

DATE:OCTOBER 4, 2019

TIME 9:02 a.m.

INTERVIEWER: KEVIN GREENE AND TOM BEERS
EAGLE INTEL SERVICES

CONTRACTOR: NORTH CAROLINA GENERAL ASSEMBLY AND SUBCOMMITTEE
ON THE ACP

PARTIES PRESENT:KEVIN GREENE
TOM BEERS
BILL LANE, DEQ
JENNIFER BURDETTE
DREW HARGROVE, DEQ

1 KEVIN GREENE: Today's date is October 4, 2019. My name is Kevin Greene. Our
2 company Eagle Intel Services is contracted with the North General Assembly subcommittee on
3 the ACP for the purpose of gathering and reporting information back to the committee. We are
4 recording this interview. I would like to have each person present to state their name, position
5 and also to acknowledge that you understand this interview is being recorded. I will start with
6 my partner.

7 TB: Tom Beers, yes, I know it's being recorded.

8 BILL LANE: Bill Lane from DEQ.

9 JENNIFER BURDETTE: Jennifer Burnette, I understand this is being recorded.

10 DREW HARGROVE: Drew Hargrove, DEQ.

11 KEVIN GREENE: Thank you. Mr. Lane would you like to add something?

12 BILL LANE: Yes, thank you. Uh, this is Bill Lane, General Counsel for DEQ. I would
13 like to clarify that this interview will end, we are starting at 9:02 and it will end no later than 10
14 AM. It is being recorded by audio by both parties. The questions in this interview will be
15 related to the witness's official duties related to the 401 water quality certification for the
16 Atlantic Coast Pipeline project. There will not be questions about the witness's work on other
17 projects or the witness's personal life. Thank you.

18 KEVIN GREENE: Thank you. Thank you all. We appreciate your time. We'll just start
19 out you have already stated your name Ms. Burdette but would you give us a brief history of
20 your employment with DEQ. When you started and your positions that you had.

21 JENNIFER BURDETTE: Yes, I started I believe in 2013 as the 401 and Buffer
22 Coordinator for the 401 and buffer permitting, maybe unit at that time and probably changed the
23 branch while I was there.

1 KEVIN GREENE: Ok.

2 JENNIFER BURDETTE: And I resigned to go to private employment maybe February
3 of 2018. I believe the first of February 2018.

4 KEVIN GREENE: Ok, thank you. So, during 2017, all of 2017 and then just probably
5 one or two months into 2018. Your official position was or official title was?

6 JENNIFER BURDETTE: The 401 Buffer Coordinator.

7 KEVIN GREENE: 401 Buffer Coordinator. Thank you and in that position what was
8 your chain of command. What department - I'm assuming this is the water quality but, can you
9 give us a brief of what your chain of command was?

10 JENNIFER BURDETTE: Yes, my supervisor was Karen Higgins and there were some
11 changes as for her supervisor but, towards the end it was Jeff Poupart who was Chief of the -
12 What is he chief of? There're so many different departments I get confused sometime. What
13 was he chief of?

14 KEVIN GREENE: A lot of chiefs and Indians

15 JENNIFER BURDETTE: But that was my chain was Karen Higgins and then Jeff
16 Poupart was her supervisor.

17 KEVIN GREENE: Did you manage anyone?

18 JENNIFER BURDETTE: No I did not manage, when I was here.

19 KEVIN GREENE: Alright and so Mr. Poupart and Ms. Higgins and you said there was a
20 change. Was that Mr. Zimmerman?

21 JENNIFER BURDETTE: Yes. Let's see. Okay above Jeff would have been the
22 Director and it's been a while since I've been here. They change a lot.

23 KEVIN GREENE: I understand.

1 JENNIFER BURDETTE: So, oh, wow is his name escaping me. Tom Reader was when
2 I first got here. Then it was Jay Zimmerman after that.

3 KEVIN GREENE: OK. Thank you

4 JENNIFER BURDETTE: Sorry, I haven't thought about those names in a while.

5 KEVIN GREENE: We'll just go ahead and start. What was your involvement - I guess
6 your duties with the ACP permitting process? Can you kind of give us a little bit of what you did
7 and describe what you did and how you did it?

8 JENNIFER BURDETTE: Being the 401 buffer coordinator in the central office I usually
9 handled individual permits. Those are the permits that are elevated. Not the routine nationwide
10 permits for minor projects. So, I handled all the individual permits and the buffer variances with
11 the, with the environmental management commission presenting those. When this project first
12 began it was thought it would be an individual permit because it was, it was such a large project.
13 But, the Corps of Engineers decided to process it as a Nationwide crossing several regions it
14 stayed in my - as my responsibility being in the central office because it crossed those multiple
15 regional office territories.

16 KEVIN GREENE: Ok, alright. So, an individual permit is there differences in? Can you
17 explain those?

18 JENNIFER BURDETTE: Sure. So the individual permit refers to the Clean Water Act,
19 Section 404 Permitting. And they - for those section 404 Permits are divided there are two -
20 well there are a few types - but the main ones they deal with are Nationwide Permits for very
21 minor activities with impacts that are below a threshold for what they consider gets elevated to
22 an Individual Permit and the Corps of Engineers decides which permit method they will use to

1 permit a project. And the 401 certifies that permitting process that the Corps chooses to go
2 through. That individual permitting process is a more vigorous review.

3 KEVIN GREENE: And are there different standards within the States? You have the
4 Corps of Engineers do they have their standards and then do the States have their regulatory
5 standards or is it all the same?

6 JENNIFER BURDETTE: I'm not sure I follow you. Help me out with it a little bit.

7 KEVIN GREENE: Uh, so the Corps of Engineers they make the decision as to it's going
8 to be an individual permit and as an individual permit the State has certain regulations for that
9 401 permit. So, do those vary across State lines?

