PROGRESS ENERGY FLORIDA
IN RE: NUCLEAR COST RECOVERY CLAUSE
Docket 100009-EI

TWENTY-FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION
CONFIDENTIALITY JUSTIFICATION MATRIX

EXHIBIT B

Attachment B

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME I

_____/

PROCEEDING: DEPOSITION OF JEFFREY LYASH

DATE: August 12, 2010

TIME: 9:41 a.m. - 5:18 p.m.

PLACE: Progress Energy Florida
299 1st Avenue North
St. Petersburg, FL 33701

REPORTED BY: Stephanie A. Walters
Florida Professional Reporter
Notary Public, State of Florida

(PAGES 1 - 194)

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(VOLUME I)

THE COURT REPORTER: Okay. Go ahead and raise your right hand.

THE WITNESS: (Complies.)

THE COURT REPORTER: Do you swear or affirm the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

WHEREUPON,

JEFFREY LYASH,

the witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REHWINKEL:

Q Okay. Good morning, Mr. Lyash.

A Good morning, Charles.

Q My name is Charles Rehwinkel with the Florida Office of Public Counsel, and with me here is Dr. Bill Jacobs with GDS & Associates.

MR. REHWINKEL: I guess we will take appearances first, and then I would like to go through a preliminary recording of confidentiality, so --

MR. JACOBS: Me?

MR. REHWINKEL: Yeah.

MR. JACOBS: William Jacobs with GDS Associates, consultant to the Office of Public Counsel.

MR. WALLS: Mike Walls with Carlton Fields on behalf of Progress Energy.

MR. BURNETT: And John Burnett on behalf of Progress Energy, but I'm not making an appearance today, just listening in.

MR. REHWINKEL: And on the phone?

MR. BREW: James Brew for White Springs Agricultural Chemicals, PCS Phosphate.

MR. WHITLOCK: Jamie Whitlock and Gary Davis on behalf of the Southern Alliance for Clean Energy.

MR. LAUX: Mark Laux, William Coston, Kevin Carpenter, all non-attorneys for the Florida Public Service Commission.

MR. REHWINKEL: Anyone else?

Okay. Today's deposition will be taken utilizing information that is deemed by Florida -- Progress Energy Florida to be confidential; and as such, we are required by law to keep it confidential.

It is my understanding that everyone that has

entered a notice and that is dialed into the call is qualified to view this confidential information.

The Office of Public Counsel is qualified pursuant to nondisclosure agreement and bound by the rules and statutes of governing practice for the Commission.

I believe the Florida Public Service Commission staff members are the same, and I believe that the -- the nongovernmental parties on the phone are -- have a binding nondisclosure agreement with the company; is that correct?

MR. WALLS: That's correct.

MR. REHWINKEL: Okay. So the deposition will be taken, and it will be deemed confidential pending review by Progress Energy of confidentiality.

All parties who have entered an appearance today are eligible to receive a copy, I believe, pending that determination; is that correct, Mr. Walls?

MR. WALLS: Yes.

MR. REHWINKEL: But no one else, without the permission of Progress Energy, may order a copy; is that correct?

MR. WALLS: Yes.

MR. REHWINKEL: Okay. All right.

MR. MOYLE: Charles, I didn't enter an appearance, but Jon Moyle, Keith Eckers, Gordon Moyle on behalf of the Florida Industrial Power Users Group.

MR. REHWINKEL: I apologize, Jon.

And Jon Moyle is subject to a nondisclosure agreement as well.

Okay. All right. We're ready to get started. I apologize for the delay.

BY MR. REHWINKEL:

Q And I appreciate you making yourself available today, Mr. Lyash. You received a notice of this deposition; is that correct?

A That's correct.

Q And I understand you have your testimony and some of the documents that we indicated that we would be asking questions from today; is that correct?

A That's correct.

Q Okay. First of all, I'd like to ask you about your direct testimony that was filed on April 30, 2010. Do you have that with you?

A Yes, I do.

Q And my first question to you is, do you have any changes or corrections that you intend to make to that testimony when you get on the stand?

A No, I don't.

Q Okay. Are you testifying before the Public Service Commission as an officer of Progress Energy, the parent corporation?

A Yes.

Q Are you testifying with any -- are you offering yourself as an expert witness in any area in this case?

A As covered in my testimony.

Q Okay. What -- what -- do you consider yourself an expert in nuclear licensing?

A I -- yeah, I have extensive experience in nuclear licensing with the company and with the Nuclear Regulatory Commission, so I'm generally familiar with the process.

Q Okay. But your -- your purpose in filing testimony is as an officer of the corporation; is that correct?

A That's correct.

Q Recently, I think in your testimony, you indicate that you -- your job changed recently, I think on June 1st of this year?

A That's correct.

Q And your job title changed from vice -- executive vice president of Corporate Development to what?

A Executive Vice President of Energy Supply.
Q Okay. And I think -- I guess back on June 1st of 2010, the St. Pete Times had an article that said you were swapping corporate EVP titles and duties. Do you recall that?
A Do I recall that article?
Q Yeah.
A I'm sure one was written, but no.
Q Well, in the article it said that -- that -- that, "Perhaps the most significant shift from a Florida point of view is that Lyash will play less of a role in the development of the plan to Levy County nuclear plant." Do you --
A Would you like me to read this article?
Q Just, if you would, take a look at it. This was an article, I think, written by Robert Trigaux, and it's just the top page of that document.
A Uh-huh. Okay.
Q Is the article generally accurate?
A It's a newspaper article, so --
Q Okay. I understand.
A -- I wouldn't characterize it in the way they have. The underlying facts of some of them are correct; the opinions are Bob's.
Q Is it true that you will play less of a role in

the development of the Levy nuclear plant?

A No, I wouldn't characterize it that way at all.

Q That seems inconsistent with your testimony, so I just wanted to ask if -- if he got it right or I should rely on your testimony.

A I try not to make any comments on editorials, but I would not characterize my role as being any less than it was previously.

Q Okay. There have been changes, though, with the -- the direct oversight of the Levy County nuclear plant project; is that right?

A Yes, as you stated, my job title has changed.

Q What about with respect to the next level down? I think Gary Miller, last year, was testifying in his role as -- as the direct person responsible for the project; is that correct?

A Yes, at that time -- point in time. I'm trying to recall the sequence. Gary Miller was engaged as -- in terms of directing the licensing and engineering, and I believe at that point in time he was reporting to John Elnitsky, and so Gary Miller has changed roles as well; John Elnitsky has not.

Q Okay. And Gary Miller has been -- his -- he has taken a role with respect to the CR-3 delamination issue?

A No, Gary Miller -- we formed a single engineering organization in support of our nuclear program, and those responsibilities had previously been dispersed among the nuclear sites.

And so in order to improve the level of rigor and discipline around nuclear engineering support for our program, we formed a central corporate engineering organization, and Gary Miller is now the head of that organization.

Of course, one of the issues that that organization is engaged in is the Crystal River 3 Delamination Resolution.

Q Does that organization still have responsibility for -- for aspects of the Levy project?

A John Elnitsky is responsible for the Levy project, and John has both engineering and licensing resources under him dedicated to the project.

Gary Miller continues to be involved in a support role as the ultimate owner of the design basis and the plan itself from an engineering point of view, so the relationship there with our corporate engineering organization is strong, but Gary is not primarily responsible for Levy.

Q Okay. If I could get you to turn to Page 5 of your testimony.

A Uh-huh.

Q And, actually, you can refer to the bottom of Page 4, but I wanted to ask you about the sentence that starts at the top of Page 5, where you discuss a decision that mitigates near-term price increases to customers by pushing out near-term LNP costs. What do you mean by "pushing out"?

A Yeah, we had -- we had a decision to make, given -- given changes, in the environment of particular, with respect to certain enterprise risks and as to how to posture the Levy project.

So one of those decisions could have been -- one of those decisions was whether to proceed with the project at all; and the second is, if to proceed, what would be the best course of action to undertake.

And so as you've read in my testimony, our decision was to continue with the project, but to alter the in-service date and the subordinate schedule in order to -- and one of the results of that was to take an excess of a billion dollars of capital that would have been required to be invested, had we continued on a more aggressive schedule, and move that along with the Levy project post-license issuance, okay, and that's what I'm referring to here.

Q Okay. Various points in your testimony you use

the terms, as here, pushing out, or deferring or extending. Is there any significance to the use of any of those words with respect to that, that you just described?

A I'm not sure I understand your question, in a general sense. I mean, I'd be happy to answer it specifically.

But, again, I think, in general, if you compare a Levy project with an in-service date as early as, say, between '16 and '19, and you compare that to the decision that we took to position the Levy project with in-service dates of '21 and '22, the net result of that is the capital that would have been invested prior to issuance of a license in excess of a billion dollars now moves post-license issuance.

Q Okay. And that is if you make certain decisions after the license issuance, correct?

A Correct.

Q Let me step back, and I want to just kind of get a -- a higher level view of your -- of your decision-making with respect to pursuing the Levy nuclear project. What timeframe would you say the company made a decision to pursue the Levy -- the Levy nuclear project?

A Well, our decision was finally made on issuance

of the Need Certificate to proceed with the project.

Q By the Public Service Commission --

A That's correct.

Q -- in 2008?

A Uh-huh.

Q But you took some actions in advance of that; is that correct?

A Yes, as would be required to develop the project to a state where we would be able to confidently present the merits of the need.

Q Okay. Now, at the time you decided to pursue the Levy nuclear project, did the company also make a decision to pursue another nuclear project within the corporation?

A I presume what you're referring to is the Harris project.

Q Yes.

A And what we decided to do in that case was to submit the license application.

Q Okay.

A Yes.

Q Now, Harris is a project in North Carolina, correct?

A Yes.

Q And you submitted that license application

actually ahead of the Levy application; is that right?

A We did.

Q Okay. Was that basically because you already had the land?

A There was -- well, the Harris site is substantially different. It's got an existing reactor. We control the land, the cooling water system, etc.

And our resource planning in North Carolina created the potential that we may need a plant, and we -- so we prepared and submitted the COLA.

[redacted]

Q Well, I would like you answer that question.

A Let me --

MR. WALLS: Yeah, let me --

MR. REHWINKEL: I don't mind if you want to go off the record for a second and confer.

MR. WALLS: Yeah, let's do that.

MR. REHWINKEL: Okay.

(WHEREUPON, a brief recess was taken.)

BY MR. REHWINKEL:

Q Okay. All right. My question to you was, are you negotiating an EPC contract for the Harris project?

[redacted]

Q Okay.

A -- and I'm just sensitive to not disclosing information that might affect competitive advantage in those discussions.

Q Okay.

A But in direct answer to your question, [redacted]

MR. REHWINKEL: Okay. Well, I tell you what I would like to do. I have a few questions that -- in this area, and what I'm going to do is, I think, before two hours are up, the court reporter and myself need to go and move our cars to -- to a more

longer term parking.

And when we take a break, I will talk to your counsel about what I will like to ask about, because I -- my job here is not to jeopardize the corporation's interest in any way.

But I want to ask some questions in this area, but I'll defer those until we've had a chance to talk, if that's acceptable.

MR. WALLS: Yes. Thank you.

BY MR. REHWINKEL:

Q Okay. Okay. But -- but you went to the Public Service Commission in 2008 and you asked for determination need. And at that time, did you testify -- or did the company testify before the Commission that you intended to build the Levy nuclear project?

A Yes, that was our intention at that time, and that remains our intention today.

Q Okay. And you testified that -- I think at that time, that you intended to sign an EPC contract in 2008?

A I can't recall the timeframe, but at -- yes, we were in active negotiations at that point.

Q Okay. And if you did testify that way, the Commission's order would so indicate that you --

A Uh-huh.
Q -- indicated that you intended to execute one in the 2008 --
A Uh-huh.
Q -- calendar year?
A Uh-huh.
Q Is that a yes?
A Yes. Sorry.
Q And you also indicated that the company was actively pursuing joint owners --
A Yes.
Q -- for the project at that time?
A Yes, that's correct.
Q Okay. All right. Prior to going before the Public Service Commission, did the company also actively supported advance recovery legislation before the Florida legislature?
A We were in favor of that legislation as it was being developed, yes.
Q Okay. Did you testify before the Florida legislature in support of that legislation?
A I testified at some point before a subcommittee in the legislature, and I'm having difficulty recalling whether it was before or after the legislation was passed.

Q Okay.

A My recollection is it was after, but --

Q Really? Okay. And when the company -- when you testified before the legislature, did you tell the legislature that you intended to build a nuclear power plant at the Levy site?

A I don't recall specifically. But had they asked, my answer would have been yes, that we intended to build a plant.

Q And when the company went before the Florida Public Service Commission in the first round of nuclear cost recovery hearings, did you tell the Commission at that time that you intended to build the Levy nuclear plant?

A Yes. And let -- and just let me -- to make sure I'm understanding your questioning, yes, our intent from the point of need forward was to construct the plant, and I think we consistently characterized it that way.

Although, we've also consistently characterized that -- because you can't predict the future and because there are both project risks and enterprise risks, that this would be an active process of evaluating and mitigating the risks, and that we would carefully consider, with the passage of time, what the correct

decision was with respect to proceeding with the project.

And if the correct decision was to proceed with the project, under -- on what schedule and under what terms.

Q Would it be fair to say that in 2008, or during the need determination hearing, that the company was fully committed to building the Levy nuclear project?

MR. WALLS: Objection. Vague and ambiguous.

THE WITNESS: Well, I'm not sure what the term "fully" means. I can -- as you've already asked, our intent is to construct the plant as something that's in the best interest of the customers and the company.

But as I've said, because these are long-term, complex projects, there are -- there is a continuous evaluation and decision-making process around whether to proceed, and if so, under what conditions.

BY MR. REHWINKEL:

Q But when you petition for a determination of need, the representation to the Commission was that you intended to build the Levy nuclear plant; is that correct?

MR. WALLS: Objection. Asked and answered, but

you can answer it again.

THE WITNESS: Yes, as I've said, our intention underlying the need, and our action since, is that this is a project that is necessary, and it's the optimum solution, and we will continue to proceed in that manner, carefully evaluating, with the passage of time, whether there are conditions that would advise otherwise.

BY MR. REHWINKEL:

Q At the time you went before the Florida Public Commission, was the projected in-service date of the Levy project 2015 or 2016?

A My recollection, it was 2016/2017 for the two units.

Q Okay. Was it ever 2015?

A I cannot recall. I think there was -- as we developed the project, there was a range of in-service dates dictated by our view of the actions necessary for licensing and permitting at a federal and a state level, as well as what we thought the best project schedule was, and was so those dates -- that window was fairly broad.

Q Okay.

A What I can't recall is whether the window at some point in time would have made it possible to build

it in '15.

Q In 2008, when the company was before the Public Service Commission in the first round of nuclear cost recovery hearings, did you testify in those?

A Yes.

Q Okay. And at that time, did -- was it your testimony that the company intended to build the Levy nuclear plant on the 2016/2017 in-service date timeframe?

A Yes, my recollection is that that's the timeframe that the plant was on at that point in time.

Q Okay. And at that time, you did not express any reservations about meeting those timelines, did you?

A I would not characterize them in that manner. I'm not sure what you mean by reservations. However, I would say the way that we characterized it was that we had a timeline, but that there were certain project and enterprise risks, a number of which were outside the control of the company, that could impact that timeline, and that those risks could neither be eliminated nor, many cases, predicted with precision, but that we would identify and take steps to mitigate the risks.

And so our position at the time was that there was a need for this plant in 2016/2017. That schedule was achievable, but that there were risks, and that we

would monitor, mitigate the risks, and include them in an ongoing decision-making process as to whether that schedule, in the end, was obtainable.

Q Okay. In the 2008 hearing, though, you did not identify the list of enterprise risks that you identify in your testimony in the 2010 proceeding, did you?

A I believe I did identify and list the enterprise risks in the first round of nuclear cost recovery hearings.

Q Did you identify those lists as having an impact on your -- as having an impact on your ability to meet the 2016 and 2017 dates?

A Well, I think identification of those risks, in its very nature, says that they impact -- potentially impact schedule and costs. That's the effect of increasing or diminishing risks.

Q But you didn't testify that the -- the impacts on them would change your decision-making with respect to whether to proceed with the project, did you?

A Oh, I believe that's implicit in the testimony. If what we said -- I mean, what I said, I believe, was that we had a need for this plant in '16 and '17, a '16 and '17 schedule was achievable, but that there were enterprise risks, many of which were beyond the company's control, that would bear on both the price and

the schedule, and that we would take steps to monitor and mitigate those risks.

Q Okay. And then in 2008, in the last day of the year, you signed -- you executed the EPC contract, correct?

A That's correct.

Q And at the time you executed the EPC contract, the company fully intended to construct the Levy nuclear plant, correct?

A Our intention was to construct the Levy nuclear plant, as it is today, yes.

Q Okay. I mean, you wouldn't have executed that contract had you not had that intention; is that right?

A That's correct.

Q Now, in 2009, the company announced the -- that there would be a schedule shift as a result of the NRC's decision on your limited work authorization; is that right?

A Yes, we announced that the NRC's decision on the limited work authorization would consequentially require a change of the in-service date of the project, and that we would evaluate the project, given that, and in that evaluation we would -- we would consider a broader set of factors, including those enterprise risks, in making the decision on what the new in-service

schedule would be.

Q Okay. And at that time that you -- and you testified in 2009, correct?

A That's correct.

Q At the time that you testified before the Commission, did you express doubt to the Commission about whether the Levy nuclear project would be constructed?

A No, I didn't express doubt; what I expressed was the -- the same -- the consistence of issues that we had discussed in the need hearing, and that we're continuing to discuss, and that is that we intended to proceed with the project; we think it's in the best interest of the customers and the company, but that we will need to carefully consider and continue to monitor and mitigate the risks that affect the project, yes.

Q Now, in 2010, you're here before the Commission, and is it your testimony that you are as committed to the project today as you were in 2008 when you got your need determination? You, meaning the corporation.

A Uh-huh, yeah, the -- yes, characterized in the following manner: We still continue to believe that this project is in the best interest of the customers and shareholders, that the project is feasible, and that

given -- given our assessment of risks, that the best course of action is to continue with the project on the new schedule, and ultimately to construct the plant.

Q All right. So is it your testimony here today that the Levy nuclear plant is as likely to be built, from where you sit here today, as it was in 2008 when you got your need determination?

A I'm unclear what you mean by the term "as likely." However, what I will say is that these -- these enterprise risks ebb and flow, rise and fall, identified and mitigated.

I would -- I would say that our commitment to the project and our view of its benefits and likelihood of ultimately being built is no less today than it was a year ago. Although, the landscape of risk that we will need to monitor and mitigate has shifted.

Q When you say it shifted, has it increased?

A Some of the enterprise risks associated with this have increased; some of the risks have decreased.

Q Decreased since when?

A Well, I'm not sure what timeframe you're asking me to characterize it in. I would say since the last -- since the 2009 cost recovery hearings, the -- the risk associated -- the enterprise risks associated with the project have changed.

As I said, some increased; some decreased. In general, I would say that the risks -- the enterprise risks associated with the project have increased somewhat, overall.

Q On Page 6 of your testimony, you state -- near the top, beginning on lines 2 through 4 -- that the decision -- and I assume -- and this means the decision that you have chosen to present to the Commission?

A Uh-huh, yes. Is that a -- what's your question?

Q Well, I was asking you if the decision that's referred to here is -- let's call it option three. Can we use option three to be the option that the company has chosen, the Board of Directors has approved and that you're representing?

A I can't recall how they're numbered in various presentations. This --

Q Okay.

A -- with respect to this decision, I think what we're referring to here is the decision to continue with the project, and then the subsequent decision to continue with it, on a greater than 36-month delay in the in-service date, with a '21/'22 in-service date.

Q Okay.

A That's what I'm referring to there.

Q All right. Now, you're saying here, "This decision defers significant capital investment in the LNP until after the COL is obtained."

Now, you use the word "defer" here, and on the prior page you used the word "pushes out." Is there any significance to the use of "defer" versus "pushes out"?

A No, I don't think there is any significant difference. The underlying concept here is that given the -- given the -- the shifting and shape of the enterprise risk landscape and placing it on the schedule, it takes that capital and it moves it to a period after the license, which is also a period after that licensing risk is behind us.

Q Now, what's different about this year than the prior years? Is it the -- is it that you have to affirmatively decide after the COL is issued to continue the project; isn't that correct?

A No, I don't think that's different. We need to affirmatively -- if we're going to be prudent, we need to evaluate and continuously monitor the situation and make decisions based on the landscape -- the risk landscape whether to proceed or not.

Q Well, let me ask it to you this way: Last year, you had execute an EPC --

A Uh-huh.

Q -- correct?
A That's correct.
Q And at the time that the testimony was filed with the Commission, was there a -- was that EPC contract fully enforced?
MR. WALLS: Objection. Vague and ambiguous, but if you can answer it.
THE WITNESS: Take -- rephrase your question.
BY MR. REHWINKEL:
Q Okay. You had executed an EPC contract on the last day of 2008, correct?
A That's correct.
Q Okay. Now, when you were -- before, filed testimony with the Commission in May -- I think on May 1st of 2009 -- was there any kind of a hold on proceeding with the project under the EPC contract?
A We had not issued -- I need to refer to the timeline. I'm not -- we had not issued, I don't believe, a formal suspension at that point. It's possible we might have; I just don't recall the timeline.
Q Is it possible it was very late in April that you did that?
A Yeah. Yeah, I'd have to look at the timeline to refer to it. I just can't recall the sequence of

dates in that period of time.

Q Okay.

A But what had transpired in that timeframe is after we had signed the contract, as we discussed in great detail last year, the NRC made their decision with respect to the LWA, and when that information became known, that was cause for us to pause and look at the sequence.

That would have been -- clearly would have been obvious to the consortium, and we would have been in discussions with the consortium about how we wanted them to proceed as we evaluated this change to the project.

Q Okay. So at some point in time, in 2009, you issued a formal partial suspension of the EPC contract; is that right?

A Well, we exercised the partial suspension option contained in the contract.

Q Okay.

A That's correct.

Q You issued a later exercising that?

A Yes.

Q Okay. All right. And, now, in 2010, the state of the project with respect to the EPC contract, is it you have to issue a notice to proceed to the consortium before they will resume any work on the project; is that

correct, other than --

A No, that's not --

Q -- licensing?

A No, that's not correct. The term notice to proceed, I believe, is in the EPC contract. That's got a specific meaning to it. The contract was then, and still remains, in force.

We exercised the provisions, which we had established as part of the negotiation, to direct the consortium to partially suspend work.

Partial suspension means -- that doesn't mean no work will continue; it means that we will select the work that is to continue during the pendency of the partial suspension.

We subsequently negotiated Amendment 3 to the contract, using that process to essentially create the ability to have a longer term partial suspension that would make that EPC contract and our approach consistent with the new scheduled in-service date for the plant.

Q Okay. But work to construct the Levy nuclear project will not proceed until you tell the consortium to go forward, will it?

A No, I wouldn't characterize it that way, for the following reason: Building a nuclear power plant, constructing it, entails a long series of activities,

and that is not exclusive of licensing, permitting, finalization of the design, fabrication of long lead time materials, etc.

So during the pendency of the license application, the project continues. It will continue with respect to NRC licensing, our 404 permit, the FSCR, the FEIS, certain critical land procurement on the site and in the transmission, right-of-ways to secure that property, wetlands mitigation, certain long lead time components that will continue to be fabricated, as well as finalization of the detailed design for the plant.

So I cover that just to say that the project continues, the schedule for the project, then specifically which elements of this project construction design and construction we will undertake have changed at the present time.

Q You said they have or haven't?

A The schedule of the project, and so, therefore, specifically what we're focusing on during this period of time before the license has changed.

Q Okay. With respect -- you mentioned long lead materials. With respect to long lead materials, you're not engaged in procuring anymore long lead materials than -- than you had contracted to procure before the partial suspension letter was issued, are you?

A I didn't quite catch the phrase in the beginning, but let me -- let me see if I can answer it. Yes, we continue to be involved in procuring long lead time materials.

The scope of long lead time material procurement itself hasn't changed; it's still the same as set of long lead time components.

Given the change in the project schedule, we went through a process to decide whether for those long lead time materials that we were engaged in procurement with -- engage means contracting, fabrication, quality control, quality assurances, inspections, etc. -- which of those it would be best to cancel, which it would be best to suspend, and which it would be best to continue to completion.

In the end, we -- we were [redacted] Each one of them was dispositioned to either [redacted], you know, based on, I think, a fairly clear methodology that Mr. Elnitsky addresses in quite an amount of detail.

Q Okay. But those materials that you just referenced in your answer, those items had already been contracted for in the March 2008 letter of intent and subsequent processes; is that correct?

A Yes, they had been contracted for, because those are the long lead time material that -- my explanation had to do with your use of the word "procurement," which involves more than a contract.

Q Okay.

A That's a process.

Q You are not in the process of adding anymore long lead materials to -- to what you had already -- were already in the process of procuring before the partial suspension letter was issued; is that correct?

A That's correct, because there are no other long lead materials; these are it.

Q Okay. So in your Amendment 3 -- do you have a copy of Amendment 3 with you? Could I get you to look at -- at section 22.1(i)?

A What page is that on?

Q I don't know.

A Can you say again what section?

Q I don't know. I was not allowed to keep a copy of the documents, so I don't --

A I don't think there is a section 22I.1 (sic). I have sections 1 through 16.

Q Is there a reference to notice to resume in that -- in that Amendment 3?

A Would you like to look at this and point out

for me what you want, to make it easier?

Q Okay. Yeah, on Page 3, item 6, if you wouldn't mind, tell me what that --

MR. REHWINKEL: Do you have a problem with him reading that into the record?

MR. WALLS: Well, if it's confidential, we'll mark it "confidential."

MR. REHWINKEL: Okay.

BY MR. REHWINKEL:

Q Yeah. Would you read that?

A Okay. Section 6, you're asking me; is that correct.

Q Yes.

A Okay. Section 6 says,

[redacted]

Q Okay. Now, that provision there says that once the COL is issued [redacted]; is that correct?

A I'd have to go back and reread the body of the contract in which this is embedded.

Q Okay.

A However, in general, the impact of this is that under the original contact -- contract, we had negotiated the ability to partially or fully suspend. However, [redacted]

And I'm subject to check, I think it was [redacted] My understanding of the intent of this was -- now, that doesn't necessarily mean that the contract would be [redacted] It provided that -- that the consortium could [redacted]

The intent of this provision was that, in light of the optimal schedule shift that we established, we wanted to be able to go into a [redacted],

and to [redacted]

[redacted]

The import of this is that it takes risk associated with delay in the DCD and the reference COLA in issuance of the Levy COLA, or any other delay that impacts the COLA, and it [redacted]

[redacted]

Q Okay. And -- and what happens instead of [redacted], you would be [redacted]

[redacted]; is that fair to say?

A Yes, I think, but I'm a little cloudy on your phrasing. I think what this means is that we have the [redacted], and then we're subject to the [redacted]

[redacted]

And then if we [redacted]

[redacted], then the consortium might deem this -- can

deem this [redacted]

Q Now, you said COLA, but you mean COL?

A COL. I'm sorry. Thank you.

Q Okay. But unless you take the action to issue a notice to resume --

A Uh-huh.

Q -- the activities that are currently suspended under the EPC will not resume; is that correct?

A Yes, and that's been true of the original EPC contract as well as the current EPC contract. In other words, any full or partial suspension we might undertake, for any reason it was contemplated in the original contract, and then we would need to issue a notice to proceed.

There are also some provisions in the contract for us to [redacted]

Q All right. You can't [redacted] -- you can't ask them [redacted]

A That's correct.

Q On Page 6 of your testimony --

A Can I put way this or should I keep this

Amendment 3 out?

Q We may get into that --

A Okay.

Q -- later on.

On Page -- on Page 6 of your testimony, starting on line 10, you say that your decision moves forward with the EPC agreement and, thus, preserves the long-term benefits of nuclear generation for the company and its customers in Florida. Do you see that?

A Yes, I do.

Q Okay. Now, when you say it preserves the benefits, it only preserves the benefits if you proceed, if you issue that notice to resume with -- sometime after a COL is issued; is that correct?

A Yes, the benefit of the plan is 60 years of operation, so -- so, yes.

Q You've got to build the plant to yield the benefits, correct?

A Yes.

Q Okay. The benefits to the customers aren't preserved if it's just an option that is never exercised. Would you agree with that?

A Yes, but perhaps not entirely. Clearly, the benefit of the project -- the substantial benefit of the project flows from construction of the plant and its 60

to 80 years of operation, and those benefits are substantial.

If the plant is never built, I would agree with you, that then those substantial benefits don't flow to the customer. My only hesitation there is that there is always benefit to having options available with the uncertainty of time.

So preserving -- our intention is to build this plant, and we think we're going to have the position to do that. But given the enterprise risk, we have to be mindful of how that risk profile is shifting.

And so there's benefit to the long-term plan and there is also benefit to keeping this project moving forward in the manner that we've laid out.

Q Okay. But you list -- where you say -- well, let me ask you to turn to Page 11 of your testimony, and this is where you list -- you begin listing the enterprise risks.

A Which paragraph?

Q I'm sorry. Beginning at the bottom there in the Q and A that starts at line 16.

A Uh-huh.

Q Okay. And that continues for some pages on; is that right?

A My testimony continues?

Q Yes.
A Yes.
Q All right. At the time you filed this testimony on April 30, 2010, have the enterprise risks that you list here, have they quantitatively or quantitatively changed?
A Yes --
Q Okay.
A -- as I expect they're going to continue to do.
Q Okay. And, I guess, have they changed in a material sense with regard to the way the company reviews them impacting the project?
A Well, I'm not sure how to character them in terms of material or not material. They're -- as you pointed out, there all multiple enterprise risks, and they will change over time.

An example of the way they've changed since my April 30 testimony is that just last week the Nuclear Regulatory Commission issued the Draft Environmental Impact Statement for public comment.

And, fundamentally, the conclusion of the Draft Environmental Impact Statement is to recommend proceeding with the project; so that up until the Draft Environmental Impact Statement, I might have characterized that as a risk.

For example, the nature of ground water monitoring and the LEDPA determination, which were significant discussion items.

Now that that Draft Environmental Impact Statement has been issued, the risk of having ground water monitoring and LEDPA issues presented significant problem is not necessarily eliminated, because it's the only comment, but substantially decreased.

So I offer that just as example of an enterprise risk that has changed since the April 30 testimony.

Q Could you just, for the court reporter's sake, say what LEDPA is?

A Yeah, it's the least environmentally damaging -- I can't remember the "P" -- potential or practical alternative.

Q Okay. Anyway, it's an acronym?

A Yes, I think that's right. We can correct it for you if it isn't.

Q All right. What I'd like to do is go through these enterprise risks that you list here and ask you where they stand. But above that, you -- right before you get to that point, you talk about, "A reasonable, conservative" -- this is on lines 12 through 14 --

A Okay.

Q -- "A reasonable, conservative approach to the expected licensing activity impacts to the LNP schedule then is to use 36 months as the new minimum duration for the expected LNP schedule shifts."

A Yes, I see that.

Q Okay. Now, right now, the delay that you expect is 60 months, not 36, correct?

A The -- the new -- yes, the new in-service dates we've established are '21 and '22.

Q Yes.

A And as we evaluated this, our conclusion was that given the enterprise risks and to take the right action to mitigate those risks, while it might have been possible to move the date of the project 36 months, we felt as though the prudent action was to move the in-service date to '21/'22, greater than 36 months, so that we could insure that there was float, if you will, in our schedule to accommodate any additional delay that would -- that would have a likelihood without subsequently impacting that schedule.

Q Okay. And is there any -- is it conceivable at all that the 60-day delay -- when I talk about delay, that's from the original in-service dates --

A The 2016 in-service date --

Q Yes.

A -- of the first unit to the 2021 for Unit 1?

Q Right.

A Yes.

Q Is it -- is it conceivable that it would be any less than 60 months at this point in time?

A That's conceivable, yes.

Q Is it possible?

A Yes, I think it is. I wouldn't call it likely. And if I understand your question, you're asking would it be possible to build the plant sooner and have it in service sooner than 2021?

Q Yes.

A Yes, it is possible, and there is even some likelihood that licensing actions could move more rapidly than our assumptions. So, for example, we've leaving in an extended period for mandatory and contested hearings.

It's entirely possible that those hearings could go more quickly. It's also -- it's also possible that there may be -- there may be federal legislation, or policy or environmental issues that might prompt us to want to build the plant quicker.

But it's not obvious to me at this point that those things will come to play, and I don't think it is prudent to plan on them coming into play.

And so our assessment here in the 60-month revision to the schedule is that while it's possible to get the plant in service in 36 months, in order to place this on a schedule that we think we can execute with high confidence and in a very controlled and effective manner, 2021 is the better choice.

Q So you don't envision the company, at this point in time, planning to construct any sooner than the 60 months that you lay out in your testimony?

A No, our intention is to build the plant on the schedule that we've proposed. Although, we will work to -- if there is optionality around acceleration at -- without additional costs, we will preserve those options.

Q Now, it's also possible that 60 days could -- could be not enough time?

A 60 months?

Q 60 months, yeah.

A 60 days is clearly not enough time. 60 -- yes, the answer to your question is.

Q It's plausible that 60 months could turn into -- the 60-month delay that you currently envision could turn into a longer period?

A That's certainly possible; although, that's not our assessment of the likelihood. We believe that the

60-month move minimum schedule is the appropriate move in recognition and to mitigate what we see is the principle enterprise risks, and that that is a success scenario.

Q Okay. On Page 12 of your -- your direct testimony, you start at the very top of the page with the phrase, "The enterprise risks include the following," and then you list several enterprise risks. You did not list the same enterprise risks last year in your testimony, did you?

A I'd have to review the list last year. My recollection is that many of these risks were listed there. I think these are examples of enterprise risks, not necessarily an exclusive list, and I think that's likely what the list represented in my last testimony.

Q Okay.

A If you'd like me to, I can compare the two.

Q Not at this point in time. Let me ask you this way: These enterprise risks that you list here on Page 12 at the top, is it your testimony that these directly impacted the decision of the company with respect to the decision you made -- the decision-making of the company with respect to the decision you have made and are presenting to this Commission, that is Option 3?

A Yes, insofar as to say enterprise risks must

always be considered. All of the enterprise risks must always be considered in deciding whether it is in the best interest of the customer and the company to proceed with this or any other project.

And so in that sense, each of these risks, positive or negative, bears on, and ought to bear on, our ultimate decision.

Q But it seems to me your testimony here in your direct is that these did, in fact, affect the decision of the company. These are not listed merely to list them, that you did take them into account and they did directly impact your decision-making?

A Yes, that's the nature of enterprise risks, not all necessarily aversely, but certainly their impact, positive, negative or neutral, would have been part of our decision.

Q Okay. Now, one of the -- one item that's not listed on here is the absence of joint owners.

A Uh-huh.

Q Is that an enterprise risk?

A That certainly bears on our decision as well. Although, as we've said before, this plant at a hundred percent ownership, we think, is in the best interest of the customers and the company, and we can construct it in that fashion.

Although, we've also stated that our desire is -- for many reasons, is to have substantial joint ownership in the project.

So in direct answer to your question, as we're considering all these enterprise risks, we're also actively considering structure and potential joint ownership in the project.

Q Okay. But enter -- the status of joint ownership is not an enterprise risk that should be listed here?

A You could argue to list it as an enterprise risk or not. The nature of these enterprise risks will in and of themselves influence your view of joint ownership, optimal joint ownership.

I would not -- I would not characterize this as necessarily an exhaustive list of enterprise risks, but a representative list.

Q Would you characterize these as the most significant enterprise risks affecting your decision on whether to proceed with the project?

A Yes. Yes, generally, I would agree with that.

Q Okay. Would you agree that these enterprise risks influence the Board of Director's decision with respect to how to proceed with the project?

A Yes, these enterprise risks are discussed with

both Senior Management and with the Board, and, therefore, are part of the consideration.

Q Okay. Now, the enterprise risks that you list on Page 12 and discuss on the subsequent pages, did those just manifest themselves after the LWA decision by the N -- by the NRC, or were they -- were they impacting the project even before that?

MR. WALLS: Object. Vague and ambiguous, but if you can answer.

THE WITNESS: Yeah. Well, I'll try to answer. I don't really know what you mean by impacting the project. I think I tried to explain this.

The nature of an enterprise risk is that these risks exist continuously, and they exist not just for this project but for any project or any decision that we might undertake, and they rise and fall or remain the same.

We either can take actions to mitigate them, or we can take actions to monitor them, or both. And so in that sense, they are a continuous part of our assessment of the project, not just the discrete points in time -- although, certainly discrete points -- but on a continuous basis.

BY MR. REHWINKEL:

Q Okay. Well, let me ask you this way: If you

were going to build a substation somewhere in your territory that -- I don't know how much one might cost, but let's say it costs less than $5 million --

A Uh-huh.

Q -- these set of enterprise risks would have relatively little bearing on your decision-making, correct?

A No, not necessarily, but in a much different way, so I don't want to characterize them as having the same impact. So do you want me to expand on your example?

Q (Nodded.)

A We, as part of our Bartow repowering project, we built a substation here in St. Petersburg on a -- on a piece of property that had a dry cleaners on it, and was in a densely populated area and required a substantial amount of mitigation and engineering.

And so in those cases, looking at alternatives, looking at load growth, not on a system basis, but locally, and the conditions, considering impact on the community, environmental requirements, all of those things are sort of generally considered in making the decision on whether to proceed.

So not to -- I'm not trying to parch your words, but these -- environmental risk is always a part

of your decision-making on any project. Of course, not every project is as significant in terms of its cost, or benefit or complexity as Levy.

Q Well, I guess my question was, you didn't care about world economic conditions, or the conditions in the country or customer -- legislative support for nuclear generation, or global greenhouse gas or climate control with respect to that substation, correct?

A No, not in the same way. It's -- it -- this is a project that costs $5 million and takes 12 months to build, not a project that is billions and a decade in development, so you certainly don't apply them in the same manner.

Q Okay. So a project now, that when all the costs are in, including the financing costs, the AFUDC, is now projected to be above $20 billion; is that fair?

A Yes, I think our point estimate at this point is 17.6 billion without AFUDC --

Q Right.

A -- AFUDC, we can characterize it, but until we -- until we move to the point where there is a real clear cash flow, it's difficult to put a precise number on it. So, yeah, it's a very large project.

Q You can ballpark it, and it's above $20 billion?

A It could be, yes.

Q Okay. So that's -- that's something that these risks become much more sensitive in your decision -- in decision-making than it would be with a $5 million substation project, correct?

A Yes, not just because of the dollar value, but because of the time horizon for the project, I agree.

Q And if you're wrong about this, it could have a material impact on the viability of the company with respect to the amount of dollars that you would be spending, if your assumptions about the viability project did not prove out, correct?

A I'm not sure I understand the question.

Q All right. Well, let me ask it a different way. You have to be right, for purposes of your -- your -- of the future of your company, about how these risks impact the decision to build a $20-plus billion project?

MR. WALLS: Objection. It assumes facts not in evidence, but if you can answer.

THE WITNESS: Yeah, I'm confused by the question, but I would -- perhaps I can answer it this way: An undertaking like this has tremendous benefit for the customers, but it also has a high level of complexity and difficulty associated with it.

We must be clear and transparent about what the benefits and the project and enterprise risks are associated with this. We must be reasonable and prudent in our decision-making around that.

And we -- and if we -- if we manage this properly, at the end of the project we have something that is of tremendous benefit to our customers, and so that's our objective.

BY MR. REHWINKEL:

Q Okay. Now, the way you characterize the risks in your testimony are that they are such a state, I guess, that -- well, let me ask it this way: The way you characterize these risks, in total, may cause the company to basically presume that you would cancel the project unless you can get favorable terms and conditions in your EPC contract amendment, correct?

A Yes, but I would say not just these risks. There are -- there are specific project risks. There are enterprise risks. There are resource planning issues and risks.

And what we concluded -- and the reason we evaluated, should we cancel the project or should we proceed, and with -- and if we were to proceed, given this universe of project and enterprise risk, what measures would be necessary to properly mitigate or

position us in our customers with respect to those risks?

In considering that, one of the principle elements that we concluded we needed to have was Amendment 3 to the EPC.

If your question is had we not been able to negotiate Amendment 3 to the EPC would we have proceeded with the project or canceled it at that point, that's not a position we found ourselves in, so it's a -- it's a hypothetical; it depended on the position we landed in.

However, we would -- if we had made no change to the EPC contract, the consortium would have supported no change to the EPC contract; we would have terminated the contract.

Termination of the project is a separate decision, which may likely have followed, but we would not have proceeded past the termination date without the changes that we negotiated.

Q Okay. Let's go through the enterprise risks that start on Page -- actually, I think the first one is on Page 13. And do you list these in any -- in any order of importance?

A No.

Q They're just randomly listed?

A Yes.

Q Okay. So the economic conditions impacting the companies -- the company, and, specifically, the recession, what is your perception about the recession as an enterprise risk? Is it -- is this risk -- is this a risk, one, that has improved or gotten worse with respect to the project?

MR. WALLS: You mean since he filed his testimony?

MR. REHWINKEL: Yes.

THE WITNESS: I wouldn't consider this having changed substantially since I filed my testimony.

BY MR. REHWINKEL:

Q Okay. How about on -- and that would -- that would cover all of the recessionary impacts that -- that are -- that go through Page 16, line 18 on Page 16?

A Line 18 on Page 16? Let me -- well, let me take one at a time. With respect to economic conditions --

Q Yes.

A -- globally, nationally and in Florida, our -- our assessment of that risk is, really, that we are expecting to see minimal growth in -- beginning about 2011. And so that's our economic projections, and I don't think they've changed substantially.

Impact on customer demand for energy usage on PEF, it's a little early to tell whether that's changed. We've seen -- we've seen increased electricity sales over the course of the summer associated with what we've all been suffering through in terms of heat and humidity and that sort of thing, so has -- has the -- how has customer demand impacted? Well, I don't know that I concluded it substantially different, but perhaps.

Are recessionary economic impacts affecting the company? Yes, as they are all companies. This, perhaps with the passage of time, I think, gains stability as the credit markets continue to work out the issues that resulted, you know, in what we've seen over the last couple of years and as the financial community has a chance to evaluate and get comfortable with our overall plans.

Q Okay. Well, let me ask you this: Recently, the company entered into a settlement --

A Uh-huh.

Q -- with the parties in the last rate case. Do you see that has a -- changing in any way the impact on this project?

A Do we see the settlement changing --

Q Yes.

A -- or do we see the --

Q The results of the settlement.

A Well, certainly, our -- if you'll allow me to back up one step from the settlement to the Commission decision on the base-rate proceeding.

You know, we certainly -- we presented the case in the rate case that we thought was sound. The Commission arrived at a different decision, which we -- you know, we may not agree with, but we understand, and we did act constructively on it.

So that leads us to putting in place a settlement that we think supports the financial health of the company over the pendency of the settlement.

And so we -- we've -- we mitigate the impact on this project and on the companies held. It has some bearing on the project, in that it does affect our financing. It affects our cash flow -- the settlement -- and so we have to consider that.

Q You say it affects your cash flow in the sense that it does not give you incremental cash flow --

A That's correct.

Q -- for the next -- through 2012?

A That's correct.

Q Now, the company, you would not be able to come in and file a rate case to get relief, so that you could build a nuclear plant, could you?

MR. WALLS: Object. Vague and ambiguous.

THE WITNESS: Well, we -- we could have made the decision to file another rate case, but that decision is not directly linked to a nuclear plant; we have a broader business.

So, yes, we could have elected to file a rate case. Yes, we may elect to file a rate case at the expiration of the settlement agreement, but that's a decision we haven't made and we'll make when we view the circumstances at the time.

BY MR. REHWINKEL:

Q I guess my question is, is the cost recovery for the nuclear project is through the nuclear cost recovery clause, correct?

A That's correct.

Q So you can't come in and ask the Commission to give you relief in order to be able to build the nuclear plant, correct?

A I don't know; I haven't considered it.

Q All right. On Page 16, you discuss the rating agencies. Really, as part of the question and answer that starts on Page 15, and then continuing on for the next two or three pages, and these would be the bond-rating issues, correct?

A You're looking at the question at the bottom of

Page 16, that continues through 17, 18 and to the top of 19?

Q Yes, and, really, a little bit on Page 16, above that.

A Uh-huh. Okay.

Q These rating agencies are the ones that rate your debt; is that correct?

A Uh-huh, that's correct.

Q All right. The -- has the view of the credit rating agencies changed with respect to the company since you filed your testimony in April?

A The -- no, I don't believe materially, although I'd have to go back and refresh my memory. For example, Moody's -- Moody's placed us on review for a possible downgrade, and my recollection, subject to check, was that they -- was that they didn't downgrade us, but put us on a negative watch or a negative trend --

Q Okay.

A -- as opposed to stable. One of the other agencies did, in fact, downgrade the debt. So each credit agency has worked through this and come to their final conclusion. I think the net result is that -- is that they expressed a notch down in terms of confidence around the debt.

Q And is that as a result of the regulatory

environment in the rate case?

A Well, you can read their comments. I think they're in the testimony, but I think that they characterized it as having been related to the economy and also related to the regulatory environment.

Q Okay. Now, did your decision -- when you announced the 60-month delay in the Levy nuclear project, did that impact rating agency's perception of the debt?

A Not that I'm aware of.

Q Okay. Are you aware of whether the company has had any conversations with the rating agencies since May about your decision on the Levy plant?

A We're in very frequent communication with the rating agencies. It's a capital, intensive business, so we're sort of consistently in the debt market, so it's an ongoing relationship. So the answer to your question is yes, I'm sure we have.

Q Okay. And -- but it's your testimony that the rating agencies did not see -- well, did either of the rating agencies see your decision to defer -- to delay the in-service date of the Levy plant 60 months as a positive or a negative?

A I'm not aware that they've come out and taken a very strong position one way or the other. But

intuitively, if you're a rating agency focused on debt, and the company, in the short term, is going to take on less debt, then that would be generally viewed as a positive, regardless of the nature of the debt.

Q Okay. But your testimony here is that you have not seen a material impact in your ratings based on the 60-month delay announcement?

A Yes, I think that's the case. They announced we were under review, that that review worked its course.

They made their final decision, and I'm not aware that the -- that their -- they have or are considering any additional adjustments subsequent to that.

Q So you're saying it was positive, or they -- or you made the announcement and they still went ahead and kept you on a negative outlook or downgraded you? Is that --

A What -- what I'm saying is that they initiated this following the rate case decision, their reviews. Their reviews ran their course and they made their decision, and I have -- I'm not aware of any change since that point in time.

Q Okay. I'm just asking, because you'll be -- we'll be in testimony before the Commission in a couple

of weeks --

A Uh-huh.

Q -- and there is no material change to the way the rating agencies are characterized in your testimony --

A Uh-huh.

Q -- in April through today?

A They have moved through the process of making their decision. So in other words, where it says at the bottom of the page, on Page 16, "On January 19th, 2010, Moody's placed the long-term debt ratings for Progress Energy, Inc. and PEF in the short-term commercial paper" -- oh, there it is. It is down below. I'm sorry. I missed that.

"On April 8th, Moody's made their decision to downgrade PEF one notch..." So I had not recalled that date, but I don't think it's changed since this testimony material -- since this testimony was submitted.

Q All right. And just so I can -- because they made their decision in April; you made a decision in -- well, you announced a decision in May --

A Uh-huh.

Q -- about the 60-month delay in the project?

A Uh-huh.

Q And you've had no material change in the -- in the credit rating agencies' perception of the company?

MR. WALLS: I'm going to object as to vague and ambiguous as to the timeframe there. You said May; you didn't say what year.

BY MR. REHWINKEL:

Q Oh, I mean May of 2010, May -- April 30th of 2010 is when you filed your testimony --

A Uh-huh.

Q And we're here now in mid-August?

A Uh-huh, right.

Q No change?

A I don't think a material change, no.

MR. REHWINKEL: Okay. Let me ask. This might be a good time to take a quick break and move our vehicles. Why don't we just stop now and do that?

MR. WALLS: Okay.

MR. REHWINKEL: We're going to take, I don't know, a 15- or 20-minute break. We've got to move our vehicles to a less law enforcement oriented parking spot. So we'll be off the record, but we'll leave the phone up, okay?

MR. WALLS: Sounds good.

(WHEREUPON, a brief recess was taken.)

MR. REHWINKEL: We're back. We had to move

cars and also discuss some -- I told the company on the break I would discuss this issue about Harris, so we've concluded that and we're ready to start back.

BY MR. REHWINKEL:

Q Okay. All right. Mr. Lyash, I was asking you, I think, when we took a break about the rating agency views of the company and as they relate to the enterprise risks that you describe.

A Uh-huh.

Q On Page 19, you move from the credit rating analyst to the equity analyst. And my question to you there is, has anything changed with respect to the equity analysts' views of the company since you filed your testimony in April of 2010?

A No, I would say not. I'm trying to recall, and perhaps someone can refresh my memory when we -- when the Commission approved the settlement agreement in the wake of the rate case.

Q That was in May.

A That was in May?

Q Or, actually, it was in June, June 6th.

A Okay. So that was subsequent to my testimony, so, no, I don't think it has a material affect. Although, from an analyst point of view, it at least

provides for clarity around company financials.

So I -- it hasn't resulted in any significant change of view in the financial community, other than -- other than perhaps clarity and a little bit of confidence.

Q Okay. On Page 21, you talk about -- the question there is whether the economy will rebound enough to improve your sales and revenue. Do you see that?

A Uh-huh.

Q Has your outlook there changed?

A No.

Q All right. The next risk you identify is the DSM goals decision of the Commission. Since April 2010, has that risk changed in any way?

A No, I don't believe it has.

Q All right. And then on Page 25 through 27, you testify about the impact of adverse economic conditions on customer's ability to pay. With respect to that risk, has anything changed since you filed your testimony?

A No.

Q Okay. On Pages 27 through 29, at the top, you -- how would you characterize this risk that you discuss here?

A Let me take a minute and --

Q Okay.

A -- make sure I get the right orientation. And so is your question has this situation changed with respect to this?

Q Yes.

A No.

Q In here, you're talking about legislative and regulatory risks, or is it primarily legislative risk at the state level?

A It is primarily legislative risk at the state level and, you know, general long-term policy -- long-term policy support for nuclear here in Florida. No, I don't think it's changed since I answered this question.

Q Okay. So is your point here, that's summarized on Page 29, about attempts to alter or eviscerate the nuclear cost recovery statute so soon after passage of this legislation, are a concern for the company, even if they are unsuccessful, as they have been so far?

Is your point there that since it's been attempted, as you characterized it once, that attempts will ensue, further attempts will ensue?

A Well, my point is that in assessing enterprise risk, as we discussed earlier, we need to look at the

aggregate impact of all of the enterprise risks over the course of time, and the 2006 legislation is a fundamental building block in the success of the project, and, in fact, there's a substantial enterprise risk mitigant.

So to the extent that there is any momentum to undo or revise that, it bears on the project enterprise risk directly, and also indirectly in the way that it causes the debt in equity markets to look at the project.

And so, you know, my point here is to acknowledge that this set of events in Florida, in terms of policy support, although unsuccessful, have to be considered.

Q All right. Now, on Pages 29 through 31, you discuss state and federal legislative action, I guess, state legislative action, dealing with -- well, state and federal legislative action dealing with RPS standards; is that right?

A Uh-huh. Yes, that's correct.

Q What is the status of this risk with respect to how it was evaluated in your testimony on April 30th, 2010?

A I don't -- I don't think there is any substantial change to this.

Q Okay. Do you have a legislative affairs department within the Progress Energy corporation?

A Are you asking about federal or state?

Q Well, both.

A No, we don't have a department, but we do have -- we do have individuals --

Q Okay.

A -- who maintain constant contact and knowledge of the progress of federal and state legislative affairs.

Q And they -- they give you and other members of senior management updates and advice about where they think legislative policy is going?

A Yes.

Q Okay. And you give them feedback about where you would like for them to try to help it to go?

A Yes, they -- our legislative affairs personnel keep us apprized, generally, of the flow of legislation that's relevant to our business, and they work with us as we consider the potential impacts of proposed legislation and develop our views on that legislation.

Q Now, is it your testimony that -- and would you know if there was any movement in the areas of RPS standards at the state or federal level?

A Significant movement, yes. I mean, there is

movement on these things on a day-in and day-out basis. Politics is a 24-hour occupation, as we all know. I wouldn't say I'm aware of everything, but I think I'm aware of those that are significant.

Q Okay. And on that basis, your testimony is that nothing has materially changed in these -- in the state or federal level in the RPS standard, or do you know?

A In terms of --

Q Since you filed your testimony.

A Since I filed my testimony, that's correct.

Q Okay. All right. And the next section, the next risk you identify is greenhouse gas emission reduction target legislation; is that correct?

A Yes.

Q Okay. And what is your assessment of that risk as -- as it has changed, if at all, since you filed your testimony?

A I mean, this issue continues to work in Washington, both in Congress and the administration, and, most specifically, at EPA.

So EPA continues to move down the path of regulating greenhouse gas and -- as well as a bunch of related environmental issues.

So there is activity here, but I don't know

that I characterize it any differently than I have in my testimony.

Q Okay. And with respect to federal legislation regarding climate control, is there any change there?

A Is there any change there?

Q Since you filed your testimony.

A Yes. Well, the -- you know, again, that's a fluid situation, so that changes constantly. But I think in terms of the long-term prospects and the way we characterize the issue, no, I don't think there is any material change.

Q Has it gotten more or less likely that you'll see climate control legislation out of Congress based on the assessment that your experts within the corporation, in the legislative affairs arena, have told you?

A It is -- in the long term, it is no less likely; in this session, it is less likely that Congress will act.

Q But for the purposes of evaluating this risk with respect to this project, you say there is no material change in the way you assess the risk at this time?

A Yes, I think that's correct, and let me explain just a minute. It is -- I don't think it is any less likely that on this topic, CO2 control, that -- that in

the long term we will have either legislation or regulatory structures to address greenhouse gases.

I think -- as a matter of fact, I think with the passage of time it is more likely that that will occur, not less likely.

But just to make clear I was clear, I think that the -- we don't believe that the Congress will take action, and it's less likely that the Congress will take action in this session then it was when I filed my testimony.

Q If I could get you to go back to Page 12. I don't want to kind of go through the enterprise risks that you have listed here -- well, actually, I want to ask you a question.

These enterprise risks have caused the Board of Directors to -- that they're one of the factors that have caused the Board of Directors to authorize the option that you are currently pursuing with respect to the Levy nuclear project; is that correct?

A Yes, in that these were enterprise risks, as I've said, are considered actively and continuously as a part, but not the entire decision.

Q Okay. But they -- it's fair to state that they materially impact the Board's decision about approving the option that you have selected?

A Yes, as they have in the past and as they will continue to.

Q Okay. Now, on Page 40 of your testimony, on lines -- well, the Q and A on -- starting on lines 4 and 6 -- you state on line 6 that, "Our evaluation of these enterprise events and circumstances indicated that there was greater uncertainty and, thus, risk associated with the short-term investment of substantial capital in the project"; is that correct?

A Yes, that's correct.

Q Now, what is the timeframe that the -- the term "greater uncertainty" applies to?

A Okay. I'm not sure I understand the question, but let me try and answer. What this says is it -- let me read it again. "Our evaluation of these enterprise risks and circumstances indicate that there was greater uncertainty and, thus, risks associated with the short-term investment of substantial capital in the project."

So what -- what we judged here is that in the aggregate, the enterprise risks represented, as it said there, an overall risk in uncertainty affecting this short-term period related to the project, such that it would be prudent for us, as we made our decision about on what schedule to proceed, to proceed on a schedule

that mitigated those risks in this period of time; in other words, between now and issuance of the license.

Q So the term "greater" -- usually a word like "greater" is a relative term and it's contrasting one period to another, when you're talking about it in a temporal sense.

A Uh-huh.

Q So my question is, is greater -- is it greater now than when?

A Well, certainly, greater now than a year prior.

Q Okay. All right. And your testimony here today is that since April to mid-August, where we are now, this level of risk is relatively unchanged; is that correct?

A Well, yes. I'm a little uncomfortable with the term "relatively unchanged." These risks are changing constantly, and we're constantly evaluating them, and so you can't be in a position to conclude or not conclude on a daily basis what the increment is, up, down or neutral.

What I'm saying here is that certainly over a period of time -- for example, over the period of time since our last nuclear cost recovery hearing, looking at what has transpired in projecting those risks forward, it's as we say here, greater uncertainty that ought to

be factored into the decision.

But I don't want to imply that there is some sort of enterprise risk meter that you can get up every morning and read and reevaluate. This is something that naturally takes place over a longer period.

Q Well, I did have a question along those lines about that meter and what might sit in the boardroom. You spend a lot of time in your testimony, and I think in the company's petition it is very similar in recounting these risks, and you address it again in your rebuttal, is that it appears to me that your testimony taken as a whole, these enterprise risks were a significant factor in the company's decision about how to proceed with Levy; is that fair?

A Yes, once -- and let me amplify -- once the situation changed in the manner that required us to reevaluate the Levy schedule, the NRC's decision not to -- the limited work authorization and other factors -- that dictated that we evaluate the impact that that would have on the schedule, if we decided to proceed.

Once you begin that evaluation and you recognize that you -- to proceed, you will need to proceed on a new schedule and all that that implies for the project, then it is reasonable and prudent to step

back and evaluate, given those issues, plus the project and the enterprise risk, what is the optimal sequence to proceed on.

And so once the decision is made that an evaluation is necessary, then our obligation is to ensure that it's comprehensive in nature.

And so it is in that spirit that you evaluate these enterprise risks, not in deciding whether to move the schedule, but in deciding how to move the schedule to best mitigate the risk.

Q So having gone through that process, accepting your explanation that it was triggered by the event surrounding the LWA decision --

A Uh-huh.

Q -- how do you know when these risks have resolved themselves to the extent that you can now proceed?

A What -- how will you know when we have resolved the risks so that we can proceed? Well, we are proceeding, and so -- and so in answer to your question, we have evaluated these risks.

We've -- incorporating these risks into our decision, not only on whether to proceed, but how to proceed -- as a matter of fact, the Amendment 3 to the contract was specifically undertaken with a number of

these risks in mind. So the amendment, in fact, is one of the risk-mitigating actions taken in response to this.

Q Let me ask you a hypothetical question. We'll try this: If you had NRC issued a COL on the last day of this year, 2010, as unlikely as that would be, and these enterprise risks were the same then as they are today, other than the fact that the NRC had issued a COL, would you be in a position to proceed or issue the notice to resume to the consortium?

A It -- it's -- it's very difficult to answer a hypothetical question in the manner you posed it, but let me try to address sort of the overarching issue.

There is a pool of these enterprise risks associated with the licensing process, the process needed to obtain the COL.

And so when the COL was issued, then -- then there is a significant reduction in the level of enterprise and project risk related to this project.

Q Well, can I get you a --

A So if your question is -- now, it's not possible that that's going to happen by the end of the year. It --

Q Sure.

A -- we think it is highly likely that it will

happen by early 2012, early 2013. If it -- if it sort of miraculously happened by the end of the year, that would substantially reduce the enterprise risk.

It would increase, yet further, the likelihood to proceed and our options for proceeding. I have no idea whether we would be able to actually proceed because of the number of complex factors involved here.

Q So the issues that are listed on -- on 12 --

A Uh-huh.

Q -- Page 12, do any of those relate to the timing of the issuance of the COL or the likelihood of the NRC's issuance of the COL?

A I'm sorry. Can you -- I'm not sure I got that.

Q Do any of these relate to the NRC's issuance of the COL? Do any of these enterprise risks that are listed on Page 12?

A This federal energy and environmental policy and regulation. This is federal regulation. But up above, yeah, the licensing and permitting activities I described above, they're directly related here.

Q So the issuance of the COL would, by itself, be a threshold issue as far as whether to proceed in regard to these enterprise risks? If you get --

A Again, I'm not sure what you mean by threshold, but let me try and answer it. When I say here the

enterprise risks include the following, the licensing and permitting activities --

Q Yeah.

A -- there are multiple licensing and permitting activities related to this project, but, certainly, the largest among them is -- is the COL.

Q Uh-huh.

A So if the COL is issued, that's a substantial reduction in that enterprise risk, and that is a significant enterprise risk. So, therefore, it's a substantial reduction in the enterprise risk associated with the project.

Q Okay. So world economic conditions, if they haven't changed materially, at the time whenever you get your COL, by themselves, would -- would that risk keep you from going forward with the project?

A Can you say that -- I'm sorry to be struggling, but I want to make sure I answer your question.

Q World economic conditions and economic conditions in this country and in Florida, that's -- let's call that one economic conditions --

A Yes.

Q -- enterprise risk. If those have not changed at the time you get your COL, would -- would the company still be in a position to proceed with issuing the

notice to resume to the contractor?

A That is one of the number of risks, and so it -- you cannot evaluate a single risk and conclude on whether it is in the company/customer's best interest to proceed or not.

You necessarily have to consider the aggregate of these risks. So if -- if economic conditions were precisely as they are now in -- in 2013, which is highly unlikely, we would have to consider that, in conjunction with the remaining risks, to make a conclusion as to whether to proceed or not.

Q Okay. What about economic conditions for the company, including capital market reactions, same answer there, if they were precisely the same in 2013?

A If they were precisely the same in 2013 --

Q Yes.

A -- we could proceed with the project, provided the aggregate of these enterprise risks indicated that was the correct thing to do.

Q Okay. And load-growth impacts, if they were precisely the same as they are today in 2013, your answer would be the same? You would evaluate that -- you could proceed if the aggregate impacts of all the risks had resolved themselves favorably? Or let me --

A Is that a different question?

Q No, I'm trying to -- I'm trying to understand. Are any of these risks that are listed here on Page 12, are any of them more important than any other? Is there one that has to be resolved in order for you to go forward with the project, if you get to 2013 and get the COL?

A No -- I think I want to say no. No, these are all relevant enterprise risks, not just the specific definition, but the magnitude of the risk is important.

You -- you -- can you build a nuclear plant in these economic conditions? Perhaps, if the federal and environmental policy around CO2 were significant enough to drive you in that direction.

Might you build a nuclear reactor without CO2 legislation? You know, a price on carbon. Yes, but it would depend on fuel price; it would depend on customer demand; it might depend on the extent to which you can continue to operate your COLA assets.

You know, to try to answer your question directly, all of these enterprise risks are important and need to be evaluated in making the contemporary decision, and they need to be mitigated to the extent we can, and then we need to continue to evaluate these, individually and, most importantly, collectively to decide whether to proceed with the project, and if we

proceed with the project following that decision point, what the best approach to proceeding is.

Q Okay. So is it possible to identify any of the risks that are on Page 12 that are -- that is, by itself, a threshold issue for the company, as far as being resolved in a way that you can proceed with Levy in 2013, if you get the COL?

A I'm not -- what do you mean by a threshold issue, and can you define what you mean by being resolved?

Q Okay. Right now, you -- the list that we went through earlier and that is contained on Page 12 in a summary form, all of these are risks that essentially mitigate against proceeding with Levy at this time; is that correct?

A No.

Q Which ones are not?

A Well, as example -- let me preface my answer by saying we are proceeding with Levy at this time, alright?

Q Okay.

A So this -- our decision was whether to cancel or proceed. We've decided to proceed, so the project continues. Now, the question is how to proceed.

So, for example, this federal -- federal energy

and environmental policy and regulation, in terms of whether to proceed or not, it is likely that federal policy will continue to march towards some form of greenhouse gas legislation by legislation or by the Environmental Protection Agency as a follow-on to their endangerment finding.

It is likely that the environmental policy at the federal level related to NOCS, SOCS, carbon, mercury coal combustion, ash, coal combustion byproducts will continue in a path that are used in favor of continuing with proceeding with the project.

So these -- this federal issue argues in favor of proceeding with the project. If I then turn to a slightly different angle and say, given that you're proceeding and the nature of the flow of federal policy, would you proceed more quickly or more slowly, given that?

Again, in considering that, we can consider that one isolated risk, but we have to do it in terms of the overall project. We are necessarily changing the schedule because of the licensing process.

Given that, allowing that additional time for additional clarity, not on necessarily on whether federal policy will continue to march down this path, but specifically what it will look like, argues in favor

of a slowing. Have I answered your question?

Q Well, let me ask you -- I think so, but what I want to ask is, right now, your testimony to me characterizes the state of progress in the federal legislative arena as stalled?

A I didn't characterize it as stalled; that's your term.

Q Would you -- I --

A What I said was I don't think the CO2 legislation drafted in the Kerry-Lieberman bill will be voted on in this session. The Environmental Protection Agency continues their process of regulating CO2 under the Clean Air Act.

Q That, by itself, the Environmental Protection Agency's actions, are not enough for you to build the plant, though, are they?

A They may well be.

Q Okay.

A But we have to see the end of the EPA's process.

Q But right now, in your analysis, your feasibility analysis, that's not criteria that you're using to -- to input the void -- the cost to avoid for clean air -- for environmental legislation, is it?

A Okay. I'm sorry. Are we talking about

feasibility or are we talking about the assessment of enterprise risk and whether it is in the customer and company's best interest to proceed? They're related, but separate topics.

Q Well, the enterprise risk does feed into your -- is a qualitative assessment that goes into your feasibility study, correct?

A Yes, but feasibility and the decision on whether it's in the best interest to proceed on a particular timeline are two separate discussions.

Q But Environmental Protection Agency regulation, by in and of itself, is not -- is not the reason for building nuclear generation, is it?

A The topic we're talking about, I thought, at the start of this was CO2 regulation, which has a direct impact on the benefit in the long term of nuclear generation.

Whether you -- whether you believe that that impact from carbon comes as a result of federal legislation or regulatory action is not really relevant; it's what -- it's what the outcome of that is, the impact of that that's important to the decision.

Q But your testimony here is that the -- the state or federal regulation in the environmental arena is such that you don't have enough clarity or certainty

with respect to it, to know whether to proceed at this time, so it's prudent because of that and other factors to delay and get more clarity, right?

A Again, we're boring down on this example, so I'll stay with it. The notion of whether we are going to need to delay the Levy schedule is in relation to enterprise risk. Those aren't connected. We need to delay the Levy schedule. It's a consequence of the NRC's licensing provisions.

The question we're discussing here is, given that that schedule must be revised and in recognition that there are a set of enterprise risks on balance, what is the best schedule? What is the best way to proceed with the project?

And so one of the factors associated with that is the clarity of federal legislation and regulation, which, by its nature, will get clearer over time, in one direction or another.

So that given we're moving the project, then there is an advantage to seeing that, the development of federal legislation.

Q So I'm misreading your testimony when I read from Page 11 to Page 41, where you discuss enterprise risks. There's 30-something pages out of -- out of 66, is that those are just by -- they're just kind of

afterthoughts? Because the LWA decision came down and caused your schedule to be delayed, and these -- these enterprise risks don't have a bearing on the company's decision about when to proceed with Levy?

A No, I didn't say that at all.

Q Okay. So these -- there is --

A Let me try again. Given -- given what is a very material change in that enterprise risk related to licensing and permitting activities, that manifests itself in the LWA, as well as several others related to that, then the company needed to make a decision as to whether to proceed or not, and our decision related that to that, which is that we should proceed.

The question then becomes how should we proceed, and in deciding how -- so we considered the enterprise risk in determining that one had substantially changed that required us to evaluate whether to proceed.

Once we decided that it was the right thing to continue the project, then proceed, then the decision is on what schedule and in what manner would best mitigate what had been from the beginning of the project and will continue through to the in-service date a set of enterprise risks.

We were facing a minimum 36-month change in the

in-service date. Our assessment of that licensing and permitting risk is that a 36-month shift provided us, given that we were moving it, provided us too little float for any additional permitting and licensing delays, and that a more appropriate date was the 60-month change in in-service date.

In evaluating that 60-month change in in-service date and thinking about these other impacts, it also helps us to mitigate some of these risks.

We are currently coming out of a recession, and the economic forecast show a slow recovery, but as we look 60 -- you know, as we look out to 2013, 2014, we would expect to see that position improve.

We continue to see progress on CO2 legislation; we expect that progress to continue, so that will clarify that.

Q Okay. Do you have a copy of the most recent IPP --

A No, I don't.

Q -- Levy project?

Give me a minute. I may have a copy of that for you. Are you familiar with the April 28th, 2010 IPP for the Levy project?

A Yes.

Q Okay. Let me see it for a second. I want to

ask you this question: Is this something you would have signed off on?

A Yes.

Q Okay. And then on Page 3 is your signature from April 29th?

A That's correct.

Q Okay. In the IPP -- and this is a document dated April 28th, 2010, and it is at 10PMA-DR4LEVY-3S1-000001, and I want to ask you, on Pages 9 and 10, if you're familiar with those schedules there?

A Yes, generally.

Q Okay. And what that schedule shows is your latest estimate for the cost of the Levy plant, minus AFUDC; is that right?

A That's correct.

Q Okay. And then that number is?

A Total, with fuel, is 17.6 billion.

Q Okay. And is there a segment in there that shows the incremental change from the prior IPP to that one?

A Is there a section on these pages that show that?

Q In the IPP.

A In the IPP? I believe there is.

Q It's on the next page then.
A Yeah, yes.
Q And what does it show on the incremental change?
A It shows the incremental change as [redacted].
Q Okay. And how much of that is escalation?
A [redacted]
Q Okay. On the -- the page I've -- the prior page there, below the $17 billion estimate, there are a set of assumptions; is that right, that are material to that estimate being accurate; is that correct?
A Yes.
Q Now, are those listed in order of magnitude?
A No.
Q They're not?
A No, it's just the list of assumptions.
Q Okay. What is the fist assumption there?
A The first assumption says Class 5, slash, Class 4 estimate according to the Association for the Advancement of Cost Estimating International Guidelines.
Q Okay. Do you know what those are?
A Generally. Although, this -- this particular area is Mr. Elnitsky's area of focus.
Q Okay. Do you -- are you generally familiar

with what that estimate -- what that assumption means with respect to the likelihood of that estimate proving to be accurate?

A Well, generally speaking, in a project of this size and with this duration, you begin with Class 4 or Class 5 estimates, and the estimate sharpens as the project proceeds over time.

Q Okay. When you say the estimate sharpens, you -- you -- it gets more certainty around it?

A Yes --

Q Okay.

A -- that's right.

Q Now, Class 4 and Class 5 estimates are, by your testimony, they are less reliable than lower level class estimates; is that correct?

MR. WALLS: Objection. Lack of foundation. Ambiguous, but go ahead.

THE WITNESS: Well I wouldn't characterize them as less reliable. This is a -- this is an estimating discipline, and so implicit in the discipline that there is an approach to the estimate. There is uncertainty of risk in every estimate the way it behaves over time, is what this is about.

BY MR. REHWINKEL:

Q Okay. Now, that estimate that's in April 28, 2010 IPP was done subsequent to the execution of Amendment 3; is that correct?

A Subsequent to estimation of --

Q Execution.

A Yeah. Well, we -- we had been working on estimates for each of the potential options, so it clearly is consistent with Amendment 3.

Q Okay.

A We'd likely develop our estimate as part of the process of evaluating the approach to Amendment 3.

Q Now, with respect to that assumption about the cost of the plant, did -- is there a range that one would put around the $17.6 billion number that would -- that would correlate with a Class 4 and Class 5 estimates?

A I can't recall the detail. That's something you may want to put to Mr. Elnitsky.

Q Okay. But was there some range around that number?

A Yeah, there naturally would be a range around 17.6 billion, as there was a range around the prior estimate --

Q Okay.

A -- before the schedule shifted, so that the nature of this estimate and the nature of our prior estimate would be similar.

In order to arrive at this estimate, you -- you kind of directly assume that the terms, and conditions and escalations embedded in the EPC contract and the assumptions made outside the EPC contract, informing the estimate, continued on with the new schedule.

That isn't to say that this would be the price. The price might be more; the price might be less, either because of changes in the escalation assumptions or because of negotiations that will necessarily take place before we proceed.

Q Okay. I want to ask you, last year, Gary Miller testified that if the cost of the project doubled, then that would probably mean a no-go situation for the company. Would you agree with that?

MR. WALLS: Object, as it assumes facts not in evidence, but --

THE WITNESS: You know, I'm uncomfortable -- I'm uncomfortable establishing a go/no-go, just because there are such a diverse set of implications for this project.

What I can point to is, if you look at the feasibility analysis that was done, I believe we did

that at minus 15 percent, plus 25 percent escalation off of -- off of this assumed price -- and that includes AFUDC -- and under that assumption, the project still showed substantial benefit across its lifetime, indicating that all else being equal, you would likely proceed at a plus 25 percent.

BY MR. REHWINKEL:

Q Okay.

A Beyond that, I think it's highly circumstance dependent.

Q And would you agree that the cost of the Levy project in 2013, as it -- as you would then estimate it to be in 2013, would be a factor to consider whether to issue the notice to resume to the consortium?

A Yes. Certainly, we will -- yes, I would agree with that.

Q Okay. I want to ask you about Amendment 3 again, if I could hand this back to you. And I may have spoken too soon. I might need to look at that. Is there a reference in the letter to 22 -- Amendment 3 to 22.1(m), as in Mark -- I'm sorry.

A This is the same section that we read into the record earlier?

Q Uh-huh. And does it -- does it refer to certain other required actions?

A Can you be specific?

Q Let me see the -- if I can look at that real quick, and we're looking on 10PMA-LEVYEPC-00535, is where the document starts in the Bates numbering. It's actually -- I'm sorry -- in section 10, or item 10 of that document. Can you tell me what -- can you read that into the record and then tell me what that means to you?

A Uh-huh.

Q You're welcome to read it first to yourself before you read it in and answer.

A Yeah, let me do that.

Q Okay.

A Okay. Let me read this in -- this is item number 10 -- and it says, [redacted]

[redacted]

Q Do you know what that means in terms of the overall price of the EPC?

A Yes, I'll give you my view.

Q Okay.

A Although, let me -- let me say that, again, this is embodied -- this is embedded in a larger contract. Mr. Elnitsky has more information on this, as do our legal folks.

But the primary intent of this is, while we are in this prolonged partial suspension, there will be substantial work completed, as we allow and authorize the consortium to do so.

To the extent that the work that we authorize to be performed [redacted]

[redacted] Does that -- is that clear?

Q Yes. So this work that will occur in this prolonged suspension period, [redacted]

A Correct.

MR. WALLS: Objection to the characterization but go ahead.

BY MR. REHWINKEL:

Q Okay.

A Perhaps. If we authorized it, we would have to authorize the work. [redacted]

Q Yeah.

[redacted]

Q Okay. Does the -- the effect of that provision there mean that the price of the EPC is still to be negotiated?

A No, that's not the intent of this paragraph.

Q Is it the effect of it?

A No, I don't believe so.

Q So is it your testimony that you have a price, an overall price for the EPC contract, an understanding of what that is?

A In the same manner that we did when we initiated the EPC contract. The EPC contract contains [redacted]

So our estimating methodology, as we've discussed, puts us in a position, given the terms of the contract, to estimate the delivered price, but the delivered price can be affected by those [redacted] or those other factors.

This amendment preserves that same [redacted] structure in the contract; it preserves the [redacted] it preserves [redacted] And so with respect to that, the nature of this estimate --

Q And you're pointing to the 17.6 --

A The 17.6 billion -- that the nature of this

estimate is consistent with the estimate that was developed when the original EPC was signed.

Q And the only material difference between the two is [redacted] that would occur between now and -- and --

A Right -- well, you pointed out earlier, on Page 11 of the IPP, there is a table that breaks down the [redacted] delta, and I'll just summarize it.

EPC incremental schedule shift, this is primarily related to long lead time purchase order disposition, [redacted].

Design change proposals, [redacted], these are [redacted] So, in essence, they're very specific scope changes for the project.

