

PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Tuesday, September 10, 2019

TIME: 9:00 a.m. - 11:44 a.m.

DOCKET NO.: E-2, Sub 1204

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner Tola D. Brown-Blair

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

IN THE MATTER OF:

Application of Duke Energy Progress, LLC

Pursuant to N.C.G.S. 62-133.2 and NCUC Rule R8-55

Regarding Fuel and Fuel-Related Cost Adjustments for

Electric Utilities

VOLUME: 2



A P P E A R A N C E S:

FOR DUKE ENERGY PROGRESS, LLC:

Jack Ji rak, Esq.

Associate General Counsel

410 South Wi l m i n g t o n Street, NCRH 20

Ra l e i g h, North Carol i n a 27602

Dw i g h t A l l e n, Esq.

A l l e n Law Offi ces, PLLC

1514 Gl enwood Avenue

Ra l e i g h, North Carol i n a 27608

FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC. :

Robert F. Page, Esq.

Cri sp & Page, PLLC

4010 Barrett Drive, Sui te 205

Ra l e i g h, North Carol i n a 27609

FOR CAROLINA INDUSTRIAL GROUP FOR FAIR UTILITY

RAT E S, I I :

Ra l p h M c D o n a l d, Esq.

Ba i l e y & Di x o n, LLP

Post Offi ce Box 1351

Ra l e i g h, North Carol i n a 27602-1351

1 A P P E A R A N C E S Cont'd.:

2 FOR SIERRA CLUB:

3 Gudrun Thompson, Esq.

4 Senior Attorney

5 Tirri II Moore, Esq.

6 Southern Environmental Law Center

7 601 West Rosemary Street, Suite 220

8 Chapel Hill, North Carolina 27516

9

10 FOR FAYETTEVILLE PUBLIC WORKS COMMISSION:

11 James West, Esq.

12 General Counsel

13 955 Old Wilmington Road

14 Fayetteville, North Carolina 28301

15

16 FOR NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION:

17 Benjamin Smith, Esq.

18 Regulatory Counsel

19 4800 Six Forks Road, Suite 300

20 Raleigh, North Carolina 27609

21

22

23

24

1 A P P E A R A N C E S Cont'd. :  
2 FOR THE USING AND CONSUMING PUBLIC:  
3 Dianna W. Downey, Esq.  
4 North Carolina Utilities Commission  
5 4326 Mail Service Center  
6 Raleigh, North Carolina 27699-4300  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

OFFICIAL COPY

Oct 04 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

DANA HARRINGTON	PAGE
Continued Cross Examination By Mr. West...	7
Cross Examination By Ms. Downey.....	41
Redirect Examination By Mr. Jirak.....	51
JAY LUCAS	PAGE
Direct Examination By Ms. Downey.....	56
Prefiled Direct Testimony.....	57
Cross Examination By Mr. West.....	74
Cross Examination By Mr. Jirak.....	96
Redirect Examination By Ms. Downey.....	102
Examination By Commissioner Clodfelter....	103
DUSTIN R. METZ and JENNY X. LI	PAGE
Prefiled Direct Testimony.....	106
PANEL OF BARBARA A. COPPOLA AND JOHN HALM	PAGE
Direct Examination By Mr. Jirak.....	140
Prefiled Rebuttal Testimony.....	142
Cross Examination By Mr. West.....	165
Cross Examination By Ms. Downey.....	172
Redirect Examination By Mr. Jirak.....	190
Examination By Commissioner Clodfelter....	194

E X H I B I T S

I D E N T I F I E D / A D M I T T E D

1

2

3 Harrington Exhibit 1; 2, Schedules 1 . - /54  
to 3; 3 through 5; 6, Reports 1 and 2

4

5 Harrington Workpapers 1 through 8, ... - /54  
8a, 8b, 9 through 16, 16a, and 16b

6 Revised Harrington Exhibit 1..... - /54

7 Revised Harrington Exhibit 2, ..... - /54  
Schedule 1, page 3

8

9 Revised Harrington Exhibit 2, ..... - /54  
Schedule 2, pages 1 through 3

10 Revised Harrington Exhibit 2, ..... - /54  
Schedule 3, page 3

11 Revised Harrington Exhibits 3 and 4... - /54

12 Revised Harrington Workpaper 8a..... - /54

13 Revised Harrington Workpaper 9..... - /54

14 Harrington Workpapers 1 through 14.... - /54

15 Revised Harrington Workpapers 15,..... - /54  
16, 16a, and 16b

16

17 FPWC Harrington Confidential Cross ... - /55  
Examination Exhibits 1, 2, and 4

18 FPWC Harrington Cross Examination .... - /55  
Exhibit 3

19

20 Confidential Lucas Exhibit 1..... 57/106

21 Metz Exhibit 1 ..... - /106

22 Li Exhibit 1 Schedule 1, 2, 3, 3-1 ... - /106  
through 3-5, and 4

23 Coppola Halm Public Staff Cross ..... 182/ -  
Examination Exhibit 1

24

OFFICIAL COPY

Oct 04 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

P R O C E E D I N G S

CHAIR MITCHELL: Good morning. Let's go  
back on the record, please.

Mr. West?

MR. WEST: Thank you.

DANA HARRINGTON,  
having previously been duly sworn, was examined  
and continued testifying as follows:

CONTINUED CROSS EXAMINATION BY MR. WEST:

Q. Good morning, Ms. Harrington.

A. Good morning.

Q. Just to save you from getting a sore neck,  
please --

A. Okay.

Q. -- feel free to face the Commission.

A. Okay.

Q. I don't want you to feel like you have to  
turn around.

A. Thank you.

Q. What I would like to do, if we could, is  
start with some -- just some very basic principles.  
The first one is the concept of least-cost dispatch.

A. Okay.

Q. Are you familiar with that?

1 A. Yes. Yeah, sure. Basic principles, yes.

2 Q. And that's something that Duke Energy

3 Progress has been doing for decades, correct?

4 A. Absolutely, yes, yes. Independent of the  
5 JDA, uh-huh.

6 Q. Can you just give us a one-sentence summary  
7 explanation of what it is?

8 A. Just dispatching the generation units in  
9 order of economic benefits. So cheapest to most  
10 expensive.

11 Q. And does the dispatch depend fairly heavily  
12 on the current price of fuel?

13 A. I would say so, yes.

14 Q. And in terms of your generating fleet -- in  
15 terms of Duke Energy Progress' generating fleet, over  
16 the last couple of decades, you have moved decidedly  
17 towards natural gas as the generating fuel of choice,  
18 correct?

19 A. In the last couple of years, that has been  
20 the trend, yes, due to prices.

21 Q. Has it not been also for the last couple of  
22 decades?

23 A. I couldn't speak for the last couple decades.

24 Q. Have you added any coal generation in the

1 last two decades?

2 A. You mean a new plant?

3 Q. Duke Energy Progress. Has Duke Energy  
4 Progress added any new coal generation in the last two  
5 decades?

6 A. That's outside of my testimony, but I  
7 couldn't answer that. I do not know.

8 Q. Do you know if you added any natural  
9 gas-fired generation in the last two decades?

10 A. I believe we have, yes. We have some new  
11 CC's.

12 Q. So, in your testimony, on page 12 --

13 A. Direct or supplemental?

14 Q. Your direct testimony. And I will only refer  
15 to your direct.

16 A. Okay. Uh-huh.

17 Q. You made a statement, "Due to changes in coal  
18 consumption over time, the Company was not able to meet  
19 its contractual gypsum supply obligations." That's  
20 line 16 to 20.

21 Do you see that?

22 A. I do.

23 Q. Can you elaborate on that?

24 A. I think the 2016, '17, and '18 is about the

1 time range when we began -- our coal pile fell beneath  
2 what was necessary to meet the CertainTeed obligation,  
3 at Roxboro, specifically.

4 Q. Sorry, I should have asked a more specific  
5 question. So I'm asking you to elaborate on the  
6 changes in coal consumption.

7 Can you elaborate on what the changes in coal  
8 consumption were?

9 A. Over time, it -- I would say that, in this  
10 sentence, this is about the contractual gypsum supply  
11 obligation. So we were not burning the coal necessary  
12 to meet the gypsum supply obligations under the  
13 contract to CertainTeed.

14 Q. Okay. So when you talk about changes in coal  
15 consumption over time, are you talking about reducing  
16 the dispatch of the coal-burning units specifically at  
17 Roxboro and Mayo?

18 A. Yes, specifically at Roxboro and Mayo.

19 Q. And that's because of the economics of the  
20 prospective fuels between coal and natural gas; is that  
21 right?

22 A. That is correct.

23 Q. Were there any other factors that you are  
24 aware of that caused these changes in coal consumption?

1 A. Not to my knowledge. I'm specifically  
2 following the prices and the cost, the fuel expenses.  
3 So that's my expertise, is the cost.

4 Q. Okay.

5 A. So I couldn't speak to the operations of why  
6 they might dispatch gas over coal.

7 Q. But you don't know -- you don't know, for  
8 example, if one of the units or two of the units were  
9 down for an extended period of time?

10 A. No, I would not.

11 Q. All right. But at least your statement is  
12 referring only to changes in --

13 A. Roxboro --

14 Q. -- changes in dispatch due to changes in  
15 respective fuel prices?

16 A. Absolutely.

17 Q. And the reference to the contractual gypsum  
18 supply obligation, is that the obligation to  
19 CertainTeed?

20 A. Yes.

21 Q. So, earlier, I had asked you if you recognize  
22 the exhibit marked as Exhibit 1, which is entitled  
23 Second Amended and Restated Supply Agreement.

24 A. Let me grab that. I have seen this. I have

1 not studied it in depth.

2 Q. Well, when you refer to the contractual  
3 obligation to supply gypsum to CertainTeed, which I may  
4 refer to as CTG at times, because I think that's how  
5 you guys identify them --

6 A. Uh-huh.

7 Q. -- you are referring to the contractual  
8 obligation under this Exhibit 1, correct?

9 A. You could say that. I, specifically, would  
10 have more experience with the 2004. So I kind of took  
11 my knowledge back to the initiation. But it's the same  
12 continuation of the 2004, so yes, this includes --  
13 would include this.

14 Q. Okay. Well, the -- I think the time period  
15 that you referenced earlier in testimony was 2016 to  
16 2018; is that correct?

17 A. Yes. That's the time that we began to fall  
18 short of this obligation, yes.

19 Q. Okay. And this agreement was amended and  
20 restated in 2012?

21 A. Uh-huh.

22 Q. So this would have governed not anything in  
23 2004, correct?

24 A. Right.

1 Q. Okay. So --

2 A. Just clarifying which -- my level of depth of  
3 this, or lack of level of depth of this.

4 Q. All right. But you've at least looked at  
5 this before, correct?

6 A. I have seen it come through the data  
7 requests.

8 Q. Okay. Have you read any sections of it?

9 A. Not this particular agreement, no. I did not  
10 need it to compile my testimony.

11 Q. Okay. Let me ask you to turn to page 15.

12 MR. JIRAK: If I could pause here, are  
13 you asking to turn to page 15 of the agreement?

14 MR. WEST: I am.

15 MR. JIRAK: Okay. So I think, at this  
16 point, if we are going to be discussing particular  
17 provisions of this confidential document, I need to  
18 ask --

19 MR. WEST: Well, I think -- I tell you  
20 what, just to make things easier, there is  
21 obviously a public order, and a lot of the  
22 questions are general enough that they will fit  
23 under the order. I am happy to give you the  
24 question and then let you decide whether it's

1 something that needs to be confidential, but I  
2 simply want to -- may I?

3 CHAIR MITCHELL: You may.

4 (Discussion off the record.)

5 Q. Have you had a chance to find page 15?

6 A. Yes. Yes.

7 Q. If you would turn your attention to Section  
8 3.1.

9 A. Yes.

10 Q. Have you had a chance to review that?

11 A. In the few minutes I have sat here, yes.

12 MR. JIRAK: If you need more time --  
13 Ms. Harrington has stated that she has not reviewed  
14 the agreement previously in any depth. If you are  
15 asking her to testify with respect to the entirety  
16 of Section 3.1, then we will need a little more  
17 time for her to take a quick look at it, with the  
18 caveat that this is the first time she will have  
19 reviewed it in any depth.

20 MR. WEST: Sure. But this is not a  
21 deposition, so you don't talk to me directly. You  
22 can talk to the Commission.

23 MR. JIRAK: I'm just -- for purpose of  
24 the Commission -- go ahead.

1 THE WITNESS: You mean take time to read  
2 it?

3 MR. JIRAK: Take time to look at it.

4 THE WITNESS: Okay.

5 (Witness peruses document.)

6 Okay.

7 Q. Okay. So is this the -- to your knowledge,  
8 is this the provision that addresses the contractual  
9 supply obligation that you were referencing in your  
10 testimony with regard to the supply of gypsum to  
11 CertainTeed?

12 A. Yes.

13 Q. And are you -- are you aware that there was a  
14 dispute over what this section meant?

15 A. Yes, I'm aware of that.

16 Q. Can you explain to the Commission what your  
17 understanding of the dispute was?

18 A. Oh, gosh. I would -- well, my understanding  
19 was that, during the litigation, I believe there -- my  
20 understanding, which is novice, is that there were  
21 disagreements about how high the coal pile should be,  
22 but I really don't have a lot of depth on the  
23 litigation details.

24 Q. Okay. Was there -- are you aware that there

1 was a dispute about whether the quantity to be provided  
2 by DEP to CTG was variable versus fixed on a monthly  
3 basis?

4 A. That sounds appropriate, considering that the  
5 pile determined -- and I don't know the details, but I  
6 do know there was a coal pile, over time, that  
7 CertainTeed was allowed to retrieve from, and their  
8 patterns of retrieval were variable. So I know that  
9 much.

10 Q. Okay. So do you know that the dispute  
11 resulted in a resolution?

12 A. Yes, I do.

13 Q. What was the resolution?

14 A. I believe the Court decided that the  
15 50,000 tons was the minimum obligation.

16 Q. Okay. So part of the resolution in the  
17 dispute was a court order identifying what Section 3.1  
18 meant, correct?

19 A. Yes, that's correct.

20 Q. Have you had a chance to review the court  
21 order?

22 A. No, I have not. That was this item from  
23 yesterday?

24 Q. That was Exhibit 3.

1 A. I have not seen that.

2 Q. Okay. How do you know what the court order  
3 did then?

4 A. All the data requests.

5 Q. Okay. So you are looking at narrative  
6 summaries as opposed to the underlying documents?

7 A. Yes.

8 Q. And the further resolution would have  
9 occurred because the parties entered into some kind of  
10 settlement; is that correct?

11 A. That is correct.

12 Q. Okay. So could you explain to the Commission  
13 what the settlement -- what the parameters of the  
14 settlement were after the Court issued its order?

15 A. Yes, I could speak to that. I do know that  
16 the Court did decide that the 50,000 tons per month was  
17 the minimum that the Company was obligated to provide.  
18 And then they also upheld the Article 6.3 from the  
19 initial contract. I'm not sure if 6.3 has been  
20 sustained throughout all the revisions and amendments,  
21 but I do know, in the initial contract, the initial  
22 sales agreement for the gypsum stated that there was a  
23 remedy for discontinuing supply of gypsum on the part  
24 of DEP that, for the remainder of the term of that

1 contract, should DEP discontinue supply during the  
2 scope of the initial agreement, which was 2004 to, I  
3 believe, 2029, 25-year contract, that the -- it says  
4 the remainder of the initial term, that DEP would have  
5 to pay equal to the minimum monthly quantity, which the  
6 Court determined was 50,000 tons a month, multiplied by  
7 the current price of gypsum filter cake, which is \$4  
8 per ton throughout the term of the contract then in  
9 effect under this agreement, plus \$10. So that brings  
10 us to \$14 per ton, multiplied by the number of months  
11 in that year remaining in the agreement. So that would  
12 be 50,000 tons a month for the remaining number of  
13 months in the contract, which is 127 months, at \$14 a  
14 ton. And that comes to the liquidated damages amount  
15 that is being discussed in this case. So that's a  
16 total of \$88,900 -- I'm sorry, \$88,900,000 over the  
17 scope of 10 years. And in this proceeding, the Company  
18 is only asking for the portion we have paid thus far,  
19 which is the cash payments, and also the cash payment  
20 that will be made in the billing period. So we have  
21 requested that we be allowed to recover what we are  
22 paying as paid.

23 Q. Okay. So with regard to these payments you  
24 are referring to, this year, how much is the payment

1 assessed to North Carolina retail ratepayers?

2 A. That would be -- this year, in the review  
3 period -- so cash payments made now for liquidated  
4 damages alone is -- let's see. \$6.6 million -- excuse  
5 me, 5 -- yes, \$6.6 million for the liquidated damages  
6 and cash payments. That's North Carolina's retail  
7 share of, looks like, \$10.5 million.

8 Q. Okay. And then are you also assessing an  
9 additional amount for what you expect to pay over the  
10 next year?

11 A. Yes.

12 Q. And that's how much?

13 A. 5.3. That North Carolina retail share would  
14 be 5.3 of \$8.4 million.

15 Q. And then going -- assuming the Commission  
16 decided to allow you to recover the liquidated damage  
17 payments through the fuel clause, how much would you be  
18 expecting to assess based on the contractual payment  
19 schedule -- how much would you be expecting to assess  
20 against North Carolina retail ratepayers each year  
21 going forward?

22 A. Approximately 5.3. That is -- that's  
23 approximately, let's say, 63 percent of the cash  
24 payment, which could vary, depending on

1 North Carolina's share of system sales in the month  
2 that the payment is made.

3 Q. So close to \$60 million over some period of  
4 time?

5 A. Let's see. Yeah. I approximated it 52 to 57  
6 at 63 percent.

7 Q. Okay. When -- if you know, when did DEP last  
8 sell gypsum to CTG?

9 A. I believe as -- they are still currently  
10 selling it, so.

11 Q. So let me ask a more specific question then.  
12 When, if you know, did DEP last sell gypsum  
13 to CTG under the 2012 Second Amended and Restated  
14 Supply Agreement?

15 A. October 1, 2018.

16 Q. When did the dispute between the parties  
17 arise, if you are aware?

18 A. When? Well, I could check the date on this  
19 judgment. So is that what you're asking?

20 Q. I'm asking when the dispute arose, not when  
21 the resolution --

22 A. I don't know. I don't know how prior earlier  
23 to that there were dialogues between the Company. I  
24 know we filed a letter letting them know when our pile

1 got below a certain height. I do not know the date on  
2 that letter. I would -- yeah, I don't know the date on  
3 that letter. I might could -- yeah, I don't know.

4 Q. Okay. So you -- I think you stated that  
5 October 2018 was the last time you were aware of a sale  
6 under --

7 MR. JIRAK: Could I interrupt here? To  
8 the extent we are going into specifics of  
9 continuing sales with respect to CTG, we are now in  
10 the realm of confidential information, so I have no  
11 way of knowing where these questions are going, but  
12 out of an abundance of caution, I --

13 MR. WEST: I have no way of knowing  
14 either. I'm just kind of going --

15 MR. JIRAK: Well, if we are going to be  
16 talking about details of continued sales, that's  
17 confidential information, so we need to clear the  
18 room at this point.

19 MR. WEST: Okay. So what I'm going to  
20 try to do, just to keep people from having to get  
21 up and leave and then come back, is I will try to  
22 put all the confidential questions in one section,  
23 and I will push these back to then.

24 Q. So with regard to the liquidated damages that

1 you referenced earlier, the \$88.9 million, those are  
2 being paid because there are no sales occurring under  
3 the 2012 Second Amended and Restated Agreement,  
4 correct?

5 A. Could you rephrase that?

6 Q. The \$88.9 million in liquidated damages are  
7 being paid because there are no sales under the Second  
8 Amended and Restated Agreement; is that correct?

9 A. I would say they are being paid because of  
10 the settlement agreement.

11 Q. Well, the settlement agreement was the  
12 resolution of what the Court determined in its order,  
13 correct?

14 A. Correct. The resolution, yes, yes. And  
15 that's what we are currently operating under, the  
16 settlement agreement and the additional confidential  
17 agreement.

18 Q. Okay. Are you -- let's try it this way.  
19 Are you paying liquidated damages because you  
20 are not selling gypsum to CTG under the 2012 Second  
21 Amended and Restated Supply Agreement?

22 A. We are paying liquidated damages because of  
23 the settlement agreement that we entered into.

24 Q. Okay. Is the 2012 Second Amended and

1 Restated Supply Agreement still in effect?

2 A. It is not.

3 Q. Okay. So that agreement stopped, you  
4 reference Section 6.3 as the basis by which the  
5 liquidated damages were computed, the Court found that  
6 you had a fixed supply obligation under Section 3.1 to  
7 supply 50,000 tons per month, correct?

8 A. Yes.

9 Q. And you then entered into a settlement  
10 agreement to pay liquidated damages because you had  
11 stopped supplying gypsum to CTG under the 2012 Second  
12 and Amended Restated Agreement, correct?

13 A. You could -- yes, I guess you could come  
14 around to that statement, yes. The original -- the  
15 original supply agreement and the amendments thereafter  
16 were discontinued, so yes.

17 Q. Okay. So, to a layperson, it would appear  
18 that you're asking to recover \$88.9 million for not  
19 selling gypsum to CTG; do you understand that  
20 perspective?

21 A. That's not exactly our perspective, but our  
22 perspective is that the ideal, most prudent resolution  
23 was to agree to select the liquidated damages option  
24 over the replacement gypsum. So it was the more

1 prudent alternative at this juncture. So that's why we  
2 entered into it under those terms.

3 Q. Sure. But that assumes that, number 1, the  
4 contract was intended to be a fixed supply agreement,  
5 correct?

6 A. Because the Court determined that it was  
7 fixed, it was necessary. It was -- meeting that fixed  
8 obligation was not going to be prudent for ratepayers  
9 at that level at this point in time. So the best  
10 option was to discontinue the contract and pay the  
11 liquidated damages.

12 Q. Again, assuming that the contract was  
13 intended to be a fixed supply agreement, correct?

14 A. Assuming that. When the Court made that  
15 decision, it was best for us to discontinue the  
16 contract.

17 Q. Just so I understand, there is a provision in  
18 G.S. 62-133.2, which is (a1)(9), that talks about net  
19 gains or losses resulting from any sales of byproducts?

20 A. Yes.

21 Q. Is that the provision under which you are  
22 trying to fit the liquidated damages as a recoverable  
23 cost?

24 A. It is.

1 Q. And the court order that you mentioned, the  
2 appeal of that court order was withdrawn by DEP,  
3 correct?

4 A. By both parties.

5 Q. Okay. So the court order is final, right?

6 A. Is final?

7 Q. Yes. Yes.

8 A. Is that what you're asking?

9 Q. Is not appealable.

10 A. Correct, not appealable.

11 MR. WEST: So let me -- I think just to  
12 make things easier, I'm gonna ask some questions  
13 about a confidential exhibit, which is Exhibit  
14 Number 2, and it's marked confidential. My guess  
15 is that some of it is confidential, and some of it  
16 may not be, but in an abundance of caution, perhaps  
17 we need to go into a confidential session.