10 JENNIFER BURDETTE: I don't – I mean I'm sure they do. All the States are different
11 in how they handle the 401 Certification.

12 KEVIN GREENE: But in North Carolina has their own, I don't know what you would
13 call it regulations? or

14 JENNIFER BURDETTE: Sure, Rules?

15 KEVIN GREENE: Rules that you would follow?

16 JENNIFER BURDETTE: Yes.

17 KEVIN GREENE: Alright, and you have already kind of touched on how it works, but
18 kind of go through the 401 certification process. What has to be done? While are aware and
19 we'll get into some of this other stuff, like the Hearing Officer's Report, but just kind of give us
20 a general background specifically regarding the ACP permit for one permit - what had to be
21 done?

22 JENNIFER BURDETTE: Well we review the project to make sure it meets the 6 criteria
23 that are listed in the Rule for issuance of water quality certification. Those are about practical

1 alternatives, minimizing avoiding impacts, mitigation, degradation of surface water and ground
2 water, cumulative and secondary impacts. How many did I just list? There's 6. I feel like I'm
3 missing one. Oh, storm water controls - that's it. There we go - Storm water controls are onsite
4 storm water for post construction storm water treatment.

5 KEVIN GREENE: So is there a first step in starting all of this? It seems like a lot of
6 stuff to do. What would you normally start with?

7 JENNIFER BURDETTE: Well we start with reviewing the Application for its
8 completeness. Do we have all the information that we need to review the project to apply those
9 6 criteria that I listed? There's also, well, it's a, it's a, there also public notice requirements it
10 was decided to process this as an individual permit. So that requires a public notice and
11 reviewing the project and getting that public input as part of that review process.

12 KEVIN GREENE: Ok and how is the public notice and their input, how's that affect
13 what you were doing?

14 JENNIFER BURDETTE: So we conducted two public hearings and we collected
15 comments from the public and of course comments during the public hearing and then comments
16 - written comments that were submitted during that comment period. We reviewed all those
17 comments, categorized them as to whether they were duplicate, you know different issues that
18 were brought up and then we considered all those comments in reviewing those 6 criteria and - in
19 our review.

20 KEVIN GREENE: Ok. So the application - Do you recall when the Application was
21 first submitted in this the ACP 401?

22 JENNIFER BURDETTE: I don't really recall the date.

1 KEVIN GREENE: Alright. Prior to the Application process were you involved in the
2 ACP project prior to them filing a formal application?

3 JENNIFER BURDETTE: Yes, so Applicants have the ability to ask for what they call
4 pre-application consultation and so we had meetings with the Corps of Engineers me as a
5 representative of Division of Water Resources had meetings at the Corps of Engineers' Office
6 just being introduced to the project, questions about the project and just, some familiarity with
7 how FERC their projects are processed and guidance for how to comply with our rules.

8 KEVIN GREENE: Ok and do you know when that began?

9 JENNIFER BURDETTE: I based that on the project number that is given. Those are
10 based on the year they were started and that was 2014.

11 KEVIN GREENE: 2014. So between 2014 and I think the Application was filed in May
12 2017. Does that sound right to you? We can go back and look but.

13 JENNIFER BURDETTE: I don't remember. It was later, I remember that.

14 KEVIN GREENE: Right. So during that whole process, you called it liket a pre-
15 application type screening or?

16 JENNIFER BURDETTE: Yea, So there's a lot of information they need to collect in
17 order to apply for a permit. They need to delineate the surface waters and wetlands and we also
18 have that overlapping program of Riparian Buffer Rules and so they came to talk to us back in
19 2014, I believe, before they had completed all of their field work and assessments of natural
20 resources. And you know, they delineate and meet with the Corps of Engineers and the Corps of
21 Engineers verifies that their delineation is accurate and then an overlapping step is the Riparian
22 Buffer rules that each stream that is, that is applicable to the buffer rules has to be verified that
23 it's subject or not subject. So that took quite a bit of time. So a lot of that time period was them

1 completing their field work and those verification processes of the accuracy of their delineations
2 and subjectivity.

3 KEVIN GREENE: OK. So I guess I'm trying to understand it – Is, so they are trying to
4 get the information to put in the Application for review. So they are working with you to do that
5 or working with DEQ in this case, the water quality division to do that upfront?

6 JENNIFER BURDETTE: Yes.

7 KEVIN GREENE: Ok, that makes sense.

8 JENNIFER BURDETTE: Yes they basically come to find out what you know, what is
9 subject and before they go...

10 KEVIN GREENE: So did they have an understanding, I think you mentioned those 6
11 criteria that you look at. Do they have an understanding of each and every one of those at that
12 point in time?

13 JENNIFER BURDETTE: I don't recall whether we discussed each of those criteria at
14 that time.

15 KEVIN GREENE: Ok and this is kind of a general question but, have you had
16 experience dealing with similar projects of this size?

17 JENNIFER BURDETTE: While at DWR, no.

18 KEVIN GREENE: Ok I'm assuming this was kind of the most significant or largest
19 project I guess? How would you categorize this project? Would you categorize it by size or
20 categorize it by the work that has to be done?

21 JENNIFER BURDETTE: For geographically extent it was definitely a large project.

1 KEVIN GREENE: Ok that makes sense. And this project compared to others that you
2 worked on -What were some of the variances or what were some of the things that may have
3 different from other projects?

4 JENNIFER BURDETTE: Hmm well its linear nature. A lot of linear projects are more
5 transportation projects that are in a different group than the group I was in. There's a separate
6 transportation unit that handles those. So most of my experience was from a single footprint
7 project more than a linear project.

