EXHIBIT 2

Transcript of Thomas Stith
9/1/16

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA *ex rel.* NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, Plaintiff, V. SIERRA CLUB, WATERKEEPER ALLIANCE, NEUSE RIVERKEEPER FOUNDATION, WINYAH RIVERS FOUNDATION, ROANOKE RIVER BASIN ASSOCIATION, and CAPE FEAR RIVER WATCH, INC., Plaintiff-Intervenors, v. DUKE ENERGY CAROLINAS, LLC, Defendant.	13-CVS-11032 DEPOSITION OF THOMAS ANDREW STITH, III

AND

NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA *ex rel.* NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, Plaintiff, V. CATAWBA RIVERKEEPERS FOUNDATION, INC., APPALACHIAN VOICES, YADKIN RIVERKEEPER, MOUNTAINTRUE, DAN RIVER BASIN ASSOCIATION, ROANOKE RIVER BASIN ASSOCIATION, SOUTHERN ALLIANCE FOR CLEAN ENERGY, and	13-CVS-14661

WATERKEEPER ALLIANCE,	)
	)
Plaintiff-Intervenors,	)
	)
v.	)
	)
DUKE ENERGY CAROLINAS, LLC,	)
	)
Defendant.	)

DEPOSITION OF THOMAS ANDREW STITH, III

THURSDAY, SEPTEMBER 01, 2016

CONFERENCE ROOM

THARRINGTON SMITH, LLP

150 FAYETTEVILLE STREET

SUITE 1800

RALEIGH, NORTH CAROLINA

9:04 A.M.

VOLUME 1

PAGES 1 THROUGH 67

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WITNESS	DIRECT
THOMAS ANDREW STITH, III	
BY MR. HOLLEMAN	6-65

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PLAINTIFF-INTERVENORS

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P R O C E E D I N G S 9:04 A.M.

(WHEREUPON,

THOMAS ANDREW STITH, III

WAS CALLED AS A WITNESS, DULY SWORN, AND TESTIFIED AS FOLLOWS:)

D I R E C T E X A M I N A T I O N 9:04 A.M.

BY MR. HOLLEMAN:

Q. Mr. Stith, we met a few minutes ago. My name is Frank Holleman. I am with the Southern Environmental Law Center, and represent the conservation groups in the litigation. I know you are well represented and have many lawyers here, but just a few things I am supposed to lay out for the record.

A. Sure.

Q. I will be asking you a series -- have you ever been in a deposition before?

A. I have not.

Q. Okay. I will be asking you a series of questions. If you can't hear me or don't understand me, let me know and I will try to be clearer and louder, if possible. And if you have any questions about my questions, please ask me.

We are in a conference room here, but you are under oath. And your testimony is as though it were in a court room and might be used in a legal proceeding at

some point. Are you aware of that?

A. Yes.

Q. Okay. Can you tell me where you live?

MR. PHILLIPS: Frank?

MR. HOLLEMAN: Yes?

MR. PHILLIPS: Before we get into the questions ---

MR. HOLLEMAN: Yes.

MR. PHILLIPS: --- let me just put something on the record.

MR. HOLLEMAN: Sure.

MR. PHILLIPS: Mr. Stith, of course, is the Chief of Staff to the Governor of North Carolina. And we believe that he would be entitled just to not appear today based on his office.

Also, of course, as I have said in my letters, he is not a scientist and he has no duties in the departments that have been primarily involved in the issues of collecting data and evaluating the data related to the coal ash ponds. So we don't think he has any competent evidence to offer in this case.

We do understand that he has made a public statement that challenged the veracity, at least in one instance, of one of your witnesses or potential witnesses, Dr. Rudo, and that you have an interest in

asking him about why he did that. As you said in your letter to me is the reason why you thought you needed to depose Mr. Stith. And we recognize that. And that -- that is basically why we are offering up here to voluntarily testify, but -- of course, without waiver of any of the objections that we raised. So with that on the record we will go forward.

MR. HOLLEMAN: Sure, thank you. And just for the record, we may not agree with all of that and we will see as we proceed.

BY MR. HOLLEMAN:

Q. Mr. Stith, where do you live?

A. At Durham, North Carolina.

Q. And where did you go to college?

A. North Carolina Central University.

Q. What was your major?

A. Which degree?

Q. Well, if you had more than one college degree ---

A. My undergraduate was in management and my MBA was in marketing.

Q. And where did you get your MBA?

A. North Carolina Central University.

Q. What year?

A. The MBA?

Q. Yes, sir.

A. I believe in 1986.

Q. And what was your -- did you have a job between college and graduate school, or did you go straight to graduate school?

A. Actually, both. I went to graduate school for about a half a year, and then I came back to North Carolina and worked, and then went back to graduate school in the evenings.

Q. Well, what was your first job out of -- after you got your MBA in 1986?

A. Well, actually, '86, I was working already. I got my MBA while I was working. So the question is the first job out of college, maybe?

Q. Okay, sure.

A. It would be Director of Minority Affairs for Jim Martin's campaign.

Q. And then when did that job end?

A. In 1985, and I joined the administration then.

Q. And what was your job in the administration?

A. I was Special Assistant to the Governor.

Q. And how long did you hold that position?

A. Approximately two years.

Q. So about 1987 you left and took what position?

A. I went to work in the private sector.

Q. And what was your job?
A. I was a marketing representative.
Q. For?
A. IBM.
Q. And how long did you work with IBM?
A. Approximately two to three years.
Q. And then?
A. I opened my own business.
Q. And what was your business?
A. Pre-school.
Q. Pre-school?
A. Yes.
Q. And where was the pre-school?
A. In Durham, North Carolina.
Q. What was the name of it?
A. Windsor Academy.
Q. And how long did it -- is it still in operation?
A. No. We ceased operation after eleven years.
Q. Did you -- did you have any other job while you were operating the pre-school business?
A. I wouldn't call it a job. Well, probably, yes. I served on the Durham City Council during that term. Some folks don't think that is a job, but it is. And I also had a private consulting firm.

Q. What was the name of the consulting firm?
A. The Michael Thomas Group.
Q. And what did it do?
A. It provided marketing services.
Q. To private business or government ---
A. (Interposing) Correct.
Q. --- or both?
A. Private businesses.
Q. When you left your pre-school business, what year was that?
A. We closed in 2000. So it was around 2000 when we closed.
Q. And what was your next job or professional work?
A. I went back into the private sector.
Q. And what did you do then?
A. I was manager for supply diversity and business development.
Q. Where?
A. Where? Progress Energy.
Q. And how long did you work there?
A. Approximately three years.
Q. And then ---
A. Three, three and a half years.
Q. And then what did you do?