18 CHAIR MITCHELL: At this point in time,  
19 we will clear the room then.

20 MR. WEST: I'm sorry?

21 CHAIR MITCHELL: At this point in time,  
22 we will clear the room so you could ask your  
23 confidential question.

24 MR. WEST: Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

(Whereupon, the following is  
confidential and shall be filed under  
seal.)

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXX

XX XXXXXXXXXXXXXXX

XX XXX

XX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXXXXXXXXXXXXXX

XX XXX

XXXXXXXXXXXX

XX XXXXXXX

XX XXXXXXXXXXXXXXX

XX XXXXX

XX XXX

XX

XX

XX

XX XXXXX

XX XXX

XX

XX

1 XXX

2                   XXXXXXXXXXXXXXXXXXXX

3       XX       XXXXXX

4       XX       XX

5 XXX

6       XX       XX

7 XXXXXXXXXXXXXXXXXXXXXXX

8       XX       XX

9 XXX

10 XXX

11 XXXXXXXXXXXXXXXXXXXXXXX

12       XX       XX

13 XXX

14       XX       XX

15 XXX

16 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

17       XX       XX

18 XXXXXXXXXXXXXXXXXXXXXXX

19       XX       XX

20 XXX

21 XXX

22 XXX

23 XXXXXXXXXXXXX

24       XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1           XX       XX

2   XX

3   XX

4   XX

5   XX

6   XX

7   XXXXXXXXXXXXXXXXXXXXXXXXXXXX

8           XX       XXXXXXXXXX

9           XX       XXXXX

10          XX       XX

11   XX

12          XX       XX

13   XX

14   XXXXXXXXXXXXXXXXXXXX

15          XX       XX

16   XXXXXXXXXXXX

17          XX       XX

18   XX

19   XX

20   XX

21   XX

22   XX

23   XXXXXX

24          XX       XX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXX

2 XX XXX

3 XXX

4 XXXXXXXX

5 XX XXX

6 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7 XX XXX

8 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9 XX XXX

10 XXX

11 XXXXXXXXXXXXXXXXXXXXXXX

12 XX XXXXXXX

13 XX XXX

14 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XX XXXXX

16 XX XXX

17 XX XXXXXXXXXXXXXXXXXXXXXXX

18 XX XXX

19 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20 XX XXXXX

21 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XX XXXXX

23 XX XXX

24 XXX

OFFICIAL COPY

Oct 04 2019

1 XX  
2 XXXXXXXXXXXXXXXXXXXXXXXX  
3 XX XX  
4 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
5 XX XX  
6 XXXXXXXXXXXXXXXXXXXXXXXX  
7 XX XX  
8 XX  
9 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
10 XX XXXXXXXX  
11 XX XXXXXXXX  
12 XX XX  
13 XX  
14 XX XX  
15 XX  
16 XX  
17 XX XX  
18 XX XXXXXXXX  
19 XX XX  
20 XX  
21 XX XX  
22 XX  
23 XX XX  
24 XX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXX

2 XX XXX

3 XXX

4 XXX

5 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XXX

9 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

11 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

13 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XXXXXXXXXXXXX

16 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

17 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

18 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

19 XXXXXXXXXXXXXXXXXXXXXXX

20 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

5 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

11 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XX XXXXXXXXX

13 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XX XXXXXXXXX

15 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

16 XXXXXXXXXXXXXXXXXXXXXXX

17 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

18 XXXXXXXXXXXXXXXXXXXXXXX

19 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1           XXXXXXXXXX

2           XX       XX

3   XXXXXXXXXXXXXXXXXXXX

4           XX       XX

5           XX       XXXXXXXXXXXXXX

6           XX       XX

7           XX       XX

8   XXXX

9           XX       XX

10   XX

11          XX       XX

12   XX

13          XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14          XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15          XX       XX

16   XX

17          XX       XX

18   XXXXX

19          XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20          XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXX

21          XX       XX

22          XX       XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23   XXXXXXXXXXXXXXXXXXXXXXXXXXXX

24          XX       XXXXXX

OFFICIAL COPY

Oct 04 2019

1 XX XX

2 XX XXXXXXXXXXXXXXXX

3 XX XXXXXXXXXXXX

4 XX XX

5 XX

6 XX XX

7 XXXXXXXXXXXXXXXXXXXXXXXX

8 XX XXXXX

9 XX

10 XX

11 XX

12 XX

13 XX

14 XX

15 XX

16 XX

17 XX

18 XX

19 XX

20 XX

21 XX

22 XXXXXXXXXXXXXXXX

23 XX

24 XX



1 XX XXXXX

2 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3 XX XX

4 XXXXXXXXXXXX

5 XX XX

6 XX XX

7 XX XX

8 XX

9 XX

10 XX

11 XX XX

12 XX XX

13 XX

14 XXXXXXXXXXXX

15 XX XXXX

16 XX XXXXXXXXX

17 XX XX

18 XX

19 XX

20 XX

21 XX

22 XX

23 XX

24 XX

OFFICIAL COPY

Oct 04 2019

1 XXX

2 XXX

3 XXX

4 XX XXX

5 XXX

6 XXX

7 XX XXX

8 XX XXX

9 XXX

10 XX XXXXXXXXXXXXXXX

11 XX XXX

12 XXX

13 XXX

14 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XX XXXXXXXXXXX

16 XX XXX

17 XXX

18 XXX

19 XX XXX

20 XXX

21 XXXXXXXXXXXXXXX

22 XX XXX

23 XX XXX

24 XXX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXX

2 XX XX

3 XX

4 XX

5 XX XXXXXX

6 XX XX

7 XX

8 XX

9 XX XXXXXXXXXXXXXXXX

10 XX XXXXXXXXXXXXXXXXXXXXXXXX

11 XX

12 XX

13 XX

14 XX

15 XX XX

16 XX

17 XX

18 XX

19 XX

20 XX

21 XX

22 XX

23 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XX XX

OFFICIAL COPY

Oct 04 2019

1 XX  
2 XXXXXXXXXXXX  
3 XX XX  
4 XX XX  
5 XXXXXXXXXXXX  
6 XX XX  
7 XX  
8 XX  
9 XX  
10 XX XX  
11 XX  
12 XX XXXXXXXXXXXXXXXXXXXXXXXX  
13 XX XX  
14 XX  
15 XX  
16 XX XX  
17 XX XXXXXXXXXXXXXXXX  
18 XX XXXXXXXX  
19 XX XXXXXXXXXXXXXXXX  
20 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
21 XX XX  
22 XX  
23 XX XXXXXXXX  
24 XX XX

OFFICIAL COPY

Oct 04 2019

1           XX       XXXXXXXXX

2           XX       XX

3   XX

4   XX

5   XX

6   XX

7   XX

8   XXXXXXXXXXXXX

9           XX       XXXXX

10          XX       XX

11   XX

12          XX       XX

13   XXXXXXXXXXXXXXXXXXXX

14                   XX

15   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

16                   XX

17   XX

18   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

19                   XX

20   XXXXXXXXXXXXXXXXXXXX

21                   XX

22   XX

23                   XXXXXXXXXXXXXXXXXXXXXXXXXXXX

24                   XX

1 XXX

2 XXXXXXXXXXX

3 (Whereupon, confidential session has  
4 ended.)

5 CROSS EXAMINATION BY MS. DOWNEY:

6 Q. Okay. Ms. Harrington, my name is  
7 Dianna Downey. I'm with the Public Staff. Good  
8 morn ing.

9 A. Good morn ing.

10 Q. So one question that I didn't have on my list  
11 here, but Mr. West's questions sort of raised this for  
12 me. You told Mr. West that you didn't review the 2012  
13 agreement; is that correct?

14 A. That's correct.

15 Q. So how is it that you can opine that the  
16 liquidated damages constitute a sale but you didn't  
17 review the agreement that gave rise to the payments?

18 A. Well, I read the initial agreement. I read  
19 through the 2004. So, in my opinion, we have been  
20 operating -- this business arrangement was established  
21 then, and that's why I started there with my inquiries  
22 into where we are today.

23 Q. But you didn't review the 2012 agreement?

24 A. I did not.

1 Q. Okay. But you're the accounting witness, so  
2 you have some idea of what cost should and should not  
3 go into the fuel clause, right?

4 A. Yes, ma'am.

5 Q. Okay. You would agree that the cost of  
6 disposing gypsum or landfilling it would not be  
7 recoverable under the fuel clause, correct?

8 A. That's correct.

9 Q. Okay. And neither would the cost of  
10 installing a conveyor system to take the gypsum from  
11 the Roxboro plant, right? That wouldn't be  
12 recoverable?

13 A. That's correct.

14 Q. Or maintaining that conveyor system?

15 A. Correct.

16 Q. That wouldn't be recoverable under fuel?

17 A. Right.

18 Q. What about putting the gypsum on a stockpile?

19 A. Putting it there, I'm not sure. Typically,  
20 handling costs don't go through fuel.

21 Q. That's correct.

22 A. Sales of gypsum. Okay. Typically, they  
23 don't. So I would say -- knee jerk, I would say no,  
24 without delving deeper into nits and pieces and

1 whatnot.

2 Q. Okay. All right. Now I'm going to get into  
3 Confidential Exhibit 4 that Mr. West showed you. It's  
4 the settlement agreement.

5 A. Okay.

6 Q. Hoping I could stay away from --

7 MS. DOWNEY: All I'm going to ask her  
8 about is the recitals, so I'm looking at counsel.

9 CHAIR MITCHELL: Do we need to clear the  
10 room?

11 MR. JIRAK: Yes. If we are talking  
12 about the terms of the settlement agreement, then  
13 yes, we need to.

14 MS. DOWNEY: Well, I'm just gonna ask  
15 her about the recitals.

16 MR. JIRAK: If it's in the document,  
17 it's a confidential document.

18 MS. DOWNEY: Sorry.

19 MR. JIRAK: No problem.

20 CHAIR MITCHELL: All right. We will go  
21 into confidential session.

22 (Whereupon, the following is  
23 confidential and shall be filed under  
24 seal.)

1 XXX

2 XXX

3 XX XXX

4 XXX

5 XX XXX

6 XX XXX

7 XX XXXXXXXXXXXXXXXXXXXXXXX

8 XX XXX

9 XXX

10 XXX

11 XXXXXXXXXXXXXXX

12 XX XXXXXXX

13 XX XXX

14 XXX

15 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

16 XX XXXXX

17 XX XXX

18 XXX

19 XXX

20 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XX XXXXXXX

22 XXX

23 XXX

24 XXX

1 XX  
2 XX  
3 XXXXXXXXXXXXXXXX  
4 XX  
5 XX  
6 XXXXXXXXXXXXXXXXXXXXXXXX  
7 XX XX  
8 XX  
9 XXXXXXXXXXXXXXXXXXXXXXXX  
10 XX XXXXX  
11 XX XX  
12 XXXXXXXXXXXXXXXX  
13 XX XXXXX  
14 XX XX  
15 XX XXXXXX  
16 XX XX  
17 XX  
18 XX  
19 XX XXXXXXXXXXXXXXXXXXXXXXXX  
20 XX XX  
21 XX  
22 XXXXXXXXXXXXXXXXXXXXXXXX  
23 XX XX  
24 XX

OFFICIAL COPY

Oct 04 2019

1 XXX

2 XXX

3 XXX

4 XXX

5 XXX

6 XXX

7 XXX

8 XXXXXXXXXX

9 XX XXX

10 XX XXXXXX

11 XX XXX

12 XXX

13 XXX

14 XX XXXXXXXXXX

15 XX XXX

16 XXXXXXXXXXXXXXXXXXXXXXX

17 XX XXXXXX

18 XX XXXXXXXXXX

19 XX XXXXXX

20 XX XXX

21 XXX

22 XXX

23 XXX

24 XXX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXXXXXXXXXXX

3 XX XXX

4 XXX

5 XX XXXXXXXXX

6 XX XXX

7 XXX

8 XXXXXXXXXXXXXXXXXXXXXXXX

9 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XX XXX

11 XXXXXXXXXXXXXXXXXXXXXXXX

12 XX XXX

13 XXX

14 XXX

15 XXX

16 XXXXXXXXXXXXXXX

17 XX XXX

18 XXXXXXXXXXXXXXXXXXXXXXXX

19 XXX

20 XXX

21 XXX

22 XX XXX

23 XXX

24 XX XXX

OFFICIAL COPY

Oct 04 2019

1 XX  
2 XX  
3 XX XX  
4 XX  
5 XX  
6 XX  
7 XX  
8 XX  
9 XX  
10 XX  
11 XX  
12 XX  
13 XX XX  
14 XXXXXXXXXXXXX  
15 XX XX  
16 XX  
17 XX  
18 XX  
19 XX  
20 XX  
21 XX  
22 XX XX  
23 XX  
24 XX

OFFICIAL COPY

Oct 04 2019

1           XX       XX

2           XX

3           XX

4           XX       XX

5           XX

6           XXXXXXXXXXXX

7           XX       XX

8           XX

9           XX

10          XXXXXXXXXXXXXXXXXXXX

11          XX       XX

12          XX       XX

13          XX

14          XXXXXXXXXXXXXXXXXXXX

15          XX       XX

16          XXXXXXXXXXXXXXXXXXXXXXXXXXXX

17          XX       XX

18          XXXXXXXXXXXXXXXXXXXX

19          XX       XX

20          XX

21          XXXXXXXXXXXXXXXXXXXXXXXXXXXX

22          XX       XXXXXXXXXXXX

23          XX       XX

24          XX

OFFICIAL COPY

Oct 04 2019



1 (Whereupon, confidential session has  
2 ended.)

3 MR. JIRAK: Just a few questions,  
4 Chair Mitchell, for Ms. Harrington.

5 REDIRECT EXAMINATION BY MR. JIRAK:

6 Q. Ms. Harrington, just to be clear, in your  
7 testimony, you have testified to the fact that it's  
8 your position that the payment of the LDs are  
9 recoverable fuel costs under North Carolina law,  
10 correct?

11 A. Yes, I have testified to that.

12 Q. Now, you were asked questions regarding  
13 whether or not you reviewed in detail the 2012  
14 agreement; do you recall those?

15 A. I have been asked that.

16 Q. Those questions, okay. Now, in reaching your  
17 determination that these are recoverable fuel costs,  
18 did you consult with other people at the Company in  
19 order to come to that conclusion in your role as rates  
20 manager?

21 A. I did. I consulted with our witnesses who  
22 are here today, Barbara Coppola and John Halm.

23 Q. And did you consult with anyone else at the  
24 Company?

1 A. I did. My legal advisor.

2 Q. Okay. And so your conclusion in your  
3 testimony was based on those discussions, and from your  
4 perspective, it wasn't necessary to review, in detail,  
5 every provision in the 2012 agreement?

6 A. That is correct.

7 Q. Now, as it relates to your opinion as  
8 informed by those at the Company that these are  
9 recoverable fuel costs under North Carolina law, I want  
10 to just walk through that, make sure I understand your  
11 position.

12 Just to confirm, is it your understanding  
13 that gypsum is a byproduct produced in the generation  
14 process?

15 A. Yes, it is.

16 Q. Okay. And what is the input leading to  
17 gypsum?

18 A. Coal and limestone.

19 Q. And is it your understanding that the cost  
20 incurred for the purchase of coal is a recoverable fuel  
21 cost under North Carolina law?

22 A. Yes.

23 Q. Did DEP sell actual gypsum under the 2012  
24 agreement that's in question here today?

1 A. Yes.

2 Q. And did that very same agreement also contain  
3 revisions related to the payment of LDs under certain  
4 scenarios?

5 A. Yes, it did.

6 Q. And so did the LDs in this case, incurred  
7 under the agreement, result from those sales of gypsum  
8 that actually occurred under the 2012 agreement?

9 A. Yes.

10 Q. Okay. And did the Company experience a net  
11 loss or a net gain resulting from the sales of gypsum  
12 under this agreement?

13 A. Yes, a net loss.

14 Q. Can you explain that further? How did you  
15 come to the conclusion that there was a net loss under  
16 this agreement?

17 A. Basically, a simple definition of revenues  
18 minus expenses. So any revenues associated with the  
19 sales less the costs. If you have a positive, you have  
20 a gain. If you have a negative, a loss. So a loss in  
21 this case.

22 MR. JIRAK: Okay. I have no further  
23 questions.

24 CHAIR MITCHELL: Questions from the

1           Commi ssi on?

2                               (No response.)

3                               CHAIR MITCHELL: No questions from the  
4           Commi ssi on. At this point, we will entertain a  
5           moti on.

6                               MR. JIRAK: Yes. We would like to move  
7           the testimony -- direct and supplemental testimony  
8           of Dana Harrington into the record along with her  
9           workpapers and exhi bi ts.

10                              CHAIR MITCHELL: That moti on is allowed.  
11                              (Harrington Exhi bi t 1; Harrington  
12                              Exhi bi t 2, Schedules 1 to 3; Harrington  
13                              Exhi bi ts 3 through 5; Harrington Exhi bi t  
14                              6, Reports 1 and 2; Harrington  
15                              Workpapers 1 through 8, 8a, 8b, 9  
16                              through 16, 16a, and 16b; Revi sed  
17                              Harrington Exhi bi t 1; Revi sed Harrington  
18                              Exhi bi t 2, Schedules 1, page 3; Revi sed  
19                              Harrington Exhi bi t 2, Schedules 2, pages  
20                              1 through 3; Revi sed Harrington Exhi bi t  
21                              2, Schedules 3, page 3; Revi sed  
22                              Harrington Exhi bi ts 3 and 4; Revi sed  
23                              Harrington Workpaper 8a; Revi sed  
24                              Harrington Workpaper 9; Harrington

1 Workpapers 1 through 14; and Revised  
2 Harrington Workpapers 15, 16, 16a, and  
3 16b were admitted into evidence.)

4 (Whereupon, the prefiled direct and  
5 supplemental testimony of  
6 Dana Harrington was previously copied  
7 into the record as if given orally from  
8 the stand and included in Volume 1.)

9 MR. WEST: I would like to move into the  
10 record the exhibits marked, the FPWC Harrington  
11 Confidential Cross Examination Exhibits 1, 3, and  
12 4 -- or 1, 2, and 4; and then the FPWC Harrington  
13 Cross Examination Exhibit 3, which is not  
14 confidential.

15 CHAIR MITCHELL: Without objection,  
16 motion will be allowed. Mr. West, I ask that you  
17 work with the court reporter to ensure that those  
18 documents are appropriately marked as confidential.

19 MR. WEST: I spoke with her this  
20 morning.

21 (FPWC Harrington Confidential Cross  
22 Examination Exhibits 1, 2, and 4; and  
23 FPWC Harrington Cross Examination  
24 Exhibit 3, were admitted into evidence.)

1 CHAIR MITCHELL: Okay, Ms. Harrington,  
2 you are dismissed.

3 THE WITNESS: Thank you.

4 MS. DOWNEY: My understanding was that  
5 we would go next; is that right?

6 MR. JIRAK: Yeah.

7 MR. WEST: I think they are choosing to  
8 put their rebuttal on after Public Staff's case.

9 CHAIR MITCHELL: All right, Ms. Downey.  
10 Call your witness, please.

11 MS. DOWNEY: Public Staff calls  
12 Jay Lucas.

13 CHAIR MITCHELL: Good morning,  
14 Mr. Lucas. Let's go ahead and get you sworn.

15 JAY LUCAS,  
16 having first been duly sworn, was examined  
17 and testified as follows:

18 DIRECT EXAMINATION BY MS. DOWNEY:

19 Q. Mr. Lucas, please state your name, business  
20 address, and present position.

21 A. My name is Jay Lucas. My address is 430  
22 North Salisbury Street, Raleigh, North Carolina. I'm  
23 an engineer in the Public Staff's electric division.

24 Q. Did you prepare and cause to be filed on

1 August 19, 2019, direct testimony in this case  
2 consisting of 11 pages and appendix and one exhibit?

3 A. Yes.

4 Q. And a part of your testimony -- namely, a  
5 footnote -- part of a footnote and the entire exhibit  
6 is confidential, correct?

7 A. That's correct.

8 Q. Do you have any changes or corrections to  
9 your testimony at this time?

10 A. No.

11 Q. If the same questions were asked of you  
12 today, would your answers be the same?

13 A. Yes.

14 MS. DOWNEY: Madam Chair, I move that  
15 the direct testimony and appendix of Jay B. Lucas  
16 be copied into the record as if given orally from  
17 the stand and that his exhibit be premarked as  
18 filed.

19 CHAIR MITCHELL: Hearing no objection,  
20 the motion is allowed.

21 (Confidential Lucas Exhibit 1 was  
22 premarked as filed.)

23 (Whereupon, the prefilled direct  
24 testimony of Jay B. Lucas was copied

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

into the record as if given orally from  
the stand.)

**OFFICIAL COPY**

**Oct 04 2019**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1204

<p>In the Matter of  Application by Duke Energy Progress, )  LLC, Pursuant to G.S. 62-133.2 and )  Commission Rule R8-55 Regarding Fuel )  and Fuel-Related Costs Adjustments for )  Electric Utilities )</p>	<p>TESTIMONY OF  JAY B. LUCAS  PUBLIC STAFF – NORTH  CAROLINA UTILITIES  COMMISSION</p>
---	---

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

3 A. My name is Jay Lucas. My business address is 430 North Salisbury Street,  
4 Dobbs Building, Raleigh, North Carolina. I am an engineer with the Electric  
5 Division of the Public Staff – North Carolina Utilities Commission.

6 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

7 A. My qualifications and duties are included in Appendix A.

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

9 A. The purpose of my testimony is to present to the Commission the Public  
10 Staff's position on whether Duke Energy Progress, LLC, (DEP or the  
11 Company), should be permitted to recover the cost of liquidated damages  
12 paid to CertainTeed Gypsum NC, Inc. (CertainTeed), in the fuel rider  
13 proceeding filed by DEP in this docket on June 11, 2019.

14 **Q. PLEASE DESCRIBE CERTAINTEED.**

15 A. CertainTeed manufactures drywall, also known as gypsum board, for the  
16 construction industry. BPB NC, Inc. (BPB) is the predecessor of  
17 CertainTeed and was the original party to the contract with DEP for the  
18 delivery of gypsum, as described later in my testimony.

19 **Q. WHAT IS GYPSUM?**

20 A. Gypsum is a mineral that is the primary component of gypsum board and  
21 can be mined in its natural state. However, artificial gypsum is a suitable

1 substitute and is a by-product of the flue gas desulfurization (FGD)  
2 equipment installed at some coal-fired power plants.

3 **Q. PLEASE DESCRIBE THE RELATIONSHIP BETWEEN DEP AND**  
4 **CERTAINTTEED.**

5 A. In 2004, DEP's predecessor, Progress Energy Carolinas, Inc. (PEC), began  
6 planning to install FGD equipment at its Roxboro and Mayo coal-fired power  
7 plants in order to comply with the stricter air pollution control requirements  
8 of N.C. Gen. Stat. § 62-133.6 (also known as the Clean Smokestacks Act  
9 or CSA) that was enacted in June, 2002. Both plants had been built many  
10 years earlier to meet the baseload demand of DEP's customers. The  
11 Roxboro plant consists of four generating units with a total capacity of 2,462  
12 MW (winter rating), and the Mayo plant has one generating unit with a  
13 capacity of 746 MW (winter rating). Both of these plants are located in  
14 Person County, North Carolina, approximately 16 road miles apart. DEP's  
15 CSA compliance plan called for FGD equipment to be installed and  
16 operational at Roxboro Units 2 and 4 in 2007, Roxboro Units 1 and 3 in  
17 2008, and Mayo in 2009.

