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PLACE: Via Videoconference

DATE: Wednesday, March 3, 2021

TIME: 10:00 a.m. - 12:22 p.m.

DOCKET NO: E-2, Sub 1177

E-7, Sub 1172

BEFORE: Commissioner Daniel G. Clodfelter, Presiding

Commissioner ToNola D. Brown-Bland

Commissioner Lyons Gray

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Cube Yadkin Generation, LLC, Complainant

v.

Duke Energy Progress, LLC,

and

Duke Energy Carolinas, LLC, Respondents

Volume 1

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

2 FOR CUBE YADKIN GENERATION, LLC:

3 Joseph S. Dowdy, Esq., Partner

4 Phillip A. Harris, Jr., Esq., Counsel

5 Benjamin L. Snowden, Esq., Counsel

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9

10 FOR DUKE ENERGY PROGRESS, LLC, and

11 DUKE ENERGY CAROLINAS, LLC:

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JOHN R. COLLINS

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E X H I B I T S

IDENTIFIED / ADMITTED

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

2 COMMISSIONER CLODFELTER: Good morning  
3 everyone. Let's come to order. I'm Commissioner Dan  
4 Clodfelter and I have been assigned to preside during  
5 this proceeding. Joining me this morning via remote  
6 connection are Commissioners Brown-Bland, Commissioner  
7 Gray, Commissioner Duffley, Commissioner Hughes, and  
8 Commissioner McKissick.

9 We're now going to bring for hearing Docket  
10 Numbers E-2, Sub 1177 and E-7, Sub 1172, which are the  
11 complaints of Cube Yadkin Generation, LLC, against  
12 Duke Energy Progress and Duke Energy Carolinas,  
13 respectively. These matters are on remand to the  
14 Commission from a decision by the North Carolina Court  
15 of Appeals.

16 In compliance with the requirement of the  
17 State Ethics Act, I remind all the Commissioners of  
18 our duty to avoid conflicts of interest, and at this  
19 time inquire whether any member of the Commission has  
20 a known conflict of interest with respect to these  
21 matters?

22 (No response)

23 Madam Court Reporter, no conflicts were  
24 indicated, and let the record please so note.

NORTH CAROLINA UTILITIES COMMISSION

1           On July 16th, 2018, the Commission issued an  
2 Order granting the Duke Utilities' motion to dismiss  
3 Cube Yadkin's complaints in these dockets. Cube  
4 Yadkin thereafter appealed. And on December 17th,  
5 2019, the Court of Appeals issued its opinion  
6 affirming in part and reversing in part the  
7 Commission's Order and remanding these dockets to the  
8 Commission for further proceedings on the question of  
9 whether Cube Yadkin should be granted a waiver of the  
10 requirement that it submit a Notice of Commitment Form  
11 in order to establish a legally enforceable obligation  
12 as a QF under PURPA.

13           On December 14th, 2020, Cube Yadkin filed  
14 direct testimony of John Collins consisting of 14  
15 pages and five exhibits, two of which were filed as  
16 confidential.

17           On January 15th, 2021, the two Duke  
18 Utilities filed the direct testimony and exhibits of  
19 Glen Snider consisting of 10 pages, but no exhibits,  
20 and Michael Keen consisting of 18 pages, one page of  
21 which contained confidential information, and four  
22 exhibits.

23           On February 16, Cube Yadkin filed the  
24 rebuttal testimony and exhibits of Mr. John Collins

1 consisting of 17 pages including six exhibits  
2 designated as confidential. Also on February 16th of  
3 this year, Cube Yadkin and the two Duke Utilities  
4 filed their consents that this hearing could be  
5 conducted via remote means.

6 I know we've got a couple of brief  
7 preliminary matters to address, and I understand at  
8 least one of the parties wants to make a short opening  
9 statement. So let me first ask for appearances of  
10 counsel. Mr. Snowden, we'll start with you.

11 MR. SNOWDEN: Good morning, Presiding  
12 Commissioner Clodfelter and Members of the Commission.  
13 I'm Ben Snowden with the Law Firm of Kilpatrick  
14 Townsend & Stockton here on behalf of Cube Yadkin  
15 Generation, LLC. Also on behalf of Cube are my  
16 colleagues, Joe Dowdy and Phillip Harris.

17 COMMISSIONER CLODFELTER: Great. Good  
18 morning. Ms. Fentress, Mr. Kaylor, I'm not sure which  
19 of you is leading this one so I'll call whoever wants  
20 to speak.

21 MR. KAYLOR: I'll let Kendrick go.

22 MS. FENTRESS: That would be me this  
23 morning, Commissioner Clodfelter. Good morning,  
24 Commissioner Clodfelter and Commissioners. I am

1 Kendrick Fentress. I am appearing on behalf of Duke  
2 Energy Carolinas and Duke Energy Progress in this  
3 proceeding. I think if Cube is going to make an  
4 opening statement, we would like to do so as well.  
5 I'll just say that. And also, I'll turn it to  
6 Mr. Kaylor and he can introduce himself today.

7 MR. KAYLOR: Thank you. Chair, Members of  
8 the Commission, Robert Kaylor appearing on behalf of  
9 Duke Energy Progress and Duke Energy Carolinas.

10 COMMISSIONER CLODFELTER: Great. Anyone  
11 else appearing in the case?

12 (No response)

13 I know that you've all been briefed by the  
14 Commission's counsel on the procedures for conducting  
15 the hearing remotely. I want to just offer a couple  
16 of supplements to what I know you've already been  
17 told. I have you all on the screen before me in grid  
18 view. If you need to be recognized for any purpose  
19 during the hearing, please call out your name so I can  
20 find you at the right place on the screen and don't  
21 have to go hunting for you. That will help me out  
22 tremendously.

23 I understand we only have three witnesses  
24 for the hearing today. Mr. Collins for the



1 Complainant, and Mr. Snider and Mr. Keen who will  
2 testify as a panel for the Duke Utilities. I want to  
3 be sure that all of those witnesses have available to  
4 them now, either in electronic form or in hard copy, a  
5 complete set of all the potential exhibits that may be  
6 used on cross examination or redirect so we can not  
7 have to spend time during the course of the hearing  
8 hunting down an exhibit so the witness has it.

9 Mr. Snowden, Ms. Fentress, can you confirm  
10 that your witnesses all have access, either  
11 electronically or in hard copy, to all of the exhibits  
12 that might be used today?

13 MR. SNOWDEN: Yes, sir.

14 MS. FENTRESS: They've been -- go ahead,  
15 Ben.

16 MR. SNOWDEN: Yes, sir. Mr. Commissioner,  
17 we have provided our witness with all of the exhibits.

18 COMMISSIONER CLODFELTER: Great. That's  
19 good.

20 MS. FENTRESS: And we have provided our  
21 witnesses with those exhibits as well.

22 COMMISSIONER CLODFELTER: Excellent. We  
23 won't have to do any hanging around.

24 Finally, before I get to matters that you

1 may have, I understand that there has been an  
2 agreement or stipulation potentially among counsel to  
3 waive the confidentiality designation of all the  
4 exhibits that have been previously marked as  
5 confidential. I need to sort of confirm if that is or  
6 is not the case because, of course, if we're going to  
7 be dealing with confidential matters we'll have to  
8 break here and convene via telephone conference, so  
9 let me first find out if the information I've been  
10 given is correct. And my understanding is we won't be  
11 dealing with any confidential information or exhibits;  
12 is that correct?

13 MR. SNOWDEN: That is correct, sir, from  
14 Cube's point of view.

15 MS. FENTRESS: Yes. Duke has no  
16 confidential information in this proceeding.

17 COMMISSIONER CLODFELTER: Excellent.  
18 Excellent. Good progress. Okay. Are there other,  
19 before we get to the opening statements, preliminary  
20 matters from the parties themselves? Ms. Fentress?

21 MS. FENTRESS: Yes, Commissioner Clodfelter.  
22 Yesterday, I sent an email containing an additional  
23 cross examination exhibit to Cube Yadkin and sought  
24 their permission or at least their agreement that I

1 could add this to our list of cross examination  
2 exhibits. It is designated as Attachment 9. It is a  
3 letter and a compliance filing made by the Companies  
4 in Docket Number E-100, Sub 140, and I will now make a  
5 motion that the Commission would accept that as one of  
6 the cross examination exhibits for Duke Energy in this  
7 proceeding.

8 COMMISSIONER CLODFELTER: Okay.  
9 Mr. Snowden?

10 MR. SNOWDEN: Cube does not object to that  
11 motion.

12 COMMISSIONER CLODFELTER: It will be added  
13 to the potential list of cross examination exhibits.

14 MS. FENTRESS: Thank you.

15 COMMISSIONER CLODFELTER: Other preliminary  
16 matters?

17 (No response)

18 If not then, Mr. Snowden, a brief -- I  
19 understood you wanted a brief opening statement. And,  
20 Ms. Fentress, accordingly to you. So Mr. Snowden,  
21 briefly.

22 MR. SNOWDEN: Yes, sir. And my colleague  
23 Mr. Dowdy will be delivering our opening statement  
24 much more --

1                   COMMISSIONER CLODFELTER: Okay. Excellent.  
2 Mr. Dowdy, your video is off. There you are.

3                   MR. DOWDY: It should be fixed now. Thank  
4 you.

5                   Good morning, Members of the Commission.  
6 Thank you for hearing us today. This is a proceeding  
7 by Cube Yadkin Generation, LLC, requesting that the  
8 Commission find that Cube had established a legally  
9 enforceable obligation for its three hydroelectric  
10 facilities no later than October 11, 2016. This will  
11 require the Commission to grant a waiver of the Notice  
12 of Commitment Form requirement generally required to  
13 establish a LEO.

14                   The Cube Yadkin facilities at issue are High  
15 Rock, Tuckertown and Falls Station. They're located  
16 on the Yadkin River in Western North Carolina, and  
17 they're long-existing well-known facilities, all of  
18 which were constructed well before the 1965 enactment  
19 of the CPCN requirement for construction of generating  
20 facilities. Duke contractually obligated itself to  
21 purchase the facilities on June 30th, 2016, when it  
22 entered into a Purchase Agreement for the three  
23 facilities, the closed fourth facility, Narrows which  
24 is not a QF and not an issue here.

1           In September of 2016, Alcoa and Cube were  
2 finalizing the transfer and all that remained to be  
3 completed were standard regulatory items. In  
4 September of '16, Alcoa and Cube also had prepared and  
5 filed with the Federal Energy Regulatory Commission a  
6 request to transfer the license for the facilities to  
7 Cube, and FERC issued an Order transferring the  
8 license in December 2016. Parties fully finalized the  
9 purchase on February 1st, 2017.

10           After Cube was contractually entitled and  
11 obligated to acquire the facilities, and while the  
12 transaction was awaiting final regulatory approvals,  
13 Cube reached out to Duke to begin serious discussions  
14 about a long-term PPA for the facilities' output.  
15 This was done at Alcoa's suggestion and with its  
16 encouragement.

17           Correspondence between Cube and Duke shows  
18 that Cube planned at a minimum to sell the output of  
19 the three facilities and issue to Duke under PURPA, so  
20 Cube felt there were advantages to the parties and the  
21 public if the parties contracted for PPAs for all four  
22 facilities. Correspondence demonstrates that as of  
23 October 11th, 2016, Cube's commitment of the three  
24 facilities' output was clear. There can be no doubt

1 that Alcoa was cooperating because it self-certified  
2 the three facilities as QFs one week after Duke sent  
3 correspondence to Cube in September 2016 noting that  
4 the facilities were not yet self-certified.

5 As the incoming owner, Cube could commit the  
6 facilities' output, but it could not complete Duke's  
7 NoC Form. That form requires a facility to indicate  
8 that it either has obtained or will obtain a CPCN and  
9 it requires the seller to agree that its LEO date is  
10 the later date of either the NoC Form submission date  
11 or the date on which the facility obtains a CPCN, but  
12 these facilities predated the CPCN requirement. The  
13 Form would interfere with Cube's ability to establish  
14 a LEO for the facilities.

15 From the beginning, Duke has sought to avoid  
16 its PURPA obligations. Its present objection is based  
17 on the non-submission of the NoC Form, but waiver is  
18 appropriate for several reasons.

19 First, Cube proceeded reasonably and in good  
20 faith in not completing the NoC Form. As I indicated,  
21 Duke's NoC Form assumes that a facility must obtain a  
22 CPCN and ties the LEO date to issuance of the CPCN.  
23 And these facilities predate the CPCN requirement.

24 Second, it appears Duke would not have

1 accepted the NoC Form from Cube had Cube submitted  
2 one, because perfunctory regulatory approvals of the  
3 sale from Alcoa were still pending.

4 Third, and relatedly, Cube was far more than  
5 a perspective or possible purchaser of the QFs when it  
6 committed their output. Its purchase of the QFs  
7 contractually obligated it to acquire the facilities  
8 once all the necessary regulatory approvals were  
9 completed, and Alcoa was cooperating with Cube's  
10 efforts to obtain PPAs from Duke.

11 Fourth, allowing Cube a waiver from  
12 submitting the NoC Form would be in the public and the  
13 ratepayers' best interest. The Cube QFs would provide  
14 greater value to Duke than other QFs because the Cube  
15 QFs are long-standing, reliable facilities that  
16 provide clean energy and ancillary services at lower  
17 or substantially the same cost to consumers as a Duke  
18 self-build, and Duke is willing -- I'm sorry -- and  
19 Cube is willing to provide dispatch rights to Duke,  
20 which would enable the output of the facilities to be  
21 coordinated with Duke's own Dan River hydroelectric  
22 facilities and thereby provide Duke more generation,  
23 control and support for the integration of  
24 intermittent resources on Duke's transmission and

1 distribution systems.

2 Fifth, we respectfully submit that refusing  
3 a waiver would reward Duke for its efforts to avoid  
4 its PURPA obligations here.

5 We appreciate your attention and look  
6 forward to presenting our case to you. Thank you very  
7 much for your time.

8 COMMISSIONER CLODFELTER: Thank you,  
9 Mr. Dowdy. Ms. Fentress?

10 MS. FENTRESS: Thank you, Commissioner  
11 Clodfelter. Duke Energy is here today standing in the  
12 shoes of our customers - our industrial customers, our  
13 residential customers, our commercial customers, our  
14 small business customers - and I say that because it  
15 is our customers who pay the avoided cost rates that  
16 are remitted to QFs.

17 Cube Yadkin is and has been, as Mr. Collins'  
18 testimony states "a highly capitalized, sophisticated  
19 market player with sophisticated and knowledgeable  
20 representatives", yet they are here before the  
21 Commission today arguing that the Commission should  
22 waive its own clear, well-established requirements for  
23 establishing a LEO, a LEO that ensures the avoided  
24 cost rates paid by our customers actually align with



1 the Companies' avoided cost at the time.

2           Cube Yadkin's argument in support of this  
3 requested waiver is that this sophisticated, highly  
4 capitalized market player was unable to comply with  
5 the Commission's simple, clear requirements because  
6 they are unaware of them or because they were too  
7 difficult to comply with. So they have asked this  
8 Commission to instead retroactively, retroactively  
9 select a self-serving date for Cube prior to  
10 November 15th, 2016 to say that they have established  
11 a LEO. This time period that they refer to is  
12 actually before Cube owned these assets, before Cube  
13 operated these assets, before Cube became a QF which  
14 is one of the LEO requirements, basically before Cube  
15 became a small power producer.

16           LEO requirements at issue in this docket  
17 were made by the Commission to protect our customers  
18 from the risk of overpayment for PURPA power and,  
19 under the circumstances of this case, Cube has failed  
20 to justify its requested waiver. Thank you.

21           COMMISSIONER CLODFELTER: Thank you,  
22 Ms. Fentress. Anything else we need to take up before  
23 I turn the case over to Mr. Snowden?

24           MS. FENTRESS: Mr. Chairman?

1 COMMISSIONER CLODFELTER: Yes.

2 MS. FENTRESS: In an abundance of caution,  
3 if this is the appropriate time, I was going to ask if  
4 the Commission would take judicial notice of the  
5 Complaint, the Response, the filings in the complaint  
6 docket as well as the Commission's Avoid Cost Orders  
7 in Docket Number E-100, Sub 140 and E-100, Sub 148. I  
8 believe testimony from the witnesses will refer to  
9 those dockets and it just seemed appropriate to take  
10 judicial notice.

11 COMMISSIONER CLODFELTER: You may be doing  
12 Mr. Snowden's work for him but I'm sure he doesn't  
13 object to that. And the Commission will take judicial  
14 notice of the matters filed of record in this docket  
15 and also of its Order in the Sub 140 avoided cost  
16 docket. Was there anything else in your list?

17 MS. FENTRESS: The Order in the Sub 148  
18 avoided cost proceeding.

19 COMMISSIONER CLODFELTER: I'm sorry. The  
20 148 Order, correct?

21 MS. FENTRESS: Both, yes. Thank you.

22 COMMISSIONER CLODFELTER: Mr. Snowden,  
23 that's all been taken care of for you, so you now have  
24 the case.

1 MR. SNOWDEN: Thank you, Chair Clodfelter.  
2 I will turn it over to Mr. Harris to introduce our  
3 witness.

4 MR. HARRIS: Good morning, Commissioner  
5 Clodfelter and Members of the Commission. We would  
6 like to call John Collins, please.

7 JOHN R. COLLINS;  
8 having been duly affirmed,  
9 testified as follows:

10 COMMISSIONER CLODFELTER: Mr. Harris, you  
11 may proceed.

12 MR. HARRIS: Thank you, Commissioner  
13 Clodfelter.

14 DIRECT EXAMINATION BY MR. HARRIS:

15 Q Mr. Collins, would you please state your name and  
16 business address for the record?

17 A My name is John R. Collins. My business address  
18 is 49 Westside Drive, Rehoboth Beach, Delaware  
19 19971.

20 Q By whom are you employed and in what capacity?

21 A I'm employed by First State Advisors, LLC, which  
22 is a consulting firm, and I am the President and  
23 CEO. Previously, I was employed by Cube Hydro  
24 Partners, first as the Executive Vice-President

1 and then subsequently as the President and CEO.

2 Q And did you cause to be prefiled in this  
3 docket on December 14th, 2020, 14 pages of direct  
4 testimony and five exhibits?

5 A Yes, I did.

6 Q And do you have any corrections or changes to  
7 that testimony?

8 A Yes, I do. On page 4, line 16 of the testimony,  
9 I stated that the license for the facilities was  
10 transferred by Order in January 2017. That  
11 should have been on or about December 13, 2016.  
12 In addition, on page 7, lines 9 through 11,  
13 Alcoa's certification occurred on September 28th,  
14 2016, and on or about March 8th, 2018, Cube filed  
15 revised Form 556 with FERC reflecting the change  
16 in ownership.

17 Q And with those changes, if I were to ask you the  
18 same questions that appear in your direct  
19 testimony today, would your answers otherwise be  
20 the same?

21 A Yes.

22 MR. HARRIS: Presiding Commissioner  
23 Clodfelter, at this time I move that the direct  
24 testimony of John Collins be copied into the record as

1 if given orally from the stand and his Exhibits 1  
2 through 5 be marked for identification as prefiled.

3 COMMISSIONER CLODFELTER: Hearing no  
4 objection, the motion is allowed.

5 (WHEREUPON, Collins Direct  
6 Exhibits 1 - 5 are marked for  
7 identification as prefiled.  
8 Confidentiality waived with  
9 respect to exhibits.)

10 (WHEREUPON, the prefiled direct  
11 testimony of JOHN R. COLLINS is  
12 copied into the record as if given  
13 orally from the stand.)  
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PRE-FILED DIRECT TESTIMONY OF  
JOHN COLLINS  
ON BEHALF OF CUBE YADKIN GENERATION, LLC  
NCUC DOCKET NO. E-2, SUB 1177, E-7, SUB 1172

**INTRODUCTION**

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

A. My name is John R. Collins. I am currently president and chief executive officer of First State Advisers, LLC, a consulting firm, based in Rehoboth Beach, Delaware. The company's address is 49 W. Side Dr., Rehoboth Beach, Delaware, 19971. Previously, I worked for Cube Hydro Partners, LLC ("Cube Hydro") as executive vice president and later as president and chief executive officer. Cube Hydro's address is Two Bethesda Metro Center, Suite 1130, Bethesda, Maryland 20814. I also served as president of Complainant, and Cube Hydro's affiliated company, Cube Yadkin Generation, LLC ("Cube Yadkin") based in Bethesda, Maryland and at the same address as Cube Hydro. Cube Hydro was purchased by Ontario Power Generation and was merged with Eagle Creek Renewable Energy.

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

A. I have more than thirty (30) years of experience in the merchant energy and regulated utility business, including the nuclear, natural gas, and hydroelectric generation. I was employed with Cube Hydro for eight (8) years and had been actively engaged in the oversight of project development of Cube Hydro-initiated projects during this time and the acquisition of additional hydroelectric facilities, including the four facilities that are the subject of these dockets. Further, I have been personally involved in the development and acquisition of more than 385 MWs of hydroelectric projects across five states, including experience related to the self-certification of energy facilities as Qualifying Facilities ("QFs") under the Public Utility

1 Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 (“PURPA”). Prior to joining Cube Hydro,  
2 the majority of my career was spent with Constellation Energy Group and its affiliate, Baltimore  
3 Gas & Electric Company, in various financial and executive leadership positions. I earned a  
4 Bachelor of Science in Business Administration from the University of Delaware. I also earned a  
5 Master’s in Business Administration with a concentration in finance and strategic planning from  
6 the University of Pittsburgh.

