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2 Raleigh, North Carolina

3 DATE: Thursday, May 23, 2018

4 DOCKET NO.: E-2, Sub 1159

5 E-7, Sub 1156

6 TIME IN SESSION: 10:00 a.m. - 12:43 p.m.

7 BEFORE: Commissioner ToNola D. Brown-Bland, Presiding

8 Commissioner Jerry C. Dockham

9 Commissioner Lyons Gray

10 Commissioner Daniel G. Clodfelter

11 Commissioner Charlotte A. Mitchell

12

13 IN THE MATTER OF:

14 TECHNICAL CONFERENCE

15 Joint Petition of Duke Energy Carolinas, LLC,

16 and Duke Energy Progress, LLC, for Approval of

17 Competitive Procurement of Renewable Energy Program

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19 Volume 1

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NORTH CAROLINA UTILITIES COMMISSION

1 COMMISSIONER BROWN-BLAND: Good morning.
2 We'll come to order now and go on the record. I am
3 Commissioner ToNola D. Brown-Bland, and with me this
4 morning are Commissioners Jerry C. Dockham, James G.
5 Patterson, Lyons Gray, Daniel G. Clodfelter and
6 Charlotte A. Mitchell.

7 The Commission now calls for Technical
8 Conference, the Matter of the Joint Petition of Duke
9 Energy Carolinas, LLC, which may sometimes be referred
10 to as DEC, and Duke Energy Progress, LLC, sometimes
11 referred to as DEP, and collectively they will be
12 referenced as Duke, for Approval of Competitive
13 Procurement of Renewable Energy Program, hereafter
14 CPRE Program.

15 Specifically pending before the Commission
16 is the requested approval of the CPRE Program plan
17 which was filed with the Commission in Docket E-100,
18 Sub 157 on September 5, 2018, as a part of Duke's 2018
19 Biennial Integrated Resource Planning Reports. Duke's
20 proposed CPRE Program plan contemplates the opening of
21 the Tranche 2 CPRE RFP solicitation in July 2019.

22 On December 17, 2018, the Commission issued
23 an Order allowing Duke to implement the proposed CPRE
24 Program plan on an interim basis requiring Duke to

1 file interim reports regarding the status of the
2 Tranche 1 CPRE RFP solicitation and establishing a
3 schedule for the filing of comments by the parties to
4 this proceeding. That Order authorized Duke to
5 implement the CPRE Program plan without prejudice as
6 to the right of any party to file comments with the
7 Commission regarding the CPRE Program plans or the
8 Commission to order changes in the CPRE Program plans.

9 Since the Commission issued that Order, the
10 Commission has received the required interim reports
11 from the Independent Administrator, hereafter IA, of
12 the CPRE Program, and comments from the following
13 parties: Duke; the Public Staff; First Solar, Inc.,
14 hereafter First Solar; and the North Carolina Clean
15 Energy Business Alliance, NCC -- NCCEBA.

16 On May 1, 2019, after having taken under
17 advisement the comments filed by the parties, the
18 Commission issued an Order scheduling this matter for
19 Technical Conference at this time and in this place
20 for the purpose of receiving more detailed arguments
21 from the parties regarding the following four issues:
22 First, the need for more detailed locational guidance
23 and when that guidance should be published to market
24 participants; second, the reasonableness of the energy

1 storage protocol that is a part of the CPRE pro forma
2 Power Purchase Agreement, hereafter PPA; third, the
3 reasonableness of the dispatchable PPA proposed by
4 First Solar for purposes of the CPRE Program; and,
5 fourth, how to structure a bid refresh procedure and
6 what amendments should or need to be made to
7 Commission Rule R8-71(f)(3) to authorize that
8 procedure. As to the bid refresh procedure, the
9 Commission allowed for the filing of proposed
10 amendments to the rule -- to Rule R8-71(f)(3) and
11 comments related to the same. Duke, the IA, the
12 Public Staff, and NCCEBA filed proposed amendments and
13 comments.

14 On May 21, 2019, as directed by the
15 Commission, the Commission Staff hosted a prehearing
16 conference call to address logistical and procedural
17 matters prior to the convening of this technical
18 conference, including a tentative order of discussion
19 for today's technical conference.

20 In compliance with the State Ethics Act, I
21 now remind the Commissioners of our duty to avoid
22 conflicts of interest, and I inquire at this time as
23 to whether any Commissioner has a known conflict of
24 interest with respect to the matter coming before us

1 this morning?

2 (No response)

3 Let the record reflect that no conflicts
4 were identified.

5 I will now call upon counsel for the parties
6 to announce their appearances and to introduce as
7 necessary any other persons that you anticipate might
8 be involved in today's discussion on the part of the
9 party you represent, and I'll start with the
10 Petitioner.

11 MR. JIRAK: Thank you, Chairman. On behalf
12 of Duke Energy, Jack Jirak and Brett Breitschwerdt.
13 We have a number of Duke personnel that will be
14 providing some information to the Commission. If it's
15 okay with you we'll have them introduce themselves and
16 then come up at the appropriate portions of the
17 presentation.

18 COMMISSIONER BROWN-BLAND: That will be
19 fine. And I'll say at the outset, Mr. Jirak reminds
20 me, but there are a number of people who we anticipate
21 will be speaking today, and our court reporter is not
22 familiar with you, so you will help her out greatly if
23 each time you come to the mic you identify who you are
24 and who you're with. Thank you, Mr. Jirak.

1 Continue.

2 MS. KEMERAIT: Good morning, Commissioners.
3 I'm Karen Kemeraït with the Law Firm of Fox Rothschild
4 in Raleigh, and I'm here on behalf of the North
5 Carolina Clean Energy Business Alliance. And with me
6 are several of the members of NCCEBA who are market
7 participants in Tranche 1 and who are planning to be
8 market participants in Tranche 2, and I'll ask that
9 they stand, Brian O'Hara with Strata Solar, Steve
10 Levitas with Cypress Creek, and Tyler Norris also with
11 Cypress Creek. Mike Wallace with EcoPlexus had a
12 flight and was planning to come today but he is very
13 ill and was not able to make it but he was intending
14 to be here. Also, Andy White with First Solar is a
15 member of NCCEBA who is also here today. Thank you.

16 COMMISSIONER BROWN-BLAND: Thank you all.
17 Thank you.

18 MR. HIGGINS: Commissioner Brown-Bland and
19 Commissioners, Dan Higgins with Burns, Day and
20 Presnell appearing for First Solar, Inc. With me are
21 these gentlemen with First Solar, Roger Bredder, Andy
22 White who stood a moment ago, and Hubert Lee.

23 COMMISSIONER BROWN-BLAND: Good morning.
24 Thank you.

1 MR. SMITH: Ben Smith, Regulatory Counsel
2 for NCSEA. I'm here more for observation and
3 potentially questions if any come up.

4 COMMISSIONER BROWN-BLAND: Well, we hope you
5 will learn a lot today.

6 MR. DODGE: Good morning, Commissioners.
7 I'm Tim Dodge with the Public Staff. Also joining me
8 is Layla Cummings with the Public Staff. We also
9 anticipate calling on Jeff Thomas from our Electric
10 Division and Dustin Metz from our Electric Division to
11 answer some questions today.

12 COMMISSIONER BROWN-BLAND: Thank you. And
13 we have our Independent Administrator.

14 MR. JUDD: Thank you, Commissioner
15 Brown-Bland, and thank you, Commissioners, for letting
16 us appear. I will introduce myself but as a matter of
17 protocol is it all right if we remain seated when we
18 address you?

19 COMMISSIONER BROWN-BLAND: Yes.

20 MR. JUDD: Thank you. My name is Harry
21 Judd. I'm with the group -- the Accion Group. We are
22 serving as the Independent Administrator. With me
23 today is Phil Layfield, our transmission expert, and
24 Dave Wall, also with the Accion Group who went through

1 Tranche 1 with us and will have insights to share.

2 Thank you.

3 COMMISSIONER BROWN-BLAND: Thank you. And
4 this morning, as I'll be mentioning later, our
5 Commission Staff is participating so, just for the
6 record, I'll have them to identify themselves.

7 MR. BUFFKIN: Thank you, Madam Chairman.
8 Patrick Buffkin, Staff Attorney with the Commission
9 Staff.

10 MR. McDOWELL: Hi, I'm Steve McDowell with
11 the Operations, Commission Staff.

12 MS. JONES: Kim Jones also on Commission
13 Staff.

14 MS. DUFFLEY: Kim Duffley, Commission Staff.

15 COMMISSIONER BROWN-BLAND: All right. So I
16 think we have -- we've gotten everybody on the record.

17 I have some comments to make about
18 today's -- the procedure and the reasons we're here,
19 but before I do that is there -- does anyone have any
20 preliminary matters to bring to the Commission's
21 attention before that?

22 (Counsel shakes their heads no)

23 COMMISSIONER BROWN-BLAND: The Commission
24 appreciates the parties and the IA's efforts to date

1 to attempt to reach consensus on the issues raised in
2 the CPRE Program implementation as the Tranche 2
3 solicitation approaches.

4 The purpose of today's technical conference
5 is to facilitate discussion so that the Commission can
6 resolve outstanding issues to assist with the forward
7 progress of implementation of the CPRE Program.

8 To that end, we are having this technical
9 conference transcribed by our court reporter. So
10 while we want this conference to be somewhat relaxed
11 and informal, we do still need each of you who has
12 something to say to speak one at a time and not speak
13 over one another. Wait for whoever is speaking to
14 finish before you start. And as I mentioned earlier,
15 also identify for the court reporter who you are and
16 who's speaking.

17 Please feel free to respond to questions
18 from the Commission and from our -- and from the
19 Commission Staff at your seats using the microphones
20 or, if you wish, you could come around to the witness
21 stand podium or the podium that's been placed there.
22 Again, it's relaxed, you don't need to ask permission
23 if that's what you want to do, please go ahead and do
24 that. But as I said, we're trying to keep it

1 informative and informal.

2 Generally, this conference will be much less
3 formal than usual. And if you have questions of other
4 parties for greater clarity or for understanding, I
5 may allow that but I need you to first ask so that we
6 can just keep order in the record. And I want to
7 remind you that the questions should not be for the
8 purpose of argumentation or arguing and should not be
9 considered to be cross examination. There will be no
10 formal testimony or cross examination and we're not
11 swearing anybody in. The comments made today will
12 though be part of the record in this proceeding just
13 as the written comments that were already filed
14 were -- are a part of the proceeding.

15 The other thing I want to emphasize, and I
16 believe you were told this in the pre-conference call,
17 but the purpose of today is not to make long extensive
18 arguments. You can assume that we've already read the
19 comments that have been filed so we're not looking for
20 a repeat or long presentations in that regard. We
21 want to keep it moving as best we can. And we really
22 wanted to get some questions answered that we the
23 Commission have and those have been developed along
24 with our staff. So staff -- I mean, the questions you

1 get are not to be ascribed to any one particular
2 person, they're coming from the body as a whole in
3 general. And we'll proceed -- we'll let the staff
4 begin, they will, after a statement by the IA of
5 course, but the staff will generally start this ball
6 rolling with their questions and we'll go through in a
7 basic order starting with the Petitioner and we will
8 hear from -- well, from time to time the IA first, and
9 then the Petitioner, and then the Intervenor parties,
10 back to the Petitioner I think, and then the same
11 thing will happen with the Commissioners. So we don't
12 do these often; they're rare, so bear with us as we
13 kind of figure our way out to what's gonna make the
14 most sense for purposes of the record.

15 Any questions or preliminary issues after
16 that statement?

17 (No response)

18 We're ready to begin. So we'll now start
19 with Mr. Judd of Accion Group as the Independent
20 Administrator of the CPRE Program for an overview of
21 the results of Tranche 1 and a forecast of potential
22 success in Tranche 2.

23 MR. JUDD: Thank you, Commissioner.

24 Tracy, may we have the next slide please.

1 First off, let me say that we are not going
2 to be introducing any confidential information
3 including if we have questions that would delve into
4 areas that we understand are confidential. We'll
5 provide that in an appropriate manner to the
6 Commission at a later date.

7 We do believe that Tranche 1 was a success.
8 It started the CPRE Program. We view it and always
9 did view it as a beta test for how we were going to go
10 through a number of different Tranches. We
11 acknowledge that we did not reach the goal that we had
12 set of 600 megawatts. There are reasons for that. We
13 think that, first off, that number was arbitrary. We
14 have over 2000 megawatts to procure. We wanted to see
15 how it would work. Our MO when starting a new program
16 is *you walk before you run*. But the program was
17 launched in a timely manner. It did confirm that the
18 marketplace is prepared to bring forward bids that are
19 at or below avoided cost. In fact, we had 2700
20 megawatts bid in initially; that shows certainly an
21 interest.

22 As we go through our initial presentation
23 and as there are later discussions, we do have ways
24 that we think it could be improved so that Tranche 2

1 will be even more successful. I do want to say that
2 the proposals that are now in the final phases of --
3 for which PPAs will be issued are going to be coming
4 online using the excess capacity on transmission of
5 the system, which was the goal here to see if we can
6 bring in renewable resources without a significant
7 increase in cost.

8 I also want to note that the process we used
9 as guided by the staff in using a web-based
10 procurement platform has created an audit trail for
11 you. We have all exchanges with the marketers
12 recorded; we have their proposals recorded; we have
13 all of their materials recorded; and we are able to
14 provide to the Commission a complete record of every
15 bid that was considered and how we moved forward.

16 Tracy, may I have the next slide, please.

17 When we were here in November we prepared a
18 flow chart of how the CPRE Program would be conducted,
19 how things would be administered. We're here to tell
20 you that we used the process that we had presented
21 then. There were no changes to it and it was
22 successful.

23 Next slide, please.

24 What we're providing here -- and again I'm

1 not going to read all of these slides, we've provided
2 it to you both electronically and a hard copy -- but
3 to show you that we used the progression. We're
4 continuing to believe that is the right way to proceed
5 in Tranche 2. It will produce the results that are
6 required in CPRE.

7 Next slide, please.

8 Again, this is just showing the progression
9 that we used and how we got to the results.

10 (Discussion among the panel)

11 We did receive bids in a timely manner.
12 We're trying to be efficient here for you. I
13 understand your time is valuable. We went through a
14 process as we had laid out ahead of time that we
15 received the proposals. We confirmed the intent of
16 the bidders, and I will use bidder/MP interchangeably
17 if you don't mind, and we were able to go through the
18 process also of bringing in proposals from the DEP/DEC
19 team for acquisition. A separate data record that we
20 have for the Commission are proposals for projects to
21 be acquired by Duke. We were -- that data also is
22 collected for you and, as an aside, we have created an
23 audit of that process as we were instructed to do and
24 we will be providing that report to you of how the

1 selections were made for the projects to be acquired
2 by Duke and how those were presented into CPRE and how
3 they progressed. You can see from the charts -- I'm
4 sorry, next slide please -- that we progressed in time
5 including that we did bring in proposals from the
6 DEP/DEC team that were included and evaluated using
7 the same standards as used for all other proposals.

