



**REPORT OF INTERVIEW**

**DATE:** September 13, 2019  
**TIME:** 3:00 PM

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

**PARTICIPANTS:** David Fountain, Senior Vice President, Legal, Chief Ethics and Compliance Officer and Corporate Secretary, Duke Energy  
Vijay Bondada, VP for Litigation, Duke Energy  
Marcy Selle, Outside Counsel, Womble Bond Dickinson, LLP  
Jim Cooney, Outside Counsel, Womble Bond Dickinson, LLP  
Tom Beers, EIS Investigator  
Kevin Greene, EIS Investigator

On the above date and time, Eagle Intel Services Investigators Tom Beers and Kevin Greene conducted an interview of David Fountain, Senior Vice President, Legal, Chief Ethics and Compliance Officer and Corporate Secretary for Duke Energy, at the offices of Womble Bond Dickinson in Raleigh, North Carolina. This interview was previously arranged by and through Jim Cooney, outside counsel for Duke Energy, at the request of EIS investigators. The following information was provided by Fountain unless otherwise indicated:

1. Fountain was asked to explain the evolution of the Mitigation Project Memorandum of Understanding (MOU) that was signed by the Office of the North Carolina Governor on January 25, 2018. This document included the commitment of a \$57.8 Million fund (Fund) to be paid by the Atlantic Coast Pipeline (ACP) Partners to the Office of the Governor.
2. Fountain said during late 2017, he was the President of North Carolina for Duke Energy and was responsible for the rate cases before the North Carolina Utilities Commission and was required to testify before the Commission in late November 2017, and in March 2018. He therefore had limited involvement with the MOU that was negotiated in December and January.
3. He said that the Atlantic Coast Pipeline was a \$5.5 billion infrastructure project that was designed to through three states of West Virginia, Virginia and North Carolina. He explained the project was heavily reviewed by the federal government and by North Carolina's Department of Environmental Quality.
4. Per Fountain, by late 2017 the ACP pipeline was at the tail-end of the permitting process before the Federal Energy Regulatory Commission. It was necessary to



receive the North Carolina 401 and other permits in order to receive the notice to proceed to begin tree clearing along the 600-mile route where the ACP was to be built. He explained that the first quarter of 2018 was a critical time when trees could legally be cleared and therefore the permits for the ACP were needed by the 1<sup>st</sup> quarter of 2018.

5. In middle 2017 and into the fall of 2017, the ACP partnership promoted the project and the economic development benefits that it would bring. The ACP believed the economic benefits would include the creation of 4000 jobs during the construction phase of the ACP with a creation of approximately \$700 million benefit to the economy from construction.
6. After the ACP was in place, the local economy would benefit from access to natural gas through the Piedmont distribution system. There would be three taps in North Carolina that would be accessible to Piedmont for delivery to Eastern NC. Having this access to natural gas would be attractive to manufacturing, agriculture and food processing businesses and would be an incentive to locate to eastern NC. Fountain said the leaders in Eastern NC saw it as a lifeline to attract business and compete for large manufacturers.
7. Fountain said that Eastern North Carolina has a large farming industry but because of the lack of natural gas, food processing plants can't compete in NC. The natural gas that would be available from the ACP through the Piedmont system would help attract food processing plants to Eastern NC.
8. During late summer to early fall of 2017, Fountain had numerous conversations with three leaders of Eastern North Carolina business organizations. Durwood Stephenson, of the I70 Corridor Group was one of these business leaders. Stephenson was featured in some of the ACP's television advertisements promoting the economic benefits of the ACP. Norris Tolson and Larry Wooten were the other two business leaders that were collaborating with Stephenson. These three individuals have been described as Governor Cooper's "advisors in Eastern North Carolina" and will be referred to as such hereinafter.
9. At some point in the fall of 2017, the advisors in Eastern North Carolina 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. At this time the General Assembly was not in session and would not be in session again until February.

