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7 TIME IN SESSION: 2:00 P.M. TO 4:26 P.M.

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

9 Commissioner Bryan E. Beatty

10 Commissioner ToNola D. Brown-Bland

11 Commissioner Don M. Bailey

12 Commissioner Jerry C. Dockham

13 Commissioner James G. Patterson

14 Commissioner Lyons Gray

15

16 IN THE MATTER OF:

17 Application of Duke Energy Corporation

18 and Piedmont Natural Gas, Inc., to Engage

19 in a Business Combination Transaction

20 and Address Regulatory Conditions and

21 Codes of Conduct

22 VOLUME 3

23

24

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

2 CHAIRMAN FINLEY: It's your witness, Mr. West.

3 CONTINUED CROSS EXAMINATION BY MR. RUNKLE:

4 Q Mr. Barkley, we've gone through the regulatory
5 side. Now let's look at the Code of Conduct.

6 A Yes.

7 Q All right. Page 9 at the bottom,
8 Nondiscrimination.

9 A Yes, sir.

10 Q In 9.1, it says, "DEC, DEP's and Piedmont's
11 employees and representatives shall not unduly
12 discriminate against non-Affiliated entities." What is
13 -- what kind of discrimination is it referring to?

14 A It could be in any shape, form or fashion, but
15 I think it -- to go ahead and read the rest of Section B
16 there, I think, would be helpful. We're talking about
17 the -- it shall not provide any preference in any shape,
18 form or fashion to an affiliate that you wouldn't provide
19 to a non-affiliate; the application of tariffs in
20 paragraph 3 there; a request for service in paragraph 4
21 would be a good example. That request for service should
22 be handled consistently, regardless of whether such
23 request comes from an affiliate or a non-affiliate.
24 Those would be some examples.

1 Q Similar to the Regulatory Commissions, how will
2 this code be -- who's going to enforce this code?

3 A The Company, upon signing the document, and if
4 the -- these codes are -- this Code of Conduct is
5 approved by the Commission. The Company will be
6 obligated to follow it as it does any directive from the
7 Commission. The Company's books and records are open for
8 review by the NCUC Public Staff and by the Commission
9 Staff, so those are some ways that it could be reviewed.
10 Also, if a party felt they were being discriminated
11 against, they would have a remedy here at the Commission
12 or the right to raise a complaint regarding
13 discrimination.

14 Q I just have to ask, what is "unduly
15 discriminate"? Can you duly -- can you -- you should not
16 unduly discriminate. What does that mean?

17 A I think that -- here's how I would answer that
18 as a non-lawyer, Mr. Runkle, is that, you know, to unduly
19 discriminate would be to disadvantage someone by treating
20 someone else in a more favorable manner. I think you can
21 be consistent and fair and within the Code of Conduct
22 without treating everybody the exact same. If
23 circumstances differ, the type of customer, its load is
24 different, then you wouldn't treat that customer in

1 exactly the same manner. It doesn't mean it would be
2 inappropriate; it would just be different.

3 Q So on page 16 of the Code of Conduct on the
4 Complaint Procedure, is the log of complaints, will that
5 be reviewed by the Commission or the Public Staff?

6 A That log of complaints would be like all the
7 rest of DEC, DEP and Piedmont's books and records. It
8 would be available for inspection. As it says in
9 G(1)(d), it would -- we would permit inspection of
10 documents by the Commission, its staff, and the Public
11 Staff, so it's -- their ability to look at that log would
12 be consistent with their ability to look at all our books
13 and records, which is very broad.

14 MR. RUNKLE: I have no further questions for
15 the witness.

16 CHAIRMAN FINLEY: Mr. West?

17 CROSS EXAMINATION BY MR. WEST:

18 Q Good afternoon, Mr. Barkley. How are you?

19 A Mr. West, fine. Thank you.

20 Q I would like to start where I think we sort of
21 left off with Dr. Reitzes with regard to the components
22 of a sale of gas by Piedmont, and I think you actually
23 mentioned it in response to one of your answers to Mr.
24 Runkle. I think you identified three components.

1 There's a commodity gas component, interstate
2 transportation component and a local transportation or
3 more typically called a distribution component to the
4 cost of gas that's ultimately sold, correct?

5 A Yes.

6 Q If we turn to the Code of Conduct, page 13,
7 Section D, as in dog, 3, (e) as in echo, there is a
8 provision that appears to be designed to address the
9 potential risks that we discussed with Dr. Reitzes
10 concerning the anti-competitive impact of vertical
11 integration. Is it fair to characterize this as a
12 provision to address that particular risk?

13 A I'm going to answer it slightly different. I
14 really have not prepared to discuss vertical versus
15 horizontal integration. I did listen to the conversation
16 you had with Dr. Reitzes, so as far as really being able
17 to distinguish all of the specifics and the various terms
18 he used and so forth, I'm not sure I want to speak on
19 behalf of the market power study that The Brattle Group
20 did. But I would say this is -- this, as is the entire
21 set of conditions in this Code of Conduct, is put in
22 place to protect customers at a very high level, so I
23 think that's a -- that's an in general yes to your
24 question, but I don't know if I want to start getting

1 into the specifics of horizontal versus vertical types of
2 integration, those -- that level of specifics.

3 Q That's disappointing, because my next question
4 was going to be if you could identify any other part of
5 the Code of Conduct or the Regulatory Conditions that
6 provided protection to municipals or electric co-ops with
7 regard to vertical integration.

8 A Well --

9 Q Is that something you could take a stab at?

10 A Sure. Sure, because I'm going to substitute
11 protection of those customers in general with protection
12 from vertical integration. I think -- I think the
13 umbrella would cover whatever kind --

14 Q Well, that's --

15 A -- of integration you were looking at.

16 Q And I apologize for interrupting. I'm not
17 asking you about protection in general. I understand
18 there are lots of provisions that are designed to provide
19 general protection. What I was really asking about is
20 protection that's specific to the risks imposed by
21 vertical integration which was the third part of The
22 Brattle Group study.

23 A I think, Mr. West, I'm -- since you ask, I will
24 respond to some of the many places where customers are

1 protected in the Reg Condition. I would draw your
2 attention to 5.22 where --

3 Q What page?

4 A -- where -- 5.22 of the Reg Condition is on
5 page 28 of my version. There's a hold harmless from this
6 transaction for all customers. That would include
7 municipal customers and that would include any type of
8 harm, however you would want to define it.

9 Q But that's a -- that's a general protection.
10 That's not specific to the issue of vertical integration,
11 correct?

12 A I think that it -- from my perspective, a
13 general protection is a protection for vertical
14 integration or any other kind of integration. Is it --
15 is that term -- if you're asking is the term in this
16 document that this paragraph specifically addresses
17 vertical integration, I think you could do a word search
18 and you would not find that, so I don't believe we would
19 sit here and find that specific. But the things that
20 that I just pointed you to, the nondiscrimination that I
21 discussed just a minute ago with Mr. Runkle, and there is
22 -- there's a section that has been added for this merger
23 proceeding on competition. There are many areas.
24 Section H of the Code of Conduct, page 17, talks about

1 competition between the utilities. So I think that the
2 entire document is replete with consumer protection, but
3 lacking, to your point, anything that specifically
4 references the term vertical integration.

5 Q Well, I'm not referencing -- I'm not asking
6 about the specific reference to the term vertical
7 integration. I'm asking about the concept. If you look
8 at The Brattle Report, it was identified as third-party
9 generation, I believe, is the issue he was addressing.
10 And as we addressed in cross examination, that was a
11 vertical integration issue. So I was simply asking if
12 there are provisions other than (e) on page 13 that are
13 specific to the issue of vertical integration.

14 A So (e) on page 13, I think, is a great example,
15 and it lists there how all people are going to be -- all
16 counterparties are going to be treated in a similar
17 manner.

18 Q Okay. That provision is specific to shippers,
19 though, right?

20 A Yes, which would include your client.

21 Q Okay. So shippers has a specific definition?

22 A It does. It -- the --

23 Q Those are --

24 A The definition of shipper, if I may, is a non-

1 affiliated gas marketer, a municipal gas customer or an
2 end user of gas.

3 Q Okay. So how about if I ask it this way? Are
4 there other provisions in the Regulatory Conditions or
5 the Code of Conduct that are specific to shippers?

6 A Not to my knowledge. To the extent shippers
7 are customers, then they're covered under the many places
8 that I've just mentioned, so to me the answer is yes.
9 I'm not sure that the term shipper is used a tremendous
10 amount throughout this document other than as you just
11 took us to D.3.(e).

12 Q And this provision (e) on page 13 was
13 renegotiated as part of the settlement of the Public
14 Staff, correct?

15 A Well, let's take a look at the specifics,
16 because there -- there's a blackline version that was
17 filed, so I will go to the blackline version. I -- it
18 certainly was changed as a result of this docket, and it
19 was added as a result of this current docket that we are
20 gathered here today for.

21 Q Are you referring to the blackline version
22 dated June 10th, 2016?

23 A Yes.

24 Q That's a blackline from the Duke Energy

1 Carolinas/Duke Energy Progress Regulatory Conditions and
2 Code of Conduct, is it not?

3 A That's right. And as you're probably well
4 aware, this Code of Conduct was based on that. That's
5 the most recent proceeding where the Code of Conduct and
6 the Reg Conditions were updated, but many of the terms
7 and conditions in our Code of Conduct and our Reg
8 Conditions have been around for a long time. There have
9 been a series of mergers and -- going back to the 1990s
10 that were referenced yesterday and again today, and this
11 document has been constructed since then with additional
12 terms and conditions.

13 Q Okay. When the application was filed, did the
14 Companies -- did the Applicants not include a proposed
15 set of Regulatory Conditions and Code of Conduct?

16 A We did.

17 Q And was that not admitted at the outset of the
18 hearing as part of the Company's evidence?

19 A Let me check that fact. I have it here. I
20 don't have it memorized.

21 MR. SOMERS: May I respond in an effort to just
22 move things along? I think the question, was it admitted
23 at the beginning of the hearing, the answer to that is
24 yes. I think Mr. Barkley is trying to answer your

1 question as was that specific provision in the code part
2 of what the Companies filed in January, so maybe we need
3 to clarify what he's trying to answer.

4 MR. WEST: That's -- that's fine.

5 A All right. So I now have what we filed in
6 January, D.3. It was included in January. It was
7 further developed in -- on June the 10th. It was
8 altered.

9 Q Meaning it was revised from January to June?

10 A Yes.

11 Q Okay. In May in this docket the Commission
12 issued a -- an order about discovery and -- well,
13 actually, let me take one step back.

14 In the original January version there's a
15 reference to shippers who are similarly situated,
16 correct?

17 A Yes.

18 Q As opposed to shippers who have comparable
19 characteristics, which is the current version; is that
20 correct?

21 A Yes.

22 Q So in May the Commission issued an order on the
23 discovery issue and said -- I'm going to paraphrase as
24 best I can -- that the phrase "similarly situated" is a

1 concept difficult to litigate in the context of the
2 issues under review in these dockets. Were you generally
3 aware of that?

4 A That was in response to the Motion to Compel, I
5 believe. So if that's the case, yes, I am generally
6 familiar with it, and I do have it with me.

7 Q Okay. So do you agree with the Commission that
8 the concept of "similarly situated" is difficult to
9 litigate in the context of the issues under review in
10 these dockets?

11 A Don't think I'm in a great position to disagree
12 with the Commission at this point, Mr. West, so sure, I
13 agree with the Commission's assessment that they offered
14 in that order, and because the term -- and it may not be
15 completely simple to give all the ramifications and
16 meanings and how to discern distinctions within that term
17 doesn't mean that it can't be done. So that -- that's
18 how I -- I did not remember that line from that order,
19 but certainly if you say that's what it says, I accept
20 that, so there -- maybe there are some difficulties in
21 discerning exactly what "similarly situated" means, and
22 certainly I would offer that the revised version goes
23 into more detail along those lines.

24 Q Okay. And that's --

1 CHAIRMAN FINLEY: Don't hesitate to disagree,
2 Mr. Barkley. Some people disagree with everything we do.

3 (Laughter.)

4 THE WITNESS: Trying to stay off of that list.

5 (Laughter.)

6 Q So one of the things I wanted to address with
7 you is whether the changes to this subsection (e) on page
8 13 of the Code of Conduct were made in response to the
9 Commission's comment about a potential deficiency with
10 the concept of being similarly situated.

11 A I don't know.

12 Q Okay. Do you know why the -- this provision of
13 the Code of Conduct is restricted to shippers who have
14 comparable characteristics as opposed to either shippers
15 or generating units?

16 A I don't know the answer to that question. My
17 impression, Mr. West, is that shipper, as defined, is
18 very broad and doesn't exclude your client or any other
19 generating unit.

20 Q Well, what I'm asking about, really, is
21 comparing one combined cycle facility to another. For
22 example, when we -- when we received your discovery
23 responses, you all distinguished between shippers and
24 potentially generating units. Do you recall that?

1 A I don't remember that distinction.

2 Q Okay. You understand what a generating unit
3 is, correct?

4 A Sure.

5 Q Okay. So does the definition of shipper that
6 we addressed earlier, does that include a generating
7 unit, or is a shipper an entity?

8 A Give me just a second, Mr. West. (Reviewing
9 documents.) So I didn't know I was going to have to
10 parse these definitions in this manner, but as a non-
11 attorney, to me, again, I'll repeat, it seems like this
12 particular definition is very broad, municipal gas -- a
13 non-affiliated gas marketer, municipal gas customer or an
14 end user of gas. From my perspective, a generator is an
15 end user of gas.

16 Q Is a generating unit an end user of gas?

17 A Sure.

18 Q Okay. So --

19 A The unit is what consumes the gas.

20 Q All right. So is -- just hypothetically, is
21 Butler Warner facility a --

22 MR. JEFFRIES: Yeah. Mr. Chairman, there may
23 be some confusion, but I'm having trouble understanding
24 what Mr. West is getting to, and I believe Mr. Barkley

1 may be as well. The distinction between a shipper, which
2 is generally either a corporate entity or a live human
3 being whose contractual rights and obligations, either
4 implied or by separate agreement, and a piece of
5 equipment that burns gas, I -- I'm lost. I mean, we
6 don't -- I don't think Piedmont generally considers
7 inanimate objects to be their customers. I think that
8 they believe that they're -- the folks that they have
9 contractual obligations to are their customers.

10 MR. WEST: Was that an objection?

11 MR. JEFFRIES: It was an objection because I --
12 I don't -- I think that -- my perception is that Mr.
13 Barkley is confused. Maybe he can elaborate on that, but
14 I sense confusion on his part and there's certainly
15 confusion at this table about that questioning or that
16 distinction.

17 CHAIRMAN FINLEY: I think he was trying to
18 clear up some miscommunication between you and the
19 witness, and we'll treat it as such.

20 MR. WEST: Sorry. I missed the last thing you
21 said.

22 CHAIRMAN FINLEY: We'll treat it as such.

23 MR. WEST: Is --

24 CHAIRMAN FINLEY: I think he's trying to clear

1 up some -- what he views to be miscommunication between
2 you and the witness and he's trying to clear it up, for
3 what that's worth.

