



**REPORT OF INTERVIEW**

**DATE:** September 9, 2019  
**TIME:** 10:00 AM

**LOCATION:** Womble Bond Dickinson  
555 Fayetteville Street  
Raleigh, NC

**PARTICIPANTS:** Kathy Hawkins, Vice President, NC Government Affairs, Duke Energy  
Jim Cooney, Outside Counsel, Womble Bond Dickinson, LLP  
Vijay Bondada, VP for Litigation, Duke Energy  
Marcy Selle, Outside Counsel, Womble Bond Dickinson, LLP  
Tom Beers, EIS Investigator  
Kevin Greene, EIS Investigator

On the above date and time, Eagle Intel Services Investigators Tom Beers and Kevin Greene conducted an interview of Kathy Hawkins at the offices of Womble Bond Dickinson in Raleigh, North Carolina. This interview was previously arranged by and through Jim Cooney, outside counsel for Duke Energy, at the request of EIS investigators. The following information was provided by Hawkins unless otherwise indicated:

1. Kathy Hawkins, Vice President of North Carolina Government Affairs, began her career with Progress Energy in 2002, and was recruited by Duke Energy before the merger and remained with the merged company. She remained with Duke Energy, after the merger, and continued her position as Lead of the North Carolina Government Affairs. During 2017, she reported directly to, then North Carolina President, David Fountain. Above her in the chain of command was Fountain, Lloyd Yates and Lynn Good.
2. Hawkins said she was familiar with a document created by Attorney James Cooney summarizing facts involving the permitting process and related issues involving the Atlantic Coast Pipeline (ACP). This document is referred to as "Whitepaper". Hawkins understood that this document is a summary of facts, compiled by Cooney, from various documents and interviews of Duke employees.

**Mitigation Project Memorandum of Understanding**

3. Hawkins was directly involved in the creation of a \$57.8 million fund (hereinafter referred to as the "Fund") intended to promote economic development by providing access to the natural gas from the ACP. The final Mitigation Project Memorandum of Understanding (MOU) between the ACP partners and the

Cooper Administration, was signed on January 25<sup>th</sup> of 2018 and is referred hereinafter as the “MOU.”

4. Hawkins was asked to describe the evolution of the MOU from its conception to the final document signed in January of 2018.
5. Hawkins explained that the economic assumptions underlying the ACP had been challenged previously but that, around August or September of 2017, there was increased pressure on Duke to defend the economics of the project. Concerns were expressed by the agriculture community in eastern North Carolina, the NC Department of Commerce (including Secretary Copeland) and the Governor’s office, specifically Ken Eudy and Governor Cooper, regarding the ACP’s economic benefits and its ability to create economic growth. There were sharp and divisive meetings, particularly with the Department of Commerce, which questioned the data that the ACP partners was using to support its argument that the pipeline would lead to economic development. The concerns centered around the pipelines ability to provide natural gas to small business and farms, along with doubt about the number of jobs it could potentially create through expansion of manufacturing. Also, three businessmen from eastern North Carolina (Tolson, Wooten and Stephenson) had made a specific request for the creation of a fund to provide access to natural gas by the ACP.
6. Hawkins agreed with statements in the Whitepaper indicating, that prior to November 30, 2017, Duke believed the ACP would provide access to gas through the Piedmont Distribution System and did not believe that it was necessary to create a fund to provide further access, as the Piedmont system was adequate for smaller users and new, large, users would pay for their own access. Hawkins had direct conversations with Ken Eudy where this was discussed.
7. Prior to November 30, 2017, Hawkins was not aware of any internal research or analysis by Duke regarding the creation of a fund.
8. On November 30, 2017 Hawkins and Duke President Lynn Good arrived at Governor Cooper’s office for a scheduled meeting. Shortly after arriving for the meeting the Governor asked that only he and Good meet. Hawkins left the offices and didn’t wait for Good to conclude her meeting with the Governor. That evening, Good and Hawkins discussed by telephone the topics of conversation between Good and Governor Cooper. The topics included the status of the 401 permits for the ACP project, the status of the coal ash impoundments and Duke’s efforts to provide water lines to residents around the impoundments, the pending rate case, the dispute over the nameplate capacity, and the necessity of creating

a fund to provide additional access to the ACP. The next morning, at approximately 7:30AM, Good conducted a conference call with the executive staff, which included Hawkins, David Fountain and Lloyd Yates. During the call, Good told them that they needed to give attention to two of the issues that were brought up during her meeting with Governor Cooper; the Fund concerning economic development and the nameplate dispute with the solar developers. Good told them that at the Governor's request she agreed to explore the fund and to look into the nameplate issue. Hawkins does not recall that Good directed a deadline to complete these tasks or whether the timing for the completion of these tasks was to coincide with the issuance of the 401 permit for the ACP.

