



REPORT

FOR

**JOINT LEGISLATIVE COMMISSION ON
GOVERNMENTAL OPERATIONS OF THE NORTH
CAROLINA GENERAL ASSEMBLY ON THE
ATLANTIC COAST PIPELINE**

FROM

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INTRODUCTION

Purpose of Report

Eagle Intel Services, LLC (hereinafter, "EIS") is submitting this report to the Joint Legislative Commission on Governmental Operations of the North Carolina General Assembly Subcommittee on the Atlantic Coast Pipeline (hereinafter, "SACP").

SACP contracted EIS to interview witnesses, request and review documents and other information, and otherwise conduct an investigative review of: (1) the circumstances surrounding the underlying negotiation and agreement reflected in the Mitigation Project Memorandum of Understanding dated January 25, 2018 by and between Roy Cooper in his Official Capacity as Governor of North Carolina and the Atlantic Coast Pipeline, LLC, (2) the approval of North Carolina 401 Water Quality Certification to Atlantic Coast Pipeline, LLC by the North Carolina Department of Environmental Quality (DEQ) on January 26, 2018, and (3) all other related matters as the SACP deemed necessary.

The purpose of this report is to provide the information gathered as per the above scope of work.

ACP Background

The Atlantic Coast Pipeline, LLC (ACP) is a partnership between Dominion Energy, Duke Energy, Piedmont Natural Gas and Southern Company Gas. The ACP project in West Virginia, Virginia and North Carolina was developed for the purpose of bringing natural gas to these States in order to provide additional power and utility sources and an anticipated increase in economic development.

The ACP is a 600-mile underground natural gas transmission pipeline that is planned to originate in West Virginia, travel through Virginia with a lateral line extending to Chesapeake, VA, and then continue south into eastern North Carolina, ending in Robeson County. The proposed route for the ACP includes the North Carolina counties of Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson. The pipeline essentially tracks the Interstate 95 corridor in North Carolina.

The ACP project was first announced in late 2014 and was supported by the then seated Governors of North Carolina, Virginia and West Virginia. The key interest in this project was specifically to provide economic benefits to include jobs, economic stimulus and tax revenue for the State.

Per Duke Energy, on September 18, 2015, the ACP filed its application with the Federal Energy Regulatory Commission (FERC) pursuant to the National Gas Act ("NGA") and implementing regulations to be allowed to construct, maintain, and operate the proposed natural gas pipeline. The NGA prohibits this type of project absent "a certificate of public convenience and necessity (CPCN) issued by the Commission authorizing such acts or

operations.” 15 U.S.C. § 717f(c)(1). To obtain and maintain the required certificate, the ACP had to demonstrate to FERC that the pipeline project “is or will be required by the present or future public convenience and necessity.” Any authorization by FERC could be made contingent upon “such reasonable terms and conditions as the public convenience and necessity may require.” 15 U.S.C. § 717f(e). FERC’s consideration of the pipeline project also triggered an environmental review under the National Environmental Policy Act and implementing regulations. This review involved a publicly disclosed analysis of the environmental impacts of the ACP project through an Environmental Impact Statement, which FERC was to publish prior to the issuance of a CPCN.

On May 8, 2017, ACP filed an application with the North Carolina Director of the Division of Water Resources at DEQ requesting the issuance of a 401 Water Quality Certification (“401 Permit”) pursuant to 15A N.C. Adm. Code §§ 2H.0501 et seq. implementing Section 401 of the Clean Water Act, 33 U.S.C. § 1344, and requesting riparian buffer authorizations for the Neuse and Tar-Pamlico River Basins pursuant to 15A N.C. Adm. Code §§ 2B.0233 and 2B.0259, respectively.

In July 2017, FERC published the Final Environmental Impact Statement and responded to the comments that had been made in connection with the Draft Environmental Impact Statement. In response to DEQ and North Carolina Wildlife Resources Commission (WRC), FERC refused to broaden its analysis of cumulative impacts beyond those “for a linear ‘corridor-type’ project” and thus declined to account for reasonably foreseeable environmental impacts caused by the future economic developments linked to the ACP. In the context of refusing one of the specific mitigations requested by DEQ, FERC explained: “State agencies would have the opportunity to review Atlantic’s proposed facilities during their permitting processes, and, if necessary, identify additional mitigation measures beyond those currently proposed.”

After nearly an eight-month review of the ACP 401 permit application, DEQ issued the 401 Water Quality Certification on January 26, 2018. On the same day, January 26, 2018, the Mitigation Project Memorandum of Understanding (MOU), between the ACP and Roy Cooper, Governor of North Carolina was announced, in which the ACP would be providing funding in the amount of \$57,800,000 to the Governor for environmental mitigation, economic development and renewable energy for those counties and communities impacted by the ACP.

The North Carolina General Assembly raised concerns about the relationship between the 401 Certification and the \$57,800,000. Additionally, the Solar Industry representatives entered into a Settlement Agreement, over connectivity issues, with Duke Energy the following week. The North Carolina General Assembly began to question the Governor’s involvement and the potential relationship between these issues.

Actions on Behalf of the General Assembly

In an attempt to seek answers to their questions, regarding the appearance of a “pay-to-play” or “pay-for-permit” series of events, the House and Senate Appropriations/Base Budget Committees held a joint meeting on February 8, 2018. During that meeting, Lee Lilley, the Governor’s Office Director of Legislative Affairs, was questioned by the committee members regarding the permitting process and the \$57,800,000. Lilley was unable to address many of the questions presented.

On February 12, 2018, Senator Bill Rabon, Senate Rules Chairman and Member, Senate Appropriations/Base Budget Committee and Representative David Lewis, House Rules Chairman and Member, House Appropriations/Base Budget Committee sent a letter to Lee Lilley asking Lilley to obtain answers to the 15 questions, included within the letter. The letter asked that the answers be obtained from Governor Cooper and his General Counsel.

In a reply letter dated, February 15, 2018, to Senator Rabon and Representative Lewis, the Governor’s Chief of Staff, Kristi Jones provided an explanation of the origin and purpose of the MOU. She wrote; “The mitigation fund was established independently of the DEQ permitting process, which is still underway.”

On February 16, 2018, Senator Rabon and Representative Lewis sent a letter to the Governor’s Chief of Staff Kristi Jones, thanking her for her “partial response to our February 12 letter,” and adding six additional questions in response to the partial answers received.

On February 19, 2018, the Governor’s Chief of Staff, Kristi Jones, responded to the letter. The Governor’s office did not provide responses to the questions previously asked and Jones wrote, “your new questions appear to be political in nature, as well as moot, and as such our office lets the previous letter stand as our answer.”

On August 29, 2018, the Governor’s Chief of Staff, Kristi Jones, made a statement to the NCGA’s Joint Commission on Governmental Operations regarding the ACP.

On September 7, 2018, a letter signed by Senator Harry Brown, Co-Chairman, Subcommittee on the Atlantic Coast Pipeline and Senator Paul Newton, Advisory Member, Subcommittee on the Atlantic Coast Pipeline, sent a letter to Governor Cooper requesting that the Governor provide answers to questions provided and to produce documentation.

On November 15, 2018, the Co-Chairs of the Joint Legislative Commission on Governmental Operations Subcommittee on the Atlantic Coast Pipeline, Senator Harry Brown and Representative Dean Arp, sent letters to Governor Roy Cooper and DEQ Secretary, Michael Regan asking for documents under the authority of the Public Records Request.

On November 27, 2018, by letter from the Governor's Chief of Staff, Kristi Jones, the Public Records Request was acknowledged, and the Co-Chairs were informed the documents were being prepared.

By letter dated December 12, 2018, sent to Senator Brown and Representative Arp, the Governor's Chief of Staff, Kristi Jones replied to the November 15, 2018, letter and committed that the documents would be provided by Thursday, December 20, 2018. In addition to the response, the Governor's Office made a Public Records Request of the North Carolina General Assembly.

On December 18, 2018, Eagle Intel Services was contracted by the Joint Legislative Commission on Governmental Operations Subcommittee on the Atlantic Coast Pipeline.

Contents of the Report

This report consists of several sections addressing the pertinent matters in which EIS was contracted to gather and provide relevant factually based information back to the Subcommittee on the Atlantic Coast Pipeline. The information contained within these sections is the culmination of interviews and documents provided by employees of the State of North Carolina, Duke Energy, Dominion Energy and other individuals with direct knowledge of the subject matter(s). Additionally, as referenced within, review and analysis was conducted on the Governor's and Department of Environmental Quality's Public Records Request(s) responses.

On February 1, 2019, EIS Investigators met with Attorney's for ACP Partners Duke Energy (Duke) and Dominion Energy (Dominion) to discuss and plan for interviews of individuals involved in the creation of the MOU, the negotiations of the Nameplate Dispute and ACP permitting. During this meeting, it was agreed that the ACP Attorney's, in order to streamline the interview process, would conduct internal interviews and review documents to identify the relevant employees and collect the relevant facts. If requested, EIS Investigators would then interview the relevant employees. Investigators provided the ACP Attorneys with an outline of requested information. (EIS-2, email and requested facts) Based on the requested facts, the ACP Attorneys collected and compiled information into two separate Whitepaper Proffers. The first Whitepaper Proffer, received on March 14, 2019, focused on the Nameplate Dispute and Resolution. This proffer is hereinafter referred to as the "Nameplate Whitepaper". (DUKE-4, Nameplate Whitepaper) The second proffer, received on April 26, 2019, focused on the creation of the MOU, the ACP Permitting Process and contacts with the Cooper Administration. This Proffer is hereinafter referred to as the "Whitepaper". (DUKE-1, Whitepaper)

Subsequent to providing information in the Whitepaper Proffers, both Duke Energy and Dominion Energy cooperated to allow key individuals, associated with the primary topics of concern, to be interviewed by EIS Investigators. These interviews are referenced and provided within. (DUKE-12, Agreement to Provide Interviews)

EXECUTIVE SUMMARY

Actions on Behalf of the Governor

In late 2017 and into early 2018, North Carolina Governor Roy Cooper, acting in his official capacity, affected the outcome and process of matters concerning Duke Energy (Duke) a North Carolina based company. The Governor controlled the 401 Water Quality Certification (401 WQC), process and timing of issuance at the North Carolina Department of Environmental Quality (DEQ), being sought by the Atlantic Coast Pipeline (ACP) partnership, in which Duke was a partner. The Governor requested Duke to provide a \$57.8 million fund through the “Mitigation Project Memorandum of Understanding,” under terms that the Governor would control. The Governor also caused a settlement agreement to be rendered, between Duke and the Solar Industry, that ultimately could reduce the proposed savings within HB 589 by \$100 million.

Background

The ACP needed the 401 WQC by the end of December 2017, so tree clearing could begin and be completed by March 31, 2018. If the 401 WQC were not issued in time, the ACP Project would not be able to move forward until the following tree clearing season. The Governor’s Office was aware of this deadline.

During the same time period, local eastern NC business leaders, which the Governor referred to as his “advisors”, along with the NC Department of Commerce and the Governor’s Office expressed concern that the ACP would not deliver on promises of job creation and economic development. These business leaders made requests, on behalf of business and agriculture..., to the ACP to create a fund to be used to pay for access to the natural gas. ACP executives consistently relayed the message to these business leaders, the NCDOC, and the Governor’s Office that the ACP would make gas available at a lower price. The ACP executives believed that the lower prices would spur economic development and therefore a fund would not be required.

Also, in late 2017, DUKE and the solar industry were involved in a dispute over an interpretation of a section of HB 589, which became known as the Nameplate Dispute. In November of 2017, this dispute was at an impasse. At that time, DUKE was unwilling to settle with the solar industry because the North Carolina Utilities Commission Public Staff was not willing to approve a settlement where costs of the settlement could be passed to ratepayers. The Governor’s Office was aware of this dispute. The Governor publicly supported the solar industry on a platform of moving the State to a renewable energy future.

The Governor benefits from the support from a large base of environmental and renewable energy groups.

Governor Cooper Makes Requests of Duke on November 30, 2017

At the request of Governor Cooper, on November 30, 2017, the Governor and Lynn Good Chairman, President and CEO of Duke, met. At this meeting, Governor Cooper asked Good to consult with the Governor's "advisors" and create a fund. A fund for economic development that Duke had previously not deemed necessary and had denied to his "advisors". The Governor also asked Good to work to resolve the Nameplate Dispute and was made aware by Good that savings on behalf of the bill could be lost.

The Governor added that he wanted Duke and the ACP to complete these requests by the end of December 2017 and do so at the same time the required WQC was approved.

Duke was aware that the Governor has control over the agencies in his administration, including NCDEQ which was reviewing the 401 WQC application.

DUKE Immediately Works to Create a Fund and Resolve Nameplate Dispute

On the following day, December 1, 2017, Good instructed her Executive staff to begin working to resolve the nameplate dispute and create a fund as requested by Governor Cooper.

Nameplate Dispute Settled Because Public Staff Involved

In the first week of December, Duke executives found that the NC Public Staff was willing to work with the parties and recommended costs of a settlement could be passed to ratepayers. Prior to November 30, 2017, the Public Staff indicated the parties should work the dispute out on their own and would not recommend costs of a settlement could be passed to ratepayers. The Nameplate Dispute was settled (in principle) on December 14, 2017. Details of the agreement continued to be negotiated until the end of January 2018.

Governor's Office Takes Control of Fund & ACP 401 WQC

In the first week of December 2017, Duke worked to calculate a fund amount of \$50 million to be used to extend gas lines to businesses and farms. This proposal was relayed to the Governor's Office and the Governor's "advisors," who agreed with the proposal. On December 13, 2017, a Memorandum of Agreement (MOA) for the fund was delivered, Duke, to the Governor's Office showing a fund amount of \$55 Million (\$5 Million was added for environmental mitigation). The terms of this MOA stated that the fund was designated for environmental mitigation.

Texts messages and emails, which the Governor's Office provided, indicated the Governor's Office, in preparing a new document in response to Duke's proposed fund, was suggesting that Duke increase the fund amount to \$80 million.

On December 19, 2017, Kathy Hawkins, of Duke, discussed the proposed fund with Ken Eudy, of the Governor's Office. During this conversation, Eudy informed Hawkins that the Governor would be making the final decision on the ACP WQP rather than the Secretary of NCDEQ.

At some point in December 2017, Hawkins asked Ann Loomis of Dominion, about increasing the fund to \$80 Million to match total mitigation of Virginia. After Loomis explained Virginia's mitigation differences, the NC fund remained at \$55 Million.

On December 20, 2017, The Governor's Office returned a re-written fund document to Duke. This new document was named a Memorandum of Understanding (MOU) and showed the funds would be designated for environmental mitigation, economic development, and renewable energy.

Duke approved changes in the document even though the fund designation had changed from Duke's original intended purpose. Lynn Good, said the administration of the fund was left to the State of North Carolina.

Governor's Office Delays Signing MOU because of Nameplate Settlement

Text messages, which the Governor's office produced, showed that the Governor's Office was planning to sign the MOU on January 2, 2018. Text messages indicate signing the MOU was cancelled because the nameplate dispute settlement was not complete.

On January 3, 2018, The Governor's Office heard a rumor that Virginia had negotiated a fund of \$100 Million.

The next day, on January 4, 2018, DEQ, as employees were finalizing ACP Hearing Officers Report, a document required for the 401 WQP, the DEQ Secretary's Office requested that the Secretary's office review the report. This additional review delayed the issuance of the WQP by approximately 2 weeks. No edits were made to the report when it was returned from the Secretary's Office.

On January 11, 2018, after the Governor's Office confirmed that Virginia's fund amount was \$57.8 Million and after the NCDEQ Secretary's Office had delayed the ACP WQC review, Ken Eudy and William McKinney requested an additional \$2.8 Million to match the fund amount of Virginia. Duke and the ACP partners did not agree to this request at that time.

On January 13, 2018, Kathy Hawkins requested Ken Eddy's help to get a Programmatic Agreement (PA) signed by North Carolina Department of Natural and Cultural Resources. This PA needed to be obtained/signed before the ACP could begin clearing trees in

Virginia and West Virginia. Eudy indicated he would help but instead ordered the PA be recalled on Sunday, January 14, 2018. Eudy has claimed he had it recalled for legal review. Eudy did not inform Hawkins that he recalled the PA.

On January 14, 2014, Eudy sent emails to his staff and to DEQ Secretary Regan asking why he wasn't informed about ACP permits that involved tree cutting.

Duke Agreed to the Additional \$2.8 Million

On January 17, 2018, in a phone conversation between Lynn Good and Governor Cooper. Governor Cooper requested that the fund amount be increased by \$2.8 Million to \$57.8 Million. Good agreed to the request.

The Governor's Office Agreed to Resume Approval of the WQP and Return the PA

The next day, on January 18, 2018 at 12:31PM, Ken Eudy sent an email titled "ACP TICK TOCK" to the Governor's Staff members. In this email, Eudy listed a schedule of events and indicated these events were discussed with the Governor. The schedule indicated the PA would be signed and returned on January 18, 2018 and that DEQ would begin final approval of the 401 on January 19, 2019.

Documents from the Governor's Office indicated that William McKinney texted Governor Cooper on January 18, 2018 to inform him the PA was sent, and Duke was notified.

Documents from NCDEQ indicate that the Hearing Officer's Report was sent back to the normal chain of review on January 19, 2018.

On January 26, 2018, The Governor announced the MOU and the ACP WQC. Almost immediately, the media and the General Assembly questioned the "voluntary nature of the MOU. On February 8, 2019, Ken Eudy, requested Duke prepare a letter indicating that Duke voluntarily created the MOU. Duke denied this request.

In his testimony on November 8, 2019, Eudy said he never made a request to Duke to ask for a such a statement.

401 WATER QUALITY CERTIFICATION

Before tree clearing and construction on the Atlantic Coast Pipeline could begin in North Carolina, a “401 Water Quality Certification” (WQC) was required to be approved by North Carolina Department of Environmental Quality (DEQ). In various documents and interviews, the WQC is sometimes referred to as a “401 Permit” and sometimes simply as “The Permit”.

Permitting Process of ACP 401 Water Quality Certification

Under Section 401 of the Clean Water Act (CWA), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state or authorized tribe where the discharge would originate issues a Section 401 water quality certification verifying compliance with existing water quality requirements or waives the certification requirement¹.

The 401 & Buffer Permitting Branch of the North Carolina Department of Environmental Quality (DEQ) is responsible for implementing the State's waters, wetlands, and riparian buffer regulatory programs and assisting with compliance and enforcement procedures².

On May 9, 2017, an application for a 401 Water Quality Certification was received by DEQ from The Atlantic Coast Pipeline (ACP). (DEQ-1 Application Info)

The ACP is a partnership between Duke Energy (Duke) and Dominion Energy (Dominion). Duke and Dominion own approximately 85% of the ACP partnership. (DUKE-1 ACP Whitepaper, pg. 3)

The Whitepaper provides a history of the ACP, prior to May 9, 2017. (DUKE-1, pgs. 2-6)

Dominion personnel were primarily responsible for the 401 Permit and for responding to DEQ requests for additional information. In general, the written requests and responses occurred among, on one hand, Richard Gangle and Spencer Trichell on behalf of ACP, and on the other hand, Jeff Poupart, Jennifer Burdette, and Karen Higgins on behalf of DEQ. (DUKE-1, pg. 7)

Exhibit 1 to the Whitepaper is a Timeline of Permitting Events re: Atlantic Coast Pipeline. (DUKE-2 Exhibit 1 to Whitepaper) This timeline lists key events including dates of meetings, public hearings, information requests and responses to the information requests.

¹ <https://www.epa.gov/cwa-401/clean-water-act-section-401-state-certification-water-quality>

² <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch>

Documents relating to the ACP permit are maintained as public records on the DEQ website³. These documents include emails, reports, permits, employee notes and letters.

In January of 2019, EIS Investigators made requests to DEQ for interviews of DEQ employees. (EIS-1, DEQ Contact Log with DEQ)

On January 17, 2019, Kristi Jones, Chief of Staff for Governor Cooper, sent a letter to the General Assembly informing them that “We have directed cabinet level agencies to respectfully decline these outside investigators’ requests for interviews.” (GOV-1, Letter from Kristi Jones 1/17/19)

On January 18, 2019, DEQ Chief Counsel William Lane said he was instructed not to allow employees to be interviewed by EIS Investigators. (EIS-1)

On July 5, 2019, NC SB 127, “The Whistleblowers Protection Act” was signed into law⁴.