7 **Q. PLEASE DESCRIBE YOUR RELATIONSHIP WITH THE**  
8 **COMPLAINANT IN THIS DOCKET AND YOUR EMPLOYMENT RESPONSIBILITIES.**

9 A. The Complainant, Cube Yadkin, was an affiliated company of Cube Hydro through  
10 Cube Yadkin’s managing member, Cube Hydro Carolinas, LLC. Cube Yadkin is a Delaware  
11 limited liability company that manages four hydroelectric power facilities on the Yadkin River.  
12 Cube Hydro Carolinas LLC served as the managing member of Cube Yadkin, and is an affiliate  
13 of Cube Hydro. As the affiliate of Cube Yadkin, Cube Hydro was responsible for all stages of the  
14 acquisition and operation of four hydroelectric power facilities on the Yadkin River, including the  
15 three facilities that are the subject of this proceeding. Cube Hydro was also responsible for the  
16 negotiation of power purchase agreements (“PPAs”) with Respondents Duke Energy Progress,  
17 LLC (“DEP) and Duke Energy Carolinas, LLC (“DEC”) (collectively, “Duke”). In my roles at  
18 Cube Hydro, I was responsible for the acquisition of the four hydroelectric power facilities and for  
19 negotiating the PPAs with Duke. I have knowledge of, and had primary final decision-making  
20 authority concerning, the negotiation of PPAs for the output of the four hydroelectric power  
21 facilities.

22 Following Cube Yadkin’s acquisition of the Yadkin plants, its mission was to modernize,  
23 manage and optimize the four hydroelectric facilities and continue to pursue the development and

1 acquisition of hydroelectric generating facilities in the southeast region, including North Carolina.  
2 Cube Yadkin and its affiliates are skilled in all aspects of hydroelectric project acquisition,  
3 development, and operation, including federal, state, and local permitting processes and  
4 requirements.

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

6 A. I have not previously testified before the North Carolina Utilities Commission.

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

8 A. The purpose of my testimony is to provide the Commission with background  
9 information about the acquisition of the four hydroelectric facilities, including three of the facilities  
10 which are QFs under PURPA (the “Cube QFs”), and the negotiations with Duke for PPAs  
11 concerning the same. The information I am providing will serve to demonstrate that Cube Yadkin  
12 clearly committed to sell the output of the Cube QFs to Duke, and sufficient to establish legally  
13 enforceable obligation (“LEO”), before November 2016; and further, that the Complainant’s  
14 request for a waiver of the Commission’s requirement for use of Duke’s Notice of Commitment  
15 Form (“NoC”) to establish an LEO is justified.

16 **Q. PLEASE DESCRIBE THE COMPANY’S TECHNICAL EXPERIENCE**  
17 **AND FINANCIAL CAPABILITIES TO OWN AND OPERATE THE CUBE QFS.**

18 A. As described in the Complaint, Cube Yadkin is a Delaware limited liability  
19 company, authorized to transact business in North Carolina. Cube Yadkin is in the business of  
20 owning, developing, and modernizing hydroelectric facilities and is the owner of the three  
21 hydroelectric QFs that are the subject of this proceeding. Cube Hydro was a hydropower  
22 development and operating platform targeting investments in mid-size hydroelectric projects in  
23 the United States and Canada. Cube Hydro and Cube Yadkin have since been purchased by



1 Ontario Power Generation and merged with Eagle Creek Renewable Energy (“Eagle Creek”).  
2 Prior to their sale, Cube Hydro and Cube Yadkin were principally owned by I Squared Capital  
3 Advisors, a \$13 billion private equity firm that is an independent global infrastructure investment  
4 manager focused on energy, utilities, telecommunications, and transport in the Americas, Europe,  
5 and Asia. At the time and as merged into Eagle Creek, Cube Hydro and Cube Yadkin had  
6 extensive experience in developing and operating hydroelectric facilities safely, innovatively, in  
7 compliance with federal, state, and local laws, and in a socially responsible manner. I stepped  
8 down as president and CEO of Cube Hydro and its affiliates following the Eagle Creek acquisition.

9 **Q. WHAT WAS THE TIMELINE FOR PURCHASING THE CUBE QFS?**

10 A. As early as 2013, Cube Hydro began discussions with Alcoa Power Generating Inc.  
11 (“Alcoa”) related to the purchase of the four hydroelectric facilities. Ultimately, in 2016, Cube  
12 Hydro entered negotiations to purchase the facilities and began the due diligence process in early  
13 2016. On or about June 30, 2016, Cube Hydro and Alcoa entered into a purchase agreement for  
14 the facilities. Alcoa and Cube Hydro prepared and filed with the Federal Energy Regulatory  
15 Commission (“FERC”) a request to transfer the license for the facilities from Alcoa to Cube Hydro  
16 in September 2016. The license was transferred by order of FERC in January 2017. The closing  
17 on the purchase of the facilities was completed on February 1, 2017.

18 **Q. DESCRIBE THE FACILITIES PURCHASED BY COMPLAINANT.**

19 A. The facilities purchased from Alcoa include four hydroelectric stations, dams and  
20 reservoirs along a 38-mile stretch of the Yadkin River as it flows through Davidson, Montgomery,  
21 Davie, Rowan and Stanly Counties. The four purchased facilities are commonly referred to as:  
22 High Rock, Tuckertown, Falls, and Narrows, with the first three being QFs under PURPA and the

1 subject of this proceeding. From upstream to downstream, the three Cube QFs can be described  
2 as follows:

3 (1) The High Rock facility, placed in service on or about January 1, 1927, consists  
4 of a 14,400-acre reservoir at full pool elevation with a usable capacity of 217,400  
5 acre-feet. Its reservoir is impounded by a 936-foot-long, 101-foot high dam. The  
6 powerhouse is integral with the dam and contains three turbine/generator units with  
7 a total installed capacity of 40.32 MW after several upgrades including  
8 turbine/generator refurbishment. The powerhouse's address is 3344 Bringle Ferry  
9 Road, Denton, North Carolina 27239.

10 (2) The Tuckertown facility, placed in service on or about January 1, 1962, consists  
11 of a 2,560-acre reservoir at a full pool elevation of 564.7 feet, with a usable capacity  
12 of 6,700 acre-feet. Its reservoir is impounded by a 1,370-foot-long, 76-foot-high  
13 dam. Its powerhouse is integral with the dam and contains three turbine/generator  
14 units with a total installed capacity of 38.04 MW. The powerhouse's address is 711  
15 Tuckertown Road, New London, North Carolina 28127.

16 (3) The Falls facility, placed in service on or about January 1, 1917, consists of a  
17 204-acre reservoir at a full pool elevation of 332.8 feet, with a usable capacity of  
18 940 acre-feet. Its reservoir is impounded by a 748-foot-long, 112-foot-high dam.  
19 Its powerhouse is integral with the dam and contains three turbine/generator units  
20 with a total installed capacity of 31.13 MW. The powerhouse's address is 49156  
21 Falls Road, Badin, North Carolina 28009.

22 Together (along with the Narrows facility), the four purchased facilities have a total generating  
23 capacity of approximately 220 megawatts ("MW") and they are expected to produce nearly

1 800,000 MWh of clean, reliable electricity per year – enough to power approximately 72,000  
2 homes with renewable energy. Downstream of these facilities are two additional hydroelectric  
3 facilities, Tillery and Blewette Falls. These facilities are licensed by DEP as the Yadkin-Pee Dee  
4 Project.

5 The four facilities originally operated under a 50-year FERC license issued to Carolina  
6 Aluminum Company on May 19, 1958, later transferred to Alcoa on July 17, 2000. After operating  
7 under short-term, annual licenses and Alcoa’s initiation of the re-licensing process, on September  
8 22, 2016, FERC issued a new long-term license to Alcoa authorizing the operation and  
9 maintenance of the facilities until March 31, 2055 (the “License”).

10 The three Cube QFs have undergone, and will undergo further, substantial modifications  
11 as required by the License. These modifications include addressing the following:  
12 turbine/generator efficiency, water quality, protection of aquatic habitat, fish populations,  
13 wetlands, recreational opportunities, and aesthetics. Pursuant to the Order issuing the License,  
14 FERC estimated a total capital cost in excess of \$112 million for the turbine/generator  
15 modifications and water quality measure alone. While Cube Yadkin’s scope of work and budget  
16 has been reduced below this amount, the required modifications are significant and allow these  
17 QFs to be treated as “new” capacity under PURPA.

18 **Q. WHY DID COMPLAINANT PURCHASE THE CUBE QFS?**

19 A. Cube Hydro Carolinas, LLC purchased these facilities to continue to facilitate  
20 Cube Hydro’s efforts to demonstrate the value of renewable hydropower and reduce the nation’s  
21 reliance on carbon-based energy. The facilities further provided Cube Hydro an opportunity to  
22 expand its presence into North Carolina and upgrade the plants on the Yadkin River. Further, the  
23 facilities were purchased with the intent to be able to sell power and capacity to Duke. One goal

1 of the acquisition was to modernize the facilities with the expectation that Cube Hydro would be  
2 able to sell power through the three Cube QFs at avoided cost rates.

3 **Q. DESCRIBE THE PERMITS AND APPROVALS YOU SOUGHT FOR THE**  
4 **PURCHASE OF THE QFS.**

5 A. As noted previously, Cube Hydro sought, and was granted, a transfer of the FERC  
6 license from Alcoa. Further, at Duke’s suggestion, and reflecting the substantial investment in the  
7 modernization and renewal of the Cube Yadkin facilities, Cube Yadkin sought registration of all  
8 four of the facilities as New Renewable Energy Facilities on or about March 16, 2017. Alcoa had  
9 previously certified each of the three QFs as Qualifying Facilities under PURPA. On or about  
10 September 28, 2016, Cube Yadkin filed revised Form 556’s with FERC reflecting the planned  
11 change in ownership.

12 **Q. DID CUBE HYDRO OBTAIN A CERTIFICATE OF PUBLIC**  
13 **CONVENIENCE AND NECESSITY (“CPCN”) FOR THE CUBE QFS?**

14 No, because Cube Hydro determined, based on reasonable diligence and available  
15 information, that a CPCN was not required, and indeed could not be obtained. North Carolina  
16 statute requires that a CPCN be obtained only before a public utility or other person “begin[s] the  
17 construction” of a generating facility. N.C. Gen. Stat. § 62-110.1(a). The statute implementing  
18 that requirement was enacted in 1965, at which time the Cube QFs were already constructed and  
19 had been selling power in North Carolina for decades. Accordingly, the Cube QFs would not be  
20 required to receive a CPCN, as they existed before the creation of the CPCN requirement. Cube’s  
21 review of existing precedent indicated that the Commission had not required any other generating  
22 facility that had been constructed built before the CPCN statute to obtain a CPCN to continue  
23 operating. The company, through counsel, sought advice from the Public Staff of the North

1 Carolina Utilities Commission as to whether the facilities could proceed without a CPCN. Based  
2 on its analysis of the law and the response from the Public Staff, Cube concluded that no CPCN  
3 was required for the facilities.

4 **Q. HOW ARE THE CUBE QFS INTERCONNECTED TO THE GRID?**

5 A. The facilities are (and have, for decades, been) interconnected to the Yadkin  
6 Transmission System, a distinct Balancing Authority Area that is interconnected to DEC and DEP's  
7 systems. There is an interconnection agreement with the facilities, and they were interconnected  
8 at three separate points (two for DEC and one for DEP). The power from the facilities flows from  
9 the Yadkin Transmission System into the Duke system.

10 **Q. WHEN DID THE COMPLAINANT FIRST NOTIFY RESPONDENTS OF ITS**  
11 **INVESTMENT IN THE QFS?**

12 A. Cube Hydro reached out to Duke in March 2016 on behalf of Cube Yadkin, prior  
13 to signing the purchase agreement with Alcoa, as part of the due diligence process to both introduce  
14 itself and to explore the possibility of a long-term PPA with Duke. Alcoa was aware of this  
15 outreach, and not only authorized but also encouraged it.

16 **Q. WHEN DID COMPLAINANT APPROACH RESPONDENTS FOR THE**  
17 **SALE OF POWER FROM THE QFS?**

18 A. In March 2016, Cube Hydro approached Duke for an introduction and to determine  
19 how Duke would approach a long-term PPA. Further, immediately after executing the purchase  
20 agreement with Alcoa, Cube Hydro contacted Duke to begin discussions on a long-term PPA for  
21 the Cube QFs.

1           **Q.     PLEASE DESCRIBE THE NEGOTIATIONS BETWEEN COMPLAINANT**  
2 **AND RESPONDENTS FOR THE PURCHASE OF THE QFS ENERGY AND CAPACITY**  
3 **PURSUANT TO PURPA.**

4           A.     Beginning in March 2016, Cube Hydro conducted meetings with Duke to determine  
5 how Duke would approach a long-term PPA. These communications involved the following  
6 individuals: from Cube Hydro, Kristina Johnson, then-CEO, Andrew Longenecker, Director of  
7 Business Development, and Neal Simmons, Vice President of Optimization and Research &  
8 Development; and from Duke, Dhiaa Jamil, President, Regulated Generation and Transmission,  
9 Matthew Palasek, Director of Corporate Development, Charles Gates, Senior Vice President and  
10 Chief Fossil / Hydro Officer, and Ronald Reising, Senior Vice President of Operations Support.  
11 Cube Hydro informed Duke that they were pursuing the purchase of the QFs and desired to enter  
12 into a long-term PPA with Duke. In response, Duke noted that it wanted to have discussions  
13 concerning potential offtakes and buying power from the Cube QFs, as well as seeking an  
14 understanding of how Cube would control and own the Cube QFs.

15           During follow-up conversations and after an in-person meeting in or around June 2016,  
16 Duke and Cube Hydro continued discussions concerning the PPAs for the Cube QFs. Alcoa was  
17 aware of, involved in, and approved these discussions before and after signing the purchase  
18 agreement. Moreover, Duke was aware that Cube Hydro was fully authorized to negotiate PPAs  
19 on behalf of the Cube QFs. After the purchase agreement was executed by Alcoa and Cube Hydro,  
20 I reached out to Regis Repko, Senior Vice President and Chief Fossil/Hydro Officer, of Duke on  
21 or about August 23, 2016. I noted to Mr. Repko that as discussed in prior meetings, Cube Hydro  
22 planned to self-certify three facilities as QFs (as discussed, that self-certification was filed in  
23 September 2016) and I requested further discussions with Duke regarding longer-term contracts

1 and pursuing a long-term PPA for all four facilities, including the Narrows plant. The long-term  
2 PPA would provide additional flexibility to Duke to manage its grid due to the continuing impact  
3 of solar generation on Duke’s network. After being referred to Matt Palasek and finally Michael  
4 Keen, I informed them on August 26, 2016 that Cube Hydro desired to enter into a long-term PPA  
5 with Duke related to the three Cube QFs as well as the Narrows plant.

6 On or about September 16, 2016, I contacted Michael Keen to further discuss Duke’s  
7 purchasing the output of the Cube QFs. By responsive letter dated September 21, 2016 (**Exhibit**  
8 **1**), Michael Keen, acknowledged that Cube Yadkin was committed to sell the power from QFs by  
9 noting that Duke did not have any current needs and that “to the extent that Cube Yadkin  
10 approached Duke under PURPA . . . Duke would likely have no obligation to purchase any output  
11 of energy or capacity from that Yadkin system that may be certified as qualified facilities.” Mr.  
12 Keen did not say why Duke would be exempt from its PURPA obligations, but this statement is  
13 contrary to PURPA, as the obligation to purchase energy is mandated by PURPA and Duke was  
14 not eligible for any of the recognized exemptions to that obligation. In his September 16 letter,  
15 Mr. Keen acknowledged that Cube did not yet own the Cube QFs, but was scheduled to close on  
16 the purchase transaction around November 1, 2016. Mr. Keen did not indicate in his letter that  
17 this state of affairs would be an impediment to PPA negotiations, and his response indicates Duke’s  
18 understanding that Cube was authorized to negotiate on behalf of the Cube QFs.

19 By letter sent to Duke on or about October 11 (**Exhibit 2**), I responded that the QFs were  
20 self-certified with FERC and that Cube Hydro wanted to meet to discuss the process for making  
21 sales from the projects to Duke pursuant to PURPA. Surprisingly, Michael Keen responded in a  
22 letter on October 14, 2016 (**Exhibit 3**), stating that if the QFs are qualifying facilities that seek to  
23 sell power to Duke, Duke believed that it would be exempted from the purchase obligations “under

1 292.309/310.” Presumably this was a reference to FERC’s regulations at 18 C.F.R. § 292.309-  
2 310, which establish a procedure under which a utility may petition FERC for an order exempting  
3 it from its obligation to purchase power QFs that have nondiscriminatory access to wholesale  
4 markets that meet specified criteria. However, Duke had never filed such a petition, and the Cube  
5 QFs lacked the kind of market access required in the rules, and so Duke’s response appeared to be  
6 another effort to stall PPA negotiations. In its October 14 letter, Duke also asserted for the first  
7 time that because Cube was under contract to purchase the QFs, but had not yet closed on them,  
8 “Cube Hydro has no potential rights to exert under PURPA.” Duke did not state any legal or  
9 factual basis for its claim that Cube could not negotiate a PURPA contract on behalf of the Cube  
10 QFs.

11 During these discussions between Duke and Cube Hydro, Duke never mentioned the NoC  
12 form nor did it mention any expected requirements for a CPCN. Further, Cube Hydro was unaware  
13 of any of its facilities, or other existing hydroelectric facilities, that would require the use of the  
14 NoC form or a CPCN.

15 **Q. PLEASE DESCRIBE THE NEGOTIATIONS BETWEEN COMPLAINANT**  
16 **AND RESPONDENTS FOR THE PURCHASE OF THE CUBE QFS’ OUTPUT AFTER**  
17 **THE DISCUSSIONS IN OCTOBER 2016.**

18 A. Cube Yadkin, through Cube Hydro, believed that it had established a LEO for each  
19 of the three Cube QFs and was entitled to sell their output to Duke under PURPA. Nevertheless,  
20 given Duke’s refusal to purchase from the Cube QFs under PURPA, Cube Yadkin was open to  
21 continuing to have further discussions with Duke because it would be advantageous to sell power  
22 from all four of the Yadkin facilities to Duke under long term PPAs. Cube Yadkin’s openness was  
23 driven by the relative strength of bargaining positions between it and Duke. As a monopoly, Duke



1 has considerable bargaining power when it comes to Cube Yadkin's pursuit of a longer term PPA.  
2 The best chance for Cube Yadkin to negotiate with Duke was to find some common ground  
3 through a non-PURPA PPA that would incorporate all four of the facilities purchased from Alcoa  
4 and to focus on the PURPA PPA Cube Yadkin was entitled to at a later date. At no time, however,  
5 did Cube Yadkin waive its right to a PURPA PPA. Accordingly, Cube Yadkin sought to explore  
6 such an alternative. In November 2016, Cube Hydro and Duke began conversations about a  
7 potential, alternative approach for Duke to purchase the power from the all four facilities, including  
8 the Cube QFs, on a non-PURPA basis. Such a PPA would be beneficial to Duke and its ratepayers,  
9 and would diversify the power grid in a manner consistent with goals of the State of North  
10 Carolina.

11 As it had done before, Duke drew out the negotiations on a non-PURPA PPA through  
12 requiring confidentiality agreements and demanding, as a precondition to any negotiations, that  
13 Cube sign an agreement stating that such subsequent negotiations would not, on their own, give  
14 rise to any rights under PURPA. The letter agreement, dated April 25, 2017 (**Exhibit 4**),  
15 acknowledged that Cube Hydro and Duke would enter into non-PURPA discussions. However,  
16 in the letter agreement Cube did not waive its existing rights under PURPA, which had arisen  
17 during the discussions in the spring, summer, and fall of 2016, when Cube Hydro committed to  
18 sell the output of the Cube QFs to Duke.

19 **Q. WHEN DID COMPLAINANT ESTABLISH ITS LEO?**

20 A. The Cube QFs' LEOs were established as early as March 2016, when Cube Hydro  
21 sought to interface with Duke concerning the potential for a long-term PPA. At that point, Cube  
22 Hydro notified Duke of its intention to commit to sell the Cube QFs' output to Duke at avoided  
23 cost rates pursuant to PURPA. These discussions continued throughout the spring and summer of

1 2016. By emails between August 23 and August 26, 2016 (**Exhibit 5**), I again put Duke on notice  
2 that Cube Hydro was committed to sell its power to Duke, as I expressly stated that Cube Hydro  
3 was seeking long-term PPAs. Further, during direct communications on or about September 16,  
4 2016, I communicated Cube Yadkin's commitment to sell the output of the QFs to Duke. (**Exhibit**  
5 **1**). Additionally, on September 28, 2016, Cube Yadkin filed Form 556's for the QFs, further  
6 establishing a commitment to sell the power to Duke. Finally, by letter served on Duke on October  
7 11, 2016 (**Exhibit 2**), I explicitly stated that Cube Yadkin wanted to discuss the process of making  
8 sales from the QFs pursuant to PURPA and this was acknowledged in Duke's October 14, 2016  
9 response (**Exhibit 3**). Accordingly, Cube QFs' LEOs were established as early as March 2016,  
10 but no later than October 11, 2016.