18 Also in 2004, in order to mitigate the cost of disposing the gypsum produced  
19 in the FGD process, DEP executed a contract with BPB for the future sale  
20 of artificial gypsum from the Roxboro and Mayo plants to BPB for the  
21 manufacture of gypsum board. In 2005, BPB acquired approximately 121  
22 acres of land from DEP adjacent to the Roxboro plant with the intent of

1 constructing a gypsum board manufacturing facility. Also in 2005,  
2 CertainTeed's parent company, Saint-Gobain North America, bought BPB  
3 and merged it with the existing CertainTeed operations. CertainTeed  
4 delayed construction of the facility due to the housing market decline and  
5 economic downturn (Great Recession).

6 As a result of the Great Recession, in late 2007, CertainTeed contacted  
7 DEP in an effort to amend the 2004 agreement and to maintain the supply  
8 of artificial gypsum in the future.

9 In 2008, the parties executed an Amended and Restated Supply Agreement  
10 that made refinements to the 2004 contract. CertainTeed began accepting  
11 artificial gypsum from DEP on May 1, 2009, but transported it to other  
12 locations because the CertainTeed facility adjacent to the Roxboro plant  
13 had not yet been completed. The CertainTeed facility began operation on  
14 March 28, 2012. In August 2012, DEP and CertainTeed executed a Second  
15 Amended and Restated Supply Agreement (2012 Agreement). Two key  
16 provisions of the 2012 Agreement were that DEP would provide 50,000 tons  
17 of gypsum per month to CertainTeed and would maintain a gypsum  
18 stockpile of 250,000 tons.

19 **Q. WHAT OCCURRED TO DISRUPT THE ARRANGEMENT BETWEEN DEP**  
20 **AND CERTAINTEED FOR THE SUPPLY OF ARTIFICIAL GYPSUM?**

1 A. Several events led to the reduced dispatch of the Roxboro and Mayo plants  
2 and, as a result, the decreased production of artificial gypsum below the  
3 amounts required in the contract with CertainTeed.

4 First, in 2012, Duke Energy Corporation merged with PEC and eventually  
5 renamed it DEP, placing DEP and Duke Energy Carolinas, LLC (DEC),  
6 under single ownership. One of the primary outcomes of the merger was  
7 the creation of the Joint Dispatch Agreement (JDA) that facilitated the  
8 transfer of economic energy purchases between DEC and DEP resulting  
9 from the maximization of joint least cost dispatch of generation. The JDA  
10 allowed DEC to sell cheaper energy to DEP when not needed for DEC's  
11 own use; as a result, DEP's Roxboro and Mayo generating plants operated  
12 less often than before the merger.

13 Second, natural gas prices significantly declined after 2009 and have not  
14 approached the 2009 prices since. This decline in natural gas prices  
15 resulted in utilities dispatching natural gas-fired combined cycle plants  
16 (CCs) ahead of coal-fired plants. The decline was attributable in part to the  
17 increase in hydraulic fracturing technology, which greatly increased natural  
18 gas supply, and the Great Recession, which resulted in lower demand for  
19 all forms of energy. As the recession eased and the economy improved,  
20 natural gas prices remained near historic lows, leading to low spot market  
21 purchases as well as low prices for forward hedging. Coal prices generally  
22 fell over this same time period, but did so more moderately.

1 When DEP and CertainTeed executed the 2012 Agreement, DEP had only  
2 two operational CC units, both at the Smith Energy Complex. However,  
3 DEC had placed its Buck CC in operation in 2011, and its Dan River CC  
4 became operational in late 2012. Both of these plants became available to  
5 supply DEP when appropriate under the terms of the JDA. Furthermore,  
6 DEP completed its H. F. Lee CC in late 2012 and its Sutton CC in 2013.

7 The effect of low natural gas prices and the large increase in natural gas-  
8 fired CC capacity resulted in the Roxboro and Mayo power plants being  
9 dispatched less. The reduced dispatch resulted in less coal burned,  
10 resulting in the inability of DEP to provide the quantities of artificial gypsum  
11 that CertainTeed contracted for and anticipated when it built the gypsum  
12 board manufacturing facility next to the Roxboro plant.

13 On March 9, 2017, DEP sent CertainTeed a letter stating that the artificial  
14 gypsum stockpile would fall below the minimum 250,000 tons required in  
15 the 2012 Agreement. In addition, DEP did not deliver the 50,000 tons per  
16 month under the 2012 Agreement for the months of May 2017, June 2017,  
17 and September 2017 through January 2018.

18 DEP took the position that the 2012 Agreement allowed DEP to deliver  
19 flexible amounts of artificial gypsum to CertainTeed, but CertainTeed's  
20 understanding was that the 2012 Agreement required DEP to deliver a firm  
21 minimum amount of gypsum of 50,000 tons per month and to maintain a  
22 stockpile of 250,000 tons. On June 30, 2017, CertainTeed filed a lawsuit

(Whereupon, page 68 is confidential and shall be  
filed under seal.)

1 A. No. While the Public Staff has concerns regarding the reasonableness and  
2 prudence of the costs, the Public Staff is only recommending that these  
3 costs not be considered appropriate for inclusion in this or any fuel case as  
4 a gain or loss on a sale of a byproduct.

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

6 A. Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

JAY B. LUCAS

I graduated from the Virginia Military Institute in 1985, earning a Bachelor of Science Degree in Civil Engineering. Afterwards, I served for four years as an engineer in the U. S. Air Force performing many civil and environmental engineering tasks. I left the Air Force in 1989 and attended the Virginia Polytechnic Institute and State University (Virginia Tech), earning a Master of Science degree in Environmental Engineering. After completing my graduate degree, I worked for an engineering consulting firm and worked for the North Carolina Department of Environmental Quality in its water quality programs. Since joining the Public Staff in January 2000, I have worked on utility cost recovery, renewable energy program management, customer complaints, and other aspects of utility regulation. I am a licensed Professional Engineer in North Carolina.

1 Q. Mr. Lucas, do you have a summary of your  
2 testimony?

3 A. Yes.

4 Q. Please give it now, please.

5 A. The purpose of my testimony is to present to  
6 the Commission the Public Staff's position on whether  
7 Duke Energy Progress, or DEP, should be permitted to  
8 recover the cost of liquidated damages paid to  
9 CertainTeed Gypsum in the fuel rider proceeding.

10 CertainTeed manufactures drywall, also known  
11 as gypsum board, for the construction industry. Gypsum  
12 is a mineral that is the primary component of gypsum  
13 board and can be mined in its natural state. However,  
14 artificial gypsum is a suitable substitute, and is a  
15 byproduct of flue gas desulfurization equipment  
16 installed at some coal-fired power plants.

17 In 2004, DEP's predecessor, Progress Energy  
18 Carolinas, or PEC, signed a contract with CertainTeed's  
19 predecessor, BPB, for the future sale of artificial  
20 gypsum from the Roxboro and Mayo power plants. PEC  
21 installed the flue gas desulfurization equipment on  
22 these two plants from 2007 through 2009. PEC also sold  
23 land adjacent to the Roxboro plant to BPB for  
24 construction of a drywall manufacturing facility. The

1 contract between the two parties was modified several  
2 times, with the last modification occurring in  
3 August 2012. This 2012 agreement required DEP to  
4 provide 50,000 tons of gypsum per month to CertainTeed  
5 and maintain a gypsum stockpile of 250,000 tons.

6 Several events led to the reduced dispatch of  
7 the Roxboro and Mayo plants and, as a result, the  
8 decreased production of artificial gypsum below the  
9 amounts required in the 2012 agreement. The causes of  
10 reduced dispatch of the Roxboro and Mayo plants were;  
11 one, DEP's joint dispatch agreement with Duke Energy  
12 Carolinas; two, low natural gas prices; and three, the  
13 large increase in natural gas-fired combined cycle  
14 capacity.

15 Because of DEP's reduced supply of artificial  
16 gypsum, CertainTeed filed a lawsuit against DEP. The  
17 Court sided with CertainTeed and required DEP to; one,  
18 pay approximately \$1 million; two, deliver  
19 approximately 120,000 tons of gypsum; and three,  
20 provide a gypsum replenishment plan. After the  
21 judgment was entered, DEP and CertainTeed reached a  
22 settlement in which DEP agreed to pay liquidated  
23 damages.

24 In this fuel cost recovery case, DEP seeks to

1 recover the judgment payment and other related annual  
2 liquidated damages from ratepayers through the fuel  
3 adjustment clause. DEP proposes to recover the costs  
4 as the amounts are paid to CertainTeed. DEP's request  
5 in this case, on a system-wide basis, is \$8.4 million  
6 for the billing period or approximately \$5.2 million  
7 for its North Carolina retail jurisdiction.

8           The Public Staff recommends that the  
9 Commission deny DEP's request for recovery of the costs  
10 because they are not appropriate for recovery in a fuel  
11 proceeding. DEP's failure to provide the required  
12 amount of artificial gypsum and the resulting expenses  
13 arising from the legal action do not constitute a sale  
14 under the express and limited provision of  
15 North Carolina General Statute 62-133.2(a1)(9). The  
16 legal action created no sale in which DEP sold gypsum  
17 to CertainTeed in exchange for payment. The Public  
18 Staff recommends that these costs not be considered  
19 appropriate for inclusion in this or any fuel case as a  
20 gain or loss on a sale of a byproduct. The more  
21 appropriate proceeding to consider these costs is in a  
22 general rate case.

23           This completes the summary of my testimony.

24           MS. DOWNEY: The witness is available

1 for cross.

2 MR. WEST: I think they are looking at  
3 me. I have some cross examination for Mr. Lucas,  
4 and I thought, as a courtesy, I should go before  
5 Duke.

6 CHAIR MITCHELL: Okay. Okay. Proceed,  
7 Mr. West.

8 CROSS EXAMINATION BY MR. WEST:

9 Q. Mr. Lucas, as part of your preparation in  
10 this case, did you review all of the discovery requests  
11 and responses relating to DEP's dispute with CTG and  
12 any proposed recovery?

13 A. Yes.

14 Q. And as part of your review of the discovery,  
15 did you have an opportunity to review the exhibits that  
16 were previously marked FPWC Harrington Cross  
17 Examination Exhibits 1 through 4?

18 A. Yes.

19 Q. Okay. Do you have copies of those available  
20 to you?

21 A. Yes.

22 Q. If I understand your testimony correctly, you  
23 reviewed what the requested recovery was with regard to  
24 liquidated damages, and you concluded that they were

1 not appropriately recovered under G.S. 62-133.2(a1)(9);  
2 is that correct?

3 A. That's correct.

4 Q. Okay. And at that point, did you essentially  
5 stop?

6 A. No. We continued our review, and we  
7 concluded, due to the complexity, it did not belong in  
8 a fuel proceeding.

9 Q. I guess what I'm trying to ask is,  
10 recognizing that that was a legal conclusion and the  
11 Commission could potentially reach a different legal  
12 conclusion, did you take the next step and look at  
13 whether the recovery or the amount requested was  
14 prudently incurred?

15 A. No. We were not able to make that  
16 determination.

17 Q. Why not?

18 A. During our review of the fuel case and the  
19 Public Staff's data request, we were able to determine  
20 the complexity. A lot of the items I could go into  
21 detail about indicated that it was not a normal cost  
22 recovery that should go in a fuel proceeding. Some of  
23 the complex analysis about dispatch of power plants, a  
24 multi-year analysis of that dispatch is not a typical

1 item reviewed during a fuel proceeding.

2 Q. Are you suggesting that you didn't have  
3 sufficient time resources to review them or --

4 A. The complexity -- the complexity of all the  
5 pieces, the Company's hindsight analysis that it  
6 conducted in response to Public Staff data requests,  
7 and also the General Statute, itself, it talks about --  
8 that part 9 talks about the gain or loss on the sale of  
9 a byproduct, and in the Public Staff's eyes, this was  
10 not a gain or loss on the sale of a byproduct.

11 Q. Okay. And again, just so I understand, if  
12 the Commission were to disagree with you, if they were  
13 to accept DEP's position that it is a gain or loss on  
14 the sale of byproduct, you are not offering any opinion  
15 as to whether the amount, itself, is prudent, correct?

16 A. No, I can't say that at this point, whether  
17 the amount, itself, is prudent.

18 Q. So let me ask you a hypothetical then.

19 You were present when I was cross examining  
20 Ms. Harrington, correct?

21 A. Yes.

22 Q. And you are generally aware that there was a  
23 dispute between DEP and CTG about the supply quantity  
24 obligation, correct?

1 A. Yes.

2 Q. And have you -- have you had an opportunity  
3 to review Exhibit 3, which is the Court opinion and  
4 final judgment in any level of detail?

5 A. Yes.

6 Q. And then I think your attorney asked the  
7 Commission to take judicial notice of the entire court  
8 record in that that led to that opinion and order,  
9 correct?

10 A. Yes.

11 Q. Okay. So have you reviewed the court record?

12 A. Yes.

13 Q. Is it your understand- -- do you share  
14 Ms. Harrington's agreement or understanding that, if  
15 the agreement had been written in a manner that was  
16 clear with regard to providing for a variable supply  
17 obligation by DEP to CTG, that DEP would have been able  
18 to meet that variable supply obligation?

19 A. I can't deliver an opinion on what CTG would  
20 have done. If it had been cleared at CTG that the  
21 delivery amount was variable, there probably would not  
22 have been a court case.

23 Q. So hypothetically, let's assume that it's  
24 clear to everyone. Let's assume that the agreement

1 said, "We have a variable supply obligation with regard  
2 to gypsum. We will supply any gypsum that is generated  
3 by Roxboro and Mayo when they are dispatched based on  
4 these cost dispatch principles."

5 If the agreement said something to that  
6 effect, is it your understanding, consistent with  
7 Ms. Harrington's testimony, that DEP would have been  
8 able to comply with that agreement?

9 A. Yes.

10 Q. And if DEP had complied with that agreement,  
11 that hypothetical agreement, we wouldn't be here  
12 talking about liquidated damages, correct?

13 A. That's correct.

14 Q. Okay. And what we would be talking about is  
15 perhaps the amount of revenue that's credited under the  
16 variable supply obligation, because any sales would  
17 have resulted in a gained revenue that would be  
18 credited to ratepayers, correct?

19 A. I don't think we would be discussing this at  
20 all. If this court case had not occurred, Duke Energy  
21 Progress would have continued to sell its variable --  
22 its hypothetical variable output to CertainTeed, and it  
23 probably would not have been an issue to come before  
24 the Commission.

1 Q. Right. It would have been a footnote in one  
2 of Ms. Harrington's workpapers, correct?

3 A. It could have been, or in one of the  
4 Company's exhibits.

5 Q. In other words, they would have identified  
6 some limited amount of revenue and probably wouldn't  
7 have gotten a second look from the Public Staff or  
8 anyone else?

9 A. We would have reviewed it, and if we were in  
10 agreement, we would not have made any comments on it in  
11 our testimony.

12 Q. And did you have an opportunity to look at  
13 Exhibit 4, which is the settlement agreement?

14 A. Yes.

15 MR. WEST: So I would like to ask  
16 Mr. Lucas some questions about Exhibit A, and my  
17 understanding is the entirety of Exhibit A is  
18 confidential, so I assume we need to go into  
19 confidential session.

20 MR. JIRAK: Yes, that's correct.

21 CHAIR MITCHELL: All right. We will go  
22 into confidential session now, and I ask to clear  
23 the room. Thank you.

24 (Whereupon, the following is

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

confidential and shall be filed under  
seal . )

XX

XX

XX

XX XXX

XX

XX XXXXXXXX

XX XXXXXXXXXXXX

XX

XX

XX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

XX XXX

XXXXXXXXXXXX

XX XXX

XXXXXXXXXX

XX XXX

XX XXXXX

XX XXX

XX

XX

XX

OFFICIAL COPY  
Oct 04 2019

1           XX    XX

2           XX    XXXXXXXXXXXX

3                   XX

4           XX    XXXXXXXXXXXXXXXX

5           XX    XX

6   XX

7   XX

8                   XX

9           XX    XX

10   XX

11   XX

12   XX

13   XX

14   XX

15           XX    XX

16   XX

17   XX

18   XX

19   XXXXXXXXXXXXXXXXXXXX

20           XX    XXXXX

21           XX    XX

22   XX

23   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24           XX    XXXXX

OFFICIAL COPY

Oct 04 2019

1           XX       XX

2   XX

3   XX

4   XX

5           XX       XXXXX

6           XX       XX

7           XX       XX

8   XX

9           XX       XX

10   XX

11   XX

12   XXXXXXXXXXXX

13           XX       XX

14   XX

15   XX

16   XX

17   XXXXXXXXXXXXXXXXXXXX

18           XX       XXXXXXXXXXXXXXXXXXXX

19           XX       XX

20           XX       XXXXXXXXXXXX

21           XX       XXXXXXX

22           XX       XX

23           XX       XX

24           XX       XX

OFFICIAL COPY

Oct 04 2019

1 XX  
 2 XX  
 3 XX  
 4 XX XX  
 5 XX  
 6 XX  
 7 XX  
 8 XX  
 9 XX  
 10 XX  
 11 XX  
 12 XX  
 13 XX  
 14 XX  
 15 XX  
 16 XX  
 17 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
 18 XX XX  
 19 XX  
 20 XX  
 21 XX  
 22 XX  
 23 XX  
 24 XX

OFFICIAL COPY

Oct 04 2019

1 XX  
2 XX  
3 XX  
4 XX XX  
5 XX  
6 XX  
7 XX  
8 XX  
9 XX  
10 XX  
11 XX XX  
12 XX  
13 XX  
14 XX XXXXX  
15 XX XX  
16 XX  
17 XX XX  
18 XX  
19 XX  
20 XX  
21 XXXXXXXXXXXXXXXX  
22 XX XX  
23 XXXXXXXXXXXXXXXX  
24 XX XXXXX

1 XX XX  
2 XXX  
3 XXXXXXXXXXXXX  
4 XX XX  
5 XXX  
6 XXX  
7 XX XX  
8 XXX  
9 XX  
10 XX XX  
11 XXXXX  
12 XX XX  
13 XXX  
14 XXXXXXXXXXXXX  
15 XX XXXXX  
16 XX XX  
17 XX XXXXX  
18 XX XX  
19 XXXXXX  
20 XX XX  
21 XXX  
22 XXXXXXXXXXXXXXXXXXXXXXX  
23 XX XX  
24 XXX

1 XXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXX

3 XXXXX

4 XX XXXXXXXX

5 XX XXXXXXXXXXXXX

6 XX XXX

7 XX XXXXX

8 XX XXX

9 XXX

10 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

11 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XXXXXXXXXXXXXXXXXXXXXXX

13 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XXX

15 XXX

16 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

17 XXXXX

18 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

19 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20 XX XXXXX

21 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1 XXXXX

2 XX XXX

3 XXX

4 XXX

5 XXX

6 XXX

7 XXX

8 XXX

9 XXX

10 XXX

11 XXX

12 XXX

13 XXX

14 XX XXX

15 XXXXXXXXXXXXX

16 XX XXX

17 XXX

18 XXX

19 XX XXX

20 XXX

21 XXX

22 XXXXXXXXXXXXXXXXXXXXXXX

23 XX XXX

24 XXX

OFFICIAL COPY

Oct 04 2019

1 XXX

2 XX XXX

3 XX XXX

4 XXX

5 XX XXX

6 XXXXXX

7 XX XXXXXXXXX

8 XX XXX

9 XXXXXXXX

10 XX XXXXX

11 XX XXX

12 XXX

13 XXXXXXXXX

14 XX XXXXX

15 XX XXX

16 XXX

17 XXX

18 XXX

19 XXX

20 XXX

21 XXXXXXXXXXXXXXXXXXXXXXX

22 XX XXX

23 XXX

24 XXXXXXXX

OFFICIAL COPY

Oct 04 2019

1 XX XX  
2 XXXXXXXXXXXXXXXXXXXX  
3 XX XXXXXXXXXXXXXXXX  
4 XX XX  
5 XX XX  
6 XXXXXXXXXXXXXXXX  
7 XX XX  
8 XX XXXXX  
9 XX XX  
10 XXXXXXXXXXXXXXXX  
11 XX  
12 XX  
13 XX  
14 XX  
15 XX  
16 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
17 XX XX  
18 XX  
19 XX  
20 XX  
21 XXXXXXXXXXXXXXXXXXXXXXXX  
22 XX XX  
23 XXXXXXXXXXXXXXXXXXXXXXXX  
24 XX XX

1 XX XXXXXXXXXXXXXXXXXXXXXXXX

2 XX XX

3 XX

4 XX XX

5 XX

6 XX

7 XXXXXXXXXXXXXXXXXXXXXXXX

8 XX XX

9 XX

10 XXXXXXXX

11 XX XXXXXXXXXXXXXXXX

12 XX XX

13 XX

14 XXXXXXXX

15 XX XX

16 XX XX

17 XXXXXXXXXXXXXXXX

18 XX

19 XXXXXXXX

20 XX XXXXX

21 XX XX

22 XX XXXXX

23 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XX

OFFICIAL COPY

Oct 04 2019

1 XX  
2 XX  
3 XXXXXXXXXXXXXXXXXXXXXXXX  
4 XX XX  
5 XXXXXXXXXXXXXXXX  
6 XX XX  
7 XX XX  
8 XX  
9 XX XX  
10 XXXXXXXXXXXXXXXXXXXXXXXX  
11 XX XXXXXX  
12 XX XX  
13 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
14 XX XX  
15 XX  
16 XX  
17 XX  
18 XX  
19 XX  
20 XXXXXXXXXXXXXXXX  
21 XX XXXXXX  
22 XX XX  
23 XX  
24 XX

OFFICIAL COPY

Oct 04 2019

1 XX  
 2 XX  
 3 XXXXX  
 4 XX XX  
 5 XX  
 6 XX  
 7 XX  
 8 XX  
 9 XX  
 10 XX  
 11 XX  
 12 XX  
 13 XX  
 14 XX  
 15 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
 16 XX  
 17 XX  
 18 XXXXXXXXXXXXXXXX  
 19 XX  
 20 XX  
 21 XX  
 22 XX  
 23 XX  
 24 XX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXX

2 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

5 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9 XXXXXXXXX

10 XX XXXXXXXXXXXXXXXXXXXX

11 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XXXXX

13 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XXXXXXXXXXXXXXX

16 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

17 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

18 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

19 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XXXXXXXXX

23 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1           XX       XXXXXXXXXXXXXXXXXXXX

2           XX       XX

3           XX

4           XX

5           XX       XX

6           XX

7           XX

8           XX       XX

9           XX

10          XXXXXXXXXXXXXXXXXXXX

11          XX       XX

12          XX

13          XX

14          XX

15          XX

16          XX

17          XX

18                   XX

19          XX

20          XXXXXXXXXXXXXXXXXXXX

21                   XX

22                   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23                   XX

24          XX

OFFICIAL COPY

Oct 04 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Whereupon, confidential session has ended.)