During August 2019 through September 2019, requests were again made to interview DEQ employees. (EIS-1)

On October 4, 2019, current and former DEQ employees, Karen Higgins, Jennifer Burdette, Bridgette Munger, Brian Wrenn and Linda Culpepper were interviewed. These interviews were audio recorded at the request of DEQ. (DEQ-2 – DEQ-7, Transcripts of Interviews)

DEQ Secretary Michael Regan, through DEQ Attorney Bill Lane, declined to be interviewed but indicated he would answer questions during a public hearing if requested. (EIS-1)

From October 9, 2019 through October 22, 2019, requests were made to DEQ Attorney William Lane for interviews of DEQ employees Sheila Holman, Jennifer Mundt, Jeff Poupart and a follow-up interview of Karen Higgins. (EIS-1)

On October 31, 2019, DEQ Attorney, William Lane emailed written statements of Mundt, Higgins, Poupart and Holman. In the email Lane stated: “Good afternoon. I have enclosed signed documents from four DEQ employees who have elected to provide written statements rather than be interviewed”. (DEQ-8 – DEQ-12, Email and Statements)

Brian Wrenn acted as the Hearing Officer for the ACP 401 Water Quality Certification. Wrenn explained that because of the size and type of the ACP project, public hearings were required to be held in order to receive comments from the public. As the Hearing Officer, he was responsible for leading hearings, taking the comments and preparing a

³ <https://deq.nc.gov/news/key-issues/atlantic-coast-pipeline>

⁴ <https://www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S127v4.pdf>

report. A “Hearing Officer’s Report” (HO Report) not only addresses the comments from the public hearings but also summarizes and evaluates the information provided by the applicant. The HO Report makes recommendations on each of the five criteria on which the 401 Water Quality Permit is to be evaluated. The HO Report is the document that makes the recommendation on whether a 401 Certification should be issued.

As stated by Wrenn and as listed in his Hearing Officer’s Report, the five criteria are: 1) a no practical alternatives analysis, 2) minimization of adverse impacts to surface waters, 3) an analysis of the degradation of groundwaters or surface waters, 4) a cumulative impacts analysis and 5) a replacement of existing uses through mitigation. (DEQ-3, Wrenn Interview Transcript) (DEQ-13, HO Report, pg. 18)

Environmental Justice

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. While it is important, it is not a part of the state regulatory requirements for the 401 Water Quality Certification, but a policy imposed by the Cooper Administration. (DEQ-13)

During Lynn Good’s meeting with Governor Cooper on November 30, 2017, Governor Cooper indicated to Good that there was “balking” at DEQ over the issuance of permits for the pipeline and in particular over issues of environmental justice. (DUKE-1, pg.19) During an interview on August 23, 2019, Good said she did not know what Cooper meant when he made this statement. There was no further conversation during the meeting where he explained “balking by DEQ over environmental justice”. (DUKE-5, Interview of Lynn Good)

In Wrenn’s notes, filed as public records on the DEQ website, he made some notations indicating he had questions regarding the consideration of environmental justice issues as it related to the 401 WQC. (DEQ-14, Wrenn’s Notes about EJ)

Wrenn stated that, when he first became involved with the ACP WQC evaluation, there were multiple conversations in the department about the need to consider environmental justice. Wrenn said he had discussions with Linda Culpepper about this issue and confirmed that, environmental justice issues are important but were not to be considered as a factor in the issuance of a 401 WQC. (DEQ-3, pgs.11-12)

In the final HO Report, Wrenn wrote: “environmental justice is not included in the criteria upon which the Director must evaluate the application. Although environmental justice is not an evaluation criteria, the Department has been intimately engaged with the stakeholders of North Carolina through the permitting process.” (DEQ-13, pg.18)

Additional Requests for Information by DEQ

Documents from the DEQ Website show that during the ACP permitting process, several requests for additional information were made by DEQ reviewers. In response, ACP provided the requested information. A list of the dates of the Additional Information Requests (Req. for Add Info) and the corresponding dates of Additional Information Received (Add Info Received) is listed on the DEQ Website and in the HO Report: (DEQ-13, pg. 2)

Date	Action
June 27, 2017	Req. for Add Info (1)
July 12, 2017	Add Info Received (1)
September 14, 2017	Req. for Add Info (2)
September 22, 2017	Add Info Received (2)
October 2, 2017	Add Info Received (2)
October 13, 2017	Add Info Received (2)
October 26, 2017	Req. for Add Info (3)
November 4, 2017	Add Info Received (3)
November 15, 2017	Add Info Received (3)
November 28, 2017	Req. for Add Info (4)
December 8, 2017	Add Info Received (4)
December 14, 2017	Req. Correction to (4)
December 20, 2017	Add Info Received (4)
January 17, 2018	Add Info Received
January 18, 2018	Add Info Received

According to the Whitepaper provided by Duke and Dominion, the scale of the pipeline project proposed by ACP, the 401 Certification and permitting process was more rigorous and detailed than prior, smaller projects. But ACP perceived nothing improper about the length of the process. ACP engaged in rigorous and highly technical environmental discussions with career staff at DEQ throughout the 401 certification process. There was speculation by Dominion that the Cooper Administration took a more focused approach to the technical details of the 401 certification and permitting process than the previous administration had taken and that this focus slowed the permitting process, to a degree. But ACP did not sign onto the MOU in exchange for the 401 Permit or any other permit. (DUKE-1, pgs. 7 & 8),(DUKE-2)

ACP's concerns about the length of the permitting process stemmed not from a concern that the permits would not be issued or were not warranted, but rather from the construction schedule for the pipeline. No tree clearing and related activities could begin until the permits were obtained and FERC issued a limited notice to proceed based upon the permits. In order to construct the pipeline, the pipeline right-of-way needed to be cleared of trees. That process, however, could only take place during certain months of

the year (“tree-felling season”) and ACP believed that in order not to lose an additional calendar year for construction, tree clearing and related activities needed to begin no later than the end of December 2017. (DUKE-1, pg. 15)

Karen Higgins, Jennifer Burdette and Brian Wrenn explained that Incidental and Cumulative Effects (ICE) are the effects on water quality that occur as a result of future economic development that is stimulated as a result of the project that is being evaluated. ICE is subjective in nature and is based on projections and estimates. It is, however, required to be considered in the evaluation of a 401 Certification application. (DEQ-4, DEQ-3, DEQ-6)

In the request for information letters dated September 14, 2017, October 26, 2017, November 28, 2017 and in the email on December 14, 2017, DEQ asked for additional information including analysis of Incidental and Cumulative Effects (ICE). ICE was primarily the only type of information requested in the last two requests. (DEQ-15, Add Info request 9-14-17) (DEQ-16, Add Info Request 10-26-17) (DEQ-17 Add info Request 11-28-17) (DEQ-18) (Add Info Request Email 12-14-17)

Higgins, Wrenn and Burdette said that they sent multiple requests for additional analysis of ICE to ACP because Spencer Trichelle and Richard Gangle from the ACP did not provide the details on the projected economic development and analysis of ICE as requested. Higgins said they received general information without the details requested initially. (DEQ-4, DEQ-3, DEQ-6)

Higgins, Wrenn and Burdette said it was entirely their decision to make the additional requests for information. They were not told to send out additional requests by the Director or by the Secretary’s Office. (DEQ-4, DEQ-3, DEQ-6)

Higgins said that information received from Spencer Trichelle and Richard Gangle from ACP, indicated there was very little projected economic development as a result of the ACP. At the same time, there were television advertisements indicating the ACP would have a big effect on the economy. This conflicting information caused DEQ to ask more questions about the details of projected effects on economic development and is one of the reasons additional analysis of the ICE was requested. (DEQ-6)

Spencer Trichell (Trichell) of Dominion Energy, was interviewed on October 21, 2019, and said that in working on the North Carolina 401 Permit, his primary contact at DEQ was Jennifer Burdette (Burdette). Burdette was the 401 Permit Reviewer and was supervised by Karen Higgins (Higgins). Trichell said he met with Burdette on multiple occasions and had numerous phone conversations. He had less dealings with Higgins and remembered meeting with her once or twice.

Trichell said his job was to get the 401 Permit and, to that purpose, he contacted Burdette on a regular basis to make sure he understood what information was needed by DEQ and to make sure they received that information as soon as possible.

Trichell estimated that DEQ made seven or eight requests for information but believed only four of the requests were officially made on letterhead. There were a number of informal requests by DEQ for additional information.

Trichell said the requests for additional information mainly related to streambed restoration, stream crossings, and cumulative impacts (CI).

Trichell explained that the CI were the anticipated effects the project would have on economic growth and the effects caused by that growth on the environment.

Trichell said that he knew as far back as May of 2017, that CI would be critical to the review process. He remembered that DEQ had additional guidance that had a higher resolution on CI than was required by FERC. He remembered there were numerous conversations on getting the CI documentation right.

Trichell said he was frustrated by the multiple requests for additional information relating to CI but he understood why they were being made. He also said that he did not think the additional requests were unreasonable, given the size and nature of the ACP project. He also said that DEQ often indicated the information was not presented in the way they wanted the information and that it required additional resubmissions. (DOM-1, Interview Report of Trichell)

Completion of the 401 Certification Evaluation

On December 14, 2017, at 2:59PM, Karen Higgins emailed Bridgette Morris-McLawhorn and stated: "I'd like to go ahead and schedule time with Linda, Jennifer Burdette, Brian Wrenn and me to go over the Atlantic Coast Pipeline Hearing Officer's Report and recommendation. We'll probably need an hour and are looking for January 4th or 5th." (DEQ-20, Email on 12/14/17)

Emails between Higgins, Wrenn and Burdette on January 3, 2018, were sent indicating they were finalizing the HO Report and preparing for a meeting with Linda Culpepper on January 4, 2018. (DEQ-21, Email-Wrenn-Higgins-Burdett 1-3-18 HO Edits)

In Higgins' notes, an entry on January 4, 2018, said: "-Give HO Report/Draft decisions to Linda on Monday. (January 8, 2018) Bridget will talk w/Doug about release of decision." (DEQ-22, Higgins notes 1-4-17)

Hearing Officer's Report Reviewed by Secretary's Office

On January 4, 2018, at 7:25PM, Brian Wrenn emailed Bridget Munger and stated: "Please make it known that this has not gone through final revisions. Some of the cumulative impact language is new and neither Karen nor Jennifer have reviewed it at all. Thanks. (DEQ-23, Emails 1-5-18)

On January 5, 2018, at 8:09AM, Bridget Munger emailed Brian Wren and stated: Hi Brian, If Karen and Jennifer will be looking at the report today, I can wait for that draft. Please let me know what you prefer." (DEQ-23)

On January 5, 2018, at 8:44AM, Brian Wrenn emailed Bridget Munger and stated: "I think the HO report is their focus this am. If it's ok, we can send the draft to you when we send to Jeff to review. Thanks". (DEQ-23)

On January 5, 2018, at 9:17AM, Brian Wrenn emailed Karen Higgins and Jenifer Burdette and stated: "...The Secretary's office wants to review the HO report prior to sending to Linda. I told Bridget we would send a copy to them when we send one to Jeff." (DEQ-23)

On January 5, 2018, at 11:37AM, Karen Higgins emailed Brian Wrenn and Jennifer Burdette and stated: "Brian, Just a few minor suggestions highlighted in yellow. I don't think Jennifer will review this today so please go ahead and send to Jeff and others. Since the Department is reviewing before going to Linda, I'm not sure that it will be ready for her by Monday...." (DEQ-23)

On January 5, 2018, at 12:19PM, Brian Wrenn emailed Jeff Poupart and cc'd Bridget Munger and stated: "Jeff, please find the attached draft hearing officer's report for the ACP project. If you have any questions, please do not hesitate to contact me..." (DEQ-24, Email Wrenn sends HO report)

The above listed emails and notes were shown to Higgins, Wrenn, Burdette and Munger. Higgins, Wrenn and Burdette said that on January 4th and 5th they were finishing the Hearing Officer's Report and were planning to meet with Linda Culpepper on January 8th, 2018, to discuss and finalize. (DEQ-3, DEQ-4 and DEQ-6)

In an interview on October 4, 2019, Higgins indicated she expected the 401 Certification would be approved. She said "We did not expect it to not be approved. Our recommendation was to approve and at no point were we told something different". (DEQ-6, pg. 21 line 6)

According to Higgins, after a Hearing Officers Report is reviewed by the Division Director, a 401 WQC is usually issued “a couple days to probably not more than a week”. (DEQ-6, pg. 21, line 15)

Brian Wrenn said, regarding 401 Certifications, “Usually once you submit the Hearing Officer’s Report to the Division Director for signature, the decision is made fairly quickly after. Within a matter of days. Sometimes if the Director is familiar with the project and it is pretty simple, it can be issued right there.” (DEQ-3, pg. 23, line 13)

Higgins did not know who at the Secretary’s Office reviewed the Hearing Officer’s Report but said there were no changes made to the report when it was returned from the Secretary’s Office. (DEQ-6, pg. 22, line 17, pg. 30, line 1)

Higgins said she does not recall having any discussions with anyone at the Secretary’s Office about their review of the HO Report. (DEQ-6, pg. 31, line 12)

Regarding the review of the HO Report by the Secretary’s Office, Wrenn said “My understanding of that review was just to be informed on what we were going to do.” He said he and Karen Higgins met with Secretary Regan on January 12, 2018. In this meeting, Regan seemed to understand everything and had no questions about the HO Report. Wrenn did not know why there was an additional 10-day delay from the meeting with Regan on January 12, 2018 to the signing of the HO Report on January 22, 2018. Wrenn said “I don’t have any information on why it took that long.” (DEQ-3, pgs. 23-25)

In late December of 2017, Burdette told Trichell that they (DEQ) were close to finalizing the Hearing Officer’s Report and were cleaning up everything on their end. At that time, Burdette told Trichell she was leaving her position at DEQ. He remembered being told that, after Burdette left, he was to direct his communications to Karen Higgins.

Trichell said, after he was informed that the Hearing Officers Report was being sent up to review, he waited a few days and reached out to Higgins to check the status. Higgins did not return his calls for over a week. Higgins finally contacted him by email with a request to verify the information for the permit. Trichell does not remember being told that the Hearing Officer’s Report was being reviewed by a level above the Division Director. (DOM-1)

Linda Culpepper said she has no recollection of why the HO Report was diverted from her review on January 4, 2018, to the Secretary’s Office for review. She was sent the HO Report on January 22, 2018, but has no recollection of what occurred from January 4, 2018, until January 22, 2018. (DEQ-7, Culpepper Interview Transcript. pgs. 13-14)

DEQ & Dominion Employees not informed of MOU for Economic Development

On January 12, 2018, Higgins and Brian Wrenn met with Secretary Regan and Sheila Holman. The purpose of the meeting was to provide an update on some of the challenges the staff was having with the applicant, particularly with information relating to cumulative impacts.

In the interview on October 4, 2019, Karen Higgins said “So, we provided an update to the Secretary that some of the challenges we felt as staff, we were having with the Applicant, was trying to reconcile the information they were portraying in the cumulative impact analysis - that there wouldn’t be any with their website and commercials. We were hearing on the radio about all the economic development that was going to result from this project, so we were reading information that there was going to be all this economic development and then they were telling us that there was nothing foreseeable happening. So we were having a challenge kind of reconciling those two pieces of information coming from the Applicant. So that is what we talked about at the meeting.” (DEQ-6, pg. 23, line 22).

Culpepper said she did not know anything about a fund being negotiated by the Governor’s Office and the ACP to be utilized for environmental mitigation and economic development.

The following is a portion of the transcript of Culpepper’s Interview on October 4, 2019: (DEQ-7, pg. 20, line 18)

KEVIN GREEN: Were you aware of the mitigation fund that was being negotiated outside of DEQ? The 57.8 million dollars? Where you aware of that at the time of the permit certification?

LINDA CULPEPPER: I was not aware of that fund at the time I signed this permit. I found out about it through the media, afterwards.

KEVIN GREEN: OK. So there was no discussion about how it could be used for cumulative impact or whatever?

LINDA CULPEPPER: No, sir. I found out after, via the media.

Higgins, Wrenn and Burdette were responsible for reviewing the ACP 401 WQC application. They were never told of the negotiated MOU. (DEQ-3, DEQ-4, DEQ-6)

No one from DEQ ever discussed the anticipated payments under the MOU with Trichell or Gangle who were primarily responsible for the 401 Permit and for responding to DEQ requests for additional information. (DUKE-1, pgs. 7&8)

In an interview on October 21, 2019, Trichell said he was not made aware that the Memorandum of Understanding (MOU), negotiated between the Governor's Office and the ACP, could be used for economic development, until a request for information was made to Dominion Energy by EIS. He may have also heard about it in the news. (DOM-1)

The final requests for information from DEQ to the ACP on November 28, 2017, and on December 14, 2018, focused on only additional information relating to cumulative impacts. (DEQ-17, DEQ-18)

No information was included in any of the responses to the Additional Request Letters, to indicate that a fund was being negotiated between the ACP and the Governor's Office, for the purpose of providing economic development in areas near the ACP.⁵ (DEQ-25, Add Info received letter)

DEQ Upper Management Awareness of a Mitigation Fund

DEQ emails and documents from the Governor's Office, indicate individuals at the DEQ Secretary's Office level were assisting with preparing Possible ACP Mitigation Options:

A document was included in records from the Governor's Office titled "Possible ACP Mitigation Options". This document was also found posted on the DEQ website. The document lists possible uses of funds for ACP Mitigation, including "*Fund additional compressor stations and taps to be used for economic development and new industry recruitment.*"

Emails from DEQ indicate that this document was created as the result of an "ACP Brainstorm" meeting at DEQ on 11/28/17, between Sheila Holman, Mary P Kelley, Sarah Rice, Jennifer Mundt.

According to DEQ files, the meeting was arranged "Per Sheila and Jennifer's Request".

This document was emailed by Doug Heyl, of DEQ, to Julia White, of the Governor's Office, on 11/28/17 at 6:54PM. At 6:56PM, Doug Heyl sent an email to Holman and Mundt stating "Here is what I sent to the GO, thanks for working on this".

⁵ <https://deq.nc.gov/news/key-issues/atlantic-coast-pipeline>

The document was forwarded by Julia White to Kristi Jones on 11/28/17 at 7:24PM. Documents from the Governor's Office response to a Public Records Request indicate, that during that time, Kristi Jones was preparing questions and talking points for a meeting, on 11/30/17, between the Governor and Duke CEO, Lynn Good.

On December 6, 2017, Julia White emailed the document "Possible ACP Mitigation Options" to Governor Cooper". (DEQ-26, Email String from DEQ) (GOV-2, Email Heyl-White-Jones) (GOV-3, Memo Brief for meeting with Good) (GOV-4, Questions for Lynn Good 11/28/17) (GOV-5, Email White to Cooper)

In her written statement, signed on October 31, 2019, Jennifer Mundt stated: "I was not aware of the Mitigation Project Memorandum of Understanding (MOU) signed by Dominion Energy Transmission, Inc. on January 25, 2018, until it was reported in the news media after the Certification had been issued." (DEQ-9)

In her written statement, signed on October 31, 2019, Sheila Holeman stated: "I did not participate in the development of the Mitigation Project Memorandum of Understanding (MOU) signed by Dominion Energy Transmission, Inc. on January 25, 2018, and I was not aware of its contents until it was reported in the news media after the Certification had been issued." (DEQ-11)

On December 19, 2017, David Fountain met with Secretary Regan at the Secretary's invitation. Secretary Regan discussed with Mr. Fountain the mitigation fund and indicated that he believed the total fund amount should be similar to the \$100 Million CWMTF. (DUKE-1, pg. 23)

Text messages from the Governor's Office indicate that Secretary Regan was updated on the status of the Mitigation Fund on January 1, 2018. The following is written in a text message string was between Ken Eudy, William McKinney and Roy Cooper on January 1, 2018:

McKinney: Am set to sign MOU regarding Pipeline with ACP tomorrow at ten. Please let me know if any questions prior to signing; glad to discuss if convenient-

Eudy: Should review with Regan if he hadn't seen it.

McKinney: I'm glad to touch base with him this evening-

Cooper: It's what we discussed earlier right?

McKinney: Correct

Cooper: Where are the solar boys on their deal?

McKinney: Do not know if Levitas has gotten movement towards signatures yet-

(GOV-6, Texts McKinney-Eudy-Cooper 1-1-18)

Final Steps in ACP 401 Certification

After he was informed that the Hearing Officers Report was being sent up to be reviewed, Trichell waited a few days and then reached out to Higgins to check the status. Higgins did not return his calls for over a week. She finally contacted him by emailing a request to verify the information for the permit. (DOM-1)

On January 16, 2018, at 3:50PM, Karen Higgins sent Spencer Trichell an email requesting to check numbers and match the numbers for impacts and buffer mitigation.

On January 17, 2018, at 12:29PM, Karen Higgins emails Spencer Trichell and asked “Do you think you can get me this info by Friday?”