11 **Q. WHY DID COMPLAINANT NOT COMPLETE THE NOC FORM?**

12 A. As an initial matter, the NoC form could not be completed in its entirety by Cube  
13 Yadkin based on the very terms of the form. The NoC form required Cube Yadkin to make  
14 certifications which it could not or was not required to make. Specifically, section 3 required Cube  
15 Yadkin to certify that it had either received (or would apply for) a CPCN for the QFs, or was  
16 exempt from the CPCN requirement pursuant to N.C. Gen. Stat. § 62-110.1(g) and had filed or  
17 would file a report of proposed construction. A CPCN was not required for the Cube QFs because  
18 these facilities pre-dated the CPCN statutory requirements, as discussed above. The remaining  
19 sections presuppose that section 3 was completed. It would be impossible for Cube Yadkin to  
20 complete this form as written. Furthermore, throughout the course of PPA negotiations, Duke  
21 never requested that Cube Yadkin complete the NoC form or indicated that a NoC form would  
22 need to be completed in order to establish a LEO or enter into a PPA. A reasonable review of the

1 specific facts associated with the Yadkin QFs and the requirements of the NOC form fully support  
2 Cube Yadkin's decision not to file the NOC form.

3 **Q. WHY WOULD IT BE APPROPRIATE FOR THE COMMISSION TO**  
4 **WAIVE THE NOC FORM REQUIREMENT AS TO THE CUBE QF'S?**

5 A. There are several reasons that a waiver would be appropriate. First, as discussed  
6 above, Cube Yadkin proceeded reasonably and in good faith in not filing the NoC form because it  
7 had reason to believe the Commission would not require a NoC form since the Cube QFs were in  
8 full operation and pre-dated NoC requirements. Second, this was (at most) a technical deficiency  
9 that did not cause harm or prejudice to any party. Duke was fully on notice of Cube's commitment  
10 to sell the output of the Cube QFs based on the negotiations with Cube that started in March 2016  
11 and continued through November 2016. Finally, Cube submits that *not* granting the requested  
12 waiver would in effect reward Duke for its efforts to try to evade its PURPA obligations, first by  
13 making frivolous arguments that it was exempt from its PURPA obligations as to Cube, and then  
14 by dragging out PPA negotiations through the fall of 2016.

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

16 A. Yes.

1           COMMISSIONER CLODFELTER: Mr. Harris, that  
2 of course includes the waiver of the confidentiality  
3 designation on page 16 of the testimony I believe.

4           MR. HARRIS: Yes, it does. Yes, it does,  
5 Commissioner.

6           COMMISSIONER CLODFELTER: Great. You may  
7 proceed.

8           MR. HARRIS: Thank you.

9 BY MR. HARRIS:

10 Q And, Mr. Collins, did you also cause to be  
11 prefiled in this docket on February 16th, 2021,  
12 17 pages of rebuttal testimony and six exhibits?

13 A Yes, I did.

14 Q And do you have any corrections or changes to  
15 that testimony?

16 A Yes, I do. On page 15, line 21 of the testimony,  
17 I stated that the license for the facilities was  
18 approved in October 2016, but this should be  
19 December 2016.

20 Q Thank you. And with that change, and if I were  
21 to ask you the same questions that appear in your  
22 rebuttal testimony today, would your answers be  
23 the same?

24 A Yes.

1 MR. HARRIS: Commissioner Clodfelter, at  
2 this time I move that the rebuttal testimony of John  
3 Collins be copied into the record as if given orally  
4 from the stand and that his Exhibits 1 through 6 be  
5 marked for identification as prefiled.

6 COMMISSIONER CLODFELTER: Unless there is an  
7 objection, hearing no objection, the motion is  
8 granted.

9 (WHEREUPON, Collins Rebuttal  
10 Exhibits 1 - 6 are marked for  
11 identification as prefiled.  
12 Confidentiality waived with  
13 respect to exhibits.)

14 (WHEREUPON, the prefiled rebuttal  
15 testimony of JOHN R. COLLINS is  
16 copied into the record as if given  
17 orally from the stand.)  
18  
19  
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24

PRE-FILED REBUTTAL TESTIMONY OF  
JOHN COLLINS  
ON BEHALF OF CUBE YADKIN GENERATION, LLC  
NCUC DOCKET NO. E-2, SUB 1177, E-7, SUB 1172

**INTRODUCTION**

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

A. My name is John Collins. I am currently president and chief executive officer of First State Advisers, LLC based in Rehoboth Beach, Delaware. The company's address is 49 W. Side Dr., Rehoboth Beach, Delaware, 19971. Previously, I worked for Cube Hydro Partners, LLC ("Cube Hydro") based in Bethesda, Maryland as executive vice president and later as president and chief executive officer. Cube Hydro's address is Two Bethesda Metro Center, Suite 1130, Bethesda, Maryland 20814. I also served as president of Complainant, and Cube Hydro's affiliated company, Cube Yadkin Generation, LLC ("Cube Yadkin") based in Bethesda, Maryland and at the same address as Cube Hydro.

**Q. DID YOU PROVIDE DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes.

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

A. As a reminder, this matter involves Cube Yadkin's purchase of three facilities on the Yadkin River that are Qualifying Facilities ("QFs") under the Public Utility Regulatory Policies Act ("PURPA) which is administered by the Federal Energy Regulatory Commission ("FERC") and this Commission (the "Cube QFs"), and the negotiations which took place for a power purchase agreement ("PPA") between Cube Yadkin and Respondents Duke Energy Progress, LLCs ("DEP") and Duke Energy Carolinas, LLCs ("DEC") (collectively, "Duke"). The primary issue before the Commission is whether the Notice of Commitment Form ("NoC Form") requirement to establish a legally enforceable obligation ("LEO") should be waived. My rebuttal

1 testimony responds to several points made by Duke witnesses in their Direct Testimony.  
2 Specifically, my testimony will rebut several misrepresentations and mischaracterizations in the  
3 testimony of Michael Keen and Glen Snider. Further, my testimony will demonstrate that waiver  
4 of the NoC Form requirement to establish a LEO for the Cube QFs before November 2016 is  
5 appropriate.

6 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR DIRECT**  
7 **TESTIMONY?**

8 A. Yes. Exhibit 1 is a copy of the Duke NoC Form. Exhibit 2 is an email from Kendall  
9 Bowman of Duke to several Duke employees acknowledging that Cube Yadkin reached out to  
10 Duke in February 2017 concerning a meeting. Exhibit 3 is a document containing background and  
11 talking points for a conversation with the CEO of Duke Energy, Duke's parent company, related  
12 to Cube Yadkin. Exhibit 4 is an internal Cube Yadkin email describing communications with the  
13 Public Staff of the Utilities Commission ("Public Staff") concerning the requirement to seek  
14 Certificates of Public Necessity and Convenience ("CPCNs") for the Cube QFs. Exhibit 5 contains  
15 information Duke received concerning the purchase of the Cube QFs by Cube Yadkin. Exhibit 6  
16 contains information related to Alcoa's belief that the Cube QFs qualify for QF status and that a  
17 PPA was appropriate. I further incorporate by reference the exhibits referenced in my pre-filed  
18 direct testimony and the testimony of Mr. Keen.

19 **Q. AT ANY TIME WHILE CUBE WAS ATTEMPTING TO NEGOTIATE A**  
20 **PURPA PPA WITH DUKE, DID MICHAEL KEEN RELATE TO CUBE YADKIN**  
21 **DUKE'S POSITION THAT A NOC FORM WAS REQUIRED TO ESTABLISH A LEO?**

22 A. No. Despite Mr. Keen's statements (on pages 7 and 12 of his direct testimony) that  
23 a NoC form is required from all potential PURPA suppliers, he does not, nor can he, testify that

1 he discussed Duke's supposed requirement with me or anyone at Cube Yadkin. Prior to the filing  
2 of Duke's Answer in this matter, neither Mr. Keen nor anyone else at Duke discussed with Cube  
3 Yadkin Duke's apparent requirement that a NoC Form must be completed and filed in order to  
4 establish a LEO, notwithstanding the unique circumstances presented. Although Duke's letters to  
5 Cube in September and October 2016 (Exhibits 1 and 3 to my Direct Prefiled Testimony) asserted  
6 several spurious objections to purchasing the output of the Cube QFs under PURPA, they  
7 conspicuously left out the one supposed defect (according to Duke) that Cube might have been  
8 able to cure, *i.e.* the NoC Form.

9 **Q. WHY WAS CUBE YADKIN UNABLE TO COMPLETE THE NOC FORM?**

10 A. The NoC Form (Exhibit 1) contains six sections to be answered by a seller. The  
11 first two sections could be completed by Cube. The first section provides that:

- 12 1. [ ] ("Seller") hereby commits to sell to Duke Energy Carolinas, LLC or Duke Energy Progress, LLC (the "Company") all of the electrical output of the Seller's qualifying facility ("QF") described in Seller's self-certification of QF status filed with the Federal Energy Regulatory Commission in Docket No. QF \_\_\_\_\_ (the "Facility").

13 As an initial matter, Mr. Keen is incorrect in his statement that Cube Yadkin was required to  
14 demonstrate from Duke's view that Cube Yadkin owned the QFs. The plain language of the NoC  
15 Form bears this out as it states that "the Seller", in this case, Cube Yadkin, was required to:  
16 (1) commit to sell to Duke all of the electrical output of the QFs, and (2) self-certify as a QF in a  
17 filing with FERC. Cube Yadkin was clearly committed to sell the electrical output to Duke as  
18 outlined in the extensive communication with Mr. Keen and other Duke personnel, beginning at  
19 least in August 2016. Further, on September 28, 2016, Form 556's were submitted for the Cube  
20 QFs to self-certify the facilities' status as QFs. Despite Mr. Keen's protestations to the contrary,  
21 he and Duke were also well aware that Cube Yadkin had entered an agreement to purchase the



1 Cube QFs. Specifically, Duke received several notices, including press releases, announcing the  
2 Alcoa’s sale of the Cube QFs. (Exhibit 5)

3 Notably, Mr. Keen blames executive contacts between Cube Yadkin and its principal  
4 owner and Duke for his continuing negotiations with Cube Yadkin, despite his contention that  
5 Cube Yadkin did not own the Cube QFs.<sup>1</sup> Either Mr. Keen failed to clearly delineate his policy  
6 for entering negotiations with his superiors at Duke and proceeded to communicate with Cube  
7 Yadkin regardless of his policy, or these “executive contacts” or the person “assigning” him the  
8 project ignored Mr. Keen’s policy related to ownership (which was contrary to the requirements  
9 of the NoC Form)– perhaps because they were not Duke’s policies, but merely Mr. Keen’s  
10 preference.

11 Cube Yadkin would have answered this section of the NoC Form by acknowledging its  
12 commitment to sell and noting that on September 28, 2016 three Form 556’s for the QFs were filed  
13 at FERC.

14 The second section of the NoC Form reads:

2. The name, address, and contact information for Seller is:

\_\_\_\_\_ Telephone: \_\_\_\_\_  
\_\_\_\_\_ Email: \_\_\_\_\_

15  
16 Cube Yadkin could have provided this information (which Duke was well aware of) as the seller  
17 of the QF’s electrical output as the filed Form 556’s for self-certification were filed and Cube  
18 Yadkin had established its commitment to sell generation to Duke. Cube Yadkin would have  
19 submitted its contact information in response to this section of the NoC Form.

<sup>1</sup> Curiously, Mr. Keen does not state who “assigned” him commercial responsibility for this project, nor whether he informed this person of his apprehension concerning the negotiations concerning a PPA.

1 As to each of the remaining four sections, however, Cube Yadkin could not have completed  
2 the section because it was not required to receive a CPCN or file a report of proposed construction  
3 (“ROPC”), since the QFs were in existence and operating before the CPCN requirement was  
4 established by the General Assembly.

5 The third section of the NoC Form states:

3. By execution and submittal of this commitment to sell the output of the Facility (the  
“Notice of Commitment”), Seller certifies as follows:

(Select the applicable certification below)

- i. \_\_\_\_\_ Seller has received a certificate of public convenience and necessity  
 (“CPCN”) for the construction of its \_\_\_\_\_ kW (net capacity ac) Facility  
 from the North Carolina Utilities Commission (“NCUC”) pursuant to North  
 Carolina General Statute § 62-110.1 and NCUC Rule R8-64, which CPCN  
 was granted by NCUC on [insert date] in Docket No. \_\_\_\_\_.
- ii. \_\_\_\_\_ Seller is exempt from the CPCN requirements pursuant to North Carolina  
 General Statute § 62-110.1(g) and has filed a report of proposed  
 construction for its \_\_\_\_\_ kW (net capacity ac) Facility with the NCUC  
 pursuant to NCUC Rule R8-65 (“Report of Proposed Construction”) on  
 6 [insert date] in Docket No. \_\_\_\_\_.
- iii. \_\_\_\_\_ Seller has applied or will apply for a CPCN for the construction of its \_\_\_\_\_  
 kW (net capacity ac) Facility on [insert date] in Docket No. \_\_\_\_\_. If the  
 Seller does not know the docket number on the date of submission of this  
 Notice of Commitment, Seller shall notify the Company of the docket  
 number when it is assigned by the NCUC. Seller shall notify the  
 Company upon issuance of an order by the Commission granting the  
 CPCN.
- iv. \_\_\_\_\_ Seller is exempt from the CPCN requirements pursuant to North Carolina  
 General Statute § 62-110.1(g) and will file a Report of Proposed  
 Construction for its \_\_\_\_\_ kW (net capacity ac) Facility with the NCUC  
 pursuant to NCUC Rule R8-65 and shall notify the Company at the address  
 specified in paragraph 1 of the docket number of such filing when it is  
 assigned by the NCUC.
- 7

8 This section required Cube Yadkin to certify that it had either received (or would apply for) a  
9 CPCN or that it was exempt from the CPCN requirement because it was eligible for one of the

1 exemptions set forth in G.S. § 62-110.1(g) and could file a ROPC instead. However, as I noted in  
2 my direct testimony, North Carolina law requires that a CPCN be obtained only before a public  
3 utility or other person “begin[s] the construction” of a generating facility. N.C. Gen. Stat. § 62-  
4 110.1(a). Because the Cube QFs were constructed and had been selling power in North Carolina  
5 for decades prior to the enactment of this statute, the Cube QFs would not be required to receive a  
6 CPCN. Accordingly, Cube Yadkin could not have completed this section of the NoC Form.

7 The fourth section of the NoC Form provides as follows:

4. This Notice of Commitment shall take effect on its “Submittal Date” as hereinafter defined. “Submittal Date” means (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day (Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.

8  
9 Because Cube Yadkin was not required to and could not make the certification required in Section  
10 3 of the NoC Form, it could not establish a Submittal Date in response to this section.

11 Section 5 of the NoC Form states:

- 5. By execution and submittal of this Notice of Commitment Seller acknowledges that:
  - a. The legally enforceable obligation date (“LEO Date”) for the Facility will be determined in accordance with subsections (c) or (d) below. For QFs of 5 MW or less, the LEO Date will be used to determine Seller’s eligibility for the rates, terms and conditions of the Company’s currently effective Schedule PP. If the Seller’s Facility does not qualify for Schedule PP, rates for purchases from the Facility will be based on the Company’s avoided costs as of the LEO Date, calculated using data current as of the LEO Date.
  - b. If on the Submittal Date, Seller has a CPCN from or has filed a Report of Proposed Construction with NCUC for the Facility, the LEO Date will be the Submittal Date.
  - c. If on the Submittal Date, Seller does not have a CPCN for the Facility or has not filed a Report of Proposed Construction with the NCUC for the Facility, the LEO Date will be the date on which the NCUC issues a CPCN for the Facility or the filing date of the Report of Proposed Construction for the Facility, as applicable.

1

2 This “acknowledgement” would have required Cube to agree (incorrectly) that the Cube QFs  
 3 would not even be able to establish LEOs until they went through the CPCN process. Because  
 4 Cube Yadkin could not and was not required to certify under Section 3 of the NoC form, it could  
 5 not incorrectly acknowledge the information in this section of the NoC Form.

6 Finally, Section 6 of the NoC Form provides:

6. This Notice of Commitment shall automatically terminate and be of no further force and effect in the following circumstances:
- a. Upon execution of a PPA between Seller and Company.
  - b. For a seller eligible for Schedule PP, if such Seller does not execute a PPA within thirty (30) days of the Company's delivery of an "executable" PPA. An executable PPA shall mean a PPA delivered to the QF by the Company that contains all information necessary for execution and that the Company has requested that the QF execute and return.
  - c. For a Seller that is not eligible for Schedule PP, if such Seller does not execute a PPA within six months (as such period may be extended by mutual agreement of Seller and Company) after the Company's submittal of the PPA to the QF, provided, however, that if no interconnection agreement for the Facility has been tendered to Seller prior to the expiration of such deadline, the deadline for execution of the PPA shall be automatically extended until the date that is five days after the date that the interconnection agreement is tendered to the Seller. Notwithstanding the foregoing, if the PPA proposed by the Company becomes the subject of an arbitration or complain proceeding, the six month deadline for execution of the PPA shall be tolled upon the filing of the pleading commencing such proceeding and thereafter the deadline for execution of the PPA will be as directed by the NCUC.

1  
2 As with Sections 4 and 5 of the NoC Form, Cube Yadkin could not and was not required to certify  
3 under Section 3 of the NoC Form, and, therefore, Section 6 of the NoC Form could not be attested  
4 because a prior section of the NoC Form was inapplicable to Cube Yadkin. Without the  
5 completion of the entire NoC Form, according to Mr. Keen, Duke would not enter into a PPA and  
6 thus it would be impossible for Cube Yadkin to complete this provision.

7 **Q. ARE YOU AWARE THAT MR. KEEN TESTIFIED THAT THE REASON**  
8 **CUBE YADKIN COULD NOT COMPLETE THE NOC FORM WAS BECAUSE CUBE**  
9 **YADKIN WAS NOT THE OWNER OF THE CUBE QFS?**

10 A. Yes, I am aware of this portion of his pre-filed testimony. I was not aware of Mr.  
11 Keen's position, however, until I read his testimony and, nonetheless, he is incorrect. Despite Mr.  
12 Keen's statement that he has 22 years of experience negotiating new PURPA and non-PURPA  
13 power purchase agreements ("PPAs"), he failed to understand Duke's own NoC Form in at least

1 two ways: (1) the NoC Form required either a CPCN or ROPC; and (2) the NoC Form required  
2 only a commitment to sell and self-certification with FERC, rather than a formal contractual  
3 commitment by Alcoa and Cube Yadkin. As to the first, Cube Yadkin was not required to procure  
4 a CPCN as the Cube QFs have been producing electrical output long before the CPCN  
5 requirements. With respect to the second, Cube Yadkin established both a commitment to sell the  
6 electrical output of the Cube QFs by initiating negotiations with Duke and obtaining the filing of  
7 Form 556's with FERC in September 2016. Furthermore, Mr. Keen and others at Duke were well  
8 aware of the fact that Cube was in the process of buying the assets from Alcoa. (Exhibit 5)

9 **Q. ARE YOU AWARE THAT MR. KEEN STATED THAT CUBE YADKIN IS**  
10 **ATTEMPTING TO IMPOSE EXCESSIVE, OUT-OF-DATE AVOIDED COST RATES ON**  
11 **DUKE'S CUSTOMERS?**

12 A. Yes, I am aware of his statement in his pre-filed testimony. I was not aware,  
13 however, of Mr. Keen's position until I read his testimony. Mr. Keen's statement supports Cube's  
14 argument that Duke conducted these negotiations in bad faith. While Cube Yadkin was aware that  
15 avoided cost rates for standard offer QFs were approved every two years through an administrative  
16 docket, it was unaware in September and October 2016 of the changes Duke would propose to its  
17 avoided cost calculation methodologies in November 2016. Duke, however, was well aware of  
18 these planned changes, which would have the effect of significantly reducing the avoided cost rates  
19 calculated for the Cube QFs. With the knowledge that there would be a reduction in avoided cost  
20 rates that Duke would have to pay for the electrical output if a PPA was entered after November  
21 2016, Duke had every incentive to delay and drag out negotiations. While we understand that  
22 Duke should look after its customers, it cannot employ bad faith and a lack of candor to achieve  
23 that goal, and further, it should not receive the benefit of its own malfeasance.

1 As further evidence of Duke's inherent bad faith in this matter, Duke also selectively  
2 attempts to use avoided cost rate statements. Specifically, Mr. Keen and Mr. Snider make several  
3 claims about Cube Yadkin seeking contracts at avoided cost rates, specifically, that these contracts  
4 would not be in the interest of ratepayers. During the course of this matter, however, Duke  
5 believed that avoided cost rates were not relevant to the question of whether waiver of the NoC  
6 Form is appropriate, to the point of refusing to respond to data requests requesting avoided cost  
7 rate calculations. As another example of Duke's attempts to negotiate unfairly, they now attempt  
8 to rely on this information to score points with the Commission.

