

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: North Carolina Department of Environment and Natural Resources
Custodian of Records
c/o Lacy Presnell, Office of General Counsel

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

REQUEST FOR PERSON AND DOCUMENTS

Place: United States District Court, Eastern District of North Carolina
Terry Sanford Federal Building
310 New Bern Avenue, Raleigh, North Carolina 27601

Date and Time:
March 18-20, 2014 at 9:00am

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

SEE ATTACHMENT

The appearance commanded by this document is a continuing obligation during the course of this proceeding. To avoid being away unnecessarily, please call my Legal Assistant, Julie King at (919) 856-4002 or toll free at 1-800-538-1564, for any assistance you may need.

This information is requested pursuant to an official criminal investigation being conducted by a Federal Grand Jury. You are requested to not disclose the existence of this request. Any such disclosure could impede the investigation and interfere with the enforcement of federal law, in violation of Title 18, United States Code, Section 1510.

Date: February 10, 2014

CLERK OF COURT

Julie A. Richards

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Banumathi Rangarajan, AUSA
U.S. Attorney's Office, EDNC
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
(919) 856-4530

USAO # 2014R00058-02

ATTACHMENT A

In re Grand Jury Subpoena to:

Custodian of Records

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES (NCDENR)**

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

I. INSTRUCTIONS

A. This subpoena requires that you appear before the Grand Jury at the time and place specified and produce to the Grand Jury all documents described herein.

B. Documents to be produced include all documents in your possession, custody or control, wherever located. Without limitation on the term "control" a document is deemed to be in your control if you have the right to secure that document or a copy thereof from another person.

C. All documents that respond, in whole or in part, to any part or clause or any paragraph of this subpoena shall be produced in their entirety, including all attachments to documents called for by this subpoena shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.

D. All documents produced shall be accompanied by an index listing the document by number, identifying the natural person and office location from which each document was obtained, and the paragraph of this subpoena to which each document is responsive.

F. Each page of all documents produced shall be numbered consecutively beginning with "1" and continuing through the total number of pages submitted. These markings shall be placed at the lower right-hand corner of each page, but shall not be placed so as to obscure any information on the document.

G. Any document demanded by the subpoena that is withheld on a claim of privilege must be preserved. If the document contains privileged material, produced the entire document with the privileged portion deleted. For any document or any portion of a document withheld under a claim of privilege, submit a sworn or certified statement from your counsel in which you identify the document by author(s), addressee(s), date, number of pages, current location, and subject matter; specify the nature and basis of the claimed privilege and paragraph of this

demand for documents to which the document is responsive; and identify each person to whom the document or its contents, or any part thereof, was disclosed.

H. No agreement by the United States Attorney's Office or any of its representatives purporting to modify, limit or otherwise vary this subpoena shall be valid or binding on the Department of Justice unless confirmed or acknowledged in writing (or made of record in court) by a duly authorized representative thereof.

II. DEFINITIONS

A. "And" and "or" as used herein are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this schedule any document or information that might otherwise be construed to be outside its scope.

B. "Document" means any written, recorded or graphic material of any kind or form (including electronic records) that is in your possession, custody or control. The term includes, but is not limited to: contracts; agreements; letters; telegrams; interoffice communications; memoranda; notes; reports; analyzes; notebooks; surveys; lists; outlines; schedules; pamphlets; newsletters; flyers; charts; tabulations; compilations; studies; books; records; telephone books or messages; visitor books; calendar or diary entries; desk or appointment calendars; drafts; business cards; minutes or meetings or conferences; notes or memos or other records of telephone or other conversations or communications; electronic mail transmission; ledgers; financial statements; bills or invoices; purchase orders; receipts; photostats; microfilm; microfiche; audio and video tape or disc recordings; and computer printouts. It also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers. Any such document is to be produced in reasonably usable form, along with instructions for reading the data. The term "document" includes the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original or that bear any notation, marking or information not on the original.

C. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business or legal entity, and includes any affiliate, parent or subsidiary.

D. "Company," "Corporation," and "Entity" include any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business or legal entity, and includes any affiliate, parent or subsidiary. "Your company" includes but is not limited to any other business entities related by common ownership, common management, common directors, common officers or by other means.

E. "Relating to" means constituting, analyzing, describing, discussing, reporting on, commenting on, inquiring about, setting forth, explaining, considering, pertaining to, mentioning, regarding, alluding to or concerning, in whole or in part.

F. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa.

II. DOCUMENTS TO BE PRODUCED

Unless specifically mentioned, all records and documents sought are for the Dan River Steam Station (also referred to as the Dan River Combined Cycle Station).