8 KEVIN GREENE: Like roadways and stuff would be linear?

9 JENNIFER BURDETTE: Roadways and utilities lines - and lots of utility lines although
10 they are linear they don't cover the same geographical extent, so they would have been handled
11 in the regional office as opposed to the central office, because they were nationwide permits that
12 were of small scale.

13 KEVIN GREENE: OK. Alright. And because of the magnitude of this project, were
14 there different methods of approvals? Were there different strategies as how to deal with it than
15 other projects?

16 JENNIFER BURDETTE: As an individual permit it had the additional- the six criteria
17 applies to both general certifications and individual permits. The difference being the public
18 involvement, public hearings and the public comment would be the difference.

19 KEVIN GREENE: OK. And so when you had those public hearings and you get the
20 comments, then those have to be addressed within the permitting process?

21 JENNIFER BURDETTE: Yes, the Hearing Officer's Report addresses those.

22 KEVIN GREENE: Ok, who was the hearing officer in this in the ACP project?

23 JENNIFER BURDETTE: Brian Wrenn.

1 KEVIN GREENE: Did you work closely with Brian Wrenn?

2 JENNIFER BURDETTE: Yea

3 KEVIN GREENE: How does that relationship in your position and the hearing officer,
4 how does that you can say mesh?

5 JENNIFER BURDETTE: We participated in the public hearings. He was the hearing
6 officer. I presented just a background overview of the project. When it came to reviewing the
7 project we did consult as far as meeting those 6 criteria and how each comment related to the 6
8 criteria required for reviewing the projects. Provided information that was also provide for the
9 permit application to make sure that Brian had all the information regarding theApplication.

10 KEVIN GREENE: Do you recall how many public comments you had?

11 JENNIFER BURDETTE: No I don't actually.

12 KEVIN GREENE: Do you recall what the primary concerns or comments were? Positive
13 or negative for the pipeline?

14 JENNIFER BURDETTE: One comment was about the necessity of the project for
15 energy policy was probably an overarching one we received.

16 KEVIN GREENE: What energy policy, what do you mean?

17 JENNIFER BURDETTE: Oh as in the public not believing that North Carolina should
18 invest in this infrastructure or allow this investment in infrastructure in Fossil fuels.

19 KEVIN GREENE: Ok, do you recall any other comments?

20 JENNIFER BURDETTE: Oh yea! Water quality concerns about the extent of the
21 project, the number of crossings, the amount of impact - I mean stream crossings and wetland
22 crossings that is. Safety was another issue that came up. Water - ground water wells - people
23 being concerned about their wells being affected by construction of the project. Issues with

1 sediment erosion control. Degradation of downstream water quality from construction of the
2 project and operation too.

3 KEVIN GREENE: Were their concerns by these public hearings about the cumulative
4 and secondary impacts?

5 JENNIFER BURDETTE: Yes.

6 KEVIN GREENE: And can you kind of summarize what those concerns were?

7 JENNIFER BURDETTE: That the project would - not just the construction of the project
8 itself but by constructing the project - it would result in addition development that would have an
9 impact on water quality.

10 KEVIN GREENE: And how do you address that as one of those issues? How do you
11 make a determination? Or what's the criteria to make a determination on the cumulative impact?

12 JENNIFER BURDETTE: So the cumulative impact is tied to additional development
13 that would have an impact on water quality and we have a guidance policy that we used at the
14 time to evaluate that. We went with a qualitative review.

15 KEVIN GREENE: Can you explain that a little bit?

16 JENNIFER BURDETTE: Yea, so I mean form - I mean I only remember - You know, I
17 haven't looked at this in a long time. But, looked at - asked them to provide an analysis of what
18 they anticipated from secondary development resulting from the project. We learned through the
19 project - through the process - that transmission line - not anybody can tap into a transmission
20 line anywhere along the line. So we focused on the metering stations. There were three
21 metering stations that were here in North Carolina as that's where development could actually
22 have access to the new gas that was being provided and we asked for them to provide an analysis
23 of that.

1 KEVIN GREENE: They being ACP Partners?

2 JENNIFER BURDETTE: Yes the ACP - the Applicant - to look through and predict
3 what type of development they expected and then through back and forth to then relate that
4 development to whether it would impact water quality or not. And that related to you know were
5 there already storm water controls in place for - that would protect water quality from that
6 additional development and then also looking at 303d streams. Streams that are impaired,
7 quality impaired, to make sure that those were protected.

8 KEVIN GREENE: So you focused around the metering stations primarily for the impact
9 and those were? Do you recall where those were?

10 JENNIFER BURDETTE: Johnston, Cumberland and Roberson.

11 KEVIN GREENE: Thank you. What about the Environmental Justice. How did that
12 play into the permitting process?

13 JENNIFER BURDETTE: Because it wasn't part of the 6 criteria, we looked at the
14 Department to assist us with the Environmental Justice aspect and we did participate in some
15 public meetings - what we call listening sessions. I can't honestly remember if I went to them or
16 not. I went to some it blurs. I can't remember. But that wasn't within our 6 criteria that we
17 reviewed, that I remember.

18 KEVIN GREENE: Ok and you looked to the Department regarding that. So it's not
19 within the 6 criteria, but, it's necessary?

20 JENNIFER BURDETTE: It was certainly from an overall standpoint considered and we
21 assist - I do remember our Department assisting with outreach sending - basically sending
22 notices everywhere along the Pipeline about the public hearings. Reaching out more than our
23 usual advertisements for a public hearings; but actually sending notices to churches and post

1 offices and basically any community center that was along the Pipeline to make sure people
2 understood we were having these meetings and had their opportunity to speak.