9 **Q. ARE YOU AWARE THAT MR. KEEN TESTIFIED THAT CUBE YADKIN**  
10 **“DISAPPEARED” FOR FIVE MONTHS (OCTOBER 2016 THROUGH MARCH 2017)**  
11 **DURING A CRITICAL TIME IN THESE NEGOTIATIONS?**

12 A. Yes, I am aware of this portion of his pre-filed testimony. I was not aware of Mr.  
13 Keen's position, however, until I read his testimony, and, nonetheless, he is incorrect because the  
14 record clearly demonstrates communications between October 2016 and March 2017. Notably,  
15 despite Mr. Keen's statement that he did not begin negotiating a PPA with Cube Yadkin because  
16 Cube Yadkin did not own the facilities, he failed to accurately describe the process the parties were  
17 involved in as negotiations in his direct testimony as recounted below. Moreover, it appears that  
18 Duke's internal communications leave much to be desired, otherwise, Mr. Keen appears to be  
19 making a false statement as to Cube Yadkin's alleged disappearance from the negotiations.

20 As an initial matter, even after communications before and during October 2016 as  
21 discussed below, Cube Yadkin met with and communicated with Duke on multiple occasions  
22 between October 2016 and March 2017. On November 9, 2016, representatives of Cube Yadkin  
23 met directly with Duke representatives concerning the Cube QFs. (Exhibit 3) On or about

1 February 17, 2017, Cube Yadkin representatives also met with Duke concerning the Cube QFs  
2 after Cube Yadkin reached out to Duke in early February 2017. (Exhibit 2)

3 As I have testified previously (on pages 8-13 of my Direct Testimony), there is  
4 considerable history as to the negotiations between Cube Yadkin and Duke for a PURPA PPA.  
5 Conversations between Duke and Cube Yadkin began as early as March 2016. In an effort to  
6 explore a potential long-term PPA with Duke, Cube Yadkin reached out to Duke for introductions.  
7 In June 2016, Alcoa and Cube Yadkin entered into a purchase agreement for the sale of the Cube  
8 QFs. On or about August 12, 2016, Dhiaa Jamil of Duke met with me and Kristina Johnson, then  
9 the CEO of Cube Yadkin. I communicated with Regis Repko at Duke to negotiate for the sale of  
10 the output from the Cube QFs. After being referred to Mathew Palasek of Duke, I was referred to  
11 Mr. Keen on or about August 25, 2016. I exchanged multiple emails and telephone calls with Mr.  
12 Keen, including on August 26, 2016 and September 6, 2016. Mr. Keen sent the September 21,  
13 2016 letter that purported to state that Duke was not required to purchase the power from the Cube  
14 QFs at avoided cost rates, among other inaccuracies.

15 Contrary to Mr. Keen's statement that Cube Yadkin "disappeared" in October 2016, on or  
16 about October 5, 2016, Ms. Johnson continued discussions with Ms. Jamil including informing  
17 Ms. Jamil of the transfer of the license of the Cube QFs from Alcoa to Cube Yadkin and the  
18 submission of the Form 556's to the FERC for self-certification of the facilities. Mr. Keen is aware  
19 that he exchanged letters with Mr. Collins in October 2016. First, I responded to Mr. Keen's  
20 September 21, 2016 letter on October 11, 2016, where I pointed out that the Cube QFs were self-  
21 certified and Cube Yadkin wanted to meet to discuss the process for making sales from the Yadkin  
22 QFs. Mr. Keen responded on October 14, 2016 that Duke would be exempted from any purchase  
23 obligations.



1           **Q. ARE YOU AWARE THAT MR. KEEN STATED THAT IT WAS**  
2 **INACCURATE AND FALSE TO SAY THAT ALCOA FULLY AUTHORIZED CUBE**  
3 **YADKIN TO NEGOTIATE PPAS ON THEIR BEHALF PRIOR TO CUBE YADKIN'S**  
4 **OWNERSHIP?**

5           A. Yes, I am aware of this portion of his pre-filed testimony. However, Mr. Keen  
6 apparently responded to a question that I was not asked in my prior testimony: specifically, whether  
7 Cube Yadkin was authorized to act on Alcoa's behalf. Because of the sale of the Cube QFs, Alcoa  
8 authorized and encouraged Cube Yadkin to negotiate PPAs on Cube Yadkin's behalf as the  
9 purchaser of the Cube QFs and because the Cube QFs were QFs. (Exhibit 6)

10           **Q. ARE YOU AWARE THAT MR. KEEN TESTIFIED THAT YOUR PRE-**  
11 **FILED DIRECT TESTIMONY WAS THE FIRST THAT HE HAD HEARD OF ALCOA**  
12 **BEING AWARE OF, INVOLVED IN, AND APPROVED THE PPA DISCUSSIONS**  
13 **BETWEEN DUKE AND CUBE YADKIN?**

14           A. Yes, I am aware of this portion of his pre-filed testimony. If Mr. Keen had asked  
15 at any time during the negotiations, he would have been informed that Alcoa was aware of,  
16 involved in, and approved the PPA discussions between Duke and Cube Yadkin. During the  
17 negotiations, Mr. Keen and Duke did not request any written or other formal authorization from  
18 Alcoa in order to negotiate with Cube Yadkin.

19           **Q. ARE YOU AWARE THAT MR. SNIDER TESTIFIED THAT THE LEO**  
20 **TEST HAD THREE REQUIREMENTS?**

21           A. Yes, I am aware of this portion of his pre-filed testimony. Those three requirements  
22 were: (1) self-certification with the FERC as QF; (2) a commitment to sell the facility's output to  
23 a utility pursuant to PURPA via the use of the NoC Form; and (3) have received a CPCN for the

1 construction of the facility. Notably, a prerequisite for the second requirement as discussed above  
2 is the issuance of a CPCN. As noted previously, there was no reason for Cube Yadkin to pursue  
3 a CPCN, where the Cube QFs have been in operation for decades.

4 The Cube QFs are in a unique position because a CPCN was not required when the facilities  
5 were first constructed. There are not many facilities in the state that are similarly situated to the  
6 Cube QFs, and thus, contrary to Mr. Keen's and Mr. Snider's testimony, waiving the NoC  
7 requirement under these unique circumstances will not create uncertainty and recurring  
8 disagreement over the formation of a LEO in contravention to the use of the NoC form.

9 Before the NoC form requirement was implemented in 2015, Duke was receiving a very  
10 large volume of requests to contract with new QF facilities that had not yet achieved commercial  
11 operation – in particular, solar facilities seeking to contract under the utilities' standard offer tariffs.  
12 *See, e.g.,* Docket No. E-100 Sub 140, Order Setting Avoided Cost Input Parameters (Dec. 31,  
13 2014) at 63-64. The Cube QFs, and similarly situated facilities, were not the type of facilities for  
14 which the NoC Form and the revised LEO standard were established because these facilities:  
15 (1) were not required to receive a CPCN to continue operating and (2) had already achieved  
16 commercial operation and were providing power. Every facility constructed after 1965 would  
17 have been required to receive a CPCN, such that the requirements of the NoC form make sense for  
18 the vast majority of QFs across the state. However, as previously stated, the Cube Yadkin QFs  
19 had been operating continuously since 1917, 1927, and 1962, respectively, a fact Duke is and was  
20 well aware of. It is illogical that facilities that have operated for decades both before and after the  
21 enactment of the CPCN statute would be required to submit an application for a CPCN to comply  
22 with LEO requirements. This would be a waste of the Commission's resources and take up as  
23 much, if not more, of the Commission's time as considering the issue of waiver of the NoC Form.

1 As Commissioner Brown-Bland noted in her dissent to the Order dismissing the Complaint,  
2 one of the utilities' long-standing arguments was that they do not know whether an owner of a  
3 facility can actually deliver electrical output to allow a utility to rely on a QFs electrical output.  
4 The NoC requirement is a response to this concern. However, this argument does not hold much  
5 weight where, as here, the provider at issue, Cube Yadkin, has a record of reliable performance  
6 and a previous relationship with Duke (as did Cube Yadkin's predecessor), and the Yadkin QFs  
7 were constructed decades ago and have operated continuously since that time. In fact, Duke is  
8 extremely familiar with the Cube QFs as they operate up-river of two Duke hydroelectric facilities,  
9 Tillery and Blewett. As Commissioner Brown-Bland stated, "[Duke] can hardly claim not to  
10 understand that [Cube Yadkin] will be able, reasonably, to count on the QFs and [Cube Yadkin]  
11 to deliver." Because of the uniqueness of the circumstances surrounding the Yadkin QFs,  
12 including their long-standing operations before and after the CPCN requirement, waiver of the  
13 NoC Form requirement is appropriate.

14 **Q. WHAT ARE THE CIRCUMSTANCES THAT SUPPORT A WAIVER OF**  
15 **THE NOC FORM HERE?**

16 A. First, Cube was unable to complete the form without waiving its rights. The form  
17 requires a Seller to acknowledge the effective date of its LEO as the later of either the NoC form  
18 submittal date, or the date that a facility obtains a CPCN. As the facilities did not have, and were  
19 not required to have, a CPCN, submitting the NoC form would have been a circular exercise.  
20 Rather than establishing a LEO, it would have given Duke a basis for delaying or denying the  
21 establishment of a LEO.

22 Second, as explained above, the Cube QFs did not require a CPCN, the issuance of which  
23 is a condition presumed by Duke's NoC Form. As emails we have produced in this case

1 demonstrate, the Commission’s Public Staff informed our prior outside counsel that it agreed with  
2 our understanding that no CPCN was required and that we should not expect Duke to make an  
3 issue of it. (Exhibit 4).

4 Third, as the Public Staff predicted, Duke did *not* make an issue of the Cube QFs not having  
5 a CPCN or not submitting a NoC Form when the parties were in discussions about the sale of the  
6 Cube QFs output to Duke. Indeed, Duke never stated that it believed either a CPCN or a NoC  
7 Form was required for negotiations with Cube, and Duke never referenced the NoC form at any  
8 point in negotiations. The fair inference of this is that Duke did not think a CPCN or a NoC Form  
9 were required. If Duke did not mention them and apparently did not think they were required, it  
10 is not fair to allow Duke to evade its PURPA purchase responsibilities based on the CPCN and  
11 NoC form requirements.

12 Fourth, Duke’s pre-filed testimony establishes that, even if Cube could have submitted a  
13 NoC Form in a manner that would establish an immediate LEO date, Duke would not have  
14 accepted it on the basis of Duke's contention that only the current owner of a facility can submit a  
15 NoC form. Notably, however, Duke has never pointed to any formal policy -- written or unwritten  
16 -- that requires a current owner's submission of the form. Any such requirement by Duke would  
17 be inconsistent with the language of the NoC Form, which requires only that it be submitted by  
18 the “Seller.”

19 Fifth, the circumstances of Cube Yadkin’s purchase of the QFs from Alcoa were such that  
20 Cube Yadkin was contractually entitled to acquire the facilities once all necessary FERC approvals  
21 including a license transfer (which was approved in October 2016). All other requirements of the  
22 sales contract, including all diligence, had been completed, and it was a matter of months before  
23 Cube Yadkin would own the Cube QFs. Accordingly, Duke was negotiating with an incoming

1 owner, not merely an interested purchaser, as Duke's pre-filed testimony suggests. Further, Alcoa  
2 was in active cooperation with Cube Yadkin regarding its ownership goals, which is evidenced by  
3 Alcoa suggesting (and authorizing) that Cube Yadkin to reach out to Duke and by Alcoa self-  
4 certifying the QFs with FERC after Mr. Keen's September 21, 2016 letter to me indicating that the  
5 facilities needed to be certified.

6 Sixth, Cube Yadkin's establishment of a LEO in its correspondence with Duke is clear. To  
7 interpret the NoC form as an unwaivable requirement, as Duke suggests, under these circumstances  
8 would constitute an interference with Cube Yadkin's ability to establish a LEO, where, as here,  
9 Cube Yadkin could not complete the NoC form for the reasons stated above.

10 Seventh, an unwaivable requirement that Cube Yadkin submit a NoC form,  
11 notwithstanding the lack of a CPCN and the form's language that would delay the establishment  
12 of a LEO, would be harmful to Duke's ratepayers and North Carolina's citizens. The Yadkin QFs  
13 are established, reliable power production facilities that can provide clean energy to the grid at  
14 lower or substantially the same costs to consumers as an expensive Duke gas facility self-build.  
15 Further, Cube Yadkin was willing to provide dispatch rights to Duke, which would provide  
16 additional benefits to Duke's ratepayers by enhancing Duke's ability to meet the impact of  
17 increased intermittent solar generation resources on the reliability of Duke's electric grid and  
18 reduce the need for new transmission and storage investments. Moreover, the Cube QFs' output  
19 could be coordinated with Duke's immediately downriver hydroelectric facilities, Tillery and  
20 Blewett, to provide enhanced capacity during peak periods of energy use.

21 Finally, the rates received by Cube Yadkin based on its establishment of a LEO in October  
22 2016 are consistent with PURPA and would be fair. The Cube QFs would provide greater value  
23 to Duke than other QFs, because Duke could coordinate with Duke's other facilities downstream

1 from the Cube QFs and have the ability to provide energy and capacity as needed by Duke. Duke's  
2 proposed non-PURPA terms offered to Cube Yadkin failed to account for these advantages.

3 **Q. DO DUKE'S WITNESSES RESPOND TO YOUR TESTIMONY ABOUT**  
4 **THE REASONS CUBE ASSERTS THAT A WAIVER OF THE NOC FORM**  
5 **REQUIREMENT IS APPROPRIATE HERE?**

6 A. No. In my direct prefiled testimony, I cited three reasons that a waiver would be  
7 appropriate: First, Cube Yadkin proceeded reasonably and in good faith in not filing the NoC form.  
8 Second, this was at most a technical deficiency that did not cause harm or prejudice to any party,  
9 because Duke was on notice of Cube Yadkin's commitment to sell the output of the Cube QFs  
10 based on the negotiations with Cube Yadkin that started in March 2016 and continued through  
11 November 2017. And third, not granting the requested waiver would in effect reward Duke for its  
12 efforts to try to evade its PURPA obligations. Although Mr. Keen asserts in a conclusory fashion  
13 that Duke negotiated with Cube Yadkin in good faith, he does not otherwise attempt to rebut Cube  
14 Yadkin's arguments regarding waiver.

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

16 A. Yes.

1 BY MR. HARRIS:

2 Q And Mr. Collins, do you have a summary of your  
3 direct and rebuttal testimony?

4 A Yes.

5 Q Would you please present that to the Commission?

6 A Good morning, Commissioners. My name is John R.  
7 Collins, and I am the former Executive Vice  
8 President and later President and Chief Executive  
9 Officer of Cube Yadkin Generation and its parent  
10 company, Cube Hydro. I am providing prefiled --  
11 I provided prefiled testimony on behalf of Cube  
12 in this matter. My direct and rebuttal testimony  
13 addresses several topics including the  
14 negotiations which took place between Cube and  
15 Duke concerning a Power Purchase Agreement for  
16 three qualifying facilities, which I shall refer  
17 to as QFs as we move forward; when Cube Yadkin  
18 established a legally enforceable obligation,  
19 which I'll refer to as LEO; and why the  
20 Commission should waive the use of the Notice of  
21 Commitment Form, or NoC Form, to establish a LEO.  
22 The facilities at issue are three  
23 hydroelectric facilities located along the Yadkin  
24 River, the QFs. The facilities are commonly

1 referred to as High Rock, placed in service in  
2 1927; Tuckertown, placed in service in 1962; and  
3 Falls, placed in service in 1917. Prior to  
4 Cube's purchase of these facilities they were  
5 owned by Alcoa Power Generating Inc.

6 A number of parties, including  
7 Cube, sought to purchase the QFs from Alcoa.  
8 Cube entered negotiations to purchase the  
9 facilities and began the due diligence process in  
10 early 2016.

11 On June 30, 2016, Cube and Alcoa  
12 entered into a purchase agreement for the QFs.  
13 On July 25, 2016, Alcoa and Cube prepared and  
14 filed with the Federal Energy Regulatory  
15 Commission a request to transfer the license for  
16 the QFs from Alcoa to Cube. FERC approved the  
17 license transfer in December 2016. Pending the  
18 transfer and to assist with Cube's negotiations  
19 with Duke, Alcoa filed Form 556 certifying their  
20 QFs on September 28th, 2016.

21 Beginning in March 2016, Cube  
22 conducted meetings with Duke to determine how  
23 Duke would approach a long-term PPA. During  
24 these discussions, Cube was informed -- or Duke



1 was informed that Cube was pursuing the purchase  
2 of the QFs and wanted to enter into long-term  
3 PPAs with Duke. Duke was responsive to these  
4 entreaties.

5 After an in-person meeting in or  
6 around June 2016, as well as email communications  
7 between Cube and Duke personnel, the negotiations  
8 began in earnest in August 2016. I initiated  
9 these conversations by reaching out to personnel  
10 at Duke and explaining that Cube planned to  
11 self-certify QFs and I requested further  
12 discussions regarding a long-term PPA for the  
13 QFs. I also mentioned the possibility of  
14 expanding discussions to include a fourth  
15 facility, the Narrows facility which is not a QF,  
16 because of the expanded benefits it could provide  
17 Duke and its ratepayers. I was referred to  
18 Michael Keen, who was my primary point of contact  
19 at Duke.

20 Around September 16, 2016, I  
21 contacted Mr. Keen to further discuss Duke  
22 purchasing the output of the QFs. In a September  
23 21st response letter, Mr. Keen acknowledged that  
24 Cube intended to self-certify three of the

1 facilities as QFs and to sell the power from the  
2 QFs. However, he incorrectly stated, contrary to  
3 PURPA, that Duke would not have any obligation to  
4 purchase the power from the QFs. I responded in  
5 an October 11 letter stating the QFs were  
6 self-certified with FERC and that Cube wanted to  
7 meet to discuss the process for making sales from  
8 the projects to Duke pursuant to PURPA. My  
9 October 11th letter committed the output of the  
10 QFs such that October 11, 2016, at the latest, is  
11 the established date for a LEO. By letter dated  
12 October 14, 2016, Mr. Keen responded that Duke  
13 believed if the QFs were QFs then Duke would be  
14 exempted from the purchase obligations. At no  
15 time during these discussions in August '16  
16 through October 2016, did Mr. Keen or anyone at  
17 Duke mention the NoC Form nor did they mention  
18 any expected requirements for a CPCN.

19 Strict application of the NoC Form  
20 requirement would create a hardship for Cube and  
21 would be inconsistent with the public interest.  
22 There are several reasons the NoC Form  
23 requirement should be waived.

24 First, Cube proceeded reasonably

1 and in good faith in not completing the NoC Form.  
2 Duke's NoC Form assumes that a facility must  
3 obtain a CPCN and ties the LEO date to the  
4 issuance of the CPCN. But the QFs predate the  
5 CPCN requirement. In addition, the NoC Form was  
6 not designed to accommodate operating generating  
7 facilities that predated the requirement for a  
8 CPCN. Cube's counsel contacted the Commission's  
9 Public Staff, which indicated that Cube should  
10 not expect Duke to make an issue of the  
11 facilities predating the CPCN requirement. And  
12 Duke never raised the issue in the parties'  
13 negotiations. The Public Staff did not indicate  
14 that CPCN was required.

15 Second, Duke has essentially  
16 conceded that it would not have accepted the NoC  
17 Form from Cube had it submitted one. Duke argues  
18 that a NoC Form may be submitted only by the  
19 current owner of a facility, even though such a  
20 requirement is not imposed by the Commission, any  
21 proffered formal policy of Duke, or the NoC Form  
22 itself. The NoC Form requires submission by the  
23 seller, a requirement that Cube could satisfy.

24 Third, Cube was far more than a

1 prospective purchaser of the QFs, as Duke  
2 contends. Cube's purchase of the QFs  
3 contractually obligated it per -- Cube's purchase  
4 of the QFs contractually obligated it to acquire  
5 the facilities once all necessary regulatory  
6 approvals were completed. Alcoa and Cube  
7 initiated the license transfer in September 2016,  
8 which was approved by FERC in December 2016.  
9 Michael Keen's testimony that he'd not negotiate  
10 with a non-owner of a QF under the circumstances  
11 presented by Cube's acquisition rights, is belied  
12 by the fact that he and others at Duke actively  
13 communicated with Cube and participated in the  
14 PPA negotiation process. Further, Alcoa was in  
15 active cooperation with Cube to facilitate Cube's  
16 plan to sell the output of the QFs to Duke, which  
17 is evidenced by Alcoa certifying the QFs with  
18 FERC in response to Mr. Keen's September 21, 2016  
19 letter to me indicating the facilities needed to  
20 be certified. Indeed, Alcoa fully supported Cube  
21 reaching out to Duke and authorized us to do so.

22 Fourth, Cube -- a waiver  
23 submitting the -- excuse me. Fourth, allowing  
24 Cube a waiver from submitting the NoC Form would

1 not cause any harm or prejudice to any party and  
2 would be in the public's best interest. Under  
3 PURPA, Cube is entitled to the avoided cost rates  
4 as of the date it established its LEO, which is,  
5 at the latest, October 11, 2016 after the Form  
6 556s were filed, and Cube through letters  
7 acknowledged that it was committing to sell power  
8 to Duke. The QFs would provide greater value to  
9 Duke than other QFs, such that there would be no  
10 harm to Duke's ratepayers and North Carolina  
11 citizens because the Cube QFs are long-standing,  
12 reliable facilities that provide clean energy and  
13 ancillary services at lower or substantially the  
14 same costs to consumers as an expensive Duke gas  
15 facility self-build. Further, the Cube QFs would  
16 also be helpful to Duke insofar as Cube  
17 demonstrated a willingness to provide dispatch  
18 rights to Duke, which would enable the output of  
19 the facilities to be coordinated with Duke's own  
20 downriver hydroelectric facilities, and thereby  
21 providing Duke more generation control and  
22 support from the integration of intermittent  
23 resources on Duke's transmission and distribution  
24 systems.