9. Hawkins was asked to explain why, after the meeting between Good and Cooper, Duke immediately began working to create a fund for economic development when, prior to the meeting, Duke did not believe that such a fund was necessary. Hawkins said, Duke began working on the fund in response to the combination of requests from (Tolson, Wooten and Stephenson) and from the Governor.
10. Hawkins stated that he is the Governor and just like if you were meeting with the Speaker (NC House Speaker), "you look into it," regarding any requests.
11. Hawkins said there were no discussions between herself and any of Duke's staff regarding an apparent reversal in the decision to create a fund. Hawkins said that she was never told that if the fund was not established or the nameplate dispute not resolved, that the permits would not be issued. denied or delayed if the requests by Governor Cooper were not honored.
12. Per Hawkins, she began working on creating a fund to provide access to natural gas to businesses and farmers at the request of her bosses (Good, Yates, and Fountain). Hawkins remembered that in the first discussions with Duke staff regarding the fund, a dollar amount of \$50 million was proposed (\$25 million for Economic Development and \$25 million for agriculture). This was based on an estimate of the costs of accessing the pipeline for 10 medium-sized businesses and the 10 largest farming operations in eastern North Carolina. Hawkins also said, during the first few days in December, she spent time attempting to find a similar existing program that could be used as a model for the fund.
13. Following the November 30 meeting, Hawkins met with Eudy on December 5 and informed him that Duke was considering the establishment of a \$50 Million fund split between agriculture and business. They discussed calling it an economic development fund at that time.

14. On approximately December 11, Duke leadership made a request to Dominion, the ACP Managing Partner, for assistance in creating the fund. She recalled that, on December 12, 2017, she and David Fountain had a conference call with Dominion about the Fund. During communications with Dominion, Hawkins learned that Dominion had existing funds in place with West Virginia and Virginia. These funds were designated for environmental mitigation. It was suggested by Dominion that in addition to Duke's proposed \$50 million, to be split for economic and agriculture development, an additional \$5 million should be added to the fund for the environmental mitigation. Ann Loomis, of Dominion, suggested that the fund for North Carolina be consistent with the funds created for Virginia and West Virginia. Loomis drafted the original Memorandum of Agreement for the North Carolina fund. Once Dominion became involved, the name of the fund was changed to a "mitigation" fund, rather than an economic development fund. The first draft was delivered to Ken Eudy on December 13 and was based on the funds that existed in Virginia and West Virginia.
15. Initially there was discussion with the ACP partners regarding the other funds put in place by Dominion Energy for the states of West Virginia and Virginia. It was determined that the partners wanted to maintain a consistency, regarding the funds, between the three states.
16. Hawkins was not aware of any underlying legal documents that were created to allow the funds in this original draft agreement to be utilized for economic development.
17. Hawkins said this version of the Memorandum of Agreement was provided to the Governor's Office and on, December 19 or 20, 2017, Hawkins met with Eudy to discuss it. The initial draft was revised by the Governor's counsel, William McKinney, after that meeting. The revisions included changing the stated purpose of the fund to include economic development and renewable energy. The name changed to Memorandum of Understanding and language was added to show the purpose was to provide funding for environmental mitigation, economic development and renewable energy. These changes were made by the Governor's Office. The Governor's office made the majority of edits to the Memorandum for the fund. Hawkins is aware that counsel within Duke and Dominion reviewed drafts of the agreement. In addition, after counsel review, Duke and Dominion, along with counsel for Duke and Dominion, as well as Hawkins and others, had a conference call with William McKinney.
18. Hawkins didn't know how funding renewable energy related to the original purpose of the fund (providing access to natural gas from the ACP). She said that it is possible that renewable energy could relate to economic development

because it could create jobs. She said it was a brilliant idea by the Governor to add renewable energy, because his platform includes supporting renewable energy. Hawkins added that, on a good day, renewables could give you 4 hours of usable energy as opposed to natural gas that is clean and is a good bridge between fossil fuels and renewables.

