

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.