On January 17, 2018, at 4:29PM, Trichell responded with numbers that “match the mitigation plan and letters of reservation”. (DEQ-27, Emails Higgins-Trichell Request & Response 1-16-18 & 1-17-18)

On January 18, 2018, at 7:11PM, Trichell sent revised tables to Karen Higgins. (DEQ-28, Email Trichell to Higgins Response 1-18-18)

The above responses on January 17, and January 18 of 2018 are the final responses and Additional Information Received as listed in the HO report. (DEQ-13, Pg.2)

The following emails were sent during January 18-25, 2019: (DEQ-29, Emails-final days of ACP)

On January 18, 2018, at 10:00PM, Karen Higgins emailed Brian Wrenn, the draft 401 certification and draft denial letter. (DEQ-30, email draft 401 & draft denial)(DEQ-31, Draft Denial Letter)

Higgins, Wrenn, Burdette and Culpepper stated the draft denial letter was prepared by Karen Higgins as a matter of routine and was not utilized or shown to anyone. (DEQ-4, pg. 19) (DEQ-3, pg. 25) (DEQ-6, pg. 28) (DEQ-7, pg.18)

Wrenn said preparing draft denial letters “...is procedural. We have been beat up in the past for if we just bring in a Permit to be signed at that table. People have said that’s pre-decisional, so we started to bring both so we can say that we considered both options”. (DEQ-3, pg. 25)

On January 19, 2018, at 9:26PM, Karen Higgins emailed Brian Wrenn with revised 401 and HO Report. (DEQ-29)

As stated above, Higgins said the HO Report was unchanged when she got it back from the Secretary’s Office. (DEQ-6, pg. 22, line 17, pg. 30, line 1)

On January 21, 2018, at 8:59PM, Brian Wrenn emailed Karen Higgins and informed her he made all the edits on the HO Report and will forward to Linda Culpepper. (DEQ-29)

On January 22, 2018, at 8:41AM, Brian Wrenn emailed Linda Culpepper with the attached HO Report for the ACP. Higgins and Poupart were copied. On the same day, Higgins forwarded the HO Report to Bridget Munger who forwarded it to Doug Heyl and Sheila Holman. (DEQ-29)

On January 23, 2018, Karen Higgins emailed Linda Culpepper with the draft 401 decision documents for ACP. (DEQ-29)

On January 25, 2018, at 3:40PM, Karen Higgins emailed Culpepper's Assistant to tell her she left paper copies of 401 Certification for Culpepper to sign. (DEQ-29)

On January 26, 2018, four days after the Hearing Officer Report was delivered to Linda Culpepper, the ACP WQC was signed by Culpepper. (DEQ-31, Signed Permit Letter)

Governor's Office Involvement in Permitting Process

On November 1, 2017, an Email was sent from Toby Vinson, DEQ Chief of Program Operations, to DEQ Management, stated the following:

Hi guys,

I just got off weekly ACP phone call with other Divisions and Sheila.

Per Sheila, going forward, let us (Tracy, Brad, Sheila and me) know at least two hours prior to acting on any permits or reviews on the ACP project. This includes:

- 1. Sending additional information request letters or emails,*
- 2. E&SC Plan Approvals or Disapprovals, 3. SW Permit Approvals or actions*

Also, email us (again, Tracy, Brad, Sheila and me) a copy of the letter that is to go out so that the administrations and PIOs have appropriate information.

Let me know if you have any questions.

Toby (DEQ-34, Email Vinson to DEQ management)

DEQ Updating Governor's Office on Permit Status of ACP

From November 28, 2018, to January 26, 2018, Doug Heyl, PIO for DEQ, sent over 20 email updates on the ACP permitting process to Julia White of the Governor's Office. (DEQ-33, Emails Heyl-White)

Julia White said, in her testimony on November 8, 2019, stated: "...part of my role as a member of the Senior Staff was to work as a liaison to various Agencies - so to give them a single point of contact in the Governor's Office, DEQ was one of those Agencies.....So

it was common for me to get, to request and to get updates on issues that were in front of the State of North Carolina and specifically Department of Environmental Quality... so these updates on information requests and the schedule that was going on with the ACP was one of those topics.”

White further stated: “I believe I initiated the request to be kept updated on the timetable. There was certainly a lot of public attention being paid to that. Attention from this body, attention from environmental advocates, economic developers, others in the East, the utility company itself. It was really a national issue, so it was something that I was interested in and also the Governor was interested in.

When asked if she passed this information to anyone else at the Governor’s Office, White said: “I probably verbally relayed it as I got it. I don’t recall if I forwarded it to anyone, but it was something that I was aware of as it was going along.” (GOV-7, Eudy & White Testimony 11-8-19)

THE \$57.8 MILLION MITIGATION FUND

Summary of the Final Mitigation Project Memorandum of Understanding

The following is a summary of what is known as the final Memorandum of Understanding, also referred to as the MOU, which commits the Atlantic Cost Pipeline, LLC to provide \$57.8 Million to Roy Cooper, Governor of North Carolina:

On January 25, 2018, a “Mitigation Project Memorandum of Understanding” (“Memorandum”) was entered into by and between Roy Cooper, Governor of North Carolina and the Atlantic Coast Pipeline, LLC (“ACP”). This Memorandum was signed by William C. McKinney, General Counsel with the Office of the North Carolina Governor and Leslie Hartz, Vice President-Engineering & Construction-Strategic Projects, with Dominion Energy Transmission, Inc.

The Memorandum commits the ACP to providing funding in the amount of \$57,800,000.00 for the following:

- (i) Mitigation for the unavoidable effects of the ACP on the interior forest habitats, open-space lands, waterbodies, and natural resources of the communities along the ACP’s route;
- (ii) Support and funding for economic development in the counties that would be impacted by the ACP; and
- (iii) Extension of renewable energy projects into certain local communities which may stand to be affected by the ACP’s operation.

The Memorandum, while containing other declarations, specifically states:

WHEREAS, the ACP will serve as a catalyst for economic development and job creation in North Carolina; and

WHEREAS, the ACP will promote and facilitate the recruitment of new industries to North Carolina; and

WHEREAS, the pipeline will generate approximately \$60,000,000 in local property tax revenue between 2018 and 2025; and

WHEREAS, the Governor, through his agents and assigns, including, but not limited to the Department of Environmental Quality, Department of Commerce, Wildlife Resources Commission, and their respective leaders, has the authority to direct the disbursement of funds contemplated in this Memorandum of Understanding;

From Forests to Renewable Energy (Draft Changes)

The initial proposed Memorandum of Agreement was sent to the Governor's Office on December 13, 2017, on behalf of the ACP Partners. Prior to the final signing of the Memorandum of Understanding on January 25, 2018, multiple drafts were submitted from the Governor's Office back to the ACP Partners, primarily through ACP partner Duke Energy. All of these changes were accepted by Duke and the ACP Partners, with only minor changes.

The following depicts the changes made by the Governor's Office between the original Memorandum of Agreement (MOA) submitted by the ACP partners and the final signed Memorandum of Understanding (MOU) executed on January 25, 2018: (GOV-29, Original MOA draft) (GOV-34, Final MOU)

- The "MITIGATION PROJECT AGREEMENT" became a "MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING."
- The counterparty changed from "by and between the STATE OF NORTH CAROLINA" to "by and between ROY COOPER, GOVERNOR OF NORTH CAROLINA, IN HIS OFFICIAL CAPACITY."
- Funding was originally offered at "\$55,000,000" and increased to "\$57,800,000."
- Funding was originally going "to the State of North Carolina" and was changed to "The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina (the Escrow Account)."
- Funding was originally provided as "required mitigation for the unavoidable effects of the ACP on interior forest habitat, open-space lands; water bodies; and natural resources of the communities along the ACP's route." The signed MOU included that statement and added that the funds are being provided as "support and funding for economic development in the counties that would be impacted by the ACP" and "extension of renewable energy projects into certain local communities which may stand to be affected by the ACP's operation."
- The original MOA stated that "the Director of the North Carolina Wildlife Resources Commission has authority and responsibility under NCGS Section 113-306(a) to act in the overall best interest of the conservation of wildlife resources to accept gifts and grants on behalf of the State." The MOU was changed in that "the

Governor, through his agents and assigns, including, but not limited to the Department of Environmental Quality, Department of Commerce, Wildlife Resources Commission, and their respective leaders, has the authority to direct the disbursement of funds contemplated in this Memorandum of Understanding.”

- Added to the MOU was the statement; “the ACP will serve as a catalyst for economic development and job creation in North Carolina.”
- Added to the MOU was the statement; “the ACP will promote and facilitate the recruitment of new industries to North Carolina.”
- Added to the MOU was the statement; “the pipeline will generate approximately \$60,000,000 in local property tax revenue between 2018 and 2025.”
- Added to the MOU was the statement; “Nothing in this Memorandum is deemed to constitute a settlement as defined by N.C. Gen. Stat. § 114-2.4A(a), nor does it require the payment of penalties or forfeitures and fines under N.C. Const. Art. IX § 7. Likewise, nothing in this Memorandum should be construed to be an admission of Liability or wrongdoing by either Parties.”

North Carolina, West Virginia and Virginia Fund Comparison

The ACP signed a mitigation agreement and/or understanding that would provide funding for each of the three states, being West Virginia, Virginia and North Carolina that the pipeline would be routed through. There are differences between the West Virginia and Virginia mitigation documents when compared to the North Carolina Mitigation Project Memorandum of Understanding.

The Virginia document titled; “Memorandum of Agreement for Mitigation of Virginia Forest Fragmentation Impacts of Atlantic Coast Pipeline, was signed, on behalf of the Commonwealth of Virginia, by Molly Joseph Ward, Secretary of Natural Resources, on December 28, 2017. The West Virginia document titled; “Memorandum of Understanding: Conservation Measures for Atlantic Cost Pipeline Project, Developed by Atlantic Coast Pipeline, LLC and West Virginia Natural Resources, Wildlife Resources Section” was signed by Stephen S. McDaniel, Director, West Virginia Division of Natural Resources on May 2, 2018. A “First Amendment” to the West Virginia Memorandum of Understanding was later signed and dated February 6, 2019. (VA-1, Virginia MOU)(WV-1, West Virginia MOU) (WV-2, West Virginia MOU amendment)

The North Carolina document is titled; “Mitigation Project Memorandum of Understanding” and was signed by William C. McKinney, General Counsel, Office of the North Carolina Governor on January 25, 2018. (GOV-34)

Ann Loomis and Spencer Trichell, both with Dominion Energy, worked on the impact assessments for Virginia and West Virginia. Loomis focused primarily on the Virginia agreement and Trichell on West Virginia. To determine the amount of required mitigation, an assessment of the land/forest impacted, by the ACP, had to be completed. This assessment included the study of the direct loss of forest, forest fragmentation and total acreage impacted. (DOM-2, Loomis Memo)

Per Loomis, when the Atlantic Coast Pipeline (ACP) was first announced, the United States Fish and Wildlife Service required mitigation to be paid for the loss of interior forest habitat caused by the construction of the ACP. This mitigation was required under the Migratory Bird Treaty Act (MBTA). She explained that the MBTA was established to avoid, minimize and/or mitigate the impact on forest loss or forest fragmentation. (DOM-2)

The ACP Partnership agreed with the States of West Virginia and Virginia to satisfy this requirement by establishing Mitigation Fund Agreements. Each State has a different formula used to calculate the amount of mitigation. The specific way the mitigation is paid from these agreements is left up to the individual State. (DOM-2)

At some point after the VA and WV agreements were being established, the Trump Administration lifted the former Administration's guidelines for projects, such as the ACP, to pay for the forest mitigation as previously required by the MBTA. Even though it was no longer required, the ACP agreed to continue the practice and honor the agreements with WV and VA. (DOM-2)

Both the West Virginia Memorandum of Understanding (MOU) and the Virginia Memorandum of Agreement (MOA) state that each of the documents is the direct result of cooperation by Atlantic (ACP) with the state (West Virginia and Virginia) "in response to the Environmental Impact Statement prepared as part of the National Environmental Policy Act review process, Endangered Species Act Section 7 consultation, and Atlantic's compliance with the Migratory Bird Treaty Act concerning migratory birds and their habitat. They further state; Specific consideration was given both to the results the Habitat Equivalency Analysis methodology used by the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Bureau of Land Management and employed by Atlantic." For the West Virginia MOU it included "additional West Virginia-specific methodologies employed by the West Virginia Division of Natural Resources to further analyze and design conservation measures for forest fragmentation in the state." The Virginia MOA included "Virginia-specific methodologies employed by the Virginia Department of Conservation and Recreation, the Virginia Department of Forestry, and the Virginia Department of Game and Inland Fisheries to further analyze and design compensatory mitigation for forest fragmentation in the Commonwealth." Each of the memos "addresses commitments related to forest conservation to offset impacts associated with forest fragmentation caused by the ACP (WV only) Project."

The Virginia and West Virginia Memorandums are very specific as to the purpose and breakdown of the compensatory mitigation payments. Those two states focused their funding directly for the compensatory mitigation of the pipeline's impact on the environment and natural resources. The North Carolina funding was to be deposited into an escrow account designated by a third party selected by the Governor of the State of North Carolina. The funds were to be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order. As stated in the Memorandum, the funds were being provided as; (i) mitigation of the unavoidable effects of the ACP on the interior forest habitats, open-space lands, waterbodies, and natural resources of the communities along

the ACP's route; (ii) support and funding for economic development in the counties that would be impacted by the ACP; and (iii) extension of renewable energy projects into certain local communities which may stand to be affected by the ACP's operation. (VA-1)(WV-1)(WV-2)

The following is provided to show a break-down comparison in the funding allocation by each of the three states:

West Virginia	
Lost Value of Interior Forest Wildlife Habitat	\$13,238,545.00
Fiduciary Management Fee (The Conservation Fund)	\$793,312.00
Wildlife Endowment Fund	<u>\$1,059,084.00</u>
Total to West Virginia	\$15,090,941.00
Virginia	
Virginia Outdoors Foundation (Va. Code § 10.1-1801(4))	\$24,650,000.00
U.S. Endowment for Forestry and Communities	\$9,000,000.00
Charlottesville Area Community Foundation (Forest Mitigation)	\$5,000,000.00
Virginia Association of Soil and Water Conservation	\$11,500,000.00
Virginia Environmental Endowment (Water Mitigation)	\$7,000,000.00
United States Geological Survey (Water Quality Monitoring)	<u>\$700,000.00</u>
Total Virginia	\$57,850,000.00
North Carolina	
Allocation Pursuant to Executive Order	\$57,800,000.00

Request for a Fund to Extend Gas Lines from ACP

Beginning in September 2017, Duke began receiving comments and expressions of concern from both the Cooper administration and individuals in Eastern North Carolina over what was viewed as the lack of viable infrastructure planned for the pipeline. On September 25, 2017, following an economic development meeting in Raleigh, Governor Cooper spoke with Lynn Good about his concerns over access to the pipeline and the tangible economic benefits of the pipeline. Ken Eudy, on behalf of the Governor, communicated similar concerns to Kathy Hawkins during September. The thrust of the criticism and concern stemmed from the fact that without adequate interconnection facilities to the pipeline, it would be difficult to recruit larger businesses into Eastern North Carolina because the businesses would be faced with the prospect of paying for the distribution infrastructure necessary to have access to the pipeline for industrial purposes. These concerns culminated in a meeting between David Fountain (Duke Energy), Frank Yoho (Duke Energy), and Bruce McKay (Dominion) for ACP with the North Carolina Secretary of Commerce, Anthony Copeland, on October 25, 2017. (DUKE-1, Pgs. 12-13)

During that meeting, ACP again presented its case that the pipeline would provide real and important economic benefits for Eastern North Carolina. The Secretary indicated that his office was receiving substantial criticism about the projected benefits and that much of the criticism dealt with the fact that, once constructed, the pipeline provided limited access to businesses because infrastructure for interconnection was not part of the pipeline plan and was not otherwise funded. The Secretary told ACP that it needed to make a more persuasive case for the economic benefits of the pipeline, while emphasizing that he continued to support the project. During that same time period, Rep. Szoka had a meeting with Mr. Fountain, Ms. Hawkins, Phil Grigsby, and a legislative staffer for Rep. Szoka, to discuss the ACP route, and during the meeting Rep. Szoka raised the issue of the lack of convenient access to the pipeline in Eastern North Carolina. Mr. Fountain had an additional conversation with Ken Eudy on November 1, 2017, about these concerns, and another phone conversation with Secretary Copeland on November 3, 2017.

Durwood Stephenson, Norris Tolson and Larry Wooten were identified as advocating the ACP in an effort to spur economic development in Eastern North Carolina. Stephenson is a Director on the US 70 Commission, also referred to as the Interstate 42 Commission, which promotes economic development along US 70 from Raleigh to Morehead City. Tolson is President and CEO of the Carolina Gateway Partnership, which promotes new businesses and industries in Nash and Edgecombe counties. Larry Wooten is the President of the North Carolina Farm Bureau and in that position advocates for farmers and the agricultural industry. (ADVS-1, Stephenson Memo) (ADVS-2, Tolson Memo) (ADVS-3, Wooten Memo)

In late, 2017, Stephenson, Tolson and Wooten began working with the ACP. Their desire was to establish an agreement with the ACP partners that would ultimately create a fund that could be accessed for future economic development along the North Carolina pipeline route. Primarily, they wanted money from the ACP partners that would provide funds for the natural gas distribution along the pipeline. Stephenson explained that it cost approximately \$1 million per mile to have the gas delivered from the pipeline taps. Stephenson, Tolson, and Wooten requested from the ACP partners, mainly Duke Energy President Fountain, to establish a fund for the distribution of the gas. (ADVS-1)

Per David Fountain, at some point in the fall of 2017, the advisors in Eastern North Carolina (Stephenson, Tolson, Wooten) began to express concerns that the three taps planned for the ACP were not sufficient to guarantee access to natural gas to Eastern NC. The advisors in Eastern North Carolina made a request to Fountain for a fund similar to the \$100 million Clean Water Management Trust Fund (CWMTF). Fountain offered to work with them to create this type of funding through the North Carolina General Assembly. The advisors in Eastern North Carolina believed there was not enough time to create funding through legislation and requested that the Duke and the ACP partnership create this fund. (DUKE-7, Fountain Memo)

Bruce McKay was the lead for the Atlantic Coast Pipeline Outreach Team on behalf of Dominion Energy (Dominion). In that position he and his team attempted to educate people about the ACP and dispel rumors about the pipeline. It was expected that the

ACP would face opposition from multiple environmental organizations, and he generated support by promoting the benefits of a new source of energy. He met with community business leaders, Chambers, and organizations interested in the economic benefit of the ACP. McKay began the public relations campaign in the beginning when the ACP project was announced in 2014. In that position he met Larry Wooten, President of North Carolina Farm Bureau, Durwood Stephenson, from Smithfield and Norris Tolson, who promotes business opportunities in Nash and Edgecombe counties. All of these men, per McKay, are leaders for economic development in their respective communities. Through several meetings and conversations with each of these gentlemen, regarding the ACP's ability to provide a lower coast energy alternative, they were willing to publicly support the project. (DOM-3, McKay Memo)

Larry Wooten noted that the primary concern of the North Carolina Farm Bureau Federation was making the natural gas from the pipeline accessible to the farmers and to keep the land, crossed by the pipeline, accessible to the farmers. According to Wooten, many farmers felt very positive about having the pipeline run through their properties and signed the easements, because they were expecting access to the natural gas. Farmers in Eastern North Carolina currently use propane in many of their operations. Natural gas, because it is much cheaper than propane, would make NC farmers more competitive and profitable. (ADVS-3)

McKay said, through McKay's association with these three men, they approached him with the idea of a fund to give business and farmers a means to connect to distribution gas lines. (DOM-3)

On November 22, 2017, David Fountain and Frank Yoho met with Stephenson, Tolson and Wooten. During that meeting, Stephenson, Tolson and Wooten raised the issue of the lack of convenient access to the pipeline in Eastern North Carolina, a lack of access which they believed would undermine the economic promise of the pipeline. They proposed that a mitigation fund similar to the \$100 million Clean Water Management Trust Fund be established and funded to build-out the taps, stations, and other infrastructure necessary for the businesses to connect to the pipeline. Fountain offered to explore and support a legislative solution to establish such a trust fund. (DUKE-7)

In his testimony on November 8, 2019, Eudy said "...in the fall of 2017...we started thinking, not specifically a mitigation fund, but ways the Pipeline could benefit Eastern NC". (GOV-7, Eudy & White Testimony)

ACP Held the Position that a Fund was not Required

On October 25, 2017, Bruce McKay met with NCDOC Secretary Copeland, the meeting was also attended by David Fountain (Duke) and Frank Yoho (Duke). The Secretary questioned the economic benefit based on the limited number of taps. They told the Secretary that the economic opportunities would come from the new cheaper gas source, which would make the energy costs to businesses to be lower. They showed him line

maps and how the web of Piedmont Natural Gas lines would interconnect to the three M&R Stations or taps. They further explained that the current Piedmont system could not stretch into Eastern North Carolina because of the lack of line pressure and natural gas supply, and the ACP would fill that need. They also discussed ways to fund additional gas lines through tariffs and the Agricultural Gas Program. (DOM-3)

David Fountain wrote a letter to the North Carolina Secretary of Commerce, Anthony Copeland, on November 8, 2017, providing details of how the ACP would provide economic development to Eastern North Carolina. The letter explained the plan for Piedmont Natural Gas to provide direct tap in service for large industrial customers. It also provided cost comparisons between the ACP and other alternatives. The letter did not mention or suggest a fund for economic development associated with the pipeline. (DUKE-3, Letter)

During the November 22, 2017, meeting with Stephenson, Tolson, and Wooten, Fountain told them that the ACP would provide sufficient natural gas and a fund was not required. (DUKE-7)

McKay consistently told Stephenson, Wooten and Tolson, that a fund was not required to provide gas because the gas was going to be available through the secondary lines. McKay did not get directly involved with these discussions to negotiate a fund and continued with the message that it was not needed. He is aware that further discussions were conducted on the Duke side of the partnership, specifically through David Fountain, then President of Duke Energy for North Carolina. McKay was aware that the three men were talking to Governor Cooper about the need for a fund, to access the gas, for the purpose to advance future economic development. (DOM-3)

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 (DUKE-8, Hawkins Memo)

Creation of a Fund

On November 30, 2017, Lynn Good, President and Chief Executive Officer for Duke Energy and Kathy Hawkins, the Vice-President of Governmental Affairs for Duke Energy met with Governor Cooper, at the Governor's mansion in Raleigh. After a brief introductory exchange, Hawkins was asked to leave by Governor Cooper so that he could meet privately with Good.