8 MR. BALL: One more.

9 MR. JUDD: Next slide, please.

10 We also went through the process that was
11 unique to Tranche 1 of recognizing what we termed
12 "late-stage projects". Those were ones that were well
13 into the process of completing the determination of
14 what the cost would be for their system upgrades and
15 that the market participants had agreed to assume that
16 cost so that they were not subject to the process of
17 the stage two determination of system impact cost and
18 then having that cost imputed into their proposal to
19 determine the true cost to the Duke system and
20 ultimately to ratepayers, and we treated them
21 separately but we did recognize their existence.

22 MR. LAYFIELD: Me?

23 MR. JUDD: Yes, sir.

24 MR. LAYFIELD: On page 8, we're talking

1 about formation of the base case. I'm sorry. I'm
2 Phil Layfield with Accion.

3 The base case is the starting point for the
4 analysis as we add CPRE projects, and it's critical
5 that it be an accurate depiction of the electric
6 system. What we had in the base case as you see is a
7 little over 12,000 megawatts in DEC and a little over
8 12,000 megawatts in DEP that needed to be entered as
9 having existing and being built. That's 25,000
10 megawatts in a system that peaks at 37,000 megawatts
11 and you already have generation in place to meet that
12 peak.

13 My point is there is a bit of a disconnect
14 here, folks. And I realize that we're not here to
15 solve the queue reform issue today, but I do want to
16 point out that we have a bloated base case. And
17 hopefully as we get into the guidance, which is the
18 second issue you've asked us to talk about, we can
19 talk a little bit more about how we can manage the
20 base case.

21 One proposal that -- just a consideration is
22 that we only enter into the base case those projects
23 that have a completed facility study. That would
24 reduce the base case down to about 7000 megawatts --

1 we're on the last line now -- reducing, eliminating if
2 you will, from the base case 18,000 megawatts that
3 could be freed for later CPRE tranches. I don't want
4 to tell you that this is without risk because we still
5 have the queue so we have to manage this, but it is an
6 opportunity. It's an opportunity to continue to add
7 generation on the existing transmission system that I
8 am hopeful we'll be able to pursue.

9 Next slide.

10 MR. BALL: Thank you, Phil. Thank you,
11 Commissioners. I'm Dave Ball with Accion Group. I'm
12 going to cover the next few slides that describes the
13 process of the step one evaluation. And on slide
14 number 9, we talk about the bid cures and
15 clarifications. Just as a point of reference, we
16 received a -- all of the bids and there is a
17 tremendous amount of information that's required for
18 each market participant to bid, and we reviewed all of
19 it. We had technical teams split up to go over
20 different subject areas. Also, we summarized the
21 important pricing and other technical factors in their
22 bids and sent it back to each market participant in a
23 document to allow them to confirm that what we were
24 seeing in our files matched what they intended to

1 propose. And in that process we identified a few
2 items as charted out in that table of different
3 factors that were needed to be clarified. So our
4 whole process was intended to find the important
5 information, confirm that it was what they intended to
6 provide, and allow them to cure them in those
7 instances when it wasn't what they intended. The
8 purpose is to keep everybody in and to get the best
9 offers.

10 Now, on slide 10 we're pointing out that
11 only two bids actually were dropped out. The
12 Independent Administer did not kick anybody out. The
13 two that were dropped out were, as itemized in the
14 slide, inadvertent or unintended double submissions of
15 the same project. In DEC, there was one that was
16 submitted as both late stage and non-late stage, and
17 in DEP there was one that had storage and without
18 storage, and they clarified that they only intended
19 that one of each of those to go through.

20 On slide 11, this shows our initial ranking
21 of the pricing factors. The average net benefit,
22 that's the average net benefit below avoided costs.
23 The -- I'd just like to point out the final line there
24 is the median net benefit. So, if you prefer an

1 average or a median in the statistics, you have both
2 of those information points. And just to remind you,
3 the net benefit is the net energy benefit from the
4 production of solar energy plus the net capacity
5 benefit that you get from the solar production minus
6 the T&D system upgrade costs. And, again, that's an
7 8760 hourly load production profile across 20 years of
8 production and that's matched to the 20 years of 8760
9 avoided energy and avoided capacity costs for the Duke
10 systems, each DEP and DEC are separate.

11 Now, on slide 12, this is the asset
12 acquisition proposals that were sponsored by Duke.
13 There were five of them; two in DEC and two in DEP.
14 And I'd just like to point out that the Duke
15 self-build team submitted other proposals in addition
16 to these, just so you understand there are more than
17 just the five. These are just the five from the asset
18 acquisition silo.

19 And then the -- on slide 13, as the result
20 of the step one process, we evaluated the economic
21 benefits of every proposal and we ranked them in
22 descending order of net benefit, and we classified
23 them in terms of whether they were in the competitive
24 tier or the reserve list or they were released. And

1 the competitive tier, as Accion has used in another
2 jurisdiction, is generally three times the requested
3 megawatts, and it was split into the competitive tier
4 in this instance which was required to post proposal
5 security, and then the reserve list was held in
6 reserve so they might be brought in and then others
7 were allowed to be released if they chose to be
8 released, and some chose to be released and some asked
9 to stay in.

10 Thank you. I'm going to turn it over to
11 Phil.

12 MR. LAYFIELD: Okay. We're on slide 14 and
13 this gets into step two which is the analysis process
14 for determining the system upgrade cost associated
15 with each bid. We had a process in place, was tested,
16 the teams worked through it, and we evaluated each bid
17 starting at the most attractive bid in terms of
18 improvement from avoided cost.

19 In DEC, we had 57 bids and as you see 26 of
20 them were in the red zone. None of those bids
21 prevailed. We had a number drop out because of
22 security not being provided but we moved forward and
23 ended up only slightly shy of the 600 megawatt target.
24 We ran out of bids. There were no more bids available

1 to be evaluated. In DEP, we had 20 bids; eight were
2 in the red zone, and that was more straight forward.
3 We ended up analyzing three. We did not have conflict
4 among the winning bids.

5 MR. BALL: Next slide, please.

6 MR. LAYFIELD: Excuse me. Sorry. We did
7 not have multiple bids that relied upon the same
8 transmission access path. We had anticipated that we
9 might have a cluster issue. We've had such issues in
10 other jurisdictions and I suspect that we'll see it
11 here in the future, but we did not have to allocate
12 any costs between bids. We were fortunate that we
13 found areas of the transmission system that were
14 available and afforded relatively easy connection with
15 relatively low costs, and that's what we see on page
16 15 -- 16, excuse me. We have 682 megawatts. The
17 total cost of the system upgrades for those 14
18 projects, and remember this transmission upgrade cost
19 is socialized, was only \$5 million; a very low number
20 for connecting that much.

21 COMMISSIONER GRAY: Can you speak a little
22 more directly in the mic.

23 MR. LAYFIELD: I'm sorry, sir. Thank you.

24 COMMISSIONER GRAY: Some of us are getting a

1 little older.

2 MR. LAYFIELD: I understand.

3 So we had a good opportunity, a nice fit.
4 The bids that won put themselves in the right position
5 on the transmission system, and you can see the 12
6 bids, the size of them in DEC, and the two bids, the
7 two on the left in DEP were taken, and the process
8 worked the way we intended. And the teams did a very
9 beautiful job of working through all of the bids and
10 coming up with the cost and we're quite pleased with
11 the outcomes.

12 Dave.

13 MR. JUDD: (Inaudible)

14 MR. LAYFIELD: Thank you, Harry. What I was
15 asked to say here is that the one bid in DEP, that's
16 the small one on the left, is the only bid that
17 prevailed that was in the red zone. As you see it's
18 quite small. It also was a late-stage project that we
19 already knew the cost for. Thank you.

20 MR. JUDD: So we provided to Duke our list
21 of finalists and are moving forward to complete the
22 PPAs. As you all know, we have a pro forma PPA, it's
23 non-negotiable. We are, if you will, plugging in the
24 necessary data about project specifics. And we have a

1 situation where the bidders were advised they had 60
2 days from when they were notified. In reviewing the
3 Commission's prior orders, we determined that, in
4 fact, the Commission had said we could take up to 90
5 days. We have advised the -- we being the IA has
6 advised the bidders to let us know which way they wish
7 to go. We do have the proposal security in place for
8 all of those projects that are moving into the PPA
9 phase that will be replaced by project security.
10 Shortly after signing the PPA, the project -- the
11 proposal security, forgive me, stays in place until
12 that time and, if they choose not to sign the PPA
13 that's been proffered, they will forfeit the proposal
14 security.

15 I just want to take a moment on that point.
16 It's a process we have used in other jurisdictions to
17 great success of determining that only projects that
18 are shovel ready, those that the developers are
19 prepared to move forward actually get full analysis
20 and are presented with a PPA. We have had the
21 unfortunate situation elsewhere where at the 11th hour
22 someone pulls out and that leaves us short, leaves us
23 scrambling to try to meet program goals. We don't
24 have that situation here. If anyone departs now they

1 will forfeit and will deal with any short-come in the
2 next round.

3 It is our thinking that having come in
4 slightly under our arbitrary goal for Tranche 1 that
5 we do have additional tranches coming and we will roll
6 that, those megawatts into future solicitations.

7 At this point I'd like to stop. We do have
8 some information that we'd like to present concerning
9 a later topic that is outlined by the staff, but this
10 concludes our overview of Tranche 1.

11 COMMISSIONER BROWN-BLAND: And did you want
12 to move forward and address Tranche 2 at this time,
13 the process, or do you consider that done?

14 MR. JUDD: Let me address that. Thank you,
15 ma'am.

16 The recommendations that you'll hear from
17 Phil about how we managed step two in Tranche 2 we
18 think are very important in making that even a more
19 robust program and bringing forward even more
20 successful bids. Because we're coming down to when we
21 have to assign the cost, and I understand it's on the
22 table of whether the developer pays it directly or
23 whether it's socialized, regardless, it is a cost that
24 in large part is because of the process we have to use

1 because of, and I'll use Phil's term "the bloated
2 queue" that we have.

3 We also have some thoughts about Tranche 2
4 and starting with we'd like permission to start the
5 document review process now so that we can have that
6 in place so that when we get final authorization on
7 the avoided cost to be applied so we can launch the
8 bid process without further delay. We are mindful of
9 the fact that the marketplace wants to move forward.
10 They want to capture the tax advantage that we have in
11 place for them. And we believe that if we can move
12 through the comment period on the draft documents,
13 being both the PPA and the RFP, have those set to go
14 so that when you tell us to release the bid process
15 every one will be aware of what to expect and we won't
16 have additional delay. We think that by doing the
17 review process now the marketplace will be fully aware
18 of what the confines will be of the RFP and they can
19 prepare their proposals, fine tuning them if you will.
20 When we have a decision on the issue of how many
21 different buckets we call them on avoided cost, the
22 granularity that we're permitted to use. We do
23 believe that we should have more granularity than we
24 do. The three buckets that were in Tranche 1, again,

1 it was a beta we got started. We needed something to
2 work with. But we believe that providing bidders the
3 opportunity to use their projected production profile
4 to the max and having that identified as separate
5 avoided cost buckets will produce more benefit to the
6 system and will also encourage more participation.

7 Did I miss any --

8 MR. BALL: No.

9 MR. JUDD: So that, in summary, is how we'd
10 like to proceed. We'd like to get started. We'd like
11 to move so that we can work with the market
12 participants and other stakeholders in finalizing the
13 RFP framework and the parameters. Obviously, Duke is
14 a critical participant in that. And we need your
15 guidance on what the -- any changes to the PPA.
16 Specifically, there have been some questions, of
17 course, about storage which is the sticking point.
18 The rest of the terms did not get much attention in
19 terms of being in dispute. The vast majority of that
20 document is commercially acceptable and very similar
21 to what we use elsewhere.

22 I'll stop there and be delighted to take
23 questions, ma'am.

24 COMMISSIONER BROWN-BLAND: Thank you for

1 getting us started this morning. So every one has
2 heard what the IA had to say. I will go around to see
3 if there are any comments. This section is really not
4 intended to be long but if you have reactions or
5 something you want to respond to what you've just
6 heard. We'll start with the Petitioner.

7 MR. JIRAK: Thank you, Commissioner. We --
8 just very briefly a minute here to say there's
9 obviously nothing much that Duke can add. Because the
10 IA was solely responsible for step one and understands
11 the mechanics of that we don't -- we defer to their
12 expert judgment on how to run that and what lessons
13 learned to carry over in Tranche 2.

14 The only thing I would add is obviously the
15 IA has characterized that Tranche 1 was a success and
16 we agree. As we think about this procurement from a
17 30,000 foot level, it's important to remember where
18 we've been and where we're going in this process. And
19 obviously in HB589 CPRE signaled a fundamental shift
20 towards a competitive solicitation process for new
21 renewable resources. And the big idea as we all know
22 is that paying long-term avoided cost for solar
23 resources, which has historically resulted in all
24 customers being put in an overpayment risk to the tune

1 of billions of dollars. The idea for CPRE obviously
2 is that those same resources could be obtained through
3 a competitive process at prices below forecast and
4 avoided costs, and on top of that there'd be the
5 operational benefit of having resources that could be
6 operated in the same manner as the utility's
7 resources. So it's a big shift no doubt and it would
8 be unreasonable to think that instituting a first of
9 its kind RFP in North Carolina is going to be without
10 any hiccups whatsoever. But we think obviously from
11 our perspective that with the Commission's close
12 oversight and strong direction, and the IA's
13 leadership and experience, and the strong engagement
14 of Public Staff and the many stakeholders in this
15 room, we ended up with a well thought out first RFP.
16 We're going to use lessons learned obviously in
17 Tranche 2 to improve. And it's no surprise that there
18 continues to be differences of opinion on some issues
19 in this RFP; there likely always will be.

20 But again, big picture, less than two years
21 after HB589, we're at the tail end of the first RFP
22 and that RFP has delivered a portfolio of solar
23 resources and solar plus storage resources that under
24 the IA's analysis shows close to \$400 million of

1 savings for customers, and we think that's a success,
2 no doubt. I think that definitively meets the
3 statutory direction to achieve resources that reliably
4 and cost effectively serve customers. And, again, we
5 think this is a good first step. We think there's
6 things we can learn as we move in Tranche 2 and we'll
7 be looking to the IA's leadership as we think about
8 those next steps.