Q. Mr. Lucas, I would like to ask you about the costs that are eligible for recovery under the fuel prudence provisions. You indicated earlier that you did not believe that the liquidated damages were appropriate for recovery because they were not a net gain or loss from the sale of the byproduct, correct?

A. Yes.

Q. If DEP had gone out into the market and purchased gypsum from a third party for redelivery to CTG to meet its 50,000-ton-per-month contractual obligation, would those costs of purchasing gypsum from a third party and transporting them to CTG have been eligible for recovery under the fuel clause?

A. No.

Q. And why not?

A. Because it's not the gain or loss on the sale of the byproduct from the Company.

Q. If DEP had acquired the gypsum from DEC's Belows Creek unit, which I believe Ms. Harrington testified that they did obtain some from DEC, would that also not have been eligible for recovery under the

1 fuel clause?

2 A. That would not have.

3 MR. WEST: I don't have any additional  
4 questions. Thank you.

5 CROSS EXAMINATION BY MR. JIRAK:

6 Q. Mr. Lucas, just a few questions for you. So  
7 you were asked a series of questions by Mr. West  
8 regarding the 2012 agreement and a \$55-per-ton price  
9 that was identified --

10 MR. JIRAK: And I apologize.  
11 Unfortunately, my redirect is going to touch on the  
12 confidential issues covered by Mr. West.

13 CHAIR MITCHELL: Okay. We will go into  
14 confidential session, please. We will clear the  
15 room.

16 (Whereupon, the following is  
17 confidential and shall be filed under  
18 seal.)

19 XX XXX  
20 XXX  
21 XXX  
22 XXX  
23 XX XXXXX  
24 XX XXX

1 XX

2 XX XXXXX

3 XX XX

4 XX

5 XX

6 XX

7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XX XX

9 XXXXXXXXXXXXXXXXXXXXXXX

10 XX XX

11 XXXXXXXXXXXXXXXXXXXXXXX

12 XX XXXXXX

13 XX XX

14 XXXXXXX

15 XX XXXXXX

16 XX XX

17 XX

18 XX

19 XXXXXXXXXXXXXXXXXXXXXXX

20 XX

21 XXXXXXXXXXXXXXX

22 XX XX

23 XXX

24 XX XX

1 XX  
2 XX  
3 XX  
4 XX  
5 XXXXXXXXX  
6 XX XX  
7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
8 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
9 XX XX  
10 XX  
11 XX  
12 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
13 XX XX  
14 XX  
15 XX  
16 XX  
17 XX XX  
18 XX  
19 XX  
20 XXX  
21 XX XX  
22 XXXXXXXX  
23 XX XX  
24 XX

OFFICIAL COPY

Oct 04 2019

1 XX  
 2 XX  
 3 XX  
 4 XX XXXXXXXXXXXXXXXXXXXXXXXX  
 5 XX XX  
 6 XX  
 7 XX  
 8 XX XXXXXXXXXXXXXXXXXXXXXXXX  
 9 XX XX  
 10 XX  
 11 XX  
 12 XX XX  
 13 XX  
 14 XX  
 15 XXXXXXXXXXXXXXXXXXXXXXXX  
 16 XX XX  
 17 XX  
 18 XX  
 19 XX  
 20 XX XXXXXXXXXXXXXXXXXXXXXXXX  
 21 XX XX  
 22 XX  
 23 XX  
 24 XX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XX XXX

5 XXX

6 XXXXXXXXX

7 XX XXXXXXXXXXXXXXXXXXXXXXX

8 XX XXX

9 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XX XXX

11 XXX

12 XXX

13 XXX

14 XXX

15 XXX

16 XXXXXXXXX

17 XX XXX

18 XXX

19 XXX

20 XXX

21 XX XXXXXX

22 XX XXX

23 XXX

24 XXXXXXXXX

1 XX XXX

2 XX XXX

3 XXX

4 XX XXX

5 XXXXXXXXXXXXXXX

6 XX XXX

7 XXX

8 XXXXXXXXXXXXXXXXXXXXXXX

9 XX XXX

10 XX XXX

11 XX XXXXXXXXXXXXXXX

12 XX XXX

13 XXX

14 XXX

15 XXXXXXXXXXXXXXXXXXXXXXX

16 XX XXX

17 XXX

18 XXX

19 XXX

20 XXXXXXXXXXXXXXXXXXXXXXX

21 XX XXX

22 XXX

23 XX XXXXX

24 XX XXX

OFFICIAL COPY

Oct 04 2019

1 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXXXX

3 XX XXX

4 XX XXXXX

5 XX XXX

6 XXX

7 XXX

8 XXX

9 XXX

10 XX XXX

11 XXX

12 XXXXXX

13 XX XXX

14 XXXXXXXXXXXXXX

15 XX XXXXXXXXXXXXXXX

16 XXX

17 XXX

18 XX XXX

19 XXX

20 XXX

21 XXX

22 XXX

23 XX XXX

24 XXX

OFFICIAL COPY

Oct 04 2019

1 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

2 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

5 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6 XXXXXXXXX

7 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XXXXXXXXXXXXX

9 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XXXXXXXXXXXXX

11 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XXXXXXXXXXXXX

13 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

16 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

17 XX XXXXXXXXXXXXXXXXXXXXXXXX

18 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

19 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

23 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXX

OFFICIAL COPY

Oct 04 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

XX XXXXX  
XX XXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XX XXXXX  
XX XXX  
XX  
XX  
XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Whereupon, confidential session has ended.)

Q. Go ahead.

A. In transportation it's -- I guess goes back to my previous understanding, that it's materials that are in storage, or partway through transportation, that aren't delivered in the expected time by the recipient of those materials.

Q. What about the phrase a "dead run"; do you have any familiarity with that term?

A. I'm not familiar with that term.

Q. Okay. Did you participate in the Duke Energy Progress fuel clause proceedings in 2013?

A. I might have had a minor role. I can't remember.

1 Q. Do you recall, if you had a minor role, does  
2 it jog your memory -- do you recall anything at issue  
3 in that proceeding about transportation costs, dispute  
4 with CSX over transportation costs?

5 A. I wasn't involved in that.

6 Q. You were not involved in that, okay. That's  
7 all I have. Thank you.

8 CHAIR MITCHELL: Questions on  
9 Commission's questions?

10 MS. DOWNEY: No.

11 CHAIR MITCHELL: Okay. Ms. Downey, we  
12 will entertain a motion.

13 MS. DOWNEY: Yes. I would like to move  
14 Mr. Lucas' exhibits into evidence and also address  
15 the other witnesses that were excused at this time.

16 CHAIR MITCHELL: Please do so.

17 MS. DOWNEY: On September 6, 2019, the  
18 Commission entered an order granting the Public  
19 Staff's motion to excuse Public Staff witnesses  
20 Dustin R. Metz and Jenny X. Li from attending this  
21 hearing. Therefore, I would move that the  
22 testimony of Mr. Metz filed on August 19, 2019,  
23 consisting of 19 pages and appendix and one exhibit  
24 be entered into evidence, and further move that the

1 testimony of Jenny X. Li filed on August 19, 2019,  
2 consisting of 11 pages and appendix and one exhibit  
3 with four schedules be admitted into evidence.

4 CHAIR MITCHELL: Hearing no objections,  
5 the testimony and exhibits of Public Staff  
6 witnesses Lucas, Metz, and Li will be received into  
7 evidence.

8 (Confidential Lucas Exhibit 1; Metz  
9 Exhibit 1; and Li Exhibit 1, Schedule 1,  
10 2, 3, 3-1 through 3-5, and 4 were  
11 received into evidence.)

12 (Whereupon, the prefilled direct  
13 testimony of Dustin R. Metz and direct  
14 testimony of Jenny X. Li were copied  
15 into the record as if given orally from  
16 the stand.)

17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1204

In the Matter of	)	
Application by Duke Energy	)	TESTIMONY OF
Progress, LLC Pursuant to G.S. 62-	)	DUSTIN R. METZ
133.2 and Commission Rule R8-55	)	PUBLIC STAFF – NORTH
Regarding Fuel and Fuel-Related	)	CAROLINA UTILITIES
Costs Adjustments for Electric	)	COMMISSION
Utilities	)	

1 Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE  
2 RECORD.

3 A. My name is Dustin R. Metz. My business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina.

5 Q. WHAT IS YOUR POSITION WITH THE PUBLIC STAFF?

6 A. I am an engineer with the Electric Division of the Public Staff  
7 representing the using and consuming public.

8 Q. WOULD YOU BRIEFLY DISCUSS YOUR EDUCATION AND  
9 EXPERIENCE?

10 A. A summary of my education and experience is outlined in detail in  
11 Appendix A of my testimony.

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
13 PROCEEDING?

14 A. The purpose of my testimony is to present the Public Staff's  
15 recommendations regarding the proposed fuel and fuel-related cost  
16 factors for the residential, small general service, medium general  
17 service, large general service, and lighting customers of Duke  
18 Energy Progress, LLC (DEP or the Company), as set forth in the  
19 Company's June 11, 2019, application and the Company's August  
20 15, 2019 supplemental filing.

1 Q. WHAT ARE THE TEST AND BILLING PERIODS FOR THIS  
2 PROCEEDING?

3 A. For this proceeding, the test period is April 1, 2018 through March  
4 31, 2019, and the billing period is December 1, 2019 through  
5 November 30, 2020.

6 Q. PLEASE DESCRIBE THE SCOPE OF THE PUBLIC STAFF'S  
7 INVESTIGATION.

8 A. The Public Staff's investigation included a review of the Company's  
9 test period and projected fuel and fuel-related costs and also the  
10 following: (1) the Company's application, testimony, and responses  
11 to Public Staff data requests; (2) documents related to the  
12 performance of the Company's baseload power plants, including the  
13 specific performance of the Company's nuclear facilities; (3) the  
14 Company's purchased power transactions, including from  
15 renewable energy facilities;<sup>1</sup> (4) the Company's coal, natural gas,  
16 nuclear, and reagent procurement practices and contracts; and (5)  
17 the current state of coal, natural gas, nuclear fuel, and reagent  
18 markets. The Public Staff also engaged in multiple discussions and  
19 meetings with Company personnel regarding these subjects and  
20 conducted a site visit to the H.B. Robinson Nuclear Station

---

<sup>1</sup> Except for those costs recovered pursuant to N. C. Gen Stat. § 62.133.8(h).

1 (Robinson). I have also reviewed the testimony of Public Staff  
2 witnesses Jenny Li and Jay Lucas.

3 **Q. PLEASE SUMMARIZE THE RESULTS OF YOUR**  
4 **INVESTIGATION AND YOUR RECOMMENDATIONS.**

- 5 • For the test year, the Company did not meet the standard  
6 found in Commission Rule R8-55(k), and the Public Staff  
7 disagrees with the Company's inputs into the calculation of  
8 averages. The Public Staff believes it is reasonable in this  
9 case to factor in the effects of hurricane-related events.  
10 Factoring in those effects, the Company meets the standard.
- 11 • The Public Staff cannot conclude that an outage extension at  
12 Robinson was unavoidable and the resulting replacement  
13 power costs were reasonably and prudently incurred due to  
14 an absence of documentation.
- 15 • The Public Staff is concerned about the Company's natural  
16 gas commodity pricing methodology and believes it warrants  
17 further analysis by the Company.

18 **Commission Rule R8-55(k) Standard**

19 **Q. DURING THE TEST YEAR, DID THE COMPANY ACHIEVE**  
20 **EITHER OF THE TWO BENCHMARKS SET FORTH IN**  
21 **SUBSECTION (K) OF COMMISSION RULE R8-55?**

1 A. No. For the test year, the Company did not meet either of the two  
2 benchmarks set forth in Commission Rule R8-55(k). The Company  
3 reported a single year system-wide nuclear capacity factor of  
4 89.21%, which was less than the NERC (North American Electric  
5 Reliability Corporation) weighted average nuclear capacity factor.  
6 Additionally, the Company's two-year simple average of its system-  
7 wide nuclear capacity factor of 92.44% was also less than the NERC  
8 weighted average nuclear capacity factor (CF). Therefore, a  
9 rebuttable presumption was created that DEP imprudently incurred  
10 the increased fuel costs during the test year.

11 **Q. WHAT IS THE MOST RECENT NORTH AMERICAN ELECTRIC**  
12 **RELIABILITY CORPORATION'S (NERC) GENERATING**  
13 **AVAILABILITY REPORT (GAR) CAPACITY FACTOR (CF)?**

14 A. The most recent NERC GAR CF<sup>2</sup>, appropriately weighted for the  
15 size and type of plants that are equivalent to the Company's, is  
16 92.72%.<sup>3</sup>

17 **Q. DO YOU AGREE WITH THE COMPANY'S INPUTS TO**  
18 **DETERMINE THE SINGLE AND TWO YEAR AVERAGES?**

---

<sup>2</sup> On July 30, 2019, NERC issued its annual updated Generating Unit Statistical Brochure (e.g., GAR). As a result, I believe the most current values should be used for evaluation purposes. This date is the earliest in which NERC has released the Generating Unit Statistical Brochure over the last four years.

<sup>3</sup> At the time of the Company's filing, the 2013-2017 GAR was the most recent release, and the benchmark weighted average was 91.80 CF% versus the 2014-2018 benchmark weighted average of 92.72% CF.

1 A. No, I do not completely agree with the Company's inputs used to  
2 determine its comparative averages to the NERC GAR CF. While  
3 my disagreement results in a CF difference that is immaterial to the  
4 end result in this case, it may not be so in the future; thus I would  
5 like to bring the differences to the Commission's attention.

6 In this particular docket, the name plate rating or maximum  
7 dependable capacity (MDC) for the Shearon Harris Nuclear Station  
8 (Harris) is of interest. In the 2018 spring nuclear refueling outage, at  
9 the beginning of the Company's test year, Harris underwent a  
10 replacement of its low pressure turbine, adding 32 megawatts (MW)  
11 of station capacity.<sup>4</sup>

12 I do not take issue with how the Company tested and validated the  
13 results of the low pressure turbine replacement throughout the 2018  
14 test year, as described by DEP witness Kelvin Henderson.  
15 However, based upon my review of the Harris generation profile,  
16 when calculating the annual (test year) CF, the additional 32 MWs  
17 of station capacity should have been included, beginning when the  
18 outage was completed. Including the increase in the available  
19 dependable generation post installation better aligns the actual fleet  
20 performance to peer units. To do otherwise allows the DEP unit and  
21 fleet to take seven months of operational credit at an understated

---

<sup>4</sup> Direct Testimony of Company witness Henderson, p. 10.

1 capacity value. In other words, the Company's filed calculation  
 2 evaluates the Harris actual generation performance against an  
 3 unrealistically lower theoretical generation performance target. For  
 4 example, Table 1 below is an extraction of data from the Company's  
 5 monthly Baseload Power Plant Performance Reports filed with the  
 6 Commission.<sup>5</sup> In the first full month of production following the  
 7 planned refueling outage, the plant experienced a 104.5% CF,  
 8 which never dropped below 103% CF for the remainder of the test  
 9 year, reaching a maximum of 107.3% in November of 2018. Harris  
 10 remained at a generation capacity factor greater than 104% CF for  
 11 the entire summer of 2018, which is particularly notable because  
 12 summer is typically a time when generating plants are forced to  
 13 operate at lower output due to increased thermal temperatures of  
 14 cooling water. The Company finally updated the plant's MDC rating  
 15 in January of 2019, nearly seven months after the unit underwent a  
 16 power uprate.

2018									2019		
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
19.2%	66.3%	104.5%	104.5%	104.4%	104.5%	105.8%	107.3%	107.0%	103.7%	103.4%	103.0%

17

18 **Table 1:** Shearon Harris Nuclear Station Test Year Capacity Factors

19 As I stated earlier, I believe it is important to compare a generation  
 20 unit's actual performance under the R8-55(k) guidelines by using

<sup>5</sup> Docket No. E-2, Subs 1164 and 1201.

1 the most accurate data set. Absent this type of adjustment (i.e.,  
2 correcting the unit MDC value to a contemporaneous post  
3 installation level versus waiting seven months), deviations in  
4 generation output can improperly skew the single year weighted  
5 average and the two year simple average.

6 While this calculation adjustment has no material impact to the  
7 comparative analysis required by the R8-55(k) guidelines in this  
8 case, it has created some discrepancies between the values  
9 discussed in my testimony. This single year variance between the  
10 DEP calculation and my corrected calculation is approximately  
11 0.61%.<sup>6</sup>

12 **Q. IN TABLE 1, YOU LISTED A CF TABLE FOR HNS. DO YOU**  
13 **HAVE OTHER EXAMPLES OF COMPANY NUCLEAR PLANTS**  
14 **EXCEEDING 100% CF DURING SUMMER MONTHS?**

15 **A.** Yes. As noted above, summer months will typically have the lowest  
16 annual dependable capacity rating due to increased thermal  
17 temperatures of the cooling water. Tables 2 and 3 provide the  
18 previous test year CF values for both Robinson and Harris, and  
19 show that a number of months' CFs exceeded 100%. Units that

---

<sup>6</sup> According to DEP witness Henderson, DEP calculated a single year weighted CF of 89.21%. The Public Staff calculated a single year value of 88.60%. According to witness Henderson, the two year simple average resulted in a 92.44% CF; the Public Staff calculated a value of 92.08% CF. The NERC GAR CF of 92.72% is the comparative value to the DEP single year and two year average.

1 consistently and regularly exceed a CF of 100% warrant closer  
2 scrutiny and an increase in the MDC.

2017									2018		
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
73.5%	102.7%	102.0%	100.8%	101.1%	102.7%	103.2%	104.9%	107.6%	107.9%	107.3%	107.2%

3  
4 **Table 2: H.B. Robinson 2018 Test Year Capacity Factor**

2017									2018		
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
103.0%	102.7%	101.9%	101.2%	101.5%	100.9%	80.7%	104.2%	104.2%	85.6%	102.7%	103.3%

5  
6 **Table 3: Shearon Harris 2018 Test Year Capacity Factor**

7 **Q. DID YOU TAKE INTO CONSIDERATION THE TEST YEAR**  
8 **HURRICANE-RELATED WEATHER IMPACTS ON THE**  
9 **BRUNSWICK NUCLEAR UNITS WHEN YOU CONSIDERED THE**  
10 **CAPACITY FACTOR BENCHMARK COMPARATIVE**  
11 **STANDARDS SET FORTH IN COMMISSION RULE R8-55(K)?**

12 **A.** Yes I did. Because the Company did not meet either of the  
13 benchmarks (guidelines) set forth in R8-55(k), a presumption of  
14 imprudence was created that some portion of the cost of fuel and  
15 fuel-related costs incurred by the Company warranted disallowance  
16 in this case. My analysis of the test year performance of the  
17 Brunswick Nuclear Station (Brunswick) units confirms the testimony  
18 of DEP witness Henderson that the test year weather-related events  
19 that caused Brunswick Units 1 and 2 to be offline were beyond the  
20 Company's control. Therefore, I requested that the Company

1 recalculate the single and two year average CFs by removing the  
2 Brunswick weather-related outages. After this recalculation, the  
3 single year weighted average CF continued to be less than the  
4 NERC GAR CF value, regardless of which Harris MDC value (see  
5 discussion above) was used for the current test year.<sup>7</sup> However, the  
6 recalculated two year simple average met the NERC GAR CF  
7 value.<sup>8</sup>

8 **Q. WHY DIDN'T YOU INCLUDE THE ROBINSON EXTENDED FALL**  
9 **2018 OUTAGE IN THE RECALCULATED HURRICANE-**  
10 **RELATED CFS?**

11 A. First, as discussed previously, removal of the Brunswick hurricane-  
12 related outages allowed the Company to exceed the two year simple  
13 average CF due in part to the previous year's approximate 96%  
14 overall CF. Thus, the rebuttable presumption of imprudence was  
15 avoided.

16 Second, the Robinson 67 day outage, which included a scheduled  
17 39 day refueling and transmission project outage, had an outage  
18 delay associated with, at least in part, weather events. My review of

---

<sup>7</sup> DEP recalculated a single year weighted average CF of 90.39% with the Brunswick Hurricane Florence outages removed, but using its filed MDC for Harris, I calculated an 89.78% single year weighted average CF with the adjusted MDC for Harris discussed previously.

<sup>8</sup> DEP recalculated a two year simple average CF of 93.02% with the Brunswick Hurricane Florence outages removed, but using its filed MDC for Harris. I calculated a 92.72% two year simple average CF with the adjusted MDC for Harris discussed previously.

1 the total outage involved an assessment of how the scheduled  
2 outage had progressed prior to the weather-related events, and an  
3 assessment of any associated impacts on the 28 day outage  
4 extension.

5 **Q. PLEASE PROVIDE A SYNOPSIS OF THE 2018 FALL OUTAGE**  
6 **AT ROBINSON.**

7 A. As discussed in greater detail in DEP witness Henderson's  
8 testimony, part of the outage scope was to install a transmission  
9 upgrade project (TUP). The TUP was a multiyear design,  
10 procurement, installation, and commissioning project that began in  
11 2011, with a proposed in-service date of Spring 2017.<sup>9</sup> The multi-  
12 year coordinated TUP project, included installing a new 230 kV  
13 start-up transformer, replacing an existing 115 kV start-up  
14 transformer, switchyard modifications, replacing older electro-  
15 mechanical relays with digital relays, building infrastructure,  
16 installing new electrical switchgear, replacing reactor coolant pump  
17 breakers, installing uninterrupted power supplies and battery  
18 systems, and numerous other electrical systems. The overall scope  
19 of this project was expansive and required a significant level of  
20 engineering and oversight.

---

<sup>9</sup> Initial communications with the Company revealed the initial in-service date of 2014 and not 2017. This was later clarified in discovery, and the overall project was completed in stages, spanning multiple outages and years.

1 After investigation, I am unable to conclude whether the additional  
2 28 outage days of replacement power costs incurred during the Fall  
3 2018 outage at Robinson were imprudently incurred. I will discuss  
4 the factors that led to my inconclusive determination below.

5 **Q. MR. METZ, IF YOUR FINDINGS ARE INCONCLUSIVE, SHOULD**  
6 **THE COMMISSION DISALLOW THE REPLACEMENT POWER**  
7 **COSTS ASSOCIATED WITH THE 28-DAY OUTAGE**  
8 **EXTENSION?**

9 A. At this time I cannot recommend disallowance of any portion of the  
10 replacement power costs because the Fall 2018 outage was  
11 impacted, at least in part, by events outside of the Company's  
12 control (weather).

13 However, there is significant doubt, in my professional opinion, as  
14 to whether the Company's management of the project should have  
15 resulted in it being shifted from the Spring 2017 refueling outage to  
16 the Fall 2018 refueling outage.

