



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EDWARD TANSEY and THE
POLICE RETIREMENT SYSTEM
OF ST. LOUIS, Derivatively on
Behalf of DUKE ENERGY
CORPORATION,

Plaintiffs,

v.

LYNN J. GOOD, B. KEITH
TRENT, LLOYD M. YATES, ANN
M. GRAY, CARLOS A.
SALADRIGAS, MICHAEL G.
BROWNING, G. ALEX
BERNHARDT, SR., JAMES T.
RHODES, JAMES H. HANCE, JR.,
E. JAMES REINSCH, JOHN H.
FORSGREN, JAMES B. HYLER,
JR., E. MARIE MCKEE, JOHN T.
HERRON, DANIEL R. DIMICCO,
HARRIS E. DELOACH, JR.,
WILLIAM E. KENNARD, JAMES
E. ROGERS, WILLIAM BARNET,
III, and PHILIP R. SHARP,

Defendants,

-and-

DUKE ENERGY CORPORATION,
a Delaware corporation,

Nominal Defendant.

C. A. No. _____

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACH
OF FIDUCIARY DUTY, WASTE OF CORPORATE ASSETS, AND
UNJUST ENRICHMENT**

Plaintiffs, by their attorneys, submit this Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment against the defendants named herein. Plaintiffs allege the following on information and belief, except as to the allegations specifically pertaining to plaintiffs which are based on personal knowledge.

NATURE AND SUMMARY OF THE ACTION

1. This is a verified shareholder derivative action brought by plaintiffs on behalf of nominal defendant Duke Energy Corporation ("Duke Energy" or the "Company") against certain of its officers and directors for breaches of fiduciary duties and violations of law. These wrongs have exposed the Company to billions of dollars in potential liability.

2. Duke Energy is the largest provider of electricity in the United States. The Company generates power from a variety of sources, with 41% of its energy generated from coal. When coal is burned for fuel, coal ash is generated as a byproduct. Coal ash contains numerous chemicals that are toxic to humans and wildlife, including lead, arsenic, and mercury, among others. North Carolina's Department of Environment and Natural Resources ("DENR") requires companies producing coal ash, such as Duke Energy, to create and implement proper coal ash disposal systems, and also to obtain various permits from the DENR to legally discharge rainwater draining from coal plants into public waterways. These permits help to ensure that proper testing and inspections are implemented at the facilities, and further insure that the rainwater discharge is within acceptable environmental limits.

3. Coal ash is typically disposed of in one of three ways, specifically: (i) wet disposal in unlined ash ponds; (ii) wet disposal in lined ash ponds; or (iii) dry disposal in lined landfills. Duke Energy has at least thirty-three unlined ash ponds in

North Carolina. While this is the cheapest method, it also poses the most significant risk to the environment and public health. In particular, because the unlined ash ponds do not use geomembranes,¹ leachate collection systems,² or other flow controls often found in municipal solid waste landfills, toxic residue from the coal ash easily seeps into soil and groundwater. As a result, the popularity of unlined wet ash ponds has significantly decreased over the last several years, and many major energy suppliers have completely excavated previously installed ash ponds and transported the coal ash to dry landfills for safer disposal.

4. Of the three major energy suppliers in North and South Carolina, Duke Energy is the only company that has refused to remove their coal ash from unlined ponds and store it in lined landfills or recycle it. Worse, certain of the Company's ash

¹ A geomembrane is very low permeability synthetic membrane liner or barrier used with any geotechnical engineering related material so as to control fluid (or gas) migration in a human-made project, structure, or system. Geomembranes are typically made from relatively thin continuous polymeric sheets, but they can also be made from the impregnation of geotextiles with asphalt, elastomer or polymer sprays, or as multilayered bitumen geocomposites.

² Leachate is any liquid that in passing through matter, extracts solutes, suspended solids or any other component of the material through which it has passed. Leachate is a widely used term in the environmental sciences where it has the specific meaning of a liquid that has dissolved or entrained environmentally harmful substances which may then enter the environment. It is most commonly used in the context of land-filling of putrescible or industrial waste. Leachate collection systems are comprised of many components, including pumps, manholes, discharge lines, and liquid level monitors.

ponds were installed over local stormwater runoff pipes, which allow excess rainwater to run unimpeded into local rivers. Thus, any breach in the pipes allows the coal ash to enter the pipe and flow directly into nearby rivers.

5. On February 2, 2014, one of the stormwater pipes broke below an ash pond at the Company's retired Dan River Steam Station in Eden, North Carolina (the "Dan River Station"). The pipe was positioned only three feet under the twenty-seven acre coal ash pond. As a result, over the next few days, at least 39,000 tons of coal ash and twenty-seven million gallons of contaminated water spilled into the Dan River, making it the third-largest coal ash spill in the nation's history. The spill coated the river bottom with coal ash for at least seventy miles in North Carolina and Virginia. On February 14, 2014, government investigators discovered that a second, smaller stormwater pipe at the Dan River Station was also releasing coal ash into the Dan River.

6. As detailed herein, subsequent investigations have revealed that at a minimum, the Individual Defendants (as defined herein) have known for years that the Duke Energy's coal ash ponds were seeping toxic chemicals into the soil and rivers, yet took no action to remedy the problems. The Individual Defendants also knew since at least 2010 that the Company was illegally operating without proper permits in several Duke Energy facilities, including at the Dan River Station. Even a major disaster such as the Dan River Station spill, however, did not motivate the Individual

Defendants to cause Duke Energy to obey environmental laws. As a result of the Individual Defendant's failure, Duke Energy has received eight permit violations *since* the Dan River Station spill, including: (i) six violations for failing to obtain proper permits at various coal plants, including at the Dan River Station; (ii) one violation specifically relating to the environmental destruction caused by the Dan River Station spill; and (iii) one violation for *illegally and intentionally dumping millions of gallons of contaminated coal ash water into local rivers just one month after the Dan River Station disaster occurred.*

7. On March 6, 2014, Judge Paul C. Ridgeway, a Superior Court Judge for the Wake County General Court of Justice, ordered Duke Energy to "take immediate action to eliminate sources of contamination" at all fourteen of the Company's coal plants in North Carolina, which include thirty-three coal ash ponds. To date, the Individual Defendants have refused to cause Duke Energy to comply with the order. Instead, the Company has proposed to leave the majority of the coal ash in place and simply cap the ponds.

