QFs may have
17 offered the system?

18 A Yeah. I think they -- you know,
19 you have to say that within the context of what is
20 allowed within PURPA. So, for example, Cube, while a
21 carbon-free asset, would not -- those carbon-free
22 attributes do not convey with PURPA, so that specific
23 attribute, whether it's a small QF or large QF, would
24 be fundamentally the same value, which is zero value

1 placed on an avoided cost rate.

2 Q And it would be fair to say rates
3 have gone down since October of 2016, avoided cost
4 rates?

5 A Yes. It is fair to say that they
6 have gone down. I think it's an interesting question
7 for the Commission. If they would have been moving in
8 the other direction, would the same -- would we be
9 here today? Would you and Mr. Collins be here saying,
10 you know, we picked up the phone and talked to an
11 executive and, oh, boy, November rates are \$70, and
12 then the next year they're 90, but we're going to
13 honor our \$60 rates?

14 I highly suggest that you're probably not
15 here having this conversation, and if we showed up at
16 the Commission saying we had a phone call from Cube in
17 '16 and, therefore, they're not eligible for the 70,
18 80, or \$90 rates, we probably would have been laughed
19 out of the Commission room.

20 Q Fair enough, but in that instance
21 is it possible that Duke might give a different answer
22 on how to fill out the NoC Form?

23 A No.

24 Q Well, I want to talk about that.

1 Let's finish there. You referenced the possibility of
2 -- I forget exactly how you put it, but crossing out
3 Section 3 and putting N/A?

4 A Yeah.

5 Q But N/A is not actually a choice
6 on this form, is it?

7 A I've filled out a lot of forms in
8 my day where I don't have a choice, and I write over
9 it, and many times it goes perfectly accepted.

10 Q Many times, but how would one know
11 it would be accepted this time?

12 A It's probably a better chance of
13 it being accepted than not filling out a form at all.

14 Q Do you know if that's an option
15 listed on the website, to mark Section 3 N/A?

16 A I think any form can't envision
17 every potential outcome, and it's up to the person
18 filling out the form if they have questions to ask. I
19 think Mr. Collins alluded to the fact that he was
20 aware this form was out there long before having
21 conversations, and if he had specific questions on the
22 form, he could have asked. He was aware of that form.
23 He testified he was aware of the form. And they
24 wanted -- and I think, quite frankly, you wanted to

1 keep your option open to be able to back cast if
2 prices went down and forward cast if they go up. And
3 I know it's commercially reasonable to do that, but
4 that's the whole purpose of a NoC Form.

5 Q But just to be fair, though,
6 you're surmising that. You don't know whether that's
7 what Mr. Collins or Cube was thinking or not, do you?

8 A I do know that Mr. Collins just
9 testified that he was aware that form was there before
10 conversations with Duke.

11 Q Yeah. He was aware of the form,
12 but, again --

13 A And if he had questions on the
14 form or how to fill the form out, he could have
15 reached out to Mr. Keen or other representatives at
16 Duke during one of these many conversations.

17 Q Well, fair enough, but when Duke
18 was flagging issues for Mr. Collins, they could have
19 raised the NoC Form, too, couldn't they?

20 A It's not Duke's responsibil---
21 we're not the seller. And quite frankly, as Mr. Keen
22 represents, Cube is not the seller until they own the
23 asset. But we're not the seller, and we have many,
24 many, many QFs that go to our website, fill out the

1 NoC Form, and bring it to this Commission. And if the
2 Commission has a standard of the Company has to make
3 the QF aware of the NoC Form, they would have put that
4 in their Order.

5 The NoC Form is published on our website.
6 It's very transparent as to what it needs to do to
7 establish a Notice of Commitment. Sophisticated
8 buyers would be looking at that. Mr. Collins said he
9 looked at that. So, you know, I find it a little
10 disingenuous to say it was Duke's responsibility to
11 start raising these questions about what do I do about
12 the CPCN before the seller even was established as a
13 seller.

14 Q You reference the website. Does
15 the website mention the option of marking N/A to your
16 -- crossing out and writing N/A, to your knowledge?

17 A No. If it would be, it would have
18 been on the form.

19 Q Okay. And do you know if, either
20 of you, if you've ever received a form that someone
21 marked N/A?

22 A I do not review the form, so I
23 wouldn't have that information.

24 Q Let me make sure I understand your

1 answer. I'm sorry. You don't know if it's happened
2 or -- is that what --

3 A I do not know if it's happened.

4 Q Mr. Keen, do you know?

5 A (Keen) I don't know if anyone has
6 put N/A on there. I do know that every PPA that we do
7 has a NoC Form submitted before we calculate the
8 avoided cost. And typically, as I mentioned before,
9 if our contract management folks see that a form is
10 incorrectly filled out or we need additional
11 information, they will reach out to the owner and get
12 the form corrected.

13 Q If you mark N/A, what is the LEO
14 date under this form?

15 A (Snider) The LEO date is not about
16 when you get the CPCN. The LEO date is when a NoC
17 Form is received as deemed to be an appropriate NoC
18 Form. And I think we've had a lot of testimony today
19 about the fact that the NoC Form being submitted, if
20 there was not a disagreement that the CPCN was going
21 to make it invalid -- in other words, if the Public
22 Staff has said we don't see an issue, Duke has not
23 said that we would have invalidated that simply
24 because you put N/A. You know, there's no reason to

1 believe that the LEO wouldn't have been established
2 when an owner of a facility files a NoC Form and the
3 parties agree that it's, you know, that it's filled
4 out. And if the Company would have, and I don't
5 believe they would have contested the N/A designation
6 at that point in time, then the Commission has an
7 issue to arbitrate. Then the Commission can say, yes,
8 N/A is right because these facilities were built
9 pre-CPCN, something that, you know, one of many
10 hundreds of potential things that could potentially --
11 you can't think of everything in a form -- that could
12 make the form, you know, an N/A appropriate and say,
13 yes, we either agree with Cube or we agree with the
14 Company that it was or wasn't an appropriate NoC. But
15 the point is the NoC was never filed.

16 Q And I take it that neither of you
17 know, as you sit here today, whether Duke would have
18 agreed with the Public Staff about whether a CPCN was
19 required?

20 A From my perspective, I think it's
21 reasonable to say these facilities have already
22 predated the CPCN, and they are operating facilities
23 in good standing and, you know, we're ready, willing,
24 and able, we're the owner, we've recertified, and

1 that's -- you know, that would have had to have been,
2 too, you know. I don't necessarily agree with Mr.
3 Collins that the facility gets QF designation without
4 the owner. I'm not a lawyer, I think that issue would
5 need to be looked into, but FERC requires new owners
6 to recertify, as I understand it. They require
7 recertification if there's significant changes to the
8 facility, which part of the transfer of this ownership
9 there are significant changes.