17 In this case, I am faced with a dilemma in presenting my  
18 recommendation to the Commission. On the one hand, I cannot  
19 conclude with a reasonable certainty that the TUP was prudently  
20 managed up to the events that caused the outage to shift from 2017  
21 to 2018. I will provide more detail on the factors that contributed to  
22 this decision later. At the same time, I cannot conclude that it is

1 reasonable to disallow recovery of the replacement power costs for  
2 an outage that was impacted by severe weather events.

3 **Q. WHAT FACTORS PREVENTED YOU FROM REACHING A**  
4 **CONCLUSION AS TO WHETHER THE TUP PROJECT WAS**  
5 **PRUDENTLY MANAGED?**

6 A. First, the Company's lack of document access or retention restricted  
7 the Public Staff's ability to review and evaluate the prudence of  
8 project management. Let me expand upon some of the factors that  
9 may have contributed to the absence of sufficient documentation.

10 This particular project started pre-merger<sup>10</sup> and during the project  
11 life cycle, the merger led to the introduction of new policies and  
12 procedures regarding project management. The Company was able  
13 to produce applicable guidelines and procedures that should have  
14 been followed, but the documentation to ensure that these items  
15 were, in fact, appropriately implemented and completed could not  
16 be produced consistently.

17 This project had multiple internal project managers, at least two,  
18 over the project life as well as multiple iterations of project staffing.  
19 A significant portion of the information required to perform an  
20 evaluation of prudence is based upon the organizational

---

<sup>10</sup> When I reference "merger" in this testimony, I am referring to the merger of Duke Energy Corporation and Progress Energy, Inc. in 2012.

1 management by the project manager. The most recent project  
2 manager who worked on this project has since retired from the  
3 Company and, therefore, his knowledge of project specific events  
4 was not available to be utilized in this investigation. The Company  
5 was able to produce other project management staff who worked on  
6 the project, which did help the overall investigation, but there were  
7 still missing pieces.

8 The scope of this project would have required an immense amount  
9 of contractor coordination, not only with individual vendors, but also  
10 coordination of internal review cycles due to interdependencies  
11 among multiple working groups and project milestones. This level of  
12 communication would have required several revisions to project  
13 milestones, as well as numerous amounts of communication and  
14 records. As part of our discovery, the Public Staff asked the  
15 Company for "all" communications between the Company and  
16 vendors as well as any internal communications regarding the  
17 project. The Company was capable of providing only limited  
18 communications. As of August 1, 2019, only approximately five  
19 responsive documents had been provided.

20 While I believe that the Company worked in good faith to respond  
21 to Public Staff discovery, made technical experts and senior  
22 management available for discussion, and had open dialogue as the

1 Public Staff and DEP worked through the discovery process, I am  
2 concerned about the Company's apparent lack of records retention  
3 in this case. As the Commission relies on the Public Staff to conduct  
4 detailed technical and prudency investigations and audits of the  
5 utilities, I believe the Commission expects the utilities to retain  
6 adequate and sufficient documentation for audit purposes. Even  
7 though my testimony in this docket is about fuel and fuel-related  
8 costs associated with this proceeding, this concern has broader  
9 implications that could impact future investigations and  
10 proceedings. To that point, because the Robinson TUP project was  
11 completed in 2018, the associated capital expenditures specific to  
12 this project are not yet included in rate base. In the Company's next  
13 general rate case, we anticipate that the Company will seek cost  
14 recovery for the project, as the project is now completed. When the  
15 Company files a general rate case, the reasonableness and  
16 prudence of the project and project spend will be evaluated. The  
17 Public Staff will ask questions in the general rate case similar to  
18 those asked in this case, but the responses will be reviewed under  
19 a different lens (capital versus replacement power).

20 Having access to documentation is vitally important to the Public  
21 Staff's ability to audit and provide recommendations to the  
22 Commission. Commission Rule R8-28 establishes the records  
23 retention requirements of utilities, but it appears the Company did

1 not fully comply with the Rule with respect to this project.<sup>11</sup> More  
 2 likely than not, there are other Company projects that will require  
 3 similar scrutiny, including legacy projects that occurred before,  
 4 during, and just after the merger time period and transition, or other  
 5 projects that span multiple years. Therefore, the Public Staff  
 6 requests that the Commission (1) review the Company's records  
 7 retention protocol to determine if it is consistent with the  
 8 Commission's Rules and (2) provide guidance on how to proceed if  
 9 necessary records are unavailable to allow sufficient review of  
 10 projects or other items for which the Company seeks cost recovery.

11 **Q. ABSENT THE ROBINSON TUP PROJECT, DID YOUR**  
 12 **INVESTIGATION INTO DEP'S OTHER TEST YEAR POWER**  
 13 **PLANT OUTAGES REVEAL ANY UNREASONABLE OR**  
 14 **IMPRUDENT ACTIONS BY THE COMPANY THAT WARRANT A**  
 15 **DISALLOWACE OF REPLACEMENT POWER COSTS?**

16 **A.** No, my investigation did not reveal any other outages that warranted  
 17 an adjustment in this proceeding.

---

<sup>11</sup>Commission Rule R8-28 requires that unless otherwise specified by the Commission, records must be retained in accordance with the National Association of Regulatory Utility Commissioners' (NARUC) publication "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities." <http://www.psc.state.wv.us/scripts/webdocket/ViewDocument.cfm?CaseActivityID=236040&NotType=%27%27WebDocket%27%27>. Notably, the NARUC regulations provide that notwithstanding any minimum requirements in the regulations, utilities must retain appropriate records to support cost recovery.

1 **Future Commodity Pricing**

2 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE COMPANY'S**  
3 **NATURAL GAS COMMODITY PRICING METHODOLOGY?**

4 A. Yes, we have concerns about the Company's natural gas  
5 commodity pricing methodology, similar to the concerns expressed  
6 by Public Staff witness Jay Lucas in Duke Energy Carolinas, LLC's  
7 (DEC) recent fuel proceeding in Docket No. E-7, Sub 1190. As the  
8 Company has shifted to a fuel commodity with greater price  
9 variances (compared to nuclear and coal), despite overall  
10 decreasing costs in order to more economically serve its rate  
11 payers, these same customers are exposed to greater risk of fuel  
12 cost under- and over-recoveries. Natural gas consumption, most  
13 notably by baseload combined cycle (CC) plants, coupled with  
14 recent winter weather events of the last few years, have caused  
15 exposure to higher than anticipated natural gas fuel commodity  
16 prices.

17 **Q. DO YOU PROPOSE A SPECIFIC RECOMMENDATION TO**  
18 **ADDRESS YOUR CONCERNS?**

19 A. Yes. In the recent DEC fuel proceeding, the Commission required  
20 DEC to evaluate historic price fluctuations and whether its current  
21 method of forecasting and hedging programs should be adjusted to  
22 mitigate the risk of significant under-recovery of fuel costs and report

1 the results of that evaluation in the Company's next fuel proceeding.  
2 DEP should be required to undertake the same evaluation and  
3 report the results to the Commission in its next fuel proceeding.

4 **Q. DID THE PUBLIC STAFF REVIEW THE BILLING PERIOD OR**  
5 **PROJECTED FUEL AND FUEL-RELATED COSTS AS SET**  
6 **FORTH BY THE COMPANY IN THIS FILING?**

7 A. Yes. Based upon my investigation, I determined that the projected  
8 fuel and reagent costs are reasonable and were calculated  
9 appropriately with the exception of CertainTeed-related costs, as  
10 discussed by Public Staff witness Lucas. The projected cost of fuel  
11 and fuel-related costs are affected by minor projected fluctuations  
12 in nuclear fuel, coal, and natural gas costs. DEP's proposed fuel and  
13 fuel-related costs are based on a 94.62% system nuclear capacity  
14 factor, which is what the Company anticipates for the billing period.

15 **Q. PLEASE DISCUSS THE PUBLIC STAFF'S INVESTIGATION OF**  
16 **THE TEST PERIOD EXPERIENCE MODIFICATION FACTOR**  
17 **(EMF).**

18 A. Public Staff witness Jenny X. Li describes the Public Staff's review  
19 of the test period EMF in her testimony, and I have incorporated her  
20 recommendations in Exhibit 1-Table 2 below.

1 Q. WHAT ARE THE FUEL COMPONENTS AND TOTAL FUEL  
2 FACTORS THAT THE PUBLIC STAFF RECOMMENDS THAT  
3 THE COMMISSION APPROVE?

4 A. The Public Staff recommends approval of the fuel components and  
5 total fuel factors (excluding the regulatory fee) shown in Exhibit 1  
6 Table 2, effective for the twelve months beginning February 1, 2019:

7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8 A. Yes, this concludes my testimony.

## APPENDIX A

## QUALIFICATIONS AND EXPERIENCE

DUSTIN R. METZ

Through the Commonwealth of Virginia Board of Contractors, I hold a current Tradesman License certification of Journeyman and Master within the electrical trade, awarded in 2008 and 2009 respectively. I graduated from Central Virginia Community College, receiving Associates of Applied Science degrees in Electronics and Electrical Technology (Magna Cum Laude) in 2011 and 2012 respectively, and an Associates of Arts in Science in General Studies (Cum Laude) in 2013. I graduated from Old Dominion University in 2014, earning a Bachelor of Science degree in Engineering Technology with a major in Electrical Engineering and a minor in Engineering Management. I am currently enrolled at North Carolina State University, working toward a Masters of Engineering degree.

I have over 12 years of combined experience in engineering, electromechanical system design, troubleshooting, repair, installation, commissioning of electrical and electronic control systems in industrial and commercial nuclear facilities, project planning and management, and general construction experience, including six years with direct employment with Framatome, where I provided onsite technical support, craft oversight, engineer change packages and participated in root cause analysis teams

at commercial nuclear power plants, including plants owned by both Duke and Dominion.

I joined the Public Staff in the fall of 2015. Since that time, I have worked on general rate cases, fuel cases, applications for certificates of public convenience and necessity, service and power quality, customer complaints, North American Electric Reliability Corporation (NERC) Reliability Standards, nuclear decommissioning, National Electric Safety Code (NESC) Subcommittee 3 (Electric Supply Stations) member, avoided costs and PURPA, interconnection procedures and power plant performance evaluations; I have also participated in multiple technical working groups and been involved in other aspects of utility regulation.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1204

In the Matter of  
Application by Duke Energy )  
Progress, LLC Pursuant to G.S. 62- )  
133.2 and Commission Rule R8-55 )  
Regarding Fuel and Fuel-Related )  
Costs Adjustments for Electric )  
Utilities )

TESTIMONY OF  
JENNY X. LI  
PUBLIC STAFF – NORTH  
CAROLINA UTILITIES  
COMMISSION

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE**  
2 **RECORD.**

3 A. My name is Jenny X. Li. My business address is 430 North Salisbury  
4 Street, Raleigh, North Carolina.

5 **Q. WOULD YOU BRIEFLY DISCUSS YOUR EDUCATION AND**  
6 **EXPERIENCE?**

7 A. Yes. My education and experience are summarized in Appendix A to  
8 my testimony.

9 **Q. WHAT ARE YOUR DUTIES?**

10 A. I am responsible for the performance of the following activities: (1)  
11 the examination and analysis of testimony, exhibits, books and  
12 records, and other data presented by utilities and other parties under  
13 the jurisdiction of the Commission or involved in Commission  
14 proceedings; and (2) the preparation and presentation to the  
15 Commission of testimony, exhibits, and other documents in those  
16 proceedings.

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

18 A. The purpose of my testimony is to present the results of the Public  
19 Staff's investigation of the Experience Modification Factor (EMF)  
20 riders proposed by Duke Energy Progress, LLC (DEP or the  
21 Company) in this proceeding. The EMF riders are utilized to "true-  
22 up," by customer class, the recovery of fuel and fuel-related costs

1 incurred during the test year. DEP's test year in this fuel proceeding  
2 is the twelve months ended March 31, 2019.

3 **Q. PLEASE DESCRIBE THE PUBLIC STAFF'S INVESTIGATION OF**  
4 **THE FUEL EMF INCREMENT RIDERS.**

5 A. The Public Staff's investigation included procedures intended to  
6 evaluate whether the Company properly determined its per books  
7 fuel and fuel-related costs and revenues during the test period.  
8 These procedures included a review of the Company's filing, prior  
9 Commission orders, the Monthly Fuel Reports filed by the Company  
10 with the Commission, and other Company data provided to the Public  
11 Staff. Additionally, they included review of certain specific types of  
12 expenditures impacting the Company's test year fuel and fuel-related  
13 costs, including nuclear fuel disposal costs and payments to non-  
14 utility generators, as well as reviews of source documentation of fuel  
15 and fuel-related costs for certain selected Company generation  
16 resources. Performing the Public Staff's investigation required the  
17 review of numerous responses to written and verbal data requests,  
18 as well as a site visit to the Company's offices and several telephone  
19 conferences with Company representatives.

20 **Q. PLEASE EXPLAIN THE FUEL EMF RIDERS ORIGINALLY**  
21 **PROPOSED BY DEP IN THIS PROCEEDING.**

1 A. In its application filed on June 11, 2019, DEP stated that it  
 2 experienced a total under-recovery in the amount of \$109,550,954  
 3 for its combined customer classes. The under-recovery of fuel for  
 4 each of the North Carolina retail customer classes initially proposed  
 5 was as follows:

6	Residential	(\$40,376,037)
7	Small General Service	(\$2,324,536)
8	Medium General Service	(\$18,739,830)
9	Large General Service	(\$46,571,176)
10	Lighting	(\$1,539,374)

11 The proposed riders were calculated by dividing the fuel and fuel-  
 12 related cost under-recovery for each class by DEP's normalized test  
 13 year North Carolina retail sales of 16,022,241 megawatt-hours  
 14 (MWh) for the Residential Service class; 1,943,714 MWh for the  
 15 Small General Service class; 11,007,307 MWh for the Medium  
 16 General Service class; 8,368,542 MWh for the Large General  
 17 Service class; and 353,965 MWh for the Lighting Service class.  
 18 DEP's resulting proposed EMF increment riders (excluding the North  
 19 Carolina regulatory fee) for each North Carolina retail customer class  
 20 are as follows:

21	Residential	0.252 ¢ per kWh
22	Small General Service	0.120 ¢ per kWh

1	Medium General Service	0.170 ¢ per kWh
2	Large General Service	0.557 ¢ per kWh
3	Lighting	0.435 ¢ per kWh

4 In computing these initially proposed EMF riders, DEP included the  
5 under-recovery related to the coal inventory rider established in  
6 Ordering Paragraph 12 of the Commission's February 23, 2018  
7 *Order Accepting Stipulation, Deciding Contested Issue and Granting*  
8 *Partial Rate Increase* in Docket No. E-2, Sub 1142. The coal  
9 inventory rider was terminated effective for service on and after  
10 December 1, 2018.

11 **Q. PLEASE DESCRIBE THE COMPANY'S SUPPLEMENTAL**  
12 **TESTIMONY AND REVISED EXHIBITS.**

13 A. On August 15, 2019, DEP filed the Supplemental Testimony of Dana  
14 M. Harrington with Revised Harrington Exhibits and supporting  
15 workpapers. Witness Harrington's supplemental testimony and  
16 revised exhibits reflects the impact of three updates to numbers  
17 presented in witness Harrington's direct exhibits and workpapers.  
18 They are as follows:

19 (1) Update the EMF increment to incorporate the fuel and fuel-  
20 related cost recovery balance for April through June 2019,  
21 pursuant to Commission Rule R8-55(d)(3). The reported  
22 over/under-recovery included in the update, although included

- 1 in this proceeding, will be reviewed as part of next year's fuel  
 2 and fuel-related cost proceeding.
- 3 (2) Update proposed rates to reflect revisions to the customer class  
 4 allocation of manual adjustments made to the EMF under-  
 5 collection balance. The impact of this correction to proposed  
 6 customer rates is as follows: Residential (0.015) cents per kwh,  
 7 Small General Service 0.019 cents per kwh, Medium General  
 8 Service 0.016 cents per kwh, Large General Service 0.002  
 9 cents per kwh, and Lighting (0.010) cents per kwh.
- 10 (3) Update the Customer Growth adjustment. This update results  
 11 in a change of (2,062) MWh to adjusted NC system sales. The  
 12 fuel rates proposed by the Company are not affected by this  
 13 update.

14 **Q. WHAT DID COMPANY WITNESS HARRINGTON PROPOSE IN**  
 15 **HER SUPPLEMENTAL TESTIMONY?**

- 16 A. DEP Witness Harrington proposed a revised under-recovery of fuel  
 17 for each of the North Carolina retail customer classes as follows:

18	Residential	(\$63,138,790)
19	Small General Service	(\$4,209,287)
20	Medium General Service	(\$26,020,608)
21	Large General Service	(\$55,725,485)
22	Lighting	(\$1,941,135)

1 The revised riders were calculated by dividing the updated fuel cost  
 2 under-recoveries by DEP's revised normalized test year N.C. retail  
 3 sales of 16,022,203 megawatt-hours (MWh) for the Residential  
 4 Service class; 1,941,728 MWh for the Small General Service class;  
 5 11,007,307 MWh for the Medium General Service class; 8,368,542  
 6 MWh for the Large General Service class; and 353,965 MWh for the  
 7 Lighting Service class. DEP's revised proposed EMF increment  
 8 riders (excluding the North Carolina regulatory fee) for each North  
 9 Carolina retail customer class are as follows:

10	Residential	0.394 ¢ per kWh
11	Small General Service	0.217 ¢ per kWh
12	Medium General Service	0.236 ¢ per kWh
13	Large General Service	0.666 ¢ per kWh
14	Lighting	0.548 ¢ per kWh

15 **Q. PLEASE EXPLAIN DEP'S TWO ADJUSTMENTS RELATED TO**  
 16 **THE NET GAIN/LOSS ON THE SALE OF BY-PRODUCTS IN THE**  
 17 **TEST PERIOD IN WITNESS HARRINGTON'S DIRECT**  
 18 **TESTIMONY.**

19 A. As explained in her initial testimony, DEP witness Harrington  
 20 proposes to recover liquidated damages and a judgment payment  
 21 related to a lawsuit involving CertainTeed Gypsum NC, Inc. included  
 22 in test period costs on a cash basis rather than an accrual basis.

1           Regarding the liquidated damages, witness Harrington indicated that  
2           for accounting purposes, the full 10-year liability related to the  
3           settlement agreement was accrued in December 2018. As a result,  
4           these system costs were reflected in the monthly fuel filings as they  
5           were recorded to the Company's books in FERC account 502, which  
6           was incorporated into the computation of the net gain/loss on the sale  
7           of by-products. The N.C. retail share of these costs is reflected in the  
8           test period under-recovery balance of \$146.8 million. However, for  
9           fuel cost ratemaking purposes, DEP proposes to recover these costs  
10          as the amounts are paid, rather than when the liability was accrued.  
11          To achieve this result, the Company made an adjustment in the  
12          amount of (\$44.1) million, to remove the North Carolina retail portion  
13          of the total amount recorded to the books during the test year. The  
14          Company subsequently made a second adjustment in the amount of  
15          \$6.6 million to recognize only the North Carolina retail portion of the  
16          cash payments made during the test period.

17   **Q.   WHAT IS YOUR RECOMMENDATION REGARDING THE**  
18   **ADJUSTMENTS PROPOSED BY DEP?**

19   A.   Based on the testimony and recommendation of Public Staff witness  
20   Jay Lucas to remove all CertainTeed lawsuit-related expenses, I  
21   have removed from test period costs: (1) the component of the  
22   liquidated damages in the amount of \$6.6 million and, (2) the

1 judgment payment in the amount of \$619,200, both related to  
2 CertainTeed. These adjustments are set forth in Li Exhibit 1.

3 I have also incorporated witness Lucas' recommendation to remove  
4 the CertainTeed liquidated damages expenses that are projected be  
5 made in the billing period. This recommendation is also reflected in  
6 Li Exhibit 1.

7 **Q. ARE YOU PROPOSING ANY ADJUSTMENTS TO DEP'S TEST-**  
8 **YEAR KWH SALES?**

9 A. No. I am not proposing any change to the revised normalized North  
10 Carolina retail sales as proposed by DEP of 16,022,203 MWh for the  
11 Residential class; 1,941,728 MWh for the Small General Service  
12 class; 11,007,307 MWh for the Medium General Service class;  
13 8,368,542 MWh for the Large General Service class; and 353,965  
14 MWh for the Lighting class, as set forth in DEP witness Harrington's  
15 supplemental testimony.

16 **Q. ARE THERE ANY OTHER MATTERS YOU WOULD LIKE TO**  
17 **DISCUSS AS IT RELATES TO THE TEST PERIOD EMF**  
18 **INVESTIGATION?**

19 A. Yes, my investigation found a Net Native Load Transfer correction  
20 that was set forth on Schedule 3 of the Monthly Fuel Reports for  
21 February 2019, for both DEP and Duke Energy Carolinas, LLC  
22 (DEC). According to the Company, a coding error was discovered

1 related to the sharing of economic purchases between DEP and DEC  
 2 that are subject to the Joint Dispatch Agreement (JDA). This coding  
 3 error covered the period from July 2012 through December 2018.  
 4 This correction is a net benefit to DEP in amount of \$54.7 million on  
 5 a system basis. The Public Staff does not dispute that the coding  
 6 error occurred and that it was appropriate to make the adjustment in  
 7 this case. However, the Public Staff will continue to investigate the  
 8 reasons why the coding error occurred and reserves the right to raise  
 9 any other issues related to the coding error in future proceedings.

10 **Q. WHAT ARE THE EMF UNDER-RECOVERY AMOUNTS YOU ARE**  
 11 **PROPOSING FOR THE FIVE CUSTOMER CLASSES?**

12 A. Based on the testimony and recommendation of Public Staff witness  
 13 Lucas, I recommend the following under-recovery amounts for each  
 14 Carolina retail customer class, (excluding the North Carolina  
 15 regulatory fee):

16	Residential	(\$59,835,706)
17	Small General Service	(\$3,842,749)
18	Medium General Service	(\$24,006,222)
19	Large General Service	(\$54,214,580)
20	Lighting	(\$1,875,903)

1 The EMF increment riders that I am recommending (excluding the  
2 North Carolina regulatory fee) for each North Carolina retail customer  
3 class are as follows:

4	Residential	0.373 ¢ per kWh
5	Small General Service	0.198 ¢ per kWh
6	Medium General Service	0.218 ¢ per kWh
7	Large General Service	0.648¢ per kWh
8	Lighting	0.530 ¢ per kWh

9 I have provided these amounts to Public Staff witness Dustin R. Metz  
10 for incorporation into his recommended final fuel factor.

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

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

## APPENDIX A

## QUALIFICATIONS AND EXPERIENCE

## JENNY X. LI

I graduated from North Carolina State University with a Bachelor of Science degree in Accounting.

I joined the Public Staff Accounting Division in August 2016 as a Staff Accountant. I am responsible for the performance of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings.

Since joining the Public Staff, I have filed affidavits in Duke Energy Progress, LLC (DEP) fuel rider Dominion Energy North Carolina REPS rider. I have also assisted on several electric cases and performed reviews in Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP) rate cases and fuel cases. I have also performed reviews of DEC's Existing DSM Program Rider and BPM/NFPTP Rider; Western Carolina University's PPA Rider and New River Light and Power Company's PPA Factor.