During the approximate hour-long meeting Governor Cooper and Good discussed the ACP. Governor Cooper indicated to Good that there was "balking" at DEQ over the issuance of the permits for the pipeline, and in particular over the issues of environmental justice. Governor Cooper further indicated that his advisors in Eastern North Carolina

believed that ACP was not doing enough to create the economic benefits and jobs that had been promised by the project, and in particular focused on the lack of infrastructure to enable businesses and farmers to access the pipeline once completed. Governor Cooper indicated that he was relying on his advisors in Eastern North Carolina on this issue and that Duke needed to continue to deal with them (WP pg. 19). Governor Cooper indicated that Duke should focus its efforts in this regard in the East, confer with those of his advisors who had contacted Duke (and mentioned Tolson), and consider establishing a fund to ensure the benefits of the pipeline. (DUKE-1, pg. 20)

During this meeting Governor Cooper also asked Good to work to resolve the Nameplate Dispute with the solar industry. He told Good that these were some of the issues before him and that he wanted to resolve these with Duke and to do so before the end of December, if at all possible. No resolution of any of these issues was reached during the meeting. (DUKE-1, pg. 21)

Good said Cooper's request, in their November 30th meeting, to consider the creation of a fund by the end of December 2017, was a catalyst for Duke to focus and expedite the economic development aspects of the ACP, specifically by creating a fund that would be utilized to pay expenses to install gas connections to the ACP. Duke realized the fund would benefit Duke and the ACP partnership in the long run by this promotion of economic development and the additional sales of natural gas by businesses that could connect to the ACP. (DUKE-5, Interview of Good)

During an interview with EIS investigators, Good was asked if there could have been a consequence to not providing the \$57.8 Million fund to the Governor. Good stated that she works with other Governors and that Duke does business within several states and values the customers within those states. The fund represents common sense business. (DUKE-5)

Good said she did not know and did not ask why Cooper wanted the issues settled within the same timeframe as the issuance of the ACP permits. Good said she did not ask why Governor Cooper wanted these issues settled by the end of December. She did not know if Cooper's request correlated to the timeframe that the ACP believed they needed permits to begin felling trees, which is listed in the Whitepaper on page 15 as late December 2017. (DUKE-5)

On the morning of November 30, 2017, prior to Good's meeting with the Governor, Stephenson emailed Fountain and Yoho thanking them for their time on November 22, 2017. In the email, he summarized the request for Duke, Dominion, Piedmont, and the State of North Carolina to establish a fund modeled after the CWMTF and funded with \$100 million. He also indicated that he had publicly and personally asked for the support of Governor Cooper for the ACP project, but had suggested that this support be contingent upon the ability to provide customers and businesses along the pipeline route with access to the pipeline. (DUKE-1, pg. 18) This email was forwarded to the Governor's office on the morning of November 30, 2017. (GOV-35, Email Stephenson-Fountain)

On the following day, December 1, 2017, Good met by telephone with Hawkins, Fountain, Yoho, Paul Draovitch, Rob Caldwell, and Yates to discuss her conversation with Governor Cooper and determine the appropriate steps that needed to be taken in light of his request to resolve these pending issues. Hawkins was designated as the lead person in dealing with the Office of the Governor and was to work with Yates and Fountain in an attempt to address the economic development issues that surround the pipeline. (DUKE-1, pg. 21)

In her interview, on September 9, 2019, Kathy Hawkins said 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. (DUKE-8)

In his interview with Travis Fain, Ken Eudy said Duke came up with the Idea of the fund. (GOV-10, pg. 5, Fain Interview)

In his testimony on November 8, 2019, Eudy was asked “Did the Governor, during that meeting, request Duke to create an Economic Development Fund to provide access to gas from the ACP”. Eudy replied “No, Sir”. (GOV-7, Eudy & White Testimony, pg. 12, ln 22)

Fountain explained that he did not question Good regarding the reasons for the abrupt change in opinion to establish an economic development fund. Fountain said his feelings about creating the fund had changed since his meeting with the advisors in Eastern North Carolina on November 22, 2017. He said that at some point between November 22, 2017, and November 30, 2017, he learned that West Virginia and Virginia had negotiated funds and felt that it was fair for North Carolina to also have a fund. (DUKE-7)

According to Hawkins and the Whitepaper, she and Fountain were not made aware that Virginia and West Virginia had funds, until December 11 or 12 of 2017, when she and David Fountain had a conference call with Dominion and learned that Dominion had existing funds in place with West Virginia and Virginia. (DUKE-8) (DUKE-1, pg. 22)

In an interview on August 23, 2019, Lloyd Yates said he, 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. (DUKE-9, Yates Memo)

Prior to November 30, 2017, Hawkins was not aware of any internal research or analysis by Duke regarding the creation of a fund. (DUKE-8)

In the first week of December 2017, Hawkins 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. (DUKE-8)

Fountain said he remembered that during early conversations in the first week of December 2017, the amount of the fund was calculated roughly by dedicating \$25 million for business development and \$25 million to agriculture. (DUKE-7)

On December 5th, 2017, Hawkins had a discussion with Ken Eudy where she notified him of the proposed \$50 million fund for agriculture and economic development. (DUKE-1) (DUKE-8)

On December 6, 2017, in response to a text from Hawkins, Ken Eudy indicated that the proposal was well received, and that Fountain should meet with Stephenson, Tolson and Wooten, while he would continue to communicate with Hawkins on this issue. (DUKE-1, pg. 22)

On December 6, 2017, Julia White emailed a document “Possible ACP Mitigation Options to Governor Cooper”. This document was created on November 28, 2017 by DEQ. (DEQ-26, Email String from DEQ) (GOV-5, Email Julia White to Cooper)

On December 8, 2017, Jeremy Tarr, Policy Advisor for Office of Governor Roy Cooper, received an email from Sue Gander with the Energy, Environmental & Transportation Division of the National Governor’s Association for Best Practices (NGA) in Washington DC. (GOV-27, Tarr Email) The Carolina Journal article, dated February 15, 2019, reported per Cooper spokeswoman Noelle Talley; “Gander’s email followed a phone inquiry from Tarr”. (CJ-1, Article) Not having additional information related to the request, it appears that it is in regard to a request by Ken Eudy, as referenced in a subsequent email by Tarr on December 22, 2017, where Tarr states; “In a prior discussion, you asked whether there is precedent for a company setting aside funds for community benefit before approval of a major deal or project”. (GOV-36, Email Tarr-Eudy 12-22-17) In part, Gander writes to Tarr: “What can be done would be based on what authority is involved – DNR or PUC etc.” (Investigator Note: Division of Natural Resources or Public Utilities Commission). “A company could volunteer to make ‘stipulation agreements’ but it wouldn’t be appropriate for a commission to require such a thing in a determination of public need and benefit. A commission, it seems ought to keep to ‘prudently incurred costs’ for ‘essential utility services.’ To ‘extort’ (not my word) payments for ‘anything not directly related to the cost of providing utility service’ would raise ‘due process’ and ethical concerns.” “California has a ‘Gas Accord’ which sets aside pipeline capacity for residential and small commercial customers. Not really a money thing but ensures that a gas transmission pipeline provides some local benefit.”

On December 8, 2017, Hawkins, Fountain and Yoho met by telephone with Stephenson, Tolson, Wooten and Peter Barnes with Farm Bureau. They communicated Duke's commitment for a \$50 Million fund. Stephenson, Tolson and Wooten were in broad agreement with this fund and the split between economic development and agricultural development. (DUKE-1)

Stephenson stated that he had spoken to the Governor about the ACP, on several occasions. The Governor had nothing to do with the initial economic development fund that they had negotiated; but did take on the responsibility to negotiate the fund after it was presented to him by Good. (ADVS-1)

First Draft of Fund Agreement

On December 12, 2017, Kathy Hawkins 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. (DUKE-8)

Loomis provided a draft mitigation agreement to Hawkins that was similar to the VA agreement. Loomis said Hawkins had indicated that NC had some concerns of mitigation relating to agriculture and commerce. Loomis was not told the purpose of the fund was for economic development. Loomis said she wrote section 2), of the original mitigation agreement, where it stated; "the mitigation funding sufficiently addresses the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by the pipeline..." According to Loomis, this clause could have made the fund available for purposes other than loss of forest habitat. (DOM-2)

Loomis said she never had a discussion with anyone indicating this language was being added to use the funds for a purpose other than environmental mitigation. (DOM-2)

The original document, prepared by Ann Loomis, was a "Mitigation Project Agreement" between the State of North Carolina and Atlantic Coast Pipeline, LLC. It considered the Director of the North Carolina Wildlife Resources Commission with having the authority and responsibility under NCGS, Section 113-306(a) to act in the overall best interests of the conservation of wildlife resources to accept gifts and grants on behalf of the State. It agreed to, on behalf of the ACP to provide mitigation funding in the amount of \$55,000,000.00 to the State of North Carolina for mitigation for the unavoidable effects of the ACP on interior forest habitat, open-space lands; waterbodies; and natural resources of the communities along the ACP route. (GOV-29)

This version was sent to the Office of the Governor on December 13, 2017. (DUKE-1, pg. 23)

Hawkins said, this agreement indicated the \$55 million were to be used for environmental mitigation rather than the intended purpose of economic development by providing access to the ACP. Initially there were discussions 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. 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. (DUKE-8)

Fountain said he remembered seeing the first draft of the North Carolina Agreement for a fund. This draft of the agreement indicated the fund was to be used for environmental mitigation and not economic development. Fountain said, even though this first draft indicated that the fund was to be used for environmental mitigation, he knew the intent of the fund was to provide access to natural gas from the ACP. (DUKE-7)

Fountain could not explain why the initial agreement was drafted in such a way. He could not explain, how this agreement, drafted in this manner could provide funds for economic development when it clearly stated the funds were to be used for environmental mitigation. He insisted that the intent of the fund was to provide access to natural gas for economic development. (DUKE-7)

On December 19, 2017, Fountain met with Secretary Regan of the Department of Environmental Quality, at the invitation of the Secretary. Secretary Regan discussed with Fountain the mitigation fund and indicated that he believed the total fund amount should be similar to the \$100 million Clean Water Management Trust Fund and that the fund should be managed in a similar way. (DUKE-7) (DUKE-1, pg. 23)

On December 19, 2017, Hawkins held a discussion with Ken Eudy. (DUKE-1, pg. 23) During this conversation, Eudy told Hawkins that the Governor would be making the decision on the ACP 401 Permit rather than DEQ Secretary Regan. Hawkins then texted this information to Lynn Good. (DUKE-8) (DUKE-10, Text message 12-19-17)

On November 8, 2019, in his testimony before the Joint Legislative Commission on Governmental Operation Subcommittee on the Atlantic Coast Pipeline, Ken Eudy stated the following in response to questions: (GOV-7)

SENATOR BROWN: Did Duke believe the Governor was making the decision on the 401 Certification?

KEN EUDY: I cannot answer what Duke believed, but I can tell you that the Governor and everybody that I know if the Governor's Office repeatedly said, that that was a decision that DEQ would make on the basis of science, technology and the law and nothing else.

SENATOR BROWN: Did you inform anyone that the Governor would be making the decision on the 401 Certification?

KEN EUDY: No, Sir.

Fund Document Edited by Governor's Office

On December 19 or 20, 2017, Hawkins met with Ken Eudy for the purpose of discussing the proposed Mitigation Project Agreement. 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. (DUKE-8)

Texts messages and emails, which the Governor's Office provided, indicated the Governor's Office, in preparing a new document in response to Duke's proposed fund, was suggesting that Duke increase the fund amount to \$80 million.

On December 20, 2017, McKinney emailed Eudy and state "Please fine a draft redline and copy of the MOU which we have discussed. Am glad to answer any questions you may have. Please note the fund amount is currently identified as \$80,000,000." (GOV-28, Email McKinney to Eudy \$80 Million 12-2-17)

On December 20, 2017, McKinney texted Eudy about the red line MOU. Stating "Sending now. Aggregate fund amount listed at 80M. Can move that around."

Eudy Replied: "Nah. Leave it at \$55mm. (GOV-45, Text McKinney Eudy \$80M)

At some point in December 2017, Hawkins asked Ann Loomis of Dominion, about increasing the fund to \$80 Million to match total mitigation of Virginia. After Loomis explained Virginia's mitigation differences, the NC fund remained at \$55 Million. (DOM-2, Loomis Memo)

Lynn Good said the ACP left the administration of the fund up to the State North Carolina. The change making the fund payable by and through the Governor was a decision that was out of the purview of the ACP and was a State decision. (DUKE-5, pg. 5)

Good could did not know why, on December 20, 2017, the purpose of the fund was changed to include renewable energy and Duke accepted this change within a short time. Good was unable to explain how renewable energy related to the original purpose of the fund, to create connections to the ACP. She said she was not briefed on each draft of the MOU. The details and negotiations of the MOU would have been handled by her staff, including Kathy Hawkins, Frank Yoho and David Fountain. Duke's attorneys also provided a review of the MOU. (DUKE-5)

Hawkins didn't know how funding renewable energy related to the original purpose of the fund, which was to provide 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. (DUKE-8)

David Fountain was not part of negotiations that resulted in the second draft of the fund agreement. This new draft showed the purpose of the fund was changed from environmental mitigation to environmental mitigation, economic development and renewable energy. Fountain did not know why renewable energy was added as purpose of the fund. He did remember a conversation with Michael Regan, Secretary of DEQ, speaking of placing solar panels on school rooftops to offset costs of school electricity. However, he did not know if that was the intended purpose. (DUKE-7)

Lloyd 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. (DUKE-9)

Discussions on Legal Authority for MOU

On December 20, 2017, Hawkins had a joint meeting with Duke's attorneys to review and discuss the agreement. One issue about which Duke's legal department spoke with the Office of the Governor, as to whether the Governor had the authority to bind the State of North Carolina. Specifically, Alex Glenn, an in-house counsel for Duke, spoke with William McKinney and others, including counsel for Dominion, about this issue. McKinney, as counsel to the Governor, indicated that he believed the applicable case law showed that the Governor could bind the State of North Carolina on a contractual matter. Duke also sought the opinion from outside counsel on this issue. (DUKE-1, pg. 24)

On December 22, 2017, Jeremy Tarr, Policy Adviser for the Governor's Office, sent an email to Ken Eudy. The email, with the subject header of "State/Local Incentives" stated the following: "In a prior discussion, you asked whether there is precedent for a company setting aside funds for community benefit before approval of a major deal or project. I found an illustrative case where utilities funded a customer investment fund for ratepayer benefits in order to win state approval of a merger. There is also precedent for a pipeline company paying more than the fair market value for an easement over public lands, with the overage directed to purposes desired by the state. The ACP route does not cross any NC state parks, but if helpful, I can look into whether it crosses any other type of public land, such as property owned by local governments or the state in some other capacity". (GOV-36)

Additional Changes to MOU

On December 22, 2017, Duke revised the MOU to provide for a repayment of monies should a Final Notice to Proceed be issued, but the pipeline not to be placed into service. On that same day, Hawkins spoke with the Office of the Governor and confirmed the new language. Duke sought to make arrangements for the MOU to be executed by December

26, 2017. The draft is identified as the “second” draft of the MOU in the Rep. Arp Presentation to the Subcommittee on ACP. (DUKE-1, pg. 24)

On December 29, 2017, a new draft was sent to the Office of the Governor, adding a signature line for Leslie Hartz, of Dominion, as the signing party for ACP; this draft was executed (signed) by ACP. (GOV-32, 12-29-17 Draft)

Planned Signing of MOU on January 2, 2018

The following texts indicate that the Governor’s Office planned to sign the MOU on January 2, 2018, and cancelled because the Nameplate Dispute between Duke and the Solar industry was not complete:

The following was stated in text messages between Ken Eudy, William McKinney and Roy Cooper on January 1, 2018:

McKinney: Am set to sign MOU regarding Pipeline with ACP tomorrow at ten. Please let me know if any questions prior to signing; glad to discuss if convenient-

Eudy: Should review with Regan if he hadn’t seen it.

McKinney: I’m glad to touch base with him this evening-

Cooper: It’s what we discussed earlier right?

McKinney: Correct

Cooper: Where are the solar boys on their deal?

McKinney: Do not know if Levitas has gotten movement towards signatures yet-

(GOV-6, Texts McKinney-Eudy-Cooper 1-1-18)

The following was stated in text message between Ken Eudy and Steve Levitas, on January 1 and 2, 2018:

Eudy on January 1, 2018, at 6:44PM: “Do y’all have an agreement with DE?”

Eudy on January 2, 2018 at 7:17AM: “???”.

(GOV-14, texts Eudy-Levitas 1-1-18 & 1-2-18)

The following was stated in text messages between Ken Eudy and William McKinney on January 2, 2018:

Eudy: “No response from Levitas yet. Not sure we should sign ACP unless solar deal works”.

McKinney: “Ok. Don’t disagree. Let’s discuss on call. Do think we shouldn’t let it linger much longer”

(GOV-15, texts Eudy-McKinney 1-1-18)

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 why that a meeting, on January 2, 2018, to sign the Memorandum was scheduled and then cancelled. (DUKE-8)

On January 3, 2018, Jeni Owen, of the Governor's Office, sent an email to Governor's Office staff members, Julia White, Ken Eudy, William McKinney, Morgan Jackson and Jordan Witchard. In the email Owen writes: "Per Jeremy and his counterpart in VA, VA has negotiated a \$100 million ACP mitigation fund agreement and WV has done something similar or is in the process of doing so. Not yet public. Unless someone on our end is already up to speed on this, I'll ask him to work with DEQ (they may know about this as well) to get more info." (GOV-37, Email 1-3-18 Owen about VA fund)

On January 4, 2018, the Hearing Officer's Report, required for the ACP 401 Certification, is redirected from review by the Division Director of Water Quality to Secretary Regan's Office. (See 401 Permitting Process Section of this report)

In early January, Hawkins had a series of conversations with Ken Eudy and William McKinney. During this time, questions were raised about the amount of mitigation funds that were contained in the MOU and how these funds compared with the mitigation funds negotiated by West Virginia and Virginia. Specifically, on January 11, 2018, Mr. Eudy and Mr. McKinney requested that the fund amount be increased to \$57.8 Million. Duke confirmed on January 12th, that Virginia would receive \$57,850,000 in its mitigation agreement. (DUKE-1, pg. 25)

After being asked for the additional funds, Hawkins showed Eudy 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. (DUKE-8)

On January 13, 2018, Kathy Hawkins texted Ken Eudy to ask for help in getting a Programmatic Agreement (PA) signed so VA and WV can begin clearing trees for the ACP. Instead, on January 14, 2018, Eudy instructed the NC State Historic Preservation Officer, Kevin Cherry, to recall the PA. (See PA Recall Section in this report)

On January 16, 2018, Lloyd Yates texted Kristi Jones: "Here is the issue: Why does it seem that approval of the Atlantic Coast Pipeline is dragging? How can we move it along? We have had a number of discussions with Eudy and slow progress." Yates and Jones make arrangements for Lynn Good and Governor Cooper to have a discussion on January 17, 2018, at 4:00PM. (GOV-38, Texts Yates-Jones 1-16-19)

On January 17, 2018, Good and Governor Cooper met by telephone. Only the Governor and Good participated in this call. Good said she has limited recollection of this phone call. She remembers that during the call, Governor Cooper requested to increase the mitigation fund by \$2.8 Million to \$57.8 Million. Good believed that Governor Cooper wanted to match the amount in the Virginia agreement.

