

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT  
COST RECOVERY CLAUSE

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Docket No. 090009-EI

ATTACHMENT B

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ECR   1    
GCL \_\_\_\_\_  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR COST RECOVERY  
CLAUSE

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Docket No. 090009-EI  
Submitted for Filing: August 4, 2009

**PROGRESS ENERGY FLORIDA**  
**REDACTED DOCUMENTS**

09NC-PCSPD2-18-000001

Through

09NC-PCSPD2-18-000017

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR COST RECOVERY  
CLAUSE

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Docket No. 090009-EI  
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09NC-PCSPD2-18-000019

through

09NC-PCSPD2-18-000029

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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IN RE: NUCLEAR COST RECOVERY  
CLAUSE

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**PROGRESS ENERGY FLORIDA  
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09NC-PCSP0D2-19-000147

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09NC-PCSP0D2-19-000150



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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IN RE: NUCLEAR COST RECOVERY  
CLAUSE

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**PROGRESS ENERGY FLORIDA  
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09NC-PCSP0D2-19-000182

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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IN RE: NUCLEAR COST RECOVERY  
CLAUSE

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09NC-PCSPD2-19-000296

through

09NC-PCSPD2-19-304

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT  
COST RECOVERY CLAUSE

Docket No: 090009

DEPOSITION TRANSCRIPT

Volume I, Pages 1-103

DEPOSITION OF: GARRY DALE MILLER  
TAKEN AT: Carlton Fields  
4221 W. Boyscout Boulevard, Suite 1000  
Tampa, Florida  
DATE & TIME: July 2, 2009  
Commencing at 9:00 a.m.  
REPORTED BY: Penny M. Appleton, RPR  
Notary Public

Berryhill & Associates, Inc.  
501 E. Kennedy Boulevard, Suite 775  
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DOCUMENT NUMBER-DATE  
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FPSC-COMMISSION CLERK

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A P P E A R A N C E S (Continued)

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I N D E X

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CERTIFICATE OF REPORTER:	102

E X H I B I T S

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>ID'D</u>
Late-filed Deposition Exhibit Number 1	Document listing	35
Late-filed Deposition Exhibit Number 2	Placeholder for stipulated deposition exhibit documents	35

1 Thereupon, the following proceedings commenced:

2 MR. WALLS: While we're on the record and before  
3 we start, we'd like to confirm that the people on the  
4 phone have signed a confidentiality and who's there.

5 MR. REHWINKEL: Yes.

6 MS. TRIPLETT: Okay. So I think probably the best  
7 way to do this -- can everyone hear? Okay. I think  
8 the best way to go on the phone -- first, we'll start  
9 in the room, and then we'll go on the phone, and then  
10 I'd like for each counsel for each party to confirm on  
11 that record that they have not -- that the only people  
12 in the room are either subject to a confidentiality  
13 agreement or subject to the confidentiality statute and  
14 rules and that they also have not forwarded the number  
15 to anyone who doesn't fall within those two categories.

16 MR. REHWINKEL: Okay. Here in the room, my name  
17 is Charles Rehwinkel, Associate Public Counsel, and  
18 with me is Bill Jacobs, expert witness, retained by the  
19 office. I am here and subject by law and orders of the  
20 Public Service Commission to abide by the  
21 confidentiality representations and claims of the  
22 company and with me -- Dr. Jacobs is a signatory to a  
23 nondisclosure agreement with Progress Energy Florida  
24 and subject to all of the confidentiality restrictions  
25 in that agreement, and Jim McGaughy is -- is a member

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1 of the firm and is also a signatory to the  
2 nondisclosure agreement. He is retained by the office  
3 as well with GDS Associates.

4 MS. TRIPLETT: Thank you.

5 Why don't we start -- staff --

6 MR. REHWINKEL: One other thing. Will Foster in  
7 the Public Counsel's Office is -- is part of the staff  
8 and is subject to the nondisclosure requirements of the  
9 law and the Florida Public Service Commission's rules  
10 and orders.

11 MS. TRIPLETT: Thanks.

12 Public Service Commission staff?

13 MS. WILLIAMS: Yes. This is Anna Williams on  
14 behalf of PSC staff. I'll be the counsel today. I'll  
15 have everybody in the room who's with me go around and  
16 introduce themselves, but all PSC employees that are in  
17 this room are on the docket and can view the  
18 confidential documents that we'll be discussing today.

19 MS. COVERMAN: Shay Coverman, legal intern.

20 MS. BENNETT: Lisa Bennett --

21 MS. TRIPLETT: Wait. I'm sorry, Lisa. I'm sorry  
22 to interrupt you, but the first person, the legal  
23 intern, the court reporter can't hear. Can you speak  
24 up and maybe spell your last name?

25 MS. COVERMAN: Shay Coverman, legal intern,

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1 C-o-v-e-r-m-a-n.

2 MR. WALLS: Thank you.

3 MS. BENNETT: And you got Lisa Bennett. Correct?

4 MR. WALLS: We do now.

5 MR. BREMEN: Jim Bremen, technical staff.

6 MR. LAUX: Mark Laux, technical staff; last name  
7 L-a-u-x.

8 MR. VINSON: Carl Vinson, PSC staff, V-i-n-s-o-n,  
9 and also, we'll joined shortly by Tripp Coston,  
10 C-o-s-t-o-n. First name is T-r-i-p-p, Tripp Coston.  
11 We'll also be joined by Geoff Cryan, G-e-o-f-f  
12 C-r-y-a-n. All three of us are PSC staff on the  
13 docket.

14 MS. TRIPPLETT: Is that it for staff?

15 MS. WILLIAMS: Yes, that's it.

16 MS. TRIPPLETT: Thank you.

17 Jay Brew, you want to go next?

18 MR. BREW: Jay Brew on the line for PCS Phosphate,  
19 and I am a signatory to a nondisclosure agreement, and  
20 I'm the only one on the line for PCS.

21 MR. WALLS: Thank you.

22 MS. TRIPPLETT: What about the SACE folks, Gary and  
23 James?

24 MR. DAVIS: Gary Davis for Southern Alliance for  
25 Clean Energy, and we have signed a nondisclosure

1 agreement. Also, Jamie Whitlock is on the line as  
2 well, who signed the agreement too.

3 MS. TRIPLETT: Thank you.

4 Did Leon Jacobs join back in?

5 Not yet. We'll take his appearance when he  
6 comes -- comes back.

7 Have I missed anyone?

8 MR. MOYLE: Jon Moyle representing the Florida  
9 Industrial Power Users Group, FIPUG, as it is commonly  
10 known. I am in Tallahassee at Public Counsel's Office  
11 with Will, and we signed a nondisclosure agreement,  
12 haven't forwarded the telephone call or number to  
13 anyone, and I think that's it.

14 MR. WALLS: Thanks, Jon.

15 Is there anyone else on the line?

16 Okay. I think we can start.

17 MR. REHWINKEL: Okay. And just a few more  
18 preliminary matters. I have spoken to counsel with  
19 Progress Energy. This is Charles Rehwinkel, and  
20 because of the extensive number of documents that are  
21 classified as confidential in this matter from which I  
22 will be asking questions, I am going to treat the  
23 entire deposition as confidential. If and when it  
24 becomes necessary to use this document in a public  
25 hearing, we will make a further determination or allow

1 the company to make a determination about what is and  
2 is not to be classified as confidential under the  
3 orders of the commission, but that's, I think, the most  
4 effective way to proceed here.

5 We've covered the -- the ground rules for who  
6 can -- can listen in. I have submitted to the -- to  
7 the company and by e-mail to all the known parties who  
8 are going to participate today an effort to list the  
9 documents that we will be discussing by Bates stamp  
10 number as produced in discovery in this docket and,  
11 hopefully, in the order in which we will be discussing  
12 them.

13 At this time I do not plan to offer these  
14 documents as exhibits to the deposition due to the  
15 logistical problems that would present. What I would  
16 propose to do is to provide a late-filed deposition  
17 exhibit, with the concurrence and cooperation of the  
18 company, that lists the documents that we ultimately  
19 use in this deposition, and that would be a late-filed  
20 deposition exhibit.

21 We probably can go ahead at the appropriate time  
22 and identify it as late-filed Deposition Exhibit Number  
23 1, with the understanding that if the document -- the  
24 deposition is to be used at hearing, that we would  
25 further work with the parties and the company to

1 identify the documents or the pages of the document  
2 that we would use in a way to minimize the logistical  
3 problems of confidentiality, and I would ask if anybody  
4 has any problems with that or the staff has any  
5 concerns about that approach.

6 MS. WILLIAMS: No, we don't have any problems with  
7 that.

8 MR. REHWINKEL: Okay. All right. And finally,  
9 just before we start, I feel that the Public Counsel's  
10 Office would like to make a statement before we start  
11 this deposition that the Public Counsel and myself  
12 personally are not opponents to nuclear energy or to  
13 Progress Energy's efforts to build a nuclear generating  
14 plant. Our mission here today and in this docket is a  
15 specific one, to test certain thesis offered by  
16 Progress Energy for determination on prudence and cost  
17 recovery in this docket, and our goal is nothing more,  
18 and nothing other than that should be read into our  
19 questions, and with that the witness has been sworn by  
20 the court reporter.

21 Thereupon,

22 GARRY DALE MILLER,

23 a witness, having been first duly sworn, upon his oath,  
24 testified as follows:

25 EXAMINATION

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1 BY MR. REHWINKEL:

2 Q I would ask you to state your name for the record.

3 A My name is Garry Dale Miller.

4 Q And could you state who you're employed by?

5 A Progress Energy.

6 Q Okay. Is that Progress Energy the corporate  
7 entity?

8 A Progress Energy Carolinas.

9 Q Carolinas. Okay. Are you -- is 100 percent of  
10 your time dedicated to the LNP Project or to PEF, Progress  
11 Energy Florida?

12 A 100 percent of my time is dedicated to new nuclear  
13 plants. We also have the Harris site that I'm responsible  
14 for also.

15 Q Okay. Can you tell me generally what your role is  
16 with respect to the Levy Nuclear Project?

17 A I have been responsible for --

18 (Mr. Jacobs joined the conference call.)

19 MR. REHWINKEL: Before you answer that question, I  
20 would ask Dianne Triplett on behalf of the company to  
21 take care of an administrative matter.

22 MS. TRIPLETT: Leon, this is Dianne Triplett, and  
23 you missed the -- the court reporter is here,  
24 obviously, and everyone went around and put their  
25 appearance on the record and then confirmed that they

1 had either signed a confidentiality agreement or were  
2 covered by applicable confidential statutes and further  
3 confirmed on the record that they had -- there's no one  
4 in the room with them that is not subject to one of  
5 those two things and that they had not forwarded this  
6 confidential call-in number to anyone. So could you do  
7 that for us?

8 MR. JACOBS: Sure. My name is Leon Jacobs. I am  
9 counsel for Southern Alliance for Clean Energy in this  
10 case, and I can confirm that I did receive the  
11 confidential call-in number. I did not forward it to  
12 anyone, and there's no one in the room with me at all.

13 MS. TRIPLETT: Okay. Thank you.

14 BY MR. REHWINKEL:

15 Q Okay. My question, Mr. Miller, was to ask you to  
16 describe your role with respect to the Levy Nuclear Project.

17 A My role has been beginning with the siting and the  
18 technology selection for the Levy Project through  
19 engineering, licensing, regulatory, pre-construction  
20 planning, contracts, commercial negotiations on the EPC,  
21 that large scope of activities.

22 Q And do you have any role similarly with the Harris  
23 Plant?

24 A The Harris Plant, because that project follows  
25 after Levy, the role currently right now is a regulatory

1 role primarily. We -- it is an existing site that we have  
2 there at the Harris site, and so we have a COLA that's in  
3 progress for that site also.

4 Q Okay. You said COLA, C-O-L-A?

5 A Yeah. Combined Operating License Application.

6 Q Okay. Can you tell me who are your direct  
7 reports?

8 A My direct reports are Bob Kitchen -- he is the  
9 Manager of Nuclear Licensing; Vann Stephenson, the Manager  
10 of Engineering, Nuclear Engineering --

11 Q Is that Stephenson with a p-h?

12 A Correct.

13 Q Okay.

14 A With a p-h -- Lewis Spragins, Supervisor of  
15 Project Controls, and then I also have an admin, Betsy Cox,  
16 and then I have a QA Program Leader. His name is Michael  
17 Janus.

18 Q J-a-n-u-s?

19 A Correct.

20 Q And who do you -- to whom do you report?

21 A I report to John L. Elnitsky. He is the VP of  
22 Nuclear Plant Development.

23 Q Okay. And that's E-l-t --

24 A E-l-n-i-t-s-k-y.

25 Q Okay. Thank you. At this time, do you have any

1 other responsibilities other than with respect to these  
2 plants?

3 A Only Harris and Levy. They're my only  
4 responsibilities.

5 Q Is that because you're the chief engineer for the  
6 nuclear engineering group?

7 A I have held that position as chief engineer in the  
8 nuclear engineering group, but my current responsibilities  
9 are focused on the development of these two sites.

10 Q Okay. And, again, your job title now is?

11 A General Manager of Nuclear Plant Development.

12 Q Okay.

13 A That's my current title.

14 Q Okay. I would like at this time to turn to the  
15 direct testimony --

16 (Ms. Kaufman joined the conference call.)