Prior to joining the Public Staff, I was employed by MDU Enterprises Inc. and Neusoft America Inc. My duties there varied from examining various financial statements to supervising accounting and assisting external audits.

1 MS. DOWNEY: That concludes the Public  
2 Staff' s case.

3 CHAIR MITCHELL: Thank you, Ms. Downey.

4 MR. JIRAK: Thank you. At this time,  
5 DEP would like to call the panel of Barbara Coppola  
6 and John Halm on rebuttal.

7 CHAIR MITCHELL: Good morni ng. Let' s  
8 get you all sworn in.

9 BARBARA A. COPPOLA AND JOHN HALM,  
10 having first been duly sworn, were examined  
11 and testi fied as follows:

12 DIRECT EXAMINATION BY MR. JIRAK:

13 Q. Ms. Coppola, I will start with you.

14 Please state your full name and title for the  
15 record.

16 A. (Barbara Coppola.) Yes. Barbara Coppola,  
17 manager of strategy and planning in our grid solutions  
18 department.

19 Q. And, Mr. Halm, please state your name and  
20 title for the record.

21 A. (John Halm.) John Halm, Lead byproduct  
22 marketer for Duke Energy.

23 Q. Ms. Coppola -- excuse me.

24 COMMI SSI ONER GRAY: Some of us, as you

1           may recognize, are a little hard of hearing. So I  
2           hate to ask you to do this, but to share the  
3           microphone.

4                         THE WITNESS: (Barbara Coppola.) Thank  
5           you.

6                         COMMISSIONER GRAY: Thank you.

7           Q.        Ms. Coppola, along with Mr. Halm, did you  
8           prepare and cause to be filed in this proceeding  
9           rebuttal testimony consisting of 19 pages, questions  
10          and answers?

11          A.        (Barbara Coppola.) Yes.

12          Q.        Mr. Halm, did you assist in the preparation  
13          of that same testimony?

14          A.        (John Halm.) I did.

15          Q.        Do either of you have any changes you need to  
16          make to your testimony at this time?

17          A.        (Barbara Coppola.) No.

18          A.        (John Halm.) No.

19          Q.        Ms. Coppola, if I were to ask you the same  
20          questions contained in your testimony today, would your  
21          answers remain the same?

22          A.        (Barbara Coppola.) Yes.

23          Q.        Mr. Halm, same question to you. If I were to  
24          ask you the same questions contained in your testimony

1 today, would your answers remain the same?

2 A. (John Halm.) Yes.

3 MR. JIRAK: Chair Mitchell, at this  
4 time, I would request the prefilled rebuttal  
5 testimony of the panel of Barbara A. Coppola and  
6 John Halm be copied into the record as if given  
7 orally from the stand.

8 CHAIR MITCHELL: Hearing no objection,  
9 that motion would be allowed.

10 (Whereupon, the prefilled rebuttal  
11 testimony of Barbara A. Coppola and  
12 John Halm was copied into the record as  
13 if given orally from the stand.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1204

In the Matter of )  
Application of Duke Energy Progress, LLC )  
Pursuant to G.S. 62-133.2 and NCUC Rule )  
R8-55 Relating to Fuel and Fuel-Related )  
Charge Adjustments for Electric Utilities )

**REBUTTAL TESTIMONY**  
**OF BARBARA A. COPPOLA AND**  
**JOHN HALM**  
**FOR DUKE ENERGY PROGRESS,**  
**LLC**



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

3    A.    My name is Barbara A. Coppola, and my business address is 400 South Tryon  
4    Street, Charlotte, North Carolina.

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

6    A.    I am employed by Duke Energy Business Services, LLC as Manager, Grid  
7    Solutions Strategy and Planning. In a previous role, I worked with our Fuels and  
8    System Optimization organization and was responsible for administering contracts  
9    and arrangements for the acquisition of reagents for our power generating fleets as  
10   well as the disposition of certain power generation by-products that can be sold for  
11   beneficial reuse.

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

14   A    My educational background includes a Bachelor of Science in Mechanical  
15   Engineering from Rochester Institute of Technology in Rochester, New York and a  
16   Master of Science in Management from North Carolina State University in Raleigh,  
17   North Carolina. I joined Progress Energy in 2002 in the Engineering Programs  
18   Department and then spent thirteen years in Fuels and System Optimization in a  
19   number of roles, including coal procurement, byproducts and reagents management  
20   and manager of transportation. I then joined the Distributed Energy Technology  
21   department and had responsibility for developing new products and services for our  
22   customers in the area of distributed energy technologies such as solar, wind, energy  
23   storage and microgrids. My current role in Grid Solutions is developing strategies

1 and plans for Grid Initiatives. I am a Registered Professional Engineer in the states of  
2 New York and North Carolina.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED OR SUBMITTED TESTIMONY**  
4 **BEFORE THE NORTH CAROLINA UTILITIES COMMISSION?**

5 A. No.

6 **Q. MR. HALM, PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

7 A. My name is John Halm, and my business address is 400 South Tryon Street,  
8 Charlotte, North Carolina.

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

10 A. I am employed by Duke Energy Business Services, LLC as Lead Byproducts  
11 Marketer - CCP. In my current capacity I manage the synthetic gypsum  
12 commercial activities and day to day operations.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
14 **PROFESSIONAL EXPERIENCE.**

15 A. My educational background includes a Bachelor of Science in Chemical  
16 Engineering from Clemson University in Clemson, South Carolina. I began  
17 working for Progress Energy in 2009 in the Fuels and System Optimization  
18 Department as a Fuels Engineer.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED OR SUBMITTED TESTIMONY**  
20 **BEFORE THE NORTH CAROLINA UTILITIES COMMISSION?**

21 A. No.

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

23 A. The purpose of this rebuttal testimony is to respond on behalf of Duke Energy  
24 Progress, LLC (“DEP” or the “Company”) to the testimony of Public Staff witness

1 Jay B. Lucas in this proceeding.

2 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR TESTIMONY.**

3 A. In 2002, the Company began pursuit of a long-term commercial transaction that  
4 was projected to provide substantial benefit to customers based on what was known  
5 at that time. Specifically, the Company was ultimately able to reach an agreement  
6 (the "Agreement")<sup>1</sup> pursuant to which a wallboard manufacturer—CertainTeed  
7 Gypsum NC, Inc.<sup>2</sup> ("CertainTeed")—was to construct a manufacturing facility at  
8 Roxboro and make a long-term commitment to purchase substantial amounts of  
9 gypsum from the Roxboro and Mayo units under a gypsum supply agreement. This  
10 arrangement secured a long-term revenue stream for customers while avoiding  
11 disposal and other costs that would otherwise be incurred.

12  
13 Over the intervening 15+ year period of time, circumstances changed dramatically.  
14 Specifically, due to the decrease in natural gas prices, the dispatch of Roxboro and  
15 Mayo Generating Stations decreased and therefore the amount of synthetic gypsum  
16 produced decreased. The Company pursued all reasonable avenues—including  
17 fully litigating a complaint brought by CertainTeed in the North Carolina Business  
18 Court and prevailing against CertainTeed's claim that the Company must deliver  
19 gypsum from alternative sources at the Company's cost for the full remaining term  
20 of the Agreement. However, the Company ultimately determined that

---

<sup>1</sup> For purposes of this testimony, the "Agreement" refers to the Second Amended and Restated Supply Agreement dated August, 1, 2012 by and between CertainTeed Gypsum NC, Inc. and DEP. The LD provision remains essentially unchanged from the initial agreement entered into 2004.

<sup>2</sup> CertainTeed is the successor-in-interest to BPB NC Inc., which negotiated and executed the 2004 Agreement.

1 discontinuing supply under the Agreement and making payment of liquidated  
2 damages (“LDs”) was the most prudent and reasonable option for customers.  
3

4 When payments made by the Company under the Agreement are netted against the  
5 revenues received by the Company for the sale of gypsum, the Company has  
6 experienced a loss in connection with the sale of gypsum. Therefore, because the  
7 LDs were incurred as a result of prudent and reasonable decisions of the Company  
8 and constitute a “loss[] resulting from any sales by the electric public utility of by-  
9 products produced in the generation process to the extent the costs of the inputs  
10 leading to that by-product are costs of fuel or fuel-related costs,” the LDs are  
11 properly recoverable through fuel rates.  
12

13 Each and every decision that the Company made during this chain of events was  
14 prudent and reasonable given what was known or reasonably should have been  
15 known at the time the decision was made. From the initial decision to enter into a  
16 long-term transaction to sell gypsum and thereby avoid landfill and disposal costs,  
17 to the decision to dispatch less expensive natural gas-fired units ahead of Roxboro  
18 and Mayo coal-fired units in order to provide North Carolina customers the lowest  
19 cost energy, to the decision to contest CertainTeed’s interpretation of the  
20 Agreement in Court and, following the Court’s decision, to cease supplying  
21 synthetic gypsum to CertainTeed under the Agreement and to pay LDs, the  
22 Company has made the prudent decision for the benefit of customers.  
23

1           Moreover, even though the Commission expressly prohibits the use of hindsight  
2           analysis to evaluate the prudence of the Company's actions, the limited hindsight  
3           analysis performed by the Company and described in more detail below shows that  
4           decisions of the Company over the course of this transaction have resulted in overall  
5           benefits to customers.

6       **Q.   WHAT IS PUBLIC STAFF'S POSITION?**

7       A.   Public Staff witness Jay Lucas asserts that "DEP's failure to deliver the required  
8           amount of artificial gypsum and the resulting expenses arising from the legal action  
9           taken against DEP by CertainTeed do not constitute a "sale" under the express and  
10          limited provision of N.C. Gen. Stat. § 62-133.2(a1)(9)."

11      **Q.   DID WITNESS LUCAS MAKE ANY ATTEMPT TO ASSESS THE**  
12      **PRUDENCE OF THE COMPANY'S DECISIONS?**

13      A.   No. As discussed above, the Public Staff position centers on a legal question  
14          regarding whether the LDs in this case constitute fuel-related costs under North  
15          Carolina law. Public Staff witness Jay Lucas states that Public Staff has "concerns  
16          regarding the reasonableness and prudence of the costs" but does not attempt to  
17          identify any particular decision or action of the Company that may have been  
18          imprudent. In a footnote, the Public Staff does question certain assumptions in a  
19          particular piece of hindsight-based analysis provided by the Company, and we  
20          address this particular hindsight-based analysis later in our testimony.

21

1     **Q.     DID THE COMPANY PROVIDE SUFFICIENT DETAILS REGARDING**  
2     **THE HISTORY OF THIS TRANSACTION TO ALLOW PUBLIC STAFF**  
3     **TO ASSESS THE PRUDENCE OF THE COMPANY’S ACTIONS?**

4     A.     Yes. The Company responded to extensive discovery on this issue, providing  
5     written responses to four sets of data requests and thousands of pages of responsive  
6     documents. Such information is sufficient to assess the reasonableness and  
7     prudence of the Company’s actions.

8     **Q.     WHAT IS THE RELEVANT LEGAL STANDARD IN THIS CASE FOR**  
9     **DETERMINING WHETHER THE LDs PAID CONSTITUTE**  
10    **RECOVERABLE FUEL COSTS?**

11    A.     We have been advised by the Company’s counsel that N.C. Gen. Stat. § 62-  
12    133.2(a1)(9) states that “cost of fuel and fuel-related costs shall be adjusted for any  
13    net gains or losses resulting from any sales by the electric public utility of by-  
14    products produced in the generation process to the extent the costs of the inputs  
15    leading to that by-product are costs of fuel or fuel-related costs.”

16    **Q.     DID THE COMPANY EXPERIENCE A LOSS IN CONNECTION WITH**  
17    **ANY SALES OF GYPSUM?**

18    A.     Yes. In assessing whether a loss occurred for purposes of determining the  
19    recoverability through the fuel rider, we have been advised by the Company’s  
20    counsel that it is necessary to look at the flow of revenue and costs under the  
21    Agreement. From that perspective, DEP experienced a “loss” because the amount  
22    of costs incurred by the Company due to its obligations under the Agreement  
23    exceeded the amount of revenue received by DEP. Put simply, DEP sold a  
24    substantial amount of gypsum to CertainTeed for which DEP received revenue of

1 approximately \$24.3 million and was also obligated to pay LDs and other costs  
2 totaling approximately \$90 million. Therefore, with respect to the Agreement and  
3 the sale of gypsum thereunder, DEP has experienced a loss.

4 **Q. WHAT IS YOUR UNDERSTANDING OF PUBLIC STAFF'S POSITION?**

5 A Witness Lucas states that "DEP's failure to deliver the required amount of artificial  
6 gypsum and the resulting expenses arising from the legal action taken against DEP  
7 by CertainTeed do not constitute a "sale" under the express and limited provision  
8 of N.C. Gen. Stat. § 62-133.2(a1)(9). There was no "sale" in which DEP sold  
9 gypsum to CertainTeed in exchange for payment."

10 **Q. DO YOU AGREE THAT THERE WAS NO "SALE" IN WHICH DEP SOLD  
11 GYPSUM TO CERTAINTEED IN EXCHANGE FOR PAYMENT"?**

12 A. No, this is an incorrect statement. The Company sold millions of tons of gypsum  
13 to CertainTeed under the Agreement and continues to sell gypsum to CertainTeed.  
14 Public Staff is mistaken in its attempt to divorce or extract the LD payment  
15 obligation from the purchase and sale context in which it arose. The LD payment  
16 was an integral part of the Agreement for the sale of gypsum and it should be  
17 considered in that context.

18 **Q. DID THE OBLIGATION TO PAY LDs "RESULT" FROM THE SALE OF  
19 GYPSUM?**

20 A. Yes, the LDs were the result of actual sales of gypsum, meaning that the LDs would  
21 not have been incurred but for the Company's actual sales of gypsum. As further  
22 described below, the LDs were negotiated as part of the original agreement for the  
23 sale of synthetic gypsum to CertainTeed in 2004 and were included in all  
24 subsequent versions of the Agreement.

1 **Q. DOES PUBLIC STAFF'S OVERLY RIGID INTERPRETATION INCENT**  
2 **NON-STANDARD CONTRACTUAL ARRANGEMENTS?**

3 A. Yes. Public Staff's interpretation of N.C. Gen. Stat. § 62-133.2(a1)(9) places form  
4 over function and incents particular contractual arrangements that may not be in the  
5 best interest of customers or are otherwise unnecessarily complex.

6 **Q. PLEASE DESCRIBE THE APPLICATION IN THIS CASE.**

7 A. LDs are a common commercial term by which parties allocate risk under various  
8 types of contracts. Public Staff's interpretation of N.C. Gen. Stat. § 62-133.2(a1)(9)  
9 would incite the Company to avoid LD provisions and instead allocate risk through  
10 more indirect means that may not be as optimal for the Company or its customers.  
11 For instance, if the Company is unwilling to agree to LDs for failure to meet a  
12 particular contractual minimum obligation, the counterparty may require a lower  
13 price to compensate for the greater level of risk. This fact highlights that an LD  
14 payment is but one inter-related term among many from any purchase and sale  
15 agreement, and it is not reasonable to artificially segregate one particular  
16 commercial term from the entirety of the contractually determined balance of risk  
17 and obligations and the resulting net gain and losses that flow therefrom.

18 **Q. WHAT OTHER CONCERNS DO YOU HAVE REGARDING PUBLIC**  
19 **STAFF'S POSITION?**

20 A. There is also an asymmetry to Public Staff's position. Once again, an LD provision  
21 is a common commercial term by which parties allocate risk between each other.  
22 The price for gypsum in the Agreement reflected the allocation of risk by the  
23 parties, including the LD provisions. Customers have been receiving the benefit of  
24 the revenues under the Agreement through reduced fuel rates and it would be

1           asymmetrical for them to receive the benefits but not an actual cost that arose from  
2           the same transaction.

3       **Q.    HAS THE COMMISSION EVER ALLOWED FOR THE RECOVERY OF**  
4       **LDs THROUGH THE FUEL RATES?**

5       A.    Yes.  Though neither of us were personally involved in these examples or have in-  
6           depth knowledge of the particular details, we have been advised that there are prior  
7           instances in which the Commission has allowed for the recovery of LDs through  
8           fuel rates.  For instance, in 2013 the Company incurred and recovered through fuel  
9           rates \$10.6 million due to a tonnage shortfall under a railroad transportation  
10          contract in connection with the retirement of the Robinson and Sutton coal-fired  
11          generating units.<sup>3</sup>  In 2014, the Company incurred and recovered through fuel rates  
12          \$10.5 million in LDs due to a tonnage shortfall under another railroad contract in  
13          connection with the retirement of the Sutton coal-fired generating facility.<sup>4</sup>  The  
14          Company specifically noted in a discovery response that “it was cheaper for the  
15          Company’s customers for the Company to incur the liquidated damages on its  
16          [railroad] contract and generate the lowest cost generation after accounting for the  
17          [] liquidated damages.”  In 2019, Duke Energy Carolinas, LLC (“DEC”) incurred  
18          \$786,615 in LDs due to a limestone tonnage shortfall and the Commission approved  
19          a fuel charge adjustment for DEC to begin recovering these LDs through fuel rates  
20          effective for service on or after September 1, 2019.<sup>5</sup>  DEC specifically noted in a  
21          discovery response that “DEC was unable to meet its contractually defined

---

<sup>3</sup> Docket No. E-2, Sub 1031.  See the Company’s responses to PSDR 1-22 and 12-8.

<sup>4</sup> Docket No. E-2, Sub 1045.  See the Company’s response PSDR 2-8.

<sup>5</sup> Docket No. E-7, Sub 1190.  See the Company’s response to PSDR 2-5.

1 minimum tonnage obligations due to decreases in natural gas prices that resulted in  
2 declining coal burns, which in turn reduced limestone consumption.”

3 **Q. TURNING NOW TO THE QUESTION OF PRUDENCE, DO YOU**  
4 **BELIEVE THAT EACH OF THE COMPANY’S DECISIONS**  
5 **THROUGHOUT THIS PROCESS WERE REASONABLE AND PRUDENT**  
6 **GIVEN WHAT WAS KNOWN AT THE TIME?**

7 A. Absolutely, yes.

8 **Q. PLEASE PROVIDE FURTHER BACKGROUND.**

9 A. Once again, the genesis of this transaction occurred in 2002, as the Company sought  
10 to identify the most cost-effective options for disposing of gypsum. The Company  
11 can either dispose of the gypsum in a landfill or sell the material for beneficial  
12 reuse. Clearly, selling the material is the preferable option but the challenge is  
13 finding buyers that have a need for substantial quantities of gypsum and that are  
14 able to utilize gypsum in a cost-effective manner. Further, such buyers generally  
15 will not agree to long-term purchase commitments without adequate remedies for  
16 undersupply or discontinued supply in the event the counterparty does not supply  
17 the buyers’ requirements.

18 **Q. WHAT WAS OCCURRING IN THE EARLY- TO MID-2000s THAT**  
19 **FURTHER CAUSED THE COMPANY TO NEED TO TAKE STEPS TO**  
20 **IDENTIFY COST-EFFECTIVE, LONGER-TERM GYPSUM DISPOSAL**  
21 **OPTIONS?**

22 A. Due to increasing environmental regulations, the Company was installing scrubbers  
23 on a number of its coal-fired generating units, including Roxboro and Mayo, that

1 would result in substantial amounts of gypsum being produced. During this period,  
2 the installation of scrubbers was also occurring across the country.

3 **Q. PLEASE DESCRIBE THE BASIC IDEA OF THE CERTAINTeed**  
4 **COMMERCIAL RELATIONSHIP?**

5 A. At that time, utilities were aggressively looking for long-term arrangements under  
6 which they could sell large amounts of gypsum. CertainTeed provided a desirable  
7 solution because it was willing to construct a wallboard manufacturing facility at  
8 Roxboro. The CertainTeed transaction provided DEP with a long-term purchaser  
9 of substantial amounts of gypsum.

10 **Q. IN YOUR OPINION, WAS IT PRUDENT AND REASONABLE FOR DEP**  
11 **TO ENTER INTO THE INITIAL TRANSACTION?**

12 A. Yes. Based on the gypsum production estimates that existed at that time, it was  
13 prudent and reasonable for DEP to enter into the transaction. Stated differently,  
14 based on the projected amounts of gypsum production, it would have been  
15 imprudent for the Company to pass on such an opportunity to obtain a long-term  
16 buyer of its gypsum while avoiding potential disposal and other pile management  
17 costs. It is important to keep in mind that Roxboro and Mayo are relatively  
18 geographically isolated and the substantial costs of transportation would have  
19 severely restricted the pool of potential gypsum buyers.

20 **Q. AT THE TIME OF INITIAL TRANSACTION, WAS A FIRM DELIVERY**  
21 **OBLIGATION, COMBINED WITH AN LD PROVISION, INCLUDED IN**  
22 **THE CONTRACT?**

23 A. Yes, the original agreement included a firm delivery obligation and an LD  
24 provision.

1     **Q.     WHY WAS A FIRM DELIVERY OBLIGATION AND ASSOCIATED LD**  
2     **AN ESSENTIAL TERM OF THE TRANSACTION?**

3     A.     CertainTeed was investing approximately \$200 million to construct a wallboard  
4     production facility that was projected to operate for approximately 20-30 years and  
5     therefore required an assurance of supply of gypsum sufficient to justify  
6     construction of the production facility. At the time of the original agreement,  
7     CertainTeed anticipated significant demand for its products and predicted that it  
8     would be able to use a significant portion of the gypsum production from the  
9     Company's Roxboro and Mayo plants. Simply stated, no rational investor would  
10    have been willing to make such a substantial investment without having an  
11    assurance of cost-effective supply of gypsum that would be necessary to sustain  
12    operations at necessary levels. And in order to provide protection in the event that  
13    DEP could not fulfill the minimum delivery obligation, there needed to be  
14    contractual provisions to incent performance. At the same time, from the  
15    Company's perspective, there needed to be provisions limiting the financial risk to  
16    the Company in the event it was not able to consistently supply the contractually-  
17    required amounts over the longer term. In this case, the Company reasonably  
18    limited its risk by providing that, if the Company failed to supply the required  
19    amount of gypsum for certain periods specified in the Agreement, or if it  
20    discontinued the supply of gypsum altogether, its obligation would be limited to  
21    the payment of LDs. The LD provision reduced the Company's and its customers'  
22    exposure in the event of a long-term disruption in its ability to deliver gypsum and,  
23    therefore, was an essential component of the transaction as a whole.

1 **Q. WAS A FIRM DELIVERY OBLIGATION A STANDARD COMMERCIAL**  
2 **TERM IN SIMILAR TRANSACTIONS IN THE INDUSTRY?**

3 A. Yes, it was common in the industry at that time to have longer-term arrangements  
4 with minimum delivery and/or purchase obligations and contractual remedies in the  
5 event of failure to satisfy the minimum delivery and/or purchase obligation.  
6 Wallboard production facilities require stable supply and minimum volumes to  
7 support continuous operation.

