

**REPORT OF INTERVIEW**

**DATE:** August 23, 2019

**TIME:** 9:30 AM

**LOCATION:** Duke Energy  
550 S. Tryon Street  
Charlotte, NC

**PARTICIPANTS:** Lloyd Yates, Executive VP, President Carolinas Region, Duke Energy  
Julie S. Janson, Chief Legal Officer, Duke Energy  
Vijay Bondada, VP for Litigation, Duke Energy  
Marcy Selle, Outside Counsel, Womble Bond Dickinson, LLP  
Jim Cooney, 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 Lloyd Yates (Yates), Executive Vice President, Customer and Delivery Operations, and President, Carolinas Region for Duke Energy, at the Duke Energy headquarters. 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 Yates unless otherwise indicated:

**MOU \$57.8 Million Fund**

1. Lloyd Yates believed the memorandum of understanding, in the amount of a \$57.8 million, was a fund ("fund"), established to benefit the stakeholders down east. He described it as a way that smaller industries and businesses could potentially hookup to the pipeline. He gave examples of the major hog farming facilities that currently do not have a lower cost gas option and could potentially be provided gas through the pipeline hookup as a result of the fund. He saw the fund as a way to address the economic development issue being raised by the Cooper administration.
2. Yates was aware that David Fountain, at that time the president of Duke Energy for North Carolina, was working with three business leaders from "down east" to create the groundwork for the fund. He recalled Larry Wooten, of Farm Bureau Insurance, Norris Tolson and an individual in Smithfield (whose name he couldn't recall), as the business leaders from down east wanting the fund. Yates was also aware that the Governor was talking to those parties down east.

3. Wooten and Tolson were initially supporters and proponents of the pipeline because of the economic benefits that it would bring to North Carolina. However, and despite their support, between September and November, Duke was being challenged on the economic benefits of the pipeline and Wooten and Tolson expressed concerns about the ability of the pipeline to provide any benefits to small businesses or farm operations.
4. Per Yates, he and Fountain often discussed the fund and other ways to address the concern of economic development as a result of the ACP. He didn't believe there was enough time to go through the North Carolina legislative branch to fund connections to the ACP.
5. Yates, Fountain and Frank Yoho had conversations about creating a fund for the economic development prior to December 2017. They were just conversations, and there are no emails or documents reflecting this idea. No numbers were run, or any analysis conducted regarding the fund prior to December.
6. Originally Duke was focused on the economic development that would be created by attracting large industrial users with a now available supply of gas. The Company had not focused on smaller customers. However, in discussing the concerns for smaller businesses, Duke began to appreciate that by investing in additional infrastructure they could increase the use of gas and the overall economics of the pipeline. Piedmont Natural Gas, now a part of Duke, would distribute more gas as a result of the investment. Yates felt the fund was a form of capital investment, where Duke Energy could potentially benefit from the gas sold to those that utilized the fund to connect gas lines to their businesses.
7. On December 1, 2017, Lynn Good conducted a meeting in which she debriefed a group of Duke executives concerning her meeting with Governor Cooper on November 30.. Yates recalled that as a result of the meeting, Ms. Good asked that they work on the transformer capacity dispute with the solar industry and the establishment of an economic development fund. This was in addition to the work that was ongoing relating to the approval of the 401 permits and other regulatory issues, such as coal ash and the ongoing rate cases. Yates became actively involved in these matters at that point because, "when the boss asks you to do this, you do it."
8. Yates summarized his recollection of what he had been told about the call by Ms. Good. He said that she had a meeting with the Governor and that the Governor related that there were a number of issues or "hard spots" between Duke and the State and that Duke needed to work on those issues to try to resolve them. Yates' impression from Good's conversation was that the Governor may have

wanted these things done by the end of December 2017. Good instructed Yates and the others that they needed to start working harder to resolve these issues.

9. Yates said they were looking at how the fund was done in Virginia. Duke was aware that Virginia had \$50 million in a mitigation fund. So, initially Duke used the Virginia agreement as a model to create the MOU fund for North Carolina. He recalled an additional \$5 million was added for the environment but couldn't recall who or why it was added. He thought it could have been DEQ saying you still need additional mitigation funds.
10. After reviewing the whitepaper, Yates recalled that the \$50 Million was apparently arrived at as a result of estimates created by Kathy Hawkins and David Fountain over the cost of 10 medium sized businesses and 10 farming operations tapping into the pipeline.
11. Yates explained that he had approval of expenditures up to \$50 million and amounts above that were approved by Lynn Good. Because of the size of the pipeline project and Duke's overall operations, "\$50 million doesn't draw a large magnitude of attention." He stated that Diane Leopold, who works for their Dominion partner would know more about the accounting for the fund. She and Frank Yoho were the primary representatives for the ACP.
12. Yates had no information concerning the additional \$2.8 million that was added to the fund. He was not aware of any conversations about this other than he texted the Chief of Staff for the Governor on January 16, 2018, concerning the continued delay in the issuance of the permits and was aware that a conversation was to occur between Ms. Good and the Governor.
13. Yates did not know that renewable energy was a part of the final fund and did not know how the money was to be used for renewables.
14. Yates never heard anyone say that the \$57.8 million fund was tied to the ACP permit.