9 COMMISSIONER BROWN-BLAND: Thank you.
10 NCCEBA, any reaction to the IA's comments?

11 MS. KEMERAIT: Yes. Thank you,
12 Commissioners, I will be brief as well. With me are
13 representatives of Cypress Creek and Strata who have a
14 couple of comments as well, but we will -- we will be
15 brief.

16 As I mentioned when I made the
17 introductions, North Carolina Clean Energy Business
18 Alliance, the group that is participating in this
19 docket is a group of solar developers that are
20 market -- that were market participants in Tranche 1
21 and are planning to be market participants in Tranche
22 2. And my understanding is that this group of solar
23 developers is the vast majority of the market
24 participants for Tranche 1 and that, again, that are

1 anticipating being involved with Tranche 2. So the
2 positions and the concerns that we will be talking
3 about today are the collective and consensus opinions
4 and concerns of the market participants. And those
5 market participants, just so the Commission is aware
6 that we have been involved with Tranche -- with this
7 docket, are Cypress Creek Renewables, Strata Solar,
8 Ecoplexus, First Solar, Carolina Solar, Southern
9 Current, O2 Energy and Birdseye. So these opinions
10 are those that are represented, are the collective
11 opinions.

12 So, again, we appreciate the Commission
13 ordering this technical conference because we believe
14 that this is a great opportunity to discuss in depth
15 some of the important issues and considerations for
16 Tranche 2. And there have been a number of issues
17 that we view as being particularly problematic for
18 Tranche 1. That -- as Mr. Judd mentioned, there is an
19 opportunity for Tranche 2 to be improving those
20 aspects and that the Independent Administrator is
21 going to be working toward having a more robust
22 program for Tranche 2. And I wanted to mention --
23 respond to Mr. Judd's recommendation to the Commission
24 that the document review process for Tranche 2 begin

1 now or immediately. We are in full support of that
2 recommendation. We think it's prudent to begin
3 consideration of the revisions of the Tranche 2
4 documents now so that there can be time to review them
5 and provide comments about the Tranche 2 PPA,
6 especially about the energy storage protocol.

7 Beginning in May of 2018, we expressed
8 concerns about the energy storage protocol. And we,
9 beginning in May of 2018, we asked for justification
10 from Duke about why those restrictions were necessary,
11 and we have not received any detailed information
12 about that or any specific revisions for the energy
13 storage protocol. So we think it's really important
14 that there be an opportunity to consider and provide
15 comments about the energy storage revisions and that
16 the Commission review it carefully and then approve
17 those revisions for Tranche 2.

18 And for the issues for Tranche 1 that we
19 would like to have in particular be addressed for
20 Tranche 2, the first and I think most important issue
21 is the energy storage protocol which is in Exhibit 10
22 of the Tranche 1 PPA, and we believe that those --
23 that the energy storage protocol is overly
24 restrictive. That is what we said when we filed a

1 motion back in May of 2018. And the results of
2 Tranche 1 I think demonstrate that those restrictions
3 are overly restrictive because only four out of 78
4 proposals that were bid into Tranche 1 of CPRE
5 included energy storage. Most of the market
6 participants elected not to submit energy plus storage
7 for Tranche 1 based upon the restrictions in the PPA.

8 And then the second issue that we'll be
9 talking about that we think is particularly important
10 is the curtailment provisions, and the PPA.

11 And then the third, which is not on the
12 agenda for today but we did raise in our comments that
13 we filed on March 22nd, are the exorbitant liquidated
14 damage penalties for failure to build facilities. So
15 we would ask that the Commission carefully consider
16 that issue.

17 And then finally and briefly, we'd like to
18 have some concerns about lack of transparency be
19 improved for Tranche 2, and Brian O'Hara and Tyler
20 Norris will briefly describe what -- from a practical
21 aspect what occurred for Tranche 1.

22 MR. O'HARA: My name is Brian O'Hara. I'm
23 with Strata Solar, also, the Chairman of the Board of
24 NCCEBA. I just want to give maybe three kind of

1 anecdotes that highlight some of the points that Karen
2 just made.

3 So first off from Strata's perspective, and
4 this is related to the PPA documents, Strata did not
5 participate in Tranche 1 of CPRE other than to bid
6 asset acquisition proposals because we evaluated the
7 PPA and other contract documents and found them to be
8 not commercially reasonable. Life is too short to bid
9 on documents like that from our perspective. So we
10 were not participants other than asset acquisition
11 proposals. We hope that changes for Tranche 2. And
12 we've provided comments via NCCEBA about some of the
13 changes that we would like to see made there. And
14 I'll say, too, that we're a company that, while we're
15 based here in North Carolina we operate across the
16 country. And I'm not sure, Mr. Judd I think
17 mentioned -- I think -- Harry, you were talking about
18 the PPA when you said that the only issue that was
19 sort of contested was the storage protocols and the
20 rest of it was commercially reasonable. Was that the
21 PPA you were referring to?

22 MR. JUDD: Brian, what I said was that it
23 was -- yes, the storage was the focal point of
24 concern. The rest of the terms, there were some

1 thoughts given to it, but they appeared to be
2 commercially reasonable as we've seen in other
3 jurisdictions.

4 MR. O'HARA: Thank you for the
5 clarification. And as our company would take
6 exception with that, we did not find those documents
7 to be commercially reasonable.

8 The second kind of anecdote I'll share
9 related to the need for transparency as we only bid
10 asset acquisition proposals. It actually wasn't until
11 the meeting with the Independent Administrator after
12 the Tranche 1 awards were announced that we actually
13 understood how the asset acquisition proposals were
14 even going to be evaluated. That would have been
15 really helpful to know ahead of time. Perhaps that
16 was an oversight on our part, but if it was an
17 oversight on our part the rest of the market
18 participants in that room were also learning about
19 that process for the first time in that meeting, so we
20 all -- it was an oversight for all of us if it was an
21 oversight. So I think that's one example there.

22 And then third, we'll say more about the
23 storage protocols later in the meeting, but I'll just
24 say again from Strata's perspective, we would not bid

1 on a project that had the restrictions in place that
2 we saw here related to storage. That's also part of
3 the reason that we supported the position that NCCEBA
4 took that if we don't -- we would prefer to see the
5 storage protocols and the ability to bid storage
6 removed all together rather than set the precedent of
7 having bad protocols around something as important as
8 storage. We really see storage as the future of the
9 industry and it's really critical that we get those
10 rules right around storage. Thank you.

11 MR. NORRIS: Thanks, Brian. Thanks for
12 having us here. We really appreciate this
13 opportunity. I'm Tyler Norris with Cypress Creek and
14 with NCCEBA. I just wanted to expand on one aspect
15 related to transparency that we thought would be
16 valuable to note just as we reflect on Tranche 1, and
17 that is with respect to what occurs during the cluster
18 study process and thereafter. And just to recall for
19 all our sake, what normally occurs in the course of
20 the System Impact Study, according to the State
21 Interconnection Procedures, is that an interconnection
22 customer executes a System Impact Study Agreement, a
23 variety of studies are performed as part of that, and
24 then they are delivered a final System Impact Study

1 that they can then agree upon and then proceed to a
2 Facility Study Agreement, if they choose to. What's
3 occurring now with this cluster study process is that
4 a site say that is just submitted in an
5 interconnection request, even a week prior to say to
6 the bid deadline, can bid that project into say
7 Tranche 2, and then they'll proceed into a cluster
8 study if they do post a bid bond, but it's unclear
9 what exactly occurs during that cluster study process
10 and whether that actually represents a full System
11 Impact Study, and it's unclear if they actually have
12 to execute a System Impact Study Agreement prior to
13 entering that process. And I think in general, from
14 our perspective, too, as a market participant we
15 didn't quite understand sequentially how the cluster
16 study was proceeding. This impacted us directly
17 because we had multiple projects that were still under
18 consideration but then we were being invited to post
19 bid bond while that cluster study was underway, and
20 they were running into network upgrades. But that was
21 not a predetermined schedule, it was ad hoc, and it
22 created challenges for being able to make a decision
23 about whether to post a bid bond upon invitation
24 because we only had a few days to do so.

1 So the general point is just that I think
2 there's an opportunity to provide some more
3 transparency information about what exactly is
4 occurring during the cluster study process and what
5 that represents with respect to the System Impact
6 Study. And then after the cluster study is complete
7 and awards are made, having more information available
8 about when a System Impact Study, a final System
9 Impact Study will be, in fact, delivered to the
10 interconnection customer. To our knowledge, that
11 information was not provided upfront despite some
12 appeals to make more information available. And my
13 understanding is that awardees did not get information
14 about when they would get that System Impact Study
15 until very recently. And that has a lot of
16 implications, of course, for an interconnection
17 customer making a decision about whether to proceed
18 with ex-communal PPA. And it has implications for the
19 in-service timeline for their own project and their
20 business planning about when they're going to need to
21 make substantial capital expenditures to get those
22 projects in service.

23 So we think this is an opportunity that will
24 help all market participants including the utility in

1 Tranche 2 on that front. Thank you.

2 MR. LEVITAS: Good morning. Steve Levitas
3 with Cypress Creek. First, I just want to add one
4 issue, a small, obscure issue relating to transparency
5 but an important one. But before I do that, I just
6 want to be sure that from this side of the room that
7 we commend the IA for doing really an excellent job on
8 a very difficult and challenging assignment. We
9 didn't agree with everything along the way but on
10 balance they certainly should be commended.

11 The issue that I want to bring to your
12 attention concerns your Rule R8-71(1)(4), which is
13 your CPRE implementing rule, and the very last
14 sentence of that section, it's actually the last
15 sentence of the whole rule. If you'll let me try to
16 with my poor eyesight read it to you, it says the
17 following, "If the electric public utility's initial
18 proposal includes assumptions about pricing after the
19 initial term, such information shall be made available
20 to the Independent Administrator and all
21 participants". So what this is getting at is all
22 bidders into a process like this or, for that matter,
23 PURPA QFs who agree to enter into contracts or you'll
24 see the same thing with your GSA Program, you have a

1 time limited initial term, and then after that you're
2 making a bet about what's going to happen thereafter
3 in terms of potential revenues, and the price that you
4 bid or the price that you're willing to accept in that
5 initial term is heavily dependent on that assumption.
6 And we requested and negotiated, and you approved that
7 requirement in that Rule for a very specific reason,
8 which is Duke coming into this program as a market
9 participant has vastly more resources and vastly more
10 information about market conditions than other
11 participants do and, therefore, you required them to
12 share that information with the IA and other
13 participants. To my knowledge, I'm not aware that
14 that information ever was provided and I hope that
15 that will be corrected in Tranche 2.

16 If I may, one quick question for the IA.
17 The slide presentation included information about base
18 line assumptions. I believe that's what you called
19 it, the 24 --

20 MR. JUDD: The base case, yes.

21 MR. LEVITAS: The base case. And I don't
22 recall having seen that information during the
23 process. And my question is did you make the
24 assumption that all of those projects would be built

1 and would trigger system upgrades and, therefore, pay
2 for the upgrades that they triggered? What assumption
3 was made about the impact to the transmission system
4 of those projects being in queue?

5 MR. LAYFIELD: The assumption was that the
6 projects did exist prior to CPRE, they were in the
7 queue, and they were entered into the base case.

8 MR. LEVITAS: And so, if I may follow up, is
9 it possible then that there's an assumption that
10 network upgrades or system upgrades were being --
11 would be built as a result of those projects coming
12 on, that if -- should those projects not be built,
13 would then become the responsibility of projects that
14 may have received awards?

15 MR. LAYFIELD: That's not exactly how the
16 base case works. It's a snapshot of the system as it
17 exists for study purposes and load flow analysis so
18 that we can understand what an incremental project
19 impact would be on the system.

20 MR. LEVITAS: Okay. Thank you.

21 COMMISSIONER BROWN-BLAND: First Solar, any
22 response to the IA?

23 MR. HIGGINS: No, thank you.

24 COMMISSIONER BROWN-BLAND: Public Staff?

1 MS. CUMMINGS: Yes, thank you. Layla
2 Cummings with the Public Staff. We do have a few
3 comments about overview from Tranche 1 and some
4 additional comments about Tranche 2 going forward.

5 We overall think -- agree with the IA and
6 with Duke and the Intervenors, too, it sounds like
7 that Tranche 1 was generally a success. We were happy
8 to see the total savings versus the avoided cost over
9 20 years was \$290 million in DEC and calculated to be
10 \$85 million, rounded up a bit there, in DEP. We think
11 these savings in general show a good outcome for
12 ratepayers and that the CPRE in that regard has been
13 successful.

14 We do have a few concerns; however, we are
15 concerned to see how many projects failed to post
16 performance security and how many of those projects
17 then backed out of Tranche 1. We understood from the
18 IA that that was -- the 20 projects that backed out
19 were an abnormal amount to back out of the RFP. We
20 believe this delayed the process and maybe did not
21 give the most accurate depiction of the base case. We
22 hope to hear more from the market participants. I
23 think we just heard from Tyler Norris about some of
24 the reasons for -- for maybe some transparency

1 measures could be put in place to help with that. But
2 we would like to -- we hope going forward in Tranche 2
3 that we would see less projects backing out.

4 We also acknowledge that there was
5 some uncertainty for the market participants
6 surrounding GSA implementation and also the
7 finalization of the grouping study in the
8 interconnection docket.

9 So looking forward to Tranche 2, and
10 consistent with our March 22nd comments, we continue
11 to support a delay of the Tranche 2 solicitation until
12 the Sub 158 rates are in effect. We believe that
13 current rates are most reflective of the avoided cost
14 are the best to provide the cost cap.

15 We also have a few issues up for
16 consideration, new issues in the avoided cost docket,
17 that we think are appropriate to consider in the CPRE
18 and that includes our partial settlements on rate
19 design and the solar integration services charge. In
20 general, we believe that more granular rates will
21 allow for more pricing buckets and will send better
22 price signals. We also believe it is appropriate to
23 consider whether a charge or some other similar
24 calculation of additional ancillary services costs

1 should be applied to CPRE Tranche 2 projects or any
2 other future tranches. We believe that this is
3 consistent with the language of House Bill 589 that
4 requires the utility to consider the potential for
5 increased delivery cost to a public utility's
6 customers as a result of siting additional renewable
7 energy facilities.

8 We also, in terms of a delay, believe that
9 we -- we're still in the contracting phase for Tranche
10 1 and we still think there are lessons to be learned
11 before the finalizing of the winning bids. And so
12 we've heard today some from NCCEBA about the PPA. We,
13 along with the IA, support putting those documents out
14 and learning more but that may be a process.