1. Certified copies of all National Pollutant Discharge Elimination System Permits (NPDES) issued to Duke Energy's Dan River Steam Station plant in Rockingham County, North Carolina (NC0003468).
2. Certified copies of all NPDES applications submitted by Duke Energy for NPDES permit NC0003468.
3. All documents and records relating to the broken storm water pipe at the Dan River Steam Station that caused the discharge of coal ash and wastewater to the Dan River on or about February 2, 2014.
4. All documents, including schematics, designs, drawings, maps, inspection records and maintenance records, relating to the storm water pipe from January 2010 to the present. The record sought relate to the storm water pipe which broke on or about February 2, 2014.
5. Any and all emails, memoranda, letters, photographs, videos, reports, and any other documents or materials, from 2010 to the present, that refer or relate to discharges or seepages from any coal ash pond on site, including any coal ash pond that is not specifically described in Dan River Steam Station's National Pollutant Discharge Elimination System permit. Include all sample results taken from the above described discharges or seepages.
6. All documents, correspondence, pictures, videos, reports, and any other records generated as a result of the coal ash and wastewater discharge on or about February 2, 2014, at the Dan River Steam Station, provided to local, state and federal regulatory agencies, including law enforcement agencies. Include all records generated by the Unified Command.
7. All documents, correspondence, e-mails, pictures, videos, reports, and any other records generated, received, or sent, as a result of the coal ash and wastewater discharge on or about February 2, 2014, at the Dan River Steam Station between NC DENR and Duke Energy or its subsidiaries, including any employee or contractor of Duke Energy or its subsidiaries.

8. Certified copies of all documents relating to enforcement actions taken by any division of NC DENR concerning the Dan River Steam Station, including but not limited to: notice of violations, administrative penalties, civil penalties, consent orders, complaints and motions for injunctive relief.
9. Certified copies of all documents and relating to inspection conducted at the Dan River Steam Station by any division of NC DENR, from 2000 to the present.
10. All video and pictures documenting the broken storm water pipe that discharged coal ash and wastewater to the Dan River on or about February 2, 2014.
11. All documents and records, including sampling results, relating to samples taken from the Dan River, drinking water plants, the broken storm water pipe or the coal ash ponds as a result of the coal ash and wastewater discharge into the Dan River on or about February 2, 2014.
12. All press releases issued by any Division of NC DENR, or provided to NC DENR as a result of the coal ash and wastewater discharge into the Dan River on or about February 2, 2014.
13. All permitted effluent sampling results submitted by Duke Energy's Dan River Steam Station pursuant to NPDES permit NC0003468 since January 1, 2010, including daily and/or monthly monitoring reports.



U. S. Department of Justice

Thomas G. Walker
United States Attorney
Eastern District of North Carolina

Terry Sanford Federal Building
310 New Bern Avenue
Suite 800
Raleigh, North Carolina 27601-1461

Telephone (919) 856-4530
Criminal FAX (919) 856-4487
Civil FAX (919) 856-4821
www.usdoj.gov/usao/nc

February 10, 2014

North Carolina Department of Environment and Natural Resources
Custodian of Records
c/o Lacy Presnell, Office of General Counsel

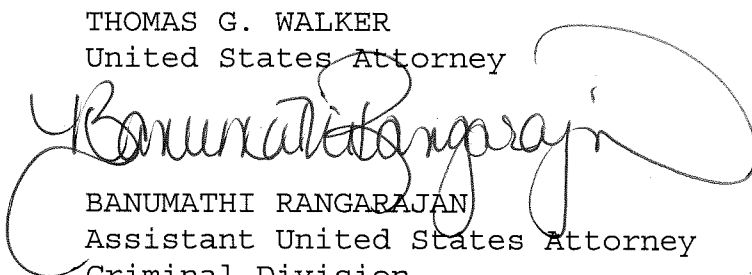
RE: Grand Jury Subpoena
2014R00058-02

To Whom It May Concern:

An official criminal investigation of a suspected felony is being conducted by an agency of the United States and a federal grand jury. As a subpoena recipient, this office is requesting that you complete the Business Record Affidavit pursuant to Rule 902(11) of the Federal Rules of Evidence, as amended December 1, 2000. By submitting this affidavit with the requested documents, you may avoid the need to appear at trial to testify to the authenticity of these records.

Sincerely yours,

THOMAS G. WALKER
United States Attorney


BANUMATHI RANGARAJAN
Assistant United States Attorney
Criminal Division

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

IN RE:

Grand Jury Subpoena
2014R00058-02

)
) BUSINESS RECORD AFFIDAVIT
) FED. R. EVID 902(11)
)
)

I am personally acquainted with the facts stated herein and make this statement under penalty of perjury.

I am the custodian of records for _____ (herein after referred to as "Company"). The documents made by the Company and produced in compliance with the subpoena duces tecum (consisting of _____ pages attached hereto) are memoranda, reports, records or data compilations of acts, events, conditions, opinions or diagnoses that were made at or near the time, by or from information transmitted by a person with knowledge and that have been kept in the course of the Company's regularly conducted business activity. It has been the Company's regular practice in that business activity to make those memoranda, reports, records or data compilations. Neither the source of information, nor the method or circumstances of preparation, indicate a lack of trustworthiness for those memoranda, reports, records or data compilations.

Affiant

Sworn to and subscribed before me
this the _____ day of _____, 2014.

