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VIA ELECTRONIC FILING

Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Direct
Testimony and Exhibits
Docket Nos. E-2, Sub 1177 and E-7, Sub 1172**

Dear Ms. Campbell:

Please find enclosed on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies") the Direct Testimony and Exhibits of Michael Keen and Glen A. Snider for filing in the above-referenced dockets. Portions of Mr. Keen's testimony contain confidential contract offers from Cube Yadkin and are being filed under seal. Accordingly, pursuant to N.C. Gen. Stat. § 132-1.2, the Companies respectfully request that the Commission protect this commercially sensitive data.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kendrick C. Fentress

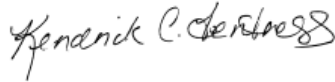
Enclosures

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Direct Testimony and Exhibits of Michael Keen and Glen A. Snider, in Docket Nos. E-2, Sub 1177 and E-7, Sub 1172 has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 15th day of January, 2021.



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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1177

DOCKET NO. E-7, SUB 1172

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

v.)

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

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

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

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

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

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

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

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

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

3 **A.** No.

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

6 **A.** No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

11 **A.** Yes.

From: John Collins
Sent: Tuesday, August 23, 2016 9:50 AM
To: regis.repko@duke-energy.com
Cc: Kristina Johnson <kjohnson@cubehydro.com>
Subject: Follow-up to Our Meeting

Regis,

I hope this email finds you well and enjoying the end of summer. I am emailing to follow-up on our discussions regarding the Yadkin hydroelectric assets that Cube Hydro is purchasing from Alcoa. As we discussed in our meeting, we plan of registering 3 of the assets, High Rock, Tuckertown and Falls, as Qualifying Facilities and would like to have further discussions with Duke regarding longer-term QF contracts for these facilities. In addition, we discussed the possibility of a long-term PPA arrangement for all four facilities including the Narrows plant with Duke that could provide additional flexibility for Duke to manage its grid due to the continuing impact of solar generation on the Duke network.

As a follow-up to the meeting you were going to put us in contact with the appropriate team members at Duke to begin discussions. I wanted to let you know that Kristian and I plan to be in North Carolina next Thursday, September 1st, and have some availability to meet with your team if their schedules permit.

Let me know if that will work or who we should contact to begin further discussion related to long-term PPAs for the Yadkin hydroelectric plants.

Look forward to hearing from you.

Regards,

John

John R. Collins
Executive Vice President and Managing Director – Business Development
Cube Hydro Partners
Two Bethesda Metro Center, Suite 1330
Bethesda, MD 20814
(240) 482-2703 (Work)
jcollins@cubehydro.com



Duke Energy
299 First Avenue North
St. Petersburg, FL 33701

OFFICIAL COPY

Mar 29 2018

September 21, 2016

Cube Hydro Partners
Two Bethesda Metro Center, Suite 1330
Bethesda, MD 20814

Attn: John R. Collins
Executive Vice President and Managing Director – Business Development

Re: Inquiry concerning sale of output of Yadkin system to Duke Energy

Dear John:

This letter is a follow up to our conversation of September 16, 2016 during which I communicated to you Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's (collectively/individually, "Duke") positions in response to your inquiry soliciting Duke's interest in purchasing the output of the Yadkin system. The "Yadkin System" consists of four hydro-electric units as follows: High Rock Station, approximately 33 MW; Tuckertown Station, approximately 39 MW; Falls Station, approximately 30 MW; and Narrows Station, approximately 119 MW.

The Yadkin system is currently owned and operated by Alcoa Inc., and is the subject of a potential purchase by Cube Yadkin Generation, LLC ("Cube Yadkin"). You informed me that Cube Yadkin does not currently own or operate the Yadkin system, but anticipates that it will close on the transaction to own and operate the facilities around November 1, 2016. As I communicated to you previously, Duke does not have any current needs for energy or capacity; however, if a need arises in the future, Duke would likely issue a request for proposals and Cube Yadkin can elect to submit a responsive bid. You further informed me that Cube Yadkin is considering certifying the three smaller units as qualifying facilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). In that regard, I informed you that to the extent Cube Yadkin approached Duke under PURPA, that under PURPA's requirements, Duke would likely have no obligation to purchase any output of energy or capacity from the Yadkin system units that may be certified as qualified facilities.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Keen".

Michael Keen
Business Development Manager
Duke Energy



Michael Keen
Business Development Manager
Duke Energy
299 First Avenue North
St. Petersburg, FL 33701

Dear Michael,

I am writing in response to your letter dated September 21, 2016 (the "September 21 Letter") regarding the discussions between Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (individually and together, "Duke"), and Cube Hydro Partners, LLC ("Cube Hydro") with respect to the four hydroelectric projects on the Yadkin River (collectively, the "Yadkin Projects") that are currently owned by Alcoa Power Generating Inc. ("Alcoa").