17 MR. REHWINKEL: Okay. Before I ask the next  
18 question, I would ask who's joined the call.

19 MS. KAUFMAN: This is Vicki Kaufman. I just  
20 wanted to listen in for a bit.

21 MR. REHWINKEL: Okay. Vicki, before I ask any  
22 more questions, Dianne Triplett has questions to ask  
23 you along the lines of our confidentiality protocol.

24 MS. KAUFMAN: Okay.

25 MS. TRIPLETT: Hi, Vicki. I just need you to



1 confirm that you have signed a confidentiality  
2 agreement, that there's no one else in the room with  
3 you other than folks who are covered by either an  
4 agreement or the confidentiality rules and statutes and  
5 that you did not forward this call-in number to any  
6 other non-authorized persons.

7 MS. KAUFMAN: Yes. That's all correct.

8 MS. TRIPLETT: Good enough for me. Thank you.

9 MS. KAUFMAN: Uh-huh.

10 MR. REHWINKEL: Thank you.

11 BY MR. REHWINKEL:

12 Q I would like to turn now to the direct testimony  
13 that you filed on May 1st in this docket. Do you have that  
14 with you?

15 A I do.

16 Q Before we get started, let me ask you are there  
17 any changes or corrections that you would have that you know  
18 about to your testimony at this time?

19 A The only change which would -- which is not ready  
20 to make a change yet, we are going through an organizational  
21 restructuring, and some titles will change, and that is in  
22 process as we speak.

23 Q Okay.

24 A They have not changed yet. My title still remains  
25 the same, but it may change in the future, but I will still

1 report to John Elnitsky, and I will have similar  
2 responsibilities.

3 Q Okay. Is there -- is it anticipated that there  
4 will be any changes to the section of your testimony  
5 starting on Page 25, Section Roman Numeral 6 relating to the  
6 feasibility?

7 A No. There will be no changes to that section.

8 Q Okay. Is it -- is it contemplated anyone else  
9 will adopt parts of that testimony? If you don't know --

10 A I don't know.

11 Q Okay. That's fine. That's all I can ask you is  
12 to answer questions you know about.

13 A Okay.

14 Q Okay. Let me ask you to turn to Pages -- Page 4.

15 A Okay.

16 Q There on Lines -- the last question on that page,  
17 beginning on Line 17, you described a -- the Florida Public  
18 Service Commission determination of need process is at a  
19 very high level. Is that right?

20 A Beginning on Line 17 of Page 4?

21 Q Yes.

22 A Yes. That is correct.

23 Q Could or would PEF -- and I'm when I say PEF, I  
24 mean Progress Energy Florida. Would PEF have undertaken to  
25 build the plant if the PFC did not find a need?

1           A     I would doubt that.

2           Q     Okay.  On Page 5 of your -- of your testimony, you  
3 discuss the sufficiency review on Lines 18 on down that the  
4 NRC, or Nuclear Regulatory Commission, conducted.  Can you  
5 tell me what a sufficiency review is?

6           A     Yes.  When an applicant applies for a combined  
7 operating license, you submit a large volume of information.  
8 The NRC takes a finite amount of time, typically 60 days, to  
9 review that application to make sure it includes all those  
10 things necessary for an application and that the -- the  
11 depth and scope of what's included in that application meets  
12 the required regulations.

13           MS. BENNETT:  Guys, this is Lisa Bennett, and  
14 Jennifer Brubaker is in here.

15           MS. BRUBAKER:  I'm very sorry to interrupt, but I  
16 was just asked a question of this deposition.  I just  
17 need -- if I can quickly go off the record and just  
18 briefly talk about this process.  I just need a better  
19 understanding of what's going on, please.

20           MR. REHWINKEL:  Who is that?

21           MS. BRUBAKER:  This is Jennifer Brubaker.  I'm the  
22 attorney supervisor for the Public Service Office in  
23 this area.

24           MR. REHWINKEL:  Okay.  Well, do we need to go off  
25 the record?

1 MR. BRUBAKER: We can stay on or off. I don't  
2 care. I just think it's going to go a lot faster if we  
3 don't have to sit there and think about everything we  
4 say, but I don't care.

5 MR. WALLS: Well, let's go off the record.

6 MR. REHWINKEL: That's fine.

7 (A brief discussion was had off the record.)

8 BY MR. REHWINKEL:

9 Q And I don't know -- I think the question  
10 pending -- you may have answered it -- was I think you had  
11 just talked about the 60-day period at the NRC it usually  
12 takes to -- between the filing of the COLA and some kind of  
13 determination.

14 A That is typical that we seen in the industry,  
15 approximately 60 days, for that sufficiency review.

16 Q Okay. Now what is the difference between an  
17 acceptance review and a sufficiency review?

18 A In the industry, those terms are used  
19 interchangeably. The probably official term to say is the  
20 application is docketed and it is deemed that it's ready for  
21 review, and so the review then starts officially and so --  
22 because it has been accepted because it is sufficient.

23 Q Okay. But sufficiency doesn't go to whether the  
24 information is sufficient for purposes of making all the  
25 determinations that the NRC staff needs to make or the

1 commission itself. Is that correct?

2 A That is correct. The sufficiency is completeness  
3 from a -- does it include all the sections it should. The  
4 actual review and analysis of what we have in that section  
5 follows.

6 Q Okay. On Page 8 of your testimony, Line 8, you  
7 say typically the NRC issues its review schedule 30 days  
8 following the docket of the COLA. Is that different -- how  
9 is that different from the 60-day period you just -- you  
10 just discussed?

11 A The NRC does not work on the schedule until the  
12 application passes a sufficiency review.

13 Q Okay.

14 A So once they -- once it passes sufficiency review  
15 and it's officially docketed, then they begin to work on a  
16 schedule.

17 Q Okay. So this 30 days that you discuss on Page 8  
18 of your testimony is -- is after that first 60 days?

19 A That's correct.

20 Q Okay. So we're talking about a 90-day time frame  
21 from filing the COLA to the NRC issuing its review schedule?

22 A That is correct.

23 Q Okay. All right. When the -- so when was the --  
24 when did that 30-day clock, if you will -- and I understand  
25 that is not any kind of -- written in any kind of rule.

1 This is just your understanding of -- of normally how many  
2 days they take. Is that right?

3 A That is correct. It's typical, but it's not a  
4 rule prescribed date.

5 Q Okay. So when did that 30-day clock start, in  
6 your mind?

7 A October 6.

8 Q Okay. And October 6th was -- what was the  
9 significance of that date?

10 A That's when our application was docketed and  
11 deemed to be sufficient to start the review.

12 Q Okay. So 30 days from October 6th would have been  
13 November 6th, give or take a day?

14 A That's correct.

15 Q Okay. When the -- when November 6th came, you did  
16 not have a review schedule issued. Is that correct?

17 A That is correct.

18 Q Okay. At what point did you believe that the --  
19 that the 30 days -- well, let me ask -- let me ask -- strike  
20 that.

21 Let me ask it to you this way. When 30 days came  
22 and went and you did not hear from the NRC, did that strike  
23 you as being unusual?

24 A No. Because in the docketing letter they said it  
25 would take them longer to create the schedule because they

1 had some questions that we needed to answer first. So in  
2 the letter, they did not make a commitment for 30 days.

3 Q Okay. We'll talk about that letter when we get to  
4 some other documents.

5 A Okay.

6 Q On Line 21 of Page 8, you use the term -- well,  
7 you say that the NRC indicated that although the acceptance  
8 review determined that the LNP was complete and technically  
9 sufficient, the geotechnical characteristics of the Levy  
10 County site required additional information in order to  
11 develop a complete and integrated review schedule. You see  
12 that?

13 A Yes.

14 Q Now is technically sufficient any kind of a term  
15 of art?

16 A I'm not familiar with that phrase, term of art,  
17 but technically sufficient in this case is for the purposes  
18 of docketing and starting the review.

19 Q Okay.

20 A That's what it means.

21 Q Okay. So that's the same as -- what do we call  
22 it -- sufficient --

23 A Sufficiency review.

24 Q All right. On Page 9 of your testimony on Lines 1  
25 and 2, you state that there was no indication that an LWA

1 would not be issued for the scope requested. What do you  
2 mean by no indication?

3 A In our application that we submitted back on July  
4 30th of 2009, we had requested an LWA. In the acceptance  
5 letter that came October 6 that said they need more  
6 information to build the schedule, there was no indication,  
7 no narrative in that letter, that would suggest that an LWA  
8 would not be issued for this project.

9 MR. WALLS: You said July 30th, 2009.

10 THE DEPONENT: Oh, excuse me. Pardon me. July  
11 30th, 2008.

12 BY MR. REHWINKEL:

13 Q Okay. I heard it.

14 A Yes. Thank you.

15 Q Okay. Well, let's go back and talk a little bit  
16 about the -- what you filed on -- was it the 28th or 30th of  
17 July?

18 A The letter is dated July 28th, but it was  
19 delivered on July 30th, and the NRC considered it to be  
20 delivered on July 30th.

21 Q Okay. So you filed your C-O-L-A, your COLA --

22 A That's correct.

23 Q -- on that day? What was the next interaction  
24 that you had with the NRC relative to the COLA? I say  
25 you -- when I say you, I mean anybody with PEF that's acting



1 on behalf of the company.

2 A We submitted the COLA July 30th, and then we had a  
3 meeting the following month, late in the month -- I don't  
4 remember the exact date. August 21st maybe. It's late in  
5 the month -- where we had a public meeting that we  
6 overviewed what was in the scope of our application.

7 Q Okay. Was this an in-person meeting with the  
8 staff?

9 A It was.

10 Q Okay. What did they communicate to you -- they,  
11 NRC staff -- communicate to you at that meeting relative to  
12 your COLA?

13 A Well, it's a -- it was a dialogue where we  
14 presented what was in our application, and they asked  
15 questions as they went along for understanding and  
16 clarification. In that meeting, there was no statements  
17 about -- they make no statements committing that the  
18 application will be approved or anything like that. It's  
19 strictly asking questions to help facilitate their  
20 understanding so as they progress into the review that  
21 review can go more expeditiously.

22 Q Okay. Did they ask any questions or exhibit any  
23 concerns about the filing?

24 A Well, they asked a lot of questions. I don't know  
25 if I would characterize it as concerns. There were areas

1 that they talked about because they wanted to understand  
2 those areas further.

3 Q Okay. What was the next staff/PEF interaction  
4 relative to your COLA, to your recollection?

5 A It was September 9th, and that's where I and my  
6 Manager of Nuclear Licensing and our Chief Nuclear Officer  
7 traveled to the NRC offices to meet with some of their  
8 leadership.

9 Q Was there -- well, who were the people there? It  
10 was -- it was you?

11 A Our CNO, Chief Nuclear Officer, Jim Scarola --

12 Q S-c-a-r-o-l-a?

13 A -- a-r-o-l-a, and Boc Kitchen, who is our Manager  
14 of Nuclear Licensing.

15 Q And Mr. Scarola is the one who signed the COLA  
16 letter?

17 A That is correct.

18 Q Let me ask you this with respect to that date of  
19 the 9th. Was there any kind of a teleconference with the  
20 NRC on or about the 5th of September?

21 A There was.

22 Q Okay. What was the essence of that?

23 A The NRC advised us on the status of the review and  
24 what was -- they need to be able to complete their  
25 sufficiency review. Based on, as you see in the testimony,

1 we -- based on that call, we did make an adjustment to the  
2 LWA scope that's in Part 6 of our application.

3 Q Okay. When they -- what specifically did they say  
4 to you about the -- the LWA and -- well, let me step back  
5 and ask this. As part of your COLA, you asked for a limited  
6 work authorization. Is that correct?

7 A That is correct.

8 Q That was filed with the COLA on the 30th of July?

9 A That is correct.

10 Q Okay. So what you're saying is that on September  
11 5th the NRC staff communicated to you that the LWA scope  
12 needed to be expanded. Is that correct?

13 A Adjusted.

14 Q Adjusted?

15 A Because there was some increases and some  
16 decreases.

17 Q Okay. So they told you there were things in there  
18 that you could -- that you didn't have to seek authorization  
19 for?

20 A That's correct.

21 Q And there were things in there that they told you  
22 that they wanted you to include in the authorization?

23 A That they deemed should be in the LWA scope.

24 Q Now when they tell you that, you basically have to  
25 do what they want?

1           A     Well, we were interested in facilitating the  
2 review and getting the COL review moving forward. So we  
3 decided that it was best to go ahead and -- and take the  
4 action they requested, which was to add that scope into the  
5 LWA, and then that would facilitate the completion of the  
6 sufficiency review, so we'd be docketed and would progress  
7 with the major COL review. So that was our logic as we had  
8 that discussion.

9           Q     Okay. Now, was this meeting -- this conversation  
10 on September 5th, was that the first indication that PEF had  
11 that you would need to increase or to adjust the LWA scope  
12 with respect to the things they deemed needed to be added?

13          A     It was the first meeting where it was clear to us  
14 that the -- to docket the COL we would need to make that  
15 adjustment, or the docketing could be held up.

16          Q     Okay. Had you had prior conversations -- you,  
17 meaning the PEF -- had you had prior conversations with the  
18 NRC staff regarding the scope of any LWA that you would  
19 file?

20          A     We had.

21          Q     Okay. When would those have occurred?

22          A     As far back as January 2008 where we had a public  
23 meeting where we discussed the LWA and what we wanted to do,  
24 and then there were, obviously, meetings leading up to the  
25 application, and then there were meetings after the

1 application was submitted, so a series of meetings.