10 So I do believe, you know, the fact that
11 recertification of this facility under Yadkin -- you
12 know, from Yadkin over to Cube that didn't happen
13 until March of 2018 also should be, you know, a
14 question of whether or not an actual QF has been
15 established in Cube's name. I disagree with Mr.
16 Collins' representation that simply certifying the
17 facility, you know, if that was the case, Cube -- or
18 FERC wouldn't have you recertify. FERC wouldn't have
19 you recertify with significant changes or with new
20 owners. But as I understand it, FERC asked that these
21 facilities be recertified under those situations.

22 So I -- you know, we haven't even brought
23 that up, but that probably would have more likely been
24 the contention than the CPCN.

1 Q I understand. Okay. So you
2 referenced earlier -- was it your testimony earlier
3 that not every form covers every situation, right?

4 A Yes. Yes.

5 Q And that led you to the conclusion
6 that one should sort of make changes or write-overs to
7 the form to address that; is that right?

8 A Or reach out and ask. Ask the
9 Public Staff. Ask the Company.

10 Q Is one other thing that someone
11 could do ask for a waiver?

12 A It would probably be good if they
13 asked for the waiver at the time they were trying to
14 establish the LEO and not after prices have fallen and
15 they didn't get, you know, they highest price they
16 could have.

17 So when the waiver is being used as a
18 retrospective free put option, then, no, I don't think
19 that's a reasonable option. You know, you could ask
20 for the waiver in 2016, you know, in October of 2016
21 if you thought it was an invalid form and said, you
22 know, we'd like a waiver and we'd like clarification
23 that we can establish a LEO as a nonowner. So, you
24 know, I think the waiver is not an acceptable reason

1 not to fill out a form.

2 Q And if you filed that proceeding,
3 then presumably that would be a proceeding that other
4 people could get involved in, intervene, or the
5 Company could contest, right?

6 A Well, I think the Commission would
7 need to determine whether a nonowner at that point in
8 time could establish a LEO, because it is a very
9 complex issue. There may be three people bidding on
10 those assets. What if they all at different points in
11 time tried to establish a LEO? I don't know how the
12 Commission thinks about that. I'm sure you are not
13 the only prospective bidders on the Alcoa assets and,
14 therefore, multiple people could be looking to
15 establish LEOs at various points in time in
16 negotiation. It seems unwieldy and unmanageable that
17 that would actually be how a LEO gets established.

18 Q But proceeding in that -- and I
19 think this is my last question. Proceeding in that
20 manner, then, wouldn't necessarily create the
21 certainty that the NoC Form is intended to create; is
22 that right?

23 A That's why a NoC Form can't be
24 filled out by a prospective owner. So it certainly

1 creates the certainty as long as the owner is the only
2 one that can fill out the NoC Form.

3 Q Well, and there is no section they
4 need to cross out, right?

5 A Don't think they needed to cross
6 out. They just need to ask for clarity.

7 MR. DOWDY: I don't have any further
8 questions.

9 MR. KAYLOR: Redirect, Mr. Chairman?

10 COMMISSIONER CLODFELTER: Yes. Redirect.

11 MR. KAYLOR: Thank you.

12 REDIRECT EXAMINATION BY MR. KAYLOR:

13 Q Just following up, Mr. Snider, on
14 that line of questioning, you said several times that
15 the NoC Form is filed. It's actually not filed with
16 the Commission, is it? It's actually handed to Duke;
17 is that correct?

18 A That is correct. I'm sorry if I
19 misspoke.

20 Q And you were asked a series of
21 questions about the timing of whether or not Cube
22 would have been eligible for the avoided cost rate
23 prior to the November 2016 change versus what those
24 rates would look like after that change. Can you give

1 us a magnitude in dollars of what we might be looking
2 at or the Commission might be looking at in terms of
3 what customers would have to pay if it's established
4 that they are entitled to those pre-November 2016
5 rates?

6 A You know, I heard Mr. Collins
7 testify and I jotted it down, that the three
8 facilities that are in question produce about 400,000
9 MWh a year. We're talking differences in rates of,
10 for round numbers, \$25 a MWh, so you're looking at \$10
11 million a year of overpayment times a 10-year
12 contract. Let's say it would be \$100 million of costs
13 that customers would pay that are above current rates.

14 Q And as you said, the customers pay
15 that, not Duke -- not Duke Energy?

16 A Yeah. This is always a -- you
17 know, Duke is the middleman here that collects dollars
18 from customers and gives those dollars to the QF.

19 Q This would be for the Panel. I'm
20 not sure if you want to answer it, Mr. Snider or Mr.
21 Keen, but we were asked to look at the exhibit which
22 was the press release showing that the facility had
23 been purchased. Do you recall that, either one of
24 you?

1 A (Snider) I remember looking at
2 that press release, yes. Like I don't know --

3 A (Keen) Yeah. I remember looking
4 at it, but I don't remember which --

5 Q I think that was Exhibit 7.

6 A Okay. Let's see. Exhibit 7. It
7 was the Kendall Bowman email with the -- I guess an
8 attachment, it looked like.

9 Q Yeah. My question is in the very
10 last -- the next-to-last paragraph of that press
11 release, it talks about how -- all the fights among
12 the counties, the cities, state government, and
13 ownership of the Alcoa facilities were now over with
14 because of the purchase with -- by Cube. My question
15 is, doesn't that indicate that in that time frame, in
16 the fall of 2016, there was still uncertainty as to
17 who might own those units and that you were right in
18 your position that you don't talk to someone unless
19 they actually own the facility?

20 A Yes. I guess there still was some
21 opposition at that time. I know like we had seen
22 documents that the North Carolina Department of
23 Justice was involved, also. But, again, it's just a
24 lot cleaner for us not to try to guess who the owner

1 is going to be or when the owner is going to be. So
2 from a business perspective, we wait till we know who
3 actually owns the plant. And on January 31st, 2017,
4 it was owned by Alcoa. The next day it was owned by
5 Cube Hydro. So that's how clean it is, from our
6 perspective, when we're dealing with counterparties
7 like this.

8 Q And Mr. Keen, I believe you were
9 asked a question about the ability of Cube to dispatch
10 the unit. Did they ever indicate to you that the units
11 would be dispatchable?

12 A Yeah. I mean, that's a good
13 question, and I got that earlier. So on September
14 5th, 2017, when we got our first offer from Cube
15 Hydro, they wanted to sell us the full 215 MW for 15
16 years at \$60 a MW, escalating at 3 percent. In that
17 agreement, it states in that agreement that Cube Hydro
18 has full scheduling and dispatch rights, and Duke
19 would only be able to dispatch the unit in an
20 emergency condition. But that pricing of \$60 a MWh
21 for 15 years, that would be about \$150 million over
22 our current -- over our summer of 2017 avoided cost.

23 Q Thank you.

24 MR. KAYLOR: That's all the questions I have

1 of the Panel, Mr. Chairman.

