PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Tuesday, February 5, 2019

TIME: 10:00 a.m. - 12:30 p.m.

DOCKET NO: E-7, Sub 1181

SP-12478, Sub 0

SP-12479, Sub 0

BEFORE: Chairman Edward S. Finley, Jr., Presiding

Commissioner ToNola D. Brown-Bland

Commissioner Jerry C. Dockham

Commissioner James G. Patterson

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

Commissioner Charlotte A. Mitchell

**IN THE MATTER OF:**

Transfer of Certificates of

Public Convenience and Necessity

and Ownership Interests in Generating Facilities

from Duke Energy Carolinas, LLC,

to Northbrook Carolina Hydro II, LLC,

and Northbrook Tuxedo, LLC

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

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P R O C E E D I N G S

CHAIRMAN FINLEY: Good morning, and let's come to order. My name is Edward Finley and with me this morning are Commissioners ToNola D. Brown-Bland, Jerry C. Dockham, James G. Patterson, Lyons Gray, Daniel G. Clodfelter and Charlotte Mitchell.

I now call for hearing Docket Nos. E-7, Sub 1181, SP-12478, Sub 0, and SP-12479, Sub 0, In the Matter of Transfer of Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas to Northbrook Carolina Hydro II and Northbrook Tuxedo, LLC.

On July 5, 2018, DEC, Duke Energy Carolinas, and the Northbrook filed a Joint Notice of Transfer, Request for Approval of Certificates of Public Convenience and Necessity, Request for Accounting Order and Request for Declaratory Ruling in these dockets.

On July 25, 2018, the Commission issued an Order Requesting Comments and Setting a Schedule for Filing Initial Comments by August 27, 2018, and Reply Comments by September 10, 2018.

Intervention and participation in this

docket by the Public Staff of the Commission is made and recognized pursuant to Statute.

On September 20 -- excuse me, on September 4, 2018, the Public Staff filed comments.

And on September 18, Duke Energy Carolinas filed Reply Comments.

On November 29, 2018, the Commission issued an Order requiring Duke Energy Carolinas and Northbrook to file testimony by December 21, 2018; the Public Staff to file the testimony by January 18, 2019; and scheduling a hearing for this date, at this time and in this place.

On December 21, 2018, the testimony of John C. Ahlrichs was filed on behalf of Northbrook.

Also, on December 21, 2018, Duke Energy Carolinas filed the testimony and exhibits of Gregory Lewis, Veronica Williams, and Manu Tewari.

On January 18, 2019, the Public Staff filed the Joint Testimony of Michael Maness and Dustin Metz.

On January 18, 2019, the Public Staff filed the Motion Regarding Deferred Losses from the Sale of Hydroelectric Facilities.

On January 28, 2019, Duke Energy Carolinas filed a Response in Opposition of the Public Staff's

Motion.

On January 30, 2019, Duke Energy Carolinas, Northbrook, and the Public Staff filed a Joint Motion to Cancel Hearing, and to Excuse Witnesses, and to Enter Additional Evidence into the record.

On February 1, 2019, the Commission issued an Order Accepting Late-Filed Exhibits and Excusing Witness Ahlrichs and DEC Witness Tewari from testifying at this hearing and accepting their testimony and exhibits into evidence at the hearing.

In compliance with the State Ethics Act, I remind members of the Commission of their duty to avoid conflicts of interest, and inquire whether any member of the Commission has a known conflict of interest with regard to the matters coming before the Commission this morning?

(No response)

There appear to be no conflicts. So we will proceed and I'll call upon counsel for the parties to announce their appearances, beginning with Duke Energy Carolinas.

MR. SOMERS: Good morning, Mr. Chairman and Members of the Commission. I'm Bo Somers, Deputy General Counsel, on behalf of Duke Energy Carolinas.

MR. ALLEN: Mr. Chairman, my name is Dwight Allen. I'm with Allen Law Offices in Raleigh and I'm also appearing on behalf of Duke Energy.

MS. ROSS: Mr. Chairman, Katherine Ross from Parker Poe. We're representing Northbrook Energy. And while our witness was excused we wanted to just be here to observe.

CHAIRMAN FINLEY: Well, why don't you come up to sit at the counsel table, Ms. Ross, and just --

MR. DWIGHT ALLEN: Mr. Chairman, you've got more influence than we did. We tried to talk her into that and she wouldn't listen to us.

MR. DODGE: Good morning, Mr. Chairman and Members of the Commission. Tim Dodge with the Public Staff.

MR. DROOZ: David Drooz, Public Staff.

CHAIRMAN FINLEY: Are there any public witnesses that need to be heard from this morning, Public Staff?

MR. DODGE: We haven't identified any.

CHAIRMAN FINLEY: Any public witnesses in the hearing room?

(No response)

There appear to be none. Are there any

preliminary matters that we need to address before we get started.

MR. SOMERS: A couple if I could just to make sure I'm clear on procedure here. I understood the Chairman to indicate that Mr. Tewari's testimony and exhibits are in the record already and I just want to make sure I'm correct in that understanding, or would you like for me to move those?

CHAIRMAN FINLEY: Well, out of an abundance of caution we will, even though Mr. Tewari is excused, we will copy his testimony of 12 pages into the record and receive his exhibit into evidence as well.

MR. SOMERS: Thank you, Mr. Chairman. And one other question, in conjunction with the Motion that the Public Staff and the Companies filed, we also submitted two Joint, we termed them as "Late-Filed Exhibits", and I believe the Commission's Order indicated those would be accepted. Would you like for me to -- are those already in the record or would you like for me to move them now or at a later time?

CHAIRMAN FINLEY: Well, we'll accept those exhibits into evidence at this point.

MR. SOMERS: Okay. Thank you.

(WHEREUPON, Tewari Exhibit No. 1

is marked for identification as prefiled and received into evidence.)

(WHEREUPON, the prefiled direct testimony of MANU TEWARI is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

| | | |
|---|---|---|
| In the Matter of<br>Transfer of Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC | )<br>)<br>)<br>)<br>)<br>) | **DIRECT TESTIMONY OF MANU TEWARI** |

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

A. My name is Manu Tewari, and my business address is 550 South Tryon Street, Charlotte, North Carolina 28202.

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

A. I am employed as Corporate Development Director by Duke Energy Business Services, LLC, which provides services to Duke Energy Carolinas, LLC ("Duke Energy Carolinas," "DEC" or the "Company"). Duke Energy Carolinas is a wholly owned, indirect subsidiary of Duke Energy Corporation ("Duke Energy").

Q. **WHAT ARE YOUR RESPONSIBILITIES AS CORPORATE DEVELOPMENT DIRECTOR?**

A. As Corporate Development Director, I am responsible for supporting Duke Energy and its subsidiaries in a variety of transaction activities, including acquisitions, divestitures, joint ventures, and corporate-level combinations.

Q. **PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

A. I have a Master in Business Administration degree from the McColl School of Business at Queens University in Charlotte, and a Bachelor of Science degree in Computer Science from Avadh University, India. I began my career at Duke Energy in 2000 as IT Manager and since 2006, I have held a variety of responsibilities in the Finance area. I joined Duke Energy's Corporate Development group in 2014 as Manager Corporate Development and was later promoted to my current position as Director Corporate Development.

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

A. No, I have not.

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

A. The purpose of my testimony in this proceeding is to support DEC's Application to Transfer Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC (which I will collectively refer to as "Northbrook"). Specifically, I will discuss the process Duke Energy Carolinas utilized to solicit and evaluate bids for the purchase of the Bryson Hydroelectric Generation Facility, the Franklin Hydroelectric Generation Facility, the Mission Hydroelectric Generation Facility, the Tuxedo Hydroelectric Generation, and the Gaston Shoals Hydroelectric Generation Facility (which I will refer to collectively as the "hydro units"). I will also discuss why DEC selected Northbrook and describe the terms of the Asset Purchase Agreement entered into by DEC and Northbrook.

**Q. PLEASE DESCRIBE THE PROCESS THAT DEC UTILIZED TO SOLICIT OFFERS FOR THE PURCHASE OF THE HYDRO UNITS.**

A. After DEC determined that it was more cost-effective to sell the hydro units rather than to continue to own and operate them as Company witness Greg Lewis discusses in his testimony, in August 2017, DEC assembled a core team with resources from Corporate Development, Fossil Hydro Operations, Hydro

Licensing, and Purchase Power areas to develop a project plan and related marketing material for the potential sale using a two-phase process: Phase 1 to invite indicative non-binding offers and Phase 2 to invite binding offers to negotiate a definitive Asset Purchase and Sales Agreement (APA).

At the launch of Phase 1, a high-level investment opportunity presentation using public information was distributed to 45 potentially interested parties in early October 2017. A Non-Disclosure Agreement was executed with 25 interested parties prior to which DEC shared a detailed non-public Confidential Information Memorandum (the "CIM"). The CIM covered detailed asset specifications, operational metrics, hydrology, major maintenance and avoided cost energy rates for the purchase power agreements. Phase 1 of the process concluded on November 15, 2017 with the receipt of non-binding offers from 11 interested parties.

**Q. PLEASE DISCUSS THE RESPONSES AND OFFERS THAT DEC RECEIVED FOR PHASE 1.**

A. As noted previously, DEC received 11 non-binding offers as summarized below:

**[BEGIN CONFIDENTIAL]**

| [redacted] | [redacted] | [redacted] |
|---|---|---|
| [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] |
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| [redacted] | [redacted] | [redacted] |

[redacted]

[END CONFIDENTIAL]

**Q. PLEASE DISCUSS THE PHASE 1 EVALUATION PROCESS.**

A. DEC applied following criteria to evaluate phase 1 offers:

i. **Purchase price:** While maximizing proceeds from the sale was the primary objective, the buyer's ability to finance and close the transaction in a timely manner was considered a critical factor in DEC's evaluation of the bids.

ii. **Hydro operation capabilities:** DEC requested potential buyers to provide their experience in owning and operating small hydroelectric generation assets, a key consideration for the transfer of ownership of the hydro facilities.

iii. **Presence in the region:** DEC considered the ownership by potential buyers of other small hydro assets in the region and a firm understanding of the new owner's obligations under the Purchase Power contracts in the Carolinas to be a beneficial attribute that would ensure transaction certainty.

iv. **Ability to transact as a portfolio:** DEC does not divest generation assets on a regular basis. In rare occasions, when certain small assets are no longer core to serve customers, the most effective sale process is to bundle the assets in a portfolio. The scale that this approach creates generates maximum interest from potential buyers and minimizes ultimate transaction costs (i.e. data room hosting, legal document preparation, etc.). As such, DEC's strong preference was to sell the entire portfolio to one bidder.

Bidders **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** met all four of the criteria described above, so they were invited to participate in Phase 2 of the process. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** is a non-U.S. entity and **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** has no presence in the region, which caused both to be eliminated. Moreover, the ability of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** to execute a transaction was considered limited, as the megawatts in the portfolio were too small to justify a standalone hydro operation business, especially given their lack of experience in operating such assets in the Southeast region.

Following is a summary of evaluated offers results:

**[BEGIN CONFIDENTIAL]**

| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
|---|---|---|---|---|---|
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
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| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
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| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
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| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | | | |

[redacted]

**[END CONFIDENTIAL]**

**Q. WHAT DID DEC DO IN RESPONSE TO THE PHASE 1 OFFERS?**

A. DEC invited **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** to Phase 2 of the process to conduct more detailed and comprehensive diligence. The decision to move these four bidders into Phase 2 created the right balance between the ability to support the detailed due diligence effort (host management presentations, provide responses to bidder questions, conduct site visits for each bidder) and to ensure receipt of at least one binding offer from a bidder that met the criteria described in the response to the prior question upon conclusion of the Phase 2 due diligence the process.

In December 2017, each of the four bidders was invited to attend a management presentation held in DEC's Charlotte office. Following the conclusion of the last of the four management presentations, DEC gave the bidders access to a virtual data room containing approximately 600 documents to assist the bidders in their detailed due diligence on the assets. DEC responded to 287 questions from the bidders as part of the Q&A process. DEC hosted bidders at each hydro site in order that each bidder could conduct visual diligence.

Q. **PLEASE EXPLAIN WHY NORTHROOK WAS SELECTED TO PURCHASE THE HYDRO UNITS.**

A. On March 5, 2018 binding bid instructions were sent to the four Phase 2 bidders. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** subsequently dropped out of the process and did not submit binding offers. On the binding bid due date of April 13, 2018, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** submitted offers. In compliance with the binding bid instructions, Northbrook submitted its binding offer, together with a markup of the bid form Asset Purchase Agreement (APA) as required per the bid instructions. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** submitted an indicative and non-conforming conditional offer with generalized comments and no markup to the bid form APA. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** indicative offered Purchase Price was **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

On April 19, 2018 Northbrook's binding bid summary was presented to Duke Energy's Transaction Review Committee ("TRC") and, in accordance with Duke Energy's Approval of Business Transactions policy, the CEO of Duke Energy approved entering into a transaction with Northbrook on the terms presented to the TRC. DEC and Northbrook subsequently signed a fully negotiated APA on May 15, 2018, which I am attaching as Tewari Exhibit 1 to my testimony.

**Q. PLEASE GENERALLY DESCRIBE THE PROCESS TO FINALIZE AN ASSET PURCHASE AGREEMENT WITH NORTHBROOK.**

A. After DEC received management approval to negotiate the APA with Northbrook, parties went through a 4-week negotiation process. In the initial stage of the negotiations: 1) DEC provided an opportunity to Northbrook to confirm value; 2) In response to Northbrook's election to enter into 5-year power purchase agreements, for all assets, DEC committed to upload 5-year power RPPA rate schedule in the virtual data room; 3) DEC counsel requested Purchaser's disclosure of approvals; and 4) DEC requested comfort from Northbrook that the purchasing entity will be favorably viewed by the FERC. In response, Northbrook improved its purchase price offer from $4.3 million to $4.75 million USD. Northbrook confirmed reviewing the 5-year PPA rates DEC provided in the data room. As requested by DEC counsel, Northbrook provided disclosure schedule of approvals. Northbrook further described that Northbrook's ownership will be favorably viewed by the FERC as Northbrook's wholly owned entity, Northbrook Power Management, LLC

("NPM"), is a leading independent hydropower operations, maintenance and asset management company in the U.S., providing services to both FERC licensed and non-licensed facilities. Northbrook reiterated that in 2017 alone, NPM has managed twenty-two facilities regulated by the FERC, and has considerable experience, knowledge and necessary contacts with the FERC and other federal and state resource agencies.

Subsequently, DEC asked Northbrook to clarify Northbrook's APA comments regarding purchaser's ability to perform environmental sampling of soil, water or air prior to closing of transaction. In response, Northbrook withdrew their comment and responded that no further Environmental Phase II investigations are planned, and Northbrook's proposal is not conditioned on any such investigations.

Finally, per DEC's corporate credit guidelines, DEC asked Northbrook to provide an acceptable form of credit support. Northbrook provided a Commitment Letter of funding from Alliance Fund II, LP, assuring DEC that sufficient funds will be available to close the transaction. Alliance Fund is a large investment fund focused on renewable energy, and is an affiliate of the purchaser. The parties entered into an APA on May 15, 2018.

Q. **PLEASE DESCRIBE THE MAJOR TERMS OF TEWARI EXHIBIT NO. 1, THE APA.**

A. Pursuant to the May 15, 2018 APA, DEC will sell and transfer the Facilities to Northbrook for $4,750,000. At the closing, Northbrook will assume all liabilities arising out of or relating to ownership or operation of the purchased assets, including pre-closing environmental liabilities. Following are the key closing conditions for the transaction:

1. FERC License Transfer Approval to transfer each of the FERC Licenses to the applicable Purchaser;

2. An order from the North Carolina Utilities Commission approving (i) the establishment of a regulatory asset for the retail portion of any difference between the sales proceeds and the net book value of the plants and (ii) the transfer of the plant Certificates of Public Convenience and Necessity from the Seller to the applicable Purchaser;

3. An order from the Public Service Commission of South Carolina (i) granting permission to sell utility property and (ii) approving the establishment of a regulatory asset for the retail portion of any difference between the sales proceeds and the net book value of the plants.

In summary, approval of the requested accounting treatment is a condition to closing the Transaction, and DEC would have no obligation to consummate the sale if the accounting order is not approved.

Q. **IS THERE A DEADLINE TO CLOSE THE TRANSACTION WITH NORTHBROOK?**

A. Per Section 9.01 of the APA, if the closing has not occurred before the date that is twelve (12) months after signing, the APA may be terminated by either DEC or Northbrook. As a result, the deadline for meeting all the closing conditions described above is on or before May 15, 2019, or either party can terminate the agreement.

**Q. IN SUMMARY, WHY DOES DEC BELIEVE THAT ITS PROCESS AND DECISION TO SELL THE SMALL HYDRO FACILITIES TO NORTHBROOK WAS APPROPRIATE?**

A. DEC conducted a thorough and competitive bidding process for the sale of the small hydro facilities. Our evaluation determined that Northbrook was a qualified purchaser with operational experience in the region, and offered the best final bid. We negotiated an appropriate APA with Northbrook, which includes this Commission's approval of the CPCN transfer and the Company's requested accounting treatment as a key closing condition. For all the reasons discussed in my testimony, as well as the testimony of the Company's other witnesses and the application, we believe the Transaction is in the public convenience and necessity and should be approved by the Commission as proposed by the Company.

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

A. Yes.

(WHEREUPON, Duke Energy Carolinas, LLC and The Public Staff Partially Confidential Late-Filed Exhibit No. 1 is admitted into evidence with PSDR 6-11 Attachment 1 filed under seal.)

CHAIRMAN FINLEY: Anything else? Duke, call your witness.

MR. SOMERS: Mr. Chairman, if it's okay with the Commission we're going to call our two witnesses as a panel, that's Mr. Greg Lewis and Ms. Veronica Williams. I'd ask them to come forward, please.

CHAIRMAN FINLEY: I don't think there's any objection to that so have them come forward, please.

GREGORY D. LEWIS and VERONICA I. WILLIAMS;
having been duly sworn,
testified as follows:

CHAIRMAN FINLEY: I had to do that 50 times last night and I think I've pretty well got it down.

MR. SOMERS: Thank you, Mr. Chairman. If I could, I'll begin with Mr. Lewis.

DIRECT EXAMINATION BY MR. SOMERS:

Q If you would please state your name for the record. And make sure that you pull that

microphone close to you.
A Gregory D. Lewis.
Q And, Mr. Lewis, what is your position with Duke Energy?
A I am currently on an interim assignment pending my retirement, but I previously held the position of Regional Services Manager.
Q And just briefly, as Regional Services Manager what were your areas of responsibility?
A I had the responsibility for a number of things including the Project Management Group, some O&M Operations, Cyber Security, Controls, Hydro Controls, Programming Controls, and that sort of thing.
Q And how long have you worked for Duke Energy?
A Nearly 38 years.
Q And this is the first time you've testified in 38 years?
A And the last.

(Laughter)

Q If you would, Mr. Lewis, would you please give the Commission your business address?
A Yes. I'm at 526 South Church Street in Charlotte.

Q Thank you. And, Mr. Lewis, did you cause to be prefiled direct testimony of some 14 pages in this matter?
A Yes, I did.
Q And do you have any changes or corrections to your testimony?
A No, I do not.
Q So if I were to ask you those same questions here today on the stand, would your answers be the same?
A Yes, they would.

MR. SOMERS: Mr. Chairman, I would move that Mr. Lewis' direct testimony be admitted into the record as if given orally from the stand.

CHAIRMAN FINLEY: Mr. Lewis' direct prefiled testimony of 14 pages of December 21, 2018, is copied into the record as if given orally from the stand.

(WHEREUPON, the prefiled direct testimony of GREGORY D. LEWIS is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

| | | |
|---|---|---|
| In the Matter of<br>Transfer of Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC | ) | **DIRECT TESTIMONY OF GREGORY D. LEWIS** |

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

A. My name is Gregory D. Lewis, and my business address is 526 South Church Street, Charlotte, North Carolina 28202.

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

A. I am employed by Duke Energy Carolinas, LLC ("Duke Energy Carolinas," "DEC" or the "Company") and am currently on an interim assignment in the Carolinas Regulated Renewables department. Duke Energy Carolinas is a wholly owned, indirect subsidiary of Duke Energy Corporation ("Duke Energy").

**Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR INTERIM ROLE?**

A. I am currently on an Interim Assignment in a consulting capacity until my pending retirement, which includes supporting the divesture of the Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals hydroelectric generation facilities (which I will collectively refer to as the "small hydro facilities").

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

A. I am a registered Professional Engineer in North Carolina, having received a Bachelor of Science degree in Civil Engineering from Ohio State University and a Master of Science degree in Mechanical Engineering from the University of South Carolina. I have worked for Duke Energy for over thirty-seven years, with the overwhelming majority of my responsibilities being focused in hydro engineering, operations, maintenance, and program management. Immediately prior to my current role, I served as Manager of Regional Services for the

Regulated Renewables Fleet at Duke Energy from January 2017 until June 2018. As Manager of Regional Services for the Regulated Renewables Fleet, I had management responsibility for fleet engineering and technical support, remote operating system support, hydro cybersecurity, and the vast majority of hydro capital projects across the Company's North Carolina and South Carolina hydroelectric generation facilities. I began my career at Duke Power in 1981 as an associate engineer in the Design Engineering department. Over the course of my career, I then held positions of increasing responsibility, including Program Manager for the "Hydrovision" rehabilitation and upgrade program, support of due diligence assessments of various external hydro assets, Technical Manager over hydro engineering and technical support, and Manager of Regional Services.

I have also had the honor to serve in leadership roles for several hydroelectric industry professional organizations. I served on the Executive Committee of the CEATI Hydraulic Power Life Interest Group (a collaborative group of 70 worldwide hydro utilities and owners) as Vice-Chair/Chair from 2014 to 2018 and have been an active technical contributor since 2004. I was a member of the Board of Directors of the National Hydropower Association from 2007 to 2010 and served as Treasurer of the Association and a member of the Executive Committee in 2009-10. I also served on the Department of Energy's Water Power Peer Review Panel as a subject matter expert in 2010, 2011, 2018, and in 2014 served as the chairman of the panel. I have also served on the Advisory Board for Hydro Review magazine since 2008 and previously served as a Board member for the Hydro Research Foundation.