Also, during the call, Good said she did discuss the progress of the 401 Permit but does not recall the conversation. During the call she was never told by Governor Cooper that the permit would be issued. (DUKE-1, 26) (DUKE-5)

On January 18, 2018 at 12:31PM, an email titled “ACP TICK TOCK” was sent by Ken Eudy to the Governor’s Staff members Julia White, Sadie Weiner and Morgan Jackson. Eudy states in the email “Gov wants to get a tick tock on this. Here’s a start. Can you fill it out? He especially wants to understand how we think the word of the solar and mitigation agreements will get out. I put a placeholder statement in for discussion purposes only”. (GOV-23)

The email has a planned schedule of tasks as follows:

Timing	Activity	Owner.
1-18	State Historic Preservation Officer signs PA agreement, returns it to FERC”.	William.
1-18/24	Gov Makes stakeholder calls	Morgan
1-19	Sr. staff reviews internal and external messaging, sends to gov	Julia
1-19	DEQ staff begins process of final 401 approval	Julia
1-19/1-22	Gov reviews messaging	Sadie
1-23	Gov staff meets with DEQ to align communications	Julia
1-23	Gov staff meets with Commerce to secure statements from economic leaders	Ken
1-23	Gov staff meets with Solar developers to nail down their messaging on queue agreement	Ken
1-23/24	Sr. staff may tweak messages base on stakeholder feedback	Sadie
1-25 pm	Legislative liaison briefs caucus leaders	Brad
1-26 am	DEQ notifies ACP	Julia
1-26 am	NCDP briefed	Morgan
1-26 noon	DEQ issues 401 permit	Julia
1-26	Press office issues gov statement outlining carbon-offsetting measures	Sadie
1-26 pm	Local or regional stakeholder calls by IGR	Jordan

On January 18, 2018, a new version of the MOU increasing the payment to \$57,800,000 was sent to the Office of the Governor, who returned it that day with minor revisions. (DUKE-1 pg. 26-27)

On January 25, 2018, the MOU in its final version was signed by William C. McKinney, General Counsel for the Office of the North Carolina Governor and Leslie Hartz, Vice President-Engineering & Construction-Strategic Projects, Dominion Energy Transmission, Inc. (GOV-34)

On January 26, 2018, the MOU was announced on the same day the 401 ACP Water Quality Certification was signed. (DEQ-32)

Authority of MOU Funding

Karen Hammonds-Banks (Hammond-Banks), a Senior Fiscal Analyst with the North Carolina General Assembly Fiscal Research Department, sent an email to Kristin Walker (Walker), with the North Carolina Office of State Budget Management (OSBM), on January 27, 2018, at 1:29 PM. (GOV-39, email) The content of the email consisted of five questions presented to Walker:

1. *Who “owns” the \$57.8 million?*
2. *Are these State funds?*
3. *Where the funds will be deposited (State treasury?)?*
4. *Who will administer the fund?*
5. *Legal authority to enter into such a MOA.*

Also, as an attachment to the email from Hammonds-Banks, was the press release, from the Governor’s Office, announcing the Atlantic Coast Pipeline (ACP) permit and the ACP partners offer of the \$57.8 million fund.

Hammonds-Banks was interviewed and recalled sending the email and considered it as a normal course of business procedure. She was not previously aware of the fund and offered the questions to her counterpart in OSBM. She did not recall getting the answers to the questions she posed. Hammonds-Banks was confident that the questions were not answered in a response back to her, either by email or verbally. She believes that Walker may have replied back to her but did not have answers to the questions. (GA-1, Memo Hammond-Banks)

On the email, it reflected the chain going from Walker to William McKinney (McKinney), Julia White (White) and Charlie Perusse stating, “Please see questions below from Fiscal Research regarding the Atlantic Coast Pipeline Trust.” A reply from McKinney to Walker stated “Thank you Kristin. Let’s discuss some of the below and how best to structure answers.” (Investigator note: Walker is the Deputy Director of State Budget; Perusse is the State Budget Director; McKinney is Counsel to the Governor) Hammond-Banks did not get a response back from any of the individuals reflected on the email, regarding her questions.

Hammonds-Banks was shown another email chain that showed her request going from Walker to the individuals previously stated above and McKinney forwarding it to Ken Eudy (Eudy) with the notation “FYIO.” (GOV-40, Email Walker FYIO) Hammond-Banks did not get a response back from Eudy regarding her questions.

Hammonds-Banks was shown an email chain that showed her request going forward from Walker to the individuals previously stated above and McKinney forwarding it to Munashe Magarira (Magarira) with the notation “FYI – let’s discuss potential answers.” (Investigator note: Magarira is Associate General Counsel for the Governor) Magarira responded to McKinney “Sounds good.” (GOV-41, Email Magarira) Hammond-Banks did not get a response back from Magarira regarding her questions.

Hammonds-Banks was shown an email chain that showed her request going forward from Walker to the individuals previously stated above and McKinney forwarding it to Bill Lane

(Lane) on 1/29/2018 at 6:31 PM (GOV-42 Email McKinney Lane) McKinney's email to Lane stated the following:

"Hope you are well. See below from the NCGA looking for information regarding the Mitigation Fund. I would like to discuss the below with you at your convenience. My assessment is that the fund is likely not "State Funds" as the legislature uses the term. I think the Gov. has ample constitutional authority to enter into such agreements, and it is the corporation's determination on how to spend and organize its mitigation funds. Welcome any thoughts you have about same."

Hammond-Banks did not get a response back from Lane regarding her questions. (Investigator note: Bill Lane is General Counsel for the Department of Environmental Quality)

Duke Executives Stated that MOU and Nameplate Settlement not a Condition of 401 Certification

Duke CEO, Lynn Good insisted that the ACP partners and Duke did not believe that the creation of the Mitigation Fund and Settlement of the Nameplate Dispute, as requested by Cooper, had any bearing on the issuance or timing of the 401 Permit for the ACP. She said the ACP partners and Duke believed that the ACP was entitled to the permits. Good said "Duke did not and would not pay for permits". Executives of Duke made similar statements. (DUKE-5), (DUKE-7), (DUKE-8), (DUKE-9)

Attempt to Get Duke to Write Statement that MOU was Voluntary

On February 8, 2018, at a hearing held by the House and Senate Appropriations Base/Budget Committees, Lee Lilley, Director of Legislative Affairs for the Governor's Office, was questioned about the relationship of the MOU to the 401 WQC. Lilley stated that the MOU was a voluntary agreement made by the project developers and had was separate from the 401 WQC. (GA-2. Lilley Transcript)

On February 8, 2018, Ken Eudy called Kathy Hawkins, after the General Assembly's Joint House and Senate Appropriations/Base Budget committees meeting, to request that Duke prepare a letter stating that the \$57.8 Million Fund was voluntarily provided on behalf of the ACP. Hawkins told him that they "were not doing that." She then notified Duke management and they agreed that a letter, as requested by Eudy, would not be prepared. (DUKE-11)

Also, during the call between Eudy and Hawkins, Eudy referenced an article in the Triangle Business Journal, dated February 7, 2018. (TBJ-1, Article) Eudy was upset about the article and felt that it was inaccurate and therefore wanted someone from Duke to call the reporter and make corrections. (DUKE-11)

On November 8, 2019, in his testimony before the Joint Legislative Commission on Governmental Operation Subcommittee on the Atlantic Coast Pipeline, Ken Eudy stated the following in response to questions: (GOV-7)

SENATOR BROWN: You assisted the Governor in preparing for his meeting with Lynn Good on November 30, 2017. This would be document 3. Were you briefed about the meeting after it took place?

KEN EUDY: Yes, Sir, directly thereafter.

SENATOR BROWN: Did the Governor, during that meeting, request Duke to create an Economic Development Fund to provide access to gas from the ACP.

KEN EUDY: No, Sir.

SENATOR BROWN: Did you ask Duke to provide a statement regarding the voluntary status of the MOU and fund?

KEN EUDY: No, Sir.

SENATOR BROWN: Just to back track for one second. I asked you earlier did you ask Duke to provide a statement regarding the voluntary status of the MOU and fund. Did anyone in the Governor's Office do that?

KEN EUDY: Not that I am aware of.

SENATOR BROWN: Document 8. – Again, the question was - what were the topics of discussion for the Governor's call on January 17, 2018 between the Governor and Lynn Good?

KEN EUDY: It was, she was concerned and frustrated about the slow pace of the DEQ review of their Application for a Water Quality Permit.

PROGRAMMATIC AGREEMENT RECALL

In January of 2018, Kathy Hawkins was notified by their Dominion partner that a critical document, known as the Programmatic Agreement (PA), had not yet been signed by the North Carolina Department of Natural and Cultural Resources and submitted to the Federal Energy Regulatory Commission (FERC). This document was required before trees could be cleared for the ACP in Virginia and West Virginia.

On Friday afternoon, January 12, 2018, Hawkins found out, from the ACP partners, that the Programmatic Agreement had not been signed and submitted on behalf of North Carolina.

On January 13, 2018, beginning at 9:55AM, Kathy Hawkins exchanged texts with Ken Eudy regarding the Programmatic Agreement as follows: (GOV-17, Texts Hawkins-Eudy PA 1-13-18)

Kathy Hawkins texted: *"I do need to chat with you re another significant issue. Any chance you can spare a few minutes today..."*

Eudy responded: *"...I'm with gov in mtgs til after lunch..."*

Kathy Hawkins texted: *"Every state has signed the historic preservation agreement except N.C. Once N.C. signs we get the go ahead from FERC to proceed with cutting trees in VA and W Va. It has to be signed by the State Historic Preservation officer. I understand it is on Kevin Cherry's desk."*

Eudy responded: *"First I've heard of this. What the heck?"*

Hawkins texted: *"N.C. is the final signature required for FERC to issue the Limited Notice to Proceed in tree felling. Can you please help me, Ken?"*

Eudy responded: *"Yes."*

On Sunday, January 14, 2018, at 10:28AM, Kevin Cherry, Ph.D., Deputy Secretary and State Historic Preservation Officer for NC Dept. of Natural and Cultural Resources emailed FERC employees, Kevin Bowman, David Swearington and Ellen Arbruster to request the signature page, on the Atlantic Coast Pipeline Programmatic Agreement (PA), be recalled.

In his email, Cherry requested the signature page of the PA be recalled because he signed it by mistake.

The following was written in the body of Cherry's email to FERC:

"I would like to recall our signature page on the Atlantic Coast Pipeline Programmatic Agreement. I signed the form by mistake. I was in the field all day on Friday and arrived back at my desk late to find a number of forms waiting for my signature. One stack held items upon which I had been briefed and had reviewed. Other items were near it. The ACP Programmatic Agreement was then inadvertently signed as I headed out the door to make another appointment." (GOV-18, Email Cherry Requesting Recall of PA)

On January 14, 2018, at 10:59 AM, Kevin Bowman acknowledged receipt of the request to recall the signature. (GOV-19, email FERC-Cherry-EUDY Requesting Recall of PA)

On January 14, 2018, at 11:06 AM, Kevin Cherry forwarded Bowman's response to Ken Eudy. (GOV-19)

On January 14, 2018, at 1:35 PM, Eudy emailed Jenni Owen, of the Governor's Office, and stated: "Please let me know why this issue didn't get elevated to the governor's office as we were discussing ACP issues". (GOV-21, Email Eudy to Gov staff about PA)

On January 14, 2018, at 1:37 PM, Eudy emailed Michael Regan, Secretary of DEQ, and stated: "Michael, "Please help me understand why the issue of tree-cutting permits has not been a part of any of our conversations about ACP." (GOV-22, Email Eudy to Regan).

On January 14, 2018, at 1:41 PM, Eudy emailed William McKinney and Stated: "I need to understand how this could get negotiated and signed at DNCR without their legal counsel's review." (GOV-20, Eudy-McKinney Emails about PA recall)

On January 14, 2018, at 1:54PM, Eudy forwarded Bowman's response to William McKinney and stated: "NC's PA agreement signature has been recalled."

(GOV-20)

On January 14, 2018, at 2:41PM, McKinney emailed Eudy to explain how he discussed the PA with "Phil" who said "He typically clears documents like this that are going to federal government." "He is looking into ...and ...will provide an update." (GOV-20)

In the interview by Travis Fain of WRAL, Eudy explained that he asked to have the PA recalled because "I just want to see what we commit to or what it requires us to do. Does it require us to do anything? And so they got it back, we looked at it, has some attorneys look at it, make sure that legally it was the way it needed to be, and we sent it back" with "no changes, at all". (GOV-10, pg. 6)

The following week, Hawkins was told by Ann Loomis, of Dominion, that the PA had previously been signed and sent but was recalled by the Administration after Hawkins requested assistance from Eudy. Eudy didn't tell Hawkins that he was having it recalled. After Hawkins found out that Eudy had recalled the document, she confronted him about it. Eudy told her he thought she knew he was having the document recalled. (DUKE-8)

On November 8, 2019, in his testimony before the Joint Legislative Commission on Governmental Operation Subcommittee on the Atlantic Coast Pipeline, Eudy was asked about the recalled PA and stated:

"So, I called the Secretary of the Department of Natural and Cultural Resources and said what is the Programmatic Agreement? I asked – and it was very clear – that neither she nor her Department's legal counsel had reviewed that agreement. And so, I asked that it be recalled. I must tell you that I was unhappy that that was the case. We had tried to be aware of everything that had to happen on these issues of agreement or permit. And so it was recalled. The Secretary and the legal counsel at that Department reviewed it, found that it was a fairly routine agreement and sent it back approved to FERC within a matter of days with no changes".

Eudy was asked "Why did you email Regan on January 14, of 18 to ask why Regan didn't inform Governor's Office about tree cutting permits? Eudy Answered "Because I was unhappy that we hadn't been informed about that part of the – that piece of the ACP project.

Eudy was asked "Did the Governor's Office have an expectation to be informed on issues such as this on behalf of DEQ? Eudy Answered: "We wanted to know, Senator, about the existence of them, what they committed the State to, and what the time-line was within which we had to respond." (GOV-7, Eudy & White Testimony)

Eudy stated: During the interview with Travis Fain of WRAL, “The Governor, from time to time at a cabinet meeting will hear an update from Michael Regan that all the other cabinet hears, but he is not enmeshed in the weeds of this permitting process.” (GOV-7, pg. 4)

On January 18, 2018 at 12:31PM, an email titled “ACP TICK TOCK” was sent by Ken Eudy to the Governor’s Staff members Julia White, Sadie Weiner and Morgan Jackson. Eudy states in the email “Gov wants to get a tick tock on this. Here’s a start. Can you fill it out? He especially wants to understand how we think the word of the solar and mitigation agreements will get out. I put a placeholder statement in for discussion purposes only”.

The email has a planned schedule of tasks with the heading, Timing, Activity and Owner.

The first planned task indicates that On January 18, 2018, “The State Historic Preservation Officer signs PA, returns it to FERC”. The owner of this task is listed as “William”. (GOV-23, Tick-Tock email)

On January 18, 2018, at 9:22AM, William McKinney texted Ken Eudy “PA in Process Alternatively, a copy may be on my desk”

On January 18, 2018, at 3:16PM, McKinney texted Eudy “PA Sent”

On January 18, 2018, at 3:16PM, Eudy texted McKinney “Great. Thx”

(GOV-24, Text McKinney-Eudy PA Sent)

On January 18, 2018 at 4:19 PM, McKinney texted Roy Cooper “PA signed and sent. DE notified”. Cooper texted back “Great”. (GOV-25, Text McKinney to Cooper)

On September 18, 2019, EIS Investigator Kevin Greene requested an interview of Kevin Cherry. On October 2, 2019, Cherry responded “I have been advised that state employees in the administration should not participate in private interviews with Eagle Intel Services regarding this matter.” (SHPO-1, Email String Cherry-Greene 10/7/19)

On October 14, 2019, Cherry emailed Investigator Greene with an attached fully executed Programmatic Agreement for the ACP. The signature page indicates Cherry signed the PA on January 18, 2018. In the email, Cherry also included links to materials on programmatic agreements. (SHPO-2, Email Cherry to Greene with attached PA sig page)

AUTHORITY AND CONTROL OF THE GOVERNOR

Duke Energy operates in an environment that is heavily controlled and scrutinized by governing bodies and their administration. Many of these issues involve the State of North Carolina or agencies in which the State has an interest in the outcome. Additionally, the threat of lawsuits and adverse public opinions are concerns.

The Governor appoints department heads and/or Secretary positions, which include the Department of Environmental Quality, Department of Commerce, and Department of Natural and Cultural Resources. The Governor also appoints the Executive Director for North Carolina Utilities Commission Public Staff and Commissioners to the North Carolina Utilities Commission.

All of these Departments and positions played a critical role in issues concerning the Atlantic Coast Pipeline and Duke Energy during the timeframe addressed within this report, and all of these Department Secretaries are under the authority of Governor Cooper.

On November 21, 2017, Ken Eudy, Senior Advisor to the Governor, contacted Kathy Hawkins, Vice President, NC Government Affairs, Duke Energy. He noted the large number of issues that involved Duke Energy and the Executive Branch and suggested that in light of those issues, a meeting should take place between Ms. Good and the Governor.

These issues included: (1) pending rate cases for Duke Energy Carolinas (“DEC”) and Duke Energy Progress (“DEP”), one of the elements of which was cost recovery for environmental compliance costs related to coal ash (before the NCUC); (2) continued oversight by DEQ of coal ash compliance throughout the State, including disposal options, and in particular the provision of water to homeowners near the coal ash basins; (3) potential proceedings in state court or before the NCUC involving the controversy over the interpretation to be applied to the “nameplate capacity” language of HB 589 to which the Public Staff was an interested party; (4) issues surrounding the economic benefits of the pipeline; (5) the pending 401 Permit application for the pipeline; and (6) Duke’s proposal for the Power/Forward Carolinas Grid Modernization Initiative to spend approximately \$13 Billion over 10 years to modernize and harden the grid, bury power lines, upgrade transmission facilities, retrofit transformers, increase automation, control, and enable renewables and distributed energy resources. (DUKE-1, pg. 16)

On November 30, 2017, Lynn Good met privately, at his request, with Governor Cooper. Many of these issues were discussed between the two of them. The primary take-aways from the meeting involved the nameplate capacity issue with the Solar Industry and the development of a fund to promote economic development on behalf of the ACP.

Governor Cooper indicated, to Lynn Good that Duke should focus its efforts in this regard in the East, confer with those of his advisors who had contacted Duke (and mentioned Tolson), and consider establishing a fund to ensure the benefits of the pipeline (DUKE-1, pg. 20).

Governor Cooper also asked Good to work to resolve the Nameplate Dispute with the solar industry. He told Good that these were some of the issues before him and that he wanted to resolve these with Duke and to do so before the end of December if at all possible. (DUKE-1, pg. 21)

Governor Cooper told Lynn Good that if the dispute (nameplate capacity) was not resolved, the developers were prepared to engage in litigation that could be “ugly” for the company. (DUKE-1, pg. 20)

Good said Duke takes requests of the governors of all states seriously. She said Duke has to work with the governors in the states where Duke operates and also with the customers in those states. (DUKE-5)

When Governor Cooper, during their meeting on November 30th, asked Good to meet with his advisors to create a fund, she agreed. (DUKE-5)

When he asked her to settle the nameplate dispute, she agreed. (DUKE-5)

There were no conditions or implied threats of delaying the pipeline by Governor Cooper. Good said the requests by Governor Cooper were catalysts to expedite things that Duke already wanted to do. (DUKE-5)

Good was asked EIS Investigators if she believed the Governor had control over the permitting process. Good responded that the Governor does have control through his cabinet positions including DEQ, Commerce and others. (DUKE-5) Good was asked by EIS Investigators if there could have been a consequence to not providing the \$57.8 Million fund to the Governor. Good stated that she works with other Governors and that Duke does business within several states and values the customers within those states. The fund represents common sense business. (DUKE-5)

Lloyd Yates, Executive VP, President Carolinas Region, Duke Energy, told EIS Investigators that the Governor called the boss in and told her that we have hard spots and that Duke needed to work on those issues. Yates felt that the Governor may have wanted these things done by the end of December 2017. (DUKE-9)

Per Yates, Duke held its position on the nameplate interpretation (nameplate dispute), and he was not concerned about the possibility of lawsuits by the solar industry. But the Governor said work it out and Yates stated, “when the governor request things, you do them.” (DUKE-9)

Prior to the meeting between Governor Cooper and Lynn Good, on November 30, 2017, the North Carolina Utilities Commission Public Staff was reluctant to become involved with the dispute between Duke Energy and the Solar Industry regarding the nameplate dispute. After that date the Public Staff hosted a meeting, on December 14, 2017, between the two parties and the groundwork for the settlement was initiated. William McKinney, the Governor’s Chief Counsel attended the meeting on that date.