Q Would the shield building be one of them?

A No, no. They can -- I'm sorry. I can't come up with some examples, but they can be a range of issues. They can be maintainability related or -- or -- and [redacted], which essentially takes those [redacted] that we talked about, as well as other escalation assumptions, and moves those forward.

That's the majority of the estimate. That's

[redacted] Contingency, which is [redacted], and that contingency was related to -- with the passage of time, reevaluating, monetizing the kind of project risks that you do -- and I don't want to bore you here -- and then some additional owners cost that we identified over the intervening time. So at any rate, that's what makes up the delta.

Q By the way, there is a number here at the top on -- [redacted]. That should be a billion, not million, right?

A Oh, yes, it should, right.

Q All right. Well, we'll take that.

A Now, see, if it was that number, it would substantially reduce our enterprise risk and we might decide to proceed even more aggressively.

Q Do you understand the sentence here? It says, [redacted] Can you tell me what that means to you?

A No, I'm not sure what that means.

Q Okay. Do you know what it means when it says, [redacted]

A Point to where that was, please.
Q I'm sorry. It's right there.
A Okay.
Q And that's on -- can you tell me what page that is on?
A This is on Page 11.
Q Okay.
A I can -- I can give you my view of, generally, what that means.
Q Okay.
A So if -- as we -- as we went through our decision-making process on how to proceed with the Levy project, we asked the consortium to run a series of studies for us on -- on various scheduling moves from 24 to 36 months, with various separation between Unit 1 and Unit 2, so that they could test those scenarios through their internal organizations, their contractors, subcontractors, material supply organizations.

And as we did this, we -- we would consider what we felt that would do to project costs and modeled what that would generally do to resource plans and costs, etc.

So, you know, the notion here is that as we were working through our decision-making process, it wasn't entirely sequential; there were parallel

activities, preliminary in nature, directionally indicative that we would do, that, you know, lead us to, but are superseded by the -- what finally lands in the IPP.

Q And this --

A And perhaps Mr. Elnitsky can -- can fill in more detail for you on that.

Q And this is saying the $17.6 billion number turned out to be lower than this -- figures that were calculated under the scenarios you looked at in January?

A Well, I'm not sure whether the sensitivity scenarios that are being referred to were exactly the scenario that we ultimately landed on.

Q Okay.

A So I'm not sure there is a directly comparable preliminary Rough Order of Magnitude estimate. There's certainly a range of those. I just don't know whether it was one directly contrastable to this.

Q Okay. Are you familiar with the enterprise risk summary section of this IPP?

A Yes.

Q And I would ask you to look on 17 and 18.

A Okay.

Q And in the first paragraph under that, what is that paragraph called, 5.1.2?

A That's correct.

Q That first paragraph there, doesn't it say that the enterprise risks can affect the company's ability to proceed with the project?

A Yes.

Q Okay. And it lists, essentially, the enterprise risks that you testified to be low that; is that right?

A Yes.

Q Okay. So is that testimony -- is that IPP basically saying that these enterprise risks are factors that affect the company's ability to proceed with the project?

A It says they can. Yeah, and I think that's summarized pretty well in the paragraphs at the bottom of 17.

I mean, what we -- what we say there, up above, what we say is, "The enterprise risks are those risks that are generally outside the control of the company that can affect the company's ability to proceed with the LNP."

Q Okay.

A And below it we say, "As the company considers the effects of the enterprise risks and its qualitative analysis of the feasibility of completing the LNP,"

which we previously discussed, "the company's evaluation of the enterprise risks identified for LNP involves identifying events or circumstances that represent fundamental changes in the project's enterprise risks.

"The company's qualitative analysis of LNP risks indicate that there is a noticeable increase in the amount of uncertainty associated with multiple factors" -- leading up to the testimony here -- "that impact the LNP, and certainly the timing and cost of the LNP are impacted by the schedule shift when the decision is made to move forward with the project."

Q Okay. So the phrase here, "when the decision is made to move forward with the project," means that there is a decision that needs to be made relative to these enterprise risks and the project?

A No, I think that's just general discussion of how enterprise risks are applicable, one; and two, and I think as we talked about several times, the nature of these enterprise risks is that they need to be evaluated on an ongoing basis.

And so while we have -- while we have taken a decision to proceed with the project, we've taken that decision multiple times; at the point we applied for the need; at the point the need was granted; again, in light of the schedule changes that have transpired, and we

will continue to evaluate and -- that as a potential decision in the future.

Q Okay. But it's -- I mean, this is specific to the Levy project, "and certainly the timing and costs of the LNP are impacted by the schedule shift when the decision is made to move forward with the project."

Am I misunderstanding that these have an impact on whether or not to move forward with the project?

A No, they have in the past, and they will continue to have impact. That -- that is not to imply that the decision that there is a -- that we have not made a decision to proceed; we have made a decision to proceed, and we will evaluate the continued acceptability of that decision from now until the date the plant goes in service, as we should.

Q Okay. You have not made a decision, at this point in time, to issue a notice to the consortium to resume under the EPC, have you?

A No, because there's no reason to do that.

Q Okay.

A It's interesting. I take from your implication that -- well, we should not, and will not, on a project of this magnitude make a decision that is never again considered or evaluated and reaffirmed on an ongoing basis. That would not be the way any executive or

project manager would manage a project of this nature.

We have made a decision to proceed, and we will, on a number of occasions, reaffirm that decision, if it is correct, and we will meter what we will allow the consortium to do, consistent with the evolution of that decision.

Q Okay. So your testimony here today is, there is a presumption that you will issue that notice to proceed in [redacted], assuming that a COL is issued prior to that timeframe?

A That's correct.

Q I think in your testimony you indicate that the expected timeframe for the COL is 2012; is that right?

A Yes, December 2012, perhaps January 13.

Q Okay. Well, why do you say perhaps January 13?

A Well, we have the NRC schedule. However, there are a set of mandatory and contested hearings, and you must make an assumption about once the final safety evaluation report and the final Environmental Impact Statement are issued about the timeliness -- timeliness isn't the right word -- about the schedule for those hearings.

Q Okay.

A And we would expect those hearings to conclude in the fourth quarter of '12 or early first quarter of

'13.

Q Does the availability of the EPACT, E-P-A-C-T, tax credits for nuclear construction commencing before January 1, 2014, does that have any influence on your decision to proceed?

A Yes, it certainly has some influence, although I wouldn't characterize it as significant. And I would have to go back and refresh my memory on what the miles -- on what the 2014 milestone is. My recollection is that it is pouring of the related concrete, but I may be mistaken on that.

But from the beginning, what we've said regarding the tax credit, it is -- all other things being equal, that is a benefit that will accrue to our customers, that it would be a positive thing for us to capture. But in the overall evaluation of whether to proceed and whether to proceed, it is not a major factor.

Q Okay. So if there was substantial delay in this issuance of the COL into 2013, such that you had less than 365 days before January 1st, 2014 to make your decision about issuing the notice to proceed, the EPACT tax credits would not have a material impact on that decision-making?

A No, they wouldn't. They would be always

considered in it, but -- but I think the decision on whether to proceed and how to proceed are -- that is a relatively small item.

Q Okay. On Page 56, your statement on lines 9 and 10 about the company also considered it optimistic based on recent experience, and that's referring to the -- the schedule shift --

A Yes.

Q -- in the recent experience? Are you referring to the NRC?

A I believe what I'm referring to here is the recent experience with the NRC with respect to the LWA. We had a minor shift in the schedule for the FSER, Final Safety Evaluation Report, issuance, a shift in the delivery of the final Environmental Impact Statement and, you know, also, somewhat, to the progress on the AP1000 DCD.

Q Okay. And -- and your -- just so I understand it, your testimony is that additional 24 months, on top of the 36 month delay, is to account for the recent experience? In other words, that builds enough float into the project, in your opinion?

A Yes, it is not -- the number isn't driven entirely by that, but that's a significant factor in it, and our assessment is that a 36-month delay did not

build adequate float into the schedule to accommodate potential licensing delays, but that that additional 24 months, among other things, did provide adequate float, given what we see the current state of licensing activities.

Q Okay. And you said that that didn't entirely drive it. What else would it have been, driving that additional 24 months?

A Well, as an example of one of the things we've said is, that with this move -- with this move, we are moving capital investment to the other side of the license.

And so because you're moving a capital dollar to the other side of this, you are consequently lowering the risk associated with investment of that dollar, because you would have cleared risk associated with the license.

And as you practically look at how that plays into the project schedule, equipment procurement and sequencing, then you might also move it to optimize that piece as well.

So what I'm sort of expressing is, is there is a layered set of considerations. Certainly, licensing risk is one of the consideration -- is one of the significant considerations.

Q Okay. And so in that light, on Page 58, I think you're -- you're talking -- this is one of the four reasons for not moving ahead as quickly as possible, up there at the very top on lines 1 through 5.

A On Page 58?

Q Yeah.

A Okay. I'm sorry. So what was your question?

Q So what -- what you're referring to there is not moving ahead with this option because -- well, here, you're talking about if you moved ahead with -- with the -- the option that would have you move ahead as quickly as possible, that would keep your capital on the near side of the COL, right?

A Yes.

Q Okay. And the company's position is that it would be imprudent to expose your capital to these risks?

A No, I wouldn't say it would be imprudent? Again, this is a -- this is a matter of judgment --

Q Uh-huh.

A -- and so what we're saying here is, trying to characterize in all four of these reasons, is that -- is that in layering on these considerations why we would consider going to the 60 months versus the most aggressive schedule, which is 36 months.

And one of those considerations is that -- is that it lowers the risk of that capital investment by pushing it onto the other side of the license. That lowered risk is an enterprise risk and, ultimately, ought to lower the cost of financing the project. You get it on better terms then.

Also, it allows additional time for the economy to improve, and an improved economy helps the company's financial strength, which helps lower financing costs. It also helps the state and customers' financial strength, which is supportive of the project as well.

MR. REHWINKEL: Do you want to take a lunch break? I think we're probably going to be here a little bit longer.

MR. WALLS: Whatever you want to do.

MR. REHWINKEL: Why don't we -- it's a quarter to 1:00. I didn't realize how late it had gotten. We will come back at about 1:15, okay, and see y'all then.

(WHEREUPON, a brief lunch recess was taken.)

MR. REHWINKEL: We're back on the record.

BY MR. REHWINKEL:

Q I would like to ask about -- a few more questions about Amendment 3 in this section 10, if I could. We only have one copy of it. I would like to

kind of -- if we can kind of -- right here where it says, [redacted]

And then it continues on, [redacted] and it continues on to that language that you read earlier.

A Uh-huh.

Q My question is, is there more to this paragraph "m" than just the [redacted] for any compensation for work being done during the suspension on a basis, other than the [redacted]?

A Yeah, I think I understand your question. So, you know, the primary purpose is as I stated before, but we recognize -- and it's embedded in the estimate -- that there are some -- just as there are some demobilization costs, for example, to demobilize the Project Management office, there are remobilization costs associated with putting that back in place.

So there are very particular costs associated with demobilizing and remobilizing from the partial suspend -- from where we were at the partial suspension

and back again.

And so the first sentence carries that implication with it, but what this doesn't imply is that we are renegotiating the terms and conditions of the contract or --[redacted]

So this is really related to the fact that we're transitioning the project to a partial suspension and then have to transition it back, and that during the term of the partial suspension we're going to continue work, and it could be on any number of topics.

And so we want to make sure that the costs associated with those things are accurately characterized and reflected.

Q So, for instance, if -- if the consortium was aware that the way they worked at Vogtle or SCANA changed their thinking about how the construction ought to proceed, they could not use that section there to negotiate changes to the prices in the contract?

A If I understand your question, no, I don't; I don't think they could use this. There are provisions in the original contract on where -- what the risk allocation looks like, units, man hours, etc., and there are incentives around that.

So those kind of provisions existed in the original contract, and they still exist unaltered. But this doesn't introduce some new set of opportunities for the consortium to renegotiate the terms and conditions.

Q Okay.

A Now, that isn't to say that we might not want to renegotiate some of them. So, for example, when this contract -- when we -- post-COL issuance, if you consider where the -- where the rest of the industry will be at that point, there will be substantial construction experience at Vogtle.

So there will be substantial experience with module design and fabrication with scheduling sequence. The Sanmen Haiyang projects will be headed towards substantial completion. I think the Sanmen first unit is 2013, so it will be nearing completion.

And so there may be elements of that experience that we elect that we want to try to negotiate into the contract. So there may be a process around that, but this doesn't, in any way, sort of open the door to that unilaterally.

Q If the company could get all of the costs that you have spent to date and any costs that you are legally obligated as of September 1 -- September 1, 2010, guaranteed for recovery over an acceptable period

of time, would the company walk away from this project --

A No.

Q -- based on the circumstances that you understand today?

A Yeah. No, I mean, our -- and let me explain -- well, embedded in your -- I want to make sure I understand your question. Embedded in your -- in your question is the premise that -- that the Commission would conclude that, in their judgment, the project should not proceed; is that --

Q Yes --

A -- what is embedded?

Q -- that's part of it, yes?

A And they would have -- at that point, they would have made their judgment, you know, based on hearing of the information.

Certainly, just as in our base-rate proceeding, we wouldn't agree with that judgment; we don't think it's optimal, but we would have to respond to it Constructively.

So that as a backdrop, our -- we made a very thoughtful and deliberate decision about whether to proceed with the project, and the whole basis of proceeding with the project is that we firmly believe

this is in the best interest of our customers and our company, given those enterprise risks, and the project risks, and what we see in the legislation with respect to fuel diversity, and environmental footprint and baseload generation of reliability.

So -- so we would -- because we firmly believe in that decision, and we believe the timeframe we put the project on is appropriate, you know, I don't see why we would walk away from the project.

Because to do so, we are giving up on behalf of the customers the substantial benefit that the project represents, over a billion a year in fuel savings, over a hundred billion over -- over the initial 40 years of the plant life.

And so it would not be appropriate for us, having made the judgment we made, to walk away from a project and then forfeit that benefit for our customers.

If the Commission, at some point, makes an alternative decision, we'll certainly hear that, understand it and deal with it.

And I would expect any decision they might make around that would have the basis that you described, because that's the basis that's laid out in the legislation and the presumption that we made in undertaking the project at its inception.

Q In the company's statement that was filed, there was this sentence that said, "If the Commission finds that PEF's filing is technically acceptable, but that the LNP is not feasible going forward on substantive grounds, the Commission's determination would preclude the company from completing the construction of the LNP, and the Commission should award PEF cost recovery of its prudent 2009 costs and reasonable 2010 costs, as well as reasonable project exit costs pursuant to section 366.93(6)," and it has your name --

A Yes.

Q -- behind that?

Now, that's not specifically in your testimony, that particular sentence, is it?

A I don't believe so.

Q Okay. But you're, nevertheless, a witness to answer questions on that at the hearing; is that --

A Yes.

Q -- is that fair?

A Yes, that's fair.

Q I would like to turn to your rebuttal testimony. I just have a few more questions, and then I'll let others ask questions of you.

And before we get too far into your rebuttal,

is there anything in your rebuttal testimony that was filed on August 3rd that you have identified for making any corrections or changes to on the stand?

A No.

Q Okay. Several places in your testimony, for example, on Page 5 at the bottom, lines 21 through 23, you seem to suggest or imply that Dr. Jacobs is asking the Commission to cancel -- to -- or asking the Commission -- or testifying that Progress should cancel the project; is that accurate? I can reask it. That was a --

A Well, no, I'm not -- I'm not saying that their request there is to cancel it. What I'm really saying is that as -- when we stood at the point of making the decision on whether to proceed with the project or not, that process -- in other words, whether to cancel it at this point or not -- that process necessarily involves looking at those enterprise risks, looking at the progress for the license, and making a conclusion as to whether continuation in the manner that we talked about is acceptable.

So where Dr. Jacobs makes the point that we should have evaluated cancellation after COLA, my point is that we did evaluate cancellation after COLA as part of the decision on whether to cancel or proceed now.

And so what I'm saying is that that -- what I'm saying is that the decision -- I think the decision here is -- really boils down to whether to proceed now or not.

And so I'm not sure I've been clear about that, but -- so my view of Dr. Jacobs' argument is, A, we did evaluate necessarily as part of our decision whether to terminate or not whether to terminate post-COLA, because all of the information is embedded; and, B, I see his argument as really going not to should the case of canceling after the COLA, but directly to the decision of whether to cancel now or not.

I don't see them as necessarily separate in the way that he does. Now, whether he would argue if we should cancel it now or not, I don't know.

Q Okay. You're not contending that he is saying that you should cancel it now?

A No, not directly. If I can -- if I -- I can sort of make some assumptions and say if you believe what you say about canceling post-COLA, then I can imply from that, that your argument is cancel now, but I don't recall that he directly makes an argument.

Q Well, if the company knew that it was going to cancel the project after receipt of the COLA and still spent the funds to give the COLA, would that be

considered an imprudent decision with respect to rate-payer funds?

A Yeah, I hadn't thought about that, because we don't intend -- let me clear about this -- we don't intend to cancel the project after the COLA. We intend to proceed with the project after the license is issued.

Q But you haven't made a decision to proceed with the project after the COLA yet?

A We have made a decision to proceed with the project. As I've said, that decision is evaluated and reaffirmed on an ongoing basis, and we will evaluate it again, at least, when the COLA is issued.

Q You would agree that it is equally likely that the enterprise risks that you have identified in your testimony will worsen as it is that they will improve with respect to this project?

A No, I wouldn't agree with that.

Q Okay. On Page 20 of your rebuttal testimony, again, on lines 4 through 10, in that paragraph you state that, "Jacobs believes today that PEF will likely terminate the project after PEF receives the LNP COLA" -- or COL -- "in 2013, because of these project uncertainties and risks."

A Uh-huh.

Q This is, in essence, an argument that PEF

should immediately cancel the project?

A And what line are you on? I'm sorry.

Q I was reading there from lines 7 through 9.

A Okay.

Q He doesn't testify that PEF should immediately cancel the project, does he?

A Not directly, but my -- that I'm aware of, but my point is that as you proceed through his argument, as I say here, it, in essence, is an argument that says your decision is whether to cancel the project now or not.

Q Isn't it possible that you could construe his testimony to read that if the company intends to proceed with the project, knowing that there is a great likelihood that they will cancel the project, that the customers should not bear the costs of that decision?

A Say that again.

Q Isn't it possible that you can construe his testimony, instead of advocating cancellation of the project, that if the company wants to proceed with the project in the face of the likelihood that it will be canceled after receipt of the COL, that the company should -- should bear the costs of proceeding.

A I'm -- well, I don't know if you can construe it that way. That's not the way I construe it. The way

I -- the way I construe it is that -- well, first of all, let me take an objection to one term there. I don't view it as likely that the project will cancel post-COLA. I view it as more likely that the project will proceed post-license issuance.

If -- if we had concluded that it was substantially or significantly likely that the project will be canceled, then we would have brought that decision forward in time and used it in making the contemporary decision about proceeding or canceling.

Q On Page 23 of your testimony, up here in the paragraph starting on line 7, you state that, "In terms of these future long-term benefits and even the total project costs to achieve these benefits, the incremental costs of canceling the project after receipt of the COL compared to immediate cancellation of the project are clearly insignificant on a relative basis." Do you see that?

A Yes, I do.

Q Now, those dollars that are referenced in that sentence are the dollars that Dr. Jacobs say that you should evaluate in a fourth option; is that right? Is that your understanding?

A I think so. What I gather from Dr. Jacobs' testimony is that he is saying we should have evaluated

the costs of proceeding from today to license issuance, which we estimate at [redacted], and the cost of proceeding with that and then subsequently canceling, which moves that number from [redacted] to [redacted].

And he's saying we should have evaluated that as a fourth option, and what my testimony says is that was evaluated.

It -- in the process of deciding whether to proceed or cancel in the present time, it necessarily has to be considered as part of that discussion, because your decision is to proceed to the COLA and to the license and beyond. So my point is that we did consider it as part of the option to cancel the project today.

Q Okay. And so the incremental costs that are referenced on lines 8 and 9, that [redacted] minus the [redacted] --

A Uh-huh.

Q -- those are the dollars that you describe as on a clearly insignificant basis; is that right?

A And, also, the dollars -- the difference between [redacted] and [redacted], which is immediate cancellation or cancellation post-COLA. That delta is [redacted].

And when I use the term "relatively insignificant," keep in mind we're discussing this -- you know, no dollar is, in and of itself, significant. You know, we manage the pennies here, and so that's not

the intent of my comment.

The intent of my comment here is that this is a $17.16 billion project that has tremendous customer benefits. As I mentioned earlier, over a billion a year in fuel savings; over a hundred billion for 40 years; plus, potential carbon costs avoidance.

And that -- when you consider this decision, you must not only consider this [redacted] of costs, you must consider the lost opportunity or the lost benefit for having made the decision to cancel, because you're really responsible -- or you ought to be considering both sides of that equation.

And so my comment on the [redacted] is not that a dollar is insignificant, it's that given the scale of the project and the opportunity that it represents, and given the fact that we believe this project will proceed, and we intend to proceed, that number is not determinative.

Q But from the customers' standpoint, if the likelihood of cancellation is greater than not, a hundred, or 200, or 300 or $400 million is very significant. You would agree with that?

A Yes, I've already agreed every dollar is significant. I don't agree that it's more likely than not that this won't proceed, which is -- which is the

crux of what you must decide here.

Q And so these dollars that we just discussed, that you state are clearly insignificant on a relative basis, and that's relative to the overall project and the benefits, is your testimony, correct?

A Correct.

Q They are not so insignificant that the company would be willing to share with the customers, and the costs of these, if it turns out that the project is canceled after the COL; is that right?

A No, it's not a question of willingness. There is a -- there -- the project is built on some fundamentals of legislation and regulation, which we expect to be predictably implemented.

That's one of the bases of the project. So this is not a question of willingness; this is a question of what is the process that we are in.

Q And if that legislation was not available to the company, you would not be billed in this project; is that right?

A Well, that certainly would have been a different decision for the company. Personally, I would tell you I would not have recommended proceeding with the project were it not for that basis; and if that basis changed, I would not recommend continuing.

Q Is that part of the reason [redacted]

A The -- it's certainly a part of that, a part of that process, yes, although not the only one. [redacted]

Q Okay. Page 32 of your testimony, is it fair to say that -- actually, on 31, starting at the bottom on line 22, through line 9 of 32?

A Give me a second to read that.

Q Sure.

A Okay.

Q Okay. Is the crux of that portion of your testimony that it's a close call with respect to evaluating these risks and making the decision to proceed with the project?

A No, I wouldn't characterize it as a close call. What I'm acknowledging here is that our assessment, I think, clearly tells us that proceeding with the project, and proceeding with it in the manner that -- that we've established, is the optimal decision.

And that call, I would not characterize as close. We think that's clear. What I'm acknowledging here, however, is that reasonable people fully armed

with the facts could reach a different conclusion. It depends on how they weigh the risks, and evaluate that against the current situation and their view of the future.

And what I'm acknowledging here is that our assessment of that, we think, presents what we view as the optimal solution. Someone else may reach a different conclusion. And I wouldn't consider them unreasonable in doing that, but I wouldn't agree with it.

Q Okay. Fair enough.

On line 5 you say, "Another utility manager may conclude the risks are too great to be mitigated and that the risks and project costs outweigh the project benefits and, thus, prefer cancellation." Does that sentence also apply to a regulator, such as the Public Service Commission?

A Yes, as a matter of fact, I go on to discuss that in the last sentence. I only use the term "utility manager" there, because I'm a utility manager --

Q Right.

A -- and so there is a -- a decision-making process by the developer, and implementer of the project, and then there is a separate decision-making process that the Commission is entitled to undertake.

Q And so would you consider the Public Service Commission, after hearing evidence and bringing to bear their expertise and utility regulation, to be positioned to make a determination about whether the risks are too great to be mitigated and whether the project costs outweigh the benefits, in the context of the -- of the ongoing nuclear cost recovery dockets?

A I would hope that at the end of this process the Commission will be in such a position.

Q Okay. Those are all the questions I have. I really appreciate you taking the time to give your position.

MR. REHWINKEL: I -- I know Mr. Brew had asked if he could go next. I don't know if the other parties have any problem with that.

MR. MOYLE: I don't have a problem with that.

MR. REHWINKEL: Okay. Then I'm going to turn it over to Jay Brew.

MR. BREW: Thanks, Charles.

CROSS-EXAMINATION

BY MR. BREW:

Q Good afternoon Mr. Lyash.

A Good afternoon.

Q Can you hear me okay? I've got you on my speaker, but I'm kind of shuffling papers.

A No, you're very clear.

Q Okay. Thanks. And I'm -- to avoid repetition with what you had discussed with Mr. Rehwinkel, I'm going to hop around a little bit.

But a quick question, you mentioned a minute ago the -- with respect to Levy that this was a $17.6 project?

A Yes, and I was referring to our present estimate of the project on the '21/'22 schedule.

Q Okay. On Mr. Foster's Exhibit 2R-2, he shows the estimated in-service cost at 22 billion.

A Uh-huh.

Q Can you reconcile those two?

A I don't have Mr. Foster's schedule in front of me. I can only say that the 17.6 I refer to is with fuel and without AFUDC.

Q Okay. On -- speaking to your direct testimony, you discuss the -- a joint ownership issue, around about on page 68?

A Okay. Give me a second to get there, please.

Yes. Go ahead.

Q Now, quick questions, is conducting the negotiations with potential joint owners a part of your current responsibility?

A Yes, it's within my scope, either directly or

indirectly, yes.

Q Okay. And you had discussed the company's efforts with respect to securing joint ownership back in the original need case. Do you recall that?

A Yes, I do.

Q And you mentioned at the time that the company had discussions in 2007 and 2008 regarding potential joint ownerships. Do you recall that?

A Yes.

Q And continuing into 2009?

A Yes.

Q Okay. And your testimony here discusses the fact that the -- the change in the project costs and schedule, along with other conditions, have led the potential joint owners to adopt a more cautious approach to invest in the Levy?

A Yes.

Q Okay. By cautious, meaning that currently there are no potential joint owners that are willing to commit?

A What I mean by cautious here is that as we have looked at the enterprise risks and made decisions about the schedule, they've also looked at those risks, and we continue in discussion with these parties on the project. And while they are still interested and active

in the project, they have adopted a similar posture with respect to timing.

Q Along those lines, it's fair to say that all of the potential joint owners are mindful of the same circumstances you've discussed in your testimony, in terms of the risks and how they're changing?

A I would think so, yes.

Q Okay. And that regardless of how Progress judges those risks and how they're resolved, that each potential joint owner will judge for themselves whether those risks and uncertainties have been sufficiently resolved for them to commit to the project?

A Yes, I would assume any party involved in the project would do so.

Q Okay. Is it possible that as a result of the Levy project delays that some of the potential joint owners will commit to other resource alternatives?

A Yes, it is possible, although the owners -- the potential joints owners that we've been engaged at -- with have continued to express the same level of interest in the project. So, in other words, none of them have indicated to us that their interest has changed in any way or subsided.

Q But one of the enterprise risks that you face, if you will, is that some or all of those potential

joint owners will adopt alternative resource strategies?

A Yes, that is possible.

Q Okay. Awhile ago, with your discussion with Mr. Rehwinkel, you had talked about -- just a second. Let me find the page reference for you -- Page 25 of the testimony, where you had discussed the changing economic conditions and the enterprise risks addressed in your testimony.

A You're referring to the question on line 20?

Q Yes, I am. Thank you.

A Okay. I'm sorry. What was your question?

Q Oh, I was just waiting for you to get there.

A That's okay.

Q The answer to that question begins with the statement, "The recession affected customer ability to pay for nuclear generation development." Do you see that?

A Yes.

Q Is the customer's ability to pay for nuclear generation development always a factor to consider, with or without a recession?

A Yes, I think it's always a factor to consider. The -- the unusual circumstance of the recession, you know, perhaps unique circumstance of the recession, both nationally and Florida, and in Florida, though, make it

something that warrants more consideration in this circumstance than it might otherwise.

Q Understandable, but my point is simply that there are finite limits on the amount of capital spending that can be absorbed by rate-payers in a cost recovery?

A Yes, I agree. I think that what we have to consider there is not -- as we evaluate that, it's not just the impact of nuclear, but the impact to the customer without nuclear. And so there is, again, both sides of the equation that have to go into this consideration.

Q Sounds good, because that actually leads up to my next question, which was a staff had asked you in one of their interrogatories, No. 26, about the company's -- what steps to take to improve the company's financial condition, and cash flow coverage and other financial metrics.

And in that answer, you describe the need to prioritize capital spending. And my question is the point you just made, which is to confirm, which is that the company needs to look at not just the cost of constructing Levy, but its total capital expenditures in terms of its impact on consumers?

A Yes.

Q Would you agree with that?

A Yes.

Q Okay. And so, basically, the more you spend on Levy, the relatively less that's available for other capital spending purposes?

A Well, that's a -- I'm not sure -- I'm not sure how to characterize this. These are complex decisions, so the -- Levy needs to be looked at in short, intermediate and long-term context, in terms of price impact and benefits for the customers, as well as the other aggregate set of investments that have to be made to serve the company -- the customers.

It's not necessarily so that less on Levy means less impact on the customers in the long term, or that less on Levy means more on something else.

Q Okay. Of the --I'm less comfortable with options one, two and three then being more specific, but can we agree that the three options the company looked at were cancellation, the go-slow approach that you're recommending, and continuing with your full-speed approach?

A With the 36-month delay approach, yes.

Q Yes. Okay. The company's analysis of those three options, which have the lowest, long-term rate impacts for consumers?

A If -- it would either be the go-as-quickly-as-possible, provided we don't sort of evaluate the way the risks are associated with that. In other words -- I think I'm answering your question -- the quicker you go, the sooner the benefit begins to accrue to the customer, and so the better long-term position they're in.

We elected not to do that, because we felt that was not the best way to manage the project and balance the relevant enterprise and project risks.

Q Meaning, to put it in front of you in different terms, you thought it was prudent to keep your powder dry with respect to certain level of capital expenditures until some of the uncertainties were better resolved?

A No, our logic isn't that one-dimensional; it is that -- you know, given what we've experienced with the licensing process, and what we're likely to experience, one of the dominant factors there is that we did not feel as though adopting a schedule, with what we viewed as nonsufficient regulatory float, was a prudent decision.

Now, once you get there, there are a number of other attractive things about that decision that are beneficial, but I don't -- I don't want to say that

lowering capital investment in the short term has several benefits, but is not the primary reason for making your selection; it's just one of the number of factors.

Q Okay. In terms of the company's valuation of the project cancellation option, was a core consideration the company's desire to preserve the nuclear generation option?

MR. WALLS: I'm going to object as vague and ambiguous, but if you understand.

MR. BREW: You can qualify it, if you need to.

THE WITNESS: Yeah. Yeah, the failure to preserve the nuclear -- I don't like the term "nuclear option," by the way, but --

BY MR. BREW:

Q We can refer to whatever language you used in your testimony, which was the --

A I understand. Well, the decision to cancel the plant, I think, directly leads to the diminished likelihood that the customer will have nuclear power available to them and, therefore, all the benefits that accrue to it.

So cancellation of the project consequently weakens the customer's position with respect to being able to capture that benefit in the long term, if, in

fact, that is the right thing to do, and so it weighs into the decision in that manner.

But preserving the nuclear option is -- is not -- is -- is not a direct driver here, because our -- we wouldn't do this just to preserve the option; we're doing this because we intend to build the plant, and we think it's likely that we will build the plant.

Q Okay. With the -- with the proposed new project schedule, which is, as I understand it, is to focus on achieving the COL by mid to late 2012; is that right?

A Yes, it's late 2012, early 2013.

Q And assuming that that is achieved, that would lead towards target in-service dates of Levy Unit 1 of mid-2021; is that right?

A Yes.

Q And in-service Levy Unit 2 in late 2022?

A Correct.

Q Okay. And with the -- there are changes in the estimated total project costs that go with that change in schedule?

A Yes.

Q And that change is as an increase?

A Yes.

Q Okay. Does the Amendment 3 to the EPC shift

any of the estimated increased costs away from Progress retail customers?

A Say that again, please. Ask that again.

Q Yeah, let me try it again. The -- just sticking with Mr. Foster's exhibits as showing an estimated in-service cost of $22 billion, which the schedule that shows the comparison from the original need estimate -- the original need case estimate to now.

Does the -- the changes to the Amendment 3 to the EPC, do those amendments mean that any of that increased cost will not be passed on to retail consumers?

A The regulatory and rate-making process here hasn't changed as a result of the EPC, so the same treatment of Levy investment that existed from the -- from the need case forward, you know, still exists.

Q Okay. And so to, I guess, rephrase the question somewhat differently: If the estimated in-service amount has gone up by, say, $5 billion, then there is nothing in the EPC that changes the rate-payer's responsibility for paying those amounts, subject to prudence?

A No, and I'm sorry if I'm confused. The EPC contract is not -- is a contract between parties. It's not related to rate-payers. That's what the regulatory

process does.

Q Okay. But the -- the amounts that are -- that the company is projecting for the costs of the units are basically what they expect that are the jurisdictional amount that consumers will be responsible for paying for?

A Yes, wholesale or retail jurisdictions.

Q Yeah. Well, retail jurisdiction --

A Uh-huh.

Q -- is that right?

A The --

Q What I'm trying to get to is, since there are provisions of the EPC that govern costs that might be [redacted], and what I'm trying to ask is, does the 3rd Amendment reflect -- or do the -- does the updated estimated in-service cost of the unit reflect any project costs that aren't included in these estimates, that would be borne by the vendors or the consortium.

A No, the terms and the conditions of the contracts remain unchanged with Amendment 3.

Q Okay?

A So the -- you know, [redacted]

[redacted].

Q Okay. Early on, you discussed with Mr. Rehwinkel, he asked you whether the absence of joint owners, to date, represented an enterprise risk. Do you recall that?

A Yes.

Q And I wanted to just touch on that a little bit differently. The absence of joint owners, would you agree, affects several of the enterprises that you discussed, doesn't it, such as financing of the project?

A I would characterize joint ownership as a risk mitigation strategy, not as a risk in and of itself.

Q Okay. But the absence of joint owners does affect how the project will be financed, doesn't it?

A Yes.

Q And it does affect the rate impacts on Progress consumers?

A Yes, if you -- and I think you can see that in the customer price impact and in the feasibility study that we did -- a hundred percent ownership of the -- by Progress Energy will certainly require collection of more -- certainly weighs on one side of the equation, but that additional ownership comes with the related benefit --

Q Understood.

A -- so you will -- yes, you will affect the customer price based on joint ownership, but you will affect it on the cost and benefit side of that equation, both.

Q Okay. And that applies both in the short and long term, right?

A Correct.

Q Okay. And the relative consumer rate impacts and economic conditions may affect state energy policy down the line, possibly?

A That would be conjecture on my part.

Q Okay. Well, asking you to engage in a little conjecture, would you expect the state energy policy would be any different to consumer rate impacts or -- and relative economic conditions?

MR. WALLS: Object. Calls for speculation, but go ahead.

THE WITNESS: Yeah. Well, I would expect state energy policy to consider a wide range of factors, you know, including federal policy and it's implications for the state, you know, fuel diversity, environmental issues, energy security issues, as well as customer right impact, and economic conditions and trajectory. I would expect all of those and many more.

Q Okay. Thank you, Mr. Lyash. That's all I have.

MR. MOYLE: We'll allow anyone else to go next, if they want to. I'm probably going to take longer than Mr. Brew.

MR. WHITLOCK: This is Jamie Whitlock on behalf of SACE. I just have a few questions.

Was that Mr. Moyle?

MR. MOYLE: Yes. Go ahead.

MR. WHITLOCK: Mr. Moyle, I appreciate it.

CROSS-EXAMINATION

BY MR. WHITLOCK:

Q Mr. Lyash, good afternoon. Can you hear me okay?

A Yes, I can.

Q I just have a couple of questions for you. First of all, I just wanted to make sure I understand -- and I know you're probably tired of talking about Amendment 3 to the EPC, but I did have another question in that regard.

And what my question is, assuming that Progress Energy has issued the combined operating license, Progress then has [redacted] or whatever the terminology is; is that correct?

A Yes.

Q Okay. And can you explain to me what -- what will -- again, assuming the COL is issued, what will be going -- what will be the negotiations between Progress and the consortium during those [redacted]?

A Well, the -- first, let me say that the purpose of the [redacted] isn't intended to be solely or necessarily related to any negotiations with the consortium, so --

Q Okay.

A -- yeah, I mean, fundamentally, the reason why we included [redacted] is by tying -- by tying this decision point to the issuance of the license, then the risk -- some of the risk associated with the generic design certification that Progress on the reference COLA and on the Levy COLA, now, in a certain sense, [redacted]

So in putting the [redacted] on it acknowledges a few things. One is, we want to make sure that we have adequate time before and after the license is issued to carefully consider whether -- whether the circumstances were proceeding, and if so, on what timeframe.

So in other words, were creating room for

decision-making. We also anticipate, as we talked with Mr. Brew and Mr. Rehwinkel about, that we will have joint owners in the project, and we wanted to make sure there was time for us to conclude any remaining activities with potential joint owners.

These are examples of how the ears might be used, so hopefully I'm answering your question. That [redacted] is not to imply that that will be negotiating time with the consortium, although very well might be.

Q Right, right. And that does -- that does generally answer my question.

Did you say that during that period that would give -- and I just might have misheard you or I didn't completely hear what you said -- time to consider to proceed at that point? Was that what you said?

A Yeah, what I said was, or at least what I meant to say, was, you know, we are intending to proceed with the project, but there are various points along the way where we've got to look at the circumstances and reconfirm that this is in the customers' best interest and the company's best interest to do so.

And as you approach issuance of the license, that certainly is a process that you will go through again.

Q Sure, sure. So it's fair to say that assuming

the combined operating license is issued, at that point Progress will certainly -- although you -- you -- you know, you say you intend to proceed at this point, but y'all will certainly reevaluate that decision at that point; is that fair?

A Yeah, we -- yes, we'll we reevaluating -- not reevaluating, is a term I wouldn't use -- we're consistently evaluating enterprise and project risks, to insure that that decision remains a valid -- one that's in the best interest of our customers, and we'll certainly be doing that up to and through the -- the issuance of the license.

Q Mr. Rehwinkel had asked you about certain clause in Amendment 3 that would -- that discussed there would be the need to discuss in some [redacted]

A Yes.

Q Now, will there also be negotiations on, you know, as far as construction timelines, or is it Progress' position that there is a hard timeline in place right now?

A Well, we will -- let me see if -- from what I understand your question --

Q I didn't phrase that the best way. I apologize.

A That's okay. The -- the terms and conditions in the structure in the EPC contract remain intact. However, the original EPC contract had a [redacted] that once you change the in-service date of the project must change, and so we will need to go through a process with the consortium to reestablish the dates associated with those major milestones.

Q Right.

A And we did not do that in Amendment 3. We won't necessarily wait until 2013 to do that. We just did not do it associated with Amendment 3, but I would not anticipate that the nature or sequence of the milestones will change substantially; they'll just move in time.

Q Move sequentially, essentially?

A Yes.

Q Okay. And I guess -- and due to the -- due to the delay, obviously and these dates and milestones moving, there could also be cost increases relating to the possible construction; is that accurate?

A Well, our estimate, the $17.6 billion estimate, includes escalating the price of the project, consistent with taking our -- the basis of the original contract and moving that out in time, and it also includes a

reevaluation of contingency, which is associated with progress risks, so those escalations are in our estimate.

Q Okay. So when we looked at the IPP earlier and compared those different estimates, those numbers are already included in those numbers?

A Yes.

Q Okay. Okay. Now, I believe Mr. Rehwinkel had asked you -- and I'm not sure if this was taken straight from your deposition -- but I believe you testified today that all of the enterprise risks that you identify in your direct testimony, those materially affect the decision of, you know, continuing with the Levy nuclear project, correct?

A What I testified to was that enterprise risk clearly affects, and ought to affect, our decision on -- the decision we've undertaken whether to proceed, and, if so, how, and that those risks need to be consistently evaluated, monitored and mitigated.

You know, some of them affect the material and some perhaps -- and some don't, but in the aggregate is the way we look at that.

Q And I believe you -- and I believe you testified -- and I think it's on Page 40 of your testimony, if all of my jumbled notes here are

correct -- that upon y'all -- Progress' evaluation of the enterprise risks this year, y'all found that there was greater uncertainty than there was last year; is that accurate?

A Yes, we -- I think -- I think I testified that there is greater uncertainty on a number of those risks than there was a year ago, and that, in fact, is what led to Amendment 3 of the EPC as one of our mitigating actions, as an example.

Q Okay. Now, given that there is greater uncertainty this year than there was last year, given all the enterprise risks that you go into great detail in your testimony to talk about, and Mr. Rehwinkel talked with you about -- I'm not going to go back through all those -- as we sit here today, can you -- can you state with a degree of -- a reasonable degree of certainty that Progress Energy Florida will complete the Levy nuclear project?

A Yes, that is our intent and our assessment. You know, any project is done against the backdrop of risk. If we wait until there is no risk or uncertainty, then we will never undertake any project.

What I am very confident in, is we have evaluated the factors we've discussed, made our assessment of those risks and mitigating actions, and

have concluded that we will proceed with the project on the timeline that we've laid out. And, yes, given that, we think it is -- that there is certainty around our completion of the project.

Q Okay. Thank you, Mr. Lyash. Those are all my questions.

A Uh-huh.

MR. MOYLE: Does anyone else have any questions?

Jeff, it's John Moyle. I'll go ahead and go. Maybe their phone is muted. Are you doing okay from a timing perspective, or do you want to take five minutes before we get going?

THE WITNESS: Well, let's see. How long do you think you're going to take, Jon?

MR. MOYLE: Probably -- you know, depending on your answers, it's probably -- it's north of an hour.

THE WITNESS: Okay. Why don't we take a couple of minutes then.

MR. MOYLE: Okay. Just when you get back, just tell me when you're back and you're ready.

THE WITNESS: Okay. Just maybe 10 minutes.

MR. REHWINKEL: How about 1:30?

THE WITNESS: You mean, 2:30.

MR. REHWINKEL: Yeah, 2:30.

All right. We're just going to leave the phone on.

(WHEREUPON, a brief recess was taken.)

CROSS-EXAMINATION

BY MR. MOYLE:

Q Mr. Lyash, Jon Moyle on behalf of FIPUG. I know you've been asked a lot of questions. I'm going to try not to be repetitive, but cover some ground that I was not clear on the response, and then I want to ask you some questions. Can you hear me okay?

A Yes, I can.

Q Okay. Tell me, if you would, your -- your understanding or definition of the word "option."

A My definition or understanding of the word "option"?

Q "Option."

A Well, in the -- in the context of -- I take it to mean in the context of our discussions, right? And in that case, what it means is there are a set of alternatives, that we evaluate it in order to make a decision on how to proceed.

So in other words, one of those options or alternatives was project cancellation, at the present time; a second -- you know, a second was the option or

the alternative to -- to continue on the path that we have proposed.

And so in the context of -- if I understand your question, the context of our discussion, these are evaluations and decision points around alternatives that might be undertaken.

Q Yeah, and that's fine. I mean, Webster's defines it as the power or right to choose. I assume you would be okay with that as well?

MR. WALLS: You mean just as a general definition, Jon?

MR. MOYLE: Yeah.

THE WITNESS: I would disagree with Mr. Webster, but there is an operational definition associated with what we're discussing, and that's kind of as I just mentioned.

BY MR. MOYLE:

Q Right, but -- but -- and what you just mentioned, there were some choices that were available, correct? I mean, if you have option one, two and three, doesn't that then suggest that, well, there's some choices that can be made, one, two or three?

A Yeah. Yes, generally, there are always choices that can be made.

Q And isn't it, at the end of the day, the

decision that was made by -- by your company, the decision is to preserve the option to pursue the Levy nuclear project.

A No, no, and let me be clear about this. We made two decisions, at least. Decision number one was whether to cancel the project or proceed, and we decided to proceed; and number two was how we should proceed, and that is embodied in the 2021/2022 in-service date path that we discussed.

So -- now, an effect of that is that that means nuclear is still a part of Florida and our customers' energy future.

Q Right. But just so I'm clear, I mean, I understand, at the end of the day, the end result of the process that you went through, kind of a big picture, is Progress Energy is taking a long-term view and wants to preserve the option of -- of building Levy nuclear, correct?

MR. WALLS: Objection. Mischaracterization.

THE WITNESS: No, I don't believe that's all what I'm saying. What I'm saying is we made a decision -- we made a decision, once again, that the right thing to do is to proceed with this project, and we're going to proceed. It's not about preserving options; it's about proceeding with the

in-progress project.
BY MR. MOYLE:
Q I'm not understanding your testimony then. It says on Page 67 -- do you have your testimony in front of you?
A Yes.
Q Okay. Line 9, it starts, "PEF reasonably believes that in the exercise of its management judgment the incremental cost of the company's decision to adopt the COL focus approach are worth incurring to preserve the nuclear generation option for PEF and its customers in Florida?
A Where are you?
MR. WALLS: He's right there.
THE WITNESS: Okay. Let me read that for myself, if you would.
Yeah.
BY MR. MOYLE:
Q And, also, if you just would refer down to line 18. It says, I quote, under this long-term view, preserving the LNP new nuclear generation option with a COL focus approach makes sense.
A Yes, it, in fact, does, and you are preserving the possibility -- you know, the possibility of having this generation asset in service, but that's not the

fundamental decision we're making. The fundamental decision we're making is to proceed with the project.

Q Now, I asked you about this understanding of options. Are you also familiar with the word "option" as it relates to usually you hear it in a property context. Somebody has an option to buy property, or an option maybe to -- to exercise a stock purchase. Are you familiar kind of with that concept?

A Yes.

Q And in that concept, you would agree there is usually some consideration that goes to the -- there's some consideration back and forth. So if I'm going to have an option to buy property, I'm usually not just giving that for free, but I would have to pay something, correct, in a broad context?

A I suppose.

Q And for, like, stock options that are given to senior management, you're familiar with that concept, right?

A Yes. Although I have none, but go ahead and proceed.

Q Typically, that's done to try to encourage people to remain with the company or to work harder so the company's stock value improves. There's kind of a -- some give and take in that arrangement, correct?

MR. WALLS: Object. Calls for speculation.

THE WITNESS: Yeah. I mean, not to be difficult, I don't know what arrangement you're talking about. I understand the notion of an option on property or an option on stock, if that's your question, yes.

BY MR. MOYLE:

Q All right. So here's -- here's what -- here's a criticism that I have heard about the -- the nuclear cost recovery statute and the cost that it imposes on rate-payers, including my client, that it, in effect, operates as a free option to the utility to, you know, pursue -- pursue a nuclear project, but that they're assured that all of their costs are coming back to them, as long as they can establish prudency. Would you agree with that?

A Well, no, I don't. No, I don't. First of all, what --

Q And why not?

A Well, first of all, this is isn't an option. This is a project to construct two nuclear generating stations on property in Levy County to serve our customers in the long term.

So I don't agree, in any way shape or form, with the notion that this is an option, because it's

not. It's a real project and it's proceeding, number one; number two, I don't agree that we're assured -- our investors are assured of recovering all of their money.

There is a standard to be met here of reasonable and prudent, and we are compelled to demonstrate that we meet that on an annual basis, and that's what we -- and that is the basis for the actions that we take.

So I understand that you can -- we can take notions like that and try to stretch them to apply, or to try to take the Webster's dictionary definition of "option" and place it, but I don't agree that that's appropriate.

Q Yeah. And, again, I'm -- I spent some time on the word "option" because it's what I found in your testimony, as we pointed out, but let's move on.

You were asked some questions about the costs by Mr. Brew of the -- of the change. And, in effect, at the end of the day, you would agree that the additional time is approximately two years that was added onto the 36-month float time; is that right?

A No, I didn't add two years to a 36-month float. We evaluated the alternative of pursuing with an in-service date 36 months later than the original 2016 in-service date -- in other words, 2019 -- and while we

felt that that was possible, we felt as though, given the aggregate set of -- of enterprise risks, particularly the clarifying risk around the licensing process, that it would be difficult to achieve that, if not impossible, to achieve that date, and then a more appropriate date was 2021.

Q Okay. Maybe I misunderstood, but didn't -- didn't the project sort of, originally, have a 36-month lag time or variability window in it?

A I'm -- I don't know what you're referring to.

Q Okay. I guess it may have hinged on the -- on the LWA?

A When the NRC decision on the LWA was rendered, it caused a 20-month delay in the in-service date, all else being equal.

That's what caused us to step back and reevaluate now what the schedule implications were. As we were evaluating that, we recognized a couple of other things, that there would likely be a delay in the design certification process and rule-making as a result of the complexity of some of the questions that had to be resolved on the AP1000 design.

Also in that period of time, the ASLB made a decision to admit some contentions that -- that relate to contested hearings.

There were questions from the NRC and the Corp related to the drafted Environmental Impact Statement that were going to delay a couple of months the issuance of the COLA beyond the schedule that we had, the FSCR associated with the COLA, and also the -- the issuance of the final Environmental Impact Statement, and so we started out with the necessary 20-month delay.

We evaluated the net effect of all of that licensing and permitting and made the conclusion, as a result, that at least a 36-month delay was necessary, and that there was some risk we wanted to mitigate associated with what would be potential additional slippage and all that led us to the 60 months.

Q Okay. So that helps. I thank you for that answer, because I was kind of saying, well, 36 months and then two years is 24 months to get there, but I may not have had the component parts right, given your explanation for the 20 months, but -- so right now, we have a 60-month lag -- lag period; is that right?

A I thinks it's -- it's not a lag period; it's a 60-month revision in the in-service date of Levy Unit One.

Q Okay. And with respect to the costs that are projected now, Mr. Brew referenced you an exhibit in somebody else's testimony that had a -- you know, had a

number north of 20 billion.

You have an exhibit attached to your direct testimony that I'd ask you to take a look at, JL No. 6. Just tell me when you're there, if you would.

A Okay. Yeah, I'm there, Jon.

Q Okay. This -- this exhibit is a presentation made to the Senior Management Committee; is that right?

A That's correct.

Q Okay. And who is on that committee?

A That committee is composed of all of the senior executives of Progress Energy, which, you know, would include -- well, I could name it. It's about eight individuals. They're the eight most senior managers in the company.

Q Can you name it as we sit here today?

A Yeah. Yeah, it's Bill Johnson, who is chairman, President and CEO of Progress Energy; it's myself; it's Vincent Dolan, who is the President and CEO of Progress Energy Florida; Lloyd Yates, who is the President and CEO of Progress Energy Carolina; Paula Sims, who is currently the Senior Vice President of Corporate Development and Improvement Group; Jim Scarola, who is Senior Vice President and Chief Nuclear Officer; Jeff Corbett, who is Senior Vice President of Energy Delivery Florida; Michael Lewis, Senior -- or,

I'm sorry -- Jeff Corbett is Senior Vice President of Energy Delivery Carolina; Michael Lewis, Senior Vice President of Energy Delivery Florida; Mark Mulhern, Chief Financial Officer; and John McArthur, who is a Senior Vice President of -- of Services and General Counsel for the company. I think I've got them all.

Q Okay. Thank you. Thank you for doing that.

And so the presentation that's set forth as the exhibit was made to the group that you just named?

A Yes.

Q Okay. And then, specifically, on Page 6, am I reading that exhibit correctly, which shows that -- you know, the top of it is labeled a 2019 COD versus a 2021 COD?

A Yes.

Q Okay. What is "COD"?

A Commercial operations date.

Q Okay. And so the two charts there, I guess the -- it's a -- the difference, a delta is more than [redacted], correct?

A Yes.

Q And so then the number, the [redacted] -- or [redacted], is that -- is that a good number?

A Well, I think the -- what do you mean a good number?

Q Is that, as we sit here today, you know, the estimated project costs for the nuclear power plant, exclusive of AFUDC?

A No, where -- where I point you to is two locations. The Levy Nuclear Project Integrated Project Plan, which Mr. Rehwinkel referred to earlier, dated April 28th, 2010 -- or I believe in Mr. Elnitsky's testimony there is information on the cost estimate, and I would point you there as well -- and that is the estimate that we discussed earlier, 17.6 billion, with fuel and without AFUDC.

Q So why -- why -- why are these numbers -- why were these numbers presented to the Senior Management Committee?

A Well, remember, we're in -- let's see. We're in February of 2010 here, and so at this point in time we had requested information from the consortium on a number of different schedule sensitivity analyses.

That information was coming in and being evaluated. We were negotiating Amendment 3 to the EPC, and this presentation is part of maintaining the Senior Management Committee knowledge of all of the flow of those processes and -- and of the potential alternatives or options, which is on Page 4 of that presentation, full-speed project continuation, which is essentially a

36-month revision, project cancellation or project continuation with EPC amendment, which is the 2021 option.

And what this table is doing is trying to keep them -- as we are doing rough order of magnitude estimates, not our -- not our disciplined and approved estimates, but, directionally, as the negotiations are ongoing, what our thinking is at the time.

Q Did you -- were you making this presentation to the group?

A I believe John Elnitsky made the presentation; I was present.

Q Okay. But if -- if maybe say, for example, Bill Johnson said -- at that point, if he had said the difference between the 2019 and the 2021 date under this chart looks to be -- you know, we're closer now to [redacted], that the answer to that question would have been, "That's right," correct?

A Well, the answer would have been, as the table displays. You have a Class 4 rough order magnitude on 2019, a Class 5 rough order magnitude on 2021, the delta reflects the escalation due to time, and just a continuation of the embedded escalation assumptions over an additional two-year period.

Q Okay. I'm about done with this, but tell me

the difference between a Class 4 and a Class 5.

A Well, again, as I said earlier, I think these -- that question is better put to John Elnitsky, who is responsible for application of the methodology to the estimate, but the class of the estimate has to do with where you are in the life cycle of the project, and the degree to which you can estimate costs with certainty and to what uncertainty band you apply.

It's a standard net project management estimating methodology that we're requiring to be applied to this project.

Q And I don't want to get into the nitty-gritty on it, but would I be safe in assuming that the higher the class number the more comfort with the numbers?

Because, as you described it, it's based on time. So if the project is moving forward, I assume you have a better handle on costs as opposed to an earlier point in time; is that fair?

A In part it is. It is -- I wouldn't use the word "comfort." This isn't about comfort. It is -- and although it has something to do with time, it also has to do with a number of other aspects of the projects. It's really something that I -- it's a discipline that's difficult to describe, in a sense.

Q Okay.

A It's not only about time. Just because you're moving further down the project on a timeline doesn't mean you're going to graduate the class estimate directly, because it has do with the number of other factors as well.

Q And does it go up to, like, 10, or does it go up to -- is it infinite? Can it go up to as many numbers as you can?

A I don't know. John can answer the question.

Q And if you were sitting in a management committee, if you -- all things being equal, if you were given a choice between a rough order of magnitude Class 2 and a rough order of magnitude of Class 7, which would you have -- expect to have greater reliability?

A Well, I wouldn't make my decision based on a rough order of magnitude estimate. I'd -- I'd wait for the estimate to move on from that phase before we moved the final decision --

Q All right. Well, just given between those two -- two choices --

A And if I chose between a Class 5 and a Class 2, I'd have to -- I'd have to have the project manager go through the implications of what underlies the estimate and talk about, specifically, why we're at a Class 5, 4, 3, 2 or 1 stage. It's not a litmus test; it's just a

piece of information.

Q Does that -- does that exhibit -- your exhibit has -- does it have "confidential" on the top of it?

A It does.

Q Okay. And then the page before doesn't have confidential on it, does it?

A No, it doesn't.

Q So do you know why "confidential" was marked on No. 6 and not No. 5 and some of the others?

A I don't know specifically. I can say in general because -- in general, I would suppose because Page 5 contains information that is general in nature and commonly available. You could extract this from any regulatory proceeding that we've been through on this project, whereas Page 6 has specific numbers associated with what we review as potential costs for the project.

Q Do you know -- is this whole -- whole -- maybe your lawyer can help you -- is this whole exhibit being claimed as confidential or only those pages being -- that are marked confidential?

MR. WALLS: Only the pages and only the highlighted designated sections on the page.

MR. MOYLE: Thank you.

BY MR. MOYLE:

Q Page 3.

A Page 3 of the presentation?
Q Right.
A Yes.
Q Does this document accurately reflect the amount of money that had been spent to date on the project for which the rate-payers are being looked to for recovery?
A Well, I would expect that at this point in time this was our view of what the spent-to-date was and our projections of what the spending intent would be. I don't know of any reason why this would be inaccurate.
Q Okay. So does the number 576 million down at the bottom -- do you see that -- total amount at risk pending prudence review --
A Yes.
Q That is the sum of the two numbers above, right, the amount spent pending prudence review of 326 million and the potential 2010 spent pending prudence review of 250, correct?
A That's correct.
Q What does the top figure show, the total project spent-to-date?
A All right. I think that shows as of this date the total amount of funds expended on the project.
Q And that's 601 million, correct?

A Yes.

Q If -- I'm unclear as what -- how these two numbers relate. Maybe you can help me with that. The 601 million and the 576 million, are they additives of that --

A No.

Q -- that full amount outstanding would be the 601, which I assume that that money has been recovered, and then the 576, which is the money at risk?

A No. No, these numbers are not additives, so let me -- and if you want to dive into these in more detail, there may be -- perhaps may be someone who can break them out for you, but I'll make an attempt to give a broad overview.

This was a February '10 presentation, so up to that point, the total expenditures on the project -- and I'm unclear -- I'm assuming this is year-end 2009 -- was $601 million, of which a 197 million had been collected and 404 million remained yet to be collected, if that -- if that were its fate.

The -- not all -- some, but not all of that $601 million, was pending prudence review. Some of it had been through prudence review as a result of last year's nuclear cost recovery process. Some of it had been found reasonable, but not yet prudent, and so that

amount represents 326. All right. So 326 is part of the 601 --

Q Okay --

A -- the projection --

Q -- I was trying to figure it out. You were at the meeting, so thanks for helping me with that?

A -- and then that next line, that 250 million, is what at that time we projected would be spent in '10. That's not actually what we will spend in '10; that was the projection at that point. Is that clear?

Q Yes. And that note under the top, I mean, I read it to suggest that, essentially, about two-thirds of the spend has been deferred as compared to being actually collected; is that correct?

A Well, two-thirds had not been collected, either because the collection is ongoing or because it had been deferred.

Q Okay. In terms of doing your analysis, you know, there's -- there's -- you all have made the statement in your testimony that the decision you made, the option you selected, was good for the company and good for the rate-payers and the consumers. Did you talk with any consumers to reach that conclusion, or how did you reach that conclusion?

A Well, there are a couple parts to that answer.

Yes, we talked to policymakers, regulators, legislators and customers on a daily basis, and -- number one, and so we have a general sense of where they stand.

Number -- but number two, quantitatively -- and you can see this in the CPVRR assessment associated with the Feasibility Study -- the project continues -- including the project at the 17.6 billion in the estimate -- continues to have a very positive cost benefit for customers over its lifetime. That's the second issue.

And the third issue is it continues to be responsive to the underlying policy's directives that have been set at the federal and state levels around fuel diversity, greenhouse gas mitigation, etc.

Q Okay. And I -- that was probably not particularly fair, because I kind of asked you two questions at once and then jumbled them together, but I appreciate your answer.

Specifically, with respect to the three options that you considered, as far as your testimony, did you specifically bring those options up and discuss them with any customers prior to making the decision?

A As I said, we're -- we discussed our balance solution strategy and our nuclear with a broad range of customers on an ongoing basis.

Q Right. But in terms -- what I'm trying to get an answer on is the three options that are set forth on Page 4, full-speed project continuation, project cancellation or project continuation with EPC amendment.

I'm just trying to get a, you know, yes or no. Did you discuss those three options with any customers before that decision was made by your company?

And I would expect not, because it's your business decision, but I was just curious if you can answer the question.

A Yes, I can answer the question. No, we did not present these three options, as laid out on Page 4, and ask for a range of customers to give us their view on which of the three options we should choose. We did not do that.

What I was saying is that we consistently talked with customers about our balance solution strategy and the role that nuclear plays in it, including polling of our customer base, asking them questions, these questions, about how they view Levy and how they view nuclear power.

And so that broad input is part of our -- is part of our assessment. But in direct answer, no, we did not ask them, "Option 1, 2 or 3, how would you vote?"

Q Okay. And then on -- I'd like to get into some of your specific testimony. I presume that when you're testifying, on Page 3, that, you know, it's in the best interest of the company and our customers, that the best interest of the customers, the genesis of that is the general conversation that you just described, not any specific conversations related to the specific three options, correct?

A Correct. Yes, that's correct. The best interest of the customer here is defined not just in terms of an opinion today, but in the overall planning of generation transmission and distribution resource over the long term, because that's the nature of this business.

So best interest of the customer here really -- really means the best -- the planning of this system over the 10, 20, 30, 40, 50, 60 years in which it's going to perform, and what is the right balance of fuel and pricing. We don't -- we don't, and shouldn't, make decisions based on a minority poll on a given day.

Q No, I'm not suggesting that, and I hope you don't take my questions to suggest that. You know, what I'm suggesting is, typically, when -- when best interest of a third party are being put forward, oftentimes, you know, the third party can speak articulately to the best

interest. You would agree with that?

A Yes, and I think people do speak. They speak through the Public Service Commission. They speak like you're speaking right now, I'm sure, in rendering an opinion. So, yeah, there are multiple ways to hear those views.

Q Okay. And I know -- I don't want to get into the -- there's been some corporate shifts of responsibility. You know the old saying about the buck stops here, with respect to the Levy nuclear project, would it be fair to say that the buck is stopping with you at this point?

A Well, I'm not sure how you do define the buck stops here. I know -- I know how Truman did. I'm not sure how you are, but I am certainly -- I am certainly -- I am certainly responsible for this project.

But if you pose that question to anyone of our Senior Management Committee members, or to Mr. Johnson, our chairman, or, in fact, to our Board of Directors, I think they would be quick to accept accountability and responsibility for how we plan this system and our decision-making around Levy.

That isn't -- don't imply that to mean I am personally advocating any responsibilities; I am not.

I'm just saying that I'm not the only one here who feels heavy accountability for this.

Q Okay. Let me direct your attention to a sentence that I was not exactly sure what you were trying to communicate. On Page 3, line 12 -- and I'll just read it for the record -- "Even though the completion of the Levy nuclear power plant is feasible, the company still must determine, in the exercise of its management" -- "management judgment if proceeding with the LNP at this time is in the best interest of the company and its customers."

And that sentence was kind of written in the present tense. It confused me. Could you -- you've made the decision that it is in the best interest, right?

A Yes, we have. And as I've tried to point out over the course of the discussion today, you know, I think it's our obligation to continue to evaluate all of the issues that bear on Levy and to insure that that continues to be -- that the project continues to be in the best interest of the company and the customers.

So we have made that conclusion in deciding to proceed, as we have made in the past and as we will need to make it as we move forward.

Q You spent some time previously -- and I think

you actually used the word "judgment," and said it's a matter of judgment -- would I be correct in assuming that you would not have presented to the Senior Management Committee options that you did not think were viable?

A Yes, I would presume that, yeah.

Q And so the three options that, you know, you presented, you -- when I say "you," I mean the company -- exercised business judgment and made the decision that it thought -- it thought made the most sense, correct?

A We -- we -- I agree with you, but let me characterize it a little bit differently. We evaluated these alternatives and the relative enterprise project risks from both a technical point of view and others, and our conclusion is that the optimal approach here is project continuation with EPC amendment.

Although, it would be possible, certainly, to select project cancellation. It would also be possible to select full-speed. The result of our assessment and subsequent judgment was continuation with EPC amendment was the optimal solution.

Q Right. But you would agree that others reviewing the facts and circumstances of the case, you know, could -- could exercise a judgment that

necessarily -- that's not necessarily consistent with the judgment you exercised, correct?

A Yes. As a matter of fact, I think I've already given this answer in response to Mr. Rehwinkel when I said that, that others could weigh these factors that must be weighed in making a decision to proceed or not proceed with the project and reach a different but reasonable conclusion.

I wouldn't agree with the conclusion. I think we reached there optimal conclusion, so I would agree they could. That isn't to imply that I agree that they made the correct choice.

Q Right. And, ultimately, these options, were they presented to your Board?

A Yes, these -- fundamentally, these -- these choices were discussed with the Board, yes.

Q During the discussions at the Senior Management Committee or at the Board, or any other point in time, you know, with management, did the phrase "throwing good money after bad" come up?

A No.

Q Do you understand what that term means?

A Well, I know what I think it means. I'm not sure I know what you think it means. But you're specific question is did I hear that phrase, and the

answer is no.

Q Okay. And then just tell me what it means to you.

A Well, if a choice -- if you are clearly on a path that cannot succeed, and yet you continue to expend money on a path that you have judged you cannot succeed with, that might be characterized as throwing good money after bad. Of course, if your implication is that that applies in this case, I don't agree with that at all.

Q No, no, I'm just curious as to whether -- whether that term came up. You told me it did not. I assume that concept came up in discussions, correct?

A What do you mean by "that concept"?

Q The concept that you just described, where, are you on a path where you're spending money that may not -- may not result at the end of the day in recovery or a benefit?

MR. WALLS: Object. Assumes facts not in evidence; asked and answered.

BY MR. MOYLE:

Q Did you understand the question?

A I think I've answered it already. You know, we -- we're not discussing alternatives here that are not executable, and we're not discussing here a project that is unlikely to be successful, in our judgment.

We're discussing alternatives on how to proceed on a viable project in the face of variable enterprising project risks, as we do in all projects, and as we'll continue to do here.

So I understand your question, but in the context and focus of these discussions, it's not applicable.

Q Okay. And my question simply was I asked you initially, you know, did that term come up, and you told me no. And then my pending question was, did the concept come up, and I'm not sure I got an answer to that.

A Did the con -- okay --

Q The concept of throwing good money after bad, even if those terms weren't used, and maybe -- you know, maybe they're not used in the boardroom, but in terms of -- what I'm trying to do is to share some insight into your thinking, is to test the robustness of the conversations, and the discussions and the decisions that took place when you decided on the option you decided --

A Yeah, let me answer it this way --

Q -- and I am presuming that there was debate and discussion, and maybe that concept came up, and said, "Well, we've already spent 600. Now, it's going up

another [redacted] [redacted] Are we at a point where we may not be, you know, still able to achieve our goals?"

A Oh, that conversation clearly came up. You're -- the difficulty I'm having is, we don't discuss concepts like throwing good money after bad; we're discussing the merits, and the risks, and the decision on how to proceed with a real project on a real schedule that has real benefits for our customers.

And one of the elements of that, which goes to the notion you're putting forth, is that the Senior Management Committee and the Board very clearly discussed what are the risks; what are the likely and unlikely outcomes; is this the right investment for the customers and the company; and do we believe this will be successful in the long term?

And if the answer to those questions were no, then we would recommend canceling the project, but that is not what we saw and that is not what we recommended.

So the underlying notion that says are we making a sound investment here is at the heart of the discussion.

Q Were there any -- and I'm not going to ask you to name names or anything -- but were there any dissenting views expressed within your Senior Management Committee about -- about which options to -- which

option was most appropriate?

A No, I wouldn't say there were any dissenting views. I mean, we have a robust and informed discussion and debate to ensure that we've aired all the views and issues. But if what you're asking, is at the end of the process was -- were there -- was there dissent among the Senior Management Committee for what the right course of action was, I'd answer that no.

Q And that's what I was asking. The -- during the discussions on how to proceed, you know, you spent a lot of time talking about the enterprise risk factors, and you include RPS in those discussions. Did the company consider investment or -- or looking at renewable energy and whether that might be able to be pursued?

A Yes, we consider that actively and on an ongoing basis as part of our resource planning process. As a matter of fact, unless something has changed, I believe we have a standing request for proposal on renewable resources and, in fact, have signed contracts on biomass and solar power proposals that -- that met the threshold.

Q Now, on your testimony on Page 6, line 17, you talk about the benefits of the nuclear, and it includes the fuel portfolio diversity, the reduced reliance on

fossil fuels and a carbon-free energy generation. You would agree that those three components are also typically inherent in renewable energy, correct?

A I'm sorry. Where were you?

Q Page 6, starting on line 17.

MR. WALLS: I'm going to object as to vague and ambiguous. Do you mean all renewables?

MR. MOYLE: I asked him typically.

THE WITNESS: Well, some of these --

BY MR. MOYLE:

Q I mean, we can go through one by one. I just was -- you know, fuel listed -- fuel portfolio diversity, renewable -- if you could gain more renewables, that would increase your fuel diversity portfolio, would it not?

A Yes, it would. The only caveat on that is you have to think in terms of scale here, so increasing your fuel diversity by fractional percentages, or increasing it by a significant percentage are different in terms of how you think about fuel diversity.

So the answer is yes, they incrementally improve fuel diversity; no, they aren't going to have a -- I think, a substantial effect as nuclear based would be, so yes, they do. We don't have to --

Q And you say that because you're assuming that

the scale would be small, correct?

A I'm basing that based on the response to the RFP and the amount of renewables currently online, and in Florida and around the Southeast. So it's based on our experience to date and projections of what the impact will be.

Q All right. And in the reduced reliance on fossil fuels, that -- that is associated also with renewables, right?

A Yes.

Q And carbon-free energy generation, you would agree that's associated with renewables as well?

A It can be, yes.

Q But with the caveat, you know, when solar has that, maybe, some biomass, you get into a little complicated analysis?

A Yeah, it depends on how you view their carbon footprint and what you include in the renewable or not.

Q All right. And in the baseload capacity, some renewables have had that benefit as well, correct?

A Most do not. It is possible that -- that biomass, depending on its nature, has a baseload capacity. However, other renewables, solar and wind as an example, typically don't have the significant baseload capacity impact.

Q And -- and I read your testimony. You indicated that it looked like your customer growth was -- was kind of falling off a little bit. And I was curious as to whether you did any kind of cost-benefit analysis of looking at a spend, you know, say of half -- half your Levy, 17 billion, and put that into nuclear and what that would look like.

A I'm sorry. You said spend half of Levy on nuclear? I'm not sure what that means.

Q On renewable.

A Oh, yeah. Well, that's an analysis that was done in conjunction with the need case, I think, establishing the need, and this is the best selection.

And while we certainly didn't do -- redo any of that, now, I think were you to do it, it's pretty compelling that that sort of an expenditure on intermittent renewables would not have the substantial positive impact on baseload capability, price and CO2 reduction that nuclear has.

Q Have you followed the FPL's solar project in DeSoto?

A Generally, yeah.

Q Do you know how those costs compare with the costs that were presented in determination of needs?

MR. WALLS: The determination of need for what,

Jon?

MR. MOYLE: For the -- for the Levy project.

THE WITNESS: Yeah, my -- I haven't looked at that recently, but the last set of data that I saw shows that that on a per-kilowatt-hour deliver basis is substantially higher in cost.

BY MR. MOYLE:

Q Compared to -- compared to the renewable project -- that the renewable projections that were put forward in the -- in the need determination?

A No, what I'm saying is the per-kilowatt-hour delivered price from the solar project is still substantially higher than the per-kilowatt-hour price over the life of the project delivered in the Levy analysis.

Q All right. Let me -- let me move on. And Mr. Rehwinkel asked you a few questions about this, and I wanted to follow up in a little more detail.

But you have in your testimony -- I think beginning on 16 -- a lot of discussion about -- about rating agencies and others, and I'm unclear as to what the -- what the point of including all of that in your testimony. Could you -- could you explain that, please?

A Hang on one second. I want to get to where I need to be here. Yeah, and here it is. So can you flip

to Page 20 of the testimony?

Q Got it.

A Okay. So that question is, "What conclusion has the company drawn from the recent rating agency and equity analysis report about the company?" You might -- you might read that.

Q Yeah. No, I have, but let me ask you -- so there is -- there is a comment -- go to line -- Page 17, line 20. You state, "In response to the Moody's downgrade, Oppenheimer Equity Research stated that, quote, the downgrades at the Florida subsidiaries of both companies were prompted by the recent decline in the political regulatory and economic environments."

A Yes.

Q And then you go on, and it says, "The political interference in the recent rate cases have increased the regulatory risk in the State, which was exasperated by the continuing economic downturn in Florida. Florida's specific downgrade should send a clear signal to the Florida Public Service Commission that they are favoring rate-payers at the expense of FDNL and Progress credit ratings."

MR. WALLS: I'm going to object to your characterization. It mischaracterizes his testimony.

MR. MOYLE: Well --

MR. WALLS: He didn't say that. He's quoting Oppenheimer.

THE WITNESS: Uh-huh.

BY MR. MOYLE:

Q And why is -- why is -- why is that part of your testimony?

A I'd go to -- I'd go to Page 20. The question, "What conclusions have the company drawn?"

Q Would you agree that -- particularly given your delay now of 60 months, five years -- that -- well, let me ask you this way: When do you anticipate going into the markets, both debt and equity, for the significant portion of your spend on Levy?

A Well, we're in the debt and equity markets every year, and we don't carve out specific debt and equity issuances for Levy or any other project.

And so the degree to which we'll enter the debt and equity market will depend on a number of factors, including the project scheduling cash flow, also including other -- other capital, other maturing debt, our cash flow and retained earnings. All of these are factors, and Levy is not separate from that.

Q Has the need for the Levy expenditures been pushed off, given the option that you selected?

A Well, as we discussed several times, consequential to the decision to place Levy on this schedule, there is about [redacted] of capital investment that would have been made before the license issuance, that now is made after the license issuance and at a later date.

So as a consequence of the schedule alternative we selected, the short-term investment in capital in Levy is reduced.

Q So just so I'm clear on this, this Oppenheimer quoting here, it's not your testimony that you're -- you're saying -- you're not necessarily asserting this as true, correct, the Oppenheimer statement?

A It's true that they said it --

Q Right. Is that --

A -- and it's true that --

Q -- your belief, what's set forth in there?

A Well, that's irrelevant. What's true is that that was Oppenheimer's statement, and, therefore, that was Oppenheimer's view, and Oppenheimer is a -- Oppenheimer is advising on investment.

So this is not a matter of what I -- what my belief is; this is a matter of what financial analysts and investors believe, and so it's just merely here to illustrate that -- that -- that this process is watched

carefully and considered by the debt and equity community.

Q So if I understand your view, what -- what is said by the investment community, the relevancy or importance of it isn't necessarily whether it's accurate or not; it's the mere fact whether or not it's been articulated, because then that affects markets; is that what your saying?

A Well, it affects their decisions.

Q Which then, I guess, would affect markets for capital of equity and debt; is that right?

A When we enter the debt and equity market, for any reason, the rating agencies, the analysts and the investors make their own decisions about whether to invest, how much to invest and when to invest.

And so their assessment of the situation, both short and long term, is, by consequence, relevant to our company's financial help. We may or may not agree with them, but we don't make our decisions for them; they make them on their own.

Q And on Page 20, line 4, you had included a quote here that says, "The regulatory environment of Florida has soured and we would recommend avoid rating with Florida exposure for the time being."

Same answer with respect to that's not your

belief, is it?

A I'm -- not I'm not addressing that here. The point here is -- whether I agree or disagree with him isn't -- isn't the point of this. The point is that these are the views of individuals who shape the way the debt and equity markets respond, and so their view is as they state.

Now, their view also seems to be that this is a near-term issue, not a long-term fundamental change that would be of a nature that would impact the ability to complete Levy, but it certainly has an impact on their near-term view of investment.

Q You would agree there are a whole bunch of other factors that ratings must consider in making those decisions, correct?

A Yes.

Q And you attach -- you attach some ratings clips as JL-2 to your -- to your testimony?

A Right, because those are the ones I'm referring to in my testimony.

Q Right. And I was just, you know, looking at -- there was a lot of things in the exhibits that had other factors beyond the rates case and the political and regulatory environment, you know, economy matrix drew are significantly during 2009 bank credit facilities

expiring less than a year."