2 COMMISSIONER CLODFELTER: All right. Let's
3 see what questions we have from Commissioners, and
4 I'll begin again with Commissioner Brown-Bland.

5 EXAMINATION BY COMMISSIONER BROWN-BLAND:

6 Q Mr. Keen, good afternoon. With
7 regard to the letter dated September 21st, 2016 to
8 John Collins, in that letter you indicated that the
9 Yadkin system was not owned by Cube, essentially, it
10 was owned by Alcoa, correct?

11 A (Keen) Yes, ma'am. I mean, yes,
12 Congressman (sic).

13 Q Then you indicated at the end of
14 that second paragraph there --

15 A Oh.

16 Q That's okay. It's late.

17 A Sorry about that.

18 Q That's okay. You indicated at the
19 end of that paragraph that you had informed -- that to
20 the extent that Cube was considering working under
21 PURPA or certifying the units under PURPA, that it was
22 Duke's position that Duke likely had no PURPA
23 obligation. Is that a fair assessment?

24 A Yes. There was -- at that time,

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1 before they owned the assets, there were some
2 conversations internally with legal counsel that we
3 might be eligible from -- eligible for the organized
4 market exception under PURPA, and it was something
5 that I wanted to make sure that Cube Hydro knew that
6 we were discussing about and gave them a chance to do
7 their homework, also. I think in retrospect we
8 decided not to exercise that right to go to FERC and
9 ask for that, and I don't think -- and we never made a
10 decision to go forward with that, but we wanted them
11 to at least know that it was a conversation we were
12 having and make sure they had read that section of
13 PURPA.

14 But we ended up -- and what eventually
15 happened, there was -- we -- once they owned the
16 plants in February, by later that summer we basically
17 gave them a PURPA offer, so the organized market
18 exemption, the NoC stuff, it kind of became moot
19 because once they owned it, we basically gave them the
20 2017 similar offer and they rejected that.

21 Q But here in this letter of
22 September 21st, that statement regarding PURPA is not
23 necessarily tied to the statement right up above it
24 that Duke does not have any current need for energy

1 capacity.

2 A Yeah. The reason I mentioned
3 current needs is because there's really two paths you
4 can take if you want to do a long-term agreement. You
5 can take the PURPA path, which is sort of a regulatory
6 process we've talking about today, or you can take the
7 market case. And basically, I was telling them that
8 we didn't really need any capacity and energy at that
9 time, but that when we did, we would issue an RFP for
10 that. And then when we do the RFP, we get competitive
11 solicitations and we can prove to ourselves and to you
12 that we're out buying the most -- the cheapest
13 available capacity and energy out there and getting
14 the best price for our customers, so -- and eventually
15 we did that in 2018. We went the non-PURPA path with
16 them. It just didn't work out because there was a
17 couple thousand megawatts in the market cheaper than
18 that.

19 Q So --

20 A But the one thing we mentioned to
21 them was that these things were not certified at FERC
22 as QFs yet, and then a week later they went and got
23 them certified, Alcoa did, not Cube.

24 Q Okay. So you've gotten ahead of

1 me just a little bit there. So what I'm driving at
2 right here is those two statements about having no
3 need for energy or capacity, and then the issue that
4 you likely didn't have a PURPA obligation, those are
5 two separate -- they're not tied together; that's two
6 separate concepts, correct?

7 A They are two separate issues, yes.

8 Q Okay. And then where you were
9 going is where I was going to go -- well, let me come
10 back to that. So --

11 A Sure.

12 Q -- you -- well, when did Duke
13 first decide to negotiate or make any proposal to
14 Cube?

15 A I think that was -- I think the
16 decision was made in March of 2017. The following --
17 they owned them in February. I think in March we
18 decided to go forward and negotiate with them at that
19 time. And throughout that summer we traded -- we sent
20 them two offers and they sent us two offers. We just
21 weren't able to agree. We were very far apart. We
22 were at avoided cost about 34 bucks and they were in
23 the 50 to \$60 range. We were just very far apart.

24 Q And so prior to that time or

1 sometime in 2017, Duke did not negotiate or entertain
2 negotiations with Cube, whether it was PURPA or
3 non-PURPA, correct?

4 A Can you repeat that question,
5 please?

6 Q Duke didn't negotiate with Cube
7 prior to 2017, either PURPA or non-PURPA?

8 A That's correct. We did not -- I
9 mean, we had a lot of conversations, a lot of
10 meetings, a lot of letters going back and forth before
11 they owned it, but I wouldn't classify those as
12 negotiations. I think once they owned it in February,
13 it was at that point we started sharing pricing data
14 and began negotiations with them.

15 Q And coming back to where you were
16 a few minutes ago, at some point -- it's not in this
17 letter of September 21st, but I just understood you to
18 say at some point Duke told Cube that these facilities
19 were not QFs?

20 A They had not -- at the time of the
21 September 21st letter, they had not been certified at
22 FERC as QFs. And then a week later Alcoa did file the
23 FERC Form 556 to get self-certification. So it was
24 done on September 28th --

1 Q And so --

2 A -- by Alcoa.

3 Q Do you recall that to just have
4 been an oral conversation or was that in writing, and
5 I just don't remember, if you know, when you indicated
6 --

7 A Are you talking about when --

8 Q -- that it was not a QF, when you
9 indicated to Cube that it was not a QF.

10 A It was done both in writing and
11 verbally.

12 Q All right. And then you said a
13 week later?

14 A Yes.

15 Q Was it a week later?

16 A So September 28, 2016, or right
17 around that day, Alcoa self-certified three of the
18 four facilities at FERC.

19 Q All right.

20 A So that was the -- even though
21 PURPA had come around in 1979, '78, that was the first
22 time these three power plants were ever certified, as
23 far as we could tell, as QFs.

24 Q Now, if -- it doesn't have to be

1 Cube and it doesn't have to be about what was going on
2 here. This is just my general question on Duke's
3 practice. If you were going to sit down and enter
4 PURPA negotiations, you know, you were seriously
5 trying to get to some end result there, would you have
6 indicated to the party you were negotiating with -- in
7 this case if it's going to be PURPA it would be a QF
8 -- would you have indicated to them what Duke would be
9 looking for, what Duke would need to go forward?

10 A Yes, we would. Like I mentioned
11 earlier, we have -- we just had four hydros start
12 March 1st. We've got four more starting March 15th.
13 When they reached out to us, they submitted their NoC
14 Forms. We checked them, put them in the file. And
15 then we calculate our cost based on those, give them a
16 PPA, and then the agreement starts. We do a REC
17 agreement at the same time. So that's the case.