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

A. No.

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

A. The purpose of my testimony in this proceeding is to support DEC's Application to Transfer Certificates of Public Convenience and Necessity ("CPCN") and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC. Specifically, I will discuss how DEC reached the decision to sell the small hydro facilities (which I will refer to as the "Transaction") and explain the economic analysis the Company performed in making that decision. I will also briefly describe each of the small hydro facilities and explain the capital investments made at the small hydro facilities from 2015 to year-to-date ("YTD") 2018.

**Q. PLEASE GENERALLY DESCRIBE THE SMALL HYDRO FACILITIES THAT DEC IS PROPOSING TO SELL.**

A. The small hydro facilities are some of the oldest in DEC's portfolio, having entered service more than ninety years ago. These small conventional hydro plants have a relatively small generation contribution to DEC. In 2017, the DEC Hydro fleet generated over 5,700 gigawatt hours ("GWh") of energy with these five facilities contributing only 31.6 GWh, which is less than 0.6% of the

DEC Hydro generation. On a capacity basis these assets have a capacity of 18.7 MWs, which is approximately 0.6% of total DEC hydro capacity and less than 0.1% of DEC system capacity. These small stations were once an important part of the 1900's electrical system and they served their communities well; however, today, they represent a very small portion of Duke Energy Carolinas' generating system and their strategic importance has significantly diminished in serving DEC customers.

Below is a table showing more detail about the five small hydro facilities the company is proposing to sell to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC.

| Station | *Bryson* | *Franklin* | *Gaston Shoals* | *Mission* | *Tuxedo* |
|---|---|---|---|---|---|
| Location | Swain Co, NC | Macon Co, NC | Cherokee Co, SC/ Cleveland Co, NC | Clay Co, NC | Henderson Co, NC |
| Commercial Date | 1925 | 1925 | 1908 | 1924 | 1920 |
| Capacity | 0.98 MW | 1.04 MW | 8.50 MW | 1.80 MW | 6.40 MW |
| River/Reservoir | Oconaluftee/Lake Ela | Little Tennessee/Lake Emory | Broad/Gaston Shoals | Hiwassee/Mission Lake | Green/Lake Summit |
| FERC License # | 2601 | 2603 | 2332 | 2619 | N/A; State Regulated |
| License Effective Date | 7/1/2011 | 9/1/2011 | 6/1/1996 | 10/1/2011 | |
| License Duration | 30 Years | 30 Years | 40 Years | 30 Years | |

**Q. WHY DID DEC EVALUATE SELLING THE SMALL HYDRO FACILITIES AND WHEN DID THE PROCESS START?**

A. Due to the significantly escalating compliance, safety, and maintenance costs associated with the small hydro facilities, DEC evaluated a potential sale and determined that divesting of these small hydro facilities is more economical than continued ownership and will result in net savings for customers over time. In addition, the Transaction will allow DEC to optimize its capital investments by focusing on higher priority generation facilities, and will eliminate the risk for continued significant investment in the facilities, and thereby enhance DEC's ability to provide continued affordable and reliable service to its customers. In May 2017, DEC began the divesture process after receiving internal approvals needed to proceed to the market test. Company witness Tewari discusses the sale process in his testimony.

**Q. HAVE OTHER UTILITIES DIVESTED OF SMALL HYDRO ASSETS IN RECENT YEARS?**

A. Yes. Other utilities, including First Energy, American Electric Power, Pacific Gas & Electric, and Public Service of New Hampshire have divested of a number of small hydro assets in recent years. Through my work in the hydro industry, I am generally aware of the reasons for these sales and believe that these other utilities were faced with similar factors as DEC was in making its decision.

**Q. PLEASE DESCRIBE THE ECONOMIC ANALYSIS THAT DEC PERFORMED IN REACHING THE DECISION THAT IT IS MORE COST-BENEFICIAL FOR CUSTOMERS TO SELL THE SMALL HYDRO FACILITIES TO NORTHBROOK, RATHER THAN DEC CONTINUING TO OWN AND OPERATE THE UNITS.**

A. The Company performed a Present Value Revenue Requirement ("PVRR") analysis to determine the benefits of divesting and purchasing back the power of the small hydro facilities versus continuing operation and ownership. The PVRR analysis was performed by the Company's Integrated Resource Planning ("IRP") group and is similar to other analyses completed for project reviews.

The PVRR assessed future cost probabilities based on current and expected regulatory requirements for equipment maintenance, dam safety, licensing plans & risks, and operations & maintenance. This analysis considered the difference in the present value of the anticipated future costs compared to the present value of purchasing back the power from a third party. Using this method, three different sensitivity scenarios were derived:

**Scenario 1**: Based on aggressively low and optimistic budget (Low Cost Case)

**Scenario 2**: Based on planned work and most likely probability outcomes (Probable Case)

**Scenario 3**: Some additional risk probability beyond Scenario 2 (Higher Cost Case)

These three scenarios produced customer benefits ranging from approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**. I am attaching a Confidential Summary Roll-up of the PVRR analysis as Lewis Confidential Exhibit No. 1. The Company is also providing the Commission a full electronic version of the confidential PVRR analysis, with formulas intact. The analysis utilized subject matter experts, including myself, to determine the future compliance obligations, safety requirements, operating costs, risk probabilities, and future capital investment compared to divesting and buying back the renewable generation from a third party. By divesting the small hydro facilities, DEC will only be required to pay for the power produced versus the long-term obligations of operations and ownership. As the analysis shows, the sale of the small hydro units will provide significant benefits to customers.

**Q. DO YOU BELIEVE THE COMPANY'S PVRR ANALYSIS WAS APPROPRIATE AND SHOULD BE RELIED UPON BY THE COMMISSION?**

A. Yes, the company's PVRR analysis should be relied upon by the Commission because the analysis was an exhaustive review utilizing experts in dam safety, licensing, and operations to forecast the future needs of these small hydro facilities. The PVRR was performed by the IRP group and is similar to other analyses completed for project reviews. This expert review of the small hydro facilities resulted in a PVRR analysis that shows the customer benefit of divestiture of the small hydro facilities versus continued ownership, including ongoing financial obligations. Also, the Company utilized a multiple scenario approach to provide a range, which again resulted in net benefits ranging **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**.

**Q. PLEASE DESCRIBE THE CAPITAL PROJECTS AT EACH OF THE SMALL HYDRO FACILITIES FROM 2015 TO YEAR-TO-DATE, NOVEMBER 2018.**

A. I'm attaching to my testimony Lewis Exhibit No. 2, which provides details of the project list of actual capital expenditures from 2015 through year-to-date November 2018, which total approximately $17.4 million. These projects are largely driven by compliance with license obligations, dam safety requirements, and personnel safety.

I believe that a little perspective may be helpful to understand why there have been numerous safety, environmental, and license compliance projects at these small hydro facilities. These facilities were commissioned between 1908 and 1925, when many regulatory agencies did not even exist and societal norms were quite different. As an example, by coincidence, the Ford Motor Company produced the Model T across this same general timeframe from 1908 to 1927. The safety features of that vehicle would not be close to meeting today's vehicle safety requirements or expectations. Seat belts, safety glass, airbags, anti-lock brakes, crumple zones, impact bumpers, padded dashboard or steering wheels, front or side crash tests, whiplash protection, etc., were not part of the original design. Indeed, retrofitting very old automobile designs to meet modern National Transportation Safety Board ("NTSB") or Occupational Health and Safety Administration ("OSHA") standards would certainly require significant modifications and would be quite expensive.

Similarly, for old dam designs, there was not a Federal Energy Regulatory Commission ("FERC") requiring certain factors of safety for various aspects of dam construction. In fact, the FERC did not exist until 1977 and its predecessor, the Federal Power Commission, did not exist prior to 1930. Additionally, there were no license compliance requirements since there were not any FERC licenses. Furthermore, there was not an Environmental Protection Agency, so original designs have had to be retrofitted through the years to be compliant with modern environmental regulatory standards and expectations. And, of course, as we learn more from emergent incidents or accidents in all industries, regulations are constantly changing and improving to mitigate the possibility of future issues. So regardless of their small generating capability, their antiquated designs, and their lack of economies of scale, small hydro facilities must also comply with continuously evolving regulations, standards, and expectations.

**Q. FROM THE COMPLETE LIST YOU PROVIDED IN LEWIS EXHIBIT NO. 2, PLEASE DISCUSS SOME EXAMPLES OF MAJOR CAPITAL PROJECTS THAT WERE COMPLETED.**

A. Yes, I will describe eight of the projects I detail in Lewis Exhibit No. 2 to give the Commission an idea of the projects at issue. All of these projects were necessary to meet various regulatory, license, operational, and safety requirements. We have discussed these projects in detail with the Public Staff, and responded to data requests, since they filed their initial comments.

First, the Gaston Shoals Unit 6 turbine replacement and mechanism rehabilitation was necessary to support operational compliance with lake level restrictions and simultaneously meet minimum flow requirements. This involved replacement of the worn turbine operating mechanism linkages to provide accurate control of the discharge flows as well as replacement of the original turbine. I'm attaching as Lewis Exhibit No. 3 illustrative photos of this Gaston Shoals project. Looking at these photos, it is readily apparent that replacement of these original components was necessary to enable continued operation for the duration of the license. Furthermore, the design of this unit results in more flexibility and output than the other available units, so it is the preferred operating unit and typically runs continuously.

The Bryson left bulkhead stability project was necessary to comply with modern dam safety regulations that required a higher factor of safety than the original Bryson dam design. This involved anchoring the bulkhead to bedrock so that it could withstand the Inflow Design Flood criteria, required by FERC.

The Franklin tainter gate replacement project was necessary to meet modern dam safety requirements. After finding distortion in some of the gates' original structural members, concerns were raised that the unusual original gate design was inadequate for continued operation. This led to the decision to remove the already 90-year-old gates and replace them with a new engineered qualified design.

The Mission Unit 3 turbine/generator refurbishment was needed to support operational license requirements. The new FERC License, issued in 2011, imposed stringent lake level and flow release requirements that could not be met with existing controls and original aging equipment.

The Gaston Shoals Unit 4 wear ring and bushing replacement is a routine replacement of aging equipment, that was installed in 1993. The normal overhaul interval for this equipment is approximately 20 years.

The Bryson Unit 1 turbine/generator refurbishment was needed to support operational license requirements. The new FERC License, issued in

2011, imposed stringent lake level and flow release requirements that could not be met with existing controls and original aging equipment.

The Tuxedo access stairs project was necessary to ensure personnel safety while performing routine inspections and maintenance of the wood stave flume line that is on a very steep slope. I'm attaching to my testimony a photo of the project as Lewis Exhibit No. 4. Slips and falls on sloped embankments, within the industry, have resulted in serious employee injuries and this project was necessary to mitigate the potential of future slip and fall injuries along the flume line at Tuxedo.

Finally, the Gaston Shoals Big Bay Access Ramp project involves the installation of a public boat launch ramp on the Gaston Shoals Reservoir. This is required by the FERC license. Allowing and providing public access for recreation on reservoirs is a very common requirement in the hydro licensing process.

All of the projects listed in Lewis Exhibit No. 2 were initiated after careful review of regulatory, license, operational and safety needs. Given the circumstances dictated by the regulatory requirements and the obligation of continued operation for the remaining duration of the license, I believe that each of these projects, and their associated costs, were reasonable and prudent.

**Q. HOW DO THE 2017 AND 2018 SMALL HYDRO FACILITIES' CAPITAL COSTS COMPARE TO THOSE FROM 2015 AND 2016?**

A. The capital costs in 2017 and 2018 were significantly lower than prior years. After determining to move forward with the sale, the Company put some projects on hold that could be temporarily delayed. Prospective buyers were made aware during management presentations of projects that would need to be completed in the near term.

**Q. WERE ANY OF THE CAPITAL PROJECTS INITIATED TO "UPGRADE" THE UNITS?**

A. None of the projects were initiated for the primary purpose of upgrading the units. Any upgrade was a secondary benefit of replacing aging, deteriorated equipment with modern replacements as a means of reliably managing flows and staying in compliance.

**Q. WHY IS DEC SEEKING COMMISSION APPROVAL TO TRANSFER THE CPCNS ISSUED OR DEEMED TO HAVE BEEN ISSUED FOR THE SMALL HYDRO FACILITIES TO NORTHBROOK?**

A. Commission approval of the Transaction will enable DEC to divest of these facilities with significant, ongoing maintenance costs while providing relatively small output when compared to the remainder of DEC's generation portfolio. DEC has determined that the divestiture of the small hydro facilities is more economical than continued ownership and maintenance because it will make it easier for DEC to optimize and prioritize its ongoing investments in higher priority generation facilities, thereby resulting in net savings to customers over time. For these reasons, and the reasons explained in the testimony of DEC's other witnesses and the application, we believe that the proposed sale of the small hydro facilities is in the public convenience and necessity and should be approved by the Commission.

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

A. Yes.

MR. SOMERS: Mr. Chairman, I would also ask -- Mr. Lewis had four exhibits attached to his direct testimony. The first one is confidential. Exhibits 2, 3 and 4 are not confidential. I would ask that those exhibits be identified as premarked.

CHAIRMAN FINLEY: Mr. Lewis' Exhibits of the same date are marked for identification as premarked in the filing with the indication that the first one is confidential.

(WHEREUPON, Lewis Exhibit 1, prefiled as confidential, is marked for identification and filed under seal. Lewis Exhibits 2, 3 and 4 are marked for identification as prefiled.)

MR. SOMERS: Mr. Chairman, we've handed out copies of Mr. Lewis' summary and I would -- if the Commission would like we could give that now or if you'd rather us move forward we can dispense with that.

CHAIRMAN FINLEY: Why don't you give the summary, please.

MR. SOMERS: Thank you.

BY MR. SOMERS:

Q Mr. Lewis, have you prepared a summary of your testimony?

A Yes, sir.

Q Would you please read that now?

A Yes, sir. Good morning to the Commission and the Chair. I'm Greg Lewis and have worked with Duke Energy for nearly 38 years with increasing responsibilities in hydro engineering, technical and operational support, and management over my career. My direct testimony discusses how the Company reached the decision to sell the Bryson, Franklin, Mission, Tuxedo and Gaston Shoals hydroelectric generation facilities and explains the economic analysis behind that decision. I also describe the hydro facilities and explain the capital investments made from 2017 to November 2018.

CHAIRMAN FINLEY: 2015 or 2018?

A From 2015 to November 2018.

CHAIRMAN FINLEY: I think you said '17.

A The five small hydro units are among the oldest in DECs portfolio, commissioned between 1908 and 1925. While they were an important part of the electrical system in the 1900's and served their communities well, today they represent a very small portion of the Company's generating system. In 2017, these five facilities contributed less than 0.6 percent of the DEC hydro generation. On a capacity basis, these assets have a capacity of 18.7 megawatts, which is approximately 0.6 percent of the total DEC hydro capacity and less than 0.1 percent of DEC system capacity.

As a result of escalating compliance, safety and maintenance costs associated with these small hydro facilities, DEC evaluated a potential sale in 2017 and determined that divestiture is more economical than continued ownership. In addition, the sale will result in net savings for customers over time, will allow DEC to optimize its capital investments by focusing on higher priority generation facilities and will eliminate the risk for continued significant investment in the facilities. Other utilities have divested small hydro assets in recent years and, as a result of my experience in the hydro industry through several professional organization leadership roles, I believe that these utilities faced factors similar to DEC in deciding to divest.

The Company's IRP group performed an exhaustive Present Value Revenue Requirement (or PVRR) analysis to determine the customer benefits of divestiture versus continued operation and ownership of the small hydro facilities. The PVRR assessed future cost probabilities based on current and expected regulatory requirements for equipment maintenance, dam safety, licensing plans and risks, and operations and maintenance. Under three different scenarios, the analysis shows that the sale of the small hydro assets will provide significant benefit to customers.

As mentioned previously, these hydro units entered service more than ninety years ago. Back then, there was no Federal Energy Regulatory Commission, no Environmental Protection Agency, or similar regulatory agencies requiring safety or environmental factors for various aspects of dam construction and operation. Additionally, there were no license compliance requirements, since there were no FERC licenses. I make the analogy in my testimony to the small hydro units and a Model T Ford to explain the increased safety and operational requirements and expectations that have evolved over that same timeframe.

The list of capital expenditures for these facilities from 2015 through November 2018, total approximately $17.4 million. Lewis Exhibit 2 lists all the projects at issue and I describe in greater detail eight of these projects. All of the projects were necessary to meet various regulatory, license, operational, and safety requirements, and none were designed to "upgrade" the units. I believe that each of these projects, and their associated costs, were reasonable and prudent. The capital costs in 2017 and 2018 were significantly lower than prior years because the Company put on hold those projects that could be temporarily delayed. Prospective buyers were made aware of these projects that would need to be completed in the near term.

The Company has determined that divestiture of the five small hydro facilities is more economical than continued ownership and maintenance because it will make it easier for DEC to optimize and prioritize its ongoing investments in higher priority generation facilities, thereby resulting in net savings to customers over time. For these reasons, and the reasons explained in the testimony of the Company's other witnesses and the application, we believe that the proposed sale of the small hydro facilities is in the public convenience and necessity and should be approved by the Commission.

This concludes my summary.

MR. SOMERS: Thank you, Mr. Lewis.

If it's acceptable to the Commission, because we're putting our witnesses on as a panel, we are planning to divide that up by lawyers. I believe the Public Staff has the same arrangement. And Mr. Allen will present Ms. Williams, if that's okay?

CHAIRMAN FINLEY: All right.

DIRECT EXAMINATION BY MR. ALLEN:

Q Good morning, Ms. Williams.

A Good morning.

Q Would you state your name and business address for the record, please?

A My name is Veronica I. Williams. Business address is 550 South Tryon Street in Charlotte.

Q And in what capacity are you employed with Duke Energy?

A I'm a Rates and Regulatory Manager.

Q Can you describe briefly what your responsibilities are in that capacity?

A I'm responsible for providing regulatory support for retail and wholesale rates, and providing guidance on the Renewable Energy and Energy Efficiency Portfolio or REPS Standard.

Q Now, have you testified before the Commission previously?

A I have.

Q Can I assume that you do not anticipate this being the last time you're going to testify?

A I don't want to make any assumptions in that regard but right; correct.

Q Okay. Did you prepare and cause to be filed with the Commission on or before December 21, 2018, 12 pages of testimony?

A Yes, I did.

Q Are there any additions or corrections you wish

to make to that testimony?
A Yes. On page 2, line -- lines 9 and 10, there's an incorrect title. It says "Business Development Manager", that should say "Rates and Regulatory Strategy Manager".
Q And that is in the question to that -- the question that begins on --
A Correct, lines 9 and 10.
Q Does that conclude your corrections?
A Yes.
Q If you were asked the questions that appear in your prefiled testimony from the witness stand today, would your answers be the same as they appear in that prefiled testimony?
A Yes.
Q And are they true and correct to the best of your knowledge and belief?
A Yes.
Q Have you prepared a summary of your testimony?
A Yes, I have.
Q Could you please give that now?

CHAIRMAN FINLEY: So let's introduce into evidence first Ms. Williams' direct. The prefiled testimony of 12 pages of December 21, 2018, is copied into the record as though given orally from the stand.

(WHEREUPON, the prefiled direct testimony of MS. WILLIAMS is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

| | | |
|---|---|---|
| In the Matter of<br>Transfer of Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC | )<br>)<br>)<br>)<br>)<br>) | **DIRECT TESTIMONY OF VERONICA I. WILLIAMS** |

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

A. My name is Veronica I. Williams, and my business address is 550 South Tryon Street, Charlotte, North Carolina.

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

A. I am a Rates and Regulatory Strategy Manager for Duke Energy Carolinas, LLC ("Duke Energy Carolinas", "DEC", or the "Company"). Duke Energy Carolinas is a wholly-owned subsidiary of Duke Energy Corporation ("Duke Energy").

Q. **WHAT ARE YOUR RESPONSIBILITIES AS BUSINESS DEVELOPMENT MANAGER?**

A. I am responsible for providing regulatory support for retail and wholesale rates and providing guidance on Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") compliance and cost recovery for Duke Energy Carolinas and Duke Energy Progress, LLC ("Duke Energy Progress" or "DEP").

Q. **PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

A. I received a Bachelor of Science degree in Business from the University of North Carolina at Charlotte. I am a certified public accountant licensed in the state of North Carolina. I began my career with Duke Power Company ("Duke Power") (now known as Duke Energy Carolinas) as an internal auditor and subsequently worked in various departments in the finance organization. I joined the Rates Department in 2001.

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

A. Yes. I most recently provided testimony in Docket No. E-2, Sub 1175 regarding Duke Energy Progress' 2017 REPS compliance report and application for approval of its REPS cost recovery rider, and in Docket No. E-7, Sub 1162 regarding Duke Energy Carolinas' 2017 REPS compliance report and application for approval of its REPS cost recovery rider.

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

A. The purpose of my testimony in this proceeding is to support DEC's Application to Transfer Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC. I will specifically discuss the accounting order requested by the Company in connection with the sale of the Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals hydroelectric generation facilities (which, I will collectively refer to as the "Facilities" or "hydro units") and the basis for the deferral request.

**Q. PLEASE DISCUSS THE DEFERRAL ACCOUNTING THAT DEC HAS REQUESTED.**

A. The Company has asked the Commission for an accounting order for regulatory and financial accounting purposes authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the hydro units. The loss is calculated as the difference between the sale proceeds of $4.75 million and the net book value of the Facilities of $42 million, $0.2 million of plant material and operating supplies, $1.4 million of legal and transaction-related costs, and $1.6 million of transmission-related work required by the sale. The North Carolina retail allocable portion of the total estimated loss of $40 million is approximately $27 million.

DEC proposed to amortize the regulatory asset over a period of time and at the approved return, as determined in the next general rate case. At the time the regulatory asset is approved by the Commission, the cost of the Facilities will be removed from plant in service, the appropriate amounts reflecting the sale will be recorded as assets held for sale, depreciation of the assets will cease, and the estimated loss will be recorded in the regulatory asset approved by the Commission.