2 Q Okay. And when you say public meeting, that's a  
3 meeting between you and the staff, and it's noticed to the  
4 public?

5 A That is correct.

6 Q Okay. In these conversations between January of  
7 2008 and September 5th, had the NRC staff indicated to you  
8 that they thought that the activities that you increased in  
9 the scope of the LWA needed to be in there?

10 A We had dialogue on the scope. The rule was in  
11 place that -- for the limited work authorization was revised  
12 in October 2007. However, some of the guidance which the  
13 NRC staff uses to implement that rule -- they're called  
14 interim guidance -- they were still in draft form at the  
15 point our application was going in. So there was dialogue.  
16 Both with the NRC and with the nuclear industry at large, on  
17 that because it was being refined at the point we submitted  
18 our application.

19 Q Okay.

20 A So the answer to your question, there was  
21 dialogue, but it was in -- but it was in a context of some  
22 of the interim guidance was being -- was in draft form and  
23 being finalized at the point our application went in.

24 Q Okay. Those are ISGs?

25 A Correct.

1 Q All right. The -- the things that you added to  
2 the LWA were the diaphragm wall. Is that correct? That's  
3 one?

4 A That's correct.

5 Q The -- and the grouting?

6 A Permeation grouting.

7 Q Permeation grouting. And I guess the dewatering  
8 activities were just -- that was -- that wasn't part of the  
9 LWA. That's -- the things that I just mentioned facilitate  
10 dewatering. Is that right?

11 A That is correct. Those two items you named are  
12 those things that we added to the scope. Those facilitate  
13 dewatering and excavation, which are not part of an LWA.

14 Q Okay. But they wanted you to add those activities  
15 to the LWA. In other words, they wanted to review them and  
16 to -- for authorization before the issuance of your COL. Is  
17 that correct?

18 A Before the issuance of an LWA.

19 Q Okay. Okay. All right. So on September 5th, you  
20 had a teleconference with the -- the NWA staff -- the NRC  
21 staff, and as a result of that, is that why you and  
22 Mr. Scarola and Mr. Kitchen went to Washington to meet with  
23 NRC staff?

24 A I don't remember the dates of this, but because we  
25 had the meetings set for September 9th, it's unlikely

1 that -- that meeting would not have been set with such a  
2 short time frame. It was probably set before the September  
3 5th call. We were going on September 9th to talk about  
4 the -- if you will, the priority of our application as  
5 compared to other applications and to in person reenforce  
6 the importance of a good review schedule.

7 Q Okay. So the September 9th meeting -- did you end  
8 up talking about the LWA?

9 A It was discussed.

10 Q Okay. Now, what were the nature of those  
11 discussions?

12 A At that point, we were obviously aware of their  
13 request to include those additional items in our LWA scope.  
14 We reenforced the importance to them based on that change  
15 that well, with an LWA that has more scope in it, we -- it  
16 becomes even more important to get that review completed so  
17 we can have the LWA authorized, and then we also reenforced  
18 the COL date and that type of thing.

19 Q Okay. Did you try to convince them to recede from  
20 their insistence that you include these two activities in  
21 the LWA?

22 A We shared with them that we differed on our  
23 opinion regarding that, but because the people in the room  
24 were not the technical experts on the subject, we did not  
25 try to argue the subject. We just acknowledged the fact

1 that we disagree. We'll add it to our LWA scope, and if you  
2 look at the language in our LWA revision letter, we held the  
3 door open for future discussions on that topic.

4 Q Okay. So what was the next event with respect to  
5 your COL after September 9th?

6 A It would be the letter we submitted on September  
7 12th, which said the LWA scope has changed. We're adding  
8 the dewatering wall. We're adding the permeation grouting,  
9 and then we're removing circ water piping and some other  
10 piping.

11 Q And that's c-i-r-c, circulation?

12 A Circulating water system, circ water piping --

13 Q Okay.

14 A -- for short. And those are detailed in that  
15 letter.

16 Q Okay. Now from September 5th to September 12th,  
17 is seven calendar days. Was -- was that when you began  
18 working on the September 12th letter or had you kind of  
19 anticipated this, and was that September 12th letter and the  
20 associated geotechnical information that accompanied it --  
21 was that provided subsequent or developed subsequent to the  
22 5th of September?

23 A I don't recall. But we certainly could have  
24 created the September 12th letter within the seven days  
25 because it was not a complicated letter.



1 Q Okay. Is it possible that that was something  
2 that -- that you were working on because you anticipated  
3 that they might add this to the -- to the scope of the LWA?  
4 They, being RC staff?

5 MR. WALLS: Objection. Vague.

6 MR. REHWINKEL: Okay. He can answer it if he --  
7 I can rephrase the question.

8 THE DEPONENT: Okay.

9 MR. WALLS: You may want to define when you say  
10 "working on" what time frame you're talking about.

11 BY MR. REHWINKEL:

12 Q Okay. Is it possible -- let me ask it this way.  
13 This is what I'm getting at. Is it possible that the  
14 information that was in the September 12th letter was  
15 developed contemporary with the information you provided in  
16 the July 30th COL filing?

17 A The letter that we submitted September 12th was  
18 not developed when we submitted our COLA. It came after  
19 that, and you asked me when it came. I don't recall.  
20 Certainly, the September 5th letter would have required us  
21 to take the action to -- to actually finalize a letter and  
22 submit it. I don't recall when we started drafting it.

23 Q Okay. All right. Let me ask you to turn to Page  
24 9 of your testimony. I guess we were already on 9, but  
25 further down on Lines 16 and 17 -- let's see. I apologize.

1 On Lines -- from Line 6 through Line 11, is this the -- is  
2 this the meeting that you mentioned on September 9th?

3 A You're talking about from Lines 11 --

4 Q No. I'm sorry. From Line 6 through 11.

5 A There are several meetings that took place, and  
6 it's one of our interrogatories that actually details those  
7 meetings.

8 Q Okay.

9 A But if you look, we had public meetings in  
10 January, and in February we had meetings with their staff,  
11 which we call -- which are more informal called drop-ins  
12 before the application went in. We had meetings with them  
13 before application went in, two days ahead of it, on July  
14 28th. Then we had meetings, as we said, in August then in  
15 September. So there is a number of meetings that meet --  
16 that are applied against these statements here.

17 Q Okay. But on Lines 9 and 10, one of these two  
18 occasions is the -- is a September 9th meeting?

19 A That's correct.

20 Q Okay. What were the other occasions?

21 A The other one would have been, for example, in  
22 February of 2008 as we were meeting with them on LWA and  
23 also the coordination of the Corps of Engineers and how  
24 those two relate where their managers were present at that  
25 time.

1 Q Okay. Did you get a commitment or any kind of  
2 indication from the NRO managers about the time frame or  
3 their willingness to expedite your time frame?

4 A They would not make a commitment until they had  
5 completed the review of the application such that they could  
6 develop a milestone review schedule. So they did not make  
7 any commitments on the schedule prior to January of 2009.

8 Q Did they give you any indication that they would  
9 work to facilitate your desired timelines?

10 A I understand your question to be with regard to  
11 the September 9th meeting?

12 Q Yes.

13 A They acknowledged our statements. They said they  
14 had to complete their review and then after the review was  
15 completed then work on the schedule. So there were no  
16 commitments.

17 Q Okay.

18 A They did acknowledge, which is what we had told  
19 them, that this project compared to other projects, we have  
20 an approved need case. We actually had purchased land. We  
21 are actually moving ahead to a real project, and so we were  
22 emphasizing to them that this project had already several  
23 major approvals, and it was moving forward, and we needed  
24 them to recognize that.

25 Q Okay. Just as part of that conversation, did you

1 make the case that you were differently situated than any  
2 other utility with respect to those factors that you just  
3 mentioned as far as what you'd already done?

4 A Yes, we did.

5 Q Okay. And was that the case, that you had  
6 actually more, kind of, invested in -- in the process than  
7 others?

8 A That is correct. We had.

9 Q Okay. On Lines 11 through 14, you mention that  
10 PEF met twice with NRC technical reviewers before submitting  
11 the LWA. When were those meetings?

12 A January of 2008 and July 2008.

13 Q Okay. So the July 28th meeting is one?

14 A That is correct. That was very detailed with  
15 subject matter experts.

16 Q Okay.

17 A Technical review.

18 Q Okay. Now, at this July 28th meeting, did you get  
19 any indication from the NRC technical reviewers of any  
20 concerns that they had with respect to the scope of your  
21 LWA?

22 A There was discussion on it. I was not present at  
23 the meeting. I do not know the full breadth of the  
24 discussion. They certainly wanted to understand what we  
25 were requesting in the application and the basis behind it

1 and what was not -- and also what was not in the LWA  
2 application.

3 Q Okay. Would some -- would somebody, one of your  
4 subordinates or somebody subordinate in your organization  
5 have been in attendance?

6 A Bob Kitchen, the Manager of Nuclear Licensing.

7 Q Okay. And would he have generated a memo to you  
8 detailing what happened there and his impressions?

9 A He would probably not have generated a memo but  
10 debriefed me verbally.

11 MR. REHWINKEL: Okay. Before we get into  
12 late-filed exhibits and whatnot, I -- maybe now we  
13 should just go ahead and identify late-filed Deposition  
14 Exhibit Number 1, and we'll just call that document  
15 listing, for lack of a better term and then late-filed  
16 Deposition Exhibit Number 2 we'd like to identify as  
17 placeholder for stipulated deposition exhibit  
18 documents. Does that sound good? Do you understand  
19 what we're talking about there is what we discussed at  
20 the beginning?

21 MR. WALLS: Yes.

22 MS. TRIPLETT: Uh-huh.

23 MR. REHWINKEL: So from here on out, if I ask for  
24 a late-filed exhibit, it will be for an actual  
25 document. I'm not ready to ask that now but just in

1 case I do.

2 BY MR. REHWINKEL:

3 Q Okay. So just to kind of summarize this section  
4 with respect to your meetings with the NRC staff, is it fair  
5 to characterize these meetings that you did not come away  
6 with them -- you, meaning PEF -- come away with them with  
7 the understanding that they were committing to any timeline  
8 that you were requesting nor were they expressing doubt on  
9 any timeline that you were requesting? Do you understand  
10 the question? Is that a fair characterization?

11 A I understand the question. To answer your  
12 question, they will not make commitments until they develop  
13 a schedule.

14 Q Okay.

15 A That's just -- that's what they do. But I want to  
16 make clear to you also it is -- it was very clear that in no  
17 circumstance in any of these interactions with the NRC did  
18 they suggest to us that we would not get an LWA because it  
19 would take as long as a COL.

20 Q Okay. And I'm referring to the ones -- the  
21 meetings up until the time --

22 A Right.

23 Q -- you filed your LWA.

24 A Right.

25 Q Okay. And just from and administrative

1 standpoint, if you need a break or anything, let me know.

2 MR. REHWINKEL: If the court reporter needs a  
3 break, just give me an indication.

4 MR. MOYLE: Charles, we're having difficulty  
5 hearing on the phone. In response to that last  
6 question, he indicated that NRC never told him in these  
7 meetings that the LWA would be delayed? Was that the  
8 answer?

9 THE DEPONENT: Would you like me to repeat it?

10 MR. REHWINKEL: If he wants to repeat it or  
11 explain it, that would be fine.

12 THE DEPONENT: My point was in all these  
13 interactions that you've been asking me about -- during  
14 all those interactions, the NRC never said to us that  
15 we would not be able to get an LWA because it would  
16 take as long as a COL to review.

17 COURT REPORTER: Who was that on the phone?

18 MR. REHWINKEL: That was Jon Moyle, M-o-y-l-e.

19 COURT REPORTER: Thank you.

20 MR. REHWINKEL: I think it's J-o-n. Is that  
21 right?

22 MR. MOYLE: That's right.

23 BY MR. REHWINKEL:

24 Q Okay. On Lines 15 through 17, you state that PEF  
25 timely provided the NRC staff the requested answers to the

1 geotechnical RAIs and met with and discussed with the NRC  
2 staff the RAIs and the LAW. You see that?

3 A Uh-huh.

4 Q Okay. When you say timely provided the staff, are  
5 you saying that for these RAIs that they -- well, let me ask  
6 you this. When did they -- when did you get these RAIs?

7 A The RAIs came in the October 6th docketing letter.

8 Q Okay. And that's Request for Additional  
9 Information? Is that what that is?

10 A That is correct.

11 Q Okay. And what -- what does timely mean?

12 A In our case, we were able to turn that around and  
13 give it back to them November 20th, about four to five weeks  
14 later.

15 Q And is that -- that was at the time frame that  
16 they expected it?

17 A That is correct.

18 Q Okay. You say you met with and discussed the  
19 RAIs. When -- when and how did that occur?

20 A We had -- we had discussions with them as RAIs  
21 were being drafted. We had calls to them to talk about the  
22 subjects to make sure that as we completed those analysis  
23 that were requested in the October 6th letter that we would,  
24 you know, sufficiently answer their questions so they could  
25 proceed ahead with the discussions. So this took place in



1 the period of between -- we submitted -- we got the letter  
2 October 6th and the submittal went through October -- excuse  
3 me -- November 20th.

4 Now, we had requested a two-day work-in shop  
5 meeting with them, and they did decline that ultimately  
6 because they preferred just to have calls and then to get  
7 the actual documented response, and we submitted that  
8 November 20th.