15 We acknowledge, too, that the delay may
16 cause some hardships, that there may be other factors
17 such as further reductions in the tax credits and
18 increased carrying costs for projects, that the
19 Commission may want to take into consideration before
20 considering such a delay. That's all of our comments.

21 COMMISSIONER BROWN-BLAND: I'll ask if the
22 Commission has any response or questions just based on
23 the preliminary comments here. Commissioner
24 Clodfelter.

1 COMMISSIONER CLODFELTER: If we were to say
2 that we wouldn't actually solicit the bids until we
3 had established the new methodology in the avoided
4 cost docket, but we wanted to get the bids in and
5 received before the end of the year, if we were to say
6 that that's our goal is to try to get the bids in
7 before the end of the year, how late can -- what's the
8 latest date by which we have to establish the new
9 methodology and Duke establish the new rates? We've
10 got our evidentiary hearings on July 15th. I'm not
11 suggesting that we're going to sit on it; I'm not
12 suggesting that at all. I just want to know what's
13 our window before we get into trouble.

14 MR. JUDD: Well, I can definitely tell you
15 if it's Christmas Eve that we'll be --

16 COMMISSIONER CLODFELTER: Well sure, okay,
17 but I'm saying reasonably. You've got a lot of work
18 to be done on these documents. We've already heard
19 that.

20 MR. JUDD: Yes, sir.

21 COMMISSIONER CLODFELTER: There's going to
22 be a lot of work done on these documents. We heard
23 you loud and clear. You want to get that started
24 right now. That's good. But it sounds like there are

1 going to be a lot of issues on the documents and
2 people are going to want to talk about that so that's
3 going to chew up some time, too. So taking all of
4 that into consideration, you're going to need the
5 methodology because then Duke has to sort of give you
6 the rates under that new methodology. So that's going
7 to take a little time for them to sort of -- they may
8 have already done it but --

9 MR. JUDD: That's a great question and let
10 me respond this way.

11 COMMISSIONER CLODFELTER: That's all I'm
12 looking for.

13 MR. JUDD: The parties in interest have been
14 working together. As you know, we did have formal
15 stakeholder meetings with them. We thrashed through
16 some issues, got them on the table, and we continue to
17 talk to try to work together to make this a successful
18 program. In Tranche 1 we accepted bids in October.

19 COMMISSIONER CLODFELTER: Okay.

20 MR. JUDD: Given lessons learned in Tranche
21 1, I think -- I expect that the evaluation process
22 will move more quickly in Tranche 2.

23 The issue of the -- finalizing the PPAs was
24 mentioned that we're still in the process. I want to

1 say again I think the Commission was wise in saying
2 we're going to have a pro forma PPA. And the reason
3 for that, and that has eliminated by the way a
4 protracted discussion period, because all we're doing
5 now is confirming the information, confirming the
6 willingness of the counter party to go forward. If we
7 had done otherwise and permitted that the PPAs be
8 negotiated after the selection process, I can -- I can
9 say without a moments hesitation the people would have
10 gained the system. They would have said I'll give you
11 a low number to get to the table and now I'm going to
12 negotiate. I'm going to trade some horses and I'm
13 going to claw back value. Even if I don't change my
14 price I'll shift risk and to my benefit and that takes
15 time. I think you were spot on in saying we're not
16 going to go that way. So the fact that whether it's
17 60 days or 90 days it's plenty of time to complete
18 that contracting.

19 I think that the team that Duke put up into
20 a T&D evaluation team that is isolated from the rest
21 of the company that worked with Phil have made great
22 progress in eliminating the challenges that we faced
23 in Tranche 1. Again, this is one of those lessons
24 learned situations, Commissioner, where going through

1 the evaluation there were issues identified that have
2 been corrected and will not be repeated in Tranche 2
3 that will save us time.

4 The issue of posting the bid security, I
5 understand that there is a concern about why so many
6 pulled back. We haven't done a survey and, frankly
7 and candidly, I really don't care to learn the -- and
8 nor would they tell us the individual business model
9 that these folks are using of why they had so many
10 bids that they put in, and given the opportunity to
11 move forward, chose not to. I will tell you that the
12 proposal security process works well. We've used it
13 many other places including in Georgia, by the way
14 which was somewhat of a model for this program, and it
15 does avoid the situation of folks getting to the 11th
16 hour and then trying to extract value and change the
17 PPA under the guise that you're stuck with us, you've
18 got to go forward.

19 Lots of reasons to have it there: It works;
20 it means that the projects that are prepared to go
21 forward are the ones that we're looking at; and folks
22 can decide to bid, not bid, withdraw, and I think it's
23 an appropriate way. Frankly, I think it's an exit
24 ramp to let people decide whether they are serious and

1 whether within their business model a particular
2 project is appropriate to move forward; whether it's
3 changed --

4 COMMISSIONER BROWN-BLAND: So, Mr. Judd, I
5 hear you saying for various reasons parts of this
6 process should be faster than it was before just
7 because --

8 MR. JUDD: And they will be, ma'am.

9 COMMISSIONER BROWN-BLAND: -- you have been
10 through it and you worked it out.

11 MR. JUDD: Yes. I expect in Tranche 2 they
12 will.

13 COMMISSIONER BROWN-BLAND: Can you get
14 closer to an answer to Commissioner Clodfelter's
15 question?

16 MR. JUDD: I'm sorry. I wasn't as
17 explicit -- if we can have --

18 COMMISSIONER CLODFELTER: Let me come at it
19 this way. Suppose -- and I'm picking this out of the
20 air, but suppose we've got Duke and you, a decision on
21 the avoided cost docket around about the Labor Day
22 time period. Does that give you enough time to --

23 MR. JUDD: Absolutely. Absolutely. And, in
24 fact --

1 COMMISSIONER CLODFELTER: When did it begin
2 to get into trouble?

3 MR. JUDD: Yeah. Let me give you a little
4 more color.

5 COMMISSIONER CLODFELTER: Okay.

6 MR. JUDD: If we can have it so the bids are
7 presented in October, we're fine.

8 COMMISSIONER CLODFELTER: Okay.

9 MR. JUDD: And, also, if we can go through
10 this process of having the RFP document and the PPA
11 documents completed then what would happen? And I
12 want to give a little flavor here, that on the
13 electronic online bid form it lays out all of the
14 different tranches -- strike that, I'm sorry, wrong
15 word -- the different buckets for the avoided cost.
16 If you give us how much granularity we have, whether
17 it's 7, 8, 9, whatever, that would be presented on the
18 form so that the bidder can literally use that as a
19 scratch pad to see what the impact would be for the
20 different periods. And what I recommend is that we
21 have the information early enough so that the market
22 participants have at least a month to go through that
23 scratch pad process. They'll know all of the other
24 terms because of the RFP. We can even put up a model

1 bid form so they'll know all of the information they
2 need to collect. And the only page left will be to
3 figure out how they will break on the individual
4 buckets.

5 Was that a more precise answer? I hope it
6 was.

7 COMMISSIONER CLODFELTER: Yes. Thank you.

8 MR. JUDD: Thank you.

9 As you can see we get into the weeds too
10 much so thank you for guiding me back.

11 COMMISSIONER BROWN-BLAND: Commissioner
12 Mitchell.

13 MS. MITCHELL: Just two questions. Will
14 you -- I want to make sure I'm entirely clear. Will
15 you define for me "red zone"?

16 MR. JUDD: Thank you. It's our shorthand
17 for the areas that are serious constrained areas for
18 transmission access. Duke worked with Phil on our
19 team and produced maps that we published on the
20 website and it shows the areas of constraint. And we
21 colored them red to say you really should take a
22 serious look at whether you want to go forward because
23 we're telling you you will incur costs if you bring us
24 a proposal on those terms. I apologize for the

1 confusion.

2 COMMISSIONER MITCHELL: Oh, that's okay.
3 So -- so that information was made available to the
4 entire marketplace; is that correct?

5 MR. JUDD: Yes. It was published on the
6 website in a map form so that it was visually
7 available to them.

8 COMMISSIONER MITCHELL: How many of the
9 proposals that advanced to this stage or step two
10 review were late-stage proposals?

11 MR. JUDD: Do you recall?

12 MR. LAYFIELD: I don't recall that off the
13 top of my head.

14 MR. JUDD: To avoid delay we don't have the
15 precise number in front of us. We'll get it for you
16 today.

17 COMMISSIONER MITCHELL: Okay. Thank you.

18 COMMISSIONER BROWN-BLAND: Commissioner
19 Clodfelter.

20 COMMISSIONER CLODFELTER: Yeah, since it's
21 not really connected to any of the other things we're
22 going to be talking about later in the day, would you
23 respond to the point Mr. Levitas raised? Did Duke
24 provide you any information about post initial term

1 pricing or renewal terms? Did you -- were you
2 provided any of that by Duke?

3 MR. JUDD: I'm not sure I understand the
4 question, Commissioner.

5 COMMISSIONER CLODFELTER: The question --
6 the question was you are required to be provided
7 information under the rule about what pricing
8 structures might look like in a renewal term for any
9 of the winning proposals. Were you provided any of
10 that information? It sounds like you weren't. If
11 you're not, not even following the question, you
12 probably weren't provided the information.

13 MR. JUDD: As was said before we have
14 subject matter expert teams in our group --

15 COMMISSIONER CLODFELTER: Okay.

16 MR. JUDD: -- so give me just a moment --

17 COMMISSIONER CLODFELTER: You can provide
18 that in a follow-up later if you want, that's fine,
19 unless you've got it right now.

20 MR. JUDD: Let me do that. I know a lot of
21 information was provided.

22 COMMISSIONER CLODFELTER: Okay.

23 MR. JUDD: I don't want to give a mistaken
24 answer to you.

1 COMMISSIONER CLODFELTER: Okay.

2 MR. BALL: Excuse me. Just to clarify, the
3 question is what is the pricing after the 20-year PPA
4 term?

5 COMMISSIONER CLODFELTER: Yes.

6 MR. JUDD: Thank you.

7 COMMISSIONER BROWN-BLAND: So now we'll move
8 on with the items that we had listed in our May 1
9 Order. And we'll start with -- oh, do you want to
10 ask -- okay. I'm sorry. I'm leaving out my staff.

11 MR. McDOWELL: That's all right. Thank you.

12 COMMISSIONER BROWN-BLAND: Steve McDowell.

13 MR. McDOWELL: Steve McDowell with the
14 Commission Staff. I want to ask a couple of
15 questions. One playing off of Commissioner Mitchell's
16 questions there.

17 In Tranche 1, how many winning project
18 proposals had network upgrade costs yet were not
19 located on the list of constrained circuits and
20 substations that you can provide it as locational
21 guidance? And partly I'm playing off of a couple of
22 things in your presentation. On page 14 you indicated
23 that there was one winning bid in the red zone. And
24 then on page 15 said every winning bid required

1 minimum basic system upgrade requirements. So my
2 question is related to Commissioner Mitchell's but
3 probing that in a little different way.

4 MR. LAYFIELD: There was one winner --
5 excuse me, there was a winner in the red zone in DEP.
6 It did have minimum costs as did every bid that won.
7 We felt was a low-cost project and that's frankly one
8 of the reasons that they won. They bid into a
9 location that was relatively easy and inexpensive to
10 connect. Did that help?

11 MR. McDOWELL: Yes. So partly what I wanted
12 to -- what we're interested in is, and we're going to
13 probe this a little bit later in the locational
14 guidance but more directly, but I was interested in
15 any evidence out of the Tranche 1 that the locational
16 guidance hit the mark so to speak. And so the
17 question was how many winning project proposals had
18 network upgrade costs but yet were not located on the
19 list of constrained circuits and substations that have
20 been provided in that locational guidance? Does that
21 make sense?

22 MR. LAYFIELD: It makes sense but I don't
23 have that data in front of me, sir.

24 MR. JUDD: But we'll get it.

1 MR. LAYFIELD: Yes.

2 MR. McDOWELL: Can you provide that later
3 then?

4 MR. LAYFIELD: Yes, sir.

5 MR. JUDD: Absolutely.

6 MR. McDOWELL: Let me change gears real
7 quickly. I want to -- I'm interested in the proposals
8 with storage, the four proposals and, in fact, there
9 were some that won. I read with interest the Public
10 Staff's comments and I'll quote, "the IA has indicated
11 that bids with storage operated the storage devices to
12 maximize revenue - that is, energy storage was
13 discharged during the on-peak hours and charged during
14 the off-peak hours, both derived from the E-100,
15 Sub 148 Option B rate tariffs used in the RFP". And
16 that's from page 11 of the Public Staff comments.
17 Based on the production profiles provided by the
18 projects that included storage, would this have
19 included battery discharges in the hours of 6:00 to
20 7:00 a.m., in the winter?

21 MR. JUDD: Let me start by giving a little
22 background so you understand our point of reference.

23 MR. McDOWELL: Okay. Thank you.

24 MR. JUDD: Any proposal that included

1 storage was required to provide a production profile
2 in 8760 with and without storage, and we did that for
3 a couple of reasons. One was to stress test whether
4 they knew how to use storage; whether they were
5 realistic in what they were proposing. That's based
6 on experience elsewhere that we drew upon.

7 MR. McDOWELL: So those profiles look
8 different with and without storage --

9 MR. JUDD: Most --

10 MR. McDOWELL: -- as a simple test?

11 MR. JUDD: Yes.

12 MR. McDOWELL: Okay.

13 MR. JUDD: Yes. I'm sorry. I'm now going
14 to pass to someone who actually had to pull apart the
15 production profiles.

16 MR. McDOWELL: Thank you.

17 MR. BALL: Thank you. We did look at the
18 hourly battery storage, the charging as well as the
19 battery discharging and there were hours of discharge
20 in the winter peak hours. Is that -- I think that's
21 the question.

22 MR. McDOWELL: Yes. And more specifically,
23 I understand peak hours, and in the Sub 148 and what's
24 proposed in 158 those peak hours are pretty broad.

1 Specifically, the question was related to say a peak
2 hour of 6:00 to 7:00 a.m., in the winter?

3 MR. BALL: Can we get back with you? I
4 don't recall exactly in -- when those discharges
5 occurred in that peak period but they were in the --
6 whatever the peak periods were they did take advantage
7 of and responded to those pricing signals.

8 MR. McDOWELL: Okay.

9 MR. JUDD: If I could, I'm going to request
10 some guidance from you gentlemen as to what of this
11 information we're provided should be considered
12 confidential. If you say none then that's fine,
13 you'll have it all; I just will want the guidance.
14 Patrick admonished us on that on our call the other
15 morning and I wanted to make certain that you're aware
16 we will test that with you before we make it public.
17 Thank you.

18 MR. McDOWELL: So kind of a follow up to
19 that, the System Impact Grouping Study approach that
20 the Commission approved in October 2018, that was the
21 approach used to evaluate system impacts; is that
22 correct, the grouping study?