These last two, those are accurate; is that right, that they -- again, the bank credit facilities expire in less than one year --

MR. WALLS: What are you quoting from, Jon? Where are you quoting?

MR. MOYLE: On Page 2 of 6 of the JL-2.

MR. WALLS: So you're looking at -- you're looking at Moody's? What are you looking at in JL-2?

MR. MOYLE: I'm on Page 2 of 3 of the first Moody's document.

THE WITNESS: Where I am, 2 of 6 of the second Moody's document?

BY MR. MOYLE:

Q Right.

A Okay. And you're looking at what? Ratings drivers and --

Q Yeah.

A These are statements of fact on other issues that are concluded in their modeling methodology for assessing ratings.

Q Okay. And those are the -- you know, we had the discussion, whether it's true or not, you know, it's kind of what the market is saying. Is it true that the

NYSE parent company grew significantly during 2009?

A Yes, our parent company debt did grow in 2009, as a number of other projects that raises and falls over time. That's part of our general financing.

Q And the bank credit facilities, that's expiring on March 28th, 2011?

A Yeah, that's a statement of fact. Although, our credit facilities periodically expire and were renewed. And if you're asking the company's view of that, we will -- we don't -- we don't think it's likely that it's a -- it's the nature of bank credit facilities.

Q Okay. I didn't see those rate drivers in the testimony, only in the appendix. Was there a reason why these weren't mentioned?

A Yeah, because we're talking about the decision on the Levy nuclear power plants, not on our timing for whether we renew bank credit facilities. If we were discussing our timing and banks, we would be discussing that aspect.

Q Well, I think that Moody's documents talk about the rate decline, does it not, in terms of their -- their assessment rating drivers, in terms of what their -- their rating, which is part of your testimony?

A They are certainly drivers, because they're

always drivers. I'd -- and we're not saying here that the rate case is the only factor in credit rating.

I'd flip you back to the front page of that document, and I -- I would point you to the section that says, "The downgrade of the ratings at Progress Energy reflects the recent decline in the political and regulatory environment for investor-owned utilities in Florida and continued challenging economic conditions in its service territory, especially related to the Florida housing market." It doesn't go on to say, "And their bank credit facilities are expiring in March 2011."

So the implication here is there are some of these drivers that are more significant and some of them are less significant in their consideration, and I would presume the one that they mentioned within the analysis is a significant one.

Again, that isn't to say -- and the one that they mention on Page 2 of 6 in the attachment -- is a factor, but not the one they're focused on.

Now -- but all that being said, the point here is that -- is that the regulatory and political environment has an impact on the finances of the company, because it has an impact on the perceptions and judgments of credit of debt and equity investors.

And their view is that in the near-term the

uncertainty or risk associated with that one particular risk has increased, but also, our sense of this is that they have not concluded that this is a long-term fundamental shift, but rather a near-term situation to be considered, and it is relevant to -- once we decide to move Levy along, with all the other enterprise risks, in making that decision, and that is essentially, I think, what is said on Page 20 and 21, in direct answer to your question.

Q Now, you would agree that in terms of all of the rating drivers that I referred you to, and that are set forth, that most of your time is spent in your testimony focusing on the regulatory and political environment, correct, in terms of pages of testimony?

A Are you saying with respect to the Moody's discussion?

Q Well, with --

A I mean, I would -- I think I spent considerable time talking about the economic situation analysis, and in Florida, which is the second major driver in paragraph three of the Moody's text.

Q The -- on that point, on the economy, you stated that on Page 21 -- if you could go there --

A Yes.

Q -- line 16.

A I'm there.

Q First, PEF is starting out at a lower point, at a point of lower sales, lower sales in 2010, and PEF rejected, in its base-rate proceedings -- meaning PEF -- has a big sales revenue hole to dig out of in 2010. And I was curious, in terms of your projections, you do project increased sales and growth in 2011, right?

A Well, what we say is it's unlikely that we'll see in our revenue in 2011. We expect to see -- we expect to see a flattening in the decline of customer usage.

And as the economy recovers, we expect, in Florida, that we will see a return, to some level, of positive customer growth, and that we will see a -- a rebound over time in customer usage, but we are trying to be conservative, if you will, about our projections in that area.

Q Okay. And you use the term "significant improvement." You had conversations earlier about, you know, significant and that it kind of depends on what you're comparing to -- it to.

And I think you talked about 300 million not necessarily being significant in comparison to 17 billion. And that's a fair point, but with respect to your sales forecast, when you use the word

"significant improvement" there, can you give me an order of magnitude that you're referring to?

A I could give you the number, but I need to go back to our projections. They are assumptions that we've embedded in our 10-year site plan.

Q And they're also consistent with that embedded in the CPVRR associated with the study?

A I'm sorry, Jon. I can't recall specifically what those numbers were, but we did not assume here a return, either to the customer growth or to the customer growth in usage that we experienced along with the rest of Florida in the 2005/'6/'7 timeframe. We've embedded here what we think are very conservative and reasonable slow-growth numbers.

Q Okay. Let's do this: Give me five minutes. Let me kind of review my notes to see where I am. I'll try to avoid some things that have already been discussed, and let's come back in five minutes and we'll wrap up.

A All right. Thank you.

(WHEREUPON, a brief recess was taken.)

(WHEREUPON, Volume I is concluded.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME II

_____/

PROCEEDING: DEPOSITION OF JEFFREY LYASH

DATE: August 12, 2010

TIME: 9:41 a.m. - 5:18 p.m.

PLACE: Progress Energy Florida
299 1st Avenue North
St. Petersburg, FL 33701

REPORTED BY: Stephanie A. Walters
Florida Professional Reporter
Notary Public, State of Florida

(PAGES 195 - 239)

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(VOLUME II)

MR. MOYLE: Back on the record.

CROSS-EXAMINATION (CONTINUED)

BY MR. MOYLE:

Q Mr. Lyash, in response to a question, I think by Mr. Rehwinkel earlier, you had made the statement about the capital investment was now going on the other side of the COL. Do you remember that, or words to that effect?

A Yes, not the capital investment, but a -- a significant amount of the capital investment that had been planned prior to the COL; not all, but -- but a significant amount was now with this schedule shifting to post-COL issuance, and I was not involved in the, I think, initial nuclear cost recovery docket. I was involved in the last year.

Q But why would not -- would that not have been the initial case, in terms of setting that up, so that a significant portion of the capital spend is not incurred until after you get a significant permit approval?

A Yeah, it could have been, but it was not. And if I roll back the clock, we petitioned the Commission for a Certificate of Need for a specific baseload generating facility that was in service in 2016, and

that was based on the time, on the economy and the growth, and the situation that we're in at that time.

And so the reason for the selection of the Levy construction schedule, in conjunction with the original Certificate of Need, is because had we got it in service in 2016, we would have had to make a separate decision -- or a different decision about what baseload to construct, as we discussed a couple of times here.

As this situation has changed, including the one that we just covered, on what the economy in Florida is and, therefore, growth in customer account and usage has done, is it has opened up the opportunity -- "opportunity" may perhaps be the wrong word -- it allows us more time and support now, moving the in-service date, while holding the license date as closely as we can, and, therefore, moving the capital on the other side of that date.

Q So -- so, essentially, if I understood your answer, it -- if the need had not been there in 2016, then maybe they would have been scheduled sequentially from the outset; is that right?

MR. WALLS: Object. Calls for speculation.

THE WITNESS: Yeah, I'd have to go back and relook at the circumstance, but -- but -- so it's -- it's a -- it's hypothetical, but, yes, had the

circumstance been different when the need was implemented, we might have recommended a different schedule. Whether it would have been this schedule, I'm not sure.

BY MR. MOYLE:

Q And I was a little unclear earlier when Mr. Rehwinkel asked you about -- about your testimony, whether you're testifying as an expert.

In hypotheticals, typically, experts can answer hypotheticals and fact witnesses can't. Do you have an understanding as to whether your a fact witness, an expert or a little of both?

A Well, I'm -- I'm here as a representative of senior management of the company. And, I mean, if your question is, do I have expertise in some of these areas, the answer is yes.

Q Yeah, but isn't the primary purpose of your testimony to let the Commission and others know the decisions that were made, the rationale for the decisions, the reasons for the decisions, and to seek cost recovery consistent with those decisions?

A Yes, I would say so.

Q All right. And I think -- I think the lawyers can argue about it, but that tends to be more factual than you bringing special expertise to help explain

something, like the relative degrees of magnitude discussion we had before.

You know, you weren't an expert on that; neither am I, but someone might be that can explain it clearly. So anyway, there is a little confusion on that point, but let me move on.

A Well, I'm not -- I guess I'm not confused. I think those are part and parcel of the evaluating and forming the basis for your conclusion. So we don't make these decisions without thinking, and I'm explaining our thinking.

Q We talked a little bit about what the rating agencies are saying. You would agree with me, would you not, that -- that -- you know, you had made a comment earlier about a St. Pete Times article, and be careful, you know, of what you read in the newspaper --

A I didn't make that comment. I just commented that I hadn't read the article that Mr. Rehwinkel put in front of me.

Q Yeah, you made some comment about, words to the effect, you know, newspapers -- I mean, you would agree, would you --

A No, no, no, he asked me --

Q -- not, that newspaper articles aren't always reliable?

A No, he didn't. I don't want to get confused. Mr. Rehwinkel asked me about Bob Trigaux's --

Q Well, you said, did you not --

A -- article, and I said I was wasn't going to comment on Bob's opinion.

Q Okay. Do you believe everything that you read in the newspaper is reliable?

A No.

Q Do you believe everything that is set forth in analysts' reports is reliable?

A Well, now, you're asking a different question. I believe that analysts report their views, because I have no reason to question whether what they write is their view, just as I have no reason to question whether what Bob Trigaux is his view. Whether it's -- whether I agree with it is a different matter.

And in the case of a financial analyst in a credit agency, their view is what matters with respect to their assessment and decision.

Q With respect to the attachments that you've provided with your testimony, have you had direct conversations with -- with the analysts that are writing those reports that you attached to JL-2?

A We have fairly regular conversations with the analysts that cover -- yes, we have routine

conversations with the analysts that cover our company, both when they have inquiries directly and when we are engaged with them at various industry events.

You know, for example, I was recently in New York at the infrastructure conference, and all the analysts who cover us were there and asking us questions and discussing our company.

Q All right. So to the extent that you wanted to get into the thinking and background of those opinions, you know, you would agree that the people who are expressing those opinions would be the best source, correct?

A I'm sorry. Can you ask me that again?

Q Sure.

A I didn't understand.

Q You said if the analyst -- I think we agreed that the analysts' records often reflect opinions of the analysts, correct?

A Yes, judgments of the analysts.

Q Okay. And to the extent that the judgments were being questioned by -- by someone, the best source to test those judgments, and views and opinions would be the analyst who is expressing those views, judgments or opinions, correct?

A Yes, if you are forming your own judgment or

assessing and forming your own opinion. I would expect that the best source would be to go to that analyst and ask why they formed the view they have.

Q The -- let me refer you to -- you spent some time in your testimony talking about legislative discussions, and I think it's on Page 27.

A Okay. I'm there.

Q Okay. I guess you're indicating that there is -- you say, quote, we observe changes in the near unanimity that assisted in the Florida legislature for nuclear generation development?

A Sorry. Where are you?

Q Line 7.

A Yes.

Q Okay. Do you know, was the original bill passed without any negative votes? Do you know?

A My recollection is, in the house and the senate as an aggregate, there was one negative vote.

Q And so what do you -- what are you referencing when you talk about the -- I guess you're suggesting there was some changes or some concerns that are being raised. Can you -- can you detail those?

A Well, I think they're detailed in the answer to this question. What would you -- what would you like me to add? And if you go to Page 29 and look at the next

question, "Can you explain the company's concern?"

Q Well, who was the legislature? Do you know?

A I think Senator Fasano was one of the two that was referenced here.

Q Who was the other one? Do you know?

A I can't recall.

Q And do you know, were they successful in having any amendments adopted or bills passed at a committee that would have affected the nuclear recovery?

A No, they were not.

Q Would it be fair to suggest that the likelihood of statutory change to the nuclear cost recovery statute is not particularly significant at this time, in your judgment?

A I -- I think it -- no, I don't think it's likely that that will change. I think it -- as we discussed, legislative and regulatory support is one of the enterprise risk factors that we need to continue to monitor carefully, and this observation is related to potential shifts in regulatory and legislative support during this recessionary troubled economic period in Florida.

But I think we recognize -- I think I recognize in my testimony that those were not successful in amending the legislation.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME I

_____/

PROCEEDING: DEPOSITION OF JOHN ELNITSKY

DATE: August 13, 2010

TIME: 9:33 a.m. - 5:51 p.m.

PLACE: Law Offices of Carlton Fields
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REPORTED BY: Stephanie A. Walters
Florida Professional Reporter
Notary Public, State of Florida

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(VOLUME I)

THE COURT REPORTER: Okay. Go ahead and raise your right hand.

THE WITNESS: (Complies.)

THE COURT REPORTER: Do you swear or affirm the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

WHEREUPON,

JOHN ÈLNITSKY,

the witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REHWINKEL:

Q Good morning, Mr. Elnitsky.

A Good morning.

Q My name is Charles Rehwinkel with the Office of Public Counsel, and we'll take appearances and do the confidentiality drill.

MR. REHWINKEL: Charles Rehwinkel with the Office of Public Counsel.

MR. JACOBS: William Jacobs, GDS Associates, consultant to the Office of the Public Counsel.

MR. WALLS: Mike Walls for Carlton Fields on behalf of Progress Energy Florida.

THE WITNESS: John Elnitsky, Progress Energy.

MR. REHWINKEL: Okay. And John Burnett is in the room, but not making an appearance.

MR. BURNETT: And I promise I won't talk today.

MR. REHWINKEL: And on the phone, starting with Jamie.

MR. WHITLOCK: Jamie Whitlock on behalf of the Southern Alliance for Clean Energy.

MR. BREW: James Brew on behalf of White Springs Agricultural Chemicals, PCS Phosphate.

MR. REHWINKEL: Jon Moyle, Keefe, Anchors, Gordon & Moyle law firm, on behalf of Florida Industrial Power Users Group, known as FIPUG.

MR. CARPENTER: Kevin Carpenter on behalf of PSE staff.

MR. REHWINKEL: Okay. Today's deposition is taken pursuant to notice, and indicated that we would be inquiring using confidential information.

Whether we ultimately get into confidential information or not will remain to be determined, but in an abundance of caution, we will -- the deposition will be confidential, and the deposition will only be available to those who are subject to a

nondisclosure agreement with Progress Energy, or are required to keep confidential information confidential pursuant to statute and public service rules and orders.

The Office of Public Counsel is covered by rules, orders and statute, as is the Public Service Commission staff.

And all of the attorneys who have made appearances for interveners are subject to nondisclosure agreements with Progress Energy, and Dr. Jacobs is also a signatory of the nondisclosure agreement.

So at this time, everyone is subject to a nondisclosure agreement. The process will be that the deposition will be available to all the parties when it is completed by the court reporter.

She will provide a copy to Progress and they will scrutinize it for confidential information, redact it, as necessary, and submit the requisite request for -- or notice of intent to request confidentiality with it, so that it can be used at hearing.

MR. WALLS: Yes.

MR. REHWINKEL: Have I stated that correctly, Mike?

MR. WALLS: Yes, you have.

MR. REHWINKEL: Okay. So with that, unless there are any questions about confidentiality before we get started, I will proceed.

BY MR. REHWINKEL:

Q Okay. Mr. Elnitsky, if -- you did receive a notice, though, for your deposition --

A Yes, I did.

Q -- here today?

Okay. And you brought with you the testimonies that we asked you to have with you?

A Yes, we did.

Q And I also provided, separately, a list of documents that I may inquire from, and you have those with you?

A We have those down there, yes.

Q Okay. With respect to your testimony that you have prefiled, I'll ask for both right now. Direct testimony you filed on April 30th, 2010, are there any changes or corrections that you intend to make at the hearing to your -- let's start with your direct testimony.

A There is one correction we need to make in the direct testimony, and that is in regards to the numbering of the attachments.

THE WITNESS: And, Mike, if you'll help me with the page there.

MR. WALLS: On Page 4, at lines 18 and 19, you'll see there is a reference to Exhibit No. JE-2 and JE-3. If you actually look at the tabs, they're reversed.

MR. REHWINKEL: Okay.

MR. WALLS: So, you know, 3 is 2 and 2 is 3.

MR. REHWINKEL: Okay.

MR. WALLS: And then that appears again on Page 15, at line 10, there is a reference to Exhibit JE-2, which should be JE-3, because of the reversal of the numbering there.

MR. REHWINKEL: Okay. That's it?

MR. WALLS: That's it.

MR. REHWINKEL: All right. Did everyone get those?

BY MR. REHWINKEL:

Q Okay. Now, let's turn to your rebuttal testimony. Are there any changes or corrections that you need --

A No.

Q -- that you intend to -- okay. Very good.

You're testifying here today as a representative of the company?

A That's correct.

Q Okay. Are you testifying as an expert in any capacity?

A I am primarily testifying as a factual witness. My materials here are based on the facts and the actions that were based on those facts.

There will probably be some cases, I suspect, today where we may talk about opinion; and based on my experience and background, I'll try to make that clear --

Q Okay.

A -- if that's something that's based on my understanding of the facts. But, primarily, my direct and rebuttal testimony is based on the fact.

Q Okay. Thank you.

Can you tell me your -- first of all, just give me a quick synopsis of your -- your job title and job duties with respect to the entire corporation.

A Okay. My -- let me just start. My job title is I'm the vice president of New Generation programs and projects. In that capacity, I have the responsibility and oversight of, fundamentally, our New Generation construction projects.

That includes the Levy project, as well as our gas and combined cycle projects that we're undertaking

in the Carolinas and completing in Florida, and our environmental projects, such as the Clean Air project of Florida.

In my direct testimony, I speak specifically to my role in terms of the Levy nuclear project, the project management teams and the oversight for that project, and the responsibilities that I hold in that regard.

Q Do you have any responsibilities with respect to the Harris project?

A Yes, I do.

Q Okay. Is that -- is Harris a project that is coequal with the Levy and -- as far as your job responsibilities are concerned?

A As far as my job responsibilities are concerned, yes.

Q Okay. And how long have your job responsibilities been, as you've stated them here this morning?

A I have been with Progress Energy since November of 2007. I have been directly responsible for the Levy project since March of 2009. However, prior to that, I did have responsibility for the baseload transmission aspects of the Levy project.

Q Okay. So your name on the IPP documents before

2009 are related to transmission aspect of the project?

A That is correct.

Q Okay. I want to ask you a question that I don't want to know anything about the numbers. This is just a question that -- well, let me just ask it and let you know I'm not interested whatsoever in the dollar figures. Is your compensation tied in any way to meeting Levy milestones?

A Let me make sure I understand your question. So is my compensation tied to specific milestones identified for the project?

Q Yes, sir.

A I would say yes, but let me qualify that, because -- and the reason I think we need to qualify that is, my compensation is based in two parts. I mean, there is a base salary component to it and then obviously an incentive component.

My performance assessments are based on my ability to execute a series of goals that are established for me by my supervisors and by the company.

Those goals are connected to the various projects I'm responsible for, but it's difficult to say that you can draw that directly to milestones in the project.

It's really more -- it's more general than that

in terms of overall project performance and movement against the set of goals that were established for me as a leader in the company.

Q Okay. In that regard, when you first had responsibility for the Levy project, were -- was your incentive segment of your compensation based on the performance of the Levy project against overall corporate goals?

A Repeat your question. I'm not sure I understand where you're trying to go here.

Q Okay. Well, the aspect of your compensation that you just described to me --

A Uh-huh.

Q -- that's as it stands today; is that correct?

A Yes.

Q Okay. At the time you first had responsibilities for the Levy project, did you also have your incentive a segment of your compensation tied to the performance of the Levy project against overall corporate goals?

A Yes, and again, let me explain. So when I transition from being in charge of, well, at that time, what was called the Generation and Transmission Construction department, where I had Levy baseload transmission responsibility, to my role as Nuclear Power

Plant Development and, ultimately, as New Generation, my performance goals were adjusted consistent with, now, the changing scope of my responsibilities.

So, yes, my job was to insure that the project remained on track in accordance with what the company's objectives were.

Q Okay. And when exactly did that occur, your transition from transmission to overall --

A In May of 2009.

Q Okay. All right. And when that happened, I assume that a certain set of criteria identifiably changed for you; is that correct, with respect to how your compensation was calculated?

A No, I wouldn't say a set of criteria; it was more a refinement of goals. I mean, one of my -- one of the primary things that I'm responsible for in my role is the leadership and successful execution of a variety of projects, the most significant of one, obviously, which is the Levy nuclear project.

So, really, it was just a refinement to say, you know, your scope now has expanded to include this. Our expectation is that you will continue to lead that effort and continue to execute that project in accordance with the standards and processes that we establish as a company.

Q Okay. So my next question is, from that original set of refined criteria that would apply to your incentive compensation as it related to Levy, have those criteria changed since -- since you initially started in this job?

A Since May of '09?

Q Yes.

A No, those criteria have not changed.

Q Okay. So was the -- the -- at the time that -- that you transitioned from the transmissions to the overall Levy scope relative to the project, since that time, the company has decided on a direction that has a 60-month delay from the original CO date of 2016 and 2017; is that right?

A Well, let me qualify that, because that's not exactly right.

Q Okay.

A The company has made -- and I'm sure we're going to discuss this more today -- but the company has made a reasonable and prudent decision on a path forward for the project, that includes, as you know, a limited long-term partial suspension.

That has the effect of what we are targeting as 60-month change in the project schedule for the in-service of the first unit in 2021, so that's where we

are in terms of schedule.

In terms of what I think was your original question, did that in any way change my responsibilities, or my objectives or my goals as a leader? No, my job all along, since I came to the company, has been to run projects and insure that those projects are done in a rigorous and disciplined manner, reasonably and prudently, and are conducted in a manner that meets the objectives of the company.

Q Okay.

A So that really not changed. I would classify the change that happened in May of 2009 as an expansion of the scope of responsibility that I had to cover, but the basic objectives for me as a leader and what my responsibilities were in the company did not change.

Q Okay. I want to talk to you in this segment about long lead materials procurement.

A Okay.

Q Okay. And is that one of the -- one of your responsibilities --

A Yes, sir.

Q -- is to make sure that that process is -- is carried out with -- within the corporation's goals?

A Yes, sir. My responsibilities insure that the execution of our decisions around long lead material are

reasonable and prudent in the best interest of our customers.

Q Okay. Can you give me -- well, in your testimony, especially in your rebuttal testimony, you address the long lead procurement process; is that correct?

A Yes, sir.

Q Okay. Since the filing of your testimony in -- on August 3rd of 2010, have there been other activities relative to long lead procurement, that you've been involved in?

A Yes, there have.

Q Can you tell me what they are?

A Yeah. And let me, if I can, let me go to my materials here on long lead, because I'll step you through, because I want to check what we provided you as production of documents --

Q Okay.

A -- already, so let me just get to the right sections here.

All right. What I thought I would do -- this is probably the easiest way to walk through this -- is I'll just talk you through the various documents that we developed and the ones that have been provided to you --

Q Okay. And I would appreciate that.

A -- and we can walk through there.

So since -- and let me just make sure I get the right dates here -- so since the time of rebuttal testimony, which was filed on August 3rd, I'm going to actually step back just a little bit before that, if that's okay with you, so you'll kind of get the sequence --

Q That's fine.

A -- in line.

So on April 21st, 2010, we basically went back to the consortium with a letter that was addressed to Mr. Allison, the consortium director, and is provided in production in the documents.

THE WITNESS: And, Mike, help me out here. What's the easiest way to refer these to the record, just to say production documents --

MR. WALLS: Yeah.

THE WITNESS: -- 3-59-00001, so this was our first activity, was to go back to the consortium and ask for additional information around each of the long lead equipment items, and this letter specifies the additional data that we wanted in order to make our informed decision.

The consortium responded to that letter on May 5th of 2010, and that's in production of

documents 3-59-00003 through 33, and that was basically their answers to our questions.

We then took that information and commenced our assessment, using a documented process that we had previously provided to you as production -- another production of documents in response to No. 3-59, and that is 34 through 40. So that's our methodology that we've used to go through and analyze long lead material.

That decision then we took to -- we took to the SMC on June 17th and said, "Here is our process and our initial decisions."

That resulted in a June 15th memorandum from Mr. Lyash to me basically approving our recommendations on how we would move forward with each of these materials, and that's production of document 3-5942 through 43.

And there is a -- and we provided in production of documents as well in response to that -- a spreadsheet for each one of the lead materials.

So that got us to the point of having made a decision then around each of these items and how we would move forward.

At this point, we have worked with the consortium to go back to the suppliers, where we

were requesting that they [redacted], and the consortium has issued a request for proposal to those suppliers.

When those proposals come back, we will start [redacted] will be executed.

So long answer to your question, but basically we've marched through our process. We're now at the point of [redacted]

BY MR. REHWINKEL:

Q Okay. On -- I appreciate that very thorough answer -- on the June 15th letter from Jeff Lyash to yourself --

A Yep.

Q -- and the information that you have identified is very sensitive commercial information --

A Yes.

Q -- because you are actively engaged in negotiation with vendors?

A That is correct.

Q And -- and I want to be sensitive to that, and I think, just for purposes of those on the deposition,

that this is some of the most sensitive information that we've been allowed to look at, because it is active and ongoing.

A Yeah, we're in the middle of this process, that is correct.

Q Okay. There is a total figure on 59-42 --

A Uh-huh.

Q -- in the page and date column. And are these dollars relevant to the cost recovery docket, as far as costs that you are seeking recovery for?

A You know, I -- let me answer the question this way: I'm not certain, because this paid-to-date, I think, was effective as of June 15th.

And I think the better way to answer that question is Sue Hardison, who is our project controls and project support, who will be able to more clearly articulate what portions of this [redacted] are in the project-to-date costs.

I -- I'm not sure when we did our filing where exactly we were in terms of this [redacted] number --

Q Okay.

A -- so probably either Sue Hardison or Jeff Foster, I think, could clearly spell that out for us.

Q Yeah, I was trying not to mention numbers, but --

A Yeah. Sorry.

Q That's okay.

Okay. The -- you have provided estimates of long lead material purchase order disposition costs. Would these dollars in this column be part of those costs?

A No.

Q No?

A And the reason they're not is the -- the way we -- as we evaluate the different alternatives for the project, [redacted]

So most of these [redacted]

So when we took action in April of 2009, to put a partial suspension in place, most of those charges stopped. [redacted]

So these numbers here represent the payment for work that had continued or work that continued beyond

into the partial suspension. The disposition costs are specific to these activities here to establish the [redacted].

Q Okay. Now, based on where you stand, as you've described with where you are with the consortium and the sub-vendors, if you will -- I don't know if that's the right term --

A Yeah, that's fine.

Q -- have the disposition costs, for example, that are shown in the 2010 column of your JEA (sic) -- I mean, JE-6, is there any reason that they would have changed, based on what has transpired as you've described it?

A Okay. Let me go back to JE-6, which is -- okay. And which -- which --

Q And I'm looking at a 2010 column?

A 2010. Okay, and disposition costs.

Q Yes.

A That number there, yes, I would expect that number to change.

Q Okay. And which direction and to what magnitude would you estimate?

A I would estimate -- and, again, we're early in negotiations, so let me clarify that response, because all the numbers that you see on the document from Jeff Lyash, that was an estimation. Everything you saw in these alternative analyses are our best estimates of what these costs are going to be, and we're still in negotiation.

So you were right, when you started out here saying this is very sensitive, because we're in the middle of sort of defining what those numbers actually will be.

However, this number, as it appeared in the -- I think this actually originally comes from the February 15th presentation that's an attachment to Mr. Lyash's testimony -- but this number was [redacted]

In fact, as we have proceeded from that point until today, [redacted]

[redacted] I won't be able to definitively tell you that until we have completed those negotiations, but the estimate that we give here in the first column, that you see under where it says "estimated spend," that's what we now expect would be that 10 through 12 cost associated with that disposition activity.

Q Okay.

MR. MOYLE: Charles.

MR. REHWINKEL: Yes.

MR. MOYLE: A point of clarification, I'm looking at JE-6 attached to, I guess, the rebuttal testimony, and you were referencing a column. I don't see an estimated spend. Is there another document that he is looking at?

MR. REHWINKEL: Yes, it's the document that he contrasted the dollar figure in the 2010 column associated with LLMPO disposition costs on JE-8 -- JE-6, that number that he said as a better estimate is on 10NC-OPCPOD3-59-000042.

MR. MOYLE: Thank you.

BY MR. REHWINKEL:

Q Is that correct?

A That is correct.

Q Okay.

A And let me, if I can, just one additional clarification to that.

Q Yeah.

A If you look at this JE-6 document, just so we're not missing any of the nuances here, you will notice that there is two lines, long lead payments and WEC support, long lead purchase order disposition costs.

Both of those lines include part of the cost during this 1011 and '12 period that would be associated with changing the plan, basically, for long lead material.

It also includes some of the ongoing WEC support during impartial suspension, but, in fact, that first line, where it says long lead payments and WEC support, also included what, at the time, [redacted]

So there is a -- if you combine those two lines, that number more accurately compares to what's now in this estimated spending column --

Q Okay.

A -- it -- subtracting out the WEC support cost, which, unfortunately, I don't have right in front of me, but --

Q Okay. Is that a discernable number, the W -- WEC is W-E-C, all caps --

A Yeah. Sorry.

It's -- it's small compared to the total long lead material disposition costs, and, again, I don't want to guess off the top of my head. I could probably go find that here in the documentation, but --

Q Okay. Well -- so just to close the loop on this comparison that I was trying to do, on the June 15th memo from Jeff Lyash to yourself, and the estimated spend, 2010 to 2012, the total amount that's at the bottom of that column is roughly comparable to the two LLM line items on JE-6 and the -- and the three-year-total column; is that correct?

A That is correct.

Q And it's roughly because it would be less the WEC support component?

A Yeah. And let me -- yes, because I think the number I quote in my testimony -- and let me -- I'm trying to find -- I think I talked to [redacted], which was what our original estimate was. I think that's probably the best way to draw the direct comparison. Let me just find it for a moment, if I can, sir.

Q Okay. And that memo is from you to Lyash; not the other way around.

A Yeah, I'm sorry, from me to Lyash. I think I may have said that wrong and incorrect at the beginning.

If you go to my direct testimony, Page 27 --

Q Okay.

A -- okay, at line 4, I say, "The cost of purchase order disposition is estimated to be [redacted]"

Q Uh-huh.

A That's the subset of the two lines that we were looking at. So if you take out the WEC support, that's -- you end up with the [redacted] number.

Q All right.

A And this is going to be hard to do without talking numbers --

Q I understand.

A -- so if you take that [redacted] number, that's what you can compare then to our current estimate of spend of that's the best direct comparison.

Q So would it be fair to say that with respect to the -- well, let me step back and ask it this way: Right now, you are awaiting responses to RFPs from the consortium to the suppliers; is that correct?

A No, let me clarify. What we're waiting for right now are responses to requests for proposal from the supply chain, the sub-suppliers, back to Westinghouse.

When that is complete, [redacted]

[redacted] with the suppliers that are on this memo that you see [redacted]

For the items that are [redacted]

Q Okay.

A So if you look through the list of suppliers, those are the ones that we will [redacted]

Q So there are [redacted] suppliers that are --

A Well, actually, it's -- [redacted] of them are internal to Westinghouse. As you can see there, those are the same.

Q Oh, okay. Yeah.

A [redacted] of them are [redacted] which is the [redacted], and then [redacted] which is the -- so those are the groups that [redacted]

Q Okay.

A [redacted] because -- well, that wasn't a direct question, I guess.

Q Well, I was -- Toshiba is a parent of Westinghouse; is that right?

A Toshiba is a parent of Westinghouse, and

[redacted]

Q So -- and [redacted] is --

A [redacted] is [redacted]

Q And that's a [redacted] supplier?

A Yeah.

Q Okay. And the -- so you have [redacted] from them, [redacted] and [redacted], outside of the Westinghouse family?

A Yes.

Q All right. Now, once those responses to the RFP come back to Westinghouse, [redacted] --

[redacted] --

A That's correct.

Q -- [redacted]

A Yeah, that's correct, and allow me to explain that, too. Because the way the contract is structured, [redacted]

We have been successful in being [redacted] especially with regards to this

negotiation, [redacted]

Q Okay. And if this requires you to speculate beyond where you're comfortable speculating, I will understand: Is it your belief that their [redacted]

MR. WALLS: I'll object to speculation, but you can go ahead.

THE WITNESS: If you -- well, I would ask the question differently. You've already objected, though, so process wise --

MR. REHWINKEL: You can answer the question.

MR. WALLS: Yeah, you can answer the question --

THE WITNESS: Okay. I'm sorry.

MR. WALLS: -- unless I tell you not to answer.

THE WITNESS: Okay. Yeah, I'm sorry. I just didn't understand the process. Sorry. I'm learning the drill here.

MR. WALLS: That's okay.

THE WITNESS: It is hard to tell why [redacted], but what I do know, as a facts, [redacted]

So in [redacted] specifically -- and this is very sensitive -- [redacted]

BY MR. REHWINKEL:

Q Okay. But their -- whatever has occurred, it's not even just with [redacted]

MR. WALLS: Object. Speculation.

Go ahead.

THE WITNESS: Yes, but allow me to explain.

And that is primarily driven by two factors: One, a reasonable and prudent decision that, in some of the cases, it was in the best interest of the project and the customers to [redacted]

BY MR. REHWINKEL:

Q Okay. That brings me to a question that -- that is suggested by your testimony, that when comparing the various alternatives, the three options that the company narrowed down to and then made a decision from, and then, if you will, the fourth scenario that Dr. Jacobs forms, that when comparing those, you note that there is -- that the comparisons are not necessarily that mathematical, because there is potential salvage value to this equipment; is that correct?

A If your question is, is there salvage value for some of this equipment --

Q Yes.

A -- in the event that the project, for whatever reason, had to stop, yes, there is potential salvage

value.

Q Okay. And I guess in that regard, the equipment that is listed on the June 15th memo, [redacted]

A Yeah. Let me make sure I understand your question. [redacted]

Q And -- and that would be in any project that [redacted]; is that correct?

A That is correct.

Q Okay. And if for some reason --

A Well, let me --

Q Yes. Go ahead.

A -- if I can. I'm sorry. Let me -- let me clarify that, because it -- [redacted]

So where our reactor plants are a 60-hertz

So while the risk barriers may have increased in the near term, we don't see a fundamental shift in that risk in the long term at this point.

Q All right. And in the last legislative session, there wasn't even legislation filed to change the nuclear cost recovery statute, correct?

A I can't recall whether anything was filed or not, Jon. There was legislation drafted. I don't recall whether it was filed or not.

Q I -- I read your testimony to highlight certain enterprise risks, including RPS and greenhouse gas, and that there is an increased level of uncertainty associated with that. You would agree that's generally fair?

A Yes.

Q To an effort to try to reduce that uncertainty, is the company advocating a particular position, you know, to reduce that risk?

MR. WALLS: I'm going to object to vague and ambiguous. Position where?

MR. MOYLE: On either of those issues.

BY MR. MOYLE:

Q I'm sorry. I didn't ask it very clearly, but you talk about the uncertainty, and that that's not helpful to the Levy nuclear power -- nuclear project.

With respect to an RPS, is the company, do you know, working to try to have that issue resolved, or what's their position on an RPS?

A Well, you know, the company is -- is a significant player in the energy industry, so on these topics, greenhouse gas regulation and a renewable portfolio standard that have potential, significant impact on the company and our customers, we are always engaged with decision-makers to insure that they're informed, so that the policies that they shape, consider the company and our customers.

And so to that extent, we are consistently involved in dialogue on CO2 regulation and RPS. We have formed and articulated, over time, company positions, not on whether such a policy should be implemented, but more so, if the policy is implemented, what should it consider or reflect.

Those discussions are related to, but independent of Levy, because they affect more than just this project.

Q All right. So let me just jump to the greenhouse gas issue --

A Yes.

Q -- on Page 48, on 15, you state, quote, federal or state government decisions to abandon greenhouse gas

emission legislation or regulation altogether would be a fundamental change that adversely impacts the feasibility of completing the LNT.

Would it be correct to take from that statement that -- given that if the federal or state government abandons greenhouse gas emission legislation or regulation, it would negatively affect Levy, that the company does not support efforts to abandon greenhouse gas emission legislation or regulation?

A There were a couple parts to that question, I think. The company, generally, believes that the regulation of greenhouse gases will be necessary, and that that -- what's most important is that the policies that are constructed consider all the right factors and are fair to our company and our customers.

The -- certainly, a price on carbon makes nuclear more valuable to our customers; no price on carbon makes it less valuable to our customers.

So to that extent -- and that is the perspective that we bring in evaluating the impact of potential greenhouse gas regulation on the Levy project.

There are various ways to regulate greenhouse gas, directly with legislation, directly or indirectly with regulatory positions. For example, we've already discussed -- the EPA's approach to regulating greenhouse

gas under the Clean Air Act.

So, for example, we are not in favor of EPA regulating it under the Clean Air Act. If we're going to do this, we would -- we think it is better to do it legislatively, so that the policy is clear and predictable.

Q Okay. And so the reason I'm asking you these questions is because I read it to say there is an uncertainty that exists with a lot of these enterprise risks.

And I'm just trying to understand whether the company is trying to affect change associated with some of there enterprise risks that have been identified --

A What many of these --

Q -- because if you affect change, then the uncertainty is removed, and that seems to be, you know, a better situation from the standpoint of moving forward with -- with Levy, all other things being equal, correct?

A Certainty on any topic certainly improves your decision-making ability. It doesn't necessarily make your -- make your situation better or worse; it just makes it clearer.

So with these enterprise risks -- for example, greenhouse gas -- we monitor those in terms of how

they're behaving near term and long term.

On greenhouse gas, we don't see any diminution in the pressure toward putting a price on and regulating carbon. If anything, we see increased likelihood that that will happen in the long term. What.

What I'm saying here is that in the near term, because of the positions that evolved politically at a national level, there is more, not less, uncertainty over that time period than there was last year.

Q All right. And -- and same point being made with the RPS, in terms of certainty versus uncertainty, but is the company, do you know, actively working to try and advance on RPS, either nationally or in Florida?

A No, we -- no, specifically, and generally, we're not working on any of these necessarily to advance a particular course of action. What we're doing is trying to insure that the policy that's developed is fair and equitable.

As I said, on a greenhouse gas policy, we're generally in favor of addressing greenhouse gases regulation through legislation, if it has the right elements.

At the national level, on a renewable standard, we have generally taken the position that renewables is a local resource, and if the decision is made to issue

an RPS, it should be at a state level and not a federal level.

But our objective is neither to advance nor impede these. That's not our job. It's to inform the discussion.

Q Sometimes -- you're aware, sometimes interests will work actively to advance certain -- certain legislative agendas, correct?

A I --

MR. WALLS: Object. Vague and ambiguous. What do you mean interests?

BY MR. MOYLE:

Q Did you understand, in terms of trying to achieve a legislative objective?

MR. WALLS: Same objection. I think it's vague and ambiguous.

BY MR. MOYLE:

Q Do you understand -- do you understand the question, Jeff?

A No, not -- I mean, not really. If you're asking -- if you're asking me do people -- do interest lobby, I think everyone is well aware of that, but --

Q And -- and you would also agree that -- that, historically, the utility industry has lobbied to affect change on certain policies, correct?

A What -- what policies are you talking about? I think I --

Q Just as a general rule of thumb.

MR. WALLS: Are you asking if utilities have -- utility industries have lobbyists?

MR. MOYLE: No, because I know -- I think they do. I'm simply asking -- asking him to confirm that utilities will, at times, seek to affect change on a proactive basis.

THE WITNESS: Yes, I understand that.

BY MR. MOYLE:

Q And you would agree that that was done in the context of the nuclear cost recovery statute, correct?

A In -- in the same manner that I discussed our interest in greenhouse gas and renewables. As the State debated the notion of the legislation in 2006, Progress Energy certainly made our views on the legislation and its potential impacts and benefits known as that legislation was working its way through the process, including the notion that in order to make nuclear power possible in Florida, some measure of this nature would have to be implemented.

So in that sense, yes, we made our views known, but it's -- it's certainly not our primary objective, but we are -- we are, as you are and your clients are, a

part of the process.

Q And -- and when you responded to a previous question from Mr. Rehwinkel about -- about the ability or willingness of Progress Energy Florida to share in the cost of the Levy nuclear project with the rate-payers, in some form or fashion, I think you indicated that that -- you know, that was not contemplated by the legislation; is that right?

A No, I don't recall seeing that in the legislation. My response to Mr. Rehwinkel was that it's -- that we are following a process that was established in legislation and put in place by the Public Service Commission, and that's our obligation.

Q And with respect to his question, you assume there's nothing in the legislation that would preclude Progress Energy from sharing some of the costs with the rate-payers, would that be something that Progress Energy would consider?

MR. WALLS: Objection. Mischaracterization. Calls for a legal conclusion.

BY MR. MOYLE:

Q You can go ahead and answer.

A Well, again, the only answer that I can, which is that the legislation was enacted. The Public Service Commission has a process for implementing the

legislation.

Our understanding of that process, as it was constructed and exists today, forms a significant part of the basis for proposing and continuing with the project, and that is our intent and our trajectory.

You're asking me whether there are alternatives to that, and that is really not what we're discussing. What we're discussing is the process that exists and the project that we're embarked on.

Q Well, really, what we're talking about is the Commission's review of the cost of that pass-through to the rate-payers and the prudency of the costs that were incurred, and that you're asking them to make a decision that's going to have an impact on my client and others.

And so, you know, the question, while in the context of the legislation, if you assume, for the purposes of the question, that there would be nothing in the legislation that would prevent Progress Energy from sharing some of the additional costs associated with the delay, would that be something that Progress Energy, would they be willing to consider doing that?

MR. WALLS: Same objections.

THE WITNESS: My -- my response is the same. We're involved on a highly complicated, challenging, but important, project, and there are -- there is a

process laid out in the legislation and with the Public Service Commission, and that is what we're focused on following.

You're asking me whether there was -- is another way to do this, and what I'm saying is we're doing this as the legislature has set the policy and as the process is defined.

BY MR. MOYLE:

Q Right. And you -- you know, your lawyer made an objection on a legal conclusion, and lawyers can look at statutes and argue and interpret things. Yet, you know, you're, in my view, a fact witness and maybe some expertise.

But my question is really simple -- and it doesn't even have to be part of the -- you know, the legislation -- but if it were able to be done legally, would Progress Energy consider sharing some of the additional [redacted] costs with rate-payers? You can answer yes or no, and it's not even would you; it's would you consider doing it.

MR. BURNETT: Jon, are you -- this may help -- are you asking Mr. Lyash if he would consider no longer being a regulated utility and having open comp --retail competition being unregulated and act as, like, a normal business, like Wal-Mart?

MR. MOYLE: No, no, I'm simply asking -- you know, I think we've established that there is [redacted] give or take, in additional costs associated with this -- with this delay --

THE WITNESS: No, I didn't say we've established that, but continue.

MR. MOYLE: -- but that if Progress Energy would be willing to consider some type of a sharing mechanism of those additional costs with rate-payers?

MR. WALLS: Objection to the foundation. It assumes facts not in evidence and mischaracterizes testimony. Same objection about legal conclusions.

THE WITNESS: We have a fairly clear and unambiguous process that was established in policy by the legislature and that we're involved in implementing.

And so you're asking me, hypothetically, would we entertain some other approach to nuclear construction and cost recovery.

It's not obvious to me that we would, because we have a perfectly acceptable process that's before us, that we're focused on implementing.

BY MR. MOYLE:

Q And doesn't that process put a hundred percent

of the cost recovery on the rate-payers?

A The process is consistent with the regulatory process that's been in place for decades, and, in fact, applies to any asset we build.

The risk is on the company to execute the project properly, and to demonstrate that we are reasonable and prudent. The need determination is premised on the fact that the facility is needed and the technology selected is the best alternative.

Ultimately then, because we're regulated, the price of that necessarily flows into the price of the project, not -- not because we set the price, but because of the construct of the regulatory process. This process, in terms of --

Q Have you done any analysis looking at the ability to effectuate wholesale sales out of the Levy nuclear project, should it be built?

A I'm not sure I understand the question. We -- no, we have not studied Levy as an unregulated wholesale asset. That's not the way the project was conceived, nor is it the way it's proposed.

Q We've spent time talking about policies. One that you indicated, I believe, was abandoned was the -- on Page 37 -- the Yucca Mountain project.

A I'm sorry. Is that a question?

Q No, I was referring you to it, but --
A Okay. I'm there.
Q -- line 15.
A Uh-huh.
Q Am I correct, in that your sentence that says, "The only clear nuclear policy advanced by the new administration was the abandonment of Yucca Mountain as the federal nuclear waste storage option after years and billions of dollars invested in it as a nuclear waste repository," that that is a negative development for your project?
A Yes, at the timeframe the testimony was submitted, that was the only clear nuclear policy advanced by the administration, either withdrawal of the Yucca Mountain -- the proposed withdrawal of the Yucca Mountain license application from the Commission.

And so it is -- it is one indication, at that point in time, of the current administration's mindset. Although, I don't believe the continuation of Yucca Mountain, in and of itself, is critical to the project. It is the only clear signal, at this point in time, that the current administration has given.
Q Now, are you limiting that answer to nuclear waste disposal or with respect to support of nuclear power project development in general?

A Yeah. If you will flip to the next page, Page 38, and take a look at the paragraph beginning on line item 9.

Q Yeah, with the loan guarantees.

A Yeah, uh-huh.

Q All right. So back on the -- back on the Yucca Mountain issue, what -- what's the current plan if the administration has abandoned the federal waste storage for the waste with respect to the Levy nuclear project?

A Well, the administration hadn't made any specific decision about the Levy nuclear project, but --

Q And what's your plan?

A Oh, what's our plan? Well, you know, we can -- we safely store, presently, all of the waste ever generated at our existing five nuclear facilities. We can do that for their lifetime and beyond, and we can do the same for the Levy nuclear station.

Is that the optimal solution? No. Do I believe that the federal government will ultimately disposition its responsibility to put in place a long-term waste storage disposal reprocessing approach? Yes.

So, specifically, our plan for the Levy project waste is similar to that for our existing five facilities for the 104 facilities that exist in the

country.

Q And which is to store it on site?

A Yeah, which is to store the waste on site until the issue is resolved at a national level.

Q As part of the nuclear licensing process, have there -- have you commissioned any studies that look at the storage of the material on-site for an extended period of time as compared to the federal government policy of burying it in the middle of a -- you know, of Yucca Mountain?

A Yeah. I mean, our assumption and analysis, and operation of the existing facilities and design of these facilities is that we'll safely store the waste, if and until the federal government takes possession.

As a matter of fact, we have already built independent spent fuel storage facilities at two of our four existing nuclear sites, and we're continuing with that process at the remaining three, including Crystal River, and both that analysis and design are applicable to the Levy station.

Q Would you -- would it be fair to suggest that given your testimony about the federal government abandonment of the only nuclear storage option, that, in effect, the policy is that rather than having one nuclear disposal site, that there, in effect, are more

than a hundred around the country?

A Okay. Well, you said their abandonment of the only nuclear waste storage option. Yucca Mountain isn't the only option.

I think there are other options for storage and/or reprocessing at a national level. And as a matter of fact, I think the President's commission panel for blue ribbon studied those options. It is unclear at this point in time what option they will ultimately select.

In the interim, it is clear that the expectation is that existing nuclear facilities will store their fuel on-site, and that can be safely done.

Q Okay. Let me refer you to Page 47, line 19. When you talk about employing mitigation measures to store up -- to shore up the financial position in the capital markets, if the company expects the capital markets to respond favorably. What -- what mitigation measures are you referring to?

A Let me take a minute and reread this paragraph, Jon.

Okay. So now I've read that paragraph. I apologize. Could you restate the question?

Q I was wondering what mitigation measures you were referring to in line 20.

A Yes, in -- in -- so in general here, the -- what I'm saying is that nothing fundamental has changed about long-term economic potential in the country or in Florida. We expect a return to growth.

Likewise, while a recession puts near-term financial strain on our company and every other company, we expect -- we fully expect to be able to work through that strain and emerge from it in a -- in a condition that will support this and our other capital investments.

So, now, specific actions we've taken during this period have been to manage our operating and maintenance costs effectively, and in some cases, to pull back on our broader capital investment program, where justified, because of the slow-down in growth in order to maintain a strong financial position.

Q And you had taken those steps prior to filing your testimony, right?

A Well, and we continue to take steps. It's a routine part of the business.

Q Are there other steps that are contemplated? Because I read your testimony, "We'll have to take action," and, you know, "We'll mitigate investor concerns." It reads to me like there are additional steps that are going to be taken. Is that the case?

A Certainly, as -- as there always are.
Q But not any additional steps, other than what you just described?
A Well, in a certain -- well, as an example, we've entered into a rate settlement, that you're well aware of, that adds some clarity to our business in Florida and we think supports confidence in the financial markets, that helps to preserve access to equity. But the term of that agreement, you know, is several years, and so --
Q I'm familiar with that. I just -- simply, I was just inquiring, because you used the term "mitigation measures," what those were.
It's not -- it's not designed to be exceedingly difficult. So they're not plans to make it -- you know, other than what we discussed; is that fair?
A Well, they're -- as I said, there are -- we are consistently looking at measures we might take to strengthen our financial position. That might be -- that might be timing for debt issuance, or as we talked earlier, early renewal of credit facilities.
You know, there are various ways to strengthen your position, and we will continue to actively do that as we manage our way through this economic downturn.
Q Okay. Let me flip you to Page 53. We're

pretty close.

A I'm there.

Q All right. So am I reading your testimony correctly at the top of the page, which -- in a way, which indicates that the Commission's decisional return on equity actually has been a benefit to the Levy nuclear project?

A Well, I'm not sure I'd use the word "benefit." The Commission's decision on the return on equity and -- and the performance in the debt market, when you consider those lower or average rate of cost to capital, which then is applied to Levy, and its alternatives and other decisions we make, then it has a certain effect.

And what we're saying here is that that effect has been incorporated into this CPVRR associated with the feasibility study, and we could characterize --

Q And at line 14, "It favors the LNP case." What were you -- what were you trying to convey there?

A Well, that's the -- that's the net effect, is that a lower cost of capital will favor an investment likely to be where the variable costs are so small and the fixed costs are higher.

Q But my original question, I guess, was, you know, am I reading this properly, in that it seems that the Commission's decision with respect to ROE mid-point

of 10.5 as compared to the requested 11.75, I think I said benefited, but it would be accurate to say that it favors the -- the Levy project with respect to discount rate, correct --

A Well, as --

Q -- as the net present value?

A As stated here, that has an effect on Levy, which -- which makes it -- which makes it more favorable in the CPVRR alternatives. That's simply the fact.

Now, the Commission's decision has other impacts than that, but this isolates the impact of that decision on the CPVRR and relative position of Levy with respect to the alternatives.

Q No, and I appreciate that. I've heard a lot of -- you know, a lot of things about, you know, arguably negative impacts, but this seems like it was a positive impact, and I just wanted to make sure I understood.

A Yeah, and if you recall, we talked about the statements from the investor's credit rating agencies and equity investors. That would be an adverse impact, a nonfavorable impact; this would be a favorable impact, as two examples.

Q And then on the -- on the -- further down on Page 53, on line 19, you're talking about -- about there

being -- I guess I read it to be a lower cost of debt, or maybe -- maybe I misread that.

But at some point, as we sit here today, is debt less expensive than it was a year ago when we were in this proceeding?

A Yes, as we revised this -- as we revised it for the allowed ROE, we've also revised it to reflect the current interest rate environment, because necessarily the CPVRR is a single point in time that evaluates these -- takes this information and projects it forward.

And so I think we've all seen a general lowering in interest rates across the economy, and so that is reflected here.

Q All right. I think that's it. Give me just one second to check my notes.

Two more quick things. I did not ask you this about your Exhibit No. 6, and you've had some previous conversations with some other lawyers about this point, and I want to make sure that I understand.

On Page 24 --

A I'm there.

Q -- the objective as stated at the top is to maintain favorable terms and conditions of the existing EPC contract, alright --

A Yes.

Q -- and then the last bullet point says, quote, [redacted].

A Uh-huh.

Q I'm having difficulty reconciling those two statements and was hoping that you could explain?

A Yeah, let me clarify that for you. Our objective here, that we've said and that we achieved, is to maintain the terms and conditions of the structure of the contract the same. But what we -- what we needed to defer is that the contract itself includes -- included, by date, certain [redacted].

All right. And so we did not want to revise that set -- that set of information in the contract at this time, so that's not where we focused.

So what this is essentially saying is that we will need to readdress those specific [redacted] in the contract based on the new schedule.

Q So the last bullet point, [redacted], is more specific relating to [redacted]; is that correct?

A That -- that's generally true, yes.

Q And then the broader statement of the objective

is to try to preserve, I guess, the general parameters of the deal?

A Yes, yes. Although -- that's correct.

[redacted]

They're in place and in force.

Q Okay. And the other point I wanted to cover is, is you were asked a question about the process and the statute, and I think you were asked about -- about reevaluation of Levy. I assume that the project is evaluated, at least on an annual basis, as you prepare for these hearings, correct?

A We have very active -- we have very active project management oversight and assessment at a number of levels in the organization.

That includes John Elnitsky and his team actively managing the project on a day-to-day basis. It includes monthly project reviews. It includes quarterly program performance review team sessions, and it includes reports to the Senior Management Committee and to the Board of Directors.

And so, you know, the way I characterize this, Jon, is we are, in realtime, insuring that we have a clear view of where the project is and where it's going.

And then at major points in the project, we stop, and reconfirm and reinsure, such as this annual demonstration of feasibility and analysis, and do that very deliberately.

Q And you've been involved with the project how many years?

A Since --

Q Since its inception?

A Yeah, since its inception.

Q And then -- and then given that history, how many points in time in the project, counting the original one as one, have you, you know, and Senior Management and the Board been asked to make a go/no-go decision.

A I can't -- I can't give you a number, Jon. I'd tell you that the Senior Management and the Board are briefed on the project status and the relevant issues at least quarterly, and -- and the Senior Management and the Board can always undertake a decision to redirect the project.

But at major points where we've got to make a commitment, executing a contract, submitting an application, you know, forming a conclusion as we did in this case, there have been any number of those decisions over the years.

Q Okay. And just so I'm clear -- because it may be that these go on for some time, given the current setup -- the go/no-go decision is not necessarily a decision that is made annually, or is it --

A It's --

Q -- in terms of preparation for these proceedings?

A Yeah, it's made when that decision is appropriate. I mean, the -- the Board -- both the Board and SMC put constraints on any project as it proceeds.

Constraints on deviation from the spending pattern. Constraints on earned value associated with the project, you know, where they -- we as the Senior Management or Board require an update on the status, an explanation of performance, and an opportunity to comment or redirect. So that's a very active process.

Q Okay. And so as we sit here today, can you see the next point in time -- you know, assuming, you know, the Commission concurs with your judgment, for the purposes of answering this question -- when a go/no-go decision would be made?

A No, I can't -- let me think about your question. I think there are -- there are a number of decisions that the Senior Management Committee and the Board will have to make, so I'm not sure what you mean

by go/no-go.

You know, for example, we proposed how we're going to disposition long lead time materials, but that relies on some negotiation with the vendors, and so we'll return to the Senior Management Committee to report the position of those negotiations, to reaffirm our decision on individual components, to suspend, cancel or continue. So that's an example of a decision that the Senior Management Committee will make.

Now, your question on a go/no-go, whether to proceed with the project or not, we've -- we stopped and remade that decision, given the significant change in circumstance associated with the licensing schedule shift.

And so over the course of the next few years, it's difficult for me to predict whether another set of circumstances such as that, that might arise that would require that.

Q All right. And in a big picture context, it looks like you're proposing move forward only with the COL at this point and then reevaluate the project, assuming that's granted; is that right?

A No, I'd characterize it a little differently. We made the decision to proceed with the project on the schedule that we proposed, '21, '22, and in support of

that, to focus our efforts on obtaining the COL, on finishing those critical land acquisitions it takes to solidify the site, and the transmission and the wetlands mitigation plan.

We're also proceeding with activities to finalize the detail design, so that we'll be in a stronger position to then refine our cost estimates and our schedule, and so we made the decision to proceed on this schedule and there are various work streams proceeding.

We have elected not to undertake certain work at this point, such as construction of a barge slip, and an intake structure, and -- and aggressive site preparation until after the COL.

Q All right. You were asked questions previously about the joint ownership, and I think I understand where things are on that.

On Page 68, line 12, you state, quote, for these reasons, no third party has made a firm commitment to participate in the project.

A Yes.

Q Am I correct that there is no letter of intent or expression of interest that there is a document that is out there with a third party, you know, as we sit here today; is that correct or incorrect?

A Well, what I mean by the firm commitment is we have had potential joint owners express intent, and we have, and continue, made substantial progress on negotiating some of the underlying foundational elements, joint owners agreement, operating and maintenance agreements, etc. But what I'm referring to here, as a firm commitment, is no one has closed on their equity ownership and -- and -- and written the check for that amount.

Q Does anyone have an option to procure equity ownership in the plant, as we sit here today?

A No, we have not -- well, no, we have not, and no one has an option on the plant.

Q I figured -- I figured that would be a good place to end up, given our beginning, so that's all I have. Thanks?

A Okay.

MR. REHWINKEL: Anyone else? Mike?

MR. WALLS: Nope.

MR. REHWINKEL: No?

Okay. Well, then before we terminate the line, anyone that's still on the line needs to order -- I guess the deposition is concluded -- and now --

MR. WALLS: He'll read.

MR. REHWINKEL: -- anyone needs to order needs

to talk to the court reporter now.

MR. YOUNG: Charles, this is Keino. I'll have our court reporter contact the court reporter there.

MR. REHWINKEL: Okay. He's with the Public Service Commission, and it's K-e-i-n-o, Y-o-u-n-g.

Anyone else?

MR. TAYLOR: Yes, this is Al Taylor from PCS Phosphate. We want a copy also.

MR. REHWINKEL: He's with Jay Brew.

Okay. Anyone else?

MR. WHITLOCK: Charles, this is Jamie Whitlock with Gary Davis & Associates. I'm not sure if we'll want a copy or not. Is there any way we could just get the court reporter's contact info?

MR. REHWINKEL: Yes, she can give that to you now.

MR. WHITLOCK: Thank you.

MR. MOYLE: What's the anticipated timing? I guess the hearing starts in two weeks. I'm trying to understand the timing of the deposition.

MR. REHWINKEL: Yeah, we need it expedited.

MR. WALLS: We can take it be e-mail, too.

THE COURT REPORTER: You want it, too?

MR. WALLS: Yes.

THE COURT REPORTER: Okay. And we can talk

about this tomorrow when I see you at the other deposition.

MR. REHWINKEL: Okay. That will work.

(WHEREUPON, the deposition of Jeffrey Lyash was concluded at 5:18 p.m.)

CERTIFICATE OF REPORTER OATH

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Stephanie A. Walters, Notary Public in and for the State of Florida at large, hereby certify that JEFFREY LYASH appeared before me on the 12th day of August, 2010, and was duly sworn.

WITNESS my hand and official seal this 16th day of August, 2010.

STEPHANIE A. WALTERS, FPR
NOTARY PUBLIC - STATE OF FLORIDA
MY COMMISSION NO. DD796026
EXPIRES: 06-28-2012

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Stephanie A. Walters, Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the examination of JEFFREY LYASH; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel for any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of this action.

DATED THIS 16th day of August, 2010 at Clearwater, Pinellas County, Florida.

_____

STEPHANIE A. WALTERS, FPR

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES ON THIS PAGE

IN RE: Nuclear Cost Recovery Clause
DOCKET NO.: 100009-EI
DEPOSITION OF: JEFFREY LYASH
TAKEN: August 12, 2010

PAGE	LINE NUMBER	ERROR/AMENDMENT	REASON FOR CHANGE?

Under penalties of perjury, I declare that I have read the foregoing document, and that the facts stated in it are true.

JEFFREY LYASH DATE

cc: Charles Rehwinkel 111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

James Brew and/or F. Alvin Taylor,
1025 Thomas Jefferson Street, NW, 8th Floor,
West Tower, Washington, DC 20007-5201

[redacted]

So there is one -- [redacted]

[redacted]

Q So the [redacted] --

A [redacted]

Q -- [redacted] --

A [redacted]

Q Okay. [redacted]

[redacted]

A Well, actually, [redacted]

[redacted] --

Q But other than that --

A [redacted]

[redacted]

Q Okay. And when salvage value is mentioned, would a potential purchaser of these components -- let's hypothesize. Let me step back and hypothesize for a minute with this question, is that the project -- if the Levy project was ultimately decided to terminate and you had these components, either stored or in a partial

fabrication mode, would a potential supplier look at these components as being anything other than new, a potential purchaser of a different AP1000 American project?

MR. WALLS: Object. Calls for speculation and opinion testimony, but go ahead.

THE WITNESS: Well, let me break your question in a couple of parts.

BY MR. REHWINKEL:

Q Okay.

A So, first, let's start with the hypothesis, that I don't necessarily agree that's where we're trying to go.

Q I understand.

A I mean, our intention is to continue the project. However, if for some reason the project does have to stop, are these components -- if I think what you're asking, are these components of like quality to something that a purchaser might go out and ask for new,

[redacted]

[redacted]

Q Is the storage criteria or the storage conditions criteria for these components, are they established in any way, such that they would insure quality assurance under NRC standards?

A There -- let my make sure I understand your question. Are there a set of standards and procedures for how nuclear components are stored? Yes.

Are those in alignment with the requirements of the inner city? Yes. [redacted] So in those cases, [redacted]

Q So the turbine generator, for example, would --

A [redacted]

Q Okay. And I fully understand if you have no

expertise or knowledge about this, but would -- would these components be depreciated for tax purposes while they're being stored?

A I --

MR. WALLS: Object.

THE WITNESS: I -- I really don't know. I can't answer that. That question probably would be better answered by Mr. Foster, in terms of -- or Mr. Garrett, in terms of how accounting practices would be applied to those.

BY MR. REHWINKEL:

Q Okay. And I guess one last question in this area, has there been any what-if scenario run within the company, to your knowledge, about making these components that are on the June 15th, 2010 memo available for a potential Harris nuclear plant or nuclear project, if the Levy nuclear project, for whatever reason, does not go forward?

A I would say -- well, I'm going to say no. Certainly, during the course of evaluating how we would disposition each of these purchase orders, we looked at -- and you'll see on the spreadsheets that were associated with each item -- [redacted]

So to your earlier question [redacted]

[redacted]

Q Okay. On 19 of your rebuttal testimony, Page 19, line 17 --

A Okay. Page 19?

Q Yes, line 17.

A Yes, sir.

Q The [redacted] number, you say, is an estimated cost to cancel the project; is that correct?

A Let me just read this --

Q Yes.

A -- so I get the context of what we were talking about here.

And so in answer to your question, sir --

Q Yes.

A -- on line 17, this paragraph, as I recall, is referring to -- and this question is about a comparison of the option that Dr. Jacobs recommended we consider, or suggested that we should have considered -- the [redacted] that is referenced here is in -- is the same number that's in the cancellation option that was part of the February 15th brief that's an attachment to --

Q Okay.

A -- Mr. Lyash's testimony.

Q I guess my question about that [redacted] is that -- is that the cost to cancel the contract or would that be cost to exit the project? Do you understand my question?

A Yes, I understand the question, and I think the best way to answer that, if I can refer to the brief that was given on 15 February that's in Mr. Lyash's testimony.

Q Okay.

A I'd like to open that up just for a minute, and I just want to make sure I'm looking at the right numbers.

So if I can refer you in -- on Page -- well, let me see. How do I -- it's probably easiest just to go to Lyash's testimony and go to Page 19. So if you go to Mr. Lyash's testimony -- which attachment is that -- JL-6, Page 19, we evaluated one of the alternatives, which was project cancellation.

And to your question, the [redacted] estimate was, at that time in February of 2009, our estimate at the total cancellation of the project.

So that would include everything from purchase order cancellations, through stopping of the COLA and the other activities that are required. So it was the

overall project, not just the contract.

Q Okay. Do you know if that number is -- has changed in any way since February of 2010, as far as your -- your, Progress Energy's, calculation or estimation of that number?

A I'm just looking over the line items here that were included in that. Let me answer the question this way: I don't think we have -- we have not redone this estimate for this particular alternative.

Are there elements in here that may have changed since this was originally done? I think the biggest thing in there that would likely be a factor is what ultimately are the [redacted] and that goes back to the conversation we had a minute ago.

So this was based on the best information we had available at the time in February, which was very early in the process of engaging with any of the suppliers around what would be a logical path. So would these numbers potentially change based on that work as it goes forward? Yes.

Q So the figure that was in the 2010 to 2012 column of the February 15th memo from yourself to Jeff Lyash is -- is the delta, if you will -- [redacted]

[redacted] that are the [redacted] estimate; is that fair?

A No.

Q It's not. Okay.

A And here's why it's not: The memo -- the memo from me to Mr. Lyash, in terms of the estimated spend between 2010 and 2012, is predicated on an approach that includes [redacted]

Q Okay.

A So this estimate was clear, looking at the alternative that says is it the right thing to do to just stop the entire project.

Q So what one would have to do would be to say at what point in time -- based on where you are in the procurement process, at what point in time you were to cancel and then see what your -- your long lead material disposition costs were at that particular time or for that particular year?

A I'm not sure I understand your question.

Q Okay. How -- how can you estimate how the long lead material disposition cost that is assumed in the [redacted] how can you determine what -- how that number has changed, based on what you know now, as of the June 15th

memo?

A Well, I don't think you really can. I mean, the problem is this alternative -- or the issue is, this alternative was evaluated at a date and time with said knowledge that we knew at the time and was part of -- I mean, I think if your point here is if it was part of a reasonable and prudent decision to continue the project, to go back now and say, well, knowing what you know now about [redacted], and to go back and recalculate those numbers or re -- you know, second guess that decision as it was made at that point in time, I don't think it's appropriate.

Q Yeah, I was not asking to second guess it. I understand that -- that those numbers went into a decision that was made in the first quarter of this year; is that -- that correct?

A That's true.

Q Okay. If one were to decide what the exit costs were today, based on, you know, the criteria that you would have to look at, what would that number be?

A Again, I don't have that number because we haven't done that calculation today.

Q Yeah.

A We did these evaluations here. What we did do,

in terms of the rebuttal testimony, is try to be responsive to the question about what might that look like in the future, knowing what we knew based in the time back, you know, in February.

So had you evaluated -- and I'm not going to contend that we didn't, because it was part of the overall discussions -- the possibility that we might have to cancel the project at some point in the future.

But to go back now, we have not -- you know, to sit here today and say based on what you know today, what does the project cancellation look like? I don't have that calculation.

Q How difficult would it be to do such a calculation? And I don't ask the question in order to kind of say, well, if you knew what you knew now, your analysis would have been different. Because I think your comparative scenarios, they all have the long lead material termination -- disposition costs; is that fair, if you compare the various scenarios, other than what's being --

A No, it's really not. See, that's the problem. That's why -- you know, I think if your point is, if you were doing these comparison alternatives today, would you come to a different conclusion --

Q No.

A -- I'd say the answer is no.

Q Okay.

A And the reason is, you would still have to go through and do a comparison of an option where you cancel the project and the costs associated with that as opposed to the option which we ultimately selected, which is the longer term partial suspension.

Have we continued to work on the dispositional long lead material during the intervening months, yes. But that number and what's in our assumptions today, or what it's going to take to continue the project and do the right thing in terms of long lead material is based on a totally different set of assumptions than what went into this alternative analysis.

Q Yeah, my question is not for any comparative purposes of various scenarios. I'm just wondering what -- what the exit costs would be if you were to decide to exit, say, by the end of this year?

Is there a way to estimate that based on the analysis of the [redacted]? And not for comparative purposes, because I understand that that -- it's not relevant to me, and it's not a fair comparison anyway.

A I would say yes, there is a calculation that could potentially be done, but without sitting down and walking through what you would have to do in terms of

assumptions, I can't say definitively you can come to that --

Q Okay.

A -- that point today.

Q Was it something that the company could calculate internally, without having to go to the consortium and ask questions? I mean, is it something you have the knowledge to do, the facts?

A I would say yes, but... And the problem will be, in order to effectually analyze a cancellation option today would require the gathering of data from the supply chain that is not currently available.

And allow me to explain. When we performed our analysis in February of this year, it was based on a [redacted] at that point.

Recognize, the [redacted], dependent on what [redacted], and in the case of subseries suppliers, [redacted].

So I don't think we could do that calculation today without going back to the current set of suppliers, which, by the way, we're in the middle of now negotiating with, and saying, "What would it cost to

cancel today," because [redacted]

Q I understand.

A So it's very hard to get to that. So, you know, you can't -- you know, I guess the problem is you're -- you know, we'd be in sort of different -- we'd be talking out of two sides of our mouth at the same time --

Q I understand.

A -- is the best way to describe it.

Q Yeah, and the reason I was -- I just was exploring how that would be done, and I understand that there are some practical issues, as well as some sensitive negotiation issues, that you could send, certainly, the wrong signal about what your intents were.

A Well, and I'm thinking if your point is, you know, should there be an ongoing evaluation, I mean, certainly we're going to do that, in terms of feasibility and the viability of the project going forward.

But, you know, can we continue to go out and say, you know, what does a cancellation charge date look like while, at the same time, pursuing the decision that

we've made, which is continue the project and taking the necessary actions with the various parties involved in the execution of this project? That's a -- that's a difficult thing to do.

Q Okay. But it is fair to say that you probably could estimate a number based on what you know and your best estimate?

I mean, there are estimates in not only the February 15th analysis, but your testimony about what certain costs would be with respect to long lead materials disposition; is that correct?

A I would say yes, it -- yes, it is fair. If we can -- if given a set of assumptions -- and I think that would be the real question -- is what assumptions would we have to make in order to be able to try to calculate a cancellation cost today.

But, yes, given the right set of assumptions, I think if is possible to estimate a cancellation cost, theoretically, at any point in time.

Q Yes.

A And to the point of my rebuttal testimony, that's one of the problems with trying to say, well, what does cancellation look like three years from now, four years from now, five years from now, is always going to be something different, depending on the

circumstances that exist at that time.

So the best thing I think you can do in prudent project management is to understand the conditions that exist for the project at the time that you make your reasonable and prudent decision.

Q Let me ask it this way: If I asked you --

MR. REHWINKEL: And, Mike, feel free to -- to opine --

BY MR. REHWINKEL:

Q -- if I asked you one of two things, either for a late-filed deposition exhibit, to give your best estimate of what the cancellation costs would be as of August 1st or September 1st -- pick a date -- or if I asked you at the hearing what would the number be, would you be able to do that, give a -- give me a reasonable estimate?

A Yes, we would be able to do that. I would predicate that, though, with we'd have to look again at what assumptions would we have to make to come to some reasonable number, and then what do we consider then the validity of that, having not done what we did prior, which was go out and gather as much data as we could from the supplier.

Q And my question would definitely based on not --

A Yeah.

Q -- communicating with any vendors.

A So short of that, I think it would be possible to make such an estimate --

Q Okay.

A -- with the right assumptions.

MR. REHWINKEL: I would like to know that number, and I'm -- I'm indifferent as to whether it's a late-filed deposition exhibit, or if it's something I ask him at the hearing and that he's just prepared to give.

MR. MOYLE: It would be easier, on a confidential basis, to have it in a written format than asking him what it is at the hearing.

MR. REHWINKEL: Yeah. Okay.

MR. WALLS: Well, John --

MR. REHWINKEL: Late file?

MR. WALLS: -- we could do a late file, which would probably be the easiest way to handle it rather than have a number spoken at the hearing.

MR. REHWINKEL: Okay.

MR. WALLS: That way we have a document.

MR. REHWINKEL: Okay.

MR. WALLS: Of course, with all of the qualifications that the witness has identified.

MR. REHWINKEL: Yes, I -- you know, one thing we can do is, let me identify this as a Late-Filed Deposition Exhibit No. 1, and it would be, just as a short title, "Update to Project Termination Costs."

(WHEREUPON, Elnitsky Late-Filed Deposition Exhibit 1 is identified for the record.)

BY MR. REHWINKEL:

Q And what I would be looking for is, is an update based on the most recent time that you decide is reasonable, and only internal company information and any other assumptions that you think are reasonable for purposes of -- well, for any other assumptions that you think are reasonable based on the information, you know, without going outside the company. Does that help you understand what I'm looking for?

A Yes, it does. Again, you know, my big qualification here is, a lot of this -- any kind of calculation like that is going to depend on a -- how you make your assumptions and what those set of assumptions are going to be. So, I mean, that's the part that I'm not yet clear on how we go about doing that.

So I've got to -- you know, that's something I've got to go back and talk with our folks that are involved in our supply chain efforts, to say, "Given what we have now told the supply chain to do, based on

the fact that we've made a decision on how to go forward with the project, what does that then mean in terms of the estimates associated with some of those supply chain activities?"

I'm just not sure -- again, I'm not trying to be cagey; I'm just trying to -- I'm just trying to be very clear. I'm not exactly sure if we can make cogent and reasonable estimates today, given where we are in the middle of --

Q Okay.

A -- those negotiations, to get to, "This is what it looks like when you cancel."

Q Well, this will definitely be a confidential document; and even understanding that it would be confidential, I would certainly not ask you to put anything in writing in your document that would have any impact on vendor discussions, or looking at an L -- a long lead material disposition cost line item and nothing else, with whatever assumptions or caveats that you want.

One thing I would suggest that we do is -- I've made my request -- when we take a break, we can talk about it further, and if there is further clarification that we need to do, to put it on the record. We can do that.

But I'm -- I want to make it really clear. I'm not trying to do anything that would jeopardize discussions that you're having, or to increase the cost to the company or the customers. So that's a very cautionary request to you, but we'll start there and we can see how it goes.

A Sure.

Q Is that fair?

A Yes, sir.

Q Okay. I want to ask you some questions about the IPP.

MR. REHWINKEL: But if there is -- if you -- if anybody needs a break or you want to take a break, then we can do that.

THE WITNESS: Yeah, let's take a short break. Let's do that.

MR. REHWINKEL: Okay. I tell you what. Why don't we come back in 10 minutes; is that okay? I'll just leave the line on and put it on mute.

(WHEREUPON, a brief recess was taken.)

BY MR. REHWINKEL:

Q All right. Mr. Elnitsky, do you have a copy of the April 28th, 2010 Levy nuclear project -- integrated project plan?

A Yes, I do.

Q Okay. And do you also have with you the Amendment 3 to the EPC contract?

A Yes, I do.

Q Okay. And one other thing I forgot to mention, I was wondering, do you have the AACE International Cost Estimate Classification System?

A Yes, I do have that.

Q Okay. This is AAC International Recommended Practice No. 18R-97?

A Yes.

Q Okay. And this -- the one I have is dated February 2nd, 2005. Are you familiar with that document, the AAC Classification System?

A Yes I have.

Q Okay. What I'd like to ask you is to turn to Page 10 of the 2010 IPP, and this Page 10 is the --

A Okay.

Q Okay. Well, first of all, hold that Page 10. The IPP is something that you're familiar with; is that correct?

A Yes, sir.

Q Okay. And there is -- on Page 3 of the document, there is a signature table, and it doesn't show that at the time this copy was made that you had signed it, but is this a document that you have signed

off on?

A If you look at the next page --

Q Oh, yes.

A -- there should be two Page 3s.

Q Okay.