9 Q Okay. So when you meet with them about, I guess,  
10 these technical reviewers, is that what you're talking  
11 about?

12 A Uh-huh.

13 Q Those aren't public meetings or required to be  
14 noticed. Is that right?

15 A No. The rules of the NRC is that you can do  
16 drop-ins, but if you have more than three people present,  
17 that typically has to be a public and noticed meeting. So,  
18 for example, the July 28th is an example of where we had  
19 discussed with the NRC staff, the technical staff, the LWA  
20 scope.

21 Q Okay.

22 A And that was a public meeting.

23 Q All right. Now, these conversations that you  
24 would have had between September 12th and -- I'm sorry --  
25 October 6th and November 20th, in those meetings did the NRC

1 staff express any opinion as to the sufficiency of your --  
2 let me -- did they say any -- let me ask that question a  
3 different way. Did they ask any questions that made you  
4 think that they had concerns about the geotechnical  
5 information that you had already provided?

6 A The -- when we had the September 5th phone call,  
7 they expressed some areas that they needed more detail to be  
8 able to facilitate their review of the schedule and in  
9 the -- on the telecons that took place following that, as we  
10 worked through the development of the responses to those  
11 RAIs, I wasn't present at those calls, but I would suspect  
12 that our dialogue was in regards to answering the things  
13 they pointed out in the September 5th call --

14 Q Okay.

15 A -- which preceded in the October 6th letter.

16 Q On Lines 21 on down, beginning at the bottom of  
17 Line -- of Page 9, you state -- well, in answer to this  
18 question, Did the NRC staff indicate during the RAI review  
19 that an LWA could not be issued for Levy in advance of the  
20 COL? And you say in there that the NRC accepted the  
21 company's RAI responses. Can you tell me what you mean by  
22 accepted?

23 A We developed the RAI responses, submitted those on  
24 November 20th, and we submitted those to the NRC, and then,  
25 obviously, that did lead to a schedule, which we did get

1 issued out, and while we do have supplemental responses and  
2 they're ongoing, that is typical for this process. So we  
3 deemed, based on the fact that we had submitted the  
4 information which allowed them to build the schedule, that  
5 we had satisfied their original request as delineated in the  
6 October 6th letter.

7 Q Okay.

8 A So the phrase that the NRC accepted, to your  
9 question, is our interpretation of their actions based on  
10 what they did following our submittal.

11 Q Okay. But they did not give you any affirmative  
12 statement saying that -- that they accepted in terms of  
13 satisfying any questions that they might have?

14 A There is nothing similar to a sufficiency or  
15 acceptance review for RAIs. If they -- in general, if we  
16 submit an RAI on any topic relative to our application, if  
17 they have a question about what we submit or they disagree  
18 with what we submit, they will issue another RAI to tell us  
19 that.

20 Q Okay. And you don't know whether they're going to  
21 issue another RAI or not. They could issue them any time --

22 A That's correct.

23 Q -- in the review process. Is that right?

24 A That is correct. The schedule that we have  
25 suggests that we should expect RAIs through February of next

1 year to continue.

2 Q Now you say in here they did not indicate that an  
3 LWA could not be issued. Are you just saying that they  
4 didn't say anything about it or did you have a conversation  
5 with them that -- where they indicated a lack of concern?

6 A This statement is to say, in all of our dialogues  
7 that we had regarding LWA and LWA scope, at no time did the  
8 NRC say we believe you cannot get an LWA because it would  
9 take as long as a COL, and the first indication was January  
10 23rd.

11 Q Okay. Now, you said you got a -- a -- a schedule,  
12 but you're referring to the schedule that came in February?

13 A February 18th.

14 Q Okay. All right. You say January 23rd, 2009 --  
15 that was the first indication that the NRC staff deemed the  
16 LWA geotechnical scope review duration to be concurrent with  
17 the COL. Is that right?

18 A That is correct.

19 Q Before January 23rd, 2009, had you had any  
20 internal discussions with management about the fact that the  
21 30 days had come and gone and you had not gotten a schedule?

22 A I don't recall all the occasions, but I am sure  
23 that we had briefed management on the fact that the  
24 docketing letter required more information to be able to  
25 build the schedule, and so 30 days would not be the

1 expectation.

2 Q Okay. If you had gotten -- just for purposes of  
3 this discussion, it's true that you signed the engineering  
4 procurement and construction contract with the consortium of  
5 Shaw Stone & Webster and Westinghouse Electric Company on  
6 December 31st?

7 A That is correct.

8 Q Okay. Of 2008. Is that right?

9 A That is correct.

10 Q If you had gotten the letter that you got on  
11 February 18th, if you had gotten that same letter on  
12 December 1st, would you have signed the EPC?

13 A In the form that it was signed, no. We would have  
14 had to modify the EPC agreement for that shift in dates.

15 Q Okay. All right. Do you have an idea how it  
16 would have been modified?

17 A Probably, similar to what we're doing right now in  
18 our ongoing negotiations.

19 Q Would you have signed it by the end of 2008?

20 A I do not know whether we could have concluded the  
21 changes necessary to finish those changes in advance of  
22 December 31st.

23 Q Okay.

24 A For your scenario of December 1st.

25 Q Right. And that's purely hypothetical. I

1 understand.

2 A Right.

3 Q Did you receive inquiries from management above  
4 you regarding the status of the LWA in the time frame  
5 immediately proceeding -- preceding the signing of the EPC?

6 A Again, I don't remember specific occasions, but I  
7 am sure I had dialogue with management on have we received  
8 the schedule, not just for LWA but for the environmental  
9 impact statement and the COL, and I would have advised on  
10 the -- the latest status as we understood it from our  
11 project manager at the NRC.

12 Q Okay. But are you fairly certain that you did --  
13 that that was a matter that was discussed --

14 A Oh, I'm sure.

15 Q -- in the days and weeks leading up to the EPC  
16 signing?

17 A I am sure that the -- the fact that the -- we were  
18 still waiting on the schedule was discussed.

19 Q Okay. Did you make any inquiries to the NRC staff  
20 about the -- the milestone letter or the -- the schedule  
21 that you were expecting before the signing of the EPC  
22 occurred?

23 A We did that on multiple occasions because we were  
24 interested in getting our schedule, and so, as we have a  
25 routine interface with our NRC project manager, we would ask

1     them about the status of the schedule, when did they expect  
2     to send it to us, so that was just routine business to ask  
3     about the schedule.

4             Q     Okay. Did -- and did they give you any  
5     indication?

6             A     The -- the indication -- originally, we thought we  
7     would get it in December. Then that moved into January, and  
8     then it moved into February before we actually got the  
9     actual published schedule.

10            Q     Okay. When you said originally you thought you  
11    would get it in December --

12            A     We did.

13            Q     -- what time frame was that that you were in when  
14    you thought you would get it in December?

15            A     Right.

16            Q     Was that in November?

17            A     Yes. It was the November time frame. Once we had  
18    our response to those IRAs completed and back in their hands  
19    to -- so they would be able to review the information that  
20    we sent them, we had expected that they would have  
21    everything that they needed to proceed with finalizing our  
22    schedule. They would not make commitments, but they were  
23    working toward, you know, a December, which then ultimately  
24    moved into January because many of the subject matter  
25    experts were involved with holidays. It's December.

1 Q I understand. The RAIs that you received on  
2 October 6th -- did the nature of the questions surprise the  
3 company?

4 A The fact they were geotechnical?

5 Q Well, for starters.

6 A No. Once the sufficiency review starts back when  
7 the application is submitted in July, a dialogue starts  
8 because they have our application, and so as we worked  
9 through that -- we actually answered many questions  
10 regarding geotech and other subjects that then led up to the  
11 docketing October 6th, and because we had that dialogue  
12 going on leading up to October 6th, we knew that there were  
13 likely to be additional dialogue on geotechnical. So we  
14 were not surprised because of what we had had as  
15 interactions from the time we submitted to the time we  
16 docketed.

17 Q Okay. What about the -- the questions themselves  
18 in the areas -- the specific geotechnical areas that they  
19 asked about? Did that surprise you?

20 A Well, based on the dialogues we had, we knew the  
21 topics that they would likely talk about.

22 Q Okay. Did the concern -- did the questions that  
23 they asked lead you to believe that they had concerns  
24 greater than what you anticipated when you filed the -- the  
25 LWA request initially?



1           A     Well, your choice of the word "concern" -- I  
2 characterize it as they needed more information to support  
3 their development of the review schedule. So I was not  
4 surprised about the subjects they asked about, and I didn't  
5 characterize it as concern but more of something they needed  
6 to be able to finish their review and then develop the  
7 review schedule.

8           Q     Okay. Let me ask the same question a different  
9 way, and I'll substitute scope of information need for  
10 concern.

11          A     Okay.

12          Q     Did the scope of their need for information -- was  
13 it greater than what you contemplated when you filed your  
14 LWA request?

15          A     Yes.

16          Q     Okay. Let's go to Page 10.

17               MR. WHITLOCK: I apologize. This is Jamie  
18 Whitlock. Was that an affirmative answer to that  
19 question?

20               MR. REHWINKEL: I think it was. Yes?

21               THE DEONENT: Yes.

22               MR. WHITLOCK: Thank you.

23 BY MR. REHWINKEL:

24          Q     Okay. On the question -- the only question on  
25 this page, you used the term -- well, the term was used in

1 the question "necessitate". Did the inclusion of the  
2 diaphragm wall and grouting activities in the September 2008  
3 LWA revision to the LWA scope necessitate a shift in the  
4 proposed LWA issuance date? And your answer to that is no,  
5 with some explanation in here. But is it my understanding  
6 that the essence of the question is are you saying that in  
7 your opinion putting these activities in the LWA scope  
8 should not have caused any -- any variance from the timeline  
9 that you requested? Is that correct?

10 A That is correct.

11 Q Okay. So you're saying here that -- that you just  
12 had a disagreement with the NRC staff on the importance that  
13 they placed on the geotechnical questions that they  
14 ultimately asked?

15 A Not on the importance, on what we believed would  
16 be reasonable for them to complete the review schedule in.

17 Q Well, you say in Lines 14 through 17 that you  
18 believe they had adequate time to review the request and set  
19 the LWA prior to the COL?

20 A That is correct.

21 Q Okay. And what was the basis for that belief?

22 A Let me explain.

23 Q Okay.

24 A The LWA rules that are embodied in 10 C.F.R., Part  
25 50 and Part 52 that were promulgated with the revision in

1 October of 2007 -- excavation is not part of LWA scope. Now  
2 once you excavate the hole and you do engineering backfill  
3 and rebar and things like that in the hole, those are  
4 covered by LWA scope very clearly.

5           Since excavation scope is not typically -- well,  
6 is not under the scope of an LWA approval and applicants can  
7 do that without an LWA, the fact that we had to install this  
8 diaphragm wall and grout just for the purposes of dewatering  
9 the hole and excavating, we concluded that that additional  
10 scope in the LWA should not drive the schedule for the LWA  
11 review significantly.

12           It was -- the diaphragm wall and grout are only  
13 used for the purposes of dewatering. They are not used as  
14 part of our foundation design or any nuclear safety function  
15 and are not credited in the FSAR, the Final Safety Analysis  
16 Report, as doing something that's relied upon in an  
17 emergency or the design of a reactor.

18           So because excavation is not typically covered by  
19 LWA, the fact that these two items were added just to be  
20 able to excavate, which is not typically in an LWA, we  
21 believed that they could incorporate those additional scopes  
22 in their review without a change -- a significant change in  
23 the LWA schedule.

24           And just to give you a sort of a layman's way of  
25 looking at it, we announced our site in December of 2006 and

1 submitted our application in July of 2008, about 18 months.  
2 In that 18 months, we went out into the field, did  
3 approximately 108 borings, collected soil samples, collected  
4 rock core samples, did all the analysis associated with  
5 that, did laboratory analysis of the samples, designed the  
6 foundation, did the analysis that supported the foundation  
7 design, did all that work in 18 months.

8           The decision by the NRC that they could not give  
9 an LWA prior to COL in essence says we will approve your LWA  
10 scope in 42 months as compared to our 18. So that's why we  
11 say that it was reasonable to say they would not affect  
12 their review schedule.

13           Q     Well, you used the term -- you said you were  
14 able -- on Line 18, you said were able to complete your  
15 evaluation at the site.

16           A     That's correct.

17           Q     Do you consider that evaluation of the site  
18 complete?

19           A     I consider it to be very thorough. The NRC  
20 clearly has additional questions on it because of the  
21 ongoing dialogue with RAIs.

22           Q     Okay.

23           A     But when we submitted our application, we believe  
24 that we had done sufficient borings, sufficient analysis of  
25 those borings and sufficient analysis of foundation done to

1 make our application complete to submit it.

2 Q Did -- did -- now, between July 28th, which was a  
3 contemporary -- a meeting contemporary, more or less, to  
4 your filing of the COLA and the LWA, and this kind of  
5 November -- late November time frame, did it become -- did  
6 it start to become aware to the company that despite your  
7 view of what needed to be done that the NRC staff was taking  
8 a different view of the geotechnical information needs?