23 MR. LAYFIELD: CPRE bids were looked at as a
24 group, yes.

1 MR. McDOWELL: Okay. Consistent with that
2 guidance?

3 MR. LAYFIELD: Yes.

4 MR. McDOWELL: So in those production
5 profiles that were provided for storage and how they
6 impacted that, and I know you're going to follow up
7 with some more specific information about how those
8 profiles looked with storage, that would have been
9 included in the grouping study, the System Impact
10 Study?

11 MR. LAYFIELD: The answer is yes. The
12 storage is behind the inverter and does not impact the
13 amount of megawatts provided to the grid.

14 MR. McDOWELL: Just in a different location;
15 a timeframe?

16 MR. LAYFIELD: A different timeframe. But
17 the magnitude would not -- the maximum magnitude would
18 not change and we look at the maximum input when doing
19 analysis.

20 MR. McDOWELL: So it was studied with
21 storage and without storage because that was with the
22 profiles that were provided by the projects that bid?

23 MR. LAYFIELD: The costs were for the
24 megawatt hours.

1 MR. McDOWELL: How about in terms of the
2 System Impact Study?

3 MR. LAYFIELD: There is no difference in
4 cost, whether the project has storage or not, in terms
5 of its system upgrade costs.

6 MR. McDOWELL: Okay. So did the results
7 there provide any unique issues with storage, without
8 storage?

9 MR. LAYFIELD: No.

10 MR. McDOWELL: For instance, did the
11 stability studies, for example, reflect any
12 significant impact from storage being a part of the
13 formula?

14 MR. LAYFIELD: The answer is no, because we
15 took the maximum input to the system and that's what
16 all of the studies were based upon.

17 MR. McDOWELL: The maximum megawatt hour?

18 MR. LAYFIELD: Yes. Maximum megawatts, yes.

19 MR. McDOWELL: One final question then, from
20 Tranche 1 how many winning bids will be
21 interconnecting to the transmission system as opposed
22 to the distribution system?

23 MR. LAYFIELD: There was one bid that will
24 connect to distribution. The other 13 winning bids

1 connect to transmission.

2 MR. McDOWELL: Thank you. That's all I
3 have.

4 MR. BUFFKIN: I have one question for
5 Mr. Layfield.

6 You describe the total grid upgrade cost to
7 \$5 million as being a very low number. I think that's
8 what you said.

9 MR. LAYFIELD: Yes, I did.

10 MR. BUFFKIN: You must have made a
11 comparison to something. What did you compare that
12 to?

13 MR. LAYFIELD: Other jurisdictions in which
14 we've worked. It's not unusual to have over
15 \$5 million for a single project.

16 MR. BUFFKIN: Then I think this question is
17 for Mr. O'Hara, if I may.

18 You told us that the process just wouldn't
19 work for you and that's why you didn't bid, but it
20 worked for a lot of other market participants, so
21 what's unique about your situation at Strata?

22 MR. O'HARA: Well, I would actually say that
23 if you look at the number of projects that did not
24 post the bid -- the security, that may be telling that

1 it actually didn't work for a lot of other market
2 participants as well. It's not unusual for us to see
3 in these competitive processes that if there aren't
4 controls in place to ensure, like the Independent
5 Administrator said, that bids that go in are
6 legitimate and shovel ready that you will see often
7 times bidders sort of go on a fishing expedition, put
8 in a lower number, get short listed and look to either
9 sell that project or see if the economics change in
10 time for them to post the bid security. I think the
11 fact that we saw so few bids - I think it was 10 out
12 of the total that were short listed I think in DEC -
13 actually post the bid security tells me that other
14 folks were looking at these, potentially looking at
15 these agreements and saying that there's too much risk
16 there.

17 MR. JUDD: Madam Commissioner, may I follow
18 up on Patrick's earlier question to Phil?

19 MR. LEVITAS: Harry, do you mind if I just
20 elaborate on Brian's --

21 MR. JUDD: Oh, I'm sorry, I didn't see you.

22 MR. LEVITAS: -- just for a second. That's
23 okay.

24 Just following up on a point that was made

1 earlier about the transparency of the process. The
2 whole asset -- the language gets a little confusing,
3 asset acquisition and asset transfer. Basically, the
4 Statute and Rules contemplate several ways that, other
5 than a PPA, that third parties can participate but
6 that would ultimately involve the transfer -- the
7 ultimate ownership of the asset by Duke. And as
8 Mr. O'Hara observed earlier but he didn't go into much
9 detail, we had very little understanding of how that
10 bid process was going to work. And, specifically --
11 and I'm still not sure I fully understand how it did
12 work and it's intended to work in the future. But
13 essentially as I think I understand it, what happened
14 was that there was an initial bid that came in from a
15 third party in the nature of a transfer or an EPC
16 project, a project that would ultimately be owned by
17 Duke. And there was then a secondary stage in which
18 Duke made a decision whether to quote, sponsor that
19 project, which required negotiation with the bidder
20 and both with respect to Mr. Judd's point earlier
21 about how price and other contracted terms relate to
22 each other. I think there was an opportunity for
23 negotiation regarding price and contract terms that
24 ultimately led to Duke formulating a new bid price

1 that it submitted in -- that competed with the
2 other -- the PPA projects. And I'm not sure any
3 market participant understood that's how it was going
4 to work. We certainly didn't and had we understood
5 that we might well have chosen to bid projects on that
6 pathway. So I think there's a need for a lot more
7 transparency and clarity about how that's going to
8 work in the future.

9 COMMISSIONER BROWN-BLAND: Mr. Judd, you
10 wanted to follow up on Mr. Buffkin --

11 MR. JUDD: I did. I wanted to give a little
12 more flavor, if you will, color to your question about
13 why is \$5 million not a significant number in this
14 context. I expect it's probably more than you keep in
15 a checking account. But we ran some numbers of what
16 it would take -- it would have taken for system
17 upgrade costs for other projects, and they're well in
18 excess of \$200 million. Had the other projects been
19 brought on line with a maximum in DEP of \$89 million
20 for projects, \$235 million of system upgrades in DEC,
21 for all of the 57 projects that were bid there. So
22 when Phil says what we've come down to, and a
23 \$5 million upgrade it met, we believe, the goal of
24 CPRE which was to find the least cost way of using the

1 existing transmission system and bringing projects
2 online as opposed to wholesalely going out and
3 building a -- putting a lot more infrastructure costs
4 on the rate base.

5 COMMISSIONER BROWN-BLAND: Mr. Jirak, I see
6 that you were inching up to the mic but we're in the
7 Commission Staff's questions. Do you want to respond
8 to something that they've said or can you hold yours
9 til we come back?

10 MR. JIRAK: I can hold mine to not defer the
11 Commission Staff.

12 COMMISSIONER BROWN-BLAND: All right.

13 MR. BUFFKIN: I have one more. So the bids
14 that were eliminated had some significant -- I guess
15 what we could call significant upgrade costs?

16 MR. JUDD: Yes, sir.

17 MR. LAYFIELD: Yes, sir.

18 MR. BUFFKIN: Then is it reasonable to
19 expect those are the same bids that are going to be
20 submitted into Tranche 2 and we would face much
21 greater upgrade costs as a result of selection of bids
22 in Tranche 2?

23 MR. JUDD: Whether the market participants
24 will choose to bid the same projects -- again, we do

1 get to a point at which the definition of insanity.
2 But as I mentioned before, if we don't make changes in
3 the way we establish the base case, it's our view that
4 the available capacity for new projects is going to be
5 smaller; it's going to constrict. And, therefore,
6 there will be system upgrade costs that will
7 necessarily be assigned to the bids that come in that
8 are in the constrained area, the red zone if you will,
9 ma'am, that we defined. We will be producing new maps
10 that will give guidance once it's determined whether
11 we are permitted to address the base case, the size of
12 the base case. If we have to go forward as we did in
13 Tranche 1, and those projects now become part of the
14 base case, in fact, there will be less excess capacity
15 available. Have I responded to be your question?

16 MR. BUFFKIN: I understand. Thank you.

17 MR. JUDD: Thank you.

18 COMMISSIONER BROWN-BLAND: Kim Jones.

19 MS. JONES: One quick one for the gentleman
20 at the end of the table here, and I apologize I can't
21 remember your name.

22 You mentioned concern that you didn't
23 receive System Impact Study results in time to know
24 that information before putting in a security bond.

1 Am I getting it right?

2 MR. NORRIS: That's correct.

3 COMMISSIONER BROWN-BLAND: That's Tyler
4 Norris for the record.

5 MR. NORRIS: Yes, sorry, Tyler Norris. That
6 is correct. The bid bond was required to be posted
7 prior to the cluster study being completed.

8 MS. JONES: So help me out because for
9 Tranche 1 the costs learned from the cluster study of
10 the network upgrades weren't going to be the
11 developers problem in any case. So they were going to
12 be put into Duke's base rates, so why was knowing that
13 number important at that stage?

14 MR. NORRIS: Yeah, well in this scenario
15 where those costs are socialized or rate-based it is
16 less of a concern. So I think that's really important
17 to emphasize for the Commission as well, because if
18 rate-basing is eliminated it only elevates that
19 concern going forward. But for the case of Tranche 1,
20 so part -- so one issue to address there is, in terms
21 of the timing of in-service completion, if you are
22 allocated in a network upgrade you're going to have a
23 much longer period to actually -- a complete COD and
24 that has substantial implications for the economics of

1 a project because the year that it goes into service,
2 of course, has implications for what module costs, et
3 cetera, and also for capital planning purposes.

4 MS. JONES: Okay. So for Tranche 1 what was
5 really important was knowing what your in-service date
6 was going to be based on when your transmission would
7 be available.

8 MR. NORRIS: Yeah. And that, also, would
9 have implications for whether or not the project would
10 meet the in-service deadline that was enforced as part
11 of the -- or should have been enforced as part of the
12 evaluation --

13 COMMISSIONER BROWN-BLAND: Mr. Jirak.

14 MR. JUDD: If I could follow up on your
15 question, ma'am, that -- just to remind everyone, in
16 Tranche 1 as part of the effort to get shovel-ready
17 projects to move forward, there was an established
18 in-service date, the COD, and market participants who
19 bid committed that they could make that date, the
20 January 1, 2021. And if they felt that they were not
21 far enough along in their development, they didn't
22 have the necessary information, whatever their
23 concerns were, then maybe CPRE Tranche 1 wasn't for
24 them. And, again, we gave them the guidance and that

1 was part of the RFP that there was to be a firm
2 in-service date that they were expected to meet. And
3 again, the goal here was to find the shovel-ready
4 projects so we could take advantage of existing
5 transmission capacity and move forward in getting
6 projects into service.

7 MR. NORRIS: May I comment on that issue
8 just for a second?

9 COMMISSIONER BROWN-BLAND: Briefly please.

10 MR. NORRIS: Thank you. This issue of build
11 timelines matters a lot for even whether the Tranche 1
12 projects can, in fact, meet the in-service timeline.
13 None of them were likely to meet the January 1st
14 timeline. There was an extension provided in the
15 Tranche 1 RFP that, if necessary, that could be
16 expended -- extended to July 1st of 2021.

17 The fact is is that the utility's own build
18 timelines for even projects without any upgrades is a
19 minimum of two years, or at least in the case of DEC,
20 so 24 months. They're very unlikely to meet that
21 timeline unless those timelines are accelerated. And
22 this is an issue we probably should address
23 collectively because I think there was some questions
24 about whether there could be preferential treatment to

1 certain projects in their build timelines for those
2 that have been awarded. And -- but regardless
3 it's almost certainly the case that those established
4 timelines are going to need to be accelerated to even
5 meet those. So it's probably just something at a
6 minimum we need to address and have more clarity
7 around for Tranche 2.

8 COMMISSIONER BROWN-BLAND: Mr. Jirak.

9 MR. JIRAK: Yes. Thank you, Commissioner,
10 I'll be very brief here.

11 Obviously a lot of different issues have
12 been raised so I'm just going to pinpoint a couple of
13 them. A lot of the storage related discussions you're
14 going to have -- hear a lot more on so I won't go into
15 that.

16 Three quick issues to address. First, the
17 reasonableness of the PPA document. We just, from
18 Duke's perspective obviously, we firmly disagree with
19 the characterization that the PPA is not being a
20 commercially reasonable document. And we disagree for
21 the following reasons: As a reminder, the PPA form
22 that's used in CPRE started with the -- as a QF
23 negotiated PPA form that has been used to finance and
24 construct 800 megawatts worth of projects. And I have

1 a slight background in project development finance and
2 I know it's very difficult to get a project built with
3 a completely unreasonable PPA because you won't get
4 financing for it. So I think the fact the -- so where
5 the PPA started was a document that already served as
6 a commercially unreasonable document to support 800
7 megawatts of solar development, I think undercuts the
8 assertion.

9 Moving beyond that form we then took two
10 rounds of comments, we worked with the IA, we
11 responded to every comment we received, we made
12 improvements to the document and, from my perspective,
13 moved it more towards what market participants are
14 asking. So the assertion that the PPA itself is, as a
15 general matter, just a commercially unreasonable
16 document we just simply disagree with.

17 We recognize there's a disagreement about
18 the storage proposal on the storage protocols. We
19 also recognize there's a disagreement on the size of
20 the pre-COD commercial performance assurance. But
21 aside from those two issues, we think the evidence
22 fully supports the fact that the overall terms and
23 conditions of this PPA were reasonable and wouldn't --
24 should not have served as a barrier to participation

1 in CPRE. So that's the PPA.

2 Two more quick issues. Transparency;
3 certainly we want to improve the RFP. We want to put
4 all the information on the table that market
5 participants need to know and we want to work with the
6 Commission, the Public Staff, and stakeholders to do
7 that. But I want the Commission to be clear that the
8 process as it existed for Tranche 1 allowed for an
9 incredible amount of transparency. All of the
10 documents were subject to comments. There was a
11 60-day comment period as mandated by the Commission
12 Rule. In addition, at any point during -- so during
13 that 60 days any market participant could have asked
14 or raised any questions about the structure of the
15 RFP, how asset acquisitions have worked, how the
16 documents were -- why the documents were structured
17 the way they were. In addition, throughout the entire
18 RFP process, both before and after the RFP was issued,
19 the IA message board was open for confidential
20 questions to the IA. So, again, it's not to say we
21 can't improve in the clarity of certain aspects of the
22 RFP, but I want the Commission to be very aware of the
23 fact that there was a complete opportunity given for
24 market participants to get answers to questions where

1 they had them. And so that's just an important fact
2 as you think about transparency issues in general.