8. In the wake of the disaster, the U.S. Attorney's Office in Raleigh, North Carolina, opened a criminal investigation of Duke Energy and the DENR. According to news reports, the investigation is focused on DENR's relationship with Duke Energy and Duke Energy's influence on DENR's regulatory actions. Federal prosecutors have issued at least twenty-three grand jury subpoenas to Duke Energy

executives and various state employees. The subpoenas demand documents, e-mails, and reports related to the Dan River Station spill and the state's oversight of Duke Energy's thirty-three North Carolina coal ash ponds. The subpoenas also suggest that the Company is being investigated for bribery as they demand documents involving any investments, cash, or items of value that state employees received from anyone at Duke Energy.

9. Plaintiffs now bring this action against the Individual Defendants to repair the harm that they caused the Company with their faithless actions and prevent the future harm that is occurring.

THE PARTIES

Plaintiffs

10. Plaintiff Edward Tansey was a shareholder of Duke Energy at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Duke Energy shareholder.

11. Plaintiff The Police Retirement System of St. Louis was a shareholder of Duke Energy at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Duke Energy shareholder.

Nominal Defendant

12. Nominal defendant Duke Energy is a Delaware corporation with principal executive offices located at 550 South Tryon Street, Charlotte, North

Carolina. Duke Energy was formed as a result of the merger between Duke Energy and Progress Energy, Inc., which was completed on July 2, 2012. Duke Energy is the largest electric power holding company in the United States with more than \$110 billion in total assets. The Company's regulated utility operations serves approximately 7.2 million electric customers located in six states in the Southeast and Midwest and it also owns and operates diverse power generation assets in North America and Latin America. The Company generates 41% of its energy from coal.

Current Executive/Director Defendant

13. Defendant Lynn J. Good ("Good") is Duke Energy's Vice Chairman, President, Chief Executive Officer ("CEO"), and a director and has been since July 2013. Defendant Good was Duke Energy's Executive Vice President and Chief Financial Officer from July 2009 to June 2013 and President, Commercial Businesses from November 2007 to June 2009. Defendant Good knowingly, recklessly, or with gross negligence: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv)

failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant Good the following compensation as an executive:

Year	Salary	Stock Awards	Non-Equity Incentive Plan Compensation	Deferred Compensation Earnings	All Other Compensation	Total
2013	\$929,167	\$4,177,007	\$1,103,411	\$87,825	\$175,600	\$6,473,010
2012	\$617,500	\$1,220,361	\$648,401	\$523,790	\$76,515	\$3,086,567
2011	\$595,833	\$1,213,768	\$495,545	\$187,708	\$84,317	\$2,577,171
2010	\$575,000	\$1,163,575	\$710,528	\$437,235	\$77,000	\$2,963,338

Current Executive Defendants

14. Defendant B. Keith Trent ("Trent") is Duke Energy's Executive Vice President and Chief Operating Officer, Regulated Utilities and has been since December 2012. Defendant Trent has also served in various other executive positions at Duke Energy, including Executive Vice President, Regulated Utilities in at least July 2012; President, Commercial Businesses from July 2009 to July 2012; and Group Executive and Chief Strategy, Policy and Regulatory Officer from May 2007 until at least June 2012. Defendant Trent knowingly, recklessly, or with gross negligence: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls

to prevent the wrongdoing detailed herein. Duke Energy paid defendant Trent the following compensation as an executive:

Year	Salary	Stock Awards	Non-Equity Incentive Plan Compensation	Deferred Compensation Earnings	All Other Compensation	Total
2011	\$500,004	\$1,011,532	\$415,845	\$121,401	\$77,102	\$2,125,884
2010	\$500,004	\$1,011,812	\$608,855	\$150,788	\$74,414	\$2,345,873

15. Defendant Lloyd M. Yates ("Yates") is Duke Energy's Executive Vice President, Regulated Utilities and has been since November 2012. Defendant Yates was Duke Energy's Executive Vice President, Customer Operations in July 2012 and CEO, Duke Energy Progress, Inc. from July 2007 to June 2012. Defendant Yates knowingly, recklessly, or with gross negligence: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Yates the following compensation as an executive:

Year	Salary	Stock Awards	Non-Equity Incentive Plan Compensation	Deferred Compensation Earnings	All Other Compensation	Total
2013	\$559,673	\$1,367,408	\$497,126	\$59,944	\$177,764	\$2,661,915

Current Director Defendants

16. Defendant Ann M. Gray ("Gray") is Duke Energy's Chairman of the Board of Directors (the "Board") and has been since January 2014 and a director and has been since 1994. Defendant Gray was also Duke Energy's Lead Director from April 2006 to December 2013. Defendant Gray knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Gray the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$254,500	\$125,000	\$6,412	\$385,912
2012	\$221,500	\$220,890	\$4,831	\$447,221
2011	\$168,500	\$100,000	\$5,053	\$273,553
2010	\$171,000	\$100,000	\$3,471	\$274,471

17. Defendant Carlos A. Saladrigas ("Saladrigas") is a Duke Energy director and has been since July 2012. Defendant Saladrigas is also Chairman of Duke Energy's Audit Committee and has been since at least March 2013 and a member of that committee and has been since at least March 2012. Defendant Saladrigas is a member of Duke Energy's Regulatory Policy and Operations Committee and has been since July 2012. Defendant Saladrigas knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Saladrigas the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$177,500	\$125,000	\$6,412	\$308,912
2012	\$81,826	\$74,366	\$225	\$156,417

18. Defendant Michael G. Browning ("Browning") is a Duke Energy director and has been since 1990. Defendant Browning is also a member of Duke Energy's Audit Committee and has been since at least March 2010 and was Chairman of that

committee from at least March 2010 to at least March 2012. Defendant Browning knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant Browning the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$159,500	\$125,000	\$6,412	\$290,912
2012	\$162,500	\$120,890	\$5,331	\$288,721
2011	\$138,500	\$100,000	\$5,553	\$244,053
2010	\$146,000	\$100,000	\$11,266	\$257,266

19. Defendant G. Alex Bernhardt, Sr. ("Bernhardt") is a Duke Energy director and has been since 1991. Defendant Bernhardt is also a member of Duke Energy's Regulatory Policy and Operations Committee and has been since at least March 2014. Defendant Bernhardt was a member of Duke Energy's Audit Committee from at least March 2010 until at least March 2013. Defendant Bernhardt knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by

inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant Bernhardt the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
2013	\$136,500	\$125,000	\$14,843	\$6,412	\$282,755
2012	\$146,500	\$120,890	\$13,772	\$5,331	\$286,493
2011	\$121,500	\$100,000	\$12,166	\$5,553	\$239,219
2010	\$114,000	\$100,000	\$11,012	\$5,225	\$230,237