19. Hawkins was shown various text messages, from documents provided by the Governor's office. These messages indicated the Governor's office believed the Memorandum was going to be signed on January 2, 2018. Hawkins recalled texting with Eudy indicating she would deliver the Memorandum to them on the January 2, 2018 but she did not realize they were anticipating signing it at that time. She does not know that a meeting, on January 2, 2018, to sign the Memorandum was scheduled and then cancelled.
20. Hawkins stated that on or about January 11, 2018, she met with Ken Eudy and William McKinney in William McKinney's office. Ken Eudy noted that Virginia was to receive \$57.8 Million under its mitigation agreement and requested that the amount of the fund be increased to \$57.8 Million to match the amount of Virginia's mitigation fund. His rationale was that North Carolina should be treated no differently than Virginia. Hawkins indicated that she actually got the precise mileage of the pipeline to demonstrate that North Carolina was doing better on a per mile basis. She told Eudy she would have to pass the request along to the ACP partners and informed David Fountain and Lloyd Yates, Lynn Good, and Frank Yoho.

#### **401 Water Quality Permit-Certification**

21. While Hawkins did not work directly on the permits or communicate with regulators on permit issues, she knew the ACP partners were frustrated with all the additional requests by the North Carolina Department of Environmental Quality (DEQ) for information regarding the permit, which caused an additional 15-day extension each time. She could not say whether the requests were out of the ordinary or unusual for this type of permit, given the size and complexity of the project.
22. Hawkins was directed to text messages from Lloyd Yates to Kristi Jones on January 16, 2018, where Lloyd indicated that calls had been made to Ken Eudy regarding slow progress on ACP permit. Hawkins was asked why calls were made to Eudy regarding the permit rather than to DEQ?
23. During this time there were several significant permits needed for the ACP. Duke and its ACP partners felt, for a long time, that the timing of the permit was a key issue. If the permitting process went much past December 2017, then the project

could be in jeopardy. Of primary concern was the short period for tree felling, which would end in March 2018 for the season.

24. Hawkins was directly involved with the Governor's office regarding the permitting of ACP. She stated that the Executive Branch is under her purview as a Duke lobbyist. Per Hawkins, practically every time she talked to Eudy she brought up the issue of the slow progress regarding the permitting approvals. It was her job to address these issues with the Executive Branch because the Governor owns responsibility for all the agencies. Her primary points of contacts within the Governor's office was Eudy and McKinney. Hawkins spoke to Eudy about the concerns and the need for the permit for the tree felling.
25. In reviewing her internal notes and communications, Hawkins found a message sent to Good, on December 19<sup>th</sup>, stating that Eudy informed her that the Governor would be making decisions on the permits versus Regan. Regan being DEQ Secretary Regan. The text message was supplied to investigators and reads: "KE said Gov will make this decision versus Regan."
26. Hawkins was asked why Eudy would have any role in the pipeline project or permitting. Hawkins related that the Governor was responsible for every agency in the Executive Branch.
27. Hawkins stated it would be against the law to not issue the permit if all requirements were met. She did not believe they could deny the permit and therefore did not believe that the permit was contingent on the Fund. She was never told if we didn't do the Fund, we wouldn't get the permit.
28. Hawkins has become aware of a phone call meeting between Good and Governor Cooper on January 17, 2018. She has also become aware of a schedule emailed by Ken Eudy on January 18, 2018, to Governor's Office staff. Hawkins does not have any knowledge of the events that were listed on this schedule. She said she is not aware of any information from the Governor's office, on January 17 or 18 that indicated the ACP permit would be issued. It wasn't until January 26, 2018 that she found out it was issued. Hawkins said DEQ sent a text to Leslie Hartz at Dominion and she informed Duke that it was issued.
29. Hawkins did not see the DEQ draft Denial Letter regarding the 401 permit. There was no mention of the letter by anyone during that time frame.