3 Then the last just very minor point is this
4 issue that was raised about the assumptions about
5 post-term revenue for Duke projects. That issue was
6 litigated expressly during the program -- the review
7 of the program planning guidelines, and the
8 Commission's February Order specifically addressed
9 that issue and came to a conclusion. So at this point
10 we don't see the need to rehash that issue. We think
11 the Commission's conclusion was reasonable in February
12 and it's just as reasonable today.

13 So that's the three points I'd like to hit.
14 And obviously we'll give some more feedback on the
15 grid locational issues and storage later today.

16 COMMISSIONER BROWN-BLAND: And Commissioner
17 Mitchell is going to have the last word in this
18 session -- in this section and she's standing between
19 you and a 10-minute break.

20 COMMISSIONER MITCHELL: This is a very quick
21 one.

22 Do you all -- this is directed to the IA.
23 Do you all anticipate that the in-service deadline for
24 Tranche 2 will be moved beyond that mid-year 2021?

1 MR. JUDD: Yes, ma'am.

2 COMMISSIONER MITCHELL: And can you tell us
3 when you think it will be?

4 MR. JUDD: We have not established that
5 working with Duke. If I could add just a little color
6 to this. The issue is -- it's not an arbitrary date.
7 Part of the issue is how much can the Duke system
8 absorb in a particular timeframe, and that's where the
9 600 megawatts in Tranche 1 came from. We didn't want
10 to set an unrealistic goal. We didn't want to set up
11 MPs for failure. So what we will be doing is going
12 back with Duke, look at -- you have now taken out a
13 certain amount of capacity because of the Tranche 1
14 experience and setting a new date. I would expect it
15 would be at least a year later. But part of that is
16 also dealing with the market participants and their
17 goals to have an opportunity to maximize their use of
18 the investment tax credits.

19 COMMISSIONER MITCHELL: Right. That's where
20 obviously I have some questions. I mean, because the
21 two seem -- there seem to be some tension there.

22 MR. JUDD: Yeah. They -- well, I'm agreeing
23 with you. And what we have done in some places is
24 have a maximum date, an outer limit if you will, but

1 permit developers to come online sooner in order to
2 meet the goals. And, yes, it is different for wind
3 than it is for solar and how much has to be completed.
4 I'm not expecting we will see any wind bids just like
5 we only got solar bids here. So we're looking at
6 strictly what would a solar developer need to
7 accomplish in order to maximize capturing the ITCs,
8 which it's not -- frankly, it's not only for their
9 benefit it's for the ratepayers benefit because they
10 should be able to give us better pricing if they know
11 they're getting the benefit of the federal tax
12 credits. So we're very mindful of that. And, again,
13 my expectation is we'll -- we'll work not only with
14 Duke as to when they can bring it on, but what the
15 needs and the expectations are of the market
16 participants as well.

17 COMMISSIONER MITCHELL: And just one quick
18 follow up. I assume that the limiting factor for Duke
19 would be construction labor but is there something
20 else that would limit Duke's ability to bring projects
21 online?

22 MR. JUDD: As long as the -- I would say no
23 as long as we can continue to focus on the available
24 excess capacity. When they have to bring in major

1 investments, you know, running additional crews to
2 bring in new lines, that's what we're trying to avoid
3 here. We're trying to absorb the existing capacity so
4 that they don't have to have delays in bringing
5 projects online.

6 COMMISSIONER MITCHELL: Okay. Thank you.

7 COMMISSIONER BROWN-BLAND: All right.
8 You've brought forth a lot of complexities in your
9 discussion and this is helpful to us in our
10 understanding.

11 Right now we're going to take a break and
12 let's see, I said 10 minutes. Let's be back at 11:50.

13 (A recess was taken at 11:40 a.m.,
14 until 11:50 a.m.)

15 COMMISSIONER BROWN-BLAND: Now, we're back
16 to order and back on the record and we will turn our
17 attention to how to structure a bid refresh procedure
18 and what amendments need to be made to Commission Rule
19 R8-71(f)(3) to authorize that procedure. And from
20 this point on staff will take the lead and some of the
21 questions may be for everyone, some of the questions
22 they may direct to specific parties. So who's
23 starting? Kim Duffley.

24 MS. DUFFLEY: Can you hear me? Thank you.

1 My first set of questions will be for the Independent
2 Administrator. And when I say grid upgrade costs in
3 the questions, for purposes of the CPRE Program, I
4 mean transmission and distribution upgrades.

5 MR. JUDD: Thank you.

6 MS. DUFFLEY: So you state within your
7 comments that the Independent Administrator has
8 conducted over 100 RFPs in the past 12 years. In any
9 of those RFPs that you've conducted, have transmission
10 and distribution upgrades of non-utility winning
11 bidders been placed into rate -- base rates of the
12 utility company versus being incurred by the market
13 participant?

14 MR. JUDD: Absolutely and certainly.
15 Let's -- I'll just address so there's no confusion.
16 In California with the CAISO it's separate, but that
17 is an expense that is borne as a wire's charge so
18 ultimately it goes to the consumer though it's not
19 directly assigned by the utility; so that's one,
20 otherwise, the answer is yes.

21 MS. DUFFLEY: So --

22 MR. JUDD: Do you want examples or how would
23 you like to proceed?

24 MS. DUFFLEY: Right. I mean, so you

1 mentioned California, what other states have they
2 socialized these network or distribution upgrades?

3 MR. JUDD: One moment. We're going through
4 a checklist here. Certainly Colorado, and Oregon --
5 well not the renewables in Georgia, right. I'm sorry.
6 You know that we do the RFPs in Georgia --

7 MS. DUFFLEY: Correct.

8 MR. JUDD: We're the IA for that Commission,
9 and there for the third-party providers those expenses
10 go back, after a threshold amount, go back to the
11 developer; correct?

12 MR. LAYFIELD: Yes.

13 MR. JUDD: And the threshold amount was --
14 do you recall? Sorry. We can get you that number if
15 you'd like. There is a threshold that is rate based
16 by Georgia power and after that it's assigned to the
17 developer.

18 MS. DUFFLEY: Thank you. You mentioned the
19 Georgia model so I'm going to --

20 MR. JUDD: There's also -- I was going to
21 say some of the RFPs that we have done in Arizona, the
22 cost has been borne by the utility.

23 MS. DUFFLEY: Thank you. I'm going to skip
24 ahead for a minute because you mentioned the Georgia

1 model. So on pages 5 and 6 of your March 15, 2019,
2 report regarding the Tranche 2 stakeholder process,
3 you outline that the stakeholders indicated four ways
4 to employ a bid refresh. Were any of those four ways
5 similar to the Georgia RFP process?

6 MR. JUDD: Point of reference if I could,
7 you're speaking of our most recent filing concerning
8 refresh?

9 MS. DUFFLEY: The March 15th filing.

10 MR. JUDD: No. The answer is no.

11 MS. DUFFLEY: Okay. So we've talked about
12 the \$5 million in grid upgrade costs, how are those
13 grid upgrade costs distributed amongst the winning
14 bidders?

15 MR. LAYFIELD: Thirteen of the 14 --

16 COMMISSIONER GRAY: Please pull the mic up.

17 MR. LAYFIELD: Thirteen of the 14 winning
18 bidders had upgrade costs associated with them, one
19 did not. We have that data for each bid in terms of
20 the upgrade costs if you would like us to supply it to
21 you.

22 MS. DUFFLEY: That would be helpful. So
23 we've heard today that, even though there was this
24 \$5 million in grid upgrade costs, that DEC is

1 estimated to have saved \$290 million; is that correct?

2 MR. LAYFIELD: That's not my number.

3 MS. DUFFLEY: Okay. What's the number?

4 MR. LAYFIELD: I don't know. That's Harry's
5 number.

6 (Laughter)

7 MR. JUDD: Correct.

8 (Laughter)

9 MS. DUFFLEY: Thank you. These questions
10 are for all of you. And then on page 1 of your
11 report, you stated that it looks like that savings
12 were estimated versus a full avoided cost contract
13 over a full 20-year term; is that correct?

14 MR. JUDD: Yes, ma'am.

15 MS. DUFFLEY: And based on your review of
16 the bids from Tranche 1, can you estimate or provide
17 an estimate of what grid upgrade cost could be part of
18 winning bids in Tranche 2?

19 MR. JUDD: I was told years ago if you don't
20 say anything it doesn't end up in the transcript;
21 that's with my pause. The difficulty I'm having in
22 answering your question is I don't know who's going to
23 bid. I don't know what's going to be bid. And I'm
24 not trying to dodge your question. In every one of

1 the RFPs it always comes down to what are we presented
2 as the opportunities to consider. I fully expect
3 projects that are already in the queue will be bid.
4 I'm afraid I'm reluctant to guess which ones. But,
5 Phil, do you have some views?

6 MR. LAYFIELD: Clearly, we can't know who's
7 going to bid or where they're going to do their point
8 of interconnection. But based upon Tranche 1 and, if
9 you extrapolate that, all of the winning bids had the
10 basic connection costs, extension of the bus, a
11 breaker, relays, the communication required, were the
12 basic components that were assigned to each winning
13 bid. Does that help?

14 MS. DUFFLEY: It helps some. Let me go at
15 it a different way. So on page 5 of your report dated
16 April 9, 2019, I'll let you get to it.

17 MR. JUDD: Thank you. I'm sorry the page
18 reference again?

19 MS. DUFFLEY: Page 5. You indicate that 15
20 proposals which would represent 794 megawatts were
21 eliminated because of T&D, which is transmission and
22 distribution system upgrade costs, and that that
23 resulted in a proposal above avoided cost?

24 MR. JUDD: That's correct.

1 MS. DUFFLEY: And then on page 9 of the
2 report you state that system improvements required to
3 accommodate the proposals that were evaluated but not
4 selected would cost approximately \$230 million;
5 correct?

6 MR. JUDD: Yes.

7 MS. DUFFLEY: And when you say "system
8 improvement" do you mean network upgrades or both
9 network and distribution upgrades?

10 MR. LAYFIELD: Network upgrades.

11 MS. DUFFLEY: Network only. So how was the
12 \$230 million in network upgrades distributed upon --
13 among those 15 projects?

14 MR. LAYFIELD: Off the top of my head I
15 don't know.

16 MR. JUDD: The answer is we can give you a
17 break down for that if you would like but we don't
18 have the data right in front of us.

19 MS. DUFFLEY: Okay.

20 MR. JUDD: We'll be happy to provide it.

21 MS. DUFFLEY: Wonderful. I just kind of
22 want to have a general sense is it one or two projects
23 or would it be evenly dispersed among all 15
24 proposals?

1 MR. JUDD: One moment please.

2 MR. LAYFIELD: Memory is all I've got here.
3 I believe that the most expensive system upgrade cost
4 for any winning bid was about \$855,000. There were a
5 number of bids at the \$450,000. There were some at
6 the two twenty-five. And the difference is -- is -- a
7 voltage difference is a 44 kV doesn't cost as much as
8 100 kV, the equipment, and these are all standard
9 costs and they were applied to all of the bids and
10 tabulated, and that's the range of cost that we have.

11 MS. DUFFLEY: Sure. And do you know if any
12 of those 15 proposals were interdependent with each
13 other?

14 MR. LAYFIELD: They were not.

15 MS. DUFFLEY: So I'm going to give a
16 hypothetical. The last time that we had a technical
17 conference we heard from Duke that with respect to an
18 80-megawatt facility, if you had an 80-megawatt
19 facility and you had a decrement of \$8.00 that you
20 could have per project about \$13 million in system
21 upgrades and still come below avoided cost so that's
22 what we've heard. And what I'm trying to get at or
23 find out with this \$230 million in system upgrades
24 divided by 15 proposals - tell me if my math -- I'm an

1 attorney so tell me if my math is correct - that you
2 could have roughly around \$15 million per proposal.
3 And under this type of hypothetical let's assume that
4 the decrement is lower and this would come under
5 avoided cost. Is that a possibility in Tranches 2 and
6 3?

7 MR. LAYFIELD: The \$235 million is not for
8 the 15 winning projects. That's for what we added up
9 to be the cost of the projects that were not selected.

10 MS. DUFFLEY: I understand that but this is
11 a hypothetical. These same --

12 MR. LAYFIELD: I'm sorry.

13 MS. DUFFLEY: These same projects come in in
14 Tranche 2 or Tranche 3, they've determined a bid where
15 they can come in at a certain level and each of these
16 projects have about \$15 million in upgrades. Is that
17 a possibility in Tranche 2 and 3?

18 MR. LAYFIELD: The \$15 million per project
19 seems excessive.

20 MS. DUFFLEY: And then asked a different
21 way, and you may have to -- it sounds like you're
22 going on memory here so if you could follow up with
23 the Commission on this. In your opinion is there any
24 way that the bidders who were not selected, those 15

1 projects that were above avoided cost, could
2 restructure their bids in Tranche 2 and come in under
3 avoided cost?

4 MR. LAYFIELD: There were some bids that
5 were very close to avoided cost and those bids could
6 certainly be repriced slightly and come in under
7 avoided cost. We had about four bids if I recall that
8 were very close to and just over avoided cost.

9 MS. DUFFLEY: Thank you. So am I correct in
10 assuming that when the cost of grid upgrades
11 increases -- so let's assume that the \$230 million in
12 upgrades that were pushed out in Tranche 1 is
13 dispersed between these 15 projects and they fall
14 below avoided cost, just assume that hypothetical,
15 that under that scenario, you know we had \$290 million
16 in savings in Tranche 1, that that type of savings
17 would go away due to the grid upgrade costs pushing
18 the decrement to right below avoided cost? Is that a
19 possibility?

20 MR. LAYFIELD: If we're staying with the
21 hypothetical 15 projects then that follows.

22 MS. DUFFLEY: Okay. And how likely is this
23 scenario?

24 MR. LAYFIELD: Not at all.

1 MS. DUFFLEY: Not at all. Would you explain
2 why not at all?

3 MR. LAYFIELD: Well, because there will be
4 other bids that are competitive and we wouldn't be
5 looking at just the higher cost bids.

6 MS. DUFFLEY: So -- but in Tranche 1 -- and
7 I thought I heard earlier today that the red zone
8 area, that more and more of the bids are actually
9 going to have to bid in these constrained areas, that
10 we might be not having the bids that do not have these
11 grid upgrade costs. Did I mishear that testimony?

12 MR. LAYFIELD: That's certainly a possible
13 but we're still working on how we can restructure the
14 base case and that's a topic of conversation here.
15 And if we're successful -- and there's several avenues
16 to follow to do that, we're not just looking at the
17 one facility study criteria there. If we're able to
18 restructure the base case then we might well have more
19 transmission capacity available for Tranche 2 than we
20 did Tranche 1.