A. I -- went to work for a non-profit.
Q. And what is the name of the non-profit?
A. The Civitas Institute.
Q. And how long did you work there?
A. Approximately three or so years.
Q. What was your job with them?
A. I was Vice-President.
Q. And what -- generally, what were your duties?
A. Operational responsibility for the organization.
Q. Like the Chief Operating Officer?
A. Correct.
Q. What year did you join them?
A. That had to be early 2000's. I don't remember the exact year.
Q. And what year did you leave?
A. Or mid-2000's.
Q. What year did you leave?
A. 2007.
Q. And then what did you do?
A. Went back into the public sector.
Q. And what did you do in 2007?
A. I was -- I joined the Kenan Institute of Private Enterprise at UNC, and I was there.
Q. And what did you do there?

A. Served as the Director of Economic Development focused on Eastern North Carolina.

Q. And how long did you hold that position?

A. About four and a half, five years.

Q. And so I guess that brings us to around 2012?

A. Correct.

Q. And what did ---

A. (Interposing) If my math is correct.

Q. What did you do in 2012?

A. I joined the Governor's transition team. I was Director of the Transition Office.

Q. And how long did you hold that position?

A. Through the end of 2012. That was probably November 2012 through December 2012.

Q. And then in January 2013, what position did you take?

A. I joined as Chief of Staff.

Q. And you have been in that position ever since, is that correct?

A. Correct.

Q. And you described your college education and then your MBA. Do you have any other post college, education apart from your MBA?

A. You know, no -- any additional degrees?

Q. Yes, sir.

A. No additional degrees.

Q. Okay. Now, Mr. Stith, I believe on August 2nd of this year you held a press conference about the testimony of Dr. Rudo; is that correct?

A. Correct.

Q. And prior to that testimony -- I am sorry, prior to that press conference, had you reviewed Dr. Rudo's deposition in this case?

A. No.

Q. Had you seen his deposition?

A. I was aware of some of the deposition.

Q. Had you physically seen any of it?

A. I probably -- can you clarify that; do you mean the actual official document?

Q. Well, I mean -- yes, the transcript. Had you seen any portion of the transcript of his ---

A. (Interposing) And I am not splitting -- trying to split hairs. I probably saw printed versions in the press that purported to be from the actual document. So I am assuming it was the document.

Q. So does that mean you saw a newspaper report on-line that quoted from the transcript?

A. Correct.

Q. Okay. Now, whose decision was it to hold the press conference?

A. It was mine.

Q. And when did you decide to hold a press conference?

A. On the -- probably the evening of the 2nd. Well, it probably was the evening of the second.

Q. And did you discuss that with anyone before you held it?

A. Yes.

Q. And who did you discuss it with?

A. My main conversation was with -- with our Director of Communications.

Q. And who is that?

A. Josh Ellis.

Q. And did he suggest the press conference or did you?

A. No, it was my idea.

Q. And what did -- what was your discussion with Mr. Ellis?

A. I don't remember the exact time, but on the afternoon of the 2nd, I became aware that statements that I had not been aware of were in the media concerning a meeting at the Capitol. I was very concerned about it, and was told that -- based on what I was told, the information was inaccurate. And so I began to think that this was very serious and would probably need to have a

response to it.

Q. You say based on what you were told. Who told you?

A. Josh.

Q. Was he the only person who told you anything about Dr. Rudo's testimony?

A. Yes, on that -- yes.

Q. And what did he tell you?

A. That the media was reporting or beginning to report that in that testimony, Dr. Rudo -- the two main things that I focused on at that time was that the Governor had summoned him to the Capitol and had participated in a meeting at the Capitol.

Q. Now, did you hear that from anyone other than Mr. Ellis? Was he the sole source?

A. He was the source.

Q. Did Mr. Ellis have a copy of the transcript of Dr. Rudo's deposition?

A. I -- I am not sure whether he did or not.

Q. But he did not share one with you?

A. No.

Q. Did you attempt to get a copy of the transcript?

A. I did not.

Q. Did Mr. Ellis?

A. I don't know.

Q. But, to your knowledge -- you don't have any knowledge that he did, is that correct?

A. I don't know.

Q. One way or the other?

A. Yes, I don't know.

Q. Did you talk with counsel before holding the press conference?

A. I did not.

Q. Did you talk with anyone other than Mr. Ellis before holding the press conference?

A. I had a brief conversation.

Q. With whom?

A. The Governor.

Q. And what did you tell the Governor?

A. I told him I was going to issue a statement refuting, and there was a -- potentially a press conference if the press was interested, because I was extremely concerned about the inaccurate information that had been given to the media.

Q. And what did the Governor say?

A. "Use your judgment. Do the right thing."

Q. In your press conference, I believe you said that Dr. Rudo lied under oath, is that correct?

A. In my press conference?

Q. Yes. Did you say that?

A. Yes.

Q. And did you tell the Governor you were going to say that?

A. I don't recall. I don't think I -- I don't recall the details of what I said. I just said that the information was inaccurate and I was going to issue a statement. And there was a potential, if media was interested, I would talk to the media, as well.

Q. And did you -- and when you say "the information was inaccurate," what were you referring to?

A. That he had been summoned to the Capital by the Governor, and that the Governor participated in the meeting.

Q. And what did the Governor say about those two statements when he spoke with you?

A. His comment ---

MR. PHILLIPS: (Interposing) Objection to the form. I don't think he said -- I think he already told you what the Governor said.

BY MR. HOLLEMAN:

Q. Well, I am asking: what did the Governor say to you?

A. The Governor said exactly what I said a few minutes ago: use your judgment and do the right thing.

Q. So the Governor did not confirm or deny to you whether those two statements were true or not true?

A. I -- I don't -- what I can recall is what I just said.

Q. And nothing more?

A. It was a -- it was a very brief conversation.

Q. Had the Governor reviewed the transcript of Dr. Rudo's deposition?

A. I don't know.

Q. Well, sitting her today, have you ever reviewed the transcript of Dr. Rudo's deposition?

A. Have I?

Q. Yes.

A. The majority -- parts of it, yes.

Q. And where did you get it?

A. From our legal counsel.

Q. And who is that?

A. Well, the legal -- the general counsel's office. I talked with Lindsay Wakely, who is a member of the legal office.

Q. And that is where you got a copy of the transcript of Dr. Rudo's deposition?

A. Yes.

Q. And have you reviewed it?

A. Most of it.

Q. And do you still take the position that Dr. Rudo lied under oath?

A. Yes.

Q. In what respect?

A. When he says he was summoned to the Capital by the Governor, and that the Governor participated in the meeting.

Q. And it is your -- where in his transcript does he say that he was summoned to the Capital by the Governor?

A. The way I read it, around page 42, 43.

(PLAINTIFF-INTERVENOR EXHIBIT 637 WAS MARKED FOR IDENTIFICATION.)

Q. Okay. Let me show you what has been marked Exhibit 637 as portions of Dr. Rudo's testimony, but it includes pages 42 and 43. Could you show me where on those pages Dr. Rudo lied about being summoned by the Governor to the Governor's office?

(Witness peruses document.)