As we discussed, Cube Hydro Carolinas LLC, an affiliate of Cube Hydro, has agreed to acquire the Yadkin Projects from Alcoa. The acquisition is anticipated to occur before the end of 2016. Alcoa has certified three of the four Yadkin Projects – the approximately 30 MW Falls project, the approximately 40 MW Tuckertown project, and the approximately 34 MW High Rock project – as qualifying small power production facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the implementing regulations of the Federal Energy Regulatory Commission ("FERC").

As you may know, Section 210(m) of PURPA and FERC's regulations require electric utilities, including Duke, to purchase energy and capacity made available from QFs. *See* 16 U.S.C. § 824a-3(a)(2) (2012); 18 C.F.R. § 292.303(a) (2016). FERC's regulations further specify that a QF shall have the option of making sales to an electric utility pursuant to a legally enforceable obligation, or on an "as available" basis. *See* 18 C.F.R. § 292.304(d) (2016).

Given that three of the Yadkin Projects are now QFs, we recommend that we meet to discuss your concerns at your earliest convenience. We are happy to come to your offices in late October or early November to discuss the process for making sales from these projects to Duke pursuant to PURPA. We would anticipate that such discussions would, among other things, address the statement in the September 21 Letter that, "under PURPA's requirements, Duke would likely have no obligation to purchase any output of energy or capacity from the Yadkin system units that may be certified as [QFs]." While electric utilities may petition FERC to be relieved of their mandatory purchase obligations under PURPA, it does not appear that FERC has issued an order relieving Duke of such obligations, or that there are any other applicable exceptions or exemptions.



Duke Energy
299 First Avenue North
St. Petersburg, FL 33701

OFFICIAL COPY

Mar 29 2018

October 14, 2016

Via Email and Priority Mail

Mr. John R. Collins
Executive Vice President and Managing Director – Business Development
Cube Hydro Partners, LLC
Two Bethesda Metro Center, Suite 1330
Bethesda, MD 20814

Re: Response to Undated Cube Hydro Letter Received October 11, 2016

Dear John:

This letter is a follow up to your undated letter to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (“Duke”) which was received on October 11, 2016 (the “Cube letter”).

In the Cube letter you inform Duke, as Cube Hydro Partners LLC, on behalf of Cube Hydro Carolinas, LLC (collectively, “Cube Hydro”), that Alcoa Power Generation, Inc. (“Alcoa”) has certified three out of four units of the Yadkin system as qualifying facilities under PURPA. The “Yadkin system” consists of four hydro-electric units, as follows: High Rock Station, approximately 33 MW; Tuckertown Station, approximately 39 MW; Falls Station, approximately 30 MWs; and, Narrows Station, approximately 119 MW. You further inform us that Cube Hydro seeks to purchase the Yadkin system from Alcoa, and may be the actual owner and operator of the Yadkin system by the end of 2016. At this time, Cube Hydro neither owns nor is a qualifying facility with respect to the Yadkin system. Therefore, Cube Hydro has no potential rights to exert under PURPA. Although your letter fails to reference our discussions, we have previously and prior to your letter informed you of the PURPA provisions under which Duke would be exempted from PURPA with regard to the Yadkin system. Accordingly, this letter serves as Duke’s formal notice under 292.309/310 that if in the future Cube Hydro is a qualifying facility with respect to the Yadkin system and it seeks to sell power to Duke, it is Duke’s view that it is exempted from any purchase obligation under PURPA with respect to the Yadkin system.

Representations and warranties in applications made at FERC demonstrate that Cube Hydro has sought, and Alcoa currently has market-based rate authority on the basis of the ability and history of selling the output of the Yadkin system into competitive wholesale and organized markets. However, after you have closed on the transaction with Alcoa, if you seek to approach Duke under PURPA we will be glad to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Keen'.

Michael Keen
Business Developer Manager, Duke Energy

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1177

DOCKET NO. E-7, SUB 1172

In the Matter of)	
Cube Yadkin Generation, LLC, Complainant)	DIRECT TESTIMONY OF
)	GLEN A. SNIDER
v.)	ON BEHALF OF DUKE ENERGY
)	CAROLINAS, LLC AND DUKE
Duke Energy Progress, LLC, and Duke)	ENERGY PROGRESS, LLC
Energy Carolinas, LLC, Respondents)	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴*Id.*

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

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

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

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

⁵ *Id.*

⁶ *Id. at 51.*

⁷ *Id. at 52.*

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

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

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

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

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

⁸ *Id.* at 52.

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

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

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

13