20. Defendant James T. Rhodes ("Rhodes") is a Duke Energy director and has been since 2001. Defendant Rhodes is also a member of Duke Energy's Regulatory Policy and Operations Committee since at least March 2014. Defendant Rhodes was a member of Duke Energy's Audit Committee from at least March 2010 until at least March 2013. Defendant Rhodes knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash

disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Rhodes the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$160,500	\$125,000	\$6,412	\$291,912
2012	\$161,500	\$120,890	\$3,904	\$286,294
2011	\$136,500	\$100,000	\$5,553	\$242,053
2010	\$132,500	\$100,000	\$5,671	\$238,171

21. Defendant James H. Hance, Jr. ("Hance") is a Duke Energy director and has been since 2005. Defendant Hance is also a member of Duke Energy's Audit Committee and has been since at least March 2014. Defendant Hance knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Hance the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2013	\$160,000	\$125,000	\$6,412	\$291,412
2012	\$142,000	\$120,890	\$331	\$263,221

2011	\$108,000	\$100,000	\$5,553	\$213,553
2010	\$117,500	\$100,000	\$5,971	\$223,471

22. Defendant E. James Reinsch ("Reinsch") is a Duke Energy director and has been since 2009. Defendant Reinsch was a member of Duke Energy's Regulatory Policy and Operations Committee from July 2012 to at least March 2013. Defendant Reinsch knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Reinsch the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$134,000	\$125,000	\$6,412	\$265,412
2012	\$137,500	\$120,890	\$4,906	\$263,296
2011	\$111,000	\$100,000	\$5,553	\$216,553
2010	\$105,000	\$100,000	\$5,971	\$210,971

23. Defendant John H. Forsgren ("Forsgren") is a Duke Energy director and has been since 2009. Defendant Forsgren was a member of Duke Energy's Audit Committee from at least March 2010 to at least March 2013. Defendant Forsgren

knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant Forsgren the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$128,000	\$125,000	\$4,412	\$257,412
2012	\$134,500	\$120,890	\$331	\$255,721
2011	\$115,500	\$100,000	\$5,553	\$221,053
2010	\$122,500	\$100,000	\$5,971	\$228,471

24. Defendant James B. Hyler, Jr. ("Hyler") is a Duke Energy director and has been since July 2012. Defendant Hyler is also a member of Duke Energy's Audit Committee and has been since July 2012 and a member of its Regulatory Policy and Operations Committee and has been since at least March 2014. Defendant Hyler knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of

contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant Hyler the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$160,000	\$125,000	\$1,412	\$286,412
2012	\$81,092	\$74,366	\$225	\$155,683

25. Defendant E. Marie McKee ("McKee") is a Duke Energy director and has been since July 2012. Defendant McKee is also a member of Duke Energy's Audit Committee and has been since at least March 2014. Defendant McKee knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Duke Energy paid defendant McKee the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$164,000	\$125,000	\$6,412	\$295,412
2012	\$82,510	\$74,366	\$5,225	\$162,101

26. Defendant John T. Herron ("Herron") is a Duke Energy director and has been since March 2013. Defendant Herron is also a member of Duke Energy's Regulatory Policy and Operations Committee and has been since at least March 2014. Defendant Herron knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Herron the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$141,000	\$146,291	\$1,385	\$288,676

27. Defendant Daniel R. DiMicco ("DiMicco") is a Duke Energy director and has been since 2007. Defendant DiMicco knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash

disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant DiMicco the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$141,000	\$125,000	\$1,412	\$267,412
2012	\$134,000	\$120,890	\$331	\$255,221
2011	\$100,500	\$100,000	\$553	\$201,053
2010	\$99,000	\$100,000	\$971	\$199,971

28. Defendant Harris E. DeLoach, Jr. ("DeLoach") is a Duke Energy director and has been since July 2012. Defendant DeLoach knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant DeLoach the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$151,500	\$125,000	\$5,412	\$281,912
2012	\$79,592	\$74,366	\$225	\$154,183

29. Defendant William E. Kennard ("Kennard") is a Duke Energy director and has been since January 2014. Defendant Kennard knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; (iii) refused and continues to refuse to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina; and (iv) failed to instill adequate internal controls to prevent the wrongdoing detailed herein.

Former Executive/Director Defendant

30. Defendant James E. Rogers ("Rogers") was Duke Energy's President and CEO from 2006 to July 2012 and from July 2012 to July 2013. Defendant Rogers was also Duke Energy's Chairman of the Board from 2007 to December 2013 and a director from 2006 to December 2013. Defendant Rogers knowingly, recklessly, or with gross negligence: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; and (iii) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Rogers the following compensation as an executive:

Year	Stock Awards	Option Awards	Deferred Compensation Earnings	All Other Compensation	Total
2013	\$6,727,407	\$1,600,002	\$311,187	\$916,620	\$9,555,216
2012	\$6,373,023	\$1,600,000	\$388,257	\$369,229	\$8,730,509
2011	\$6,439,381	\$1,600,001	\$328,742	\$412,134	\$8,780,258
2010	\$6,440,180	\$1,600,000	\$352,289	\$422,712	\$8,815,181

Former Director Defendants

31. Defendant William Barnet, III ("Barnet") was a Duke Energy director from 2005 until May 2014. Defendant Barnet was also a member of Duke Energy's Regulatory Policy and Operations Committee from July 2012 until May 2014. Defendant Barnet knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; and (iii) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Barnet the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$128,000	\$125,000	\$6,412	\$259,412
2012	\$134,000	\$120,890	\$5,331	\$260,221
2011	\$123,000	\$100,000	\$5,553	\$228,553
2010	\$117,500	\$100,000	\$5,971	\$223,471

32. Defendant Philip R. Sharp ("Sharp") was a Duke Energy director from 2007 until May 2014. Defendant Sharp was also Chairman of Duke Energy's Regulatory Policy and Operations Committee from July 2012 until May 2014.

Defendant Sharp knowingly or recklessly: (i) caused or allowed Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failed to take any preventative action despite years of warnings that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; and (iii) failed to instill adequate internal controls to prevent the wrongdoing detailed herein. Duke Energy paid defendant Sharp the following compensation as a director:

Year	Fees Paid in Cash	Stock Awards	All Other Compensation	Total
2013	\$151,500	\$125,000	\$3,912	\$280,412
2012	\$152,000	\$120,890	\$2,831	\$275,721
2011	\$122,000	\$100,000	\$3,053	\$225,053
2010	\$116,000	\$100,000	\$971	\$216,971

33. The defendants identified in ¶¶13-15, 30 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶13, 16-32 are referred to herein as the "Director Defendants." The defendants identified in ¶¶17, 19-20, 22, 24, 26, 31-32 are referred to herein as the "Regulatory Policy and Operations Committee Defendants." Collectively, the defendants identified in ¶¶13-32 are referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

34. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owe Duke Energy and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are

required to use their utmost ability to control and manage Duke Energy in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Duke Energy and not in furtherance of their personal interest or benefit.