**Q. WHAT WOULD BE THE CONSEQUENCES TO THE COMPANY IF THE COMMISSION DID NOT APPROVE THE REQUESTED ACCOUNTING TREATMENT?**

A. Absent the accounting treatment requested, DEC would be forced to write off the North Carolina retail allocation of approximately $27 million for the loss associated with the sale of the facilities if DEC were to nonetheless complete the Transaction. In order to avoid that result, approval of the requested accounting treatment is a condition to closing the Transaction, so DEC would have no obligation to close on the sale if the accounting order is not approved.

**Q. WHAT DEFERRAL STANDARD DOES DEC RECOMMEND THAT THE COMMISSION APPLY TO ITS REQUEST?**

A. It is the Company's position that the two-prong test the Commission sometimes utilizes of considering (1) whether the costs in question are unusual or extraordinary in nature and (2) whether absent deferral the costs would have a material impact on the company's financial condition should not apply to the Company's request in this docket. This transaction is unique. In a previous case in Docket No. E-7, Sub 828[1], the Commission considered deferral and amortization of costs related to another unique set of facts – work performed to establish the GridSouth Regional Transmission Organization, which had been curtailed as a result of a change in FERC regulatory policy. In that case, the Commission noted that it "had generally decided requests for deferral and amortization of specific costs items by examining whether the costs in question are unusual and material and whether allowing the deferral and amortization request is equitable, taking into account the equities for both shareholders and customers." The Commission also decided that the costs in question were "clearly unusual and not part of the ordinary cost of providing service," and further noted that the amounts at issue were "clearly material," citing comparable past deferrals ranging from approximately $15 million to $40 million. However, the Commission's analysis went beyond the limited question of materiality. The Commission noted that the nature and scope of the exact terms and conditions of the deferral and amortization of any item of cost are committed to the Commission's sound discretion, This includes the

[1] The Commission's Dec 20, 2007, *Order Approving Stipulation and Deciding Non-Settled Issues* in Docket No. E-7, Sub 828.

consideration of equitable treatment for both shareholders and customers, which is an important question in the current case.

The Company respectfully submits that the net costs (i.e., loss) associated with the potential sale of the hydro units qualify for deferral consistent with the tests previously applied by the Commission in similar situations and such tests are still relevant today. The sale of generating assets by the regulated utility is certainly unusual and not part of the conduct of its ordinary course of business, and would not normally be reflected in any given general rate case. The loss associated with this sale is not immaterial in the context of other deferrals and costs itemized in general rate case proceedings. Finally, allowing the deferral and amortization of the prudently-incurred costs required to achieve the future benefits of lower costs of service provides an equitable balancing of the interests of customers and the Company's shareholders. Although the sale of the hydro units was conducted through a bid process, the sale of the units will result in a loss. Notwithstanding the loss from the sale, the testimony of Company witness Lewis demonstrates that the transaction will produce net benefits to customers over time as compared to DEC continuing to own and operate the units as it has done in the past. It is clear that customers received the benefits of the units while they were in service and under regulation. Because customers received the benefits of the units under regulation, it is appropriate that the loss resulting from the sale should be included in the Company's cost of service and recovered over a reasonable period of time. This is particularly true because customers will receive an ongoing benefit due to decreased cost of service in the future. If the units were to be sold at a gain, the Commission would expect that customers receive the benefit of all, or at least a portion, of the gain because the cost of the units was included in rates while the units were in service and under regulation. The same regulatory policy should be followed when the units are sold at a loss, particularly when the sale produces net benefits to customers over time.

Q. **DOES DEC BELIEVE THAT THE COMMISSION SHOULD GRANT THE DEFERRAL TREATMENT IT HAS REQUESTED?**

A. Yes. This is a one-time event that is not part of the ordinary course of doing business. The costs the Company seeks to defer and amortize have been prudently incurred and are material in amount. The transaction, once completed, will result in overall cost savings for customers. Absent a deferral and reasonable amortization period, the Company would be denied recovery of costs that benefitted customers and will continue to benefit customers in the future. Further, allowing deferral of the costs provides the necessary balancing of equities between customers and shareholders, which is consistent with the regulatory compact.

Q. **WHEN DOES DEC PROPOSE THAT THE AMORTIZATION PERIOD SHOULD BEGIN?**

A. In its comments filed on September 4, 2018 in this docket, the Public Staff supports DEC's request to establish a regulatory asset because of the benefits to customers resulting from the overall transaction. The Public Staff, however, recommends that the Commission require DEC to begin amortization in the month in which the Transaction closes, subject to reevaluation and adjustment in the next general rate case. In addition, the Public Staff recommends that the amortization period for the regulatory asset be set at approximately 20 years, which it asserts is the average remaining book life of the Facilities, but which should be subject to reevaluation and adjustment in the Company's next general rate case. (*Id.* at pp. 10, 12). Because depreciation on these assets is currently approved in rates, DEC agrees that it would be reasonable and appropriate in this instance to recognize amortization expense at the level of depreciation currently approved in rates until the time of its next general rate case, at which time DEC would address the appropriate amortization period for the remaining regulatory asset balance. As such, the Company proposes approval of the regulatory asset, with amortization beginning at the time the regulatory asset is recorded on the books, at a rate equivalent to the remaining 20-year life of the assets. Once established, the Company would plan to address the proper amortization period for the then-remaining regulatory asset balance in its next general rate case.

**Q. WHAT COSTS RELATED TO THE HYDRO UNITS WERE INCLUDED IN DEC'S LAST GENERAL RATE CASE, DOCKET NO. E-7, SUB 1146?**

A. Net plant balances were updated through December 31, 2017, and reflected in the revenue requirement in the Company's general rate case in Docket No. E-7, Sub 1146. Capital expenditures incurred and closed to plant in service through December 31, 2017 would have been included in the costs approved in the rate case. The Company's capital expenditures on the hydro units for the period 2015-2017 are detailed in the testimony of Company witness Lewis and on Lewis Exhibit No. 2 filed in this current docket. More than 95% of the 2015-2017 capital costs shown would have been included in net plant in rate base in the previous general rate case. The remaining capital costs were mostly associated with a project that was suspended pending the sale.

**Q. DESPITE THE FACT THAT THESE COSTS FOR THE HYDRO UNITS WERE CONSIDERED AND APPROVED DURING THE COMPANY'S LAST GENERAL RATE CASE, WHAT IS YOUR UNDERSTANDING OF THE PUBLIC STAFF'S RECOMMENDATION TO THE COMMISSION REGARDING ADDITIONAL FUTURE REVIEW OF THESE COSTS?**

A. In its comments, the Public Staff stated that it supports the transaction because of the substantial customer benefits it would provide, but indicated that it had questions about capital projects at the hydro units totaling approximately $18 million that were incurred and completed by DEC in 2015-2017, as well as approximately $865,000 budgeted or invested in 2018. The Company updated the information it provided to the Public Staff subsequent to the time the Public Staff filed its initial comments, which revised the total expenditures for the period 2015-2017 to approximately $17.3 million. In its comments, the Public Staff argued that the Commission should allow the Public Staff to investigate these projects further and that the question of whether it is reasonable for DEC to recover the full $27 million loss due to Transaction should "be preserved as an open issue until DEC's next general rate case when the reasonableness of recovery of the deferred costs will be addressed." (Public Staff Comments at p. 5). Although the Public Staff acknowledged that it and the Commission recently completed their investigations of the Company's retail electric rates and charges in the general rate case completed in Docket No. E-7, Sub 1146, it nonetheless asserted that the Commission should allow the Public Staff the ability to review the reasonableness and prudence of capital costs related to the hydro units again in the next rate case, because the Company's sale of the hydro units was "new information."

**Q. DO YOU AGREE THAT THE POTENTIAL SALE OF THE HYDRO UNITS CONSTITUTES NEW INFORMATION?**

A. No, I do not. The Company first met with the Public Staff to discuss the proposed sale of the Facilities on August 23, 2017 - - two days before DEC filed its general rate case application in Docket No. E-7, Sub 1146. Subsequent meetings were held with the Public Staff to discuss the proposed sale on February 6, 2018 and on May 9, 2018, both while the general rate case was pending. In addition to these meetings, the Company has responded to numerous formal and informal data requests from the Public Staff regarding the proposed sale of the hydro units. Subsequent to the filing of the Public Staff's comments, the Company also discussed and provided additional detail regarding the capital projects at issue as requested by the Public Staff.

**Q. DOES THE COMPANY BELIEVE IT IS APPROPRIATE FOR THE COMMISSION TO APPROVE THE PUBLIC STAFF'S REQUESTED**

**CONDITION TO ALLOW YET ANOTHER PRUDENCE REVIEW OF THE HYDRO UNITS' ALREADY-APPROVED CAPITAL COSTS IN THE NEXT RATE CASE?**

A. No. The Public Staff was well aware of the proposed sale of the hydro units before and during the last rate case. The Company believes that the Public Staff had an adequate opportunity to investigate the capital costs at issue. As Company witness Lewis explains in his testimony, these were reasonable and prudent capital investments made by the Company to ensure the safe and reliable operation of the hydro units and to comply with Federal Energy Regulatory Commission license requirements over the past 36 months. If the Public Staff had any questions about, or even challenges to, the reasonableness and prudence of such investments, its opportunity to raise them was in the Sub 1146 rate case proceeding. Furthermore, the Public Staff received ample detail in this current proceeding, both written and provided in comprehensive discussions with the Company, to ascertain the reasonableness of the capital costs. The Commission's Orders have meaning and bring certainty to the regulatory process. Commission Orders are reviewed and relied upon by other regulatory bodies, financial analysts and potential investors. Issues previously resolved by the Commission following review and hearing should not be subject to second guessing, except in the most extraordinary circumstances.

To allow the Public Staff to have the ability to review the incurrence of these costs yet again in the next general rate case through some sort of hindsight analysis - - especially when the Public Staff has agreed with the Company's decision to sell the assets for the benefit of customers - - would inject unprecedented and impermissible uncertainty into the determination and recovery of just and reasonable costs. Finally, DEC's requested accounting order would not preclude the Commission or parties from addressing the reasonableness of the deferred costs arising from the Transaction itself (*i.e.*, legal and transaction-related costs) in the next general rate proceedings filed by DEC.

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

A. Yes.

BY MR. ALLEN:

Q Please give your summary.

A Okay.

(WHEREUPON, the summary of VERONICA I. WILLIAMS is copied into the record as read from the witness stand.)

My Direct Testimony discusses the accounting order requested by the Company in connection with the sale of the Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals hydroelectric generation facilities and the basis for the deferral request. The Company has asked the Commission for an accounting order authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the hydro units. The loss is calculated as the difference between the sale proceeds of $4.75 million and the net book value of the Facilities of $42 million, $0.2 million of plant material and operating supplies, $1.4 million of legal and transaction-related costs, and $1.6 million of transmission-related work required by the sale. The North Carolina retail allocable portion of the total estimated loss of $40 million is approximately $27 million.

DEC proposed to amortize the regulatory asset over a period of time, and at the approved return, as determined in the next general rate case. At the time the regulatory asset is approved by the Commission, the cost of the facilities will be removed from plant in service, the appropriate amounts reflecting the sale will be recorded as assets held for sale, depreciation of the assets will cease, and the estimated loss will be recorded in the regulatory asset approved by the Commission.

If the Commission does not approve the accounting treatment, the Company would be forced to write off approximately $27 million associated with the sale of the facilities. To avoid that result, approval of the requested accounting treatment is a condition to closing the Transaction.

The Company believes that the two-prong test the Commission sometimes utilizes should not apply here, because this transaction in unique. In a 2007 order involving another unique circumstance, the GridSouth Regional Transmission Organization, the Commission decided that the costs in question were "clearly unusual and not part of the ordinary ~~cost~~ course of providing service," and further noted that the amounts at issue were "clearly material," citing comparable past deferrals ranging from approximately $15 million to $40 million. However, the Commission's analysis went beyond the limited question of materiality. The Commission noted that the nature and scope of the deferral and amortization of any item of cost are committed to the Commission's sound discretion.

The net costs (i.e., loss) associated with the potential sale of the hydro units qualify for deferral consistent with tests previously applied by the Commission in similar situations, and such tests are still relevant today. The sale of generating assets is not part of the conduct of a utility's ordinary course of business and would not normally be reflected in any given general rate case. The loss associated with this sale is not immaterial in the context of other deferrals and costs itemized in general rate case proceedings. Finally, allowing the deferral and amortization of the prudently-incurred costs required to achieve the future benefits of lower costs of service provides an equitable balancing of the interests of customers and the Company's shareholders.

Although the sale of the hydro units was conducted through a bid process, the sale will result in a loss. Because customers received the benefits of the units under regulation, it is appropriate that the loss resulting from the sale should be included in the Company's cost of service and recovered over a reasonable period of time. This is particularly true because customers will receive an ongoing benefit due to decreased cost of service in the future. If the units were sold at a gain, the Commission would ensure that customers receive the benefit of all, or a portion of, the gain because the cost of the units was included in rates while the units were in service and under regulation. The same regulatory policy should be followed when the units are sold at a loss, particularly when the sale produces net benefits to customers over time.

DEC agrees with the Public Staff that it would be reasonable to recognize amortization expense at the level of depreciation currently approved in rates until the time of its next rate case, at which time DEC would address the appropriate amortization period for the remaining regulatory asset balance.

The Public Staff has also asked for the right to review the prudence of capital costs related to sale of the hydro units in the next rate case, citing the sale as "new information." I believe that the Public Staff has had an adequate opportunity to investigate the capital costs at issue, both in this proceeding and also in the rate case filed in Docket No. E-7, Sub 1146. The Company first discussed the proposed sale with the Public Staff on August 23, 2017, two days before DEC filed its application in the Sub 1146 rate case. Subsequent meetings to discuss the proposed sale with the Public Staff were held on February 6, 2018 and on May 9, 2018, both while the rate case was pending. Additionally, the Company has responded to numerous data requests from the Public Staff regarding the proposed sale. To allow the Public Staff to review these costs yet again in the next rate would inject unprecedented uncertainty into the determination and recovery of just and reasonable costs. Finally, DEC's requested accounting order would not preclude the Commission or parties from addressing the reasonableness of the deferred costs arising from the transaction itself (*i.e.*, legal and transaction-related costs) in the next rate proceeding filed by DEC.

DEC believes the Commission should grant the deferral treatment, because this is a one-time event and not part of the ordinary course of doing business. The costs the Company seeks to defer and amortize have been prudently incurred and are material in amount. The transaction, once completed, will result in overall cost savings for customers. Allowing deferral of the costs provides the necessary balancing of equities between customers and shareholders, which is consistent with the regulatory compact.

This concludes my summary.

BY MR. ALLEN:

Q One quick question for clarification. If you'll look on page 2 of your summary, line 3, you read that line to say "unusual and not part of the ordinary course of providing service". The typed page says "cost", though "course" is the right word to use there and that should be substituted; is that correct?

A I would have to look back at my testimony to see because that was a direct quote from the GridSouth Order. I'd have to look back at my testimony to see. I think what's in my testimony is correct in that it cites the GridSouth Order.

Q Okay. That's fine. Thank you.

MR. SOMERS: Mr. Chairman, I would just note for the record that portions of Mr. Lewis' testimony and exhibits, as well as portions of the Responses to Public Staff Data Requests Set 6 and 7 which are in the two late-filed exhibits, contain confidential information. There are folks in the room who have not signed Confidentiality Agreements, including Ms. Ross, and we've discussed a procedure for that. So I'll just note, if we get into confidential information, we may need to clear the room. But, with that, these witnesses in the panel are available for Commission questions.

CHAIRMAN FINLEY: We'll put it on the lawyers, to the extent confidential information is being discussed, to alert us to that and we'll try to take appropriate steps.

MR. SOMERS: Thank you, Mr. Chairman.

CHAIRMAN FINLEY: So the witnesses are available for cross examination.

MR. SOMERS: Based on the agreement of counsel we are waiving cross and we'll go to Commission questions. Counsel will reserve the right to ask questions based on Commission questions.

CHAIRMAN FINLEY: Questions by the Commission?

EXAMINATION BY COMMISSIONER CLODFELTER:

Q Mr. Lewis, in 1996 I think the testimony is, the Company disposed of a number of other small hydro facilities. What differentiated -- at that time what differentiated this group from the ones that were sold in 1996?

A (Mr. Lewis) Commissioner Clodfelter, yes, Duke did dispose of some stations in 1996. Back in 1988, there was an agreement when Duke acquired the Nantahala Power and Light system. There was an agreement that Duke would not interfere with the operation of Nantahala Power and Light for 10 years. That didn't expire until 1998. Those assets, the Franklin, Mission, and Bryson assets, might have been candidates before that divestiture in 1996, had they been available and incorporated into the Company; however, they were not. Tuxedo and Gaston Shoals at that point in time with the forecast future in terms of energy values, et cetera, those were considered profitable at that point in time. That was a long time ago.

Q Thanks for that history. I didn't have it and I appreciate that you're sharing it with me. The license on Gaston Shoals was renewed -- or they got license application, renewal application was filed in the early '90's, right?

A Yes, sir.

Q And, for the others in this package, the renewal license application was filed in 2000; is that correct?

A The Notice of Intent had to be submitted in January/February timeframe of 2000. Even though we didn't receive the license until 2011 --

Q 2011, right.

A -- the groundwork had been laid with Nantahala Power and Light negotiations with stakeholders, et cetera, to figure out their intended path, whether they were going to continue operating the units or pursue a surrender, a license surrender path.

Q And at that point the 10-year hold steady had expired --

A Yes, sir.

Q -- if I can call it that. Okay. And it's my understanding that the Company has not been able to locate any analysis that was done in 2000 or that timeframe about the cost of benefit of retaining these units; that's correct?

A That is correct, yes. I suppose the question has come up about our holistic evaluation of the units, and I suppose the best way to address that is that the Company did look at the options available to us. Basically, as you are the holder of a FERC license, you are the holder of an obligation and one that you cannot walk away from. The choices that you have in front of you are to continue operating the units and meet the compliance obligations set forth in the license, number one. Number two, to surrender that license which has significant ramifications that appear more like a re-licensing proceeding where you have to go and negotiate with stakeholders all over again, mind you at Nantahala that was more than 20 stakeholder groups involved in deciding the future course of these assets. You would be exposed to significant costs associated with the environmental costs, environmental assessments potentially required to remove the dams - remove the dams, remove the sediment, dispose of the sediment. A lot of other things come into play when you go into a license surrender situation. If the FERC does not require you to remove the dam, you still will be obligated to operate that station with compliance with that license. So all you have effectively done when you retire the units is you've retired the revenue-making portion of that. You haven't gotten rid of any of the risks of dam safety or the compliance risks.

Q I think you've just answered the next question I was about to ask, which was what in the world does a "holistic evaluation" mean. I think you just gave me one because I --

A Yes. Well, the third option is to be able to transfer that obligation to a willing, capable, and competent entity that can assume the responsibilities of that license.

Q Do you know if that option was explored in the 2000 timeframe?

A In the 2000 timeframe I do not believe that it was for those Nantahala assets. As I said, they had already begun the groundwork, the negotiations, and had started discussing with people their intended course of action and that was to continue operation.

Q Ms. Williams, I have a question or two for you. A lot of the disagreement between the Company and the Public Staff seems to be, if I could distill it down in my words not yours, is who knew what, when, and what did they do about it. So I want to ask a couple of questions about who knew what, when, and what did they do about it.

COMMISSIONER CLODFELTER: I'm going to refer, Mr. Somers, to a couple of pieces in the late-filed exhibits but I'm not going to -- I think I'm going to refer to them in ways that don't disclose anything that's confidential in them, so you listen to me to be sure that I'm not doing that.

MR. SOMERS: Yes, sir.

BY COMMISSIONER CLODFELTER:

Q Ms. Williams, in the confidential late-filed exhibits there were a series of, looks like they were PowerPoint or slide presentations that were given by the Company to the Public Staff in the fall of 2017 and the early part of 2018. Are you familiar with those?

A (Ms. Williams) And, if I may, I'll need to -- oh, I'm sorry. (Pulls mic closer)

Q Yes, ma'am.

A If I may, I'll have to defer to Witness Lewis who was involved all the way through 2018 with the Public Staff discussing these.

Q Well, then why don't I refer my questions to Mr. Lewis and then if you want to add that's fine. I wasn't sure which of you --

You heard my question?

A (Mr. Lewis) Could you repeat the question, Commissioner?

Q Yes. Are you familiar with the three slide presentations that look like the Company gave --
A Yes, sir.
Q -- to the Public Staff in the fall --
A Yes, sir.
Q -- and the early spring of 2017 and 2018?
A Yes, sir.
Q And I've looked particularly at those and the one I'm going to ask you about is the one that was in February. It looks like there was a discussion in the February of 2018. And as I read it -- I don't know if you have that in front of you. Do you have it available?
A I'm working on it.
Q Okay. Let me give you time to do that. I mean, I'll ask you about page 5 in that February 2018 presentation.
A Okay.
Q And, again, I'm going to not quote from it or say anything that I think would be confidential. But my take away from reviewing that slide presentation is that as of that date the Company had put the projects out for bid, had received bids, had decided to accept a bid, and was

beginning to negotiate an Asset Purchase Agreement as of that date. I'm really focused on getting my timetable.

A I'm with you there. I believe, I believe that is correct. I would have to defer to Manu Tewari to make sure, absolutely sure that we had in hand as you described.

Q Mr. Tewari was in the meetings with you and the Public Staff?

A Yes.

Q Was he the other --

A Yes.

Q -- person?

A He was the person involved with the transactional side of this agreement.

Q Okay. And then I look at page 6, the next page in that very same presentation, and again I'm not going to talk about any specifics that appear on than page, but my take away -- I want you to tell me if I'm correct. My take away from that page is that as of that date the Company had a pretty good idea that the sale was going to result in a loss.

A Absolutely.

Q And had some range of estimates of what the size of that loss was going to be?
A Yes.
Q At that date?
A Yeah. I think we had an idea. We probably -- we did not have a binding, a binding bid at that point in time. And, if you're familiar with the process of buying and selling, the non-binding bids typically come in and are often gloriously optimistic such that as they perform their due diligence that they realize some things that need to be corrected in their estimation or adjustments made in their bid prices and they frequently go down.

MR. SOMERS: Commissioner Clodfelter, if I may just --

COMMISSIONER CLODFELTER: I'm done unless I've messed up already on confidential.