4 MR. WEST: Okay. But let me see if I can help.

5 Q Are you generally familiar with the Butler
6 Warner facility of Fayetteville PWC?

7 A Yes.

8 Q If Progress had a similarly sized, similarly
9 configured -- sorry -- Duke Energy Progress had a
10 similarly sized, similarly configured gas burning
11 generating station located down the street from Butler
12 Warner, would that be -- would Butler Warner be
13 considered a shipper that is -- has comparable
14 characteristics to Duke Energy Carolinas and Duke Energy
15 Progress, or is the comparison that's relevant for
16 subsection (e) Fayetteville PWC versus Duke Energy
17 Carolinas and Duke Energy Progress, because obviously the
18 two entities are -- three entities are vastly different
19 size and scope?

20 A I think the answer to the question was -- is
21 yes. The question -- and you went on afterward, but you
22 said -- the original premise of the question was would we
23 treat a DEP facility and a Fayetteville facility that
24 were situated similarly, I think you said down the

1 street, absolutely, we would treat them in a consistent
2 manner.

3 Q Meaning the negotiated rates offered to each of
4 them would be either the same or very consistent and --

5 A Absolutely. It -- yeah. It would be based --
6 it's not based on the corporate entity. It's based on
7 the facility. And so the answer is yes, and we would
8 look in -- if there were two -- two exact, if you will,
9 identical twins in terms of they had every characteristic
10 the same, firm versus interruptible, what they were using
11 gas for, the pressure requirement, the distance from our
12 line, if Plant A and Plant B were completely identical,
13 then they would get an identical rate through this
14 process.

15 Q Okay. So when you -- if we look back at the
16 language of subsection (e), when you refer to other
17 shippers having comparable characteristics, what -- is it
18 safe to say what you actually mean is the generating
19 units of other shippers having comparable characteristics
20 to the generating unit or units of DEC and DEP?

21 A I think probably the big picture, the answer to
22 your question is yes. I think the customer is the key,
23 as Mr. Jeffries tried to interject and clarify. I would
24 treat the two customers the same if those customers had

1 the same equipment. Again, I don't feel like we're
2 making rates for pieces of equipment here. We have rates
3 and how we're going to treat our customers, and we're
4 going to treat those customers consistently if they have
5 consistent features, as outlined in section (e) here.

6 Q Okay. But DEP has lots of generating stations,
7 correct?

8 A They do.

9 Q And many of them are gas fired, correct?

10 A Yes.

11 Q So you don't charge DEP one rate as a customer.
12 You charge DEP multiple rates, each of which is developed
13 for a particular generating station that uses gas,
14 correct?

15 A Absolutely, yes.

16 Q Okay. So you mentioned the concept of two twin
17 units?

18 A I did.

19 Q What I'd like you to do, now that you've given
20 us a list of factors, is just walk us through, all things
21 being equal among the twins, other than each of the
22 individual factors. For example, the first factor is
23 nature of service, parenthetically, (firm, interruptible,
24 fails or transportation). I'd like you to walk us

1 through how each of those factors would affect the price,
2 meaning if one of the twins was firm and the other was
3 interruptible, which would pay the higher rate?

4 A All right. So -- and this may be unnecessary
5 parsing, but I was -- in my hypothetical I set up
6 identical twins. If you're going to now start saying
7 they're different, I guess we're moving to fraternal
8 twins, but, I mean, my point was around an exact image,
9 we would give them the same rate. So we can walk through
10 in general -- I mean, I guess just to start with the
11 first one, if somebody wants firm service and somebody
12 across the street is identical in every other way, but
13 they're willing to accept interruptible service, I
14 believe that the charge would be higher for the firm
15 service. You wouldn't treat them the same because
16 they're asking for two different products.

17 Q Are you waiting for me to ask another question?

18 A Yes.

19 Q Could you simply go through the list the same
20 way you did and let us know what the -- what the pricing
21 differences would be as a result of that particular
22 factor? And technically, identical twins can be slightly
23 different.

24 A All right. All right. So let's -- I will try

1 to roll through the list here. Pressure is the next one,
2 and I believe that if a customer required a higher
3 pressure, that would require more commitment on
4 Piedmont's part and, therefore, a higher rate. Process,
5 heating or electric -- electric generation, I think that
6 gets to maybe how consistent the load is, so certainly
7 they would have different characteristics. You wouldn't
8 have someone with a process load and somebody else with a
9 heating load that would have the same profile in terms of
10 how they consume natural gas, so --

11 Q Low profile is one of your other
12 characteristics. So is there any way that nature --
13 excuse me -- nature of load would be relevant to pricing,
14 aside from the low profile?

15 A I think they're -- they're pretty -- I think
16 one influences the other. So I think it's just, again,
17 given as something that can differentiate customers, the
18 size. You would need larger facilities to serve a larger
19 customer. That might also be offset, though, Mr. West,
20 by the benefits that a very large customer could bring.
21 So, you know, in terms of a rate, I think the size needs
22 to be considered, but I think we would -- it would be
23 situational as to whether, you know, the exact effect it
24 would have.

1 Q What are the other benefits to which you're
2 referring?

3 A Excuse me? So maybe get you to rephrase that
4 one, if you will. Other benefits?

5 Q I thought you said with size it would -- the
6 rate would typically be higher, but there may be other
7 benefits.

8 A The cost would be higher, but I'm not sure the
9 rate would be higher. I mean, in many ways large
10 customers have a lower cost to serve than smaller
11 customers because you're getting so many dekatherms
12 through one connection. So whether it would be daily,
13 monthly, seasonal, annual, I think the effect on the
14 rate, the more consistent, a more consistent load may in
15 many ways be more economical to serve than one that is
16 swinging up and down with large differences in how much
17 they consume from one day to the other. Certainly,
18 that's a factor you would need -- that the engineering
19 team would need to have in mind as they connect that
20 customer. The location on the system, closer is better
21 than farther. The cost to serve, lower would be better
22 than higher, and maybe an example of that would be it
23 might be a mile to get to two customers, but if one of
24 them were in a very level, sandy environment, that would

1 be a lower cost than if you were going to construct a
2 natural gas line in a more mountainous, rocky terrain.
3 Same distance, different cost, higher cost for the
4 customer.

5 Q I think Mr. Runkle asked this similar question
6 in a different context, but the maintenance of records
7 that's addressed in the last sentence of this provision?

8 A I see the provision.

9 Q Is that -- are you going to -- for each
10 generating station that you serve, are you going to be
11 producing a report to explain how all these factors led
12 into the development of a particular rate along with, you
13 know, the quantifications that are relevant to the rate?

14 A I don't believe that we would produce a report,
15 certainly not unless requested to do, but what we would
16 have is we would maintain the documentation to support
17 the rate. The rate would be based on a cost of service
18 base model, and certainly for the duration of the
19 contract we would have the support as to how we determine
20 that rate. And the rate that we're discussing here, Mr.
21 West, if I may, would be subject to review by the Public
22 Staff and approval by the Commission.

23 Q So when you say you would have support for
24 developing the rate, are you talking about a spreadsheet?

1 What are you --

2 A Yeah. We would have spreadsheets. There may
3 be notes from the -- from the customer -- the customer
4 rep, there may be notes from the engineering department
5 as to the cost, but it would be maintained probably in
6 electronic files to support that rate. The rate is not
7 going to be pulled out of the air. It's going to be
8 calculated, and it's going to be reviewed, and it's going
9 to be approved, and we would maintain support for that
10 during the duration of the contract.

11 Q And that would be considered -- those would be
12 considered confidential records, correct?

13 A Yes.

14 Q And presumably treated with at least equal
15 confidentiality to the actual rates that are filed with
16 the Commission for approval in any kind of negotiated
17 contract, correct?

18 A Yes.

19 Q Would those -- are you familiar with the
20 discovery that was produced in this case?

21 A Yes.

22 Q So rather than make an exhibit, I'm going to
23 try to do this just through narrative. In one of the
24 answers about how the rate is determined, Piedmont

1 identified the following factors: Cost of materials,
2 labor, land, overhead, AFUDC, taxes, depreciation, O&M
3 expenses, capital structure, debt and allowed return on
4 common equity. Does that sound familiar?

5 A It does.

6 Q Are all of the negotiated rate agreements based
7 on the same allowed rate of return on common equity?

8 A Yes.

9 Q And the other factors, taxes, depreciation,
10 O&M, those all have to be allocated in some way, correct?

11 A When you say "allocated," I want to make sure
12 we're -- I think about a company allocating its cost to
13 jurisdictions. It's kind of a specific term in utility
14 ratemaking.

15 Q Well, costs are also allocated among customer
16 classes, correct?

17 A So there would be -- for the investment, the
18 depreciation would be dependent upon the amount of
19 utility plant, and there would be an assumption of, based
20 on the investment, what the operating and maintenance
21 cost would be to maintain that investment. And so
22 obviously a large and lengthy pipe would take more
23 maintenance than would a smaller one, smaller, shorter.

24 Q Let me see if I can get you to clarify

1 something for me, then. So when we talk about O&M
2 expenses or taxes, are you identifying the taxes that are
3 specific to that incremental project, or are you
4 allocating any of those costs from the system itself?

5 A I think it's much more the -- those that are
6 specific to the project. They would cause -- a project
7 would cause additional property taxes --

8 Q Okay.

9 A -- so that would be assigned to that customer.
10 If you are going to cause Piedmont to incur another
11 hundred dollars of property tax by its investment in this
12 project, then that would go into the model.

13 Q Okay. So it's -- and I don't want to put words
14 in your mouth, but just so I can understand, is it all
15 incremental cost causative assignments, meaning this
16 project causes us to incur these specific costs and,
17 therefore, we're going to recover these costs as part of
18 our negotiated rate?

19 A That is certainly my understanding of how this
20 model works. It would apply to the individual customer
21 and to the cost that he caused the Company to have, and
22 the Company would seek to recover -- just like it does --
23 it's a mini version of what happens in a general rate
24 case. The Company would seek to earn a return on the

1 investment, and in order to earn that return, it has to
2 recover certain operating expenses first.

3 Q So -- sorry.

4 A No. Go ahead. I'm sorry. I think that's
5 enough.

6 Q So is the model common to all negotiated rate
7 agreements, but the inputs are specific to the --

8 A Yeah.

9 Q -- customer or the generating station?

10 A I think that's a -- that's a good way to put
11 it. It's a consistent process, but two dissimilar
12 customers would have very dissimilar inputs.

13 Q All right. So if I understood the discovery
14 and the discovery disputes, no one outside of Piedmont,
15 other than perhaps the Public Staff and/or the
16 Commission, has looked at that process; is that correct?

17 A Yes.

18 Q All right. So if you are a municipal or a
19 co-op that generates electricity through natural gas on
20 the Piedmont system, how would you identify potential
21 incidents of discrimination? If everything is in a black
22 box and Fayetteville PWC or one of the electric co-ops
23 was suspicious that somebody got a favorable rate because
24 they're winning all these wholesale electric competitions

1 -- wholesale electric sale competitions, how does one
2 identify that that has actually occurred?

3 A Well, this entire process that we're talking
4 about here in terms of this rate mechanism is something
5 that's not forced upon Fayetteville PWC or any other
6 customer. It's something to negotiate a rate with
7 Piedmont, requires them to participate, to be a willing
8 counterparty in the negotiation. So they have a chance
9 to negotiate for the very best rate that they can get
10 from Piedmont, and then that process would be reviewed by
11 the Public Staff and approved by the Commission. And if
12 you were -- felt like that the best rate you could get
13 from Piedmont was at a certain level and that was unfair
14 and discriminatory, then you could bring that as a
15 complaint before this Commission, so --

16 Q How would we know that, though? In other
17 words, go back to the example of the two identical
18 generating stations that we talked about earlier. If
19 Piedmont gave DEP a significantly more favorable rate
20 than Fayetteville PWC or an electric co-op, how would
21 they know that?

22 A How would -- and I want to clarify the question
23 by making sure we're together. How would you know what
24 Piedmont was billing somebody else?

1 Q How would the --

2 A Is that the heart of the question?

3 Q How would the customer know --

4 A Uh-huh.

5 Q -- that it was being discriminated against?

6 A Well, the customer is not going to be given all
7 the details on another customer's arrangement because
8 then the entire process is open to the entire world and
9 the confidential discussions you had with that
10 counterparty can't be shared with the customer that
11 you're representing in your question.

12 So I'll restate, this customer will have to
13 obtain the best deal that it can get for itself using its
14 negotiating abilities, and then if it feels like it's
15 being discriminated against, it's going to have to raise
16 it, I believe, here at this Commission. It's not going
17 to be able to say I'm not happy so I want to see all of
18 your other deals that you reached with Progress and with
19 every other industrial customer. And so I just don't
20 believe that those confidential arrangements can be
21 opened up as a fishing expedition for somebody that's not
22 happy with their negotiated rate.

23 Q And if a customer were inclined to do that, to
24 contest the proverbial "pig in a poke," who has the

1 burden of proof in that kind of situation? Do you know?

2 MR. JEFFRIES: Objection.

3 Q If you know.

4 CHAIRMAN FINLEY: If you know, Mr. Barkley, you
5 can. If you don't -- if you don't know a legal question,
6 you don't have to answer.

7 A I am not -- I am not sure about burden of
8 proof. It does appear to be a fairly legal type term, so
9 I will -- I'll just leave it with I'm not sure.

10 MR. WEST: I don't have any further questions.
11 Thank you.

12 CHAIRMAN FINLEY: Redirect?

13 MR. JEFFRIES: Thank you, Mr. Chairman.

14 REDIRECT EXAMINATION BY MR. JEFFRIES:

15 Q Mr. Barkley, do you recall some conversations
16 with Mr. Runkle, it seems like a while ago now --

17 A It does.

18 Q -- about the exclusion of direct transaction
19 costs from recovery from ratepayers as a result of this
20 merger?

21 A I do.

22 Q Okay. And do you have a copy of the cost-
23 benefit analysis?

24 A I do. That would have been the Appendix B

1 filed back in January, I believe --

2 Q Okay.

3 A -- Mr. Jeffries. And so if you'll give me one
4 second.

5 Q And I --

6 A Just make sure I'm on the right page.

7 Q Yeah. I think specifically it's the last page
8 of the cost-benefit analysis.

9 A So the cost-benefit analysis, the last page I
10 have is page 7.

11 Q Okay. And does that indicate or recite some of
12 the direct transaction costs that are anticipated?

13 A It does. And, yeah, we discussed some of those
14 earlier with Mr. Runkle, and so it does list bankers,
15 security issuance, legal, accounting.

16 Q Uh-huh. And how much does -- roughly, how much
17 does that add up to?

18 A 125 million.

19 Q Okay. And I believe you referenced something,
20 a hundred million or more --

21 A I did.

22 Q -- in your testimony. Okay. And that's what
23 you were -- that's what you were referring to; is that
24 correct?

1 A Yes. The very same number that I referenced as
2 in excess of a hundred million --

3 Q Uh-huh.

4 A -- is, indeed, 125 here.

5 Q And is there any indication on there about who
6 -- about rate recovery treatment for those costs?

7 A There is direct comment on page 7 associated
8 with that, and I think it supports what I had said
9 earlier, and it says that the costs will be absorbed by
10 Duke Energy and Piedmont, so that certainly says to me it
11 will not be placed into its customer rates.

12 Q Thank you. You also had some conversation with
13 Mr. Runkle regarding customer benefits from the merger.
14 Does that -- again, referring to the cost-benefit
15 analysis, does that analysis provide a list of benefits
16 that the Companies believe will be provided to customers
17 as a result of the merger?

18 A It does, Mr. Jeffries, I think, especially
19 starting on page 3 and really continuing through the rest
20 of the document. There are, in the left-hand side,
21 numerous benefits, some quantified, some not quantified,
22 in Appendix B filed in January in this docket.