35. To discharge their duties, the officers and directors of Duke Energy were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the affairs of the Company. By virtue of such duties, the officers and directors of Duke Energy were required to, among other things:

(a) ensure that the Company complied with its legal obligations and requirements, including complying with all state and federal laws concerning coal ash storage;

(b) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock; and

(c) remain informed as to how Duke Energy conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct

such conditions or practices and make such disclosures as necessary to comply with applicable laws.

Additional Duties of the Regulatory Policy and Operations Committee Defendants

36. In addition to these duties, under its Charter in effect since July 2012, the Regulatory Policy and Operations Committee Defendants, defendants Barnet, Bernhardt, Herron, Hyler, Rhodes, Reinsch, Saladrigas, and Sharp, owed specific duties to Duke Energy to assist the Board in overseeing the Company's regulatory, strategy, and public policy positions, including: (i) non-nuclear regulated utilities' operations, such as coal; (ii) environmental, health, and safety issues; and (iii) major regulated projects. Moreover the Regulatory Policy and Operations Committee's Charter provides that the committee is specifically required to, among other things:

1. Review the significant state and federal regulatory and legislative activities and strategic initiatives involving the segment of the enterprise identified as the Regulated Utilities segment.

2. Review the Regulated Utilities segment's operational performance and strategies.

* * *

4. Review the Corporation's environmental, health and safety goals, objectives and compliance status and public policy developments as compared with industry trends and best practices.

* * *

7. Report regularly to the Board (i) following meetings of the Committee, (ii) with respect to such other matters as are relevant to the

Committee's discharge of its responsibilities, and (iii) with respect to such recommendations as the Committee may deem appropriate.

Breaches of Duties

37. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of Duke Energy, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

38. The Individual Defendants breached their duty of loyalty and good faith by allowing defendants to cause, or by themselves causing, the Company to: (i) operate without proper permits; (ii) repeatedly and continuously pollute soil and groundwater; and (iii) and refuse to comply with a court order. These improper practices wasted the Company's assets and caused Duke Energy to incur substantial damage.

39. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Duke Energy, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage the Company has already incurred, Duke Energy has expended, and will continue to expend, significant sums of money.

SUBSTANTIVE ALLEGATIONS

Company Overview

40. Duke Energy is the largest provider of electricity in the United States and generates power from a variety of sources, with 41% of its energy generated from coal. The Company has fifteen active coal-fired plants and fifteen retired facilities, with fourteen active or retired plants located in North Carolina.

41. Coal ash is generated as a byproduct when coal is burned for fuel. Coal ash contains numerous substances that are toxic to humans and wildlife, including lead, arsenic, and mercury, among others. The Company stores millions of tons of coal ash in open, unlined ash ponds, with thirty-three such storage facilities located in North Carolina.

Duke Energy's History of Ignoring Environmental Rules and Regulations

42. For years, the Individual Defendants have known that the Company's coal ash containment was inadequate and posed a significant threat to the environment, yet utterly failed to take appropriate action to fix the substantial problems.

43. In February 2008, state records showed that the groundwater under several Duke Energy's ash ponds was polluted with potentially unsafe levels of arsenic, boron, and selenium. The contamination was persistent enough at the

Company's Belews Creek Steam Station to force Duke Energy to close an ash landfill that year.

44. In June 2009, the Environmental Protection Agency classified ten of Duke Energy's North Carolina ash ponds (including both ash ponds at the Dan River Station) as "high hazard potential" based on the potential for harm should the pond containment fail. By October 2009, state data showed that groundwater was contaminated under ash ponds at thirteen active Duke Energy power plants in North Carolina. In January 2012, elevated levels of heavy metals were found in groundwater around ash ponds at all fourteen of Duke Energy's North Carolina coal-fired power plants.

45. Duke Energy's Riverbend coal plant has long been one of the Company's most egregious polluters. In October 2010, county officials detected arsenic and zinc above state standards in Mountain Island Lake near the Riverbend plant. Over the next two years, the problem persisted and worsened. In October 2012, Duke University scientists reported high levels of arsenic near the Riverbend plant on Mountain Island Lake, the main drinking water source for Charlotte, North Carolina. The Individual Defendants ignored the problem for another four months before finally announcing in February 2013 that the Riverbend plant would close in April 2013, and that the ash ponds would either be capped or removed and transported to dry landfill. Although Duke Energy has since conceded that removal of the coal ash is the

preferred option, to date, the Company has not confirmed a suitable destination to move the coal ash and has not received the proper permits to complete the work.

46. The Dan River Station also consistently failed groundwater testing long before the Dan River Station spill, with no action by the Individual Defendants to address the problem. Indeed, samples from the Dan River Station from at least January 2011 through July 2013 demonstrated that the ash ponds consistently seeped excessive levels of numerous harmful elements into the groundwater, including, among others, arsenic, antimony, and sulfate.

47. In the first quarter of 2013, a coalition of environmental groups represented by the Southern Environmental Law Center (the "SELC")³ filed notices that they planned to sue Duke Energy for the Company's seeping coal ash ponds under the citizen enforcement provision of the Clean Water Act. The Clean Water Act gives state agencies sixty days to preempt citizen suits by taking their own action. The DENR subsequently intervened in these suits to force the cases into state court. By August 2013, the DENR filed injunctions against all fourteen of the Company's coal plants alleging violations of the Clean Water Act and violations of the North Carolina groundwater standards. The DENR explicitly noted that the coal ash violations, if not corrected, "pose a serious danger to the health, safety and welfare of the people of the

³ The SELC represented the Sierra Club, Western North Carolina Alliance, Waterkeeper Alliance, and the Catawba Riverkeeper Foundation.

State of North Carolina and serious harm to the water resources of the State." As defendant Good subsequently noted, the Board was overseeing management's work on coal ash and receiving regular updates from management during this time. Accordingly, the Board knew about Duke Energy's injunctions when they were filed.⁴ Despite this dire warning, the Individual Defendants took no preventative or corrective action.

48. On October 4, 2013, the Company and DENR negotiated a proposed consent order concerning the violations at two Duke Energy plants. The consent order assessed civil penalties of approximately \$100,000 and imposed a compliance schedule requiring Duke Energy to undertake monitoring and data collection activities toward making appropriate corrective action to address any substantiated violations. The court's consideration of the October 4, 2013 consent order was subsequently postponed for reconsideration in light of the Dan River Station disaster. DENR's enforcement actions against the Company's other plants in North Carolina remain pending following motions to intervene that were filed by the SELC and Catawba Riverkeeper Foundation that were granted on November 17, 2013.