A It was just -- I was in Florida; this was -- they were in Raleigh, so we were signing it in different locations, so Vinnie, Peter and I signed it down in Florida.

Q So Vinnie Dolan and Peter Tully?

A Yeah, Vincent Dolan and Peter -- Vinnie Dolan, Peter Tully and myself were in St. Petersburg, Florida, so we signed the record copy from Florida and just combined it in one document.

Q Okay. All right. So on Page 10, that's the second page of a two-page table that contains the cost update to the Levy nuclear project; is that right?

A That's correct.

Q Okay. Now, did you participate in the development of the line 34 total with fuel estimate of 17,636,000,000?

A Yes, sir.

Q Okay. In fact, would this have been prepared basically under your direction and control?

A Yes, sir.

Q Okay. Underneath this number on Page 10 is a -- is a statement that says, "Key assumptions of the estimate include," and then there are seven assumptions; is that right?

A That's correct.

Q Now, is -- are the assumptions listed in any order of magnitude or order of significance?

A No, sir.

Q Do you have the prior IPP with you, the one dated September 5, 2008?

A Yeah.

THE WITNESS: I think we have it in there, right?

Yes, we do. I just need to find it.

BY MR. REHWINKEL:

Q All right.

A Yes.

Q All right. And there is an estimate in that document of the total cost of the project; is that correct, on Page 17 of 71; is that --

MR. WHITLOCK: Charles, I'm sorry to interrupt. Do you have a Bates numbering on the previous IPP?

MR. REHWINKEL: That's a good point, Jamie.

Let me, just for the record, state that the 2010 IPP has a Bates stamp -- and I'll give the

Commission Bates stamp here -- 10PMA-DR4LEVY-3S1-000001; and the 2005 -- or 2008 IPP is 09NC-OPCPOD-1-47-018709.

BY MR. REHWINKEL:

Q Okay. On Page 17 of 71 of the 2008 IPP, there is table 4.3, and it's entitled, "Total Levy nuclear project recoverable cost estimate"; is that correct?

A That's correct.

Q Now, is this table the comparable table to the cost update on Pages 9 and 10 of the 2010 IPP?

A Yes, I think it is.

Q Okay. Now, the [redacted] -- [redacted] number on the 2008 IPP has an AFUDC estimate; is that correct?

A That is correct.

Q And then it has two contingency items of overall project contingency -- actually, three, overall project contingency of [redacted]; transmission contingency of [redacted]; and nuclear of [redacted]; is that right?

A That is correct; that is what this document says.

Q Okay. Now, is fuel included in the [redacted] number on the 2008? Is that the initial reactor core number?

A Yes, that would be the initial reactor core number, would be the estimate at that time for initial fuel.

Q Okay. So the -- on the 2010 estimate of $17.6 billion number, it does not include AFUDC; is that right?

A That is correct. That does not include the carrying charges or the AFUDC.

Q It includes fuel of [redacted]. Does it include all of the comparable contingency -- does it -- does the 2010 number include the corresponding contingency amounts?

A It includes the applicable contingency amounts for this estimate.

Q Okay.

A And if I could maybe jump ahead a little bit?

Q Sure.

A Just because I -- I'm not going to try to presume where you're going, but there may be an easier way to do this.

There is a production of documents document that we provided that is the cost estimate, that provides a little clearer comparison between the original need filing estimate and the current estimate today.

And certainly -- I mean, we can go between these two documents; it's just -- it's a little harder, because the language is a little different sometimes, so just to be very transparent, in our production of documents, when we provided -- when asked on our estimate, we actually showed the comparison side by side to the previous estimates, so if that's an easier way to do it for you.

Q Yeah, I was -- I really don't have much more on that. On Page 11 of the 2010 IPP, there is a schedule that shows major areas of change from IPP to current estimate --

A Yes, sir.

Q -- do you see that? And that shows the [redacted] delta, with some major items from '08 to 2010; is that right?

A Yes, sir.

Q My question back on the 2008 estimate is, is there -- remembering that -- well, is -- I'm sorry. Let me do it this way: Going back to the 2010 estimate, under those key assumptions that are on Page 10 of the 2010 estimate, the first one says, "Class 5," slash, "Class 4 estimating according to Association for the Advancement of Cost Estimating International," parenthesis, "AACEI," closed parenthesis, "Guidelines."

Do you see that?

A Yes, I do.

Q So my question is, in the 2008 cost estimate, is there a similar assumption there?

A There -- yes, but let me explain.

Q Okay.

A There's a slight difference in the way the process was applied to both of these estimates, and, again, it's commensurate with what was the status of the project at that time.

Let me start with 2008. And, again, I wasn't intimately involved in all of this estimate development, so I'm not as familiar. I was involved in the transmission portion of the estimate development. This estimate was primarily based on --

Q And you're pointing to the 2008?

A I'm sorry. Yeah, I'm pointing to the 2008 IPP. That estimate was primarily based on what was understood at that point of how the contract would be finalized, the APC contract, for the construction of the plant, and what we knew at that time on the transmission side of the project and an estimate that was billed specific to transmission.

So the assumption that is included in the 2010 estimate is a reflection of a continued refinement in

our estimating process, consistent with how the project moved forward and the areas that were refined.

The statement on the 2010 estimate is consistent with our current practices and policies for how we do cost estimates, and was the result of a line-by-line build-up that brought us to that final number in our assessment of what the category of that estimate was.

Q Okay. Not long before the IPP, the EPC was executed in 2008, on December 31st, 2008. You received a draft of an analysis of the EPC terms and conditions and pricing from a firm called Burns and Roe, R-o-e; is that correct?

A I'm familiar with that report.

Q Okay. And that report identified, I guess -- well, how would you characterize that report?

A Again, this is before my time in this role, so I'm going to -- based on what I understand today, having looked at that report, that we basically -- my understanding is we contracted with Burns and Roe to essentially assist us in how we positioned ourselves in the final stages of the negotiations with the consortium to sign the APC contract.

And although I was not intimately involved, so I can't speak to the details of that, my understanding,

at least, is that report was used as a way to negotiate some of the favorable terms and conditions that we were ultimately able to achieve in the contract.

And it was a way, as I understand it, again, to have context with what was sort of the industry posture at that time about what we should be able to achieve in terms of some of the objectives that we had set for that contract.

Q Did the Burns and Roe report also identify issues within the overall APC contract that could lead to inaccuracies in the estimates of the overall contract price?

A I don't --

MR. WALLS: Objection. Vague and ambiguous.

THE WITNESS: And I don't know. I would have to go back and look at that report again. I am not familiar with those details in that report. Again, that was before my involvement with the project.

BY MR. REHWINKEL:

Q So do I take it by your answer that what -- that the Burns and Roe assessment of the APC was not a factor in the estimate that you developed for the 2010 IPP?

A No, that's not true. I do -- as I understand it, our estimator that was responsible for building this

reviewed that report and evaluated the items that were identified in that report.

But what we did to build this estimate was with that information in hand, our estimator went off. And knowing what we knew about the contract at that point, because it hadn't been executed obviously when this estimate was built.

Knowing what we had been able to obtain from the consortium as part of our scenario analysis in terms of the impacts of incremental changes to the schedule, we built a line-by-line estimate and applied our best engineering and cost-estimating judgment on each line around what was the potential variance in those lines.

So what you will see in the more detailed version of this estimate, which, again, we provided in our production of documents, and just to reference it again -- I don't have the -- I don't have your DR number on this one; I've got the POD number -- but the production of documents number is 10NCOPCPOD3-73-1 through -- I guess it's probably 4 -- 1 through 5 is the detailed build-up of our cost estimate.

And each of the line items that went into that estimate were evaluated, taking into account some of the things that had either been identified by Burns and Roe, or, by that point in time, we understood based on the

scenario and the work we had done with our suppliers.

Q Okay. The assumption -- of the seven key assumptions, the one I want to ask you about at this point in time -- well, let's just go through the assumptions. You've got the one that I read, item number one, which is the Class 5/Class 4 estimate.

A Uh-huh.

Q The second one is in-service dates are Unit 1, June 21; Unit 2, December 22nd?

A That's correct.

Q And is there any -- since April 28th of 2010, have there been any changes that would affect assumption number two?

A No, sir. And let me clarify how that assumption was built, too, because I think that's important.

In order to build an estimate, you first have to have some assumption of the schedule which you're going to execute on and the cash flows that will then be associated with that execution.

In order to -- you know, having completed the negotiation of Amendment 3 to the EPC contract, we were then in a position to be able to complete this estimate with those known terms and conditions.

So we selected, based on that, a target date

for the first unit in '21 and then the subsequent unit in '22, consistent with how this assumption is worded.

Q Okay. And item three, general terms of the existing EPC contract were maintained. Now, is that a specific reference to maintained [redacted]

A That is correct. What that is in reference to is that in the execution of Amendment 3 to the EPC contract, we were able to maintain the favorable terms and conditions, and maintain the [redacted]

So we used that information in detail as we went through each line item in the estimate. That's a piece of information that was not finalized and available in the time the 2008 estimate was performed.

Q Okay. And item four excludes AFUDC, and that's not because AFUDC is not a cost; it's because it's a cost that's dependent on material purchases at a future point in time; is that right?

A No, I don't exactly agree. It's -- AFUDC was not included in this estimate, because the project's responsibility was to clearly identify what we call

project costs.

Q Okay.

A The financial view of the project was the responsibility of Jeff Foster's organization, and then take the cash flows that were established for this estimate, and then work those through his analytics and equations to determine the applicable carrying charges that would be part of the project.

Q Is there an estimate of AFUDC that would apply to the 17.6 -- 36 billion-dollar number?

A Yes, there is. The details of those were Mr. Foster's. I understand that that estimate brings this number to approximately 22.5 billion with AFUDC.

Q Okay.

A And, again, that -- and, again, allow me to clarify that, too, because that, again, is predicated on a set of assumptions, just like we talked about earlier with long lead material or how you build an estimate.

Those assumptions are based on the timing and the cash flow, and [redacted]

Q Okay. And item five estimate includes estimated escalation dollars through in-service dates. Is that assumption -- any changes to that assumption?

A No changes to that assumption. And, again, what that is referring to is a couple of things. First off, the [redacted] that were defined in the contract that were maintained by the Amendment, as well as assumptions regarding things like the [redacted]

Q And if I turn to Page 11 on the next page, and the -- there is major areas of change from IPP to current estimate, excluding AFUDC table. Do you see that?

A Yes, sir.

Q And that rolls up to a [redacted]; is that correct?

A Yes, sir.

Q The escalation component, it says, "Escalation increases," parenthesis, "schedule shift and other, [redacted]," and then under the notes it just says "schedule shift." Do you see that?

A Yes, sir.

Q What is meant by "schedule shift and other"?

A Okay. The -- let me make sure I understand your question. So you're looking at the line that says "escalation increases," and it says, "schedule shift and other" in parenthesis behind it?

Q Yes.

A So that line is to capture the main driver of really the cost change, and that is specifically the application of the [redacted] in the [redacted], any duration of the project, as well as some updates that we made based on known changes and things like the [redacted]

So the original estimates were based on how -- what -- well, let me go back. The estimate is based, in part, on the first portions of the contract that are [redacted]

And those assumptions and the realty of what [redacted] was doing and the go-forward forecast for that had changed since the 2008 estimate was prepared. So that's the other piece of escalation and other.

Q Okay. All right. And then item six is, "Assumed partial suspension through COL24200" -- 2012." Do you see that?

A Yes, I do.

Q All right. Is there any change to that assumption?

A Any change since this was written?

Q Yes. Yes, sir.

A No, not today. That's still our best estimate, is that we will receive our combined operating license somewhere between mid-2012 to late 2012.

So, again, this estimate, as it's indicated in this book, is based on being able to then execute the terms of Amendment 3 to the contract that provides [redacted] after receipt of the COLA to issue a notice to proceed, and then the schedule is predicated on moving from that point forward. So that all then drives the estimate cost.

Q Okay. Now, yesterday, Jeff Lyash testified that it may even be January 2013 that the COL is issued. If that -- if that's the case, would that materially affect the estimate based on this assumption?

A No, it would not.

Q And then, finally, the item seven of the key assumptions is, "Allowances were estimated for incremental costs associated with partial suspension." Do you see that?

A Yes, sir.

Q Now, what does that -- how is that different from item five? Well, first of all, what does that mean and how is that different from item five?

MR. WALLS: Objection. Compound, but I assume you want him to answer the last question.

MR. REHWINKEL: Yes.

THE WITNESS: So let me make sure I understand your question, though, because that's where I was going next.

Allowances -- you're looking at line seven, "Allowances for estimate to incremental costs associated with partial suspension." And is your question is that different from estimated --

BY MR. REHWINKEL:

Q Yes.

A -- estimated escalation dollars?

Q Yes.

A And the answer is yes, they are different. How they are different is line seven is specific to the fact that there are incremental costs associated with the fact that the project did not continue on the original schedule path, that the change in the schedule to move a large portion of the capital and the project activities beyond receipt of the COLA then implies that there is some amount of incremental costs that we wanted to make sure was concluded in the estimate.

Q Okay.

A That's different from pure escalation factors.

Q Well, I want to ask you for an example of that, but is -- are these -- is item seven referred to costs

that are not -- costs that are -- that come out of the EPC?

A I don't understand your question.

Q Well, let me just -- let me strike that question and just ask you, can you give me an example of something that would be a cost that would be -- that item seven would apply to, assumption seven?

A Yes, item seven, which is allowances for incremental cost, so an example of an incremental cost would be the [redacted]

That was not contemplated in the original contract as part of the schedule. It's a new set of activity.

We have written a change order to the consortium to do that work, and, in fact, all work that is performed during the partial suspension period is [redacted], so it's any of that type of activity.

Q Okay. Now, we had a discussion earlier today about procurement related to long lead materials. Do you recall that?

A Yes, I do.

Q Would any of those activities be covered by assumption seven in here, or are you talking about something different?

A Let me make sure I understand your question. Would -- if your question would be if the activity required to disposition long lead material, to make now the long lead material schedule work with the existing contract schedule be an incremental cost of the project, the answer to that is yes.

Q Okay. So that is an example of the type of activity that assumption seven relates to?

A Yes.

Q Okay. Can I ask you about Amendment 3? Are you familiar with -- what I'd like to do is go to item number 10, and this is a document, I assume, you have a lot of familiarity with?

A Yes, I do.

Q Okay.

A Let me just get to it.

Q Okay.

A Okay.

Q All right.

A Amendment 3 -- item 10, you said?

Q Yes. This is on?

A Paragraph -- you mean paragraph 10?

Q Yes, yes, Page 4, and I'm referring specifically to the page that is 10PMA-LEVY, L-E-V-Y -- EPC-000538. Do you have that?

A Yes, I do.

Q Okay. And I want to understand your understanding of this paragraph, and number 10 says, [redacted] lengthy paragraph underneath that.

I hate to ask you to do this, but would you mind reading that paragraph into the record after you've had a chance to read it to yourself?

A Yes, so the paragraph you're referring to is paragraph 10 of Amendment 3 to the contract, which reads, [redacted]

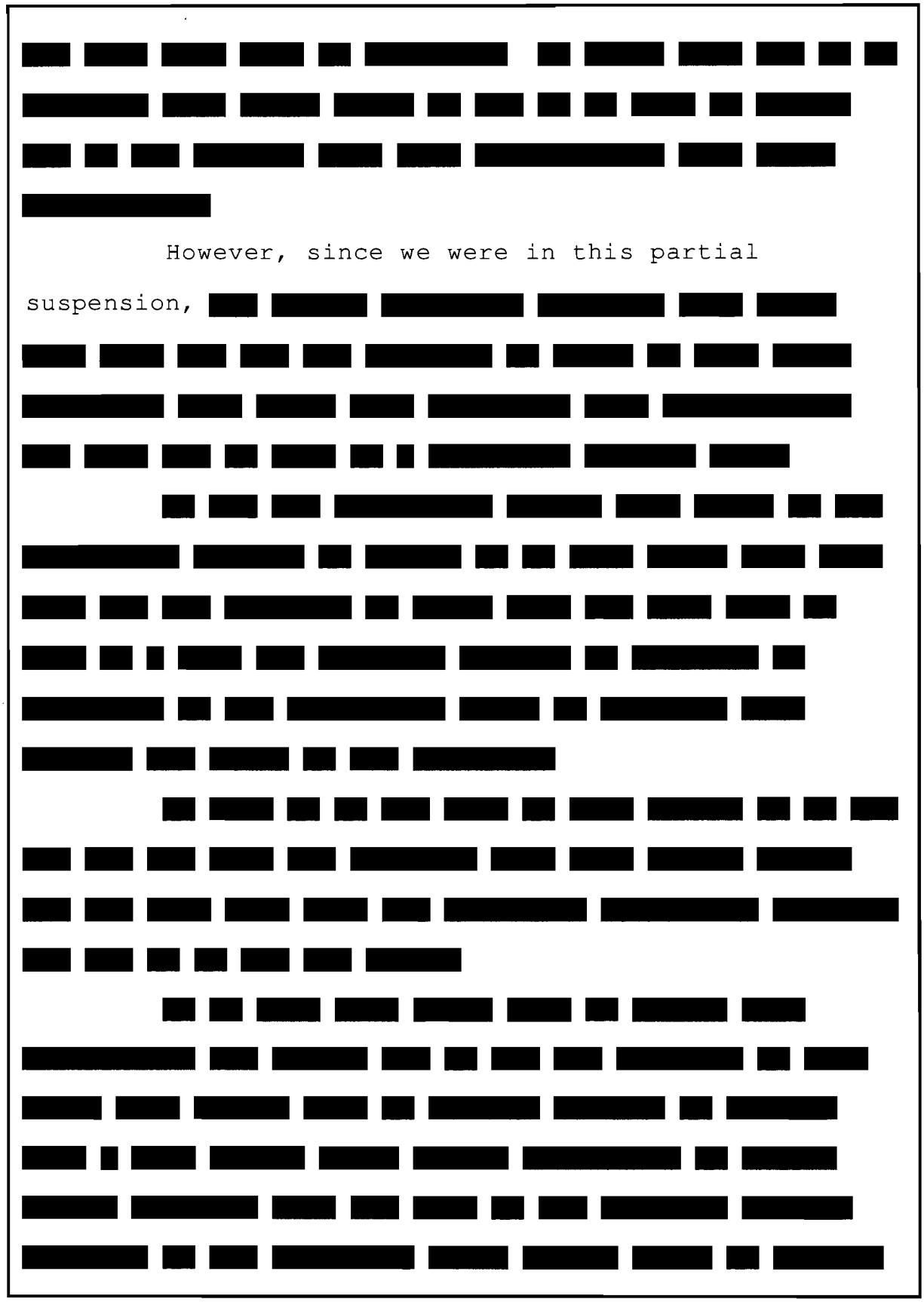
[redacted]

Q Thank you. Can you give me your understanding of how this amended subsection affects the pricing of the EPC?

A Yes. And let me go back and explain a little bit how this particular subparagraph was added to the Amendment, and why it was added, because I think that explains maybe why the language is what it is.

As we -- when we executed the partial suspension in April 2009, what effectively happened was

[redacted]


However, since we were in this partial
suspension,

[redacted]

Q Okay. And is that a sole reason for that provision in the contract?

A Yes.

Q Okay. And it's your testimony that this is a provision that Progress insisted upon?

A Yeah, we pursued that.

Q Okay. The first sentence in here, where it says, [redacted]

And it's your testimony that the impacts there refers to that scenario that you just laid out in our answer to me?

A Yes, it is. And, in fact, to clarify, you know, you have to be careful, because you can't take a sentence at a time. The rest of that paragraph is very specific to what that first sentence is talking about.

Q Okay. So when it says [redacted]

[redacted]

A You'll have to ask your question again. I mean, I'm not sure what you're trying to say there.

Q Okay. Yeah, let me ask it again. What I'm trying to figure out is -- let me give you an example, and I want to ask you kind of how this scenario might interplay with this paragraph, if at all.

If -- [redacted], is that a component or a material that you would -- that would be procured under the EPC?

A Yes, by the -- by the consortium.

Q Okay. And that wouldn't be a long lead material item?

A No.

Q And the[redacted] would be something that the consortium would -- would procure, and would it be based on -- well, how would the [redacted] be priced if -- well, let me step back and ask it this way: If you get to January of 2013 and the COL is issued, that triggers a [redacted] period that you have to engage in discussions with the consortium about whether and how to resume work.

I guess you would issue -- and if you were to resume work, you would -- you would issue a notice to resume to the consortium?

MR. WALLS: Objection. Assumes facts not in evidence, but go ahead.

THE WITNESS: Let me go back to your premise, because you started with sort of a sentence there that's not exactly true.

BY MR. REHWINKEL:

Q Okay.

A So the way the Amendment is structured, [redacted]

[redacted]

Q Okay. Is it your intent that if you -- I think you said if it's -- if it appears that the COL is on track and the enterprise risks are where the company feels they need to be here to proceed with the project, that you would enter into discussions? You would have the ability to enter into discussions with a -- the consortium about presuming work?

A No, that's not exactly what I said. What I said was the contract [redacted]

My intention and the company's intention would be we would start those engagements at the right time in the schedule, so as to get that schedule for moving forward with the project and to get that notice to proceed executed within the time from the COLA to that [redacted]

Q Were there discussions about, like, a 30-day window prior to the anticipated COL date that the parties would get together?

A Were there -- I guess I still don't understand

your question. Were there discussions by whom?

Q Well, between the -- between Progress and the consortium about -- were there discussions about the parties reengaging in project acceleration discussions at minimum 30 days before the expected receipt of the COL?

A That was --[redacted]

We did not want this to be a -- you know, we're going to put a long-term partial suspension in place and then wait until we get the license. [redacted]

Q Okay. So if you were at a point, as Progress is at a point, where you believe that the COL is on track to be issued, and enterprise risks are at a level that are acceptable to the corporation to proceed with the project, you would anticipate engaging in discussions with the consortium about putting the

project back on track?

A Well, let me -- I don't agree with that, no. I'll try it a different way. The project has a schedule. The project continues. The project and the estimates that we talked about a minute ago are all predicated upon receipt of a license in late 2012, a grace -- a period between that receipt of [redacted] to allow the adequate time to issue the notice to proceed.

My point is, that does not have to start -- or you don't have to wait to engage with the consortium around that to get the license.

My anticipation is -- as a matter of fact, we told the staff auditors, I think, this during their engagement, that those -- [redacted]

Q Okay. Now --

MR. MOYLE: Charles, if I can just jump in briefly. I'm going to go ahead, per our conversation, and break. I'll be back at 1:30, at the latest. Thank you for accommodating me.

MR. REHWINKEL: Okay. Thank you.

(WHEREUPON, Mr. Moyle disconnected.)

BY MR. REHWINKEL:

Q Under no circumstance would you issue a notice to proceed prior to receipt of the COL; is that right, notice to resume?

A The -- let me answer the question this way: Our schedule is built upon an assumption that a notice to proceed would be issued sometime in the 2013 timeframe.

Are there potential scenarios where that could be accelerated, [redacted] Yes. However, again, our selection and our project schedule is as we have described it.

Q Okay. All right. So I appreciate that. That was a little bit of a detour. I was trying to understand the mechanics of that process.

So let's go back to [redacted] Assuming that -- that you were to issue the notice to resume -- is that the technical term?

A It's actually -- yeah, notice to resume, yes.

Q Okay. Then the consortium would -- well, let me step back and ask it this way: Assuming you made no other changes to the contract, negotiating no further amendments to the contract, if you issued a notice to resume to the consortium, that would authorize them to

resume activities in order to meet the schedule that you had agreed to? Is that an accurate --

A Let me make sure I heard your question right. I think you said assuming we made no further amendments or changes to the contract, the consortium would execute our schedule as we agreed to?

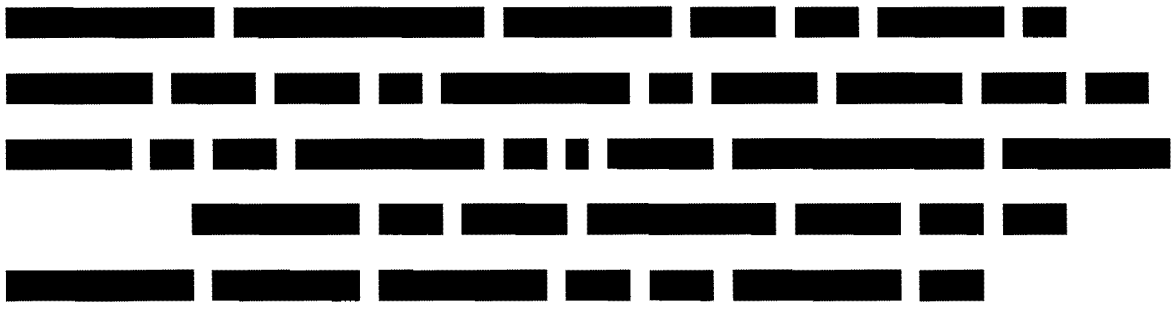
Q Yes.

A No, we have to actually issue, as defined in the Amendment, a notice to resume, which effectively ends the period of the long-term partial suspension.

So they need that action from us in order to continue any work beyond what we've directed them to do during the partial suspension.

Q Okay. So will you have to give them further instruction as far as what you want them to do once you issue the notice to resume, as far as procurement of materials and commencement of work?

A Yes, but let me qualify that. I mean, during the course of the execution of the project, there is going to be periods of time where there will be



[redacted]
[redacted]
the Amendment.

We retain the favorable terms and conditions of how this project would be executed. The specific
[redacted]

Q Okay. So in a scenario with the [redacted] that I was mentioning awhile back, what -- is that something that the consortium would procure in order to meet the milestones of the contract?

A Yes, the consortium, as part of their responsibilities under the execution of the contract,
[redacted]

Q Okay. Now, I would assume that -- unless some kind of acceleration event occurred, as you mentioned earlier, that everything that the consortium would have done under the December -- well, let me not say everything -- well, most of the things that the consortium would have done under the December 31, 2008 -- the assumptions in place on December 31, 2008, they would roughly be five years delayed if you resume

under the scenario of Amendment 3; is that fair?

MR. WALLS: Object. Mischaracterizes and assumes facts not in evidence.

THE WITNESS: I think what you may be trying to ask -- let me try it this way: Are there factors such as the price of steel --

BY MR. REHWINKEL:

Q Yes.

A -- that may change during the course of the long-term partial suspension?

Q That's exactly right, yes.

A Yes, there are. There are factors. Now, part of our responsibility and part of the basis for our cost estimate was to assess, to the best of our ability, given the information that we have today, what are the forecasts for those indices that are set as part of the exist -- as part of the base EPC contract.

So if you look to the base contract, you'll see there are various [redacted] items that have [redacted] There are [redacted] prices for other portions of the work.

Where [redacted] at the time of starting the actual work on the site is dependent on how the market's moving that -- during that timeframe.

So we've tried to make some allowance for

those. And, you know, the classic example, I think, is the items in the contract that are specifically [redacted] and where that will go over this duration, and then what will be the consortium's [redacted] when they get into actual on-site fabrication.

Q Well, in the [redacted] example, is it your opinion that if there is a material change in the price -- let's say an increase in the price of that steel, the particular steel that would be used in that fabrication -- if there is a material upward change in that price, is that delta covered by the terms and conditions in the contract as amended by Amendment 3, or is that something that would be subject to further negotiation between the parties?

A For that particular commodity, which I think -- I'd have to doublecheck the specific list in the contract, but for that particular commodity, which [redacted]

That was not affected by the Amendment. What the Amendment -- and if I think where you're trying to

go here is -- what the amendment did, effectively, was preserve the terms and conditions of the base EPC contract, [redacted]

So all those favorable terms stayed in place. What the Amendment did was [redacted]

So at little or no additional costs to the project, we were able to place the project in a condition and be able to proceed on its modified schedule.

Q So is there -- is there -- could you -- would you be able to check on -- I just want to understand the [redacted] example and how that would be affected.

Because you would agree, would you not, that the price of [redacted] to the consortium is something that would be affected by the partial suspension; is that -- is that true? It could be affected?

MR. WALLS: I'm going to object as to vague and

ambiguous.

THE WITNESS: Yes, it's two questions in one, so let me -- if the question is, are there -- would steel, as one example of a commodity that you would have to purchase for construction -- like cement or others -- will those change as a result of the change in schedule of the project? It depends.

They will change according to what [redacted] I'm reasonably confident that [redacted] is one of those examples that is tied to [redacted]

The only reason I'm not certain on [redacted] That would be something I'd have to verify, but I'm pretty confident that that is specifically [redacted] buy in support of the construction project.

BY MR. REHWINKEL:

Q Okay.

A Now, which way they will move between now and then depends on factors that we had to do our best estimating, based on what the experts in the industry told us about their [redacted]

Q Okay. So [redacted] -- let's say [redacted] you think that it is identified in that lengthy schedule at -- is it at f? I forget what the --

MR. WALLS: It's right there.

BY MR. REHWINKEL:

Q That -- and you say it would be subject to a [redacted]

A Yes, but, again, I'd like to verify that against the contract, but, in general, there are items like that --

Q Okay.

A -- that are [redacted]

Q And so it's your testimony that there is, under this item 10, paragraph m in the Amendment 3, that this example that we went through about [redacted]

A Would you ask that question again, because I want to make sure I follow exactly what you're trying to say?

Q Yes. My question is, [redacted] which is my example, is not something -- I'm asking you this based on your understanding or what you're testifying to -- is that [redacted] is not something that Progress and the consortium would, prior to the issuance of owner -- by the owner of any notice to resume suspended work under section 221 -- 22.1(f), [redacted]

A [redacted]

Q Okay. What is your understanding of the concept of the base price with respect to the EPC? Is there a base price?

A Yes, there is.

Q And the base price is essentially what's outlined in the EPC, [redacted] any applicable [redacted], is what you would -- you would -- payment would be based on; is that right?

A No, I think that's too simple of an explanation. The base price of the contract is based on [redacted]

In each of those components -- and if you give me a minute, I can pull out the specific percentages -- but each of those components is part of what [redacted] up that base price of the contract.

But that base price is ultimately affected by the -- [redacted]

Q Okay. So the -- the -- back in the [redacted] example, there is a base price associated with [redacted] is that right?

A There is a base price for [redacted]

[redacted]that was part of the base price of the contract as priced, yes.

Q Okay. And is the base price [redacted] only subject to [redacted]

A No, but let me explain that also. So the base price of the contract is based on -- you know, it was the negotiations between us, obviously, and the consortium, but the base price of the contract is based on their assumptions by the consortium of what the [redacted] quantities would be.

So -- and let me go back to your question. Is the only change in [redacted] prices that could occur the result of [redacted] Again, I'd say no, because there could be other things that happen that [redacted]

Now, that would [redacted] to the project, which would -- but it may be necessitated, for whatever reason, regulatory or otherwise.

There could be change in scope to the project that causes the quantity of [redacted] that needs to be used

to build the project to change. That could also cause a change in the price -- the base price associated with [redacted]

Q Okay.

A So there are other factors that may occur during the course of the project execution that could draw a change.

Q But if we assume for purposes of my question that there are no scope changes with respect to what the [redacted] input to the project would be, then is it true that the payment for [redacted] -- the [redacted] commodity would only be -- would be based on the base price [redacted]

A Yes, it is true that -- assuming that the scope stays constant and the quantity of [redacted] that's required is constant, that you would then take however that was priced into the base price of the contract that the [redacted]

Q Okay. And just so I understand, for the record, is it your testimony that Amendment 3 provides [redacted]

A Other than the way it's provided for -- yes, the EPC contract -- the Amendment 3 to the contract

preserves the terms and conditions of the [redacted]

Q All right. So if I could get you to look at, because this is F -- Appendix F -- and for the purposes of this question, I'm looking at 10PM-LEVY, L-E-V-Y, EPC-000283; is that right?

A Yes.

Q Okay. And this is Page 9 of 42 of Appendix -- is this Appendix F? Is that what it's called?

MR. WALLS: Exhibit.

BY MR. REHWINKEL:

Q Exhibit F-1, in the column here, it says, [redacted]

A That's correct.

Q Does Amendment 3 allow for any changes to the [redacted]

A [redacted]

Q Okay. I apologize for that.

A Yeah, and I'm just -- you know, I want to be clear, because there is -- like you say, there's two different -- there's [redacted]

[redacted]

MR. REHWINKEL: Any idea if lunch is here?

MR. WALLS: No, I don't.

MR. REHWINKEL: What I need to do is at least take a break and see get that phone call made, that's bothering me now.

So let's take a break. We're going to check on our lunch; and if our lunch is here, we'll probably take a 30-minute break; if not, I'll come back and sort that out. So I'm going to put you on mute.

(WHEREUPON, a brief lunch recess was taken.)

MR. REHWINKEL: So we're back on the record.

BY MR. REHWINKEL:

Q Mr. Elnitsky, I would like to return, if we can, to -- as of that little detour about Amendment 3, I'd like to turn back to the April 10, 2 -- or the April 2010 IPP.

A Okay. Let me just get back there. And what page are you on, sir?

Q I am on Page 10.

A Okay.

Q And to return to this, this assumption regarding the estimate, the Class 5/Class 4 estimate.

A Okay.

Q Now, can you tell me how this estimate was done

according to the Association for Advancement of Cost Estimating International Guidelines?

A Yes.

Q Okay.

A And, again, I'm going to also refer to the more detailed estimate document that was provided in production of documents, and I think I quoted that here a minute ago --

Q Yes.

A -- in here. I've got to get that out again. I think it's 13 in here.

So the way this estimate was prepared, we used the information that was available as a result of the consortium's analysis of scenarios.

That's the first big element our insight and understanding of the contract and the execution schedule and plan of the contract was based on, and our evaluation of various external factors among [redacted]

And we basically did a -- what's referred to as a bottoms-up estimate. We worked line by line through

the various aspects of the project, starting with a Level 1 schedule, and then working through each of the components of the estimate.

And the approach was to -- for each element, so whether it's the transmission lines, or a component price or a set of construction activities, to take that activity and price it out based on all those factors I just mentioned that we were -- and we built a range around each one of them.

So if you were to look at the details on the cost estimate sheet, you'll see that some things where the price was [redacted]

To come to a final number then, we basically aggregate all of that work together into a final number, and we talked about that this morning. That's the basis of that, what I would call the central point of the band, which is this 17.636 billion number, including fuel and without AFUDC, as we discussed this morning.

That band worked out to be about [redacted] from that midpoint to plus [redacted] percent from that midpoint.

You could argue that that begins to sound something like a Class 3 estimate in the AACE guidelines, but as I worked with our estimators and we looked at some of the variability associated with the different line items, we concluded that we really were more closely aligned with the Class 4 type qualifications.

Now, why does that matter -- and I think maybe that's -- if I can, Mr. Rehwinkel, I think that's maybe a distinction here.

What we wanted to do with this estimate was be sure that we provided our management with the best insight into the band that would be required that would encapsulate as many of the potential future paths that this project may go on.

In terms of cost, where, for example, what is the variability maybe associated with a [redacted] What is the variability associated potentially with what ultimately labor costs will be.

And we wanted to make sure that that band that was provided was consistent with where we were with the project. We do these types of estimates for all of our

major projects, specifically our major construction projects or major transmission or upgrade projects, and we use a very similar process.

And at this early stage of a project where the [redacted], the ultimate detailed construction scheduled are still being completed, we would normally be in this same range, where we set a Class 4 or Class 5 type range.

Why do we do that? Because we want to be sure that that range covers the potential ultimate pass that that project may get, as the design gets more finalized, as the actual, what are called bulk quantities gets finalized, as all those pieces come together, so at the end of the day, as we get further into the project cycle and the design is finished, and we're well into construction, we can lock in then on a fixed point with an amount of contingency that's commensurate with the risks associated with the project.

So for this stage, where we were in April of 2008, knowing what we knew about the project, a Class 4, type Class 5 estimate, in our assessment, provided the best coverage of those potential outcomes in the -- and the best coverage of where ultimately the total project price could go.

Q Something you said is you do this for all major

projects that do this, meaning use the --

A This type of approach to cost estimating and we use this same sort of standards that go forward.

Q And you said AACE. That's A-A-C-E?

A That's correct.

Q Okay. I assume -- I could be wrong, but I assume from an earlier answer that you gave is that the use of there AACE guidelines is something that's relatively new, as far as your cost estimating, the use of it within the company?

A I can talk to the timeline I've been here. I'm not certain prior to when I came to the company, but one of the things that we did to try to make sure we had the right rigor and discipline around the cost-estimating process is to be, number one, clearly transparent; and number two, to give a best trajectory on where projects would go, was to implement these standards.

That was part of the establishment of the Project Management Center of Excellence and the standards that we establish for the entire company around the best practices for project management, and this was one of those tools that we brought to the table.

Now, that's not to say that previous estimates were of no quality or did not comply with the intent and

purpose of this process, but we wanted to make sure, you know, sort of that we had something we could point at as a process and a procedure that was repeatable for how we did this type of estimate.

Q Okay. So the $17.6 billion number, based on the methodology that you use and application of the AACE guidelines, you yielded a range of, it could be [redacted] percent too high or [redacted] percent too low; is that a fair --

A Yes, it -- the actual band that's, again, on this production of documents is, I'm going to say it's [redacted] to [redacted], basically, which if you -- with the most likely or estimated midpoint -- it's not really called a midpoint, but the most likely number at 17.6.

Q Okay.

A And, again, the intent of that band is to give reasonable probability that the potential different paths of certain aspects of the estimate or uncertainties associated with the estimate may take the ultimate costs are covered by the cost estimate.

Q Now, the way those numbers turned out, the -- the potential variability is -- appears to be greater, that the number would be lower than higher; is that -- can you draw that conclusion from the way these numbers are --

A You -- not exactly, but what it tells you is there's more motion potentially in the lower direction, that there are a set of potential changes in some of the assumptions that could drive you to a number, and there is more motion and variability in the downward direction than there is in the upward direction. And part of that is based on how conservative were we in each of the different line items as we rolled this together.

So, again, each item, we had to make some assumptions about what's the low and the high end of the band, what's the most likely expected number, and then when you add all that up and sum it for the whole estimate, you come out with that band.

It's -- you can't necessarily make the stretch that the probability going one way or the other is any higher; it just gives you a sense of how broad potentially the band is.

Q Now, is the document that I identified earlier, the AACE International Recommended Practice No. 18R-97, is that the guideline that you use?

A This is a piece of the overall process that we use. And the way I would describe this -- and this is actually an appendix to a broader instruction, but this is the piece that is particularly applicable to EPC type contracts.

So when we, in our estimates, present these to management and provide them in a document such as an IPP or in an actual cost estimate for signature, we always go back to this appendix and reference it.

So where does this estimate stand as opposed to the various classes that are provided in this standard, so that management can look and say, "Okay. I understand then, number one, how this estimate was built; number two, what you're telling me with this particular price number and this particular band."

Q Okay. If I could get you to look at the February 5th, 2005 AACE guideline document and turn to Page 3 of 9. Do you have that?

A Yes, I do.

Q Now, starting on Page 3 of 9, there are a series of tables?

A Uh-huh.

Q Starting with Class 5 and continuing on to Class 1 on Page 5 of 9?

A That's correct.

Q And just so we understand, a Class 5 estimate is -- is one that has a lesser level of confidence than a Class 1; is that correct?

A No, actually not. The probably better description of how to think about these classes is what

is the estimates band and how is that estimate commensurate with the state of the project and the timing of where you're on the project.

So as you go up in classes, it is true to say that band gets smaller, but it doesn't really mean that one estimate is any better necessarily than another; it is just a recognition of the fact that a different points of a project's life cycle there is a different degree of ability to specifically define what is the center point and the possible range of costs for a given project.

Q So a Class 1 estimate should have a smaller range around the estimate -- a band?

A Well, to be precise, I think if you go to that same document, to Page 5 of 9, I think it does describe for a Class 1. The typical band is anywhere from a minus 3 to minus 10 percent up to a plus 3 to plus 15 percent, and that's that -- in the paragraph that indicates expected accuracy range.

Q Okay. And then if we go back to a Class 5 on Page 3 of 9, it says a typical accuracy range for Class 5 estimates are minus 20 percent to a minus 50 percent on the low side and a plus 30 percent to plus 100 percent on the high side --

A Yes --

Q -- is that right?
A -- that is what the document says, yes, sir.
Q Okay. And for a Class 4 estimate on Page 4 of 9, the expected accuracy range indicates that a typical accuracy range for a Class 4 estimate -- typical accuracy ranges for Class 4 estimates are minus 15 percent to minus 30 percent on the low side and plus 20 percent to 50 percent on the high side; is that right?
A That's correct. That's what the document says.
Q And then for a Class 3 estimate in the expected accuracy range, it says typical accuracy ranges for Class 3 estimates are minus 10 percent to minus 20 percent on the low side and plus 10 percent to plus 30 percent on the high side?
A That's correct.
Q So when you said to me earlier that one could argue that the estimate that you produce for the April 2010 IPP was more of a Class 3 estimate, is that what you were referring to, was where were those ranges fall in --
A I was referring to where the ranges were, and specifically a lot of the sub-elements of this estimate, because we had some very distinct clarity around the costs, [redacted]

[redacted] we were able to draw a much tighter band.

So we did not start and say where are we in the project; what class of estimate should we do. We, instead, started and said let's work our way bottoms up through each line item.

Let's fully understand what we expect the variability to be on that line item. Let's then sum those items to come to a conclusion, and based on our understanding of the quality of each of those subitems and what we were able to calculate, assign a value to this -- not exactly right term -- assign a classification to this estimate that our management will understand and is consistent with how we typically portray an estimate.

Q Okay. So for the Class 3 estimates -- if we can go back to that one on Page 4 -- it says, "Estimating method" -- under the heading "Estimating methods used," it says, "Class 3 estimates usually involve more deterministic estimating methods than stochastic" -- that's s-t-o-c-h-a-s-t-i-c, if I pronounced it right -- "methods that usually involve a high degree of unit cost line items," and that would be what you referred to with respect to, you had some clarity in the ones that you --

A Some items that you could very clearly

identify, [redacted]

Q "Although, these may be at an assembly level of detail rather than individual components." Is that applicable to what you looked at?

A Yes, in a way, and let me explain that. You know, assembly level detail, again, this guidance is for a very broad set of applications. So from our assessment, there were certain things that we knew based on [redacted]

We said, you know, we have an understanding of what it's going to cost, for example, for, you know, our [redacted]

So some things we were able to do that; some things we were not. We didn't have that level of specificity. For example, some of the bulk items maybe that have yet -- that are not yet defined.

Q Would that be, like, concrete?

A Potentially total concrete, so it will be required and how that factors into the total costs.

Q Okay. Do you know what "scocastic" means, "scocastic methods"?

A Yes, scocastic method -- oh, geez.

Q Well, did you --

A No, let me -- I know what they're referring to, but I'm not exactly sure of the definition anymore, scocastic, and so I'd have to go back and look at it.

Q Okay. Well, when it says, "Factoring in other scocastic methods may be used to estimate less significant areas of the project," is that what -- is that what you did?

A Ask your question again.

Q The last sentence of that "Estimating Methods" section says, "Factoring and other scocastic methods may be used to estimate less significant areas of the project." Is that -- does that describe --

A That describes a lot of what we did for -- well, in some cases we had to make assumptions based on where would a given [redacted] or what was our understanding based on projects that were already underway about what some of the actual costs were associated with certain elements of the project.

Q Okay. Now, the IPP itself describes the assumptions of the estimate, is that this is a Class 5, slash, Class 4 estimate, correct?

A That's correct.

Q So my question to you is if -- is while you say that it could be argued that this is a Class 3 estimate,

you describe is as a Class 4 and Class 5 estimate -- or Class 5, slash, Class 4 estimate. For what reason, contrasted to the --

A Well -- and let me clarify, because you can argue that the overall is a Class 3. I didn't mean to imply that.

What I meant was -- or what I think I said was certain elements of this estimate are at that level of refinement to fall into a Class 3. So what we did, again, to go back is say let's start and do a bottoms-up line by line to the best of our ability, where we can apply a [redacted] method, do that. Don't -- you know, don't provide a real broad band if we know, with some definition, that this is where the cost is going to end.

At the end of the day, though, when we got the whole estimate built, given the fact that we're still, you know, a couple of years way from the point of being on the ground doing actual work, that there's still a [redacted] -- that we talked about this morning -- that can move in different directions.

It did not seem reasonable to us to classify the overall estimate as -- for our management -- as

better than a Class 4, because we still think there is a certain amount of variability. And as we described, our band ended up being in about that [redacted] to [redacted] percent range, up and down.

Q Okay. So the band -- the numbers on your high and your low side of your band fall within the Class 3 expected accuracy ranges, right?

A That is correct.

Q And the low side estimate for -- falls in the Class 4 --

A It's a little bit.

Q Yeah.

A It's in a Class 4, just barely.

Q Okay. And then neither of them falls -- well, neither the low nor the high falls within the Class 5 --

A Yeah.

Q -- range.

Okay. So I guess what I'm trying to understand is, what is it about the estimate that makes you say Class 5, slash, Class 4?

A We were unwilling, at this point, to not think it reasonable and prudent to say we could classify it at that level of fidelity.

Normally, for our company, at that point of a project, we would be able to say this estimate is now at

a Class 3 level. We define a price point for the overall project and a set of contingencies around it.

We were concerned, because there are still some things that we will have to do ultimately to get to a final price.

We have to define as part of that process of concluding the long-term partial suspension. We have to define the schedule ultimately. We have to define the [redacted] that goes along with that and the [redacted]

So, again, our qualitative assessment at this point was to say, at this point, we would consider this in that Class 4/Class 5 category, even though we recognized certain elements of this have a tighter degree around their bands for their actual costs.

Q Okay. So if I go to Page 2 of 9 of the AACE guideline --

A Okay.

Q -- this is table that's under a heading that says, "Cost estimate classification matrix for the process industries." And there are two major headings of this table, "Primary Characteristic" and "Secondary Characteristic." Do you see that?

A Yes.

Q Okay. And under the primary characteristic

column it says, "Level of project definition expressed as a percent of complete definition." Do you see that?

A Yes, I do.

Q Is that Class 5 -- and under the estimate Class 5, on that row there's a -- it says "0 percent to 2 percent" under the "Level of project definition." Do you see that?

A Yes, I do.

Q And then under Class 4 it says, "1 percent to 15 percent." Are those the reasons why this is a Class 5, slash, Class 4? Is it because of the stage of the project?

A Yes, but let me explain. The reason we're considering this a Class 4/Class 5 -- and, you know, just to sort of get to the bottom point -- you know, how good is the estimate. I think that's the real issue here.

The reason we consider this a Class 4/Class 5 is because of where we are in the project life cycle. I would not contend that we only have 15 percent definition on the project. That's just not the fact.

But the fact is when you look in aggregate at our method of how we built this estimate, I was not comfortable, nor were our estimators comfortable, to say, "Look. We can tell our management this is at that

Class 3 level of fidelity."

There's just too many pieces in this as you look at the bands. They're a little bit broader, and we weren't willing to do that.

But -- so what's the point? The point is do we have an estimate that provides reasonable data for our SMC, our Senior Management, to make a decision around how the project should go forward. Yes.

Did we do that estimate in a way that provides coverage for the most likely vectors that this project may go on in terms of how it actually executes? Yes.

Would it have been unreasonable to try to draw a much tighter band for this stage of the project life cycle? Yes, I think it would have, and I think our estimators would have, that that would have been a bridge too far.

Q Okay. Class -- look at Page 3 of this AACE guideline.

A Okay.

Q Under the Class 5 estimate, is there -- we've talked about a couple of the headings under this estimate table. One is description, and that's, I guess, a description of the process you go through to develop your estimate; is that right?

A It's a description of how a Class 5 estimate is

typically used.

Q Typical. And then there is a level of project definition required, and we just talked about that on the prior. "End usage" talks about what it might be usable for in decision-making, I would assume?

A Yes, but this -- let me just read exactly what this says here so I'm sure. This is how you would normally apply this type of estimate.

Q And then we've talked about the estimating methods used for a Class 5; and then expected accuracy ranges, we've talked about that; and then amount of effort to prepare, ANSI, A-N-S-I, standard reference and then alternate estimate names, terms, expressions and synonyms, is the last item there.

A I see.

Q Okay. And I apologize for kind of grinding through this, but I just want to understand --

A No, that's alright.

Q -- the basis for it and see. The one portion of the -- going back up to the description section, one portion of the Class 5 estimate description it says, "Due to the requirements of in-use may be prepared within a very limited amount of time and with little effort expended, sometimes requiring less than an hour to prepare. Often, little more than proposed plant type

location and capacity are known at the time of the estimate preparation."

You can answer the question, but I certainly assume that this does not apply to what you did to develop this estimate.

A No, it does not. And let me try one more time to explain why we put this title on this estimate. We wanted to insure when -- and, again, we use the method I already described in terms of bottoms up -- when we got done, we said as we think about this estimate and you look at the bands that we ended up with, how do we want to depict this to our management, so it's very clear how much we know, and what we're -- we have band around and what we don't know.

Those are our elements of this that at this point in time you just don't know. And we said this is pretty consistent, as we look at our other projects, of what we have compared and described as a Class 4/Class 5.

Again, are there elements of this that are at a higher level of fidelity because of what's known? Yes. Can you -- you know, can you look at the particular descriptions here and the methods and say, geez, do all of these apply, therefore, you're in that class? No, that's not how we used this standard or these

descriptions to describe the type of estimate that we completed.

Q You said something. There is portions of the project that you just don't know, as far as kind of where those costs may end up. Is that what you've contended?

A Yes, what I said is there are portions of the project, from an estimating perspective, that you just don't know, you know, definitively where they're going to end up.

And it goes back to what we talked about before. What ultimately will be the [redacted] You don't know that down to the dollar, so you have to put a band around that to comply with good estimating practice.

Q Okay. There are some alternate names and synonyms description in this Class 5 estimate table. There are terms "ratio," "ballpark," "blue sky," "seat of pants," "ROM," which I think means rough order of magnitude.

A Yes, I think it does.

Q "Idea study," "prospect estimate," "concession license estimate," "guestimate," "rule of thumb." Of these terms, I have seen "ROM" in the IPP. Is this a

rough order of magnitude estimate --

A No.

Q -- in your opinion?

A No.

Q Okay. On Page 11 of the April 2010 IPP, in the middle of the Page 3, it says, "The estimate has been provided to PEF system planning for further analysis and modeling in order to reassess the nuclear cost recovery feasibility.

"This analysis is required for annual filings to the Florida Public Service Commission," parenthesis, "FLPSC," closed parenthesis. "Preliminary scenario sensitivities on rough order of magnitude," parenthesis, "ROM," closed parenthesis, "costs provided in January indicate continued feasibility for the project.

"The analysis was based on both quantitative and qualitative factors, including, but not limited to," and then there's some factors listed.

And then it says, "The approved under those factors," which are six bullet items, it says, "The approved estimate included in this IPP is less than earlier ROM inputs to feasibility scenarios." Do you see that?

A Yes, I do.

Q Okay. Reading this, though, am I to conclude

that because of the process you went through to develop this $17.6 billion estimate, and the fact that it says it's lower or less than earlier ROM inputs, means that it's done with more precision than the January ROM estimates?

A Yes, that's correct, and let me clarify, just so we're clear. In the October of 2009 timeframe, as we completed the scenario analysis that was done by the consortium and factored those into some of the initial data materials for the SMC, as they looked at the various alternatives, we developed what literally were rough order of magnitude estimate using those numbers and what we had in the contract.

We did not, at that point -- at that point, had not completed a detailed line-by-line buildup of a cost estimate. That was what was provided in the initial work that was done in support of feasibility analysis.

With the completion of this estimate -- this estimate being the one that was provided in the IPP in the more detailed estimate -- we were able to take that result, with the band associated with it, and provide that to our resource planning folks, to then update the feasibility analysis that you see as part as Mr. Lyash's testimony as one of his attachments.

And, in fact, the band in that assessment

actually incorporates additional conservatives around the high end of this estimate.

Q The band in --

A The band in -- that's used as part of the feasibility analysis. If you look at the capital bands, I think they go up to a plus 20 percent number.

Q I think that's all I have on the estimation issue. I'd like to ask you to turn to -- well, at least with the AACE document -- turn to Page 15 of the April 28th IPP. Okay. The -- I guess this section here is part of the risk matrix; is that right?

A Let me just look to make sure. Yeah, this is Section 5 of the IPP document, which is the risk matrix, and what follows on Page 15 is a description of some of the individual risk items as they were evaluated at the time for this IPP.

Q Okay. And one of the items in here on -- that's listed on Page 15 is, "Material and labor [redacted] estimated numbers." Do you see that?

A Yes.

Q Okay. And there is a description here of the risk of the number in your estimate, changing one direction or the other, correct?

A Uh-huh.

Q And then you list some mitigation strategies.

Number one, is that you "entered into an EPC contract in which [redacted] Do you see that?

A Yes.

Q All right. And that's what we discussed in the very beginning of the deposition, kind of the process that you're going through to get those [redacted]

A If your question is, are the long lead materials [redacted]

Q Okay. And -- and I guess it's fair to say that what you're doing in addition to -- well, what you're doing in that regard is part of an overall mitigation strategy for that risk; is that right?

A Yes, it is fair to say that there are, you know, several things that we continue to do on the project to try to be insure that we're being good stewards of the rate-payers' dollars here in terms of lowering the costs of the project, where possible, and making sure that we're managing items that have the potential to increase the cost.

Q Now, the second item of mitigation, it says,

"An independent third party provided long range forecast for the [redacted] Do you see that?

A Yes, I do.

Q Now, is that what you mentioned earlier when you talked about how you developed your estimate, is that you went to an outside party?

A Yes, we -- and let me explain. We went to an outside party. Specifically, we used a company by the name of Power Advocate, who has expertise in indices associated with the various commodities associated with complex construction projects.

So where things would be done, for example, on a time and material basis, it's important to understand what the estimates are for what those materials will cost at some time in the future.

So we used any -- we used all information that was available to us, and we used Power Advocates as one of those sources for some of their indices around these items.

Q Okay. Now, is -- did you use Power Advocate because you used them before, or they had specific expertise with respect to EPC -- nuclear EPC contracts?

A We used -- to answer your question, we used Power Advocate because we had had experience with them

on other construction projects, had had good success with using their materials, and thought it was a prudent thing to do in light of building this more detailed bottoms-up estimate, to add that additional level of fidelity.

Q Do you know if they work for any other utility that are engaged in building AP1000 projects?

A I -- I don't know for sure. I know they're engaged in working with several different utilities. I don't know specifically if they're involved with AP1000 efforts anywhere else.

And to some extent, that is not really germane, because the issue here is not are you building a reactor plant; are you building a steam turbine.

It's really do you understand what -- you know, back to your earlier question, what the [redacted] for the [redacted] is really going to cost when you need to procure it and have it available for your construction project.

Q Okay. And item three, "The estimate allows for adequate contingency for moderate changes in escalation. Would you -- would it be accurate to say that the range that's in the estimate represents that contingency, or is it the contingency that's in the estimate itself, the [redacted] -- is it [redacted], you know, the escalation, the

contingency item that's under the other owner contingency? [redacted]

A Let me make sure, because --

MR. WALLS: I'm going to object, because I think you had a couple of things going on there.

MR. REHWINKEL: I did.

THE WITNESS: Let me answer what I think is your question.

BY MR. REHWINKEL:

Q Yeah.

A If the question is, does the range provided by the estimate and the uncertainty inherent in that range cover potential uncertainties in estimate values, the answer is yes.

The use of the term "contingency" in this sentence is to refer to the band of the estimate; it's not meant to refer back to specific contingency items in the estimate where that contingency is more specific to potential needs for change in the scope of the project. This is about, given a fixed scope, are there things that may change, and that's part of the reason that the estimate was set at the band that it was.

Q Okay. On Page 17 of the IPP, it starts, "Section 5.1.2, enterprise risks." Do you see that?

A Yes, sir.

Q Is this a section that you had input in developing?

A Yes, sir, in conjunction with other members of the Levy project team.

Q Who would those have been?

A Well, specifically, some of are us Mr. Lyash and some of our other senior members of the team.

Q Okay. And the enterprise risks that are listed in this enterprise risk summary are the same ones that are listed in your testimony and Mr. Lyash's testimony; is that right?

A Yes, I would say they are consistent with the ones -- the exact wording may be slightly different, but they are consistent with what was in our testimony.

Q So would it be fair to say that you have familiarity with the way the company used the enterprise risks that are listed in this IPP?

A Yes, that would be a fair statement, familiarity.

Q Item six, feasibility assessment summary, in this first paragraph here it just recounts -- that's just another way of saying what we discussed on Page 11, with respect to the comparison of the $17.6 billion estimate to the rough order magnitude numbers that were provided to the -- to the Commission last year; is that

right?

A Let me just -- let me read this. I don't think that's true, but let me read what it says here.

Q I withdraw that question. I think this does refer to the comparison of the $17.6 billion number to the -- the early 2010 ROM?

A Yeah, that -- I think that's different than what you were referring to in your earlier question. This is, again, back to the discussion, that when the first feasibility work began it was based on that early rough order magnitude numbers that were prepared just by using the consortium's estimates and applying those to the current project.

Q Now, in the next paragraph under section -- or item six it says that the -- in the last sentence down there it says, "The results of this update CPVRR assessment are summarized below based on the best information available at the time and consistent with the estimates included in this IPP." Do you see that?

A Yes, I do.

Q Now, I may have asked you this, but have there been any subsequent updates to the $17.6 billion estimate that's included in the April 2010 IPP?

A No.

Q Okay. So this still represents the best

information available to the --

A Yes.

Q -- company?

All right. I would like to briefly discuss your rebuttal testimony, so if I could get you to turn to your August 3rd, 2010 testimony.

On Page 7, on the top of the page, lines 1 and 2, there's a statement that says, that reads, "Cancellation of the project is simply not supported by the regulatory and technical feasibility of the LNP." Do you see that?

A Yes, I do.

Q Is it your testimony that -- that because it's feasible from a regulatory and technical standpoint that it should not be canceled?

A Let me just read the rest of that section --

Q Yes, sir.

A -- just so I have it in context.

Yeah, let me make sure I understand your question. So your question was, because I state in my testimony on Page 7, lines 1 and 2, that, "Cancellation of the project is simply not supported by regulatory and technical feasibility of the project," that that means that project should not be canceled?

Q Yes.

A Was that what your question was? I think this is part of a broader analysis. I don't think that's the only factors, and it's certainly not the only factors that we consider in determining that the project should move forward.

This particular statement is to address the fact that the regulatory path that we were on will complete the licensing process, and the project is technically feasible and can, in fact, be constructed.

Q Would -- so would it be your testimony that even if you find it to be -- or you determine it to be rate feasible from a regulatory and technical standpoint, that doesn't end your inquiry as far as to whether you ought to proceed with the project?

A Yes, I would agree that's not the only factors, and it's not the only factors that the company has considered in our ongoing evaluation of the project.

We evaluate a variety of projects, both quantitative -- for a variety of issues rather, both quantitative and qualitatively, when we make a decision to proceed with the option we're proceeding with.

Q So it would be conceivable that the project could be canceled, even if it were to be otherwise feasible from a regulatory and technical standpoint?

A Let me make sure -- it's conceivable that the

project could be canceled, even if it was technically and regulatory infeasible?

Q Yes.

A Yes, it would depend on, again, the set of assumptions and the other factors that we evaluate as a company in determining whether the project should go forward.

For example, you know, the long-term impact on customer price, the long-term impact on price on zero carbon generation. You know, the set of factors that we would include in that analysis beyond just technical and regulatory feasibility.

Q Okay. On Pages 8 and 9, you address the staff auditor issue regarding operate -- the Operational Readiness Group; is that correct?

A Let me just --

Q And I'm starting on -- I'm looking on lines 12 on Page 8 through, I guess, line -- I guess through Page 9 and maybe even on 10.

A Yes, I agree that the staff -- the discussion about the Operation Readiness Group, I think you're right. This starts at line 12 on Page 8 and then really continues to the top of Page 10, I think.

Q Okay. Now, the Operational Readiness Group that's referred to here, is that something that was

implemented under you or is it something in place before you assumed your current duties?

A It was, in fact, implemented and parallel with me. As we got into the March timeframe, as we looked at reorganizational leadership, and what my role would be and how we would move forward with the project, one of the factors that we needed to continue to work on was our support for the things that supported the ultimate operational readiness of the effort.

So we stood up -- a very small staff, all of two people initially, to shepherd that work. The -- one of the reasons we did that was to make sure that we had the right focus on the elements of the project that are associated with the ultimate operation of the plant.

Specifically, the development of training programs, the development of engineering programs that are required to do things like radiation monitoring programs and maintenance programs.

And we brought on Mr. DeLeon, who, at the time, had been vice president at Crystal River, to lead that small group as a parallel effort to what we were doing in conjunction with the development of the overall project.

That work actually continues today at a pace and timing that is consistent with our project schedule,

and is in alignment with the rest of the owners of the AP1000 Owners Group, so as to capture the efficiencies associated with doing this in parallel with both Vogtle, SCANA, FP and L and Duke.

Q Okay. And SCANA is all caps, S-C-A-N-A; is that right?

A Yes.

Q Now, is this group expected to continue past 2010?

A Yes, but in a different manner. What we did, commensurate with the decision to continue with the longer term partial suspension and put the project on that schedule, was we merged this group back up under my department. So, originally, it had DeLeon in charge of it with -- I think it was two subordinates at the time.

We -- much like we've done across the entire project, we've made what, I think, are good decisions about what just staffing level do we need to continue to move forward with the project.

In this particular case, we've kept one of those individuals on board and have him now in my department, specifically tasked with the aspects of operational development that we still need to do, even on this modified schedule with the longer term partial suspension.

Q Now, you mentioned the other -- the AP1000 --
A Owner's Group.
Q -- Owner's Group. And what did you mean about in conjunction -- what was the terminology you used?
A I think I said in conjunction with the AP1000 owner's group --
Q Okay. And to capture the efficiencies?
A (Nodded.)
Q What did you mean by that?
A Let me explain that a little bit further. We are a member of a limited liability corporation called the AP1000 Owners Group.

That was established by the plan builders of the AP1000 to capture some of efficiences by doing things once for the five utilities instead of each utility doing them on their own.

So as an example, writing the knowledge skills and abilities catalog for new operators is an effort that, under the last regime, of what was done individually by each utility specific to that specific construction.

Since this is a standard design, with a standard operating model, with a standard way to qualify operators, we were able to come together as a group of utilities and do that effort once for all five

utilities.

So we continue, as part of the responsibilities as part of the operational readiness aspects of my department, to stay engaged in that work and continue that work to be able to capture those efficiences and not have to do that as an independent effort.

Q Now, is there a similar group that Southern Company has with respect to Vogtle?

A Southern Company is part of the AP1000 Owners Group.

Q I mean, do they have a similar segment like your -- that's analogous to your Operational Readiness Group?

A Yes, as I understand it they do, and I don't have the specifics of exactly how they're latched up, but I do know they have a leadership group that is specifically focused on the operational aspects of bringing the AP1000 into service and doing the same type of work.

Q And same with SCANA?

A Same with -- yeah, same with SCANA; same with Duke; and I don't know about FP and L.

Q But Vogtle, they're -- if they proceed on the same timeline that they plan on, I guess, their -- their reactor will go into service at least five years before

Levy; is that right?

A Their current schedule, as I understand it, is for there first unit to go in service in 2016.

Q Okay. And if you adhere to this current schedule and build the Levy project, 2021 would be the earliest, mid-'20/2021 for Levy, correct?

A That's our current schedule, yes.

Q All right. Now, this group that -- that is referenced in this testimony is -- would be preparing, I guess, operational procedures or -- etc., for a project that would not go into operation for over 10 years? Is that -- is that -- am I misunderstanding kind of what --

A Well, yes and no, so let me make sure I understand your question. Is this group a -- or maybe you better rephrase your question before I try and answer it for you.

Is this group involved in activities that are being performed to support the qualification and training of operators well in advance of their need?

Q (Nodded.)

A Yes. Is that a prudent action to take? Yes. And the reason we think it is, is because there is an efficiency to capture by doing that, in conjunction with our partners, in the same way that Duke, who is well in advance of their need, is involved in this effort, in

the same way parties from FP and L are involved in this effort, because we do that work once.

In fact, even though that sounds like a long time, when you back up and look at the time required to begin training operators, we have to build some of these tools well in advance of that 2021 timeframe regardless.

I agree, not on as accelerated a schedule perhaps as Southern Company for Vogtle, but it still, in our opinion, was prudent to take these actions and make sure we stayed in step with these efforts where we could capture that efficiency.

Q It is true, is it not, that the Operational Readiness Group was established before the company even knew that there would be a 60-month delay possibility?

A The -- yes, and let me explain. The Operational Readiness Group was established in May of 2009, about the same time that I took over as the head of the nuclear plant department -- Nuclear Plant Development department at that time.

We did it then, and while we were in the middle of evaluating how we would respond to the need to change the schedule's resulting NRC's decision around the LWA, so we were into the middle of analyzing the various scenarios and moving forward down that work stream.

We established this group, because we knew that

regardless of what path we would end up on, short of cancellation, that we would need those efforts to continue until we made such decision that would not continue the project, which is not ultimately a decision that we made.

Q Well, did the scope of work for the Operational Readiness Group, did it change once you knew that you were going to be on a 60-month delay instead of a 24 to 36-month delay?

A Yes, it did, and, specifically, it changed terms of it had planned, as it stood, to start down the process of recruiting operators and training operators.

One of the challenges, as I think you may be aware of, is you have to have a certain percentage of your operators that have more than five years of experience.

In order to do that, you have to be well in advance of your in-service date to start putting those operators into other units, not AP1000 units, just into units where they can get that experience or background as an experienced operator.

So in order to do that, this group, as it stood up in the May of 2000 timeframe, was on to that tasking. That was their intent.

As we made the decision about the longer term

partial suspension, we scaled that work back down, and specifically bringing in operators to train them, consistent with the new schedule, much as we have done in a lot of the work areas associated with the owner. We've acted in a reasonable and prudent manner to take that work scope down to a level that's consistent with the project schedule.

Q On Page 9 of your rebuttal, starting on line 21, carrying on to the next page a little bit, there's a sentence that says, "Because project continuation on an aggressive -- on an aggressive schedule as circumstances allow was one viable option.

"PEF continued to perform the work and incur the costs, like operational readiness costs, that was required if this option was selected." Do you see that?

A Yes, I do.

Q Now, is the gist of that sentence that until you knew which direction you were going, you felt that it would be prudent to continue doing certain things, like the Operational Readiness Group?

A Let me just read the whole sentence here, so I make sure I get it in context.

Q Sure.

A Yes, what this sentence is referring to is that at this point in time, when the Operational Readiness

Group was established, and early yet now in 2009, we were in the middle of and analyzing the scenarios and providing information back and forth to the consortium around the set of selected scenarios we were going to analyze.

One of the things we wanted to be sure at that point not to do was to preclude the nearest term options in terms of the schedule shift because of some action we would take.

So, for example, if, in fact, through the course of that evaluation last summer a 24-month shift in the schedule had become the most optimal path, we did not want to have missed the opportunity to complete the required actions on our part that supported that schedule.

Q It is true that, at the same time, the company was acting as quickly as possible to slow down any un --any but the most necessary work that the consortium was doing under the EPC contract; is that right?

A Yes, but let me explain, because I don't think that characterization is exactly right, "slow it down." So what we did in the April 2009 timeframe, when we issued the change order and direction to the consortium to implement the partial suspension, and when we subsequently told them to analyze a set of scenarios,

was to only perform that work that was consistent with the possible paths we might take along any of those scenarios.

So there were certain activities, in the same vein as we continue with the operational readiness effort, that we continued, because we did not want to preclude the ability to execute on a 24-month schedule change.

Q On Page 10 of your testimony, on the Q and A that starts on line 6 and continues through line 18, is it your perception that Dr. Jacobs' testimony with regard to the fourth scenario that he asked be done does not have any bearing on actual or estimated 2010 LNP costs?

A Let me just read this second section, so I know what you're referring to. So let me go back. I think your question was, is it your contention that Jacobs' testimony in regards to evaluation of the fourth scenario has no impact on the estimated or actual 2010 costs. Was that your question?

Q Yes, that's correct.

A I think what I would do is refer you to, you know, my staff testimony -- or my rebuttal testimony that immediately follows on line 20, which is -- I think, speaks directly to that, "No where" -- you know,

it says, "It says none of the staff or any of the witnesses identify any specific projected 2011 costs that they claim is unreasonable.

"As I previously explained, OPC witness Jacobs says he was asked by OPC to conduct a review of the evaluation and PU requests per authority to collect projected costs associated with LNP. Jacobs does not identify any specific projected LNP costs that he claims is unreasonable."

So although I understand his request to evaluate or thinks that we should have evaluated this other alternative, I contend -- and we contend -- that we did that as part of the process we went through to evaluate alternatives, and I don't think that that has any bearing on his commentary about our actual projected costs.

Q Okay. Well, is it the company's position that -- if I go to your -- well, if I go to your JE-6 exhibit in your -- and the confidential exhibit --

A Okay.

Q -- the total costs under the option that Dr. Jacobs described in his testimony you calculate at [redacted]; is that right?

A That -- well, yes, let me, though, explain. What we have portrayed in this attachment in JE-6 is an

evaluation of the option that Dr. Jacobs describes in terms of what might a cancellation look like at some time in the future.

You will see from looking at these numbers -- and if you go back and look at option one and option two in the original presentation -- so it's really just taking those cancellation costs and saying if that was to happen at some time in the future.

We certainly evaluated that as part of our overall process. We put this attachment together, just to provide clarity to how that would fit together, so it was easier to discuss it.

Q Okay. But this -- this [redacted] number, is it your contention that -- that we could have calculated that number based on the information that we had?

A I don't understand your question, that you could have calculated it.

Q Yes. Was the information there that would allow us to determine [redacted] was the amount associated with option four, what is --

A No, but let me explain. What -- what I am testifying is that this option, as depicted here, that adds [redacted] total incremental costs to a cancellation approach, post-COLA, is information that was embedded in

the other three options that were evaluated and discussed as part of the decision process that brought us to the point to continue.

So there is no, what I would call new information here that wasn't in the original set of alternatives; and, certainly, this was a scenario that was discussed as we evaluated each of those scenarios, because that information was already embedded in those presentations.

Q Okay. But you would agree, would you not, that it would not -- although it was embedded, it was not identified as a discreet scenario with a dollar amount associated with it, that was like this [redacted] [redacted]?

A I would agree that it was not identified as a discreet scenario, but, again, I don't think that is necessarily germane to the options that were evaluated.

It was part of that process, the alternative or the possible scenario, that said what if, for some reason, the project does have to be stopped after receipt of COLA, and it really was evaluated in the context of if the project needs to be canceled, and if our assessment today, with the information that we have today, is that we may need to cancel the project at some time in the future, you would cancel it today. You would not wait and do that at some time in the future.

Q So what I'm getting at is Dr. Jacobs described a scenario that would yield a definable dollar amount, and that's in his testimony and with respect to option four, and that's what this [redacted] represents, correct?

A What this number represents is a set of assumptions that says all other things being equal, if we move forward to the point of receipt of the COLA sometime in 2012, and we assume -- and there is, just as we discussed this morning around long lead material, there is a lot of assumptions that have to go into this -- but if we assume, basically, things stay the same, what would that potentially look like at some time in the future.

And, again, we evaluated that as part of the set of decisions that we made today, based on what we knew at the time.

Q It may even be a misnomer to refer to it as an option; it's maybe more a scenario, because it's not -- you wouldn't select an option to go forward and spend a [redacted] dollars -- million extra dollars knowing you were going to cancel, correct?

A Yes, I think that's exactly right, in some regards. Although, I think -- I don't remember if Mr. Jacobs described it as an option in his testimony.

But, really, what this is describing is, is there a scenario where this course of events may unfold, and, if so, then what might those costs look like.

Q Okay. And in that regard, it might be a semantics issue. I don't know that the Office of Public Counsel is contending that that would be an option that you would realistically do; it's a scenario that you would evaluate. Would you concur with that approach as far as how you would describe this?

A Yes, but let me clarify again. It is a possible scenario. It was, however, evaluated as part of the evaluation of the three alternatives that we -- that we went through as part of the February 15th discussion, and was considered in those deliberations when we made the decision to proceed with the project.

Q Okay. And so putting that, perhaps semantics, behind, you would agree, would you not, that the [redacted] includes dollars that are in both 2010 and 2011, that are subject to cost recovery requests in this round of the docket?

A I would agree that the [redacted] that is on JE-6 of my testimony is calculated by taking the option three incremental costs for 1011 and '12, and adding to that the potential costs that might be implied by a scenario where cancellation was then necessary --

Q Okay.

A -- which is what we described on this table, I think.

Q Page 13, if I can get you to turn there.

A Page 13. Okay.

Q The paragraph starting at line 3 and ending on line 9, it's not your testimony, is it, that Dr. Jacobs says he would have made a different decision based on his assessment of the LNP risks, does it?

A Let me just read this again, so I put it all in context.

Q That's fair.

A My intention with this statement that's outlined on Page 13, from lines 3 to 9, was my assessment of reading Dr. Jacobs' testimony inferred, to me, that he might have made a different decision today than what we did, and that was his reason for putting forth this other set of analysis, other scenario, when, in fact, as I've described, we think that we included that -- well, we don't think -- we did include that as part of our evaluation as we went through the three scenarios.

And so my assessment, and in my opinion, what I inferred from that discussion in Dr. Jacobs' testimony was that he would have made a different decision today.

Q But he doesn't express that in his testimony, that he would have made a different decision? He doesn't say that in his testimony?

A No, in fact, what I say in my testimony on line 4 is, "Indeed, the gist of Dr. Jacobs' testimony is that he would have made a different decision based on his assessment of the LNP risks."

Q And if you had Dr. Jacobs' testimony with you, on Page 10, line 21, he does refer to this as scenario, does he not?

A It is true that on Page 10, if I read this sentence right, it says, "Given the number and scope of significant risks identified by Mr. Lyash, I believe it is reasonable that a company should have considered the scenario in which the company ends up concluding in 2013 that the risk and/or cost of continuing the project is too great and the project is canceled."

Q Isn't it true that Dr. Jacobs either doesn't take issue with or agrees with the company's assessment of the enterprise risks in his testimony?

A Yes, I think that's true.

Q On Page 16 of your rebuttal, on line 7, you state, "He" -- Dr. Jacobs -- "contends that PEF cannot demonstrate now that there will be sufficient clarity or certainty with respect to," quote, many, closed quote,

"of the risks to justify a decision to proceed with the LNP after the COL is issued." Do you see that?

A Yes, I do.

Q Do you disagree with that contention?

A Again, let me just read that paragraph, so we have it in context.

Okay. So can you ask me the question again, just to make sure I understand it? I think what you said was, do you agree with Dr. Jacobs' contention that PEF cannot demonstrate now that there would be sufficient clarity or certainty with respect to many of the risks to justify the decision to proceed with LNP."

Q After the COL.

A -- "after the COL." Is that your question?

Q Yes, that's my question.

A Yes, I would agree that it is difficult to ascertain where some of the enterprise risks we identify may be by the time we get to receipt of our COLA.

However, if you look at those risks in aggregate, I think it is important to recognize, as we did in our evaluation, that some of those risks will improve and some of them may not.

Our assessment today, with what we understood of the risks as they existed today, and our projection looking forward, was that the most reasonable option was

to put the project on a long-term partial suspension, that allowed us to continue while some of those risks were mitigated.

Specifically, things that I think you can have some clarity around are items such as the DCD finalization for the AP1000 design control document, the licensing of the site for Levy in terms of the COLA. Some of those things are going to move in one direction or another, and there is going to be clarity.

They are not going to stay ambiguous for the duration. They're either going to be finished or there will be catastrophic things that will cause them to come off track.