MR. SOMERS: No, sir, I just want to -- no, sir, not at all. I just want to make sure we're clear in the record which date and which slide we're talking about.

COMMISSIONER CLODFELTER: Well --

MR. SOMERS: The slide 6 that I believe you just asked Mr. Lewis about --

COMMISSIONER CLODFELTER: Yes.

MR. SOMERS: -- I believe is from the May 2018 slide presentation.

COMMISSIONER CLODFELTER: I don't actually have here on my copy, Mr. Somers, a date. And if you tell me that May is the date of that one then I'll take May as the date.

MR. SOMERS: I will represent to you that May is the date of the slide that you've been asking about.

COMMISSIONER CLODFELTER: For some reason the copy I have doesn't show which of the three meeting dates it was.

MR. SOMERS: And, if I may, I brought extra copies of these two late-filed exhibits. I'd be happy to hand those up.

COMMISSIONER CLODFELTER: I'll take your representation that it was May. That's all. I really don't even need them handed out.

MR. SOMERS: Thank you.

COMMISSIONER CLODFELTER: Thank you. That's all I have.

MR. DROOZ: Excuse me. We would suggest

that in conjunction with DEC that we, following the hearing, identify for the Commission the date of each of those separate slide decks so we won't have any confusion.

COMMISSIONER CLODFELTER: That would be helpful.

MR. SOMERS: We'll do it on my redirect.

MR. DROOZ: Thank you.

EXAMINATION BY COMMISSIONER MITCHELL:

Q Good morning.

A (Mr. Lewis) Good morning.

Q Mr. Lewis, I believe these will be questions for you.

A All right.

Q The Public Staff's testimony discusses several small hydro units that the Company sold in 2018. Those are the Rocky Creek Units, the Great Falls Units, and the Ninety Island Units (sic). Are you aware of those units?

A Yes, ma'am.

Q And I have it right that the Company sold those in 2018?

A No, we retired those units.

Q That's what I meant. I'm sorry. Retired, yes.

A Yes.
Q Thank you for correcting me.
A Yes.
Q Retired them. So do you know if the decision to retire those units was supported by the same type of analysis that the Company performed when investigating? Did they invest the potential divestiture of the units that we're discussing today?
A There is a market difference in the situation of those units. The units at Great Falls share a dam with a more modern hydro station that we call Dearborn Hydro Station. That's very unique in Duke's system that that occurs. At Rocky Creek, it shares a dam with Cedar Creek Hydro Station, which is a more modern hydro station as well. By being -- by having such a level of redundancy with the more modern stations, these older stations 19 -- 1907 at Great Falls and 1909 at Rocky Creek, they seldom had enough flow to run. And we waited until the relicensing for the Catawba water relicensing in 2015 to verify that there was probably never going to be a situation where it would make good sense for our customers

to keep those units operational and rehabilitate them as they were needed to be done. So those -- those situations are very different from the, say Bryson, Franklin and Mission stations where you do not have any excess capacity available, you are relying on the units that you have, all of the units that you have at those stations in order to pass normal flows. And FERC would consider that to be the case that these are not excess capacity units at Mission, Franklin and Bryson; whereas, they would allow us to retire the units at Great Falls and Rocky Creek.

Now at Ninety-Nine Islands, the other station that you referred to, there are six units at Ninety-Nine Islands that are very similar. They're old horizontal units from basically 1910-1911 vintage. When two of those units are retired the dam will again remain in place. So you're not -- you'll have to have that dam in place for the remaining four units that will stay in operation. Again, the last two units were basically excess units that seldom had the opportunity to run; again, not the situation with the others. And to retire the two units at

Bryson, or the two units at Franklin, three units at Mission, one would have to go through the license surrender process which opens up the whole specter of potentially dam removal, sediment removal, all of the environmental assessments, mitigation studies, et cetera, et cetera, et cetera.

Q Okay. Just to be sure I -- that's a very helpful explanation but to be sure that I understand. The dams at Rocky Creek and Great Falls and it sounds like at Ninety-Nine as well will remain --

A They will remain used and useful.

Q -- for those more modern --

A Yes.

Q -- units that are still in --

A That's correct.

Q Okay. I believe I understand from the testimony filed in this proceeding, and I think you confirmed today, that the relicensing of at least several of the units involved today, that process began in 2000 and concluded in 2011?

A Basically the process of working with stakeholders in the community was earlier than even 2000. So the actual official filing of

Notice of Intent with FERC occurred in January or February of 2000.

Q And you may have already -- you may have already answered this question when you were -- when Commissioner Clodfelter was asking you several questions.

A Sure.

Q But prior to entering in the relicensing -- into that relicensing process, you all didn't do an evaluation regarding divestiture, you just initiated the relicensing process?

A What -- again, what would have been done with Nantahala Power and Light is look at those three options. The option of you have an obligation so you either continue operation and within license compliance you go down the path of license surrender which is very difficult, time consuming, and very expensive, or you look to transfer that license to somebody who may be willing, capable of assuming all of the responsibilities and obligations of that license. Typically what you see is that if a license is not current or is about to be expired, there are not a lot of people interested in perhaps taking on a license where you may end up having to remove the dam. That's not a very attractive business case to many people.

Q So just to follow up there, because Duke undertook the relicensing process though, I assume that means the Company was going to follow through with the outcome of that process? I mean, there --

A That's correct essentially.

Q So there -- so at some point along the way a decision was made to continue to own and operate pursuant to the new license?

A Yes.

Q And --

A You don't exactly know what those new license conditions will be.

Q Right.

A And in this particular case those license conditions ended up being more onerous than one would have anticipated but that's what we ended up with in 2011.

Q And do you know the point in time at which that occurred, that Duke determined that it would continue with the relicensing process and --

A Basically that commitment had been made in the Nantahala Power and Light days --
Q Okay.
A -- that we were going to go forward with that strategy. Now, in my opinion, Nantahala Power and Light made the correct decision in that day and I would say today they've made the correct decision.
Q What do you mean by "today they've made the correct decision"?
A Yeah.
Q Can you explain that last --
A Yeah. I would not -- I would not change that decision today based on what we know about the choices that they had, if that makes any sense.
Q Okay. I have a few questions for you about the work that -- the more recent work that has been done on the facilities that are involved --
A Yes.
Q -- in this proceeding today; that's sort of the 2014 through 2017 timeframe. Were you involved with that work with those individual projects?
A Some of that, yes.
Q And were you involved in securing the funding or

the resources that were necessary to --
A At times some of that, yes.
Q And does Duke have a formal process whereby there's competition? I use that word loosely, but you have to request funding?
A Certainly we have to request authorization.
Q And can you explain to us what that evaluation process and that request process looks like?
A Well, clearly on small units like this we would be looking at is this going to be a compliance obligation. There's not necessarily going to be a robust economic situation where you say, oh well I can do this, but we take compliance very seriously. And when there's a compliance obligation, that kind of moves to the top of the list with things like safety and environmental protection.
Q Okay. And so were all of the projects that were undertaken in recent years compliance related or compliance driven?
A For the most part, absolutely, yes; compliance driven would be a good way of phrasing that.
Q And compliance with what law or regulation?
A Well, FERC has license obligations in terms of

things like the minimum continuous flows or lake level restrictions that become a part of your license. FERC also has a Division of Dam Safety, and that's where they have significant involvement and significant powers at FERC that the regional engineer can tell you to pretty much do anything that they deem to be reasonable or desirable in order to safeguard the public.

Q Does the process of evaluating or securing funding for projects include some type of Net Present Value analysis?

A Depends on what that -- depends on what that project is. Again, if it is a economic-based project, yes. If it is a safety process or compliance-based process, probably not.

Q So did any of the projects that were completed in the 2014, 2017 and '18 -- 2017 timeframe involve any sort of economic analysis?

A For these small stations, there would be very few. They would be, again, compliance driven; compliance, safety, environmental protection.

COMMISSIONER MITCHELL: Okay. So that's all I have. Thank you.

CHAIRMAN FINLEY: Other questions? Anybody else have questions?

(No response)

CHAIRMAN FINLEY: I've got a few.

EXAMINATION BY CHAIRMAN FINLEY:

Q The Tuxedo and Gaston Shoals projects, how did Duke come to own those? Did it build them or did it buy those, just out of curiosity?

A Chairman Finley, I believe those were acquired. I believe all of these stations actually were acquired, including the Nantahala Power and Light as we mentioned in the earlier transaction, so they were acquired. I think Gaston and Tuxedo were perhaps acquired in the '20's maybe '30's.

Q You don't remember whom they were acquired from?

A I do not.

Q So the application for the deferral was filed with us on July 5, 2018. When did you know you had a definitive agreement with Northbrook?

A When you have a binding bid and a contract; and that became May 15, 2018.

Q And you are aware that the Commission has various tests that it has applied over the years as to when it looks at requests for deferrals. And one of those requests is that the, depending on what test you apply is that the request for deferral should be somewhat contemporaneous with the event that causes the need for deferral. Are you aware of that?

A Okay.

Q On these FERC evaluations, were the fish and wildlife folks involved?

A Yes.

Q And you mentioned minimum continuous flows; I mean, I confess I traipsed it through the woods on some of those Nantahala projects, some of the bigger ones with the fish and wildlife people and they're pretty strict. So the minimum --

A Yes, sir.

Q -- continuous flows would have to do with maintaining this trout and fish inhabitant, habitations downstream from the --

A Yes. Yes. Also, the lake level restrictions were quite strict. Most of the year we're required to keep a lake within a tenth of a foot or one and quarter inches of being full. That's quite a challenge when you have -- as we all know we live in the south and there are summer thunderstorms which bring in tremendous amounts of inflow, tremendous fluctuations in flow, and yet you're suppose to be able to maintain these bands. So you have to have a lot of equipment that was not available in 1920; equipment that was to be very, very responsive on things like flood gates as well as the unit operations themselves.

Q So some of these projects had storage?

A Not really to speak of, Chairman Finley. The largest project we have has about a 300-acre -- 300 surface acres, excuse me, which is quite small in relative terms compared to Lake Norman's 32,500 acre lot.

Q You're talking about the ones that are subject to this request?

A That's correct. The ones -- the five that we're speaking of are quite small.

Q The larger ones were Thorpe and Nantahala that had the substantial amount of storage?

A Yes, sir. Yes, sir. If you're familiar with those, those are significantly larger.

Q So do you have -- but there are lakes behind the dams on some of these even though there's not much storage?

A That is correct, they're pretty small lakes. So like I said, less than 300 acres on all of the five in discussion. Also, I might add that most of them through the years have become laden with sediment. Thinking back to the 1920's, our agricultural practices and forestry practices might not have been the best and, therefore, a lot of these stations have a lot of sediment in them.

Q But, so the concern over the lake levels, would that have to do with residents living around the lake or were they large enough for any recreational activities?

A No. There's not a lot of recreational activities associated with these lakes with the exception of Tuxedo which is a highly developed lake summit; it's highly developed. And there are white water interests down river on the Green River of Tuxedo, but the rest of the lakes are small and don't have a lot of recreation interest.

Q Do you recall whether or not anybody with FERC or with the fish and wildlife people were recommending that the dams be taken out?

A I don't -- I was not a part of those actual negotiations, but I don't recall at that point that any of the dams were recommended to be taken out. During the relicensing process you may recall a very small dam called Dillsboro that they did recommend and order us to remove that dam. It was only a 10 or a 12-foot high dam, a very small dam, and we did remove that but only after lengthy litigation and studies were required. So we did surrender that license but it was quite painful.

Q The buyer of this system obviously believes that it can operate these projects in an economical way --

A Yes, sir.

Q -- of course, they paid a lot lower price than you had in it.

A Yes, sir.

Q Can you comment on their ability to operate these plants financially and successfully when you were unable to?

A I think Northbrook has demonstrated their ability as they have been in the Carolinas for quite some time. Their capability and competency I think is clear to FERC. FERC has approved this transfer.

They would not approve a transfer if they did not believe that Northbrook was capable or competent in order to execute and operate these successfully.

Q Financially successful.

A Yes, sir.

Q So you in your present value presentation, I'm going to try to ask you a question without getting into any specific details, but there are periodic expenses that you project and then the bigger one at the end. Please explain that bigger cost at the end of the present value analysis?

A So most of the costs associated with that were related to -- well, first of all, it was a very exhaustive review using subject matter experts within the Company, experts in dam safety, experts in licensing and relicensing, and experts in operations and maintenance. And so some of those may have been associated with a next interval of licensing that would be required for plants in 2041. You would begin the relicensing expenses in say 2036 associated with getting your Notice of Intent, et cetera, et cetera, and filing your application well in advance of that. I can review this if you had specific questions about that.

Q I have no specific questions about that.

And so, Ms. Williams, it's the Company's position that this typical test that the Commission employs in usual situations having to do with impact on the Company's finances and the unusual nature of it is a little bit unnecessary in this case. You were looking through the Commission's GridSouth Order and believe that that's more of a better precedent in this case; is that right?

A (Ms. Williams) Yes.

CHAIRMAN FINLEY: Other questions by the Commission? Questions? Yes, ma'am.

MS. MITCHELL: Just one more question.

FURTHER EXAMINATION BY MS. MITCHELL:

Q Mr. Lewis, just to follow up on a question Chairman Finley asked you, and I'm not going to use specific numbers because I don't want to go into confidential information but this question pertains to the PVRR.

A (Mr. Lewis) Yes.

Q So there is sort of a steady spend through 2036 and then there's a much larger spend projected subsequent to that date. Can you explain to us what that larger spend relates to?
A Yes. For instance, there may have been an expected licensing probability. You're going to have to do something at the end of the next term, whether that would be to initiate the license surrender, to continue on, et cetera, et cetera. So those costs were identified in the PVRR.
Q And so it's not -- it could be any number of options not necessarily just decommissioning and retirement?
A Yes. I think that's correct, what you're asking.
Q Okay. And one last follow up for you on a question from the Chairman. Can you help us understand to the extent that you know why Northbrook, why this deal makes sense for Northbrook, just put it sort of contextual terms, where Duke concludes that it's uneconomical to continue to operate these facilities? Where is the difference in the opinion or analysis of the two parties?
A Well, anything that I would say as to how

Northbrook does that would be a little bit speculative on my part.

Q I understand that.

A Clearly they have been successful in the past. They are a small hydro niche operator and they are impressive enough that FERC considers them a good licensee because they are accepting the transfer.

Q But you can't think of specifically where there may be a difference in the --

A There's absolutely differences in terms of what a large corporation is required to do versus what a small entrepreneurial company can do. Everything from the way that we have to procure things and we have very prescriptive procurement methods that may end up -- we try to make sure that our contractors operate safely and in a quality manner. So they may not have quite as prescriptive requirements for the contractors. In other areas, certainly in questions of safety, we have a very aggressive safety program trying to keep our employees safe and our contractors safe. It's good business. But I would be remiss if I didn't mention that when you're a large corporation, if an employee gets hurt or claims to be hurt, there are a cadre of people wanting to help that individual with liability issues. So that's simply not going to be the case when you're talking about a small entrepreneurial company.

COMMISSIONER MITCHELL: Okay.

CHAIRMAN FINLEY: Commissioner Brown-Bland.

EXAMINATION BY COMMISSIONER BROWN-BLAND:

Q And just one last question, Mr. Lewis. Is the net benefit of this transaction as between the actual total benefits received as that number is derived from the PVVR analysis and the difference between the loss of sale; is that net benefit zero?

A I'm not sure I understand your question there. The net benefit is not zero. The net benefit from the PVRR analysis looked at three scenarios. One of them was very optimistic I will say, and the other two were classified as more probable or containing more of the higher risk. Not all of the risks that we could forecast were even included in that, but all of them showed benefit to the customer in all three scenarios.

COMMISSIONER BROWN-BLAND: All right. Thank you.

CHAIRMAN FINLEY: Questions on the Commission's questions? Mr. Dodge.

MR. DODGE: Thank you, Chairman Finley.

EXAMINATION BY MR. DODGE:

Q Good morning, Mr. Lewis and Ms. Williams. A couple of follow-up questions first on the questions Commissioner Clodfelter raised about the analysis done by the utilities back in 1996. Mr. Lewis, I think you responded that a forecast was done at that time for some of the facilities that indicated the facilities would be profitable at that time?

A (Mr. Lewis) Yes, I believe so.

Q And as you indicated there's not -- the Public Staff did request copies of those PVRR analysis or cost benefit analysis from that time but none were --

A We were unable to locate any.

Q Would you anticipate that the FERC license requirements were part of that forecast at that time in 1996?

A Yes.

Q So the profitability of those would have been evaluated relative to the potential risk of licensing costs?
A Yes. You have to bear in mind that 1996 was a very long time ago. The forward view forecast of what revenues would be able to be gained from hydro stations or any stations were different than what we might see today.
Q Thank you. Do you have a copy of the late-filed exhibits with you? I was going to refer to the Company's Response to Data Request 6-4(g)?
A Yes. What page are you looking here?
Q This is --
A 6-4?
Q -- 6-4(g), yes. And I just wanted to -- do you see that question at the bottom of the page there, the response at the bottom? It's page 3 of 3 at that point. I wanted to refer you specifically to the last two sentences in the Utility's response there. It states that *we made FERC aware that the Company intended to postpone hydro unit rehabilitations until it received the New Licenses* --
A Yes.

Q -- *which would provide certainty of the applicable requirements -- applicable requirements. Cost evaluations at this point were not done because the Company felt it would not be prudent to rehabilitate prior to having certainty of the requirements that would have to be met.*

A So you're trying to understand that.

Q So at that time the Utility indicated that it did not have certainty yet it chose to proceed without information on what those assumptions might have been, what those FERC costs or licensing requirements could have been.

A That's correct. The deferral that we're talking about there is, as we mentioned earlier with the testimony, the discussion with Mr. Clodfelter and Mr. Finley -- Commissioner Finley, we were in the process of the licensing process for the Nantahala assets and it took an exceedingly long time, much longer than anyone would have anticipated. During the period of time around 2008-2009, some of the smaller assets which have now been in service going on 90 years had issues that were causing them more and more forced outages. Rather than beginning rehabilitation for those particular units we told FERC, or we asked them, that we didn't feel like it would be appropriate to spend a lot of the customer's money to rehabilitate units not knowing what the requirements of that new license might be up to and including dam removal. We would look very foolish to have spent a lot of money on the units and then be told you have to remove the dam, and obviously it would be a different dynamic with that. So we asked to defer until we had conditions of license certainty then we would continue as we had already said in our Notice of Intent that we would continue operation of those units.

After we got the licenses in 2011, we began to do engineering and a program to begin fixing and meeting our obligations for those units at those locations. They allowed us to stagger the work because obviously you've got a lot of work to do and you can't just snap your fingers and do it all at once. So after we received the license in 2011, projects began mostly in -- after the engineering phase in 2013, '14, and '15.

Q Thank you. And you mentioned there are conditions of license certainty. That's as you indicate when the license was granted in 2011 that provided, but between the Notice of Intent and receiving that license there's not an opportunity to reevaluate based on the information that's been learned about the license requirements?

A You really don't have certainty until you actually have that license in hand. And having a situation where you're kind of back tracking on your commitments to the regulator is probably not an area we want to go in. We also have 29 other hydro stations of much greater significance than these that we have to deal with the same regulators, and being noncompliant and not having a plan to get in compliance is not a good position to be in with any regulator.

Q Thank you. Chairman Finley and Commissioner Mitchell asked a few questions about the PVRR. And I'm not going to get into any specific dollar amounts in there either but they did refer to some of the assumptions about relicensing costs that may -- or other options that may be explored at the end of the --

A Yes.

Q -- license period. So at this point Duke does make assumptions about the cost of relicensing and those FERC license requirements in conducting its PVRR analysis?

A Yes. I believe they're outlined clearly in the PVRR and the footnotes associated with that.

Q But again, there's no certainty at this point as to what those requirements would be?

A No. No, any time we forecast out 20 years that involves a degree of uncertainty. I hope every one understands that.

Q With regard to the current PVRR, your testimony indicated that the decision to move forward with the market test was in May 2017. When was the PVRR analysis conducted for the market test?

A The -- I think the PVRR that was submitted was probably in about February of 2018. It was updated to reflect the removal of the Queens Creek station.

Q Just to -- so following up on that was -- and when the market test decision was made in May of

2017, Queens Creek was included in the analysis?
A The early analysis, yes, it was.
Q And do you know when that PVRR analysis including Queens Creek was completed?
A I don't have that off the top of my head, no.
Q So moving to just a couple of follow-up questions on Commissioner Clodfelter's discussion about the slide presentations made to the Public Staff. I wanted to confirm and I -- Mr. Somers indicated he's going to maybe do some clarification on this on redirect as well. With regard to the February 2018 slides, this is slide 5 of the February 2018 slide deck, it indicates -- I'll give you a moment. I believe it's titled *Next Steps* if you see that one, slide 5.
A February 2018, okay. Yes, sir.
Q I just want to note the first bullet indicates that Next Steps *continue to support potential buyers due diligence to receive binding offers.* So as of February 2018, the Utility had not received any binding offers?
A I believe that's correct; only non-binding offers at that point.
Q And then it continues, the third bullet also

makes that point, *work towards receiving binding bids by mid-March with early April regulatory PURPA filings*?

A Correct.

Q And as you indicated the contract with Northbrook was signed in May of 2015?

A Good for one year. May 15th --

Q I mean, sorry, May of 2018.

A May 15th of 2018, yes.

Q Excuse me. And just to a couple of points with regard to the February slides, there's no information indicated in the February slides about the magnitude of the potential loss that customers would experience as a result of the sale is there?

A I don't believe there is a magnitude shown in here, but it was known that there was going to be a loss on sale.

Q And just as kind of a point of reference time-wise, you may have not been involved in the recent DEC rate case proceeding in Docket E-7, Sub 1146, but would you agree subject to check that this presentation occurred two weeks after the Public Staff filed its testimony in that rate case?

A I am not familiar with what you're saying there. This is my first hearing so I apologize for not being able to answer that.

Q Sure. And then the slide that you, I believe you referred to that had the magnitude of the loss information that was in response to a question from Commissioner Clodfelter, that was included in the May 2018 slide deck, correct?

