Agenda Item: 18-26 **Request Approval of Hearing Officer's Report and Issuance of Water Quality Special Order by Consent (SOC) S17-009 to Address Non-engineered Seeps from Coal Ash Basins at Duke Energy's Allen, Marshall and Rogers (Cliffside) Steam Stations.**

Explanation: Duke Energy has requested a Special Order by Consent (SOC) to address issues associated with non-engineered seeps that originate in its coal ash basins at the Allen and Marshall Steam Stations, and at the Rogers Energy Complex (formerly Cliffside Steam Station). Seepage from the ash basins conveys coal ash wastewater through porous spaces in the earthen dams and the surrounding terrain. When seepage reaches the land surface (or "daylights") it is referred to as a "seep." Flow from seeps may reach designated surface waters, depending on their volume and where they daylight. However, the nature of non-engineered seeps causes them to not fit the definition of a point source discharge and as such, their inclusion in NPDES permits is challenging. The lack of a comprehensive plan for regulatory coverage of non-engineered seeps has contributed to the delays in the issuance of NPDES permits for coal ash basin discharges.

The SOC, as drafted, provides coverage for non-engineered seeps at the Allen, Marshall and Rogers facilities. Surface waters affected by seeps will be monitored on a regular basis while the SOC is in effect, to help determine any effects the seeps may have on water quality. Within some receiving waters, interim action levels (higher than existing, numeric surface water quality standards) have been developed, representing concentration thresholds at or below which the Division of Water Resources will not take enforcement action. Exceedance of interim action levels will initiate the process for assessment of stipulated penalties and may conditionally require remedial action.

As a term of the SOC, Duke Energy will expedite decanting of its coal ash basins at the Allen, Marshall and Rogers facilities. Discharges associated with decanting will be regulated per the terms of their individual NPDES permits. Removal of this volume of wastewater from the basins should eliminate of significantly reduce the number of seeps from these impoundments. Any seeps remaining after decanting will be examined and characterized. Final disposition of remaining seeps will be addressed per the terms of groundwater corrective action plans and/or site closure plans.

Recommendation: That the EMC approves the draft SOC. Upon the affixing of the Chairman's signature, the SOC will be fully executed.