3 KEVIN GREENE: Ok, can you define Environmental Justice?

4 JENNIFER BURDETTE: Sure, that projects aren't cited in areas where there are
5 minority - economically minority or culturally minority people who - that the project isn't
6 located on property that is, uh. Alright I'm stammering. (Laughter)

7 KEVIN GREENE: Take your time that's fine.

8 JENNIFER BURDETTE: Where there is preponderance at those populations and those
9 folks are considered.

10 KEVIN GREENE: Ok.

11 TOM BEERS: As you said, it's not a requirement for the permit, correct? The
12 environment justice or was the Department - Did they make that a requirement? Did anyone
13 make this a condition?

14 JENNIFER BURDETTE: I don't know. I mean I - to be honest I did not -I was much
15 more peripherally involved with that aspect than reviewing the project from a very technical
16 standpoint of those 6 criteria.

17 TOM BEERS: So you can't speak to that - How the Department's policies were put into
18 play with this permit?

19 JENNIFER BURDETTE: I don't remember. I mean I'm sure it was discussed and I'm
20 sure I was around when it was discussed, but it wasn't my primary responsibility so I don't
21 recall, other than those listening sessions and outreach.

22 KEVIN GREENE: Who was whose primary responsibility was that?

23 JENNIFER BURDETTE: The Department I believe.

1 KEVIN GREENE: Was there a single individual assigned for that duty?

2 JENNIFER BURDETTE: I don't recall other than the public information officer being
3 involved, Bridget Munger, but I don't - I can't tell you whether that was her responsibility or
4 whether she was just the point person I remember.

5 KEVIN GREENE: Ok, do you know how much time you spent on Environmental
6 Justice?

7 JENNIFER BURDETTE: Myself it was mostly - I did attend one meeting with - Alright
8 I'm going to try not to butcher their name Hollerwasaponey is that right? Did I get that right?
9 They hosted a meeting and an information session and I attended that one and I - I can't
10 remember. I don't believe I attended the listening sessions. I don't remember.

11 KEVIN GREENE: Ok, thank you.

12 JENNIFER BURDETTE: I mean I did the public hearing so I don't think - They were
13 follow-up listening sessions, that I don't think I participated in. I may have but, I can't - I do not
14 remember.

15 KEVIN GREENE: Kind of backing up a little bit. The process the timing of it -The
16 process to complete or deny the certification, can you give us a brief background on that?

17 JENNIFER BURDETTE: Yes, so when an Applicant submits an Application, we have a
18 60 day time clock for reviewing that Application and unless we find that there is additional
19 information needed for the project to review the Application and whenever we ask for additional
20 information it, it resets that clock. Well the clock doesn't reset until the Applicant provides the
21 additional information that was requested.

22 KEVIN GREENE: Ok, and in this case you had multiple request for additional
23 information?

1 JENNIFER BURDETTE: Yes

2 KEVIN GREENE: Do you recall how many?

3 JENNIFER BURDETTE: Not exactly but, I estimate three or four. I feel like it was but,
4 there was quite a bit of back and forth where there were addendums or additional information
5 provided that makes it a little.

6 KEVIN GREENE: Right. Do you recall what those request involved? Like for each
7 one?

8 JENNIFER BURDETTE: I remember the later ones more than I remember the earlier
9 ones.

10 KEVIN GREENE: Ok.

11 JENNIFER BURDETTE: I remember one issue being, their proposal or their plans for
12 completing the crossings in the dry. That would be pumping the waters around as they completed
13 these crossings. That we had quite a bit of back and forth about that. Also about minimizing the
14 impact to well. You know, can you adjust the alignment this direction or that direction to have
15 less wetland impact or less, you know, fewer stream crossings? That was one and then we also
16 had one of our additional information was after or public comment period where we went
17 through and basically anything we hadn't asked about before that the public hadn't brought up
18 we made sure to ask the Applicant to address those comments that were of public concerns.
19 Then, of course, I believe the last one was about the that secondary and cumulative impact.

20 KEVIN GREENE: Do they have an understanding of - They obviously have an
21 understanding of what's required during the process. So is it something that in the first
22 information request you would try to gather information or gather questions that needed to be
23 answered and combine it all in one request? Or do you - would you intentionally have different

1 request for different, I guess, questions of like cumulative impact or the dry creek stuff? Would
2 you categorize it or would it all be in like you could do it in one request?

3 BILL LANE: Can you clarify that just a little bit? It was a long question. Can you break
4 it down?

5 KEVIN GREENE: I'm sorry. To clarify it - Could everything, every request for
6 additional information be put in one request?

7 JENNIFER BURDETTE: Not always. Sometimes the information the Applicant
8 provides you have additional questions. And - that we would, you know, when we get additional
9 information - would lead to further questions. I can't say that once in a while you would add
10 something that you may have seen, but - Or that may have been in there but you didn't notice
11 before and you go ahead and ask about it.

12 KEVIN GREENE: Ok. Did you participate in the weekly staff meetings?

13 JENNIFER BURDETTE: Yes

14 KEVIN GREENE: And when did they start in the process?

15 JENNIFER BURDETTE: I don't remember.

16 KEVIN GREENE: Ok, and what were the usual

17 JENNIFER BURDETTE: And I frankly didn't remember they were weekly either.

18 Sorry. Just let me correct that. I mean I knew we had them regularly but, I couldn't remember
19 that, if they were, what, whether they were weekly or not.

20 KEVIN GREENE: Was that normal or was that something that was a little bit different
21 from other permitting projects you had worked on?

1 JENNIFER BURDETTE: Yes, that was an additional part of the process. But, for the
2 size of the project and the number of departments - or excuse me - divisions that were involved
3 in this project.

4 KEVIN GREENE: And I believe there was at one point the Secretary's Office asked you
5 to - or asked each department to notify them prior to sending communications to the Applicant.
6 Do you recall that?