#### **NAMEPLATE CAPACITY**

15. Yates was more involved in what he termed the "transformer" issue or also known as the nameplate capacity issue. He explained that once HB 589 was enacted, there became an ambiguity regarding the interpretation of the capacity rating. Specifically, this involved the way the capacity ratings were interpreted by Duke and the solar parties. DEP (Duke Energy Progress) used what is known as

the operating capacity for planning projects but DEC (Duke Energy Carolinas) utilized the low “planning” capacity rating. Once the two companies merged the low planning capacity was incorporated. This caused concerns on behalf of the solar industry. Yates stated, “a little nuance that made a big difference.” One party was thinking one thing and the other something else.

16. Per Yates, Duke held its position on the interpretation, and he was not concerned about the possibility of lawsuits by the solar industry. Yates said the Governor said work it out and Yates stated, “when the governor request things, you do them.” The Governor wanted it done by the end of December 2017.
17. Ultimately, Duke and the solar industry representatives requested that the North Carolina Public Staff be involved in seeking a settlement to the nameplate capacity dispute. During the December 1<sup>st</sup> conference call, Lynn Good had suggested that they get the Public Staff involved. NC House Representative Szoka, who was one of the original sponsors of HB589 was also involved in negotiating the settlement agreement. It was the involvement of the Public Staff that ultimately led to the resolution of the issue.
18. When an agreement was reached, at the middle capacity rating, Duke would allow additional solar projects to be interconnected onto the grid. Yates believed that this would result in approximately \$200 million in additional cost, but the Public Staff recommended that this additional cost was a cost that should be passed along to ratepayers. Ultimately, the resolution was submitted to the North Carolina Utilities Commission for approval.

### **ACP PERMITTING ISSUE**

19. Yates explained that Good holds “Monday morning” meetings with the executive team each week. Often those meetings, in late 2017, concerned the issue as to why the approval for the permits seemed to be “dragging.” The Duke engineers were complaining that DEQ was asking for too much information and thought the permitting process was much more detailed than needed. Per Yates, the Duke engineers described the requests as minutia.
20. Yates met with DEQ Secretary Regan regarding the permit and expressed the concerns of Duke. Secretary Regan stated DEQ was going to dotting its I’s and crossing its T’s regarding the permit, because they expected that any decision would be challenged in litigation and did not want a decision to be vulnerable in such a challenge. Yates did not have any discussions, outside of Secretary Regan, within the Cooper administration. Yates did say that he has known Governor Cooper’s Chief of Staff, Kristi Jones, for many years.

21. Kathy Hawkins, a Duke employee, had discussions with Ken Eudy, on the Governor's staff, about why the permitting process was "dragging." Yates asked Hawkins whether there would be a way to speed up the process. Yates was expecting the permit by December 2017 and stated that "it should have been issued way before then." From a timing perspective Duke was seeking the permit prior to the tree felling season.
22. Yates did not see the Draft Denial letter, relating to the permit, and therefore they had no discussion about it.
23. Yates thinks that Duke, specifically David Fountain, may have known that the 401 permit was issued a couple of hours before it was announced.
24. Yates did not think that the permit issue had any relationship to Duke's coal ash issue. During this timeframe the Governor was making sure that Duke's customers, close to the ash ponds, were getting connected to water from municipalities. Duke was expecting to spend about \$5 billion to cover low priority ponds, per the legislation and DEQ's input, until in April of 2019, DEQ decided that these ponds needed to be excavated. (At this time, because of pending litigation, coal ash was not further discussed.).

### **Recap of Interview**

25. The investigators recapped the conclusions of the interview with Yates as follows:
  - a. MOU research, implementation and drafting started in earnest after the November 30, 2017, meeting but Yates had non-documented conversations with Fountain prior to November 30, 2017.
  - b. There is no link between the timing of the 401 permit, the MOU and/or the Nameplate Settlement.
  - c. The nameplate capacity language in HB 589 was ambiguous and that everyone was locked into negotiating positions before November 30, 2017. However, Duke knew it had vulnerabilities due to the inconsistencies in its own application of nameplate capacity between DEP and DEC. Ultimately, the nameplate settlement took place because it was in the Company's interest to resolve the matter and when the Public Staff made a determination that this would be a cost of generation that should be borne by the using and consuming public. The Governor's interest was one fact, but the settlement was not related to the 401 permit. The Governor has always been clear about his commitment to renewables.

- d. Yates understood from Good that the Governor, from a timing perspective, wanted both the nameplate and the MOU resolved by the end of December and at the same time as the 401 permit. Although Duke was asked to resolve both issues by the end of December, the resolution of the nameplate issue and the mitigation fund was not linked to a 401 permit issuance. Yates was not operating on it being a quid pro quo. Yates was focused on resolving these issues by the end of December because Good directed him to do so. Yates did not know why the Governor wanted all of the issues finalized at or about the same time and by the end of December 2017, but Yates wanted to get everything resolved by the end of December 2017 in time for tree felling season.
- e. Yates never understood that Duke and the Governor's Office were actively "negotiating" the 401 permit (Per Ken Eudy's interview)