1 Fifth, refusing a waiver would  
2 reward Duke for its efforts to attempt to evade  
3 its PURPA obligations. Duke, well aware that of  
4 the planned changes to the avoided cost  
5 calculation methodologies in November 2016, had  
6 every incentive to delay the negotiations and to  
7 discourage Cube from asserting its PURPA rights  
8 beyond November, which is what Duke did.

9 For these reasons, waiver of the  
10 NoC Form requirement is appropriate here.

11 This concludes my summary of my  
12 direct and rebuttal testimony.

13 Q Thank you, Mr. Collins.

14 MR. HARRIS: Commissioner Clodfelter,  
15 Mr. Collins is now available for cross examination.

16 COMMISSIONER CLODFELTER: Ms. Fentress, you  
17 have the witness.

18 MS. FENTRESS: Thank you, Commissioner  
19 Clodfelter.

20 CROSS EXAMINATION BY MS. FENTRESS:

21 Q Good morning, Mr. Collins. My name is Kendrick  
22 Fentress and I am an attorney for Duke Energy.  
23 How are you today?

24 A Good morning. I'm fine, thank you.

1 Q Great. Mr. Collins, we have heard already in  
2 this hearing a lot of dates thrown around and  
3 discussed, and I think what I'd like to do now is  
4 maybe walk through and see if we can get a  
5 chronology going.

6 If you could start by taking a  
7 look at Exhibit 6 of your prefiled rebuttal  
8 testimony. Can you take a look at that? You can  
9 let me know when you're there.

10 A Six. I don't have Exhibit 6. I only have  
11 Exhibit 5. I apologize.

12 Q That's okay.

13 A I'll have to print it out.

14 (Pause).

15 I'm getting it.

16 Q Sure. Take your time. And just, if it's  
17 helpful, Exhibit 6 that I have from you to your  
18 prefiled rebuttal is *Yadkin Potential Benefit for*  
19 *Qualified Facility Sales to Duke Energy at*  
20 *Avoided Cost Energy Rates*, dated February 5th,  
21 2016; just to make sure we're on the same page.

22 A Yes, I recall it.

23 Q I just have one question on this exhibit. I can  
24 ask if you agree subject to check.

1 A Go ahead. Thank you.

2 Q Certainly. On page 2 of that exhibit, it is a  
3 PowerPoint exhibit that I believe Alcoa would  
4 give to potential purchasers of Yadkin assets,  
5 and it says *Public Utility Company Power*  
6 *Purchases From Qualified QFs*, and it gives some  
7 facts about public utility power purchases from  
8 qualified QFs, and it says, if you will agree  
9 with me subject to check, *North Carolina law*  
10 *defines small power producer -- small power*  
11 *producer as entity -- it says the owns or*  
12 *operates only QFs*. I think the "the" should  
13 probably be a "that". Would you agree with me  
14 subject to check that that's what that exhibit  
15 says?

16 A Subject to check, I would agree.

17 Q Thank you. Now, turning to your prefiled direct  
18 testimony, on page 7, 9 through 11, this was the  
19 subject of a correction you made but I just want  
20 to walk through that a bit.

21 A Okay.

22 Q You got there faster than I did so I apologize.

23 A That I have.

24 Q Good.



1 A I had the other one, too. I just don't know  
2 where it is.

3 Q I'm sorry myself. And with your correction, I do  
4 want to say on lines 9 through 11, it says *Alcoa*  
5 *had previously certified each of these three QFs*  
6 *as qualifying facilities under PURPA.* Are you  
7 there?

8 A Yes, I am.

9 Q And then can you read the next line with your  
10 correction? I think that's where the correction  
11 was.

12 A I think my corrections for both of them is that  
13 they really certified them as of September 28th,  
14 2016. And then Cube Yadkin filed revised Form 56  
15 (sic) with FERC reflecting the change in  
16 ownership in March, I believe of 2018.

17 Q And I -- thank you. That is correct.

18 MS. FENTRESS: And I would like to now turn  
19 to that Form 556 that has been marked -- that I'd --  
20 may I have marked for identification as Collins Cross  
21 Exhibit Number 1? And Chairman Clodfelter and  
22 Commissioners, this is noted as Attachment 2 to our  
23 cross examination exhibits.

24 COMMISSIONER CLODFELTER: It will be so

1 marked as Collins Duke Cross Examination Exhibit 1.

2 (WHEREUPON, Collins Duke Cross  
3 Examination Exhibit 1 is marked  
4 for identification.)

5 A And this is the -- to make sure I have the one,  
6 is this the Form 556 Falls?

7 Q Yes, that's precisely it.

8 A I'm trying to bring it up. Thank you.

9 Q Okay.

10 A Yes, I have.

11 Q Great. I think you've already agreed with me,  
12 but I'm going to ask this question for the  
13 record. If you would take a look at page 6 of  
14 this 556 Form where it says the facility name.  
15 Can you read out the facility name?

16 A I'm trying to -- mine are not numbered  
17 unfortunately.

18 Q Oh, it is hard to see.

19 A Oh, it's at the top. It's at the top. Okay.

20 (WHEREUPON, the Court Reporter  
21 requested the witness to speak  
22 into the microphone.)

23 THE WITNESS: Okay. Thank you. I  
24 apologize. I'm just trying to see the facility name.

1 BY MS. FENTRESS:

2 Q I think you would agree with me this is the Falls  
3 facility?

4 A It is the Falls facility, yes.

5 Q Great. Great. And would you please turn to page  
6 18, which at the top reads *Certificate of*  
7 *Completeness, Accuracy and Authority?*

8 A Yes. Yes, I'm there.

9 Q Great. And would you agree with me that the date  
10 at the bottom of the form is September 28th,  
11 2016?

12 A Yes, I do.

13 Q And turning back to page 5, I think we -- which  
14 says Form 556 at the top.

15 A Yes.

16 Q You will agree with me that the Applicant is  
17 Alcoa Power Generating Inc.

18 A Yes, I do.

19 Q And it is not Cube Hydro or Cube Yadkin or any  
20 other entity?

21 A No, it is not.

22 Q And would you agree with me, if you look further  
23 down on page 5, it looks like 11 (1L) paragraph,  
24 that the expected effective date for this filing

1 is shown below as January 1st, 2017?

2 A No, I do not agree with that. That is meant to  
3 be January 1st, 1917 when the plant went in  
4 service.

5 Q Okay. Thank you. Would you agree that this form  
6 indicates that this facility has never been a QF  
7 before?

8 A I agree the form states that it had never filed  
9 for QF status before.

10 Q Thank you. And turning to page 7, would you  
11 agree that this form indicates on September 28th,  
12 2016 -- and I'll let you get to page 7. I'm  
13 sorry. I don't mean to get ahead.

14 A Yes.

15 Q That the facility operator is identified as Alcoa  
16 Power Generating Inc.?

17 A I -- that is what the form says.

18 Q And do you see where, anywhere on this form, and  
19 you can take a look, where it mentions Cube Hydro  
20 or Cube Yadkin?

21 A No, I do not, but that's because the form is  
22 certifying facility, not the owner.

23 Q And do you see any mention of an impending sale?

24 A I do not. But again, just the form is referring

1 to the facility and not the owner.

2 Q Understand. But it does have spaces where it  
3 indicates who is operating the facility; you  
4 would agree with me there?

5 A It does.

6 Q And it has spaces where it indicates who the  
7 owner of the facility is; you would agree with --

8 A And it does do that as well. But again, the QF  
9 certification is for the facility, not the  
10 operator or the owner.

11 Q Understand. Mr. Collins, I can walk through the  
12 High Rock form which is Attachment 3, and the  
13 Tuckertown form which is Attachment 4, but my  
14 questions would be the same. Because of this way  
15 we're doing the hearing I'm happy to do that or  
16 I'm also happy to stipulate that the questions  
17 would be the same and the information would be  
18 the same. And I leave it to your attorney how he  
19 would like to proceed with that.

20 MR. HARRIS: Thanks, Kendrick. I think  
21 we're fine. We're fine proceeding with the same  
22 questions and answers for High Rock and Tuckertown.

23 MS. FENTRESS: Certainly. Certainly.

24

1 BY MS. FENTRESS:

2 Q So Mr. Collins, if you could then look at what I  
3 would like marked for identification as Collins  
4 Cross Examination Exhibit Number 2. And I'll let  
5 you take a look when you get there -- or let me  
6 know.

7 A Number 2.

8 COMMISSIONER CLODFELTER: I'm sorry,  
9 Ms. Fentress, which document do you want so marked?

10 MS. FENTRESS: I apologize. It is  
11 Attachment Number 3, and it is the High Rock Facility  
12 FERC Form 556 filed by Alcoa Power Generating.

13 COMMISSIONER CLODFELTER: That will be  
14 marked for identification as Collins Duke Cross  
15 Examination Exhibit Number 2.

16 (WHEREUPON, Collins Duke Cross  
17 Examination Exhibit 2 is marked  
18 for identification.)

19 MR. HARRIS: And Ms. Fentress -- this is  
20 Phillip Harris. The one point I'd make is if you want  
21 to just introduce each one of the exhibits and then we  
22 can just approach the question of whether we'd  
23 stipulate to the same answers as we have before --

24 MS. FENTRESS: Certainly.

1 MR. HARRIS: -- for Falls. I think that  
2 will be the best route.

3 MS. FENTRESS: That's a great idea. I'm  
4 happy to do it that way. Yes.

5 So I'll also add to this Attachment Number  
6 4, and may I have that marked as Collins Cross  
7 Examination Exhibit Number 3? And that is the  
8 Tuckertown Facility FERC Form 556 filed by Alcoa Power  
9 Generating.

10 COMMISSIONER CLODFELTER: It will be so  
11 marked.

12 MS. FENTRESS: Thank you.

13 (WHEREUPON, Collins Duke Cross  
14 Examination Exhibit 3 is marked  
15 for identification.)

16 BY MS. FENTRESS:

17 Q Mr. Collins, do you have both of those in front  
18 of you?

19 A Exhibit Number 2 and Exhibit Number 4?

20 Q No, sir. It's Exhibit Numbers 2 and 3. It was  
21 Attachment Number 4 to what I sent. I apologize  
22 for the confusion.

23 MR. HARRIS: To the extent it's helpful --  
24 this is Phillip Harris again. These exhibits were

1 originally classified as attachments, so it may be  
2 easier just to look for Attachment 3 and Attachment  
3 4 --

4 MS. FENTRESS: Yes.

5 MR. HARRIS: -- which are now going to be  
6 designated as Exhibits 2 and 3.

7 THE WITNESS: Yes, I have those in front of  
8 me.

9 MS. FENTRESS: Great. Thank you.

10 BY MS. FENTRESS:

11 Q If you have them in front of you, would you turn  
12 please to page 6?

13 A I have to do it one at a time if that's --

14 Q Certainly.

15 A Okay.

16 Q Certainly.

17 A Page 6 on the attachment, and this is -- okay. I  
18 am on page 6.

19 Q And you will agree that's the facility name shown  
20 there, Tuckertown?

21 A I'm sorry. I must have the wrong one.

22 Q If you have High Rock I'll say High Rock.

23 A I have High Rock.

24 Q Great. And then if you look in the same place



1 for the other Form 556, you will agree that's  
2 Tuckertown?

3 A I will agree to that.

4 Q Thank you. And I think I can skip through this  
5 quickly. And you will also agree that the full  
6 name of the Applicant for these QF status is  
7 Alcoa Power Generating Inc.?

8 A I will agree with that as well.

9 Q For both of them?

10 A Yes.

11 Q And if you will turn to page 7. And at the  
12 bottom of page 7 it asks for the facility  
13 owner to be -- I'm sorry, for the facility  
14 operator to be identified. And will you agree  
15 that both of those facility operators are Alcoa  
16 Power Generating Inc.?

17 A I will agree with that.

18 Q Okay. Great. And you will agree with me as well  
19 that the date that these were submitted is  
20 September 28th, 2016?

21 A Yes.

22 Q Okay. And additionally, would you agree that  
23 this form indicates that the facility has never  
24 been -- that these facilities have never been QFs

1 before, have never been certified as QFs before?

2 A I will agree that they had never been certified  
3 as QFs prior to that date.

4 Q And will you agree with me that neither of these  
5 forms mentions Cube Hydro or Cube Yadkin?

6 A I will agree with that. But again, it's a  
7 certification of the facility, not the owner or  
8 the operator.

9 Q Understand. And you agree that the owner and  
10 operator as shown on these forms is Alcoa?

11 A At that time that is correct.

12 Q And neither of these forms mention any impending  
13 sale?

14 A No, they do not, because it's not a requirement  
15 of the form.

16 Q And Mr. Collins, Cube closed on the asset -- on  
17 the purchase of the Yadkin asset, the Narrows  
18 facility, the High Rock facility, the Tuckertown  
19 facility and the Falls facility on February 1st,  
20 2017; isn't that correct?

21 A That is correct.

22 Q And this date is later than the date you  
23 initially provided to Mr. Keen as a proposed  
24 closing day or a potential closing day; is that

1 correct?

2 A That is correct.

3 Q You had initially indicated that the closing  
4 would be November 1st, 2016; is that --

5 A I think I initially indicated it would be  
6 somewhere around that time, but not a specific  
7 date.

8 Q Okay. Turning to your prefiled direct testimony,  
9 on page 4, lines 16 through 17.

10 A Okay. I am there.

11 Q Will you agree with me that that reads *the*  
12 *license was trans-* -- I'm sorry. If you could  
13 back up to line 14, I apologize. *Alcoa and Cube*  
14 *prepared and filed with the Federal Energy*  
15 *Regulatory Commission a request to transfer the*  
16 *license for the facilities from Alcoa to Cube*  
17 *Hydro in September 2016; is that correct?*

18 A That is correct.

19 Q Okay. And you have indicated the license was  
20 transferred by Order of the FERC and in January  
21 of 2017. Was this one of your corrections as  
22 well?

23 A That was one of my corrections. That should have  
24 been in December of 2017.

1 Q All right. And turning to page 15 of your  
2 prefiled rebuttal.

3 A Prefiled rebuttal? Okay.

4 Q Lines --

5 A Okay.

6 Q Lines 19 through 21, you testified there that  
7 Cube Yadkin was contractually entitled to acquire  
8 the facilities once all the necessary FERC  
9 approvals including a license transfer, which was  
10 approved in, and I believe you've corrected that,  
11 December of 2016; is that correct?

12 A That is correct?

13 MS. FENTRESS: Now, I would like to pull up  
14 Attachment Number 5, which if I may have marked for  
15 identification as Collins Cross Exhibit Number 4 and  
16 that is the FERC Order Approving Transfer of license.

17 COMMISSIONER CLODFELTER: It will be so  
18 marked.

19 (WHEREUPON, Collins Duke Cross  
20 Examination Exhibit 4 is marked  
21 for identification.)

22 MS. FENTRESS: Thank you.

23 BY MS. FENTRESS:

24 Q Do you have that, Mr. Collins?

1 A I do have that in front of me.

2 Q Okay.

3 A Yes, I do. Just to talk into the mike -- camera.

4 Q Okay. And just to clarify the record, can you  
5 tell me, would you agree that this is the Order  
6 Approving License -- Order Approving License --  
7 Transfer of license between Alcoa and Cube  
8 Yadkin?

9 A Yes, I agree.

10 Q And can you tell me the date of that Order?

11 A The date of that Order is December 13, 2016.

12 Q And can you look at page 6 of that Order? And  
13 let me know when you are there.

14 A I am there.

15 Q Great. If you could look at paragraph C, can you  
16 read out the first 1, 2, 3, 4 lines of paragraph  
17 C?

18 A *Approval of this transfer is contingent upon*  
19 *transfer of title of the properties under*  
20 *license, transfer of all project files including*  
21 *all dam safety related documents, and delivery of*  
22 *all license instruments to Cube Yadkin Generation*  
23 *LLC which shall be subject to the terms and*  
24 *conditions of the license as though it were the*

1           *original license.*

2       Q     So would you agree with me that even though this  
3           Order had been issued in December of 2016, there  
4           were matters to be handled after issuance of the  
5           Order by the terms of the Order?

6       A     Yeah. What I would tell you is that those are  
7           standard closing items that are required with the  
8           sale of any FERC hydro -- FERC regulated  
9           hydroelectric project.

10      Q     Thank you. Would you now turn back to your  
11           testimony on page 7?

12      A     Is this my prefiled testimony or my rebuttal  
13           testimony?

14      Q     Your prefiled direct testimony. Sorry about  
15           that.

16      A     Okay. No problem. Page 7. Okay.

17      Q     And to clarify again, I think this is one of the  
18           corrections where you said on September 28th,  
19           2016, Cube Yadkin filed the revised forms. I  
20           believe you've turned that -- you've corrected  
21           that to say March 9th, 2018 -- showing you what  
22           has been marked and, I'm sorry, this would be  
23           Attachment Number 6. And I think with the  
24           permission of your counsel, I will try to do all

1 three of these at the same time as we did with  
2 the Alcoa FERC forms, 6, 7 and 8, these  
3 attachments, these are the FERC forms filed by  
4 Cube Yadkin.

5 COMMISSIONER CLODFELTER: Ms. Fentress,  
6 we'll mark item 6 on your list, that will be marked as  
7 Collins Duke Cross Examination Exhibit 5. Item 7 on  
8 your exhibit list will be marked as Collins Duke Cross  
9 Examination Exhibit 6. And item 8 on your exhibit  
10 list will be marked as Collins Duke Cross Examination  
11 Exhibit Number 7.

12 MS. FENTRESS: Thank you, Commissioner  
13 Clodfelter.

14 (WHEREUPON, Collins Duke Cross  
15 Examination Exhibits 5, 6 and 7  
16 are marked for identification.)

17 BY MS. FENTRESS:

18 Q Do you have those exhibits in front of you,  
19 Mr. Collins?

20 A I have Exhibit Number 6 in front of me. I can  
21 get 7 and 8 if we need to.

22 Q Let's start with 6 and see how we do. Would you  
23 agree with me, Mr. Collins, that this is a filing  
24 made at the North Carolina Utilities Commission

1 on behalf of Cube Yadkin Generation?

2 A We're talking about the 556?

3 Q Well, there is a letter on top of it from VanNess  
4 Feldman and it's dated March 9th, 2018?

5 A I would agree that's what the letter does, yes.  
6 It submits the 556 filing.

7 Q Thank you.

8 And if I look strange it is  
9 because Mr. Kaylor is to be commended for his  
10 energy efficient office. The lights have gone  
11 out. I have not moved.

12 (Laughter)

13 And you will agree that that  
14 letter says, begins with the line *Pursuant to the*  
15 *Federal Energy Regulatory Commission's*  
16 *regulations*, it cites a regulation, and it has  
17 the enclosed FERC form for Cube Yadkin  
18 Generation. Would you agree with me that that's  
19 what the letter says?

20 A That is what the letter says.

21 Q It's a transmittal letter basically. Do you  
22 agree with that?

23 A That is what the letter is, yes.

24 Q Turning to page 5 -- no I'm sorry, turning to



1 page 18.

2 A Yes.

3 Q You would agree that this is dated 3/9/2018?

4 A I would agree with that.

5 Q And you would agree that the other two Form 556s  
6 filed by Cube Yadkin reflect similar information  
7 and they were filed on or before March 9th, 2018?

8 A Yes, I would agree with that.

9 Q Thank you. Now, Mr. Collins, I think we've  
10 discussed with respect to the Form 556s that the  
11 assets in question here had not been used to make  
12 PURPA sales to Duke in the past; is that correct?

13 A That is correct.

14 Q And, in fact, Alcoa itself had indicated in its  
15 presentations to Cube and other potential buyers  
16 that the hydro facilities in question had access  
17 to PJM, the world's largest wholesale market?

18 A That's what their presentation stated.

19 Q And also access to MISO?

20 A That's what their presentation stated.

21 Q And also access to SOCO?

22 A And that is what their presentation stated. As  
23 part of the US Electric Grid they have access  
24 through transmission systems if you can get

1 transmission to those markets.

2 Q And also the Cube Yadkin assets, that's their own  
3 balancing authority; is that correct?

4 A Cube Yadkin Transmission or Cube -- yeah, Yadkin  
5 Transmission is a separate transmission and  
6 balancing authority company and balancing  
7 authority, not the generation company.

8 Q Understand. Thank you. And do you know if they  
9 ever considered or ever did sell to Santee  
10 Cooper?

11 A I do not know factually, but it is likely a  
12 possibility that they did through non-firm  
13 transmission.

14 Q And turning to pages 5 through 6 of your prefiled  
15 direct.

16 A Five through 6 of my -- okay.

17 Q Yes, sir. I'm at line 23, or 22 I should say.  
18 And can you read those starting with the word  
19 "together"?

20 A Line 22.

21 Q Yes, sir.

22 A *Together, along with the Narrows facility, the*  
23 *four purchased facilities have a total generating*  
24 *capacity of approximately 220 megawatts and they*

1           are expected to produce nearly 800,000 MWh of  
2           clean, reliable electricity per year - enough to  
3           power approximately 72,000 homes with renewable  
4           energy. Downstream of these facilities -- is  
5           that all?