18 What happened with this one was sort of in
19 March of '17 we were doing a non-PURPA agreement
20 because we wanted to sell -- they wanted to sell the
21 whole 200 MW and we wanted to buy the whole 200 MW, so
22 we initially started in March trying to do a non-PURPA
23 agreement. That eventually didn't work out. They
24 didn't like our pricing. So in September of 2017 we

1 offered them basically a full PURPA agreement based on
2 the 2017 avoided cost. And what they want is the
3 avoided cost before mid-November of 2016.

4 Q But if -- with any QF, if all the
5 elements were there, you were -- you know, you were
6 trying to be serious to get to a PURPA-based
7 agreement, it's not Duke's practice not to hi--- you
8 don't try to -- I realize that the NoC is on the
9 website, but if you were sitting down with personnel
10 and talking, you think it would have at --

11 A No.

12 Q -- least come up?

13 A No. I mean, there's no way we
14 would do that. I mean, you hear people --

15 Q No way you would do what?

16 A Well, there's no way we would use
17 -- that we wouldn't interact or communicate with
18 people who want to be a PURPA and sell to us. Okay.
19 I mean, we would -- and we do this all the time. Like
20 I said, we have 60 small hydros that we deal with all
21 the time. We work with them as closely as we can to
22 get these done. A lot of these are mom-and-pop
23 operations that are filling out their NoC Form on the
24 kitchen table. I mean, we're trying to meet our

1 obligations at all times here. When you hear people
2 talk about bad faith negotiations in here, I've been
3 the commercial representative since the beginning, and
4 I don't negotiate in bad faith. We tried very, very
5 hard to get a deal with these power plants and
6 literally just stopped negotiating a non-PURPA deal in
7 April of '20, and the only reason we did that was we
8 just couldn't get past the pricing hurdle.

9 Q All right. And so it's not some
10 directive or practice of Duke to hide the ball
11 regarding the NoC requirement, correct?

12 A Not at all. No, ma'am. We would
13 not, no.

14 Q Now, if -- let's say in this case
15 if Cube had submitted the Notice of Commitment Form
16 and that we weren't here talking about a waiver and no
17 waiver was needed, but the rest of the facts remain
18 the same, the sale had not closed and that kind of
19 thing, would Duke have negotiated with Cube?

20 A Would we negotiate with them if --
21 would we negotiate with them if they never owned the
22 plant?

23 Q Right, but the fact that I'm
24 changing would be that they would have -- they would

1 still not own the plant, but they would have submitted
2 -- somehow submitted a NoC Form prior to 2017?

3 A Oh, okay. Yeah. No. I mean, we
4 would not accept the NoC Form from a nonowner. If the
5 NoC Form -- before they owned it on 2/1/17, if the NoC
6 Form had come from Alcoa, we would have moved forward
7 and put a PURPA deal in place with PURPA at the time.
8 And whether or not that agreement was assigned once
9 the sale was done, I don't really know how that would
10 work, but if Alcoa approached us in the summer of '16
11 with a NoC Form and they certified the units as QFs,
12 we would have calculated our avoided cost at that time
13 and presented them a PPA with that.

14 Q All right. And at any time -- or
15 were you ever provided with the purchase agreement
16 between Alcoa and Cube?

17 A No, ma'am.

18 Q And at no time -- did you happen
19 to see it or was it ever reviewed by Duke, that
20 purchase agreement?

21 A I can't say if anyone at Duke had
22 ever seen it. I can tell you I never saw it. I never
23 knew what the closing requirements were. I know that
24 I was never reached out to by Alcoa at any time at

1 all, not one time. I have never talked to anyone at
2 Alcoa.

3 Q All right.

4 COMMISSIONER BROWN-BLAND: No further
5 questions. Thank you.

6 COMMISSIONER CLODFELTER: Okay.
7 Commissioner Gray?

8 COMMISSIONER GRAY: Thank you for the day,
9 but no further questions.

10 COMMISSIONER CLODFELTER: All right. Thank
11 you. Commissioner Duffley?

12 COMMISSIONER DUFFLEY: I have just a few.

13 EXAMINATION BY COMMISSIONER DUFFLEY:

14 Q Good afternoon, gentlemen.

15 A (Keen) Good afternoon.

16 A (Snider) Good afternoon.

17 Q So Mr. Keen, you testified today
18 about the 60 small hydro PPAs or hydro facilities in
19 North Carolina, and you also mentioned that four of
20 those have just recently submitted, I think I heard,
21 those NoC Forms. And just in the context of other
22 similarly situated entities to Cube, were any of these
23 small hydros in the same situation as Cube, and how
24 did those negotiations go?

1 A Yeah. We have four that just
2 started Monday. We've got four more starting March
3 15th. And negotiations go fine because I think we
4 explain how it works. They know that they have to
5 submit the NoC Form. They know that if they're, you
6 know, less than 1 MW or 2 MW, depending on which state
7 they're in, they could do a standard agreement, and if
8 they're not, then we negotiate a rate based on those
9 avoided costs and we give them a PPA. It goes pretty
10 straightforward.

11 Typically, the biggest discussion is the
12 term. Some like a one-year term, some want a five-year
13 term, some a 10-year term. So we have to work within
14 the regulations to get them the term they like. So a
15 lot of times we'll calculate a different term for
16 them, if they want to look at, you know, different
17 cost, but for the most part they go pretty
18 straightforward. We include with that -- typically,
19 we have the PPA with the avoided cost in it, you have
20 an Interconnection Agreement, and you have a REC
21 agreement. So we will buy RECs from these because
22 they do meet new renewable energy facility status of
23 less than 10 MW and that, so we can buy RECs from
24 them. So typically with these customers we have three

1 agreements in place with them.

2 Q So none of the facilities were
3 built prior to the institution of the CPCN statute?

4 A Not the ones I've dealt with
5 recently. Most of these are very old units, older,
6 smaller units. But we do have -- frequently, we do
7 have assets -- those hydro assets do end up on the
8 market occasionally, so our contract administration
9 people, they have the difficult job of making sure
10 we're sending the invoices to the right owners because
11 these things do get sold and passed down and things
12 like that occasionally, so we have folks that, you
13 know, have to, you know, do the paperwork for change
14 of ownership or change of control and things like
15 that. But I'm --

16 These are -- well, most of these don't --
17 none of these really have their own balancing
18 authority. These are small plants that are either
19 within our system or an adjoining system, so they
20 don't have like their own transmission and stuff, so
21 that's a little bit different. You don't have the
22 extra -- you don't have the extra sort of non-PURPA
23 unit, either, but --

24 Q Mr. Keen, I'm going to redirect

1 you to a different question --

2 A Okay.

3 Q -- or a question -- similar
4 question. Mr. Snider was asked about are there
5 similarly situated facilities in North Carolina, and
6 he answered that he was not aware of any. What is
7 your answer to that question?