⁴ At the very latest, the Board knew about these injunctions by November 8, 2013, when they were disclosed in the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2013, filed with the U.S. Securities and Exchange Commission ("SEC"). Defendant Good, however, admitted that the Board and the Regulatory Policy and Operations Committee have been overseeing the Company's inadequate coal ash storage for years and received regular updates from management.

49. In addition to the above, investigations following the Dan River Station disaster revealed that at least six of the Company's coal plants have operated for years without proper permits, including the Dan River Station. In particular, as revealed in violation notices issued by the DENR in February and March 2014, Duke Energy "neither applied for nor received coverage under" permits to discharge stormwater at those plants, in violation of North Carolina law. Regulators also revealed that both Duke Energy and DENR had been aware since at least 2010 that some of the Company's facilities lacked the required stormwater permits. In fact, according to a DENR spokesman, "[s]ince 2010, stormwater permitting staff has been working to develop a stormwater permit template that can be used at all coal-fired facilities and had been asking for information from Duke [Energy] as part of that process." Regulators also noted that more enforcement actions are possible pending further investigations into the handling of coal ash at all fourteen of Duke Energy's power plants in North Carolina.

The Dan River Station Disaster

50. On February 2, 2014, a stormwater drainage pipe below an ash pond at the Company's Dan River Station broke. The pipe was positioned only three feet under the twenty-seven acre coal ash pond. Officials warned the public not to swim in the river or eat its fish due to serious health risks. On February 14, 2014, government

investigators discovered that a second, smaller stormwater pipe at the Dan River Station was also releasing coal ash into the Dan River.

51. As a result of the spills, over the next few days, approximately 39,000 tons of coal ash and twenty-seven million gallons of contaminated water spilled into the Dan River, making it the third-largest coal ash spill in the nation's history. The spill coated the river bottom with coal ash for at least seventy miles in North Carolina and Virginia.

52. On February 28, 2014, the DENR issued two formal notices of violations against the Dan River Station. The first notice of violation confirmed that Duke Energy never even applied for a permit for stormwater discharges at the Dan River Station, in violation of North Carolina law. The second notice of violation concluded that as a result of the spill, Duke Energy "violated water quality statutes, rules, and permit conditions in association with its management of the coal ash pond and the discharge of a portion of its contents to the Dan River." The violations identified by DENR included:

- Making outlets to waters of the State without a permit via the 48-inch stormwater pipe and via a separate, 36-inch, concrete stormwater pipe also running underneath the coal ash pond, that received infiltration of wastewater.
- Failure to operate and maintain the ash pond such that any discharge from it was controlled and conveyed to the river in the manner compliant with the terms of the [National Pollutant Discharge Elimination System] permit.

- Failure to utilize or dispose solids removed from the treatment process in such a manner as to prevent pollutants from entering waters of the State.
- Failure to take all reasonable steps to prevent any discharge in violation of the permit with the reasonable likelihood of affecting human health or the environment.
- Violations of both the narrative and analytical water quality standards for class C waters. [Class C waters are considered to support swimming and fishing.]

The Company's Refusal to Abide by the Law Even After the Disaster

53. On March 6, 2014, Judge Paul C. Ridgeway, a Superior Court Judge for the Wake County General Court of Justice, ordered Duke Energy to "take immediate action to eliminate sources of contamination" at all fourteen of the Company's coal plants in North Carolina, which include thirty-three coal ash ponds. The Individual Defendants refused. Instead, at their behest, Duke Energy appealed the ruling. Judge Ridgeway then declined to stay the order until the appeal can be heard. Despite this, the Individual Defendants refused to comply with the order and, to date, the Company has not begun the excavation and removal of coal ash at Duke Energy's polluting coal ash ponds.

54. The Company claims that if Duke Energy is forced to comply with the order by digging up coal ash from disposal sites across the state and trucking the industrial waste to modern landfills, it would cost the Company between \$7 and \$10 billion over approximately twenty to thirty years. The cost of compliance, however, does not shield the Individual Defendants refusal to cause Duke Energy to obey a

court's ruling.⁵ Further, various environmental groups contend that Duke Energy is grossly exaggerating the cost of cleaning up the groundwater leaks in an attempt to evoke sympathy and eschew compliance with the court order. Indeed, based on recent similar coal ash removal projects, complying with the court order would only cost Duke Energy \$2.5 billion.

55. In the wake of the disaster, the U.S. Attorney's Office in Raleigh, North Carolina, opened a criminal investigation of Duke Energy and the DENR. According to news reports, the investigation is focused on DENR's relationship with Duke Energy and Duke Energy's influence on DENR's regulatory actions. Federal prosecutors have issued at least twenty-three grand jury subpoenas to Duke Energy executives and various state employees. The subpoenas demand documents, e-mails, and reports related to the Dan River Station spill and the state's oversight of Duke Energy's thirty-three North Carolina coal ash ponds. The subpoenas also suggest that the Company is being investigated for bribery as they demand documents involving any investments, cash, or items of value that state employees received from anyone at Duke Energy.

⁵ The Company has proposed to instead remove the coal ash to landfills at only four of its power plants and leave much of what is stored at the ten other sites in place after covering it with plastic and soil. Even this remediation plan is expected to cost the Company an estimated \$2 and \$2.5 billion.

56. Shockingly, within weeks of above revelations, *Duke Energy was caught illegally and deliberately dumping toxic coal ash waste into local water sources* near Duke Energy's Cape Fear plant. In particular, on March 10, 2014, an environmental group captured aerial photos of the Company sucking contaminated water directly from a large coal ash dump and pumping it into a tributary of the Cape Fear River, which provides drinking water for several cities and towns in North Carolina. State regulators went to the site the following day in connection with previously scheduled inspections of all of the Company's coal ash ponds in the wake of the Dan River Station spill. When the inspectors arrived, employees had predictably disabled the pumps the environmental group had photographed the prior day. Nonetheless, as a result of the photographic proof and further inspections, on March 20, 2014, the DENR cited the Company for illegally dumping an estimated sixty-one million gallons of contaminated water into the river.

The Board Was Intimately Aware of the Company's Longstanding Environmental and Regulatory Failings

57. A principal duty of the Board is to ensure that the Company operates in compliance with all applicable laws and regulations. As the Company has disclosed in every Quarterly Report on Form 10-K filed with the SEC since at least 2007, this includes "numerous environmental laws and regulations affecting many aspects of [the Company's] present and future operations, including ... water quality, wastewater discharges, solid waste and hazardous waste." The Forms 10-K further note that

[t]hese laws and regulations generally require [Duke Energy] to obtain and comply with a wide variety of environmental licenses, permits, inspections and other approvals."