A Yes, sir; yes.

Q And again, subject to check, would you agree that that presentation was given to the Public Staff after proposed orders had been filed in the most recent DEC rate case?

A Again, I'm not aware of when the orders were filed. I can vouch that this was presented on the date of the show.

MR. DODGE: Thank you.

MR. SOMERS: Mr. Chairman, I have several questions, if it's all right. I'm just going to ask Mr. Allen to help me and hand out a copy of the DEC and Public Staff partially Confidential Late-Filed Exhibit Number 1 that's been referenced from Commissioner Clodfelter's questions and Mr. Dodge. I think it just might be helpful if we all had access to that. This is confidential. I'm going to ask some questions at the beginning that don't get into that, but at some point we are going to need to clear the room.

CHAIRMAN FINLEY: Do you need to mark this or is it already --

MR. SOMERS: It's already in evidence but I'll just note for the record this is again the DEC and Public Staff partially Confidential Late-Filed Exhibit Number 1, which is Duke's responses to the Public Staff's sixth set of data requests.

RE-EXAMINATION BY MR. SOMERS:

Q There were a lot of data requests in this case weren't there, Mr. Lewis?

A There were an incredible number of data requests?

Q How much time did you spend answering Public Staff's questions?

A I spent more time answering questions on the three Nantahala assets than I had spent at those plants in my entire career.

Q Now, Commissioner Clodfelter asked you some questions about this holistic concept that the Public Staff introduced in their testimony; do you recall that?

A Yes, sir.

Q And I -- to move this along, I believe you in answering Commissioner Clodfelter's question basically said the Company had three choices when faced with the rising costs of the small hydro units. Do you recall testifying to that effect?

A Yes, sir.

Q And what were those three options again?

A The three options are basically to continue operating in compliance with the license; to surrender that license with all that it entails and any requirements that FERC deems necessary or desirable; and third would be to transfer the license to another entity that is willing, capable, and competent to assume the responsibility to that license and meet the compliance obligations.

Q And the Company undertook an analysis, whether you call it holistic, back of the envelope, whatever you want to call it.

A Yes.

Q Did the Company do an analysis in terms of what was best for its customers?

A Yes, I believe so.
Q And what was that option?
A That option was to continue operation.
Q Now, fast forwarding to the five hydro units we're here discussing today, was a similar holistic evaluation done as to what the best choice was for customers related to those five small hydro units?
A Yes, sir.
Q And what was the outcome of that analysis?
A Well, if you're able to find a suitable entity to transfer those obligations to and the PVRR supports that, then that is a viable avenue and a good avenue for our customers.
Q And I believe you testified in response to questions from several Commissioners about the details of the PVRR analysis.
A Yes, sir.
Q And that was filed confidential under seal so I don't want to ask you about any confidential numbers but I -- hopefully you can answer my question without revealing that. I believe there were three scenarios that were evaluated by the Company; is that correct?

A Yes, sir.

Q Just generally describe what the difference was between those three scenarios?

A Well, the first scenario was very optimistic in terms of future likelihood that requirements would perhaps even ease in terms of regulatory requirements. That goes -- that's pretty unrealistic truthfully; a very optimistic case; the second case we consider to be more probable; and the third case we consider to include some of the higher risk items. We did not include items for things like fish ladders that could have been required, things associated with Endangered Species Act; as we all know those kind of issues are becoming more common, not less common. There are just a -- as we learn as an industry and as a country from things that have gone on, regulations evolve and they change and you're subject to those. As a for instance, you may recall a couple of years ago there was an earthquake that cracked the Washington monument. Well, that happened to be at a location of a nuclear plant in Virginia called North Anna. Because of that the nuclear industry realized,

and the nuclear industry is very conservative, they realized that they had underestimated the potential of that earthquake. So everybody is taking a lesson from that including the hydro industry. And so now we may be looking at having to reassess standards on earthquakes and sun, how that would impact dams and other structures at the hydro station. It'd be very expensive for very small assets.
Q So under all three of the scenarios that the Company modeled what was the outcome?
A It was positive for the customers.
Q Mr. Dodge asked you some follow-up questions about the PVRR analysis. And he asked you something about the Queens Creek facility that was originally part of the portfolio for sale and was later removed and some questions about --
A Yes.
Q -- how that was included in the PVRR analysis. Do you remember that?
A Yes, sir.
Q Have you read the Public Staff's testimony in this case?
A Yes, sir.

Q And didn't they testify that they supported the Company's PVRR analysis?
A Yes, sir.
Q And correct me if I'm wrong, but didn't Mr. Maness and Mr. Metz in their joint testimony point out a few things they thought they might tweak about the analysis, but even if you made their changes it turned out to be even more beneficial for customers?
A That's the way I read it; yes, sir.
Q All right. Commissioner Clodfelter asked you some questions and I thought he framed the issue perfectly well by basically saying one of the issues in dispute - I'm not sure it's really in dispute, the facts are the facts - but the issue, the central issue between the Public Staff and the Company is who knew what, when, and what did they do about it? Do you remember that line of questioning?
A Yes, sir.
Q I want to get into that just a little bit. Do you have in front of you the Late-Filed Exhibit Number 1?
A Yes, sir.

Q And if you'd flip to the response to Public Staff Data Request 6-11, these are the three PowerPoint slide decks that were referenced earlier in some Commission questions. Let me know when you have those in front of you?
A 6-11. Okay. Yes.
Q Do you have those in front of you?
A The slide decks; yes, sir.
Q Yes.
A Yes, yes. Okay.
Q Now the first meeting with the Public Staff was on August 23, 2017; is that correct?
A Yes, sir.
Q And who -- were you in that meeting?
A August 23rd, let me verify. The August 23rd meeting I participated by phone.
Q Okay. Do you know who else was in that meeting?
A Yourself and Ben Smith I know.
Q Who's Ben Smith?
A Ben Smith is a colleague that works at Duke Energy.
Q Thank you. And do you know who was there from the Public Staff?
A I don't have that in front of me. I do have it

in my notes and I can pull that up later.

Q Do you know how many copies of this slide deck from the August 2017 meeting Duke brought to the meeting?

A My understanding is that there were perhaps a dozen and they were barely enough.

Q So the Public Staff had adequate representation from your perspective in this meeting?

A It's seemingly so.

Q I'm going to ask you about this slide deck and it's marked as confidential.

COMMISSIONER CLODFELTER: Mr. Somers, this Attachment 1 is the August 23, 2017?

MR. SOMERS: Correct. And I'll show you what this --

COMMISSIONER CLODFELTER: I'm going to write my dates on them so I --

MR. SOMERS: The cover slide for this one -- it does say *Confidential PSDR 6-11 Attachment 1* and the cover slide says *Small Hydro Evaluation Greg Lewis Ben Smith* and has photos of some hydro facilities, just to make sure we're all looking at the same one.

COMMISSIONER CLODFELTER: I'm just trying to write the dates on the --

MR. SOMERS: Yeah, this one unfortunately didn't have a date on it, but this is August 23, 2017, and I don't believe the Public Staff disagrees with that.

COMMISSIONER CLODFELTER: Okay.

BY MR. SOMERS:

Q I don't think this part is confidential so I'm just going to ask you this question. If you would flip to slide 2 from the August 2017 meeting with the Public Staff, and do you see the third bullet on that page?

A Yes, sir.

Q Would you just read that for us?

A *Regulatory spend is significantly contributing to net book value, NBV, growth.*

Q All right. And then go down two more bullets and read that for me.

A *Sale price is expected to be less than the current NBV.*

Q And this is what it says on the slide. Was there also discussion with the Public Staff related to this topic?

A Yes, sir.

Q How long -- do you remember how long that meeting took?

A I think about an hour.

Q Did Duke do all the talking?

A I don't believe so.

Q Well, I'm not asking what you believe. What do you know?

A We did not do all the talking. There were questions and give and take.

Q All right. And if you'd read that last bullet for me on the -- I'm sorry, on slide 2 from the August 2017 presentation prior to the filing of the Duke Energy Carolinas rate case.

A *Retiring the assets not suggested as this would likely require dam removal, which would be very costly to customers.*

Q If you would, please turn in the same slide deck to slide 5. I'm going to try to ask this in a way that we don't have to clear the room.

MR. SOMERS: And for the benefit of the Commission, this is the -- I'll hold up what the slide looks like so we're all on the same page.

BY MR. SOMERS:

Q Do you see that, Mr. Lewis?

A Yes, sir.

Q Without -- just generally describe what that table is at the bottom of that slide.
A It shows the escalating trend. *Expected regulatory forced spend will continue to increase NBV over time.* That's what it says clearly on the slide.
Q And so this was provided to the Public Staff in August of 2017?
A Correct.
Q I'm going to ask you to flip forward a couple of pages to the slide deck from the February 6, 2018 meeting.
A Okay.

COMMISSIONER CLODFELTER: Say again the date.

MR. SOMERS: February 6, 2018.

BY MR. SOMERS:
Q And the cover slide has the Duke Energy logo and says *Small hydro Evaluation ORS and NC Public Staff Update February, 2018.* Do you see that one? That's what the cover page looks like.
A Yes, sir.
Q And then if you would turn over to slide 4.
A Yes, sir; slide 4.

Q And do you see the bottom bullet on slide 4? The title of that slide -- what's the title of that slide page?

A *Key Considerations.*

Q Do you see that bottom bullet on the page?

A Yes, sir.

Q All right.

A *Non-binding offers imply expected proceeds from divestiture to be considerably lower than net book value of the assets - footnote 3: Assets Net Book Value approximately $42 million; if DEC agrees to sell the assets, it plans to make a regulatory asset request for the retail portion of the stranded costs.*

Q And were you in this meeting or participate by phone?

A Yes, sir; one or the other I'm sure.

Q And do you remember who else was participating in this meeting from the Company?

A I believe you were and Mr. Smith, of course.

Q And was Mr. Tewari in this meeting?

A I don't have that in front of me but probably so.

Q Do you off the top of your head or through your notes, do you recall who was there from the

Public Staff?

A I have notes on it but I don't have those with me.

Q All right.

A But well represented.

Q All right. I'm going to move away from this document for my next couple of questions. You were asked some questions by Commissioner Mitchell about some hydro, other hydro units that the Company decided to retire in 2018; do you recall those questions?

A Yes, sir.

Q And that was the Rocky Creek, Great Falls, and Ninety-Nine Islands units, correct?

A Yes, sir.

Q I believe you described why those assets are very differently situated than the five that we're talking about in this proceeding?

A Yes, sir.

Q But why did the Company not decide that it was better for customers to retire the five units that are at issue in this case instead of selling them to Northbrook?

A Well, clearly the retirement comes with it a license surrender process. The license surrender process can involve up to and including dam removal. Particularly at a license surrender, if you're not using the assets to generate renewable energy any longer, then what's the purpose of the dam. Therefore, it can become an issue as to yes you should go ahead and remove the dam. To remove the dam then you end up with sediment studies, sediment removal, sediment disposal, all of those things in addition to the physical removal of it, and the environmental studies that go with it. You don't just get to blow up a dam and have everything taken care of in a couple of days. That is not the way this is done.

Q I believe Commissioner Mitchell also asked you some questions about the fact that the FERC relicensing for several of these units began in the 2000 timeframe but took until 2011 to receive the FERC license. Do you recall questions along that line?

A Yes.

Q I want to make it clear in the record, which of the five units or the five stations at issue in this proceeding have FERC licenses?

A The Gaston Shoals, Bryson, Mission, and Franklin have FERC licenses.

Q And why don't -- sorry, go ahead.

A Tuxedo is regulated by the State.

Q Okay. And I believe in response to a question from Commissioner Mitchell you talked about once you finally got those FERC licenses that they, I wrote it down, they contain more onerous conditions than the Company anticipated. Do you recall your testimony to that effect?

A Yes.

Q Tell me what you mean by "more onerous conditions".

A I think no one would have anticipated that someone would ask us to try and maintain lake levels within an inch and a quarter. I'm not sure that there is any precedent really in the industry for those kind of conditions.

Q So I believe you've also testified in response to Commissioner Mitchell's questions about while these licenses were -- their license applications were pending at FERC that the Company contacted FERC about its request to delay making investments in the units. Do you recall that testimony?

A Yes, sir.

Q Would you just explain what you mean by that?

A Delay the expenditures, I thought -- I'll repeat that. The process where we were beginning to have more frequent forced outages with those issues, and we were looking to not have to spend a lot of money that we might end up undoing once the license was issued. Rehabilitating those units, getting them back in service would have been the license obligation, but had they came and told us to remove the dams that would not have been good for our customers. It wouldn't have been -- it wouldn't have looked very smart on our part either. So we asked them can we wait until we have some license certainty before investing additional monies in behalf of our customers to do that.

Q So then after the licenses were received in 2011, I believe you testified that there was a period of time of engineering and design work --

A Yes, sir.

Q -- and that FERC allowed the Company to stagger those compliance projects; is that correct?

A That's correct.

Q And I believe Commissioner Mitchell asked you about the capital projects that are at issue between the Company and the Public Staff from 2015 to 2017. And as I recall her question and your answer, she asked if these were compliance obligations that roughly are $17.5 million, and as I heard your testimony you said that for, quote, for the most part, unquote, that was due to compliance requirements?

A Yes. I believe the actual number that were FERC related of those was like 75, 76 percent. There were others that were state regulated projects and others that were safety, NERC-CIP, and those sorts of things.

Q So you said approximately 75 percent were FERC related, and I want to make sure we're clear, the other 25 or approximately 25 percent, why did Duke conduct those projects?

A Well, because we had to; I mean, basically whether they were for state -- for the state regulated plant at Tuxedo or whether it was for other things that were like NERC-CIP is a regulated requirement. We also had like a safety project that was outlined in one of those data requests for a stair project.

Q Have you -- again, did you review the Public Staff's testimony that despite having a year and a half to review this, and receiving the Company's answers to 75 data requests, and participating in numerous meetings and conference calls, they haven't been able to determine whether that approximately $17.5 million was done for compliance purposes or in order to put these projects up for sale? Did you read that testimony from the Public Staff?

A I did.

Q How much of the $17.5 million did the Company spend so that these assets would look more attractive to a potential buyer?

A Zero.

Q Going back to the Late-Filed Exhibit Number 1, you still have that in front of you, if you would turn to the page that's the Company's response to Public Staff Data Request 6-3?

A Yes, sir.

Q And I believe you testified to the roughly 75 percent or so of the projects that were

mandated by FERC compliance requirements?
A Yes, sir.
Q Does this Data Request Response that was provided to the Public Staff detail what those were and what the dollar amounts were?
A Yes, it does.
Q All right. In response to questions from Commissioner Finley you talked about the possibility of retiring some assets, and I believe you discussed the specific example of the Company's Dillsboro hydro facility; do you recall --
A Yes.
Q -- questions and answers along those lines?
A Yes. Chairman Finley I believe was familiar with the Nantahala Power and Light assets and wanted to share that.
Q And I believe you testified that one of the concerns in this case would be that if the Company had to surrender the FERC license one of the requirements could be removal of the dams at these five facilities?
A Absolutely. Probably -- it probably would not be an issue at Tuxedo because of the lake

homeowners' issues; that would be very problematic to remove that dam.

Q Tuxedo is the facility that has a lake at the top of the mountain and there's a giant --

A Yes.

Q -- wooden flume that carries the water down to where the power house is on the Green River; is that right?

A That is correct, sir.

Q And that was one of the projects that the Public Staff asked a lot of questions related to a stair, installation of stairs for a safety requirement at Tuxedo. Do you recall questions about that?

A Oh, yes.

Q And is that one of the projects you detailed in your Exhibit 2 to your testimony?

A Yes.

Q Why did the Company build a set of stairs on a hydro asset that's almost 100 years old and has never had stairs on it before?

A Well, the Company has a continuous improvement culture in terms of safety. We -- our employees submitted that the work that they have to do to inspect and maintain these penstocks that go up a very steep slope, probably in excess of 30 degrees probably less than 45 degrees, but a very steep slope that is often times wet. It presents a real serious slip and fall hazard. A few years ago we -- on a separate dam with a sloped embankment we had an employee fall and break a leg. I know at another utility in the not too distant past there was a report of an employee that fell while doing a penstock inspection, got a concussion, and was out on short-term disability, and I've learned that may never be able to work again. So we take it very seriously when an employee comes and says we think this needs to be made safer for us to be able to do the work that we do on a routine basis. And so even though that had not been the way it had been for 80 years, we realized that there was a better way and a better way to keep from having employees get hurt.

Q And do you recall how much that project cost roughly?

A I believe it was $460,000, something like that after the evaluation. Let me verify that.

Q I will represent that I understand your answer and I believe that's sufficient. I'm not trying to belabor this.
A All right.
Q Was any of that project done in order to gussy these --
A (Laughs)
Q -- that plant up so somebody would buy it?
A Absolutely not.
Q I mean, you laugh but I think that's why we're here today.
A Well, there's no gussying.
Q Commissioner Mitchell also asked you a series of questions that I will say the subject of which was essentially why would these projects look good for Northbrook and make financial sense for them to own and operate them as opposed to Duke. Do you remember questions and your answers along those lines?
A Yes, sir.
Q Is part of the transaction with Northbrook, if it's approved and it closes in May of this year, is Duke going to buy the power back from these facilities?

A We are.
Q And has Northbrook asked that this Commission designate those as new renewable energy facilities so they will be entitled to a Renewable Power Purchase Agreement as well?
A Yes, sir.

MR. SOMERS: Thank you for your patience, Mr. Chairman. I don't have any further questions.

COMMISSIONER CLODFELTER: Mr. Somers, you've got us a date on the first two of the presentation slide decks but not the --

MR. SOMERS: I'll give you the last one. I apologize. It's May, and subject to the Public Staff's check, May 9, 2018.

COMMISSIONER CLODFELTER: May 9?

MR. SOMERS: Yes, sir.

COMMISSIONER CLODFELTER: Thank you.

RE-EXAMINATION BY CHAIRMAN FINLEY:

Q Just out of information and that doesn't have much to do with this case, but Tuxedo is on the Green River; is this right?
A (Mr. Lewis) That's correct.
Q And that's a state --
A That's a state.

Q Was that a non-navigable stream? Why is that not FERC jurisdiction?

A Yes, I believe that was the designation from way back that it was non-navigable.

Q Okay.

A Mr. Lineberger could verify that if you'd like.

Q Just curious.

A That is correct.

Q That's enough.

CHAIRMAN FINLEY: I don't think that should generate any questions. I hope not. Okay. Let's get the Northbrook evidence in the record just for fun for Commissioner Ahlrichs. The three pages of his direct testimony are copied into the record as though given orally from the stand.

(WHEREUPON, the prefiled direct testimony of JOHN C. AHLRICHS is copied into the record as if given orally from the stand.)

PREFILED DIRECT TESTIMONY OF
JOHN C. AHLRICHS
ON BEHALF OF NORTHBROOK CAROLINA HYDRO II, LLC
AND NORTHBROOK TUXEDO, LLC

DOCKET NO. E-7, SUB 1181
DOCKET NO. SP-12478, SUB 0
DOCKET NO. SP-12479, SUB 0

## INTRODUCTION

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

A. My name is John C. Ahlrichs. I am the President of Northbrook Energy, LLC ("Northbrook Energy"). My business address is 14550 N Frank Lloyd Wright Blvd, Ste 210, Scottsdale, AZ 85260.

**Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.**

A. I am a professional engineer with a BS in Civil Engineering. I have been the President of Northbrook Energy since 2006 and have been involved in dam and hydropower ownership, management, financing, acquisition, sale, restructuring, licensing, development, operations, design, construction and rehabilitation for 35 years.

**Q. PLEASE DESCRIBE NORTHBROOK ENERGY AND ITS RELATIONSHIP WITH NORTHBROOK CAROLINA HYDRO II, LLC AND NORTHBROOK TUXEDO, LLC.**

A. Northbrook Energy is a privately held, independent power producer that has been in the hydroelectric power business for 38 years. Northbrook Energy has owned 23 hydropower facilities in 12 states. Among the facilities

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currently owned by Northbrook Energy, four are located in western North Carolina and South Carolina, in Duke Energy Carolina's service territory.

Northbrook Energy has partnered with New Energy Capital Partners, a clean energy infrastructure firm, to form Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC for the purpose of acquiring the Bryson, Franklin, Gaston Shoals, Mission and Tuxedo hydropower facilities.

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

A. No.

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

A. The purpose of my testimony is to provide the Commission with background information about Northbrook Energy's managerial, financial and technical capabilities to own and operate the Bryson, Franklin, Gaston Shoals, Mission and Tuxedo facilities ("Facilities"), which are the subject of this docket.

**Q. DESCRIBE NORTHBROOK ENERGY'S MANAGEMENT TEAM AND ITS TECHNICAL CAPABILITY TO OWN AND OPERATE THE FACILITIES.**

A. Northbrook Energy identifies and acquires risk-tolerable hydropower assets via private equity and project debt financing. Through hands-on management, Northbrook Energy has particular proficiency in increasing reliability, productivity and firm value in hydropower assets.

Northbrook Energy, through its wholly owned subsidiary Northbrook Power Management, LLC ("NPM"), has operated 29 hydropower facilities for our own companies and for third-party clients, including private equity and pension funds, infrastructure companies, utilities, municipalities, counties and bond insurers. NPM is comprised of hydropower specialists in engineering, operations, maintenance, construction management, regulatory compliance, power marketing, finance and accounting.

**Q. DESCRIBE NORTHBROOK ENERGY'S FINANCIAL CAPABILITIES TO OWN AND OPERATE THE FACILITIES.**

A. Northbrook Energy has the financial wherewithal, acquisition experience and financial backing to acquire and properly operate and maintain the Facilities in conjunction with its existing portfolio of hydropower facilities. Northbrook Energy's hydropower acquisition experience includes facilities purchased from investor-owned utilities Duke Energy, Niagara Mohawk Power and Commonwealth Edison. Northbrook Energy sells power through short-term and long-term contracts, as well as into hourly spot markets, and has a long, successful history working with state and federal agencies. Our recent hydropower deal sizes have spanned $2 million to over $100 million per transaction. Northbrook is a debt-free going concern.

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

A. Yes.

CHAIRMAN FINLEY: Public Staff.