8 A Well, could you please just make
9 sure I answer your question correctly, what you mean
10 by "similarly situated"?

11 Q That they were built and put into
12 operation prior to the CPCN requirements.

13 A Oh, yeah. Almost all these small
14 hydros were put in place before that.

15 Q Okay.

16 A So I would say almost all of them.

17 Q So how were those other hydro
18 facilities able to fill out the NoC Form?

19 A They -- and I have to go back and
20 look. I did glance at some of them. Some of them
21 just leave that section blank and, you know, our
22 contract administration people are fine with that.
23 When you have a plant that's been around for 50 or 60
24 years, a CPCN doesn't really, you know, may -- well, I

1 don't want to get into that -- but, yeah, they fill
2 out the forms and just leave that area blank,
3 typically.

4 Q About how many facilities that
5 you're aware of that have just left that portion of
6 the form blank?

7 A I don't know the answer to that.

8 Q Okay.

9 A I'd have to go back and look or
10 have our contract people do some research on that.
11 You know, while we were on break, I went and pulled up
12 some to just check these eight, and we have NoCs for
13 all eight of them.

14 Q Okay. I'm going to switch to the
15 exemption, the claim for the potential --

16 A Sure.

17 Q -- exemption to purchase.

18 A Sure.

19 Q I've heard you say that you
20 researched it. Why did you make the decision not to
21 move forward with filing with FERC for the exemption?

22 A That's a really good question.
23 There was a couple things. One is, entering into a
24 hydro facility at avoided cost is -- you know, we

1 consider that to be a good thing, I mean, so it wasn't
2 like we didn't want to buy the output. We did. So I
3 think that was part of it. There was some question on
4 whether FERC would agree to it or not. So we decided
5 just to basically move forward, and once we were not
6 able to make a non-PURPA agreement with them, that's
7 why we offered a PURPA agreement, essentially a PURPA
8 agreement September of '17.

9 But, really, we were not sure if FERC would
10 agree, and two is we're kind of indifferent at avoided
11 cost. We're supposed to be indifferent at avoided
12 cost, but if it's calculated right, it shouldn't be
13 below our cost, it shouldn't be above our cost. It
14 should be right at our cost. And locking up some
15 hydros at our avoided cost, that's not a bad thing.
16 We like our 60 hydro PPAs and we like our 26
17 facilities in the Carolinas, the hydro facilities, so
18 -- and these are good power plants.

19 Q Okay. And you mentioned the PURPA
20 agreement that you currently entered into. So since
21 it's PURPA, I assume the Narrows facility is not part
22 of the agreement. Do you have a separate contract or
23 agreement with respect to the Narrows facility?

24 A No, we do not. I'm not aware of

1 any agreement between us and Narrows. As we mentioned
2 earlier, we do have a DEC as-available agreement and a
3 DEP as available. Those are PURPA agreements, and
4 those are in place with the three PURPA machines. But
5 I think Narrows is one where Cube is probably playing
6 the market with that, so they're selling to, you know,
7 each day to maybe the highest bidder or something like
8 that. But they don't have that one tied up in any
9 agreement, as far as I know.

10 Q Okay. And then you mentioned the
11 2018 DEP RFP. What are the sources of generation for
12 the 18--- what was it, 1,800 MW, is that right,
13 secured in that RFP?

14 A Yes, ma'am.

15 Q Do you know the sources of
16 generation?

17 A So we did issue that in 2018. We
18 got about 20 bids in. We did 5 PPAs. One of those is
19 a peaking purchase from NCEMC in DEP's territory. The
20 other four machines are located in DEC's territory,
21 and those agreements are Southern Power-Grand combined
22 cycle, Southern Power-Grand combustion turbine, the
23 Broad River peaking site, and the Southern
24 Power-Cleveland four peaker.

1 Q So they're all natural gas?

2 A They're all firm dispatchable
3 natural gas, and all the peakers are dual fuel, so
4 they can run on liquid fuel, also.

5 Q Okay. Thank you.

6 A (Snider) Commissioner Duffley,
7 just to expand briefly on that, many of those were
8 machines that we've been buying from that its RECs
9 were expiring and they bid competitively into the RFP
10 then purchase power obligations that we had already
11 been in place with them.

12 Q Thank you. So Mr. Snider, I have
13 -- or both of you can answer -- but Mr. Snider, I have
14 one hypothetical for you. So let's say Cube submitted
15 the NoC Form the day after closing on February 2nd of
16 2017. Is it your contention that the LEO would be
17 created on that date or was there some other
18 outstanding item?

19 A Commissioner Duffley, you know,
20 from my perspective and, you know, obviously we would
21 review it and see if we believe the LEO was -- the NoC
22 Form was sufficient, adequate. As Mike pointed out, I
23 don't see where we would have had a contention with
24 the CPCN portion that's been so greatly debated today.

1 I do personally think what would need to be reviewed
2 is, you know, had they self-certified and had their
3 self-certification on that date, then I think we'd
4 been all set, right? If on February 2nd they received
5 a self-certification in Cube's name and they filled it
6 out and they submitted it and they left the CPCN
7 portion blank, and they committed to sell the output
8 as the owner of the asset on February 2nd, I think
9 you're golden and nobody is here today.

10 I think the fact that it never got filled
11 out, I think the CPCN is not the issue. I do think
12 it's worth thinking about the self-certification
13 process that Cube went through on March of 2018 to
14 recertify the facility with FERC, given FERC's
15 regulations to say if there are a change in
16 circumstances in the asset, you need to recertify.
17 And if that's change in ownership, if that's
18 significant modifications, I think that's where, you
19 know, we'd like to see the self-certification in the
20 owner's name. So had they recertified -- instead of
21 in March of '18, had they recertified that facility on
22 February 2nd of 2017 and they then committed to sell
23 the entirety of the output, committed to pursue
24 getting the transmission upgrades that will be

1 required to fulfill that obligation, you know, I think
2 we're golden at that point and the NoC works as it's
3 supposed to. It's the nonsubmittal of the NoC that
4 created, you know, the issue.

5 And had we had these debates timely back
6 then, we would have, I think, resolved those rather
7 expeditiously rather than waiting and, you know, years
8 down the road to having not filled it out.

9 Q Okay. Thank you.

10 COMMISSIONER DUFFLEY: I have nothing
11 further.

12 COMMISSIONER CLODFELTER: Thank you.
13 Commissioner Hughes?

14 COMMISSIONER HUGHES: No questions. Thank
15 you.

16 COMMISSIONER CLODFELTER: All right.
17 Commissioner McKissick?

18 COMMISSIONER McKISSICK: Thank you, Mr.
19 Chair. I do have a couple questions.

20 EXAMINATION BY COMMISSIONER McKISSICK:

21 Q And Mr. Snider, perhaps you are
22 best able to help me with it. I was going back to the
23 Order that was entered by the Commission back on
24 December 12th, 2015, where they first brought up the

1 use of the -- and after that the Duke Form, and was it
2 your understanding, based upon the way this order was
3 entered, drafting, based upon discussion that the
4 Order that the use of an NoC Form is mandatory, but
5 where it was absolutely required it was not
6 discretionary? I mean, what was your understanding?
7 And do you need to review it to --

8 A (Snider) No. It was my
9 understanding that it was mandatory, that the NoC Form
10 is what was needed to establish the LEO.
11 Commissioner, I would say that your body was the sort
12 of leading in seeing that this has been problematic
13 for years in North Carolina. North Carolina then --
14 its Legislature then went and saw other reforms needed
15 with PURPA and had House Bill 589. The FERC recently
16 made PURPA reforms in July of last year, given the
17 issues we've seen in setting a fixed price avoided
18 cost rate, some of which are to do with the LEO, some
19 of which are to do with stale fixed energy rates.