23 Q Thank you. And were those benefits added to as
24 a result of the settlements in this docket?

1 A They were, and certainly the -- as regards some
2 of the savings that will come out of this, it was both
3 increased in terms of we had only identified about nine
4 and a half here on a system basis, and so 10 million are
5 being provided just to the North Carolina jurisdiction,
6 and we also accelerated that to be provided during this
7 calendar year, and then the other items that we've
8 discussed previously in the Settlement Agreement would be
9 added to this well, guarantees on charitable, the
10 workforce development, Piedmont's agreement to not pursue
11 its request for cost associated with federally mandated
12 Distribution Integrity Management cost.

13 Q And if the integration process that the
14 Companies are involved in, assuming that the merger is
15 approved, results in additional savings, will those
16 ultimately inure to the benefit of Piedmont's ratepayers?

17 A It will. All savings along those lines would
18 flow through to customers at the next general rate case,
19 and that same concept would hold true for Duke's
20 customers. If there are efficiencies realized on the
21 Duke side, that there is a process to return those
22 efficiencies to customers.

23 Q Right. And was Mr. -- Mr. Page was also
24 successful in extracting some concessions from the

1 Companies in association with the settlement with CUCA;
2 is that right?

3 A There was a settlement with CUCA. I don't
4 believe I discussed it with the -- with the other cross
5 examiners. But, yeah, there was a guarantee of an
6 additional \$35 million of system-wide fuel savings, so
7 that guarantee -- the majority of that, certainly more
8 than half of that, will benefit North Carolina customers.

9 Q And there was also a settlement with the
10 Environmental Defense Fund; is that correct?

11 A There was, and the benefit there is Duke has
12 agreed to conduct some analysis, some cost-benefit
13 analysis, around some technology that is of interest to
14 the Environmental Defense Fund and to file the results of
15 that with this Commission in the fall of 2018.

16 Q Right. And just to clarify that, the EDF
17 settlement was on the Duke side and would benefit Duke
18 customers as opposed to Piedmont; is that right?

19 A That is correct. Yes, sir.

20 Q Okay. And the Code of Conduct and Regulatory
21 Conditions which are part and parcel of the Public Staff
22 settlement, do those -- do the provisions of the Code of
23 Conduct and Regulatory Conditions that are reflected in
24 that settlement, are those -- in your opinion, are those

1 benefits to customers?

2 A I believe they are. I believe all the changes
3 made, the many changes made to add Piedmont to this
4 process, do provide protections to customers and that
5 this set of Reg Conditions and Code of Conduct does what
6 it's supposed to do, and it insulates customers from any
7 risk or cost associated with this transaction and other
8 transactions that may occur in the future of a similar
9 nature.

10 Q Thank you. Could you turn to Section 5.8 of
11 the Regulatory Conditions, please?

12 A Yes.

13 Q Oh, I'm sorry. Before we get to that, do you
14 recall Mr. Runkle asking you some questions about what
15 the definition of market value or fair market value was
16 during his questions?

17 A We did, and I certainly can add to what I
18 reflected in -- I believe it is a defined term, either
19 within the Code or the Reg Conditions. And if you give
20 me just one second, Mr. Jeffries, we can go ahead --

21 Q I think page 3 is -- of the Reg Conditions.

22 A Certainly is in the definition section of the
23 Reg Conditions. Market value, as defined here, price at
24 which property, goods and services would change hands in

1 an arm's-length transaction between a buyer and seller,
2 without any compulsion to engage in a transaction and
3 both having reasonable knowledge of the relevant facts.

4 Q Thank you. And now we can go to Section 5.8.
5 Could you briefly describe what that section provides?

6 A So 5.8 is really, in terms of people --
7 independent parties looking at this process and being
8 able to provide comfort to the Commission that from an
9 outside perspective, these Reg Conditions/Code of Conduct
10 are being followed.

11 Q And are you aware of how long this has been in
12 Duke's Regulatory Condi--- or, yeah, Regulatory
13 Conditions?

14 A I am not aware of the specific origin of this
15 particular one. Many of these go back quite a ways, but
16 I think it's very safe to say it's been around at least
17 since 2012, because 2012 was the most recent one prior to
18 this, so we updated the 2012, so that would be a minimum
19 of four years and, Mr. Jeffries, it could be -- could
20 have been there longer than that.

21 Q Uh-huh. And is it your understanding that the
22 Public Staff is involved in this audit process that's
23 reflected in 5.8?

24 A They certainly are, yes.

1 Q All right. And finally, I believe Mr. -- well,
2 finally with respect to Mr. Runkle's cross, I believe
3 there were some questions about undue discrimination.

4 It's true that Piedmont does not have just one gas sales
5 rate or one gas transportation rate, correct?

6 A Yes.

7 Q So we have different rates for different
8 classes of customers; is that correct?

9 A That's correct, based on cost of service. So
10 it's not based on discrimination; it's based on different
11 cost to serve various classes of customer.

12 Q Well, my point is I'm trying to distinguish
13 between discrimination. I think if you applied
14 discrimination literally, if you're charging two people
15 two different rates, there's some degree of
16 discrimination between them; would you agree with that?

17 A Yes.

18 Q And the statutes and Regulatory Conditions
19 describe undue discrimination, correct?

20 A Right.

21 Q Okay. Are you aware of Commission precedent in
22 prior rate proceedings where they have listed a number of
23 factors that are permissible bases upon which to
24 discriminate between various customer classes in terms of

1 setting rates?

2 A Well, certainly within cost of service
3 testimony that is traditionally offered along with
4 general rate cases, there would be -- that witness would
5 offer a list of things that they would consider in
6 conducting cost of service studies, and then further in
7 rate design, and those are often, again, listed for the
8 -- in evidence for the Commission.

9 Q Right. You're familiar with Piedmont's
10 electric generation contracts as a general matter; is
11 that correct?

12 A Yes.

13 Q Do any of them have the same rates?

14 A I do not believe so, no, sir.

15 Q Okay. They're all essentially cost of service
16 base rates specific to that facility?

17 A Yes. And I think that's very consistent with
18 my discussion with Mr. West. The same process was used,
19 but because all these plants are different locations,
20 have different characteristics, the answer is not the
21 same.

22 Q Mr. Barkley, does Piedmont have any intent to
23 treat Fayetteville Public Works Commission in an unduly
24 discriminatory manner in the event that they, down the

1 road, seek a new service arrangement with Piedmont?

2 A We do not, and I believe that compliance with
3 this set -- this Code of Conduct and set of Regulatory
4 Conditions guarantees and puts in writing that we will
5 not and we cannot. We take compliance with these
6 conditions very seriously. If they are approved by the
7 Commission, then the Company will comply with them, and
8 we will not discriminate against Fayetteville or any
9 other customer in an undue fashion.

10 Q And you -- in your testimony on cross
11 examination, you identified a number of factors that
12 Piedmont identified to the Commission in terms of how it
13 would examine whether a shipper is similarly situated to
14 another shipper; is that correct?

15 A I did. That is found in the Code of Conduct,
16 and we did discuss that --

17 Q Uh-huh.

18 A -- here today, yes.

19 Q And those are going to be the factors that you
20 use to evaluate any future request for service from Mr.
21 West's client; is that correct?

22 A Yes.

23 Q All right. And finally, are you aware of any
24 obligation in the Code of Conduct for the -- again,

1 assuming the merger goes forward -- for the subsidiary
2 utilities of Duke Energy to appoint or designate a chief
3 compliance officer?

4 A I am. I believe that appears in Section XIV of
5 the Regulatory Conditions. There is discussion there
6 about a compliance officer, about training, making sure
7 that you adhere to the terms that you've agreed to and
8 been ordered to agree to, been ordered to follow.

9 MR. JEFFRIES: That's all the questions we
10 have, Mr. Chairman.

11 CHAIRMAN FINLEY: Questions by the Commission?
12 Commissioner Brown-Bland?

13 EXAMINATION BY COMMISSIONER BROWN-BLAND:

14 Q Mr. Barkley, with regard to the \$10 million
15 credit that's discussed in your supplemental testimony,
16 that's being changed from two \$5 million credits to the
17 IMR deferred account to \$10 million direct-bill credit
18 allocated using the Integrity Management Rider allocation
19 factors; is that correct?

20 A Yes, ma'am.

21 Q Okay. And since that will be a direct-bill
22 credit, is it correct to assume that it will not reduce
23 the balance in Piedmont's IMR deferred account?

24 A It will not. It won't -- it will not change

1 the balance in that account.

2 Q Okay. And so, therefore, it would be fair to
3 say that the \$10 million in the merger savings passed on
4 to Piedmont's customers will not come out of an account
5 that deals directly with pipeline safety?

6 A It's coming from Piedmont in general, so I
7 think the answer to your question is yes. It's not
8 specifically targeted to pipeline safety. It comes from
9 -- Piedmont will extend that credit to its customers, and
10 if you want to extend the concept a little larger,
11 Piedmont itself is very concerned with pipeline safety,
12 but the specific mechanism here doesn't have anything,
13 per se, to do with safety.

14 Q Okay. Thank you. And in the
15 Duke/Piedmont/CUCA Settlement Agreement, that first term
16 provides that Duke Energy Carolinas and Duke Energy
17 Progress guarantee that North Carolina retail customers
18 will receive no allocable share of an additional \$35
19 million in fuel and in fuel-related cost savings over and
20 above the amount that DEC and DEP are already obliged to
21 provide. So is it anticipated by the parties to that
22 agreement that it is this merger that will allow DEC and
23 DEP to achieve that \$35 million in fuel savings by the
24 end of 2017?

1 A No, ma'am. I do not believe that's the case.

2 I don't believe that this merger affects the level of
3 fuel savings at this time. I think we can look for
4 efficiencies, but they have not been quantified,
5 identified at this point, so I think that the two are
6 unrelated. That guarantee is not caused by efficiencies
7 gained in this merger proposal.

8 Q And so I think you got to my next question, but
9 is there anything that's already been anywhere in the
10 current record or in the Settlement Agreement that set
11 forth how the parties have agreed to measure and
12 determine the amount of additional \$35 million in fuel
13 savings?

14 A It would be measured in the same manner that
15 the first 687 million is being measured. And maybe that
16 number is not precise, but I believe it's in the
17 neighborhood of what the current guarantee to North
18 Carolina is, in the high 680 range, and so that's being
19 measured by the Companies, reported monthly to the
20 Commission and audited by the Public Staff, so there's
21 not any change in methodology envisioned as a result of
22 the additional guarantee.

23 Q And that methodology that will be relied upon,
24 that's been -- to your knowledge, that is accepted or

1 understood or has been discussed with CUCA?

2 A I do believe that methodology is acceptable to
3 CUCA, and I'll tell you why. It's not that I have had
4 conversations with any representative of CUCA about the
5 methodology personally, but that methodology has been
6 used now for, I would say, approximately four years, and
7 I'm not aware of CUCA raising any objection to how cost
8 savings are measured and reported by DEC or DEP.

9 Q And so those same methodologies would be -- if
10 there were a dispute between CUCA and the Duke companies
11 as to whether fuel savings had been achieved, that same
12 methodology would be what we would look to as guidance to
13 resolve the dispute?

14 A Yes, and I'll say it again, there's no
15 difference in the methodology to measure this additional
16 \$35 million guarantee than the methodology to compute and
17 measure the previously promised amounts.

18 Q All right. Thank you. And I believe in your
19 testimony you stated generally that the merger meets the
20 Commission's test of having no adverse impact on any of
21 Duke Energy's or Piedmont's customers, and that there's
22 no proposal to pass along increased rates in this
23 proceeding. Is Piedmont confident that the merger with
24 Duke, in and of itself, will not cause an increase in

1 Piedmont's rates?

2 A Yes, ma'am.

3 Q And how or why are you so confident about that?

4 A Well, many of the costs associated with the
5 merger itself, we have committed in what we filed back in
6 January and probably supplemented with the settlement
7 with the Public Staff filed in June, that the costs are
8 going to be -- that the customers will be shielded from
9 many of the costs, the direct cost we discussed here
10 earlier today. And so I think that we have taken the
11 risk associated with this proceeding, additional cost,
12 transactional cost, we've shielded customers from those
13 in these terms and conditions and agreements, and so
14 customers will enjoy the benefits as we are able to
15 reduce cost in addition to what we've already done with
16 the deferral by withdrawing that, the 10 million, the
17 additional cost savings will be passed along in time to
18 customers. There is a discussion, Commissioner Brown-
19 Bland, in the settlement about passing on certain IT-
20 related cost to customers, and I believe that to
21 paraphrase, what that says, though, is before those costs
22 can be charged to customers, there has to be a proof made
23 that the net effect of those expenditures is positive for
24 customers. So in other words, we would invest in an IT

1 system that would cost money, but there would be greater
2 savings than the investment. If that can be proven, then
3 I believe those costs can be passed along, but, again,
4 when you look at that proposition together, it's a
5 decrease for customers.

6 Q All right. So you are aware that the
7 Commission has received statements and inputs from
8 customers just expressing their concern that this merger
9 will result in an increase in their rates, correct?

10 A Yes, ma'am.

11 Q All right.

12 A But I'm not -- to that point, I'm not aware of
13 any specifics that have been pointed to, here is where I
14 see my rate going up; this particular rate is going to go
15 up as a result of anything specific. And I think -- I
16 think we've done a good job of shielding customers from
17 the cost and already beginning to flow through the
18 benefit. So I understand why customers may be concerned,
19 but I don't see anything in what's been proposed here to
20 justify that concern.

21 Q All right. Thank you. The Commission, in its
22 November 5th, 2015 Order Approving Smart Grid Technology
23 Plans, in its order in paragraph number 4 stated that,
24 "DEC and DEP and Dominion shall include in their 2016

1 smart grid technology plans a discussion of the variety
2 of technologies for controlling voltage on the
3 distribution grid as discussed in that order." But the
4 settlement with EDF here in this merger commits DEC to
5 provide a cost benefit estimate for Volt-VAR Control in
6 its 2018 smart grid plan. Is there any reason that DEC
7 can't provide that cost benefit estimate sooner than
8 2018?

9 A I don't know the specifics. I don't know that
10 the commitment that you referenced for 2016 is as
11 specific as the cost-benefit analysis for this. This
12 Volt-VAR is a -- I think it's a very -- it's not just a
13 generic term, but it's a specific tool, so I would
14 suggest that perhaps, again, the specificity of this
15 particular thing is a little more precise than to
16 generally study voltage, which may have been in what I
17 thought I heard you read from the 2016 order.

18 Q And if it is requiring a greater detail and
19 more precision, is that the reason it's being proposed
20 for 2018 as opposed to being able to do that sooner?

21 A I really don't know all the specifics of what
22 was committed for 2016, so I'm probably not in a -- I was
23 not part of the smart grid process that you described, so
24 I don't know all the specifics there. I do know that

1 from reading the EDF settlement in this docket the
2 commitment that's been made for '18, so I certainly
3 assume it goes a step beyond what was already required.

4 Q All right. Under what tariffs does Piedmont
5 currently receive service from DEC and/or DEP?

6 A Piedmont receives tariffs -- Piedmont receives
7 service from -- I don't know the rate schedule number --

8 Q Uh-huh.

9 A -- but Piedmont has a variety of locations
10 throughout the state, I would assume all of which have --
11 are provided with electric service, and probably
12 certainly the large majority would either come from DEP
13 or DEC. So Piedmont is served electric service by DEC
14 and DEP just like any other customer of the -- under the
15 applicable rate schedule.