So while I agree that many of the risks you just aren't going to know and you can't say today that's where it's going to go, there are those that you can say, with some clarity, they're going to move in a given direction or they're going to fail totally.

Q Now, you would agree with me, would you not, that by themselves the two risks that you list of the receipt of the COLA -- or the COL -- the receipt of the COL and certification -- if that's the right word of the reference --

A Design certification document; I think it's the DCD.

Q Okay. Whatever version they ultimately end up on -- those -- the uncertainty surrounding those would not be something that would cause you to either stop the project or not start it after a delay, such as the LWA delay; is that correct?

If those were the only major enterprise risks that you face, you would not stop the project or not proceed with the project based on them, because those are risks that you know going into the project you're going to face, correct?

A I'm not sure I agree with your contention, but maybe I'm not fully understanding the question, so let me try to --

Q Here's what I'm asking you about, is you know going into the process of going to get a determination need from the Commission, to go through the process of acquiring [redacted]-plus dollars of land and engaging all of the -- and doing a contract with the -- the consortium, concluding the letter of intent that obligated you on the long lead materials, you would not go all through all of that just because there was a risk associated with the DCD and the COL? You would not do all of that stuff just because there was risk, correct?

A Yes, and let me explain, so I make sure I'm answering your question. The risks associated with the

finalization of DCD, the risks associated with the ultimate receipt of our license as manifest by changes in schedule and the admission of contested hearings, those items by themselves had to be taken in conjunction with other enterprise risks in order to make the best decision about the path forward with the project.

However, what I would say is, those two items have a very critical impact on the ability to determine a schedule and execute because of their integral linkage to the ultimate construction schedule and how you move forward with the project.

Q Well, there is nothing about those two items that you gives you unusual reason to pause, as far as whether you would resume the contract -- the -- you would give a notice to resume under the -- the partial suspension, correct?

A Yes, I would agree there is nothing, currently today, in my -- in our assessment of the DCD, finalization or our assessment of our ult -- the path to ultimate receipt of a COLA that would cause us to question our decision to continue the project on the current path.

Q Okay. And back on your testimony on line -- on Page 16, line 9 through 11, you state that, "Based on this current risk assessment, Jacobs concludes that

cancellation after the COL is obtained is a likely outcome, and there's" -- "and, therefore, it should have been evaluated." do you see that?

A Yes, I do.

Q Can you show me where it says it's a "likely outcome"?

A I don't think I was referring to a specific quotation from Dr. Jacobs' testimony. If I was, I would have included that as part of this statement here.

I think this is consistent with the earlier statements about the gist of Dr. Jacobs' testimony. And my assessment, again, is that his discussion about this alternate scenario and my gist of how I read his testimony was that his assessment was given how he looked at these enterprise risks he would have made a different decision today than what the company made.

Q And what exactly is that different decision that he made?

A My assessment is he would have canceled the project and stopped.

Q If he was the utility manager? You're saying he would have recommended?

A He would have recommended.

Q Okay. But he does not recommend cancellation of the project in his testimony, does he?

A He does not directly in his testimony say that the project should be canceled, I agree.

Q Okay. Now, on Page 16, lines 14 through 16, you do agree with Dr. Jacobs that there are increased risks associated with this project; is that correct?

A Give me the lines numbers again, sir.

Q I'm sorry. Line 14.

A Line 14, yes, I agree.

Q Okay. Now, would you agree that the level of enterprise risks, as it exists today, are such that, unless the overall level of enterprise risks is reduced, that PEF would not proceed with the LNP?

A No, I would not agree with that statement. I think what we have said consistently -- in my testimony and Mr. Lyash's testimony -- is that we made a reasonable and prudent decision, assessing the enterprise risks that they existed at the time of that decision, to execute a long-term partial suspension for the project and continue it on the modified schedule.

I would not agree that those risks are in a state today that would have led us to a different conclusion.

Q Well, I guess my question is a little different than that, is if they don't improve -- in other words, the overall level of enterprise risk is not reduced --

you would not be in a position to go forward with the Levy nuclear project; is that correct?

A No, I don't agree. I think what we have said in our testimony is we will continue to evaluate those enterprise risks going forward, and it's -- you know, I think if I can get to the gist of where you're going here, I think the problem is or the challenge is you have to evaluate those enterprise risks in the context of the environment you're in.

That's part of the reason why I challenge Dr. Jacobs' testimony in regards to what do you know today versus where you might be in 2013.

What we did, and what I think was reasonable and prudent to do is do our best assessment of those risks today, put the project on a path that we think deals with those.

And if those risks were exactly the same in the future, you would still have to evaluate them against the other factors and the other things that could develop between now and then, and the environment at that time, and, again, make an informed and reasonable decision about how the project moves forward.

Q On Page 16, line 16, you state that, "PEF also agrees with Jacobs, that PEF cannot demonstrate at this time that there will, in fact, be more certainty with

respect to these risks by the time PEF obtains the COL for the LNP, and that it is equally likely today that these risks will increase as decreased by that future date." Do you see that?

A Yes, I do.

Q And do you still agree with that?

A I still agree with that.

Q So if it's as likely as not that enterprise risks will increase, then doesn't that say that it is less likely that you will proceed with the Levy nuclear project, as you sit here today?

MR. WALLS: Object. Mischaracterizes testimony, but go ahead.

THE WITNESS: No, I don't agree. I -- again, I'll go back to my previous statement. I think it's incumbent upon the company, as a utility that is making reasonable and prudent decisions, to continue to evaluate those enterprise risks.

Can we, with certainty, today say that those risks, in aggregate, will all move in one direction or another between now and the time of receipt of our COLA?

No, no one can predict that for some of the things. No one knows for certain when the economic recovery will start. No one knows for certain where

a federal policy and climate change and nuclear construction will be in the future.

Are there some things that we will know one way or another during that timeframe? Yes, as we've already described, associated with design finalization and licensing.

I think our job -- and I think the company's position is -- our job is to continue to evaluate those enterprise risks, whichever way they move in the context of the environment that exists at the time, and to make the most reasonable and prudent decisions in terms of the project.

BY MR. REHWINKEL:

Q Let me get you to turn to Page 18. Actually, I'm sorry. Page 17. And, again, this -- you already testified to this earlier, but the Q and A that starts on line 4 and continues on line -- through the end of that page and beyond, the crux of it -- and starting on line 12 -- is that the information that is shown on JL -- JE-6 was fundamentally embedded in the presentations that Senior Management reviewed, looking at the options, and, thus, the company considered that scenario in its decision-making; is that fair?

A Yes, I agree. As we discussed prior, what this testimony on Page 17 -- basically starts at line 12 --

says is a fundamental part of the presentations that were made to the SMC really began back in October of 2009 -- embedded in the presentation that's included in Mr. Lyash's exhibit as JL-6; that's the February 15th SMC meeting -- that inherent in those discussions was the potential scenario that the project may have to be canceled at some time in the future.

That was fully evaluated and embedded as part of the cancel-the-project-now discussion, because you could not really have a discussion about that alternative, just opposed to the other two, without considering the fact that, well, what if -- as you look at these risks moving forward, what if things don't happen the way you anticipate or the way we were posturing the project, what will then be the ultimate impact on the overall costs of the project.

Q Is it your testimony that the senior decision-makers in the company, the Senior Management Committee and the Board of Directors, expressly discussed this scenario in their decision-making?

A I can't speak to the Board of Directors' meeting, because I was not there. However, in the SMC meetings, I do know part of the discussion was what would be the impact of cancellation in the future and how would that play into the total cost of the project.

Q If the company -- well, does the company's decision-making with respect to large projects like this, does it -- does it seek to involve probabilistic inputs, like, what are the -- what are the likely things to happen in the future, such that we should plan or not plan to meet them, or spend or not spend to meet them.

A If your question is, do we include probabilistic analysis in our risk assessment, the answer is it depends. In some cases, that's very appropriate and it's applied to the evaluation of project risks, for example.

In terms of enterprise risks, it's a little bit harder to do that in some cases, because it's much harder, number one, to assign probability to some of those factors; and number two, to necessarily assign and expect that monetary value or monetary impact to some of those factors.

So, really, what you end up -- and I think part of the reasonable and prudent decision-making is to do both the quantitive and the qualitative assessment of the various alternatives with those factors in mind and those options in mind, and that's exactly what we did in making our decision to continue the project.

Q Well, if -- is it your testimony that the company never conducted this type of analysis? We know

that we have certain minimal costs to terminate the project. We know that [redacted] is what it would cost to exit the project.

If we take the next step and go -- we -- we continue the partial suspension with the Amendment 3 terms, can we proceed to get the COL and the other strategic land acquisitions and licensing activities that's going to cost us another X-hundred-million dollars?

And I think that's characterized -- well, and we're in an advanced recovery state, whereas long as we're proceeding with the project we can spend money and have it recovered from the customers, that it's worth it for us to spend another 1 or $200 million, just so we have the option when we get to the COL point.

That's a very convoluted question, and I know it's complex, but I'm trying to figure out if that kind of analysis occurred. Do you understand what I asked?

A I understand your question, but let me repeat it back to you and break it into pieces, because there is parts I don't agree with the contention, so I'm going to start with the last piece and work my way back up, I think, to the top.

So your last comment was along the lines of, well, because you're in an advanced recovery state, did

you think it was worth it to spend $200 million, 1 or $200 million just to maintain the option.

I don't agree with that characterization at all. We are very clear in our company that our big job is to make reasonable and prudent decisions that are in the best interest of the customers as good stewards of the rate-payer dollars.

That is -- that is clearcut from our manage -- from our boss all the way down, so I don't agree with that characterization at all, that that's how we think about this project.

As we looked at the options for the project and we evaluated the various enterprise risks -- to go to your part of, well, you knew what it was going to cost to terminate the project.

If we took the next steps, we knew that there was going to be some additional costs incurred. We certainly did that in light of the fact that there was always that eventuality that ultimately the project may need to be canceled.

So as we evaluated the various enterprise risks facing the project, as we looked at the benefit of this project in terms of its long-term impact on the economic stability of Florida, on the long-term benefits it provides for the customers in Florida, we balance that

benefit versus what we saw as a risk and made the decision that it was in the best interest of the customers to continue to move forward with the project, utilizing the eliminative partial suspension.

Q Okay. When the company was making its decision about the options that were before it and, I guess I should say, the embedded fourth scenario that Dr. Jacobs asked you to consider, is it fair to say that you were aware that the fourth scenario could, in fact, occur?

A Yes, I would say it is fair to say that an integral part of the discussions was the ultimate eventuality that the project may need to be canceled at some time in the future.

That was embedded in the discussions, certainly the numbers associated with cancellation were clear, and they were linked to that conversation.

Q Okay. So the decision-making -- the decision-making is -- in your testimony was this, that [redacted] number that's on line 3 of Page 20, your testimony --

A Okay.

Q -- was a number that Senior Management was aware of; is that correct?

A That is a number that Senior Manager -- Management was familiar with, based on the fact that we

had shown them the cancellation costs today, as part of the -- that option to cancel, and we had shown them the incremental costs that would be incurred during the period 2012 -- excuse me -- 2010 through 2012.

It was clear to them that cancellation after that point would incur many of those same costs that we were going to incur with cancellation today.

Q So with where you find yourself, or found yourself, in early 2010, when this decision-making was going on, with the project in an extended partial suspension, is that a fair characterization?

A When this decision-making was going on, the project was actually in a partial suspension in accordance with the terms and conditions of the contract.

We exercised that favorable term and condition that we had negotiated originally in the contract to deal with the uncertainty or potential that we might have to suspend.

It wasn't until after we had negotiated and executed the Amendment [redacted]

Q Okay. But looking at those options ahead and recommending to Senior Management the extended partial suspension scenario, your testimony is that you were

aware of the fourth scenario could occur, and if it did occur, then [redacted] of customer funds would be wasted, from the customer's standpoint?

MR. WALLS: Object to the characterization.

THE WITNESS: Yeah, I don't agree with the characterization that the funds would be wasted. I will agree that that was part of the analysis. It was part of the discussions, the -- as we've already discussed, the eventuality that the project may need to be canceled at some time in the future. That had to be weighed against what were -- what we saw as the long-term benefits of the project for the customers.

So I would not agree, though, with the characterization that in either case those funds would be wasted. That's not what we do.

BY MR. REHWINKEL:

Q Would you agree that with respect to this project, the Levy nuclear project, that in some objective sense that the greater -- well, let me say this -- let me start over again.

Would you agree that with respect to the LNP, that in an objective sense, that the greater the likelihood that the project is ultimately never going to generate electricity and, thus, be canceled, the more

significant from a customer's standpoint, any expenditures become on a going-forward basis?

A So let me make sure I've got your question right. So I think what I heard you ask is, would you agree that with respect to the Levy project that the likelihood that the project is not completed and never generates electricity -- and I guess I didn't get the last part -- it becomes more --

Q Well, I said the greater the likelihood.

A The greater that likelihood becomes the more significant the impact on the customers; is that your --

Q Any expenditure becomes to the customer.

A I guess I don't agree with the whole characterization, because it's not consistent with our approach to running the project in the first place. I mean, we make decisions based on what, in our opinion, are reasonable and prudent investments on behalf of the rate-payers.

Is it true that if a project has to be canceled, that is a detriment in terms of costs that are incurred for the customers, yes, but that's no different necessarily for any project.

I mean, we've had other projects in Florida that have had to be canceled, for which the customers bore the cost of that cancellation.

So, yes, I mean, we never want to see that. Is that certainly part of how we plan our projects? No, our intention is to deliver this capability to the benefit of the customer.

Q Well, would you agree that the greater the likelihood that the project is ultimately not going to generate electricity and, thus, be canceled, that the less relevant to the decision-makers are the punitive benefits of the project?

A I still don't think you can characterize it that way. That's a -- that's maybe a distinction without a difference. The -- what we needed to do as a company was evaluate the various risks that faced the project at any given time. That's our job every year, to make sure that the decisions we made are reasonable and prudent.

Those risks will move in different directions over time, as we've discussed. We have to evaluate those risks, as well as all of the factors that affect execution of the project against the environment that exists at the time, and make what, in our judgment, is a reasonable and prudent decision that's to the long-term benefit of the customers. So I guess I just don't agree with the context or the connection to the question.

Q Well, the benefits that you discuss on Page 20

of your rebuttal, beginning on line 8 -- or that you mentioned, beginning on line 8 through line 18 -- those benefits are meaningless to the customer if the project is ultimately never going to be completed; isn't that correct?

A Yes, I would agree that the benefits of a nuclear project are meaningless if the nuclear project is never completed. Likewise, I would agree that the ability to capture those benefits are meaningless if a prudent decision is not made to continue a project that is reasonable to continue.

Q Okay. All right. Let me move on from your LNP. In the main, I want to talk a little bit about transmission, and then we can wrap this up.

A Okay.

Q And Mr. Wall was good enough to share with me a paper copy of your response to interrogatory -- well, the company's response to Interrogatory 90. Do you have that with you? You can use that one, and I also ask you to turn to the 2008 IPP, if you could. Do you have that? If it's easier, you can just use my extra copy.

A No, that's okay.

Q Now, I think the interrogatory response -- well, let me start this way and let me ask you: When the Levy project was being conceived and developed, it

was more than just building the nuclear plant; it was providing adequate transmission to get the generation out to the customers, correct?

A That's correct.

Q And is it also true that what the company did was to reasonably combine existing non-Levy needs with Levy needs to achieve efficiencies in developing and building the increased transmission capabilities?

A Yes and no. I just want to make sure we're clear. The way the needs for the transmission portion of the Levy project were developed were based on a system analysis that was done specific to Levy.

So we clearly identified the requirements for upgrades in the existing transmission system, that were there only because of the fact that we were doing the Levy project.

It is true that in some circumstances there were opportunities to capture efficiencies for the customers, both on the traditional base rate side of transmission construction and on the Levy side of construction, by combining efforts at a single location, or not redoing work that was already planned as part of an existing system upgrade.

Q Okay. And were you part of that process?

A Yes, I was.

Q Okay. Now, what part of that process -- what were the non-Levy aspects of the transmission system upgrades and improvements were incorporated into the Levy transmission portion of the project?

A The only piece of significance that I recall was associated with Central Florida South Substation Expansion. And the reason that one was somewhat unique is the Transmission Operations Group, as part of non-Levy work, had already planned to add capacity at the existing Central Florida substation.

When we did the systems analyses and the work necessary to determine the requirements for the new Levy project, we identified that we would -- we would build a brand new substation in Central Florida, referred to in most of the documentation, you'll see, as Central Florida South.

With that expansion and the timing of that requirement, in advance of Levy -- or that need for Levy and that timing, the TOPD organization looked at their later work and said if we incorporate what we needed to do at Central Florida, and instead of doing it there, do it on the new Central Florida South land and station, we can do that more cost effectively for the customer.

So we developed a project plan and a strategy that tied those two projects together, but at the same

time had very clear delineation of what costs were associated with Levy, because they were there, but for, Levy, and what costs were part of the baseload of the regular Levy transmission project plant.

Q Okay. And --

A I'm sorry. I said that wrong. A part of the regular -- not the Levy transmission, the regular Levy -- or, excuse me -- the regular transmission work.

Q Okay. The Interrogatory 90 answer, can you identify in there what were the Levy -- I mean, the non-Levy transmission costs that were moved out of the Levy project and not being requested for NCRC recovery?

A Yes, I can. I think, you know, the specific details of the accounting here would probably be better answered by Mr. Hardison -- I'm sorry -- Ms. Hardison or Mr. Foster --

Q Okay.

A -- but I can give you the basics of how we did this. So there's a set of costs here that are depicted on the exhibit here that's, I guess, Page 101 to the back of the interrogatory that's the spreadsheet, and what we did when the Levy project schedule changed as a result of the long-term partial suspension, the need for Central Florida South's substation and the work we were planning moved.

It moved beyond the need that the Transmission Operations Group had for their work that had originally to be planned at Central Florida, that was now going to be part of the Central Florida South expansion.

So we were faced with the decision of how do we manage that from the accounting perspective, and the decision was made, with the help of our accounting team, that rather than continue to try to split those costs, we would transfer all the costs that were associated with Central Florida South, and any of the land acquisition work that we had done, and move those costs out of the Levy project, move them into transmission as part of their base rates type work that they're doing and just leave that there, because that's -- their asset will come in service first.

Now, there's still going to be a set of work that we're going to need to do for Levy, but when it comes time to do that work and plan it, then we'll add those costs back into the plan.

And we did continue to include them in our estimates; we just took them out of the actual recovery filings, because it didn't make sense, and those are all out. As I understand it, they're out -- they were taken out in '9, and there was some transition costs in '10 that we took out as well.

Q Okay. And what were -- what were the amounts for about a year? I think they're listed in the -- in the interrogatories here.

A Yeah, I think they're in here. Yeah, it was 97,116 in 2008; 6,769,674 in '09; and zero dollars for 2010, exclusive of any reclassification credits that we might have to post later in time.

Q Okay. Now, if you could turn to Page 20 of the 2008 IPP.

A Okay.

Q There are -- this is a table 4.4(b) estimate transmission project cost through 2009, dollars in millions. Do you see that?

A Yes, I do.

Q Now, just so I understand, you show under the substation elements, Central Florida South Substation, it says, "PTD December 2008." Is that --

A That was project to date --

Q Okay.

A -- through December of '08.

Q And it shows $5.1 million. Now, is this something I need to ask the accountants about whether these are dollars that are attributable to 2008 for purposes of this IPP, that were booked or accounted for in 2009, or are they different dollars than the 97,000.

I think the 97,000 is probably for the -- for acquisition on an option or a piece of land; is that right?

A Yeah, I think so. I think the majority of this is going to be land purchase that occurred in 2009. You know, to be fair, to do this right, we really need the accountant to go through this, because I don't have the detail of when -- which -- you know, when these costs were incurred. I know what we did for work scope, but I'm not certain on that number.

Q I will ask you the questions, and if you don't know the answer, that's certainly acceptable to me. I know you're helping with these as an accommodation and I appreciate it.

My other question would be the lines above the substation. I see, "Central Florida South 500KP line." Now -- and it shows total costs through 2009, $35.9 million.

Is it your testimony that those relate -- those are, but for, costs that only relate to the Levy project and not to any trans -- any of the traditional transmission line work that's not related to Levy?

A Yes, this is referring to the 500KV line from Levy to Central Florida South. It was basically going to come south across Inglis and then run east to Central

Florida.

And, again, remember also, I think, these are estimates that were billed at the time in 2008, so the actual costs through 2009 are not these numbers, because this work did not proceed on the schedule that was anticipated when the IPP was written in 2008.

Q So regardless of whether these are allocable or not to Levy or to the transmission operations, these costs ultimately didn't occur anyway?

A They ultimately did not occur, because we have -- you know, a portion of them did to complete 30 percent engineering; but other than that, they did not move forward.

And, again, with the exception of Central Florida South substation, that's really the only piece where there was an accounting change.

Q Okay. All right. I appreciate your candor and your answers today, and your making yourself available.

MR. REHWINKEL: And I have no further questions with Mr. Elnitsky, so whoever is next up, go, if you're still there.

MR. BREW: I'm still here. This is Jay.

MR. REHWINKEL: Hey, Jay.

MR. WHITLOCK: This is Jamie. I'm still here.

MR. BREW: I just have a couple.

MR. WHITLOCK: Jay, you can go ahead, if you want to.

MR. BREW: Sure. I appreciate it.

CROSS-EXAMINATION

BY MR. BREW:

Q Good afternoon, Mr. Elnitsky.

A Good afternoon, Mr. Brew.

Q Can you hear me okay?

A Yeah, I hear you just fine, sir.

Q Thank you. I admire your stamina.

A No problem, sir, anytime. This is part of the process. That's why we're here.

Q Okay. This will be brief. On your direct testimony, Page --

A You cut off there, sir. The last thing I heard was "direct testimony."

Q Oh, Page 28, line 18.

A Okay.

Q The answer that begins on line 18 says that -- or line 19, that, "We recommended to the SMC, the Senior Management Committee..." Quick question: Who is "we"?

A Let me just read the paragraph, so I get it in context, sir.

Yeah, in that context, sir, the "we" refers to the Levy nuclear project team. I did the presentation

with Mr. Lyash to the SMC. However, it was based on a set of work done by our overall project team of which I'm the lead.

Q Okay. And the presentation that you're referring to, is that the February 15th presentation that's shown on JL-6 of Mr. Lyash's exhibits?

A Let me just make sure I get the timing right. I'm just checking the overall testimony, sir, so I get the right timing here to make sure I'm familiar with which brief.

Q Sure, and I appreciate that. I'm just actually trying to get a handle on that time, so take your time.

A Sir, could you go back to what page you started on. I want to make sure I've got my context here. So you were referring to --

Q I was looking at Page 28 of your direct testimony.

A Okay. Page 28. I just want to make sure I --

Q And the question was, "What recommendations did you make to management concerning the options considered for the LNP?

A Yes. Yeah, let me go back --

Q It goes on to say that, "We recommended that the SMC pursue the option," and then you described the go-slow option.

A Yeah.

Q And my questions were, who was -- who made the recommendation, which you answered, and my next question was, when that? Was the February 15th presentation that shows up in Mr. Lyash's exhibits?

A I -- I -- this is referring to the February 15th presentation that showed up in Mr. Lyash's exhibits.

But just to keep it in context, maybe in terms of the timing here, there is -- we originally went to the SMC in October of 2009, and that presentation is in the production of documents that was to discuss this option of engaging with the consortium about the feasibility of even pursuing a long-term partial suspension.

So that -- that discussion was the first round of conversation with the SMC to see if we could engage in the start of negotiations to get to an Amendment.

When we had proceeded to the point with the consortium that we had that, what we thought was the ability to close the deal on that, we went back to the SMC, both on February 15th and March 8th, with our recommendations to move forward with the actual execution of that Amendment.

Q Okay. So if I understand it then, the October

'09 discussion would have outlined sort of the range of options and what you need to discuss with the consortium, and the various sensitivities that you asked them -- the consortium to perform?

A Not exactly. The October '09 presentation was done -- and, you know, if I can take a little bit of time, let me just sort of walk the timeline.

The October 2009 state is we have received the scenario inputs from the consortium. We have analyzed the scenarios that they provided. This was specific to the 24-month and 36-month situations -- or scenarios.

We had continued to evaluate the various other factors affecting the project, including some of the enterprise risks we discussed earlier, and we went to the SMC and recommended that we likely needed to at least evaluate an alternative associated with the longer term partial suspension.

What we did not know in October was whether or not the consortium would even entertain such an approach, and it wasn't until after extensive negotiations that we were then able to come back to Senior Management in February with a detailed analysis of the three options that were available to us, based on those preliminary contract negotiations and a final recommendation on how to proceed.

Q Okay. So from a timing perspective then, it would be in February of 2010 is when you went to the Senior Management Committee with the options that are outlined in Mr. Lyash's exhibits and made the recommendation of which of those options to pursue and how?

A That's correct.

Q Okay. And then the decision of how to proceed, was that made by the Senior Management Committee, or made up by the Board of Directors, or who made the ultimate decision?

A The process that we went through in accordance with our governances, as we previously discussed, the project team made the recommendation to Senior Management that based on the fact that we had been successful in our negotiations to that point with the consortium around an approach that allowed us to execute a longer term partial suspension while maintaining the favorable terms of the existing contract.

We, as a project team, made the recommendation to the SMC that we should move forward with the option to execute that longer term partial suspension.

The SMC, then led by Bill Johnson, our CEO, and Jeff Lyash then took that recommendation to the Board of Directors.

And if I'm not mistaken, that was in a March 17th discussion with the Board of Directors, where ultimately the Board approved that path -- our path forward to finalize what ultimately became Amendment 3 to the EPC contract.

Q Okay. Fine. Can I refer you back a couple pages, to Page 26 of your direct?

A 26 of my direct, yes, sir.

Q And you have a question that begins on line 6, "Did the company's analysis include a comparison of the costs of the LNP option?" Do you see that?

A Yes, sir.

Q And you explained in that answer that -- for each of the three options, the company considered the costs being incurred over a three-year period, from 2010 to 2012." Do you see that?

A Yes, sir.

Q And we talk about the three options, which would be cancellation, continuing with the full-speed-ahead approach or the option three, go-slow approach?

A Yes, sir, I agree that what's outlined in my testimony is consistent with the three options that were in that February 15th brief, specifically cancellation of the EPC and the overall project; I think what we

called the base case, proceeding as quickly as possible or full speed ahead; and then continuation with a longer term partial suspension.

Q Okay. Did it -- did you provide to Senior Management any cost comparisons, other than that three-year period? Did you do a five-year look, for example?

A In terms of the options for costs being incurred during the partial extension period, we focused on 2010 to 2012, and the reason for that is our assessment at this point in time that the likely timing of receipt of our combined operating license was in the mid- to late 2012 timeframe.

The reason that we focused that decision in that manner is that we had proceeded to the point of negotiations of Amendment 3 to the contract, that was going to provide for the extension of the partial suspension period out through [redacted] beyond receipt of the COLA.

So our assessment was evaluation of the 2010 through the 2012 period would cover that duration of partial suspension.

Q I understand. Thank you. But my question is whether or not additional analyses for other timeframes were also provided.

A There -- there would have been -- it would have been inconsistent with the approach we were taking with the Amendment to the contract, to evaluate -- if your question is longer term partial suspension beyond the three years, no, because that would not have been consistent with the contracting strategy that was in alignment with these option evaluations.

Q Okay. On at the bottom of Page 26 and the top of Page 27, there is a -- your answer discusses the project cancellation option. Do you see that?

A Yes, sir.

Q And on the top of Page 27, you talk about some items that would have to be completed, including some long lead time procurements?

A Yes, sir.

Q And I think you may have discussed this a little bit with Mr. Rehwinkel before, but I wasn't clear so I thought ask it again.

Do the cost of purchase order dispositions, that are described in your testimony, include any salvage estimates for reselling long lead time equipment that may be procured?

A Just to make sure -- yeah, just to make sure I've got your question correct, so the cost of purchase order disposition estimated at [redacted] on line 4 of

my direct testimony was our assessment in February of 2010 as to what it would take to basically cancel, and/or dispose, or stop work basically on purchase orders.

It did not take any credit for the possible resale of any items that were in a stage that could be resold. We had not proceeded far enough along the discussions with the vendors at that point to draw any reasonable conclusions about potential resale. I --

Q Have you subsequently had all discussions along those lines?

A [redacted]

Q Okay. On Page 29 of your direct, the question, "Why did you make this recommendation to Management?" Do you see that?

A Yes, sir.

Q The answer begins with, "This option best met the company's objectives, given the minimum schedule shift and enterprise risks the company faced on the LNP."

The company's objectives, my question is what are they and are they exactly the same objectives that are described on your Exhibit JE-5 in your rebuttal?

A JE-5 -- I don't think I have a JE-5 in my book in the rebuttal. Let me just read through it, sir, so I make sure I'm accurately answering your question.

Yes, sir, I would -- yes, sir, I would agree that the -- in my direct testimony, when I referred to "this option best met the company's objectives," those are consistent with what we provided in my rebuttal testimony under JE-5, specific to the concepts of reduction of near-term customer price impact, the continuation of nuclear generation is a viable option for future fuel and carbon emissions savings, as well as all -- as compared to all natural gas-powered generation, preservation of the beneficial terms and conditions of the contract, and movement of the risks past the COLA receipt.

I will add, though, that, you know, we address here in the enterprise risks faced by the company, because I also discuss in my direct testimony how this option aligns with our evaluation of some of the other risks that are also facing the project at that point in time.

Q So to the extent that I wanted to discuss with

you later what are the company's objectives with respect to LNP, it would be those listed on JE-5, as supplemented by the company's taking into account the change in enterprise risks; is that right?

A I guess would you ask your question again? I just want to make sure I'm clear.

Q Yeah. I've got two reference to the company's objectives with respect to LNP, and I just want to make sure if we talk about it at the hearing we agree what we're talking about.

So to the extent I'm asking you about the company's objectives, we would talk about the objectives as outlined in that discovery response, which is in JE-5, and what you just said as supplemented by the company's view of the changing enterprise risks?

A Yes, but I think we've got to be careful when we talk about the company's objectives related to the Levy project.

This is specific to the discussions of our objectives in relationship to our evaluation of the viable past forward.

I would argue -- or I would also state, rather, that in terms of the overall reasons for entering into the Levy nuclear project in the first place, I think those go beyond this limited list.

I mean, we're in this project because of our evaluation and long-term benefits for fuel diversity and the long-term benefits to the customers' costs going forward.

These -- these options were specific to how we eval -- or, I'm sorry -- these objectives were specific as to how we focused our evaluation in terms of the best path forward for the project.

Q Fair enough. I understand that. This is in the context of recommendations concerning the three options under consideration?

A Yes, sir.

Q Okay. Thank you.

Now, with respect to the recommended option, which was to proceed -- to pursue the COLA while suspending other activities, this partial suspension, am I correct, that under that approach, one of the company's aims was to defer significant capital investments until after receipt of the COL?

A Well, first of all, let me -- the first opening part of your question you said that the approach we took focused on the COLA and suspended other activities. That's not exactly right.

The approach we took selected and placed in action those activities that were necessary to keep the

project on a viable path for a 2021 in-service, so there are some other work items that continue as part of execution, that are above and beyond for just those required for the COLA.

So I don't want to leave you with the misrepresentation that that's the only work that goes on. We do have an active project and a set of work activities that are consistent with the schedule that we've established for the project.

In terms of the second part of your question, the deferring of secondary capital, it is true to say that one of the things we evaluated was what was going to be the capital requirements during the timeframe 2010 to 2012, and what those capital requirements then equated to in terms of price impact for the customers during a period of continued economic downturn.

Q Okay. But -- and I don't want to get hung up on semantics either, but I just -- there are significant capital expenditures for that period that you are deferring until after receipt of the COL, right?

A You are correct. There are capital expenditures that would have been incurred on a full-speed-ahead path that will not be incurred until after receipt of the COLA, because of the way that we've structured this long-term partial suspension.

Q And once you receive the COL, will the capital expenditures be compressed in order to adhere to the schedule compared to what was previously estimated in terms of the capital spending pattern and cash flows?

A No, sir. In fact, part of our analysis and the discussion we went through earlier about how the estimate was built and the associated cash flow is that, fundamentally, the process will be to move the schedule and the milestone payment schedule, and then the associated cash flow out in time to support the commencement of the bulk of activities after the receipt of our license, but that doesn't substantively change the shape of that capital requirements curve during the timeframe of project execution.

Q Okay. In your rebuttal, Page 31 --

A Okay.

Q -- do you see the last of the pending COL's being reviewed by the NRC?

A Yes, I do.

Q Are you generally familiar with the status of those various projects?

A Yes, I am.

Q First, are all of these Toshiba, Westinghouse, AP1000s being proposed as twin units?

A Let me just go through the list here.

Certainly, Southern Company's is a twin unit; the Summer projects, my understanding, is proposed as a twin unit in the COLA. They have a -- I think a 36-month schedule shift between their two projects. The Lee 1 and 2 was for twin units. I know Turkey Point and Harris were twin units.

The one I'm not certain about -- I'm pretty sure that the TVA project was also, too, and it listed here as Bellefonte 3 and 4, so I'm going to assume that that implies two projects. So, yes, I think they are all twin projects, but I'm not a hundred percent certain on Bellefonte.

Q Do you know what the status of Bellefonte is? Is TVA moving forward with those units?

A I think -- and, again, just my understanding, since I'm not intricately involved with TVA or their deciders, is that they are still evaluating whether they will move forward with the Bellefonte units first or whether they will proceed with the completion of construction of their projects that were not completed in the '70s under the previous part 50 process.

Q On the -- you've got units Unistar, Calvert Cliffs 3 and Nine Mile Point 3. Do you know if Unistar has indicated whether it intends to proceed with Nine Mile Point 3?

A Sir, I don't know, but I do know that they still have an active submission and an active licensing process. So if your point is, you know, are all of these projects on this list definitively going to move forward with construction, you know, I can't answer that, but what I can answer is all of these projects have been submitted for licensing and are moving forward through the licensing process.

Q And you don't -- you're not offering this list for any other purpose than that?

A I offer this list as I describe in my testimony, that the licensing process is moving forward, and in many of these cases actual projects are underway.

Q Okay. Thank you, sir. That's all I have.

A Thank you, Mr. Brew.

THE WITNESS: Take a short break?

MR. REHWINKEL: Yes.

MR. BREW: Charles, are you going to take a break?

MR. REHWINKEL: Yeah, we need about five minutes, five or ten minutes. We'll just leave the phone on.

(WHEREUPON, a brief recess was taken.)

CROSS-EXAMINATION

BY MR. WHITLOCK:

Q Good afternoon, Mr. Elnitsky, Jamie Whitlock. How are you, sir?

A Hey, Mr. Whitlock. How you doing, sir?

Q I'm fine. Thank you. I just have a few questions for you.

Today, and also yesterday with Mr. Lyash, obviously, I know you weren't present for that, about enterprise risks.

A Yes, sir.

Q Can you define that for me?

A Well, we have listed, in both my -- both my testimonies, a set of risks that we classify as enterprise risks.

Primarily, they are risks that are outside the immediate control of Progress Energy or the company, but, yet, impact the overall Levy nuclear project; and we've, you know, in several places and testimony, listed those as things such as long-term and downturn in the economy, or factors such as at that, that we don't directly control, but yet still have an impact.

Q So they're risks that impact the project; is that accurate?

A Yes, sir, I think they are risks that -- you

know, in the context of what we are discussing here today have impacts on the project. I think, though, that they also, in some circumstance, have broader impacts on the company as a whole.

Q So impact on the project and impact on the company, but it doesn't include any impacts on your rate-payers, righty?

A I'm not sure I follow the characterization. I -- certainly, those enterprise risks, if they adversely impact a project, would have effect on the rate-payers and the customers that actually -- that ultimately bear the burden of cost for this project.

Q Can you show me where in your testimony you identified the effect of that on rate-payers as an enterprise risk?

A Give me just one moment.

Sir, I think the quickest thing I can point to -- and I'd have to go back and read through both the rebuttal and the direct testimony again -- but we do, in several -- I do rather, in several places, such as on Page 16, talk about enterprise risks associated with the economy.

And, certainly, in other presentations and briefs that we've done, we've talked about the economy and its impact on the customer's ability to deal with

the associated rate impact resulting from changes in the Levy nuclear project.

Q Okay. Yeah, that's fair enough. I certainly don't want you to go back and read through your -- all of your testimony.

A Well, I'd be happy to do that. I mean, to go right now and look at pages where we specifically talk about customer rate impact, I'd probably point to some of the presentations we've given as the part of the attachments.

Q Sure, sure, I appreciate that.

And another question I wanted to ask you was a question Mr. Rehwinkel had asked you earlier, and I think I asked Mr. Lyash yesterday, and y'all both pretty much gave the same answers, so maybe I'll phrase it a little bit differently.

Tell me under what circumstances Project (sic) Energy Florida would not are proceed with the Levy nuclear project and would cancel it or terminate it, however -- however you want to phrase it? Under what circumstances would Progress Energy Florida cancel the Levy project?

A Well, first off, let me thank you for first referring to us at Project Energy Florida, because to some extent that's exactly what we're talking about

today, but I do understand you meant Progress Energy Florida. It's a big part of the company right now, is this project.

Q I apologize.

A No, that's fine.

You know, I think the best way to answer that, sir, is to say we see part of our job as to continue to evaluate the various factors that affect this project, whether it's the technical and regulatory feasibility moving forward as part of the filings we do here in this annual process, or it's our assessment of the various enterprise risks that affect the project, and our job is to look at those in the context of the environment that exists at the time.

I think it's -- I don't want to say inappropriate, but maybe the right word is it's difficult to sit here today and say what thing might happen, or what risk might change, and what direction, and what environment at some point in the future that would ultimately and definitively say you had to cancel the project.

That's a difficult thing to answer, because you really have to evaluate all of these factors in the context of the environment that they do exist.

That said, certainly, if we ultimately could

not obtain a design certification for the AP1000, or, certainly, if you couldn't get a license ultimately to build this specific technology, that might cause us -- or would cause us to have to change our technology choice and evaluate a different path.

But to sit here today and specifically point at an aggregate set of enterprise risks and say that anyone of these would mean the project doesn't go forward is just very difficult to do.

Q And I understand that, and I thank you for the last part of your answer, because the first part was the exact answer I was trying to avoid getting, but we'll move on.

If you could, do you have your rebuttal testimony handy?

A Yes, I do.

Q Okay. If you could look -- let's start, I think, about -- if you could turn to Page 10, please. Let me know when you're there.

A Yes, sir.

Q And there's a question that starts on line 6 --

A Yes, sir.

Q -- it says, "The staff or intervener witnesses assert in their testimony that any of PEF's actual estimated 2010 costs are unreasonable." And then on

line 8, how do you answer that question?

A I say no.

Q Okay. And then moving on down to line 20, do you see the question there?

A Yes.

Q And that's the same question in regards to PEF's projected 2011 costs, and how did you answer that question?

A I answered that question as no also.

Q Okay. And now if we could go over to page 11.

A And, sir, if I could, just to clarify, I think you have to also read the rest of that statement in both of these questions before we go forward, because we do say -- I do say in both cases, again, referring back to the question that begins at line 6, I qualify that as, "No, none of the staff intervener witnesses identify any specific, actual or estimated, 2010 Levy nuclear plant cost that is unreasonable."

And I say the same thing again at line 20 in response to that question, that none of the staff or intervener witnesses identify any specific costs that are unreasonable.

Q Okay. And so maybe you just answered my question for me. If we turn over to Page 11, beginning on line 14, that starts a new paragraph, and you --

you're talking about the witness, Cooper and Gundersen, and you state that, "they argue the LNP is not feasible, that it should be canceled, and that customers should not have to pay any," quote/unquote, "additional costs." Do you see that?

A Yes, I do.

Q Okay. And I guess I'm just a bit confused. I mean, certainly, additional costs would refer to 2010 estimated in 2011 projected costs, would it not?

A Would you rephrase your question, sir? Just say your question again. I'm sorry. I was reading the --

Q How do you define additional costs?

A Well, I think I define them in the context of the quotation here from Mr. Cooper, but let me look here at the actual testimony.

Q Of Mr. Cooper's testimony?

A Yeah, let me just pull that out. Hold on a second.

Yeah, the reference I make -- and I'm not going to each one of these -- but if you go to Cooper's testimony on Page 3, lines 1 through 6, he actually uses the words at -- you know, it starts at line 1, what his responsibilities are, and it goes on to line 4.

It says part of -- to paraphrase, part of his

responsibility is to determine whether or not it is reasonable or prudent for FP and L and PEF to incur any additional costs, so I would defer to them in the same manner that they're referenced in that -- in the base testimony.

Q Okay. And it's certainly a reasonable interpretation of the term additional costs, to conclude they refer to 2010 and 2011 costs, correct?

A I would agree that is one reasonable interpretation of what that means.

Q Okay. If you could, if I could get you to flip over to Page 26, I believe. Are you there?

A Yes, sir.

Q Okay. I'm sorry. And starting with that second paragraph on that page, the first full paragraph starting on line 9 --

A Yes.

Q -- it says, "SACE and Gundersen claims there is a potential, significant safety problem with the AP1000 containment. This claim is based on an alleged technical safety issue with the AP1000 design that he and SACE created."

Could you just kind of give me the -- your -- the factual basis for that statement, that Mr. Gundersen and SACE created this, what you refer to as an alleged

technical safety program?

A Yeah, give me one moment to pull out Mr. Gundersen's testimony.

Q Sure.

A The basis of that statement, I would refer you Mr. Gundersen's testimony. It's actually in this attachment AG-7, page 1 of 54, where if I read and understand the composition of the AP1000 Owners Group -- or, I'm sorry -- oversight group, it includes the Southern Alliance for Clean Energy, of which obviously Mr. Gundersen appears to be part.

It is a report that he prepared and presented to them, and then was at -- or asked the Advisory Commission on Reactor Safeguards to oversea.

But my reference to something there that he created is, in fact, a product of his development and something as part of a recommendation from an oversight group that he actually is part of.

Q It's a safety issue that he as a nuclear engineer raised with the ACRS, correct?

A I would disagree. It is an issue that he raised with the ACRS, consistent with the processes and procedures of that commission.

Q Okay. Do you have any knowledge whatsoever as to what SACE's involvement is with the AP1000 oversight

group is?

A Beyond the materials that I had in front of me as part of this testimony and my review of that testimony, no.

Q Do you have any idea if SACE asked Mr. Gundersen to draft that report?

A No, I do not.

Q So your -- your statement that you make twice in that paragraph, that this issue is one that SACE and Gundersen has created, that statement really doesn't have any factual basis, does it?

A No.

MR. WALLS: Objection. Mischaracterization.

THE WITNESS: No, I would disagree that that statement doesn't have any basis. It appears to me, in my opinion, of the review of Mr. Gundersen's, in the construct of this particular report and analysis that was provided to the ACRS, that it is an issue that Mr. Gundersen created based on his review of the facts, and his assessments of those facts of and for a part of an organization of which SACE is part, to generate an issue for review at the ACRS that, in my opinion, has no merit.

Q And you base that opinion on what?

A I base that opinion on my understanding of the

design of the AP1000, and as I described in my rebuttal testimonies, beginning on Page 26, my assessment and my understanding of the design of the containment building and the ability to inspect that containment building for corrosion issues.

Q Okay. And going -- moving to -- just turn over -- turning over to Page 28, please, sir.

A Okay. Page 28.

Q It starts with "contrary" on line 16.

A Okay.

Q It says, "Contrary to Gundersen's comments, it does not indicate that the ACRS plans to take any action with respect to the report or implemented advisory action to the NRC staff in the AP1000 DCD rule-making proceedings, or any of the specific AP1000 COLA dockets," correct?

A Yes, sir.

Q As we sit here today, do you know of any contentions that have been filed in any specific AP1000 COLA dockets?

A Yes, I do know dockets.

Q Relating to the issues raised by Mr. Gundersen?

A No, not relating to the issues raised by Mr. Gundersen. I don't think --

Q That was not my question. Do you know of any

contentions relating to the issues raised by Mr. Gundersen that have been filed with -- that have been filed in any specific AP1000 COLA dockets?

A Would you ask me your question again, because I'm obviously not understanding what the -- what your question is.

Q Okay. You've indicated in your testimony here that -- that there is no indication that the ACRS plans to -- to take Mr. Gundersen's report and, you know, and has that implemented in the generic AP1000 DCD rule-making or in any of the specific COLA dockets, correct?

A It is a true statement that, in accordance with my testimony on Page 28, I indicate that my understanding and my interaction with the NRC, there are currently no plans as a result of Mr. Gundersen's brief to the ACRS, for the ACRS to take any action with respect to Mr. Gundersen's report or to make those part of any rule-making dockets moving forward.

Q Okay. So if I told you there had been contentions filed in a specific AP1000 docket based on Mr. Gundersen's report, that would be news to you?

A I -- yes, I am not aware of any contentions that have been filed specifically as a result of the ACRS briefing.

Q Okay. Thank you.

Just one more question, Mr. Elnitsky, and hopefully no follow-ups to it, but --

A That's alright.

Q -- going back to the question I asked you, you know, under what circumstances would Progress Energy of Florida decide to cancel the Leavy nuclear project, that's certainly a possibility, right?

A If your question is it possible that there are circumstances that could develop, that would -- that would make it the most reasonable and prudent decision to cancel the project, there are certainly possibilities along those lines that could exist.

However, our assessment today, based on what we understand as the enterprise risks moving forward and the project risks as a whole, is that the most reasonable and prudent path for us is to continue with this project in the interest of the long-term benefits of our customers.

Q Okay. Thank you, Mr. Elnitsky. I appreciate your time.

A All right. Thank you, sir.

MR. MOYLE: I think I'm up next.

(WHEREUPON, Volume I is concluded.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME II

_____/

PROCEEDING: DEPOSITION OF JOHN ELNITSKY

DATE: August 13, 2010

TIME: 9:33 a.m. - 5:51 p.m.

PLACE: Law Offices of Carlton Fields
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(PAGES 201 - 267)

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(VOLUME I)

CROSS-EXAMINATION

BY MR. MOYLE:

Q This is Jon Moyle representing FIPUG. I have a few questions for you. Can you hear me okay?

A Yeah, Mr. Moyle, it sounds good.

Q All right. Can you tell me, as we sit here today, what the all-end estimated costs of the LNP, including AFUDC and including carrying costs?

A Sir, as I have previously indicated in my testimony here today and in my documentation, we have a project cost estimate, excluding AFUDC, of 17.6 billion that includes the fuel costs and the associated transmission associated with the Levy nuclear project.

My understanding, when that estimate, and the cash flows associated with that estimate, are worked through the equations for carrying costs and AFUDC calculations, is that the estimated price, based on that estimate we discussed earlier today, is approximately 22.5 billion.

Q All right. And is that confidential?

A Is that confidential? I don't know the answer. I don't think so.

THE WITNESS: I think that's public, right?

MR. BURNETT: No, that is not confidential.

MR. REHWINKEL: Is that in Foster's testimony?

THE WITNESS: That would be in Foster's calculations, yes, sir.

BY MR. MOYLE:

Q All right. So if someone were going to look at this from the beginning, when the project was put in front of the Public Service commission for a determination of need, there was estimated costs put before the Commission then, was there not?

A I was not involved with the project during the need, but I do know there are original cost estimates associated with the need filing and subsequently with our proceedings in this -- in these hearings last year.

Q Do you know what the original cost estimates were, as presented to the PFC in the need hearing?

A Let me just pull out my cost estimate numbers here again. Sir, I have an estimate here -- and I have to go digging a little bit further -- but in our 2008 cost estimate that was part of the 2008 filing, our total costs, all in with AFUDC, was [redacted]

Q So that was a 2008 number?

A That was our 2008 filing number, and that was what we discussed earlier today during the deposition that was part of the 2008 IPP and the conversation we

had earlier with Mr. Rehwinkel between the two cost estimates.

Q Given your background and experience, is that a surprise to you that the cost of increase by over [redacted] from the 2008 number is a number that you just gave me today?

A Sir, I would say that given my -- to phrase your question, given my experience and background, is that a surprise, no, given the change in the schedule of the project, that cost change is primarily driven by changes in escalation associated with the assumptions of the estimate and changes in the AFUDC calculations that are associated with the change in time.

To my understanding -- and I'm not the expert in the AFUDC calculations -- but from an estimating perspective, about [redacted] of that change is purely as a result of the [redacted] as the project moves forward in time, and about one-and-a-half billion or so is associated with the changes in the AFUDC rates associated with the later cash flows for the project.

I'm not -- I would say I'm not surprised by that. I understand, based on my insight into the calculations, why those numbers are what they are, and I would say that it, in general, is consistent with any

time -- that you look at a project later in time, it tends to be more expensive than earlier.

Q You had indicated, you said, I think, you had about [redacted] of that delta difference was associated with the [redacted] documents; is that right?

A That's correct, and that is documented in our cost estimate that was provided as a production of documents as one of the major areas of change from the IPP to the current estimate, specifically, we indicated there, [redacted] associated with the change in schedule.

Q And you spent a lot of time talking about renegotiation and contract documents. Have the -- have the [redacted] that have prompted this [redacted], have they changed in the contract documents, as we sit here today?

A No, sir, the [redacted] were established by the base contract as part of [redacted]

The Amendment that we executed to the contract, that allowed us to capture the favorable terms of the contract while extending the duration of the partial suspension with [redacted]

[redacted]

I will add, however, though, that certainly as we move forward with a Notice to Resume work and negotiate the final schedule and milestone payments, [redacted]

Q All right. And, again, these are kind of, you know, broad questions based on what I'm hearing from you, but if the difference between 2008 and 2010, you know, is north of [redacted] and [redacted] of that is escalation, it's fair to assume that the costs solely related to [redacted] documents is in excess of over a billion dollars a year, correct?

MR. WALLS: Objection. Mischaracterization. Assumes facts not in evidence.

THE WITNESS: Sir, I don't think that's an accurate representation. What I've said here is, per our cost estimate, we estimate approximately [redacted] in [redacted] that were based on a 2016 in-service.

So if you want to try to get it at what's that

on an annual basis, you really have to look at an in-service date of 2016 versus 2021, and what I would add, just as a general comment, any major project of this scope, when you move it five years in time, just the time value and money in that duration leads to the cost escalation of the project.

BY MR. MOYLE:

Q Is there any possibility that -- tell me your in-service dates now.

A Sir, the in-service dates that the cost estimate is based on and that are documented in both the testimony of myself and Mr. Lyash assumes a target in-service date of 2021 for Unit 1 and 2022 for Unit 2, June and December, respectfully.

Q As we sit here today, are you testifying that those are hard dates and there's not going to be any additional slippage of those dates?

A Sir, my testimony today is that if those dates are reasonable, based on our understanding of the project today, our assessment of the current project status, and factoring in our assessment of when we will receive our combined operating license and be in a position to -- to complete the partial suspension period and resume the construction process.

Are there other factors that I don't know today, or that we don't know today that could develop that could develop that might ultimately impact that schedule date, I don't know of -- we don't know of any of those today, but certainly there are always factors that can change during any long duration project.

Q You would -- you would agree, would you not, that the in-service dates are not definite, as we sit here today; there are other things that could happen that would cause those dates to slip, correct?

MR. WALLS: Object. Asked and answered.

Go ahead.

THE WITNESS: No, I would not agree that they are not definite, but I would qualify that, no, by saying that with any complex project schedule it is necessary to use best engineering judgment and the best insights available to the company to develop a reasonable project plan and execution schedule.

That is exactly what we have done in developing the in-service dates of 2021 and 2022, consistent with the status of the project and the enterprise risks that existed when we made the decision to continue with the Amendment to the EPC contract, that put the long-term partial suspension in place in March of 2010.

BY MR. MOYLE:

Q You're confident, as we sit here today, that the schedule shift now has the units coming in, in 2021 and 2022, that that's -- that's it; there aren't going to be other schedule shifts, correct?

A Sir, as I said in response to my last question, based on the information available to the company today and our assessment of the project schedule, that is our best estimate for the in-service date.

Are there other factors that could ultimately affect the in-service date, that are not known and cannot be reasonably known today, that is a certainly a possibility, but given the information that is available to us today, using good engineering practice and good scheduling discipline, our best estimate for an in-service date for Unit 1 is June of 2021, followed by Unit 2 in December.

Q Okay. And we kind of beat this up. And, you know, on Page 9 of your direct, you make the statement --

A Let me get my -- one second, sir. Let me get my direct out.

Q Sure.

A Okay. Page 9 in my direct, I've got it, sir.

Q Yeah, line 7, it says the company also wanted

to adjust the LNP schedule once rather than initiating a series of schedule changes -- (unintelligible) -- amendments.

I take it from our discussion we just had, that this sentence, essentially, is saying that a series of smaller time adjustments within the window from today to 2021 -- or 2022, you wanted to extend the time out to 21 -- I'm sorry -- 2021 and 2022, correct?

MR. WALLS: Objection. Mischaracterization of his testimony.

THE WITNESS: No, sir, that's not correct, and I disagree with that characterization. You have to read that sentence in context of the question that begins on Page 16, which specifically addresses, "In light of the schedule shift necessitated by the NRC's LWA decision, what criteria did the company use to determine what the revised LNP schedule should be?"

And in the context of that question, the issue here was to conduct a detailed assessment of the various schedule shift scenarios that were available to the company, evaluate those various schedule shift scenarios and the option of longer term partial suspensions against the known project and enterprise risks at the time, and then make a

decision that was reasonable and prudent about adjusting the Levy nuclear plant schedule once to address those risks as they existed at the time of the decision.

But this particular statement is in context of the whole process we used to develop a new project schedule that began with the decision by the NRC not to endorse our LWA request.

BY MR. MOYLE:

Q Okay. Well, that helps. And just so we're clear, you're not -- your testimony is not that there may not, at some future point in time, be another schedule shift; it just depends on enterprise risks and other things that the future may hold, correct?

A Sir, yes, but allow me to clarify. You know, it would be imprudent, I think, for any simple project manager like myself to sit here today and say there is absolutely nothing that can happen that may cause the schedule of a project to change.

I don't think there is any project manager anywhere that would be willing to do that. I will say, however, we have taken as many steps as possible using again good engineering judgment, a reasonable assessment of the project risks and enterprise risks that face the project, to develop what we think is the best schedule

forward and the best path forward for both our customers and the company.

Q Okay. Thank you. In conversation previously, I believe with Mr. Rehwinkel, you were being asked questions about the delta or differential, and the incremental costs between a decision to cancel now as compared to a decision to cancel after you obtained the COL.

And I read your testimony to say that that number is -- the incremental number is a [redacted], but I heard you answer a question that he posed with a [redacted]. I was hoping that you could clarify which number is the incremental difference.

A I've got the answer, but I want to go to my rebuttal testimony, because that's the easiest way to describe it.

If you go to my rebuttal testimony, Exhibit JE-6, I think when Mr. Rehwinkel and I were discussing this previously, I addressed the fact that to analyze a scenario or, as we describe in this attachment, an option that would consider project cancellation after receipt of the COLA, you would have to take the option -- or continuation option, a long-term partial suspension path that we have chosen, and the costs incurred between now and receipt of the COLA, and then

add to them the cancellation costs that we had evaluated as part of the cancelation option that we assessed back in February. That's the basis of the [redacted]-dollar number.

If you go to my actual rebuttal testimony, we then take the difference between the total cancellation costs, as they might exist in 2013, versus the cancellation option today that was evaluated.

And let me just find that in my testimony. On Page 20, we talk about -- it begins at line 2, "The difference between cancellation of the project after obtaining the COL and cancellation in 2010 is, at most, an estimated [redacted]."

So that is comparing the option as described in JE-6 as option four and the cancellation today option, and that's where that difference of [redacted] comes from.

Q Okay. Thank you.

Okay. You were asked a lot of questions about cancellation, and I followed, I believe, that -- the discussion, but I guess you would agree, to the extent that cancellation was going to be done, it would be better to cancel it today as compared to canceling the project at some future point in time, correct?

A Yes, if your question is it better to cancel a project of this scope now as opposed to cancel it at

some time in the future, from a perspective of the ultimate cost of the project, it is always going to be -- let me take that back -- it is normally going to be more expensive to cancel any project of this scope later in time.

So, yes, I would agree that if the assessment of all the factors we evaluated for the project indicated the project cancelation was warranted, you would do that now, not wait to do that at some point in the future because of the added costs that would inker for our customers.

Q And you weren't in the room yesterday when Mr. Lyash was deposed, were you?

A No, I was not.

Q He had a conversation that -- he had a conversation, I believe, with one of the lawyers talking about the advance recovery mechanism and the -- in the statute, and the exact words will be in the transcript, but my impression was he indicated that if the advance recovery clause was not in place, he didn't think the Levy project would be where it is today in terms of a live project. Would you agree with that statement?

MR. WALLS: I'm going to object. The facts, of course, speak for themself, but go ahead.

THE WITNESS: Well, sir, as we mentioned, I was

not in the room yesterday, so I don't know the specifics of how he characterized those, but I will say if your question is how significant is alternate cost recovery to projects like the Levy nuclear project, I think they are an important part of what allows a project like this to proceed.

And I base that on the following: My understanding, at least, of the statute and how it has been applied to the project. Specifically, because of the long duration of these projects and the risk that the company bears in executing such a project, the ability to come in on an annual basis and go through a proceeding just like this, to recover the cost incurred to that point wasn't -- was very important to any utility undertaking this scope of a project.

Waiting 10 years to then do a hindsight review across a 10-year project was a risk that I don't think any utility or a set of investors was willing to take.

In exchange for that, that means that, in general, the carrying costs of the project are lower because of that incremental recovery during the course of the project, and in exchange for that, the utility bears the risk to come in each year and show

that our actions are reasonable and prudent.

I think that, coupled then with the clarity around cancellation language that was provided in the statute, were all important factors that the legislature considered when they made the move to say this is an important type of project for the State of Florida and for the citizens of Florida, and took the actions they did in establishing the alternate cost recovery mechanisms.

I would not say those are the only things that would cause you to move forward in a project, but they are certainly large considerations and, in my opinion, without them in place, this project cannot move forward for.

BY MR. MOYLE:

Q You would also agree that having that mechanism in place shifts more risk to the rate-payers as compared to the scenario that would not have such a provision in place, correct?

A No, sir, I would not agree with that at all. In a regulating utility business, the utility always bears the risk, regardless of whether a major project is undertaken under the base rate provisions or whether it's undertaken in this alternate cost recovery mechanism.

We ultimately have the risk to show that our actions are reasonable and prudent, or forfeit the funds that we've expended in execution of the project.

In both scenarios, whether it's alternate cost recovery or in base rate proceedings, the customers pay the cost of doing business. That's part of the compact of a regulated environment.

Q I have a few things in your testimony that I wanted to ask you about, and I don't think it's essential that we call out each place, unless -- unless you are not comfortable answering the question. I think we can just speed it along if I ask you the question rather than referencing you to the page and line, but let's try it without that effort, but --

A Okay.

Q -- you had spoken about a reorganization that took place that changed some duties and responsibilities. I was curious as to what prompted the reorganization.

A Sir, just to clarify, it might help, are you referencing the discussion we had earlier around the Operational Readiness Group, or were you referencing our discussion first thing this morning about the changes in my role during the course of my employment with Progress Energy?

Q It's -- it's the latter, when the NPD, in May of 2009, for when the company reorganized if?

A Yes, sir, that specific reorganization was more of a reassignment. I moved from my role as the vice president for Generation and Transmission Construction and assumed the role that had already existed as vice president of Nuclear Plant Development.

The only reorganization change that happened there was, since I was already responsible for the transmission elements of the Levy nuclear project in my prior role as the vice president of Generation Transmission Construction, the transmission aspects of my work came with me when I assumed responsibilities for the Levy Plant Nuclear Development.

Q Okay. We probably crossed past each other on that question, and let me -- you said on Page 2, line 6, quote, the company reorganized the NPD in May 2009 as NPD on -- (unintelligible) -- program management of the LNP, including the associated caseload admissions of this project, and that was the question I was asking with respect to why the company undertook that reorganization referenced in your testimony?

A And, yes, sir, and, again, I think we may be talking by each other, but my answer is exactly the same thing. My reassignment, from a continuity of leadership

perspective, we felt it prudent to bring the baseload transmission work that I was already doing with me as I assumed responsibilities for the remainder of the nuclear plant development effort.

So, effectively, what that did is put all aspects of the project under one leadership instead of having it under two different department heads when we first initiated the project.

Q Okay. So the reorganization didn't necessarily result in an increase or decrease of personnel; it was simply putting -- putting everything under one roof; is that right?

A Yes, sir, there was no changes in net personnel; it was basically just combine an existing -- existing parts of the organization under one roof, as you describe.

Q And was that because, operationally, you've been in management that typically having operations under -- under one chain of command or under one roof is more efficient than otherwise?

A No, I don't think I would agree with that characterization. It's not necessarily that one way or another is more efficient or that there was anything inefficient or ineffective in the way we were running the project; it was just because of some other personnel

rotations and the fact that the previous -- some of the previous -- the previous manager of the Nuclear Plant Construction department had left the company for another company, and then presented this opportunity for me to move into that role.

So I wouldn't characterize it as it was a change in efficiency; it was just consistent with the continuation of my existing responsibilities.

Q With respect to the negotiations of the contract that had to be renegotiated, I guess, the EPC contract, were you the point person for the company for those negotiations?

A If by point person you mean the leader of the team that was responsible for the negotiations, yes, but let me also further explain that. There was a executive group that Mr. Lyash led in alignment with his counterparts at Shaw and Westinghouse.

I was the lead for what would be best described as the working group that did the day-to-day interactions and negotiations of the details of the amendments, but, ultimately, the executive sponsors, Mr. Lyash from Progress Energy, Mr. Perez from Westinghouse, and Mr. Barry from Shaw had the executive lead on that effort.

Q Okay. But you're familiar with the

negotiations and been involved in them, correct?

A Yes, sir.

Q Would you just give me, from your perspective, the -- I understand the benefits that Progress received in these negotiations; you've laid them out in terms of keeping the benefits of some of the [redacted]

What -- again, negotiations are always about give and take. What did the Shaw-Westinghouse people receive out of the negotiations, from your perspective?

A Well, sir, I think that's a very -- pretty straightforward issue, and when we began the negotiations, we made it very clear to the consortium that our alternative was [redacted]

[redacted]

Q Were you involved in the negotiations of the original contract that was signed, I think, on December 31st -- I forget the year.

A 2008, but, no, sir, I was not involved in the initial negotiations.

Q So the chief -- the chief benefit for the consortium was [redacted]

A I don't think I would characterize it just that simple. The chief benefit for the consortium was to be [redacted]

Q You use the term "status package" for engineering work. What's a "status package"?

A Could you show me where I use that term, just to be sure I'm clear.

Q Page 5.

A I'm not finding where it talks about status package, sir. Are you in Page 5 of my direct or --

Q Yeah, that's what I had on my notes. I may not

have had that -- I may have misquoted the --

A Yeah, I'm not sure what the reference is to. I mean, there are engineering packages that are part of the process, and one of the things that we did do in conjunction with the long-term partial suspension was to insure that those engineering packages were completed to a logical stopping point, and then placed in a condition that we'll be able to pick them up with no loss of efficiency to resume work. I don't know if that's what you were talking about, though.

Q Okay. That's on line 12 of Page 6. I'm sorry.

A Okay. Yes, and that's what I was just describing. We -- you know, what we did during the partial suspension was issue specific change orders for work that we wanted to continue.

One of those was, there was a series of engineering work that had begun, [redacted]

We did not -- and it was [redacted]

[redacted]

Q Mr. Rehwinkel asked you some questions about the Operational Readiness Group.

A Yes, sir.

Q What is the name of the group that has been formed by all of the companies that are developing nuclear projects at this point?

A If your question is what is the name of the group that is performing AP1000 projects, that's known as the AP1000 Owners Group, or the acronym is APOG, A-P-O-G. I'm not sure that's what you're talking about. There are other groups.

Q I'm confused with the Readiness Group. But the Owners Group, what is the purpose of that group?

A The AP1000 Owners Group was formed to take advantage of the fact that several utilities were pursuing AP1000 projects, and we recognized that there was benefit in not repeating certain aspects of development, work specific, to things like operator training programs, operator training, various engineering programs associated with the construction, operation and maintenance of an AP1000 plant, consolidated activities around licensing amendments, construction oversight.

And the five utilities that are members came together; we formed a limited liability company, and used that venue as a way to conduct work where we do it once for the five utilities as opposed to each utility doing it separately.

Q Yeah, that seems to make a lot of logical sense. Would I be correct in assuming that, to the extent that other projects move forward sooner than yours, that your membership in this group would allow you to obtain updated engineering drawings that have been done for other projects, that would have applicability to the Levy project?

A If your question is, are there opportunities to learn from construction experience or from other projects as they move forward, certainly.

And part of the active program for the AP1000 Owners Group and, in fact, for new plants, in general, known as the New Plant Working Group, which is all the new reactor builders, is to capture construction experience and engineering experience as we move forward, so that the future projects benefit from the lessons learned of the first projects.

Q With respect to the engineering work that's being done in terms of the detail construction, is that something that can be done for the Westinghouse unit

that would have equal applicability to all of the projects that are being planned and moving forward?

A Yes, but let me explain. The -- because there's a difference here between what's done under the scope of the AP1000 Owners Group, if you're still referring to that.

Engineering work that is being done to finalize the design of the AP1000, that is overseen by a group known as New Start, which was formed by all the reactor builders with partnership of the Department of Energy, to fund the activities necessary to get to the first reference COLA, and to get that initial AP1000, as well as some other reactor technologies, initial certifications complete.

So engineering work, in general, is being paid for through the New Start effort, and is also part for those entities that have signed an engineering and procurement contract specific for the AP1000, [redacted]

I don't know if that gets at what you were asking or not; I apologize if I did not.

Q I think that helps. Is Florida Power and Light an investor of New Start, do you know?

A Yes, they are.

Q And so is Progress Energy, right?
A Yes, we are.
Q Same question with respect to the AP1000 Owners Group?
A Yes, the AP1000 Owners Group currently consists of Florida Power and Light, Progress Energy, Duke, Southern and SCANA.
Q You had a brief discussion about the State Site Certification process. It says an administrative law judge approved it, and I assume that it was opposed by certain interests; is that right?
A You know, I don't know. I do know this, that, ultimately, the State Site Certification was granted by the governor and the cabinet as part of the siting as the Architectural Review Board, and approved our conditions of certification and process to move forward.
I am not familiar with, nor do I remember, if there were contentions that were admitted on the part of the A -- I said the -- I'm not sure if there were contentions that are admitted, and I'm not sure the context is right, because the ALSB is specific to the COLA process, not the SCA process, at least my understanding.
Q That's right, the SCA process is under state law and --

A Yeah.

Q -- there is an administrative law judge that typically hears cases when they're disputed. I just was wondering whether you were involved in that, and if so, what you needed to do to -- (unintelligible) -- at the proposed agency actions, but it doesn't sound like you do.

A No, I'm not familiar with that, sir.

Q A couple of questions about the AP1000 Revision No. 17. Are you briefed regularly on the status of that?

A Yes, sir.

Q And then I think in your testimony you had said it was unresolved with respect to where that -- where that was. I have it on Page 20, line 2.

A Is that in the direct testimony, sir?

Q Yes, sir.

A Line 20, line 2. Okay. Yes, sir, I'm there.

Q Okay. As we -- it was unresolved when you had this testimony. Have you received any updates or briefs as to the status since you filed your testimony on this issue?

A Let me just read that whole statement, sir, just so I've got it in context, because I think this was referring to where we were in October.

Yes, that is correct, sir. My testimony that was filed on April 30th, at that time, the resolution of the NRC's concerns with Westinghouse's design of the shield building that were specified in their October 15, 2009 letter, although progressing, had not been resolved.

Subsequent to that, there has been significant progress, and if I can just get to the reference here a second. Let me just give you the date of the latest NRC letter. It's in July of this year, I think.

In an NRC -- in a letter to the NRC on June 21st, 2010 the NRC, at that point, had received the latest design package and testing program from Westinghouse, and it had established a schedule for the completion of the AP1000 Design Certification Amendment Review.

That certification is currently on schedule for a final rule to be issued in September of 2011. As recently as the first week of August, I received an update from the Design Center Working Group that meets with and works with the NRC as part of that review, and as part of that meeting and discussion, the NRC, again, confirmed that at this point they remain on track for final rule-making to be resolved by September of 2011.

Q So that information doesn't change any of your

testimony; is that right?

A No, that's not right. At the time of my -- well, yes, that's right. At the time of my testimony, the issue was unresolved; as of today, however, there are updates to the status of the AP1000 DCD Revision 17.

So, yes, to be very direct, it does not change my testimony, but that particular issue has, in fact, changed since the time of the filing of my testimony.

Q All right. And to be precise, you know, in terms of additional slippage, it doesn't appear to you, at this point, that this issue is part of additional slippage in the master schedule, correct, this issue on the design of the Revision 17 to the AP1000?

A Yes, it is true that, right now, based on the NRC's assessment that they will complete final rule-making in September of 2011, that continues to support our assessment that we would receive our combined operating license in mid- to late 2012.

Q All right. Page 21, line 13?

A Okay.

Q There's been a lot of discussion about the schedule shift, and here, you're talking about the 36 months. You use the term "minimum" possible schedule shift was 36 months. I'm assuming there is also a maximum. If that assumption is correct, what is it?

A Let me just check and make sure I'm looking at the right reference here, Page 21.

That is correct. That reference in my statement on Page 21 is in reference to our analysis as of October, based on what we assessed as the licensing and scheduling risks, that the minimum that we could shift the project was 36 months.

In answer to your question, is there a maximum? I don't think I can give you an exact -- I know I can't give you an exact number for that, other than to say we will continue every year to evaluate all the risks associated with the project, and the enterprise risks, and evaluate what's the best schedule and path for moving forward.

Other than that, except for potentially some time limits associated with permits that ultimately could be renewed, I don't know that there is something that ultimately says there is a maximum schedule shift.

Q And that answered a question that you just provided me. Would it be fair to say that that gets back, a little bit, into the conversation we were having earlier about the 2021 and 2022 in-service dates?

MR. WALLS: Objection. Vague and confusing.

THE WITNESS: I'm not sure I understand what your question is. If your question is, is the 2122

in-service date consistent with an executable schedule that fits within a realistic and reasonable assessment of project risks and enterprise risks, then yes. I'm not sure, though, if there was some other point to your question.

BY MR. MOYLE:

Q No, I understood your answer, essentially, to say you can't have a maximum timeframe in there because of uncertainties and other issues, and we kind of had a conversation about that earlier, when I was asking you questions about the certainty of that in-service date, that that's the best projection, but you kept saying with certainty that that's going to come true, given the unforeseen nature of a lot of the variables out there, including -- including the enterprise risks, correct?

A No, I don't necessarily agree with that characterization. I think what I said was our best estimate today, based on our assessment of all the factors that affect the project and our best engineering analysis and schedule development, is that a -- a good in-service date of 2021 is what we have established for this project.

I did say -- I think the questions you asked me earlier were, can you say that that is definitely what the schedule is going to be, and I think I referred to

that and said I don't think there is a project manager that would say, with all definity, that they know absolutely everything that is going to happen to a project, or other factors that could affect the schedule.

Q Okay.

A I mean --

Q That's alright. Moving along a little bit. You've been asked a lot of questions, and we'll try to bring it in for a landing, but would it be fair to suggest that while, I understand, you're always evaluating the project, that the receipt of the COL, when you receive it, will then prompt a very thorough and considered review of -- of the project and give you time to further determine whether to move forward?

A No, sir, I would not agree with that characterization. I think we continue to do thorough and considered reviews -- to use your terminology -- continually with this project, certainly part of the alternate cost recovery mechanism in this whole project each year is to go through and document for the Commission how we view the feasibility of the project as we move forward.

So, no, I would not characterize the receipt of the COL as a seminal moment, that all of a sudden causes

a different level of scrutiny to the project. I think it is our responsibility, and I think the company's opinion, that is our responsibility to do that type of analysis on a continuing basis, and that's exactly what we do.

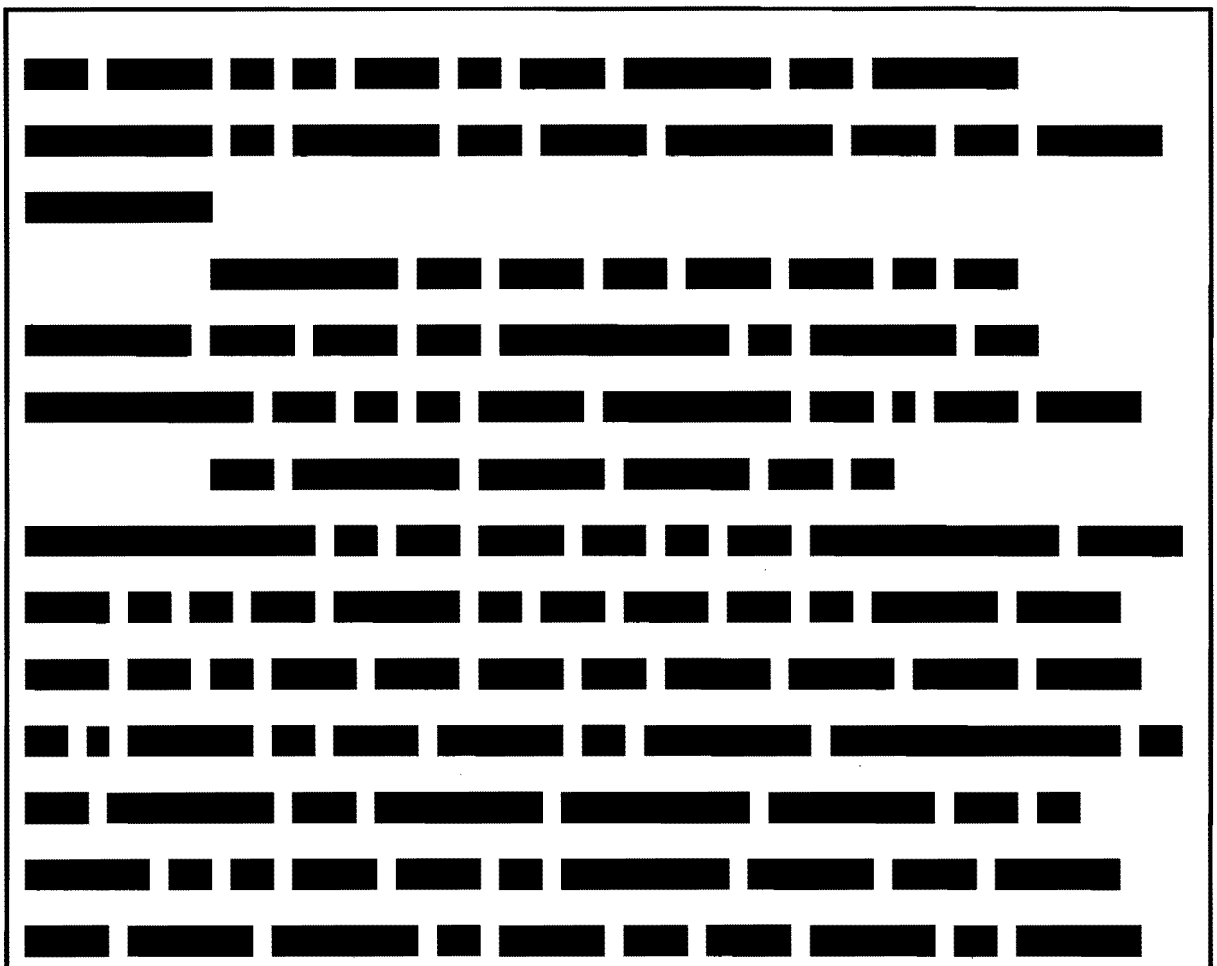
Q Why was -- why did you attach significance to the ability to achieve [redacted] after receipt of the COL?