58. The Board is also responsible for risk oversight at Duke Energy, including with respect to coal ash disposal and management. As stated in numerous Proxy Statements on Forms DEF 14A that were filed with the SEC by the Company between 2010 and the present, "[t]he Board of Directors is actively involved in the oversight of risks that could affect Duke Energy." The Company's Forms 10-K highlight the most significant risks the Company faces, including relating to the Company's environmental compliance or lack thereof. Specifically, in relevant part:

Compliance with environmental laws and regulations can require significant expenditures, including expenditures for cleanup costs and damages arising from contaminated properties. Failure to comply with environmental regulations may result in the imposition of fines, penalties and injunctive measures affecting operating assets. The steps the Duke Energy Registrants could be required to take to ensure their facilities are in compliance could be prohibitively expensive. As a result, the Duke Energy Registrants may be required to shut down or alter the operation of their facilities, which may cause the Duke Energy Registrants to incur losses. Further, the Duke Energy Registrants' regulatory rate structure and their contracts with customers may not necessarily allow for the recovery of capital costs incurred to comply with new environmental regulations. Also, the Duke Energy Registrants may not be able to obtain or maintain from time to time all required environmental regulatory approvals for their operating assets or development projects. Delays in obtaining any required environmental regulatory approvals, failure to obtain and comply with them or changes in environmental laws or regulations to more stringent compliance levels could result in additional costs of operation for existing facilities or development of new facilities being prevented, delayed or subject to additional costs.

59. Given that 41% of the Company's energy is generated from coal, and given the numerous risks associated with coal ash, the Board pays particularly close attention to Duke Energy's coal ash disposal and management. In fact, in order to ensure that the Board remained well informed about these significant issues, the Board formed the Regulatory Policy and Operations Committee in July 2012. The Regulatory Policy and Operations Committee met four times between July and December 2012, and six times in 2013. Per the committee's Charter, the Regulatory Policy and Operations Committee reported directly to the Board after each of those meetings, as well as with respect to "such other matters as are relevant to the [Regulatory Policy and Operations] Committee's discharge of its responsibilities." Thus, the Company was well structured to ensure that the Board remained intimately aware of the repeated problems occurring at Duke Energy's ash ponds.

60. Moreover, following the Dan River Station disaster, the Board has repeatedly admitted that it was long aware of the Company's coal ash issues. In fact, an April 21, 2014, presentation to shareholders claimed that "[p]rior to the Dan River incident, Duke's Board and the [Regulatory Policy and Operations] Committee [already] had a long-term plan for coal ash management well underway." Although the plan has proved ineffective, this demonstrates that the Board was deeply involved in forming it. Defendant Sharp also admitted that same day on a follow-up conference call moderated by Glass, Lewis & Co., that the Board, along with the Regulatory

Policy and Operations Committee, had long been focused on coal ash management and oversaw management's operational and risk assessment work regarding coal ash management prior to the Dan River Station incident, and thus was well aware that the Company was operating outside of the law. Defendant Sharp stated, in relevant part:

Coal ash management has been a focus area of the Board and the [Regulatory Policy and Operations] Committee for quite some time. Let me say that again, this issue has been a focus of the Board for quite some time. In fact, the Board and the [Regulatory Policy and Operations] Committee were already overseeing management's operational and risk assessment work regarding coal ash management prior to the Dan River incident. This prior oversight of coal ash matters included Board and [Regulatory Policy and Operations] Committee meetings, as well as management updates.... The Board and the [Regulatory Policy and Operations] Committee have been, and will continue to be, actively engaged in reviewing this very serious matter with management and in overseeing the Company's response.

61. Based on the above, it is undeniable that the Board was well aware of the Company's longstanding violations, yet failed to take any meaningful action to prevent further harm. Instead, the Board caused or allowed Duke Energy to operate without proper permits, continuously pollute the environment, and fail to properly inspect the Company's coal ash ponds, which potentially contributed to the Dan River Station disaster. The Board's oversight and direction of the Company's response to the disaster has been even worse.

The Board Played an "Integral Role in Monitoring and Overseeing" the Company's Wrongful Actions Following the Dan River Station Disaster

62. The February 2, 2014 spill immediately received substantial media attention. As a result of the news and the corresponding public outcry, the Company began facing significant scrutiny for its operations at all Duke Energy coal plants.

63. Amidst the scrutiny, on March 20, 2014, the directors nominated fifteen presiding Board members for reelection at the upcoming May 1, 2014 shareholder meeting. Not a single nominee had the necessary expertise to properly direct or oversee the Company's coal ash management. Based on the Board's repeated failures, two of the largest pension funds in the world, both longtime Duke Energy shareholders, pledged to vote their combined 3.9 million shares against four of the Board nominated directors. In particular, on April 14, 2014, the California Public Employees' Retirement System and the New York City Pension Funds pledged to vote their combined shares against Director Defendants Bernhardt, Hyler, Rhodes, and Saladrigas. As noted by the funds, these defendants are all members of the Regulatory Policy and Operations Committee, yet have no "relevant experience in hazardous waste disposal, environmental management and regulatory matters." The funds further noted that "[t]he company had forewarning of the potential risk through the work of environmental groups, which reportedly took the company to court on three occasions to clean up similar ash ponds at separate North Carolina plants due to the risks of catastrophe." Shockingly, the funds also revealed that they specifically

discussed their concerns with the Company's management, and "[m]anagement reported that *the [B]oard was receiving reports from management in connection with the spill, but had not initiated any independent reviews.*"

64. On April 21, 2014, defendants Good and Gray sent a letter to shareholders in response to the pension funds' criticisms and pledge to vote their combined shares against Director Defendants Bernhardt, Hyler, Rhodes, and Saladrigas. The letter claimed that all director nominees, including the contested nominees "are well-qualified to effectively oversee the Company's response to the Dan River incident and the development and execution of our comprehensive coal ash management plan." In support of this assertion, the letter averred that Director Defendants Bernhardt, Hyler, Rhodes, and Saladrigas each "individually brings valuable skills and attributes to the [Regulatory Policy and Operations] Committee and to the entire Board," yet notably failed to identify a single Board member with expertise in coal ash management. Instead, the letter merely touted these Board members' wholly unrelated or tangentially related experience. In particular, the letter stated that:

- Defendant Bernhardt purportedly has: (i) "significant business and leadership experience and communications expertise"; (ii) "knowledge of environmental and water quality issues" as a result of his "leadership and membership in various [undisclosed] environmental organizations"; and

(iii) "extensive nuclear experience, including performing risk analysis, prioritizing safety matters and addressing [undisclosed] environmental issues."