Kath Hawkins said when they went to the Public Staff, 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. Hawkins

acknowledged that Ayers was now subject to reappointment by the current Governor.⁶
(DUKE-8)

Per Hawkins, practically every time she talked to Ken 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. Hawkins spoke to Ken Eudy about the concerns and the need for the permit for the tree felling season. (DUKE-8)

Hawkins told EIS Investigators that she found a message sent to Lynn Good, on December 19th, stating that per Eudy, “the Governor would be making decisions on the permits versus Regan.” Regan being DEQ Secretary Regan. (DUKE-8), (DUKE-10)

Hawkins further 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. (DUKE-8)

NAMEPLATE DISPUTE SETTLEMENT

Background of Nameplate Dispute

The Public Utility Regulatory Policies Act (PURPA) is a Federal Law passed in 1978 and requires electric utilities to purchase electricity from independent electricity producers, referred to as Qualified Facilities (QFs), at an “Avoided Cost” rate. The avoided cost is the marginal cost an electric utility would have incurred to produce or purchase the electricity. PURPA implementation was left to individual states. In North Carolina, as in other states, the avoided cost rate has been steadily falling mainly due to the reduced price of natural gas used to generate power. North Carolina has historically authorized long term (15 year) contracts between QFs and electric utilities. These long-term contracts essentially locked in QF’s at higher avoided cost rates over the terms of the contracts. These long-term contracts helped attract many solar companies to build QF’s in North Carolina. North Carolina has the 2nd most QF’s in the country behind California.
(PS-1, Interview of Public Staff)

The large number of QFs being developed in Eastern North Carolina caused disputes between Duke and the Solar Industry.

Prior to HB 589, Duke had little input as to where solar developers could place QFs on the grid. Connecting large QFs to the grid system sometimes caused system power fluctuations that were disruptive and sometimes caused damage to electrical equipment. This was particularly true when large projects were connected to the distribution side of

⁶ <https://governor.nc.gov/news/governor-cooper-nominates-members-state-boards-and-commissions>

the grid rather than the transmission side. Solar developers preferred to develop QFs in areas of inexpensive, flat land. (DUKE-6. Interview of Ken Jennings)

As the number of QFs grew in North Carolina, dispute arose between the solar industry and Duke over interconnection requirements. Duke Energy began to place more requirements or “screens” on the QFs. These screens were required to be satisfied before Duke would approve the QF to be connected to the grid. (LEV-1, Interview of Levitas)

Because of the way PURPA was administered in North Carolina, the avoided cost rates paid to Solar developers became higher than the actual cost of Duke’s electricity production. The higher avoided cost rates paid to solar developers were being passed to ratepayers. The General Assembly was interested in reducing costs to ratepayers by reforming North Carolina’s implementation of PURPA. (DUKE-6)

In late 2016, the solar industry and Duke began discussions to avoid future disputes over PURPA implementation. The North Carolina General Assembly, Duke and the renewable energy industry engaged in several months of stakeholder meetings to arrive at terms that became the language of HB 589. (LEV-1)

North Carolina HB 589 was ratified in June of 2017.⁷ This bill introduced a new pricing method for electricity purchased by the utilities from QF’s. HB 589 mandated that utilities purchase a specified amount of renewable energy through a competitive procurement procedure. This rate, established from this competitive bidding, could not exceed the avoided cost rate. The avoided cost rate would still be an option for QF’s, electing to sell electricity at that rate. However, the standard 15 Year Contracts would not be available for the avoided cost rate. HB 589 changed contract terms for QF’s electing to sell power through the avoided cost rate. The prior avoided cost contracts were automatic or pro forma 15-year contracts for all QF’s under 5 Mega Watts. For new QF’s, the contracts would be 10-year terms for QF’s under 1 megawatt and for larger QF’s, the contracts terms would be negotiated up to a maximum of 5 years. Contracts for QF’s electing to sell electricity through competitive procurement, would receive a pro forma 20-year contract. (PS-1)

HB 589 also gave Duke the authority to determine the locations of future QFs.

HB 589 involved many aspects of renewable energy. A summary of HB 589, written by Karn Kermerait, is published on NCBAR.org. (NCBAR-1)

HB 589 was estimated to save ratepayers approximately \$850 Million over 10 Years. The bill would also make the electrical grid system more reliable by giving Duke the ability to control where new QFs would connect to the grid. (DUKE-1)

⁷ <https://www.ncleg.gov/Sessions/2017/Bills/House/PDF/H589v5.pdf>

Section 1.c. of HB 589 was negotiated during discussions leading up to HB 589. This section effectively grandfathered QFs, in the approval process but not yet on-line, to receive the older higher avoided cost rates and old 15-year contracts, as long as the QFs combined with other QFs did not exceed the nameplate capacity of the local transformer substation. This group of QFs waiting to be connected, has been referred to as “The Queue”. (PS-1)

Section 1.c. of HB 589 states:

A small power production facility which would otherwise be eligible for the standard offer rate schedules and power purchase agreement terms and conditions approved by the Commission in Docket No. E-100, Sub 140, but which fails to commence delivering power to the utility on or before September 10, 2018, shall, notwithstanding such failure, remain eligible for such rate schedules and terms and conditions, unless the *nameplate capacity* of the generation facility when taken together with the *nameplate capacity* of other generation facilities connected to the same substation transformer exceeds the ***nameplate capacity*** of the substation transformer.

The nameplate dispute arose in September of 2017, when Duke Energy released written Method of Service Guidelines making it clear that Duke interpreted “nameplate capacity”, as mentioned in HB 589, as the lowest capacity rating listed on the substation’s nameplate. Duke interpreted the nameplate capacity to be the lowest rating and the solar industry contended the highest level should be used. The solar industry believed costs to upgrade substations, to accommodate more QFs, should be paid by Duke and Duke held the position that the solar industry should pay for upgrades. (PS-1) (DUKE-4, Nameplate Whitepaper)

There are three nameplate ratings for transformer substations. The base nameplate rating represents 100% of the substation capacity. The middle rating, 133% of the base rating, can be reached by pumping cooling oil. The highest rating, 167% of the base rating, is reached by adding cooling fans. (DUKE-6)

The nameplate dispute therefore focused on how many QF’s in the Queue could be connected to the grid at the old, more favorable rates and contract terms without incurring costs to upgrade substations. If the highest nameplate capacity was used, more QF’s could connect. If the lowest nameplate capacity was used, less QF’s would be able to connect.

After Duke released the Method of Service Guidelines, the Public Staff, began receiving complaints from solar groups stating that Duke Energy has changed the rules for the QF’s in the queue. Christopher Ayers, Executive Director the Public Staff (Ayers), explained that The Public Staff is an independent agency primarily tasked with making recommendations to the North Carolina Utilities Commission (NCUC) while advocating for the consumers of utilities in North Carolina. (PS-1)

The Public Staff held discussions with members of the solar industry and members of Duke Energy. Ken Eudy, from the Governor's Office expressed to the Public Staff that the Governor's Office wanted the issue resolved. (PS-1)

During September through December 2017, Duke held several informal meetings with solar developers regarding nameplate issue. The meetings ended at an impasse, but the parties agreed to future discussions. (DUKE-4)

On November 30, 2017, during a meeting between Duke CEO, Lynn Good and Governor Cooper, Cooper indicated that he wanted Duke to resolve the nameplate dispute. The next day, December 1, 2017, Lynn Good instructed her executive staff to begin working to resolve the nameplate dispute. (DUKE-5, Lynn Good interview) (DUKE-7, David Fountain Interview) (DUKE-1, Whitepaper)

On December 12, 2017, Lawrence B. Somers, a Deputy Counsel for Duke met with Chris Ayers, Executive Director of the Public Staff, along with Public Staff employees. During this meeting, Somers sought the Public Staff's feedback and position on how to resolve the nameplate dispute. (DUKE-4)

On December 14, 2017, a meeting was held at the Public Staff Office for the purpose of working toward resolving the nameplate dispute. Present were Mr. Somers, Kendal Bowman, Gary Freeman and John Gajda of Duke Energy's Renewables Integration Group, and Kathy Hawkins of Duke Energy. Chris Ayers, James McLawhorn, Jay Lucas, Tim Dodge, Layla Cummings, Dustin Metz and Tommy Williamson attended from Public Staff. William McKinney attended on behalf of the Governor. Rep Szoka attended as well as solar developers Thomson, Levitas, O'Hara and Miller. (DUKE-4)

A resolution in principle was reached over the course of the meeting. This resolution in principle dealt with the interpretive issue of "nameplate capacity," among other interconnection issues including the Method of Service Guidelines. It also established a process by which solar developers connecting a new project to a substation would be charged for the costs of necessary upgrades to the substation unless they could prove, and Duke and the Public Staff agreed, that such upgrades provided system-wide benefits and therefore should be paid for by Duke's retail customers. Part of the resolution included utilizing the middle nameplate capacity rating to determine the amount of QFs that could connect before costs would be incurred. (DUKE-4) (PS-1)

Even though the essential deal was reached on December 14, 2017, negotiations continued to the end of January, 2018, over specifics, contract language and over things that were not thought of during the meeting on December 14th. (LEV-1)

On January 30, 2018, the settlement agreement was finalized and executed by the developers, Duke and the Public Staff. On February 2, 2018, the Settlement Agreement was filed for review by the NCCU. (NCUC-1, Nameplate Settlement Agreement)

On August 27, 2018, the NCUC issued an Order regarding the Settlement Agreement. (NCUC-2, Nameplate Settlement Order)

The Order, filed with NCUC, states “The Commission has reviewed the Settlement Agreement and acknowledges that it represents substantial give and take among the parties in order to avoid litigation. Therefore, the Commission is not inclined to disrupt it”.

The Order further states that “In order to ensure that retail customers are treated fairly, the Commission will require the Public Staff and DEP to file explanatory testimony in all future DEP cost-recovery proceedings in which they propose to allocate substation upgrade costs to retail customers pursuant to the Settlement Agreement.”⁸

Duke Wanted to Resolve the Nameplate Dispute Prior to November 30, 2017

Duke CEO, Lynn Good said Duke wanted to resolve the Nameplate Dispute because Duke was concerned with potential litigation, but also wanted it settled in order to make a path to a clear plan for solar issues. The request by Cooper to resolve the nameplate issue (by the end of December 2017) was a catalyst and motivation to get working on the settlement. (DUKE-5)

Kath Hawkins said, 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-8)

Ken Jennings was not aware of discussions within Duke that Duke was planning to settle with the solar industry because of concerns over lawsuits. Jennings speculated that Duke settled with the solar industry regarding the nameplate issue over concerns of brand and public image. However, he has no direct knowledge of this. (DUKE-6)

Lloyd Yates was not concerned about lawsuits. Yates said Duke held its position on the interpretation and he was not concerned about the possibility of lawsuits by the solar industry. (DUKE-9)

The Governor’s Office requested all parties; The Solar Industry, Duke Energy and The Public Staff to work to settle the Nameplate Dispute.

⁸ <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=7c5f2694-b6a2-4539-b5cc-6cdb57d3414f>

Ayers said he was contacted by Ken Eudy, from the Governor's Office, who expressed concerns that the Governor's Office wanted the issue resolved. (PS-1)

Ayers invited members of the Governor's Office to the December 14, 2017, meeting so they could see the negotiations first-hand and he would no longer need to be the middleman. Ayers insisted that no one from the Governor's Office, at any time, had advocated for one side or the other. (PS-1)

Ayers said he was never asked or pressured by the Governor's Office to sway the negotiations in one way or another. He was never asked, by the Governor's Office, or anyone, to approve the Settlement. (PS-1)

Levitas said he received numerous calls from Ken Eudy and William McKinney from the Governor's Office to get the deal done. Levitas said he was not told to settle the deal in one way or another, but was pressured to finalize the deal. (LEV-1)

Lynn Good said, in her November 30th meeting with Cooper, that she was asked to resolve the nameplate dispute. Good said she did not know and did not ask why Cooper wanted the issues resolved within the same timeframe as the issuance of the ACP permits. Good insisted that the creation of the Mitigation Fund and Settlement of the Nameplate Dispute, as requested by Cooper, had no bearing on the issuance or timing of the 401 permit for the ACP. (DUKE-5)

Eudy stated: "If DEQ decided to grant the Water Quality Permit, we hoped to announce this mitigation fund and a resolution to House Bill 589 at the same time that DEQ announced the Pipeline decision, if they had agreed to do that. We wanted to present a full picture of North Carolina's energy future". (GOV-7, pg. 7, line 11)

The following identified text messages were included in documents provided by The Governor's Office:

The following was stated in text messages between Steve Levitas and Ken Eudy, on December 13, 2017:

Levitas: "*Let me know if you have a few minutes to talk before tomorrow's meeting. Thanks.*" (GOV-11, texts Levitas & Eudy).

The following was stated in text messages between Kathy Hawkins and Ken Eudy on December 13, 2017:

Hawkins: "*Hi. Could we please connect later or tonight?*"

Eudy: "*Yes. Call when you can.*"

(GOV-12, texts Hawkins-Eudy 12-13-17)

The following was stated in text messages between Kathy Hawkins and Ken Eudy on December 14, 2017 at 6:03PM:

Hawkins: *"I think we have a deal with Steve's gang".*

Eudy: *"Hope it's a good one!"*.

(GOV-13 (texts Hawkins Eudy-Deal with Steve's gang 12-14-17)

The following was stated in text messages between Ken Eudy, William McKinney and Roy Cooper on January 1, 2018:

McKinney: *Am set to sign MOU regarding Pipeline with ACP tomorrow at ten. Please let me know if any questions prior to signing; glad to discuss if convenient-*

Eudy: *Should review with Regan if he hadn't seen it.*

McKinney: *I'm glad to touch base with him this evening-*

Cooper: *It's what we discussed earlier right?*

McKinney: *Correct*

Cooper: *Where are the solar boys on their deal?*

McKinney: *Do not know if Levitas has gotten movement towards signatures yet-*

(GOV-6, Texts McKinney-Eudy-Cooper 1-1-18)

The following was stated in text message between Ken Eudy and Steve Levitas, on January 1 and 2, 2018:

Eudy on January 1, 2018, at 6:44PM: *"Do y'all have an agreement with DE?"*

Eudy on January 2, 2018 at 7:17AM: *"???"*.

(GOV-14, Texts Eudy-Levitas 1-1-18 & 1-2-18)

The following was stated in text messages between Ken Eudy and William McKinney on January 2, 2018:

Eudy: *"No response from Levitas yet. Not sure we should sign ACP unless solar deal works".*

McKinney: *"Ok. Don't disagree. Let's discuss on call. Do think we shouldn't let it linger much longer"*

(GOV-15, Text Eudy-McKinney 1-2-18)

The following was stated in text messages between William McKinney and Ken Eudy on January 24, 2018:

McKinney: *“Kathy retrieving in morning. Steve says projects left are 4 small developers and 1 Strata. Kathy says they don’t care that much about the Strata one. All eyes on Ayers now.”*

(GOV-16, Text, McKinney-Eudy all eyes on Ayers)

The following was stated in text messages between Ken Eudy and Alex Miller, a Lobbyist for the solar industry. (updated)

Miller: “My POCs are out already so I’ll need to get this directly from Markus. Can I tell him why you’re asking?”

Eudy: *“Trying to negotiate wit your friends over ACP. Wanna have the number of projects in my hip pocket.*

(Gov-44, text Eudy-Miller)

The Public Staff was essential in the Nameplate Dispute Resolution but did not work with Duke until after November 30th 2017

All information received from Duke was consistent on the importance of The Public Staff in the Nameplate Dispute Resolution.

In the Nameplate Whitepaper it was written: Public Staff’s participation in such a settlement was needed because a resolution that resulted in Duke paying for substation work as system upgrades vs Solar projects paying for them as interconnection project upgrades, would result in higher costs for consumers. A resolution could also result in higher numbers of solar projects becoming eligible for the higher avoided cost rate, which would also be passed to customers. (DUKE-4, pg. 7)

Lynn Good, Kathy Hawkins, Lloyd Yates and David Fountain all stated that the settlement of the Nameplate Dispute was negotiated with the help of the Public Staff. They all stated that it was only after the Good’s meeting with Governor Cooper, where he requested Good to negotiate with solar, that Duke began to work with the Public Staff. (DUKE-5) (DUKE-7) (DUKE-8) (DUKE-9)

Fountain said that, prior to Good’s meeting with Cooper on November 30, 2017, North Carolina Public Staff was unwilling to assist in a settlement. After November 30, 2017, and during the first week in December of 2017, Duke found that Chris Ayers and the Public Staff were willing to assist in negotiations and offered to hold a meeting at their office where a deal was reached. (DUKE-7)

The Nameplate Dispute Settlement Agreement resulted in a potential loss of \$100 million in Savings from HB 589

During her meeting with Governor Cooper on November 30, 2017, Lynn Good informed Governor Cooper, that settling the nameplate dispute, could potentially decrease the savings created by HB 589 by \$180 Million. Good said she doesn't recall Governor Cooper's response to this statement. (DUKE-5)

Ken Jennings estimated that the settlement of the nameplate dispute, resulted in lost savings from HB 589, of approximately \$100 million. If Duke had conceded to the highest nameplate capacity, the lost savings from HB 589 would have been approximately \$180 million. The estimated savings from HB 589 was calculated on the standard, or lowest Nameplate Capacity rating. (DUKE-6)

The language in the filed Nameplate Dispute Settlement Order indicates that the nameplate settlement does not guarantee that additional substation upgrade costs will be passed to ratepayers without "explanatory testimony" by the Public Staff and Duke. (NCUC-1)

The Order states that "In order to ensure that retail customers are treated fairly, the Commission will require the Public Staff and DEP to file explanatory testimony in all future DEP cost-recovery proceedings in which they propose to allocate substation upgrade costs to retail customers pursuant to the Settlement Agreement." (NCUC-2)

Duke Agreed to the Settlement Because the Public Staff Agreed to Make a Recommendation to Pass the Costs of the Settlement to Ratepayers.

Ayers said the agreement, on the surface, did not necessarily provide the most benefit to the ratepayers for whom the Public Staff advocates. However, the agreement avoided a potential lawsuit against Duke, which the solar groups were considering, that could have cost ratepayers more if the solar groups were successful in the lawsuit. (PS-1)

David Fountain said the settlement between Duke and the solar industry was approved by the Public Staff and was eventually approved by the NCUC. By having the approval of the Public Staff, Duke had more confidence that the costs of settlement, could be recovered by passing them to ratepayers. Fountain said having the Public Staff's support was the only way the agreement could be reached. (DUKE-7)

Hawkins said when Duke went to the Public Staff, 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. Hawkins acknowledged that Ayers was subject to reappointment by the current Governor. (DUKE-8)

On May 1, 2019, Governor Cooper announced that he nominated Ayers for reappointment as the Executive Director of the Public Staff of the North Carolina Public Utilities Commission.⁹

Duke Executives Stated that MOU and Nameplate Settlement not a Condition of 401 Certification

Duke CEO, Lynn Good insisted that the ACP partners and Duke did not believe that the creation of the Mitigation Fund and Settlement of the Nameplate Dispute, as requested by Cooper, had any bearing on the issuance or timing of the 401 Permit for the ACP. She said the ACP partners and Duke believed that the ACP was entitled to the permits. Good said “Duke did not and would not pay for permits”. Executives of Duke made similar statements. (DUKE-5), (DUKE-7), (DUKE-8), (DUKE-9)

COOPER FAMILY SOLAR FARM

Possible Financial Motive for Governor Cooper to Intervene in the Creation of the MOU and the Resolution of the Nameplate Dispute

The following actions were taken to determine if Roy C. Cooper, III or his family could have benefitted directly or indirectly from the negotiated of the MOU and/or from the settlement of the Nameplate Dispute.

As described earlier in this report, the Nameplate Dispute settlement resulted in additional Qualified Solar Facilities (QFs), in the Queue¹⁰, to be connected to the power grid at the more beneficial grandfathered rates and contract terms.

It has been publicized in news articles that, in 2012, Roy Cooper and his brother Pell Cooper, leased land in Nash County, NC to a solar company named Strata Solar.¹¹

In order to determine if Roy C. Cooper, III and/or his family benefitted from the negotiated MOU or from the settlement of the Nameplate Dispute, Investigators attempted to identify if the Cooper Family had negotiated additional leases, in the Queue, or had discussions with solar developers about potential future leases that could be made feasible due to the

⁹ <https://governor.nc.gov/news/governor-cooper-nominates-members-state-boards-and-commissions>

1. ¹⁰ Section 1.c. of HB 589 grandfathered Qualified Solar Facilities (QFs), in the approval process but not yet on-line, to receive the older higher avoided cost rates and old 15-year contracts, as long as the QF combined with other QFs did not exceed the nameplate capacity of the local transformer substation. This line of QFs has been referred to as “The Queue”.