16 Q Should there be any concern that the two
17 electric utilities would advocate for cost allocations
18 favoring those tariffs in future rate cases?

19 A I believe that would get into discrimination
20 against everybody else, because if you're going to give
21 one person a break, you're going to shift that burden
22 onto someone else. And there are very precise rules in
23 the Code of Conduct around discrimination, so I don't
24 believe that -- I believe that would continue to be --

1 any kind of tariff service would continue to be provided
2 at cost of service, subject to audit by all the parties
3 that always participate in a general rate case, and any
4 tariff services obviously subject to the approval of the
5 Commission. So -- and I don't know if that was the point
6 of your question, but Duke certainly could not
7 arbitrarily shift cost away from Piedmont and burden its
8 other customers, so I believe Duke is committed in these
9 Regulatory Conditions not to do things like that, but if
10 it were to believe that the cost of service study
11 justified a change of rate, that would certainly be
12 something that would be an open book for all to examine,
13 all to discuss, and the Commission to opine on what the
14 right rate for that schedule should be prospectively.

15 Q A Settlement Agreement with the Public Staff
16 establishes that all margins received by Piedmont from
17 secondary market sales to the two Duke utilities will be
18 flowed back to the benefit of the Piedmont ratepayers.
19 When DEC and DEP receive service using capacity for which
20 they contracted, would that be considered a secondary
21 market transaction?

22 A That does not sound like a secondary market
23 transaction to me if they are receiving service under
24 their own contracts. So, no, ma'am, I do not believe

1 that would -- that would be a secondary market
2 transaction.

3 Q What is Piedmont's current policy as regards
4 using electricity versus gas to power compressor
5 stations? Do you know?

6 A That actually gets pretty far afield from my
7 particular expertise, but I think certainly like any
8 other operational decision, there may be circumstances
9 where one would be more efficient than the other, and
10 they would both be evaluated, and Piedmont's decision
11 would follow the lowest cost reliable option to power the
12 compressors.

13 Q Is this something that will receive a new look
14 at, I guess, since -- if the merger goes through, and any
15 reason to anticipate that policy would change after the
16 merger?

17 A No, ma'am.

18 Q No need to anticipate a change or no additional
19 review?

20 A No need to anticipate a change. I think under
21 -- Piedmont will continue to operate stand-alone fashion,
22 and so Piedmont should make that and other equipment
23 decisions based on what's best for its customers. And
24 that's the logic that's embodied in the Code and in the

1 Conditions, and that's the logic that we intend to
2 follow, and we would not buy an electric compressor over
3 a gas compressor due to the parent relationship with
4 Duke. It's going to be based on what's best for
5 Piedmont's customers.

6 Q Is it anticipated that Piedmont and the Duke
7 utilities will pursue joint planning that could result in
8 the construction of LNG storage facilities to the benefit
9 of both gas and electric consumers?

10 A So I'm going to parse that one a little bit, if
11 I may. I do believe that joint planning can have
12 benefits, and some of the other witnesses have discussed
13 that, that in terms of some of the long-range planning,
14 there can be additional coordination. There is already a
15 docket that the Commission opened that really emphasized
16 the value of planning between LDCs and electric
17 companies. So that process is there, but I think it can
18 be enhanced under one corporate umbrella, that those
19 communications around reliability can be even better.

20 As far as a specific plan, at this point in
21 time, to collaborate with Duke or anybody else to
22 construct LNG, I don't believe that's the case. I
23 believe that that would be premature. For one, the
24 merger has not been approved by the Commission, and so I

1 think that would be one of many alternatives, but we're
2 certainly not far enough down the road to say that we
3 would partner with Duke on an LNG plant or any other
4 similar big picture project at this point in time.

5 Q You hadn't thought about it or had discussions
6 about it at this point?

7 A No, ma'am. There has been no discussions, to
8 my knowledge, about construction of LNG. And I think
9 even the joint planning, I think it's -- I think it's
10 premature now. I think we are trying to prepare as best
11 we can to provide seamless customer service on day one,
12 and efficiencies that may come from longer term
13 construction projects would have to -- will flow later.

14 Q Now, earlier near the beginning of your taking
15 that seat this morning, you made reference to the
16 withdrawal of the petition to defer cost and the costs
17 that were related to the Integrity Management program; do
18 you recall?

19 A Yes. I am familiar with that.

20 Q And that was --

21 A Yes.

22 Q And that was part of the settlement?

23 A Yes.

24 Q Will that withdrawal as part of the settlement

1 result in any adverse impact or lower prioritization on
2 safety and integrity management going forward?

3 A No, ma'am.

4 Q Was it discussed and dealt with between the
5 Companies so that we can be assured there will be no
6 disincentive where safety and IMR are concerned resulting
7 from the fact that this petition is withdrawn?

8 A There was no discussion, to my knowledge, about
9 that particular subject. To me -- to jeopardize safety
10 because you either withdraw or don't get your way with a
11 cost deferral to me is so beyond reasonable you wouldn't
12 need to discuss it with anybody. You know that safety
13 and reliability have to come first and safety above all,
14 so --

15 Q So --

16 A -- we're not going to jeopardize the safety of
17 our customers based on withdrawing a petition for cost
18 deferral.

19 Q And so you don't expect or anticipate that not
20 being -- the agreement not to recover those costs would
21 serve as a disincentive in any way to plans to address
22 safety and the distribution to IMR requirements --

23 A Absolutely not.

24 Q -- or plans?

1 A No. We're going to follow what we need to do
2 to run a safe system, and any federal mandates, we will
3 follow those as well to make sure we have safety, and
4 that is absolutely the same case whether we would have
5 successfully been granted this deferral or now that we've
6 decided to withdraw it -- withdraw it if the merger is
7 approved by the Commission.

8 Q Do you have any idea, just in terms of your
9 dealing with the federal agency or with FERC, whether
10 they may look at that withdrawal as having some sort of
11 disincentive effect?

12 A No, ma'am. I don't believe anybody, any
13 federal agency would draw that conclusion. I think they
14 would say that our obligation stands, regardless of this
15 particular deferral request.

16 Q And that this withdrawal of this request would
17 not automatically have any adverse impact?

18 A Right. And I certainly -- I do not have that
19 with me, and I don't have all of the criteria that we
20 listed in our filing for why we believe it was
21 appropriate for the Commission to grant that. We believe
22 that it was significant and that we didn't have any
23 control over it. But I think if anyone were to review
24 the filing we made in March, there wouldn't have been any

1 kind of either implicit or explicit communication there
2 that if we don't get our way on this, then we're not
3 going to operate our system safely, we're not going to
4 follow federal mandates. I just don't believe that that
5 is in any shape, form or fashion going to be the case as
6 a result of withdrawing the petition for cost deferral.

7 COMMISSIONER BROWN-BLAND: All right. That's
8 all I have. Thank you.

9 EXAMINATION BY COMMISSIONER BAILEY:

10 Q Good afternoon, Mr. Barkley. Question back on
11 the Voltage-VAR Control, and since we're going to be
12 doing -- I guess this is with a settlement with the EDF.

13 A Yes, sir.

14 Q Is there any preconceived design on when they
15 start developing this cost-benefit analysis, or is it
16 going to be on several different design scenarios,
17 obviously a different technology out there for
18 Voltage/VAR Control? Do you -- can you answer that
19 question for me?

20 A I'd like to take a quick look at that
21 settlement in response to that question. (Reviewing
22 documents.) Well, there is, Commissioner, and I wanted
23 to make sure this was something that was on the record
24 versus maybe some of the communications between the

1 parties. In looking at what has been agreed to, and I'll
2 just read it rather than try to paraphrase, if I may,
3 because it's fairly short, that the cost-benefit analysis
4 for a broad development of integrated Volt-VAR, in DEC it
5 says, "similar to the plan Duke Energy developed for its
6 Duke Indiana territory." So if you then ask me what are
7 all the specifics of what's going on in --

8 Q That -- that would be my next -- that would be
9 my next -- is that similar to what Dominion does, uses,
10 or is that similar to what DEP uses here in this area, or
11 is it a different technology?

12 A I'm going to be tapped out on the Dominion
13 question, so I don't know the answer to that. It draws a
14 contrast between and urges DEP to study a model and a way
15 of operating differently from the way it currently
16 operates as DSDR. So the Indiana model, obviously,
17 whether it is the same technology or not, it is utilized
18 in a different fashion, so what is being agreed to is to
19 those things. EDF obviously sees something they like in
20 what is being done in Indiana, and my reading of the
21 settlement is that Duke Energy has agreed to study that
22 for use at DEC and DEP.

23 Q Okay. Thank you. One more. One more. This
24 is a light question, softball to you. When -- if the

1 merger takes place, is Piedmont going to change the logo
2 they have now or is that going to stay the same? Are
3 they going to put Duke -- subsidiary of Duke Energy on
4 their cars as they go around or -- and is that going to
5 be part of the 125 million integration cost?

6 A I don't believe that that has -- all of the
7 branding decisions, all of the specifics around the
8 branding have been reached at this point. I think the
9 stand-alone nature of Piedmont is still solid, but
10 exactly what the brand is going to look like, what might
11 be in the fine print, I'm not aware that that decision
12 has been reached. I do not believe conversion of items
13 along those lines is included in the 125 as outlined in
14 our Appendix B. But, again, there may not be any such
15 cost, depending on how the decisions are made.

16 COMMISSIONER BAILEY: Thank you, sir.

17 EXAMINATION BY CHAIRMAN FINLEY:

18 Q Mr. Barkley, the Volt-VAR agreement that you
19 reached with EDF, if you implement a program, a Volt-VAR
20 program, that will reduce the voltage on the end of the
21 feeder so that the demand on the system is lower and it
22 allows you to have less generation at some point; is
23 that --

24 A I think that's certainly a potential result of

1 evaluating, and if proved to be cost beneficial
2 implementing this technology, I guess it would have to be
3 weighed against what it would do to reliability and -- so
4 I think that's why it requires long and careful study,
5 and we would not want to just say what apparently EDF
6 believes works well in Indiana would be cost beneficial
7 for the Carolinas without a good bit of analysis and
8 study.

9 Q But that's sort of a demand-side management
10 energy efficiency type program that you would be
11 studying?

12 A I don't know that they would file it under that
13 rider for cost recovery, but the concept, yes, sir.

14 Q Concept. And EDF, that's Environmental Defense
15 Fund?

16 A Yes, sir.

17 Q All right. And so that environmental group
18 came to you and asked for a settlement with you, and you
19 talked with them and agreed with them to do what you
20 agreed to do and filed with the Commission, right?

21 A Yes, sir.

22 Q Now, you also reached an agreement with Mr.
23 Page's client, CUCA.

24 A Yes, we did.

1 Q And you reached an agreement with the Public
2 Staff, right?

3 A Yes, we did.

4 Q Now, I'm not interested in any of the terms
5 that you might have talked about, but did you -- were you
6 willing to enter into discussions with Mr. West's client,
7 the Public Works Commission of Fayetteville?

8 A Yes, sir.

9 Q Anybody else approach you about reaching a
10 settlement in this case?

11 A Not to my knowledge, no, sir.

12 Q Okay. I believe you said that you participated
13 in the settlement discussions with the Public Staff?

14 A I did. Yes, sir.

15 Q Did you hear Dr. Fireman testify yesterday,
16 sort of casting the effort of the Public Staff in
17 unfavorable terms?

18 A I did.

19 Q And your opinion, based on your observation of
20 what the Public Staff did in those negotiations, were
21 they pushovers, were they tough negotiators, or just how
22 would you describe it?

23 A I believe that anybody that disparages their
24 negotiating ability has not negotiated with them. And

1 certainly I feel that they are effective and exhibit a
2 great deal of integrity when working with me and our team
3 on these matters, and there was a good bit of back and
4 forth. And there was a reason, Chairman Finley, that
5 these discussions took five weeks, because parties had
6 very divergent views and it took a while to coalesce
7 around a set of conditions that were acceptable to both.
8 So it was a process where as with, as they say, many good
9 deals, I think both sides leave a little bit unsatisfied,
10 a little bit unhappy. I certainly feel that way
11 personally having gone through that, and that's because
12 they are tough negotiators and, therefore, I have that
13 feeling at this time.

14 Q Now, we've heard a lot of talk about Regulatory
15 Conditions today, have we not?

16 A Yes, sir.

17 Q How many pages of Regulatory Conditions are
18 there between the Duke, Progress, Piedmont entities now?

19 A I think the current set -- I'll go ahead and
20 take a quick look -- I think it's around 60 pages, so 43
21 on the Conditions and another 18 counting an attachment,
22 so I'm going to go 61 pages of the Code of Conduct and
23 Reg Conditions.

24 Q And correct me if I am wrong, but it's my

1 understanding that a good number, if not all, of those
2 regulatory conditions have arisen because of negotiations
3 that the various companies have had with the Public Staff
4 and proceedings such as this where there have been
5 various mergers in the past?

6 A Yes, sir. I agree with that assessment. That
7 is the genesis of the Code of Conduct and Reg Conditions.

8 Q And for the most part, those regulatory
9 conditions were put in place to provide protection to the
10 Companies' ratepayers?

11 A Yes, sir.

12 Q All right. Did you -- did the Companies have
13 face-to-face meetings with the Public Staff?

14 A We did have numerous face-to-face meetings here
15 in Raleigh with the Public Staff.

16 Q Where did you have those meetings?

17 A They were here in the Dobbs Building on the
18 fifth floor.

19 Q In the Wells Conference Room?

20 A Correct.

21 Q Is that a back room?

22 A No, sir. I don't believe it's a back room.
23 It's a conference room there on the fifth floor.

24 Q Would you believe that it's an appropriate

1 characterization to say that the agreement that you
2 reached with the Public Staff was a backroom deal?

3 A I would not. And that agreement was certainly
4 filed upon its completion on June 10th, and I believe
5 that the Commission's orders allowed a review of that
6 agreement, and so it was reached between the Company and
7 the Public Staff and then filed for review and, of
8 course, for the Commission's approval.

9 Q Mr. Barkley, do you remember a situation
10 several months ago having to do with requests by the two
11 LDCs in North Carolina to come before the Commission and
12 ask for relief from some of their large industrial
13 customers having to do with the polar vortex and the
14 relief that those customers were trying to get from the
15 tariffs that would have imposed substantial additional
16 costs from them?

17 A So I'll -- yes is the answer to the question.
18 I am aware of that situation. I believe it has now been
19 probably -- I'm not exactly sure how long it's been, but
20 that occurred before I was employed by Piedmont. But I
21 am aware of the issue, yes, sir.

22 Q Are you aware in that situation, the Company
23 and the Public Staff were in lock-step position on that,
24 and they believed that those industrial customers should

1 have been relieved from their curtailment and
2 interruptible obligations?

3 A That is my understanding, yes, sir.

4 Q And that the Commission had its own lawyer come
5 in and represent the opposite side of that deal and
6 turned down what both the Public Staff and the Companies
7 were asking it to do?

8 A That is correct. And we have certainly filed
9 this settlement for the approval of the Commission.

10 Q Right. And did the Utilities Commission have
11 anything to do with the negotiations between the
12 Companies and the Public Staff?

13 A No, sir.

14 Q Did you keep the Commission, in any respect,
15 aware of the negotiations that you were having as to what
16 any of the terms of the negotiations were?