Notary Public

My Commission expires: _____

NOTICE TO FACT WITNESSES
SUBPOENAED BY U. S. GOVERNMENT

CALL : 1 - 800 - 538 - 1564

WHEN YOU RECEIVE YOUR SUBPOENA TO SEE EXACTLY WHEN YOU ARE REQUIRED TO APPEAR AND TO MAKE TRAVEL ARRANGEMENTS IF YOU ARE TO APPEAR IN ANOTHER CITY -- CALL NO LATER THAN THE WORKDAY BEFORE YOU MUST LEAVE YOUR RESIDENCE TO ATTEND COURT. YOU MAY POSSIBLY PREVENT A WASTED TRIP IF TRIAL HAS BEEN POSTPONED, CANCELED, etc.

APPEARANCE IN ANOTHER CITY: You must call this office so we may arrange and pre-pay your necessary lodging & bus/air/train reservations. If you lack sufficient funds or credit cards, we can assist in contacting your local U.S. Marshals Service (in phone book under U.S. Government) to request an advance of funds to cover one-way travel and appearance fee and meals for one day. You must verify your need, present your subpoena, and personally sign an "advance money" receipt. All "advance monies" will be deducted from your final reimbursement check from the U.S. Marshals Service.

ATTENDANCE: Your subpoena tells you when and where to appear.

DO NOT GO INTO THE COURTROOM! REPORT DIRECTLY TO THE U.S. ATTORNEY'S OFFICE EACH AND EVERY DAY YOU ARE REQUIRED TO ATTEND.

ALLOWANCES: Under Title 28, United States Code, Section 1821, fact witnesses are entitled to the following fee and allowances:

- a. **FEE** - \$40.00 for each day (or partial day) in attendance and for each day (or partial day) spent traveling. b. **TRANSPORTATION** - Reimbursement is made for necessary transportation by the LEAST EXPENSIVE method available.

FIRST CLASS AIR FARE IS STRICTLY PROHIBITED AND WILL NOT BE REIMBURSED. COACH CLASS RATE ONLY! -- PLEASE SAVE RECEIPTS.

You MUST furnish receipts for airline, train or bus tickets, taxi fares, tolls, & \$25 expenditures in order to receive reimbursement.

YOU MUST FURNISH RECEIPTS FOR ANY & ALL PARKING YOU CLAIM.

PRIVATELY-OWNED VEHICLES - Current mileage reimbursement rates for travel by privately-owned vehicles are:

Motorcycles - .53¢ Automobiles -.56¢ Airplanes - 1.31¢

Mileage is determined from odometer readings and/or the Rand McNally Guides. Only one reimbursement is made if two or more witnesses travel together in one vehicle.

PERSONAL CAR RENTAL IS STRICTLY PROHIBITED AND IS NOT REIMBURSABLE.

c. **MEALS AND LODGING** - You must lodge at least one night away from home in order to receive *any* food allowance. Whenever you are REQUIRED to stay overnight and IF you personally pay, you MUST present a LODGING RECEIPT in order to receive up to the following amount(s) for lodging and/or meals:

	*MEALS AND INCIDENTAL EXPENSES	**NIGHTLY LODGING ALLOWANCE:
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ELIZABETH CITY, NC	\$46.00	\$83.00 (WITH receipt)
FAYETTEVILLE, NC	\$51.00	\$95.00 (WITH receipt)
GREENVILLE, NC	\$46.00	\$83.00 (WITH receipt)
NEW BERN, NC	\$46.00	\$90.00 (WITH receipt)
RALEIGH, NC	\$66.00	\$96.00 (WITH receipt)
WILMINGTON, NC	\$56.00	\$92.00 (WITH receipt)

*On your first and last day at court you are entitled to only one-half the amount (Ex: \$23.00, \$25.50, \$33.00, \$28.00), **ONLY IF YOU HAVE SPENT THE NIGHT.**

****YOU MUST FURNISH HOTEL RECEIPT TO RECEIVE LODGING REIMBURSEMENT****

PAYMENT: When your attendance is no longer required, a U. S. Attorney representative will complete and have you sign a FACT WITNESS ATTENDANCE VOUCHER which we submit to the U.S. Marshals Service. Normally, the U.S. Marshal processes the VOUCHER and mails a payment directly to you in about 10-12 days. (Prompt Payment Act, P.L. 97-177, 5/14/82). CALL THIS U.S. ATTORNEY'S OFFICE IF YOU DO NOT RECEIVE YOUR CHECK IN A REASONABLE PERIOD OF TIME.

PLEASE NOTE: Your subpoena is an "Order of the Court" which commands your appearance and is a continuing obligation until the completion of the entire trial although WITNESSES ARE NOT USUALLY REQUIRED TO ATTEND THE ENTIRE TRIAL.

Always call this office before commencing travel.

To ascertain your exact appearance date to avoid being away from home unnecessarily or for any assistance you need, please call these toll free numbers:

U.S. Attorney's Office (Monday-Friday) at **1-800-538-1564**

for **LEGAL SECRETARY:** _____,

Victim-Witness Coordinator Michelle Scott, (919) 856-4003, or 1 866 340-2639

(The above information does not apply to Federal Government employees (military or civilian), deportable aliens, or to aliens paroled in the United States for prosecution.)

FORM OBD2 -1/31/14 for FY14