10. Fountain, during a meeting with the advisors in Eastern North Carolina, on November 22, 2017, told them that the ACP would provide sufficient natural gas to promote economic development and a fund was not required.
11. In a letter to North Carolina Secretary of Commerce on November 8, 2017, Fountain provided details of how the ACP would provide economic development.
12. Fountain said, on November 30, 2017, Lynn Good met with Governor Cooper to discuss several issues including; coal ash, the pending rate case, ACP permits, Nameplate/Solar Industry Dispute, Project New World/Toyota plant and the economic development fund.
13. Fountain remembered that, prior to the meeting, Duke's executive staff provided information to Good in order to prepare her to discuss these topics with the Governor on November 30, 2017.
14. On December 1, 2017, at approximately 7:30 AM, Lynn Good held a phone conference call with Duke's Executive Staff including Fountain, Hawkins, Yoho and Yates. Fountain remembered that he was in the parking garage at the Utilities Commission at the time and took the call from his truck. During the call Good reviewed the topics discussed on November 30, 2017 with the Governor. Good provided instructions to the staff and directed them to begin work on establishing a fund in conjunction with the advisors in Eastern North Carolina. She also requested her staff to work to settle the nameplate dispute with the solar industry.
15. Good requested that these tasks be completed by the end of December if possible. Fountain did not remember if a reason was discussed for the completion of the tasks by the end of December. He said when the CEO sets the schedule, you try to meet it.
16. There was never any discussion indicating the ACP 401 permit would not be issued or would be delayed if the requests of the Governor were denied.
17. Fountain explained that he did not question Good regarding the reasons for the change in establishing 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 understood why North Carolina would also want to have a fund.

18. He said that during this time he was heavily involved with litigation of a rate case. He said proceedings were held during the week after Thanksgiving. He remembered the proceedings beginning on November 27 and he testified on the 28<sup>th</sup> and 29<sup>th</sup> of November 2017. Even though he was occupied with the rate case during this time, he remembered that it was during this time he found out that VA and WV had mitigation funds causing him to change his view on the creation of a fund for economic development for North Carolina.
19. It was pointed out to Fountain that the funds in WV and VA were designated specifically for environmental mitigation and were not for economic development as requested by the advisors in Eastern North Carolina. Fountain indicated that his feelings about a fund changed after learning about WV & VA having funds. 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. Fountain did not know why the initial agreement was drafted in this manner and was not involved in the drafting. 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 indicated that it was the intent of the fund was to provide access to natural gas for economic development.
20. Fountain 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. This was done by estimating the cost to build infrastructure to permit access to 10 medium sized businesses and 10 farming operations.
21. Fountain said Kathy Hawkins was the primary person working on the fund. She provided the information to Fountain and the rest of Executive Staff.
22. Fountain was not part of negotiations that resulted in the fund agreement. The investigators pointed out that the next 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.

23. When asked who would have approved the fund by the ACP, Fountain said that Lynn Good of Duke and Tom Farrell of Dominion may have discussed the fund. Fountain was not part of those discussions.
24. Fountain said he had several meetings and conversations with Michael Regan, Secretary of DEQ. These conversations were generally about the slow progress of the ACP 401 permit. Regan told Fountain that DEQ was completing a very thorough review that could withstand possible challenges from the many environmental groups that were opposed to the ACP. Fountain understood Regan's position was that DEQ was being cautious with this permit review because it would likely be challenged.
25. Fountain remembered a conversation where he and Regan discussed the proposed mitigation fund. Fountain does not remember that Regan asked that the fund be increased to \$100 million. He remembered that Regan compared the fund to the \$100 million CWMTF fund and made suggestions that the fund be managed in similar way.
26. Fountain did not have any contact regarding the proposed fund with the Governor's Office. He said Kathy Hawkins was primarily dealing with the Governor's Office regarding the fund. He was aware, through internal memos, the Governor's Office requested, in January 2018, that the fund be increased to \$57.8 million to match the fund in Virginia. Fountain was also aware that Kathy Hawkins and Lloyd Yates were periodically checking in with the Governor's Office on the status of the 401 Permit.
27. Fountain was never made aware that the Governor was going to make the final decision on the 401 permit instead of DEQ. Fountain was working on the assumption that DEQ was making the final decision.
28. Fountain was not aware that the Governor's office had scheduled a signing of the MOU for January 2, 2018 and was not aware that the signing was cancelled due to the nameplate settlement not being resolved.
29. Prior to the 401 permit being issued, Fountain had never heard that a draft denial letter was shown to anyone. Fountain found out through public information after the investigation started that a draft denial letter for the ACP 401 permit was prepared at DEQ. It was never shown to anyone at Duke, as far as he knew.