20 You know, North Carolina has a long history
21 of running into these types of issues, and having a
22 voluntary NoC Form doesn't do much to solve it, so my
23 read of that was the NoC Form is what establishes the
24 LEO. It works both ways that way. I've been on --

1 like I said, I was in the arbitration proceeding a
2 decade ago. It's a little bit of déjà vu here for me.
3 In 2011 I sat before this Commission before a NoC Form
4 was put in place with the EPCOR assets, and it reduced
5 the Commission to a very difficult situation of, I
6 believe, like looking through board minutes trying to
7 figure out when did this LEO get established. You
8 know, there's no clear standard.

9 You know, and like I said, if we're the
10 other way today and avoided cost rates were going up
11 and the Company came in and said, hey, they started
12 calling us in '16, we want those lower rates, I think
13 you would see Cube on the other side of the argument
14 saying we're entitled to rates all the way up until we
15 signed our NoC Form. So I think the NoC Form protects
16 you in either direction from rates going up, from
17 rates going down, buyer, seller. It takes all this
18 subjectivity that we once again are here today going
19 through, reading through emails, reading through
20 letters, trying to say this email to this person
21 constitutes a LEO is exactly why the NoC Form was put
22 in place. And if it was voluntary, it would neuter
23 that effective use of that.

24 So my interpretation was the NoC Form in

North Carolina Utilities Commission

1 that 2015 Order eliminated that ambiguity and was the
2 -- both to the protection of the buyer and the
3 protection of the seller at the unequivocal point at
4 which a LEO gets established.

5 Q Okay. Just a little follow up.
6 Do you have access to that Order? I believe it was --

7 A I do.

8 Q Okay.

9 A I have pages -- yeah, I think I
10 have it.

11 Q Can you turn to page 51?

12 A Okay. Let me make sure. Oh, I
13 have subsets out of it, and I only have through page
14 --

15 Q I see.

16 A I'm sorry. Wait, wait. Let me
17 look and see if I can have it in another --

18 Q I believe I can point you to this.
19 It's a cross exhibit. It's Cross Exhibit Number 14
20 which was the --

21 MS. FENTRESS: Commissioner McKissick, may I
22 --

23 COMMISSIONER McKISSICK: Yes.

24 MS. FENTRESS: -- ask, are you referring to

1 the Order in Sub 140 that declared --

2 COMMISSIONER McKISSICK: Yes.

3 MS. FENTRESS: -- that the NoC be made
4 mandatory? I believe I sent that to Mr. Snider, but I
5 can --

6 A I see it now. Is it Cross Exhibit
7 14?

8 Q Yeah.

9 A Yeah. Page 51.

10 Q If you turn to page --

11 A Yes.

12 Q -- 51.

13 A I'm there, sir.

14 Q And you see the first paragraph
15 underneath Discussion and Conclusions?

16 A I do.

17 Q Can you just read that briefly and
18 let me know if this is consistent with your
19 recollections relating to the NoC Form being
20 mandatory?

21 A "The Commission concludes that the
22 use of a simple form clearly establishes a QF's
23 commitment to sell its electric output to a Utility to
24 establish the notice of commitment to sell prong for

1 creation of a LEO would provide clarity both to QFs
2 and the Utilities and reduce the number of disputes
3 between the parties and number of complaints brought
4 before the Commission for adjudication as to when the
5 LEO was established. The revised form" -- was
6 submitted by Dominion -- with its reliability --
7 "Reply Comments" -- excuse me -- "contains the
8 information necessary to satisfy the second prong of
9 the LEO test and should not be unduly burdensome for"
10 -- the -- "QFs to complete. As such, the Commission
11 finds that the use of the form should be mandatory."

12 Q And is that consistent with your
13 recollections?

14 A That is consistent, sir.

15 Q Now, was there any exceptions made
16 in this Order and any subsequent Orders relating to
17 facilities such as the hydro facilities which, you
18 know, are being sold in this case that predated the
19 need for a CPCN?

20 A Not to my recollection, no.

21 Q All right. And I believe you
22 might have stated earlier -- no -- I believe perhaps
23 it was the other gentleman, Mr. Keen, stated earlier
24 they're aware of eight hydro facilities or facilities

1 that predated the requirement to submit; is that
2 correct? Mr. Keen, is that what you stated earlier?

3 A (Keen) Yeah. We have -- we have
4 four that just started March 1st. We've got four more
5 starting March 15th. And they all submitted NoC
6 Forms. And they're all, you know, I would call them
7 legacy hydro units.

8 Q Okay.

9 COMMISSIONER McKISSICK: I think you guys
10 have answered all the questions I had with the
11 questions you replied to of prior -- of other
12 Commissioners, so thank you. I don't have any further
13 questions at this time.

14 EXAMINATION BY COMMISSIONER CLODFELTER:

15 Q Mr. Keen, one question for you.
16 The sequence of events that we already had established
17 is that Cube Yadkin recertified with FERC these QFs,
18 and the date we have is March 9 of 2018. That was --
19 just for reference purposes, that was about two weeks
20 before they filed this complaint. My question to you
21 is when you made the PURPA offer in the fall of 2017
22 for the three QF units, was there any discussion then
23 of the issue of recertification or the need to
24 recertify under --

1 A (Keen) Yeah. I mean, let me ask
2 you that question, Commissioner. So I actually --
3 during this process, I had in my timeline that they
4 had certified in March of '17, and when we were
5 preparing for this, I actually found out it was March
6 of '18, which I was really surprised that it said that
7 -- but the offer we did in September 25th, 2017,
8 because they believed -- they told us that they could
9 get new renewable energy status from the Commission,
10 we told them we didn't think you could, but we said if
11 you did, we'll pay you \$4 for the RECs, \$4 for each
12 REC. So as Glen had mentioned earlier, because it's
13 -- a PURPA agreement doesn't allow you to sell RECs
14 within the PURPA agreement. It basically in that
15 September 25th, 2017, it basically was a non-PURPA
16 offer based on the PURPA avoided cost being calculated
17 so that we could also include the RECs in the
18 agreement.