21 MS. DUFFLEY: Thank you.

22 MR. BALL: Thank you. Just in terms of a
23 hypothetical for Tranche 2 or Tranche 3, I want to
24 point out that we'll be updating using Duke's updated

1 avoided costs. So making an extrapolation of the net
2 benefits from avoided cost savings for Tranche 1 to
3 Tranche 2 is something to keep -- to be careful with
4 because it will -- my understanding is avoided costs
5 might be coming down and so that will put pressure on
6 the net benefits whether the system upgrade costs
7 change at all.

8 MS. DUFFLEY: Thank you. So on page 6, and
9 I'm assuming this is the April 9th document, you
10 indicated that market participants -- so this is --
11 let me -- it's the March 15, 2019 report, page 6.

12 MR. JUDD: I'm sorry, March 15th?

13 MS. DUFFLEY: I think it's the March 15th
14 report, yes, regarding the Tranche 2 stakeholder
15 process.

16 MR. JUDD: Thank you. Continue please.

17 MS. DUFFLEY: So you indicate that the
18 market participant should not be restricted to
19 submitting proposals in non-constrained areas as it
20 would deny market participants who are willing to bear
21 some or all of the grid upgrade costs. This statement
22 seems to conflict with other statements with the
23 document that market participants will not bid if the
24 market participant is responsible for grid upgrade

1 costs. And so I just -- could you explain this
2 discrepancy or conflict for me?

3 MR. JUDD: Sure. Thank you for pointing it
4 out. We tried to avoid confusion but it's not always
5 a success.

6 What we're trying to capture there was that
7 we recommend -- we don't prohibit a market participant
8 from pursuing and bidding in a project at a site that
9 they've already procured. We require site control.
10 We require that they have a plan for the site. We
11 look at how much they have proceeded with local
12 permitting, et cetera.

13 If someone is along the route of developing
14 a project, and you could even put it in the context of
15 it's a late-stage though we're not, I understand,
16 using that concept in Tranche 2, we urge that we not
17 prohibit them from bidding into Tranche 2 simply
18 because of the geographics of their location. They
19 may choose to absorb some of the costs of the system
20 upgrades because it's within their business model.
21 That's what we are trying to capture.

22 MS. DUFFLEY: Okay. Thank you. So as you
23 may know, the Commission has some concern about the
24 socialization of grid upgrade costs in this model.

1 Specifically, there's a potential that if the grid
2 upgrade estimate is inaccurately low, the final cost
3 of the project may be over the avoided cost cap. At
4 the last technical conference I believe we heard Gary
5 Freeman state that it can be typical to have cost
6 estimate swings up to 20, maybe 30 percent.

7 MR. JUDD: Yeah, and he retired from the
8 Company, just so you know. That was his swan song.

9 MS. DUFFLEY: I do. I do. His last day and
10 we kept him from his party.

11 So what specific steps are you as an
12 Independent Administrator taking to ensure compliance
13 with the avoided cost cap for the winning bidders?
14 So, for example, are you rejecting a bid where a
15 potential 20 percent increase in grid upgrade costs
16 would place the proposal above that cap?

17 MR. JUDD: We did not in Tranche 1. We
18 are -- but we are exploring banding, if you will,
19 upgrade costs if the market participant is to --
20 particularly if a market participant is expected to be
21 responsible for those costs. But let me start at the
22 beginning, if I might, of your question and that is
23 will Duke be able to provide a firm cost estimate.
24 And I believe not unless they include a risk factor

1 for changes and their costs between the beginning and
2 the ending of a project. They're estimating today for
3 work that will be completed two years from now. There
4 will be a difference and we can ask them to be high
5 and include a -- some percentage risk for cost
6 increase, a contingency component if you will. We've
7 done that in some construction projects saying we want
8 your hard number, now give us a contingency number as
9 well so we'll understand your view. We have not
10 explored that with Duke specifically but we do believe
11 from experience that whatever the number is that we're
12 able to come up with in step two, it will not be the
13 final number. And --

14 MS. DUFFLEY: Right.

15 MR. JUDD: -- is that --

16 MS. DUFFLEY: So what specific steps are you
17 taking to ensure that we don't have a result -- well,
18 the Commission's concern is that we don't want to
19 create a program where ratepayers are paying higher
20 than avoided costs.

21 MR. JUDD: Understood. And part of the --

22 MS. DUFFLEY: And what steps are you taking
23 to ensure that compliance?

24 MR. JUDD: Let me answer your question this

1 way and I hope it's -- you review it as responsive.
2 For Tranche 2, we're talking about now, if the --
3 regardless of who's going to pay for it, we want to
4 explore with Duke and with the stakeholders a process
5 that identifies a call to contingency, a call to risk
6 factor, whatever you wish, I believe and I will share
7 that if the cost is to be borne by the developer they
8 will have to include a risk premium of their own. And
9 we can address that many ways. They can do their own
10 planning and their own cost of capital and their own
11 knowledge to come up with that but they will include
12 it. And the challenge there is if their risk
13 premium -- if they're still able to stay under avoided
14 cost with their risk premium and that ends up being --
15 they have overstated the cost of system upgrade in
16 their planning but that is the basis for their rates,
17 then we'll be overpaying them. Similarly, if Duke is
18 way off in their estimates for the dollars to be added
19 to rate base that, too, would be included in rates.
20 It's not perfect but I'm sharing we've run into both
21 scenarios of who puts on the risk premium and how do
22 we define it. And I will say that it would be easier
23 to control that risk premium on the utility than in
24 third-party independent bidders simply because we're

1 not going to get into their business model and their
2 cost of capital and in their planning in the same way
3 that you have insight into the regulated utility.

4 MS. DUFFLEY: Thank you. So in Tranche 1
5 did you reject any bids that lacked the headroom to
6 accommodate network upgrades? And I think we did hear
7 it's those 15 projects, correct? Okay.

8 So moving to the specific proposals for bid
9 refresh. Now that you've read the other proposals,
10 what is your opinion of the Public Staff and NCCEBA's
11 option of creating a system upgrade cost formula? And
12 that's the one, an adder to the market participants'
13 decrement, that the Independent Administrator would
14 update the bid price taking into account only the grip
15 upgrade cost assigned to the bid and with only one bid
16 refresh.

17 MR. JUDD: I'm glad you asked that question.
18 I did anticipate it.

19 Tracy, if you would move to the next slide
20 please. Oh, I'm sorry. Yes.

21 We were unaware of the Public Staff's
22 proposal until we read it, and so that's not a slight
23 on anyone. It's simply to tell you why we did not
24 include it in our earlier comments.

1 Let me preface by saying we'll do whatever
2 you folks tell us to do. We can model it. We can
3 evaluate it. We've made our views known on and pros
4 and cons of the refresh. We are -- we understand
5 we're not revisiting that. So if we are taking up the
6 Public Staff's proposal, we would -- if you would move
7 to slide 20, please -- we propose what we think -- in
8 implementing that what we think would be a simple
9 approach which is that at the time of bidding the
10 market participant provides a \$1.00 per megawatt-hour
11 adjustment for every million dollars of upgrade from
12 system upgrades. We would run the step two, we would
13 plug in their number, and obviously if it's half a
14 million dollars we -- somebody in our team has a
15 calculator and they can figure out what half of their
16 number is, and we would apply it and then run it back
17 through the model to determine whether it is still in
18 the competitive tier. This way we believe that we
19 could take up a formula approach consistent with what
20 the staff had recommended. It -- the beauty of it is
21 it's the bidder's number. They know their business.
22 They know what their tolerance would be. It would
23 also avoid the gaming of someone. After the bids are
24 submitted, find out that their costs have changed

1 elsewhere, and they want to adjust. Likewise, we note
2 that at least one of the filings suggested that it
3 should not be a one and done; that the adjustment
4 should be iterative, along with the iterative process.
5 If we use this approach, frankly, we could apply it
6 every time.

7 And the point being there, a hypo -- I'll
8 give a hypothetical back to you, if you don't mind.
9 Let's say we're in a situation where we have five bids
10 that are in a cluster study and we run through this
11 process and some are taken out of because they're
12 priced out. They're above avoided cost. We would
13 then move bids up from the reserve list. I'll
14 continue the hypothetical and say that three took
15 themselves out. There are only two remaining at the
16 cluster, but the new bids do not hit at the cluster;
17 therefore, instead of 20 percent of a price being
18 assigned to a bid they get 50 percent. We think if
19 you're going to do this then let us run it a second
20 time with their number rather than a one and done.

21 So I hope this information will be
22 responsive. But we did lay it out ahead of time in
23 our PowerPoint for you to consider.

24 MS. DUFFLEY: And do you think that a bid

1 refresh process potentially causes more risk in not
2 meeting the RFP target and the goals of CPRE?

3 MR. JUDD: No.

4 MS. DUFFLEY: Could you explain why?

5 MR. JUDD: Going in all participants will
6 know the rules and they'll all have to use the same
7 rules. If you use the approach we've laid out
8 there -- here rather in front of you, the risk of
9 gaming would be dramatically reduced to not having
10 someone -- the game that, I'm sorry, I'm alluding to
11 is someone gives us a very attractive price in order
12 to get in the competitive tier to find out what their
13 system upgrade costs would be and they keep on
14 churning trying to figure out what the sweet spot is
15 for their project and pricing.

16 That is also -- Commissioners, I'll come
17 back to the fact of using a pro forma PPA prevents
18 that sort of gaming, too, of getting to the
19 negotiating table and then trying to get a better
20 deal. So it wouldn't necessarily produce fewer bids
21 at all. I do strongly urge though, if you're going to
22 have a refresh, that you put some parameters around.
23 As I noted in our earlier filing, where we've done
24 refreshes before it's been for specific reasons. Back

1 when we were adding conventional generation and price
2 volatility was a serious issue, we would permit a
3 refresh on pricing. When just in '17, when we had the
4 volatility because of the uncertainty of the federal
5 tax code, we did a refresh in a major RFP saying now
6 that you know -- you know, January, you now know what
7 they did to us in December, do you want to reprice?
8 Has that dramatically changed your businesses model?
9 It was a known change that we thought was fair to let
10 people take that into account and not be held to a
11 number that was produced six months before. This
12 approach as outlined by the staff and as we could see
13 a way to implement it, should do -- should not prevent
14 folks from being competitive in their bidding.

15 MS. DUFFLEY: And under this type of bid
16 refresh process, who would bear the risk of cost
17 overruns, grid upgrade cost overruns?

18 MR. JUDD: As I understand this approach so
19 let me define it, this would be in the situation where
20 the cost is to be borne by the developer. In that
21 case they would bear the risk.

22 MS. DUFFLEY: So a quick question for
23 NCCEBA, what is your response to this risk shift?

24 MS. KEMERAIT: I wanted to point out that we

1 are in agreement with the Public Staff's
2 recommendation and also with what Mr. Judd has
3 presented in his PowerPoint presentation. That is the
4 objective formula of basically an adder is what we had
5 recommended in our, I believe it is our March 22nd
6 comments, and then we also recommended it in our May
7 16th comments. We had a slight difference in our May
8 16th comments from the Public Staff's recommendation
9 but we were in full agreement. It's a slight
10 difference and we're in full agreement with the Public
11 Staff's recommendation. And we think that it is a
12 fair and objective formula that will prevent gaming of
13 the system.

14 And the other option would be more of a
15 subjective refresh and which would lead to, we
16 believe, gaming of the system, where a bidder could
17 come in and provide, as Mr. Judd stated, a
18 artificially low price for its bids so that it could
19 get into the competitive tier knowing it would have an
20 opportunity to come in and then provide a more
21 realistic bid, and then perhaps take advantage of
22 market opportunities or market changes that other
23 market participants would not be able to do. So we
24 don't -- we're not concerned about risk shifting

1 because we think it's an objective and fair way to do
2 a refresh.

3 MS. DUFFLEY: Thank you. And what is Duke's
4 position?

5 MR. JIRAK: Is the question --

6 MS. DUFFLEY: On this bid refresh procedure.

7 MR. JIRAK: So if the Commission chooses to
8 go the bid refresh, we don't have a strong opinion and
9 we defer to the IA's judgment on that. A formula,
10 methodology seems like an appropriate path to go down
11 if the decision is made to shift those costs and to be
12 directly borne by the developer.

13 MS. DUFFLEY: Thank you. And then one last
14 question for the Independent Administrator. Between
15 the two, this bid refresh option that we just
16 discussed and the method in Tranche 1, do you have a
17 preference one way or the other?

18 MR. JUDD: With respect that we don't do
19 policy for the Commission and we respect your
20 judgment, including the cost of the upgrade in rate
21 base is a more straight-forward approach and we know
22 that the market participants from the stakeholder
23 meetings we ran, they prefer it as well. It is less
24 likely to produce significant challenges and

1 disagreements between a bidder and the company. I
2 will not bore you with war stories but we have been
3 through that process where the Company produces cost
4 estimates and then we go through a protracted process
5 of pulling it apart and putting it back together to
6 try to explain every component.

7 In this instance we avoided that in the
8 interconnection cost component because the evaluation
9 T&D team and Phil put together a list of expected
10 costs for different components that are already the
11 responsibility of the developer that is the
12 interconnection, but from the point of interconnection
13 on are the system upgrade costs, those are not
14 possible I believe - and Phil will kick me if I'm
15 wrong - but those cannot be preestablished because you
16 don't know what will be needed until we have the bids
17 in hand.

18 MS. DUFFLEY: Thank you. So now I'm moving
19 to --

20 MS. KEMERAIT: Ms. Duffley, I realized, and
21 I apologize, but I realized I did not fully respond to
22 your question about risk shifting.

23 MS. DUFFLEY: Okay.

24 MS. KEMERAIT: And I think Mr. O'Hara would

1 like to respond to that because there is an issue
2 about risk for the developers based upon the formula
3 approach.

4 MR. O'HARA: I think what I heard you ask
5 was, and let me just make sure I got it right, was I
6 heard Mr. Judd say that the risk of cost overruns in
7 network upgrades who would that be borne by, and I
8 believe he said market participants. And you were
9 asking about our reaction to that; is that right?

10 MS. DUFFLEY: Correct.

11 MR. O'HARA: So obviously we think it's
12 critically important that those estimates be as
13 accurate as possible. If the -- if the method by
14 which that risk is applied to the market participants
15 is through that formula, it essentially adjusts the
16 bid price accordingly. And to the extent that -- this
17 probably comes as no surprise but to the extent that
18 those network upgrades are part of the rate base that
19 doesn't necessarily impact the economics for a
20 developer or it may knock them out of the competitive
21 tier.

22 MS. DUFFLEY: Well, but under this bid
23 refresh process, it would not go into base rates; it
24 would be borne by the market participant?