17 A We did not, no, sir.

18 Q So as far as you're concerned, the first time
19 the Commission saw anything about these Stipulations was
20 when you filed them as a public record?

21 A June the 10th, 2016, yes, sir, that's correct.

22 CHAIRMAN FINLEY: All right. Questions by the
23 Commission? Questions on the Commission's questions?

24 (No response.)

1 MR. SOMERS: Mr. Chairman, I do not have a
2 question following up on the Commission's questions, but
3 I did want to propose an answer. I realize I am not a
4 witness, I am an attorney and I cannot testify, but there
5 were a couple of questions related to Duke and the
6 integrated Volt-VAR Control. I think Mr. Barkley did an
7 admirable job as a Piedmont employee answering those as
8 best he could. To the extent there's no objection and
9 this not a contested item, I will be happy to answer a
10 couple of the outstanding questions if that will be
11 helpful and agreeable to everyone.

12 CHAIRMAN FINLEY: Without objection, you may.

13 MR. SOMERS: Commissioner Brown-Bland, you
14 asked a question about the timing as it relates to the
15 settlement with the Environmental Defense Fund and the
16 timing of the filing of those cost-benefit analyses and
17 the 2018 Smart Grid Plans. The question essentially was
18 why the Company could not file those cost-benefit
19 analyses in the 2016 Smart Grid Plans, and the answer to
20 that is Duke Energy Carolinas is preparing to deploy some
21 pilot -- I'll call it IVVC, the acronym for Integrated
22 Volt-VAR Control -- it's going to deploy some pilot IVVC
23 technology in the third quarter of this year. We're just
24 now in the third quarter. And coincidentally, it's in

1 the Burlington area. And it's going to be a pilot
2 project to begin to understand how that technology could
3 work.

4 The reason that we discussed with EDF filing it
5 in 2018 is we would benefit from having a full year
6 deployment so that we can see how the technology responds
7 and ensures reliability of our system during all four
8 seasons of the year. So that will not be completed until
9 at least the end of 2017, and that is why we asked that
10 we would make that filing in 2018. So we believe we need
11 all of that data in order to have an informed cost-
12 benefit analysis.

13 I believe Commissioner Bailey asked some
14 questions what we're doing in Indiana. In Indiana, that
15 program -- you referenced the Duke Energy Progress DSDR
16 program which this Commission approved many years ago.
17 As Chairman Finley noted in a question, that's an
18 approved energy efficiency program. It's used for peak
19 reduction. What we're going to study for Duke Energy
20 Carolinas is the deployment of that technology that could
21 be used on a conservation basis 24 hours a day, seven
22 days a week, 365 days a year. The deployment and the
23 technology in Indiana is for that conservation use. They
24 do have the ability to use it for peak load reduction.

1 Again, on the Duke Energy Progress side, our DSDR program
2 is used for peak load reduction. As part of the
3 settlement with the EDF, we will study additional uses to
4 include conservation uses where it's run I'll just say
5 essentially all the time.

6 So I hope that is helpful in answers to
7 questions.

8 MR. JEFFRIES: And Mr. Chairman, we have no
9 further questions of Mr. Barkley. I'd just like to wish
10 him luck in his new employment.

11 (Laughter.)

12 THE WITNESS: Thank you, sir.

13 CHAIRMAN FINLEY: All right. You may be
14 excused, Mr. Barkley, and we'll take a 15-minute recess.
15 Come back at quarter until 4:00.

16 (Recess taken from 3:32 p.m. to 3:45 p.m.)

17 CHAIRMAN FINLEY: Have a seat, ladies and
18 gentlemen. We'll get back to work.

19 MR. SOMERS: Mr. Chairman, if I may, just to
20 confirm, that concludes the Applicant's case. I believe
21 all the testimony and exhibits have been entered into the
22 record, and so we would rest at this point.

23 CHAIRMAN FINLEY: All right.

24 JAMES G. HOARD; Being first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION BY MS. WIKE:

3 Q Mr. Hoard, would you state your full name,
4 business address and position with the Public Staff.

5 A My name is James G. Hoard. My business address
6 is 430 North Salisbury Street, Raleigh, North Carolina,
7 and I am the Director of the Accounting Division of the
8 Public Staff.

9 Q Mr. Hoard, did you cause to be prepared and
10 prefiled in this matter testimony consisting of 18 pages
11 in question and answer form and one Appendix with your
12 qualifications and experience?

13 A Yes.

14 Q Do you --

15 CHAIRMAN FINLEY: Ms. Wike, if you'll pull the
16 microphone up there, please, ma'am.

17 MS. WIKE: Yes, sir. I'm going to.

18 Q Do you have any changes or corrections to make
19 to your testimony at this time?

20 A Yes, I do, and I believe that Public Staff
21 counsel distributed it earlier. I'll go through those
22 changes. They show up on page 6 of my testimony. And
23 basically this is to reflect the effect of the Amendment,
24 and there's a cross out. What's crossed out is, "its

1 North Carolina Integrity Management Deferred Account (IM
2 Deferred Account) a total of 10 million" -- sorry -- "a
3 total of." That shows up on lines 5 and 6. And then on
4 line 7 cross out, "\$5 million per year for the first two
5 years following the close of the Merger." And then on
6 line 8 we've inserted, "through a one-time bill credit to
7 be completed by December 31, 2016." And then there's a
8 cross out on line 9, "The credits recorded in the IM
9 Deferred Account reduce the amount that ratepayers will
10 pay related to Piedmont's Integrity Management Rider by
11 \$10 million." And then skipping down to line 18, there's
12 a cross out, "IM Deferred Account," and there's an
13 insert, "North Carolina customers." And that's all the
14 changes.

15 Q Mr. Hoard, if I were to ask the questions in
16 your testimony today, would your answers be the same
17 except for these changes?

18 A Yes.

19 MS. WIKE: Mr. Chairman, I would ask that Mr.
20 Hoard's prefiled testimony, as revised on the stand, be
21 copied into the record as if given orally from the stand.

22 CHAIRMAN FINLEY: Mr. Hoard's prefiled
23 testimony consisting of 18 pages, as revised from the
24 stand, filed on June 10, 2016, is copied into the record

1 as if given orally from the stand, as well as his
2 Appendix which was attached to the testimony.

3 MS. WIKE: Thank you, sir.

4 (Whereupon, the prefiled direct
5 testimony of James G. Hoard, as
6 revised on the stand, and Appendix
7 A were copied into the record as if
8 given orally from the stand.)
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PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION
DIRECT TESTIMONY OF JAMES G. HOARD
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NOS. E-2, SUB 1095, E-7, SUB 1100, AND G-9, SUB 682
June 10, 2016

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- 1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND
- 2 PRESENT POSITION.
- 3 A. My name is James G. Hoard, and my business address is 430 North
- 4 Salisbury Street, Raleigh, North Carolina. I am the Director of the
- 5 Accounting Division of the Public Staff. My qualifications and
- 6 experience are provided in Appendix A.
- 7 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY IN
- 8 THIS PROCEEDING.
- 9 A. The purpose of my testimony is to present the results of the Public
- 10 Staff's investigation of the application filed on January 15, 2016, by
- 11 Duke Energy Corporation (Duke Energy) and Piedmont Natural Gas
- 12 Company, Inc. (Piedmont) (collectively, the Applicants), pursuant to
- 13 G.S. 62-111(a) for authority to engage in the proposed business
- 14 combination transaction (Merger) as set forth in the Merger
- 15 Agreement attached to the application as Exhibit A; and to revise and
- 16 apply Duke Energy Carolinas, LLC's (DEC) and Duke Energy
- 17 Progress, LLC's (DEP) Regulatory Conditions and Code of Conduct
- 18 to Piedmont. In my testimony, I describe the scope of the Public

1 Staff's investigation of the proposed Merger; discuss the balancing
2 of costs and benefits of a proposed business combination; describe
3 major provisions of the Agreement and Stipulation of Settlement
4 (Stipulation) between the Applicants and the Public Staff (the
5 Stipulating Parties); discuss the rules governing affiliate transactions;
6 describe the new Regulatory Conditions and Code of Conduct
7 provisions related to the Merger; and present the Public Staff's
8 recommendation regarding Commission approval of the transaction.

9 Q. PLEASE DESCRIBE THE PUBLIC STAFF'S INVESTIGATION.

10 A. A task force of accountants, engineers, attorneys, and financial
11 analysts conducted an investigation of the proposed Merger,
12 including the market power and cost-benefit analyses submitted with
13 the application. The Public Staff submitted data requests to the
14 Applicants and reviewed the responses to those data requests. The
15 Public Staff also reviewed the Merger proxy statements and other
16 documents filed by the Applicants with the Securities and Exchange
17 Commission, and the Applicants' submissions to the Federal Trade
18 Commission and the US Department of Justice pursuant to the Hart-
19 Scott-Rodino Antitrust Improvements Act.

20 Q. WHY IS IT IMPORTANT TO IDENTIFY AND BALANCE THE
21 COSTS AND BENEFITS OF A PROPOSED MERGER OR
22 BUSINESS COMBINATION?

1 A. G.S. 62-111(a) provides that no merger or combination affecting any
2 public utility shall be made through acquisition or control by stock
3 purchase or otherwise, except after Commission approval, which
4 "shall be given if justified by the public convenience and necessity."
5 This statute requires the Commission to review all aspects of a
6 proposed merger and to balance all potential benefits and costs of
7 the merger in determining whether the transaction should be
8 approved. In reviewing applications for merger approval, the
9 Commission has considered such factors as the maintenance of or
10 improvement in service quality, the extent to which costs can be
11 lowered and rates can be maintained or reduced, the extent to which
12 the merger could have anticompetitive effects, the continuation of
13 effective state regulation, and the relationships between and among
14 the various units of the merged firm. In approving a merger
15 application, the Commission has sought to ensure that the proposed
16 transaction would have no adverse impact on the rates charged and
17 the service provided to North Carolina jurisdictional ratepayers,¹ that
18 ratepayers were protected and insulated to the maximum extent
19 possible from all known and potential costs and risks associated with
20 the transaction, and that the benefits of the transaction to ratepayers
21 were sufficient to offset those potential costs and risks.

¹ Includes North Carolina retail customers of DEC and DEP and North Carolina customers of Piedmont.

1 The Commission's *Order Requiring Filing of Analyses* issued
2 November 2, 2000, in Docket No. M-100, Sub 129, requires that
3 merger applications be accompanied by a market power analysis
4 and a cost-benefit analysis. The Applicants submitted that the cost-
5 benefit analysis and market power analysis attached to the
6 application comply with this requirement. In its *Order Scheduling*
7 *Hearing, Establishing Procedural Deadlines, and Requiring Public*
8 *Notice* issued on March 2, 2016, in the current proceeding, the
9 Commission found and concluded that the application satisfies the
10 requirements of the *Order Requiring Filing of Analyses*. An
11 investigation and verification of the cost-benefit analysis and market
12 power analysis is an essential part of the Commission's
13 consideration of the proposed Merger and the application of the
14 statutory standard for approval. As evidenced by the Stipulation, the
15 Public Staff believes the quantitative benefits, together with the
16 agreed upon regulatory conditions, are sufficient to meet that
17 standard.

18 Q. PLEASE DESCRIBE THE PROPOSED TRANSACTION.

19 A. Duke Energy proposes to pay \$60 per share, all cash, for the
20 outstanding common stock of Piedmont, which results in a purchase
21 price of approximately \$4.85 billion.² Based on Piedmont's book
22 value as of October 31, 2015, of \$1.42 billion, the purchase will result

² Duke Energy will also assume approximately \$1.8 billion in existing Piedmont debt.

1 in a \$3.43 billion acquisition premium, which will be recorded at the
2 Duke Energy holding company level and will not impact Piedmont's
3 financial statements. Upon the close of the Merger, Piedmont will no
4 longer be a publicly traded company, but will continue to exist as a
5 wholly-owned direct subsidiary of Duke Energy. Piedmont is
6 expected to retain its current name, corporate form and
7 headquarters. In addition, it is expected that Frank Yoho, who
8 currently serves as Piedmont's Senior Vice President and Chief
9 Commercial Officer and is an existing member of Piedmont's senior
10 management team, will manage Duke Energy's natural gas
11 operations. These post-Merger natural gas operations will consist of
12 Piedmont, Duke Energy's existing Midwest local distribution
13 company (LDC) operations, and gas infrastructure investments
14 across Duke Energy.

15 Q. PLEASE EXPLAIN THE MAJOR PROVISIONS OF THE
16 STIPULATION.

17 A. Presented below is a description of the matters agreed upon by the
18 Applicants and Public Staff in the Stipulation:

19 Merger-related Costs Savings. On March 11, 2016, Piedmont filed
20 in Docket No. G-9, Sub 686, an Application for Approval of Deferred
21 Accounting Treatment of Certain Distribution Integrity Management
22 Costs. In that filing, Piedmont estimated that its costs subject to
23 deferral would be as high as \$18.03 million for North Carolina over

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1 the next five years, or approximately \$3.6 million per year. The
2 Stipulating Parties have agreed Piedmont will withdraw that request
3 for deferral accounting.

4 In addition, the Stipulating Parties have agreed that Piedmont will
5 commit to credit its ~~North Carolina Integrity Management Deferred~~
6 ~~Account (IM Deferred Account) a total of \$10 million to its North~~
7 ~~Carolina customers; \$5 million per year for the first two years~~
8 ~~following the close of the Merger. The credits recorded in the IM~~
9 ~~Deferred Account reduce the amount that ratepayers will pay related~~
10 ~~to Piedmont's Integrity Management Rider by \$10 million.~~
through a one-time bill credit to be completed by December 31, 2016.

11 To avoid potential double-counting of Merger-related cost savings,³
12 the Stipulating Parties have agreed that in the event of a Piedmont
13 general rate case with rates effective no more than two years from
14 the Merger close, (1) Piedmont reserves the right to reflect an
15 adjustment in the general rate case that would increase its revenue
16 requirement for a portion of the \$10 million in savings that Piedmont
17 has agreed to credit to its ~~IM Deferred Account~~ *North Carolina Customers* and (2) should
18 Piedmont exercise its right to reflect such an adjustment, the Public
19 Staff reserves the right to incorporate the effect of additional Merger-
20 related savings in its proposed revenue requirement calculation.

³ This issue arose in the context of the Duke-Cinergy merger docket (Docket No. E-7, Sub 795) and subsequent DEC rate case proceeding (Docket No. E-7, Sub 828).

1 Annual Community Support and Charitable Contributions. Beginning
2 January 1, 2017, DEC, DEP, and Piedmont will fund The Duke
3 Energy Foundation and Piedmont Natural Gas Foundation for four
4 years at annual levels no less than \$9.65 million, \$6.375, and \$1.5
5 million, for community support and charitable contributions in the
6 North Carolina service territories of DEC, DEP and Piedmont,
7 respectively. Comparable levels of community support and
8 charitable contributions in the North Carolina service territories of
9 DEC and DEP were \$9.2 million and \$7.328 million, respectively,
10 agreed to in connection with the 2012 merger of Duke Energy and
11 Progress Energy.