### **Programmatic Agreement**

30. In January of 2018, Hawkins was notified by Ann Loomis, of Dominion, that a critical document, known as the Programmatic Agreement (PA), had not been

signed and submitted to the Federal Energy Regulatory Commission (FERC). It was a Friday evening when she found out. Not knowing exactly what it was about, she requested help, via a text message on Saturday January 13, 2018 at 12:52PM, to Eudy, as well as by telephone. She explained the purpose of the document and who was working on it. He told her he didn't know anything about it but would help her to get it signed. Hawkins was not aware that Eudy tracked the PA to FERC and then had it rescinded, until she was told by Ann Loomis of Dominion at some point during the week of January 21. Eudy never told her that he had obtained the PA and that the Governor was holding it. She discovered this later after the events. She views this as somewhat of a betrayal because she asked him for his assistance and he took actions based on her information that could have disadvantaged the Company. She has no idea what level of review, if any, was conducted by the Governor's office on the PA. She was under the impression that Eudy was going to assist her in making sure the PA was signed.

- 31.. After Hawkins found out that Eudy had recalled the document, she confronted him about it. She told him that it was extremely disappointing and let him know that she knew what he had done. Eudy said that he thought she knew he was having the document recalled. The programmatic agreement was signed and sent back to FERC.

### **Nameplate Capacity Issue**

32. Hawkins explained the nameplate issue related to a part of House Bill 589 that grandfathered some solar projects at old rates as long as they did not exceed the nameplate capacity of the substation.
33. Hawkins said she was a part of the Duke team that negotiated for several months with the solar industry to agree on terms for HB589. The negotiations were very complex and involved many issues. Hawkins believed that the negotiations were conducted in good faith by Duke and by the Solar industry. At the time of the negotiations the definition of the nameplate rating was not discussed. Hawkins and many people on her team, did not know there were 3 listed nameplate ratings until well after HB 589 was signed into law. During the negotiations, Hawkins believed that the solar industry legitimately believed that the nameplate capacity could be defined as the highest capacity. In fact, prior to the merger between DEP and DEC to form current Duke Energy, DEP used the highest capacity rating to connect solar facilities, while DEC's practice was to use the lowest rating. When HB 589 was signed, nameplate capacity was not understood by all parties to be that same rating. Hawkins believed the specific definition of nameplate capacity should have been made clear in the final Bill.
34. In September of 2017, when Duke defined nameplate capacity as the lowest capacity rating, the solar industry became upset and complained to anyone that

would listen. Hawkins understood why the solar industry was upset about Duke's interpretation of the nameplate capacity. She believed the solar developers were likely to pursue litigation and had a legitimate argument.

35. There had been discussions between the solar developers and Duke in an attempt to resolve the dispute. However, they were not able to resolve the issue.
36. Hawkins said after the meeting between Good and Governor Cooper on 11/30/17, Good asked the executive team to attempt again to negotiate an agreement with the solar industry regarding the nameplate issue.
37. Duke had been conducting a "deep dive" with many executives to attempt to resolve the issue. There were many technical and complicated issues that involved a determination of how many projects were to be connected and the effects of each connection.
38. The request of the Governor was not the sole reason Duke wanted to resolve the nameplate issue. There were many media reports giving Duke a bad name and Hawkins believed that the solar industry had a legitimate ground for a lawsuit. Duke wanted to resolve the issue.
39. Hawkins said that after Good's instruction, they went to the Public Staff for their support, they received support in working out the settlement. Hawkins said Chris Ayers, who was appointed by a Republican Governor, was supportive of the negotiations and was key to the settlement. The Public Staff (including the Executive Director, Chris Ayers), William McKinney, Rep. John Szoka, the solar industry representatives and their lobbyists, were at the meeting at which the settlement was reached. The Public Staff's position that these were costs should pass along to consumers was critical to getting the matter resolved. Hawkins acknowledged that Ayers was subject to reappointment by the current Governor.
40. Hawkins said an agreement was reached in December of 2017 and that this agreement was ultimately submitted to the North Carolina Utilities Commission and was approved by the Commission.
41. Hawkins said Lawrence Somers told her that he was told by Representative John Szoka that Rep. Szoka hoped that no one found about the reduced savings from HB589 of \$180 million as a result of the nameplate settlement.
42. Hawkins said no attempt was made to change HB589 to add a definition of nameplate capacity because the General Assembly was not in session and would not return for several months.