6       Q     Yes. That's correct. Thank you. And just to be  
7           clear that 800,000 megawatt of -- megawatt hours  
8           of clean, reliable energy includes the Narrows  
9           facility?

10      A     Yes, it is.

11      Q     So the Narrows facility is not part of the claim  
12           before the Commission today?

13      A     No, it is not.

14      Q     So if the Commission allowed Cube's waiver that  
15           800,000 megawatt hours would be less; is that  
16           correct?

17      A     Yeah, it would probably be 50 percent or more  
18           less than that.

19      Q     Thank you. And since the Narrows facility is  
20           not a QF, selling to Duke, and I believe you  
21           mentioned this, from all four facilities was an  
22           option that Cube could pursue?

23      A     It was an option that we were considering  
24           pursuing, yes.

1 Q And do you know if Alcoa sold to PJM?

2 A I am not aware personally whether they did at the  
3 time so, no, I'm not personally aware.

4 Q But you -- do you know -- you know Alcoa sold to  
5 DEC or DEP, correct?

6 A Yeah. I am aware that they have sold  
7 historically to DEP and DEC, yes.

8 Q Thank you. Do you know any -- about SCANA? Do  
9 you know if they've sold to SCANA?

10 A I do not know specifically if Alcoa had sold to  
11 them but it would not surprise me if they had.

12 Q So, as part of the discussions with Duke, Cube  
13 sought registration of all four facilities  
14 including the Narrows facility as new renewable  
15 energy facilities at this Commission on or about  
16 March 16th, 2017?

17 A That is my understanding, yes.

18 Q And if the Commission allowed these  
19 registrations, that would allow Cube to sell RECs  
20 along with the power generated by those assets to  
21 the Companies; is that correct?

22 A That is correct.

23 Q So it would be a PPA that's bundled with the sale  
24 of RECs?

1 A It could be a PPA bundled with the sale of RECs.

2 Q Has the Commission approved these registrations?

3 A Not to my knowledge.

4 Q If you'd turn to Exhibit 4 of your prefiled  
5 rebuttal testimony.

6 A Yes.

7 Q Would you agree with me that this is an email  
8 from Eli Hopson to Kristina Johnson and to you?

9 A Yes.

10 Q And that the email indicates I had a phone call  
11 with Charlotte on this. Is that Charlotte  
12 Mitchell?

13 A That would be Ms. Mitchell, yes.

14 Q And she was acting as a representative of Cube at  
15 the time?

16 A That is correct.

17 Q So you have indicated that this email says that  
18 the Public Staff told Cube that Cube should not  
19 expect Duke to make an issue out of the CPCN; is  
20 that correct?

21 A That is correct.

22 Q But you will agree with me that they -- the  
23 Public Staff does seem to leave it open by adding  
24 Duke, that it would be a fairly easily rectified

1 situation if Duke did make an issue out of the  
2 CPCN?

3 A They may have mentioned that but it may not be as  
4 easily reconciled with the requirements of  
5 establishing the LEO as exists today.

6 Q So you sought the Public Staff's counsel and they  
7 said they didn't expect Duke to make an issue out  
8 of the CPCN; is that correct?

9 A That is correct.

10 Q But then they added, according to this email,  
11 that if Duke did make an issue it was a fairly  
12 easily rectified -- it could be fairly easily  
13 rectified by an Order of the Commission granting  
14 an effective CPCN?

15 A That is what the email says.

16 Q And so the Public Staff did not tell you that a  
17 CPCN was not required?

18 A They did not. They also did not tell us that a  
19 CPCN was required.

20 Q They indicated that obtaining a CPCN was a fairly  
21 easily done process; is that correct?

22 A They did indicate that; however, the way that the  
23 existing process in North Carolina works, if we  
24 had pursued that then the LEO date would not have

1           been established under the NoC Form until we  
2           received that CPCN which is different than the  
3           October 11th date that we established the LEO.

4    Q       And you have an undate that's from you to  
5           Mr. Keen as Exhibit 2 to your prefiled direct  
6           testimony. Can you take a look at that?

7    A       Yes.

8    Q       Thank you.

9    A       The letter is undated, however, the email was  
10           dated, and it was dated the, I believe,  
11           October 11th.

12   Q       The email we just referred to?

13   A       No. The email with this letter to Michael  
14           Keen --

15   Q       Oh, I'm sorry.

16   A       -- dated October 11th.

17   Q       Understand. Now, in your testimony, Mr. Collins,  
18           in your direct testimony, you have indicated that  
19           you have expertise with PURPA QF  
20           self-certifications; is that correct?

21   A       I have, yes.

22   Q       And in this letter, this Exhibit 2, you cite  
23           PURPA; is that correct?

24   A       I do.

1 Q And you cite several FERC regulations in the  
2 third paragraph; is that correct?

3 A I do.

4 Q And you're aware that state commissions establish  
5 LEO requirements under PURPA; is that correct?

6 A I understand they have the ability to do so, yes.

7 Q Now, nowhere in this letter do you ask Mr. Keen  
8 what the LEO requirements are; is that correct?

9 A I do not ask in this letter, no.

10 Q And you do, in fact, refer to a legally  
11 enforceable obligation at the second and last  
12 line of paragraph three; is that correct?

13 A I do and I just want to caveat one thing. While  
14 a state can enact its -- how it wants to  
15 determine a LEO, it cannot enact such a  
16 requirement that is in conflict with the  
17 requirements of PURPA.

18 Q You were buying facilities in North Carolina at  
19 this time; is that correct?

20 A That is correct.

21 Q And so you would have been aware of North  
22 Carolina's avoided cost rules in establishing the  
23 requirements for a LEO; is that correct?

24 A We were aware of what it required to establish a



1 LEO as existed at the time.

2 Q Are you saying that the North Carolina rules  
3 establishing a LEO are contrary to PURPA?

4 A I'm saying that they do not. How they were  
5 designed do not allow facilities such as the  
6 three QFs that we're talking about to  
7 legitimately establish a LEO because the NoC Form  
8 does not permit them to do so because it's not  
9 designed to. It is not designed to reflect  
10 facilities that were placed in service prior to  
11 1965.

12 Q So you were aware of the LEO requirements at the  
13 time you sent this letter?

14 A We were aware.

15 Q North Carolina's LEO requirements. And so you  
16 agree that you did not ask if and when Cube owned  
17 the facilities what the requirements would be,  
18 because you already knew them?

19 A We knew what the process was in the State of  
20 North Carolina.

21 Q Do you know if Mr. Keen is an attorney?

22 A I do not know whether he's an attorney or not.

23 Q Were you aware that the Commission had also  
24 required as part of its PURPA proceedings to --

1 for the Companies to put information about the  
2 NoC Form and establishing a LEO on their websites  
3 in February of 2016?

4 A I was aware that that was on the -- was in  
5 existence since February of 2016. Yes.

6 Q Okay. And turning to confidential -- I'm sorry,  
7 it's not confidential. Turning to Exhibit 5 of  
8 your prefiled rebuttal. I'm sorry I don't have  
9 Exhibit 5.

10 A I don't either.

11 Q I apologize it is exhibit -- oh, it is  
12 Confidential Exhibit 5 of your prefiled rebuttal,  
13 based on what I have.

14 A And which exhibit is that? I'm just trying to --

15 Q It's -- it's an invitation.

16 A Okay.

17 Q And will you agree with me that this is an  
18 invitation sent to Ms. Bowman on June 22nd, 2017?

19 A I believe it is. Yes. I'm trying to find it. I  
20 apologize.

21 Q Take your time.

22 A And this is in my --

23 Q Rebuttal, prefiled rebuttal.

24 A That's why I don't find it, I'm looking at my

1 other testimony. Okay. And which exhibit was  
2 it? Five?

3 Q Yes.

4 A Yes, I see it.

5 Q And you will agree with me that this is an  
6 invitation to Kendal Bowman?

7 A Yes, it's an invitation to celebrate a hundred  
8 years of service of the Narrows facility.

9 Q And Ms. Bowman is a vice president at Duke  
10 Energy; is that correct?

11 A Yes, that's my understanding.

12 Q And this invitation, I think we said this, June  
13 22, 2017. The party is for July 20th, 2017; is  
14 that correct?

15 A That is correct.

16 Q And then up at the top, and it's very small  
17 print, will you agree with me that it says *Cube*  
18 *Hydro Partners, which owns and operates the*  
19 *Yadkin Project hydropower plants near Badin,*  
20 *would like to invite you to a special*  
21 *celebration?*

22 A Yes, I see that language.

23 Q And that date is after the February 1st, 2017  
24 date that the purchase of the assets closed?

1 A Yes, it is.

2 Q So you were at that time the owners and operators  
3 of those facilities?

4 A Yes, we were.

5 MS. FENTRESS: I have nothing further.

6 COMMISSIONER CLODFELTER: My space bar is  
7 not working and my cursor disappeared.

8 Mr. Harris, do you have redirect?

9 MR. HARRIS: Yes, I do have a few questions,  
10 Commissioner Clodfelter.

11 REDIRECT EXAMINATION BY MR. HARRIS:

12 Q Mr. Collins, can we go back to that email? I  
13 believe it's Exhibit 6 to your rebuttal  
14 testimony, please.

15 A Yes.

16 Q Well, let me make sure I have the right one. It  
17 may be Exhibit 4. Yes, it's Exhibit 4 to your  
18 rebuttal testimony.

19 A Yes.

20 Q Are you there?

21 A I am.

22 Q Can you read for me the last line from that  
23 email?

24 A It says *they did not think we needed to pursue*

1           *independently unless necessary.*

2       Q     And that was the pursuit of the CPCN?

3       A     I believe it is the, you know, an Order by the  
4           Commission granting an effective CPCN. I believe  
5           that's what the sentence is referring to.

6       Q     And the sentence says there's no reason to -- we  
7           do not -- they did not think it was needed to  
8           pursue independently unless necessary; right?

9       A     That is exactly what it says.

10      Q     So, at any time did -- at any time during the  
11           negotiations did Duke raise the requirement of  
12           having a CPCN?

13      A     No, they did not.

14      Q     When was the first time that you heard that Duke  
15           would require both the NoC Form and the CPCN?

16      A     Not until after we filed our complaint with the  
17           Commission, our initial complaint with the  
18           Commission.

19      Q     Okay. So, I think Ms. Fentress was discussing  
20           the FERC forms, the FERC forms. But are the FERC  
21           Form 556s -- you know, are all of the regulatory  
22           approvals that you may need, you may need to  
23           purchase a facility, et cetera, are those  
24           required prior to establishing a LEO?

1 A No, to my knowledge they're not required.

2 Q After submitting your prefiled testimony and your  
3 testimony here today, do you want to change the  
4 date that Cube believes a LEO was established  
5 with respect to the three facilities on the  
6 Yadkin?

7 A Yeah, I believe the date that they established  
8 the LEO for the three facilities is October 11th,  
9 2016.

10 Q And let me look at one exhibit, I believe it's --  
11 I'm not certain that we --

12 If you would indulge me,  
13 Commissioner Clodfelter, I want to take a look at  
14 one exhibit, and I may have a question or two or  
15 maybe not.

16 COMMISSIONER CLODFELTER: That's fine.

17 BY MR. HARRIS:

18 Q Mr. Collins, can you turn to what's been labeled  
19 as Duke Attachment 8?

20 MR. HARRIS: And, Kendrick, I don't know  
21 what exhibit number that was. I think it's either six  
22 or seven.

23 COMMISSIONER CLODFELTER: I believe that if  
24 it's number 8 on the exhibit list it was marked as

1 Exhibit 7, cross examination.

2 MR. HARRIS: Exhibit 7. Thank you,  
3 Commissioner Clodfelter.

4 THE WITNESS: I have it, yes. I believe  
5 it's --

6 BY MR. HARRIS:

7 Q And can you turn to the first official page which  
8 is page 6 of the form?

9 A Yes, I can. I am there.

10 Q Can you look at box 11 (1L), please?

11 A Yes, I see box 1L.

12 Q And what box is checked there?

13 A Change to a previously certified facility to be  
14 effective on, and then it says 2/1/17.

15 Q So the only change to this form was just the  
16 change from Alcoa to Cube Yadkin, right?

17 A That is correct. It does not change that the  
18 facility is still a qualifying facility, it's  
19 just notifying of an ownership change.

20 Q Okay. Thank you.

21 MR. HARRIS: I think that's all I have with  
22 respect to redirect, Commissioner Clodfelter.

23 COMMISSIONER CLODFELTER: Let's see if we  
24 have Commissioners who have questions and we'll begin

1 with Commissioner Brown-Bland.

2 COMMISSIONER BROWN-BLAND: Yes, Commissioner  
3 Clodfelter, I have a couple.

4 EXAMINATION BY COMMISSIONER BROWN-BLAND:

5 Q Mr. Collins, good morning. And my first question  
6 has to do with -- I think I'm going from your  
7 direct testimony, but there around page 9  
8 according to my notes, let's see, you had the  
9 statement that -- let me find it. It may not be  
10 exactly on page 9, but you have the statement in  
11 your testimony that following up of June 2016,  
12 following up after that, that Alcoa was aware and  
13 involved in and approved of the discussions with  
14 Duke. How was Alcoa involved in it and --

15 A We had had verbal conversations with Alcoa  
16 regarding this and they had been supporting our  
17 efforts all along.

18 Q Well, I mean, and so that was between you --  
19 between Cube and Alcoa so was there any other  
20 participation that, when you referenced Alcoa was  
21 involved in, that you are referencing by that  
22 phrase "that they were involved in" that they do  
23 more than discuss with you, or were they more  
24 actively involved?



1 A Well, they were absolutely actively involved  
2 because they at our request following Michael  
3 Keen's letter in September 21st, 2016, they filed  
4 the Form 556 to certify the three facilities,  
5 self-certify the three facilities as QFs, so they  
6 were an active participant. You know, as part of  
7 an ongoing purchase agreement and trying to get  
8 to closing, you're actively participating on many  
9 fronts. And, you know, we didn't -- it's a -- we  
10 were actively discussing all activities with  
11 Alcoa during this time.

12 Q And beginning at the top of your page 9 in your  
13 direct you talk about March 2016 you began to  
14 conduct meetings -- Cube began to conduct  
15 meetings with Duke and that those meetings  
16 involved the folks listed there who were folks  
17 from Cube Hydro and then folks from Duke. Did  
18 any Alcoa people participate back --

19 A They did not participate at that time, no.

20 Q And to your knowledge did any people associated  
21 with Alcoa have discussions with Duke about  
22 what Cube was trying to do?

23 A No. Because at that time they assumed that we  
24 were to get the incoming owners of the projects

1 and they did not need to be involved in those  
2 discussions.

3 Q So what's your position and testimony regarding  
4 how it was that Duke was aware that Cube was  
5 authorized to negotiate at this point in time?

6 A Well, the simple answer to that is that Duke  
7 never asked us. We didn't think it was an issue.  
8 They never asked us for any support of that. The  
9 issue never came up. So, if they had asked us,  
10 we would have worked with Alcoa to get them the  
11 appropriate documentation they were looking for.

12 Q Okay. And then on -- you indicate on August the  
13 26th, I believe, that you had informed Duke that  
14 you, that Cube desired to enter into a long-term  
15 PPA. How was that communicated at that time  
16 and how did you inform --

17 A I believe at that -- I'm looking at my testimony.  
18 I'm trying to find where that is in my testimony.  
19 I had to -- basically, there were telephone  
20 exchanges with Mr. Keen and then there were  
21 emails between August 26th and September 6th,  
22 2016.

23 Q So, I'm looking at page 10 of your prefiled  
24 direct, lines 3 to 5. So you said, *after being*

1           referred to a Matt Palasek, or Palasek, and  
2           finally to Michael Keen, I, meaning you, informed  
3           them on August 26th that Cube Hydro desired to  
4           enter into a long-term PPA.

5   A       Correct.

6   Q       Was that just in a verbal discussion with -- and  
7           who did you direct that information to?

8   A       It was a verbal discussion with Michael Keen.

9   Q       And Michael Keen alone at that point, not the  
10          Matt?

11   A       No, not Matt. Matt just -- Matt referred me to  
12          Michael Keen as the point of contact for our  
13          discussions.

14   Q       And then on page 10, there -- let me see. Let me  
15          find it. So, just for my clarification, on  
16          line -- this paragraph that starts on line 6,  
17          page 10 --

18   A       And this is my --

19   Q       Prefiled direct.

20   A       Prefiled direct. I'm sorry. I'm looking at my  
21          rebuttal. I'm sorry.

22   Q       It says *on or about September 16th, I contacted*  
23          *Michael Keen to further discuss Duke's*  
24          *purchasing, and by responsive letter from Michael*

1 Keen dated September 21st. So it goes on to  
2 discuss things from that letter. And then at the  
3 end of the paragraph, starting on line 14, you  
4 say *in his September 16 letter*. Is that -- the  
5 16th letter was your letter to him, correct? Did  
6 you mean his September 23rd -- 21st letter?

7 A That probably should be -- it should be a  
8 September 21st letter.

9 Q Twenty-first. And so my question here is if at  
10 this point in time Duke had indicated that it  
11 could not go further with Cube in terms of  
12 entering a PPA or negotiating a PPA because Cube  
13 was not the owner, what -- if that had been  
14 indicated to you at that point in time in  
15 September of 2016, was there anything, in  
16 accordance with the purchase agreement and what  
17 was happening between Cube and Alcoa, was there  
18 anything that Cube could have done to have  
19 changed the ownership status?

20 A We probably could not have changed the ownership  
21 status at that time, but we could have brought  
22 the Alcoa direct and, you know, to the table to  
23 have more discussions. So, if that had been an  
24 issue raised, we would have worked with Alcoa and

1 Alcoa would have been more than willing to work  
2 with us to continue to pursue discussions on a  
3 PPA, but that was never raised by Duke at any  
4 point in time.

5 Q And that kind of led to the question that I had  
6 so, which was why Alcoa had not been involved or  
7 did not attempt to assist in entering the PPA?

8 A Correct, because it was never raised as an issue.

9 Q Okay. But it was Alcoa -- I think you already  
10 cleared up something that I had an earlier  
11 question about. It was Alcoa that made the  
12 self-certification with FERC before the ownership  
13 changed, correct?

14 A That is correct. But I want to make sure  
15 everybody understands that you're self-certifying  
16 facilities as QFs. So that means that High Rock,  
17 Tuckertown and Falls are then established as QF  
18 facilities. The owner or the operator is never a  
19 QF. They're just the owner or operator. And the  
20 556, in that form just says those facilities are  
21 QFs, which is a requirement under PURPA. It's  
22 not the requirement that the owner as the  
23 operator is a QF, it's the facility itself.

24 Q And I think when you have discussed the NoC, the

1 Notice of Commitment, you had made a distinction  
2 between the use of the word there "seller" and  
3 "owner", and you believe that is important?

4 A I absolutely do believe it's important. If the  
5 form wanted or if the Commission had wanted to  
6 know the owner there, then they would have asked  
7 for the owner separately than the seller. In  
8 this case, Cube Yadkin Generation was going to be  
9 the seller and we had -- we could move forward  
10 with committing the facilities.

11 Q And --

12 A We could not --

13 Q Go ahead.

14 A We could not, you know, complete the NoC Form  
15 because the way it's designed, but we were -- you  
16 know, the only two sections we could complete  
17 would have been sections 1 and 2, which Duke was  
18 already well aware of those matters.

19 Q And so in your testimony you indicated that Cube  
20 lacked the market access, you know, the  
21 sufficient market access that would have allowed  
22 Duke to take advantage of the -- in other words,  
23 Cube lacked the market access to the wholesale  
24 markets that might have allowed Duke to be exempt

1 from the requirement to purchase from the QF.

2 Could you explain what you -- why you say you  
3 lacked --

4 A Well, because we did not have firm, long-term,  
5 committed transmission into any of the markets  
6 that was being referenced in the  
7 cross-examination this morning - MISO, SOCO. You  
8 know, we were just interconnected directly into  
9 the Duke Carolinas and the Duke Progress systems  
10 through an Interconnection Agreement with Cube  
11 Yadkin Transmission.

12 Q So that remained an open question. If Duke had  
13 sought an exemption that would have been at least  
14 an upper question that would have had to have  
15 been addressed. Is that your position that you  
16 did not -- the fact that Cube did not have  
17 long -- or have firm transmission?

18 A That would have been one of our responses. But I  
19 think it's curious that Duke never pursued such  
20 an assumption. So I think that's curious by  
21 itself.

22 Q One more. If Duke early on, say before the end  
23 of 2016, had negotiated the PPA and got ready to  
24 present the PPA to Cube, who would have been the

1 parties to the agreement?

2 A We would have assumed that Cube Yadkin Generation  
3 or either the individual facilities would have  
4 been the party to the agreement. However, we  
5 also would have looked to negotiate an assignment  
6 clause to that agreement in case the deal didn't  
7 close so then Alcoa would have then taken that  
8 contract.