A Could you say that question again, sir? I didn't catch the first part of it.

Q Why -- why was it important to you, you being the company, to be able to [redacted] after receipt of the COL?

A For two reasons, the first of which is specifically to why did we [redacted], of note, [redacted]

We were adamant and successful in negotiating, [redacted]



Q And it's also true that that [redacted] gives you additional time to evaluate the project; isn't that correct?

A The -- well, yes, it gives you additional time, but I think you have to keep that in context of we'll continue to evaluate the project on an ongoing basis, and continue to evaluate the feasibility and the benefit of the project moving forward through the duration of the partial suspension.

Certainly, that [redacted] provides time to continue to evaluate, but it's really

in the context of that will be the period when we would complete the negotiations associated with the Notice to Resume.

Q The -- you talk about the additional [redacted] on Page 32, line 14.

A Okay.

Q And the sentence says, quote, this provides the company additional time to evaluate the status of the project after the COL is obtained, [redacted] Do you see that?

A Yes, sir.

Q Okay. So I was reading this as saying -- saying, in effect, well, this is important because -- because we'll have some time we can possibly catch our breath. We don't have to make a decision immediately whether to go forward with the project. That's fair, isn't it?

A Yes, sir, that's fair, but I would clarify the real focus of this statement and the context here, is, you know, we recognize that the COL was a good linkage points in terms of how we negotiate the extended partial suspension.

We wanted to [redacted] onto the consortium, for getting us to that date rather than

being tied to an artificial calendar date, and we also [redacted] Notice to Resume.

It's certainly also, as you indicated, and I would agree, provides time for continued evaluation, but we will continue to do that during the remainder of the partial suspension.

Q All right. And I understand the answer you give me to say, well, it also gives us time to negotiate other things.

I guess that helps you. That's not necessarily referenced in your testimony as I see it, but -- but you would agree that that's a benefit to the company?

A I guess I don't understand what you mean by "negotiate other things."

Q In response to a previous question, you indicated that the [redacted] allowed you to negotiate other components of the construction, maybe benchmarks and construction schedules, things of that nature; is that right?

A No, that's not exactly right. What I said -- and if I wasn't clear, I apologize -- what I said was we

will need to renegotiate the schedule for the project, and that includes things like what will be the actual construction plan.

We will need to negotiate the [redacted], and we will need to do that in order to be able to issue a Notice to Resume.

We did not, in the negotiation of the extended partial suspension, [redacted] We negotiated and wanted additional time beyond receipt of the COL to be able to complete those negotiations.

Q There was a bit of a discussion yesterday with Mr. Lyash about Class 4 and Class 5 estimates. You use the term "Class 4 and Class 5 estimates" on Page 35 of your testimony, line 12.

A Yes, sir.

Q Do you have understandings of the difference between the various level of classes, I guess, in terms of order of magnitude?

A Yes, sir, but let me clarify. I do have understanding of the basic principles of the classification estimates as outlined in the reference, Association for the Advancement of Cost of Engineering, that we discussed this morning.

Q What's your understanding?

A What do you mean by that, sir, what's my understanding?

Q Well, what's the difference between a Class 4 and Class 5 estimate? Do you have an understanding of that?

A Yes, sir.

Q What is it?

A A -- Class 4 and Class 5 estimates basically were referred to the band of -- or range associated with an estimate. They are consistent with and applied to the various stages of a project.

So in this case -- and maybe if I can assume where you're going with this and get right to the point -- the real question in my mind -- or in our mind was, what is a reasonable classification of the estimate we completed when we went through the exercise described earlier of doing a bottoms-up estimate on each of the line items associated with the schedule and the materials associated with the EPC contract.

There were certain things in that effort that were very clear and were [redacted] There were other things in that effort that were [redacted] that were not -- that were not certain, and it had to be estimated based on our best judgment or the advice of

outside organizations that are experts in those types of assessments.

At the end of the day, we completed that line-by-line development and developed an estimate, that I described before, had a band of minus -- about minus [redacted] percent to plus [redacted] percent.

And our evaluation of that is we looked, in an aggregate, across the various line elements, was that it most closely approximated a Class 4 to Class 5 type estimate, because our SMC was familiar with that classification for this stage of the project, and recognized that we were not in a position to move forward and define a single-point estimate for project costs.

We did not think that would be reasonable and prudent, so we provided this band cost range to our feasibility analyst and our resource planning group, to use as part of their feasibility analysis moving forward in their evaluation, that ultimately led us to conclude that the project remained feasible, even based on that new cost -- well, not even, but based on that new cost estimate.

Q You're familiar with a Phase 1 Environmental and a Phase 2 Environmental?

A In terms of COL scheduling?

Q Or in general.
A If you're referring to the phases of development of Draft Environmental Impact Statements and Final Environmental Impact Statements, I'm familiar with the phases of those projects.
Q Okay. Isn't it true that a Phase 2 Environmental is more detailed than a Phase 1?
A No, we're talking about different things then. No, I'm not familiar with what your reference is, sir.
Q Okay. The Senior Management Committee, they at one point had a retreat to discuss the Levy nuclear project; is that right?
A A retreat? I -- I do not know, sir. I can't -- I don't know what classified as a retreat, so I'm not in a position to answer that. I do know what dates we provided briefs to the SMC. I was present when those briefs were given, in many cases, led them, in conjunction with Mr. Lyash, but I don't know if, specifically, those meetings classified as a retreat.
Q Where -- where are the meetings of the SMC typically held? In Raleigh?
A Yes, sir.
Q Does the SMC -- has it ever met in St. Pete or in Florida?
A Frequently the SMC meets via video conference

with the members of the SMC that are present in Florida, so I'm not familiar with whether they have had recent meetings in Florida, but there are a variety of meetings that go on both in Raleigh and in St. Petersburg in support of the two utilities, Progress Energy Carolina and Progress Energy Florida.

Q Do you recall the Senior Management Committee meeting at any place other than the headquarters in St. Pete or in Raleigh?

A Other than the meetings I've just described, where they were videoconference meetings or meetings that were specific to an individual utility, such as some of our annual planning meetings. I can't, here today, sit down and provide you a date when the full SMC was in Florida, no, if that's your question.

Q No, I just -- you know, I -- you use the term "retreat brief" in one of your exhibits, and I, you know, corporations often take retreats when they need to huddle and focus on an issue intently, and I thought maybe that's what you did with Levy, but that doesn't ring a bell with you?

A You know, I do know, sir, the SMC, you know, has planning sessions where they may refer to it as a retreat, whether they're either in Raleigh or North Carolina off site, but I -- if you can point me to the

specific reference in one of my exhibits, I can probably clarify what was the intent.

Q JE-2, Page 7 of 15?

A Okay.

Q At the top, it says, "Progress since the SMC Retreat Brief."

A Yes, and I can talk to this specifically. The February 15 brief that was given in advance of this was actually conducted at the Kenan-Flagler Business School in Cary -- I think it's Cary, North Carolina -- not far from Raleigh.

That was part of a broader leadership meeting and a broader strategic planning meeting. So when I specify on Page 7, "Progress since the SMC Retreat," I'm referring to the progress that has been made since the February 15th brief that was given to the SMC while they were at that off site as part of the broader strategic planning sessions.

Q Okay. Just so I'm clear, the retreat wasn't necessarily designed to focus on one issue, which was the Levy project; is that right?

A That is correct. That retreat dealt with a variety of strategic planning issues associated with the company, one part of which was the detailed brief that is outlined as the February 15th brief and is an

attachment to Mr. Lyash's direct testimony.

Q Okay. Are you familiar with the term or the expression of an "intergenerational transfer" as it is sometimes used in rate-making?

A I have heard the term "intergenerational transfer," and I think I understand the basics of the concept.

Q And just to keep it moving along, you would agree that that relates to some rate-payers paying for something at a point in time that they may not necessarily see benefit from it; is that fair?

A No, but let me -- let me clarify. My understanding of one of the issues associated with major infrastructure projects of this type is something I've heard referred to, in the media or elsewhere, as an issue of intergenerational transfer.

And, certainly, you know, we've heard that from our customers in direct interaction, "Why should I have to pay for a project that won't come in service for several years?" And so I am familiar with that concern and how it has been voiced.

Q And so you would agree that the -- the result of pushing out -- to the extent that that was a concern expressed previously when the in-service date was 2006, that that concern, presumably, has been exacerbated by

the decision to push out the units until 2021 and 2022, respectively, correct?

MR. WALLS: Object. Assumes facts not in evidence and mischaracterizes testimony.

THE WITNESS: No, I would not agree. First off, you mentioned that the original in-service was 2006. That's not correct. It's 20 --

BY MR. MOYLE:

Q Okay.

A -- 16. In my opinion, as certainly possible, a shift to 2021 could change some people's perception. However, I don't have any facts to support that.

And I will state, you know, that I think a big project like this there's always going to have that type of concern, "that we're paying today for a project that we may not see," but I would reference those people -- and we do this in our interactions with customers -- to the fact that several infrastructures projects in the state of Florida that people benefit from today were paid by our predecessors, and our parents and grandparents.

So the Crystal River Energy complex is one example, is a set of facilities that was paid for by rate-payers in the past, that the customers today now benefit from.

So, certainly, that's a concern that is always there with major infrastructure projects, but I don't think it's a reason in and of itself to think differently about the long-term benefits of a project like Levy.

Q Are you comfortable answering a question that related to your military service in terms of which submarine you were the commander of?

A Yes.

Q Was it the USS Florida?

A No, it was actually the USS Maine, SSBN741. However, it was stationed in Kings Bay, Florida -- or in Kings Bay, Georgia, just a short stone's throw across the river from Florida.

Q Your resume is impressive with the experience that you have. Would -- would you believe that it's more challenging to operate a nuclear power generation system within a submarine, which is an assault water environment and goes under water, all the moving parts associated with a nuclear submarine as compared to the Levy nuclear project?

MR. WALLS: Object. Relevance.

THE WITNESS: The reason I'm pausing, I need to -- I think the way I would classify that -- and, again, I'm not sure I understand the context of this

proceeding -- but I would say both the submarine example and the Levy nuclear power plant are examples of very advanced technologies that require a set of disciplines to construct and operate them safely, you know, with the protection of the public and safety in mind.

I -- I think my assessment -- and it's just my opinion -- is each one has a unique set of complexities, and although a land-based nuclear power plant like Levy does not deal with assault, water and corrosive environments of a submarine, or some of the challenges associated with the submarine, it does have its own unique set of challenges, in terms of the design, and the operations and the environment that it does operate in, whether that's in designing it to be able to deal with anticipated or predicted seismic events, or dealing with environmental impacts.

These are all things that are evaluated as part of the process of moving forward with the permits and the licensing for the plant.

Q I -- when you were commander and in your experience in the Navy, when you got a nuclear engineer out of one of the universities that has that program, how long did you have to train them before they could be

engaged in operating the nuclear reactor unit on the submarine?

MR. WALLS: Objection. Relevance.

THE WITNESS: In general -- and there's different training programs -- but, in general, a college graduate that would come out of a program at a university such as Georgia Tech or University of Florida would first go through a commissioning program of about three months duration that basically gets them into the Navy and accustomed to the Navy, and then would commence a one-year schoolhouse and prototype training program, normally conducted in Charleston, South Carolina, that would get them to the point of being ready to move to a submarine.

Once aboard the submarine, the typical qualification was anywhere from six months to -- six months to nine months, I would say normally, to qualify on their initial watch station for operations.

BY MR. MOYLE:

Q So if I did my math right, that's between 15 and 18 months?

A That's about right.

Q And how does that compare to the training that

is involved for the resources that were the subject of this Operational Readiness Group?

A The challenge for the Operational Readiness Group is to meet some of the training requirements established by the NRC as part of the license processes in these plants, and, specifically -- and I'd have to get the exact percentages -- there is a requirement, that a large portion of the operators that come to a new facility like Levy are, in fact, experienced.

So to build a backlog of experienced operators required us to start bringing in individuals early to start in through their civilian licensing and operation training program.

And I would add -- I mean, if this is where you're going, is that, "Well, why is it so much faster in the Navy than it is with a civilian nuclear power plant?"

Recognize that the first qualification in the Navy as a watch officer is a first step in a long process that, in my case, to get to the point where I had the commensurate or equivalent level of certification that parallelled what the Department of Energy and what our operators get as part of their civilian licensing, I had been in the military for over six years to get to that point.

So it's not exactly an apples-to-apples comparison here, because of the different operating models of the two different systems, and I, personally, am very comfortable with the process that we built to certify and qualify the operators that run our land-based plants.

Q You anticipated where I was going, that you don't think it's fair from somebody to say, "Well, wait a minute. If the Navy can train people to operate and be involved in the running of a nuclear reactor on a nuclear submarine in 15 to 18 months, why do we have to spend money now to get people to understand how to operate a plant that, at the earliest projection, would be six years from now, and now with the schedule shift, it's more -- more like 11 years from now."

A Yes, I would agree that it is not a fair comparison to look at the initial qualification time for a operator in the nuclear Navy compared to the qualification requirements of a licensed operator in the civilian nuclear industry.

And I will add as a point of fact that an operator who comes out of the Navy after their initial qualifications goes through the same duration qualification process to qualify as a civilian operator, because it is a significantly different set of

expectations in a much different operating model, in terms of what we expect the operators in the control rooms of civilian nuclear power plants to be able to accomplish.

Q And if I understood your answer, as to one of the distinctions, was that the NRC has a whole host of rules and regulations that you need to basically train people as to how to comply; is that right?

A No, I wouldn't characterize it that way. I would say the operating model, you know, the principles of operation and the expectations in terms of knowledge requirements, licensing requirements, design basis analysis that are required of a station operator civilian plant are more comparable to an operator in the Navy that has had that five to six years of experience, and has, in fact, gone under additional qualification and review as part of the Navy nuclear program.

You can't -- you can't really compare that initial qualification timing to an operator at a civilian plant.

Q And when you talked about your six years, part of that time was spent doing things other than being trained on nuclear issues, correct?

A That is correct.

Q Okay. Well, thanks for your time. It was a

long day for you, and I appreciate your answers, and that's all I have.

A All right. Thank you, sir.

CROSS-EXAMINATION

BY MR. WALLS:

Q Yeah, I do have a few quick redirect --

A Okay. Thanks.

Q -- and I'll work back. And one of the questions you were asked by Mr. Rehwinkel was referring to your rebuttal at Page 16, line 16 to 19.

A Page 16?

Q Yeah, line 16 to 19, where he was referring to the agreements of PEF regarding the certainty with respect to the risks and the likelihood of the risks increasing or decreasing in the future, do you recall those questions?

A Yes, I do.

Q Okay. And what did the company do in response to this evaluation of the risks in connection with the decision to proceed forward? How did the company mitigate those risks?

A Well, the path that we have taken, to not proceed on a full-speed-ahead path, that was certainly one of the options that was available, and not to eliminate the long-term benefits of completing this

project through cancellation, was to work with the consortium to see whether we could negotiate a long-term partial suspension at no additional cost to the customer, while maintaining the favorable terms and conditions of the contract.

So the very action of putting that long-term partial suspension in place was focused at being able to recognize the fact that you don't know exactly which way all these risks were going to move, and put us in a position to be best situated to move forward with the project, and react and respond to those risks as they develop.

Q And in your opinion, did an Amendment 3 achieve that objective?

A Yes, it did.

Q Now, I think at one point as well he was asking you about the option four that was identified in your rebuttal -- it was under JE-6 -- and the question was whether we -- meaning OBC -- could calculate it, and I believe you had indicated no, but the information was embedded in the analysis. Do you recall that?

A Yes, I do.

Q Okay. What I wanted to do was show you from Mr. Lyash's JE-6 -- or, I'm sorry -- JL-6, the February 15th presentation.

A Uh-huh.

Q And if you look at that with your JE-6 option four.

A Yes.

Q And if we look at the option three, project continuation with EPC Amendment, the [redacted] that's identified here in JE-6, correct?

MR. REHWINKEL: What page were you on? The February 15?

MR. WALLS: Yes, the February 15, Page 2.

MR. REHWINKEL: Okay. Thank you.

THE WITNESS: Yes, that is correct. The top -- the top portion of JE-6, where it talks about option three, continue with partial suspension, that is basically a lift in pace from the February 15th presentation on Page 22.

BY MR. WALLS:

Q Okay. And then on Page 19 of the February 15 presentation of JL-6, option two, project cancellation, it had [redacted], right?

A That's correct.

Q If you add [redacted] and [redacted] do you get [redacted] -- I'm sorry -- [redacted]

A That's correct.

Q All right. And if we look at the option two on

Page 19, compared to option three on Page 23, they both address the LL need disposition cost, right? They were line items in both areas, right?

A That's correct.

Q So if you pursued option three, you obviously wouldn't have spent double the amounts on -- for that line item, right?

A That's correct.

Q So -- and, in fact, that's what you reflect here, the [redacted] in your incremental costs to option three to get to option four, is the difference between --

A It's the [redacted] minus the [redacted] that's already included up in the top under the option three, so you don't want to count that twice, yes.

Q And so if we take these two numbers, [redacted] plus [redacted] in options three and two and add them together, we get [redacted] and if we subtract the [redacted] we get [redacted], correct?

A That's correct.

Q And what is the number you came up with in option four?

A [redacted], which is basically around in that area. And if I can, in response to that question, I think, as you described what he asked me, is could you calculate

that, and the reason I said no is you have to kind of go through this math equation to make sure you understand what was in and what was out, so it's a set of assumptions.

So, certainly, they could calculate it, but my response was referring to the fact that you have to discuss what it is you assume about each of these items.

Q And you were asked a number of questions about your project cost estimate in the 2010 IPP, and the Class 5/Class 4 assumption for that estimate. Do you recall those questions?

A Yes, I do.

Q And do you have AACE document here?

A Yes, I do. It's this one right here.

Q Now, I believe on Page 3 of 9 of that document, Mr. Rehwinkel had referred you about a number of the references down here, "ratio," "ballpark," "blue sky," "seat of pants," "ROM." Do you recall that?

A Yes, I do.

Q Do any of those characterizations apply to the -- what you described as the bottoms-up line item estimate that you prepared, that is reflected in the IPP of 2010?

A No, they do not.

Q Okay. And just in sum about this Class 4/Class

5 estimate, on a nuclear project with a COD that is 10 years from now, 2021 and 2022, can you realistically have a Class 1 or Class 2 estimate today for a project of that --

A No, not for the stage of the project that we are at, and that is why, as we discussed, even though some of the elements are very well-defined to the Class 3 or Class 2 level, our overall evaluation of the estimate was to classify it as a Class 4 to Class 5, consistent with where we are on the project schedule.

Q And there was also some reference to evaluations in the Class 4/Class 5 estimate about how long in time it took someone to prepare that estimate, and there was references to as little as one hour or less to perhaps 200 hours. Do you recall that?

A Yes, I do.

Q Okay. How long did it take your people to prepare the bottoms-up line item estimate, and what kind of detail work did you do to prepare that estimate?

A It took approximately over a thousand hours to complete that estimate, and the detail work was, as I described earlier, associated with each line item, either extracting data that was available in the scenario analysis, the existing contract, or determining applicable escalation ratios from available resources.

Q Okay. And to move on to one final subject, you were asked about Amendment 3 in the Notice to Proceed and the Notice to Resume, various questions by Mr. Rehwinkel about that. Do recall that?

A Yes, I do.

Q And one thing I want to be clear and ask you is, does that mean that there are no activities going on the project right now, the fact that you have to issue a Notice to Resume under that Amendment 3?

A No, it does not. There are, in fact, several activities ongoing, which have been directed by the -- by Progress Energy as the owner to continue to preserve the schedule and the path of the project.

Q Okay. And do you consider you have an active project?

A I most certainly do.

MR. WALLS: No further questions.

MR. REHWINKEL: I have one further recross.

REDIRECT EXAMINATION

BY MR. REHWINKEL:

Q Mr. Elnitsky, Mr. Walls referred you to JE-6 and Mr. Lyash's February 15th document, and got you close to calculating the [redacted] number in the JE-6. Do you recall that?

A Yes, sir.

Q Could I get you to turn to JE-5, please?
A Yes, sir.
Q In your rebuttal testimony, you would agree, would you not, that the Public Counsel asked you, essentially, to calculate that number in that interrogatory? Would you agree with that?
MR. WALLS: Object.
THE WITNESS: No, I think -- and the way we read this question was, the question was, "Have you determined the estimated costs for the alternative you have chosen?" We had.
"But have you determined the estimated cost for that alternative, followed by a project cancellation after receipt of the COL?"
That evaluation, as I discussed earlier, was consistent with the overall evaluation of the three alternatives that we addressed in the February 15th brief, and as I discussed, was part of the discussion and the dialogue that went on associated with that evaluation, but I did not -- we did not read this statement to say "perform the calculation and provide it."
BY MR. REHWINKEL:
Q On -- back on JE-6, in the bottom part of the calculation there, where it says "Option four, partial

suspension cancel post-COLA." Do you see that?

A Yes, sir.

Q The [redacted], is that an item that is -- that we could determine -- from the documents that Mr. Walls asked you about, is that the -- the -- is the -- well, on Page 19 of the February 15th presentation, is the [redacted] in column 2010, is that the sum of the [redacted] that are underneath option four?

A Let me just look. On Page 19 of JL-6, the cancellation cost and fees that are referenced there in the February 15th presentation are specific to the agreement [redacted]

MR. REHWINKEL: Okay. That's all the questions I have.

MR. WALLS: No further questions.

We'll read.

MR. REHWINKEL: All right. Thank you, Mr. Elnitsky.

Is there anyone on the phone still?

MR. MOYLE: Yes.

MR. REHWINKEL: Are you going to order a copy?

MR. MOYLE: I've got to talk to Vicki first, but, no, not at this time.

(WHEREUPON, Volume II is concluded.)

(WHEREUPON, the deposition of Jeffrey Lyash was concluded at 5:18 p.m.)

CERTIFICATE OF REPORTER OATH

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Stephanie A. Walters, Notary Public in and for the State of Florida at large, hereby certify that JOHN ELNITSKY appeared before me on the 13th day of August, 2010, and was duly sworn.

WITNESS my hand and official seal this 17th day of August, 2010.

STEPHANIE A. WALTERS, FPR
NOTARY PUBLIC - STATE OF FLORIDA
MY COMMISSION NO. DD796026
EXPIRES: 06-28-2012

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Stephanie A. Walters, Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the examination of JOHN ELNITSKY; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel for any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of this action.

DATED THIS 17th day of August, 2010 at Clearwater, Pinellas County, Florida.

_____
STEPHANIE A. WALTERS, FPR

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES ON THIS PAGE

IN RE: Nuclear Cost Recovery Clause
DOCKET NO.: 100009-EI
DEPOSITION OF: JOHN ELNITSKY
TAKEN: August 13, 2010

PAGE	LINE NUMBER	ERROR/AMENDMENT	REASON FOR CHANGE?

Under penalties of perjury, I declare that I have read the foregoing document, and that the facts stated in it are true.

JOHN ELNITSKY DATE

cc: Charles Rehwinkel 111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

James Brew and/or F. Alvin Taylor,
1025 Thomas Jefferson Street, NW, 8th Floor,
West Tower, Washington, DC 20007-5201

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Cost Recovery Clause.) Docket No. 100009-EI
) Filed: July 29, 2010

VOLUME I

The DEPOSITION of JON FRANKE was taken pursuant to Notice of Taking Deposition, at PEF EOF Traning Center, 8202 West Venable Street, Conference Room No. 136, Crystal River, Florida, on Tuesday, August 10, 2010, at 8:40 a.m., before Colleen DeLaney, Court Reporter and Notary Public in and for the State of Florida at Large.

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I N D E X

Direct Examination by Mr. Rehwinkel 4

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N O E X H I B I T S

JON FRANKE,

having been produced and first duly sworn as a witness on behalf of the Office of Public Counsel, testified as follows:

DIRECT EXAMINATION

BY MR. REHWINKEL:

Q. Good morning, Mr. Franke.

A. Good morning, Charles.

Q. My name is Charles Rehwinkel with the Office of Public Counsel. And before we get started, we'll take appearances and then take care of some preliminary matters about confidentiality, so we'll go around the room.

MR. BURNETT: I'm John Burnett with Progress Energy. I'm not appearing today. I'm just listening in.

MS. HUHTA: Blase Huhta with Carlton Fields.

MR. WALLS: Mike Walls with Carlton Fields representing Progress Energy.

MR. REHWINKEL: And on the phone?

MS. KAUFMAN: Vicki Kaufman with the law firm of Keefe Anchors Gordon and Moyle. I'm representing the Florida Industrial Power Users Group.

MR. JACOBS: William Jacobs, a consultant

with Florida Office of Public Counsel.

MR. LAUX: Mark Laux, Florida Public Service Commission.

MR. REHWINKEL: Are you here with the Commission, Mark?

MR. LAUX: Right now, yes.

Do you want me to identify when other people come in the room?

MR. REHWINKEL: Yes, we probably should.

MR. LAUX: All right. I will do that.

MR. REHWINKEL: Okay. Today's deposition, I'm going to be asking questions that involve documents that have been at least for the time being designated as confidential by Progress Energy and are subject to confidentiality requirements of the Commission's rules under the statutes. So at least until Progress has had a chance to review the deposition for confidentiality, the deposition will be confidential. And I believe that all parties that are on the phone are either subject to the Commission's rules on confidentiality or non disclosure agreement with Progress Energy.

If during the call other parties call in, I will stop the deposition and we'll identify who

those are so we can make sure that they're confidential qualified, if you will. So unless there are any questions, we'll start.

MR. LAUX: Charles, this is Mark Laux with Florida Public Service Commission.

MR. REHWINKEL: Yes.

MR. LAUX: Jim Breman just joined us and he's also able to hear the confidential information.

MR. REHWINKEL: Okay. Thank you, Mark.

BY MR. REHWINKEL:

Q. All right. Mr. Franke, before we get started, did you receive your Notice of Deposition?

A. Yes, I did.

Q. And there was some documents listed in the deposition. Did you bring those with you?

A. I believe I have them available, that's correct.

Q. Okay. Thank you. I'm going to ask you questions today about your testimony from the last year's hearing, the testimony from this current 2010 hearing, the direct that was filed the beginning of March, the direct that was filed on April 30th, and then the rebuttal that was filed on August 3rd.

At each time I go to the new testimony, I'm going to ask you if you have any corrections or

changes to make to the testimony, the exhibits at that time. But when I ask you about corrections or changes, it will be as to the testimony that I'm currently asking you about, not whether it's been amended in the future, if you understand.

A. Repeat back so that I make sure we understand. You'll be asking if there's any corrections as to the status at the time that testimony was filed?

Q. That's correct. Actually, what I'm looking for is corrections or changes to what's been filed at this docket today. You filed three pieces of testimony, and I just will ask you whether you have any changes or corrections to make to those documents.

A. And it's relative to at the time that it was filed or relative to now?

Q. Well, what I want to know is whether you're going to update that testimony, if you know you're going to update that testimony at the hearing.

A. Okay.

Q. We can review that when I ask you those questions again. But just for your thinking, that's what I'm going to be asking about.

A. I understand. Thank you.

Q. And for the purpose of your testimony in this matter later this month before the Public Service Commission, are you testifying as an expert witness or merely -- not merely -- or as an employee of Progress Energy or both?

A. I am an employee for Progress Energy. And I do serve as an expert witness with regard to aspects of my testimony.

Q. Okay. And how would you characterize your expertise?

A. My expertise is primarily in the area of nuclear plant operation and licensing.

Q. Do you have with you a copy of your March 1, 2009, testimony? I say yours, I think you adopted Steve Huntington's.

A. I do not have that with me.

Q. That's okay.

A. We can produce a copy.

Q. I can let you use mine.

A. Okay.

Q. And what I would like to do is hand you a copy of the testimony that begins at 9:55 which is the official transcript page from the 090009 docket. And that runs from 955 to 1032 (handing instrument to the witness).

Can I ask you to turn to page 958?

A. Yes.

Q. And I think that's page 4 of the testimony. And this is testimony that Steve Huntington filed but that you adopted and sat for a deposition and testified to.

A. That is correct.

Q. In that -- on 958, you testified or you filed with the Commission testimony that said that the company would be generating 180 megawatts from the full uprate, Crystal River extended power uprate by 2011; is that correct?

A. That is what this testimony says, that is correct.

Q. And do you also testify there that PEF finalized the scoping work and completed the engineering design for the project?

A. That is in the testimony; however, engineering design continues today.

Q. Okay. At the time that testimony --

A. I believe that -- yeah. I believe the purpose and the reference to this sentence is with regard to the engineering work associated with scoping of the scope. I do not believe that Mr. Huntington intended to imply that all engineering work was

completed for the project. I believe it was in reference to the earlier portion of that sentence with regard to engineering work associated with original scoping.

Q. Okay.

Hold on one second. Did someone just join the call?

MR. TAYLOR: Yes. This is Al Taylor for PCS Phosphate.

MR. REHWINKEL: Okay, Al. Could you just make an appearance for the court reporter's purpose.

MR. TAYLOR: Certainly. My name is F. Alvin Taylor representing White Springs Argricultural Chemical doing business as PCS Phosphate.

Do you want an address or anything like that?

MR. REHWINKEL: Your firm.

MR. TAYLOR: I'm sorry. Brickfield Burchette Ritts and Stone.

MR. REHWINKEL: And, Al, you are qualified to review confidential information?

MR. TAYLOR: Yes.

MR. REHWINKEL: Okay. Thank you.

BY MR. REHWINKEL:

Q. I'm sorry. Were you in the middle of an

answer?

A. No. The same answer applies. Just the engineering work in this sentence relates only to scoping, not the complete engineering of the project.

Q. And just for the record, could you tell me what you mean by scoping in that context?

A. Absolutely. In this type of project, you start with a best approximation of the engineering work and modifications required to complete the project. And so there is a level of engineering work associated with that scope that needs to be completed. It tends to be cursory high level.

Then when you get into doing the actual designs of specifications for the equipment and installation instructions and requirements, it takes a great deal more engineering to complete that work. You would not complete that work until after it was funded when you best understood the requirements that would be in place at the time, because this type of a project takes many years to accomplish, and after funding was approved and authorized.

Q. Okay. Could you turn to page 960. At this part of the testimony, did you testify that the remaining two phases of the CR3 uprate project are on schedule to come on-line during the 2009 and 2011

outages?

A. That is correct. And that was true at that time.

Q. Okay. And could I get you to turn to 962?

A. (Witness complies)

Q. And therein did you testify that the project thus far is progressing as expected and we expect no problems with completing them in the expected time frames. The project is on schedule and on budget.

A. That is correct.

Q. Okay. And the project there is, again, the CR3 EPU; is that correct?

A. I believe this answer is in reference to the extended power plant project. That's correct. That's what this is referring to.

Q. And on 964 if you would, please. There do you testify that the current schedule calls for the CR3 uprate to be completed during the 2009 and 2011 CR3 refueling outages. Through the project management activities that I have identified, the company is on schedule and on budget to perform the CR3 uprate project work as planned?

A. That is correct.

Q. And on 967. Do you testify there that PEF completed several scoping or feasibility studies to

determine the exact nature of the changes necessary to implement the CR3 project?

A. That is correct.

Q. And if I could ask you about that sentence. Earlier you talked about scoping as being rather high level work. In that context there, the term exact nature of changes necessary is used.

Could you elaborate in contrast to your earlier testimony?

A. Yeah. The exact nature is probably a very good expression. You identify those -- for a project like this, you have to analyze a very, very large amount of information and technical requirements of the facility.

While you may not identify exactly the solution required, you do look after what you would -- I think a fair characterization is of the nature of the problems that have to be solved. And different options in a feasibility section might be identified -- and in some cases, the exact option of solution might be identified.

But what's important at the feasibility study is to get a best estimate of those problems that will have to be solved and those engineering -- the engineering and construction activity required to

solve those problems, and then move forward with an understanding of what nature of problems have to be solved and what you believe will have to be accomplished to complete it.

Q. The reference in March of 2009 to having completed several scoping or feasibility studies, have there been more scoping and feasibility studies done since the time of that testimony?

A. We do continue feasibility studies as required by the cost recovery clause. And then with regard to scoping issues, as each of the individual modifications are designed and as you complete the analysis of the engineering work required to support the uprate license application, those directions might change.

So a specific option, be it a type of component or a strategy in engineering space, might change along the way, so it's kind of an ongoing process. At the front end, you do a feasibility study with engineering work that supports the kinds of decisions like need of the project and ability of the project to be successful. But then that may not define, and it can't define at that stage, all the answers that the subsequent engineering work has to work through for all the details to get to a final

solution.

Q. In the context of this testimony that we just discussed on 967, the feasibility studies that you refer to, are those the feasibility studies that are required by the Commission's rule, or are those feasibility studies that you do, you Progress, does internally for purposes of --

A. It's both.

Q. Okay.

A. There are some questions that just basically answer is it feasible to solve this problem with this plan, you know. And when I say a problem, a technical question that has to be answered. I don't mean problem from a standpoint of it won't work. I've used problem like a question, like a math problem type.

Q. I understand. I want to step away from your testimony that I've been talking to you about and ask you a question about where you stand currently with your license amendment request.

A. Sure.

Q. Later I want to go through a chronology of the LAR process. But I guess what now I was wondering if you have an idea of when the LAR will be submitted to the NRC?

A. Right now, as I indicated in my rebuttal

testimony, we are working through with the NRC and our own staff some decisions due to -- that have arisen due to our monitoring of ongoing NRC acceptance and review of other utility license amendment requests.

Once those decisions are made, it will drive a new schedule for submittal of our license application. It was ready for submittal in March. We saw that our outage schedule would shift. And as such, we made the right decision to delay submittal while we continued to monitor the ongoing NRC interaction with other utilities.

Those interactions led us to go back to the Commission, review the status of one of our solutions. And it's going to drive a different schedule for submittal of our LAR.

Q. What particular solution are you referring to?

A. It relates specifically to the use of instrumentation in the facility that is required for mitigating, for operator information for mitigating our small break LOCA accidents.

We currently use a digital instrument for that purpose in the control room and are licensed for using that instrumentation. Due to reviews conducted and approved in the spring of this year, the NRC has

developed additional guidance with regard to the use of digital instruments for future licensing. And as such, we've had several conversations and one public meeting with the NRC to discuss our use of that digital instrumentation, and it is driving us to step back, take a look at our solution and determine if a different path is now required due to this new approach the NRC is taking to licensing digital instrumentation.

Q. Is that referred to as the diverse indication decision? Does that have anything to do with that?

A. I'm not sure. Diverse indication decision could mean a large number of things. If you point me to a specific reference, I might be able to understand the context of that phrase.

Q. Well, I want to come back to that when I get to a document that we're going to discuss.

A. Sure.

Q. In your testimony, I believe your rebuttal, you refer to an emerging issue with respect to the PEF LAR.

A. That is exactly correct.

Q. That is the one. Is that the only one?

A. That is the only one.

Q. Again, we're going to return to your last

year's testimony.

A. Sure.

Q. But what I would like to understand -- well, let me ask you this: In the last 18 months or so, has the PEF's philosophy or approach to how you are going to approach the license amendment request, has it evolved substantially?

MR. WALLS: I'm going to object as ambiguous, but go ahead.

THE WITNESS: Evolved is a tough word. It means a lot of things. I would say the best characterization is we've done what you should do for a licensing application. We've continued to monitor the NRC standards by reviewing other applications which might relate to our application to look for signs where the NRC is asking questions in new areas where they have not previously asked, looking for templates or depth of detail in the engineering analysis or licensing analysis required for our submittal. And as each of those lessons have been learned, we've applied those lessons to our application.

So, yes, the depth of information and the templates and the format in which the information which was expected from two years ago

has changed significantly in those last two years. And, as a result, we've continued to adjust our application so that at the time it is right to submit the application, we'll have it in the most probable success format and depth of content, if that's what you mean by evolve.

BY MR. REHWINKEL:

Q. That's part of it. The other part of it -- I guess what I was wondering is there's a section of the regulations called 10 CFR 5059.

A. Yes, sir.

Q. I'm sure that's something you're very familiar with?

A. Yes, sir.

Q. Is it true that over -- that since 2008, that you have -- that the company has sought to have more of what you -- of your engineering solutions for the uprate evaluated under 10 CFR 5059 as opposed to a license amendment request?

A. No. We have all along had a strategy which was designed to install as much of the equipment as possible under 10 CFR 5059. In fact, in the only instance where that has changed, I would say it went the other direction, and that's this recent example where we may have to now do something under 5090 that

we could have done under 5059. And 5090, just for reference and for people listening, 10 CFR 5059 describes those rules the NRC has that if we fall within those rules, the licensed or the company is allowed to make changes to the plant without prior NRC approval.

5090 is that section of the regulation which describes how we ask for that approval prior to making a change when it does not meet the requirements of 10 CFR 5059.

Q. So 59 is where you actually seek to have your license amended --

A. That is correct.

Q. -- to operate under different parameters that were assumed in your original license?

A. Yes. 10 CFR 5090 describes that licensing -- the LAR process, the licensing application request for a change in your license. That's under 59.

Q. And 5059 is the opportunity for you to demonstrate to the NRC that you have engineering solutions that will allow your plant to operate within the parameters that are in your existing license as its amended prior to the solutions being implemented; is that correct?

A. That's a very good way to describe it.

Q. So when we talked last year in your deposition and your testimony, there was a lot of discussion about a meeting with NRC in, I believe it was April of 2008?

A. Yes.

Q. And I believe at that time that the company had intended to file at least separate LARS for different engineering solutions, and you were convinced by your discussions at NRC instead to take a different approach. Is that fair?

A. Not exactly. What the purpose of that meeting was to determine which approaches or solutions to pursue for a number of technical challenges, technical questions that had to be resolved to accomplish the uprate.

The way the NRC licensing change process works, we knew we would have to apply or apply for the power uprate to increase the power or this EPU LAR we've been talking about. That we knew was a requirement because we would be increasing the reactor output.

To solve certain technical issues, there may be more than one solution and depending on which solution, the NRC may have required what's called a link submittal. For example, if a new method of --

and this is for example, not a particular for this case. But if a new method of analyzing dose to the public was going to be required in order to justify this increase in reactor power, we might have to first apply to the commission for the use of that method and get approval for that methodology change separate, independent and prior to the submittal for the larger LAR later to increase reactor power.

So one purpose of that meeting was to determine which of our options would require these linked submittals so those submittals could be prepared and sent ahead of the larger licensing application to increase power. That's a better way to describe what I believe you're trying to get to.

In that meeting, we identified only one link submittal that would be required. That was submitted on schedule and has been approved.

Q. That was the rod injection analysis?

A. Exactly.

Q. Let's go back to your testimony from 2009 and get you to turn to 972.

A. This is Mr. Huntington's testimony?

Q. Yes.

A. Yes.

Q. Starting near the bottom of 972 and carrying

on to the next page, to 973, you list project management and cost controls relating to the EPU project; is that correct?

A. That is correct.

Q. And I believe this type of testimony is kind of generic to all of your testimony, last year and this year. Is that fair?

A. That's fair.

Q. In the project management and cost controls that you list out there, one of them is to monitor the progress of work. And I guess that includes both Progress and contractor work; is that correct?

A. Yes.

Q. And to address the scope of work, and that's an evolving process, I guess; is that correct?

A. Yes.

Q. All right. As well as the status of uprate licensing?

A. That is correct.

Q. Okay. Now, at the time that that testimony was filed, were those tasks that I just listed, those three, monitor progress of work, address scope of work and status of uprate licensing, was that process going expected and intended?

A. I would say the reports at this time were

that they were going as expected and intended. As with all projects of this size, there always are a number of issues or focus items that are identified in these meetings where additional focus might be required to pull a specific task back on track. It might be behind track on a schedule. So I would have expected and, in fact, participated in some of these meetings with Mr. Huntington where there was a list of items that were off track but, you know, recovery was being reported and status was reporting as to recovery actions.

Q. Okay. Let me ask you about that. At the time that testimony was filed, which I believe was around March 1st of 2009 --

A. Yes.

Q. -- could you tell me what your role was versus Steve Huntington's role with respect to the EPU project?

A. Yeah. At this time in 2009, I was the director of site operations with the facility. And as such, I was the project's point of contact for the station. Organizationally, the projects reported through Steve Huntington to a vice president off site, a different vice president than I reported to.

Q. Who was that that he reported to?

A. He reported, I believe at this time -- let me look because there was a number of changes in this time frame.

I believe in March he was reporting directly to Mr. Scerolo (phonetic).

Q. Jim Scerolo.

A. That is correct. Prior to that, he would have reported to Danny Roderick who had resigned the previous year, the end of 2008.

Q. Okay. I don't want to -- I want to ask you -- this is a little bit confusing. But in your testimony that you filed --

A. Which testimony?

Q. -- there's a --

A. March of 2009?

Q. Okay. Look at your second round of testimony. I believe you filed testimony -- let me get that. I just need for my understanding to understand a little bit of the chronology here.

A. It may be April.

Q. What I wanted to ask you about is in your actual testimony that was filed in April or May -- and I don't have that. It's in that, for 2009. It should be in there.

A. I know that Mr. Walls has a copy of that

testimony if you'd like. This looks like only Mr. Huntington's testimony here.

Q. Okay. When we get to it, you'll understand why I was confused about --

A. Maybe not. Yes, I found it, my testimony. This is --

Q. What page does that start on?

A. 981.

Q. Okay. What I wanted to ask you about was, you state on page 2 of that testimony --

A. Yes.

Q. -- it says, "Approximately two years ago, I was promoted to my current position."

And that was in May of 2009?

A. Yes.

Q. Is that accurate there?

A. For promotion to the director of site operations, I believe that is accurate.

Q. Okay.

A. Now, I did note that that same sentence carried over in my testimony this year.

Q. That's correct. And I was wondering about that, because in your first version you say that. And in the second version, it says you were promoted a year ago.

A. Yeah. I did note in reviewing for this deposition that that same sentence was carried forward into this testimony. And my current position as vice president, which I was promoted in April of 2009, so it's only a year and a half since I've been vice president of the facility, not two years.

Q. All right. I just wanted to make sure I understood that because it had carried over and then it changed, so I wanted to understand.

A. I think it was a clip and paste from my previous testimony of my educational background.

Q. We've all been there. I understand.

A. So I tried to assume my position six months early.

Q. You need to get your payroll adjusted.

Back to 972 and 973 --

A. Yes.

Q. Was part of the project management and cost control task that you described, did it involve meeting with outside vendors?

A. Yes.

Q. Okay. And at that time was AREVA one of your large outside vendors with respect to the uprate project?

A. Yes.

Q. And did you meet with them regularly?

A. The project did meet with them regularly.

Q. But you would not have?

A. I would not have participated with all of those meetings. I would have participated with those meetings with senior management, but not the low level technical meetings.

Q. Okay. For purposes of the testimony that was filed in 2009, was it the testimony of the company, and specifically of you, as adopting Mr. Huntington's testimony, that there were no problems identified with AREVA at that time with respect to the EPU?

A. Give me a few minutes to review this.

Sure. I don't see where Mr. Huntington, in the testimony that I adopted, indicated that there were no problems with AREVA at the time.

I can say from reviewing the testimony and reviewing my own memory, that the best -- in fact, you've highlighted here on page 975 is a good description of what was going on in the area of project controls. If you refer to page 975, lines 2 through 5, it says, "By utilizing this risk management process, the company can effectively identify and prevent risk factors from affecting project scheduling and costs." That was really talking about project

risk. But then a number of the paragraphs talk about the use of these regular meetings to identify problems and issues.

As I stated earlier, with all projects of this size, and particularly in working with a vendor that is doing work scope for the first time like a first power uprate executed by that vendor, there will be issues and problems identified in these meetings, and they will be tracked for resolution.

There were some problems with AREVA's performance that we had to provide oversight and to improve their performance in a number of areas. Those would have been documented in our nuclear condition report program.

Q. Those are NCRs?

A. That is correct, NCRs.

Q. Now, 974, you discuss -- and I think you mentioned a robust risk identification and mitigation process. Do you see that?

A. Yes.

Q. Did the LAR submittal -- I guess was there -- was there a risk identified in this process with respect to the LAR?

A. Yes. Now, at the time of this testimony, I don't know what the status of that risk was. We

maintain a risk register which tracks all sorts of project risk, be they cost, schedule or accomplishment of the project.

The LAR submittal I believe was on the original risk register and has changed and moved into different statuses as we've monitored the project going forth. It continues today as an open item that we are tracking risk on and continuing to implement mitigating action.

Q. Well, did you say it's an open item today on the risk register?

A. Yeah. The risk register, the way we track the risk register, if there is something that is high or red, we put actions in place to mitigate that risk to bring it down to a green color which indicates we think that we put the right actions in place, but we'll continue to monitor that until the issue is resolved completely.

Q. Okay. Now, in the testimony, there's mention of a crane issue that was --

A. Yes.

Q. Is it fair to take from that testimony, the March, 2009, testimony, that the fact that the crane was mentioned but the LAR submittal was not, that the LAR submittal issue was not seen as a significant

risk, as significant a risk?

A. I don't know if that's fair or correct. I know that the LAR was flagged as a risk early on. We continued to have different understandings of that level of risk as the project proceeded.

Q. But it was not mentioned in the March, 2009, testimony; is that correct?

A. I'd have to review that.

Q. And it meaning the LAR submittal risk.

A. I'm not familiar enough. I would have to review that testimony to answer your question.

Q. Okay.

A. I'd be happy to do that.

Q. Well, if you would, please.

A. From my review, it appears that there was one question with regard to do we have a risk management process in place which describes our risk management process. There was a separate question that said "Were any projects identified that were deemed to have a high probability of affecting the uprate project?"

And with regard to that question, the turbine building crane reliability risk was listed. And I believe that is because at that time, from my memory of the risk register at that time, that was the one risk identified as a high probability, thus answering

the question.

I do know that the licensing application was identified as a risk, but it was believed to be not a high risk at this time.

Q. Okay. On 976, if you would turn to that. There is mentioned on that page about the company's experience with other PGN plants on uprates. Do you see that?

A. I do.

Q. And I think the purpose of that testimony was to assure the Commission that the company the right expertise working on the CR3 uprate; is that right?

A. That is correct.

Q. Is it fair to say that at the time that testimony was filed, that Progress had all of the experience available within the company that it should have had working on the CR3 uprate project?

A. I think it had all that was -- I'm not sure how to answer that question. The expertise available at the station and available to the project were made available. And in those cases where we had expertise that could not be placed full time on that project, we made arrangements for that expertise to be used in some sort of a review process as the project moved forward.

Q. But at the time that testimony was filed, was my question. Well let me ask it this way: You have expertise in licensing --

A. Yes.

Q. -- I think as you testified to. But you were running the station at the time, correct?

A. That's correct.

Q. So you could not do two jobs at one time effectively?

A. No. I mean, I was the dotted line manager. And at this time, I'd been brought in to help oversee some of the project. But not in a direct role, more as advisory role. The agreement at this time was that the project would continue to report off station. And then once we went to implementation stage, the project would report to me during the outage.

Q. Within the Progress corporation, it is your practice, is it not, to draw from resources outside of Florida, if necessary, to get the job done --

A. Yes.

Q. -- whatever the job is; is that right?

A. Yes. That's correct.

Q. I think, in fact, in the MUR, M-U-R, some equipment was sent to Robinson for welding or fabrication before it came down here; is that right?

A. That's correct. And that specific modification had been implemented at Robinson prior to Crystal River. So we were able to take advantage in that case of some of the engineering and some of the licensing expertise associated with that project.

Q. So I guess my question is understanding that there were resources like you at Crystal River, you already had a job that involved running the station. So was it at the time the March testimony was submitted to the Commission, is it your opinion that Progress had all of the best people working on the EPU project, especially the licensing aspect?

A. I believe in light of the overall business requirements of Progress Energy as a company, we had those resources available for the project dedicated to the project. There were and are resources that had additional EPU experience in the company. In the larger sense of the company, they were working on projects or other sites that they needed to be working at. But we had arranged so that their expertise could be brought to bear into the project to be able to help assurance at the time that it was appropriate to bring that experience to bear.

Q. Okay. On 978 you mention AREVA and Worley Parsons; is that right?

A. Yes.

Q. Now, AREVA was the contractor for the engineering and the LAR support for the EPU; is that correct?

A. That is correct.

Q. And that's because they were the successor and interest at Babcock and Wilcox; is that right?

A. That's right.

Q. So the assumption was that they had the proprietary technology and they had the personnel to provide the continuity, I guess, if you will, is that right?

A. Yeah. Assumption is probably a weak word there. They owned the proprietary information required to implement this uprate.

Q. And Worley Parsons, they were subcontractor to AREVA; is that correct?

A. That is correct.

Q. But they had a long-time relationship with Progress with respect to the original construction of the --

A. That relationship probably long-term was through Babcock and Wilcox at the time, I would suspect from initial construction.

Q. Okay.

A. In a similar manner to the way this is contracted.

Q. And I think -- does the testimony on 978 identify them as having a distinct advantage with respect to doing the work here?

A. Yes, it does. The advantage was they had the information required.

Q. Is it fair to say that you pretty much had to use them to get this done?

A. Yeah. There was no way to get the proprietary information that AREVA owned without contracting through AREVA. The only other way to do that would be to contract through another firm similar to them who would have to subcontract that information from AREVA. The price would just have the markup from the second firm.

So, you know, AREVA was -- has commercial control over that information. And the price would be the same for us or another third party.

Q. Okay. At the time that AREVA, you contracted with AREVA and as work progressed, did it become apparent to Progress that there were any quality issues with the work that AREVA was doing?

A. Yes. In some instances, we had found technical quality issues with some of AREVA's work,

both in engineering and in licensing. And we had to apply additional oversight and controls.

Q. When would you say that became manifest?

A. It would be difficult for me to note that, to know exactly when that occurred.

Q. Would it have occurred before the filing of the March 1st, 2009, testimony?

A. Possibly.

Q. Okay. When was the R16 work done? That was the refueling out at 16, correct?

A. Design work?

Q. The actual -- yes, the engineering design work.

A. That would have been accomplished in the 2008, 2009, time frame.

Q. Okay. Do you know if during that time frame, during the R16 engineering design work, whether any quality issues were noticed with respect to AREVA?

A. You have to be careful. You're asking an absolute, any. And I'm answering in that sense.

Q. Let me characterize it by material, if that's a little bit better.

A. No. I would not say that there were any material quality issues. Once again, this is a large project, and it's a large number of engineers. Many

of the AREVA staff were, you know -- many of them, in fact, none of them had any extended power uprate experience themselves, but they did own the proprietary information. And as such, they were learning as they went.

So we would find a quality issue with a product during our reviews. And that product, as part of the process, is required as part of the process, we would provide that feedback to AREVA. We would update it and change it. We would do audits at their facility of their work. And that's an ongoing process.

None of those quality issues led to a concern about the ability to implement the project or to be successful. And I would -- that's with regard to all my answers today. But to say there was never any quality issues is impossible in a project like this.

Q. What about with Worley Parsons?

A. I'm not familiar with any specific issues with Worley Parsons.

Q. Okay. With respect to AREVA, were there issues that arose regarding their -- the ability of their engineers to understand the 5059 requirements of the company? I say of the company, your desire to have this analyzed as a 5059.

A. I'm not aware of any specific in that area.
Q. Was there a general concern about that?
A. I'm not aware of any concern in that specific area.
Q. Okay.
A. It is possible, but I'm not aware.
Q. Okay. Let's see. I think 984. Are we into your next round' testimony? Is that still Mr. Huntington's testimony?
A. No. This is still my testimony --
Q. Okay.
A. -- I believe.
Q. Yeah. The numbers change there at the bottom.
A. Yes. 984 is my testimony.
MR. WALLS: And you have to find the date.
MR. REHWINKEL: I don't know the date.
THE WITNESS: This is April, 2009. I'm sorry. May 1st of 2009.
BY MR. REHWINKEL:
Q. Yes. Okay. They don't put the cover page in the transcript so -- okay.
In your May 1, 2009, testimony, you did not make any corrections or changes to the testimony that Mr. Huntington filed, although you'd acknowledge that

you adopted it; is that correct?

A. I do not remember any corrections or changes.

Q. On 987, do you state there that you expect -- at that time that that testimony was filed, that you expect to receive approval from NRC in 2010 for your -- the entire uprate for the LAR?

A. That is what we expected at that time, and that is what my testimony states.

Q. And you also testified there that PEF used its engineering judgement and experience to determine the cost needed to ensure timely submittal and approval of the NRC license application.

A. That is correct.

Q. And that was with respect to the expectation of receiving approval in 2010 from the NRC; is that right?

A. That is correct. And I could add that we also used AREVA's estimation given the scope of -- at that time of what we believed was required for submittal.

Q. Okay. Now, between the preparation of Mr -- and submittal of Mr. Huntington's testimony that you adopted and the filing of the May 1st testimony, was there any additional knowledge about the LAR with respect to the work that AREVA was doing to prepare

the draft?

A. In that time frame, we were receiving some of the first drafts coming back from AREVA. I'm not sure I was aware at that time yet of what that -- those reviews were revealing.

Q. Okay. What is site approval? What does that term mean?

A. With regard to a process like this, some portions of the work would be accomplished off site by AREVA personnel and go through an AREVA review process. Those reviews have to be performed by site engineering as well and then go through the approval process on site before the actual section reaches a state where we think it's ready for submittal.

The actual application in the end, when all these pieces come together in the end, they actually have to be signed out by the executive responsible for the license of the facility. In this case, it's the vice president, the site vice president. So I think the term has many different meanings. It may mean the ultimate approval and submission by the station, or it might mean a stage of the review of a particular section or a particular document by an engineer.

Q. So if I had seen a time line that had AREVA doing work and then there being a break in what they

did and a three-month period for site approval, what would that connote to you?

A. More than likely, if it was for a specific piece of the license application, for example, that would be the time for engineering and management approval and review, perhaps an assessment by our expert panel of that product to verify that it's ready for -- meets our standards prior to submission to the vice president.

Q. Okay. Let's take a break here and go off the record. (Phone Disconnected.)

I'm going to hang up and redial.

(Whereupon, a recess was taken and the conference call was reconnected.)

MR. LAUX: I have two other people that have joined us, William Costin and Kevin Carpenter.

MR. REHWINKEL: At this point there are no attorneys with the staff on yet?

MR. LAUX: There is not. Anna was here, but we do not -- I guess I'm asking you as an attorney.

Charles, my understanding is I don't believe we filed a cross, and so right now we're just listening in and that's about it.

MR. REHWINKEL: Okay.

MR. LAUX: All right. Thank you.

MR. REHWINKEL: Sure. Thank you.

BY MR. REHWINKEL:

Q. On 987 through 988 of your testimony --

A. Yes.

Q. -- there, you reference, I guess, project management task again; is that correct?

A. Yes.

Q. And that's essentially the same set of tasks that you discussed in the Huntington testimony earlier; is that right?

A. That's correct.

Q. And that included as well item 6 with the CR3 uprate licensing; is that right?

A. That's correct.

Q. And the same tasks would have been done -- are being referred to there as in the prior testimony of Mr. Huntington's; is that correct?

A. Yes.

Q. And on 988, you testify that the company incurred such costs -- or you state that the costs for project management are necessary to ensure that the scope of work is adequate to achieve the uprate project objective; is that right?

A. That is correct.

Q. Is it your testimony that that is what happened, is that you incurred the project management cost and that they insured that the scope of work was adequate?

A. Yes, throughout the entire project.

Q. Was one of the uprate project objectives to complete the project on budget?

A. I would say that the goal is to complete the project at the lowest cost reasonable. A budget is an estimate only. It doesn't, you know -- to be able to complete it at the lowest cost I think is the objective of the project.

Q. The company does work pursuant to something called an IPP, Integrated Project Plan; is that right?

A. That's correct.

Q. And before it was a business analysis plan, is that what the BAP was called?

A. Yeah. I'm not sure I remember what the letters stood for.

Q. Functionally equivalent?

A. Functionally equivalent. They had different content, but it was for the same purpose which was to describe the project, why the project was important, how it could be achieved, and to lay out the business requirements for the project.

Q. Okay. And the IPP, is there a budget contained in it for major projects?

A. Yes.

Q. And is the budget over 50 million dollars require IPP, or what's the threshold for an IPP?

A. I'd have to refer to the procedure, but I believe 50 million dollars is the level at which an IPP is required.

Q. Okay.

A. We have other project mechanisms for lower cost projects.

Q. All right. In 2009, did the EPU project incur a material increase in cost relative to the existing budget?

A. I'd have to refer to the budgets, but I do believe the costs did go up in 2009.

Q. But is it your testimony that the project management controls were effective in ensuring that the project costs were no more than necessary?

A. I believe that is true, yes.

Q. Okay. On 988 and 999, you testify that the current schedule calls for the CR3 uprate schedule to be completed during the 2009 and 2011 CR3 refueling outages; is that right?

A. Yes.

Q. Is it -- let me ask you a question in hindsight here today. Is it your testimony that even if the delamination had not occurred in October of 2009, would the company have made the objective that you testified to in May of 2009.

A. I believe it would have. The one factor that's uncertain is I cannot control the NRC. And since the NRC approval is required for some actions, I believe that we would achieve these goals, but I don't control all required resources.

Q. Okay. What is your best estimate today as to when the LAR will be submitted, if you had to guess today?

A. Well, you're asking me to guess.

Q. Yes, I am.

A. The LAR could have been submitted in March. I believe that we would have had to work through some complex REIs due to the change in the way the NRC is reviewing digital instruments today than the way it was prior to a license application we noted this spring. And we could have worked through that, I believe.

I think with our current outage schedule, the prudent thing to do, and the best solution for our customers and the company is to continue to work with

the NRC so that we can avoid any concerns or any risk out of license rejection due to this change in regulatory approach.

So, now, it depends on a number of factors on some decisions we're working through presently, but I still believe this application will be submitted this year.

Q. Is it fair to say that it will be probably in the 4th quarter before you submit it?

A. That's probably fair.

Q. What application is it that you noted in the spring that gave you this concern about the digital instrumentation?

A. It was ongoing NRC reviews of a digital modification at the Oconee station.

Q. O-c-o-n-e-e?

A. I believe that's correct.

Q. And when was the first time that the company was aware of the issue at Oconee, the digital instrumentation issue at Oconee?

A. We've known Oconee was working through a digital modification, but that review was not complete by the NRC until earlier this year. And, in fact, the guidance that they are now referring for our project is still in draft form and not complete today.

Q. Have they issued it in draft form? I mean, is it publicly available in draft form?

A. It is publicly available, but it is a draft.

Q. Go ahead.

A. Well, as a draft, the application of that guidance is still uncertain as to which types of technical questions that that will be applied to. So until -- I would say the date that we became aware of this application of this guidance, to answer your question very specifically, was June 7th of this year. And the application of this guidance would be applied to our licensing application.

Q. Now, you say it would be applied. Is it because there are similarities between the two plants?

A. The plants are similar, but that's not the issue here. The issue is the specific digital instrument. And there are vast differences between what Oconee was doing and what we were doing. The question isn't the plant, but the question is the application of that regulatory guide to a specific licensing activity.

Q. Okay. And is the specific instrument one that would alert an operator about a LOCA event?

A. That's our application. And this brings to point the evolution of how we learned of this

application, of this interim draft staff guidance.

Oconee's instrumentation was for an automatic action associated with reactor scrams. Much more intricle to the operation of the plant than anything we are pursuing in the area of digital instrumentation.

The company was seeking use of existing digital instrumentation originally that we already had a license for prior to the staff guidance for purely informational, you know, readout, if you describe it, but purely for instrumentation for the operators to monitor, not for creation of an automatic action. So there were a lot of differences.

And that was for small break LOCA, a very specific accident scenario, not for creation of an automatic reactor scram. So there are very large differences between the Oconee licensing application and ours.

Q. Is a scram a shutdown?

A. That's correct. It's an automatic shutdown of the plant.

Q. All right.

A. Essentially, we would be using the instrument for readout only.

Q. And you would assume that because of the way

you would be using it, it would not impact -- it would not have a licensing impact prior to this guidance coming out? Is that fair?

A. I don't like the way the question is asked. Let me -- why you say that is, remember, the licensing action had not been taken on Oconee yet, so there was no assumption to be made. We were monitoring what was going on. But until that application is approved, we don't know what action the NRC is going to take.

We had been speaking with the NRC on the phone about our application and, in fact, had meetings with them about our approach in this area. And none -- and those phone calls and meetings had given us some confidence that our approach that we were taking would be sufficient. During those phone calls around the same time Oconee's approval was achieved, we asked for a meeting with the NRC. They suggested we come talk to them, and we asked for a meeting. That was the June 7th meeting when we could go into more detail. And that was the opportunity that we had to learn the impact of this new approach.

Q. So Oconee was approved?

A. I'm not certain of the date of Oconee, but I believe it was approved this spring.

Q. Okay. And in approval, did the NRC make a

decision about the way they wanted to use this instrumentation in their -- it was an uprate?

A. No.

Q. It wasn't?

A. No. And that's what I'm saying. This was a very different application. Oconee was requesting the use of a digital instrument to replace their reactor protection system. It's an instrument that monitors different parameters in the plant and uses a computer to, based on those parameters, create an automatic scram of the reactor. Very different from what we're doing.

We were initially going to use an existing digital instrument which we already have a license to use for readout of a parameter in the plant and allow an operator to make a judgment based on that readout and perform a manual action. That was our original licensing approach.

In conversations with the NRC, the only thing common was the fact that the instrumentation was digital. It was different manufacturers, different software approaches, one in which we already had a license for that equipment and Oconee did not. So very different, but we monitor everything going on, and we had open questions so that as a prudent

licensee with an application that we knew would go under review of whatever the guidance was at the time, we wanted to make sure that this interim staff guidance -- we wanted to make sure we understood how that guidance would be applied to our digital instrument even though it was a very different situation from this other license.

Q. Your approach, the 5059 approach that you would take, would be that you would train the operator in the use of the instrumentation and he would have whatever the required time to make a decision?

A. Yes. But that was not necessarily 5059. That was 5090.

Q. Oh, okay.

A. It was part of the -- yes. Although, you're mixing a lot of things in that question.

Q. Yeah. Okay. All right. I think I have something to talk about later about it, so we can get into it. I just was trying to understand.

A. The solution was monitor this instrument. When a certain parameter is achieved today, and prior to any license application, we have a license solution which allows monitoring that parameter and within one minute creating a manual operator action to turn off our reactor pumps. Our approach until June 7th was to

monitor that same parameter and within 10 minutes turn an additional switch, one additional switch. And that was the approach we were taking.

Q. And you're now rethinking that?

A. We're working through decisions to determine what the right path to solve this problem is.

Q. Is there expected to be a significant cost to addressing this issue?

A. Depending on the solution taken, there may be additional costs.

Q. Do you have a ballpark idea how much?

A. No. No. We're working with the different vendors. We have a number of options here. We can go back to our original scope of the power uprate and change that scope, or we can pursue -- fundamentally, or we can pursue a digital upgrade to the existing equipment to meet the new standards. So both of those are being looked at now for cost and schedule. That will be part of our decision.

Q. When you say go back and look at the scope of the original uprate --

A. Yes.

Q. -- or the original scope of the uprate, what would that entail? Would it entail the output?

A. No. No. Just which modifications would be

pursued.

Q. But not affecting your goal of achieving 180 megawatts?

A. No. That same goal would be achieved. In this instance, there are a number of ways to solve the issue that require the manual operator action based off the use of that digital instrument. We can automate that action using a digital instrument. We could install a digital instrument to the new standard and still have the manual operator action, or we could actually change entirely different components that would no longer require the manual action or any automatic action. We could solve it with a different system altogether. And all those options we believe are feasible and possible.

Q. They just have different costs?

A. They would have different costs and different regulatory certainty.

Q. Is the company's goal to pursue a solution that has the most regulatory certainty or --

A. No. It will be to -- I believe all are possible under the regulation. So we'll look at cost and -- but paramount will be nuclear safety. What's the most safe approach in nuclear space.

Frequently they line up and all those

characteristics match.

Q. Back to your testimony, on 989, I believe you testified that the company is on schedule to perform the CR3 uprate project work as planned. I think at the bottom of 988, top of 989.

A. Yes. That is correct. This is my May 1st, 2009, testimony.

Q. Okay. And at the time, you testified that was your belief?

A. Yes.

Q. On page 990 of your testimony, you list some equipment pieces there. Do you see that?

A. Yes, I do.

Q. That information would not be considered confidential; is that correct? I mean, it wasn't then?

A. I wouldn't believe that this information is confidential.

Q. Is there a reason why some pieces of information that you plan to put on in the future would be confidential?

A. Yes. A lot of our confidentiality deals with being able to assure the lowest cost for different works of scope. So an example of a confidential piece of information would be a price agreed to for a

particular scope of work because that would provide other vendors information that might allow them to, you know, might change their bidding practices such that it would cost more for our customers.

Q. So even the lifting of equipment sometimes would impact that?

A. I'm not sure.

Q. Okay. On page 990, lines 18 through 22, I think you state that you must order and make payment during a particular time frame?

A. That is correct.

Q. Something along those lines. What are you referring to there?

A. Well, when you go into contract to specify and purchase large pieces of equipment, part of those contracts requires a payment schedule based on achievement of certain milestones. They may be the completion of the design work, the completion of the manufacturing of certain components, the delivery of the components. So we work to devise the best, lowest cost with the most favorable terms of payment associated with the contract which matches the manufacturer's requirements to continue with the project.

Q. Is it the company's practice to always make

contract for full purchase of equipment? Do you ever contract only to get the specifications in order to do design work?

A. We tend to avoid that. Why that is is if all you're doing -- we'll ask for a request for bids against a set of specifications. We'll generally write -- for example, if we're going to purchase a particular piece of equipment, we'll write the specifications that are required for that equipment. And we'll put that out for bid. The different vendors will look at their products and their capabilities to determine if they have a product that they have readily available or if they need to design or change an existing product line to meet that specification, and they'll provide that information back to us.

But prior to them doing any detail work or any extensive work, usually have to order it.

Q. Are there exceptions to that? Have you --

A. I'm not familiar with any. That doesn't mean there aren't any.

Q. Are you saying that you usually have to order it, or usually that's the path that the company chooses?

A. Typically, we make the decision to purchase based off the proposals given, and we proceed with the

purchase.

Q. On 993, you reference a figure of 439.3 million dollars. Do you see that?

A. Yes.

Q. And is that the original project estimate?

A. That is what the statement says.

Q. Okay. Did that include somewhere in the neighborhood of 90 to a 100 million dollars of transmission work, do you know?

A. I would have to review the details.

Q. Okay. Do you have any recollection of transmission costs?

A. I know early in the project there was some question of transmission costs. I was not -- at that stage, I was not, you know, a significant part of the project.

Q. Was the transmission piece removed from the project?

A. I believe what transmission was originally envisioned was removed from the project.

Q. Do you know why?

A. I believe as we developed the engineering design, it was not required for the project.

Q. When you say, "Developed the engineering design," you mean as far as the output of the plant?

A. No. I believe when the project was scoped, there may have been some transmission needs in the project. And then as I stated earlier, you learn more after the scoping engineering work. And I believe when we got into the details of that transmission work, it was no longer required.

Q. Was there anything done in the rescoping of the project that made you think that -- that made the company believe that that transmission that was originally in there was no longer needed? Is that what you're saying?

A. You're asking details I wasn't familiar with, so I really don't feel qualified to answer that question.

Q. In your subsequent testimony -- well, first of all, the 439 million dollar number, do you know if that includes the original figure that had the transmission in it?

A. Which figure are you referring to?

Q. The 439. Was transmission originally in that number?

A. Let me review that testimony and I'll see.

Based on rereviewing what I filed last year -- and, remember, I've slept since then.

Q. I understand.

A. It appears that this original estimate included transmission work, which as I stated, following the initial study, was determined to be unnecessary.

Q. Okay. In comparing -- I want to ask you a philosophical question about how you measured this project against the original estimate as you present it to the Public Service Commission.

Is it your testimony that the project should be measured against the number that included the transmission that turned out not to be needed, or the number that excludes transmission that was determined not to be needed, as we sit here today and go forward?

A. I would say sit here today, that the project should be measured against reasonable and prudent cost incurred, not necessarily a budget created four years ago.

Q. Well, are there practices within the company where management of projects are held to valuation standards about how they perform against the budget?

A. No. Our practice is -- when you're dealing with these multi million dollar projects, you create a best cost estimate. That gets reviewed. And then that project gets approved based on the best cost estimate.

Under that IPP process we discussed earlier, there are triggers when those cost estimates, you know, as you learn more of the project, both in engineering space and construction requirements and contracts are actually put in place, you get a better understanding of what those true costs may be.

Then if you go outside the parameters of your projections, the IPP requires rereview by senior management. And then those rereviews authorize the expenditure of additional funds or return of additional funds based on refining those cost estimates.

So I would say it's not a question of accountability. It's a question of process. As you get outside your approved authority for expenditures, you go back and have to document the basis for those changes, both up and down, and get approval by the level of management that authorized the spending originally.

Q. Does IPP provide a vehicle for getting approval for changes to the budget?

A. Yes.

Q. And in the IPP, is that where you explain and justify those changes?

A. Yes.

Q. On 995 of that testimony, you state that you -- the company plans to file the LAR in the fall of 2009; is that right?

A. That's correct.

Q. And you also state that obtaining regulatory approval from the NRC remains feasible and on schedule?

A. That's correct.

Q. That turned out not to be correct? Well, at least the schedule part?

A. Well, be careful with schedule. It certainly was not submitted in 2009. The schedule need of our license amendment is to get it approved as early -- early enough so that the power can be increased at the earliest time possible so that the need of schedule is for approval such that we can increase power once the modifications have been installed and once the regulatory process is complete.

Q. Okay. And on 1006 --

A. Yes.

Q. I think we're now into your --

A. This would be my August testimony.

Q. -- cross-examination.

A. Yes.

Q. You state that the project is on schedule and

on budget?

A. That is correct.

Q. And how was the project on budget with respect to your testimony to the Commission?

A. Well, in this case, I believe we were within the budget parameters required by the IPP at that time.

Q. And in August -- that was probably September 9th or 10th?

A. I don't remember the date of my testimony, but I thought it was August last year.

Q. Your testimony -- my representation to you is the testimony occurred on the 9th and 10th of September.

A. Okay.

Q. So if you testified on the 9th or 10th of September, you were stating that the project was on budget with respect to the IPP that was in effect at that time?

A. That was my belief at the time.

Q. Okay. And at that time, the project was on schedule?

A. Yes. Now, I do know in my testimony I discussed the specifics with regard to the LAR. The LAR section of the project at this time during my

testimony was not believed to be submitted until the first quarter of 2010.

When I talk about schedule and budget, I'm talking about the entire project. We believed that the project was still on schedule for completion in 2011.

Q. Okay. On 1012 of your testimony, you testified there that the project is currently on schedule and the only caveat that you provide is about the low pressure turbine?

A. That is correct. At this time, we were aware and we discussed quite a bit in this testimony that if -- and filed testimony prior to this that there was an ongoing question with the ability to install the seaman's turbines during the 2009 outage.

Q. And you don't mention any issue with respect to the LAR affecting this schedule in that testimony, do you?

A. In this testimony, I talk about the LAR being submitted during first quarter 2010, and that at this time we believe that that would be sufficient to support the power uprate on schedule.

Q. And on 1014 of that testimony, you testify that you expect the LAR to be submitted in February of 2010; is that right?

A. Let me find it.

Q. I think we actually used the words 2011 in there but --

A. It does say February, 2011, but it was actually -- hold on. I say the first quarter of 2010. Looks like we got confused about 10 or 11. But in my testimony, the intention was to say that we believed it would be filed the first quarter of 2010.

Q. And did you believe at that time it would be February?

A. I'm not sure I was certain.

Q. Okay.

A. But I'll read the sentence I said. "It's more likely now as I suggest in my rebuttal testimony, that the application will actually be submitted in the first quarter of 2010 and that we anticipate approval approximately 12 months after submittal."

And later I explain the 12 months after submittal was submittal plus -- 12 months after submittal plus acceptance review by NRC. And I know that that's covered later when we talk about it.

Q. What is the mention of February at the top of 1014? What was the intent there? Is that just because it's a day in the month in the first quarter?

A. No. That may have been what the actual -- we

maintain a schedule of activities, and it's likely that's what that schedule showed at that time.

Q. Okay. Now, on 1014 to 1015, you're testifying there -- and this is your live testimony that we're talking about here, correct?

A. Yes.

Q. Okay. That the reason for the schedule slip was that the primary vendor was a -- needed a little more time to get their information in the right format; is that correct?

A. That's what I said, yes.

Q. Now, are we talking about AREVA?

A. We are talking about AREVA.

Q. And their preparation of the draft of the LAR?

A. Yeah. We found that in particular their preparation of the LAR -- and I would say our reviews indicated that we would need a lot more work with AREVA to get their documents correct. In addition, it's -- we were learning from previous LAR submittals that a much larger degree of detail was going to be required in this application than we had originally anticipated. So the more time to get their information right, format and content, that was both for monitoring the ongoing licensed applications of

licensees working with the NRC for their uprates as well as our own reviews of the performance of preparation for the LAR.

Q. Okay. But in your testimony to the Commission at that time, you only mentioned that AREVA, not in name, but needed more time?

A. No. It says, "And then in time for us to perform our reviews."

And, in fact, I talk about our staff reviews are focusing on the outages close to reviews. I talk not only about AREVA work but company work as well.

Q. Okay. When you discussed with AREVA the timing of the work that they were doing and them meeting milestones you expected them to meet, would it be fair to say there was a window between, say, June and December of the outage years that company personnel would be focusing more on working in the outage environment than preparing the LAR --

A. Some.

Q. -- doing review work?

A. We had some people dedicated to the LAR through the outage, in fact, quite a few. But some staff -- there's a lot of people involved with this LAR. The fundamental staff working on the licensing piece of the LAR were dedicated through the act.

However, some engineers who have particular expertise in an area that would have to be reviewed for the licensing application would be distracted by the outage. And so some accommodation would have to be made so that those reviews could be performed in conjunction with the other duties which were more pressing during the outage.

Q. Did you make it clear to AREVA or communicate to AREVA that you expected them to get work done before June of 2009 so that you would not have this conflict that you just discussed?

A. I'm not sure that that was a specific consideration we gave AREVA.

Q. Do you think they understood that?

A. I'm uncertain. I don't know.

Q. Okay. On 1015, I asked you about the -- in cross-examination I asked you about the four issues that we discussed earlier today --

A. Yes.

Q. -- that were relative to that or related to that April of 2008 NRC meeting; is that right:

A. Yes.

Q. And you said that there was nothing special about these technical issues which are creating delay. Is that your testimony?

A. That is correct.

Q. And did that hold true? Is that still true?

MR. WALLS: You mean about those four?

MR. REHWINKEL: Yes, about those four issues.

THE WITNESS: Not specifically. The four issues were dealing with some approaches we were taking in solving the technical questions that were required for uprate.

One of those issues not presented as one of the four issues in 2008 is associated with now the use of a digital instrument. The technical issue there though is not the approach being taken, but the digital instrument aspect of that approach.

BY MR. REHWINKEL:

Q. Okay.

A. Does that make sense?

Q. Yes. It's kind of a -- as I understand your testimony, is it's a fallout or it's a -- it's related to, it follows a solution that you were proposing to address that problem.

A. The solution specifically is the fast cooldown system. The question was is a fast cooldown system an appropriate method of dealing with a small break LOCA. That continues to be, we believe, an

appropriate technique.

That technique uses a digital instrument. And the question is not the fast cooldown system which was the technical issue we discussed in 2008, it is the digital instrument now in light of the new rules the NRC is applying. So it's just an instrument used for that technique, not the technique itself. The technical issue was the technique.