9 A I don't understand your question.

10 Q Okay. All right. You -- you just described to me  
11 with your kind of reciting of the 18-month period in which  
12 you did the borings and the data collection, et cetera, and  
13 analysis that you did a certain view point as to what needed  
14 to be done and the purposes that they would serve. Did it  
15 begin to occur to you that the NRC staff was taking a  
16 different view of what needed to be done with respect to  
17 geotechnical information needs on this project?

18 A No. However, part of their review process is to  
19 ask questions to clarify information on our application.  
20 They're called RAIs. And in some cases, if they feel like  
21 there's something missing that needs to be added, they will  
22 point that out to us, and we will provide that information.  
23 I did not -- we did not view this dialogue with them as  
24 suggesting that they had concerns about this is Levy as an  
25 acceptable site. We did not have that. This was strictly

1 what do we need to -- as information to give them to  
2 facilitate their reviews.

3 Q Have they told you that -- that the geology of  
4 this site was more -- was more complex than they originally  
5 thought?

6 MR. WALLS: They, being who?

7 MR. REHWINKEL: The NRC staff.

8 A I don't know what they originally thought. They  
9 did tell us that this site was more geotechnically complex.  
10 BY MR. REHWINKEL:

11 Q Okay. So more means they -- must have been more  
12 than at some point than what they originally thought?

13 A My opinion is I believe they are referring to,  
14 like, other sites which could be simpler geologically.

15 Q Okay. Fair enough. Did -- do you believe that  
16 the NRC staff considered your evaluation of the site  
17 complete from a geotechnical standpoint?

18 A I believe they considered it sufficient to start  
19 their review because that's obviously embodied in the  
20 October 6th acceptance letter.

21 Q Did the NRC staff ask you to do more site  
22 evaluation work from a geotechnical standpoint?

23 A In these RAIs?

24 Q Yes.

25 A That's not the way -- they would not ask you to do

1 that. They may ask a question which would lead you to have  
2 to go out and do site work.

3 Q Okay. And did they do that?

4 A We have ongoing dialogue on very -- several  
5 subjects related to the site where we may find ourself going  
6 out and doing additional fieldwork.

7 Q Okay. From October 6th through today, have they  
8 asked questions that have required you to do further  
9 geotechnical site evaluation work?

10 A We have not done further geotechnical work at the  
11 site at this time. We had done the grout testing, which we  
12 had already planned because that's related to optimizing  
13 that process for the large-scale construction, and they  
14 witnessed that, but at this point, we have not gone back out  
15 to the field and did additional borings to answer RAIs. We  
16 could still do that in the future.

17 Q Okay. So you're saying since October 6th, you  
18 haven't done any in-the-field data collection with respect  
19 to the site?

20 A No. I didn't say that.

21 Q Okay.

22 A We've done this grout testing, and the NRC was  
23 interested in those results and actually came and witnessed  
24 those results. But from the borings that we did as part of  
25 our application, we have not gone back out and did

1 additional boring for the purposes of answering questions at  
2 this point.

3 Q Okay. Are borings the only type of geotechnical  
4 data collection that you -- you would be doing to answer  
5 RAIs?

6 A Those are typical and -- because once you do a  
7 boring, you can collect information about the sandy soil  
8 that's about the limestone and then in the limestone itself  
9 core samples of what that looks like. Once the hole is  
10 there, you can also put probes down the hole and do certain  
11 things, like shear-wave measurements, those type of things.

12 Q Okay. So shear-wave measurements are -- they look  
13 at the density of the rock, and then the speed of the  
14 measurements tell you whether it's dense or whether there's  
15 holes in that? Is that a general --

16 A That's a good characterization. A very high  
17 shear-wave number means typically very hard rock, and a very  
18 low shear-wave is typically something soft. Shear-wave is a  
19 measure of how fast, for example, an earthquake shock wave  
20 would move through that substrate.

21 Q Okay. And in a karst environment, it may  
22 indicate -- the speed of the shear-wave measurements may  
23 indicate whether there are voids?

24 A It's not clear to me that it would say that.

25 Q Okay.



1           A     Typically, borings are better for showing what's  
2 there, what's not there.

3           Q     Okay. On Page 10, Lines -- let's see. Actually,  
4 on Page 11, Lines 1 through 8, you state that comparing what  
5 you were proposing to dewatering measures in typical large  
6 construction projects in Florida, that there was not a lot  
7 of difference. Is that right?

8           A     The point of this statement in my testimony is to  
9 say in areas where there's high groundwater, techniques like  
10 this are commonly used to facilitate construction.

11          Q     Okay. Did you make that point to the NRC staff?

12          A     We did.

13          Q     Okay. What was their reaction to that?

14          A     We understand your comment.

15          Q     Okay. Did they -- did they -- do you think they  
16 look at a nuclear project differently from other  
17 construction projects?

18          A     Absolutely. Their burden, as you know, and their  
19 mission is to protect the health and safety of the public  
20 and the workers at the site. They are -- that's their job.

21          Q     Well, would you think that they would be less  
22 persuaded or impressed by what non-nuclear construction and  
23 activities entail in the dewatering context in a limestone  
24 environment?

25               MR. WALLS: Objection. Calls for speculation.

1 MR. REHWINKEL: Okay.

2 A The point in our discussion with them -- since  
3 excavation itself is non-nuclear activity and not covered by  
4 the rules, Part 50 or Part 52, how you excavate in these  
5 techniques, the relevance of non-nuclear work, you can  
6 consider it because it's a non-nuclear scope.

7 BY MR. REHWINKEL:

8 Q Did -- did the NRC staff, in your opinion, have --  
9 begin to have a concern that even though you were  
10 characterizing these activities that they asked to be added  
11 to the LWA as non-safety related, did they have a view that  
12 these activities might affect the safety of the plant with  
13 respect to the geology underlying the foundation?

14 MR. WALLS: Objection. Calls for speculation.

15 MR. REHWINKEL: I'm asking him to speculate based  
16 on his experience.

17 A It's not their view. It's their burden to prove  
18 it doesn't have an impact on the nuclear safety.

19 BY MR. REHWINKEL:

20 Q Okay.

21 A That's what -- that's why they chose to consider  
22 these in the LWA scope, just to ensure they have no nexus to  
23 nuclear safety.

24 Q Okay.

25 A But they -- but it was clear to them we were not

1 crediting them -- crediting them in our application that  
2 they serve some beneficial function for us, other than  
3 excavation.

4 Q They just -- their view -- their approach was that  
5 they needed to eliminate that your activities in the  
6 dewatering arena would not somehow adversely impact the  
7 safety of the plant. Is that fair?

8 MR. WALLS: Objection. Calls for speculation.

9 MR. REHWINKEL: Okay.

10 A I don't know their view, but their questions in  
11 our dialogue with them they -- we understand that is their  
12 responsibility to ensure it doesn't.

13 BY MR. REHWINKEL:

14 Q Okay. Are you aware of any other examples where  
15 any pending or previous COL applicant had to do similar  
16 dewatering and excavation?

17 MR. WALLS: Object. Vague as to time period.

18 BY MR. REHWINKEL:

19 Q Well, I'm asking about -- well, let's start with  
20 any pending COL application.

21 A I am aware that SCANA and Southern will both do  
22 excavation prior to their COL. To the degree they have to  
23 deal with groundwater, I don't have as much information. I  
24 do know that Southern will be having some groundwater to  
25 deal with, Southern Company, at the Vogtle site.

1 Q Okay. But you don't know whether they're  
2 comparable to the Levy site with respect to the karst  
3 topography, or do you?

4 A To answer your question, first of all, you mixed  
5 karst with groundwater. The -- the question you asked me  
6 is, is their groundwater similar. Groundwater in Florida is  
7 much higher and closer to the surface. In the case of  
8 Southern, I am aware that as they excavate down to a deeper  
9 depth than we're planning to excavate, they will encounter  
10 groundwater. I do not know if they have karst features in  
11 their geology.

12 Q Okay. Well, is the permeation grouting a function  
13 of the karst?

14 A The permeation grouting is not for karst. The  
15 permeation grouting is to seal any fissures or any pathways  
16 in the limestone to prevent water from coming up into the  
17 excavation area.

18 Q Okay. So it is a function of the limestone  
19 that -- that you're putting the foundation in because of its  
20 permeability?

21 A That is correct.

22 Q Okay. Do you know whether permeation grouting is  
23 a feature of the Vogtle Plant?

24 A I do not believe it is.

25 Q Okay. What about SCANA? That's S-C-A-N-A, all

1 caps.

2 A It is not.

3 Q Okay. How about prior COLs application -- COL  
4 applications? And I guess that would be years back because  
5 you're just in -- the last 30 years there haven't been any.  
6 Is that fair?

7 A There have been no new nuclear plants built in the  
8 last 30 years.

9 Q Okay. So are you aware of any comparable  
10 excavation and dewatering scenarios 30 years ago or more?

11 A I am. The Crystal River site.

12 Q Okay.

13 A Permeation grouting was used at that site.  
14 However, that site differs from the prospective of the --  
15 the normal grade of the site is much lower than this site,  
16 and so that plant is built up on a berm, and so in essence,  
17 engineered backfill raised the -- the area where the  
18 foundation sits, but they did do some grouting.

19 Q Okay. Well, was there any -- LWA didn't exist  
20 back then in the '60s, did it?

21 A It did not.

22 Q Was there any kind of preliminary authorization  
23 process that's analogous to the LWA?

24 A I'm not familiar with all the rules that existed  
25 back then, but we did answer an interrogatory that talked

1 about a permission that Crystal River was granted back in  
2 that time frame, but it was not under an LWA rule.

3 Q Okay. And was there anything that you know about  
4 that that's analogous to the situation you're facing here  
5 with respect to the time frames?

6 A Because the grades of the sites are seriously  
7 different, it's not easy to compare the two.

8 Q Okay. Do you know whether -- let's see. Let's  
9 look on Page 11, Lines 21 through 23. You're referring down  
10 there to the NRC's indication that any permeation grout work  
11 would also require an extended geotechnical review to  
12 confirm that all safety questions were addressed and so  
13 that -- and that -- so that scope would not allow for review  
14 and issuance of the LWA before the COLA. Is that -- you see  
15 that?

16 A (Witness nodded affirmatively.)

17 Q Are you aware of any other -- was this the first  
18 time the NRC had ever sought any kind of extended  
19 geotechnical review related to permeation grouting work?

20 MR. WALLS: I'm going to object to vague and  
21 ambiguous.

22 A I don't know.

23 BY MR. REHWINKEL:

24 Q Well, let me ask you this. Do you know whether  
25 they had ever required a similar extended geotechnical

1 review for -- related to permeation grouting work?

2 A What I do know is that there are 17 applications,  
3 and only one application had an LWA in it, which was the  
4 Levy site. The Southern Company LWA was embodied in their  
5 ESP. So to answer your question, with that as the  
6 background, I'm not aware of any other examples of  
7 permeation grouting in an LWA under the current rules.

8 Q Okay. So you don't -- is it fair to say that PEF  
9 did not have any context to evaluate whether this was  
10 unusual or not with respect to their seeking extended  
11 geotechnical review?

12 A There are no comparables to compare this to.

13 Q And you said ESP. That's Early Site Preparation?

14 A Early Site Permit.

15 Q Permit. Okay.

16 A Under 10 C.F.R., Part 52.

17 Q Okay. We'll look at the October 6th letter in  
18 more detail, but did the October 6th letter cause the  
19 company to believe that the -- the LWA time frame that you  
20 requested might not be granted?

21 A In their response in the October 6th letter, they  
22 make a statement that the dates that we requested, which  
23 were challenging dates, would unlikely be met. We -- and it  
24 wasn't clear whether it was an LWA date or a COL date or an  
25 EIS date. Our interpretation of that was that since we

1 asked for a challenging date, say, let's say we wanted the  
2 environmental impact statement in 22 months, they were  
3 implying to us maybe it would come in 23 or 24 months.  
4 Never did we read into that letter or imply from that letter  
5 that an LWA would not be available to our site based on the  
6 review would take 42 months.

7 Q Okay. On Line 16, you use the word "updated".

8 A Oh, I'm sorry. What page?

9 Q I'm sorry. I apologize. I'm still on Page 12.  
10 I'm sorry. On Page 12, you use the term "undated" to refer  
11 to your LWA?

12 A Yes.

13 Q Okay.

14 A That's the September 12th update.

15 Q Okay. And you -- it was updated in the sense that  
16 the NRC staff requested that you put it in, these two  
17 activities, in the LWA?

18 A In the context of this sentence where it says,  
19 like the permeation grout work was contained in the scope of  
20 the updated September 12th LWA request. That's -- that's  
21 what it means.

22 Q All right. And when you use the term "authorize",  
23 and without an LWA to authorize it, the work will have to be  
24 done after the COL issuance -- in other words, you cannot --  
25 based on the way -- you would take a great risk, I guess, if



1 you started that work before getting it authorized. Is  
2 that -- is that right?

3 A We could not start that work. Once the NRC --  
4 once we told them that the -- for example, the diaphragm  
5 wall is in the LWA scope. It is governed by their  
6 authority. We cannot start that work until we get the  
7 approval.

8 Q Even though your opinion was that it should not  
9 have been a part of the LWA, once you made that application  
10 on the 12th of September of 2008, it had to be authorized  
11 for you to do it. Is that correct?

12 A That is correct.

13 Q Okay.

14 A They deemed it to be under their authority.

15 Q Okay. And there's no going back on that. You  
16 would have had to litigate that somehow. Is that right?

17 A As you saw in the October 6th letter where we left  
18 the door open for follow-up discussions in an attempt to try  
19 to change this outcome, we considered other ways to get this  
20 work approved, and it's explained -- matter of fact, it's  
21 explained on Page 12 of the testimony.