9 Q And so you believe -- it's your position Cube  
10 would have executed that agreement and it would  
11 have been a valid agreement?

12 A It would have been. And if we had had to close  
13 that transaction prior to our ownership, we would  
14 have ensured that Alcoa would have been either --  
15 been a co-signatory to the agreement or would  
16 have agreed to an assignment to that agreement in  
17 case we hadn't closed. And it's our firm belief  
18 that Alcoa, who was cooperating with us, would  
19 love to have those contracts, those PPAs under --  
20 those QFs under PPA contracts. Because in case  
21 that we didn't close the transaction, it would  
22 have reduced the revenue risk to them and made a  
23 future sale of those facilities much easier for  
24 them.



1           COMMISSIONER BROWN-BLAND: All right. I  
2 think that's all the questions I have at this time.  
3 Thank you.

4           COMMISSIONER CLODFELTER: Thank you,  
5 Commissioner. Commissioner Gray?

6           COMMISSIONER GRAY: No questions at this  
7 time. Thank you.

8           COMMISSIONER CLODFELTER: All right. Thank  
9 you. Commissioner Duffley?

10          COMMISSIONER DUFFLEY: Yes, I have a few  
11 questions.

12 EXAMINATION BY COMMISSIONER DUFFLEY:

13 Q       So if Cube had pursued a CPCN, would Cube have  
14 had to be the owner of the facilities to obtain  
15 that CPCN?

16 A       I'm not a lawyer so I can't answer that question.  
17 But according -- I do not believe they would have  
18 had to have been, but I can't answer that  
19 question.

20 Q       And then on cross examination you responded to  
21 Ms. Fentress' question about when you were  
22 deciding whether to obtain a CPCN or not, your  
23 answer was something along the lines of, well, if  
24 we had obtained -- if we had sought to obtain a

1 CPCN, then we would not have been able to  
2 establish the LEO in October of 2016. Is that an  
3 accurate reflection of what you testified to?

4 A It is, and I believe it's supported by the NoC  
5 Form itself, which I believe is the Item 5 of the  
6 NoC Form itself states that.

7 Q Okay. But what did you mean by if you had  
8 pursued it, the CPCN? When do you think you  
9 would have received the LEO if you had been  
10 required to obtain a CPCN?

11 A Well, I don't know. I don't know what the  
12 Commission's timeframe is for approving such  
13 applications. But the NoC Form itself, if  
14 you had completed it, would say that the LEO date  
15 is the later of when you would have filed the NoC  
16 Form or when you would have received the CPCN.  
17 And again, our position is these facilities  
18 predate any requirement for a CPCN and,  
19 therefore, are not required to have a CPCN.

20 Q Thank you. If we could go to your direct  
21 testimony.

22 A Sure.

23 Q So on page 8 you're discussing the Yadkin  
24 transmission system. Who owns and operates that

1 system?

2 A It is owned and operated today by Cube Yadkin  
3 Transmission.

4 Q And how much transmission is owned?

5 A Well, the system probably has the ability to  
6 transmit above 300 megawatts of power through the  
7 system.

8 Q And are there other generators interconnected to  
9 this system other than the four hydro facilities?

10 A No, but it is an open access transmission system  
11 so anybody could apply for transmission access.  
12 But to date the only transmission interconnection  
13 agreement with the system is between Cube Yadkin  
14 Generation, and used to be Alcoa Generation and  
15 Alcoa Transmission, but Cube Yadkin Generation  
16 and Cube Yadkin Transmission.

17 Q And then on page -- if you could turn to page 9,  
18 lines 12 through 14.

19 A I'm sorry, my pages are out of order. They got  
20 mixed up. I'm sorry. I'm trying to get it. I'm  
21 sure this is the --

22 Q You probably don't need it.

23 A I have it. I have it.

24 Q Okay. Wonderful. You state *Duke noted* -- let's

1           see -- that it wanted to have discussions  
2           concerning potential offtakes and buying power  
3           from the Cube QFs, as well as seeking an  
4           understanding of how Cube would control and own  
5           the Cube QFs. Could you more fully explain what  
6           you mean when you say potential offtakes and  
7           buying power?

8       A     Well, I think I mean -- I believe I mean entering  
9           into Power Purchase Agreements for the output of  
10          the facilities.

11       Q     With Duke or with other buyers?

12       A     Well, in this case it was directly with Duke.  
13          Our -- you know, we were pursuing conversations  
14          to have long-term PPAs with Duke Carolinas or  
15          Duke Progress.

16       Q     And were you pursuing with any other potential  
17          buyer?

18       A     We had no real conversations with anybody else at  
19          that point in time. Now, if opportunities had of  
20          came up we may have considered it, but there was  
21          no opportunities being seriously considered at  
22          that time.

23       Q     Thank you. And Ms. Fentress asked you about  
24          Alcoa and who Alcoa sold their output to, and as

1 I understand your testimony you stated that the  
2 only output sales that you are aware of were  
3 those with Duke, DEP, I assume.

4 A I believe what I said was I'm not aware of  
5 specific sales to other parties. I am aware that  
6 they did sell to DEC and DEP.

7 Q Okay. Thank you. So there have been arguments  
8 that if the Commission were to allow a waiver of  
9 the NoC Form for Cube that the purpose of the  
10 form would be eroded, and I'd like to hear your  
11 response to that argument please.

12 A I'm actually in violent disagreement with that  
13 statement. The form -- there are very few  
14 facilities that are QFs that predate 1965 when  
15 the CPCN requirement went in place that would  
16 ever fall under that form or the requirement for  
17 a CPCN, so to me that's just a wild goose chase.  
18 And, you know, it -- so I think the form should  
19 be redesigned to address facilities that predate  
20 the form. You know, if you get it correctly,  
21 Section 3 of the form would have an other  
22 category that said no CPCN required because you  
23 predate the requirement and then you would have  
24 adjusted the other sections 4 and 5 so that your

1 LEO date would have been established as the date  
2 you submitted the NoC Form. But since the NoC  
3 Form did not do that there is no way we could  
4 fill out the NoC Form and then just contradict  
5 the date we established a LEO on October 11th,  
6 2016.

7 Q Thank you. So if you could turn to your, it was  
8 the Confidential Exhibit Number 5.

9 A In my -- which testimony? I'm sorry.

10 Q In your direct testimony.

11 A Okay. I think I have it. Is that the letter  
12 dated October 14?

13 Q It is from you to Regis and you copied Kristina.  
14 So it's your direct testimony.

15 A I do not have that one in front of me for some  
16 reason.

17 Q You probably don't need it.

18 A Okay.

19 Q In this letter you state that given that all four  
20 plants are operated as a system, so including the  
21 Narrows facility, there may be interest by Duke  
22 and PPAs covering all four plants. And we've  
23 heard you testify that you were in discussions  
24 with Duke about long-term contracts for all four

1 plants as well as potential QF-type PURPA  
2 contracts. So I just want to dig down into that.

3 Are you suggesting that there may  
4 be operational, economic, and/or efficiency  
5 benefits in a PPA that covers all four  
6 facilities? And what are those benefits both for  
7 Cube and would there be different or similar  
8 benefits for Duke?

9 A Yeah, I believe actually the real operational  
10 benefits to that, they would be on both sides,  
11 but primarily they accrue mostly to Duke and  
12 Duke's system, and here's why: The three QFs, if  
13 you look at the system, they start upriver with  
14 High Rock, Tuckertown, Narrows which is the  
15 largest facility, and then Falls. And then the  
16 Falls facility, the water leaves the Falls  
17 facility, goes into the Tillery and Blewett  
18 facilities owned by Duke, so they use the same  
19 water. And today there is no dispatch  
20 coordination amongst that system.

21 But the real benefits come from  
22 the fact that both the High Rock and the Narrows  
23 reservoirs hold significant water and that water  
24 can be ponded. So, if you take a look at High

1           Rock, the High Rock reservoir above the facility  
2           can pond enough water to basically produce 185  
3           megawatts for 182 hours with no new water coming  
4           into the system. Now that water obviously flows  
5           through Tuckertown and then flows through to the  
6           Narrows facility. The Narrows facility has a  
7           reservoir that can have -- can house up to about  
8           82 hours of capacity with no new water coming in  
9           it and at 185 megawatts, which is somewhat -- the  
10          system can produce more than that but on average  
11          when you have the -- you know -- that's a good  
12          number to use.

13                         So, by having all four facilities  
14          you can coordinate the reservoirs so that you are  
15          maximizing the economic benefit of the system,  
16          and that economic benefit accrues to Duke in a  
17          couple of ways. Number one, it allows them  
18          better to coordinate the water that goes through  
19          their Tillery and Blewett systems; number two, we  
20          were willing to discuss having dispatch rights to  
21          the whole system. So that would then be --  
22          enable Duke to use the system as a big battery, a  
23          big battery that doesn't require electricity to  
24          recharge overnight, has water there, and it



1 does -- and it's clean. It's reclean, green  
2 energy. There's no recycling of batteries that  
3 have to occur or anything like that.

4 So there is -- and that would then  
5 help Duke as you continue to put more  
6 intermittent resources on the Duke system, such  
7 as solar, you know there's a lot of solar coming  
8 on the system today, that the ability to pond  
9 that water and use it when those intermittent  
10 resources are not producing where they think is  
11 extremely beneficial to the Duke system. And  
12 that's why we believe, and we believed at the  
13 time, that if you had gotten to a deal for all  
14 four it would be in the best interest. Now, if  
15 you only do three, you still get the ability for  
16 the High Rock reservoir but you can't maximize it  
17 the way you can if you had all four facilities.

18 Q And so I think you anticipated my next question.  
19 Are there any negative impacts or consequences in  
20 having three facilities under a PURPA PPA and the  
21 Narrows facility --

22 A I don't think they're negative. They're not  
23 negative but you don't get the full benefits.  
24 Right. They're not negatives. You know, the

1 dispatch rights have to be a little bit  
2 different, right, and those things like that you  
3 would have to negotiate. But willing parties can  
4 come to the table and figure out how to make that  
5 work.

6 Q Okay. Can you give an example to the Commission  
7 where the Company did not own the facility but  
8 was able to establish a LEO?

9 A I cannot. I have not researched that so I cannot  
10 give an example.

11 Q And could you explain and --

12 A But I will posit a situation. You know, you have  
13 a lot of new solar developers in North Carolina  
14 coming in. And in a lot of cases those solar  
15 developers do not own the land that they plan on  
16 developing on and so they file for a CPCN, and if  
17 they're small and then a NoC, you know. But --  
18 so they don't actually own the land. So  
19 technically the land for a solar developer is  
20 their facility. They may not have in inventory  
21 yet the solar facility. So technically they may  
22 have an option to buy them. So technically they  
23 potentially could get the LEO without having to  
24 own the land because they haven't exercised their

1 option on that land yet.

2 Q Thank you. And the attorneys, I don't know if  
3 this is confidential or non-confidential  
4 information.

5 But could you describe a bit what  
6 are the differences between - you've discussed a  
7 PURPA PPA and a non-PURPA PPA - what are the  
8 differences between those two types of contracts?

9 A Well I -- you know, I think Duke probably has a  
10 more standard PURPA PPA. But the reason I'm  
11 meaning it was just that a non-PURPA PA (sic) was  
12 going to include a -- it included all four  
13 facilities and, therefore, it cannot be a PURPA  
14 PPA because Narrows would have been in it. So  
15 that's the real difference I was talking about.  
16 You know, you will have some differences in terms  
17 like how the dispatch rights and those type of  
18 things but that's the real difference.

19 Q Right. But the real difference that you meant  
20 within your testimony?

21 A It's basically the addition of the Narrows  
22 facility.

23 Q Thank you. And then if we could turn to your  
24 rebuttal testimony.

1 A Okay. Missing pages there, too.

2 Q And if you could turn to page 15.

3 A That's the page I don't have. Okay.

4 Q I don't think you need it.

5 A Okay.

6 Q So on page 15 of your rebuttal testimony you  
7 stated that Cube was contractually entitled to  
8 acquire the facilities once all necessary FERC  
9 approvals were obtained. And so, I'm just  
10 attempting to understand your meaning of  
11 "entitled". Did you mean that Alcoa could not  
12 back out of the deal? And that -- also what  
13 about Cube? Were there provisions in the  
14 purchase agreement that would have allowed Cube  
15 to not purchase from Alcoa once the FERC  
16 approvals occurred?

17 A The only thing that I recall -- because it was  
18 pretty much an obligation to purchase the only  
19 reason I recall in that agreement is that if  
20 there had been a material adverse effect, in  
21 other -- some material thing that would have  
22 happened to those Yadkin facilities prior to us  
23 closing. Now, those facilities have been  
24 operating more than a hundred years, you know,

1 and there's never been a material adverse effect  
2 that happened to them. So to me that is a  
3 standard purchase agreement term that is very  
4 rarely used unless there's a -- you know, let's  
5 say there was an earthquake and the whole system  
6 got damaged, that's where you would walk away.  
7 But, you know, once we had -- absent that, once  
8 we had the final, and I'll use the word  
9 perfunctory regulatory approvals we had an  
10 obligation to close.

11 Q Okay. And then if you could turn to your  
12 Confidential Exhibit Number 6, rebuttal.

13 A Exhibit six. Okay. I'm getting there. Sorry.

14 Q I need to get there as well. And it's on page 52  
15 of the pdf.

16 A Again, I don't have page numbers.

17 Q Well, I'll just read it to you.

18 A Okay.

19 Q So on -- it's a slide entitled "Public Utility  
20 Company Power Purchases from Qualified  
21 Facilities" and it states -- can you just explain  
22 these two terms to me, these two bullet points?  
23 It says *QFs in service before 1979 paid utility's*  
24 *avoided cost of energy, and QFs not in service*

1           *before 1979 paid utility's avoided cost of*  
2           *energy, capacity.* Can you explain those two  
3           statements?

4       A     Again I lost the last one. The last one was  
5           before 1979 and they get energy and capacity?

6       Q     Right. It says if the QF is in service before  
7           '79 they paid utility's avoided cost of energy.  
8           And then it says for QFs not in service before  
9           '79 paid utility's avoided cost of energy -- it  
10          doesn't have the word "capacity", but it has  
11          comma capacity. So what do those two bullet  
12          points mean?

13      A     I really cannot comment on those two bullet  
14          points because they came from Alcoa and I have  
15          not studied that, so I cannot comment on those.

16      Q     Okay. And then if you could -- you probably are  
17          going to have to find this slide. It's page 54  
18          of the pdf and it's a graph that's showing the  
19          Duke Energy avoided cost of energy rates paid to  
20          QFs. And then it says smaller than 5 megawatts  
21          and higher than forecast Yadkin Market Prices for  
22          2 years, 5 years, 10 years. Do you see that  
23          slide?

24      A     I need to find it. I'm having a hard time. I

1 don't have that exact --

2 MR. SNOWDEN: If I may, is this the page  
3 that's Bates numbered Duke002226?

4 COMMISSIONER DUFFLEY: Correct.

5 MR. SNOWDEN: So that may help you to find  
6 it.

7 THE WITNESS: I don't think so, but that's  
8 okay. And this is in my rebuttal testimony, correct?

9 COMMISSIONER DUFFLEY: Correct.

10 THE WITNESS: It would be helpful if  
11 somebody could email that to me.

12 COMMISSIONER DUFFLEY: I take it you're on  
13 it, Mr. Snowden.

14 MR. SNOWDEN: I am.

15 THE WITNESS: Okay. I apologize. I have  
16 it. So what page is that? I'm sorry.

17 BY COMMISSIONER DUFFLEY:

18 Q Page 54 of the pdf or it's the Bates stamp number  
19 002226.

20 A I see it. I believe it's a chart that has four  
21 lines across and it has a line, dotted line going  
22 up to the right.

23 Q Correct.

24 A And it says *Duke Energy Avoided Cost of Energy*

1           *Rates Paid to QFs smaller than 5 MW are Higher.*

2           Okay. Yes. Okay.

3       Q       So the rates that are reflected in this chart,  
4           are these energy-only rates or are they energy  
5           and capacity?

6       A       To be perfectly honest, Commissioner, I do not  
7           recall. This was a deck that was prepared by  
8           Alcoa as part of their sales process, so I don't  
9           recall exactly what comprises these rates?

10           COMMISSIONER DUFFLEY: I have nothing  
11       further. Thank you, Mr. Collins.

12           THE WITNESS: Thank you, Commissioner.

13           COMMISSIONER CLODFELTER: Commissioner  
14       Hughes.

15           COMMISSIONER HUGHES: No questions at this  
16       time.

17           COMMISSIONER CLODFELTER: Commissioner  
18       McKissick, anything from you?

19           COMMISSIONER McKISSICK: Just a few  
20       questions.

21       EXAMINATION BY COMMISSIONER McKISSICK:

22       Q       Mr. Collins, when did you first become aware of  
23           the existence of a Notice of Commitment Form that  
24           was required here in the State of North Carolina?



1 A I don't recall the exact date, Commissioner, but  
2 I would say late summer, you know, of 2016.

3 Q 2016, okay.

4 A Yes.

5 Q And at that point in time you were aware of it  
6 but you did not believe it was necessarily  
7 required because of the fact that the facilities  
8 here were predated what was determined to be the  
9 type of facilities that wouldn't require the  
10 filing of a -- the Notice of Commitment Form?

11 A Well, I think that that's one of the reasons. I  
12 think another reason is it would have prejudiced  
13 our LEO date because of the way the form is  
14 designed as I've already spoken to.

15 Q I see. At what point in time did you either seek  
16 some clarity or tried to determine whether your  
17 assessment as to whether it needed to be filed or  
18 not -- at one point you kind of seek some clarity  
19 at whether you need it to comply? I mean, I'm  
20 just curious. I mean, I can understand the date  
21 issue, but at some point did you think that you  
22 might have needed to seek a waiver earlier or  
23 feel like you needed to get clarity as to whether  
24 it was relevant to this particular transaction?

1 A Well, we didn't think that we needed to do that.  
2 We thought that our position was pretty clear,  
3 that the NoC did not apply. And maybe if we were  
4 to have sought clarity of the NoC and which would  
5 technically require a CPCN, that that -- that we  
6 would not have established a LEO until after we  
7 got such an answer and that answer would have  
8 been probably -- we expected would have been  
9 later than October 11th, 2016.

10 Q Okay. And, of course, I've heard you refer to  
11 that October 11th on several occasions. And  
12 that's the undated letter that you sent to  
13 Michael Keen; is that correct?

14 A It is undated but it was accompanied with an  
15 email dated October 11th, 2016.

16 Q Okay. And what language per se in that letter  
17 that you can point to specifically that in your  
18 mind creates a legally enforceable obligation at  
19 that time?

20 A So, number one, I would say the second paragraph  
21 establishes who the seller is, the information of  
22 the seller, and that the letter itself gives the  
23 contact information for the seller, which is Cube  
24 Hydro and me, and it also provides the details of

1 the QFs, who the QFs are. The second, the third  
2 paragraph notes that Duke must purchase the  
3 output from the QFs. And this, in our view, is  
4 an unmistakable commitment of a facility output  
5 selling the facility output to Duke by the seller  
6 and the incoming owner of the facilities. And in  
7 our view also, this is particularly clear in  
8 light of the context of the correspondence,  
9 previous correspondence by Mr. Keen, and this  
10 being a response to Mr. Keen's assertion that  
11 Duke had no such obligation.

12 Q Okay. And, of course, in response to that  
13 letter, I believe Mr. Keen sent you a letter  
14 dated October 14th of '16; is that correct?

15 A That is correct.

16 Q And did they express their thoughts  
17 and contentions as to whether you even owned the  
18 facilities at this time and likewise whether they  
19 would be exempt under PURPA?

20 A Well, they did say we do not own them nor is it a  
21 qualifying facility. Well, let's dissect those  
22 two statements. Nowhere does it say anywhere  
23 that you would -- the NoC Form that you actually  
24 have to own the facility. It says who the seller

1 is. Number two, the statement is is a qualifying  
2 facility with respect to the Yadkin system is  
3 just a incorrect statement. The facilities are  
4 QFs. The owner and operator are not QFs. So  
5 High Rock, Tuckertown, and Falls had established  
6 QF status as of September 28th, 2016. So that's  
7 just an incorrect statement.

8 Q Well, once those assertions were made and  
9 communicated, at any point in time did Cube  
10 contemplate working with Alcoa to somehow  
11 overcome these perceived obstacles as you move  
12 forward by submitting some documentation that  
13 they might perhaps sign on as the true owner at  
14 this time in which it's stated and contemplated  
15 that any rights that might have existed to owner  
16 would be transferred to you as the sale was  
17 consummated?

18 A We did not. Again, we didn't think that we had  
19 to. We thought that the -- you know, we were in  
20 the position to negotiate. And if Duke had  
21 specifically raised that issue with us, that they  
22 wanted more proof from Alcoa, we would have  
23 worked with Alcoa and gotten that for them.

24 Q Okay. And when you closed on February 1st of the

1 next year, I mean, at some point in time did it  
2 occur to you that you needed to go back and kind  
3 of work through these issues now that you were  
4 the owner to overcome any obstacles that were  
5 identified as challenges that might be presented  
6 to you in terms of moving forward with an  
7 establishment of a PPA?