19 Q I think I understand that. So the
20 issue of recertification wasn't even --

21 A Well -- and I apologize --

22 Q -- discussed?

23 A I had it in here as March of --
24 they had done it March of 2017, and didn't figure out

1 until it was March of 2018 until I -- while we were
2 preparing for this in the last couple days. I was
3 really surprised it took that long to happen. It
4 really should have happened right away. It should
5 have happened right away.

6 Q All right.

7 COMMISSIONER CLODFELTER: Thank
8 you. That's all. All right. We'll go back and see
9 if there are questions on the Commissioner's
10 questions, and Mr. Dowdy?

11 MR. DOWDY: Okay. Can you give me --

12 COMMISSIONER CLODFELTER: Yes, we can.

13 MR. DOWDY: Thank you. Thank you. Only
14 three, I believe.

15 EXAMINATION BY MR. DOWDY:

16 Q Speaking about the Cube
17 recertification or amended certification -- I'm sorry,
18 my exhibit went down. Bear with me just a moment. I
19 apologize, everyone. This is going to be quick.

20 Q While we're waiting for that
21 exhibit, Mr. Snider, will you take a look with me at
22 -- we looked at page 51 of -- that was our Attachment
23 14.

24 A (Snider) Yes.

1 MR. DOWDY: And Commissioner Clodfelter,
2 since we're discussing it, I know we have Judicial
3 Notice of it, but --

4 COMMISSIONER CLODFELTER: We have Judicial
5 Notice. The Commission takes Judicial Notice of its
6 own Orders and its own filings, so it's not necessary
7 to number those as exhibits.

8 MR. DOWDY: I will spare us the doing of it,
9 then. I just wanted to check with you.

10 Q We looked at -- we looked under
11 Discussions and Conclusions at the -- under the first
12 paragraph. Do you see the second paragraph as well?

13 A I am looking at it now. If you
14 give me a moment to read it, unless you want to direct
15 me to a certain sentence.

16 Q Well, just look at the first
17 sentence. It says, "In regard to the fifth section of
18 the DNCP's revised form, the Commission finds that
19 while" -- acknowledgement contained therein -- sorry
20 -- "while the acknowledgements contained therein are
21 not necessary for establishment of a commitment to
22 sell, they provide a QF notice of how the date of a
23 LEO will be established which should serve to reduce
24 the potential for disagreements between QFs and DNCP."

1 You see that, don't you?

2 A I do.

3 Q And if you recall, Section 5 was
4 the section we were talking about --

5 A Yeah.

6 Q -- that referenced the CPCN and
7 when the LEO date was established in reference to it,
8 correct?

9 A I do.

10 Q Okay. And then having -- I've
11 finally been able to pull up what was Attachment 6,
12 it's Cross Number 5 -- all right. And I wanted to --
13 the filing date we discussed earlier was 2019, but I
14 did want to point you to the effective date, if I
15 could, Mr. Keen or Mr. Snider, whoever is willing to
16 answer my question.

17 A Yeah.

18 Q This would be Number 11 on page --
19 it's PDF page 6. It states what the effective date of
20 the form is.

21 A Yes. I'm happy to -- subject --
22 and we can do it subject to check if you just tell us
23 what it says.

24 Q Well, I don't want to take up

1 everybody's time. It says 2/1/17 is the effective date
2 that is being --

3 A Yeah. I think it's -- that is the
4 question that I would have for review, which is
5 backdating a recertification by 13 months may or may
6 not -- I'm not a lawyer. That's my point. It's
7 surprising that you can backdate -- on a recertifying,
8 ask you to backdate it by 13 months. Maybe FERC finds
9 that's acceptable. Maybe it's not. I don't know. It
10 surprised me. I saw that date. You filed for
11 recertification in March of 2018 and you backdated the
12 as effective date by 13 months. My earlier testimony
13 said had you filed it on February the 2nd, there would
14 have been no need to backdate it. I don't know how
15 you can backdate it to something before you owned it,
16 but that is -- that's something you filed -- you
17 know, it's a self-certification. I don't think it
18 gets -- you know, unless contested, I don't think it
19 gets a lot of review at FERC.

20 Q And the last question, I believe.
21 Mr. Keen, you testified about, how many did you say,
22 eight hydro facilities --

23 A (Keen) Yeah.

24 Q -- that had submitted NoC Forms?

1 A No, no. We have eight from this
2 month, from this two weeks. In the first two weeks in
3 March we have eight of them.

4 Q You have eight?

5 A I have four on March -- I have
6 four that start on March 1st and four that start on
7 March 15th.

8 Q And those are all hydro
9 facilities?

10 A They're all small hydros.

11 Q What do you mean when you say
12 "small hydros"?

13 A What I mean, I mean less than 10
14 MW when I say that.

15 Q Okay. And when you say "old," I
16 mean, do you have a sense of when these were
17 constructed?

18 A I'd have to go back and look at
19 the eight individual ones, but it was decades ago.
20 Most of them are, you know, textile mill type hydros
21 and from, you know, I would call them legacy hydros.
22 There may be a few new ones in there, but we haven't
23 had very many new ones be added that I'm aware of.
24 But I don't know the dates of all of them. Like I

1 said, we have between, I'd say, maybe 55 to 60 total.

2 Q And since they came up in March,
3 that's -- I presume that's why, you know, if we ask
4 about them in discovery --

5 A It just happened to be kind of a
6 coincidence that we have a bunch coming up right now.

7 Q And was it your testimony -- I
8 didn't understand one way or the other -- that none of
9 them have CPCNs?

10 A I don't know. I'd have to go back
11 and look, but they're pretty old legacy units, so I
12 suspect they probably don't.

13 Q But you don't recall one --

14 A I just went and confirmed that
15 they had all submitted -- I wanted to make sure --
16 during the break I just wanted to make sure they had
17 all -- we had NoC Forms for all eight of them.

18 Q I mean, you confirmed that you
19 received NoC Forms, but you don't know whether they
20 had CPCNs or not?

21 A That's correct. I don't know
22 that.

23 Q Okay. And -- okay.

24 MR. DOWDY: I don't have any further

1 questions.

2 COMMISSIONER CLODFELTER: All right. Mr.
3 Kaylor?

4 MR. KAYLOR: Just a couple, Mr. Chairman.

5 EXAMINATION BY MR. KAYLOR:

6 Q I believe Commissioner Brown-Bland
7 asked you, Mr. Keen, a question, and I think the
8 question had to do with do you give legal advice to
9 developers, and I believe -- I don't know if you
10 answered that correctly, but do you, in fact, give any
11 legal advice to developers?