12 Other Contributions. Within twelve months of the close of the
13 Merger, DEC, DEP, and Piedmont will contribute a total of \$7.5
14 million to their respective foundations for workforce development and
15 low income energy assistance as may be agreed upon with the
16 Public Staff. These contributions will be allocated among the North
17 Carolina service territories of DEC, DEP, and Piedmont in proportion
18 to the number of North Carolina jurisdictional customers served by
19 each. The Duke-Piedmont transaction is considerably smaller than
20 the 2012 Duke-Progress transaction, and thus a smaller agreed-
21 upon contribution in connection with this transaction relative to the
22 \$15 million for workforce development and low-income energy

1 assistance agreed to in connection with the 2012 Duke-Progress
2 transaction is reasonable.

3 Revised GS-1 Report. Effective upon the close of the Merger,
4 Piedmont will begin utilizing a revised NCUC GS-1 Earnings
5 Surveillance Report (GS-1 Report) format that is similar to the format
6 of the ES-1 Earnings Surveillance Report (ES-1 Report) that is
7 submitted to the Commission by the major electric utilities. The
8 ES-1 Report currently submitted by DEC and DEP includes
9 comprehensive computations of the return on equity for each
10 jurisdiction in which the utilities operate, along with supporting
11 financial reports, supplemental information, and computations.
12 Piedmont currently submits only the supporting financial reports and
13 supplemental information. With the change in report format,
14 Piedmont will provide the computations of the jurisdictional returns
15 on equity and supporting computations, in addition to the information
16 currently provided.

17 Merger-related Direct Expenses. The direct expenses associated
18 with the Merger will be excluded from the regulated expenses of
19 Piedmont, DEC, and DEP for Commission financial reporting and
20 ratemaking purposes. Direct merger costs are composed of change-
21 in-control payments made to terminated executives, regulatory
22 process costs, and transaction costs, such as investment banker and
23 legal fees for transaction structuring, financial market analysis, and

1 fairness opinions based on formal agreements with investment
2 bankers. The Applicants have estimated transaction costs of \$125
3 million. In addition, Piedmont estimates in its Definitive Proxy
4 Statement dated December 14, 2015 (Definitive Proxy Statement)
5 that change in control payments to Piedmont executives could total
6 as much as \$46.8 million.⁴ Piedmont, DEC, and DEP have agreed
7 to file a summary report of their final accounting for Merger-related
8 direct expenses within 60 days after the close of the Merger, and
9 supplemental reports, as necessary, within 60 days after each
10 quarter.

11 Merger-related Transition Costs. In order to hold the North Carolina
12 ratepayers of Piedmont and the North Carolina retail ratepayers of
13 DEC and DEP harmless from any adverse effect of the Merger on
14 rates, the Stipulating Parties agreed that Merger-related transition
15 costs will be treated as follows:

16 (a) DEC, DEP, and Piedmont may request recovery through
17 depreciation or amortization, and inclusion in rate base, as
18 appropriate and in accordance with normal ratemaking
19 practices, their respective shares of capital costs associated
20 with achieving merger savings, such as system integration
21 costs and the adoption of best practices, including information
22 technology, provided that such costs are incurred no later

⁴ Definitive Proxy Statement, page 51, the sum of the amounts shown in the Total column.

1 than three years from the close of the Merger and result in
2 quantifiable cost savings that offset the revenue requirement
3 effect of including the costs in rate base. Only the net
4 depreciated costs of such system integration projects at the
5 time the request is made may be included, and no request for
6 deferrals of these costs may be made.

7 (b) DEC's, DEP's, and Piedmont's Merger-related severance
8 costs will be excluded from DEC's, DEP's, and Piedmont's
9 cost of service for ratemaking purposes.

10 Pursuant to Regulatory Condition 5.19, DEC and DEP, in their
11 respective ES-1 Reports, and Piedmont in its GS-1 Report must
12 reflect these costs to achieve Merger savings in accordance with
13 generally accepted accounting principles and identify the North
14 Carolina portions of these costs.

15 Employee Incentive and Benefit Plan Costs. Piedmont, DEC, and
16 DEP will exclude from their regulated expense and plant accounts
17 the effects of all Piedmont long-term incentive plan (performance
18 shares and restricted stock units/shares) costs that result from the
19 increase in the Piedmont stock price above the \$42.22 per share
20 closing price on October 23, 2015, adjusted for changes in the stock
21 price that would have occurred absent the Merger. Piedmont's
22 executives and some employees receive incentive compensation in
23 the form of Piedmont stock. Duke Energy is purchasing the

1 Piedmont stock at a price more than 40% above the level that the
2 stock traded at the time of the Merger announcement. The
3 Applicants have agreed to record the portion of the specified costs
4 that exceeds a pro forma cost determined based on an LDC peer
5 group proxy in non-regulated below-the-line accounts for ES-1 and
6 GS-1 Report purposes. Essentially, the portion of the costs that
7 would have been incurred absent the Merger will be recorded in
8 regulated above-the-line accounts, and the remaining costs will be
9 recorded in below-the-line accounts.

10 Interest Rate on Deferred Gas Cost Accounts. The Stipulating
11 Parties agreed that beginning with the month in which the Merger
12 closes, Piedmont will use the net-of-tax overall rate of return from its
13 last general rate case as the applicable interest rate on all amounts
14 over-collected or under-collected from customers reflected in its
15 Sales Customers Only, All Customers, and Hedging Deferred Gas
16 Cost Accounts (collectively, the Deferred Gas Cost Accounts).⁵ The
17 net-of-tax overall rate of return is the interest rate used by Piedmont
18 for its Margin Decoupling and Integrity Management Rider deferred
19 accounts. Currently, the interest rate is 6.58%. The methods and

⁵ Pursuant to the Commission's July 22, 1991, *Order Granting Partial Rate Increase*, in Docket No. G-9, Sub 309, Piedmont has been using an interest rate of 10% on these accounts. Order at page 65.

1 procedures used by Piedmont for the accrual of interest on the
2 Deferred Gas Cost Accounts will remain unchanged.

3 Plant Accounting Closing Process. In the Public Staff's opinion,
4 Piedmont has not been unitizing completed plant projects or
5 recording retirements in a timely manner. Piedmont's recent
6 extensive integrity management construction program has
7 exacerbated what has previously been a relatively minor Public Staff
8 concern. Pursuant to the Stipulation, within 180 days after the close
9 of the Merger, Piedmont will begin to implement procedures to
10 ensure that project unitization and plant retirements are finalized
11 within 180 days of project completion. Piedmont will file semi-annual
12 status reports report with the Commission detailing its progress in
13 implementing these practices, with the first report due twelve months
14 from the close of the Merger.

15 Q. PLEASE DESCRIBE THE PURPOSE OF AFFILIATED
16 TRANSACTION RULES.

17 A. Affiliated transactions rules, such as those set forth in the current
18 Regulatory Conditions and Code of Conduct of DEC and DEP
19 approved by the Commission in the Duke-Progress Merger Order,⁶
20 are designed to: (1) fairly allocate the cost of common goods and

⁶ The Regulatory Conditions were subsequently modified by the Commission's *Order Approving Revisions to Regulatory Conditions Nos. 7.7 and 7.8* issued March 24, 2015, in Docket Nos. E-7, Subs 986 and 986A, and E-2, Subs 998 and 998A, and *Order Approving Transfer of Employees and Amendment to Regulatory Condition [No. 5.3]* issued November 25, 2015, in Docket Nos. E-7, Sub 986 and E-2, Sub 998.

1 services among affiliates, (2) protect the ratepayers of utilities from
2 overcharges by non-regulated affiliates, and (3) prevent cross-
3 subsidization of non-regulated affiliates by utility affiliates. DEC and
4 DEP have developed a cost allocation manual (CAM) pursuant to
5 these Regulatory Conditions to allocate the costs of common goods
6 and services from Duke Energy Business Services, LLC, the service
7 company, to the affiliates and between or among utilities. DEC and
8 DEP have also implemented a Code of Conduct that has been
9 approved by the Commission that governs affiliate issues such as
10 joint purchases, the sharing of customer information and confidential
11 system operations information with affiliates, and the potential of
12 favoritism toward affiliates over non-affiliates in general business
13 practices. In addition, DEC and DEP are required by the Regulatory
14 Conditions to comply with certain affiliated transaction audit
15 requirements, file affiliated transaction reports and inter-utility service
16 agreements with the Commission, and provide the Commission
17 advance notice in the event of certain corporate or regulatory events.
18 In this proceeding, the Stipulating Parties have agreed to a number
19 of changes to the DEC and DEP Regulatory Conditions and Code of
20 Conduct necessitated by the Merger between Duke Energy and
21 Piedmont.

22 Q. PLEASE DESCRIBE PROPOSED NEW REGULATORY
23 CONDITIONS AND CODE OF CONDUCT PROVISIONS THAT

1 ADDRESS MATTERS RELATED TO THE AFFILIATE
2 RELATIONSHIP OF PIEDMONT'S LOCAL DISTRIBUTION GAS
3 COMPANY OPERATIONS WITH THE ELECTRIC UTILITY
4 OPERATIONS OF DUKE ENERGY.

5 A. Provisions have been added to the Regulatory Conditions and Code
6 of Conduct to address matters such as: (a) priority of natural gas
7 service for electric generation, (b) separation of gas and electric
8 operations and potential discrimination against gas-fired non-utility
9 electric generators, (c) natural gas sales transactions between
10 Piedmont and its two electric utility affiliates, and (d) natural gas-
11 electric competition. These provisions include the following:

12 **Priority of Natural Gas Service for Electric Generation**

13 Code of Conduct Section III.B.10.: Unless otherwise directed by
14 order the Commission, electric generation shall not receive a priority
15 of use from Piedmont that would supersede or diminish Piedmont's
16 provision of service to its human needs firm residential and
17 commercial customers.

18 **Separation of Gas and Electric Operations and Potential**
19 **Discrimination Against Gas-fired Non-utility Electric Generators**

20 Regulatory Conditions Section XV – Procedures for Determining
21 Long-term Sources of Pipeline Capacity and Supply

22 15.1 Cost-benefit Analysis. The appropriate source(s) for the
23 interstate pipeline capacity and supply shall be determined by DEC

1 and DEP on the basis of the benefits and costs of such source(s)
2 specific to their respective electric customers. The appropriate
3 source(s) for the interstate pipeline capacity and supply shall be
4 determined by Piedmont on the basis of the specific benefits and
5 costs of such source(s) specific to its natural gas customers,
6 including electric power generating customers.

7 15.2 Ownership and Control of Contracts. Piedmont shall retain
8 title, ownership, and management of all gas contracts necessary to
9 ensure the provision of reliable Natural Gas Services consistent with
10 Piedmont's best cost gas and capacity procurement methodology.

11 Code of Conduct Section III.B.11.: Piedmont shall file an annual
12 report with the Commission summarizing all requests or inquiries for
13 Natural Gas Services made by a non-utility generator, Piedmont's
14 response to the request, and the status of the inquiry.

15 Code of Conduct Section III.D.3.(e): All Piedmont deliveries to DEC
16 and DEP pursuant to intrastate negotiated sales or transportation
17 arrangements and combinations of sales and transportation
18 transactions shall be at the same price and terms that are made
19 available to other Shippers having comparable characteristics, such
20 as nature of service (firm or interruptible, sales or transportation),
21 pressure requirements, nature of load (process/heating/electric)
22 generation, size of load, profile of load (daily, monthly, seasonal,

1 annual), location on Piedmont's system, and costs to serve and
2 rates. Piedmont shall maintain records in sufficient detail to
3 demonstrate compliance with this requirement.

4 **Natural Gas Sales Transactions between Piedmont and Its Two**
5 **Electric Utility Affiliates**

6 Code of Conduct Section III.D.3.(f): All gas supply transactions,
7 interstate transportation and storage transactions, and combinations
8 of these transactions, between DEC or DEP and Piedmont shall be
9 at the fair market value for similar transactions between non-affiliated
10 third parties. DEC, DEP, and Piedmont shall maintain records, such
11 as published market price indices, in sufficient detail to demonstrate
12 compliance with this requirement.

13 Code of Conduct Section III.D.3.(g): All of the margins, also referred
14 to as net compensation, received by Piedmont on secondary market
15 sales to DEC and DEP shall be recorded in Piedmont's Deferred Gas
16 Cost Accounts and shall flow through those accounts for the benefit
17 of ratepayers. None of the margins on secondary market sales by
18 Piedmont to DEC and DEP shall be included in the secondary market
19 transactions subject to the sharing mechanism on secondary market
20 transactions approved by the Commission in its Order Approving
21 Stipulation, dated December 22, 1995, in Docket No. G-100, Sub 67.

22 Code of Conduct Section III.E.3.: If Piedmont supplies any of

1 Natural Gas Services, with the exception of Natural Gas Services
2 provided pursuant to Commission-approved contracts or service
3 agreements, used by either DEC or DEP to generate electricity,
4 DEC or DEP, as applicable, shall file a report with the Commission
5 in its annual fuel and fuel-related cost recovery case
6 demonstrating that the purchase was prudent and the price was
7 reasonable.

8 **Natural Gas – Electricity Competition**

9 Code of Conduct Section III.H.: Natural Gas/Electricity Competition.
10 DEC, DEP and Piedmont shall continue to compete against all
11 energy providers, including each other, to serve those retail
12 customer energy needs that can be legally and profitably served by
13 both electricity and natural gas. The competition between DEC or
14 DEP and Piedmont shall be at a level that is no less than that which
15 existed prior to the .Merger. Without limitation as to the full range of
16 potential competitive activity, DEC, DEP and Piedmont shall
17 maintain the following minimum standards:

- 18 1. Piedmont will make all reasonable efforts to extend the
19 availability of natural gas to as many new customers as
20 possible.
- 21 2. In determining where and when to extend the availability of
22 natural gas, Piedmont will at a minimum apply the same
23 standards and criteria that it applied prior to the Merger.

1 3. In determining where and when to extend the availability of
2 natural gas, Piedmont will make decisions in accordance with
3 the best interests of Piedmont, rather than the best interest of
4 DEC or DEP.

5 4. To the extent that either the natural gas industry or the
6 electricity industry is further restructured, DEC, DEP, and
7 Piedmont will undertake to maintain the full level of
8 competition intended by this Code of Conduct subject to the
9 right of DEC, DEP, Piedmont or the Public Staff to seek relief
10 from or modifications to this requirement by the Commission.

11 Q. IN THE PUBLIC STAFF'S OPINION, DO THE NEW AFFILIATE
12 TRANSACTION RULES INCORPORATE REFINEMENTS THAT
13 WILL APPROPRIATELY ADDRESS THE POTENTIAL ISSUES
14 RAISED BY THE MERGER?

15 A. Yes.

16 Q. WHAT IS THE PUBLIC STAFF'S RECOMMENDATION WITH
17 REGARD TO THE PROPOSED MERGER?

18 A. The Public Staff recommends that the proposed Merger of Duke
19 Energy and Piedmont be approved, subject to the provisions of the
20 Stipulation and the agreed upon Regulatory Conditions.

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22 A. Yes.

APPENDIX A

JAMES G. HOARD**Qualifications and Experience**

I graduated from the University of Rhode Island in 1979 with a Bachelor of Science degree in Business Administration. Subsequent to graduation I have completed various economics, statistics, and regulatory courses. I am a Certified Public Accountant and a member of the North Carolina Association of Certified Public Accountants.