7 JENNIFER BURDETTE: I don't remember. I mean in general, no. I mean I don't
8 remember specifically like when that was required, when it wasn't. I know towards the end we
9 were coordinating more but, I don't remember the process other than Jeff Poupart signing those
10 letters and it going up that chain of command.

11 KEVIN GREENE: Who would normally sign them?

12 JENNIFER BURDETTE: Karen Higgins usually signs most of the.

13 KEVIN GREENE: Request for additional information?

14 JENNIFER BURDETTE: Right.

15 KEVIN GREENE: And you just mentioned the coordination of the departments more
16 towards the end. What do you mean by that?

17 JENNIFER BURDETTE: Just that we would have those meetings and they would ask
18 where you are in your process. You know are you - Do you need more information for your
19 review? Have you asked for it? Have you gotten it back yet? You know and a lot of that too
20 was also coordination with those public meetings. The planning and setup for those public
21 meetings.

22 KEVIN GREENE: Did you ever meet with anyone - Did you ever meet with the
23 Secretary or someone in the Secretary's Office regarding the ACP.

1 JENNIFER BURDETTE: Tell me whose, who would that be? I know you - I just forgot
2 my Division's Director name a minute ago, so

3 KEVIN GREENE: Secretary Regan, Assistant Secretary Nicholson I believe at that time.

4 JENNIFER BURDETTE: He was part of - I recall him being part of that one listening
5 session we had. Shelia Holman. I can't remember what she - what her title was. Was she in the
6 Secretary's Office? No, I don't know. I'm sorry, I don't remember.

7 KEVIN GREENE: Was she like Assistant Director of the Division or something?

8 JENNIFER BURDETTE: Yes, that sounds familiar.

9 KEVIN GREENE: I'm not 100% sure of that.

10 JENNIFER BURDETTE: These were meetings with a lot of folks gathered around the
11 table that were part of it and - Who lead them? - Maybe it was Shelia. I don't remember. I know
12 Shelia was there, Shelia Holman.

13 KEVIN GREENE: Right

14 JENNIFER BURDETTE: But, I don't recall whether she lead them or. She did towards
15 the end I do remember but

16 KEVIN GREENE: What about the Governor's Office? Do you have any contact
17 regarding the ACP regarding anyone inside the Governor's Office?

18 JENNIFER BURDETTE: Not that I know of. I mean, not unless I misunderstood
19 someone's position.

20 KEVIN GREENE: Did you - Were you aware a draft of denial was prepared?

21 JENNIFER BURDETTE: Yes.

22 KEVIN GREENE: Can you tell us a little bit about why and when that was prepared.

1 JENNIFER BURDETTE: So the Hearing Officer's Report is prepared and in order to not
2 - The decision is ultimately the Division Director's decision and as support for that, I believe
3 Karen Higgins wrote the draft denial. We provide both a denial and an approval for the Division
4 Director to make their decision based on reviewing the Hearing Officer's Rreport as to, as to
5 whether they chose to.

6 KEVIN GREENE: Is that a normal practice?

7 JENNIFER BURDETTE: It is with individual projects that have a public hearing and
8 Hearing Officer's Report.

9 KEVIN GREENE: Do you know when that was prepared?

10 JENNIFER BURDETTE: I don't remember.

11 TOM BEERS: The draft denial - there's a copy in the public documents. There is really
12 no - If you look at this. Have you seen the draft denial?

13 JENNIFER BURDETTE: I'm sure I have before.

14 TOM BEERS: There's really no information for the reasoning for denying the permit.
15 So, and I've just handed her a copy to look at. So the question I have - the Hearing Officer's
16 Report is pretty detailed. It explains all the criteria that's been reviewed and analyzed. Do you
17 have any reason to believe that this permit would - could possibly be denied at the point that this
18 denial letter was given? Do you personally believe that could have happened?

19 KEVIN GREENE: Professionally.

20 TOM BEERS: Professionally. From your experience with these permits and all the
21 information that has gone into this? Is there a chance that the permit could be denied?

22 JENNIFER BURDETTE: Hmmm

23 BILL LANE: If you know. First of all, are you done reviewing the letter?

1 JENNIFER BURDETTE: Yea

2 TOM BEERS: This is just to show you there's really no information to show, there's no
3 cause for denial put into the letter.

4 BILL LANE: Remember she's here to present facts.

5 TOM BEERS: Absolutely and she was involved with these.

6 BILL LANE: Not to release her opinion.

7 KEVIN GREENE: In your professional opinion was there a need for a draft denial letter
8 at the time that the Hearing Officer's Report was submitted?

9 JENNIFER BURDETTE: My review determined that the project met the 6 criteria for
10 issuance of a 401.

11 TOM BEERS: According to the rules of the permit, a permit would have been granted
12 based on them supplying the correct information.

13 JENNIFER BURDETTE: Yes

14 TOM BEERS: So I guess you could conclude they wouldn't have denied this permit
15 based on what you just said?

16 JENNIFER BURDETTE: Well you know how rules are, everyone interprets different.

17 TOM BEERS: I'm just asking. What is the real need for this letter if they met all the
18 criteria and you know it was going to be granted?

19 JENNIFER BURDETTE: My understanding of that was that it wasn't our ultimate
20 decision.

21 TOM BEERS: Whose ultimate decision was it?

22 JENNIFER BURDETTE: The Director.

23 TOM BEERS: Which would be?

1 JENNIFER BURDETTE: Jay Zimmerman. Did Jay sign it? Was Jay still around?

2 TOM BEERS: I think at that time it was Ms. Culpepper.

3 JENNIFER BURDETTE: I'm sorry they change so many. Oh yes, I'm probably
4 confusing. Maybe it was Linda at that time, we, they change those guys a little bit. But that role
5 is the Director of the Division of Water Resources.