¹¹ <https://www.newsobserver.com/news/politics-government/article227931954.html>
<https://www.carolinajournal.com/news-article/cooper-family-solar-farms-shady-transactions/>

provisions of the MOU to “develop renewable energy projects in and around the ACP’s route.”

An undated document included in records produced by the Governor’s Office is titled “Possible ACP Mitigation Options”. This document was also found posted on the DEQ website.

Emails from DEQ indicate that this document was created as the result of a brainstorming session at DEQ on 11/28/17, between Sheila Holman, Mary P Kelley, Sarah Rice, Jennifer Mundt. This document was emailed by Doug Heyl, of DEQ, to Julia White, of the Governor’s Office, on 11/28/17 at 6:54PM. At 6:56PM, Doug Heyl sent an email to Holman and Mundt stating “Here is what I sent to the GO, thanks for working on this”. The document was forwarded by Julia White to Kristi Jones on 11/28/17 at 7:24PM. Documents produced by the Governor’s Office indicate, that during that time, Kristi Jones was preparing questions and talking points for a meeting, on 11/30/17, between the Governor and Duke CEO, Lynn Good. ” (DEQ-26, Email String from DEQ) (GOV-2, Email Heyl-White-Jones) (GOV-3, Memo Brief for meeting with Good) (GOV-4, Questions for Lynn Good 11/28/17)

The document titled “Possible ACP Mitigation Options” was emailed from Julia White to Governor Cooper on December 6, 2017. (GOV-5, Email White to Cooper)

Records filed with the Nash County Register of Deeds show:

In December of 2012, land in Nash County, NC, (parcels 000193 & 000996) were transferred from Roy A. Cooper, III and wife, Kristin B. Cooper and Pell C. Cooper and wife, Meredith G. Cooper to Will Clark Properties, LLC. (NASH-1, Deed dated 12/11/12)

On January 4, 2013, a lease was filed showing Will Clark Properties, LLC leased 40 Acres (of parcels 000193 and 000996) to Strata Solar Development, LLC. On August 4, 2013, the lease was amended to show that Nash 58 Farm, LLC replaced Strata Solar Development, LLC as lessor. The lease was signed by Pell C. Cooper for Will Clark Properties and by Markus Wilhelm for Strata Solar Development, LLC and Nash 58 Farm, LLC. (NASH-2, Lease)

North Carolina Secretary of State filings show that Markus Wilhelm is listed as a Company Official of Strata Solar Development, LLC and of Nash 58 Farm, LLC. (NCSOS-5, Annual Report of Strata Solar)(NCSOS-6, Annual Report Nash 58 Farm)

In November of 2014, Parcels 000193 & 000996 (excluding the 40 Acres leased to Nash 58 Farm, LLC) were transferred from Will Clark Properties, LLC to Sapony Creek Properties, LLC. (NASH-5, Deed dated 11/4/14)

Records on file with the North Carolina Secretary of State show that Will Clark Properties, LLC was formed on December 10, 2012. (NCSOS-1, Articles of Organization for Will Clark Properties LLC)

Annual reports filed for Will Clark Properties, LLC for the years 2013 and 2014 list the Company Officials as Roy A. Cooper, III and Pell C. Cooper. Annual reports filed for 2015 through 2018 show that Pell C. Cooper is listed as the sole Company Official.¹² The annual report filed for 2019 shows that Pell C. Cooper is no longer listed as a Company Official. Instead, Pell C. Cooper's wife, Meredith G. Cooper, is listed as the sole Company Official of Will Clark Properties, LLC. (NCSOS-2, Annual Reports for Will Clark Properties, LLC)

Records on file with the North Carolina Secretary of State show that Sapony Creek Properties LLC was formed on November 3, 2014. (NCSOS-3, Articles of Organization for Sapony Creek Properties LLC)

Annual reports filed for Sapony Creek Properties, LLC, for the years 2015 and 2018 list the Company Officials as Roy A. Cooper, III and Pell C. Cooper. The Annual Report filed for 2019 lists Roy A. Cooper, III as the sole Company Official. (NCSOS-4, Annual Reports of Sapony Creek Properties LLC)

Nash County Tax Records show Sapony Creek Properties, LLC is the owner of thirteen (13) parcels that total 339 acres. (NASH-3, Tax Listing Sapony Creek Properties)

Nash County Tax Records show Will Clark Properties, LLC is the owner of two (2) parcels that total 47 acres.¹³ (NASH-4, Tax Listing for Will Clark Properties)

Investigators attempted to identify additional or potential future Lease agreements between the Cooper Family and Solar Developers.

Other than the lease described above, filed in December of 2013, between Will Clark Properties, LLC and Nash 58 Farm, LLC, no other Ground Lease Agreements were found to be filed with the Nash County Register of Deeds relating to Will Clark Properties, LLC, Sapony Creek Properties, LLC, Roy A. Cooper, III, Kristin B. Cooper, Pell C. Cooper or Meredith G. Cooper.

Documents included in records produced by the Governor's Office indicated that Markus Wilhelm emailed the Governor in August of 2017. In this email Wilhelm complained that Duke hired an understaffed engineering company for commissioning solar projects. He

¹² On the 2013-2014 Annual Reports, the address of Roy A. Cooper III and the mailing address of Will Clark Properties, LLC is listed as PO Box 12181, Raleigh, NC 27605. Even though, Roy A. Cooper III, is no longer listed as a member on the 2015-2018 Annual Reports, the mailing address of Will Clark Properties, LLC is still listed as the address previously listed for Roy A. Cooper III.

¹³ The two parcels owned by Will Clark Properties LLC are subject to the Nash 58 Farm, LLC lease and right-of-way.

also stated in the email “Any guidance and support (a call to Duke leadership?) you can provide to our industry in this matter is very much appreciated.” (GOV-8, email transcript from Wilhelm)

Documents in the records provided by the Governor’s Office indicated that the Governor’s Staff was preparing for a phone call between the Governor and Wilhelm on August 30, 2017. (GOV-9, brief for Wilhelm call)

EIS Investigators contacted Strata Solar, in June of 2019, for the following reasons:

- To obtain the perspective of the Solar Industry relating to the Nameplate Dispute
- To determine the nature of the call between Wilhelm and Governor Cooper on August 30, 2017, and any other unknown communications.
- To identify pending or potential solar leases between the Cooper Family and Strata Solar.
- To identify discussions relating to the utilization of MOU funds for solar projects.

In June of 2019, Investigators made contact with the attorney’s for Strata Solar and requested interviews of Markus Wilhelm and Brian O’Hara¹⁴, the original email from Wilhelm to the Governor and any information relating to other discussions with the Governor. Investigators also requested that Strata Solar search their records to locate any ongoing or future solar development projects involving Roy Cooper or family members.

On July 22, 2019, during a conference call, Hampton Dellinger and Brian Herndon, Attorneys for Strata Solar explained that Strata Solar personnel had searched their records for any and all leases involving the Cooper Family. This search included a search for the names (and variations) of Will Clark Properties LLC, Sapony Creek Properties, LLC, Roy A. Cooper, III, Kristin B. Cooper, Pell C. Cooper and Meredith G. Cooper. Dellinger explained that, also at the request of EIS, Strata Solar personnel searched for these names in all solar projects, listed in the filed Settlement Agreement between Duke and the Solar Industry on February 2, 2018. (These projects were to receive grandfathered contract and rate terms pursuant to HB589). Strata Solar found no projects listed in the Settlement Agreement that related to the names associated with the Cooper Family. Herndon explained that the search was a comprehensive search. Any project showing a lessee with a corporate entity was searched further to determine if that corporate entity related to one of the Cooper Family names.

¹⁴ Brian O’Hara, of Strata Solar was the first attempted contact of Strata. O’Hara was identified by the NC Public Staff as a vocal participant in the Nameplate Dispute negotiations (see (PS-1, interview of Public Staff). O’Hara declined comment until he spoke with the attorneys for Strata. The Attorneys of Strata Solar then contacted EIS.

After searching these names and variations, the only lease found by Strata was a ground lease agreement showing Will Clark Properties, LLC as landlord. This lease was signed by Pell C. Cooper in 2013. (STRATA-2, Memo of Conference Call)

Strata Solar, through Hampton Dellinger, refused to allow interviews of Markus Wilhelm or Brian O'Hara, refused to provide the original email from Wilhelm to Governor Cooper and refused to provide additional information regarding communications between Wilhelm and the Governor. (STRATA-1, Email & Statement)

A letter and Statement of Facts was provided by Dellinger. These facts did not provide the information requested. (STRATA-1)

Cooper Property Summary

The facts listed in this section indicate that in 2012, Roy Cooper and Pell Cooper owned an LLC, Will Clark Properties. Land inherited from their father was placed into this LLC. The LLC then leased the land to Strata Solar/Nash 58 Farm. The ownership of Will Clark Properties changed from Roy Cooper and Pell Cooper to Pell Cooper alone and finally to Pell Cooper's wife alone, Meredith Cooper. However, the ownership of the lease remained in the Cooper Family.

The Cooper Family Land is located in Nash County, NC, near the planned path of the ACP. (MAP-1)

Benefit from the Nameplate Dispute

The investigation has identified no information indicating that Governor Cooper would personally, directly benefit from the negotiated Nameplate Dispute settlement. The Nameplate Dispute Settlement allowed additional Qualified Solar Facilities in the Queue to connect to the grid. There has been no information obtained to indicate Governor Cooper or his family had an interest in a Qualified Facility that was in the Queue at the time of the settlement.

Benefit from the MOU

The MOU, negotiated by Governor Cooper, specifically stated that one of the purposes of the \$57.8 million was for "developing renewable energy projects in and around the ACP's route".

The document developed by DEQ showing a list of "Possible ACP Mitigation Options" sent to the Governor's Office, on November 28, 2017 included:

Transformer Capacity – Duke to revisit the use of higher capacity transformers to allow for more renewable energy projects to access the grid. (Possible ACP Mitigation Options)

In documents provided by the Governor's Office, a drafted letter from the Governor's, Chief of Staff, Kristi Jones, invites County Managers in the counties affected by the ACP, to apply for funds from the MOU for purposes including "Renewable energy projects to reduce reliance on fossil fuels and provide a carbon offset, such as weatherization for better energy efficiency and community solar for clean energy production". (GOV-43, Draft Letter from Kristi Jones)

The Governor's Office has provided no information regarding the details of who would be eligible to receive the funds or how the funds would be administered.

None of the interviewed executives from Duke and Dominion could explain how or why language was placed in the MOU making the funds available for renewable energy projects. The executives could not explain how the money would be issued from the fund because those decisions would be left to the State of North Carolina and the Governor's Office. (DUKE-5, DUKE-7, DUKE-8, DUKE-9)

Prior to announcing the MOU in January of 2018, The Governor's Office did not have any written measures relating to the administration of the fund.

The language in the final version of the MOU, signed on January 25, 2018, states "The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of the state permitting for the ACP". (GOV-34)

No Executive Order was signed by the Governor.

In an interview by Travis Fain of WRAL, Ken Eudy stated that he and others in the Governor's Office had verbal discussions about the possible ways the Fund could be administered and the possible ways the Fund could be structured by the Executive Order. However, nothing was put into writing and no internal documents, such as emails or memos, were created to show these conversations actually occurred. (GOV-10, pg. 7) Eudy said in the interview "We did not have the details of the fund nailed down in writing. I think we had it in our heads but we didn't have it nailed down at the time we announced it". (GOV-10, pg. 1)

Funds from the MOU to expand transformer capacity could potentially benefit landowners and solar developers by allowing more projects to connect to the power grid without having to pay for the upgrades to substations. The MOU limits the funds to be used "in and around the ACP's route". Nash County records show that Roy C. Cooper, III, owns property, near the ACP route.

Over 300 acres of other land was transferred from Roy Cooper and Pell Cooper to Sapony Creek Properties, LLC. This LLC was owned by both Cooper brothers until 2019 when Pell's name was removed and Roy C. Cooper, III became the sole listed owner.

The land, owned by Roy C. Cooper through his LLC, Sapony Creek Properties, LLC, is located in Nash County, NC. The ACP is planned to travel through Nash County. (MAP-1) From the language written in the MOU, the lack of any written governing documents for the fund, and the location of Roy Cooper's land, it appears that, if the MOU had been funded, Roy C Cooper, III, would have been in a position to benefit from the MOU funds. However, the investigation has received no direct information indicating Roy C. Cooper, III, intended to utilize the funds from the MOU to subsidize renewable projects on his land.

SUMMARY OF RELEVANT INFORMATION

The following summary of information is compiled from information listed in this report. Investigators' statements and opinions are included, where appropriate, to reflect the relevance of the information.

Events in Late 2017

In late 2017, the ACP partners were working with NC DEQ to obtain the required 401 Water Quality Certification. The permit was needed by the end of December 2017 so tree clearing could begin and be completed by March 31, 2018

In late 2017, local business leaders, The Department of Commerce and the Governor's Office expressed concern that the ACP would not deliver on promises of job creation and economic development and expressed concern that gas from the ACP would not be available as promised. The local business leaders, while communicating with the Governor's Office, requested that the ACP partners create a fund to be used to pay for the extension of gas lines.

November 30, 2017, ACP executives consistently relayed the message that the ACP would make gas available and that availability and lower price would spur economic development and a fund would not be required.

Also, in late 2017, Duke and the solar industry were involved in a dispute over an interpretation of a section of HB 589, referred to as the Nameplate Dispute. In November of 2017, this dispute was at an impasse.

Governor Cooper Meets with Lynn Good on November 30, 2017

On November 30, 2017, a meeting was held between Lynn Good, CEO of Duke, and Governor Cooper. At this meeting, Governor Cooper asked Good to create a fund to extend gas lines as his "advisors", the local business leaders, had previously requested. The Governor also asked Good to work to resolve the Nameplate Dispute.

Governor Connects Nameplate Dispute, Mitigation Fund and 401 Permits

Good said the Governor did not make the issuance of the ACP Permits, conditional on the creation of a fund or the resolution of the nameplate dispute. However, she understood from their conversation, that the Governor wanted these tasks completed by the end of December 2017, and at same time as the issuance of the ACP permits. This timeframe, coincidentally, is the same time that the ACP needed the Permits signed to begin tree clearing.

The text messages on January 2, 2018, between Eudy and McKinney show the MOU and Nameplate Settlement were not negotiated separately. In their texts, they agree that they should not “sign ACP agreement unless solar deal works”.

The following was stated in text messages between Ken Eudy and Alex Miller, a Lobbyist for the solar industry. This text shows that Eudy is using information from the solar industry involved with the Nameplate Dispute to negotiate with the ACP.

Miller: “My POCs are out already so I’ll need to get this directly from Markus.

Can I tell him why you’re asking?”

Eudy: *“Trying to negotiate wit your friends over ACP. Wanna have the number of projects in my hip pocket.*

Duke Begins to Work on Creating a Fund and Resolving Nameplate Dispute

On December 1, 2017 Good instructed her staff to begin working to resolve nameplate dispute and create a fund as requested by Governor Cooper.

The Nameplate Dispute was resolved (in principle) on December 14, 2017. (See Nameplate Dispute Conclusion below)

Statements That Duke was Considering a Fund are Not Corroborated

Even though, information, as listed in this report, shows that Duke was not contemplating a fund prior to November 30, 2017, some Duke executives said that Duke had considered the creation of a fund prior to that date. The below information contradicts these statements:

Fountain said on November 22, 2017, he told “advisors” in Eastern North Carolina that a fund was not needed. He said he changed his mind, between November 22, 2017 and November 30, 2017, when he learned that West Virginia and Virginia had negotiated funds. Information listed in this report shows that Fountain did not learn of the Virginia and West Virginia funds, until December 11 or 12 of 2017.

Lloyd Yates said he, Fountain and Frank Yoho had conversations about creating a fund for economic development prior to December 2017. He said they were just conversations, and there are no emails or documents reflecting this idea. He said no numbers were run, or any analysis conducted regarding the fund prior to December.

Hawkins, who was primarily responsible for creating the fund, after it was requested by the Governor, said that prior to November 30, 2017, she was not aware of any internal research or analysis by Duke regarding the creation of a fund.

Duke has not produced any documents to show a fund was being considered by Duke, prior to November 30, 2017.

The initial draft of the fund was prepared by Duke. This draft showed the fund was entirely designated for environmental mitigation. This draft is inconsistent with the premise that Duke had put effort into considering a fund for the sole purpose of economic development.

This first draft was not simply a template of the Virginia MOU as has been suggested by Ken Eudy, in his interview with Travis Fain and in his testimony on November 8, 2019. Information from Dominion shows that a paragraph was purposely added to the first draft of fund to allow for other uses beyond mitigation of interior forest habitat. No Duke Executives could explain why the first draft was written and submitted in this way.

Governor's Office Planned Uses of the Fund Prior to the Meeting with Lynn Good

Ken Eudy, in his testimony on November 8, 2019, stated that the Governor did not ask Lynn Good to create a fund during the meeting on November 30, 2018. In his interview with Travis Fain, he said Duke came up with the Idea of the fund.

Even though Eudy said Duke came up with the Idea of the fund sometime after November 30, 2017, information listed in this report shows that the Governor's Office was planning ways to use money from an "ACP Mitigation" fund prior to that date.

A document titled "Possible ACP Mitigation Options" was created as the result of a "APC Brainstorm" meeting at DEQ on 11/28/17. This document lists possible uses of funds relating to the ACP. This document was emailed from DEQ to the Julia White then to Kristi Jones at the Governor's Office who, at that time, was preparing questions and talking points for a meeting, on 11/30/17, between the Governor and Lynn Good.

Duke Begins Work to Create a Fund at the Request of the Governor

In the first week of December 2017, Duke calculated (based on farm and tap data in the path of the proposed pipeline) an amount of \$50 Million for the fund. (\$25 Million for economic development and \$25 Million for agriculture). \$5 Million was added later at the suggestion of Dominion for environmental mitigation.

On December 5, 2017, Kathy Hawkins proposed this amount to Ken Eudy.

On December 6, 2017, Julia White emailed the document "Possible ACP Mitigation Options" (created on November 28, 2017) directly to Governor Cooper"

On December 13, 2017, Duke sent the initial draft of the proposed fund for \$55 Million to Ken Eudy. This draft showed the fund was entirely designated for environmental mitigation.

On December,19 2017, Ken Eudy and Kathy Hawkins discussed the proposed fund. During the discussion, Eudy told Hawkins that Governor would be making the final decision on the ACP Permit instead of DEQ Secretary Regan. Hawkins texted this information to Lynn Good.

On November 8, 2019, in his testimony before the Joint Legislative Commission on Governmental Operation Subcommittee on the Atlantic Coast Pipeline, Ken Eudy was asked: "Did you inform anyone that the Governor would be making the decision on the 401 Certification?" Eudy answered, "No, Sir".

Governor's Office Takes Control of Fund & ACP 401 Permit

On December 20, 2017, The Governor's Office sent a revised draft for the fund, changing several things. The counterparty was changed to "the State of North Carolina by and through the Office of the Governor". The purpose of the fund was changed to reflect the funds would be designated for environmental mitigation, economic development and renewable energy.

Even though Duke had stated the intended purpose of the fund was to provide economic development by extending gas lines from the ACP, Duke accepted these changes and did not dispute the new designated uses of the fund.

On December 20, 2017, texts messages and emails, which the Governor's Office provided, indicated the Governor's Office, in preparing a new document in response to Duke's proposed fund had considered requesting the fund amount be increased to \$80 million.

On December 20, 2017, McKinney texted Eudy about the red line MOU. Stating "Sending now. Aggregate fund amount listed at 80M. Can move that around." Eudy Replied: "Nah. Leave it at \$55mm. From this text, it appears as the fund is not based on any real need or analysis.

At some point in December 2017, Hawkins asked Ann Loomis of Dominion, about increasing the fund to \$80 Million to match total mitigation of Virginia. After Loomis explained Virginia's mitigation differences, the NC fund remained at \$55 Million.

The above facts indicate the Governors Office was asking for more money that was initially offered by Duke, showing the fund was not voluntary.

When asked, Lynn Good, Kathy Hawkins, David Fountain and Lloyd Yates could not explain why the purpose of "renewable energy" was included in the new MOU. Lynn Good said the administration of the fund was left to the State of North Carolina.

On December 29, 2017, Leslie Hartz, on ACP signed an updated version of the MOU and, according to text messages, the Governor's Office was planning to sign the MOU on January 2, 2018. Text messages indicated the signing the MOU was cancelled because the nameplate dispute settlement was not complete.