22 Q Okay. All right. Let's go to -- once you got  
23 the -- the indication from the NRC staff in February, your  
24 February 18th letter --

25 A Correct. And January 23rd phone call.

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1 Q Phone call. Okay -- you considered several  
2 options, and you discussed those on Pages 12 and 13 --

3 A That is correct.

4 Q -- of your testimony. Now on Page 13, Line 14 --  
5 actually, Lines 13 and 14, you have a sentence that starts  
6 For all these reasons, and you said -- used the phrase  
7 "prudent not to pursue". What is the purpose of using the  
8 term "prudent" in here?

9 A In this sentence, it's referring to taking the LWA  
10 exemption pathway, and the point here is because the LWA  
11 exemption pathway -- that approach had risks, and those  
12 risks could result in you not getting it, and yet, you've --  
13 all this time has passed by, then it would not be prudent to  
14 go that path with such a risk because we would be spending  
15 capital money as we're -- as we would be going on the  
16 existing schedule, and then if the schedule change still  
17 occurred, we would have spent more money too soon.

18 Q Okay. So the use of the word "prudent" here is --  
19 is that for purposes of the Public Service Commission's  
20 review of the prudence of your actions with respect to the  
21 dollars that are at issue?

22 A This sentence here is referring to that fact that  
23 as we made a decision to -- do we consider the LWA exemption  
24 option? Because it had such risks and because it may still  
25 have the same outcome from a schedule shift, we -- our

1 opinion was it was prudent not to take that path because we  
2 would have been spending money at the same rate for a 2016  
3 service date.

4 Q Okay. Then you go to Line 16 and use the word  
5 "prudent" again, and you're saying a schedule shift is  
6 prudent for several reasons. This is the option you chose,  
7 basically to withdraw the LWA request, in effect?

8 A That is correct.

9 Q And to just adjust your expectations and your  
10 schedule for the in-service date of the plant. Is that  
11 right?

12 A That is correct.

13 Q Okay. Now is the use of the word "prudent" here  
14 for the purpose of conveying to the commission that your  
15 activities and your actions in this regard should be deemed  
16 by them to be prudent?

17 A It is.

18 Q Okay. Is that different from the use of the word  
19 "prudent" in Line 14?

20 A No. It's in the same -- in the same context of we  
21 made decisions. We believe they were prudent decisions, and  
22 we want to communicate that as part of this testimony.

23 Q Okay. So are you suggesting that the lack of  
24 action with regard to pursuing the exemption should be  
25 credited to PEF by the Public Service Commission in any

1 prudency determination that they make?

2 MR. WALLS: I'm going to object. It calls for a  
3 legal conclusion. I'm not even sure what you mean by  
4 credited. It's vague and ambiguous.

5 MR. REHWINKEL: Well, I'm trying to find out why  
6 he put it in his testimony.

7 MR. WALLS: I believe he answered that question,  
8 so asked and answered too.

9 BY MR. REHWINKEL:

10 Q Okay. But what I'm asking you is do you believe  
11 that -- that the Public Service Commission should take  
12 recognition in the prudency determination that you refrained  
13 from pursuing an LWA exemption?

14 A The answer to that is yes. Because of the  
15 associated risk with that LWA exemption, that could still  
16 yield the same impact of the schedule but at a later date.

17 Q Okay. All right. So going -- we'll leave that  
18 type of prudence, and let's go to the prudency aspect of  
19 Line 15 down. You're saying that the schedule shift is  
20 prudent for several reasons, and you list those out. The  
21 first one is to limit near-term price impact on your  
22 customers during the current economic conditions. Can you  
23 explain what you mean?

24 A Well, given the fact that we have to make a shift  
25 based on the determination by the NRC on the LWA length of

1 review, which in essence means we don't get one, we just get  
2 a COL, given that, which means you're going to move the  
3 schedule, then that schedule shift allows us to restructure  
4 the capital spending of the project in the near term in a  
5 time when there is very negative economic conditions.  
6 That's what this sentence means.

7 Q Does the company's decision to spend -- well,  
8 before the LWA withdrawal, did you consider the near-term  
9 price impact on your customers during current economic  
10 conditions with respect to whether to proceed or not with  
11 the project, the LNP Project?

12 MR. WALLS: Objection. The question  
13 mischaracterizes testimony.

14 A The -- rephrase your -- can you say your question  
15 again?

16 BY MR. REHWINKEL:

17 Q Yeah. My question is you're saying that the  
18 schedule shift is prudent for several reasons, and the first  
19 one you list is to limit near-term price impact on customers  
20 during current economic conditions. My question is the kind  
21 of the inverse of that is did you consider the near-term  
22 price impact on your customers during current economic  
23 conditions with respect to whether to proceed with the LNP  
24 Project back when you were pursuing the LWA and thought it  
25 was viable?

1           A     Well, as you know, the economic conditions have  
2     been changing rapidly.

3           Q     Uh-huh.

4           A     So when we submitted our need filing back March  
5     11th of last year which culminated in an order by the  
6     commission on August 12th, we were executing that -- that  
7     project based on that need determination and making --  
8     taking all those deliberate steps associated with that.  
9     From the time frame, as you know, late '08 through today,  
10    economic conditions have changed significantly.

11          Q     Uh-huh.

12          A     And so the point here is now, because of the  
13    schedule shift that we are required to shift the in-service  
14    date out because of the regulatory timeline, it is logical  
15    and reasonable and appropriate to look at the impact on  
16    customers in light of the information we have today on  
17    economic conditions.

18          Q     Okay. Are you saying that this first reason is a  
19    reason to shift or is it just a benefit?

20          A     It is a benefit. The reason to shift is driven by  
21    the LWA determination by the NRC.

22          Q     Okay. All right. Should the commission take this  
23    first reason, the one we just discussed, into consideration  
24    in making any prudency determination about the schedule  
25    shift?

1           A     The commission should consider this because, given  
2 the shift, it does afford the ability to restructure our  
3 capital spending in the near term at a time when the economy  
4 is significantly down, and so as we look ahead and finalize  
5 the specific amount of the shift of the schedule, this is  
6 something we will consider.

7           Q     Okay. But -- and I understand that. Do you think  
8 that it is a reason for them to find the impact, if any, of  
9 the schedule shift to be prudent?

10          A     Ask your question again.

11          Q     Okay. Do you believe that the near-term price  
12 impact reason is something that the commission should  
13 consider in any determination it might make on the economic  
14 impact, if any, of the schedule shift?

15          A     I believe the commission -- you asked me if I  
16 believe.

17          Q     Yes.

18          A     I believe the commission should consider the  
19 current state of the economy in Florida and in our service  
20 territory, and as they make their decisions, that is  
21 something they cannot ignore because it is a reality of what  
22 we have today.

23                   The actions we took from the time we got the need  
24 case moving forward through our development of or  
25 application, submitting it, our interactions with NRC, those

1 all -- those all -- we took those reasonable and prudent  
2 actions to be able to advance the project forward.

3 NRC has decided, which we cannot control, that  
4 they're going to take a longer period of time to do the  
5 review, resulting in a shift to our schedule. Given the  
6 shift, these other conditions have to be acknowledged, like  
7 the economic downturn. I believe they should be considered.

8 Q Okay. The second, if you will, I guess, set of  
9 reasons is, if I'm reading this correctly, starts on Line 22  
10 of Page 13 and continues on to the next page. And you refer  
11 to greater -- the shift allows the company to gain greater  
12 clarity on a number of issues that are important to the  
13 successful completion of the LNP. Can you explicate for me  
14 what those -- what that -- the clarity on the number of  
15 issues are?

16 A There are a number of issues that are present now  
17 that -- that we would consider: Financial markets --

18 Q Okay.

19 A -- liquidity of credit, what is the federal policy  
20 and regulatory environment, particularly associated with  
21 climate change, renewables, those type of things, the -- the  
22 success and the ongoing results of various rate recovery  
23 proceedings that we're in. So there are a lot of things  
24 that are going on that we will now review and evaluate how  
25 that affects the project. Some of those don't have clarity.



1           As you know, the financial markets have gone  
2 through an upheaval, and they're still settling back down,  
3 and that's an example of one that's probably the most simple  
4 to understand, that this shift will give us more clarity on  
5 those financial markets.

6           Q     Okay. Now, had the -- and this is a hypothetical,  
7 of course, like the December 1 I asked you about earlier,  
8 but had the NRC staff issued its milestone letter the way  
9 you would have liked it with the schedule that you  
10 requested, would these factors that you just discussed that  
11 you're seeking greater clarity on -- would they have  
12 impacted the company's decision to proceed with the LNP?

13          A     In general, as we proceed with LNP over the life  
14 of the project, there are factors, like financial markets,  
15 that you always have to consider in year to year as you're  
16 proceeding with the project. So the answer would be yes.  
17 Even if we got a favorable LWA schedule, we would not ignore  
18 all these other issues. We would be watching them and  
19 determining whether there was some reason that affected the  
20 project that we should take some action.

21          Q     Absent the LWA -- I'm just going to call it  
22 denial. That's -- do you know what I mean by --

23          A     I know, but that's not the right phrase.

24          Q     Okay. Let me ask it -- let me ask it to you a  
25 different way. Absent the need to withdraw the LWA

1 request --

2 A Okay.

3 Q Okay. Is that fair?

4 A That's fair.

5 Q Okay. Absent that occurring on January 23rd or  
6 February 18th, whichever date you pick, absent that event  
7 occurring, would these factors that we just discussed, the  
8 ones that you're seeking greater clarity on, have caused the  
9 company to implement a schedule shift --

10 MR. WALLS: Objection. I'm sorry.

11 BY MR. REHWINKEL:

12 Q -- such as -- such as the one that you're  
13 discussing in your testimony here?

14 MR. WALLS: Objection. Calls for speculation.

15 A After January 23rd, I cannot speculate what would  
16 have happened. I know, based on January 23rd, we then went  
17 down a course of action to try to resolve it, but once it  
18 was clear we were not going to get the LWA, that set our  
19 path. I cannot tell you what would have happened or what  
20 may happen in the future --

21 BY MR. REHWINKEL:

22 Q Okay.

23 A -- based on this subject because there's too many  
24 variables, and they're too complex.

25 Q Well, let me ask you this based on your role as

1 the new --

2 A General Manager.

3 Q -- General Manager of the LNP Project.

4 A Okay.

5 Q Were you considering any schedule shift before the  
6 LWA withdrawal?

7 A We were not considering a schedule shift. We were  
8 looking at ways to reduce the spending in '09. That could  
9 have caused some small change in the schedule. We do not  
10 know.

11 Q Were your reasons -- why were you looking at  
12 cutting the spending in 2009?

13 A We had not finalized our co-owner negotiations,  
14 and we wanted to reduce the '09 spending until those were  
15 farther along.

16 Q You said co-owner?

17 A Joint owners.

18 Q Joint owners. Okay. All right. So when we say  
19 co-owner, joint owner or JO, you're talking about --

20 A Other equity owners in the plant.

21 Q Okay. But they -- were you going to say something  
22 else?

23 A No.

24 Q Okay. But the reasons to try to cut back on  
25 spending in 2009 were not because of any of the reasons that

1 you said you would get greater clarity on?

2 A That is correct. That reason to reduce the  
3 spending was strictly based on the -- the status of our  
4 negotiations.

5 MR. REHWINKEL: Does anybody need a break? Okay.  
6 BY MR. REHWINKEL:

7 Q Are you contemplating that there will be any --  
8 any more delays in your schedule, any significant delays in  
9 your schedule from -- from here on out? Well, let me -- let  
10 me start over again. Have you decided -- have you, PEF,  
11 decided on today, July 2nd, how much the schedule will  
12 shift?

13 A No, we have not.

14 Q When do you anticipate that will happen?

15 A That analysis will continue through the summer,  
16 and hopefully, by the end of the summer, we will have made a  
17 final determination on the specific amount of months that we  
18 will shift the schedule.

19 Q Okay. So -- okay. All right. On the question on  
20 Line 8 --

21 MR. WALLS: What page?

22 BY MR. REHWINKEL:

23 Q -- Page 14, you ask, What is the impact of the NRC  
24 staff determination on the company's EPC contract? Now what  
25 do you mean by NRC staff determination?

1           A     This question refers to by virtue of the LWA  
2     determination by the staff, that affects the in-service  
3     date, and then the question then is, How does that  
4     in-service date change affect the EPC contract?

5           Q     Okay. So does the question suggest that the LWA  
6     withdrawal was solely the fault of the NRC staff?

7           A     I don't use the word "fault".

8           Q     Attributable to?

9           A     It's their determination which causes the schedule  
10    to shift.

11          Q     Okay. So that's the only thing that caused the  
12    schedule to shift, was that determination?

13          A     That is driving the schedule change.

14          Q     Okay. Does that imply that there -- that the  
15    company did not take any action or failed to do something  
16    that caused the NRC staff's determination to be what it was?

17          A     No. We have said in our dialogue today we've  
18    taken -- we had a continuing dialogue with the NRC,  
19    responding to their questions to be able to facilitate their  
20    review of an LWA in a timely manner.

21          Q     Okay. All right. On the bottom of Page 14, you  
22    say that you are addressing the LNP schedule shift by  
23    weighing a number of factors. What are those factors?