6 TOM BEERS: So, could she have denied the permit? Just without - even though all the
7 criteria had been met, according to the rules?

8 JENNIFER BURDETTE: I don't know. I mean.

9 TOM BEERS: You did you have a discussion with anyone about this denial letter?

10 JENNIFER BURDETTE: Other than what I've already told you that it's prepared
11 routinely when these projects have Hearing Officer's Report because the ultimate decision isn't
12 staff level, but at the Director level.

13 TOM BEERS: So you have personally seen these drafted in other cases?

14 JENNIFER BURDETTE: Yes.

15 TOM BEERS: In your professional experience, Ok. So this is a routine document that's
16 always put up.

17 JENNIFER BURDETTE: It's to not be presumptive.

18 TOM BEERS: Just another question. There's no way that they basically instructed you
19 or Ms. Higgins to prepare this out of the ordinary?

20 JENNIFER BURDETTE: No.

21 KEVIN GREENE: How many of those have you seen, roughly?

22 JENNIFER BURDETTE: I can think of two besides the Atlantic Coast Pipeline.

23 KEVIN GREENE: Ok and were those two was the, was the 401 certification issued?

1 JENNIFER BURDETTE: Yes, and I don't remember.

2 KEVIN GREENE: Ok.

3 JENNIFER BURDETTE: I wasn't involved in one project that I was aware there was a
4 denial letter but, I wasn't processing that project, so I don't.

5 TOM BEERS: So two. How many 401 permits have you been involved with in the
6 course of your career?

7 JENNIFER BURDETTE: Oh gosh! I don't know, I mean I don't have an estimate of
8 that.

9 TOM BEERS: So more than the three where the three denial letters that you've seen.

10 JENNIFER BURDETTE: I mean it was easily - Wait a minute I'm sorry. Clarify that
11 one more time.

12 TOM BEERS: So, I guess my question is, if this is routine - You've been involved with
13 numerous 401 permits?

14 JENNIFER BURDETTE: Yes.

15 TOM BEERS: To the point where you don't remember exactly how many?

16 JENNIFER BURDETTE: Yes, those are the more individual certifications that are, that
17 don't require public hearing level projects and don't have those Hearing Officers' Reports and
18 that aspect of the review.

19 TOM BEERS: How many have you been involved with that actually had that type of
20 review, Hearing Officer's Report?

21 JENNIFER BURDETTE: Two.

22 TOM BEERS: Two and they were the ones that you saw the draft denial letters placed.
23 So it's routine for those types of 401 permits?

1 JENNIFER BURDETTE: Yes, when there's a public hearing, yes.

2 KEVIN GREENE: We are going to talk a little bit about the final few weeks of the
3 process and when the Hearing Officer's Report was submitted. I believe you had a chance to
4 review it.

5 JENNIFER BURDETTE: Uh huh.

6 KEVIN GREENE: And do you recall what date that you received the Hearing Officer's
7 Report?

8 JENNIFER BURDETTE: No I don't.

9 KEVIN GREENE: We reviewed several emails that were provided via the public record
10 and it said - this is on January 4th Brian Wrenn completes - Brian Wrenn is the Hearing Officer?

11 JENNIFER BURDETTE: Uh huh.

12 KEVIN GREENE: Completes the Final of his report and sends it to Higgins and
13 Burdette. It's on January 4th and - Did you review those - that Hearing Officer's Report at that
14 particular time?

15 JENNIFER BURDETTE: I don't specifically remember but, I should've.

16 KEVIN GREENE: That's fine. Let's go back to December. Or, let's just ask this
17 question. At what time did you think a decision would be made on the 401 permit?

18 JENNIFER BURDETTE: When we received all the information and had completed our
19 review of the 6 criteria.

20 KEVIN GREENE: Do you know when that would have been?

21 JENNIFER BURDETTE: I don't remember.

1 KEVIN GREENE: Here's some of your notes and it shows from 1-3 and it's got the
2 dates at the bottom. I've just highlighted those. This is coming from the staff files that were
3 made for public records. Are those your notes?

4 JENNIFER BURDETTE: Oh, yes they are.

5 KEVIN GREENE: And at the bottom down there where it says received add info receipt
6 or something and those dates. Would that have been what you were referring to when you
7 received the information?

8 JENNIFER BURDETTE: They would have been what we; I had received by the time of
9 course this was written in January.

10 KEVIN GREENE: Ok, were there other request made outside of that?

11 JENNIFER BURDETTE: Yes, I believe there were additional requests for information
12 or request to supplement additional information or provide addend information we'd already
13 received.

14 KEVIN GREENE: We've heard the term true up. What is that?

15 JENNIFER BURDETTE: What's that again?

16 KEVIN GREENE: True up. To finalize the numbers.

17 JENNIFER BURDETTE: Oh, I have not heard true up, myself.

18 KEVIN GREENE: So you're not familiar with that term?

19 JENNIFER BURDETTE: Not that term, no.

20 KEVIN GREENE: What would you call,

21 TOM BEERS: I guess verification updated figures? Maybe just a request for verification
22 before the final?

1 JENNIFER BURDETTE: Yes, sometimes when projects are very large and there are a
2 lot of different impacts. We're talking about numbers of adding up a lot of individual numbers
3 we would commonly, not commonly - usually it's only in that circumstance where you have you
4 know, one or two impacts we don't need somebody to tell us we have the right number. But
5 when you have so many different impacts, we have before sent it to the Applicant and said is this
6 what you thought your total numbers were going to be? Just to reduce errors and mistakes as far
7 as tallying and accounting of those individual impacts.