1 MR. O'HARA: Right. So my understanding
2 under the bid refresh process is the scenario we're
3 solving for is you have a bid in where we don't know
4 network upgrade costs. And so we're bidding on a
5 project assuming there are no network upgrade costs
6 and then if network upgrade costs are applied, the
7 evaluation of our bid is adjusted so the value of our
8 bid is adjusted; correct?

9 MS. DUFFLEY: Correct. And that the market
10 participant would be solely responsible for those
11 network upgrades.

12 MS. KEMERAIT: Correct. And I think that
13 the -- I think the question is, is about cost overruns
14 for the network upgrades because what we heard, and
15 I'm going to let Mr. Norris speak to this, but we
16 heard from Duke and from Mr. Judd is -- or from
17 Mr. Judd is that there can be significant swings
18 upward about what the estimates are and then what the
19 actual network upgrade costs are from 20 to 30 percent
20 swing upward --

21 MS. DUFFLEY: Correct.

22 MS. KEMERAIT: -- and if we are providing
23 an objective formula and we don't have accurate
24 information about what those network upgrades cost,

1 that can be very problematic. And I think Mr. Norris
2 would like to speak to that.

3 MR. NORRIS: Yeah. I'll just add if there
4 is truly a formula then it would apply in the instance
5 of a cost overrun. So the only way you can account
6 for that risk is if the bid price would increase in
7 proportion to any cost overrun that may occur. And
8 without that formula holding that's going to present
9 potentially prohibitive risks to the many market
10 participants and we're likely to see more market
11 participants back out either -- well, in this case
12 they would have already posted bid bond but we may see
13 more not actually end up executing their PPAs, and we
14 may see substantial delays in the overall state's
15 procurement targets here. So as long as the formula
16 holds you can see that --

17 MS. DUFFLEY: When you -- when you say
18 formula holds can you explain that further?

19 MR. NORRIS: As in let's say in the cluster
20 study a certain network upgrade cost is identified and
21 a PPA price is agreed upon and a PPA is executed. And
22 then after the network upgrade actually occurs, it
23 turns out that there was a cost overrun of say
24 20 percent, we would have to have a mechanism to

1 modify the PPA to make sure that that, again, the
2 formula holds such that that overrun would be
3 accounted for in the PPA price, if that makes sense.

4 MS. DUFFLEY: It does.

5 MR. JUDD: If I could, what we -- I'm sorry,
6 Commissioner, I didn't mean to interrupt you.

7 COMMISSIONER CLODFELTER: But if I
8 understand what you just proposed correctly that means
9 we could end up with a PPA price that exceeds avoided
10 cost. How can we do that? The Statute doesn't allow
11 us to do that.

12 MR. NORRIS: In the scenario where the
13 utility has determined that there is a risk of a cost
14 overrun such that the final PPA price would exceed
15 avoided cost, then presumably the IA would have to
16 eliminate that bid.

17 COMMISSIONER CLODFELTER: But we may not
18 know what that risk is or be able to quantify it
19 before the PPA complies with final ranking and the
20 bids are selected and go to PPA negotiation. We may
21 not know that risk. So I think Ms. Duffley's question
22 is are you willing to carry that risk knowing that you
23 can't adjust it in the PPA?

24 MR. NORRIS: Well, I -- what -- this may

1 raise a question around is how are costs being
2 determined for network upgrades and who is taking on
3 the liability for the actual construction of those
4 network upgrades. And it may be worth considering a
5 separate competitive process by which the construction
6 company that commits to billing those upgrades has to
7 commit to such costs. In fact, we are as independent
8 developers committing to the construction cost of our
9 own projects subject to a price cap which is our own
10 PPA bid. So why should there not be similar controls
11 for the cost of network upgrades. So I submit to you
12 that and it's --

13 COMMISSIONER CLODFELTER: I jumped in on
14 Ms. Duffley's questions and I apologize.

15 MS. DUFFLEY: No. I thank you for that.

16 COMMISSIONER CLODFELTER: Can I stay with
17 this for a minute because this is really what the
18 heart of the bid refresh is all about. It's not about
19 the bid refresh procedure. I mean, you guys can solve
20 the bid refresh procedure. You've given us a very
21 elegant illation to it. It's really about what
22 happens if we shift the risk of the upgrade costs from
23 the ratepayer back to the developer. That's what this
24 is all about. So let's talk about that for a minute

1 if I can stay with it.

2 So now take a deep breath because I want to
3 ask you guys a question. Take a real deep breath.
4 Okay. If the Commission were to decide that it did
5 want to follow the existing policy it uses with QF
6 contracts and require that the upgrade costs be borne
7 by the developer. But suppose the Commission did
8 this, suppose the Commission said they're going to get
9 an estimate. All they're going to have is an
10 estimate. That's all they're going to have. It's got
11 inherent uncertainty in it. And we're going to
12 require them to manage that uncertainty through the
13 refresh process up to the estimate, up to the amount
14 of the estimate. If it turns out in an actual fact
15 that the costs are greater -- you're in control of
16 those costs, you have better control of the costs than
17 anybody -- if those costs are greater by some trigger
18 amount, you've got a prudence issue. What would you
19 say? You've got a prudence issue. We'll let you
20 socialize some of the overrun, but if you overrun by
21 40 percent, 50 percent, you've got a prudence problem.
22 What would you say?

23 MR. JIRAK: Two major points, one is keeping
24 in mind as you mentioned the fact that the System

1 Impact Study point in time at which these estimates
2 could be delivered, their estimates, and certainly
3 field engineering has not been done. There's a lot of
4 stuff. I don't know all of, it, but there's a lot of
5 things that have to be done to firm up that estimate.
6 But secondarily, I think just generally that would
7 incent Duke to sort of build in some contingency into
8 its estimates to account for that risk in the same way
9 that other entities making capital investments as they
10 look for in the future and make contingency
11 assumptions, depending on the certainty of the
12 information they have underlying their then best guess
13 about the cost of it. So I don't necessarily think
14 that's the right way to go but we could solve for that
15 and figure out a way to how to allocate the risk in
16 the most appropriate way given the information we have
17 at the time we're making that estimate.

18 And again, it's not who -- it's not whether
19 retail customers pay the cost of the upgrades. They
20 will pay the cost of the upgrades either through CPRE
21 PPA price recovery if the developers bear the cost
22 directly, or they will pay for it through rate base
23 recovery if it's rate base. But there's no scenario
24 where retail customers don't pay the cost. It's just

1 which is the most efficient way from a process
2 perspective to do it and what's the most efficient way
3 to avoid an unnecessary risk premium being added and
4 paid for if the costs do, in fact, end up coming in
5 where you estimated them. And it seems to me that if
6 you shift the risk of developers they necessarily have
7 to put a risk premium in, any rational investor would
8 do that, and that risk premium may or may not turn out
9 to be necessary depending on where the actual costs
10 come in. So those are the big picture issues that we
11 think about.

12 MR. O'HARA: Commissioner Clodfelter -- go
13 ahead.

14 MS. CUMMINGS: I was just going to ask if
15 the Public Staff could comment on that?

16 COMMISSIONER BROWN-BLAND: Yes.

17 MS. CUMMINGS: We've had a lot of internal
18 conversations about this and we generally still
19 support our March 22nd comments that the grid upgrade
20 costs for winning bids are in base rates and that is
21 just a general discussion about how that risk will be
22 allocated. We believe if the risk premium is
23 developed by the developers that the ratepayers will
24 pay it regardless and even if those construction costs

1 come under. So we agree generally that Duke is in the
2 best position to determine what those costs are.

3 I would like to say about the ratepayers
4 will pay it regardless, the ratepayers will only pay
5 reasonable and prudent costs incurred. And our
6 general theory on this is if you guys decide to stay
7 with the Tranche 1 procedure, which is just no refresh
8 and to socialize those costs, one option or one
9 safeguard available is to put a sort of cost cap on
10 any overruns, and you could determine a certain
11 percentage. There's, you know, a normal construction
12 contingency of 10 percent. We recognize there's a lot
13 of uncertainty here. We've seen in other states, and
14 this is interconnection costs not a RFP, but we've
15 seen 25 percent in Massachusetts and California. What
16 they do is they create a rebuttable presumption so you
17 presume that costs over a certain envelope are
18 imprudently and unreasonably incurred and not
19 recoverable, and the utility is given a chance to
20 demonstrate that those costs were reasonable and
21 prudent so it shifts that burden. And we think that
22 would be an appropriate approach in this case.

23 COMMISSIONER CLODFELTER: My question to you
24 was what she said.

1 MR. JIRAK: As an initial matter, first of
2 all, we wholeheartedly agree with Ms. Cummings'
3 clarification that certainly we would not be entitled
4 to recover any prudently incurred costs, so I agree
5 with that presumption.

6 We haven't had a chance to discuss whether
7 the business team could support a cost cap but I
8 certainly understand the perspective on that and it's
9 something we will be willing to consider and think
10 about how that informs the group and the process
11 itself and the development of estimates, but I
12 understand where that idea comes from.

13 COMMISSIONER BROWN-BLAND: Mr. O'Hara.

14 MR. O'HARA: Yes, ma'am, thank you.

15 First, I just wanted to say we're in
16 complete agreement with Duke that having Duke
17 socialize -- or socializing the costs of those network
18 upgrades is probably the most efficient way to do
19 this. Our bids will -- if we -- as market
20 participants we have to cover the cost of bid
21 upgrades. That will be reflected in our price. So
22 assuming everyone's cost of capital is about the same
23 you're probably at a wash.

24 I think that's a more efficient process.

1 But I do want to be very clear about the question that
2 was asked about overages because I think we were kind
3 of beating around the bush on the answer to that one.
4 As market participants we need to have certainty as to
5 what the cap on those network upgrades are. If we bid
6 based on a number X and the network upgrades come in
7 at 1.3X or, God forbid, 4X which we've seen in some
8 distribution cases, that is not an overrun that in
9 anywhere in that range a market participant could
10 bear. We're bidding at the minimum acceptable margin
11 we can because we know this is a hyper-competitive
12 process and so we have to have some certainty around
13 what those costs are.

14 MS. KEMERAIT: So, and we would support the
15 Public Staff's position of what Ms. Cummings just
16 mentioned as well.

17 MS. DUFFLEY: So, Ms. Cummings, what I think
18 that I just heard you say is that you've weighed the
19 costs and benefits of both models that we've discussed
20 today and determined that the socialization model is
21 the best -- in the best interest of ratepayers?

22 MS. CUMMINGS: Yes. That's the internal
23 conclusion we've come to. And it's not just the risks
24 that would be added to the developer's bid, it's also

1 the potential delay. So we're aware that we are
2 asking for a significant delay with the Sub 158
3 docket. And we've heard from the IA that if they have
4 a bid refresh, even a limited bid refresh according to
5 the formula, you could have four or more iterations of
6 that bid refresh in a cluster study and that could
7 take up to six months, and we would rather avoid that
8 delay on the back end.

9 MS. DUFFLEY: So I have two more concerns.
10 I just want to make sure that it was part of your
11 process. Do you have any concerns about treating CPRE
12 RFP winners differently than non-CPRE participants in
13 that the interconnection customer awarded a PPA under
14 the CPRE RFP is not responsible for paying their
15 distribution and network upgrades, while all other
16 interconnection customers under the jurisdiction of
17 the North Carolina Interconnection Standards are
18 responsible for paying for their distribution and
19 network upgrades?

20 MS. CUMMINGS: Generally, I think that's a
21 policy call and, you know, we've supported it as it's
22 been proposed in Tranche 1 and we found -- we think
23 it's working well. I think, in general, it's not a
24 bad policy call and it's one that can be supported by

1 the Public Staff to incentivize people to participate
2 in CPRE through this socialization of costs.

3 MS. DUFFLEY: But are there any
4 discrimination issues?

5 MR. DODGE: This is Tim Dodge with the
6 Public Staff. And, again, when the Commission
7 originally approved the CPRE Program plan and agreed
8 that the system -- socializing those system upgrade
9 costs was appropriate, I think that there was some
10 discussion at that time but, as Ms. Cummings was just
11 indicating to the extent it's part of implementing the
12 CPRE Program. On the front end, in terms of the queue
13 position for projects as they come in, they're being
14 treated in a non-discriminatory fashion. Those costs
15 are being assigned. They shouldn't be while the --
16 again the costs -- ultimately how they're recovered
17 may be different, they would be bearing the same
18 amount of costs associated with those upgrades.

19 MS. DUFFLEY: Thank you. And then one more
20 concern is under the socialization model, who or what
21 entity will be responsible for cost containment of
22 grid upgrade costs? So, for example, under the
23 traditional PPA, the interconnection customers are
24 monitoring the cost of these upgrades because they

1 want to maximize profit, so you have a natural
2 regulator through this arms length transaction. But
3 under the socialization model, these incentives for
4 the interconnection customer to monitor the upgrades
5 has disappeared. So who will take on this burden?

6 MS. CUMMINGS: So we think that the
7 developer paying those costs does create a way of
8 containing those costs. They'll argue about certain
9 costs. And we've worried in general that you're
10 giving us sort of -- you know, on the -- we can always
11 review -- the Public Staff can always review in a rate
12 case those costs that come in. It may be difficult
13 when something was built three years prior, and those
14 costs were incurred a long time ago, and we may not be
15 able to evaluate every single project in the same
16 manner. We think though that using the rebuttable
17 presumption that I mentioned before will serve as a
18 sort of check on this that if they do go over a
19 certain cost cap that they would have to present their
20 reasons for doing that. And we support that either on
21 an individual project basis, 20 percent of what was
22 originally estimated for that project, say
23 hypothetically, or portfolio-wide. So hypothetically,
24 if you had \$5 million in upgrades, if there were

1 six -- over \$6 million portfolio-wide, that they would
2 then have to look at those costs and the presumption
3 would shift to them.

4 MS. DUFFLEY: So what I heard you say is
5 that the Public Staff would step into that role of
6 being the monitor and you have the expertise close to
7 an interconnection customer and would review those --
8 those upgrades, correct?

9 MR. DODGE: Those upgrade costs would be
10 reviewed in a rate case. So we would be looking at
11 those like other T&D upgrades in the next rate case.

12 MS. DUFFLEY: Thank you. That's all I have.

13 COMMISSIONER BROWN-BLAND: Well, this is a
14 good breaking point. I think everybody was instructed
15 that we would complete this today and be here no later
16 than 5:30, so bear that in mind as you answer
17 questions. Try to answer them as tightly as you can
18 and hold off on making prefacing statements and that
19 kind of thing. Just hone right in on a question to
20 the extent you can. With that said, we're going to
21 break now and please be back by 1:50.

22 (The hearing was adjourned at
23 12:43 p.m., and set to reconvene
24 at 1:50 p.m.)

C E R T I F I C A T E

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