A. Around line 2, “I was almost at Chapel Hill -- to go back, that the Governor wanted to discuss this. And, I mean, my first reaction, ‘Well, I am not really dressed.’” So, I mean ---

Q. How is that a lie?

A. That the Governor wanted to discuss this?

Q. Well read what he said. Begin at the first part of that sentence, what does it say?

A. Start on where?

Q. Line one.

A. "And I get a phone call from Dr. Davies telling me to turn around -- I was almost at Chapel Hill -- to go back, that the Governor wanted to discuss this."

Q. So what the sentence says is that Dr. Davies told Dr. Rudo that the Governor wanted to discuss this. Do you know that Dr. Davies did not tell Dr. Rudo ---

A. (Interposing) I have no knowledge of what Dr. Davies said.

Q. Okay. So you don't know -- you don't know that that statement is a lie, is that true?

A. To me, it is inaccurate, yes.

Q. How is it -- I thought you just said you didn't know what Dr. Davies told Dr. Rudo?

A. Well, I answered your question. I feel that is an inaccurate representation of what happened.

Q. You think Dr. Davies statement is an inaccurate representation?

A. Well, this is what Dr. Rudo said. So I am saying what Dr. Rudo said is inaccurate. I don't know what Dr. Davies said. This is what he said, correct? Is this his deposition?

Q. Yes, that is correct.

A. Okay. So that is how I read it.

Q. Well, he -- do you agree with me -- tell me if you disagree -- that in this sentence, Dr. Rudo is testifying about what Dr. Davies said to him? Do you agree that that is what the sentence says?

(Witness peruses document.)

A. My opinion is that is what Dr. Rudo said. I -- you know, I am not commenting on the source. That is what he said.

Q. Well, he said what Dr. Davies told him, is that correct?

A. Yes, that is what the sentence says.

Q. So is there anywhere in here where Dr. Rudo says the Governor called him or summoned him?

A. My read is that Dr. Rudo felt the Governor had called him to the Capital. That is the way I interpret that statement.

Q. And that is the sole basis for your statement that Dr. Rudo lied about the Governor ---

A. (Interposing) Well, that is not ---

Q. --- summoning him to the Capital is that one sentence?

A. No.

Q. Okay. Where else in his deposition do you

find a lie about that topic?

A. I have two individuals -- well, one individual who relayed the information about the meeting that said he had volunteered to come to the Capital.

Q. All right. I guess right now -- I will get to that in just a minute.

A. Oh, okay.

Q. Right now I am just asking ---

A. (Interposing) So -- so I really feel like I have answered ---

Q. --- is there any ---

A. I really feel like I have answered your question, is -- I can't answer a different way. That is -- that is the way I read it.

Q. Let me state my question. Is there any other sentence in the deposition where you say Dr. Rudo lied about the Governor summoning him to the Capital, other than that one sentence?

MR. PHILLIPS: Frank, I have got to object to the form of these -- this question, because Dr. Rudo's deposition transcript is 220 pages long. And you have put excerpts of the deposition in front of Mr. Stith. That is an issue. And I don't think he should be expected to be able to say every page -- what is on every page of a 220 page deposition. I think it is why I

asked ---

MR. HOLLEMAN: It is okay for you to object to the form, if you wish.

MR. PHILLIPS: Yes. Okay.

MR. HOLLEMAN: I would just say -- I have presented -- I asked him where in the deposition did Dr. Rudo lie. And he said on pages 42 and 43. That is why I have shown him these pages.

BY MR. HOLLEMAN:

Q. So, Mr. Stith, if you know of any other place in the deposition where you say Dr. Rudo ---

A. (Interposing) No, I can't ---

Q. --- lied about ---

A. --- I can't recall. No, that would be what I ---

Q. Let me just finish the question. If you know of any other place in the deposition where you say that Dr. Rudo lied about the Governor summoning him to the Capital or to the Governor's office, let me know. Is there any ---

A. (Interposing) Not sitting here, no.

Q. Now -- and then you say he lied about the Governor participating in the meeting. Is that the other lie you say he made?

A. Correct.

Q. And where is that in the deposition?

(Witness peruses document.)

A. I guess, if you want context, you could start at 16. "So I went down to that big old building in downtown Raleigh, and the governor wasn't there. He participated for a couple of minutes by phone. So I met with -- what is his name -- Josh Ellis."

Q. And you are saying those sentences are lies?

A. I am saying when he says "he participated for a couple of minutes by phone," he is referring to the Governor. And the Governor, from what I am told, did not participate in the meeting.

Q. Well, let's just go through those sentence by sentence. Is it true that Dr. Rudo went to the building in downtown Raleigh? Are you contending that is a lie?

A. I haven't made any statement about whether he went down -- I don't know. I am assuming he did. I was told he did come to the building on his own. He volunteered to come to the building, is what I am told, not that he was summoned.

Q. And when he was there -- and when Dr. Rudo arrived, was the Governor -- he says the Governor wasn't there. Is that a true statement or is that a lie?

A. From what I am told -- from what I am told, the Governor was not there.

Q. Okay. And then he says, "He participated for a couple of minutes by phone." Are you saying that statement is a lie?

A. I am saying -- correct, that the Governor did not participate in the meeting by phone.

Q. Was he -- well, let's just go through this. While Dr. Rudo was there, was -- did he meet with Josh Ellis?

A. From what I am told, yes.

Q. And did the Governor call Josh Ellis while Rudo -- Dr. Rudo was present with Mr. Ellis in the meeting?

A. That is my understanding.

Q. And while the Governor was on the phone, did he talk about the issue of the "do not drink" letters, or the language in the letters?

A. I don't have a -- I don't have any knowledge of what the Governor said when he was on the phone.

Q. Do you know if Dr. Rudo heard what the Governor was saying on the phone?

A. I don't know what Dr. Rudo heard. I know what he said.

Q. Do you know if the Governor said anything to Mr. Rudo by phone concerning the ---

A. (Interposing) My understanding is ---

Q. Let me ---

A. Oh, I am sorry.

Q. Concerning the language of the "do not drink" letters?

A. Can you repeat that? I am sorry, I didn't catch that.

Q. Sure. Do you know whether during the meeting with Josh Ellis, the Governor said anything to Dr. Rudo about the language that would be in the "do not drink" letter sent to the ---

A. (Interposing) No, I have no knowledge. My understanding is the Governor did not participate in the meeting. So my thought would be he couldn't have made a statement to Dr. Rudo.

Q. What do you mean by the word "participate"?

A. Personally? "Participate," as we are doing now?

Q. Yes, when you say he lied ---

A. (Interposing) You and I are participating in the deposition, so we are talking to each other. When Dr. Rudo says "he participated," he is saying the Governor participated. I don't know -- we could get a definition of "participate," but -- you know, what is your definition of "participate"? You -- you are actively a part of an event, engaged in that event, you

know. I don't want to be a Webster's Dictionary, but when -- “participate” is what we are doing now, or having input into -- and talking, yes.