8 KEVIN GREENE: Did you have direct conversations with the Applicant's
9 representatives?

10 JENNIFER BURDETTE: I didn't, I believe Karen took care of that.

11 KEVIN GREENE: Do you know Spencer Trichell?

12 JENNIFER BURDETTE: Yes

13 KEVIN GREENE: And what was his position?

14 JENNIFER BURDETTE: He worked for Dominion - at the end. In the beginning he
15 worked for I believe a consultant and then he went to work for Dominion after that.

16 KEVIN GREENE: OK. What was his position relating to your duties and the 401
17 processing.

18 JENNIFER BURDETTE: He was the primary point of contact with Dominion about the
19 Application and the additional information request.

20 KEVIN GREENE: And, your phone log was also provided as public record and there are
21 multiple calls from him and to him and so forth.

22 JENNIFER BURDETTE: Yep

1 KEVIN GREENE: So do you recall that you were talking to him on a regular basis?
2 How would you categorize the contact and context of those calls?

3 JENNIFER BURDETTE: I would say more maybe sporadic that it depended on the, it
4 wasn't a, well - it was regular basis. I talked to him plenty, you know back and forth. It was
5 usually some question of clarification. What specifically were we asking for? What did we
6 mean? Whether guidance as to what data or what documentation we needed specifically to
7 fulfill our Application requirements? Those kind of - general.

8 KEVIN GREENE: Ok, do you recall sending him an email? Do you have those emails?

9 TOM BEERS: Yes, which one's you want?

10 KEVIN GREENE: The last one. Is it - The one to Trichell. There was a request for
11 information, or actually.

12 TOM BEERS: Oh, you're talking about the true up ones?

13 KEVIN GREENE: Right, sorry. You guys generate a lot of documents.

14 JENNIFER BURDETTE: Oh my gosh, and then the email chains.

15 KEVIN GREENE: We certainly appreciate all the work.

16 TOM BEERS: That was Higgins doing those. This timeline.

17 KEVIN GREENE: Do you want to do it?

18 TOM BEERS: Yes. So, just going back to the permitting process, there's a series of
19 emails between all DEQ. I think they are all mostly internal between Higgins and yourself,
20 Wrenn and the first one starts off - we don't have a lot of time - It starts off December 14; this is
21 an email from Karen Higgins to Bridget, I think its Culpepper's assistant. She's trying to
22 schedule a meeting with you - yourself and Mr. Wrenn to go over Hearing Officer's Report.

1 Trying to schedule it for January 4th. It looks like you are getting ready to approve the 401
2 permit.

3 BILL LANE: Can we get copies of these?

4 TOM BEERS: You can get copies when we are done.

5 KEVIN GREENE: I just want to get it back in the right file.

6 JENNIFER BURDETTE: Do I need to look through all of these?

7 TOM BEERS: You don't have to. I can just go over this. We are running out of time so
8 I'm just going to go through. So, on the 14th this email, sent out to, it looks tried to setup a
9 meeting with the Director to basically go over the Hearing Officer's Report, which would be the
10 pretty much the end of the permitting process, correct? Getting towards the end?

11 JENNIFER BURDETTE: Sure. That's fair.

12 TOM BEERS: So it looks like you got all of your information and that's on December
13 14th. Then it moves on to.

14 KEVIN GREENE: I think we mentioned the January 4th you received the Hearing
15 Officer's Report?

16 TOM BEERS: Yes, so I think you got all of your information. You were expecting to
17 get this information it looks like from Dominion by, I don't know, at some point. According to
18 the documents you got everything you needed by December 20th and were looking to move
19 forward probably to review the permit.

20 JENNIFER BURDETTE: I don't believe we had everything we needed by December
21 20th.

22 TOM BEERS: Well everything that you asked them for the first, 20th. According to the
23 Hearing Officer's Report that was the last receipt of information. Then January 3rd, you're

1 reviewing the Hearing Officer's Report and January 4th looks like you are getting ready to meet
2 with Ms. Culpepper to go over the. And then somehow - the emails - it look like you are going
3 to actually do it on the next Monday the 8th. To actually meet with Culpepper to talk about this.
4 I guess the question - You are moving forward, you have it in the process. And then it looks
5 like through the emails that Bridget Munger makes a request from Brian Wrenn to instead of
6 sending the report to Culpepper to send it to her; to the Director's Office. Do you recall any
7 conversation about why

8 JENNIFER BURDETTE: I don't recall that.

9 TOM BEERS: it would go around - or the Secretary's Office instead of the normal
10 process?

11 JENNIFER BURDETTE: I don't recall the finalization of the Hearing Officer's Report.
12 I mean I ...

13 TOM BEERS: You don't recall. Ok.

14 KEVIN GREENE: And you were still in your position in January? You said you think
15 you left in February?

16 JENNIFER BURDETTE: I feel like I left the first of February.

17 KEVIN GREENE: So, do you recall the issuance of the 401 Certification?

18 JENNIFER BURDETTE: Yes I do.

19 KEVIN GREENE: Ok and I think it was officially signed on the 26th of January. During
20 this time period, what normally takes place? Once the Hearing Officer's Report is received and
21 reviewed, how long does it normally take before the permit is issued?

22 JENNIFER BURDETTE: It depends on workload and what else is going on at the time.
23 I did go back and review, just those last few additional information that was sent and you know.

1 We don't wait to begin working on drafts or anything till the very, very end. Those issues and
2 items there's a lot of standard conditions that go in there that are very routine. And so you know
3 we were working on the letter but, that didn't mean we didn't have some additional information
4 that we hadn't quite received and gotten what we felt was enough of a documentation answer
5 about. And if I'm - which I believe was a cumulative impact analysis. I feel like was the last
6 thing.

7 KEVIN GREENE: It was.

8 JENNIFER BURDETTE: It was the last piece that we felt like we didn't quite have
9 everything we needed to say it met that criteria.