12 A (Keen) No, I don't. And I will
13 just say one other thing. That's the tricky thing
14 about PURPA. Usually, when I'm doing non-PURPA deals,
15 there's not a lot of legal issues or attorneys around,
16 but PURPA deals are both kind of legal and regulatory
17 driven, so, again, we have to -- I have to be really
18 careful about giving people advice on, you know,
19 especially the regulations in North Carolina, South
20 Carolina, and Florida, as they implement PURPA can
21 change frequently, and it's really the responsibility
22 of the owners to keep up with those. It's not -- I
23 mean, you can imagine me trying to give them advice
24 and then it turns out to be wrong. That wouldn't be

1 good. So it's really their responsibility to keep up
2 with all the regulations. And that's typically why
3 folks like Cube Hydro, you know, hire outside counsel
4 to manage that for them.

5 Q Thank you. Mr. Snider, you
6 responded to a question from Commissioner Duffley, and
7 I believe you stated something along the lines that if
8 Cube had recertified in February of 2017, there
9 wouldn't be an issue here. You weren't implying that
10 if they had recertified in February of 2017, they
11 would be eligible for the avoided cost rates that came
12 under the Sub 140 Docket, meaning those rates that
13 were in effect in the fall of 2016 up until you
14 refiled in November of 2016?

15 A Oh, absolutely not. To be clear,
16 that would have been a LEO that would have been
17 established when the NoC Form was filed in February of
18 '17. They would have been able to establish that LEO.

19 Q But when you said no issue, we
20 don't know that Cube might still have disagreed with
21 even being eligible for the new rates that were filed
22 in E-100, Sub 148?

23 A Because they went down, I'm
24 guessing they may still have. Had they gone up, I'm

1 sure they would not have.

2 Q So to finalize, it could have been
3 an issue, in other words?

4 A Yes.

5 MR. KAYLOR: Thank you. Mr. Chair, that's
6 all I have.

7 COMMISSIONER CLODFELTER: Okay. At this
8 point, Mr. Kaylor, unless there's objection from Mr.
9 Dowdy, the Commission will receive into evidence the
10 exhibits attached to the prefiled testimony by the
11 Panel witnesses marked and designated as they were
12 marked as prefiled, but without the confidentiality
13 restrictions.

14 Mr. Dowdy, speak now or forever hold your peace.

15 MR. DOWDY: No objection.

16 COMMISSIONER CLODFELTER: All right. They
17 will be so admitted.

18 (Whereupon, Keen Exhibit Numbers
19 1 through 4 were admitted into
20 evidence.)

21 COMMISSIONER CLODFELTER: And Mr.
22 Dowdy, by my count we have from you exhibits -- Cross
23 Examination Exhibits 1 through 10, and unless those --
24 unless there's objection from Mr. Kaylor, the

1 Commission will receive those exhibits into evidence,
2 also, again without any confidentiality designation.

3 MR. KAYLOR: No objections from Duke.

4 COMMISSIONER CLODFELTER: No objection from
5 Mr. Kaylor, so they will be so admitted.

6 (Whereupon, Duke Panel Cross
7 Examination Exhibit Numbers 1
8 through 10 were admitted into
9 evidence.)

10 COMMISSIONER CLODFELTER: All right. Duke,
11 anything further?

12 MR. KAYLOR: That completes our testimony in
13 this matter, Mr. Chairman.

14 COMMISSIONER CLODFELTER: All right. Mr.
15 Dowdy, Mr. Harris, Mr. Snowden, as I understand, the
16 rebuttal testimony that came in on your principal case
17 was Mr. Collins, and so there is no rebuttal; is that
18 correct?

19 MR. SNOWDEN: That is correct.

20 COMMISSIONER CLODFELTER: All right. All
21 right. That brings us down to anything before we sort
22 of set the schedule for those Orders? Anything else
23 we need to talk about?

24 MS. FENTRESS: Not from Duke.

1 MR. SNOWDEN: And not from Cube, also.

2 COMMISSIONER CLODFELTER: Great. I want to
3 -- on behalf of the Commission, I want to thank all of
4 you for very efficient presentations today and also
5 for sending your materials to us in advance in an
6 efficient way. We greatly appreciate it. I think
7 it's made the day a lot more bearable and might I even
8 say enjoyable for everyone.

9 All right. Is there any reason to have any
10 different deadlines for proposed orders than would
11 normally be the case, 30 days after the transcript?

12 MS. FENTRESS: We're happy with that.

13 MR. SNOWDEN: That would be fine.

14 COMMISSIONER CLODFELTER: All right. Then
15 that's what we'll do. Anything else anyone else needs
16 to bring up?

17 (No response.)

18 COMMISSIONER CLODFELTER: All right. Excuse
19 me. Yes. Shame on me. Mr. Kaylor, Ms. Fentress, I
20 think it would be useful, given that there was some
21 discussion about the subject -- and I understand there
22 may be confidential information in the NoC Forms that
23 Mr. Keen was talking about, so let's not have the NoC
24 Forms themselves filed, but I think it would be useful

1 for the Commission to have a late-filed exhibit in
2 which Mr. Keen summarizes how many of the eight small
3 hydro facilities that he started here in March, the
4 four on March 1st and the four on March 15th, how many
5 of those have listed CPCN dates in the NoC Forms that
6 they submitted and how many have either nothing
7 indicated for a CPCN or have indicated that they don't
8 have a CPCN or that they predate the CPCN requirements
9 or words to that effect, just to get a summary. I
10 don't think you should file them because there may be
11 other confidential information in them. There's no
12 reason we should -- we can work with that.

13 MR. KAYLOR: I think we could do that
14 without any problem.

15 MS. FENTRESS: Yes.

16 COMMISSIONER CLODFELTER: I think that would
17 be useful as a late-filed exhibit.

18 MR. KAYLOR: Yes, sir.

19 COMMISSIONER CLODFELTER: Anything else? If
20 not, we will close the evidentiary record subject to
21 the request for late-filed exhibit. Mr. Kaylor?

22 MR. KAYLOR: It was good to see everybody on
23 camera today. It's been a while since we get to see
24 each other, and especially Commissioner Gray. Haven't

1 seen him in a while.

2 COMMISSIONER CLODFELTER: Mr. Kaylor, I
3 wanted to know when we're going to get to watch you
4 play golf virtually?

5 MR. KAYLOR: I'll let you know.

6 COMMISSIONER CLODFELTER: Thank everybody.
7 We are adjourned.

8 (The hearing was adjourned.)

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1 STATE OF NORTH CAROLINA
2 COUNTY OF WAKE

3
4 C E R T I F I C A T E

5 I, Linda S. Garrett, Notary Public/Court
6 Reporter, do hereby certify that the foregoing hearing
7 before the North Carolina Utilities Commission in
8 Docket Nos. E-2, Sub 1177 and E-2, Sub 1172 was taken
9 and transcribed under my supervision; and that the
10 foregoing pages constitute a true and accurate
11 transcript of said Hearing.

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

17 IN WITNESS WHEREOF, I have hereunto
18 subscribed my name this 16th day of March, 2021.

19
20 Linda S. Garrett
21 Linda S. Garrett, CCR
22 Notary Public No. 19971700150
23
24