Q. Well, when you -- you are the one who accused Dr. Rudo of lying under oath based, apparently, on this word "participate." So I am -- that is why I am asking you what you consider "participate" to mean. Do you -- in the way you are defining "participate," does it require that someone be physically present in the meeting?

A. No.

Q. So they ---

A. (Interposing) I think I just defined my -- my participation definition.

Q. So in your definition of the word participate, can someone participate in a meeting by phone as well as in person?

A. Sure.

Q. Have you asked the Governor what he said to Josh Ellis during the phone conversation while Mr. Rudo was present?

A. No.

Q. Have you asked Mr. Ellis what the Governor talked to him about while Dr. Rudo was present?

A. I am not sure if I asked him or he told me.

Q. All right. And what did he tell you?

A. What was ---

Q. What did Mr. Ellis tell you the Governor talked to him about on the phone while Dr. Rudo was present?

A. The Governor didn't say anything when Mr. Rudo was present, from what Mr. Ellis has told me, because all that was said was, "Hello, Governor." And so Mr. Rudo nor the Governor had any conversation, or they were not exposed to any conversation.

Q. Let's just make sure I stated my question clearly. Has Mr. Ellis told you what the Governor said on the phone to Mr. Ellis while Dr. Rudo was in the room?

A. As I said, because your premise is that there was a conversation with the Governor and Josh while they were all in the same room. My understanding is the only thing that was said was, "Hello Governor," as Josh was walking out of the room. So there was no conversation. My understanding is there was no conversation between Josh and the Governor. It was a greeting.

Q. So you are saying that while Dr. Rudo was in the room with Mr. Ellis, the Governor said nothing over the telephone to Mr. Ellis?

MR. PHILLIPS: Objection to the form.

BY MR. HOLLEMAN:

Q. Is that correct?

A. I -- I think I have answered that.

Q. Well, no. I don't quite understand. Are you saying -- I just want to make sure we are clear on what you are testifying to. Are you saying that while Dr. Rudo was in the room, the Governor called Mr. Ellis?

A. That is my understanding

Q. And then are you saying that Mr. Ellis said to the Governor "Hello Governor," while Mr. Ellis -- Dr. Rudo was in the room; is that correct?

A. My understanding is he, being Josh, said it as he was walking out of the room. So he ---

Q. And then he walked out of the room, and there was no -- and therefore, is it your testimony there was no conversation between Mr. Ellis and the Governor in the presence of Dr. Rudo, other than the phrase from Mr. Ellis, "Hello Governor"?

A. Yes. And -- and I guess as he was coming back he was hanging up. And he may have said "Goodbye, Governor." But my understanding is that when the call from the Governor came, that Josh left the room and said "Hello Governor." So there was no discussion. It was a -- you know, a greeting and a goodbye.

Q. And your understanding is solely based on what Mr. Ellis has told you ---

A. (Interposing) Correct.

Q. --- is that correct.

A. Correct.

Q. And you have not -- you have not confirmed this with the Governor, is that correct?

A. No, I don't -- no, I haven't gotten to that detail, no.

Q. And just to be clear, have you asked the Governor whether he had any conversation with Dr. Rudo?

A. I don't believe I have asked. I can't recall whether it came up in conversation. We just have not discussed this as much.

Q. Now, before you held the press conference where you accused Dr. Rudo of lying under oath, did you call Dr. Rudo?

A. No. Did I call Dr. Rudo?

Q. Yes.

A. No.

Q. Did you call counsel for -- at the Department of Health and Human Services?

A. No.

Q. Did you think about checking with anyone other than Mr. Ellis before you made the accusation against Dr. Rudo?

A. No. And as I said, I had a conversation with

Ms. Ellis, who was in the meeting. He also reported that the other individual in the meeting confirmed what he was saying, that the Governor did not summon Dr. Rudo, and the Governor did not participate in the meeting.

You know, his full statement was that Kendra had actually called Dr. Rudo. And they had questions, and he offered to come by -- that he was near the Capital and that he would just come by, so that he had volunteered to come by.

Q. Now, let's just ---

A. (Interposing) So ---

Q. -- let's make -- for the record, let's go through what you just said. So, first, one thing Mr. Ellis told you was what you have relayed about the nature of the phone conversation with the Governor. And then I believe you are saying he also relayed something that someone else told him. And is that person Kendra Gerlach; is that who you are referring to?

A. Correct.

Q. And who is Kendra Gerlach?

A. She is Communications Director for Health and Human Services.

Q. And what did she say -- what did Mr. Ellis say that Kendra Gerlach had said?

A. That she had called Dr. Rudo to ask a

question, and that Dr. Rudo said, "I am near the Capital, I can -- I can come by." He volunteered to come in -- "if you want I can come by." And they were affirmative. “Okay.”

Q. Now, have you talked to -- did you talk to Ms. Gerlach before you ---

A. (Interposing) No.

Q. --- held your press conference accusing Dr. Rudo of lying under oath?

A. No.

Q. Have you talked to her since about this matter?

A. No, I haven't. No. I don't -- no, I don't recall any -- any conversations with Kendra about this or other matters.

Q. Have you read her statements in the press about this meeting that Dr. Rudo attended?

A. Yes.

Q. And did you see that she did not accuse Dr. Rudo of perjury?

A. I didn't accuse him of perjury, either. I just said his -- his statement was wrong. It was a lie.

Q. I believe you said he lied under oath, is that correct?

A. He -- I can -- I don't have the complete

statement here, but my sentiment was that his statement was wrong, that that was a lie under ---

Q. Do you -- I am sorry, go ahead. “A lie,” what?

A. That was my -- that was my statement.

Q. Did you -- do you not remember whether you said Dr. Rudo lied under oath?

A. Do I remember every word I said that night?

Q. No, do you remember those words? Those are important words, wouldn't you agree?

(No response.)

Don't you agree those are important words, to accuse a 27 year employee of the State ---

A. (Interposing) I think they are important words to accuse the Governor of being in -- participating in a meeting that he wasn't.

Q. Now ---

A. I think this is a very serious situation.

Q. My question is, again, do you remember that you accused Dr. Rudo of lying under oath?

A. Yes.

Q. Okay. So just to make sure we are clear, prior to holding this press conference where you accused Dr. Rudo of lying under oath, you talked to Mr. Ellis, and you talked to the Governor, and you have talked to no

one else; is that true?

A. Not that I recall.

Q. So it is true that you didn't talk to anyone else, is that correct?

A. To -- as I can recall today, correct.

Q. And before you made this accusation against Dr. Rudo, you did not read his deposition?

A. As I said earlier, I had seen parts of his deposition in the press, you know, and this was a process. So "X" number of days before -- I can't tell you before -- this specific part of it, no, but I had seen parts of it. So I want to be ---

Q. You had seen parts of it ---

A. --- but the best I can recall ---

Q. Go ahead.

A. As best I can recall, I am trying to relate to you, I believe I had seen parts of it in the press -- his deposition -- before that day. I don't recall seeing this (indicating) particular statement before that day.