I joined the Public Staff as a Staff Accountant in October, 1979, and was promoted to Supervisor of the Electric Section in January 1984. At the end of 1985, I assumed the position of manager in a small regional certified public accounting firm. In September 1987 I rejoined the Public Staff as Supervisor of the Communications Section, and March 1991, I became Supervisor of the Natural Gas Section. On August 1, 2000, I was promoted to Assistant Director of the Accounting Division, and on October 2, 2012, I was promoted to Director of the Accounting Division. In my present position, I am responsible for the organization, planning, and performance of the work of the Public Staff Accounting Division, which includes, among other things, the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I have testified before the Commission on many occasions addressing a wide range of topics and issues.

1 Q Mr. Hoard, could you present a summary of your
2 testimony?

3 A Yes. The purpose of my testimony is to present
4 the results of the Public Staff's investigation of the
5 application filed on January 15, 2016, by Duke Energy
6 Corporation and Piedmont Natural Gas Company for
7 authority to engage in the proposed business combination
8 transaction as set forth in the Agreement and Plan of
9 Merger attached to the application. In my testimony, I
10 describe the scope of the Public Staff's investigation of
11 the proposed Merger, discuss the balancing of costs and
12 benefits of a proposed business combination, describe
13 major provisions of the Agreement and Stipulation of
14 Settlement between the Applicants and the Public Staff,
15 discuss the rules governing affiliate transactions,
16 describe the new Regulatory Conditions and Code of
17 Conduct provisions related to the Merger, and present the
18 Public Staff's recommendation regarding Commission
19 approval of the transaction.

20 Based on its investigation and the terms of the
21 Stipulation, including the Regulatory Conditions and Code
22 of Conduct, the Public Staff believes that the proposed
23 Merger of Duke Energy and Piedmont is justified by the
24 public convenience and necessity, and meets the standard

1 for approval under G.S. 62-111(a). Therefore, the Public
2 Staff recommends that the transaction be approved.

3 This concludes the summary of my testimony.

4 MS. WIKE: Mr. Hoard is available for cross
5 examination.

6 CHAIRMAN FINLEY: Cross examination?

7 CROSS EXAMINATION BY MR. RUNKLE:

8 Q Good afternoon, Mr. Hoard. How are you doing
9 today?

10 A Good afternoon. Doing fine.

11 Q All right. Were you a part of the Public Staff
12 in negotiating the settlement?

13 A Yes, sir.

14 Q Okay. So you participated in the whole five-
15 week discussion?

16 A Yes, sir.

17 Q Okay. Now, did the -- did you review the --
18 and by "you" I'm referring to the Public Staff. Did the
19 Public Staff review the application, the various
20 appendices to the application?

21 A Yes.

22 Q Did the Public Staff have data requests to the
23 Companies?

24 A Yes. I believe we had 14 multi-part data

1 requests that we sent to the Companies.

2 Q Okay. Now, did you, the Public Staff, review
3 the cost-benefit analysis that was part of the
4 application as Appendix B?

5 A Yes.

6 Q Did the Public Staff prepare its own cost-
7 benefit analysis of the merger?

8 A We did not prepare our own cost-benefit
9 analysis. We did do some investigation to try to get a
10 handle on what might could be some, you know, merger
11 savings, but we did not perform our own cost-benefit
12 analysis.

13 Q Did the Public Staff, in its review, look at
14 potential price variation in the -- in natural gas?

15 A No.

16 Q Did the Public Staff look at the availability
17 of adequate interstate pipeline transportation capacity?

18 A Well, I mean, we're familiar with the capacity
19 situation of both -- of DEC and DEP and Piedmont, and
20 we're -- you know, we're familiar with ACP and, you know,
21 we're familiar with where they are as far as their
22 capacity situation, so we didn't do any special
23 investigation of that in this proceeding.

24 Q Did the Public Staff do an investigation of

1 natural gas supply?

2 A No.

3 Q Okay. Did the Public Staff do an investigation
4 of any potential regulatory changes, either state or
5 federal, that would affect natural gas?

6 A I mean, we have lots of ongoing proceedings. I
7 mean, with as far as, you know, they have the IRP
8 proceedings and many proceedings where various issues for
9 things like clean power plant or other environmental
10 issues, other things that are going on. There are other
11 proceedings where we do those investigations. We've --
12 in this particular proceeding we focused on the effect of
13 bringing an LDC that is operating in North Carolina and
14 will continue to operate in North Carolina within
15 electric utility -- two electric utilities that are
16 operating, just that aspect of bringing those two
17 businesses together, because that's really all we saw
18 that this -- that changed as a result of this
19 transaction. And our investigation was focused on how
20 those -- that combination would affect ratepayers.

21 Q In looking at natural gas supply, how many
22 years in the future did you look at?

23 A I didn't look at gas supply in this particular
24 proceeding. We -- when we do our, you know, our annual

1 reviews for the gas companies, usually there will be
2 testimony or there will be some zeroing in on the gas
3 supply issue. Our engineers look at that on a regular
4 basis. There's nothing about this proceeding that really
5 had anything to do with the, you know, the gas supply
6 picture that's different from what happens in the annual
7 reviews for gas companies or the fuel cases for electric
8 utilities, or the IRP proceedings for that matter.

9 MS. WIKE: Mr. Chairman, I'm going to, just for
10 the record, join in the continuing objection to questions
11 along the lines that were struck from the testimony of NC
12 WARN's witnesses.

13 CHAIRMAN FINLEY: All right. With respect to
14 the same continuing objection that Duke and Piedmont
15 received, you'll have the same one.

16 MR. RUNKLE: Thank you.

17 Q The -- in its review of the application for the
18 merger, did the Public Staff investigate competition from
19 other companies that supply energy outside of -- other
20 than Duke and Piedmont?

21 A Like from whom?

22 Q Well, one of the competition might be from
23 solar energy or different other merchant plants or any
24 number of other companies that would supply either

1 natural gas or electricity.

2 A Well, I mean, we -- as far as NUGs, we've
3 considered -- I'm sorry -- nonutility generators. As far
4 as nonutility generators, we considered those in
5 developing, you know, the conditions to -- as far as the
6 many different provisions in the Code and the Regulatory
7 Conditions that we -- that, you know, we considered as in
8 trying to address maybe the needs of NUGs, but that's --
9 I know we did that. I don't think we did anything in
10 particular for solar. I mean, obviously we've got a
11 whole 'nother type of proceeding, the REPs proceedings
12 and that, where solar is a big part of that. And we've
13 got a bunch of proceedings where we had CPCNs for solar
14 facilities. So we didn't do anything particular in this
15 case that's related to nonutility generators.

16 Q And --

17 CHAIRMAN FINLEY: Mr. Hoard, how about pulling
18 that microphone around a little bit in front of you --

19 THE WITNESS: Okay.

20 CHAIRMAN FINLEY: -- between you and Mr. Runkle
21 as you address his questions.

22 Q In your investigation of the application, did
23 the Public Staff analyze the effects of climate change on
24 the future of either Duke or Piedmont?

1 A No.

2 Q Okay. Did the -- as part of your
3 investigation, did the Public Staff look at operational
4 interruptions to gas distribution and transmission
5 activities?

6 A From --

7 Q Operational interruptions of any kind?

8 A That was not part of our investigation in this
9 proceeding, I mean, but here again we're getting back to
10 the same issue. I mean, if there was operational -- a
11 potential operational disruption issue -- there was one
12 with Piedmont -- there's nothing about this merger that
13 would cause us to focus on that issue as a result of the
14 business combination.

15 Q In your investigation of the application, did
16 the Public Staff look at potential changes to credit
17 ratings?

18 A We did. That was -- we did have some -- we had
19 some data request items on that, and we incorporated some
20 conditions to try to protect against that. I think it's
21 Condition 8.2.

22 Q Uh-huh. And the resulting availability cost of
23 capital?

24 A Well, that's part of it. I think Mr. Young

1 referred to that this morning as well. Basically,
2 that's, you know, to try to protect ratepayers from any
3 harmful effects as result of the merger on capital cost.

4 Q Did you investigate the ability of
5 counterparties to meet their obligations to Piedmont?

6 A No. I mean, here again, it's the same issue.
7 That's -- you know, it's not really an issue that pops up
8 with the business combination. We do that sort of
9 investigation in other proceedings, but not in this
10 particular one.

11 Q And as part of your assessment of the
12 application, did you assess the potential growth in Duke
13 Energy's natural gas platform or the development of their
14 natural gas platform?

15 A I mean, we -- there again, we're familiar with
16 what Duke Energy's plans are as far as, you know, their
17 investment in Atlantic Coast Pipeline, which is the major
18 project. I'm aware that they're invested in Sabal Trail,
19 but frankly that doesn't affect us too much here in the
20 Carolinas. But we didn't do anything special about that.
21 I mean, we do have some conditions in here to address
22 equity investment companies. That has more to do with
23 cost allocations, you know, but as far as the idea of
24 treatment of investment companies, nothing special. I

1 think Mr. Yoho explained earlier today the Piedmont
2 structure for dealing with investment companies and
3 pipelines, and we're familiar with that. They've been
4 doing that for a long time. Started, I think, with Pine
5 Needle back in -- I'm to think if it was the early 2000s
6 or 1990s, but they've had that structure in place where
7 they kind of have the divided house with the equity, you
8 know, the folks that are involved in the ownership
9 interest separate from those that are looking out for
10 customers. We're familiar with that structure. So, I
11 mean, I think that's -- there's a lot of things that
12 we're familiar with that we didn't really have to, you
13 know, do a special investigation of in this proceeding.

14 Q Can I turn your attention to the Regulatory
15 Conditions, which is Attachment A to this Settlement
16 Agreement, page 34? And so the Settlement Agreement,
17 page 34, paragraph 8.8. And you're familiar with that?

18 A Yes, but what I was going to do is to kind of
19 look over and see. Let's see here.

20 Q In the blackline drawing it only adds Piedmont.
21 There's no substantive changes.

22 A Okay.

23 Q I know you all --

24 A Right.

1 Q I know the Public Staff is more familiar with
2 the blackline, but take your time.

3 A (Reviewing document.) Okay.

4 Q So this condition states that the Commission is
5 authorized to take whatever action it deems necessary to
6 protect the economic viability of the utilities; is that
7 correct?

8 A I mean, it says what it says. I mean, really,
9 this is one that has more to do with, you know, electric
10 operations. I mean, it does -- it is expanded to include
11 Piedmont, but, you know, it kind of had more, I think,
12 implication in the electric industry with, you know, the,
13 you know, preemption risks and those sorts of things.

14 Q The preemption risks?

15 A Yes. For preemption.

16 Q Does it have anything to do with the protection
17 of a utility's assets from liabilities of affiliates? Is
18 that with the money pools?

19 A Okay. This has -- this is a ring-fencing
20 provision.

21 Q Okay.

22 A That's what it is. I'm sorry. I've been
23 looking at a lot of stuff the last few days. That's what
24 this is. It's a ring-fencing appropriation to protect,

1 you know, the ratepayers.

2 Q And what's-- what are the differences between
3 money pools for one affiliate and borrower or loan from a
4 money pool as opposed to a ring fence?

5 A Sorry.

6 Q In a money pool, one of the affiliates can
7 borrow or lend to another affiliate; is that correct?

8 A Yes.

9 Q And then what's a -- what does a ring-fencing
10 provision do?

11 A Well, it protects the -- it protects the
12 utility from, I guess, yeah, I'm thinking about the Enron
13 case basically, you know, where they'd actually had
14 effective ring fencing put in to protect the utilities up
15 in the Northwest from, you know, creditors coming in and
16 taking the assets and disrupting the utility business.
17 That's kind of what ring fencing is -- tries to --
18 attempts to do.

19 Q Are there currently any liabilities in the
20 various companies that the Public Staff sees as potential
21 risk to the economic viability of Duke Energy or
22 Piedmont?

23 A You're talking about when the companies -- I
24 mean, Duke Energy Corporation has investments around the

1 world, in South America and the Middle East and so forth.

2 I don't know that they, you know, they have a threat to
3 North Carolina, I wouldn't say that, but they are, you
4 know, involved in lots of different things other than the
5 North Carolina retail, you know, utility business.

6 MR. RUNKLE: I have no further questions.

7 CROSS EXAMINATION BY MR. WEST:

8 Q Good afternoon, Mr. Hoard.

9 A Good afternoon.

10 Q You were present for the testimony of Mr.
11 Barkley, correct?

12 A Yes.

13 Q When I was asking him questions about the
14 negotiated rates and the factors that go into determining
15 negotiated rates and the process by which those kinds of
16 contracts are handled, did you hear him say anything with
17 which you materially disagreed?

18 A No. He described it very well.

19 Q So when the Public Staff gets involved in
20 reviewing or evaluating the contracts that contain
21 negotiated rates, do you do that subject to a
22 confidentiality agreement?

23 A Typically, yes.

24 Q And would that confidentiality agreement

1 restrict the Public Staff from disclosing to someone like
2 Fayetteville PWC or a co-op, hey, you know, another
3 facility -- again we'll use the identical twin
4 hypothetical -- seems to have gotten more favorable
5 rates?

6 A I think we would be bound by confidentiality
7 agreement to not disclose that information, but, I mean,
8 the same point of practical matter is if we're looking at
9 two different agreements that are virtually the same,
10 we're going to ask our own questions, you know, about why
11 we have different rates.

12 MR. WEST: I don't have any --

13 A And we -- and we have all these Code of Conduct
14 provisions, too, so we would want to make sure those are
15 followed through upon.

16 MR. WEST: I don't have any further questions.

17 CHAIRMAN FINLEY: Redirect?

18 MS. WIKE: No redirect.

19 CHAIRMAN FINLEY: Okay. I have a few
20 Commission questions.

21 EXAMINATION BY CHAIRMAN FINLEY:

22 Q Mr. Hoard, you heard Commissioner Brown-Bland's
23 questions of Mr. Barkley about some of the financial
24 concessions that the Public Staff and the Company agreed

1 to with respect to the Distribution Integrity Management
2 cost. Did you hear that?

3 A Yes.

4 Q Now, our question -- the Commission Staff's
5 question is why did you go there to make the financial
6 concessions on behalf of the Company as opposed to
7 somewhere else, and are you somewhat concerned that
8 that's some indication that the Company should pay less
9 attention to the safety of its resources?

10 A Well, we would assume -- we believe that the
11 Company will do what it needs to do. Basically, with the
12 deferral accounting request, the question is, you know,
13 the item -- the cost would normally be expensed. That's
14 the way that the accounting would, you know, have you do
15 it. And the request was for capitalizing those costs,
16 putting them in a deferred debit account. You know, in
17 looking at -- we have lots of different proceedings going
18 on, and we're very busy, as the Commission is, and it
19 just seemed like we had savings over here that are
20 identified in the application, and we have a cost, and
21 rather than -- I mean, we have not made a decision on
22 whether we would object to the deferral request. We had
23 some issues that we're following up on. But it just
24 seemed like an expeditious way to address, you know,

1 something that we would otherwise have to go through the
2 filing process with. We do expect the Company should
3 follow through and do what it needs to do and follow the
4 same program that it had committed to do before.

5 Q Okay. Piedmont is earning significant revenue
6 from secondary market transactions. Why wasn't
7 Piedmont's 25 percent share of the secondary market
8 transactions used to ensure ratepayers receive a cost
9 savings benefit from the merger rather than the pipeline
10 safety funds? Did you think about that? Did you think
11 about an adjustment there?

12 A Changing the sharing percentage?

13 Q Yes.

14 A I always think about changing the sharing
15 percentage. I -- we -- it just didn't seem like we could
16 make that fit in this particular proceeding, I think.
17 That's kind of where we ended up.