10 TOM BEERS: Can I follow up on that? That last request I think was made November
11 28th. I can show you this document but, that's what it shows on the documents.

12 JENNIFER BURDETTE: Sure.

13 TOM BEERS: In Ms. Higgins notes she has a rough timeline of when she thinks. This is
14 - at that point in time - this is November 20th she's - it looks like anticipating that when she
15 believes the permits will be issued and the Hearing Officer's Report will be complete. But, that
16 actually gets extended because another request goes out on November 28th. Do you recall
17 conversations with Ms. Higgins or why that from that point, it look like things were rolling along
18 fast? Why did this extra information request go out on the 28th? Because at that point in time, it
19 looks like you were planning on moving forward with the Hearing Officer's Report.

20 JENNIFER BURDETTE: Well, I think this was just planning and

21 TOM BEERS: Right, but was there - So the additional request on the 28th for the
22 cumulative impact that's the last one. Who decided to make that request?

1 JENNIFER BURDETTE: Karen and I both looked over that particular criteria of the
2 permit. And based on public comments and - I will say that we, with our individual projects we,
3 I didn't have as much experience with the secondary and cumulative impact analysis and we
4 looked into it and felt like we didn't really have the information we needed to say for sure that it
5 would not have a secondary cumulative impact without additional information from the
6 Applicant. And we wanted to be very sure that we met our obligation to make sure the project
7 met the rules.

8 TOM BEERS: So that was - You and Karen made that decision?

9 JENNIFER BURDETTE: We consulted with Brian Wrenn on that. Brian Wrenn had
10 more transportation experience.

11 TOM BEERS: So the three of you consulted together? It wasn't someone above in the
12 Secretary's Office, Director's Office that said Hey; Go look, look into this?

13 JENNIFER BURDETTE: No that was Karen and I.

14 TOM BEERS: That was ya'll?

15 JENNIFER BURDETTE: Leaning on Brian because he had more transportation and
16 linear project and more secondary and cumulative impact analysis experience.

17 TOM BEERS: Ok.

18 JENNIFER BURDETTE: Based on his previous history.

19 KEVIN GREENE: And I think ... Here is a 11-28 note from yours and you're talking
20 about a disconnect between the benefit claimed and the ICE. ICE what does ICE stand for?

21 JENNIFER BURDETTE: What is it? Cumulative; It's part of the cumulative impact
22 analysis.

23 KEVIN GREENE: Part of what you're talking about.

1 JENNIFER BURDETTE: I can't remember what those letters stand for exactly.

2 KEVIN GREENE: I believe we've got ST. I'm assuming initials that you made for
3 Spencer Trichell?

4 JENNIFER BURDETTE: OK. Let me see here. Ok this was a...

5 KEVIN GREENE: And I believe it says, he said it's speculative or what does it say
6 there?

7 JENNIFER BURDETTE: Oh yes Spencer, ST says very speculative.

8 KEVIN GREENE: What's under that?

9 JENNIFER BURDETTE: That I replied that it should be speculative. And that's
10 referring to the analysis. You are speculating on what might happen it's not known. I believe
11 they provided a lot of, for their first response to the cumulative impact analysis was they
12 provided a lot of known projects on the books as far as in planning and those kind of things.
13 And they thought that was enough and we said well no, your analysis needs to include a more
14 robust analysis, robust evaluation of what you expect development wise from this project.

15 KEVIN GREENE: Who is they?

16 JENNIFER BURDETTE: Oh, the Applicant. You know they believed they had
17 provided what they needed and we were explaining that they need to elaborate on that.

18 KEVIN GREENE: And that's between you, Wrenn and Higgins - felt it was necessary
19 to elaborate on that?

20 JENNIFER BURDETTE: Yes

21 KEVIN GREENE: Were there any other factors, any other individuals that were
22 encouraging to do that?

1 JENNIFER BURDETTE: No, not that I remember. This was us checking our boxes and
2 making sure that we had completely reviewed everything and had all the data we needed.

3 KEVIN GREENE: Ok.

4 BILL LANE: You have 10 minutes.

5 KEVIN GREENE: Yes Sir, thank you. Were you ever, did you ever express any or did
6 you have concerns that the project permitting process was dragging or taking longer that it
7 should?

8 JENNIFER BURDETTE: I don't remember. I mean it did take a long time. I don't
9 remember other than just.

10 KEVIN GREENE: Did you ever hear anyone say that the departments or the department
11 is putting up barriers?

12 JENNIFER BURDETTE: Not that I remember.

13 KEVIN GREENE: Ok.

14 JENNIFER BURDETTE: Other than all Applicants you know sort of gripe about how
15 long, I mean.

16 KEVIN GREENE: Within the Department not the Applicant itself but, that the
17 Department was putting up barriers for the permitting process?

18 JENNIFER BURDETTE: No, not that I remember.

19 KEVIN GREENE: Ok. Did you ever have any conversations with anyone regarding
20 concerns that it was taking a long time?

21 JENNIFER BURDETTE: I don't remember I mean other than status; Where are you?
22 What's next? I mean, sorry the Applicant is all I remember - of them, of course, being anxious
23 to get through the process but, I don't remember the Department being.

1 KEVIN GREENE: Were you aware of a mitigation fund outside of DEQ?
2 JENNIFER BURDETTE: I did not hear anything about that until I left through the news.
3 KEVIN GREENE: Ok. I think... Do you have anything further?
4 TOM BEERS: No I think we are.
5 KEVIN GREENE: We were right on the button here and we certainly appreciate your
6 time.
7 TOM BEERS: Yes, thank you very much.
8 JENNIFER BURDETTE: You're welcome.
9 KEVIN GREENE: And I'm going to, the current time is 9 - 10 o'clock on the dot and
10 I'm going to turn the records off.