Q. And had you seen pages 42 and 43 of his deposition before ----

A. (Interposing) I don't -- no, I don't think I had.

Q. When did you first obtain a copy of his deposition transcript?

A. Probably the next day, from what I recall. I -- that would be my -- the day, I think. The next day.

Q. Did you -- after you got a copy of the transcript, did you call Dr. Davies to determine the accuracy of the statement on page 42 where Dr. Rudo says, "And I get a call from Dr. Davies telling me to turn around -- I was almost at Chapel Hill -- to go back, that the Governor wanted to discuss this"? Did you call -- ever call Dr. Davies and ---

A. (Interposing) I have not called Dr. ---

Q. --- ask her about that?

A. I have not called Dr. Davies.

Q. Why -- why did the meeting occur? Who decided to have the meeting with Dr. Rudo?

MR. PHILLIPS: You know, Frank, we are now getting off into territory that exceeds the scope of what Mr. Stith is here to testify about.

MR. HOLLEMAN: Not according to us. We didn't limit his testimony.

MR. PHILLIPS: Well, we are going to ---

MR. HOLLEMAN: But, I mean, that is up -- I understand you may take a position, but let's just be clear: we didn't agree to limit his testimony.

MR. PHILLIPS: No, you have not agreed to.

BY MR. HOLLEMAN:

Q. So my question is, who decided -- who asked for the meeting with Dr. Rudo?

MR. PHILLIPS: Again, I am going to object, Frank, that -- that Mr. Stith is here to testify about what the -- give the answers to the questions that you have now asked him. If you have some other questions related to that topic, or if there are other topics that you want to talk about that bear on that that he might provide some testimony about, but that -- that is -- as far as we have gone so far is what we thought you were going to ask him about.

MR. HOLLEMAN: No. Now, just be clear ---

MR. PHILLIPS: No, I am not saying that you agreed to that, but that -- that is what we offered him to testify about.

MR. HOLLEMAN: Well, I am going to ask him a series of questions that I believe are relevant to the case. And you can do one of -- you can do whatever you believe appropriate, of course, but I would suggest you can object to the question or you can object and tell him not to answer. And this -- I understand you position has been stated for the record, and you understand ours. And as far as I am concerned, you can consider it -- that position repeated each time you object.

MR. PHILLIPS: Okay.

MR. HOLLEMAN: So you don't have to restate it for my purpose, at least.

BY MR. HOLLEMAN:

Q. So my question is, why was -- let me back up, restate. Again, my question is who called for the meeting with Dr. Rudo.

MR. PHILLIPS: Okay. Again, you know -- you have noticed the deposition of Mr. Ellis. Mr. Ellis is the person who directly participated in the meeting you are getting ready to -- trying to ask Mr. Stith about. Mr. Ellis is available to be examined today. He is going to answer questions such as the question you just asked. He has the direct information about that. And I would suggest that after you have asked Mr. Ellis, if you don't think you have gotten enough of an answer we could revisit this question. But I am going to instruct Mr. Stith not to answer that question.

BY MR. HOLLEMAN:

Q. Did you play any role in setting up the meeting?

MR. PHILLIPS: Objection. I am going to instruct Mr. Stith not to answer.

BY MR. HOLLEMAN:

Q. Prior to your press conference, did you have any discussions with anyone affiliated or connected with

Duke Energy about Dr. Rudo's testimony?

(Pause.)

A. Can you restate -- can you state that again?

Q. I said, prior to your press conference ---

A. Correct.

Q. --- concerning Dr. Rudo's testimony, where you said he lied under oath, did you have any conversations, meetings or communications with anyone related to Duke Energy concerning Dr. Rudo's testimony?

A. No.

Q. Prior to the -- have you discussed Dr. Rudo's testimony with anyone from Duke Energy since your press conference?

A. No.

Q. To your knowledge, has anyone in the Governor's office talked with anyone or communicated with anyone at Duke Energy concerning Dr. Rudo's testimony since your press conference?

A. In the Governor's office? To my knowledge, no.

Q. Okay.

A. And just to clarify, you mean anyone on the Governor's office? No, not to my knowledge, haven’t talked to Duke Energy.

Q. And by Duke Energy, I am including attorneys

who represent Duke Energy.

A. I understand.

Q. Prior to your press conference concerning Dr. Rudo's testimony, did you or anyone in the Governor's office have any contact or communication with anyone at Duke Energy concerning Dr. Rudo's testimony?

A. I thought I just answered that. But prior to my press conference did I or anyone in the Governor's office ---

Q. Yes.

A. --- have contact with Duke Energy about Dr. Rudo's testimony?

Q. Correct.

A. Yes, I thought I answered that. No, not to my knowledge.

Q. I thought my first question was about after his press conference. Now I am asking you about before his press conference -- before your press conference

A. Okay. Well, still ---

MR. PHILLIPS: I think -- I think that is the second time you asked the question, but that ---

THE WITNESS: I did, but that is fine. The answer is still the same.

BY MR. HOLLEMAN:

Q. Okay. To your knowledge, prior to your press

conference did anyone in State government have any contact with anyone at Duke Energy about Dr. Rudo's testimony?

A. Not to my knowledge.

Q. And since your press conference, to your knowledge, has anyone in State government had contact with anyone at Duke Energy, or connected with Duke Energy, concerning Dr. Rudo's testimony?

A. Not that I know of.

Q. Who in the Governor's office has a copy of Dr. Rudo's deposition?

A. I wouldn't know everyone. I imagine ---

Q. To your knowledge, the ones you know.

A. The ones I know sitting here today? I am sure -- I know our legal office, Josh and myself. That would be all that I am aware of. I wouldn't try to speculate.

Q. And do you know when Josh got a copy of the transcript?

A. I am not sure.

Q. Since your press conference, has Mr. Ellis reviewed Dr. Rudo's transcript?

MR. LONG: Frank, just to clarify, are you referring to the portions that were marked previously, or the entire transcript?

MR. HOLLEMAN: I am referring to the

transcript -- the full transcript.

MR. LONG: The full transcript?

MR. HOLLEMAN: Yes.

MR. LONG: Okay, thank you for clarifying.

THE WITNESS: Can you repeat that?

BY MR. HOLLEMAN:

Q. I said since -- since Dr. Rudo’s -- since your press conference, has Josh Ellis reviewed Dr. Rudo's transcript?

A. I don't know, you -- I don't know. I don't want to speculate. I don't know whether he has or not.

Q. Have you talked to anyone at the Department of Environmental Quality about Dr. Rudo's deposition and his testimony?

A. I -- I don't -- I don't recall about his deposition and testimony. No, I don't recall having any discussion.

Q. Have you talked with anyone at the Department of Health and Human Services about Dr. Rudo's deposition testimony?

A. I don't recall having any conversations. I don't recall having any.

Q. And just to recap -- I think I have got this right, but correct me -- you have talked with the

following about Dr. Rudo's deposition testimony: the Governor, Mr. Ellis, your lawyers, and the press at the press conference. Is there anyone else you have talked with about Dr. Rudo's deposition testimony?