8 **Q. WHY WAS THE COMPANY ULTIMATELY NOT ABLE TO SATISFY**  
9 **THE MINIMUM DELIVERY OBLIGATIONS<sup>6</sup> UNDER THE**  
10 **AGREEMENT?**

11 A. As natural gas prices dropped, DEP began to dispatch less expensive natural gas-  
12 fired units ahead of the Roxboro and Mayo coal-fired units in order to provide  
13 customers with the benefits of the lowest cost energy available. The dispatch levels  
14 of Roxboro and Mayo declined significantly and therefore gypsum production also  
15 declined significantly.

16 **Q. DID THE COMPANY HAVE ANOTHER OPTION OTHER THAN**  
17 **PAYMENT OF THE LDs?**

18 A. Yes, the Company could have elected to continue the Agreement, in which case it  
19 would have been required to pay for the cost, including substantial transportation  
20 costs, of supplying replacement gypsum from alternative sources. However,  
21 supplying replacement gypsum would have been substantially more expensive than  
22 paying LDs. Therefore, the Company's decision to discontinue supply altogether

---

<sup>6</sup> In the context of the litigation, there was a dispute concerning certain contractual terms but the court ultimately concluded that there was a minimum delivery obligation under the Agreement.

1 and pay LDs, rather than continuing to deliver replacement gypsum at a much  
2 higher cost, was prudent.

3 **Q. IN SUMMARY, WERE THE ACTIONS AND DECISIONS OF THE**  
4 **COMPANY AT EACH STEP OF THE CERTAINTIED TRANSACTION**  
5 **REASONABLE AND PRUDENT.**

6 A. Yes.

7 **Q. WHAT IS HINDSIGHT ANALYSIS?**

8 A. We have been advised that hindsight analysis is any review that takes into account  
9 facts that were not known or could not reasonably have been known at the time of  
10 the decision.

11 **Q. DOES THE COMMISSION CONSIDER HINDSIGHT ANALYSIS WHEN**  
12 **EVALUATING THE PRUDENCE OF A DECISION?**

13 A. No. We have been advised by the Company's counsel that the Commission's  
14 standard for determining prudence is whether management decisions were made in  
15 a reasonable manner and at an appropriate time on the basis of what was reasonably  
16 known or reasonably should have been known at the time the decision was made.  
17 Further, we have been advised that the Commission has determined that hindsight  
18 analysis is not permitted for purposes of assessing prudence.

19 **Q. WHY HAS THE COMPANY PERFORMED HINDSIGHT ANALYSIS IN**  
20 **THIS CASE?**

21 A. While the hindsight analysis should not be used to assess the prudence of the  
22 Company's actions, such hindsight analysis helps to give a greater context for the  
23 LDs in this case. The Company recognizes that the amount of LDs in this case are  
24 substantially larger in total than the amount of LDs that have previously been

1 recovered through fuel rates. But the limited hindsight analysis performed by the  
2 Company helps give context to these LDs.

3 **Q. WHILE THE COMPANY EXPERIENCED A LOSS UNDER THE**  
4 **AGREEMENT, HAVE CUSTOMERS RECEIVED OVERALL BENEFIT**  
5 **FROM THE CHAIN OF EVENTS THAT RESULTED IN THE**  
6 **OBLIGATION TO PAY LDs?**

7 A. Yes. The primary factor that caused the Company not to be able to satisfy its  
8 minimum delivery obligations under the Agreement was the reduction in natural  
9 gas prices that substantially reduced the dispatch of the Roxboro and Mayo units.  
10 However, it is important to note that customers received substantial benefits from  
11 the lowered natural gas prices that were provided through the Company's economic  
12 dispatch of its diverse generating fleet.

13 **Q. HAS THE COMPANY ATTEMPTED TO QUANTIFY HOW MUCH**  
14 **CUSTOMERS HAVE BENEFITTED FROM THE LOWER NATURAL GAS**  
15 **PRICES?**

16 A. Yes, to a limited extent. The Company performed some limited analysis that  
17 quantified the Roxboro/Mayo coal-fired kwh generation that would have been  
18 needed to supply the gypsum tonnage shortfall over calendar years 2016-2018  
19 (50,000 tons per month).<sup>7</sup> The Company analyzed the period of 2016-2018 because

---

<sup>7</sup> The analysis utilizes the average daily fuel cost for coal-fired generation at Roxboro and Mayo, as well as the average daily fuel cost for natural gas-fired generation at Richmond CCs and Richmond CTs. Based on plant capability, the analysis assumes that Roxboro would have supplied 77% of needed generation and Mayo 23% of needed generation. During years 2016-2018, DEP CTs provided 37% of DEP natural gas-fired MWhs; therefore, it is assumed that 63% of the generation displaced by natural gas was CC-supplied and 37% CT-supplied. Richmond CC and Richmond CT actual average daily fuel prices were used as a proxy for gas costs.

1 2016 is approximately the date on which DEP began to fall short of the minimum  
2 delivery obligation.

3  
4 The analysis showed that customers saved approximately \$134 million in fuel costs  
5 by displacing Roxboro and Mayo coal-fired generation with DEP natural gas-fired  
6 generation during the period of 2016-2018 alone. In other words, the fuel savings  
7 resulting from lower natural gas prices in just a three-year period far outweighed  
8 the total 10-year LD payment. Importantly, this \$134 million does not include  
9 similar cost savings that would be expected from 2018 – 2029, which are more  
10 difficult to estimate given the need to rely on longer-term projections.

11  
12 The 2016-2018 analysis is based on a number of assumptions, and the value could  
13 increase or decrease somewhat based on various changes in assumptions. However,  
14 it is undoubtedly true that customers have saved substantial amounts of money due  
15 to lower natural gas prices and those savings give better context to the amount of  
16 the LDs in this case.

17 **Q. WOULD IT HAVE BEEN PRUDENT FOR THE COMPANY TO**  
18 **DISPATCH ROXBORO AND MAYO OUT OF ECONOMIC DISPATCH**  
19 **SIMPLY TO FULFILL THE MINIMUM DELIVERY OBLIGATIONS TO**  
20 **CERTAINTIED?**

21 A. No. It would not have been prudent to burn the amount of coal necessary to meet  
22 the minimum delivery obligations. Financially, customers would have been  
23 disadvantaged had the Company elected to dispatch Roxboro and Mayo out of  
24 economic order just to avoid LDs.

1 **Q. HAS THE COMPANY PERFORMED OTHER HINDSIGHT ANALYSIS?**

2 A. Yes, a second hindsight analysis was completed. This hindsight analysis netted the  
3 revenue stream from sales based on projected gypsum production with the LD  
4 payments, avoided landfill costs and avoided stockpile costs.

5 **Q. WHAT DID THIS ANALYSIS SHOW?**

6 A. This analysis showed an overall benefit to customers of approximately \$55 million  
7 without even attempting to take into account the savings resulting from lower-cost  
8 natural gas generation.

9 **Q. DID PUBLIC STAFF TAKE ISSUE WITH THIS ANALYSIS?**

10 A. Yes. Without acknowledging that this analysis was hindsight-based, the Public  
11 Staff questioned the reasonableness of the disposal cost assumption and pile  
12 management cost assumptions.

13 **Q. PLEASE RESPOND TO SUCH CRITIQUE.**

14 A. The disposal cost assumed in the analysis in question was based on an actual rate  
15 paid by CertainTeed during the term of the Agreement for on-site disposal at the  
16 Roxboro landfill. The Company acknowledges that synthetic gypsum disposal  
17 costs onsite could have been lower or higher depending on variables such as  
18 volume, transportation distance, environmental considerations, change in law, new  
19 monofill development costs, and material handling. Based on these considerations,  
20 the cost of disposal could have ranged from about \$10/ton to \$30/ton. Furthermore,  
21 there is other evidence to suggest that if all of the Roxboro and Mayo gypsum had  
22 to have been disposed, then additional off-site landfills most likely would have been  
23 needed at a cost of about \$57/ton based on recent experiences of coal ash disposal  
24 costs.

1           Undoubtedly different assumptions could be made in performing this hindsight  
2           analysis, but all such assumptions entail some level of uncertainty.

3   **Q.    DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

4   **A.    Yes, it does.**

1 Q. Ms. Coppola, have you prepared a summary on  
2 behal f of the panel?

3 A. (Barbara Coppola.) I have.

4 Q. Please proceed.

5 A. Thank you, Chair Mitchell and Commissioners.  
6 Our testimony addresses the Company's request to  
7 recover, through fuel rates, certain liquidated damages  
8 that DEP paid under a gypsum supply agreement with  
9 CertainTeed. Gypsum is a byproduct of coal-fired  
10 generation. Once produced, gypsum must be disposed of,  
11 either in a landfill or through beneficial reuse.  
12 Where possible, the Company seeks to sell the gypsum  
13 for beneficial reuse.

14 The genesis of the CertainTeed transaction  
15 was in 2002. As the Company planned for the  
16 installation of scrubbers in response to new  
17 environmental regulations, it was also necessary to  
18 manage the substantial amounts of gypsum that were  
19 projected to be produced.

20 Under the transaction, which was first  
21 reflected in an agreement executed in 2004, CertainTeed  
22 committed to construct a wallboard manufacturing  
23 facility at the Roxboro plant site and agreed to  
24 purchase a substantial amount of gypsum from Roxboro

1 and Mayo over a long-term agreement. In addition to  
2 specifying price and volume, the agreement included  
3 express remedies, including the defined liquidated  
4 damages, to limit risk in the event that either party  
5 was unable to fulfill its respective obligations. This  
6 arrangement was very beneficial for customers based on  
7 what was known at the time. It provided assurance of a  
8 long-term revenue stream for customers while  
9 simultaneously avoiding handling, management, and  
10 landfill disposal costs. It also reduced risk by  
11 getting material off site and recycled into useful  
12 construction products.

13 During the term of the agreement, natural gas  
14 prices dropped substantially. Lower gas prices are  
15 obviously a good thing for customers, because the  
16 Company is able to shift generation to natural gas  
17 generation and reduce overall fuel costs.

18 However, the resulting reduction in  
19 coal-fired generation at Roxboro and Mayo caused gypsum  
20 production to decline. After pursuing all reasonable  
21 avenues, the Company ultimately made the prudent  
22 decision to exercise its contractual right to pay  
23 liquidated damages rather than secure replacement  
24 gypsum, which would have been significantly more

1 expensive. Each and every decision made by the Company  
2 in this chain of events was prudent and reasonable and  
3 in the best interest of customers.

4 Public Staff witness Jay Lucas asserts what  
5 we understand to be a legal position, namely that the  
6 LDs are not a recoverable fuel cost under  
7 North Carolina law. While neither of us is an  
8 attorney, we have been advised that the liquidated  
9 damages paid in this case are recoverable fuel costs  
10 because they resulted from the sale of gypsum. The  
11 Company has experienced a net loss under the gypsum  
12 supply agreement because the amount of revenue received  
13 by the Company was exceeded by the costs incurred by  
14 the Company.

15 Finally, though we have been advised by  
16 counsel that the Commission does not rely on hindsight  
17 analysis in assessing prudence, we did produce two  
18 pieces of hindsight analysis that helped provide better  
19 context to these LDs. The analysis shows that the  
20 benefits received by customers, due to avoided costs,  
21 special revenue from sale, exceed the cost of  
22 liquidated damages, and customers also benefitted  
23 significantly from lower overall fuel costs as a result  
24 of burning gas.

1 In summary, the Company made prudent and  
2 reasonable decisions, given the facts that were known  
3 at the relevant times, and believes that the liquidated  
4 damages are a recoverable fuel cost because the Company  
5 has experienced a net loss that directly resulted from  
6 the sale of byproducts.

7 Commissioners, that concludes our summary.

8 MR. JIRAK: The witnesses are available  
9 for cross examination.

10 CHAIR MITCHELL: Mr. West?

11 CROSS EXAMINATION BY MR. WEST:

12 Q. Good morning. How are you-all?

13 A. (Barbara Coppola.) Good morning.

14 A. (John Halm.) Fine.

15 Q. Same instruction I gave prior witnesses.

16 Please don't feel compelled to be polite and turn and  
17 face me. You are welcome to face the Commission so you  
18 don't get sore necks.

19 One thing I wanted to get a sense of from  
20 your joint testimony is, is it your position, at this  
21 point, that DEP's 2012 Second Amended and Restated  
22 Supply Agreement was, at all times, intended to be a  
23 firm delivery obligation?

24 A. (Barbara Coppola.) That was not my position.

1 A. (John Halm.) Not mine, either.

2 Q. Okay. So what -- can you articulate what  
3 your position was with regard to the 2012 Second  
4 Amended and Restated Supply Agreement?

5 A. (Barbara Coppola.) Yes. The volume  
6 requirement was 50,000 tons per month or the aggregate  
7 production of synthetic gypsum produced at the Roxboro  
8 and Mayo plant, whichever was less.

9 Q. Meaning that you thought the intent was to  
10 create a variable supply -- variable quantity supply  
11 obligation with the 2012 Second Amended and Restated  
12 Agreement?

13 A. That's correct.

14 Q. Is that also the case for you, Mr. Halm?

15 A. (John Halm.) Yes, it is.

16 Q. And can you give us a time frame as to when  
17 this dispute initially arose about the supply  
18 obligation, whether it was fixed or variable?

19 A. During approximately the first quarter of  
20 2017.

21 Q. And in the first quarter of 2017, or anytime  
22 thereafter, did DEP indicate its willingness to  
23 continue to supply gypsum on a variable quantity basis  
24 over the entire term of the 2012 Second Amended and

1 Restated Supply Agreement?

2 A. DEP made the statement to CertainTeed that we  
3 would continue to supply them under the terms of  
4 section 3.1 of the contract, which was what you term a  
5 variable supply contract.

6 Q. And how did CTG respond to that affirmation?

7 A. They stated that they were in disagreement  
8 with our position. That they believe that they had a  
9 firm commitment at 55,000 [sic] tons per month.

10 Q. All right. And then during the dispute, did  
11 they actually accept a variable quantity for some  
12 period of time, reserving the right to challenge  
13 whether you had actually complied with the agreement?

14 A. They continued to accept gypsum.

15 Q. And the acceptance was whatever you happened  
16 to produce from Roxboro and Mayo?

17 A. No. We provided them that -- we provided  
18 them that number, which was based on the previous  
19 12 months production, on what the -- what our  
20 definition of the MMQ would be for a given month going  
21 forward from approximately April or May of 2017. They  
22 did not confirm or deny that. They continued to use as  
23 they had previously.

24 Q. Okay.

1           A.       But their position was continuous, that they  
2 were -- they required 50,000 tons a month.

3           Q.       And were you providing less than 50,000 tons  
4 under your interpretation of the variable supply  
5 obligation?

6           A.       (Barbara Coppola.) I think, at times, both  
7 before the 2012 agreement and after the 2012 agreement,  
8 CertainTeed was certainly offered, you know, more than  
9 50,000 tons a month. At times, they took less than  
10 50,000 tons a month. And on minimal occasions, they  
11 took 50,000 tons a month. So it was a variable supply  
12 both before and after the 2012 agreement.

13          A.       (John Halm.) To Barbara's point, the  
14 difference between received, and took, and supplied are  
15 a little bit interchangeable with respect to this  
16 agreement. The agreement was set up to provide some  
17 flexibility in the fact that we had a storage pile on  
18 the site. So when we would have typically well over  
19 250,000 tons on site, it was their job -- they had the  
20 responsibility to manage the pile and to take material  
21 off the pile. So when they claim we are not supplying,  
22 in practicality, they weren't taking. So the material  
23 was made available continuously throughout this period,  
24 even the periods where the Court was finding that we

1 were in breach for not supplying.

2 Q. So when did they stop taking?

3 A. They have never stopped taking.

4 Q. Okay. So they continued to take whatever you  
5 were supplying through at least October 2018 under the  
6 2012 Second Amended and Restated Agreement?

7 A. They continued to take material off the pile.

8 Q. And did the taking off the pile under the  
9 2012 Second Amended and Restated Agreement -- Supply  
10 Agreement stop in October 2018, as Ms. Harrington  
11 testified?

12 A. The contract you referred to was ended on  
13 September 30th of 2018.

14 Q. Okay. So any taking after October 1st would  
15 have been under any subsequent agreement, correct?

16 A. That's correct.

17 Q. Did DEP, at any point prior to the filing of  
18 the lawsuit that led to the opinion and final judgment  
19 marked as Exhibit 3, take into account liquidated  
20 damages or any other form of economic damages in  
21 determining its least cost dispatch of its generating  
22 units?

23 A. (Barbara Coppola.) Could you please clarify  
24 your question?

1 Q. Which part do you need clarified?

2 A. Could you please restate your question?

3 Q. Okay. You know what least cost dispatch is,  
4 correct?

5 A. Yes.

6 Q. Okay. And when you engage in least cost  
7 dispatch, you identify the costs that it would -- that  
8 would be incurred to generate from various generating  
9 units, correct?

10 A. Yes.

11 Q. And those are run through a computer or  
12 economic model to determine which unit should be  
13 dispatched, which are the least cost units, correct?

14 A. Yes. Generally, that's correct.

15 Q. Okay. So when you input those costs, did you  
16 include any -- at any point, did you include -- excuse  
17 me.

18 At any point prior to August 28, 2018, did  
19 you include liquidated damages or any other economic  
20 damages associated with the 2012 Second Amended and  
21 Restated Supply Agreement when determining which units  
22 to dispatch?

23 A. I'm not aware of whether or not liquidated  
24 damages were or were not included in any economic

1 di spatch model ing runs.

2 A. (John Halm.) I have no di rect knowl edge  
3 ei ther.

4 Q. And did you -- di d DEP engage in any efforts,  
5 prior to August 28, 2018, to mi tigate its potential  
6 damages to CertainTeed by, for exampl e, purchasi ng  
7 gypsum from a thi rd party?

8 A. DEP purchased gypsum from DEC to help satisf y  
9 thei r obligati on.

10 Q. And what period did you do that?

11 A. I don't have all the information in front of  
12 me, but that began approximately in May of 2017 and  
13 continued through -- through the liti gation period.

14 Q. So the purchases from DEC would have  
15 continued in 2018?

16 A. They di d.

17 Q. Okay. And I may have mi sheard you, but  
18 di dn't you testify earli er that you both thought that  
19 thi s was a vari able quanti ty supply obligati on based on  
20 the gypsum that was going to be created at Roxboro and  
21 Mayo?

22 A. Yes, that' s correct.

23 Q. So why would you be buyi ng gypsum from Bel ews  
24 Creek, or DEC' s uni t, to, quote, satisf y your

1 obligation?

2 A. We had offered CertainTeed an option to  
3 purchase other gypsum, so we provided them a monthly  
4 price on what that would cost in addition to the \$4  
5 that they would purchase from Roxboro and Mayo. So the  
6 material that was being produced at Roxboro and Mayo  
7 would sell at \$4 a ton. If they required additional  
8 material, over and above the MMQ as we defined it, they  
9 would pay the extra dollars for the freight to transfer  
10 the material from our Belews Creek facility.

11 Q. So Ms. Harrington testified earlier about the  
12 credit that the Public Staff was asking her about that  
13 was addressed in the judgment, and she said it was for  
14 freight.

15 Is that -- is that freight credit the same  
16 freight charge that you are talking about?

17 A. I'm not certain. That was the -- I can say  
18 that that was the price difference on what it costs to  
19 transfer the material from the DEC plant to Roxboro  
20 DEP.

21 MR. WEST: I don't have any additional  
22 questions.

23 CROSS EXAMINATION BY MS. DOWNEY:

24 Q. It's still good morning.

1 A. (Barbara Coppola.) Good morning.

2 Q. Diana Downey with Public Staff. Let's get  
3 your testimony out on page 6. You state on that page  
4 that Mr. Lucas does not attempt to identify any  
5 particular decision or action of the Company that may  
6 have been imprudent.

7 Is that what your testimony is there?

8 (Witnesses peruse documents.)

9 A. Yes, line 16.

10 Q. Line 16; that is correct.

11 A. (John Halm.) Agreed.

12 Q. Isn't it true that Mr. Lucas did not take  
13 a position at all as to the reasonableness or prudence  
14 of the cost?

15 A. (Barbara Coppola.) Can you please reask the  
16 question?

17 Q. So you say Mr. Lucas does not attempt to  
18 identify any imprudence, basically, right?

19 A. That's correct.

20 Q. Where can you identify, in his testimony,  
21 where he took a position as to prudence? He just takes  
22 the position it's not a sale; isn't that correct?

23 A. That's correct.

24 Q. Okay. Let's look at page 7, line 6 through

1 7. On that page, you opine -- you are talking about  
2 the discovery you responded to on this issue, and you  
3 opine that such information is sufficient to assess the  
4 reasonableness and prudence of the Company's action.

5 That's your statement there, right?

6 A. That's correct.

7 Q. Would you agree that the Commission must  
8 first determine that the costs are appropriate to pass  
9 through the fuel clause before evaluating  
10 reasonableness and prudence?

11 A. That would be logical.

12 Q. All right. I want to talk about the  
13 hindsight analysis that you discussed.

14 I think, beginning on page 15, you talk about  
15 the two hindsight analyses?

16 A. Yes.

17 Q. All right. Let's talk about the one you  
18 discuss on page 16.

19 Are you there?

20 A. Yes.

21 Q. Okay. So when was this analysis performed?

22 A. This analysis was performed recently as part  
23 of this discovery process.

24 Q. Well, I'm looking for a particular date.

1 A. I don't know what the date is.

2 A. (John Halm.) And you are referring to the  
3 question that starts on line 13 on page 16?

4 Q. Correct.

5 A. Okay.

6 Q. Let's call it the \$134 million hindsight  
7 analysis; can we refer to it as that?

8 A. (Barbara Coppola.) Yes.

9 Q. That might be easier.

10 A. (John Halm.) Thank you.

11 Q. Okay. So when was this analysis performed?  
12 Did either one of you perform it?

13 A. No. Neither one of us performed that  
14 analysis. I believe that it has been done in the last  
15 60 days; is that reasonable?

16 A. (Barbara Coppola.) Yes, that's correct. And  
17 it was completed by analytical experts in our fuels  
18 department.

19 Q. Okay. When was it produced in discovery?

20 A. Within the last 60 days.

21 Q. Well, would you accept, subject to check,  
22 that it was produced after the discovery deadline?

23 A. (John Halm.) I have no knowledge of that.

24 Q. In fact, it was produced on August 12th;

1 would you accept, subject to check, that that's when it  
2 was produced?

3 A. (Barbara Coppola.) Yes, subject to check.

4 Q. So let's look at the second -- I would call  
5 it the \$50 million hindsight analysis that you discuss  
6 beginning on page 18.

7 Now, this one was actually produced earlier  
8 in discovery, right?

9 A. Yes, that's my understanding.

10 Q. Yeah. Mr. Lucas discusses this analysis in a  
11 footnote in his testimony, right?

12 A. That's correct.

13 Q. Okay. And he attached your data response to  
14 his testimony which contained the analysis, correct?

15 A. Correct.

16 Q. And the data response, itself, states that  
17 the analysis was performed in April of 2019?

18 A. That's correct.

19 Q. By you, Ms. -- I'm sorry, I'm terrible with  
20 names.

21 A. It's okay.

22 Q. Which is obviously hindsight; isn't that  
23 right?

24 A. That's correct. And hindsight analysis is

1 analysis that's conducted based on facts that were not  
2 known at a particular time in the past.