MR. SOMERS: Mr. Chairman, if I could, just a housekeeping matter, I could do it now. I would move to admit Mr. Lewis' confidential Exhibit 1 and his non-confidential Exhibits 2, 3 and 4 into the record.

CHAIRMAN FINLEY: Those exhibits are copied into the record and admitted into evidence.

(WHEREUPON, Lewis Exhibit 1, prefiled as confidential, is admitted into evidence and filed under seal. Lewis Exhibits 2, 3 and 4 are admitted into evidence.)

MR. SOMERS: Before we rest our case, if I could also ask that the Companies' Joint Application including Exhibit A and Exhibit B also be admitted into the record.

CHAIRMAN FINLEY: Without objection, those are admitted into evidence.

MR. SOMERS: Thank you.

(WHEREUPON, the Joint Application and Exhibits A and B are admitted into evidence.)

CHAIRMAN FINLEY: Ladies and gentlemen, you may be excused. Thank you.

THE WITNESS: (Mr. Lewis) Thank you.

THE WITNESS: (Ms. Williams) Thank you.

(The witnesses are excused)

MR. DODGE: Chairman Finley, the Public Staff calls Mike Maness and Dustin Metz to testify as a panel.

CHAIRMAN FINLEY: All right.

MICHAEL C. MANESS and DUSTIN R. METZ;
having been duly sworn,
testified as follows:

MR. DODGE: Thank you. I'll start with Mr. Maness.

DIRECT EXAMINATION BY MR. DODGE:

Q Mr. Maness, could you please state your name and address for the record?

A (Mr. Maness) Michael C. Maness, 430 North Salisbury Street, Raleigh, North Carolina.

Q By whom are you employed and in what capacity?

A I'm employed by the Public Staff. I'm Director of the Accounting Division.

Q Mr. Metz, could you please state your name and address for the record?

A (Mr. Metz) My name is Dustin Ray Metz. My business address is 430 North Salisbury Street, Raleigh, North Carolina.

Q By whom are you employed and in what capacity?

A I'm employed by the Public Staff as an Engineer in the Electric Division.

Q And, Mr. Maness and Mr. Metz, did you cause to be prefiled on January 18, 2019, in this docket joint testimony consisting of 25 pages and two appendices?

A (Mr. Maness) Yes, we did.

Q Do you have any changes or corrections to your joint testimony at this time?

A No, we do not.

Q If I asked you the same questions today, would your answers be the same?

A Yes.

Q Thank you.

MR. DODGE: Chairman Finley, at this time I move that the prefiled joint testimony of Michael Maness and Dustin Metz be entered into the record as if given orally from the stand.

CHAIRMAN FINLEY: The joint testimony of Witnesses Maness and Metz of January 18, 2019, of 25 pages and two appendices are copied into the record as though given orally from the stand.

(WHEREUPON, the prefiled joint testimony of MICHAEL C. MANESS and DUSTIN R. METZ and Appendices A and B is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NOS. E-7, SUB 1181, SP-12478, SUB 0,
AND SP-12479, SUB 0

| | | |
|---|---|---|
| In the Matter of | | |
| Transfer of Certificates of Public Convenience and Necessity and Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC, to Northbrook Carolina Hydro II, LLC, and Northbrook Tuxedo, LLC | ) | TESTIMONY OF MICHAEL C. MANESS AND DUSTIN R. METZ PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION |

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**
**DOCKET NOS. E-7, SUB 1181; SP-12478, SUB 0;**
**AND SP-12479, SUB 0**

**Testimony of Michael C. Maness and Dustin R. Metz**
**On Behalf of the Public Staff**
**North Carolina Utilities Commission**

**January 18, 2019**

**Q. MR. MANESS, PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND PRESENT POSITION.**

A. My name is Michael C. Maness. My business address is 430 North Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am Director of the Accounting Division of the Public Staff – North Carolina Utilities Commission. A summary of my qualifications and duties are included in Appendix A.

**Q. MR. METZ, PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND PRESENT POSITION.**

A. My name is Dustin Ray Metz. My business address is 430 North Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am an Engineer with the Electric Division of the Public Staff – North Carolina Utilities Commission. A summary of my qualifications and duties are included in Appendix B.

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

A. The purpose of our testimony is to present the results of our technical investigation into the proposed sale and transfer of certificates of public convenience and necessity for five hydroelectric facilities (facilities) by Duke Energy Carolinas, LLC (DEC) to Northbrook Carolina Hydro II, LLC or Northbrook Tuxedo, LLC (collectively known as Northbrook) in this docket.[1]. In its November 29, 2018, Order Requiring Filing of Testimony and Scheduling Hearing, the Commission directed the parties to file testimony specifically addressing nine questions (Commission Questions), along with other evidence that supports their position in this matter.

In particular, our testimony will address the following topics:

- The Public Staff's opinion on the strengths and weaknesses of the present value of revenue requirements analysis (PVRR Analysis or Analysis) conducted by DEC, as requested by Commission Questions 1 and 2.
- A review of the capital expenditures made by DEC on the facilities from 2015 through 2018, as requested by Commission Question 3.

[1] The five hydroelectric facilities in question are: Bryson, Franklin, Gaston Shoals, Mission, and Tuxedo. All but Gaston Shoals are located in North Carolina. Gaston Shoals is located in both North and South Carolina.

- The Public Staff's position on the standard the Commission should apply in assessing DEC's request to establish a regulatory asset to defer the North Carolina retail allocable portion of the loss on sale, and whether DEC's request in this proceeding meets that standard, as requested by Commission Questions 6 and 7.
- Support for the Public Staff's position that the amortization period should begin in the month in which the asset transfer is completed, subject to reevaluation and adjustment in the next general rate case, as requested by Commission Question 8.
- A review of the amounts of the expenditures that were included in the rates established by the Commission in its June 22, 2018, Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction in Docket No. E-7, Sub 1146 (Sub 1146 Proceeding), and what amounts, if any, were not included in such rates, as requested by Commission Question 9.

**Q. WHY ARE YOU PRESENTING JOINT TESTIMONY?**

A. While we have received assistance from others, the two of us have conducted a significant portion of this investigation and have worked closely together. We have agreed upon the results and recommendations presented here. If we were to file separate testimonies, it would be largely redundant.

**Q. PLEASE DESCRIBE THE TESTIMONY FILED BY DEC ON DECEMBER 21, 2018.**

A. DEC witness Greg Lewis discussed DEC's decision to sell the small hydro facilities and the economic analysis used in making that decision. Witness Lewis also provided DEC's support for the capital investments made at the facilities from 2015 to 2018. DEC witness Manu Tewari described the RFP and selection process used by DEC and the terms of the asset purchase agreement between DEC and Northbrook. DEC witness Veronica Williams discussed the accounting treatment requested by DEC and the basis for the deferral request.

**Q. PLEASE DESCRIBE THE TESTIMONY FILED BY NORTHBROOK ON DECEMBER 21, 2018.**

A. Northbrook witness John Ahlrichs provided background information on Northbrook Energy's managerial, financial and technical capabilities to own and operate the small hydroelectric facilities.

## PVRR ANALYSIS (COMMISSION QUESTION 2)

**Q. PLEASE DESCRIBE THE PUBLIC STAFF'S REVIEW OF THE PVRR ANALYSIS CONDUCTED BY DUKE.**

A. The PVRR Analysis, which has been summarized in Lewis Confidential Exhibit 1 and provided confidentially to the Commission in electronic form, is the same as was reviewed by the Public Staff prior to the filing of its Comments on September 4, 2018. The results of the Analysis indicate a significant PVRR advantage to disposing of the facilities in the 2018 time frame, even under what DEC witness Lewis describes as "aggressively low and optimistic budget" assumptions and estimates (the Low-Cost Case). Members of the Public Staff have reviewed the PVRR analysis in detail, including its structure and other cost and benefit inputs and assumptions.

Q. **WHAT IS THE PUBLIC STAFF'S CONCLUSION REGARDING THE QUALITY OF THE ANALYSIS AND ITS RESULTS?**

A. Notwithstanding a few concerns, the Public Staff finds that the analysis was reasonably performed. We believe that it adequately supports the Company's decision to dispose of the facilities, in that the disposition is likely to result in future net benefits to the Company's North Carolina retail ratepayers, subject to the accuracy of its cost and benefit assumptions.

Q. **ARE THERE ANY SPECIFIC STRENGTHS AND WEAKNESSES OF THE PVRR ANALYSIS UPON WHICH THE PUBLIC STAFF'S WOULD LIKE TO COMMENT?**

A. There are a few items that we would like to note regarding the structure of the PVRR Analysis, although none of them significantly affect or change the outcome:

1. The discount rate used by the Company in the Analysis differs somewhat from the weighted overall net-of-tax rate of return approved by the Commission in the Sub 1146 Proceeding. However, this difference does not have a significant effect on the outcome of the analysis.

2. The Company chose to use a beginning-of-year cash flow assumption for the Analysis. While this choice is not unheard of, the experience of the Public Staff is that an end-of-year assumption has been used more frequently, and is at times more accurate. In fact, in this case a mid-year cash flow assumption would probably be even more reasonable. Again, however, the difference between the outcome of the Analysis using a mid-year cash flow assumption versus either a beginning- or end-of-year assumption is not significant.

3. The methodology used by the Company in the Analysis for capital expenditures implicitly assumes that those costs would be deductible for income tax purposes at the time of each expenditure. However, each year's capital expenditure would in fact be deductible for income tax purposes over a period of

some years in the future. While the impact of this item would be somewhat more significant than the first two discussed above, it would not tend to reduce the benefit of disposing of the unit; in fact, it would tend to increase it (by increasing the net-of-tax cash outflow associated with retaining the unit).

It is, therefore, the Public Staff's conclusion that none of the issues discussed above would significantly affect the outcome of the PVRR Analysis, which shows a significant benefit of selling the facilities.

**Q. HAS THE PUBLIC STAFF REVIEWED THE COST INPUTS TO THE PVRR ANALYSIS?**

A. Yes.

**Q. WHAT ARE THE PUBLIC STAFF'S CONCLUSIONS REGARDING THE COST INPUTS?**

A. First, the Public Staff agrees with the use of avoided costs to represent the estimated cost of power purchases made in the absence of the facilities. Although virtually all forward-looking PVRR analyses must by necessity use estimates for future costs, the use of utility avoided costs in this instance is reasonable, given that they are the most current estimates approved by the Commission (in Docket No. E-100, Sub 148).

Second, the Public Staff has also reviewed the Company's estimates of future capital and operations and maintenance (O&M) expenditures. While this review has not revealed any specific issues with the Company's estimates, the Public Staff did test the results of the Analysis for sensitivity to lower cost estimates than those shown in the Low-Cost Case. The results of these tests indicate that the net benefit of selling the facilities remains positive except in some scenarios using very conservative estimates of future capital and O&M expenditures (especially when taking into account the three structural items mentioned earlier in my testimony).

**Q. WHAT IS THE PUBLIC STAFF'S OVERALL CONCLUSION REGARDING THE PVRR ANALYSIS?**

A. Within the context of a single analysis performed in the 2017-2018 time frame, the Public Staff believes that the PVRR Analysis presented by DEC supports the sale of the facilities to Northbrook. However, this conclusion is subject to any pro forma financial adjustments, as explained later in this testimony, that might prove appropriate once the reasonableness and prudence of the 2015-2018 expenditures is examined further, an examination that the Public Staff believes should be reserved for DEC's next general rate case.

## REVIEW OF CAPITAL EXPENDITURES (COMMISSION QUESTION 3)

**Q. PLEASE BRIEFLY DISCUSS THE INVESTMENTS MADE BY DEC DURING 2015 THROUGH 2018.**

A. In response to a Public Staff data request, DEC stated that it made capital expenditures between 2015 and 2017 totaling approximately $18 million, with another approximately $900,000 budgeted for 2018. Following the filing of the Public Staff Comments on September 4, 2018, DEC revised the total expenditures for the period 2015-2017 to approximately $17.3 million, and indicated that the planned 2018 expenditures were generally suspended pending the sale. Much of the work was for maintenance and refurbishment of turbine generators that had an installed life of 90-100 years, although other work dealt with compliance with each site's FERC operational license, as well as safety and overheads.

**Q. WHY IS THE PUBLIC STAFF RAISING CONCERNS REGARDING DEC'S CAPITAL INVESTMENTS FOR THE REFERENCED HYDROELECTRIC FACILITIES DURING THE 2015 THROUGH 2017 PERIOD?**

A. Despite making recent capital expenditures at the facilities that increased the book value of the facilities substantially, DEC determined in 2017 that the cost of maintaining the older facilities made it no longer cost effective to continue to operate the facilities to serve its customers, and more economical for DEC to sell the facilities. As described further in the motion filed concurrently with this testimony, the Public Staff believes that the proposal to sell the facilities so soon after making significant capital investments in them creates special circumstances meriting further consideration, and that the issues of prudence and reasonableness of the 2015-2018 expenditures should be preserved as an open issue until DEC's next general rate case, at which time the prudency and reasonableness of the deferred costs resulting from those expenditures can be further considered.

**Q. PLEASE DESCRIBE THE PUBLIC STAFF'S REVIEW OF THE INVESTMENTS MADE DURING THE 2015-2017 TIME PERIOD.**

A. The Public Staff sent multiple data requests, reviewed Company responses, and participated in multiple detailed meetings and conference calls with DEC personnel regarding these investments (see DEC witness Lewis Exhibit No. 2). In his November 29, 2018, testimony, DEC witness Lewis testified that these major capital expenditures were "necessary to meet various regulatory, license, operational, and safety requirements." However, based upon the information gathered to date, we are unable to determine if the costs were for timely compliance with license and safety requirements, reflected capital projects that were deferred from previous years that were made to secure the sale of the assets, or other reasons.

**Q. CAN YOU DISCUSS THE MAIN ISSUE THAT REMAINS OPEN IN THE PUBLIC STAFF'S REVIEW OF THESE COSTS?**

A. DEC failed to demonstrate that a "holistic" evaluation of its investments was taken to justify the continued plant operation under the license extensions. We believe it would have been reasonable to perform such an evaluation, particularly when considering these levels of investment on "facilities [that] were originally commissioned between 1908 and 1925, when many regulatory agencies did not exist..." (Lewis p. 9). Duke has faced similar decisions regarding whether to retire or retrofit small hydroelectric facilities in recent years, and in some of those circumstances, determined that retirement was reasonable, as evidenced by its decision to retire the following units in 2018: Rocky Creek Units 1-8; Great Falls Units 3, 4, 7, and 8; and Ninety-Nine Islands Units 5, 6.

**Q. WHEN DOES THE PUBLIC STAFF PROPOSE TO MAKE A RECOMMENDATION TO THE COMMISSION ON THE CAPITAL EXPENDITURE DECISIONS FOR THESE FACILITIES?**

A. For the reasons outlined in the Public Staff's Comments filed in this docket on September 4, 2018, and reiterated in its motion filed on

January 18, 2019, we recommend that the Commission allow the Public Staff further review of the reasonableness of these costs up to and including the time of DEC's next general rate case.

**DEFERRAL STANDARD (COMMISSION QUESTIONS 6 AND 7)**

**Q. WHAT DEFERRAL STANDARD DOES DEC RECOMMEND THAT THE COMMISSION APPLY TO THIS REQUEST?**

A. On page 4 of her testimony, DEC witness Williams states that DEC does not believe that the two-prong test the Commission sometimes utilizes should apply to this request based on the unique nature of the transaction. Instead, witness Williams stated that the Commission has discretion to also consider the equitable treatment for both shareholder and customers. Witness Williams does, however, indicate that DEC believes the transaction is unusual and large enough to merit deferral.

**Q. DOES THE PUBLIC STAFF AGREE WITH THE DEFERRAL STANDARD RECOMMENDED BY DUKE IN THIS PROCEEDING?**

A. Yes, in part. The Public Staff agrees that it is reasonable for the Commission to consider the apparent benefit of this transaction to the ratepayers, and in its discretion to therefore authorize the creation of a regulatory asset and amortize it to expenses over a period of time, subject to review in DEC's next general rate case.

However, the Public Staff does not necessarily agree that the transaction is otherwise unusual or large enough to merit deferral.

The "two-prong test" set forth in Commission Question No. 6 that it sometimes applies when considering whether deferral into a regulatory asset of a cost that would otherwise be expensed in a given time period is as follows: "whether the costs in question are unusual or extraordinary in nature, and (2) whether absent deferral, the costs would have a material impact on DEC's financial condition." The types of costs to which this or a similar test is applicable typically fall into one of the following categories:

1. Major storm repair expenses that are relatively unusual and so large in magnitude (often expressed as an impact on earnings) that it is not reasonable to presume that the expenses are being recovered in then-current rates.
2. Other unexpected expenses or losses so obviously unusual in nature and large enough in magnitude (often expressed as an impact on earnings) that it is not reasonable to presume that the expenses/losses are being recovered in then-current rates.
3. Other expenses or losses that may not be so unusual in nature but are so <u>excessively</u> large in magnitude (often expressed as an impact on earnings) that it is not reasonable

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to presume that the expenses/losses are being recovered in then-current rates.

Another category of costs that is often approved for deferral is related to new generating plants coming into service, typically just around the time that a general rate case is being filed. These costs (depreciation expense and the return requirement on rate base, sometimes supplemented by property taxes and certain O&M expenses) are not truly unusual in nature or significantly larger than would be expected, but it is often recognized that they are a major driver of the general rate case, and deferral is a method of virtually "synchronizing" the beginning of commercial operation of the plant with the effective date of the rate change found appropriate and reasonable in the rate case (and may be an alternative to interim rates). However, revenue requirements related to a generation plant small enough in size or earnings impact might not qualify for deferral treatment.

The expense/loss under consideration in this proceeding does not truly fall into any of the categories listed above. It is not unusual enough, in the Public Staff's opinion, to be considered to be something other than the result of an action taken in the normal course of business, nor is it large enough in magnitude to automatically be considered the be a properly deferrable item in the absence of some other underlying rationale that justifies deferral. Finally, it is not large enough in magnitude to be considered a major driver of a general rate case.

**Q. IF THE LOSS ON DISPOSAL DOES NOT FALL INTO ONE OF THE CATEGORIES YOU HAVE NOTED, WHY DOES THE PUBLIC STAFF BELIEVE THAT DEFERRAL IS JUSTIFIED?**

A. The Public Staff believes that deferral is justified in this specific case because of the nature of the actions that gave rise to the loss and the costs that make up the loss. The Company has taken the initiative in this matter to cease utility operation of the facilities and engage in a transaction that is expected to reduce the future cost of service (and thus, implicitly or explicitly, customers' rates) to a level below what would have been experienced in the absence of the action(s), regardless of costs incurred in the past. The book loss recorded as part of the sales transaction is made up of those costs incurred in the past (net of closure and sales-related expenses), in a manner that was prudent and reasonable,[2] and not yet recovered in rates. Any reasonable and prudent costs incurred in the <u>past</u> generally remain reasonable and prudent, no matter what decision the Company makes regarding <u>future</u> costs. Since the sale of the

[2] Subject to the later review of 2015-2018 expenditures that the Public Staff is advocating in this proceeding.

facilities is expected to be the best forward-looking action for the Company to take, and since the loss consists of costs incurred in the past on behalf of the ratepayers, the Public Staff believes that in this specific case, it is reasonable for the unrecovered costs (the loss) to be preserved for continued recovery in rates (subject to reasonable and appropriate amortization in the interim and subject to further investigation of the reasonableness and prudence of the 2015-2018 expenditures). The appropriate regulatory accounting mechanism to achieve this preservation is deferral of the loss by way of a regulatory asset.

**Q. DOES THE PUBLIC STAFF BELIEVE THAT THE RATIONALE SET FORTH ABOVE FOR THIS CASE SHOULD BE CONSIDERED PRECEDENTIAL?**

A. No. Cases where questions of future economic benefit are combined with the incurrence of book losses are unusual and unique enough that the issue of possible deferral should be considered on a case-by-case basis, as it normally is with other deferral requests.

**Q. DOES THE PUBLIC STAFF AGREE WITH THE REQUESTED N.C. RETAIL DEFERRAL AMOUNT OF APPROXIMATELY $27 MILLION?**

A. The Public Staff has not yet reviewed the Company's precise calculations of estimated net book value and net loss at time of sale.

If the sale is approved and consummated, the Public Staff will request that the Company provide the calculation of actual net book value and net loss at closing for each facility. This calculation will be subject to review for accuracy and reasonableness at that time and up through the Company's next general rate case.

In her testimony in this proceeding, Company witness Williams describes the estimated net loss as being the difference between sales proceeds, on the one hand, and the sum of the net book value of the facilities, plant-related materials and supplies, legal and transaction-related costs, and sale-related transmission work. The Commission does not specifically mention accumulated deferred income taxes in this list. The Public Staff notes that the loss on sale should also be net of any related accumulated deferred income tax liabilities and unamortized tax credits existing at the time of closing.

Finally, as previously described in our testimony, as well as in our Comments and motion, the Public Staff recommends that the prudence and reasonableness of expenditures during the 2015-2018 period remain subject to review for prudence and reasonableness until DEC's next general rate case. It should be noted that any of those costs found imprudent or unreasonable would be removed from the deferred regulatory asset ultimately found appropriate and reasonable for recovery from the ratepayers.

**Q. COMPANY WITNESS WILLIAMS STATES IN HER TESTIMONY THAT "THE SALE OF GENERATING ASSETS BY THE REGULATED UTILITY IS CERTAINLY UNUSUAL AND NOT PART OF THE CONDUCT OF [DEC'S] ORDINARY COURSE OF BUSINESS." DOES THE PUBLIC STAFF AGREE WITH THIS CHARACTERIZATION?**

A. Not in this case. It appears to the Public Staff that, as has apparently been the case with other relatively recent closures of hydroelectric generating facilities, the Company evaluated whether operating these facilities continued to be cost-effective. This general evaluation of cost-effectiveness of operations is something that the Public Staff believes is integral to the Company's ordinary course of business. Although an asset retirement due to such an evaluation might be eligible for deferral based on magnitude, the Public Staff is not certain it would recommend a deferral on that basis alone in this case. However, the Public Staff does believe that deferral in this case is justified by the reasons previously set forth in this testimony, and does not believe that the loss is so small as to make deferral inappropriate.