MR. WALLS: By rules, you mean the guidance?

THE WITNESS: The interim staff guidance, the changes in that interim staff guidance on the use of digital instrumentation. That could have been for something completely different and still would be an issue today.

BY MR. REHWINKEL:

Q. All right. On 1020 of your testimony, we're now in September, and you state -- you testified there, I believe, that you expect LAR approval in the summer of 2011?

A. That's correct.

Q. Is that still your belief?

A. No, I don't believe that.

Q. Okay. When do you believe now would be the earliest you could get NRC approval?

A. Depends on the solution we choose. But we're

working with the NRC now to understand the schedule of review should we choose a digital option. And the last conversation I had with them indicated summer of 2012.

Q. Okay. That would be the earliest if you choose the digital option?

A. Earliest isn't the right term. I'd say it's the most likely. But I would say it's early. We are working through whether that is the solution we'll be pursuing. And then we'll lay out a schedule with our vendor and the NRC to understand what that is. Stating a date now almost implies I know that's the day. I'd say right now we're working through -- that's the best estimate I have today.

Q. Okay. And have you evaluated the likelihood or -- let me ask it a different way.

Have you evaluated the probability of a delay in getting LAR approval by the NRC relative to your expected 2012 outage?

A. Currently, my 2012 outage is in the fall of 2012. We've indicated that in my last rebuttal testimony. I believe it is likely that the LAR will be approved and in our hands prior to. But I also recognize that with this new guidance document, the NRC is, as of June 7th, has determined would be used

for any digital solution we should choose, that it is possible there might be a delay in that approval.

Q. If there's a delay in the approval, now that you have a better understanding from the June 7th guide draft guidance --

A. Yes.

Q. -- is there any possibility that would impact your ability to actually do the work? Forget about the ascension hour, doing the work.

A. As of right now, we have not identified any. That is a question we've asked. I believe that all -- today I believe it is very likely we will be able to complete all required work during the 2012 outage. But there is some review that will now be required to do that. And it will depend on which solution we choose.

Q. Okay. Let me step back a second. And, again, I apologize for doing this, but I want to make sure I understand. But let's go back to the 5059 and 5090.

A. Sure.

Q. Is it true that if you were to do all the work -- just hypothetically. If you were to do all your work and postulate that you were doing it under 5059, would you be able to implement all of the

engineering solutions that you thought were in 5059 compliant and operate your plant without NRC approval?

MR. WALLS: I'm going to object to the form of the question as vague and ambiguous.

THE WITNESS: I think I know what's being asked. Under 5059, if a modification can be performed under 5059, I can install that equipment without prior NRC approval.

Our current strategy is to install all equipment required under 5059. And, yes, I could continue to operate the plant at existing power levels with that equipment installed.

BY MR. REHWINKEL:

Q. Okay. Is there a possibility NRC would see that even if you postulated you could operate with the existing power within the existing power level or licensed power level, I should say, with the new equipment, that they would nevertheless have a concern that it changed the operating parameters of your plant and register a concern?

Do you understand the question?

A. We would have had to make a mistake in our evaluation against 5059. I've never known that to ever happen.

Q. Is the 5059 review, does that occur in the

region? Do they look at it first?

A. No. The 5059 process is a process I own.

Q. Okay.

A. So when I decide I'm going to install a new pump in the plant, let's say, I evaluate the characteristics of how that plant pump will operate in my plant against a set of parameters described in 5059. So long as those parameters are not exceeded, those rules are not exceeded, I can install that pump without asking anyone.

That 5059 evaluation is subject to audit by the NRC as part of their inspection activities after the fact. So they could come by after the fact and disagree with my 5059. I've been doing this for 20 years. We conduct hundreds of 5059s a year. I'm not familiar with ever knowing the NRC audit ever overruling a plant's 5059 evaluation.

Q. Okay. But when in the context of your LAR submittal, you're going to file a LAR at some point in time --

A. Yes.

Q. -- that will note -- it will do more than note, but it will describe these solutions and your representation that they're 5059 compliant. Is that fair?

A. That's correct.

Q. Okay. Now, will the evaluation of 5059 compliance, within the context of your LAR submittal, will that be initially reviewed in Atlanta at the region?

A. No.

Q. No?

A. No. Staff here on-site might look at our 5059s as part of their inspection process but --

Q. You mean NRC staff?

A. NRC staff, that's correct. NRC staff on station might audit those 5059s as part of their inspection process. But that's not -- that's just part of their normal process.

Q. Okay. So the 5059 solutions that would be in your LAR submittal, they would be evaluated holistically, if you will, by the NRC in Washington?

A. No.

Q. No?

A. Not in Washington. They -- if they're looked at, they will be audited by most likely the residents on the site. And it's a -- an audit is exactly the right term. You go back and look after it's been approved to determine if the process was used appropriately.

Q. Is the 5059 approach that you're taking, is that one that is normal within the uprates that have occurred in the past?

A. Very typical. Virtually every uprate in the United States installed components under 5059 and then used those components that were installed to justify the licensing action, and then increased reactor power once the NRC approval was obtained.

Q. Okay.

A. It's very typical. Many of the uprates, in fact one that I am familiar with in Brunswick, we installed all the equipment required for the uprate, made the plant safer at the old power level, and then achieved the license once the plant was on-line, and then increased reactor power once the plant was on line. That is a very typical approach.

Q. Okay. Can I look at that testimony?

A. Sure (handing instrument to Counsel).

Q. Okay. I think I asked you this question on 1020 in lines 9 through 14 with respect to being able to operate the plant with the modifications made --

A. That's correct.

Q. -- before you get your LAR.

A. That's correct.

Q. And you said that you think that would be the

case, but there's a possibility because of this instrumentation issue that that might not be -- or that's a question you've asked? Is that what you said?

A. Yeah. The best answer is at this time and until June 6th of this year, I was very confident that any work required in the 2012 outage could be performed under 5059. Primarily because all that work scope had been done under 5059, most of it had been accomplished by other stations already under 5059, and the same rules apply to us.

This digital instrument, I also believe, can be designed to be installed under 5059. And let me give you an example. If we choose -- and it depends on the selection. If we choose to make this instrument create the automatic action of tripping off these pumps and turning the fast cooldown switch automatically, I cannot install that automatic feature without prior NRC approval.

I haven't made that decision yet. We're working through the particulars now. However, the instrument could be installed with that feature disabled and still have the instrument provide an extra readout to the operators without causing the automatic action under 5059.

Then once the license is received by the NRC, we could go in at power, most likely, and land that last wire, for example -- I'm using an example -- to make that action automatic. So I believe it's possible. I am very careful in answering your questions to talk about what I know.

Since that hasn't been laid out, that strategy hasn't been looked at in detail, I can't say for certainty that that still applies to this one question, which is how we solve this one problem.

Does that make sense?

Q. Yes. I think I understand.

A. I think it's very likely it can be done if that's the option chosen. I just haven't chosen the option even yet.

Q. And just so I understand your answer within the context of the way I intended to ask it, the post June 7th world with respect to that draft guidance is a potential caveat to the statement that you made on lines 9 through 14 on page 1020?

A. That's correct.

Q. Caveat as you've described it here?

A. That's correct.

Q. On 1022, question and answer on lines 10 through 18. I think you reference -- I think we were

talking there about the precedented or unprecedented nature of this uprate.

A. Yes.

Q. And I think you refer to it as a stretch uprate? Is that --

A. That's a fair term.

Q. Okay. What's the difference between a stretch uprate and an extended uprate?

A. Semantics.

Q. Okay. Well, is it fair to say that a extended power uprate is one that involves quantitatively more, a higher power level increase?

A. I've heard the terms used for different things. In some cases I've heard stretch uprate referred to as the measurement uncertainty uprates which are the one to two percent uprates throughout the industry, and then the extended uprate is one that requires more extensive work similar to this one. So the better characteristic of this uprate is an extended power uprate.

Q. On 1024 through 1025, it was my impression that your testimony in 2009 was conveying that there was nothing unusual about the CR3 EPU LAR compared to the LARS that had gone before you. Is that a fair characterization?

A. I'm not sure how you define unusual.
Q. Well, would it be fair to say that -- well, I'll withdraw that question.
A. Yeah. Every uprate, as I stated before, is different and has some unique aspects from any other uprate applied. That's why each license has to have a separate uprate for each site. You can't get a license uprate for all B&W units. So all of them have something unique in their application.
Q. On 1666 -- I'm going to hand you this. It continues on 1666 (handing instrument to the witness).
A. Yes.
Q. You can turn to that page.
A. (Complies)
Q. You testify there -- I think this is your rebuttal testimony. Am I right about that?
A. Yes, it should be. This is my live testimony in support of my rebuttal testimony.
Q. Actually, I think that's your pre filed rebuttal. Why don't you turn --
A. That's correct.
Q. And that was filed, I believe, August 14th of 2009. And I'll represent to you your testimony is given on September 10th of 2009. You testified there on 1666 that, I believe, that PEF has, quote,

reasonable assurances, closed quote, that the NRC will approve the full uprate. Do you see that?

A. Yes.

Q. Is that still your belief that you have received those reasonable assurances from NRC?

A. Absolutely.

Q. Is it something they have said and done since August and September of 2009 that has given you that?

A. Well, let's remember. As I've mentioned in earlier testimony, the NRC doesn't tell you that things will be approved. You work with them to understand how they will apply their regulatory review process to your application. And they will indicate if they see problems in achieving a safety evaluation.

This is the very process we used June 7th. And in that process, we laid out strategies that they indicated sounded reasonable for our application. We're were working towards those solutions today. So there is no certainty, but there certainly is a level of expectation that we can achieve regulatory review approval.

Q. Okay. The term reasonable assurances, that's not a term of art with respect to licensing at the NRC, is it?

A. No.

Q. And assurances could even be a misnomer with respect to them giving you any assurance. Is that --

A. This is -- in any dealing with the regulator, there is no certainty. So if you -- the word assurance does not imply certainty. It implies a very high level of confidence that we, one, understand the rules that have to be met for the uprate; and, two, communicate with the NRC as to their review process against those rules and that we have some confidence that we're meeting the requirements for those reviews. I think that's the best way to describe assurance.

Q. But your characterization of reasonable assurance is there's more of a perception on your part about where you stand with the regulator with respect to what you intend to do with respect to the LAR?

A. And it's also with an understanding of what -- there are hard and fast rules. This isn't a pop quiz. There are specific criteria that have to be achieved in the analysis. And if you're confident that that analysis is accurate and it achieves those values, many of them numeric, then you have a good reasonable assurance that you can achieve the uprate.

What might happen is that you find that not

enough detail was provided in your application. So even though you met the rules, the NRC may not have enough information to complete their review. So you may have to go back and refile additional information.

But with regard to achieving the uprate, we know the analysis shows this plant can achieve the rules that are hard and fast.

Q. Would you say that the rules are hard and fast with respect to the digital instrumentation issue that we discussed here today?

A. I'd say they're hard and fast. But since there's still interim guidance, those rules are subject to change just as they did to us in June.

Q. Okay. On 1671, if I could get you to turn there, lines 11 through 20. Could you just look at that testimony?

A. (Complies) Yes.

Q. Do you still have the same belief? Are you very confident about how the outcome of your LAR will be?

A. I'm confident that the LAR will be achieved.

Q. Are you as confident today as you were basically 11 months ago?

A. I am as confident today as I was 11 months

ago. The schedule right now, because we're in the process of making some decisions with regard to this new information, the schedule is more uncertain. But I am confident it will be achieved and we will eventually reach a uprated power.

Q. You testify there, I think, that there's a very developed set of rules, procedures, for submittal, review and approval for power uprates like CR3.

A. Yes.

Q. And is that still your testimony?

A. That is true for uprates. Digital instrumentation is in interim staff guidance right now. The NRC has indicated that they will make it final, so we believe we understand what those rules are.

Q. When do they -- when will they make it final?

A. The best I've heard is this fall. They wanted to work through this one application to learn their process and finalize it.

Q. Will you file your LAR before the interim guidance becomes final?

A. If required.

Q. Well --

A. But not only after good discussions with the NRC about what they need. That's why we're having these extra meetings.

Q. When you say, "if required," in other words, you mean to meet your schedule for that?

A. I guess the right answer is I'm not going to wait for them to finalize the guidance. I'm going to use the process we've already engaged in. We're going to communicate with them and have one-on-one discussions about our specific application, come to a agreement on what that application is going to have from a content standpoint, and submit in accordance with those conversations.

Q. Okay.

A. And that probably provides me the assurance to answer that question.

Q. And I think you've already testified that you have benefited from lessons learned from others?

A. Yes.

Q. At the time you testified there, you say you were there for -- had been able to craft the CR3 upright LAR to meet the expectations of the NRC. Is that your testimony there? Because of your understanding of the rules, lessons learned, your experience at Brunswick and fully understanding the

framework at which NRC reviews EPU requests?

A. Yes. And at this time, based on our lessons learned, we had put in place or are putting in place guidance that would give us an EPU LAR that would achieve the latest standards.

Q. Okay. Now, you filed that testimony, I believe, on August 14th?

A. Yes.

Q. I mean now -- I guess now that you know what you know about the expert panel, was it accurate that your LAR was -- at that time, the state of your LAR was crafted to meet the expectations of the NRC?

A. I'd say the right thing is our process was solid and in place. The expert panel -- I was confident that expert panel would identify any issues and that we would be able to resolve those.

So I think the right answer is the expert panel was part of the process. We had foreseen a need to do that. We had some expertise in the company that could not be brought to bear permanently for the EPU, but we knew that that expertise would add the value that the expert panel did and that we'd be able to resolve any issues identified. And we did do exactly that.

Q. But with respect to your testimony that you

filed there and that you gave to the Commission, the state of the LAR was not actually such that it -- at that time would meet the NRC's expectations. Is that fair?

A. Our expert panel review identified a number of areas where that -- the current state would not meet the NRC guides. Now, remember, at this point we didn't even have all the first drafts of all the sections completed. So with regard to this question, I was talking about the process we had in place including those reviews. I was confident that we would have -- and we have had -- and it's been proven out that we had the process in place to get the LAR into the right condition for the NRC.

Q. At the time you would have filed that testimony, would you have been fully aware of what was --

A. I had not gotten a debrief yet from the expert panel.

Q. I didn't think you had. I think I asked you in your deposition in July, and you knew it was ongoing, or you testified it was ongoing.

A. I had not yet been debriefed by the expert panel. But I want to make sure you understand. That expert panel was part of the confidence I had.

You're asking me are we going to be able to achieve the EPU and meet the industry standards. And my answer is yes because I have confidence in our process which includes the self evaluation by the expert panel to make sure that we're going to get it right.

Q. Okay. On 1672, if I could ask you to turn to there, you testified that you were currently finalizing PEF's LAR submittal and plan to submit it in early 2010; is that right?

A. That's correct.

Q. And you testified also that approval from the NRC would be expected in mid 2011; is that correct?

A. That's correct.

Q. And on 1673, you testified that the company had received reasonable assurance that its LAR would be acceptable; is that correct?

A. Yes. The context there is that we were continuing to monitor NRC activity and we're continuing to discuss our options and our approach in the LAR with the NRC. And, as such, we continued to gain reasonable assurance that our approaches would be acceptable to the NRC based on the guidance they had at that time.

Q. Now, at this time the NRC would not have been

aware of the findings of your expert panel or even that you had the expert panel looking at the LAR; is that right?

A. I'm not aware of what the NRC was and was not aware of.

Q. Is that something that they generally would know about?

A. No. They want to see the product.

Q. Okay. Now, on 1673, I think near the bottom you testify, "We have added additional levels of review to ensure the quality of the submittal and reduce the risk of delays in NRC review."

Do you see that?

A. Yes. That's speaking in part to our expert panel reviews.

Q. Okay. And on the next page, on 1674, you say, "Specifically PEF has implemented an independent review of the LAR."

A. That is correct.

Q. And that's the expert panel that we just spoke about; is that right?

A. Yes.

Q. So that refers to one, the first panel review of the LAR?

A. Yes.

Q. You did a subsequent expert panel review, or at least one?

A. We did a series of reviews through the process, yes.

Q. Okay. I guess what I need to know about is back in 1673, you use the term "added."

A. Yes.

Q. What did you mean by you added it?

A. We have a process for all licensing applications that we've used for many years. It's not unusual to apply for a license amendment under the license amendment process. But we would not normally have an expert panel review set up as the -- you know, as part of the process for a simple license application review.

Because this one was so large and was different -- it's a more complicated engineering and licensing submittal, we recognized before we started the process that it would require additional reviews beyond what would normally be required.

Q. Was there any work plan or documentation that says that the expert panel was always part of the LAR preparation process?

A. I'm sure it's somewhere. But, yes, it was

seen as a requirement of the process before we, you know, in conjunction with laying out the plan for the entire project.

Q. And you've said that's documented somewhere?

A. I don't know.

Q. Okay. Have you ever seen a document that said that the expert panel review was part of the overall project?

A. It's likely on a schedule from, you know, early 2009, the EPU expert panel. I mean, we had arranged for the people to come. We had chosen the right personnel before, you know, we actually had received significant information from AREVA.

Q. Okay. Do you know when you arranged for them to come?

A. I've spoken to people as much as four and five months ahead of time.

Q. Ahead of what time?

A. Ahead of when we believed that the right window for their review would start.

Q. When did you expect to get the draft from AREVA that the panel would review?

A. In the spring of 2009.

Q. Was there a specific milestone or deadline for them to meet?

A. Yes, there was. I'm not familiar specifically of what it was.

Q. That was not part of your function as to manage that part of the process?

A. No. I mean, not directly. I was overseeing -- for example, with regard to this, I knew that this application would be complex and be large. So earlier in the year and, you know, probably as early as the fall before, we talked about what oversight would be applied to the licensing application. And that's when we discussed the use of an expert panel.

Now, you know, I didn't sit down daily and review milestones for license application. In an oversight role, I was concerned in what we were doing in oversight. And the expert panel was something that we discussed as a necessary step for oversight. So my role was to make sure the right oversight was in place.

So I did discuss who we would be bringing in to review this license application so that we could make sure and provide that assurance to me that I could answer questions like what's your assurance you're going to get the right product.

Part of my assurance was I knew I was going

to bring in the right folks at the right time to provide me the right guidance.

Q. Okay. All right. Do you mind if we take a break? Everybody on the phone, why don't we come back in 10 minutes. Will that be okay? 10 minutes.

(Whereupon, a recess was taken.)

BY MR. REHWINKEL:

Q. All right. I would like to just make sure I understand about 5059.

A. Sure.

Q. It may not be the last time I ask about it. But have you evaluated the possibility that the NRC would not agree with your 5059 approach and would expect that you instead would need to get a license amendment for your proposed modifications?

A. Yes. I mean, that's what our 5059 process does. It performs a formal evaluation of each of these activities against the rule. So that is what 5059 is, it is an evaluation.

Q. I guess the question is, have you evaluated the possibility that they might disagree with your assessment that your modifications did not require a license amendment?

A. The answer is that the evaluation does that. It says will it meets the rules or not. That's what

the evaluation performs is an evaluation of will the NRC find you not in compliance with 5059. So that's what that evaluation performs.

Q. All right. And you said you own that. And you're saying your approach is that you can do your modifications as long as your analysis shows that you're within the parameters of your existing license?

A. Yes. And I may be using the terms in a confusing manner, so let me see if I can explain.

10 CFR 5059 is a section of the Federal Code. And in that section of the Federal Code, it lists a certain set of questions that must be asked to determine if an activity can be performed, like a modification to the plan, can be performed without prior NRC approval. That's the actual section of the code, 10 CFR 5059.

When someone in the utility industry or the nuclear industry refers to a 5059, what they're really saying is a 5059 is actually an evaluation of an activity against that criteria established in the code. So when you ask me if I have performed an evaluation of if the NRC will approve -- will disagree with my 5059, that is what a 5059 evaluation does specifically.

It says I have this activity. I compare it

against those rules. Does it fall within or outside those rules. We use an NEI document that describes how to -- the finer points of application against those rules. And, yes, we are performing 5059s for each of these modifications to be able to comply with the rules.

And right now we believe all those evaluations will show that the modifications can be installed without prior NRC approval.

Q. Okay. Let me do this. Let me give you a copy of what -- an old friend. This is a June 9th, 2008, letter from the NRC to you, I guess summarizing that meeting that we talked about, the April meeting; is that right?

A. Yes.

Q. This is dated June 9, 2008. And it's a letter from Feraday Sava (phonetic)

A. Yes.

Q. I guess it's just a memo.

A. It's a meeting summary.

Q. Okay. A meeting summary. And it has Tac or T-a-c No. MD8530. And here's kind of -- this may help me understand what you mean by 5059.

On the second page of the memo, there's a discussion of the issues that we have talked about

before. And kind of two thirds of the way down, it says, "The last issue is the boron precipitation methods. Current methods will be evaluated under 10 CFR 5059. If an LAR submittal is required, it is planned for October, 2008."

My question is, is they specifically mention this one being evaluated under 5059, the others are not referenced that way.

A. Yes.

Q. Can you explain that dichotomy, if you will? And I guess before you answer that, if you could turn -- there's some slides that I've attached which is the presentation that was made to the NRC by the company on that day.

And slide 31 is the boron precipitation slide. This references a solution to if you get in a loss of coolant situation where you maintain enough flow that boron does not, I guess, clog the lines, to put it in layman's terms; is that right?

A. Close enough. Close enough I think for your question.

Q. Okay. Here on 31 you -- it says, "We will evaluate under 10 CFR 5059."

And the others -- I mean, you can review the slides, but the others do not make any specific

reference to 5059, nor does the NRC.

A. That's correct.

Q. So my question is: Why is 5059 highlighted with respect to that one issue but not the other three?

A. In this case, we wanted to discuss with the NRC some details about this item because of previous experience with other power uprates had identified the question of treatment of boron precipitation and how it would be treated. So we use this slide, and the conversation around the slide, to discuss our approach with regard to this technical issue which our operating experience review of previous licensee indicated would be a question of concern for the NRC so that we could gauge or give them an opportunity to provide us any insight with regard to where we were headed.

And so we kind of laid out what our plans were with boron precipitation and told them that we believed that we could resolve that under 5059 without asking us for a specific separate submittal associated with that issue.

Q. Because you mentioned 5059 specifically there, did that create the impression that the other items would not be 5059?

A. Well, actually, the other items, if you look, it actually references when a submittal would be applied. So at the top of that page, the third paragraph, it says -- it talks about the four potential issues we wanted to discuss. We -- that the exemption that we were required in the first case, we believe that that would have required a link submittal, so we chose an option that would not require that exemption.

The second was the atmospheric dump valves. And we believed we were going to -- you know, I can't remember exactly how each of these would be referred to. But we talked about how they would be incorporated into the licensing actions.

For example, like it says that a plant specific LAR would be submitted in February, which it was.

Q. That was the rod ejection?

A. That was the rod ejection.

Q. And with that, did you receive the amendment?

A. Yes.

Q. Okay. But the core flood line break and the small break loss of coolant accident, that's the one -- actually, that's the one that has the digital instrumentation issue?

A. That is the one that has the digital instrumentation, that is correct.

Q. But after this meeting, you came away with the idea that you would not do a separate LAR or submittal for the core flood line break --

A. For the --

Q. -- solution, right?

A. Yeah. My memory is -- I've slept since then again, but memory serves me that we found a way to implement the change without requiring the exemption. So there was a specific rule with regard to the exemption for core flood line break concurrent with -- I believe this led us to add a modification to the plant which was the LPI cross tie modification so that we would not require this exemption anymore. And that LPI cross tie-- if memory serves me correct -- that's how we solved this specific issue.

It's difficult from the minimal information available in this meeting minutes. But the LPI cross tie modification that we added to the plan resolved this issue without requiring a specific exemption from a rule, and therefore the submittal for approval of that exemption was no longer required.

Q. Okay. Did the LPI cross tie issue actually solve two issues, precipitation issue --

A. We were actually able to change that modification to add a little bit of piping that actually improves our position with regard to boron precipitation.

And to your question with regard to 5059, that LPI cross tie modification has been installed at other facilities under 5059, and that is our intention as well.

Q. Okay. And is it your testimony that the NRC will not make any specific determination with respect to whether the LPI cross tie modification fits within your existing license?

A. Not for our existing license.

Q. Okay. So there just wouldn't be a point where they would -- in their evaluation where they would say yes or no on that?

A. They have an audit process where they review our 5059s after the fact.

Q. Okay.

A. But as I've stated, I've never known the NRC to overrule a utility. It probably happened somewhere if you look hard enough. But I'm not aware in my 19 years of dealing with the NRC of them ever overruling a 5059 evaluation.

Q. And they do not have a process in the context

of a formal LAR review where they look at your 5059 compliance of modifications that are part of the LAR?

A. Well, you're mixing two processes. The 5059 process is a utility-owned process under the rules set by the Federal regulation. The 5059 process is a submittal process reviewed by the NRC, and they have a review process for that.

They do have an inspection manual that tells an inspector how to look at a 5059 to determine if the 5059 was approved inappropriately. So they have a process for auditing 5059s, their procedure. And they do apply that procedure a certain number of times a year against my 5059s to determine if I made an error in my 5059.

Q. But you have no reason to believe that the NRC would do anything special with respect to reviewing or auditing your 5059s in the context of their review of your LAR; is that correct?

MR. WALLS: Objection. Ambiguous.

THE WITNESS: I'm not aware of any special inspection plan by the NRC of my 5059s for this power uprate.

BY MR. REHWINKEL:

Q. All right. And in that regard, you do not have a concern that NRC would differ with your

assessment that your modifications in your contemplated LAR submittal are 5059 compliant?

A. I have no concern at this time.

Q. Okay. On 1677 of your testimony, you discuss the core flood line break issue. Do you see that?

A. Yes. In fact, I was describing what I just said earlier.

Q. Okay. And I guess the -- there was a determination that the company made about seeking an exemption or doing a modification?

A. That's correct.

Q. And you said in your testimony that the NRC staff or NRC was strongly supportive of your chosen approach; is that right?

A. Yeah. And, once again, this isn't where you get a formal approval. They just state, listen, you certainly could apply for the exemption. This is what we would go through to review that exemption. If you install the modification, we've seen other plants do that under 5059 and that's been an acceptable approach. And you gain some certainty when you receive that feedback.

Q. Okay. And in 2009, you said they were strongly supportive. Is that your testimony today that they are?

A. Yes.

Q. And with respect to the -- on 1678 you mention the boron precipitation issue. And I think you testified there that the same modification for core flood line break could be expanded to address the boron precipitation issue. We discussed that earlier just a few minutes ago, right?

A. Yes. In this case, we had already had an exemption for our boron precipitation which required manual action. We felt we might have to reapply for that exemption in conjunction with power uprate by making a change to the design of this system. We were able to eliminate the need for that manual action and thereby that special exemption request.

Q. Okay. And you said there that that proposed solution made the extended power uprate much more acceptable for NRC?

A. Yes. NRC likes it when you -- when you're able to accommodate a more standard approach to existing licensing when you change to power uprate. In other words, if you can eliminate current exemptions by improving the way the plant responds where you no longer need that exemption of the rule, that's considered capable.

Q. Okay. And that's still the case?

A. That's still the case.

Q. On 1679, you testify about the postulative LOCA event and your atmospheric dump valve solution; is that right?

A. Yes.

Q. And I guess that you're initially concerned that the NRC would not accept this solution because they perceived it to be the first of its kind?

A. Prior to us meeting with them and describing it in detail and providing a face-to-face conversation, they were unsure if this was the first of a kind or something special.

Since then, they've indicated that it is agreeable to submit it with part of the LAR, in fact, because it is a little more standard than what they thought. Once we laid out what we would be achieving and pointing to other sites that had similar systems for similar mitigation, they realized that they already had reviewed the strategy before at other locations and could apply those lessons learned for our application and no longer required a separate submittal.

Q. And that's still the case today?

A. Still the case. Absolutely.

Q. All right. On 1684, you testify there -- I

think this is in your live testimony -- on line 17 and 18 that there were no unusual challenges in the -- I guess your LAR approach?

A. I don't think there's any unusual challenges, no.

Q. And you mention again reasonable assurances from the NRC about your chosen approach?

A. That is correct.

Q. And you state that you're confident that the NRC will approve your LAR in the upright?

A. Yes.

Q. And is that still the case?

A. I still have confidence in our NRC approval.

Q. And you also believe today that there are no unusual challenges to the LAR?

A. There's no unusual challenges. The additional modification review is a difference, but we believe we have strategies that will work with the NRC. And I personally had conversations with NRC management about this review, and we believe it is achievable.

Q. And on 1687 -- can I look at that page one a second?

A. (Handing instrument to Counsel.)

Q. You state, I think, in there that you have

high confidence that all of your solutions will be successful, your proposed solutions?

A. That is correct.

Q. And do you still have the same level of confidence today?

A. I do.

Q. On 1704 and 1705, you talk about AREVA, that this being their first uprate?

A. That is correct.

Q. And on 1705, you state that you put in additional scrutiny because of that?

A. That is correct.

Q. And what did you mean by additional scrutiny?

A. A lot of it was that expert panel. And, in fact, you know, that expert panel found some problems with that license application. And what I'm indicating in this testimony is that we were aware there were engineers that were not familiar with the EPU process that had to be involved in the program.

Fundamentally, certainly some of our own staff, but also AREVA. You know, you're in a catch-22 there. You would like to have a very experienced staff provide this license amendment request the first time. Unfortunately, there was no one on the planet with AREVA, that worked for AREVA, that was familiar

with AREVA design that, had ever submitted an extended uprate LAR or developed one because it had never been done before.

So we put in place that -- for example, the expert panel review so that we could bring to bear what experience we had once we started getting the product from AREVA in place so that we could take advantage of that experience as reasonably early as we could.

Q. Did you put the expert panel process in place because of AREVA's experience or because of the size of the project?

A. Both.

Q. Was AREVA aware that there was going to be an expert panel review of the submittal?

A. I'm not aware. They were aware that the company would be reviewing the documentation. I don't know what extent they were aware, that we would bring in personnel from outside Crystal River or the industry.

Q. And in discussions the company had with AREVA about -- well, let me step back and ask it this way.

The expert panel, did they have expectations of having full access to AREVA personnel and AREVA documentation to do their analysis?

A. I don't know.

Q. Do you know whether they had to work with AREVA personnel to accomplish the review?

A. I believe most of their review was with the paper, you know, what had been submitted.

Q. Okay.

A. So they were reviewing a document or documents.

Q. They did not have any interaction with AREVA?

A. I don't know.

Q. Well, was there any provision in the contract with AREVA that required them to cooperate with the expert panel review?

A. Yes. They were required to cooperate with company reviews. There was no need to detail that there would be an expert panel. They were required in the contract to, you know, comply with our comments and work through -- work through our reviews of their product.

Q. Would they have billed the company for the time of their personnel to participate in that, or was that part of a fixed price?

A. I'm not aware.

Q. Who would know that?

A. Perhaps the project manager might know. The

original scope of work for AREVA, based on what we knew, the template at the time that the scope was written -- and it assumed a certain amount of engineering review time to review and resolve getting the LAR to a certain status of depth of detail and format.

During the process after that original scope was written, the NRC template changed, the depth of detail requirements changed, and so there were a lot of changes in scope identified between that first scope document and the final product that was required.

Q. But you don't know whether AREVA had an expectation before they submitted the draft for review to the company about their need to cooperate?

A. I would say that their scope included a -- their contract included a specific scope required, that they were contracted for that particular scope. And then our general agreement with AREVA called for additional time and material that would be characterized for work scope outside that original scoping document.

Q. I guess your testimony -- the reason I was asking, I guess, in your testimony you have AREVA agreement and some amendments?

A. Yes.
Q. I fully don't expect you to read this contract.
A. I'm familiar somewhat with it.
Q. But is there anything in here that you can cite me to that addresses how AREVA would be compensated for any effort to cooperate with the expert panel?
A. Give me a few minutes, I think I'll be able to find something.
Q. I don't mind if you confer with Mr. Walls.
A. Yeah, it is detailed here on page 4 of 91 for work authorization 84 that there is an amount of [redacted] for draft comment response.
Q. Okay. This is JF7?
A. That is correct, JF7.
Q. And I think you're talking about 8.28 revised?
A. Yes. Additionally, there are some 30 percent review comments incorporated and 70 percent review comments incorporated under note 3 there at the bottom there also that would relate to comments received and to, you know, for comment resolution.
Q. And the term draft comment response, it means response to the company's questions about the draft?

A. Yes. Now, recognize that in each of these -- now, that specific plan -- now recognize that this contract also recognizes time and material prices associated with work which is deemed to be outside this scope of this original document.

Q. Okay. Well, so that's really my question is was their work associated with AREVA's responsiveness to the expert panel's review that was assumed in this [redacted] amount, or would it be a time and materials thing?

A. The way the contract was written was for an assumed scope of work to meet a certain threshold that was devised prior to and in conjunction with this contract.

Q. This contract was executed, it looks like, in 2007. I see --

A. Signature dates are 2007.

Q. Okay. And the expert review occurred sometime in the second quarter of 2009?

A. That's correct.

Q. Okay. And --

A. Second or third, I think.

Q. Okay. This completion date, the 6th one, 2009, what does that refer to? This is 8.28 revised, deliverable section.

A. I'm not sure. What page are you on?

Q. I was just looking at the table here on page 4 of 91

A. Yeah. "Submit the LAR to the NRC." The completion date was 2009.

Q. But above that draft comment response, 6/1/2009.

A. That's correct.

Q. You're saying, though, that [redacted] is associated with the task of cooperating with the company in responding to comments on the draft?

A. That's correct.

Q. Okay. And it says revised. There's an 8.28. And I'm looking on page 49 of 91 -- actually, 48 of 91. There's a section that says, [redacted] And it says, [redacted]

A. Yes.

Q. Is that the work under the contract that covers AREVA's obligation to cooperate with the expert

panel?

A. I'm not sure where you're going, Charles.

Q. Well, my question is, is the expert panel work, is it contemplated in this part of the contract, or would it be --

A. The contract recognized the company would review the work. And to that extent to meet the original scope of the contract, they would -- for that original scope, work with us to achieve the contract.

Q. Okay.

A. Now, I don't think we wrote the word expert panel in the contract, but they knew our engineering staff would review each document and that they would be working towards complying with the contractual language.

For example, in this case, to meet a specific template of RS-001 to meet the contract, original scope of the contract.

Q. Okay. But on 4 of 91 of this exhibit, the [redacted] that is referenced there, does that include -- is that compensation to AREVA for their work in responding to the company's inquiry through the expert panel?

A. I would say it is a line item to reflect their basis -- you remember that this was a fixed sole

source contract. So as part of our process, we wanted them to detail what the basis for all their prices were. And they could have thrown out a number of 50 million, and we would not have had any reason to challenge -- or any option but to choose AREVA.

But using our alliances with AREVA, you know, we require that they provide the basis for their figures so that we could review them so that we would feel they are reasonable and prudent.

In this case, they believed, based on the original scope, that they would be spending about [redacted] worth of man hours in reviewing comments off of the original scoping document -- to comment resolution for the original scope described in this document.

So this was the basis for why this piece of a [redacted] dollars that is at the bottom of this table was provided.

Q. Okay.

A. Does that make sense?

Q. Yeah. So you're saying that AREVA may have billed more or less?

A. No. We agreed to a fixed price for a fixed scope.

Q. All right.

A. And we paid a fixed price for a fixed scope.

Q. So the only additions, the only increases to payments to AREVA under WA 84 would have been through subsequent amendments?

A. Subsequent amendments that had scope which prescribed a scope beyond original scope. And this contract -- I want to make sure it's clear.

In this contract, it recognized the fact that there might be changes which require work outside this original scope or required work that was beyond what was expected to meet this scope. And they had -- on page 6, it talks about the use of time and material budgeting as an example for -- and on page 5 and 6, they talk about time and material processing.

Q. Okay. There were amendments to WA 84 after the expert panel review was completed?

A. That's correct.

Q. And these were -- these covered AREVAs's work to do rewrites of sections --

A. That is correct.

Q. -- for preparation of the next draft of the LAR, correct?

A. Yeah. For scope increases, that's correct. Scope changes and increases.

Q. But with respect to them responding to and

working with the expert panel to complete the initial review of the draft, you received no additional billings from AREVA; is that right?

A. Here's what I know. I know that AREVA at different times sent us invoicing for work that we felt was part of our original scope, and we rejected those invoices. But we did review and recognize that we asked AREVA to do more work than originally was prescribed in this license amendment and we used -- I mean, in this contract. And we used the time and material agreements we had with AREVA to agree to prices for this additional scope and work.

Q. And was that prior to the conclusion of the expert panel's work, those invoices for work during the time prior to that?

A. I don't know if there were any invoices prior to the expert panel or not. I don't know. I know there were some afterwards.

Q. That would have been as a result of implementing the findings of the expert panel in the adverse condition report?

A. Not necessarily.

Q. No?

A. Not necessarily. Much of what the expert panel found was where AREVA had not complied with the

original scope and with quality required to meet the original contract.

We accepted no invoices and paid no additional invoices for that scope. So the expert panel did identify issues that reflected original scope. The expert panel also identified a need based on more recent licensing activities by other utilities that a depth of design work beyond what was in the original scope would be required for submittal by the NRC.

So the extra panel identified items that needed to be improved in both original scope -- no invoices were paid or achieved for that -- plus some recognition that this original scope was not sufficient in the current regulatory review process the NRC was using for power uprates, and thus require additional work under the TNA portion of the contract.

Q. Well, I'm trying to find out whether there was an understanding by AREVA that cooperation with the expert panel was something outside their -- the scope of WA 84?

A. There was some recognition under WA 84 that they would work with the company in general, broadly, to resolve work under this contract. And that was part of the recognition of this contract. I don't

think it mentions the words expert panel.

Q. Regardless of whether it's expert panel or company, the fact is you used the expert panel to do your review of their draft?

A. A review. Maybe the process is clear to me and that's why we're having a hard time coming to a conclusion here.

Each of these 51 documents, that's a process AREVA has, a 51 program, which is an engineering program. Each of these 51 documents went through all sorts of reviews. They would be submitted to the company. It might go to a system engineering because it might be dealing with a particular system function. It might be reviewed by his supervisor. It might be reviewed by licensing and then go back to AREVA for conflict resolution. That is a review that would be recognized in this document, and I believe is likely the basis for that [redacted] line item.

It also might be subject to a self assessment that we perform where we assess a certain area of the licensing document to look for weaknesses. In this case, we added an expert panel review to oversee the entire project. So I guess my point is that there was money in here to review these documents, whether there was an expert panel or not, and it was [redacted]

Q. Okay.

A. Which was really a basis for their fixed price. And remember that we had a fixed price for a fixed scope. They provided us a basis for why it was [redacted] dollars instead of [redacted]. And part of that basis was they believed they needed about [redacted] worth of man hours to resolve comments.

Q. And that would have included these comments after the submission of the draft?

A. Yes, of each of the draft sections.

MR. REHWINKEL: Okay. It is almost noon, and I have a significant amount left. Do you all want to take a lunch break?

THE WITNESS: If you have a lot more, I'd appreciate lunch at some point.

MR. REHWINKEL: Yeah. Why don't we take 45 minutes. Is that enough? Come back at 12:45.

(Whereupon, a lunch recess was taken.)

- - - -

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF CITRUS)

I, the undersigned authority, certify that JON FRANKE, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 16th day of August, 2010.

COLLEEN DeLANEY
Court Reporter, Notary Public
State of Florida at Large
My Commission No.: DD 246550
Expires: December 30, 2011

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF CITRUS)

I, COLLEEN DeLANEY, Court Reporter, Notary Public, certify that I was authorized to and did stenographically report the deposition of JON FRANKE, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 16th day of August, 2010.

_____
COLLEEN DeLANEY
Court Reporter, Notary Public
State of Florida at Large

E R R A T A S H E E T

CAPTION: In Re: Nuclear Cost Recovery Clause

REPORTER: Colleen DeLaney

I, the undersigned, JON FRANKE, do hereby certify that I have read the foregoing deposition, and that, to the best of my knowledge, said deposition is true and accurate with the exception of the following corrections:

PAGE	LINE	CORRECTION AND REASON THEREFORE

_____ _____

Date JON FRANKE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Cost Recovery Clause.) Docket No. 100009-EI
) Filed: July 29, 2010

VOLUME II

The DEPOSITION of JON FRANKE was taken pursuant to Notice of Taking Deposition, at PEF EOF Traning Center, 8202 West Venable Street, Conference Room No. 136, Crystal River, Florida, on Tuesday, August 10, 2010, at 12:54 p.m., before Colleen DeLaney, Court Reporter and Notary Public in and for the State of Florida at Large.

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N O E X H I B I T S

CONTINUED DIRECT EXAMINATION

BY MR. REHWINKEL:

Q. Mr. Frank, are you ready to go again?

A. Yes.

Q. I'm going to go now to your 2010 testimony. Take that one. You can keep that. Yeah.

Do you have your March 1st, 2010 testimony with you?

A. Yes.

Q. Okay. I may skip over that deposition for now. Let me ask you, first of all, this is your March 1st, 2010 testimony?

A. Yes.

Q. Do you have any corrections or changes to make to this testimony?

A. All the information in this testimony is accurate as of the date of the testimony. There is some organization changes and other changes subsequent to this. But as of the day of this testimony, this information was correct.

Q. Okay. Were you going to update that at the hearing?

A. Well, for example, on the first page of the testimony, line 15, it indicates that the engineering manager was reporting to me, that was true as of the

date of this filing. The engineering manager no longer reports directly to me, but to an engineering vice president now.

Q. Okay. Someone in North Carolina?

A. That is correct.

Q. Okay.

A. That was the one change.

Q. Okay. And what about on page 2, line 16 and 17?

A. If I can refer to my notes.

Q. This is about your -- approximately two years ago, "I was promoted from my current position."

A. That's correct. At this point, it was approximately one year ago that I was promoted to vice president. And I don't have my notes with me on the changes, but I believe also this -- in this testimony I refer to a schedule for my next outage being spring of 2012 while we will continue to evaluate. We have continued to evaluate, and our next outage for refueling 17 is scheduled for the fall of 2012 now.

Q. But that is addressed in your rebuttal testimony?

A. That is addressed in my rebuttal testimony, but it would be a change from this one.

Q. Okay. All right. Did you have any role in

the preparation of the original BAP for the uprate?

A. No.

Q. Okay. What about the IPPs?

A. No direct role in the IPP development.

Q. What would have been your indirect role then?

A. I did participate in some presentations of the scope and some of the technical decisions that were being made by the organization and was familiar with the activities.

My boss at the time was also in charge of this project independent of me, so I was around as some of the discussions and decisions were being made.

Q. And who was your boss?

A. Danny Roderick.

Q. Okay. The noise you-all are hearing is rain, if you can hear it.

Can I get you to turn to page 8 of your March, 2010, testimony?

A. Yes.

Q. Okay. Do you have the schedules T7 through T7B with you that is referenced in the testimony.

A. They're available.

Q. Okay. If I could get you to Mr. Garrett's schedules that are referenced there.

A. This is exhibit -- I have Exhibit WG-2.

Q. Okay. Yes. And let's turn to T7. Actually, before we do that -- well, yeah, let's go to T7. All right.

Now, are the dollar amounts in this schedule, are they still confidential?

A. Yes, they are.

Q. Okay. The item number, line number 1 on T7 is the WA 84 contract that we discussed that's attached to your rebuttal testimony, correct?

A. Yes. This is work associated with the extended power license amendment request.

Q. Okay. And then item 12 on this contract is an amendment to WA 84?

A. That's correct.

Q. And what is the -- what is the reason for this?

A. I would have to pull out Amendment 7 to know that. What it says in work description is EC packages, which per what the table says, R17 EC packages would be engineering change packages for R17.

Q. And is that change in scope?

A. I would have to look at this, and I need to understand what WA 48 Amendment 7, I would like to refer to that amendment to know exactly what this is.

This may be scope different from licensing

application scope. We may be using the contract of WA 84, which allows for time and material work. But where it says EC packages, that is not necessarily a LAR activity. It is more -- EC packages are the detailed engineering change work that supports the modification of the plan itself, not the licensing application.

Q. Is that document attached to your testimony?

A. I don't know if we have Amendment 7 attached to my testimony. I don't believe we do. But I'd have to refer to that amendment. This description is a little vague, but EC packages are not directly associated with the LAR. It is typically work associated with the engineering work and work constructions for modification work itself.

Q. What about on line 13? That's Amendment 8.

A. That would -- and in this case, it indicates it is for engineering change packages as well as some LAR work.

Q. Okay. Do you know what LAR work that is?

A. I would have to refer to that amendment to know specifically.

Q. Okay. And the same with item 14, which is Amendment 9.

A. That is correct. Although in this case, it

does not refer to LAR, so it's more than likely for engineering change work probably.

AREVA's design -- proprietary information for design is not only required for the licensing application but most of our engineering work associated with the equipment that they were the original manufacturer for.

Q. Okay. And up on line 2 -- actually, line 3 is WA 93. And it looks like that was AREVA work for Balance of Plant?

A. Yes. And that was a separate contract for work scope that was separate from the -- what we would refer to as in triple S or nuclear safety systems, the Balance of Plant work is the steam plant work like turbine building work. And that was a separate scope of work.

Q. Okay. Now, is there Balance of Plant work schedule for R17?

A. Yes.

Q. What would that be?

A. There is work on condensate pumps, some control systems. Our low pressure turbine work would constitute Balance of Plant work.

Q. Okay. Is there anything you can tell, if you look at the T7A schedules with respect to the ones

that I asked you about, Amendment 7 and 8, and that looks like on 50 and 51 of that WG-2.

A. I'm not sure I understand your question. From referring to the Schedule 7As or 7 alphas, you're asking is there anything more that I can learn relative to the amendment?

Q. 7 and 8.

A. 8 in particular.

Q. Actually 7, because 7 is the one, if you look at the description on page 50 of 61 --

A. Page 50. My page numbers are not -- don't go up to 50.

Q. Okay. Well, let me look --

MR. WALLS: Do you have one we could look at, Charles?

THE WITNESS: I don't know why your page numbers would be different unless it's the formatting of the printing. If you give me a second, I may be able to find this page.

BY MR. REHWINKEL:

Q. Okay.

A. It's my page 19 of 28.

Q. I think there was some printing issue with these.

A. Yeah. In this case, what this appears to be

is, as I predicted, it is for work associated with some very specific engineering which is required for the installation of that LPI or Low Pressure Injection cross tie system which changes to the atmospheric dump valves associated with the fast cooldown system and emergency feed pump too where we're changing out the way that pump operates. So this would be in triple S engineering scope, some of which also that engineering work detail is also supported -- it requires to support the licensed amendment request as well.

So this particular scope of work is both engineering to design the modification changes as well as how that engineering is translated into the licensing application for review by the NRC.

Q. Okay.

A. So some of that work is required for both, if you understand. You have to pay for this work. It supports both the engineering change in the field as well as the licensing application.

Q. So it supports the work to design the engineering solution to the issue that is raised --

A. That's correct.

Q. -- as well as the analysis to support the NRC's review and approval?

A. I say that, although when I refer to the next

page which is Amendment 8, it indicates specifically that it also covers LAR activities for some of these same modifications. So it might be possible if I were to review these amendments. They may have separated these into two different amendments.

Q. Okay.

A. The licensing piece of those modifications might be covered in Amendment 8 as opposed to 7 because it is some of the -- some of the same modifications are mentioned.

Q. Okay. But in 8, it also -- it's LPI cross tie modification, large transient --

A. Yes. And, in fact, this is a good example of what I was talking to you about before. In our reviews with the NRC, subsequent from the original scoping of the contract 84 with AREVA which covered the original scope of the licensing application request, in conversation with the NRC they pressed us to conduct what we call large transient testing, okay? This involves putting the plant in a state and then initiating an actual transient on the plant like a loss of reactoral pumps or a scram and then watching the plant respond from extended power uprate in performing that test as a physical test on the facility.

Obviously, that costs money and reduces the time the plant is available for our customers. So this particular Amendment 8 I would believe was involved with our request to AREVA to try to demonstrate that testing was not required because the results could be proved analytically without the plant actually going through the transient.

So this is an exact example of how the licensing work might expand beyond the original scope due to a question by the NRC lead to us requiring additional analysis to prevent a transient, in this case, loss of generation to the customer by doing the calculations in a computer as opposed to at the plant.

Q. Okay. So 7 and 8 are without a doubt scope -- well, scope increases or modifications to the original WA 84, the assumptions as far as what engineering activities were going to be done under the original WA 84?

A. They appear to me to be scoped beyond WA 84, the original. That's why they're in this.

Q. Now, on the next one, Amendment 9 to WA 93, R17 EC packages including feed water heater 2A and 2B, the deaerator and main steam system.

A. Which one is this?

Q. It's just -- it should be following 7 and 8.

A. Okay.

Q. At the top it says Amendment 9.

A. Yes. It's Amendment 9. It's a 93 though.

Q. Yes, 93. Now, this is not for the LPT, correct? This isn't related to the low pressure turbine?

A. Not directly.

Q. Okay. Now, the deaerator, that's a none safety related piece of equipment?

A. That's correct. Yeah. Contract 93, what you'll notice -- in fact, if you refer to the first version, the first reference to Contract 93, which is my page 10 of 28, about three back when you start the T-7 alphas --

Q. Right.

A. It refers to Contract 93. You'll notice that under brief description of the selection process, in this case AREVA was not the sole source. That's why these contracts were separated. The Balance of Plant information is not of such a strong proprietary nature that we had to go with AREVA. So we did go out and look at other vendors for that work.

This package, you're referring to Amendment 9, is in conjunction with that work scope of 93 and is a Balance of Plant work.

Q. Okay. There was some work that was done or is proposed in the LAR that would bypass a deaerator; that right?

A. Yes.

Q. Now, even though the deaerator is not part of the N triple S.?

A. That's correct. It's part of the Balance of Plant systems.

Q. Okay. But the bypass of it is necessary for --

A. The deaerator was sized for the current power levels. So it has the ability to handle a certain amount of flow through it. It's a large tank that collects drains from the steam system as well as part of the condensate in feed system where it's returned the water back into the steam generators.

It was not sized originally to handle the extra increase in power. Now, not every plant has a deaerator, so we're going to bypass some flow around the deaerator to accommodate for the additional flow requirements.

Q. And that's just an issue that you own in terms of getting the maximum amount of electrical output based on what you're allowed to uprate to; is that right?

A. That's correct.

Q. So that's just a choice you would make with respect to how efficient you want your plant to be?

A. It's an element of efficiency, but it's more importantly required for the uprate. For example, if we don't bypass, then I can't pump enough water back to the steam generators to get the power out of the steam generators that the reactor is able to accommodate.

It is a capacity change. In this case, the capacity of the deaerator needs to be increased in order to get the full power out of the plant.

Q. Okay. But is that something NRC would have a say in?

A. No. It's unlikely.

Q. It's just how efficient you want --

A. There are different transients that are modeled that when we take -- for example, if we have a main steam line rupture accident that has to be analyzed, we take the case where let's assume a steam line breaks, the Balance of Plant components including this would have to be modeled accurately so we knew what the response was.

But the decision to bypass would not be something the NRC would approve. They would approve

that the main steam line break accident is -- meets the requirements of that accident, and it might be affected by this.

Q. They would look at your --

A. Total steam plant performance.

Q. Okay. And they would look at your analysis based on whichever way you would decide to configure it?

A. That's correct. But I could install this bypass with or without them and it wouldn't matter.

Q. You just have to analyze it the way you configure it?

A. We have to analyze the nuclear side of the plant the way it would respond to the turbine side.

Q. Right. Okay.

If I could get you to turn to it 6A. Do you have that?

A. I believe I do. I have a T-6 A.1.

Q. Do you have a T-6 A.1 through T-6 A.3? Do you have that?

A. Yes.

Q. Okay. Now, what is the purpose of this schedule? Is this one you sponsor?

A. Let me review.

Q. You just have 7 through 7B? I'm sorry. I

think I'm in the wrong period.

A. Actually, I do believe I sponsor this.

MR. WALLS: If you go to the March testimony.

THE WITNESS: Yeah. If you go to page 3 of my testimony. I say T-6 A through T-7B. It doesn't go into detail 6A.1.

BY MR. REHWINKEL:

Q. So you have T-6.3 as well?

A. Yes.

Q. Okay. Let's look at T-6.3 which is WG- 2.

A. I believe you're referring to T-6 alpha dot 3.

Q. Actually, this is just T-6.3.

A. Okay. We have that as well, although I'm not sure that that's part of my sponsoring.

Q. That's not yours?

A. I do sponsor the cost sections of this.

Q. Okay. So T-6.3, do you have that?

A. I have it.

Q. Okay. And that's -- I want to look first at the January through June. Do you see that?

A. Yes, I do.

Q. Okay. And on line 3, license application, do you see that?

A. Yes, I do.

Q. All right. In March there's 14.28 million dollars reflected?

A. Yes.

Q. Okay. Is that billings from AREVA?

A. That is -- I believe it would almost have to be billings from AREVA.

Q. And why would -- if I look on the next page, the total amount of license application costs for that year -- and this is for 2009 -- is 20 million 16 thousand 839 dollars?

A. That's correct.

Q. All right. So the vast bulk of that came in that one month's billing; is that right?

A. Yeah. That would be associated with some portion of, I suspect, that work order -- it was 84.

Q. Okay. Is that -- does that mean that they did for that -- in that time period, they did the why and share of the contract work?

A. I don't know what the payment milestone was for that contract.

Q. Okay. Is it possible this was work that they had been doing for the past few months and just billed it all at once or --

A. I believe that's what it is.

Q. So I could look at this and understand that

AREVA did 14 million dollars worth of work in the month preceding the day they submitted this bill?

A. No. This would have been in the months preceding this bill.

Q. Okay.

A. And it may be -- in some cases -- it's rare -- but in some cases, we'll actually pay for work before it's completed. In other cases, the work has to be completed prior.

Q. Do you know if there was any prepayment?

A. I have no idea. That would be rare, but that does occur sometimes.

Q. But was March when AREVA submitted the draft of the LAR for review?

A. In March we started receiving -- it's my understanding that around March we started to receive some of the preliminary documents associated with the LAR, although much of the work in support of the paperwork is analysis work that goes into calculations. So it's not necessarily -- this may not necessarily be what I referred to earlier as the 51 documents.

Q. Okay.

A. This may be computer runs and calculations and analysis to support those.

Q. Okay. And then in April and May, we see a $111,000 figure in April, and then a credit balance of $20,000 in May. Do you know why that would be negative?

A. No. I'd have to review the invoices.

Q. Okay.

A. And some of this may have been accruals as well. It may have been that we accrued the money in months, but the invoices haven't been paid.

Q. Was there any instance where AREVA was expected to not bill because of the quality of the work that they submitted to you?

A. I know AREVA did a significant amount of work. We did -- to correct mistakes in the original submittal that we did not accept invoices for.

Q. But that would not have created this negative amount in May?

A. I don't know what the reason for the negative amount is.

Q. Okay. Do you know why June was a million versus the prior two months?

A. No. I'd have to refer to the -- you know, this is a year ago. I'd have to go back and refer to the actual invoices paid during this month.

Q. What kind of work would -- well, would the

months after March that show balances much lower than this 14 million dollar amount in March, would they reflect work that AREVA -- would this be primarily work that AREVA was doing for the licensing?

A. This category would not just cover AREVA contract. It would cover site personnel work and any other work associated with the licensing. Eventually it may cover the licensing fees as well that the NRC charges us.

Q. But there aren't any license fees?

A. There's no licensing fees at this stage. This is primarily AREVA work. We would also -- about this time frame, we started our own work in review of the documents and our own engineering work and review, so this would start to accumulate charges from plant staff as well.

Q. So is all Progress labor billed incrementally or recorded incrementally here? Let me ask it a different way.

You have Progress Energy Florida employees --

A. That's correct.

Q. -- working. Is their time recorded in here, cost associated with their time?

A. Let me verify that. Give me a second. I believe I can verify. Let me look.

Q. Okay.

A. I'm referring to my testimony just as a reference.

Q. Okay.

A. Yeah. I believe that this line item would reflect not only company expenses, but -- I mean not only AREVA expenses, but the company expenses associated with reviews and licensing preparation.

Q. Okay. And would that include PEF, Progress Energy Florida?

A. That's correct.

Q. How about PEFC?

A. You're talking about just Progress Energy employees not assigned to Progress Energy Florida?

Q. That's correct.

A. It might include the time that the expert panel members who work at other facilities in the company but not in Florida participated on those reviews.

Q. What about would there be Progress Energy Carolina employees?

A. There are two or three Progress Energy Carolina employees that I know were involved in this time frame and on this project, and I would have expected them to bill for this project.

Q. Now, in your rebuttal testimony, you talk about AREVA not billing twice for work to fix errors that they made in their original submittal.

A. That's correct.

Q. Was there additional time or cost occurred internally that was recorded to these accounts to basically evaluate the errors that AREVA had made in their draft submittal?

A. No. Are you talking about post expert panel?

Q. That's correct, yes.

A. What the expert panel demonstrated is that we were not spending enough resource on this review. In fact, at the point of the expert panel review and the submission -- I mean the early submissions of the AREVA work, very little Progress Energy time had been charged to this project.

What the expert panel review indicated was that much more review by company resources and by AREVA beyond the original scope would be required to achieve the license and amendment request. And so subsequent to the expert panel review, we did do exactly what the expert panel recommended.

It was not -- one of the failings identified was that we were providing insufficient resources and

thus insufficient charges, if you would say, as a result that would stem from those resources to ensure a quality product.

Q. Okay.

A. None of those charges would be associated with fixing the original scope, however. Those charges were laid on AREVA without cause to Progress Energy.

Q. So is it your testimony that the dollars that are in line 3 on Schedule T-6.3, that there were no wasted expenditures with respect to preparation of the LAR?

A. Absolutely not. If you read the expert panel review, what it says is we were not spending enough resources to ensure a quality product. And the cost in this line 3 for company resources began, you know, in earnest after that in order to make sure that the reviews were correct.

There were no -- there weren't -- the errors identified by the expert panel were resolved by AREVA under the original contract, so there was no wastage of our resources or costs. We just started paying attention to the project like we should have been all along.

Q. Okay. Well, did the expert panel conclude

that all of the errors in the quality of the draft LAR were AREVAs?

A. No. There were some company -- just be careful. You call it errors. What the expert panel concluded was that we had not been putting enough hours -- I didn't say that per se. What it says is not enough detail. There wasn't enough reviews to verify the quality of the products, and that because of a lack of depth of knowledge of what was required by the NRC, we had not put in enough work into the licensing application at that stage, and we needed to accelerate how much work was required to meet the requirements of the application.

Q. Okay. Can I get you to turn to T-7B, line 13? And I don't want to you tell me anything that is a communication with your law firm. But what I was wondering is the description on line 13, it says, "Legal work - PEF Crystal River 3 Unit uprate."

Is that legal work related to the Public Service Commission?

A. I have no idea.

Q. You don't?

A. I really don't know what's on that line item.

Q. Okay. If I asked you about that at the hearing, might you?

A. I can figure it out by the time of the hearing.

Q. Okay.

A, It might. I really don't know.

Q. Okay. Do you know whether there was any legal work necessary to deal with the expert panel findings?

A. There was none.

Q. None?

A. No. That firm -- the work I'm aware of right now is that firm is associated with filing for needs and, you know, need of the project and that sort of stuff.

Q. That firm?

A. That line item 13.

Q. All right. All right.

On page 9 of your March, 2010, testimony --

A. Yes.

Q. -- you testify to a 21.1 million dollar number for project management costs.

Do you see that?

A. That is correct.

Q. Okay. Now, is it your testimony that -- and underneath this is a recitation of the task that we discussed earlier that's pretty similar to your prior

year's testimony; is that right?

A. That is correct. Very similar.

Q. Okay. Now, and this is for 2009 actual expenditures?

A. That's correct. This is for 2009.

Q. Is it your testimony that the dollars that were spent to manage this project, including the oversight of the AREVA work, were all prudently expended?

A. Absolutely.

Q. Okay. And that the process worked as always intended?

A. In some cases, as you have eluded to, the expert panel recognized we were not providing enough oversight of AREVA over the project. And, in fact, if you or the staff auditors were to have looked at how much money was spent in project management over the LAR, you would see prior to the expert panel not very much time had been charged.

So you're asking if the charges were prudent. That expert panel actually said you need to spend more money in oversight and project control. And that was correct, and we have done that, and that money was prudently spent.

Q. Okay. On page 10, lines 18 and 19.

A. Yes.

Q. Actually, line 19 through 21, it says that through project management activities that I have identified, the company successfully completed the 2009 work on schedule.

That's not referring to the licensing work, that's referring to the --

A. This is really referring to the project work, the implementation project work.

Q. Okay.

A. I believe the oversight of the licensing activities are likely in that other section from the standpoint of cost or actually in that licensing category as opposed to project management.

Q. Well, on line 10 of page 10 under this section, it does say management of CR3 uprate licensing work; is that right?

A. Line 10.

Q. On page 10.

A. Page 10. Yes, it does. You're right. It would have been charged here. To some degree. What I mean by that is the overall project manager had the whole project. So he had all his time, and some of his staff would have been looking at licensing, project management implementation, you know,

engineering, all the different aspects.

If you talk about the individual oversight by individual engineers, that would have been over in the -- I suspect that would have been charged under the 20 million dollar category of licensing.

Q. Okay. Now, is the cost of the project or cost containment, if you will, is that part of what is referenced beginning on line 13 of page 9?

A. Say that again. I'm sorry.

Q. The company incurred project management costs. Does part of that involve maintaining cost control over the project?

A. Yes. That's shown on the top of page 10, line 1.

Q. Do you have a copy of the IPP with you?

A. We have a copy available.

Q. Do you have the prior two IPPs with you? I guess what are you on Rev 2 now? Do you have a copy of Rev 2 with you?

A. Okay. I have both Rev 2 and Rev 3.

Q. Okay. Let me ask you to turn first to Rev 2.

A. Okay.

Q. And this is -- the document is Bates No. -- it's our first Bates number for today -- 10

NCOPCPOD1-40-000510 dated October 22nd, 2009. Is that your Rev 2?

A. That's OPCPOD3-5400001 is my Rev 3.

Q. Okay. I'm talking about Rev 2. Do you have Rev 2 with you?

A. Rev 2 is DR1CR3-8-000001.

Q. That's the staff's audit request --

A. Yes.

Q. -- that was ahead of Public Counsel's?

A. Yes. That's how I have it.

Q. Yes. And that's on here as well. Let me get you to turn first of all to page 8 of 28 of that Rev 2, IPP.

A. Okay.

Q. And under the recommendation there, it says -- well, there's two recommendations. One is continuation of the extended power uprate project to obtain 180 megawatt electrical to offset new plant construction costs. Do you see that?

A. Yes.

Q. And then the second one is to approve the project's additional funding request at 52.8 million per IPP Revision 2.

A. That is correct.

Q. Now, is that 52.8 million dollar number, is

that confidential?

A. I don't think the total price -- I don't know.

Q. It is confidential in a staff audit draft so I was just curious.

A. Yeah. I don't know.

Q. Is there any reason why it needs to be?

MR. WALLS: They generally mark the IPPs confidential because it outlays their strategy, so I don't know that any particular number is.

THE WITNESS: In my mind, I'm fine with it.

BY MR. REHWINKEL:

Q. Okay. Anyway, now, is the 52.8 million dollars -- if I turn to page 12 of 28 --

A. Yes.

Q. -- actually, pages 12 and 13 of 28, this is a schedule breakdown of what yields at 52.8 million dollars over 2009, 2010 and 2011 calendar year; is that right?

A. That is correct.

Q. And that number is found on page 12 of 28 in the middle where it says, "With this revision, EPU requests an additional 52.8 million dollars financial fees, costs between 2009 and 2011."

And then on the next page, 13 of 28, the

number appears two more times, one in the Cap X by year table where it shows a change between Rev 1 and Rev 2 and the total column. Do you see that?

A. Yes, I do.

Q. And then in the IPP funding history table, it shows up as a difference in the financial view total line. Do you see that?

A. I do.

Q. Okay. Other than those three, actually four mentions of 52.8 million dollars, what explanation is there in the IPP for the increase?

A. At the bottom of page 12, you see how those numbers are changed. First of all, recognize that the number you're referring to, 52.8 is over three years. The hearings that we're dealing with today only refer to the 2009 costs. So we're really only talking of a change in 2009 under this IPP revision for 2009 of 5.6 million. The remaining future years would be subject to future costs review.

Q. Okay. But before you go on, would it be true to say that all 52.8 million dollars is reflected in this hearing because you're getting approval for the actual expenditures in '09, and then your estimated and projected for '10 and '11; is that correct?

A. Yeah. My understanding of the hearings are

for review of prudency for 2009. And then looking forward, there's an element there, but I don't think we're asking for cost recovery on 2010 yet, right? Well, asking for determination of reasonableness.

Q. And there would be billing for that?

A. Yes, there would.

Q. All right. But other than the bullet points underneath 2009, 2010 and 2011, are there other explanations of what generates these line items on pages 12 and 13?

A. Yeah. At the bottom of page 12, there's a summary of issues which have changed prices. For example, the bottom of page 12 it says for 2009, the movement of the LP turbine scope to 2011 was a change of 15.5 million dollar reduction. Reduce cooling tower scope, warehouse, 9 million dollar scope. The parentheses meaning reduction.

And then there were other charges there that were additions. So this is a line item by line item addup of what adds up, for example, of 2009. If you subtract those numbers that are in parentheses and add the numbers that are solid, you should get 5.6 million dollars for 2009.

Q. Correct. And if you add all those up, you should get 52.8?

A. That's correct.

Q. Well, it looks to me like the cooling tower scope line item is basically moving, rescoping and moving a project from 2009 to 2010; is that right?

A. That's correct.

Q. But then you have an item like cross, slash, NGG fleet support charges, 1.7 million?

A. Yes.

Q. But is there any other explanation of what that is?

A. Not in the paperwork. I do know what that is.

Q. What is that?

A. That was -- in 2009, this was for in those cases where we could use -- and it's charges that were required, to some degree, by my staff in review of projects or my staff in support of the project that were charged to the capital project; whereas, some of -- they requested company staff to come in and fill a gap during the outage primarily.

For example, instead of using contract HP support, they recognized they needed more HP support, so I would assign one of my HPs directly to their project. That sort of thing.

Q. An HP is what?

A. Health physics technician, a craftsman.
Q. Okay. And the R16 and R17 engineering cost increases?
A. Yes.
Q. Are they discussed or described in the document?
A. Not more specifically than that
(Mr. Burnett left the presence of the deposition room.)
BY MR. REHWINKEL:
Q. Now, augmented staff needed earlier than resource shares available. That's different than what you described as the cross NGG fleet support charge?
A. That is different. That's just a timing issue of when we -- what the original plan thought that the resources needed to be applied and the project manager needing those resources earlier than he had predicted the year before.
Q. And how about Atlantic, that's the contractor?
A. Atlantic was the contractor that implemented the field modifications for the majority of the Balance of Plant mods in 2009.
Q. They provided skilled labor?
A. Yes. Exactly.

Q. And then in 2010, purchased major component, 8.7 million dollars. What was that for?

A. Well, this line item should be a reflection of cost changes once the specifications between what was budgeted versus what the actual contracts came back at for purchases of some of the major components.

And I suspect this is for work where we're purchasing the components in 2010 or have milestone payments in 2010 for at this point, this time the 2011 outage.

Q. And the same with R17 engineering, is that a scope change?

A. I believe that this is probably a reflection of refinement of what the engineering work would be required based on the experience of 2009 engineering work.

Q. And on the next page under 2011 --

A. Yes.

Q. -- LP turbine scope from 2009, that shows 18 million dollars?

A. That's correct.

Q. So it's 2 and a half million dollars more than the LP turbine amount in 2011?

A. That's correct.

Q. What's the reason for the 2.5 million?

A. Well, this was an estimate.

Q. Okay.

A. Realizing at this time we had not finalized any contractual agreements with Seaman's over changes of cost. Due to the D.C. Cook event, however, we have recognized that the original scope for the LP turbines would not be sufficient for our needs for our turbine. We needed additional instrumentation that was not specified, and we would require additional testing that was not specified in the original specification.

So throughout -- from the time of this revision until now, we've been working with that contractor to understand what changes in the contract would be required for us to have good assurance that those turbines would be reliable. So I believe that this extra money is a reflection of that and an estimate.

Q. Has it changed any since this October of 2009?

A. It has. I don't have the information in front of me.

Q. Has it gone up or gone down?

A. It's in this neighborhood, but I don't know

exactly what it is.

Q. So you're saying this estimate was pretty good?

A. Wasn't too far off, I don't believe.

Q. Now, the history of this project is shown on page 13 of 28 as far as the funding authorization for this project?

A. Yes.

Q. It starts with IPP Rev zero, and there was actually a prior number for the BAP, is that right, 439 million dollars?

A. Yes.

Q. So an apples to apples basis, the 439 is the same as the 461 for Rev zero, 426 for Rev 1 and 479 for Rev 2?

A. No, it's not a apples for apples basis.

Q. Okay.

A. As we've described and talked about today and in previous discussions, the scope of this project continued to evolve, continued to change. In some cases, scope was reduced. In other cases, scope was increased. That's everything from the licensing application to which modifications would be used to solve which technical issues.

So, no, this is not apples to apples. At

each stage, our process requires that you review those changes which are required as we learn more about the requirements to achieve the goals of the project, that those changes get reflected in the IPPs in using the current terminology in process. Those IPPs go through management review and approval and get approved under our project controls program.

Q. You have testified in the past, I think in last year's hearing, that the project was performing better than the original budget; have you not?

A. I'd have to go back and refer to that at the time.

Q. Okay. What do you think the Commission should or should not look at the dollars on this financial view total column in evaluating your performance with respect to cost?

A. I don't understand the question.

Q. Okay. Do you think in evaluating the Progress Energy's ability to control cost on this project --

A. Yes.

Q. -- there's an issue about cost management in the case?

A. Okay. I'm bringing forward no issue with cost management.

Q. Okay. So the section where you're testifying about here doesn't deal with the company's expenditures in order to control costs?

A. Oh, absolutely.

Q. Okay.

A. But I don't know of any issue that we're having in managing costs. I think we're doing it well.

Q. Okay. I mean an issue that is a standard issue in the case?

A. Yes. Yes. Absolutely.

Q. Okay. So I guess my question is: Should the Commission -- are you saying the Commission should not look at your year to year fluctuations in funding authorization in order to evaluate your ability to control costs?

A. That's too simple of a way to look at it. And what I mean by that is -- and this is why the audit program exists. You have to look at the details as to why those costs change and why they go up and down and to determine if the right prudent decision was made at each of those steps.

And the reason is the scope of the project changes through time. The understanding of the requirements changes at each engineering -- as each

engineering project is finalized. So what you do on a project -- this isn't buying a car where you go out and you know how much it costs to buy the car from the dealer and you just judge. You're buying the same thing from three or four places.

You start with a good feasibility that describes what you believe will need to be required to complete the project. And each month and each year you gain more information about what is required to complete that project. You might change decisions that were made at the feasibility. And then each year and at each stage where you update the integrated project plan, based on our project control parameters, you review if you're still on track to meet the goals and if any changes in price are still appropriately -- appropriate to cost control and appropriate to feasibility of the project overall.

So it's too simple to just look at last year's budget compared to this year's budget because this year you know more. You have much more information to make your decisions based on because you spent a year working, and your scope is going to be different.

Q. This is page 993 of your 2009 testimony. And if I could get you to look at the bottom and read the

highlighted section there, and I want to ask you what you meant by it.

A. Yes.

Q. Could you read the --

A. This is the cost estimate -- this is as of last year. And I'm assuming -- I don't know what date this was.

Q. That's your -- well, it's your transcript page 993. I believe it's your --

A. This was my file testimony.

Q. Yes.

A. So it was not during the hearing. It says that the cost estimates for the CR3 uprate project when compared on the same cost basis have decreased. The current estimate reasonably reflects the cost of uprate project based on costs that are better defined under circumstances where the company is closer to completing the project and simply has better cost information under its contracts for its projection.

So at this point, for the scope that was understood with contracts in place, this may have reflected a decrease in scope, and it may have reflected a better understanding of what the actual costs were -- included scope would be. At that point, the costs were lower.

Q. So was there any intent on providing that testimony to indicate to the Commission that you were below the original cost estimate?

A. Whatever the numbers -- in that testimony I gave the current numbers, so that would be the numbers I would be reporting.

Q. And that testimony was given live on September 10th. This IPP Rev 2 is October, 2009.

A. That's correct.

Q. So the number hasn't changed until the IPP was approved; is that right?

A. That's correct. You don't approve your number until it's gone through management review. And also recognize that this IPP in October would have been halfway through a very extensive outage where, you know, when you go into an outage, you have a good budget for that outage. But, you know, we were spending in this outage literally millions of dollars a day. So my knowledge and our understanding of cost in September versus the end of October were worlds of difference between what our understanding is, if that makes sense.

We hadn't actually started the construction. Well, we started some construction, but not nearly to the extent that we knew by October of 2009.

Q. Is it your testimony that -- well, isn't it your testimony that the IPP itself is a cost containment tool of the company?

A. It's more of a cost approval. And we use it to review and manage -- it's a project control feature where decisions associated with the project are laid out, written down, and submitted to senior management for approval. It is definitely cost management?

Q. Well, does management look at documentation other than the IPP when they sign off on these IPPs?

A. Yeah. You have to remember the IPP is not absent the knowledge of contract reviews, invoice reviews, work order reviews. We have a pretty complex, you know, project controls and payment approval process that we use. So the contracts themselves associated with these changes in prices go through the same hands that this IPP goes through, same chain of command that would look at the IPP in total, but also review many of the components of the contracts, work orders, invoices as part of our cost control and management program under the way we pay invoices, approve contracts, authorize work authorizations. All of those programs work in parallel with this.

Q. But not everyone that reviews the IPP gets

into that level of detail, as far as you're concerned, being familiar with --

A. Depending on their level, the price -- I'm sorry. Depending on the cost numbers associated with each of those items, depending on what kind of items they are, that determines who reviews those items as they work through the process.

These IPPs are also presented, by the way. They're not just a piece of paper across the desk. There's a formal, you know, presentation by the project management team to deliver a why the prices, the changes are there. There's a challenge session by the executives involved prior to approval.

Q. Does your testimony describe the 52.8 million dollar increase?

A. I don't believe my testimony went into details of that increase.

Q. Okay. On page 13, if I could get you to turn to page 13.

A. Which estimate?

Q. I'm still on this, your March 1, 2010.

A. Okay.

Q. It says on line 8 that the actual capital expenditures in 2009 were over PEF's estimated, slash, actual projection by $602,941.

A. Yes.

Q. Is it your testimony that that describes kind of the cost variance for 2009?

A. That is correct.

Q. So is that a net figure that includes the items on page 12 of 28 of Rev 2?

A. No. You've got to remember that this testimony is after 2009 was complete. This Rev of October was in the middle of an outage where we were expending, you know, receiving invoices, paying invoices. So this was an estimated project approval that I'm referring to, the project plan Rev 2, 2009. This was actual figures. This is after the fact going back comparing the estimated actual projection versus what was expended.

And I'd have to go back and refer to how this $602,000 was generated to determine if it was against the Rev 2 IPP or a previous filing from the year before. These numbers are changing fairly frequently.

Q. Well, is there a schedule that describes the variance?

A. Yeah, I believe there is. I believe that comes from one of --

Q. Mr. Garrett's?

A. Yes. Yeah. Here it is right here. Schedule

T-6B.3.