- Defendant Hyler purportedly has: (i) "knowledge and experience in financial services and corporate finance"; and (ii) "experience[] in working with regulatory agencies, including through his membership on the North Carolina State Banking Commission and his experience with the North Carolina Utilities Commission, the regulator of [the Company's] largest jurisdiction."
- Defendant Rhodes purportedly: (i) has historical experience as an executive at a power company and a nuclear non-profit company that promotes "safety, reliability and excellence in nuclear plant operation"; and (ii) currently chairs Duke Energy's Nuclear Oversight Committee.
- Defendant Saladrigas purportedly: (i) "brings to the Board broad business skills and experience, including extensive expertise in human resources, financial services, accounting and international operations"; and (ii) has experience in health care regulation.

65. Defendants Good and Gray's April 21, 2014 letter also stated that the Board and the Regulatory Policy and Operations Committee were responsible for the Company's actions following the spill, and were directing and guiding the Company in

"working to develop and implement a comprehensive coal ash management plan." Defendants Good and Gray further noted that the "Board, including the [Regulatory Policy and Operations] Committee, has been continually updated on and is playing an integral role in monitoring and overseeing these near-term actions." In addition, defendants Good and Gray boasted that "[s]ince the Dan River incident, the Board and the [Regulatory Policy and Operations] Committee have met five times and have received thirteen updates from management."

66. Defendants Good and Gray's letter confirmed that the Board is responsible for the Company's repeated failures following the Dan River disaster. In particular, the letter confirmed that the Board was responsible for causing or allowing the Company to: (i) ignore the March 26, 2014 order directing the Company to "take immediate action to eliminate sources of contamination" at all fourteen of the Company's coal plants in North Carolina, which include thirty-three coal ash ponds; (ii) grossly exaggerate the cost of cleaning up the groundwater leaks in an attempt to evoke sympathy and eschew compliance with the court order; and (iii) fail to immediately implement stronger regulatory compliance controls in the months following the Dan River Station disaster, which caused or allowed the Company to illegally and deliberately dump sixty-one million gallons of toxic coal ash waste into local water sources near Duke Energy's Cape Fear plant.

DAMAGES TO DUKE ENERGY

67. As a result of the Individual Defendants' unlawful conduct, Duke Energy has expended and will continue to expend billions of dollars in fines, penalties, and clean-up costs. Such expenditures include, but are not limited to:

(a) costs incurred from the Company's clean-up of the Dan River Station disaster;

(b) costs incurred from defending and paying any settlement in the criminal investigations;

(c) costs incurred from potential fines and/or penalties for failing to operate with proper permits;

(d) costs incurred from potential fines and/or penalties for violating the explicit requirements set forth in various permits held by Duke Energy, including the violations at the Dan River Station and Cape Fear plant;

(e) costs incurred from potential fines and/or penalties for refusing to comply with a court order; and

(f) costs incurred from compensation and benefits paid to the defendants who have breached their duties to Duke Energy.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

68. Plaintiffs bring this action derivatively in the right and for the benefit of Duke Energy to redress injuries suffered, and to be suffered, by Duke Energy as a

direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Duke Energy is named as a nominal defendant solely in a derivative capacity.

69. Plaintiffs will adequately and fairly represent the interests of Duke Energy in enforcing and prosecuting its rights.

70. Plaintiffs were shareholders of Duke Energy at the time of the wrongdoing complained of, have continuously been shareholders since that time, and are currently Duke Energy shareholders.

71. The current Board of Duke Energy consists of the following fifteen individuals: defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, DeLoach, and Kennard. Plaintiffs have not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

Demand Is Excused On The Current Board Because Its Conduct Is Not a Valid Exercise of Business Judgment

72. The Board was well aware of the Company's issues with unlined coal ash ponds, but took blatantly inadequate action, if any. Director Defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, DeLoach, and Kennard participated or acquiesced in the misconduct and egregious circumstances complained of herein, which exposed the Company to significant harm and potential liability. As the ultimate decision-making

body of the Company, the Board affirmatively adopted, implemented, and condoned a business strategy based on deliberate and widespread improper activities. The magnitude and duration of the Board's wrongdoing and failures show they are incapable of independently considering a demand. These defendants instilled a culture of lawlessness at Duke Energy and repeatedly ignored widespread warnings that the Company's coal ash disposal was ineffective, inadequate, and was causing serious harm to the environment.

73. These defendants also knowingly caused or allowed the Company to operate without proper permits for years. Further, these defendants have expressly refused to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina, instead arguing that removing the coal ash would be too costly for the Company. Even assuming that the Company did not grossly exaggerate its estimated \$7 to \$10 billion compliance costs, however, the Company can easily afford full compliance with the order. Indeed, the Company's profits were \$2.7 billion last year alone. Accordingly, the cost of compliance does not shield the Individual Defendants refusal to cause Duke Energy to obey a court's ruling.

74. This pattern and practice of illegal conduct, spanning multiple years, cannot be a valid business decision.

Demand Is Excused Because The Current Board Members Face a Substantial Likelihood of Liability for Their Misconduct

75. As defendant Sharp recently noted, "[c]oal ash management has been a focus area of the Board and the [Policy and Operations] Committee for quite some time," and "the Board and the [Policy and Operations] Committee were already overseeing management's operational and risk assessment work regarding coal ash management prior to the Dan River incident." Thus, defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, DeLoach, and Kennard were all well informed of the numerous problems at the Company's North Carolina plants that occurred for years.

76. Defendant Good served as the Company's Executive Vice President from July 2009 to June 2013, and has served as the Company's Vice Chairman, President, CEO, and a director since July 2013. Defendants Gray, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, and DiMicco all served as directors since at least 2009. From 2009 to the present, the Company's internal testing, state testing, and environmental group testing all repeatedly concluded that Duke Energy ash ponds seeped excessive levels of numerous harmful elements into the groundwater. In breach of their fiduciary duties, these defendants simply ignored the problem.

77. In 2010, DENR began requesting information from Duke Energy concerning stormwater permits in order to develop a stormwater permit template. Despite the Board's longstanding focus on coal ash management, defendants Good,

Gray, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, and DiMicco utterly failed to implement a system to insure that the Company applied for proper permits for Duke Energy coal plants, let alone complied with the operational requirements governed by those permits. As a result, the Company has received multiple violations at various coal plants, and has continuously polluted soil and groundwater for years. In addition, obtaining proper permits would likely have required testing and inspections that may have provided early warning signs of problems with the drain water pipe running under the massive coal ash dump at the Dan River Station before it collapsed, thus preventing the environmental catastrophe. These defendants breached their fiduciary duties by utterly failing to ensure the Company operated in a safe and legal manner.

78. Defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, and DeLoach all served on the Board in 2013 when environmental groups filed notices that they planned to sue Duke Energy for the Company's seeping coal ash ponds under the citizen enforcement provision of the Clean Water Act. These defendants also all served on the Board when the DENR intervened and filed injunctions against all fourteen of the Company's coal plants, which explicitly noted that the coal ash violations, if not corrected, "pose a serious danger to the health, safety and welfare of the people of the State of North Carolina and serious harm to the water resources of the State."

Defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, and DeLoach ignored the warnings and took no preventative or corrective action. As a result of these defendants' refusal to promptly act, the groundwater violations continued, the Dan River Station was not properly and immediately inspected, and the Company did not learn of the problems with the stormwater drain at the Dan River Station until it collapsed and spilled millions of gallons of coal ash into the river. According, they foresee a substantial likelihood of liability and demand is excused.

79. The lawless culture that the Board created at Duke Energy and the widespread acceptance of environmental abuse are further demonstrated by the Company's actions following the Dan River Station disaster. Despite being ordered to "take immediate action to eliminate sources of contamination" at all fourteen of the Company's coal plants in North Carolina, which include thirty-three coal ash ponds, defendants Good, Gray, Saladrigas, Browning, Bernhardt, Rhodes, Hance, Reinsch, Forsgren, Hyler, McKee, Herron, DiMicco, DeLoach, and Kennard simply refused to comply with the order. Further, a mere four days after the order was issued, the Company was caught illegally and deliberately dumping sixty-one million gallons of toxic coal ash waste into the Cape Fear River. These defendants have utterly failed in their duty to ensure the Company operates in compliance with applicable laws and regulations. As such, demand on the Board is futile.

80. Defendants Bernhardt, Herron, Hyler, Rhodes, Reinsch, and Saladrigas face additional liability for failing to fulfill their duties as members of the Regulatory Policy and Operations Committee. Under the Regulatory Policy and Operations Committee Charter, these defendants were required to review, among other things: (i) the significant state and federal regulatory and legislative activities; (ii) the Company's regulated operational performance and strategies; and (iii) the Company's environmental, health, and safety goals, objectives, and compliance status. Defendant Good specifically pointed to the Regulation Policy and Operation Committee and being actively involved in dealing with coal ash disposal, including meeting and receiving updates from management. These defendants utterly failed to fulfill their duties, and instead caused or allowed the Company to operate for years without proper permits and to continuously pollute local soil and groundwater.

FIRST CAUSE OF ACTION

Against the Individual Defendants for Breach of Fiduciary Duty

81. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

82. The Individual Defendants owed and owe Duke Energy fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe Duke Energy the highest obligation of good faith, fair dealing, loyalty, and due care.

83. The Individual Defendants and each of them, violated and breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the Individual Defendants violated their duty of good faith by creating a culture of lawlessness within Duke Energy, and/or consciously failing to prevent the Company from engaging in the unlawful acts complained of herein.

84. The Officer Defendants either knew, were reckless, or were grossly negligent in disregarding the illegal activity of such substantial magnitude and duration. The Officer Defendants either knew, were reckless, or were grossly negligent in: (i) causing or allowing Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failing to take any preventative action despite knowing that the Company was polluting soil and groundwater by inadequately maintaining its coal ash ponds; and (iii) refusing to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina. Accordingly, the Officer Defendants breached their duty of care and loyalty to the Company.

85. The Director Defendants, as directors of the Company, owed Duke Energy the highest duty of loyalty. These defendants breached their duty of loyalty by knowingly or recklessly: (i) causing or allowing Duke Energy to operate several coal ash ponds without proper permits for years; (ii) failing to take any preventative action despite knowing that the Company was polluting soil and groundwater by

inadequately maintaining its coal ash ponds; and (iii) refusing to comply with a court order to "take immediate action to eliminate sources of contamination" at the Company's coal ash disposal sites in North Carolina. Accordingly, the Director Defendants breached their duty of loyalty to the Company.

86. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Duke Energy has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

87. Absent injunctive relief, the Individual Defendants will continue to refuse to take immediate action to eliminate sources of contamination from the Company's coal ash ponds and will continue to improperly dispose of toxic substances, causing irreparable harm to the environment and the public.

88. Plaintiffs, on behalf of Duke Energy, have no adequate remedy at law.

SECOND CAUSE OF ACTION

Against the Individual Defendants for Waste of Corporate Assets

89. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

90. As a result of the wrongdoing detailed herein, the Individual Defendants have wasted corporate assets by subjecting the Company to billions of dollars in fines, penalties, and clean-up costs. By failing to conduct proper supervision, the Individual

Defendants have caused Duke Energy to waste its assets by paying improper compensation and bonuses to certain of its executive officers and directors that breached their fiduciary duty.

91. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

92. Plaintiffs, on behalf of Duke Energy, have no adequate remedy at law.

THIRD CAUSE OF ACTION

Against the Individual Defendants for Unjust Enrichment

93. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

94. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Duke Energy. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to Duke Energy.

95. Plaintiffs, as shareholders and representatives of Duke Energy, seek restitution from these defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

96. Plaintiffs, on behalf of Duke Energy, have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of Duke Energy, demand judgment as follows:

A. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including that the Court preliminarily, and upon final judgment, permanently enter a mandatory injunction requiring Duke Energy to:

1. comply with the March 6, 2014 order by "take[ing] immediate action to eliminate sources of contamination that cause a concentration of a substance in excess of groundwater quality standards, in advance of their separate obligation to propose and implement a corrective action plan for the restoration of groundwater quality contaminated by those sources";

2. abate any and all violations of federal and/or state statutes and/or regulations relating to groundwater permits and standards;

3. refrain from improperly disposing of coal ash and coal ash waste;
and

4. refrain from dumping coal ash waste in violation of regulations and/or permits;

B. Against the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual

Defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

C. Directing Duke Energy to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Duke Energy and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote of the following Corporate Governance Policies:

1. a proposal to strengthen the Company's internal controls and information systems to ensure compliance with all federal and state rules and regulations concerning the storage and maintenance of coal ash disposal;

2. a proposal to design, operate, and audit a system of testing for potential problems at the Company's coal ash disposal sites;

3. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board; and

4. a provision to permit the shareholders of Duke Energy to nominate at least three candidates for election to the Board;

D. Awarding to Duke Energy restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

E. Awarding to plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

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