A. No, not his testimony. No.

Q. What about his deposition?

A. Not even his deposition. I have talked about the deposition -- this event.

Q. With whom?

A. My family and my pastor.

Q. Anyone else?

A. No one in general. People may have just come up, but no one that I can recall.

Q. Have you held any other press conferences at night since you have been the Governor's Chief of Staff?

A. Not that I recall.

Q. I believe you said you called the press conference after determining there was press interest; am I correct about that?

A. From what I recall, it was -- it was -- we had a statement that we had issued to the press. And at that -- simultaneously as we issued the statement, the communications team would ask if press would like to have direct conversation. So it -- it was -- both, from what I understand, happened at the same time. We had a

statement and I offered to have a discussion.

Q. Whose idea was it to hold a press conference?

A. I made that decision.

Q. At the press conference, you said Dr. Rudo lied under oath. Have you repeated that charge anywhere else, other than today?

A. I don't recall. I mean ---

Q. You don't recall?

A. Have I said that anywhere else?

Q. Yes.

A. I have said it here.

Q. Other than here?

A. I don't recall.

Q. Just -- we got this -- this is off the website. Is this the statement you issued?

(Witness peruses document.)

MR. LONG: Frank, are you going to mark that as an exhibit?

MR. HOLLEMAN: Yes, yes. Go ahead, please.

(PLAINTIFF-INTERVENOR EXHIBIT 638 WAS MARKED FOR IDENTIFICATION.)

A. Yes, this looks like the statement.

MR. LONG: Do you have another copy?

MR. TORREY: Yes, I am sorry.

MR. LONG: Give that to Anita.

MS. LeVEAUX: Thank you. 637?

BY MR. HOLLEMAN:

Q. Now, the final version here, did someone write that for you and you approved it, or ---

MR. PHILLIPS: Are you going to say what the number of the Exhibit is?

COURT REPORTER: 638.

MR. HOLLEMAN: 638.

MS. LeVEAUX: For the record -- excuse me -- what was 637?

MR. TORREY: The excerpts of the Rudo transcript.

MS. LeVEAUX: Okay. Sorry.

BY MR. HOLLEMAN:

Q. Exhibit 638, which is the statement of August 12, 2016, by you -- did someone draft this for you and you approve it, or did you write it yourself?

A. From what I recall, Comm’s probably drafted and I made some edits. I couldn't tell you what they were. But this is basically a collaborative effort.

Q. And when you say "Comm’s," you mean the Communication Office, is that right?

A. Correct.

Q. And who are you referring to when you say that?

A. It -- it was either our press secretary or Josh. I don't -- I don't recall who I was going back and forth with. Either one of those individuals.

Q. In the statement, you say, "The Governor absolutely did not request this call or meeting." Who requested the meeting?

A. You are not returning that to this -- you are referring to another statement, apparently.

Q. Well, just look in the first sentence of your quoted statement.

A. Okay. All right.

Q. You say, in the second phrase, "The Governor absolutely did not take part in" -- we have talked about that -- "or request this call or meeting."

MR. PHILLIPS: I am going to have to object that, Frank. He is ---

MR. HOLLEMAN: So are you going to instruct him not to answer that?

MR. PHILLIPS: I am going to instruct him not to answer that. He said the Governor did not take part in or request the meeting. And we -- that would be a fair question as to what his basis for saying that is, but we are not going to get into any -- anything else about who called the meeting or what was said at the meeting where he was not a participant.

MR. HOLLEMAN: So are you ---

MR. PHILLIPS: Yes, I am instructing him not to answer your question.

BY MR. HOLLEMAN:

Q. How did you know that the Governor did not request the meeting?

A. From my conversation with Josh Ellis.

Q. And what did Josh Ellis tell you?

A. Do you want me to repeat what I said earlier?

Q. Well, what -- I want to know what Josh Ellis told you about that led you to say the Governor did not request the meeting?

A. Josh told me that he and Kendra were meeting, and that Kendra called Dr. Rudo to ask a question. And Dr. Rudo volunteered to come talk.

Q. But who requested the meeting, was my question?

A. That is my answer.

Q. Do you know who requested the meeting?

MR. PHILLIPS: Again, Frank, we are getting off into ---

MR. HOLLEMAN: Just -- if you are going to instruct him ---

MR. PHILLIPS: I instruct you not to answer that.

THE WITNESS: Okay.

BY MR. HOLLEMAN:

Q. And let me ask it this way. Did someone in the Governor's Office request a meeting?

MR. PHILLIPS: Objection to -- objection, Frank. Instruct him not to answer.

BY MR. HOLLEMAN:

Q. Were you involved in sending homeowners near the coal ash ponds information about their drinking water?

MR. PHILLIPS: Instruct him not to answer.

MR. HOLLEMAN: That is in his statement. I am reading from his statement here. He refers to that point in his statement.

MR. PHILLIPS: Well, do you want to read the statement you are asking him about?

BY MR. HOLLEMAN:

Q. I am saying he says, in his statement, "The fact is the State sent homeowners near coal ash ponds all fact and safety information about their drinking water." My question is, were you involved in that?

MR. PHILLIPS: Now, again, we are -- we are offering Mr. Stith's testimony on the questions related to the questions he has raised about Dr. Rudo's veracity, which we think is fair for you to ask about. But, again,

as the Chief of Staff to the Governor and -- because he -- he has voluntarily offered himself to testify on those issues related to potential impeachment of your witness. Other than that, we are going to instruct him not to answer.

MR. HOLLEMAN: Including this question here?

MR. PHILLIPS: Yes, because it does not pertain to that topic.

BY MR. HOLLEMAN:

Q. Is it your position that Dr. Rudo committed perjury?

MR. PHILLIPS: Objection. You are asking for a legal conclusion.

MR. HOLLEMAN: I am asking for his position.

(Pause.)

I am asking for his position. Is it his position that Dr. Rudo committed perjury?

MR. PHILLIPS: I don't believe it is a fair question to ask a non-lawyer a legal question.

MR. HOLLEMAN: I am asking his position. Are you instructing him not to answer or are your phrasing an objection, after which he can answer.

MR. PHILLIPS: I object to the question on the grounds that I have stated. I am not going to instruct him not to answer.

BY MR. HOLLEMAN:

Q. So, Mr. Stith, is it your position that Dr. Rudo committed perjury?

A. I think that the court would decide that. I don't know. I -- I don't know.

Q. Who was invited to the press conference where you made these charges against Dr. Rudo?

A. I don't -- I don't know who was on the invite list.

Q. Who decided whom to invite to the press conference?

A. The Communications Office, when they -- my understanding is the Communications Office, when they distributed the statement, also offered the opportunity to speak. So I don't -- I don’t know if there was an invitation -- well, I guess that could be considered an invitation, so -- but I don't know.