8 A No. Again, you know, we didn't think the NoC  
9 Form applied. We didn't think that you had to be  
10 an owner. You just had to be a seller. And  
11 there was no requirement for these facilities  
12 ever to have a CPCN. So we didn't think that was  
13 an avenue that we had to proceed down.

14 Q I see. Thank you.

15 COMMISSIONER McKISSICK: I don't have any  
16 further questions at this time.

17 THE WITNESS: Thank you, Commissioner.

18 COMMISSIONER CLODFELTER: Mr. Collins, my  
19 colleagues have asked most all of the questions that I  
20 would have asked you, but I've got just a couple to  
21 clean up.

22 EXAMINATION BY COMMISSIONER CLODFELTER:

23 Q With respect to the line of questions from  
24 Commissioner Brown-Bland relating to Alcoa, I

1 just want to ask this question. Was there  
2 anything in the purchase agreement between Cube  
3 and Alcoa that specifically addressed Cube's  
4 authority to negotiate offtake agreements during  
5 the period prior to closing? Did the purchase  
6 agreements say anything about the subject at all?

7 A No, it did not specifically address that matter.

8 Q Okay. Thank you. I think you answered in  
9 response to Commissioner Duffley's question that  
10 Cube had become aware of the NoC Form sometime in  
11 summer of 2016. The question I want to ask you  
12 is this, did Cube Yadkin give any consideration  
13 at that time to consulting with the Public Staff  
14 about the issues it had with the form?

15 A We did not because we consulted with the Public  
16 Staff related to the CPCN requirement and since  
17 the CPCN requirement we -- you know, they did not  
18 need to have it. Right. The NoC Form requires  
19 you to have it to establish a LEO date. So we  
20 did not specifically address that with the Public  
21 Staff at that time.

22 Q And in the consultations with the Public Staff  
23 about the CPCN issue the NoC Form never came up?

24 A It did not to my knowledge.

1 Q Well, I have to ask you one final question and  
2 it's kind of sort of the obvious question. Did  
3 Cube Yadkin ever give any consideration to  
4 filling out the NoC Form and when you got to the  
5 third item simply write "not applicable period"  
6 and then sending it to Duke?

7 A You know, we actually did give some consideration  
8 to that, but Duke's stance all along would be  
9 that they would not accept an incomplete NoC Form  
10 and that would have been an incomplete NoC Form.  
11 So to us, you know, we were in a catch 22. We  
12 were damned if you do and damned if you don't.  
13 And so we took the path that we thought was the  
14 right way to go.

15 Q This -- you referenced the stance Duke took all  
16 along was that they would not accept an  
17 incomplete NoC Form. Where do I find that in  
18 writing? Is that --

19 A Well I --

20 Q -- done somewhere?

21 A I do not -- I can't specifically point to it now,  
22 but I think we can go through and see. But I  
23 think there's stuff somewhere that basically says  
24 that you had to have the NoC Form. And I think

1 even the exhibits they put in on their website  
2 that you have to submit a NoC Form, right, so I  
3 guess that was probably more our view at the time  
4 than a specific requirement. But that said, we  
5 could not then certify the four, five or six  
6 because if we don't, N/A, okay what's the date of  
7 the LEO. You can't complete the form.

8 Q Did Mr. Keen or anyone else at Duke ever tell you  
9 that Duke would not be accept an incomplete or a  
10 non-complying NoC Form?

11 A They did not directly and -- but I'd also say  
12 they never let us know that we needed to file a  
13 NoC Form.

14 Q Okay. Thank you, Mr. Collins. I appreciate your  
15 answering my questions.

16 COMMISSIONER CLODFELTER: And that's all I  
17 have. So we'll go back and see if there are questions  
18 on Commission's questions. And I'm going to ask  
19 Ms. Fentress and Mr. Harris, we're about noon, if we  
20 think we can wrap up here by 12:30 we'll push on to  
21 12:30, unless Kim Mitchell tells me she can't do it.

22 MR. HARRIS: This is Phillip Harris. I see  
23 no issue why we can't be out of here by 12:30.

24 COMMISSIONER CLODFELTER: Okay.



1 Ms. Fentress, work for you?

2 MS. FENTRESS: It does. Thank you.

3 COMMISSIONER CLODFELTER: And Kim Mitchell,  
4 you're the most important person.

5 COURT REPORTER: I'm fine with that.

6 COMMISSIONER CLODFELTER: That's great.

7 Then let's go back to questions on Commission  
8 questions.

9 MS. FENTRESS: Mr. Chairman, would you like  
10 for me to start?

11 COMMISSIONER CLODFELTER: Yes.

12 MS. FENTRESS: Thank you.

13 EXAMINATION BY MS. FENTRESS:

14 Q Mr. Collins, I'm going to follow up on some  
15 questions that Chairman Clodfelter  
16 and Commissioner McKissick asked you. You had  
17 indicated that you felt like or Cube felt like it  
18 could not complete the NoC Form because it would  
19 somehow hinder its ability to establish a LEO due  
20 to the references to a CPCN on the NoC Form; is  
21 that correct?

22 A That is correct.

23 Q And I believe you did talk to the Public Staff,  
24 and you've testified to this, that they didn't

1 think you needed to go get a CPCN unless Duke  
2 made an issue of it; is that correct?

3 A That is correct.

4 Q So they didn't rule out that you had to get a  
5 CPCN; is that correct?

6 A They didn't think we had to but they didn't say  
7 no we -- you know, they didn't say we didn't have  
8 to I guess.

9 Q As one alternative to your due diligence in  
10 pursuing this transaction, could you have  
11 submitted the NoC Form to Duke and then asked the  
12 Commission for a waiver of the CPCN requirement?

13 A I guess that is a potential outcome. But if we  
14 had asked for that waiver when would we have  
15 received it and would Duke have made the argument  
16 that we didn't establish the LEO date until we  
17 received such waiver. And I believe -- my belief  
18 is that you would have.

19 Q Did Cube review the Commission's Rules, I think  
20 specifically Rule R8-64 in this determination?

21 A I'm not aware of that level of detail.

22 Q So that was not a part of your due diligence?

23 A It wasn't a part of my personal due diligence.  
24 I'm not aware personally of that level of detail.

1 Q And you did have legal representation at the  
2 time?

3 A We did have legal representation.

4 Q We also talked -- you've also answered some  
5 questions about Alcoa and its participation or  
6 role in this. Alcoa has not -- no one from Alcoa  
7 has submitted any prefiled testimony in this  
8 proceeding, have they?

9 A They have not.

10 Q And no one from Alcoa filed in support of the  
11 complaint that Cube initially filed at the  
12 Commission, did they?

13 A They did not.

14 Q And I understand that you indicated that -- if I  
15 followed your testimony correctly that there was  
16 an assignment provision in the sales contract  
17 that if the sale fell through Alcoa would be  
18 happy to take over those PPAs that you wanted to  
19 have with Duke; is that correct?

20 A What I stated is that we would have negotiated  
21 such a provision, is what I stated. We had never  
22 got into a direct contract negotiation, you know,  
23 with that level of detail.

24 Q With Duke or with Alcoa --

1 A With Duke.

2 Q You have no documentary evidence, however, to  
3 present in this proceeding that Alcoa would have  
4 been pleased with such an arrangement?

5 A I do not have any documentary evidence, but would  
6 it have de-risked their assets and made them more  
7 salable in the case we hadn't closed.

8 Q Alcoa was aware of your attempts to discuss with  
9 Duke the negotiation of potential PPAs; is that  
10 correct?

11 A That is correct.

12 Q We also talked about what a QF is and I believe  
13 that you focused on an argument that says an  
14 owner is not a QF but the facilities are QFs. Is  
15 that a correct representation?

16 A That is correct.

17 Q Now, if you go back to I think the first question  
18 I asked you -- I don't know if you found  
19 Confidential Exhibit 6. I think Commissioner  
20 Duffley was asking you about it.

21 A And that's the one in my rebuttal testimony or --

22 Q Yes. Yes. I cut -- I didn't want to make you  
23 have to look for it but I think I asked you and I  
24 believe you agreed that a small power producer

1 under North Carolina law is a person or a  
2 corporation owning or operating an electric power  
3 production facility; is that correct?

4 A I believe that is correct.

5 Q And so a seller would not necessarily have to own  
6 a facility but a seller would likely have to  
7 operate a facility; is that not correct?

8 A I'm not in a position to opine on that.

9 Q Cube Yadkin was not the operator of the  
10 facilities until after the close of the purchase  
11 agreement with Alcoa; is that correct?

12 A That is correct. But again, I will just state  
13 that the QF is the plant and so -- and upon a  
14 sale of that plant, that QF status transfers to a  
15 new owner.

16 Q But you are aware that North Carolina law defines  
17 a small power producer as the owner or operator  
18 of a qualified facility; you are aware of that?

19 A I would -- subject to check.

20 Q That was not part of your due diligence in  
21 purchasing these North Carolina facilities?

22 A It wasn't part of my personal due diligence. I'm  
23 sure our legal team looked at that.

24 Q Okay. Cube Yadkin did eventually file

1 a recertification petition; is that correct?

2 A We filed a notice of change of ownership and  
3 recertifying the facilities as of the date that  
4 they were placed in service, which is their  
5 original construction dates.

6 Q And that was pursuant to a FERC regulation,  
7 correct?

8 A That's my understanding, yes.

9 Q And I guess one more question just about the  
10 closing. Was -- did Cube transfer the funds to  
11 Alcoa for the purchase at the time of the  
12 closing?

13 A Yes.

14 Q You didn't pay in advance?

15 A No.

16 Q So I've heard you refer a few times to these sort  
17 of perfunctory regulatory rules and requirements;  
18 is that a fair assessment?

19 A I believe I said approvals. The FERC approvals  
20 is what I referred to as perfunctory. And as of  
21 October 11th, I believe we had all our FERC  
22 approvals and all our regulatory approvals other  
23 than one which was the approval of the license  
24 transfer.

1 Q And I think you also spoke to - and I believe it  
2 was Commissioner Duffley - but I was going to ask  
3 you, Mr. Collins, does Cube have long-term firm  
4 transmission service into DEP?

5 A We have an Interconnection Agreement with Cube  
6 Yadkin Transmission. I do not recall the term of  
7 that -- you know, what the term of that agreement  
8 is.

9 Q So you mentioned that you have non-firm sale of  
10 power into PJM. I'm just -- is that answer the  
11 same for DEP?

12 A We have, I believe, an Interconnection Agreement  
13 that allows you to get into DEP directly.

14 Q So I want to go back to these regulations that I  
15 was referring to and that you had talked about  
16 FERC approvals and you had referred to them as  
17 perfunctory. Is it fair to say another way of  
18 looking at some of these regulatory approvals,  
19 either the LEO requirements or the FERC approvals  
20 for transfer of licenses, as something other than  
21 perfunctory, but regulations put in place to  
22 ensure fairness to the parties and protection of  
23 customers?

24 A Well, I was not referring to the LEO by the way,

1 I was referring to the license transfer approval.  
2 And the reason I say it's perfunctory is because  
3 they really judge the license transfer on two  
4 main issues: Do you have the experience to  
5 operate the system and do you have the financial  
6 capabilities to assume the liabilities of  
7 operating and owning the system. In the case of  
8 Cube we met both of those criteria, therefore, in  
9 my view that approval was perfunctory. It was  
10 gonna happen. There was no question it was gonna  
11 happen.

12 Q It was contested however, though, was it not? I  
13 believe --

14 A It -- there was a gadfly contestant, yes.

15 Q One gadfly contestant?

16 A Well, I don't know how many. I don't recall.  
17 But -- but the State of North Carolina --

18 Q Timely motions -- I'm reading from paragraph  
19 three of the Order Approving License which is  
20 Collins Cross Examination Number 4. It says  
21 *timely motions to intervene were filed on*  
22 *August 16th (sic) by Trading Ford Historic*  
23 *District Preservation Association, the North*  
24 *Carolina Wildlife Resources Commission. On*



1           *August 30, 2016, timely motions were filed by --*  
2           *and if you disagree with me, please speak up --*  
3           *American Rivers, New Energy Capital Partners,*  
4           *Yadkin Riverkeeper. And on August 31st, 2015,*  
5           *timely motions or notices to intervene were filed*  
6           *by Central Park North Carolina, the North*  
7           *Carolina Department of Environmental Quality,*  
8           *Stanly County, and the North Carolina Department*  
9           *of Justice. Will you accept that subject to*  
10          check?

11        A     I also think that my gadfly reference was to the  
12            New Energy intervention.

13        Q     Thank you. Thank you. So again, I would say  
14            with that all that interest in the approval of  
15            Cube's ability to operate the facilities, would  
16            you agree that these perfunctory regulations that  
17            you've referred to are intended to protect again  
18            the rights of the parties and the consumers of  
19            the power?

20        A     I think they're intended to ensure that the new  
21            owner and operator of the facilities has the  
22            experience and the financial capability to own  
23            and operate, which in my view Cube easily  
24            satisfied regardless of the intervention.

1 Q And it easily satisfied it according to the FERC  
2 on December 13th, 2016, and then which was  
3 contingent upon closing; is that correct?

4 A That is correct.

5 Q And that closing was February 1st, 2017; is that  
6 correct?

7 A That is correct.

8 Q Thank you.

9 MS. FENTRESS: I don't have anything else to  
10 ask on the Commission's questions.

11 THE WITNESS: Thank you.

12 COMMISSIONER CLODFELTER: Mr. Harris?

13 MR. HARRIS: Thank you, Commissioner  
14 Clodfelter.

15 EXAMINATION BY MR. HARRIS:

16 Q Mr. Collins, Ms. Fentress mentioned that there  
17 was a lot of interest in the transfer of the  
18 license, and do you think that interest would  
19 exist if Cube Yadkin had filed for a CPCN?

20 A I believe it probably would have. There probably  
21 would have been interventions in that as well. I  
22 think people ought to remember there was ongoing  
23 litigation regarding ownership of the river bed  
24 by the State of North Carolina at the time Cube

1 was purchasing the asset.

2 Q So then would you think any CPCN process would be  
3 longer, shorter, or about the average time if  
4 Cube did have to proceed and pursue a CPCN?

5 A Well, I think at the time if we had pursued it it  
6 probably would have been longer because I'm  
7 assuming, based on the level of intervention in  
8 the license application, we would have had some  
9 similar intervention in the CPCN requirement.

10 Q Okay. Let's go to that. I'll actually bring up  
11 the -- I'll actually bring up that Order that  
12 Kendrick referenced and it should be Attachment 5  
13 which will likely be Exhibit 4.

14 A Attachment 5. I have it.

15 Q And can you go to page 4, please?

16 A Yes.

17 Q And can you just read that paragraph to yourself  
18 and tell me what's your impression of what FERC  
19 thought of the motions to intervene of New  
20 Energy?

21 A Well, they thought that all the motions were not  
22 relevant to the transfer proceeding.

23 Q And from your impression what were the two things  
24 that were relevant to the proceedings?

1 A Whether we had the experience to operate the  
2 facilities and the system and whether we had the  
3 financial capability to assume the ownership  
4 responsibilities and liabilities.

5 Q And if we go to paragraph 9, can you read that  
6 second sentence of paragraph 9 for us, please?

7 A *Moreover, a licensed transfer, a ministerial*  
8 *action, does not involve any significant changes*  
9 *in the license and does not provide an*  
10 *opportunity to reopen the licensing proceeding.*  
11 *We have no basis for reopening the relicensing*  
12 *proceeding.*

13 Q Commissioner Duffley had a few questions that she  
14 asked you that I would like to delve into a bit.  
15 First thing, is it your understanding that Duke  
16 devised its own NoC Form?

17 A That is my understanding.

18 Q So then if that's true then it's fair to say that  
19 this controversy basically arises from the fact  
20 that when Duke designed its form it  
21 didn't contemplate getting NoC Forms from  
22 facilities like the Cube QFs that predated the  
23 CPCN statute?

24 A I would agree with that statement.

1 Q You were also --

2 MS. FENTRESS: I would object. And I'm  
3 sorry. I was trying to -- I believe Mr. Harris --

4 COMMISSIONER CLODFELTER: State your  
5 objection.

6 MS. FENTRESS: Certainly. I believe  
7 Mr. Harris' question states a fact that's not in  
8 evidence about Duke designing the NoC Form, so there's  
9 no basis for that question.

10 COMMISSIONER CLODFELTER: Mr. Harris, your  
11 response?

12 MR. HARRIS: Yeah, I mean, it's -- the NoC  
13 Form is designed by Duke. The very form that we're  
14 looking at is a form that Duke submitted and, in fact,  
15 I believe there is an exhibit that was attached,  
16 defendant's exhibit attachment 4 that details that the  
17 NoC Form and the LEO establishment and the requirement  
18 of a LEO establishment. So, I mean, I don't know how  
19 that can't be an issue here when it's a NoC Form that  
20 Duke argues now had to be filled out.

21 MS. FENTRESS: I believe the NoC Form --  
22 sorry.

23 COMMISSIONER CLODFELTER: Mr. Harris,  
24 restate your question. I want to hear the pending

1 question again.

2 MR. HARRIS: Okay. So the first question  
3 was is it your understanding that Duke devised its own  
4 NoC Form.

5 COMMISSIONER CLODFELTER: Ms. Fentress, I'll  
6 allow him to ask the question and get an answer and,  
7 if you think that whatever assumption may be made  
8 there is incorrect, you have witnesses who can address  
9 the matter.

10 MS. FENTRESS: Thank you. Thank you,  
11 Commissioner Clodfelter.

12 BY MR. HARRIS:

13 Q So let me ask you an additional question.

14 Commissioner Duffley asked you whether you could  
15 cite an example of Duke establishing a LEO before  
16 it owned a facility; do you recall that?

17 A Yes.

18 Q And you pointed out that developers of new solar  
19 projects can establish LEOs in North Carolina  
20 when they don't own the land they're developing  
21 on, right?

22 A I use that as an example of a potential scenario,  
23 yes.

24 Q And, in fact in that scenario, you know, the

1 developer might not even own any of the physical  
2 equipment at the time that they establish a LEO,  
3 correct?

4 A I believe that would be correct in that example,  
5 yes.

6 Q And so, in essence, what you're pointing out is  
7 that in North Carolina a developer can establish  
8 a LEO without actually owning any facility?

9 A I believe they can.

10 MR. HARRIS: And I don't think I have any  
11 further questions. Thank you, Mr. Collins.

12 THE WITNESS: Thank you.

13 COMMISSIONER CLODFELTER: Okay, Mr. Collins,  
14 thank you.

15 (The witness is excused)

16 COMMISSIONER CLODFELTER: Let's see what  
17 motions we have relative to exhibits.

18 MR. HARRIS: Thank you, Commissioner  
19 Clodfelter. I'd simply like to -- this is Phillip  
20 Harris by the way. I'd like to move into evidence our  
21 exhibits as marked in the testimony and everything  
22 else that we have put into the record.

23 COMMISSIONER CLODFELTER: We previously  
24 admitted the testimony and we'll take that as a motion

1 to move into evidence all the prefiled exhibits to  
2 both the direct testimony and the rebuttal testimony,  
3 marked as they were designated.

4 And again, Mr. Harris, just to confirm for  
5 the record the confidentiality designations on those  
6 exhibits have been waived, correct?

7 MR. HARRIS: Yes, that is correct,  
8 Commissioner Clodfelter.

9 COMMISSIONER CLODFELTER: Great. Any  
10 objection?

11 MS. FENTRESS: No objection.

12 COMMISSIONER CLODFELTER: The motion is  
13 granted then.

14 (WHEREUPON, Collins Direct  
15 Exhibits 1 - 5 and Collins  
16 Rebuttal Exhibits 1 - 6 are  
17 received into evidence.  
18 Confidentiality waived with  
19 respect to exhibits.)

20 COMMISSIONER CLODFELTER: Ms. Fentress?

21 MS. FENTRESS: We would like to -- Duke  
22 Energy would like to move into the record its cross  
23 examination exhibits for Mr. Collins.

24 COMMISSIONER CLODFELTER: And those would be



1 as I recall 1 through 7?

2 MS. FENTRESS: Yes, sir.

3 COMMISSIONER CLODFELTER: Great. And again,  
4 to the extent there were any confidentiality  
5 designations on those, those have been waived as well?

6 MS. FENTRESS: Yes.

7 COMMISSIONER CLODFELTER: Great. Any  
8 objection to the motion? Hearing none --

9 MR. HARRIS: No objection.

10 COMMISSIONER CLODFELTER: -- the motion is  
11 allowed.

12 (WHEREUPON, Collins Duke Cross  
13 Examination Exhibits 1 - 7 are  
14 received into evidence.)

15 COMMISSIONER CLODFELTER: Mr. Snowden and  
16 Mr. Harris, what's next?

17 MR. HARRIS: That is the close of our  
18 presentation of evidence and I don't believe we have  
19 any further witnesses.

20 COMMISSIONER CLODFELTER: This would then be  
21 a good point I think to break for lunch. And so let's  
22 suspend now and we'll go into recess until 1:30.  
23 During that recess please put your cameras on mute --  
24 you're microphones on mute and your cameras turned

1 off. We'll be back at 1:30.

2 MR. HARRIS: Thank you.

3 MS. FENTRESS: Thank you.

4 (The hearing was recessed at 12:22 p.m., and set to  
5 resume at 1:30 p.m.)  
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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 Mitchell

Kim T. Mitchell  
Court Reporter