## AMORTIZATION PERIOD (COMMISSION QUESTION 8)

**Q. WHEN DOES THE PUBLIC STAFF PROPOSE THAT THE AMORTIZATION PERIOD SHOULD BEGIN?**

A. In our September 4, 2018, Comments, the Public Staff recommended that the Commission require DEC to begin amortization in the month in which the transaction closes. In addition, the Public Staff recommended that the amortization period for the regulatory asset be set at 20 years, which is comparable to the period of time over which the facilities would have been depreciated if they had remained in service. The amortization period should be reevaluated and adjusted as needed in the Company's next general rate case.

**Q. WHAT IS THE BASIS FOR THIS POSITION?**

A. As stated in our Comments, the decision as to when the amortization of a regulatory asset should begin is a matter within the discretion of the Commission. As the Commission has found in previous cases, the proper default position is to presume that the rates approved by the Commission at any given point in time are sufficient to and presumed to recover the annual capital and operating costs incurred by the utility at that time. However, in some cases, as when the purpose of the creation of the regulatory asset (the deferral) is largely to more precisely synchronize the beginning of the recovery of the costs of a large generating plant with the effective date of the rates approved in a general rate case that is largely driven by the costs of that plant being transferred to plant in service as the plant becomes commercially operational, it is considered reasonable for the plant's capital costs (principally depreciation expense and return) to be deferred during the period between the commercial operation date and the effective date of the rate approved in the case, with the amortization beginning with that effective date. Similarly, in other cases, when the costs underlying the regulatory asset are so large and unique as to make it clearly unfair and unreasonable to assume that existing rates are recovering those costs, it may be reasonable and appropriate for the beginning of the amortization period to be delayed until the effective date of rates (as was the case with DEC's recently approved amortization of deferred coal ash disposal expenditures).

The above notwithstanding, the Public Staff believes that in most cases, even when it is not reasonable to assume that the entire cost underlying a requested regulatory asset is recovered in the rates existing at the time the cost is incurred, and thus deferral and amortization of the cost is appropriate, it is nonetheless also not reasonable for the beginning of the amortization of the cost to be delayed until the next general rate case. This approach is most in keeping with the underlying ratemaking policy followed by the Commission in North Carolina; namely, that the utility's regulatory books and records should reflect the actual costs of providing utility service to the ratepayers (including the reasonable amortization of periodically deferred costs), and then it should be up to the utility to decide whether that annual cost of service affects its overall return in a manner that justifies the filing of a general rate case. This approach is also most appropriate when the nature of the underlying cost to be deferred is such that it is best considered in general as a normal part of the cost of conducting utility business.

This approach has been most typically used in cases involving the expenses of storm damage repair expenses. In the most recent example, that of the abnormal level of storm damage expenses incurred in 2016 by Duke Energy Progress, LLC (DEP), which was considered in DEP's most recent general rate case, Docket No. E-2, Sub 1142 (which was consolidated with Docket No. E-2, Sub 1131, the proceeding in which DEP requested deferral of the costs), the Public Staff recommended that the deferred costs approved by the Commission be amortized for regulatory accounting purposes over a ten-year period, beginning in the month the largest storm (Hurricane Matthew) occurred. The Public Staff argued in that case that for storm costs and, in general, other events that cause fluctuations in utility income between rate cases, it is most appropriate and reasonable for the Company to begin amortizing deferred costs into cost of service immediately. The purpose of deferral accounting is not to preserve costs for an indefinite period of time. Only in unusual circumstances, where costs are extremely high and/or extremely unusual, or in cases where a general rate case is pending, and the Commission particularly wants to synchronize the recognition of a deferred costs and the approval of new rates, is the delay of beginning an amortization generally appropriate. The Commission approved the Public Staff's recommendation that the amortization begin in the month that Hurricane Matthew occurred.[3]

The Public Staff believes that the same rationale that supported the amortization of DEP's deferred storm costs beginning at the time the storm costs were incurred also supports the amortization of the deferred book loss in this case beginning at the closing date of the sale of the hydro facilities. Except as described above, it is most appropriate and reasonable for the Company to begin amortizing deferred costs into cost of service immediately upon their incurrence. Therefore, the Public Staff recommends that the Commission should require DEC to begin amortizing the regulatory asset resulting from

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[3] In another notable case, that of the treatment of the deferred costs related to the never-operational GridSouth Regional Transmission Organization, the Commission decided, in Docket No. E-7, Sub 828, that amortization of the costs should be considered to have begun in June 2002, the date that the GridSouth participants notified FERC that they had ceased incurring GridSouth costs, rather than at the time of the Sub 828 general rate case (2007), as was proposed by DEC. In its Order, the Commission stated, "[T]he Commission agrees with the Public Staff that, as a matter of ordinary practice, amortization of deferred costs should begin as soon as the relevant regulatory asset is or should be established."

the book loss on the sale of the hydro facilities as of the date the sale is closed.

**Q. WHEN DOES DUKE RECOMMEND THAT THE AMORTIZATION PERIOD BEGINS?**

A. DEC generally agrees with the Public Staff's position. On page 8, DEC witness Williams testifies that:

> [T]he Company proposes approval of the regulatory asset, with amortization beginning at the time the regulatory asset is recorded on the books, at a rate equivalent to the remaining 20-year life of the assets. Once established, the Company would plan to address the proper amortization period for the then-remaining regulatory asset balance in its next general rate case.

While there might be slight differences between the annual amounts of amortization expense recorded under the Company's proposal from what would be recorded under the Public Staff's, the Public Staff considers the Company's proposal reasonable.

## COSTS INCLUDED IN THE SUB 1146 PROCEEDING (COMMISSION QUESTION 9)

**Q. WHAT COSTS RELATED TO THE FACILITIES WERE INCLUDED IN THE SUB 1146 PROCEEDING?**

A. DEC witness Williams on page 8 of her testimony states that:

> Net plant balances were updated through December 31, 2017, and reflected in the revenue requirement in the Company's general rate case in Docket No. E-7, Sub 1146. Capital expenditures incurred and closed to plant in service through December 31, 2017 would

> have been included in the costs approved in the Sub 1146 Proceeding.

DEC witness Lewis also summarizes these costs in Lewis Exhibit No. 2. The Public Staff agrees that these costs were included in the net plant in rate base in the Sub 1146 Proceeding. However, in order to determine the net loss related to these amounts, one would also need to know the accumulated depreciation, deferred income taxes, and unamortized tax credits (if any) related to these expenditures on the books as of December 31, 2017.

**Q. WHAT AMOUNTS, IF ANY WERE NOT INCLUDED IN THE SUB 1146 PROCEEDING?**

A. Lewis Exhibit No. 2 also provides a list of actual capital expenditures through year-to-date November 2018. These expenditures were not included in rate base in the Sub 1146 Proceeding. In addition, DEC witness Williams on page 3 of her testimony indicates approximately $0.2 million of plant material and operating supplies, $1.4 million of legal and transaction-related costs, and $1.6 million of transmission-related work required by the sale as part of the loss that were not considered during the Sub 1146 Proceeding.

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

A. Yes.

# Appendix A

## Michael C. Maness

### Qualifications and Experience

I am a graduate of the University of North Carolina at Chapel Hill with a Bachelor of Science degree in Business Administration with Accounting. I am a Certified Public Accountant and a member of both the North Carolina Association of Certified Public Accountants and the American Institute of Certified Public Accountants.

As Director of the Accounting Division of the Public Staff, I am responsible for the performance, supervision, and management 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. I have been employed by the Public Staff since July 12, 1982.

Since joining the Public Staff, I have filed testimony or affidavits in a number of general, fuel, and demand-side management/energy efficiency rate cases of the utilities currently organized as Duke Energy Carolinas, LLC, Duke Energy Progress, LLC., and Virginia Electric and Power Company (Dominion Energy North Carolina), as well as in several water and sewer general rate cases. I have also filed testimony or affidavits in other proceedings, including applications for certificates of public convenience and necessity for the construction of generating facilities, approval of self-generation deferral rates, approval of cost and incentive recovery mechanisms for electric utility demand-side management and energy efficiency (DSM/EE) efforts, and approval of cost and incentive recovery pursuant to those mechanisms.

I have also been involved in several other matters that have come before this Commission, including the investigation undertaken by the Public Staff into the operations of the Brunswick Nuclear Plant as part of the 1993 Carolina Power & Light Company fuel rate case (Docket No. E-2, Sub 644), the Public Staff's investigation of Duke Power's relationship with its affiliates (Docket No. E-7, Sub 557), and several applications for business combinations involving electric utilities regulated by this Commission. Additionally, I was responsible for performing an examination of Carolina Power & Light Company's accounting for the cost of Harris Unit 1 in conjunction with the prudence audit performed by the Public Staff and its consultants in 1986 and 1987.

I have had supervisory or management responsibility over the Electric Section of the Accounting Division since 1986, and also was assigned management duties over the Water Section of the Accounting Division during the 2009-2012 time frame. I was promoted to Director of the Accounting Division in late December 2016.

# Appendix B

## Dustin R. Metz

### Qualifications and Experience

Through the Commonwealth of Virginia Board of Contractors, I hold a current Tradesman License certification of Journeyman and Master within the electrical trade, 2008 and 2009 respectively. I graduated from Central Virginia Community College with Associates of Applied Science degrees in Electronics & Electrical Technology (Magna Cum Laude), 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 have 12 plus years of combined experience in engineering, electromechanical system design, troubleshooting, repair, installation, commissioning of electrical & electronic control system in industrial and commercial nuclear facilities, project planning & management, and general construction experience.

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, customer complaints, nuclear decommissioning, power plant performance, and other aspects of utility regulation.

BY MR. DODGE:

Q Mr. Maness and Mr. Metz, did you prepare a summary of your joint testimony?

A (Mr. Maness) Yes.

Q Would you please provide it at this time?

(WHEREUPON, the summary of the joint testimony of MICHAEL C. MANESS and DUSTIN R. METZ is copied into the record as read by Mr. Maness from the witness stand.)

**Summary of Joint Testimony of Michael C. Maness and Dustin R. Metz**
**Docket Nos. E-7, Sub 1181; SP-12478, Sub 0; and SP-12479, Sub 0**

Good morning, Commissioners. The purpose of our January 18, 2019, testimony is to present the results of our technical investigation into the proposed sale and transfer of certificates of public convenience and necessity for five hydroelectric facilities (facilities) by Duke Energy Carolinas, LLC (DEC) to Northbrook Carolina Hydro II, LLC or Northbrook Tuxedo, LLC (collectively known as Northbrook). In its November 29, 2018, *Order Requiring Filing of Testimony and Scheduling Hearing,* the Commission directed the parties to file testimony specifically addressing nine questions, along with other evidence that supports their position in this matter.

Our testimony addresses the following topics:

- <u>Present Value of Revenue Requirements, or PVRR Analysis</u>: The Public Staff believes that the PVRR Analysis conducted by DEC was reasonable overall, notwithstanding a few concerns. We believe that it adequately supports the Company's decision to dispose of the facilities, in that the disposition is likely to result in future net benefits to the Company's North Carolina retail ratepayers, subject to the accuracy of its cost and benefit assumptions.

- <u>Capital Expenditures Made By DEC:</u> The Public Staff believes that DEC should have done a benefit/cost or PVRR analysis comparing options like sale or retirement before investing more than $17 million over 2015-2017 in these five facilities. Further, that the Public Staff seeks to review whether this failure to conduct the PVRR before making the investment rises to the level of imprudence, and whether it may have increased the amount of loss.. We believe it would have been reasonable to perform such an evaluation, particularly when considering these levels of investment on facilities more than a century old in some cases. As described further in the motion filed concurrently with our testimony, the Public Staff believes that the proposal to sell the facilities so soon after making significant capital investments in them creates special circumstances meriting further consideration, and that the issues of prudence and reasonableness of the 2015-2018 expenditures should be preserved as an open issue until DEC's next general rate case, at which time the prudency and reasonableness of the deferred costs resulting from those expenditures can be further considered.

- Deferral Standard: Pursuant to the Commission's request, we provide a general background discussion on the deferral standard that is sometimes applied by the Commission, and the Public Staff's finding in this proceeding that it is reasonable for the Commission to consider the apparent benefit of this transaction to the ratepayers, and in its discretion to therefore authorize the creation of a regulatory asset and amortize it to expenses over a period of time, subject to review in DEC's next general rate case.

- Amortization Period: The Public Staff's position is that the amortization period should begin in the month in which the asset transfer is completed, and be set at 20 years, which is comparable to the period of time over which the facilities would have been depreciated if they had remained in service, subject to reevaluation and adjustment in the next general rate case.

- Costs included in the Sub 1146 Proceeding: The Public Staff reviewed the amounts of the expenditures that were included in the rates established by the Commission in DEC's most recent general rate case in Docket No. E-7, Sub 1146 (Sub 1146 Proceeding), and generally agrees with DEC regarding the specific costs that were included in rate base in the Sub 1146 Proceeding, as well as those costs that were not included. These include actual capital expenditures made in 2018, as well as certain specific transaction costs associated with Northbrook's acquisition that were not part of the Sub 1146 Proceeding.

In conclusion, our testimony recommends that the Commission: (1) approves the transfer of the CPCN requested by DEC and Northbrook; (2) establishes the regulatory asset requested by DEC, with the amortization period starting in the month in which the asset transfer is completed, and using the average remaining book life of the assets as the basis for the recovery period, subject to reevaluation and adjustment, however, in the next general rate case;

and (3) authorizes the Public Staff to further evaluate the reasonableness of the expenditures made by DEC at the Facilities leading up to the sale of the facilities, for consideration in the next general rate case.

This completes our summary.

MR. DODGE: Thank you.

Mr. Chairman, the witnesses are available for Commission questions.

CHAIRMAN FINLEY: Commission questions? Commissioner Mitchell.

EXAMINATION BY COMMISSIONER MITCHELL:

Q Good morning. Just a few questions for y'all. So Public Staff, as I understand your recommendation - and, Mr. Maness, the summary you just provided sort of presents it fairly clearly - is that you ask the Commission to approve the transfer, establish the regulatory asset, and authorize the Public Staff to further evaluate the reasonableness of the expenditures that were made leading up to the sale of these assets.

A (Mr. Maness) Yes, that's correct.

Q So what is the Public Staff's position if the Commission does not authorize the Public Staff to further evaluate the reasonableness of the expenditures? Specifically, what's the Public Staff's position on the creation of the regulatory asset?

A Well, first of all, we would recommend that the

Commission's standard language regarding review of deferred assets and amortizations in the general rate case would stand regardless of the Commission's specific finding as to the 2015 to 2018 expenditures; that's the normal part. Now, as far as the 2015 and 2018 expenditures themselves, what our recommendation would be in this proceeding here today, I do not know. We have not discussed that. At least I haven't been part of any of those discussions so I don't know if it would be subject to a motion for reconsideration, appeal, or any further action.

Q Okay. Thank you. It appears to be from the record in this case that Duke has determined that it's a -- it's more economical for the ratepayers for Duke to divest itself of these assets and then purchase the power in RECs at least for a five-year period from these assets. So isn't that sort of the least cost option at this point in time? I mean hasn't Duke's analysis demonstrated that in this proceeding?

A Yes. When you look -- when you say, for example, at this point in time looking at the forward expected costs and benefits of disposing of the assets, we think that that is the correct action and the reasonable and prudent action to take. Now, that doesn't mean necessarily that it shouldn't have been done previously. But when you're looking at it from this point in time, yes, we agree that that's an economical thing to do.

Q Okay. I think -- so just one last question. Given that as of at this point in time that's a least cost option, shouldn't Duke pursue that option under its least cost mandate regardless of what happens on the issue of deferral?

A Yes. We do agree that that is the option that they should pursue or maybe better stated we do not disagree with their proposal to do that. We think it's reasonable and prudent for them to go ahead and dispose of the units in the manner in which they've agreed to do with Northbrook.

COMMISSIONER MITCHELL: Okay.

EXAMINATION BY COMMISSIONER CLODFELTER:

Q Gentlemen, I'm going to ask you some three questions that arise out of the slide decks from the three meetings. I'm not sure you need to have to those in front of you. I'm not sure my questions require them but if you want to get them that's fine. While you're looking for them I can ask you an overall question. The first of those meetings we've learned was in August, August 23, 2017. Were either or both of you in attendance at that meeting?

A (Mr. Maness) I was in attendance.

A (Mr. Metz) I was not in attendance, but James McLawhorn, Director of the Electric Division, was in attendance.

Q Were there others on the Public Staff in attendance in addition to the two, Mr. Maness?

A (Mr. Maness) Yes, but I do not have a list in front of me.

Q That's fine, I just wanted to confirm that. So, again, if you want this in front of you I'll give you time for that. I'm not sure it's necessary; we've already had from Mr. Lewis that -- in the slide deck the Company presented at that meeting in August, there were two bullet points that Mr. Somers sort of focused us on, one says *regulatory spend is significantly contributing to NBV*, that's net book value growth, and the second bullet says *sales price is expected to be less* *than the current net book value, NBV.* That's on page -- the way I've got them stapled here I can't read the page numbers, I think it's 2. But the question really is -- that's the predicate for the question. The question really is this, when this information was presented in that meeting in August was the issue or the question raised at that time by the Public Staff as to whether or not the Company had done an NPV, a Net Present Value analysis, of the expenditures that were driving the increase in net book value growth? Was that question asked by the Public Staff then?

A Not to my recollection. At that point in time it was presented to us that net book value was going up over time. I think reference has been made to a graph on page 5 of the presentation. I note that there's no scale on that graph so we did not know exactly what dollar amounts were being talked about. I don't recall that question being asked although it may have been, I do not know.

Q Did you ask what was causing that trend? Even though you don't have a scale on it what was causing that trend that's shown on slide 5?

A I do not recall.
Q And you didn't ask the Company what the drivers of that were or whether they had done any analysis of those expenditures at that time?
A In August of 2017, I don't know that we did. I know that eventually we did in the course of the analysis to try to determine that, but I don't know --
Q When was eventually?
A -- that it was done in August.
Q I'm sorry. I didn't mean to cut you off.
A I don't know. It would have been in February or May or when we actually received detailed information in response to our data requests as to seeing the actual pattern of dollars spent.
Q I'm sorry, I may misunderstand you, did you present the Company with data requests after this August 2017 meeting?
A No, I don't believe we did. I think our first -- at the time of the August 2017 meeting, the perspective was well this is something that may be coming along in the future but it's not here right now, and so we did not present our first data request I think til either, after the

February or May meeting.
Q It may have been after the May meeting?
A Yes.
Q Well, were you in attendance at the second meeting in February?
A I don't recall whether I was or not. I do recall I was at the main meeting. But I did receive the slide deck with relation to the February meeting.
Q You did receive the slide deck?
A Yes.
Q Mr. Metz, were you at the February meeting?
A (Mr. Metz) I was not in the February meeting but I remember meeting with James McLawhorn shortly thereafter and being briefed on the overall situation and getting brought into the working group.
Q Mr. Maness, before the third meeting in May, on May 9th of 2018, did you or to your knowledge did anyone else on the Public Staff ask the Company if they had done a Present Value Revenue analysis of the capital expenditures that were driving this increase in net book value?
A (Mr. Maness) The slide deck from the February meeting actually indicates that they had done

what they referred to as a preliminary Present Value Revenue Requirement analysis. From that, I took that there was going to be an analysis done that would not be preliminary but would be more final and refined and so I did not feel that we needed to ask for a copy of the preliminary analysis at that time, instead we would wait for the more final analysis.

Q Well, isn't that reference to the February slide deck to an analysis of the costs and benefits of the sale of the assets versus retention of the assets?

A Yes.

Q And my question to you was a little different. I was asking you whether before the May 9, 2018 meeting, you or to your knowledge anyone else on the Public Staff had asked whether the Company had done a cost benefit analysis of the capital expenditures made prior to the --

A Oh, I'm sorry, I misunderstood. No, at that time we still didn't see the pattern of the dollar amounts and so I do not recall that being asked. It may have been asked by somebody else informally but I don't have any record of it being asked in any sort of formal manner.

Q But the Company told you that regulatory compliance costs were increasing net book value and that sale would be for less than net book value. And you saw a trend line without scale but there was no request for more information about those data points to your knowledge prior to May of 2018?

A No. My feeling about it was that this was something that would be evaluated and analyzed if and when things were finalized and the Company was going to or did come forward with a proposal.

COMMISSIONER CLODFELTER: Okay, thank you. That's all.

CHAIRMAN FINLEY: Commissioner Brown-Bland.

EXAMINATION BY COMMISSIONER BROWN-BLAND:

Q So the Public Staff's position or request is that the Commission leave open a review of these capital expenditures that occur between 2015 and 2018. What is it in a general educational way that you can explain to us today that you need to do, want to do, that you haven't been able to do to date to satisfy yourself about these expenses?

A (Mr. Metz) I'll elaborate a little bit more on that, Commissioner Brown-Bland. So a lot of the cost elements here we look at from a general rate case perspective and we wouldn't be doing this type of deep dive analysis within the setting laid out here. As you can see through the multiple data requests that we try to peel back as many layers as we can or try to understand what information was known at the time for the decisions moving forward through the many conversations and good conversations that we've had with Duke. As time has progressed through this, we've came at an impasse on certain objects where particularly the NPV or cost benefit analysis of a specific time. We'd like to continue working with the Utility to the point if information can be provided. So again, it's gearing back to our holistic evaluation. What information was known at the time for a decision point moving forward.

A (Mr. Maness) If I could I would like to add a little bit of perspective regarding the rate case Mr. Metz mentioned. In the rate case, in looking at capital expenditures in particular, we asked for all the projects, for them to provide us the cost and a description of all the projects between 2013 and 2017, approximately the space between the most recent rate cases, and that amount totaled $8 billion approximately. Well actually between $8 and $9 billion, and from that the Public Staff made a selection of additional items we wanted to review. It's not unreasonable to assume that these expenditures did not stick out in that population of $8 billion we did -- where we would automatically select that for sampling and review. I think we sampled approximately eight hundred million out of the eight billion for further review based on the judgmental review of those items to see which ones might be most susceptible to perhaps something being imprudent and unreasonable.

But I just wanted to give a little bit of sense of a scale of what we have to review in a general rate case and how we make our selection and why this would be relatively small in that scale.