24          A     Well, first, let's talk about the EPC. We have to  
25    work with our consortium, which would be Westinghouse and

1 Shaw Stone & Webster, as they interface with their major  
2 suppliers to understand are there any limitations on the  
3 schedule shift based on supply chain and queue positions,  
4 say, for a large engineering component, like a reactor  
5 vessel. So that's one input, all the EPC negotiations  
6 itself and how suppliers affect that.

7 In addition, as we talked about some of these  
8 other items before, financial markets -- that's clearly  
9 one -- the regulatory environment, both at the state and  
10 federal level, and our gauging that that environment is  
11 positive for moving the project forward, the status of  
12 approvals, regulatory approvals, like the site  
13 certification, you know, other things that we have, how  
14 those are involved. The status and the results of our  
15 various rate recovery proceedings we would consider. So  
16 there is a number of factors that -- and the list goes on.  
17 I mean, I could keep going. There's many factors that we  
18 could were in this overall decision making.

19 Q On -- at the bottom of Page 14 on Line 23, you  
20 say -- use the phrase "weighing a number of factors in  
21 assessing how best to proceed with the project". Does that  
22 phrasing, "how best to proceed with the project," suggest  
23 that you've made a determination to proceed with building  
24 LNP and that cancelling the project is not an option?

25 A We say that -- we say in this testimony -- and I

1 have to go find the line -- we are committed to this  
2 project, and so we are taking the time to analyze and weigh  
3 all these factors and decide the best way to proceed  
4 forward, but we're committed to the project. So the  
5 question is what is the best way to proceed, not whether to  
6 proceed.

7 Q Okay. Is the whether to proceed something that  
8 you would ultimately have to consider at some point if the  
9 circumstances require?

10 A Go back to our earlier discussion. On an ongoing  
11 basis, we review a lot of things that -- as we are executing  
12 this project from this year and next year and forward, and  
13 we will always consider what is the best interest of the  
14 rate payers in our company of moving forward in case  
15 something happens that's significant and material to the  
16 project execution.

17 Q So when you talk, at the top of Page 15 on Line 1,  
18 about the impact, if any, on overall project cost will be an  
19 important factor, does that incorporate the -- the  
20 consortium pricing issues that you talked about?

21 A That is correct.

22 Q Okay. So those factors, depending on what the  
23 costs ultimately are, could impact on whether you ultimately  
24 decide to proceed with the project. Is that fair?

25 A That is -- that is a fair statement.

1 Q Okay. Because it's not a matter of no matter what  
2 it costs you're going to build it?

3 A Absolutely not a -- not what you describe, which  
4 is no matter the cost we would proceed.

5 Q Okay.

6 A It's absolutely not that.

7 Q But at this point in time, you do not know what  
8 the overall project cost is --

9 A That is correct.

10 Q -- going to be?

11 A We do not know what the -- if there's any change  
12 in that total project cost.

13 Q Okay. Can you say -- you have testified, I think,  
14 in other parts of your direct testimony or your offering to  
15 testify that the best number is still 17.2 billion?

16 A The best available number is still 17.2.

17 Q Okay. Do you have any basis to believe that that  
18 is the number or do you believe that it will change, up or  
19 down?

20 A It's my belief it could go either way, probably  
21 more likely to go up some based on the fact that the project  
22 has shifted out in time, but I don't have a revised number  
23 to give to you today.

24 Q Okay. Now these other factors that you discuss on  
25 Lines 3 through 7 of Page 15, they are the same ones,



1 essentially, that you said you -- that were kind of  
2 benefits --

3 A Right.

4 Q -- that were secondary to the LWA event?

5 A Right. And that's -- again, that's one of those  
6 weighing a number of factors. The impact on our customer  
7 rates is again one of those factors, particularly in this  
8 period of economic downturn.

9 Q And when you talk about shifting capital spending,  
10 I think we have some documents to discuss later on where you  
11 look at some scenarios about shifting capital spending out  
12 past the COL date. Is that fair?

13 A There was some near-term analysis done on capex  
14 spending for various shifts.

15 Q Okay. Will you be looking at the impact of that  
16 capital spending shift on customers in the long term?

17 A We need revised EPC contract numbers and cash flow  
18 to calculate a total project cost. Once we have that, we  
19 certainly will look at rates short term, near term, long  
20 term.

21 Q Okay. Would it be more important to the company  
22 to -- about the impact on near-term customers or long-term  
23 customers?

24 MR. WALLS: Objection. Calls for speculation and  
25 ambiguous what you mean by more.

1           If you can answer.

2           A     We will look at all. Personally, I don't know if  
3 there -- if there is a short versus long term as -- which  
4 has priority, but I know we will look at all.

5 BY MR. REHWINKEL:

6           Q     Okay. I ask that question to you because it  
7 seemed like the near-term impact was isolated as a specific  
8 and distinct factor, and so I was wondering that -- if that  
9 indicated that it was a more significant consideration.

10          A     Well, because of economic downturn, it clearly has  
11 a high -- high interest in what those effects are, but we  
12 cannot ignore long-term rates as part of that analysis, so  
13 you have to look at both.

14          Q     Okay. On Line -- on Lines 18 through 22 on Page  
15 15, you state that the LNP continues to be the best base  
16 load generation option taking into account cost, et cetera.  
17 How can you say that if you don't know what the cost is?

18          A     Well, as we said, we have not got updated costs  
19 yet, so the current updated -- the current cost we have is  
20 still the 17.2 billion dollars, and this is not -- you look  
21 at all of these items here in the collective, the cost,  
22 carbon regulation, fuel volatility and then its  
23 diversification. So in the collective, even though we still  
24 don't have an updated cost, we believe that nuclear is still  
25 the best alternative.

1 Q Have you done an analysis that says that you  
2 could -- a sensitivity analysis that says if the cost of  
3 project went up X dollars, it would still be the most cost  
4 effective approach? Do you know what your margin is there?

5 A Most cost effective as compared to what?

6 Q What your next best option would be, other than  
7 nuclear.

8 A The problem is, as you know, there are many  
9 variables at play here. The cost of natural gas, which it  
10 varies significantly, various carbon scenarios, and so there  
11 is not a specific number that if you say if the cost goes to  
12 this amount, then it is more costly, even if it's one dollar  
13 more than these other technologies and other approaches.

14 Q Well, did you do an analysis based on what you  
15 knew at the time when you filed your determination of need  
16 as far as a cost benefit analysis?

17 A In our need filing, there is a table which  
18 describes the project as compared to other gas scenarios and  
19 carbon scenarios. That is in the need filing.

20 Q Once you get the updated cost information from the  
21 consortium, the cash flows and other financial information  
22 that you need, would you do a similar analysis?

23 A Not necessarily. And the reason why is because  
24 year to year the parameters in those tables would change,  
25 and this project, like many base load projects, is a multi-

1 year project that you have to start and maintain a  
2 commitment to go through. If we were to stop and start  
3 every year based on the changes in those tables, that would  
4 be unproductive and inefficient and not in the best interest  
5 of our rate payers.

6 Q Okay. Well, I guess we'll get into those when we  
7 talk about the feasibility analysis that -- that you've  
8 done, but you state here on Line 20 -- 20, starting with,  
9 PEF accordingly remains committed to the project, and the  
10 LNP remains feasible. What is your definition of feasible  
11 as is used in your testimony here?

12 A When we consider feasible, we consider is it  
13 technically feasible? Is the AP1000 design as deployed at  
14 this site, the Levy site, are there any technical issues  
15 that suggest that will not work? We also consider  
16 regulatory feasibility or, if you will, the legal  
17 feasibility. Can you secure all of the permits, approvals,  
18 authorizations, licenses, like zoning permits and  
19 comprehensive -- comprehensive land use amendment, things  
20 like that? And in those cases and for both the technical  
21 and, as I described, this regulatory feasibility, the  
22 project still is feasible.

23 Now we also consider cost, and so as we go  
24 forward, as we said earlier, on an ongoing basis, we will  
25 always consider the total project cost and make informed

1 decisions of moving the project forward.

2 Q Okay. So is this term "feasible" that's on Line  
3 22 of Page 15 -- is that the same as is used in Section 6 or  
4 Roman Numeral 6 of your testimony, Page 25, Lines 7 and 8?  
5 Is that the same definition of feasible?

6 A Okay. Give me the lines again, please.

7 Q I'm sorry. Page 25.

8 A Right.

9 Q And the question and answer on 7 and 8, Lines 7  
10 and 8.

11 A Right. Is the Levy Nuclear Project still  
12 feasible? Yes. And if you drop down and look at Line 16 --

13 Q Uh-huh?

14 A -- the technology continues to represent a viable  
15 and feasible choice. And then Line 18, which is feasible as  
16 from a project milestone prospective, this has to do with --  
17 it's inferring that you're able to secure the regulatory  
18 approvals you need to continue that -- the project, except  
19 the LWA as noted.

20 Q Okay. Is -- is cost a factor in that Q and A that  
21 starts on Line 10 and continues -- of Page 25 and continues  
22 on to Page 26?

23 A Well, it shows up -- if you look at this question,  
24 you can see the way it's structured. You see Line 11 starts  
25 with sort of a technology feasibility. Line 18 is going

1 into regulatory approvals, that type of thing, but when you  
2 go to the next page, Page 26, and we talk about diverse  
3 energy portfolio, reduced reliance on fossil fuels because  
4 of climate change and also volatility in the prices, all of  
5 these things collectively represent the basis for why we say  
6 the project remains feasible because all of this information  
7 that you see from the Question 10, Line 10, on the previous  
8 page through this is all of our logic and reasoning why the  
9 project remains feasible.

10 Q Okay. So you're saying that on Page 26, Lines 5  
11 through 16 is where the economic aspect of feasibility is  
12 considered?

13 A It's -- I don't know if it's called out  
14 specifically. We certainly talk about the diverse energy  
15 portfolio as compared to the other fuels and its  
16 susceptibility to disruptions of those other fuels. It's  
17 the best load capacity, advanced in plant design, reliable.  
18 It's not called out specifically, and, again, let me just  
19 clarify. As we've said in our discussion earlier, we always  
20 consider costs of the project. That's something we continue  
21 to look at at all times, and if there's something materially  
22 significant to that that changes -- and I can't tell you  
23 what that might be -- we would always consider that and  
24 bring that forth if there was something we thought should  
25 change our decision making.

1 Q Okay. So the feasible on Page 15 and the feasible  
2 on Pages 25 and 26 are the same?

3 A I'm on Page 26. Page 18?

4 Q Page 15. I'm sorry.

5 A Page 15.

6 Q Line 22.

7 A Yes.

8 Q Okay.

9 A This statement here, LNP remains feasible, is the  
10 equivalent of what's embodied under the question that's on  
11 Page 25.

12 Q Okay. So are you saying that you are not offering  
13 testimony that there is an economic feasibility of the  
14 project for purposes of the Public Service Commission's  
15 determination in this docket at this time?

16 A Repeat your question.

17 Q Are you saying through your testimony that  
18 economic feasibility is not a factor for consideration by  
19 the commission in its determination under Rule  
20 25-6.0423(5)(c)5?

21 MR. WALLS: Objection. Mischaracterizes the  
22 testimony and also vague and ambiguous as to what you  
23 mean by economic consideration.

24 BY MR. REHWINKEL:

25 Q My question is whether considerations other than

1 technically feasible and legally feasible are offered for  
2 the Public Service Commission's consideration and whether  
3 you meet this rule.

4 MR. WALLS: Same objections.

5 BY MR. REHWINKEL:

6 Q You can still answer the question.

7 A We built a need case that we submitted last year.  
8 It has a cost in that for this Levy Project. We do not have  
9 a revised cost that's any better and more reliable than that  
10 number. That has not changed. In terms of what the  
11 commission will consider in their deliberations, what  
12 subjects beyond just technical or regulatory feasibility,  
13 cost, whatever else they may consider, I cannot say.

14 Q Okay. If you had renegotiated the EPC at this  
15 time and knew what the costs of the -- of a schedule shift,  
16 if you had determined what it was, would you be offering  
17 that for the commission to consider?

18 A If we had a contract amendment in place where we  
19 knew the revised contract price, revised cash flows and were  
20 able to calculate through the life of the project, we would  
21 be make that information available.

22 Q Okay. So it's essentially not being considered  
23 here because it's not known. Is that right?

24 A It's a timing issue. We are in the process of  
25 doing that negotiation, and the information is not available



1 yet.

2 Q Okay. So would it be fair to say that you -- your  
3 testimony on feasibility is -- is incomplete for purposes of  
4 the commission making a determination of the rule?

5 MR. WALLS: Objection. Calls for a legal  
6 conclusion, vague and ambiguous as to what you mean by  
7 incomplete.

8 BY MR. REHWINKEL:

9 Q Do you think it's sufficient -- are you offering  
10 this for the commission to make a determination under that  
11 rule?

12 A The determination of long-term feasibility?

13 Q Yes.

14 A I believe that the commission has enough  
15 information provided in this petition -- in this testimony  
16 here that they would be able to make an informed decision.

17 Q Okay. Okay. On Page 16, you stated on Lines 11  
18 through 15, near the end there, that some of PEF's projected  
19 costs may change after the date of this filing. Have they?