Q. Now, I am going to ask you questions that I consider, or we consider relevant to the case. Your attorney, from what he said, may well instruct you not to answer. So give him a chance to respond, okay?

A. All right. I will pause.

Q. Have you ever talked to Duke about coal ash -- anyone associated with Duke Energy?

MR. PHILLIPS: Instruct him not to answer on

the basis that I previously stated.

BY MR. HOLLEMAN:

Q. Have you met with anyone at Duke Energy about coal ash?

MR. PHILLIPS: Instruct him not to answer on the basis that I previously stated.

BY MR. HOLLEMAN:

Q. Did you attend a dinner in June, 2015 at the Governor's Mansion with Duke Energy?

MR. PHILLIPS: Objection. Object and instruct him not to answer on the grounds previously stated.

BY MR. HOLLEMAN:

Q. Have you ever e-mailed with Duke Energy concerning coal ash? And when I say "Duke Energy," I mean including their counsel or anyone associated with Duke Energy?

MR. PHILLIPS: Object and instruct him not to answer on the grounds previously stated.

BY MR. HOLLEMAN:

Q. Were you involved in any way in the passage or drafting of the Coal Ash Management Act in 2014?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. Were you involved in or participate in any way in the drafting of the Coal Ash Act that passed in 2016?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. Did you discuss either of those Acts or -- before or after their passage with anyone from Duke Energy?

MR. PHILLIPS: Object and instruct him not to answer.

MR. HOLLEMAN: Can we mark this as an exhibit, please?

(PLAINTIFF-INTERVENORS EXHIBIT 639 WAS MARKED FOR IDENTIFICATION.)

BY MR. HOLLEMAN:

Q. I am showing you what has been marked Exhibit 639. It is the Governor's Executive Order Number 62. And I would ask you, first, are you familiar with that order?

MR. PHILLIPS: Object and instruct him not to answer. Again, this gets into areas of his responsibilities as Chief of Staff, and also affects the -- impacts the deliberations -- I am not saying whether or not he participated or did not deliberate, but you are asking questions that exceed the scope of the testimony

he is here to give today.

BY MR. HOLLEMAN:

Q. Were you involved in crafting this Executive Order?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. Did you discuss this Executive Order with Duke Energy ---

MR. PHILLIPS: Object and instruct him not to answer.

MR. HOLLEMAN: Let me finish the question.

BY MR. HOLLEMAN:

Q. Did you discuss this Executive Order with Duke Energy before it was issued by the Governor?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. To your knowledge, did the Governor discuss this Executive Order with Duke Energy before it was issued?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. This deposition is taken in connection with

some enforcement actions in which the conservation groups have been allowed to intervene, and that is brought by the Department of Environmental Quality. Have you ever discussed these enforcement actions with anyone at Duke Energy?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. Has -- to your knowledge, has the Governor discussed these enforcement actions with anyone at Duke Energy?

MR. PHILLIPS: Object and instruct him not to answer.

BY MR. HOLLEMAN:

Q. Do you know whether, at the meeting in June of 2015 at the Governor's mansion between the Governor and Duke Energy, whether coal ash was discussed?

MR. PHILLIPS: Frank, I am going to object and instruct him not to answer that question. Do you have any other questions related to the press conference or the statements concerning Dr. Rudo?

MR. HOLLEMAN: Well, here is one that relates to Dr. Rudo's testimony.

BY MR. HOLLEMAN:

Q. Have you been involved with the Health

Screening Level for hexavalent chromium?

MR. PHILLIPS: Object and instruct him not to answer. Again, related to his -- his responses to Dr. Rudo's testimony and the press. You know, Mr. Ellis is here to answer some -- answer his questions -- answer your questions concerning the meeting with Dr. Rudo and -- and I expect other questions you might have.

BY MR. HOLLEMAN:

Q. Are you familiar with the fact that, in the press, the Governor said that, "Dr. Rudo made mis-truths"?

(Pause.)

That is my question.

A. I read that.

Q. Did you talk with the Governor about that before he said it?

A. No.

Q. Do you know what he was referring to?

A. I would have to speculate. So, no.

Q. Have you talked to the Governor about what he was referring to?

A. No.

Q. To your knowledge, has the Governor met with anyone from Duke Energy about coal ash?

MR. PHILLIPS: Objection and instruct him not

to answer.

MR. TORREY: Are we going to mark that?

MR. HOLLEMAN: Yes.

BY MR. HOLLEMAN:

Q. Mr. Stith, let me show you a letter you sent to the newspaper, *The News and Observer*, dated August 9, 2000 ---

MR. TORREY: Oh, wait a minute. We have got different things.

THE WITNESS: I am sorry, this is ---

MR. HOLLEMAN: Oh, I am sorry.

MR. TORREY: I will re-collect those.

MR. HOLLEMAN: He gave me the wrong one. Sorry.

MR. TORREY: My fault. Sorry.

(PLAINTIFF-INTERVENORS EXHIBIT 640 WAS MARKED FOR IDENTIFICATION.)

Q. And I am showing you what has been marked 6 -- Exhibit 640, which is a letter, I guess, dated August 9, 2016, to *The News and Observer*, which appears to be from you. Is that a letter from you?

(Witness peruses document.)

A. This appears to be a letter the letter that was submitted to *The News and Observer*, yes.

Q. Did you write -- did you write the letter?

A. It was a collaboration with our Communications Department.

Q. And who in the Communications Department?

MR. PHILLIPS: Frank, could you give us a second to review this?

MR. HOLLEMAN: Sure.

(Pause.)

MR. PHILLIPS: All right.

BY MR. HOLLEMAN:

Q. All right. Ready? Did you write the letter?

A. It was a collaboration.

Q. And with whom?

A. With our Communications shop.

Q. And who within the Communications Office or shop?

A. I don't recall. It may have been Josh. I do not recall specifically the specific individual.

Q. Did you write the first draft, or did they write the first draft and you edited and proofed it?

A. They would have written the first draft.

Q. In the next to the last paragraph, you state about Dr. Rudo that these ---

A. (Interposing) I am sorry, can you start over?

Q. I am sorry. If you look at the next to the last paragraph that begins with the word, "These."

A. All right, uh-huh.

Q. You say about Dr. Rudo that "These exaggerated statements reflect a pattern," and then there is a reference to a dispute with an NC State University scientist during the Hunt administration. Did you know about that before you sent this letter in?

A. Did I know about it before I sent the letter in?

Q. Yes, correct.

A. Yes.

Q. And what did you -- how did you know about that dispute?

A. It was a communication -- a conversation with my communications unit.

Q. So they brought it to your attention? You didn't know about it until the communications office told you about it?

A. Correct.

Q. And what materials or documents did you review about that dispute before you sent this letter in?

A. Yeah. I had -- I know I had that conversation and -- I -- I believe I read it online, as well, but I am not certain sitting here today. But I know I had a conversation about the details of this -- this incident, and I believe I read it.