3 Q. Right. And that data response also states  
4 that there were no other analyses performed related to  
5 the CTG contract; isn't that right?

6 A. Can you ask that question again?

7 Q. The data response attached to Mr. Lucas'  
8 testimony states there were no other analyses performed  
9 related to the CTG contract, right?

10 A. Subject to check, yes, I would agree with  
11 that.

12 A. (John Halm.) That seems very broad in that  
13 description. Maybe you --

14 MR. JIRAK: Do you have a copy of the  
15 data request you could provide to the witnesses?

16 MS. DOWNEY: Sure. This is the response  
17 to Data Request 13-2, and it's marked confidential,  
18 but I understand that what we are asking you about  
19 is not confidential.

20 (Witnesses peruse document.)

21 Q. Now that you reviewed the answer, is your  
22 answer still the same? That's what it says, correct?

23 A. (Barbara Coppola.) That's what it says.

24 Q. Okay. On --

1 MR. JIRAK: For purposes of -- to make  
2 sure the witnesses understand the question, could  
3 you clarify for them what date Public Staff -- that  
4 data request was received by Public Staff? Do you  
5 have that date in front of you?

6 MS. DOWNEY: What date are you asking  
7 for?

8 MR. JIRAK: So your questions relate to  
9 the statement in there that no other analysis was  
10 performed, and I guess it would be helpful for the  
11 witness to understand the date --

12 MS. DOWNEY: Well, I think my question  
13 indicated that it was produced earlier in  
14 discovery.

15 MR. JIRAK: Okay.

16 MS. DOWNEY: The requested due date was  
17 July 11th of 2019, if that helps clarify the  
18 record.

19 MR. JIRAK: Thank you.

20 Q. Okay. So in your testimony you state that  
21 hindsight analysis helps to give greater context for  
22 the liquidated damages in this case, right; you say  
23 that?

24 A. Yes.

1 Q. But you also state your counsel has advised  
2 you that the Commission does not consider hindsight  
3 analysis when assessing reasonableness and prudence,  
4 right?

5 A. That's correct.

6 Q. Counsel told you that.

7 Can you clarify how you believe the  
8 Commission should utilize this hindsight analysis in  
9 this case?

10 A. The hindsight analysis performed that netted  
11 the revenue stream from sales based on projected gypsum  
12 production with the liquidated -- the LD payments,  
13 avoided landfill costs, and avoided stockpile costs was  
14 meant to demonstrate that there was a benefit to  
15 customers in the long run. Over the term of the  
16 agreement, customers benefited from this agreement  
17 economically. And while all of those costs are not  
18 fuel-related costs, some of those costs might be  
19 considered recoverable by other mechanisms, still they  
20 are costs to customers. So overall, customers  
21 benefitted from this agreement.

22 Q. So for a moment, let's assume -- let's accept  
23 your cost savings calculation, for the sake of  
24 argument.

1           Is it your position, based on your testimony,  
2           that the Company's actions were reasonable and prudent  
3           due to the fact it can show an overall cost savings to  
4           customers?

5           A.     I think what we are saying here in our  
6           testimony is that the LDs resulted from actual sales of  
7           gypsum. We sold over 4 million tons of gypsum under  
8           this agreement. And consistent with the Commission's  
9           previous decisions in 2013 and '14 related to rail  
10          contracts where we recovered liquidated damages under  
11          the fuel -- under fuel as well as a limestone tonnage  
12          shortage here in 2019, consistent with those decisions,  
13          we're saying the LDs were an actual result of sales of  
14          gypsum and should be considered for the fuel recovery.

15          Q.     Now, those previous decisions that you  
16          referenced, those were not pursuant to (a1) -- the  
17          sales provision that we are discussing in this case,  
18          correct?

19          A.     Not directly related to the sales net losses  
20          or prof- -- net losses or gains related to the sale of  
21          a byproduct.

22          Q.     You would agree that subdivision 9, the gains  
23          and losses on sales of byproducts, that's a very  
24          specific statute; isn't it?

1 A. Yes. And neither one of us are attorneys,  
2 so -- it is very specific.

3 Q. But you rely on it a lot in your testimony,  
4 though?

5 A. Yes.

6 Q. You will note that. Okay.

7 If the hindsight analysis is a helpful data  
8 point for providing overall context, would you agree  
9 that it would be appropriate for the Commission to look  
10 at hindsight analysis for context in all instances; for  
11 instance, in evaluating fuel replacement costs for  
12 nuclear outages?

13 A. (John Halm.) Neither one of us could speak  
14 to nuclear outages in that context. I will add to --  
15 in answer to your question on whether hindsight  
16 analysis should be used to determine prudence, I would  
17 say the answer is no. That that simply adds context.  
18 Both Ms. Coppola and I recognize that these are  
19 relatively large numbers. And to help put that in  
20 context with the other charges that were -- that -- the  
21 benefits that DEP received just help understand the  
22 overall equation. But really, for prudence, I think  
23 you have to go back to the original agreement on the  
24 situation that the Company was looking at with respect

1 to disposal of gypsum back in the early 2000s.

2 Q. Well, if hindsight analysis to provide  
3 context is helpful in this case, why wouldn't it be  
4 helpful in other cases?

5 A. (Barbara Coppola.) I haven't had time to  
6 understand details of other cases and why that would or  
7 would not relate or provide context.

8 Q. Doesn't it seem logical to you that it could  
9 provide context in other cases?

10 A. It may or may not.

11 Q. Now, both of you participated in the  
12 CertainTeed lawsuit, correct?

13 A. (John Halm.) Correct.

14 A. (Barbara Coppola.) Yes.

15 MS. DOWNEY: I would like to hand out an  
16 exhibit, please. And I have not marked this, but  
17 it needs to be marked Coppola Halm Public Staff  
18 Cross Examination Exhibit 1.

19 CHAIR MITCHELL: The exhibit will be so  
20 marked.

21 (Coppola Halm Public Staff Cross  
22 Examination Exhibit 1 marked for  
23 identification.)

24 Q. Now, the Commission's taken judicial notice

1 of the filings in the lawsuit, and I tell you that this  
2 is an affidavit that was filed in that lawsuit.

3 Does it look like that to you?

4 A. (Barbara Coppola.) Yes, it does. It says  
5 affidavit on the top.

6 Q. Now, this is an affidavit by Gisele Rankin  
7 filed February 11, 2018, correct?

8 A. I'm not sure where it says February 11, 2018.  
9 Oh, I see, down at the bottom.

10 Q. Down at the bottom.

11 A. Yes.

12 Q. Are you aware that she testified for  
13 CertainTeed in that lawsuit?

14 A. I am not.

15 A. (John Halm.) I'm not either.

16 Q. If you look at paragraph 3, she served as an  
17 attorney on the Public Staff for almost 34 years; isn't  
18 that correct?

19 A. (Barbara Coppola.) Yes. This is the first  
20 time I have seen this document, but item number 3 does  
21 say that she was previously employed as a senior staff  
22 attorney with the Public Staff for almost 34 years,  
23 retiring April 1, 2015.

24 Q. Right. And on paragraph 7, that states that

1 she currently serves on the Committee of the  
2 North Carolina State Bar of Legal Specialization that  
3 established utility law as a specialization in 2016 and  
4 recognized as a board-certified specialist in utility  
5 law; do you see that?

6 A. That's what it says.

7 Q. Now, I want to focus on paragraph 28 on page  
8 7, since we are talking about hindsight analysis.

9 Would you agree that she states that, in  
10 hindsight, which you say provides context, the  
11 forecasted price of natural gas, the changes brought by  
12 the implementation of joint dispatch, and the effects  
13 of both of those on the production of gypsum in Roxboro  
14 and Mayo should have been considered more seriously by  
15 Duke at the time --

16 MR. JIRAK: I would like to object to  
17 this to the extent we are entering testimony of  
18 another party not subject to cross examination on a  
19 material issue in this proceeding. Ms. Rankin's  
20 not here to respond to cross examination, and she's  
21 being proffered sort of implicitly as an expert  
22 witness in this proceeding. She is not here to be  
23 cross examined. So I think I would object to  
24 introduction of this as a substantive basis for

1           prudence determination.

2                       MS. DOWNEY: Chair Mitchell, this is  
3           part of the court filing which you have taken  
4           judicial notice of at this point. They've opened  
5           the door to hindsight analysis, and I think the  
6           Commission can give this whatever weight it  
7           determines appropriate.

8                       MR. JIRAK: I mean, it's classic  
9           hearsay, in that this substantive piece of  
10          testimony, we don't have any opportunity to cross  
11          examine the statement.

12                      MS. DOWNEY: Well, and their second  
13          hindsight analysis was not prepared by them, so  
14          maybe we should strike it too.

15                      CHAIR MITCHELL: All right. Ms. Downey,  
16          I will let you ask your questions, but please be  
17          brief. We recognize Ms. Rankin is not here for  
18          you-all to cross examine.

19                      MS. DOWNEY: Understood.

20          Q.       Doesn't she say that -- well, doesn't she say  
21          that the changes brought by implementation of joint  
22          dispatch and the effects of both of those on the  
23          production of gypsum at Roxboro and Mayo should have  
24          been considered more seriously by Duke at the time it

1 entered into the 2012 agreement?

2 A. That's what it says.

3 Q. She also suggests that Duke made a bad  
4 bargain, doesn't she?

5 A. (John Halm.) She states that.

6 Q. Okay. So let me make sure, from your  
7 testimony, if I understand your testimony correctly, if  
8 the Public Staff prevails and the Commission decides  
9 that this does not belong in fuel -- these costs don't  
10 belong in fuel, that they belong in a general rate  
11 case, the Company will get a second bite at the apple,  
12 right? The Company can then, in a general rate case,  
13 enter in evidence of reasonableness and prudence,  
14 right?

15 A. We believe that this is appropriate for a  
16 fuel rate case.

17 Q. You didn't answer my question.

18 A. (Barbara Coppola.) Yes. I would say yes.

19 Q. Okay. But if the Company prevails according  
20 to your argument, and the Commission allows recovery in  
21 the fuel case, the Company's position is, "Too bad,  
22 Public Staff. You had an opportunity to review it in  
23 fuel case"; is that your position?

24 A. I wouldn't agree with it as stated.

1 Q. What would you say?

2 A. I would say that these liquidated damages are  
3 a result of the sales of gypsum, they were a common  
4 commercial term included in this agreement, from the  
5 inception of the agreement, included in the 2012  
6 agreement, and that they should be considered for fuel  
7 recovery treatment.

8 Q. But if the Company prevails, and the  
9 Commission determines that it should go through fuel,  
10 and the Public Staff has not performed a prudence  
11 review, is it -- your position is, "Too bad, Public  
12 Staff"?

13 MR. JIRAK: I'm gonna object to that  
14 question. It's asking for a legal opinion from  
15 technical experts in this -- at this --

16 MS. DOWNEY: Well, it's their testimony.  
17 I guess they can --

18 MR. JIRAK: If you are asking questions  
19 regarding a specific portion of the testimony, you  
20 can direct them to that point in the testimony. I  
21 don't believe that they specifically state that  
22 position on that issue.

23 Q. Going back to page 7, lines 6 through 7 --

24 A. (John Halm.) I'm sorry, is that on our

1 testimony, or are you on G i s e l e R a n k i n ' s ?

2 Q. No. I'm still -- I'm on to your testimony  
3 now.

4 A. I'm sorry, what page is that again?

5 Q. Page 7, lines 6 through 7.

6 A. (Barbara Coppola.) Yes. Our testimony was,  
7 "Does the Company provide sufficient details regarding  
8 the history of this transaction to allow Public Staff  
9 to assess the prudence of the Company's actions?" And  
10 we said, "Yes, the Company responded to extensive  
11 discovery on this issue, providing written responses to  
12 four sets of data requests and thousands of pages of  
13 responsive documents. Such information is sufficient  
14 to assess the reasonableness and prudence of the  
15 Company's actions."

16 Q. So the fact that the Public Staff did not  
17 opine as to reasonableness and prudence in this case,  
18 that's too bad for the Public Staff; is that what you  
19 are saying?

20 MR. JIRAK: Again, object to this  
21 question, because the legal outcome -- their  
22 testimony says what it says. As to what happens  
23 from a process perspective from this point on based  
24 on the Commission's decision is a legal question

1 that these witnesses have not addressed here.

2 MS. DOWNEY: Their testimony says what  
3 it says. It seems like there is something that  
4 follows from that that they should be able to  
5 answer.

6 MR. JIRAK: They did not state a  
7 conclusion about what the procedural outcome is.

8 CHAIR MITCHELL: Okay. I'm going to  
9 give the witnesses one more chance to answer. We  
10 recognize they are not attorneys, so please  
11 provide -- please respond, to the best of your  
12 abilities, to Ms. Downey's question, and then we  
13 will move on.

14 Q. Let me ask it this way. Maybe this will  
15 help.

16 If the Company prevails, and the Public Staff  
17 has not had an opportunity or has not opined on  
18 reasonableness and prudence, the Company is going to  
19 recover these costs without that information; isn't  
20 that correct?

21 A. Yeah. I'm not -- I'm not aware of the next  
22 steps of the cost recovery process or what steps would  
23 be -- additional steps would be taken to provide any  
24 additional information or any --

1 Q. The Commission could ask for that  
2 information, couldn't they?

3 A. Yes. I think it's the Commission's privilege  
4 to ask for any information they desire.

5 A. (John Halm.) I will add also that this is  
6 very true, that we have answered every question that's  
7 been asked by intervenors, by the Public Staff, and  
8 have provided thousands of pages of documentation.  
9 Some of that dealt with the prudence issue. I believe  
10 that we have done everything that we have been asked to  
11 do.

12 MS. DOWNEY: I don't have anything else.

13 CHAIR MITCHELL: Redirect from Duke?

14 MR. JIRAK: Just a few quick questions.

15 REDIRECT EXAMINATION BY MR. JIRAK:

16 Q. So you-all were asked questions by  
17 Ms. Downey regarding the hindsight analysis; do you  
18 recall those questions?

19 A. (Barbara Coppola.) Yes.

20 Q. Okay. It's your understanding, is it not,  
21 that the Commission's clear precedent is that it does  
22 not rely on hindsight analysis in assessing prudence of  
23 a company's decisions?

24 A. That's correct.

1 Q. Okay. Nevertheless, your testimony contains  
2 a somewhat short description of some hindsight analysis  
3 performed by the Company.

4 Is it the case that one of the reasons you  
5 chose to discuss that in the first instance is because  
6 hindsight analysis was, in fact, raised in the  
7 testimony of Jay Lucas?

8 MS. DOWNEY: Objection, Leading.

9 Q. Did you review the testimony of  
10 Mr. Jay Lucas?

11 A. Yes.

12 Q. Did his testimony discuss hindsight analysis?

13 A. Yes.

14 Q. So did that influence your decision to  
15 address the hindsight analysis in your own testimony?

16 A. It did.

17 Q. Okay. And one last time -- well, we'll leave  
18 it at that.

19 Let's turn just briefly back to the testimony  
20 that you were directed to by Ms. Downey on page 6, I  
21 believe, of your testimony. And I want to, again, turn  
22 to the same sentence and same phrase that Ms. Downey  
23 was directing your attention to, and that's the  
24 sentence beginning "Public Staff witness Jay Lucas"; do

1 you see that portion of the testimony?

2 A. Yes. On line 15?

3 Q. Yes. And you go on to say, "Public Staff  
4 witness Jay Lucas does not attempt to identify any  
5 particular decision or action of the Company that may  
6 have been imprudent"; do you see that statement?

7 A. Yes.

8 Q. So you acknowledged in your discussion with  
9 Ms. Downey that you understand that Mr. Jay Lucas did  
10 not take a position in his testimony on the  
11 reasonableness or prudence of the Company's actions,  
12 correct?

13 A. Yes, that's correct.

14 Q. But your testimony here, you are speaking to  
15 the fact that there was -- there is nothing in his  
16 testimony that identifies or alleges that a particular  
17 action or decision of the Company was imprudent; is  
18 that correct?

19 A. Yes, that's correct.

20 Q. And, to your knowledge, no party of this  
21 proceeding has alleged a particular action or decision  
22 of the Company as being imprudent through testimony?

23 A. Yes, that's correct. No one, to my  
24 knowledge, has been -- has talked about the imprudency

1 of these decisions.

2 Q. And the Company has produced an enormous  
3 amount of information regarding the decision in this  
4 case, correct?

5 A. Yes, it has.

6 Q. And does the Company have any control over  
7 whether Public Staff, or any other intervenor in this  
8 proceeding, chooses or chooses not to introduce  
9 testimony taking a position on the prudence or the  
10 reasonableness of the Company's actions?

11 A. Not to my knowledge.

12 Q. And based on the volume of information  
13 produced, do you think that there is sufficient  
14 information for parties to have made the determination  
15 regarding the prudence and reasonableness of the  
16 Company's decision in this case?

17 A. Yes, I do.

18 MR. JIRAK: That concludes my questions.

19 Thank you.

20 CHAIR MITCHELL:

21 Commissioner Clodfelter?

22 (Whereupon, per instructions of staff,  
23 the following is confidential and shall  
24 be filed under seal.)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

XX

XX

XX

XXXXXXXXXX

XX

XX

XX

XX

XX

XX

XX

XX

XX XXX

XX

XX XXXXXXXXXXXXXXXXXXXXXXX

XX XXX

XX

XXXXXXXXXXXXXXXXXX

XX XXX

XX

XX

XX

XX

XX

OFFICIAL COPY  
Oct 04 2019

1 XX XXX

2 XXXXXXXXXXXXXXXXXXXXXXX

3 XXX

4 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

5 XXX

6 XXX

7 XXXXX

8 XXX

9 XXXXXXXXXXXXXXXXXXXXXXX

10 (Whereupon, confidential session has  
11 ended.)

12 Q. So, Ms. Coppola, in your testimony in  
13 response on one of the cross examination questions, you  
14 referred to the 2013 fuel cost proceeding for Duke  
15 Energy Progress and the matter of the contract --  
16 transportation contract with CSX.

17 Were you involved in that proceeding?

18 A. (Barbara Coppola.) I was not involved in  
19 that proceeding.

20 Q. What was your understanding? What were you  
21 communicating?

22 A. Yeah. So, as we said in our testimony,  
23 though neither of us were personally involved in these  
24 examples or have in-depth knowledge, I did have

1 responsibility for transportation from 2012 to about  
2 2015, but I don't have any direct firsthand experience  
3 with that, and I don't believe John does either. We  
4 have been advised that there were prior instances in  
5 which the Commission allowed for the recovery of LDs  
6 through fuel rates, and there were the two  
7 transportation examples, which were a total of about  
8 \$21 million. And then more recently, the limestone  
9 tonnage shortfall.

10 Q. What is your understanding about what gave  
11 rise to the liquidated damages in the case of the fuel  
12 transportation matter?

13 A. Yes. In the 2013 example, it was related to  
14 a tonnage shortfall under the railroad --  
15 transportation contract in connection with the  
16 retirement of the Robinson and Sutton coal-fired  
17 generating units. And then, in 2014, it was related to  
18 a coal tonnage shortfall for the railroad contract in  
19 connection with the retirement of the Sutton  
20 coal-fired --

21 Q. There was a contract to transport coal, and  
22 you didn't transport coal?

23 A. That's correct.

24 Q. So you paid damages for not transporting

1 coal ?

2 A. That's correct.

3 Q. And that was recovered as the cost of  
4 transportation of coal, the fuel clause?

5 A. I'm not familiar with how those were  
6 calculated.

7 Q. The fuel clause allows inclusion of the cost  
8 of fuel transportation. I'm reading straight from the  
9 statute.

10 A. Okay.

11 Q. It allows -- but in that instance, your  
12 understanding is you were allowed to recover the cost  
13 of not transporting coal?

14 A. Yes. It was a tonnage shortfall is my  
15 understanding.

16 Q. And did the Public Staff oppose --

17 A. I'm not familiar with the proceeding --

18 Q. You're not familiar?

19 A. -- or what -- yeah. What the Public Staff's  
20 position was.

21 Q. You are not familiar with their position on  
22 that proceeding.

23 Okay. Since the door got opened on cross  
24 examination, there is foresight and hindsight, but I

1 have no sight, and I would like to get some. So I  
2 would like to see the data request that had the two  
3 hindsight analyses as late-filed exhibits if there is  
4 no objection. They were asked about on cross  
5 examination. I would like to see them.

6 MR. JIRAK: Yeah. No objection from us.

7 COMMISSIONER CLODFELTER: That would be  
8 both of them. That's all I have.

9 CHAIR MITCHELL: Questions on  
10 Commission's questions?

11 MS. DOWNEY: Just to be helpful, the one  
12 data request -- the second -- what I call the  
13 second 55 million one, that was attached to  
14 Mr. Lucas' testimony as the exhibit.

15 COMMISSIONER CLODFELTER: All right.  
16 Okay. So it's not a separate data request. It's  
17 the one the Company -- okay. I have that one then.  
18 So I only need the first one.

19 MS. DOWNEY: Right.

20 COMMISSIONER CLODFELTER: Thank you for  
21 that. I didn't know whether you were referring to  
22 something else than a data request.

23 CHAIR MITCHELL: Questions on  
24 Commission's questions?

1 MS. DOWNEY: No questions.

2 MR. JIRAK: No questions.

3 CHAIR MITCHELL: Take a motion from you,  
4 Mr. Jirak?

5 MR. JIRAK: Thank you. At this time, we  
6 would like to move the testimony -- the rebuttal  
7 testimony of the panel of Coppola and John Halm  
8 into the record as if given orally here today.

9 CHAIR MITCHELL: If there are no  
10 objections, the motion is allowed.

11 (Whereupon, the prefiled rebuttal  
12 testimony of Barbara Coppola and John  
13 Halm was previously copied into the  
14 record as if given orally from the  
15 stand.)

16 CHAIR MITCHELL: And with that, you-all  
17 may step down.

18 THE WITNESS: (Barbara Coppola.) Thank  
19 you.

20 THE WITNESS: (John Halm.) Thank you.

21 CHAIR MITCHELL: And I believe that  
22 concludes the presentation of evidence. So  
23 typically we will ask for orders 30 days following  
24 notice of the transcript; is that acceptable to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

you-all?

MS. DOWNEY: Yes.

MR. JIRAK: Yes.

CHAIR MITCHELL: Any other matters to address before we adjourn today? Thank you very much. We will be adjourned.

(The hearing concluded at 11:44 a.m. on Tuesday, September 10, 2019.)

OFFICIAL COPY

Oct 04 2019

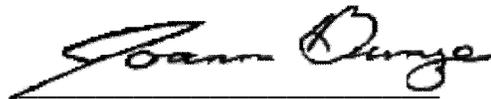
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

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

This the 18th day of September, 2019.



JOANN BUNZE, RPR

Notary Public #200707300112