Q. Okay. Now, how does T-6B.3, how does that compare to page 12 of 28 of IPP?

A. I tell you, it's going to be very difficult to relate the two for a number of reasons, Charles. First of all, the IPP numbers frequently are gross co-owner values, and they are either -- they may be financial view versus non financial view, which is burdened or unburdened, and relating them to the figures on T-6B would be difficult because those factors are different in that Schedule, if that makes sense.

Q. I understand.

A. So it would be very difficult sitting here to try to distinguish where or how the IPP relates to these figures.

Q. Okay. If I look on line 3 --

A. Yes.

Q. -- of this T-6B -- T-6B.3, there's a reduction of 18.5 million dollars. And then if I look at line 8, there's an increase of 18.6 million dollars.

A. That's correct.

Q. Are these two related items?

A. Absolutely. When we looked at how we were

assigning to the -- per the definitions, we recognized that we were charging -- that the estimate for some of those charges were originally in the project management category. And when we really got down to it, they belonged in the power block engineering procurement category.

Q. Okay.

A. So it was a same scope of work and cost that shifted from one category to another.

Q. All right. And, in fact, except for the item on line 1, these changes or variances show basically reallocations to the correct --

A. Well, there was some work that was scope and schedule changes, and some of it was the variance. But the majority of the money moving is due to this allocation method.

Q. Okay. And then your license application increase of -- or variance of 3.7 million dollars is just generally an increase in the scope of work that AREVA was expected to do?

A. Scope of work for both AREVA and my staff.

Q. Okay. And now, that 3.7 million dollar number is not confidential, right?

A. I don't think it needs to be, no.

Q. It's not in -- okay. But would you agree

that the IPP Rev 2, page 12, shows for 2009, a net change in funding requested of 5.6 million dollars decrease; is that right?

A. Yes.

Q. That includes 15 and a half million dollars of shifting the LPT cost to 2011, right?

A. Yes, that is correct.

Q. Okay. And 9 million dollars of the cooling towers project to 2010?

A. That is correct.

Q. So if you take those two, those dollars don't go away from an overall project standpoint, they just go to a different period, right, the 25 million dollars, 24 and a half million dollars, those two items?

A. For now they're delayed.

Q. Okay. But you expect to incur them in 2010 and 2011, right, or maybe even into 12?

A. Yes.

Q. So if you take those which are just deferrals out of 2009, there is otherwise an overall increase in expenditures relative to the prior authorization for expenditures, correct?

A. That is correct.

Q. All right. But page -- and none of the

dollars that are shown that build up to the 52.8 million dollars are LAR scope change items for the AREVA contract, are they?

A. Which are you talking about?

Q. In the IPP, the 52.8 million dollars.

A. They don't break it out as LAR, but some of these costs are engineering costs, yes.

Q. Okay. So the AREVA --

A. They could be related to the AREVA scope.

Q. Okay. But in Schedule T-6B.3, aside from the kind of reallocation of dollars within the overall project, there's a net increase of only $602,000 for 2009 over the prior budget?

A. That's correct.

Q. So the reality is you incurred, regardless of how it's presented in either schedule, you did incur an increase in the 20 million dollar range for these capital expenditures for 2009 over prior authorization, right?

A. Yes, for the scope completed in 2009. Now, recognize my testimony was talking about total money spent relative to the 2009 needs for recovery, okay, which is actual expenditures. But there has been a -- with moving the LP turbines and some other scope out of 2009 and the additional costs associated with the

implementation of the outage, there's some of that additional work, that other work, required additional funding.

Q. Okay. So the LPT -- the LP turbine and the cooling tower cost referrals, from an overall project standpoint, they're not really representing costs that go away. They're costs that shift from one period to another?

A. I don't know that yet. I have confidence that the low pressure turbines issues are resolved. We're continuing to evaluate the need for the cooling tower, and those costs may go away.

Q. There's a possibility you won't incur the cooling tower cost at all?

A. We're reviewing that.

Q. Okay. When do you expect to have that review done?

A. That's going to take some time.

Q. Okay. But what is some time?

A. I don't know what the schedule for that is right now, Charles.

Q. Would you have to wait until you do the third phase to test, or would you have to --

A. No. We'll know before then.

Q. Would you know before the end of this year?

A. Unlikely.

Q. Okay.

A. The delay in my 2012 outage -- here's the issue. The delay in my outage from 2011 to 2012 puts back the need for those cooling towers a year. And we've looked at that schedule. And in order to control costs, we're minimizing work on that project right now. And so that delay may make that portion of the project not unnecessary.

Q. Okay. And have you been able to defer procurement for the tower assets?

A. Yes.

Q. On page 14 of your March testimony, down on lines 11 through 14, you talk about the expert panel review. And on 9 through 11, you say, "Further analysis and engineering work was conducted to increase the level of detail provided in the content of the request and the supporting documentation."

A. That's correct.

Q. Now, is there an effort there to kind of soft pedal, if you will, the nature of the findings of the expert panel?

MR. WALLS: Objection.

THE WITNESS: Not at all. Ask me your question.

BY MR. REHWINKEL:

Q. Well, my question is, this testimony on lines 9 through 14 almost suggest that the issues with respect to the LAR draft, the expert panel review, were more superficial than substantive?

MR. WALLS: Object to the form.

THE WITNESS: I don't agree with it.

MR. WALLS: Go ahead and answer it.

THE WITNESS: I don't agree with what you're trying to say. What the expert panel review panel found was that not enough resource had been put on the LAR project -- the LAR project by our own company to review and ensure that AREVA had done the work properly, first of all.

Second, it identified that the scope of the original work assigned to AREVA was not sufficient to ensure NRC approval under the current requirements of the NRC as reflected in their reviews of more recent EPU license amendment requests.

So what this sentence is saying is that the further analysis and engineering work was conducted to increase the level of detail provided in the content of the request and in the supporting documentation. That is in reference

specifically to the expert panel's finding that the level of detail did not meet the current NRC requirements.

That's not soft pedaling anything. It's saying that the expert panel came in and said the scope you originally identified with AREVA is insufficient, and you need a greater level of detail as evidenced by, in this case, I believe, it was a Monticello application that was rejected by the NRC that had a similar level of information in it and depth of detail in it as was the original scope in the AREVA contract, and that we would expect the same kind of rejection by the NRC unless we added scope to that contract to increase the depth of detail required.

BY MR. REHWINKEL:

Q. Well, the expert panel concluded that as of -- in its state that the draft LAR would not pass muster with the NRC, correct?

A. Yes. And one reason for that was a further analysis in engineering work, as stated in my testimony, would be required to be applied to the application.

Q. Okay. And I guess where I'm asking this question is, you use the phrase greater assurance.

Well, it wasn't really greater assurance. There was really no assurance that the --

A. The experts panel's conclusions are an opinion. They felt that we needed to apply -- our goal is to send an application that's going to be received and meet the standard.

Q. What happened with Monticello? Did they remember submit or --

A. I'm not familiar with where they are today. I believe they -- the last I heard, they were taking a step back rereviewing the application, and they were going to resubmit it.

Q. Where is Monticello? Do you know where that reactor is?

A. I believe it's Minnesota.

Q. Okay.

A. I believe it's Minnesota.

Q. You don't know whether that's an advanced recovery state, do you?

A. No.

Q. Page 17 of your testimony --

A. And it may be possible I have the wrong plant, but there's several plants out there that are in the process right now. We've learned from many of them. Page 17?

Q. Yes. Section VI, Project Management and Cost Control Oversight.

And you testify here that the company has implemented project management and cost control oversight mechanisms for the CR3 uprate project, right?

A. That's correct.

Q. And the way I read your testimony on pages 10 through -- I mean, lines 10 through 13, is that additionally, because the CR3 upright project is a major capital project for the company, the project must comply with the company's policies and procedures in its major capital projects dash, IPP project plan that was issued in 2009.

A. That's correct.

Q. Now, is your testimony -- I am understanding this to mean that the IPP is one of the policies and procedures used to ensure that the cost for CR3 uprate project are reasonably and prudently incurred.

A. Yeah. The integrated project plan is really the -- we have a procedure that describes that process, and it's the integrated project plan process. It's a reflection of a compliance to that integrated project process.

Q. And the IPP -- well, let me ask you this:

The Rev 3 IPP does not mention any change in the overall project cost other than an AFUDC small change due to, I guess, the timing of certain assets being installed; is that right?

A. You know, I'd have to go back and rereview it. It is part of our --

Q. Well, look on page 13 of page 27. This is the Rev 3.

A. Okay.

Q. Right there in the middle under that Estimated Capital Cost table. It shows --

A. Yes.

Q. Otherwise, the financial view total of 479, not 426 is the same as Rev 2, financial view total, correct? If you look at page 13 of 28 of Rev. 2, I think you'll see that exact number.

A. Yeah. In fact, it shows the Rev 2 and three numbers on the same page there. So 479 and 426 is the Rev 2 and the Rev 3 numbers.

Q. And the only difference in the overall cost is as it relates to this financing cost due to the, I guess component inservice dates; is that right?

A. Yeah. Now the AFUDC needs are different than the Cap X needs. That's why they're in separate categories.

Q. Yes. So Rev 3 doesn't, on a overall project basis, from what your control, Rev 3 doesn't have any change at all, right?

A. From a capital expenditure, that's correct.

Q. And that's all you control. I mean, there's folks that are managing the project and buying equipment, contracted with labor. Your dollars don't increase from Rev 2 to Rev 3?

A. That's correct.

Q. But is your testimony on page 17 that the IPP document is a tool to control costs?

A. Yes. When costs -- when cost estimates change and the budgetary needs of the project change by a certain amount, it kicks off a revision to the IPP in a subsequent review of that IPP by senior management.

Q. Did the 52.8 million dollar increase in 2009, is that what triggered a need to revise the IPP from Rev 2 to Rev 3?

A. Rev 1 to Rev 2?

Q. Yeah.

A. It would have by itself. There are other reasons to revise it. I'm not sure what triggered it, but that would have been a large enough increase, I believe, to trigger the rereview, yes.

Q. The schedule?

A. There's also specific milestones that senior milestones may ask for a revision. There may also be a time frequency. I can't remember all the requirements that require a revision.

Q. All right. On page -- can't get rid of the IPP yet. On page 20, you reference a detailed log, a risk analysis?

A. Yes.

Q. Now, does the IPP, does that have any risk assessment or risk management?

A. It does. And it's higher level. The project risk register, is what I'm referring to, would go into more detailed on lower level items.

Q. Okay. Look on, if you will, on Rev 2 on page 17 of 28.

A. Okay.

Q. The ranks of risks are -- show number 4 as LAR approval from NRC?

A. That is correct.

Q. And in the box there with the probabilities and impacts, kind of matrix?

A. Absolutely.

Q. It shows that risk as a moderate probability and a critical impact; is that right?

A. That is correct.

Q. And is that as to project or schedule?

A. Well, if we refer to item 4 in the subsequent pages, you'll note that it's cost and schedule.

Q. Okay.

A. It is flagged for -- as the risk element with regard to that. That's a little more detail with regard to that LAR risk ranking.

It says, "If the work associated with the LAR submittal of the LAR is not developed and submitted within 18 months of the completion of R17, the station may not be able to increase the new power level because the license amendment and may not arrive in time to support power ascension."

So this is, as I've described, it might delay the schedule of the actual increase in reactive power. At this point, it was believed that we needed to have submitted that within 18 months of the completion of R17 which today is scheduled for fall of 2012.

Q. Okay. And if I look on page 18 of 27 of Rev 3 --

A. Yes.

Q. -- I don't see the NRC schedule as a risk anymore.

A. Well, if you look at the date of Rev 3, it was completed in May of 2010. At that point, our LAR was complete and ready for submittal to the best of our knowledge. You may remember I noted that our change in understanding of that was June 7th.

Q. Okay.

A. So it was subsequent to IPP Rev 3. Now, if you were to look at the risk register today, you would see a higher level risk flagged for that LAR that while we had completed the EPU LAR, it had been through all of our final reviews until it was ready for submittal. We were holding it so that we would continue to learn from what may be going on with the industry, because we now had extra time with the delay in the outage for R17. We could use that time wisely by not submitting it and submitting it after we learned a little bit more about what happened in licensing space at the NRC in the spring.

Q. Okay. So where is it now? Is it a low, moderate or high?

A. I haven't reviewed the changes. I did validate that we've added it back to the risk matrix, but I haven't seen where it landed.

Q. All right. I think that's all I have for your March testimony. I think.

A. Could we possibly take a little break?
Q. Yeah. Let's take a break. It is 2:30. You want to come back at 2:40?
(Whereupon, a recess was taken.)
BY MR. REHWINKEL:
Q. All right. I'm going now to your April 30th testimony.
A. Yes.
Q. And do you have your AE-4A schedule?
A. Should have it.
Q. I can just show you. I think I know the answer to this one, but just for the record I was going to ask you. On AE-4A --
A. Yes.
Q. -- in Column B on line 8, legal, it says -- this is for 2010, right? The year end of 2010?
A. Yes.
Q. It shows $420,987, with a variance of $293,619. And it says, "Increase in legal counsel and outside expert witness fees."
Do you see that?
A. Yes.
Q. And this is for the uprate, correct?
A. Yes.
Q. Okay. Is this for the PSC case or some other

matter?

A. You know, I'm not sure. I would have to check.

Q. All right. And do you know if there were any outside witnesses hired relative to the uprate?

A. We may have. And what I don't know is we may have hired some experts relative to the seaman's work on LP turbine.

Q. Okay.

A. I know we had to come to some agreements with some outside expert to understand what happened to DC Cook, and I don't know what the financial relationships were there. There may have been others I'm not aware of.

Q. This would not include the expert panel, would it?

A. No, I don't believe so.

Q. Well, some of it was 2010.

A. Some of it was 2010, and we did bring in some contractors, experts for the expert panel, but I don't think that's what this relates to.

Q. Okay. And if I could get you to look at AE-6.3.

A. Yes.

Q. Line 3, license application?

A. Yes.

Q. Okay. What this does is it takes the 20.016 million dollar balance from the prior year, and it adds two months of actuals and 10 months of estimated to get to the 21.607 million for 2010, right?

A. Yes.

Q. Are these dollars in here, are they company-there's an increase of about 1.6 million. Are these company dollars or are these AREVA --

A. My supposition is that it's both. I don't know that.

Q. Could you turn to P-7?

A. P-7?

Q. Yeah, Schedule P-7.

A. Yes.

Q. Okay. On line 4 -- this is WA 93. This is that Balance of Plant AREVA contract, right?

A. Yes.

Q. It says the original amount in column E, [redacted]. [redacted] Column F, amount expended as of prior year end, 2010, [redacted]. And then column H, estimate of final contract amount, [redacted].

Do you know why the final amount is less than what it says was spent in 2010?

A. No, I don't.

Q. Does that look logical to you?
A. No. I'd have to find out what the basis of that final contract versus the not expended prior to year.
Q. Okay. Look on, if you will, TOR-7, the very last schedule in foster's. Do you have that?
A. I don't have it here.
Q. I'll just show you that there.
A. Okay.
Q. That's one of yours, right? It looks different than that.
A. This is 6. That's not 7.
Q. Okay. I'm sorry. All right. Thank you.
Here you show total project cost of 439.3 million dollars under the initial milestones column. Do you see that?
A. Yes.
Q. And then the revised milestones cost is 418.6 million?
A. Yes.
Q. Was the cooling part of the original BAP?
A. I believe it was.
Q. Does this show -- is that 439.3 part of the original BAP cost?
A. I believe that is the original BAP number.

I'd have to go back and refer to it. It's always difficult to know what reference point these documents are referring to.

Q. Okay. The 418.6 million dollar number, is that the same number that is shown on page 29 of your April 30th testimony on line 23?

A. Yes.

Q. And do you know how that number relates to the 400 --

A. Do you have TGF-6 I could refer to?

Yeah. Exhibit -- I've got it. TR-6, okay.

Q. My question to you is: How does that 418.6 million dollar number relate to the 479, 426 number that was in the Rev 2 and Rev 3 IPPs that we looked at?

It would take some study to find those relationships because what you're -- remember that our docket information is -- and in this case, we're talking total cost, so it should relate back to it. But remember this 418.16 is exclusive of carrying costs, AFUDC and --

Q. The 479 is too though, right?

A. The 418 is excluding carrying cost gross of joint owners. And you keep referring back to Rev 2 of the IPP when we're on Rev 3. The numbers have not

changed, so there should be a relationship between them.

Q. Does the 418.6, does it include -- well, it includes the point of discharge, which is the cooling tower?

A. It should.

Q. Now, that's not going through -- is that going through the ECRC?

A. I believe it's going through ECRC. I'm not sure of that. I'm not certain of that though. I'm not certain which clause that's going to.

Q. Okay.

A. Jeff Foster could answer that question.

Q. Okay. Would Jeff Foster be able to reconcile the 418 and the 479?

A. He should be able to.

Q. Okay.

A. And that, in fact, may be the difference. It may be that one number in my testimony is referring to NCRC -- I just don't know.

Q. Okay. Well, now, the 439 shows a 102 million dollars of transmission costs on TGF6; is that right? And it also shows 49.5 million dollars of the POD from the cooling tower?

A. Yeah. That's what I wanted to -- on TOF line

12, you see that same 418.6 as the total additions in Column I. Now, that does include -- it appears to include 32 million for the non power block engineering procurement which is the point of discharge work.

Q. Okay.

A. So that would include the point of discharge work on the 418.6, which would make sense because that project is still in scope right now.

Q. Okay. All right. So that's not the difference then?

A. No, it's not. It is not.

Q. Is there a -- can I ask for a late filed exhibit that would reconcile the 479 and the 418?

MR. WALLS: Yes.

BY MR. REHWINKEL:

Q. And the reason I ask about Rev 2 and Rev 3 is that Rev 2 -- okay. Go ahead.

A. I know one change is that the 4 -- you're talking about 432? What number are you using?

BY MR. REHWINKEL:

Q. Well, 479, which is the current 2010 number, right?

A. Yeah.

Q. And your testimony on line 29 is, "The current estimate of the total project cost, excluding

carried cost of joint owners is 418.6 million. And the IPP says that the current total project cost is 479 excluding --

A. What I can tell you is that the 479 number is the AFUDC reduction of -- is a reduction from a 481 number, due to that change in AFUDC we just discussed.

And in this case, it says, "Including AFUDC in net of joint owner," which the 418 number is gross of joint owner, and it excludes carrying costs.

Q. Okay. Well --

A. So one has the AFUDC in carrying cost and is net of joint owner. And the other is excluding carrying cost and gross of joint owner. So I know right there's quite a bit of change relative to those numbers. Does that make sense?

If you look in the IPP, it says, "Total financial view including AFUDC and net of joint owner."

And then in my testimony, it's excluding carrying cost and gross of joint owners.

Q. Well, I was assuming that the financial view total column up here, which has 479,426 --

A. Yes.

Q. -- it doesn't have any of that in it. It

doesn't have AFUDC, and it doesn't have joint owner.

A. I don't believe that's true. If you look at the table above, there's a 481 million 480 thousand dollar line item. And then in the paragraph beneath that, it says, "The AFUDC decreases by 2.1 which is shown in the table."

And I'm wondering if that's where you get the 479.4. Yeah. That's close.

Q. Well, actually, I was thinking that the difference between 479,426 and the 481,480 is the 2.1 million dollars?

A. I agree.

Q. So -- anyway, I guess what I would like is a reconciliation of the 418.

A. Yeah. We should be able to break that down.

Q. Okay. So late file Exhibit No. 1.

A. And one thing I would like to note is this IPP was dated 5/24. There may be changes between that and the date of my testimony.

Q. And your testimony was filed on April 30th, right?

A. So --

Q. So 24 days earlier?

A. May have been a change. I don't know.

Q. Okay. I would just like -- late filed No. 1

would be reconciliation of 418 to 479.

On pages 5 and 6 of your direct testimony, on your April direct testimony --

A. Yes.

Q. -- you state on page 6, line 7 and 8 that the projected cost were developed using the best available information to the company at this time.

A. Which page?

Q. I'm on page 6 now.

A. Page 6, line 7 and 8, yes.

Q. And my question is: Is there any additional information, or do you have any better information that affects the projection of cost that you've included for 2010 and 2011 since the filing of your testimony?

A. Not -- no. No.

Q. Other than what you've told me with respect to the digital instrumentation issue and the point of discharge issue?

A. Yeah. I would say both those, you know -- I don't believe the point of discharge costs would go up, but there's a chance they may go down. And we do not yet know what the cost associated with the licensing and completion of the digital work associated with a fast coolant. So there is certainly

some level of uncertainty.

Q. So digital could go up, POD could go down?

A. They're going to change. I don't know what they're going to do.

Q. Any other information about anything that could affect the cost?

A. No. And I would characterize those changes will not be substantive enough to change any decision with regard to feasibility of this project or prudency of the project. I am very confident of that.

Q. What is an ROTSG?

A. That is Replacement Once Through Steam Generator.

Q. So those are the ones you put in the building last year?

A. R just implies it's the new one going in, so it's replacement.

Q. On page 7 of your testimony, you refer to engineering and design work on lines 7 through 19.

A. Yes. This is page 7 of April 30th, yes.

Q. Is it your testimony that with respect to the items that you list here that the engineering and design work is ongoing?

A. It is ongoing today.

Q. Okay. Now, the LAR is complete, correct?

A. It was complete as of March. I believe I will have to make adjustments after our June 7th meeting.

Q. Okay. Now, with respect to the items here, would there be additional engineering and design work that would be necessary to develop specifications for the equipment and material listed on page 7?

A. We're continuing -- the engineering work is not complete for these items, but we're ongoing with those items today.

Q. And on line 9 of page 7, you state that you will complete the work. Do you mean in 2010? I'm still on page 7, line 9. It says, "We will complete the supporting engineering and design calculation work and install and test major components."

Are you talking about before the third phase is concluded?

A. Yes. Between now and the completion of the engineering work for my R17 outage, we will be continuing the engineering and design work.

Q. In your first round of testimony in 2010, turning on to page 8, you testified that -- well, actually, in this testimony here, you state that the outage -- the most reasonable time for the outage is spring of 2012. And you subsequently testified in

rebuttal that that has changed, correct?

A. That is correct.

Q. Is there any possibility that would change again?

A. Extremely unlikely.

Q. Okay. Well, what would have to happen to cause that change?

A. Some reason to significantly extend beyond my current projected return to service date of the unit this fall.

Q. Okay. Are you talking about the extended outage?

A. Yes.

Q. Now, I believe in the newspaper in the last day or two, there have been articles that have said that the outage would be -- well, I think today's paper said that it would be at least into -- the fourth quarter of 2010.

A. That's correct.

Q. And is that an accurate reporting of the company's --

A. We anticipate it being started up in the last quarter of 2010.

Q. Okay. If it goes beyond the fourth quarter of 2010, the restart of this existing R16, the

extended R16 outage --

A. That's correct, yes.

Q. -- you're saying that that could push off the R17 outage beyond the fall of 2012?

A. It would have to be significantly beyond the fourth quarter.

Q. Okay. Now, would what determines when that outage would occur? Would it be based on your procurement of the fuel, or would it be based on more things than just that?

A. It's principally a decision regarding the fuel. In essence, in order to take efficient use of this core that we've designed as it is currently, we'll want to operate it for two years, just short of two years.

Essentially, it's designed to operate approximately 23 months from startup. And we schedule our outages for spring or fall. So if I were to extend this outage any further, it would be only after a much more significant extension than fourth quarter this year.

Q. Okay. So the spring or fall is based on kind of more or less an off peak time?

A. That's correct.

Q. If there was a delay in NRCs, issuance of

their decision in the LAR, and a delay in the return to service in R16, could those two together cause you to extend the R17 outage beyond fourth quarter of --

A. No. No. The decision on when R17 will occur is primarily based on when this outage ends, R16 extended outage ends and what the peek, you know, when the right time for the plant to come off line for the R17 outage.

Q. So NRCs's licensing decision would have no bearing whatsoever on that?

A. No, not for the extended power uprate. What we would want is to have the NRC licensing decision prior to -- at best -- well, in a perfect case, anytime prior to startup from R17.

Should we not receive it until after the startup from R17, which under current plans would be very late 2012 or 27 months from now, then we might have to start up at the existing power level, receive the licensing report from the NRC and then increase power at power.

Q. And that's assuming also that you don't have any issue with the digital instrumentation causing you not to be able to start up with that modification in place, even if it's not activated?

A. I don't like the way you worded it. Let me

explain why. There will be nothing that will prevent me from starting up from that outage. If I discover that I cannot start up with a new digital instrumentation installed, it will be installed until the licensing application is approved. And we would look for a way to install that would minimize the plant out of service time in order to accommodate the uprate. Does that make sense?

Q. Yes. I understand.

A. So you asked is there a reason I would not start up from that outage, and the answer is no, but I might have to accommodate the installation of some portion of that digital modification subsequent from the outage, after the outage is complete.

Q. Could I get you to turn to page 14 of your April testimony?

A. Yes.

Q. Your testimony there on 19, lines 19 through 22, you reference working closer with NRC. And I think you've described that many times today. And you say, "Various outside experts."

Is the various outside experts, is that the expert panel?

A. Not only that.

Q. Who else would that be?

A. We also had brought in some contract licensing personnel to work with our engineering team to help craft the license amendment request, so it's not just the expert panel.

Q. When did you do that?

A. We did that starting on and off last year about this time. I'd say for the last 12 months.

Q. Was that something that was always planned, or was it because of what you encountered with the expert panel?

A. We always knew it was an option, and it was going to depend on how well we were performing, AREVA was performing, recognizing all along, even in my testimony prior to the expert panel, we recognized the concern that AREVA had not performed an EPU before. And, as such, we might have to augment with some expertise. So I'd say all along we knew that was an option.

Q. So what you're saying is it became obvious that you had to do that, that you wanted to exercise that option?

A. Yeah, that is correct.

Q. Okay. Who were these experts?

A. I don't know their names.

Q. Were they with a firm?

A. Yes. Excel Corporation was one company we've used. I would also characterize the AREVA experts as outside experts we've worked with the NRC on. And I suspect if I went back and looked at all the details of all the analysis in support of the license network, there are probably several other companies that we and AREVA working in tandem with were very specific in the analysis.

Q. Did the Excel Corporation give you any guidance different than the expert panel with respect to how you ought to approach your LAR?

A. No. I'd say they brought the skill to help implement that guidance. And their -- they bring to bear a high level of experience in licensing.

Q. Okay. Do you know how much it cost to bring them on?

A. No.

Q. Is that information that's been provided already do you think?

A. I'm sure that the auditors have had a chance to look at that.

Q. Talking about staff auditors?

A. Staff auditors, had they looked in detail at those costs.

Q. And those costs would have been incurred in

2009?

A. Yes, and possibly into 2010.

Q. And so would you have then invoiced for those costs?

A. Yes.

Q. So those would be part of your -- they would roll up into the numbers that you're sponsoring?

A. Yes. Most likely under the licensing area.

Q. Okay. I want to just ask for a late file No. 2. And subject to verification that the numbers have been provided already, I withdraw it but --

A. I doubt if they've been broken out individually.

Q. I would like to just know the amounts for Excel billed to the EPU project for 2009 and 2010.

A. Sure.

Q. Okay.

A. Do you want all outside experts or just Excel?

Q. What I would like, I guess, Excel specifically and outside experts that were a part of this option that you exercised, if you understand what I'm saying.

In other words, your testimony is that the expert panel was always going to be done.

A. Absolutely.

Q. These other costs would have been incremental to your original expectation with the project in the sense that you weren't going to do them unless there were something that triggered your desire to exercise the option. Is that fair?

MR. WALLS: Objection. Mischaracterization.

THE WITNESS: Yeah. I think you're mischaracterizing it. I think you're trying to get back to saying that we pulled the trigger on this because of some error. That's not the case.

All along we wanted to bring to bear -- we wanted to produce a document at the lowest cost possible that was going to receive an NRC approval. As we planned an expert panel review knowing that we were going to have to adjust our plan based on the ability of AREVA and our own staff to produce the document. This was while -- this was an expense that we knew might be necessary.

You don't know it until you know it. We had to do that assessment to determine what resources would be required to complete the reviews.

BY MR. REHWINKEL:

Q. My only point in my question, I guess, is you didn't originally budget for having to do that, correct?

MR. WALLS: Objection. Ambiguous and vague.

THE WITNESS: I don't know if our budget would have gone into that much detail.

BY MR. REHWINKEL:

Q. Okay. All right. So I would like for late file No. 2, Excel dollars by 2009 and 2010. And any other -- actually, I'll just be satisfied with Excel, if you can just show me those?

MR. WALLS: 2009 and 10?

MR. REHWINKEL: Yeah. And only dollars charged to the project.

BY MR. REHWINKEL:

Q. Okay. Page 18 -- actually, page 16 of your April testimony. On lines 17 and 18, you say, "Project management costs are ongoing as we wrap up the uprate project phase 2 work in 2010.

A. What line are we on?

Q. I'm on 17.

A. Page 17 or --

Q. I'm sorry. Page 16, line 17.

A. I understand. Yes.

Q. All right. Does this testimony that phase 2

work is going to be concluded in 2010?

A. Phase 2 work should be completed in 2010 unless some additional testing may spill into 2011.

Q. So you have projected -- well, you've included actual and estimated 2010 costs for --

A. Yes.

Q. -- phase 2?

A. That's correct.

Q. All right. On pages 18 and 19, you discuss design specification material and equipment procurement costs associated with CR3 refueling outage, R17 outage work scope scheduled for spring of 2012. Do you see that?

A. Is this at the page, 22 and 23?

Q. Yes, at the bottom of 18.

A. Yes.

Q. And on the top of 19, you list materials on lines 2 through 5. --

A. Yes.

Q. -- 2 through 4. Has the procurement for all of these pieces of equipment been concluded?

A. No. We do not have all this equipment in hand.

Q. Well, have you signed contracts?

A. I'm not aware of the status of each of these

specific projects with regard to materials. I would expect many of these are in negotiations now, some of which would have been -- had contracts signed for.

Q. Some have?

A. It would not surprise me.

Q. Do you have the staff work papers, the staff audit work papers that I --

A. Yes.

Q. And can you look on page 90 of those? Do you see the Bates stamp number, is what I'm looking at?

A. Yes.

Q. All right. These look -- it says 2010 contracts R17, and it lists equipment here. Some of these are listed are the same, it looks like, on page 19 as in page 90 of the staff work papers.

A. That is correct.

Q. And here it lists pieces of equipment like booster feed pumps or the point of discharge, HCTS supporting structures, et cetera.

Is the status of these contracts or procurement activities, has it changed from what's reflected in this page 90 work paper?

A. I don't know what the date of this questioning is, but I suspect that -- I mean, it is possible that some of these have moved further than

the state at which this question was asked by the audit staff.

Q. Well, the POD, the Point of Discharge tower, you essentially eluded to that being on hold; is that correct?

A. Yeah. That particular project, because of an extremely long leave for some of those items, many of those items were under manufacture prior to being placed on hold.

Q. So you're obligated for some costs?

A. There are some obligated costs on that project.

Q. Does somebody know what --

A. Yes.

Q. Do you have an idea what it is?

A. No. But I do know that we understand exactly what we're obligated to.

Q. So between now and the hearing, if I asked you about it, you would know?

A. I could find that out.

Q. What about the booster feed pumps?

A. I could find status of any of these projects at the hearings for what the current status of the contracts were.

Q. Okay. Turn to page 28.

A. By the way, those numbers would like to be confidential.
Q. I understand that, yes.
A. Okay.
Q. Those would be fresh numbers?
A. Yes, they would be.
Q. I understand that.
A. What page?
Q. 28.
A. Of?
Q. Of your April testimony.
A. My April testimony. Yes.
Q. Okay. You describe on the Q & A on page 28 the status of the LAR. Is it fair to say that this status of the LAR has been superseded by your rebuttal testimony?
A. It absolutely has.
Q. Okay. This was your thinking at the time you filed the testimony, but June 7th is the only -- is June 7th the only event that has caused the changes in --
A. LAR status?
Q. -- LAR status from this testimony to your rebuttal testimony?
A. Yes.

Q. Now, on page 29, you reference a Point Beach Reactor --

A. Okay.

Q. -- which is going through EAP review right now?

A. Yes.

Q. That's not a Babcock fuel pump reactor?

A. No, it's not.

Q. Now, you're not testifying that this licensing action for this reactor is causing any change in what you're doing, you're just taking advantage of the delay in your schedule to find out whatever that affords?

A. That is correct.

Q. But nothing is going on with respect to Point Beach, that you're aware of, that is causing any changes in structuring your LAR approach?

A. Not going forward, no.

Q. Okay.

A. What I mean by -- we have used some lessons learned already and incorporated them already. They were one of the reactors that drove us to a much greater depth of detail than had been previously required by the NRC. Point Beach was one example of why we had to add that scope, that cost -- that

increased the LAR cost to AREVA as part of that 3.7 million dollars that we talked about earlier. Point Beach was one of those examples.

Q. Okay. And on page 29, line 6 and 7, you state that there's no reason to believe the necessary license and permits will not be obtained and that the EPU cannot be achieved. Do you see that?

A. That's correct.

Q. Now, just so I understand if there's any semantics involved here or not, no reason to believe is the same as reasonable insurance?

A. Absolutely. I think we have reasonable assurance that we can get the licenses and permits.

Q. So you're not expressing a lesser level of confidence by saying no reason to believe instead of saying --

A. No. Reasonable assurance is present.

Q. Okay. Let's go now to your August 3rd rebuttal. All right. On page 2, line 16 through 20, you're critical of Dr. Jacob's testimony and state that he misconceives that design engineering and procurement of equipment for the EPU can be separated from the preparation of the LAR for NRC review and approval to reduce the risk of investment in the project before LAR approval; is that correct?

A. That is correct.

Q. Are you saying that unequivocally that design engineering and procurement are inseparable from the LAR?

A. Absolutely.

Q. And that includes all three elements of that?

A. It depends on which project we're talking about. In essence, the design in engineering work is intrical to the LAR process. That's one of the lessons of Point Beach in Monticello. They try to submit without good understanding of the design requirements and the engineering work required to implement the modification. And they have had challenges in their review by the NRC.

Now, some of this is new. Like I said, the bar has continued to be raised by the NRC with regard to the depth of detail of engineering design work that was required prior to submittal. And some material as a consequence of two reasons. One, the NRC needs to see the actual purchase information, procurement information, to make the decision. And in other cases, the contractor is not willing to go through the expense of the design and engineering work -- put you in their manufacturing cycle without a commitment to purchase requires that the procurement activities

occur as well.

Q. Well, in that regard, has the company ever received sufficient information to do the design and engineering without procuring a piece of equipment?

MR. WALLS: I'm going to object as vague and ambiguous.

THE WITNESS: Try to restate your question. For a license application?

BY MR. REHWINKEL:

Q. Yes.

A. I'm not aware of any license application we have ever submitted without already having committed to purchasing the material required.

Q. Okay. I want to show you a document. I don't have an extra of it. But it is an AREVA document. And this page is 10 PMADR3 CR3-1C000156. And it starts on 000106. And I would ask you to look at this.

Do you know what the BOP I and R list is, Issues and Restraints?

A. I know what Balance of Plan is.

Q. I want to ask you about that first column in that table there.

A. Which first column?

Q. I'm sorry. The first row.

A. Line item 1?
Q. Yeah.
A. Okay.
Q. Do you know what's going on there?
A. This is talking about purchase of some of the secondary components, secondary plant components. It appears to be the components for our power uprate.
Q. Okay. Does that indicate that the reasons for the procurement were unrelated to the need for licensing, one was cash flow and others that you were able to procure, design specifications without procuring the equipment?
A. I'm not sure what it means by cash flow. I'd have to ask the person that wrote that. I know that these components were actually delivered, most of them, in 2009, okay, in order to be installed in our 2009 outage. And the timing may have been cash flow driven in order to support that delivery date by 2009.
Q. Okay. What does the last column mean in that row with respect to -- could you read that aloud and tell me what your understanding of that is?
A. It says, "Preliminary area data will be obtained from Seaman CR3 to accept, proceed with preliminary data. This deviates from proposed schedule and poses risk on proposed man hours."

I think what this is saying -- and I don't even know who this is. This is an AREVA presentation. I don't know if it's to AREVA or to Progress Energy, so I'm not sure if this is talking about -- this could be -- AREVA may be expending man hours and not going to get paid for.

But what it's saying is that the specifications for some of these components was going to be based on some preliminary design information, not the final design information, and that there might be a chance those numbers might change after the contracts were signed for these companies.

Q. That doesn't indicate that the design criteria or information was acquired without purchasing any equipment?

A. Say that again.

Q. That doesn't indicate that you got the design specifications before procuring the equipment?

A. You always have the design specifications before procuring the equipment.

Q. But without actually having expended the funds to procure the equipment?

A. No. In fact, in this case, they're saying we've got to go buy the equipment now even though we haven't finalized all the design specifications. And

that represented a risk.

So in this case, in order to meet the schedule, which is something we've tried to emphasize here, the manufacturing time lines are so long right now, that you need to order the equipment very early. And so in this case, the specifications were not even complete, yet there was a desire to order the equipment in time for the delivery. And that was being done at risk without the engineering.

Q. Okay. I wanted to understand.

While I've got this, it looks to me like this document is a presentation -- well, let me let you look on. This is a February 19th, 2008, MRU EPU executive meeting.

A. Okay.

Q. It looks to me like that's a presentation of AREVA to PEF.

A. It is a joint presentation, AREVA leading it with some PEF personnel people present.

Q. I want to ask you a question about it.

A. Yes.

Q. On page 54 of that presentation, the February 19th presentation, there's a reference to 5059 and qualifications of engineers. Is that an issue that you're familiar with?

MR. WALLS: Object to the characterization.

THE WITNESS: I don't understand what you're asking. I understand what this says, but I don't understand your question.

BY MR. REHWINKEL:

Q. Well, tell me what that means to you.

A. This is an issue -- they're describing a concern about qualifications of the engineering staff.

Q. Whose?

A. It appears to be AREVA staff. And this is why -- the 5059 process is a process a licensee holder uses, in other words, a utility that owns a nuclear power plant.

AREVA doesn't own any nuclear power plants, and as such performs no such work under 10 CFR 5059. So it would be unusual for them to have any engineers qualified to perform 5059s. So this appears to be talking about how they're going to resolve the fact that some AREVA work requires a knowledge of 5059 without them already having that knowledge in their company. Make sense?

Q. Uh-huh (affirmative).

A. So that's all this is. They're talking about the qualification of their personnel with regard to that and how we're going to gap that qualification.

Q. How did you gap it?

A. Well, AREVA doesn't do the 5059s. My company does those. In this case, it looks like they had some qualified and Worley Parsons that were qualified. They may have qualified under our program. We're going to support the -- and I believe the support origination and review means so that when it comes to us, it comes with that knowledge in it and we're going to actually perform the 5059s. It's an attempt to not do rework because they don't understand that process.

Q. So they do as much as they can?

A. No. You want them to work having some idea of what we're going to have to deal with at the back end so that when it comes to us, it doesn't have a problem with it that we have to go back and say, no, you've got to change this. Does that make sense?

Q. Yes. All right. On page 58 of that same slide presentation, could you read the first couple of bullet items there and tell me what those mean to you?

A. This meeting was from February, '08. So what it tells me is that a year and a half ahead of our outage, there was a concern that AREVA was raising about the schedules for implementation of some design work, and they recommended moving that work forward

because of the outage that we had in the fall of 2009.

Q. Did that impact the deadline or the milestone for them to deliver the draft LAR to you?

A. I don't believe it would have. This is talking about engineering design work, not LAR work.

Q. I want to show you now a March 27th, 2009, AREVA presentation. It's called the CR3 extended power uprate project executive review meeting.

Are you familiar with that meeting?

A. March, 2009?

Q. Yes.

A. I was actually probably present at this presentation as opposed to the other ones which I was not. I likely was present at that meeting.

Q. On page 5, this is a document that is at 10 PMA-DR3 CR3-1C-000345. And on page 5, there is a table about deliverable metrics. Do you see that? Do you know what -- does that mean anything to you?

A. Yes.

Q. Does that represent a concern about the level, the percentage of deliverables as of that date?

A. Yeah. It reflects that AREVA, under their two contracts, was being challenged to meet their original projected schedule.

Q. And is that with respect to the engineering

work or the LAR or both?

A. Looking at it, I believe it is likely both. And some of this is -- now, recognize that this work authorization 84 was for the safety related work that they had proprietary knowledge of including the LAR work.

Q. Okay. Are you familiar with the ROTSGEFW2 wetting issue?

A. Yes.

Q. Is there an issue with that with regard to licensing?

A. There was -- no. That was a phenomenon that had to be looked at for licensing of the EPU, but there's no issue. There's no challenge to licensing due to the emergency feed water wetting. I guess right words is wetting condition at EPU conditions.

Q. Okay. On page 18 of that document, can you tell me what that means to you?

A. This is the same presentation?

Q. Yes. Do you see at the bottom? What would that mean where it says, "LAR input text delivered and reviewed by CR3 for acceptable level of detail?"

A. This is talking about the process by which they would be going through, not that it had been complete.

Q. Okay.

A. At this point, in fact -- I don't know if there's more detail or less detail regarding the LAR in here. There isn't much. They're describing a process by which I talked about where the input in text will be developed and then reviewed by CR3 staff similar to what we discussed before.

This is describing a process that was not completed in March of 2009.

Q. And on the ROTSGEFW2 wetting issue on the next page, 19 --

A. Yes.

Q. Do you understand what's on that page there? And what is the reference to 5059 regarding that issue?

A. Yeah. This was an emergent question that came up during events or reviews of information at a -- I believe at another facility, that when we applied it to our plant, we recognized a need to go reevaluate us against this concern. So it not only affected the uprate condition, but it affected the plan to run without uprate for the new steam generators.

So AREVA had to go back and do analysis to support that we did not have a concern with regard to

the tube wetting condition under emergency feed water conditions for the new steam generators at the current power level and for extended power level. And this is describing the dates by which AREVA felt that analysis would be in place.

The urgency here was to demonstrate there was no problem for the cycle that will start when we come out of R16. That has been resolved. 5059 means that it can be analyzed and reviewed as acceptable without review by the NRC.

Q. And not by AREVA, but by you?

A. That is correct. Yes.

Q. All right. I wanted to hand you what is page 125 of this same March 27th --

Q. Meeting?

A. Yes.

Q. Are you familiar with this document?

A. No. But I can speculate what they're trying to say.

Q. Okay. Well, what does this mean to you with respect to --

A. I'm not familiar. I probably had this presented to me a year and a half ago.

Q. Okay. Do you know what was the original LAR schedule -- what is the reference here to the original

LAR schedule? Was there an intention to file a LAR in March of 2009?

A. No. This is input. The title is LAR input schedule impacts.

Q. Okay.

A. So as you saw before in earlier slides, AREVA was being challenged meeting their original schedule on deliverables. The LAR was no different than some of their other deliverables. This overall EPU was extremely aggressive, and I think some of the ability of AREVA was optimistic when they presented their original ability to produce the documents required. I think their original scope, as defined in the contract, was not large enough. And their belief in their ability to produce at that rate exceeded their capability to a degree.

Originally, they had a schedule that showed us that their inputs for the 51 documents, the conclusions of their reviews for different segments of the license amendment request would be transmitted to us by March of 2009. They fell behind. They fell behind not only there but in some of the engineering work for the 2009 outage. We recovered the schedule for the engineering, and this was a revised schedule for the license application review inputs.

Now, remember that we had a lot of margin on submittal of the LAR to the NRC. In early September -- an early 2009 preparation of the LAR was way ahead of what was ever required. So they were proposing in March that they felt they could get those submittals to us by August of 2009, and that we could be complete by 2009 at this time in March.

Q. Okay.

A. So they still thought August of 2009 was achievable at this point.

Q. Okay. And this was prior to the expert panel review; is that correct?

A. That is correct.

Q. And at this time, they show EFW wetting for Cycle 17. Is that an issue that they were just going to put off until -- what does that mean to you, the gray bar?

A. I think the gray bar, it means that that analysis would be good for that period going forward, that we would be in place for that period.

Q. Okay.

A. Yeah. The ROTSG reflects the fact that they had to analyze it for that steam generator, and that was for original power level. Later on that chart it talks about an EPU schedule and a schedule for that

analysis. I believe that's all that's referring to.

Q. Okay. I want to show you now page 34 of the same slide presentation and ask you what the items under consolidated lessons learned means (handing instrument to the witness). And who were they talking about?

A. This is talking about the lessons learned with regard to preparing the engineering for R16. And it -- when I say lessons learned, in my industry we always look for how we could have done the job better. We do that in self assessments. We do it in expert panel reviews. We do it on corrective action with the idea that you can always manage something better than before and produce a better result next time than we did this time.

In this case, the refueling 16 engineering change packages were not completed until February of 2009 for implementation starting in September of 2009. So several months ahead of time which allows for finalizing the planning, walking the work down, identifying any last-minute, short-term procurement items required.

The milestone for that work earlier had been December of 2008. So they were two months behind among other challenges. That's a reflection of that

schedule completion percentage that you reviewed before.

So as with all things in our industry, we take a step back and we develop what we could have done better. And this is a list of lessons learned so that we can implement those for future outages.

Q. And what is the reference to ineffective review?

A. I don't know the detail because I wasn't part of this lessons learned.

Q. What about inadequate qualified staff, what is that referring to?

A. I'm not sure of the specifics.

Q. Okay. And does that refer to -- do you know if it refers to AREVA or Progress folks?

A. Could be either. I believe it would be most likely AREVA. The term qualified, by the way, is not a reference to their technical ability, but it's -- we have qualifications where you have to work through a qual card to get signed off.

They might be absolutely the right technical expert, but they may not be qualified to the program.

Q. Their work is not submitable to the NRC if they're not?

A. It's not related to the NRC. It's related to

our own processes. There's actually not a qualification for the NRC. There's an internal qualification process.

It might mean that a qualified individual might have to review the work of a nonqualified individual, even though the nonqualified individual is the technical expert.

Q. And what does this mean on page 36 with respect to AREVA and Worley Parsons personnel?

A. That's exactly what I'm talking about, that AREVA and Worley Parsons in this case for several of our modifications were the right technical people to be performing the work based on their technical expertise and backgrounds; however, they may not be qualified to our engineering change process.

In other words, we have a procedure we follow to write the engineering document. They've never done that procedure before. And in order to sign off on that procedure, they have to be qualified under our training program. So that's exactly what this is talking about. It's not a fact that we had the wrong people, but that we recognized that we ought to qualify these people to our program.

Q. Okay. Page 5 and 6 of your testimony --

A. This is my August 3rd rebuttal?

Q. Yes. And I think we established that your engineering design and design analysis is ongoing as well as procurement for Phase 3?

A. That's correct.

Q. On page 7 --

A. Yes.

Q. -- on lines 3 through 6, is it your testimony that the CR3 EPU project is no more of a challenging complex project than any other EPU project?

A. I don't see how it's any more challenging than the other ones.

Q. Okay. On page 8 -- actually, skip that one. Page 9, lines 7 through 10 --

A. Yes.

Q. -- you say you currently anticipate only some cost escalation over time due to the extension of the next refueling outage and the final phase of the CR3 uprate project. Do you see that?

A. Yes.

Q. Is that still the case that only escalation costs or ones that would impact costs, based on what you know now?

A. Well, this question is in relation to the delamination event. So the question is, does the delamination event cause by itself an increase in cost

of the extended power uprate.

And to the best of my knowledge right now, the only potential impact might be an increase in labor costs, should labor costs go up, which right now they're fairly flat, or material costs where we've delayed purchase of the material until later where the material costs might go up.

Q. Okay. And you're saying on the bottom of page 9 that the project is still feasible?

A. Yes.

Q. But feasibility of the project could be impacted if your schedule is material impacted with respect to whether R17 occurs in 2012 or not?

A. I don't believe that could affect feasibility.

Q. What about licensing impacts or another emerging issue with the NRC? Could that affect the ability?

A. I'm aware of no issue right now with the NRC that would challenge feasibility of this project.

Q. Is it possible that an issue could emerge with the NRC that would affect your ability to achieve the goal of 180 megawatt uprate?

MR. WALLS: Object. Calls for speculation.

THE WITNESS: I'm aware of none that could

come up.

BY MR. REHWINKEL:

Q. Okay. On page 10 -- let me ask you this: Do you disagree that had -- is it your testimony that every other uprate project was done or substantially all of the dollars were spent prior to either LAR submittal or LAR approval?

A. Everyone I am familiar with, and I'm familiar with many.

Q. Well, if I gave you Dr. Jacob's testimony --

A. Yes.

Q. -- can you tell me -- can you look at his attachment, WRJPED3? Can you tell me which of the projects here that you're familiar with in that regard (handing instrument to the witness)? And that's as far as the dollars being incurred.

A. You know, to be accurate, you would want to review all these. I'm certainly familiar with the Brunswick units. I mean, there's 120 on this list.

Q. Okay.

A. I'm not aware of anybody on this list that has -- that was doing an extended power uprate that did not commence the modifications prior to the LAR approval.

I know that occurred at Brunswick. I know it

occurred at Hatch. Trying to look at the large power uprates.

Q. Which Brunswick one, which number are you referring to here on the list?

A. I know it occurred at Robinson. It is line items 82 and 83.

Q. Those are the Robinson. Okay?

A. Brunswick ones.

Q. Brunswick. I'm sorry. Yes. What kind of reactors were those?

A. Boiling water reactors. I believe Genay did the same thing?

Q. Which is that?

A. Line item 111. Most of these small uprates are not a lot of capital. I mean, there's capital involved, but we're not talking hundreds of millions to do that.

Q. And which one was Robinson did you mention?

A. It's one of the small ones.

Q. Oh, okay.

A. I'm not talking about No. 4.

Q. What about 85?

A. That's the one, 85.

Q. Okay. Do you have knowledge of any of the others other than these four?

A. Hold on. I'm looking for a large one here, Hatch. Yeah, 45 to 46.

Q. That would be Hatch 1 and Hatch 2?

A. That's correct.

Q. 8 megawatt?

A. My staff has also informed me that they know more, and they have yet to find anyone who did not follow this strategy.

Q. Do you know how many more they looked at?

A. No.

Q. Is it a dozen or more? I mean, do you have any idea?

A. I don't know.

Q. Okay. On page 11 of your rebuttal --

A. Yes.

Q. -- you would agree with Dr. Jacobs that if the LAR is not approved, then CR3 cannot operate at the additional power level of 140 -- at the additional 140 megawatt output level; is that right?

A. If it is never approved, we never could, that is correct.

Q. And if that were the case, the benefits of the project would be lost, correct?

A. That is correct, for some of the work. A lot of this work does not -- not a lot, but some of the

work is required in order to capture thermal efficiencies. They do not depend on the LAR.

For example, the low pressure turbine work and some of the Balance of Plant work that is required to support those new lower pressure turbines and high pressure turbines will achieve a number of megawatts, electrical megawatts, absent the license.

Additionally, the installation of the two heat exchangers we installed during last outage that captured moisture separator drains will result in, I believe, 4 megawatts there of thermal efficiencies that will be achieved. And the turbine work -- I don't know the final number, but it's depending on -- well, I don't know the actual number, but it's greater than 24 megawatts once the HP and LP turbines were installed would be achieved.

Q. So essentially up to 40 megawatts could be --

A. It's in the neighborhood of 40. One of my staff could tell me exactly what that number is.

Q. Okay. And this possibility, without attaching a percentage to it, the possibility is always -- it's always been a possibility since the inception of the project that you might not get approval from the NRC?

A. That is correct.

Q. And you've already testified that LARS have been withdrawn. Were you aware of at least one?

A. I am aware of LARS that have been withdrawn. I'm aware of LARS that have been withdrawn and subsequently resubmitted and approved.

Q. Are you aware of any LARS that have been withdrawn and not resubmitted?

A. I'm aware of a LAR that has been withdrawn with the intention to resubmit, but I don't believe they've resubmitted yet. And I believe that's the case for Monticello right now.

Q. All right.

A. At least there was a time period where that was true. They have may have resubmitted since then.

Q. Do you know, have any been rejected?

A. I'm not familiar with any that have been rejected.

Q. Okay. Do you know in the states where LARS have been withdrawn whether those states had advance recovery?

A. I have no idea.

Q. Okay. Are you familiar with how many states have advanced recovery?

A. No.

Q. Okay. On page 13, lines 10 through 16, you

discuss in rebuttal to Dr. Jacobs the separation of specifications from the procurement activities. Do you see that? Is that correct?

A. Yes.

Q. Have you ever asked to acquire specifications for licensing work on a basis that would involve paying for less than the full amount of the long lead item?

A. I'm not sure what you're asking. When we go out to purchase equipment, the design and engineering and specification work is part of the package. Now, so --

Q. Well, are you saying it's not possible to pay some amount less than the full cost of the piece of equipment and have the manufacturer do the engineering -- provide the specifications for purposes that you might need in the licensing process?

A. Here's the trouble. The manufactures in general -- and this is a general statement. Can I go find a manufacturer that if I pay him a bunch of money he'll pretend like he's going to manufacture something without manufacturing it? He might be willing to do that.

But, in general, they're pretty busy right now. So what you're buying right now is their

engineering specification time. You're buying a set of programs that's going to develop, take our specifications, turn that into the manufacturing specifications and the design requirements and right onto a factory floor.

They don't have a lot of resources sitting around waiting for work. So they apply those resources to people actually purchasing equipment. Can I find a manufacturer that might be idle right now and be willing to expend his engineering resources to do that? It might be possible, but I don't foresee it for the kind of work we're talking about.

They want to sell a turbine, and there's a lot of people trying to buy turbines, for example. So they're going to say, well, if you agree to buy the equipment, we'll do that work.

Q. On page 16, lines 15 through 19 --

A. Yes.

Q. -- you state that the independent expert panel that reviewed the draft in the summer of 2009 concluded that PEF had not spent enough money to adequately describe those modifications in the LAR for the NRC to accept and approve the EPU LAR. Do you see that?

A. Well, what they actually said was we hadn't

spent enough time on it. Time is money.

Q. Okay. I was going to ask you did they specifically say you didn't spend enough money, or is that --

A. No. They said we hadn't spent enough time on it. So we had not worked enough hours against it. That gets translated into money.

Q. You refer to them as an independent expert panel.

A. Yes.

Q. What do you mean by independent?

A. They were independent. They were not personally involved at that stage yet with the development of the LAR. So when they reviewed the work, it was not their personal work they were performing.

Q. But two of the members of the panel were corporate?-

A. Yes. We do independent work of each others' work all the time. Independence is an individual thing for that person. That person had not been involved to a great extent, to an extent at that point to invalidate their independence.

Q. I just wanted to make sure I understood. Independent doesn't mean outside of the corporation?

A. No. No.
Q. Do you have the expert panel presentation from July 14th, 2009?
A. Yes, I do.
Q. This is the management debrief?
A. Yes.
Q. Now, this is a 10 PMA-DR1 CR3-14-002041.
A. 43, I believe.
Q. I'm looking at the front page.
A. 41, yes.
Q. Okay. Now, on the second page of this document slide 2, Brian Miller and Mark Turkle (phonetic) are Progress people, correct?
MR. WALLS: He's missing a couple of pages.
THE WITNESS: Yes. Brian Miller and Mark are engineers for Progress, Inc.
BY MR. REHWINKEL:
Q. Now, there's a man from Worley Parsons. Were they supporting AREVA on the development of the draft?
A. I'm not sure what Worley Parson's participation with our LAR was.
Q. Is it possible that they were working with AREVA on the draft LAR?
A. Unlikely.
Q. Okay. What about -- and Greg Ellis from

Excel Services, that's the firm that we discussed in Late file No. 2?

A. Yes.

Q. And these services that he was providing were separate and apart from the dollars that --

A. No. I suspect he would have been charging to the same Excel contract.

Q. Okay.

A. We always plan to have some Excel support for the project.

Q. All right. But the dollars I'm looking for in late file No. 2 would be not including the independent panel work. This is in addition to the independent panel work. Is that your understanding that there was Excel work that was in addition to independent panel work?

A. Yes.

Q. All right. On page 3 of this management debrief under scope, there's a reference to final draft.

What is that final draft of the LAR or the final draft of management debrief?

A. I think it was the draft dated 15 June of the EPU licensing report. I think final draft is a pretty -- it's probably a misnomer here because on

June 15th, 2009, all the sections weren't complete. It was -- I think the draft dated June 15th is a better description.

Q. Okay. But that's the EPU licensing report is the LAR draft that AREVA presented to you?

A. Yes. It was that that was included by that point.

Q. All right. And so everywhere else here where it says LAR, that's the draft LAR, licensing report?

A. Yes.

Q. All right. Now, on page 4, there are observations --

A. Yes.

Q. -- with respect to the quality of the draft. Do you disagree with the way these observations have been characterized?

A. No. They're accurate.

Q. Okay. What about on page 5, do you disagree with any of the characterizations that are included in these observations?

A. No. I agree completely.

Q. What about on page 6 under the conclusion?

A. I believe that they were accurate, that we would not have received an acceptance review of the LAR -- the LAR at that time, that a lot more technical

work, a lot more man hours needed to be booked against this project, and that it was going to take beyond 2009 to get it fixed.

Q. Okay. And then on page 7, did you have any disagreement or differences with the recommendations?

A. No.

Q. Okay.

A. What I'd like to say is that this expert panel described a need to spend a lot more resource and focus on this license and review in light of some of the elements you pointed out earlier -- for example, on slide 3 where they talked about the Point Beach, the Genay and the -- understanding the NRC's acceptance review perspective, that we really needed to spend a lot more man hours on this project than what was previously believed to be true.

Q. Okay. Do you have the adverse condition report --

A. Yes.

Q. -- that starts at 10PMA-DR1CR3-14-002048? And, actually, I'm just going to ask you about stuff that starts on 2076.

A. Yes, I do. I believe you're talking about -- is it DR1CR3-14?

Q. Yes.

A. Starting at 002048?
Q. Yes.
A. Yes, I have that.
Q. I'd like for you to turn to 002076.
A. Yes.
Q. Adverse condition investigation form.
A. Yes.
Q. All right. Now, are you familiar with this document?
A. Absolutely.
Q. Okay. I would ask you on 20762077 and 2078, do you disagree with any of the characterizations that are contained in this report?
A. Not fundamentally, no.
Q. Do you have any specific disagreements with any of the conclusions?
A. No.
Q. Okay. On page 2077 --
A. Yes.
Q. -- do you agree that the apparent cause with respect to the LAR content issues was that AREVA was a first-time performer of a new task?
A. Yes. What this is saying is that the LAR content not being sufficient was that, one, AREVA was -- this was the first time AREVA had done it. But

it was not just AREVA -- until you've done this one time, you really don't know how much work is required.

Q. Do you agree that this being the first EPU conducted of a B&W plant in the U.S. had an impact on the result of the LAR draft?

A. Yes. In fact, I believe in my testimony last year I indicated that with AREVA being the first time they do this that there will be some lessons learned. It's always easier to perform an uprate on a design, fundamental design that's been done previously.

Q. What about this being the first EPU LAR project performed by CR3 licensing a major project leaders and staff?

A. That makes it more difficult. And the reason is you don't know what your target is. And I believe it is true for how AREVA scoped the original LAR contract and how we accepted that contract. A piece of it was we did not know and did not have in our head that the standard into the detail in all the hundred areas the LAR goes into to how great a depth that analysis needed to be done to document the basis. So this was a matter of believing the scope was smaller than it truly needed to be.

Q. All right. Let's put that aside, and I want to ask you, do you have this Appendix E Major Plant

Modifications document that is at 56-00001?

A. I may. Hold on. This is DR1CR3-14-0029 being the first page? No. No, that's not it.

Q. Mine is 10NCOPCPOD-56-0001.

A. Oh, I know what this is.

Q. Technical report.

A. This is a summary of the LAR itself.

Q. You have that?

A. Yes, I do, somewhere. Hold on.

MR. WALLS: Here it is, F6.

THE WITNESS: Yes, I have that.

BY MR. REHWINKEL:

Q. Okay.

A. I have 2 sided copies. Yes.

Q. On page -- and my first question to you about this is is this essentially a summary of the LAR in a very --

A. This is a very high level -- this is actually, if you look at the bottom, this is an appendix to the LAR, and it is a summary document.

Q. Of a 2,000, 1,500 page document?

A. Yes, a very large document.

Q. This one looks to be, I don't know, a hundred pages maybe. I don't know. 60 page?

A. Yes.

Q. On page E3?
A. Yes.
Q. You state up there at -- well, it states that -- and by the way, who prepared this document?
A. This is the whole team. This is the AREVA and CR3 licensing group document.
Q. Okay. When this and the documents that it appends to that comprise the LAR are submitted, you will be the one to sign?
A. I'll be the signature authority on it, on the letter to the NRC transmitting it.
Q. Up at the top of page 3, it says, "CR3 intends to implement these modifications under 10CFR5059."
A. Yes.
Q. You see that? And that's still the case except for possibly how you resolve the instrumentation issue; is that right?
A. Yes. And I want to reemphasize. I believe it can be done. I will know once -- once we first choose that as an option. Remember, we're still going through that selection process. And then as we work through the engineering to validate it can be done. I still believe it can be done.
Q. Okay. Now, that's highlighted, and then

there's a comment 02 out to the side. It says, "Potentially impacted by diverse indication decision."

Do you know what that means? And who is KRW?

A. For some reason, you have a copy with comments that have not been incorporated. I don't know why that is.

Q. Okay.

A. That looks to me like a word processing comment that was out there. I don't know who KRW is, but let me see if I can tie it to --

Q. It looks to me like these comments, where they take numeric values, they map them to an engineering change document, is that right, other than this one here?

A. Most of this work is associated with a specific engineering change. For example, in paragraph 1.1.2 cooling replacement, that was a specific engineering change that installed that modification or plan in our LAR status.

You know, I'm not sure what KRW is referring to, and I'm not even sure if it's tied to the 5059. This copy is not clean enough for me to see where that comment is tagged. Is it highlighted?

Q. Here's a color version. I've got another

one.

A. Oh, there we go.

Q. When I look through this document, everywhere I see this kind of light magenta highlighting, there's always a comment.

A. Yeah. This could very well be what I was speaking to because diverse indication is -- may pertain to the digital instrumentation I was discussing. It's possible that's what they're talking about. I don't know that.

Q. Now, what does diverse indication mean to you in this context?

A. The word diverse indication means you have more than one way of knowing what parameter is in the plant. For example, if you have a pressure gauge, you'll have a diverse pressure gauge that is measuring the same thing so that if this instrument fails, this one will indicate the pressure that you need to know. That's what diverse indication means.

Now, what I don't know is the context of this comment without talking to the individual whether or not he's concerned about a specific diverse indication or a diverse indication issue associated with a digital instrumentation I discussed earlier.

Q. Is the diverse -- potentially impacted by

diverse indication decision, is that -- I don't know when this document was produced.

A. I don't either.

Q. Is there concern there that there could be confusion with respect to other instrumentation?

A. No. The intent of the regulation is for you to have diverse indication.

Q. Okay.

A. So diverse indication is good.

Q. Okay.

A. It's a backup. It's like having two speedometers. If one fails, you've got the other one.

Q. Okay. The next paragraph here, it says, "The modification addressed in enclosure 3, which adds fully qualified digital post accident indications is somewhat complex from a licensing perspective."

If CR3 were to install them as a replacement to the current manual needs of determining subcooling or HPI flow adequacy, it could be done under 10CFR --

A. Where is this?

Q. I'm looking -- I'm sorry -- the second paragraph on that page there.

A. Okay.

Q. And it says, "However, our intent is to treat them as the primary means of calculating these

conditions from both an approved technical specification and regulatory guide 1.97 perspective. As such, NRC review and approval is required."

A. At the time that we completed the LAR and was ready for submittal, our intention was to use the existing already licensed digital instrument in a manual action to actuate this -- to determine when manual means would be required for actuating the fast cooldown system, okay?

We wanted to provide a diverse indication, instrument only, readout for the operator so they would have a backup to the existing instrument using a digital instrument, if that makes sense. And so it was a backup to what was already installed, and that it would continue to be manual.

Installing a new instrument that's not required in your license can be done under 5059 if it's not relied upon.

Q. Now, in this case, they're saying that they wanted to use this new diverse indication by this point. This is evolved, so I don't know what the date of this is. But it says, "As such, NRC review and approval is required."

And that would be to use this new indication for read only, if that makes sense.

Q. Uh-huh (affirmative). So this is -- where someone is -- is this likely to have been developed before June 7th?

A. Yes.

Q. This is the -- this is someone kind of looking at the way this might be looked at from a licensing approach, the issue that is causing you to pause right now and look at your options; is that right?

A. That's correct. And I don't know if this was before March or after March, but this appears to be before June 7th that this was -- this was the status before June 7th.

Q. Okay. If it was after June, what would be different? What would tell you it's different?

A. We've got to make those decisions.

Q. So it wouldn't be so certain as to how you were going to go forward?

A. We could -- we have options. We can continue with this approach, which is have a diverse digital instrument installed and approved by the NRC for use of a manual action. We could use that same instrument to create the automatic action and be available for the operator to see, or we can not install a digital instrument at all, upgrade other components in the

plant to avoid the requirement to even have a fast cooldown system. So we have several options. We're working through the decision process now.

Q. On page 5 of the exhibit here --

A. Yes.

Q. -- the deaerator rewrite and bypass line installation.

A. Yes.

Q. This is an issue that you consider to be resolved from an engineering standpoint?

A. I'm not sure what you mean by resolved. We're designing this modification now.

Q. Okay. So this is still ongoing as well?

A. This would be a change that it would be installed in the 2012 outage. So the engineering work isn't complete on this, but we know how to solve this problem.

Q. Okay. And I guess to kind of cut to the chase, we've been kind of through this instrumentation issue many times. And if I went through this document and asked you about all these modifications, your answer would be the only one that there is uncertainty about, as far as an engineering solution, is the instrumentation issue?

A. That's correct.

Q. I would like to ask you on page 14 under this note here, it says, "Implementation of this design change is not contingent upon receipt of the FCR for EPU?"

A. What that means is it can be done under 5059. It can be installed under 5059 without prior NRC approval.

Q. And this is the LPI cross tie?

A. That's exactly correct.

Q. So if I look at the second bullet under that note, what you're describing here is that you basically would install the equipment but not hook it up, so to speak, the pipes, until you got your license amendment?

A. Well, the pipes would be installed. But what this says is we'll continue to rely on existing active means or pressurizer spray to approach -- to meet that precipitation requirement.

What it's saying is we're not going to cancel our procedures and do it the other way. So, in other words, it requires the license review to take credit for this new method. It would be available to us, but we still would have to keep in place whatever is required to have the other methods available to us.

Q. So it is your understanding that installing

this, I guess the hot leg injection aspect of this, because it says you have auxiliary pressurizer spray in place now, but the hot leg injection offers operator's approach to boron precipitation prevention, which is not subject --

A. Yes.

Q. Okay.

A. In other words, it would be available. There's a lot of things we do in a real accident that is the right thing to do, but it wasn't relied upon to get our license.

Q. Okay.

A. For example, in order to get my license, I have to assume that there's no off-site power available during the transient. If I've got it available, I'm going to use it.

Q. Sure.

A. And that's what this is saying, is the modification improves my safety margin, but I don't rely on it for getting my license. I certainly am going to use it if it's available.

Q. So the NRC would not question your decision to implement this under 5059?

A. No. We've already talked to them about it. You pointed to some meeting minutes earlier where we

talked about this installation, which indicated they were very pleased we were doing it. They going to be happy we do it. The question is can we rely on it as a license condition.

Q. And you did say that you're aware of other utilities who have done EPUs using an all 5059 strategy?

A. Yes. When you say all 5059 strategy, in order to install the modifications, absolutely. I've done it myself.

Q. Okay.

A. Which, by the way, was not subject to an advanced regulatory recovery policy at the time.

Q. Okay. Do you know how much that cost?

A. No.

Q. What was the increase there?

A. Total increase when we did everything was about 15 percent.

Q. 15?

A. Yeah. Same type of modifications we're talking about here.

MR. REHWINKEL: That's all I have. Thank you.

Is anyone else on the call still awake that wants to ask questions?

This is Kevin Carpenter with FPSC staff. We just wanted to get a transcript, if we could get the transcript contact information.

MR. WALLS: I do have a few follow up questions if no one has any.

MR. REHWINKEL: We'll stay on the line so you can do that after Mike asks his questions.

CROSS-EXAMINATION

BY MR. WALLS:

Q. Mr. Franke, I'm going to work backwards, hopefully quickly.

You were shown a document that was identified as an appendix as a summary of the LAR. Do you recall that?

A. Yes.

Q. And you were asked questions about if you were asked a question about each of the solutions identified in there, is the only one in which the engineering solution is, where there's any uncertainty about, is the digital instrumentation. Do you recall that line of questioning?

A. Yes.

Q. I believe you said yes. Now, when you said the engineering solution was uncertain there, what did you mean by that?

A. It's in context of the answers previously. We're continuing to write up the engineering work that provides the detail on how this equipment will be installed. And as we work through with our vendors to buy equipment and to install it, those details will be defined and finalized into work engineering instructions.

But in each case, we've defined what the solution is going to look like. So with regard to dealing with the fast cooldown modification and a potential digital instrument in support of that, we haven't fully vetted out what that solution is going to look like yet.

In all other cases, we have a good idea of what the final product will be like, and we're building the packages to define that.

Q. Is any uncertainty around whether you can come up with an engineering solution, or is the uncertainty around which one you're going to choose to present to the NRC?

A. And the uncertainty is with regard to which vendor we'll select for the digital modification. We have a very good concept as to how that digital instrument would work, how it would meet the regulations and the rules. But we have to select a

vendodr -- we don't want to do a sole source on this -- as well as we want to verify that the digital instrument and fast cooldown option remains to be the best one for our customers since now that we will have to license a digital instrument, the down select on other options other than fast cooldown should be re reviewed.

Q. You were also asked a series of questions about the adverse conditions report regarding the LAR preparation following the first expert panel review in July of 2009. Do you recall that?

A. Yes.

Q. And I recall you made a statement that one of the issues that was being identified in the discussion about the adverse condition report was the belief that the scope was smaller than it truly needed to be. Do you recall that statement?

A. Yes, I do.

Q. And was that statement -- well, let me ask you this question: What led you to believe that the scope was smaller than it needed to be at that point in time in June of 2009, versus the time that your contract with AREVA was signed?

A. Yeah. I think when the contract with AREVA was signed, it recognized a scope that at that time

was believed to be -- that required for an extended power uprate. However, you know, in light of the NRC review of more recent EPUs, and in conjunction with a better experienced group, we recognized primarily from those recent EPU reviews, that the NRC was demanding a greater depth of design information, specification information, and details with regard to the engineering work prior to their approval of EPUs. And as such, the scope that was originally defined in our first contract was not sufficient for today's standards.

Q. You were also asked a number of questions about the IPP Revisions 2 and 3 and variance descriptions in your testimony. And you were asked about the schedules that you were shown here. I'll try to do this quickly, if I can. But this is Exhibit WG-2. Do you recall questions about that?

A. Yes.

Q. And I think if we return to -- do you understand what the schedules here that are prepared are the ones that are -- the nuclear power department's are required to be filed in this procedure?

A. Yeah. And so these -- yeah. These schedules are prepared so that the numbers from year to year are

relative to the filing from the previous year, not relative to any IPP milestone for approval, but relative to the regulatory filing from the previous year's filing in this case.

Q. And if we look at Schedule T-6 B.3 which provides variance explanation which is also discussed in your testimony, right, in March of 2009?

A. Well, actually this one is -- the numbers from this particular schedule was for end of year 2009, and the numbers in this are from my 2010 testimony.

Q. Right, from March of 2010.

A. March of 2010, not 2009.

Q. And what you're comparing in the variances in column A is the estimated actual for 2009 for the prior year's period; is that right?

A. Right. So that the variance of $602,941 on Schedule T-6 B.3 of Exhibit WG-2, that explains a total project variance value relative to the previous year's filing.

Q. I did want to show you -- I guess you were shown the Crystal River extended power uprate IPP Revision 2, and I believe Revision 3. Do you recall that?

A. Yes.

Q. And Revision 2 is dated October 22, 2009, right?

A. That's correct.

Q. What does that tell you about when the information was collected that was presented in this?

A. As I tried to describe earlier, this document was prepared during my last -- in the middle of the implementation of Phase 2 during my outage. And as such, it had insites in it that were not available for the filing period for 2009, so the numbers at this point was a snapshot of best information available in October, 2009; whereas, the schedules under Will Garrett's filings were a best information as of March, 2009.

And then any relationship between Rev 2 and the previous number would be relative to our fall best known information.

Q. And you were asked a number of questions on page 12 of 28, Revision 2 about the 52.8 million variance between 2009 and 11, and then a description of the variances in 2009. Do you recall that?

A. That's correct.

Q. If you turn over to the next page on page 13 of 28, there's a series of entries here of Cap X by year that includes changes between revision 01 and 2.

Do you see that?

A. I do see that.

Q. And what does it say was for 2009 between Revision zero and 01?

A. It shows the reduction of 5.6 million dollars, as we discussed earlier.

Q. What was the amount identified for Revision 2 for '09 in this IPP Revision 2 dated October 22, 2009?

A. I'm sorry. I don't understand your question.

Q. The amount that's identified for 2009 under Revision 2 --

A. Yes.

Q. -- for the total project price?

A. It's 135 million 749 thousand dollars.

Q. Okay. And if we look at the IPP Revision 3 -- that one was prepared May 24th, 2010?

A. That's correct.

Q. Look to the similar page, page 13 of 27, what does it show there occurred -- well, let me back up. What's it show for Revision 2? Does it show the same amount?

A. It does show the same amount, although it shows Rev 3 at 125 million dollars now, 140 thousand dollars.

Q. What was the reduction changed in relation to

for '09?

A. For '09, it shows a 10 million dollar reduction as well. 10.6 million to be exact.

Q. We started referring loosely to June 7th a number of times in the deposition. What year was June 7th when you were referring to that?

A. 2010.

MR. WALLS: Okay. That's all the questions I have. We'll read.

MR. REHWINKEL: No further questions.

All right. We're done here.

MR. WALLS: We'll order and read.

MR. REHWINKEL: I will order expedited.

(Whereupon, the deposition was concluded at 4:57 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF CITRUS)

I, the undersigned authority, certify that JON FRANKE, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 16th day of August, 2010.

COLLEEN DeLANEY
Court Reporter, Notary Public
State of Florida at Large
My Commission No.: DD 246550
Expires: December 30, 2011

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF CITRUS)

I, COLLEEN DeLANEY, Court Reporter, Notary Public, certify that I was authorized to and did stenographically report the deposition of JON FRANKE, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 16th day of August, 2010.

COLLEEN DeLANEY
Court Reporter, Notary Public
State of Florida at Large

E R R A T A S H E E T

CAPTION: In Re: Nuclear Cost Recovery Clause

REPORTER: Colleen DeLaney

I, the undersigned, JON FRANKE, do hereby certify that I have read the foregoing deposition, and that, to the best of my knowledge, said deposition is true and accurate with the exception of the following corrections:

PAGE	LINE	CORRECTION AND REASON THEREFORE

_____ _____

Date JON FRANKE

August 16, 2010

J. Michael Walls, Esq.
Carlton Fields
4221 W. Boy Scout Blvd, St. 1000
Tampa, Florida 33607

Dear Mr. Walls:

This letter is to advise you that the transcript for the above-referenced deposition has been completed and is enclosed for Mr. Franke's review. Please have him read and sign the enclosed Errata Sheet with any corrections, and mail to us at the address below, or sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Federal Rules*; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely,

Colleen DeLaney
Superior Reporting
P.O. Box 1233
Crystal River, Florida 34423

Waiver:

I, _____, hereby waive the reading and signing of my deposition transcript.

_____ _____
Deponent Signature Date

*Federal Civil Procedure Rule 30(e)/Florida Civil Procedure Rule 1.310(e)