Q. You believe you read it?

A. Sitting here today, I believe I actually read the account. But I know I had a conversation about it.

Q. And the account you read was in a newspaper, is that right?

A. It was probably on line.

Q. Version of a newspaper?

A. From what I recall, but I am not certain of that. But I know -- I am certain I had a conversation about it but not certain if I actually read it before the letter went out.

Q. Okay. What was the -- what was false in the memo that Dr. Rudo sent, as is stated in this letter?

A. My understanding was that there were statements made by Dr. Rudo about an NC State Professor that were proven inaccurate, and that the leadership or the administration at that time had to apologize.

Q. What were the false statements?

A. I don't recall the specific examples.

Q. Did you know what they were when you sent the letter in?

A. They were -- they were -- a couple of examples were given, but I don't recall them sitting here today.

Q. You don't remember anything about what they were?

A. You know, I think one had to do with -- a statement that the NC State Professor had made, and that is why, I believe it is referenced here, in the recorded conversation. I do not remember the exact statement that was inaccurate ---

Q. Do you remember ---

A. --- if that is your question.

Q. --- the subject -- yes. And to elaborate on that question, do you remember the substance of the statement, even if you don't remember the exact statement that was false?

A. I do not. I do not. I -- I do not.

Q. Did you talk to Dr. Rudo before you sent this letter?

A. I did not.

Q. Did you talk to anyone else about this letter before you sent it in, other than your communications office?

MR. PHILLIPS: Do you mean pertaining to Dr. Rudo?

MR. HOLLEMAN: No, about this letter.

BY MR. HOLLEMAN:

Q. Did you talk to anyone else about this letter before you sent it in ---

A. (Interposing) Not that I ---

Q. --- other than your communications staff?

A. Not that I recall, no.

Q. I believe you said you reviewed -- we talked about the transcript of Dr. Rudo's deposition. Did you review any of the exhibits to Dr. Rudo's deposition before or since?

A. Not that I recall, unless -- well, I don't know if this is the same transcript that I have, so I can't ---

Q. (Interposing) No, an exhibit would be something separate from the transcript. It was attached to it.

A. To my knowledge, I have just seen portions of the deposition or transcript.

(PLAINTIFF-INTERVENORS EXHIBIT 641 WAS MARKED FOR IDENTIFICATION.)

Q. I guess this is Exhibit 641.

MR. PHILLIPS: Do you have another copy?

MR. TORREY: I may.

BY MR. HOLLEMAN:

Q. Exhibit 641 is August 10, 2016, opinion piece by Mr. Reeder and Mr. Williams -- Dr. Williams, who are officials of the Department of Environmental Quality and the Department of Health and Human Services. Did you review this before it was sent out?

MR. PHILLIPS: Objection, instruct him not to answer.

BY MR. HOLLEMAN:

Q. And just so we are clear on that, this -- you have not discussed Dr. Rudo --- I am sorry.

(Pause.)

Are you ready?

MR. PHILLIPS: Go ahead, sorry.

BY MR. HOLLEMAN:

Q. Just so we are clear on this, as I understand it, you have not discussed Dr. Rudo's deposition or his testimony with either Mr. Reeder at the Department of Environmental, or Dr. Williams at the Department of Health and Human Services; is that right?

A. Yes, I haven't talked to Reeder and Williams, no. I don't know if you will want to put this on the transcript. I am fine answering questions, but in about two minutes, I am going to need a bio break.

Q. Go ahead.

A. So I don't want you to think I am evading you when I go, but ---

Q. No, no. Please, at any time -- of course. So why don't we take a break ---

A. I mean, I am willing to take some more questions right now, but I am just giving you a ---

Q. Well, why don't we go ahead and take a break. And we can regroup and see what else we have that your counsel may allow you to answer.

A. That will be fine.

MR. HOLLEMAN: OFF THE RECORD. 10:14 A.M.

(A BRIEF RECESS WAS TAKEN.)

MR. HOLLEMAN: ON THE RECORD. 10:23 A.M.

BY MR. HOLLEMAN:

Q. Mr. Stith, have you talked -- I asked you about who you talked about the deposition with. Have you talked about Ken Rudo with the Governor?

MR. PHILLIPS: Well, you know, again, Frank, he is here to address the statements he has made concerning the deposition that Dr. Rudo gave. And your question is so broad I am not sure if it is confined to that.

MR. HOLLEMAN: So -- what? I mean, are you objecting or are you telling him not to answer.

MR. PHILLIPS: I am -- I am going to instruct him not to answer that question, but maybe ask you to rephrase it.

BY MR. HOLLEMAN:

Q. Have you talked with anyone else about Dr. Rudo, including the Governor or anyone else?

MR. PHILLIPS: I am going to instruct him not

to answer.

BY MR. HOLLEMAN:

Q. In 2016, the State government sent letters to well owners around Duke Energy coal ash sites telling them it was safe to drink their water. Were you involved in issuing those letters?

MR. PHILLIPS: Objection. I am going to instruct him not to answer that. Do you have any other questions pertaining to the statements that Mr. Stith made in public about Mr. Rudo's testimony?

MR. HOLLEMAN: Yes, I do.

BY MR. HOLLEMAN:

Q. Have you or the Governor or anyone in the Governor's office asked any law enforcement agency to look at Mr. Rudo's testimony, and specifically your claim that he lied under oath?

A. I have not, and not -- to my knowledge, no one in the Governor's office that I know of.

(Pause.)

MR. HOLLEMAN: That is all I have. Thank you.

MR. PHILLIPS: All right. Thank you.

MR. TORREY: One other thing. We have not received documents that we requested, so I think we need to, I guess, leave -- we are going to need to leave this

open, just because we haven't ---

MR. HOLLEMAN: Seen the documents.

MR. TORREY: --- we haven't seen the requested documents.

MR. PHILLIPS: Well, we posed proper objections under the Rules to production of the documents on the grounds that, A, they are not relevant -- and we made a voluntary offer as public documents to produce them. But your time allowed was not reasonable for us to identify and review them. We suggested that you may want to defer these depositions, given that there is no particular time pressure to do them, until you have had a chance to get the documents, but you elected to go forward. So we would not agree that the deposition should be kept open on that basis.

MR. HOLLEMAN: We will just agree to disagree. And others can ask questions if they want to, of course.

MR. LONG: We have no questions.

MS. LeVEAUX: We have no questions.

MR. HOLLEMAN: Thank you.

(THE DEPOSITION WAS ADJOURNED AT 10:26 A.M. TO RECONVENE AT A LATER UNSPECIFIED DATE AND TIME.)

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MY COMMISSION EXPIRES FEBRUARY 15, 2021

STATE OF NORTH CAROLINA

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IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 5TH DAY OF SEPTEMBER, 2016.

MICHAEL B. CARTER
NOTARY PUBLIC FOR THE
STATE OF NORTH CAROLINA
NOTARY NUMBER 19960030065
MY COMMISSION EXPIRES
FEBRUARY 15, 2021