On January 3, 2018, Jeni Owen of the Governor's Office, sent an email to Governor's Office staff members indicating Virginia has negotiated a \$100 million ACP mitigation fund agreement.

On January 4, 2018, as DEQ employees were finalizing ACP Hearing Officers Report and planning to send it to Division Director, the DEQ Secretary's Office requested that the HO Report be reviewed by the Secretary's Office. This additional review delayed the issuance of the 401 Permit by approximately 2 weeks. No edits were made to the HO report when it was returned from the Secretary's Office.

On January 11, 2018, after learning that Virginia negotiated a fund for \$57.8 Million (entirely for mitigation of interior forest habitat), Ken Eudy and William McKinney request an additional \$2.8 Million from Kathy Hawkins of Duke. Duke did not agree at that time.

On January 13, 2018, Hawkins texted Eudy to ask help in getting Programmatic Agreement (PA) signed so VA and WV can begin cutting trees. Eudy said he will help but instead orders the PA to be recalled on Sunday, January 14, 2018. Eudy has claimed he had it recalled for legal review. Eudy did not inform Hawkins that he was recalling the PA.

On January 16, 2018, Lloyd Yates texted Kristi Jones, Governor's Chief of Staff, to ask why ACP Permit is dragging. In his text he said, "we have had a number of discussions with Eudy and slow progress". This text is consistent with the Statement Eudy made to Hawkins on December 19, 2017 when he told her the Governor will be making the decision on the ACP Permit. In this text Lloyd says they were discussing the slow progress with Eudy. He doesn't mention anything about discussions with DEQ. In this text string, Yates and Jones make arrangements for Lynn Good and Governor Cooper to have a discussion on January 17, 2018 at 4:00PM about the ACP Permit. Nothing is suggested by Jones that Duke should speak with DEQ about the permit.

Conversation Between Governor Cooper and Lynn Good on January 17, 2018

Lynn Good said during her phone conversation with Governor Cooper on January 17, 2018, he requested that the mitigation fund be increased by \$2.8 Million to \$57.8 Million. Good agreed to Cooper's request.

The next day, On January 18, 2018 at 12:31PM, an email titled "ACP TICK TOCK" was sent by Ken Eudy to the Governor's Staff members. Eudy states in the email "Gov wants to get a tick tock on this. Here's a start. Can you fill it out? He especially wants to

understand how we think the word of the solar and mitigation agreements will get out. I put a placeholder statement in for discussion purposes only”.

The email has a planned schedule of tasks as follows:

Timing	Activity	Owner.
1-18	State Historic Preservation Officer signs PA agreement returns it to FERC”.	William.
1-18/24	Gov Makes stakeholder calls	Morgan
1-19	Sr. staff reviews internal and external messaging, sends to gov	Julia
1-19	DEQ staff begins process of final 401 approval	Julia
1-19/1-22	Gov reviews messaging	Sadie
1-23	Gov staff meets with DEQ to align communications	Julia
1-23	Gov staff meets with Commerce to secure statements from economic leaders	Ken
1-23	Gov staff meets with Solar developers to nail down their messaging on queue agreement	Ken
1-23/24	Sr. staff may tweak messages base on stakeholder feedback	Sadie
1-25 pm	Legislative liaison briefs caucus leaders	Brad
1-26 am	DEQ notifies ACP	Julia
1-26 am	NCDP briefed	Morgan
1-26 noon	DEQ issues 401 permit	Julia
1-26	Press office issues gov statement outlining carbon-offsetting measures	Sadie
1-26 pm	Local or regional stakeholder calls by IGR	Jordan

This email was sent at 12:31PM, the day after Lynn Good agreed to increase the Mitigation Fund by \$2.8 Million. The additional \$2.8 Million that had been previously requested by McKinney and Eudy on January 11, 2018. It appears that Duke did not agree to the additional funds, until Cooper asked Good. It also appears that after Good agreed to the additional funds, Eudy and the Governor discussed that DEQ would begin the final 401 Permit Process for the ACP.

The first item on the schedule indicates that On January 18, 2018, “The State Historic Preservation Officer signs PA, returns it to FERC”. The owner of this task is listed as “William”.

Eudy has made statements that he recalled the PA, on January 14, 2017, for “legal review” and it was returned after the review. From Eudy’s email instruction to William McKinney to get the PA signed and returned, it is apparent that the legal review, was complete (or was never required) but it had not yet been signed and returned.

On January 18, 2018 at 4:19 PM, McKinney texted Roy Cooper “PA signed and sent. DE notified”. Cooper texted back “Great”. This text indicates Cooper was aware that the PA had been previously recalled and that Duke was expecting a notification of when it would be sent.

According to his “Tick-Tock” email, on January 19, 2018, DEQ would to begin the process of the final ACP 401 permit. This is consistent with Eudy’s statement on December 19, 2017, to Kathy Hawkins, that the Governor would be making the final decision on the 401 Permit.

On January 18, 2018, at 10:00PM, Karen Higgins emailed Brian Wrenn, the draft 401 certification and draft denial letter. On January 19, 2018, at 9:26PM, Karen Higgins emailed Brian Wrenn with revised 401 and HO Report. The HO Report was unchanged when she got it back from the Secretary's Office.

Governor's Office Attempts to Make the MOU Appear to Be Voluntary

On February 8, 2018, at a hearing held by the House and Senate Appropriations Base/Budget Committees, Lee Lilley, Director of Legislative Affairs for the Governor's Office, was questioned about the relationship of the MOU to the 401 WQC. Lilley stated that the MOU was a voluntary agreement made by the project developers and had been separate from the 401 WQC.

On February 8, 2018, Ken Eudy called Kathy Hawkins, after the General Assembly's Joint House and Senate Appropriations/Base Budget committees meeting, to request that Duke prepare a letter stating that the \$57.8 Million Fund was voluntarily provided on behalf of the ACP. Hawkins told him that they "were not doing that." She then notified Duke management and they agreed that a letter, as requested by Eudy, would not be prepared.

On November 8, 2019, in his testimony before the Joint Legislative Commission on Governmental Operation Subcommittee on the Atlantic Coast Pipeline, Ken Eudy stated the following in response to questions:

SENATOR BROWN: Did you ask Duke to provide a statement regarding the voluntary status of the MOU and fund?

KEN EUDY: No, Sir.

SENATOR BROWN: Just to back track for one second. I asked you earlier did you ask Duke to provide a statement regarding the voluntary status of the MOU and fund. Did anyone in the Governor's Office do that?

KEN EUDY: Not that I am aware of.

Nameplate Dispute Information

The information listed under the Nameplate Dispute Section shows that, prior to the meeting between Duke CEO, Lynn Good and Governor Cooper on November 30, 2017, Duke wanted to resolve the nameplate dispute.

Prior to November 30, 2017, the Public Staff was unwilling to assist in the negotiations between Duke and the Solar Industry. Duke was not willing to settle, without the support of the Public Staff, because the costs of the settlement could not be passed to ratepayers.

On November 30, 2017, Governor Cooper asked Lynn Good to work to resolve the

nameplate dispute. Good informed him that a settlement would result in approximately \$180 Million in lost savings to ratepayers from HB589. Knowing this, Cooper asked her to resolve the nameplate dispute and create a mitigation fund, by the end of December 2017.

After the meeting between Lynn Good and Governor Cooper, on November 30, 2017, Duke found that Chis Ayers and the Public Staff were willing to assist in negotiations and offered to hold a meeting at their office on December 14, 2017, where a deal was reached.

Information from Duke, the Public Staff and the solar industry, shows that the Governor's Office encouraged all parties to settle the nameplate dispute and did not advocate for one side or the other. However, the Governor knew that a settlement would potentially cost the ratepayers \$180 Million and would benefit the solar industry. The actual settlement, at the middle nameplate rating, resulted in loss of savings of approximately \$100 Million. As a result of the settlement the solar industry benefited by having more solar facilities connected at the grandfathered rates and contract terms. Duke agreed to the settlement because the Public Staff recommended that the costs to add additional facilities would be passed to ratepayers.

Ayers said the agreement, on the surface, did not necessarily provide the most benefit to the ratepayers for whom the Public Staff advocates. However, the agreement avoided a potential lawsuit by solar groups that could have cost ratepayers more if the solar groups were successful.

Duke executives have provided differing opinions of their concerns over lawsuits.

Hawkins said Chris Ayers, who was appointed by a Republican Governor, was supportive of the negotiations and was key to the settlement. Hawkins acknowledged that Ayers was now subject to reappointment by the current Governor.

On May 1, 2019, Governor Cooper announced that he nominated Ayers for reappointment as the Executive Director of the Public Staff of the North Carolina Public Utilities Commission.

Duke Executives Stated that MOU and Nameplate Settlement not a Condition of 401 Certification

Duke CEO, Lynn Good insisted that the ACP partners and Duke did not believe that the creation of the Mitigation Fund and Settlement of the Nameplate Dispute, as requested by Cooper, had any bearing on the issuance or timing of the 401 Permit for the ACP. She said the ACP partners and Duke believed that the ACP was entitled to the permits. Good said "Duke did not and would not pay for permits". Executives of Duke made similar statements.

Information in this report shows that Duke and the ACP partners provided all required information to DEQ and were entitled to the permits. No information has been found to indicate that Duke and the ACP partners “paid” for a permit that they were not entitled to receive. However, the information shows, at the Governor’s request, Duke and the ACP partners agreed to create a fund, that was not a requirement imposed by the Federal Energy Regulatory Commission or the State of North Carolina. The benefit to the ACP partners for creating the fund, is not clear. The MOU for the fund showed the fund was to be controlled entirely by the governor, with no documents showing how it would be administered. The listed purposes of the Governor’s fund could not be fully explained by the Duke Executives interviewed. Information in this report shows that permits, needed by the ACP, were delayed until Duke agreed to the full fund amount of \$57.8 Million.

Multiple Requests for Cumulative Impact Information

During the evaluation by DEQ of the 401 Certification application, multiple requests were made to the ACP for additional information. These requests consistently asked for additional information as it related to cumulative impacts that could result from future economic development from the ACP. In fact, the last two requests were only asking for information relating to cumulative impacts. Multiple requests for additional analysis of cumulative impacts were sent because the ACP sometimes did not provide the details on the projected economic development as requested

DEQ Employees Evaluating 401 Not Notified of Economic Development Fund

The Secretary’s Office was aware that the additional requests for information related to the cumulative impacts from expected future economic development. DEQ employees were required to notify the Secretary’s Office of all requests of information.

Information in this report shows that Secretary Regan was aware that a fund was negotiated by the Governor’s Office and Duke and discussed the fund on December 20, 2017. Members of his office, including Sheila Holman and Jennifer Mundt were involved in creating a document titled “ACP Mitigation Options” on November 30, 2017.

Even though, the DEQ Secretary’s Office knew that DEQ employees evaluating the 401 application, had concerns over the projected cumulative impacts from future economic development, it did not notify them of the fund to promote economic development near the ACP.

Governor told Duke that DEQ was “Balking” over Environmental Justice

During the meeting Between Governor Cooper and Lynn Good, on November 30, 2017, Governor Cooper told her there was “balking” at DEQ over the issuance of permits for the

pipeline, and in particular over issues of environmental justice.” Cooper did not explain what he meant by this statement but during, this meeting, Cooper also asked Good to create a fund for economic development and to do so at the same time the ACP 401 permits were issued.

Information from DEQ employees indicated that, environmental justice issues are important but were not a factor to be considered in the issuance of a 401 Certification.

In the final HO Report, it was written: “environmental justice is not included in the criteria upon which the Director must evaluate the application. Although environmental justice is not an evaluation criteria, the Department has been intimately engaged with the stakeholders of North Carolina through the permitting process.”

CONCLUSION

From the information presented in this report it would be reasonable to conclude that Governor Cooper improperly used the authority and influence of his Office to cause the ACP partnership to commit to a \$55 million "Mitigation Fund" that the Governor placed under his complete control. Governor Cooper continued to use his authority and influence to delay the ACP permitting process until the ACP partners agreed to increase the fund amount to \$57.8 million.

Also, from the information presented in this report, it would be reasonable to conclude that Governor Cooper used the influence and authority of his Office to pressure parties involved in the Nameplate Dispute, to enter an agreement that favored the solar industry at the cost of \$100 Million to the ratepayers of North Carolina.

No information was identified from the investigation to show Governor Cooper personally benefited from the creation of the Mitigation Fund or from the Nameplate Dispute settlement.

The above conclusions are based on the information obtained from individuals and entities to the extent they cooperated with the investigation. Additional information potentially exists with government agencies, private companies, and individuals that have not fully cooperated.

The investigation was not conducted for the purpose of identifying criminal violations and the information has not been evaluated to determine if specific criminal statutes have been violated. However, the information suggests that criminal violations may have occurred. An investigative agency with the authority to compel cooperation and the production of documents could potentially obtain additional information to identify violations of criminal statutes.

EXHIBIT LIST

Source	Number	Description
ADVS	1	Interview Report Stephenson 1-24-19
ADVS	2	Interview Report Tolson 2-4-19
ADVS	3	Interview Report Wooten 1-29-19
CJ	1	Carolina Journal Article
DEQ	1	ACP Application Info 5-9-17
DEQ	2	Interview Transcript B Munger
DEQ	3	Interview Transcript B Wrenn
DEQ	4	Interview Transcript J Burdette
DEQ	5	Interview Transcript J Zimmerman
DEQ	6	Interview Transcript K Higgins
DEQ	7	Interview Transcript L Culpepper
DEQ	8	Statement of Jeffrey Poupart 10.31.19
DEQ	9	Statement of Jennifer Mundt 10.31.19
DEQ	10	Statement of Karen Higgins 10.31.19
DEQ	11	Statement of Sheila C. Holman 10.31.19
DEQ	12	Email from Bill Lane 10-31-19
DEQ	13	ACP Hearing Officer's Report 1-22-18
DEQ	14	Wrenn's Notes on EJ
DEQ	15	Add Info Request Letter 9-14-17
DEQ	16	Add Info Request Letter 10-26-17
DEQ	17	Add Info Request Letter 11-28-17
DEQ	18	Add Info Request Email 12-14-17
DEQ	19	Higgins Notes (Draft ACP Schedule)
DEQ	20	Email Higgins to Morris-McLawnhorn 12-14-17
DEQ	21	Email - Wrenn-Higgins-Burdett 1-3-18 HO Report edits
DEQ	22	Higgins Notes 1-4-17 HO Report to Linda on Monday
DEQ	23	Emails Wrenn-Higgins-Burdette-Munger re HO report 1-5-18
DEQ	24	Email Wrenn sends HO to Poupart & Munger 1-5-18
DEQ	25	Add Info Received 12-20-17
DEQ	26	Email String & attachment - Mitigation Options 11-28-17
DEQ	27	Email Higgins to Trichell & response 1-16-18 & 1-17-18 (request & response)
DEQ	28	Email Trichell to Higgins response 1-18-18 (final request & response)
DEQ	29	Emails (final days of ACP Permit)
DEQ	30	Email Higgins to Wrenn 1-18-18 (draft 401 & draft denial)
DEQ	31	Draft Denial of 401
DEQ	32	ACP Signed Permit Letter 1-26-18
DEQ	33	Heyl to White Emails
DEQ	34	Email Vinson to DEQ-Upper Mgmt to know about ACP actions
DOM	1	Interview Report Trichell 10-21-19
DOM	2	Interview Report Loomis 10-21-19
DOM	3	Interview Report McKay 10-21-19

Duke	1	ACP Whitepaper Proffer
Duke	2	Exhibit 1 to Whitepaper (Timeline of Permitting Events)
Duke	3	Exhibit 2 to Whitepaper (Fountain Letter to Copeland)
Duke	4	Nameplate Whitepaper Proffer
Duke	5	Interview Report Good 8-23-19
Duke	6	Interview Report Jennings 9-13-19
Duke	7	Interview Report Fountain 9-13-19
Duke	8	Interview Report Hawkins 9-9-19
Duke	9	Interview Report Yates 8-23-19
Duke	10	Text Message Hawkins to Good 12-19-17
Duke	11	Interview Report Hawkins 11-18-19
DUKE	12	Agreement for Interviews
EIS	1	EIS Contact Log with DEQ
EIS	2	Email & Attachment Request for Info via Proffer
GA	1	Interview Report Hammonds-Blanks 3-12-19
GA	2	Lee Lilley Transcript
GOV	1	Letter from Jones 1-17-19 declining interviews of State employees
GOV	2	Email String & Mitigation Options (11-28-19) Heyl to White to Jones
GOV	3	Memo Briefing Meeting with Lynn Good
GOV	4	Questions for Lynn Good
GOV	5	Email J White to Cooper 12-6-17 (ACP Mitigation Options)
GOV	6	Texts McKinney-Eudy-Cooper) (1-1-18 -about MOU signing
GOV	7	Eudy & White Testimony 11-8-19
GOV	8	Email transcript from Wilhelm to Gov
GOV	9	Brief to prep for call with Wilhelm 8-30-17
GOV	10	Fain Interview of Eudy
GOV	11	Texts Levitas-Eudy (12-13-17 -12-22-17)
GOV	12	Texts Hawkins-Eudy 12-13-17
GOV	13	Text Hawkins-Eudy -(Deal with Steve's gang 12-14-17)
GOV	14	Texts Levitas-Eudy (1-1-18 & 1-2-18)
GOV	15	Text Eudy-McKinney 1-2-18 (don't sign until solar deal works
GOV	16	Text McKinney-Eudy 1-24-18 (all eyes on Ayers)
GOV	17	Texts Hawkins-Eudy (PA) 1-13-18
GOV	18	Email Cherry requesting recall of PA (1-14-18)
GOV	19	Cherry Emails to FERC & Eudy about PA recall
GOV	20	Emails Eudy-McKinney about PA recall
GOV	21	Email Eudy to Gov staff about PA
GOV	22	Email Eudy to Regan why was Tree Cutting not part of ACP discussions
GOV	23	Eudy Tick Tock Email 1-18-18
GOV	24	Text McKinney-Eudy PA Sent
GOV	25	Text McKinney to Cooper PA sent 1-18-18
GOV	26	Emails Stephenson-McKay-Copeland-Eudy 11-1-17 to 11-4-1
GOV	27	Tarr Email Research on Fund 12-8-17
GOV	28	Email McKinney to Eudy MOU \$80Million 12-20-17

GOV	29	12-13-17 Original MOA Draft
GOV	30	1-19-18 MOU Draft
GOV	31	12-22-17 MOU Draft
GOV	32	12-29-17 MOU Draft
GOV	33	1-25-18 MOU signed by McKinney
GOV	34	1-25-18 MOU Final
GOV	35	Letter Stephenson to Fountain sent to Cooper 11-30-17
GOV	36	Email Tarr-Eudy 12-22-17
GOV	37	Email 1-3-18 VA has negotiated 100M fund
GOV	38	Texts Lloyd Yates - Kristi Jones 1-16-18
GOV	39	Email Hammond-Banks 1118
GOV	40	Email Walker FYIO 0689)
GOV	41	Email Magarira-McKinney 0985
GOV	42	Email McKinney-Lane about MOU 5706
GOV	43	Draft Letter From Kristi Jones -purpose of Funds (2-8-18)
GOV	44	(Text Eudy Alex Miller re Solar Deal-ACP)
GOV	45	(Text McKinney-Eudy \$80 Million 12-20-19)
LEV	1	Interview Report - Steven Levitas 5-2-19
MAP	1	Map of ACP Route
NASH	1	Deed - Cooper Brothers to Will Clark Properties 12-11-12
NASH	2	Lease - Will Clark to Strata to Nash 58
NASH	3	Sapony Creek Properties Tax listing
NASH	4	Will Clark Properties Tax listing
NASH	5	Deed - Will Clark Properties to Sapony Creek - 11-4-14)
NCBAR	1	Article by Karen Kemerait NCBAR on HB590
NCSOS	1	Will Clark Properties Articles of Organization
NCSOS	2	Will Clark Properties Annual Reports 2013-2019
NCSOS	3	Sapony Creek Articles of Organization
NCSOS	4	Sapony Creek Annual Reports 2015-2019
NCSOS	5	Strata Solar Annual Report
NCSOS	6	Nash 58 Farms Annual Report
NCUC	1	Nameplate Settlement Agreement
NCUC	2	Nameplate Settlement Order
PS	1	Interview Report Public Staff 4-2-19
SHPO	1	Email string- Cherry to Greene 10-7-1
SHPO	2	Email Cherry to Greene with attached PA -sig page
STRATA	1	Email String & Statement - Strata Solar
STRATA	2	Report of Conference Call with Strata
TBJ	1	Triangle Business Journal Article 2-7-18
VA	1	VA Mitigation Agreement
WV	1	WV Mitigation Agreement
WV	2	WV Mitigation Agreement (amendment 1)