30. During the phone conference on December 1, 2017, Lynn Good asked her staff to work to settle the nameplate dispute with solar developers as requested by the Governor. Fountain said he was not surprised by this request because he knew Duke wanted to settle the dispute but was unable because they didn't have the support of the NC Public Staff to ensure their costs could be recovered.
31. Fountain explained that HB 589 changed the way Duke would purchase future power from Solar facilities. The new method of competitive bidding would reduce the costs of power purchased by Duke and passed to customers. Fountain said HB 589 would save customers approximately \$850 million and would reduce the number of solar facilities connecting to the grid where the grid was already at capacity.
32. HB 589 had a section that grandfathered qualified solar facilities that were in line to be connected to the grid at the older more beneficial rates. These grandfathered facilities could only be connected if they, combined with other facilities projects, they combined projects did not exceed the nameplate capacity of the substation. If the nameplate capacity was exceeded, the cost to upgrade the capacity would be incurred by the solar facility that was in the "queue." Fountain said the dispute arose because there was a difference in understanding as to the definition of nameplate capacity. Many people involved in the dispute held different opinions of the definition of nameplate capacity. Prior to merging with Duke Energy Carolinas, Duke Energy Progress had sometimes utilized the highest rating. Solar developers insisted that this rating be used.
33. In September of 2017, Duke officially defined nameplate capacity as the lowest capacity rating of the substation in a policy statement disseminated to the solar industry. The solar industry, led by Strata and Cypress Creek, threatened to challenge Duke at the NC Utilities Commission and in the courts.
34. Fountain said during the nameplate dispute he kept Chris Ayers, Director of the NC Public Staff, updated on the nature of the dispute and the dialog. Fountain said Duke and the solar industry had sharply opposed views on the nameplate capacity dispute. He believes that the solar industry also shared its views with Ayers.
35. He stated that initially the Public Staff had told the two parties, being Duke and the solar industry, to work it out. Fountain was encouraged when the Public Staff was more willing to get involved in December of 2017. Fountain was not told of any conversations that led to the Public Staff changing their views in the matter.
36. Fountain was directed to a transcript from an interview of Ken Eudy conducted by WRAL Reporter Travis Fain. In this interview Eudy described his conversation

with David Fountain, prior to the November 30, 2017 meeting between Good and Cooper, regarding the nameplate dispute. The following portion of the transcript was read allowed to Good:

37. “So, I said David, “Why don’t y’all come back? You’re fixing to get sued. The solar industry said they were going to take it to the Utilities Commission and then go to Superior Court. Why don’t y’all come back and work this out? And at first David says “no, we’re not interested. We’ve been doing this for a year, they need to take yes for an answer and be thankful for what they’ve got.” That’s not an answer that the governor was particularly happy with. (Fain Interview of Eudy, Pg. 4)
  
38. Fountain recalled receiving a telephone call from Eudy in September telling him that the Governor was receiving phone calls from the solar developers and that they were upset that Duke had selected the lowest rating. Fountain said he walked Eudy through the issues from the viewpoint of Duke. Fountain said he did tell Eudy that the solar developers, many of whom were out-of-state, should take “yes” for an answer and that there was an approximate \$200 Million difference between the solar developers’ position (the highest rating) and Duke’s position (the lowest rating). This would erode the savings in HB589 explained that when he told Eudy “They need to take Yes for an Answer” he was referring to out-of-state solar projects that would not take yes for an answer because Duke had no ability to settle at the time. He explained to Eudy that if Duke agreed to the highest nameplate capacity, the settlement would result in the erosion of savings of HB 589 in the amount of \$180 million to \$200 million. He also explained to Eudy that a settlement may also involve large costs to upgrade substations. Eudy was told that, at that time, Duke did not have support of the Public Staff to negotiate with the solar industry. Without concurrence of the NC Public Staff, Duke would not be able to pass the costs to ratepayers and would have to absorb these costs. Duke was unable to do so and therefore the dispute remained at an impasse. Eudy told Fountain that he would help in working out a settlement.
  
39. Fountain said during the nameplate dispute, he was aware that the solar industry was communicating with Public Staff and with the Governor’s Office to attempt to gain their support in a settlement.
  
40. Fountain summarized that, prior to Good’s meeting with Cooper on November 30, 2017, North Carolina Public Staff had not been involved in attempting to resolve the disputed. Chris Ayers of the Public Staff had previously told Duke that Duke should work it out alone with the solar industry. After November 30, 2017, and during the first week in December of 2017, Duke asked the Public Staff to become involved and found that Chis 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. Bo Somers was the attorney for Duke during the negotiations. Gary Freeman of Duke was involved to discuss technical interconnection issues. Fountain said, William McKinney from the Governor's Office also became involved. Representative Szoka was present during the meeting at the Public Staff Office when the deal was reached. The settlement between Duke and the solar industry was approved by the Public Staff and was submitted for approval, and approved, by the NCUC. By having the approval of the Public Staff, Duke had more confidence that the costs of the station upgrades and the increased rates to be paid would be considered an appropriate cost to be recovered from ratepayers. Fountain said having the Public Staff's support was the only way the agreement could be reached.

41. When asked by investigators whether there was anything else that they needed to know about the permit process, Fountain explained that he was presently the Chief Ethics and Compliance Officer for Duke Energy and was familiar with the ethical culture at Duke Energy. Fountain told investigators that Duke Energy would never pay for permits or engage in any discussions that suggested that it should pay for permits.