18 Q Okay. Section III.H of the Code of Conduct
19 deals with Natural Gas/Electric Competition. It states
20 that, "The competition between DEC and DEP and Piedmont
21 shall be at a level that is no less than that which
22 existed prior to the Merger." Does the Public Staff have
23 any recommendations for the Commission on how to measure
24 compliance with this paragraph?

1 A We'll have to work on it. I mean, there's -- I
2 mean, obviously we've got to figure out some ways to, you
3 know, enforce these -- this new condition and the
4 practical effect of what it is. We'll see what we can
5 do. I don't have any advice, sitting here right now. We
6 will point out we have a number of conditions that we've
7 -- as you pointed out earlier, that evolved over years,
8 and we've worked out ways to deal with most of those
9 conditions and, you know, in a practical and efficient
10 manner, and I think that we'll be able to do that here as
11 well.

12 Q All right. Section XV of the Code of Conduct
13 deals with Procedures for Determining Long-Term Sources
14 of Pipeline Capacity and Supply. Paragraph 15.1 makes
15 clear that DEC and DEP and Piedmont will independently
16 determine the, quote, "appropriate sources," end quote,
17 for interstate pipeline capacity and supply for their
18 customers based on their own cost-benefit analysis.
19 First, does this section refer just to pipeline capacity
20 or is storage capacity included, also?

21 A I would -- it doesn't say storage capacity, but
22 I would include that to the extent it's used in
23 interstate pipeline storage capacity like Pine Needle or
24 Hardy, something like that.

1 Q Paragraph 15.2, captioned Ownership and Control
2 of Contracts, states, "Piedmont shall retain title,
3 ownership, and management of all gas contracts necessary
4 to ensure the provision of reliable Natural Gas Services
5 consistent with Piedmont's best cost gas and capacity
6 procurement methodology." Once DEC and DEP determine the
7 appropriate sources, will Piedmont own the contracts?

8 A The idea is to keep the businesses separate.

9 Q So that would mean that Piedmont would keep the
10 contracts?

11 A Okay. Well, the idea is that, you know, right
12 now DEC and DEP have their own gas contracts and they
13 have an asset management agreement where they share their
14 capacity and supply, and Piedmont has its own portfolio
15 of contracts. And the idea is that each will figure out
16 what sources of capacity and supply it needs -- when I
17 say "each," I'm talking about DEC and DEP as a group and
18 Piedmont as another group -- they'll each figure out what
19 sources of capacity and supply they need and they'll each
20 maintain their own contracts. We want to make sure that
21 Piedmont keeps its own -- particularly keeps its own
22 contracts so that we don't run into any issues with
23 priority of service sorts of things where a gas -- LDC
24 contract could be used for, you know, directly towards

1 electric operations. We want to try to keep the
2 businesses separate.

3 Q Will the 25 percent secondary market
4 transaction margin share to Piedmont apply to any
5 capacity procured for DEC and/or DEP and released to a
6 third party?

7 A Sorry. The -- okay. We -- any transaction
8 between DEC and DEP and Piedmont there is no sharing on,
9 so we've added a condition to do that.

10 Q I believe that's consistent with what Mr.
11 Barkley said, is it not?

12 A (No response.)

13 Q All right. Code of Conduct Section III.D.3.(g)
14 deals with margins received by Piedmont on secondary
15 market sales to DEC and DEP. It states that all margins
16 from secondary market transactions by Piedmont to DEC and
17 DEP will flow through to customers, with no 25 percent
18 sharing by Piedmont pursuant to the Commission's December
19 22, 1995 Order Approving Stipulation in Docket Number
20 G-100, Sub 67. Doesn't this create a situation where
21 Piedmont would profit from making a secondary market
22 transaction sale to a party other than DEC or DEP, and
23 thus have an incentive to do so?

24 A Well, I think we realize that. I think the

1 most important issue here is that Piedmont does not
2 profit on sales to Duke, to DEP and DEC. I mean, what we
3 don't want to have, a situation, is where basically every
4 -- the dekatherm that goes to a Duke plant runs through
5 Piedmont. We wouldn't want that. You know, that's 25
6 percent, you know, skimming. That doesn't make any
7 sense. So what we've tried to do is set up so, okay, we
8 have zero sharing on the DEC and DEP transactions, 25
9 percent on everything else like it always has been. The
10 reality is there really haven't been many transactions
11 between DEC and DEP and Piedmont. I mean, it -- there
12 were a few years ago for a number of transactions, but I
13 have a chart that kind of looks like one of these. It's
14 like -- it has really dropped off, the amount of volume,
15 and I -- there's really not a whole lot of need for, you
16 know, for those transactions. I mean, they could occur,
17 but I don't think that's -- I mean, that's a big -- going
18 to be a big issue because it just hasn't been that volume
19 level of transactions between DEC and DEP to Piedmont.

20 Q The Commission is aware of at least one
21 contract between Progress Energy and Piedmont in which
22 electric compression was specified for a pipeline built
23 to serve a generating facility. Is that sort of
24 condition allowed under the Regulatory Conditions and

1 Code of Conduct in this merger?

2 A I don't know what the circumstances were for
3 why electric compression was used at that particular
4 facility. I mean, I think as Mr. Barkley explained, I
5 mean, the idea is we want -- that Piedmont should operate
6 its gas business to the benefit of its gas customers and
7 not to try to push sales over to the -- to Duke. I think
8 if they -- if we do see electric -- a lot of electric
9 compression coming along, there will be a fair number of
10 questions being asked why that's happening from the
11 Public Staff, and I imagine from the Commission, too.

12 Q Regulatory Condition 9 states, "Beginning with
13 the month in which the Merger closes, Piedmont will use
14 net-of-tax overall rate of return from its last general
15 rate case as an applicable interest rate on all amounts
16 over-collected or under-collected from customers
17 reflected in the Sales Customers Only," -- the All
18 Customer -- "the All Customers, and the Hedging Deferred
19 Gas Cost Accounts." That is a change from the 10 percent
20 statutory maximum now used on some of the costs that are
21 run through those deferred accounts short-term in nature,
22 and did the Public Staff consider using a cost of short-
23 term debt as appropriate?

24 A Well, I try -- I think about lots of different

1 rates for -- that apply to deferred accounts, and I think
2 the one we've -- that has kind of been agreed upon in
3 lots of different proceedings for accounts that are
4 symmetrical, you know, you have -- other than the fuel
5 account, you know, the fuel cost cases for the electric
6 utilities, pretty much most of the accounts that are
7 symmetrical, like for Piedmont all the accounts are
8 symmetrical, the debits and credits get interest both
9 ways, the only one that had the 10 percent are these ones
10 that are identified here. There are a number of others
11 that the net-of-tax return is used. It's also used in a
12 number of applications in the electric industry, you
13 know, for, I think, for the Duke bulk power marketing for
14 one. I think the EDPR and other -- there are a number of
15 applications where the net-of-tax return is used, so I
16 think it makes sense, you know, kind of as an in between
17 interest rate.

18 When you start -- I will say when you start to
19 go down that road towards whether you use a longer-term
20 rate or a short-term rate, you bring in lots of other
21 folks that have opinions on that that, I mean, it's -- as
22 far as what the right rate could be, I mean, I think in
23 certain circumstances you could argue a short-term rate
24 would make sense. But I think the -- you've got to look

1 -- it gets into kind of the overall capitalization
2 question, and I think we look at the -- the deferred
3 accounts are basically supported by the overall
4 capitalization of the company.

5 Q On page 17 of your testimony you state that
6 under the Code of Conduct, Section III.H, "In determining
7 where and when to extend the availability of natural gas,
8 Piedmont will at a minimum apply the same standards and
9 criteria that it applied prior to the Merger." What are
10 the existing standards and criteria that Piedmont uses
11 and what does "at a minimum" mean in this context?

12 A Okay. Sorry. At what page? I didn't --

13 Q Page 17.

14 A Of the --

15 Q Code of Conduct, Section III.H. Page 17 of
16 your testimony. I'm sorry.

17 A Well, basically they use feasibility studies.

18 Q I beg your pardon?

19 A Economic feasibility studies and CIAC. You
20 know, if it's feasible to extend. You have a -- I think
21 the rule still is a hundred feet of main, a hundred of
22 service that you get, and then if you go beyond that,
23 then you start to look at doing a feasibility study and
24 coming up with a contribution and native construction to

1 extend service.

2 CHAIRMAN FINLEY: Other questions by
3 Commissioners?

4 (No response.)

5 CHAIRMAN FINLEY: Questions on the Commission's
6 questions?

7 MR. JEFFRIES: Piedmont has.

8 CROSS EXAMINATION BY MR. JEFFRIES:

9 Q Mr. Hoard, do you recall, and referring to the
10 -- with the agreement of Piedmont to withdraw its
11 deferred O&M temp proposal, do you recall what the level
12 of projected spending under that mechanism or that that
13 mechanism was intended to address was?

14 A \$18 million. I think a total of \$18 million.
15 It was over five years or three years, so it was --

16 Q About three and a half a year, I think, was the
17 number --

18 A Okay.

19 Q -- something -- do you accept that, subject to
20 check --

21 A Yes, sir.

22 Q -- ballpark? Is that material compared to
23 Piedmont's total cost of service?

24 A No. I mean, its O&M is around 300 million.

1 Q Uh-huh. And the O&M is not its complete cost
2 of service, right? It's just a component of the service.

3 A Right. That's just one of -- yeah, it's just
4 one piece. Doesn't include the cost of gas, return or
5 taxes. It's just -- had to be a number I had in my mind
6 that was pretty big.

7 Q Right. And you've got several years'
8 experience now with Piedmont's expenditures under its
9 Integrity Management programs; is that correct?

10 A Yes.

11 Q And would it be fair -- well, let me ask you,
12 do you have any concerns that Piedmont has not been
13 spending aggressively enough on Integrity Management
14 projects?

15 A Not at all. They've done a very good job of
16 spending money.

17 (Laughter.)

18 MR. JEFFRIES: Thank you. I believe Mr. Somers
19 may have a question.

20 MR. SOMERS: If you don't mind, I'm going to
21 ask one.

22 CROSS EXAMINATION BY MR. SOMERS:

23 Q Mr. Hoard, you were asked a question -- a
24 couple questions by Chairman Finley about the Code of

1 Conduct, Section D, and I think Mr. West asked you a few
2 questions about that section as well. It relates -- and
3 the heading of that section, while you're turning to it,
4 is Transfer of Goods and Services, Transfer Pricing and
5 Cost Allocation. Do you recall those questions?

6 A Yes.

7 Q Okay. And I believe you mentioned -- you
8 testified earlier that in the event that the Public Staff
9 was reviewing negotiated contracts between Piedmont and
10 various electric generators, if you saw some divergence
11 in the rates that were charged, that you would ask your
12 own questions. Do you recall that?

13 A Yes.

14 Q What kind -- why would you do that?

15 A Well, we would want to find the -- find out
16 what the basis was for the difference in pricing. You
17 know, we look at the cost data, return, everything built
18 into the contracts, and then we look at the terms of
19 service and try to see if there's a rational reason for
20 why one price would be different than the other.

21 Q And hypothetically, if that situation arose and
22 you asked questions, and as a result of the answers
23 provided by the Companies if the Public Staff had a
24 question or concern that there was undue discrimination,

1 what would you do?

2 A We would bring it first to try to -- bring it
3 to the Company's attention to see if we could -- see if
4 they had a good reason for it, and I think we would
5 probably -- if they didn't have a good reason for that,
6 do what we could to get them to address that issue.

7 Q And do you have any doubt that the Public Staff
8 has the ability to bring that issue to the Company's
9 attention and get it resolved?

10 A I believe we could bring it to the Company's
11 attention to get it taken care of, yes.

12 Q And I -- sorry. Were you done answering?

13 A I am.

14 Q Hypothetically, if the Companies were unable to
15 resolve the Public Staff's questions, do you have other
16 remedies available to ensure that there is no undue
17 discrimination?

18 A Yes. We could bring it to the Commission's
19 attention.

20 MR. SOMERS: Okay. Thank you. I have no
21 further questions.

22 CHAIRMAN FINLEY: All right. Mr. Hoard, you
23 better get off the stand there while the getting is good.
24 You're excused.

1 (Witness excused.)

2 CHAIRMAN FINLEY: Is that your case, Public
3 Staff?

4 MS. WIKE: That completes our case.

5 CHAIRMAN FINLEY: I believe that's all the
6 evidence that we are slated to hear in this case. Any
7 motions? Any issues that we need to resolve?

8 MR. SOMERS: Mr. Chairman, if I may, I will
9 stand on our prior arguments on the original Motion in
10 Limine, the continuing objections that were lodged and
11 recognized by the Commission throughout the -- and don't
12 wish to be heard further on that, but would appreciate a
13 ruling from the Commission in due course.

14 MR. RUNKLE: Chairman, in light of the
15 responses by Ms. Good and Mr. Young to cross examination
16 and Commission questions, we would like the opportunity
17 to review the transcript and be able to make the nexus.
18 We understand that it's a serious matter and a concern by
19 all involved, and so would ask you to defer a Motion in
20 Limine until that time.

21 CHAIRMAN FINLEY: Well, it would be a Motion to
22 Strike.

23 MR. RUNKLE: Motion to Strike. Excuse me.

24 CHAIRMAN FINLEY: Okay. I'll allow you to do

1 that. I'll allow you to do that. Okay. One other
2 housekeeping matter, Commissioner Brown-Bland was
3 unavoidably unable to appear at the hearing yesterday.
4 We'd begun the technical case before she could return
5 from town. It would be my thought that we would waive
6 any difficulties that the Commission might have in
7 letting her rule on this case because she missed that
8 part of the case.

9 MR. SOMERS: Duke Energy has no objection to
10 Commissioner Brown-Bland reading the transcript and
11 participating in the decision.

12 MR. JEFFRIES: Piedmont Natural Gas has no
13 objections.

14 MS. WIKE: No objection from the Public Staff.

15 MR. RUNKLE: No objection NC WARN.

16 MR. WEST: No objection Fayetteville PWC.

17 CHAIRMAN FINLEY: Very well. Now, what do the
18 parties say about post-hearing filings? What is your
19 wish?

20 MR. SOMERS: I haven't discussed this with
21 opposing counsel, but our preference would be sort of the
22 standard. If we had 30 days from receiving the
23 transcript to submit any post-hearing filings, that would
24 be acceptable to us.

1 CHAIRMAN FINLEY: Anybody have an objection to
2 that?

3 (No response.)

4 CHAIRMAN FINLEY: So ordered. Anything else?

5 (No response.)

6 MR. SOMERS: Thank you.

7 CHAIRMAN FINLEY: Very well. Thank you all for
8 your participation and for the presentations, and the
9 hearing is adjourned.

10 (The hearing was adjourned.)

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STATE OF NORTH CAROLINA

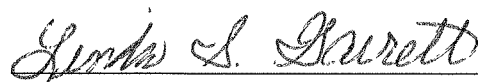
COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,
do hereby certify that the foregoing hearing before the
North Carolina Utilities Commission in Docket Nos. E-2,
Sub 1095, E-7, Sub 1100, and G-9, Sub 682 was taken and
transcribed under my supervision; and that the foregoing
pages constitute a true and accurate transcript of said
Hearing.

I do further certify that I am not of counsel for,
or in the employment of either of the parties to this
action, nor am I interested in the results of this
action.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 25th day of July, 2016.



Linda S. Garrett

Notary Public No. 19971700150