CHAIRMAN FINLEY: So let me make sure I have the facts right here.

EXAMINATION BY CHAIRMAN FINLEY:

Q So in the last rate case at the end of the hearing, for example, most of these costs have been incurred with respect to these five projects.

A (Mr. Maness) Yes, that's true.

Q And are they all capitalized costs?

A No. There's a mixture of capital costs and operations and maintenance expenses.

Q So do you want to take a look at all of the costs, the O&M expenses as well as the capital costs?

A (Mr. Metz) I believe some of those go hand in hand; yes, Chairman Finley. But also to add on to that, through discovery and working with the utility the Company itself identified at different points in time of, I call them, misentries or potential corrections that can -- that were filed. So in a degree of what was reviewed, even after the fact, there are potential things miscategorized and cost codes still self identified by the Company.

Q But as of the -- do you want to say something?

A No, sir.

A (Mr. Maness) I was just going to say that we would expect those to be corrected when the Company makes its final entries regarding the sale and the loss on sale.

Q Can you give me a breakdown percentage-wise how much of the costs are O&M costs and how much are capital costs; just a rough estimation?

A I guess the first thing I should say is that this is -- may delve into confidential information.

Q I'm just looking for a rough percentage here if you could. Hopefully that wouldn't be too confidential.

CHAIRMAN FINLEY: Did you hear that, Mr. Somers?

MR. SOMERS: I'm sorry, I did not.

CHAIRMAN FINLEY: He's suggesting that the question that I asked may get into confidential information. What I've asked him for is as far as the test year, the expenses that we're having at issue here, how much -- what percentage of those are capital expenses and which are O&M expenses.

MR. SOMERS: I do not believe that answer will be confidential. I appreciate Mr. Maness asking that.

MR. DROOZ: I believe there's some testimony on that from a Duke witness. I also -- we would be happy - we don't have that right at hand - to provide that post hearing.

A (Mr. Maness) The number I'm looking at is, if it suffices, is the number from 2011 through 2017, and the -- I would say somewhere in the neighborhood of 40 percent would be the operations and maintenance expenses total over that time. The capital expenses would be about 60-65 percent, somewhere in that range.

BY CHAIRMAN FINLEY:

Q So in the rate case the O&M expenses were -- operating revenue deductions were recognized in the calculation of the cost of service, and the capital items were added to rate base, and there's a return being earned on those now, and there's depreciation being taken on those capital assets; is that right?

A Yes. Now, one thing I would point out with the operations and maintenance expenses, we're only talking about one, in this analysis one-seventh in general of the number that we look at because some of those things are recurring things that happen every year. And so we're setting the revenue requirement to recover that amount on an annual basis where the capital expenditures are more of a cumulative number.

Q I got you. But you're not asking in this case to change the rates that are reflective of those costs in the expenses, right?

A No. It would probably, most likely, and the emphasis would be looking at what the decision would be at the previous point in time and how that could impact the amount of the deferral, the loss on sale.

Q Can you cite to me any example where the Commission, after a rate case had been concluded, went back and took items out of rate base that had been included in a prior general rate case?

A I'm not aware of any.

Q Are you aware of an item that came up in the last Aqua general rate case where there was an issue of contributions in aid of construction with respect to Flowers Plantation and there was a recommendation by the Public Staff to take some of that contribution in aid of construction out of a deduction from rate base, and the Commission

said, no, we don't want to do that, if it's already in rate base we want to leave it there?
A I'm generally aware of that, yes.
Q Are you aware of a Motion for Reconsideration addressing an issue such as this? Can you cite me an example of where a Motion for Reconsideration was asked and granted with respect to this particular set of facts in the past?
A No.
Q Thank you.
CHAIRMAN FINLEY: Other questions? Questions on the Commission's questions?
MR. SOMERS: I have a couple, Mr. Chairman. Thank you.
EXAMINATION BY MR. SOMERS:
Q Mr. Maness, I want to try to clear something up on the record while we're all still here. You were asked a question from Chairman Finley about how much is capital and O&M. Would you agree with me that approximately $17.3 million that are at issue are 100 percent capital?
A (Mr. Maness) That looks generally correct to me. I'm going to let Mr. Metz address that as well if

that's all right.
Q Certainly.
A (Mr. Metz) That sounds pretty close, subject to check. It's around that number. It's around $17 million.
Q Okay. And my question is not whether it's $17.3 million or close to $17 million, but that 100 percent of those dollars are capital. Do you agree with that or do you know?
A I don't know right off the top of my head, no.
MR. SOMERS: If we want to put a Duke witness up here we can do so, but I will tell you that Duke's testimony will be that's 100 percent capital.
A couple more -- I'm sorry, Mr. Drooz.
MR. DROOZ: Yes, I believe Witness Williams' testimony also indicates that 95 percent of the costs were included in the prior rate case.
MR. SOMERS: That's correct.
BY MR. SOMERS:
Q A couple more questions I believe for you, Mr. Maness. You were asked some questions by I believe Commissioner Clodfelter about the slide deck from the August 2017 meeting; do you recall that? You have that in front of you?

A (Mr. Maness) Yes.

Q And one of the questions he asked you about was whether there was a discussion with the Company about the PVRR analysis at the time of that first August 2017 meeting and whether the Public Staff had asked what were the components of that were. Do you recall that question or a question to that effect?

A I generally recall that we did ask about the PVRR analysis in August.

Q And if you'd you look at slide 4 of the August 2017 slide deck. Do you have that? The title at the top of the page says *Recommendation*.

A Yes.

Q In that first bullet there it says *Positive For Customers*. Do you agree that that talks about the internal modeling that the Company had done as of August of 2017 that showed it was positive for customers versus divestiture -- excuse me, *positive for customers for divestiture versus keeping plants*?

A Yes. Our perspective on that was this was a preliminary analysis that had been done by the Company, and we felt we would follow up on it when the project became more firm. And looking -- sorry, just a second, looking at some of the dates, this may be partially responsive to Commissioner Clodfelter's question, our first data request was sent on May 22nd.

Q And you wouldn't disagree with me that the Public Staff has asked a lot of questions about this project and the sale of these assets, correct?

A I'm not sure how to characterize a lot, we asked the questions that we felt we needed to be asked to get a -- to come to our recommendation, and including the recommendation that some of this evaluation be preserved for the next general rate case.

Q Thank you. You asked every question you wanted to, didn't you?

A As far as I -- speaking for me personally and the people who worked under my supervision, I would say the answer is yes. I'll let Mr. Metz address it from the engineering end.

A (Mr. Metz) I asked the questions and other non-team members with the Electric Division asked the questions. Looking at the information that was presented to us and in continuing dialogue with the Company, so to that framework it is as more information is being presented, more and continuous questions continue to evolve due to conversation.

Q I'm not trying to argue with you. I apologize if it came across that way. My question is the Public Staff had every opportunity to ask the Company whatever question it wanted to beginning in August of 2017, throughout the rate case and in this docket, and the Company didn't refuse to answer a single question, did they?

A (Mr. Maness) No, not to my knowledge, particularly with the ones that were asked by folks who were working under my direction. I will point out, though, that in these sort -- it's not uncommon in these sort of deferral requests for us to recognize that we want to get the requests on the -- before the Commission within a reasonable amount of time given the time we need to develop our position regarding the general appropriateness of the deferral, and it's not unusual at all for us to say that the costs need to continue to be reviewed after the Deferral Order comes out, subject to adjustment in the next general rate case.

Q Okay. If you would flip to slide 5 from that August 2017 presentation. Again, this is in the Joint Late-Filed Exhibit 1. As you're flipping there, you were asked some questions from Commissioner Clodfelter about this net book value graph at the bottom of the page, if you get there and remember that line of questioning generally?

A Yes.

Q And I believe you noted that there's scale on this graph but there's no numbers, correct?

A Yes, that's correct.

Q And you were in the August 2017 meeting that this slide deck was discussed between the Company and the Public Staff?

A Yes.

Q Do you recall Mr. McLawhorn, Mr. James McLawhorn asking Mr. Smith how much was in that book value as of 2016, and he told him $41 million; do you remember that?

A No, I do not recall that.

Q All right.

A But I don't dispute it.

Q That was a long time ago. I appreciate that.

You were testifying earlier in response to questions from Commissioner Clodfelter, or Chairman Finley I believe about sort of a threshold of dollars that the Public Staff would look at in the context of a rate case, and that the dollar -- the $17 million at issue here is a relatively small number in the case of a general rate case. Do you remember your testimony to that effect?

A Yes.

Q I want to make sure this is clear on the record. Whether Duke Energy Carolinas was selling these hydro units or not, the Public Staff had the opportunity and obligation to review the reasonableness and prudence of those costs in the Sub 1146 rate case, didn't it?

A I'm going to take a little issue with your term "obligation". When we look at a general rate case it's obvious, we simply cannot review every single dollar that was spent in capital between a rate case that was held, let's say, three or four years ago and the current rate case. We have to make a selection of items to review. And the objective to that -- the objective of that is to determine within a manner of reasonableness that the overall level of plant in service and other rate base items is reasonable and appropriate. Just as any auditor would do, even in a financial audit they're not going to look to get a hundred percent certainty on every dollar. They're just looking to have reasonable assurance and, therefore, make the recommendation that the overall amount be accepted as reasonable and appropriate for ratemaking purposes. So I'm going to disagree with "obligation". When you say did we have an opportunity, well to the extent that that full population of costs was presented to us, yes, we would have an opportunity.

At the time of the August meeting and even going forward til we received the Company's I believe reply comments in this proceeding, I was not expecting to tell you the truth that the Company would argue that we would not be -- should not be allowed to look at those costs because they had been incurred prior to the end of the review period for the last general rate case. I personally think that the appropriate policy from a ratemaking standpoint is that when you're looking at something you're looking at it within the context of the scope of the total dollars you're looking at. And when you have a proceeding that is asking, for example as in this case, that certain dollars be deferred for future recovery that that scope is much smaller, but you're being asked to give an opinion on a specific matter that involves those specific dollars. And to me it's entirely reasonable that the Public Staff should be allowed to ask questions about those specific dollars even if they were incurred before the cut-off date for a general rate case.

Q In this docket that we're here discussing today, the entire focus has been on this approximately $17 million; is that correct?

A No. I mean, that's been the focus of this hearing but this docket looked at, also, whether it was appropriate for the Company to dispose of the units at this time.

A (Mr. Metz) And the deferral.

A (Mr. Maness) And the deferral but I think the $17 million would be part of the deferral.

Q The total scope of the dollars that are issue in this hearing is approximately $17 million; is that correct?
A That seems like a reasonable statement to me.
A (Mr. Metz) Yes.
Q And the Public Staff has asked every question it wanted to, is that correct, about those $17 million?
A (Mr. Maness) We've asked every question that we felt was reasonable to ask to this point in time recognizing that we think we should be able to do further analysis and there really hasn't been time to do all of the further analysis that we would want to do. And that's why we were asking to be able to continue that up until the time of the next general rate case.
Q And then you're --
A (Mr. Metz) And I agree with Mr. Maness.
Q I'm sorry, Mr. Metz, I didn't mean to interrupt you. Are you done?
A I agree with Mr. Maness.
Q In your joint testimony in this case, you have not alleged that a single dollar out of that approximately $17 million was unreasonable or

imprudently incurred have you?

A I'm not a lawyer. I'm not trying to spin on words like reasonable and prudence. But at some point we're trying to understand what decision points were made at a specific time, and absence of a cost benefit analysis it's unknown what one should have spent or not spent; therefore, I can't make a reasonable or prudent decision based upon information known to date.

Q My question is you have not testified in this case in your prefiled testimony or today on the stand that a single dollar out of that approximately $17 million was in your considerable professional opinion unreasonably or imprudently occurred or approved by this Commission, is it?

A I can't reach a conclusion at this point, and I believe that's why we were requested to continue the review at a later point due to specifics of the case.

MR. SOMERS: Thank you. No further questions.

CHAIRMAN FINLEY: Do you have any questions over here?

MR. DROOZ: And we can go in whatever order you want but --

CHAIRMAN FINLEY: Why don't you go.

MR. DROOZ: Okay.

EXAMINATION BY MR. DROOZ:

Q Just following up, if either of you remember the conversations you took part in at those August and February meetings where the Company presented its slide decks on this proposed sale, did the Public Staff ask if the reasonableness of these costs could be subject to review in a subsequent rate case and get a positive answer from the Company?

A (Mr. Metz) If we're talking about the --

Q If you recall.

A Well, if we're talking about the February 2017 meeting, I was not there -- or the August 2017 and February meeting I was not there.

A (Mr. Maness) I don't specifically recall that question being asked, but I do recall that that's in the Company's petition.

Q When did the Public Staff learn of the magnitude of loss?

A I believe it was -- the estimated loss was

presented to us in the May meeting I believe.
Q May of which year?
A May of 2018.
Q Thank you. Is it your understanding that this docket, this proceeding is about the deferral request and the transfer of the CPCNs and the ability to use RECs as if these were new hydro? Is that essentially what the Company is asking for?
A Yes.
Q Is this a cost-recovery proceeding?
A No, it is not.
Q Is the general rate case a cost-recovery proceeding?
A Yes.
Q And is the reasonableness of a loss or a cost generally considered in a general rate case or cost-recovery proceeding?
A In a case like this where you're talking about a deferral request there is usually some investigation as to what the amount of loss would generally be at the time of the deferral. Frequently, we don't have all of the data in and, secondarily, the final resolution of that is --

there's language included in these deferral orders that the final resolution of that is left to be determined in a future proceeding or a cost-recovery proceeding, so to speak.

Q Just to maybe recapitulate there, is it the Commission's normal procedure in a deferral request to hold open the reasonableness of the costs into a subsequent rate case?

A Yes.

Q If the Company, as Duke Energy Carolinas had done a PVRR analysis in earlier years, say in 2011 or 2014, and had considered options of sale, retirement, continuing to make investments in facilities, is it possible, if they had done that analysis then and made a decision based on it, that the amount of loss would be different than what's being presented today?

MR. SOMERS: Objection, calls for speculation.

CHAIRMAN FINLEY: Overruled.

A Yes, it's possible.

BY MR. DROOZ:

Q And is that the subject that the Public Staff would like to address in DEC's next rate case?

A Yes. I think that that's how our final conclusions and recommendations would be put into the context of cost recovery.

MR. DROOZ: That's all.

CHAIRMAN FINLEY: We have another question here.

RE-EXAMINATION BY COMMISSIONER CLODFELTER:

Q Mr. Maness, Mr. Drooz may have asked you the question I'm about to ask but I'm not sure whether he did and I'm not sure what your answer really was so I'm going to ask it a little differently and see if I can help myself. All right.

So you have a meeting in August which you attended?

A (Mr. Maness) Yes.

Q And the Company lays out this idea that it's proposing to sell these plants and it tells you, among other things, in that meeting that the book value of these assets is increasing because of expenditures being made and that it's likely they'll be sold at a loss to book value. It tells you that in August?

A Yes.

Q And then it comes back in February and it gives you an update on that and you're at that meeting?
A I believe I was but I can't say for sure.
Q And I think what I learned earlier from earlier questions I asked you was that up until the third meeting in May, the Public Staff hadn't been asking the Company any detailed information about what was causing those expenditures to be made that were increasing the net book value and, therefore, increasing the probable loss. That wasn't the topic you were discussing.
A That wasn't a topic I was discussing. I know that we didn't send a formal data request. That does not necessarily mean that there weren't some informal discussions between Mr. McLawhorn or other members of his division and the Company. I just don't know.
Q Do you or Mr. Metz know if there were any such discussions on that subject?
A I do not know.
Q Okay.
A (Mr. Metz) There were general conversations between Mr. McLawhorn and ourselves because they're just taking into consideration, I

believe, one of the items that was brought up going off memory was specifically dealing with NERC-CPI (sic) Standards. That might be the wrong acronym to use. But through different regulatory requirements there would be imposed costs to meet the regulatory requirements.

Q But was the topic of discussion the money the Company had been spending prior to 2017?

A No, sir. The magnitude aspect was not discussed.

Q All right. So when the Company comes back in in February -- I'm sorry I'm long-winded about this but I have to get this into simple English and not regulatory-ese. So when the Company comes back in February, it tells you according to the presentation materials that it's going to ask -- if it sells these assets and if it realizes a loss as it expects to do then it's going to ask for an Accounting Deferral Order; it tells you that?

A (Mr. Maness) Yes.

Q And at that point in time you hadn't really done or asked any questions about what was causing the size of that loss? The expenditures that have been made that were growing the net book value and increasing the size of the loss, that's not a topic that you can sit here today and say you've been discussing?

A No because at that time our plan was to ask whatever questions necessary when it became a formal proposal, not imagining at that time that our ability to look at that would be challenged. Should the outcome of this proceeding be such that we are precluded from that type of investigation when it involves a general rate case intervening at some point, then it will become obvious to us that we will have to ask a lot more questions both about that specific topic in the context of what they're asking for in terms of deferral, or what they plan to ask for, and in terms of any possible plans or contemplations they may have in a general rate case, even if they haven't presented them to us. It will be -- it'll create quite a lot of effort.

Q Okay. So we're getting close to the question here. We're getting real close. Thank you for that answer. So you're in the middle of a general rate case right then.

A Could you specify the date?

Q Well this is in May of 2018.

A Well, we had already filed our proposed orders in the general rate case in May of 2018.

Q But you're in a general rate case right then.

A We're in a general rate case but we don't have any further opportunity for discovery --

Q You were in one in February?

A -- in a general rate case.

Q You were in one in February.

A In February, I believe that the discovery period had closed. I'm not sure whether we had filed testimony --

MR. DROOZ: Just as a matter of judicial notice, our discovery deadline ended on January 5, 2018, in the general rate case.

COMMISSIONER CLODFELTER: Thank you.

MR. DROOZ: And our testimony was filed January 23, 2018, in the rate case.

COMMISSIONER CLODFELTER: Thank you. My memory is not as good as yours and I appreciate the dates on that.

BY COMMISSIONER CLODFELTER:

Q But these expenditures had been flagged for you as something you might want to know about in

August and in February.

A My interpretation is that they were flagged for us because in general would say you see how these expenditures are going to go up. They're going to continue to go up in the future. So the entire focus from my perspective was what's going to happen in the future and does that lend itself to a conclusion that it's the right move to sell these assets.

Q Well, did -- so the Company tells you that they're going to ask for deferral accounting on these losses, expected losses?

A Yes.

Q And did you, do you recall did you in any of the meetings or informal discussions tell the Company well, you know, we're not going to be looking at those in this general rate case, we're going to ask for an opportunity to review those expenditures in the next rate case?

A I don't know that we explicitly told them that but that's the normal procedure. And I did not even imagine at the time that they would take a position to preclude us from making a more detailed look at those expenditures. I think

Mr. Metz wanted to --
A (Mr. Metz) I'd like to potentially add on --
Q Sure.
A -- Commissioner Clodfelter. In switching gears a little bit back to the rate case, I'm looking at the items that were reviewed since I can talk about what I looked at. As you reviewed it sort of the accounts, and I worked with Public Staff Accounting of how Mr. Maness analyzed of how you sort of look at different values. And then you go into -- further into extreme, we also have to take into consideration of say the Lee combined cycle plant which is approximately a $600 to $700 million plant and how much time was invested into -- in magnitude. So just trying to balance whether you look -- you spend a significant amount of time in a new asset coming on line at $700 million or going further down into the pie and triggering not $17 million because the $17 million as a whole wouldn't have been flagged or identified, you'd be looking at subprojects or subsets that are further demonstrated in some of the costs.
Q I understand exactly why you looked at what you

looked at. My question was that these were specifically flagged for you as something that might be of interest. And my question was did you tell the Company that you were going to be wanting to look at those further in the next rate case after the one that was then pending?

A (Mr. Maness) I don't remember whether we explicitly said that. That's the normal procedure. Well, I'll just say that, that is the normal procedure you would take for looking at costs of this type. I guess the one thing I would add to that is that the Company did not present this matter to us in the context of a general rate case. They presented it to us in the context of here's something that we may or most likely will be filing in the future and so we want to let you know that so you can look at these costs in the general rate case. They never presented it to us in that context either. So I felt fairly confident and didn't even think about the fact that we might somehow be precluded from looking at those most -- more specific dollars in that more specific context.

CHAIRMAN FINLEY: Questions on Commissioner

Clodfelter's questions? Any over here? Mr. Drooz.

MR. DROOZ: Yes.

RE-EXAMINATION BY MR. DROOZ:

Q In general, setting aside legal transaction costs, is a loss defined as the net book value minus the sales price?

A In general, yes.

Q Okay. So do you need both of those pieces in order to make a recommendation on prudence? The net book value and the sales price.

A A prudence of an amount to be deferred, yes.

Q Yes. And did you have both of those pieces in August of 2017?

A No.

Q In February of 2018?

A No.

Q Did you not have both of those pieces until May of 2018?

A That is when they were presented. That's the first time I became aware of it. I don't know if there had been any informal discussions prior to that time, but that's when I became aware of it.

MR. DROOZ: That's all.

CHAIRMAN FINLEY: Thank you. I think that's all we have for these two witnesses and you two may be excused. Thank you for coming.

(The witnesses are excused)

CHAIRMAN FINLEY: Is there anything else we need to -- any housekeeping matters we need to address? I think we've got all of the exhibits in and all of the testimony in if I'm not mistaken.

MR. DROOZ: Just dates on proposed orders or briefs.

CHAIRMAN FINLEY: The Commission would like proposed orders. Our general process is 30 days after the submission of the transcript. What is your pleasure on that?

MR. SOMERS: That's acceptable to the Company. If I may just note for the record, I believe it was in previous testimony and when Mr. Lewis also discussed it, the Company has a deadline of May 15, 2019, with the purchaser. And one of the conditions to closing is dependent upon the Commission's Order in this case so I would respectfully request, to the extent possible, that the Commission give us an order to help us meet that schedule. Thank you.

CHAIRMAN FINLEY: All right. Thank you all. If there's nothing further, we shall be adjourned.

CERTIFICATE

I, KIM T. MITCHELL, DO HEREBY CERTIFY that the Proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

Kim T. Mitchell

Kim T. Mitchell
Court Reporter II