20 A Not yet. We're -- negotiations are continuing.

21 Q Okay. I just had to ask because it was in there.

22 A I understand.

23 Q On Lines 11 and 12 of the same page -- or 11  
24 through 13, you say, These projected costs were developed  
25 using the best available information to the company at this

1 time. Are you saying that the commission should rely on  
2 your projected costs just because they're the best  
3 available?

4 MR. WALLS: Object to the mischaracterization of  
5 the testimony.

6 Go ahead.

7 A What this statement is making the point is, is we  
8 used the available information we had, considering the shift  
9 in the schedule, and used information that was quite  
10 detailed to construct what we believed is -- represents what  
11 we will spend in 2009 and 2010 for this project execution.

12 BY MR. REHWINKEL:

13 Q Because it is the best available, does that mean  
14 that it is accurate?

15 A We believe it to be reasonably accurate. However,  
16 it's not -- it may not be exact.

17 Q But you would agree that it could change based on  
18 what's negotiated with the EPC?

19 A I agree it could change, but I would point out in  
20 any year it could change based on execution of the project  
21 or other things that may happen that could have some effect.  
22 That's why there is always a description of variances with  
23 respect to prior years and why the variance occurred.

24 Q But the EPC renegotiation and the schedule shift  
25 are -- would be an extraordinary impacting event, would it

1 not?

2 A They are significant to the changes in the 2009  
3 and 2010 budget.

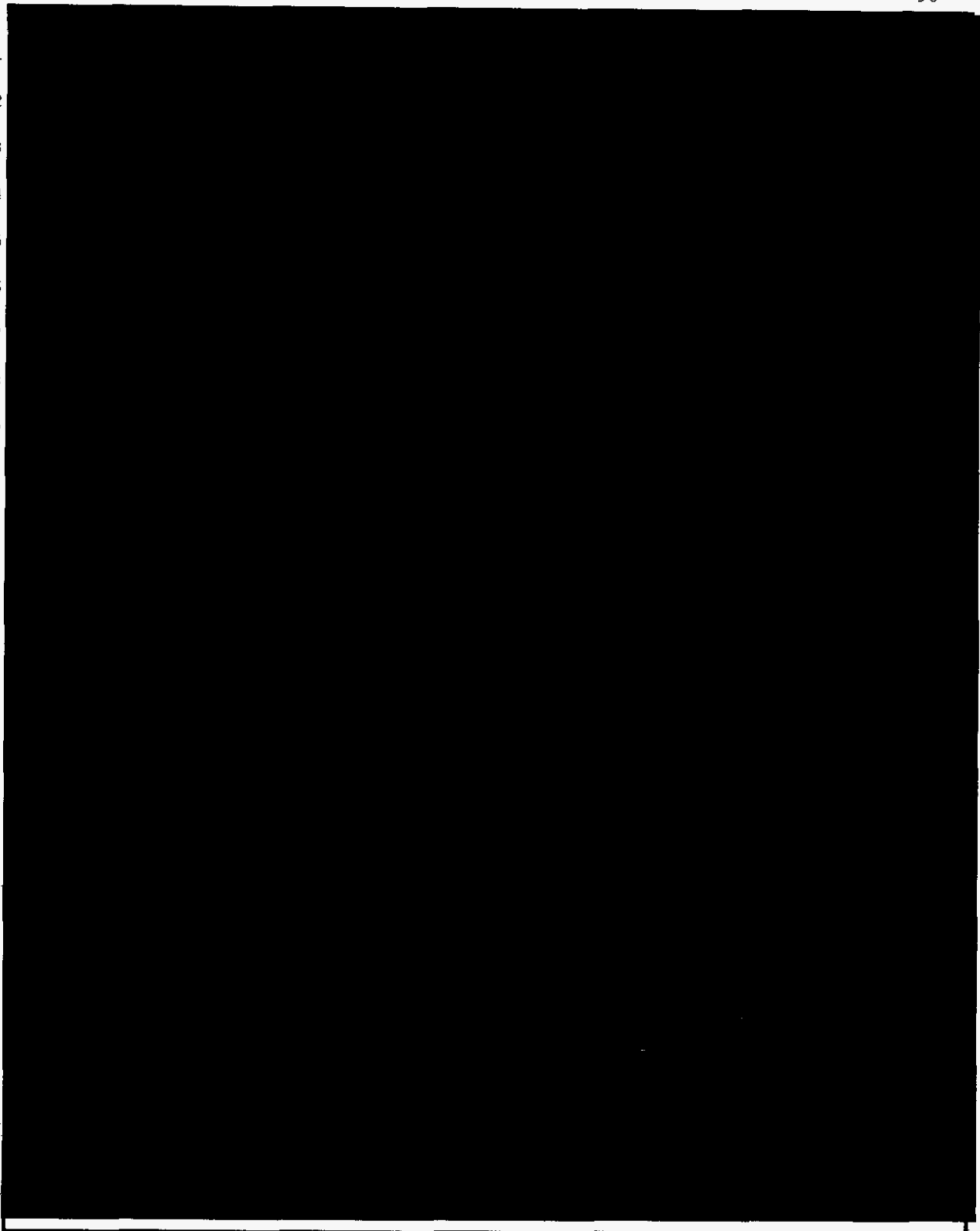
4 Q Okay. So even though -- even if you get  
5 information about the EPC, et cetera, all those other things  
6 you said could happen, that could happen as well. Right? I  
7 mean, you said there was contingency in any given  
8 projection. Is that right?

9 A In any particular year, we will analyze and  
10 predict our '09 -- our this year remaining estimated and  
11 spending through the next period, and we would do that using  
12 all the information available to us to get the best precise  
13 number we can, but the number will not necessarily be exact.  
14 It could be off a little bit either way.

15 And so we -- we took the same approach here, using  
16 the available information we had based on how the EPC was  
17 structured in terms of the cash flow, coupled with all the  
18 other things that don't get changed, the COL licensing  
19 process and other staff that I have, those type of things  
20 and built this analysis for the '09 and '10 budget.

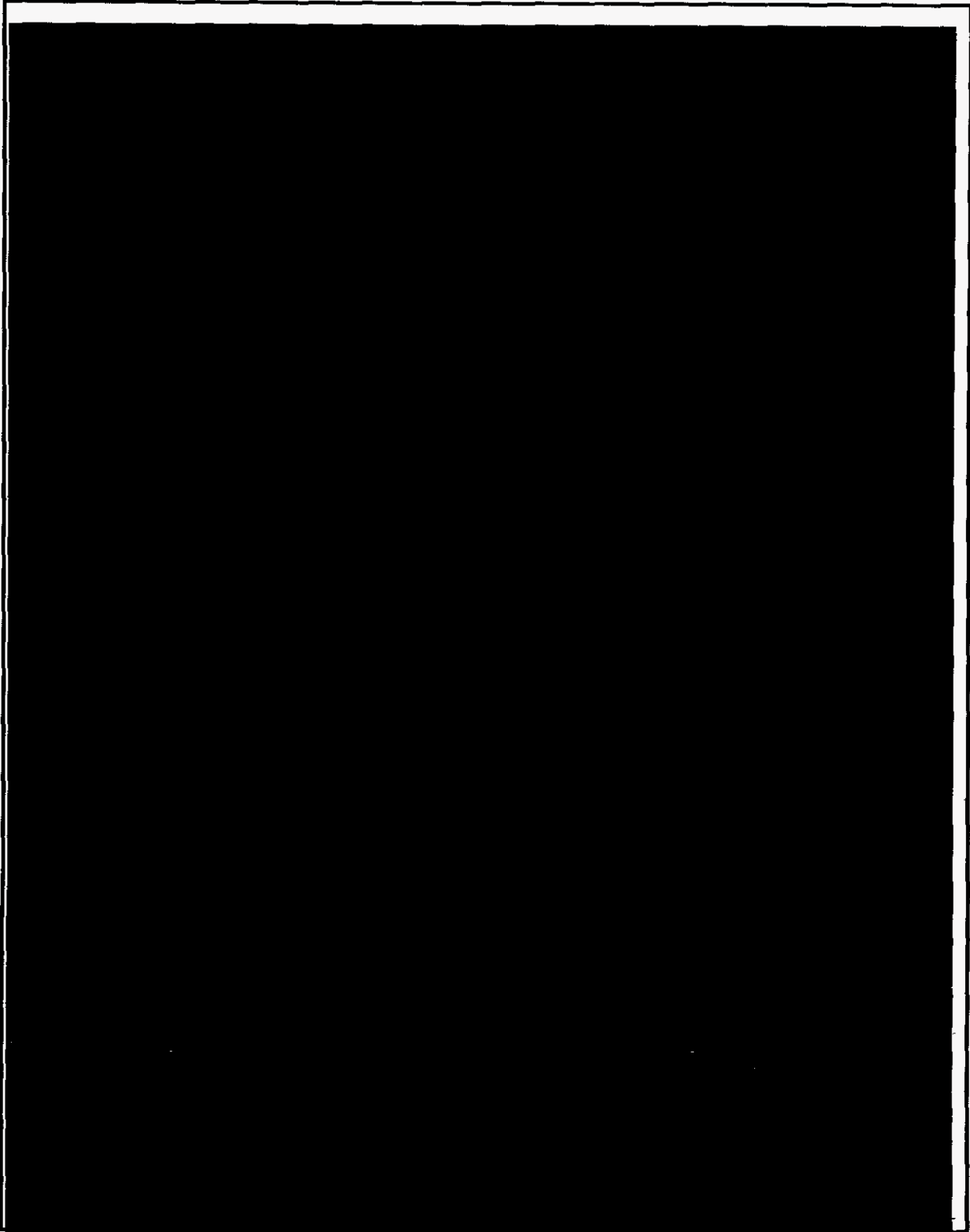
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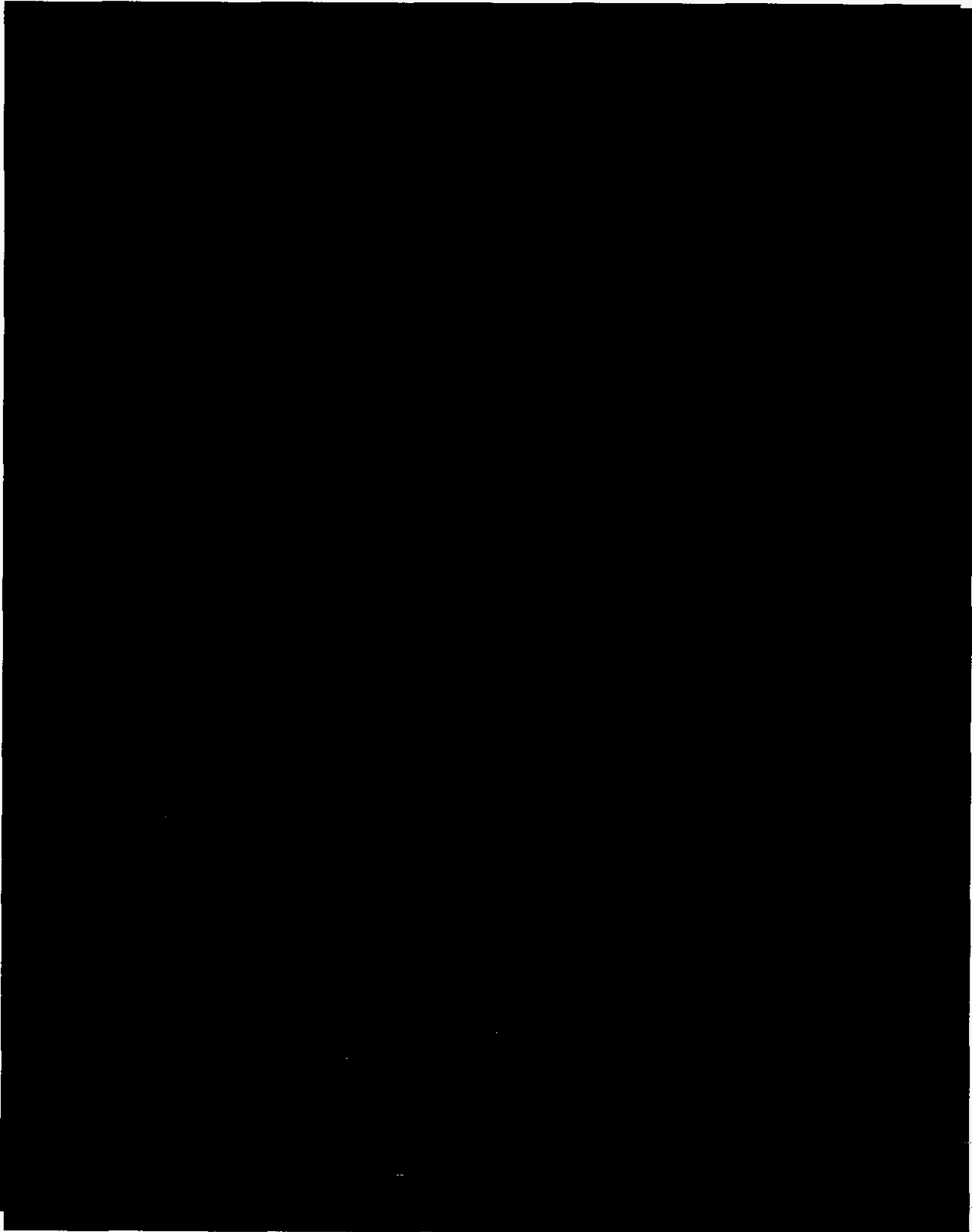
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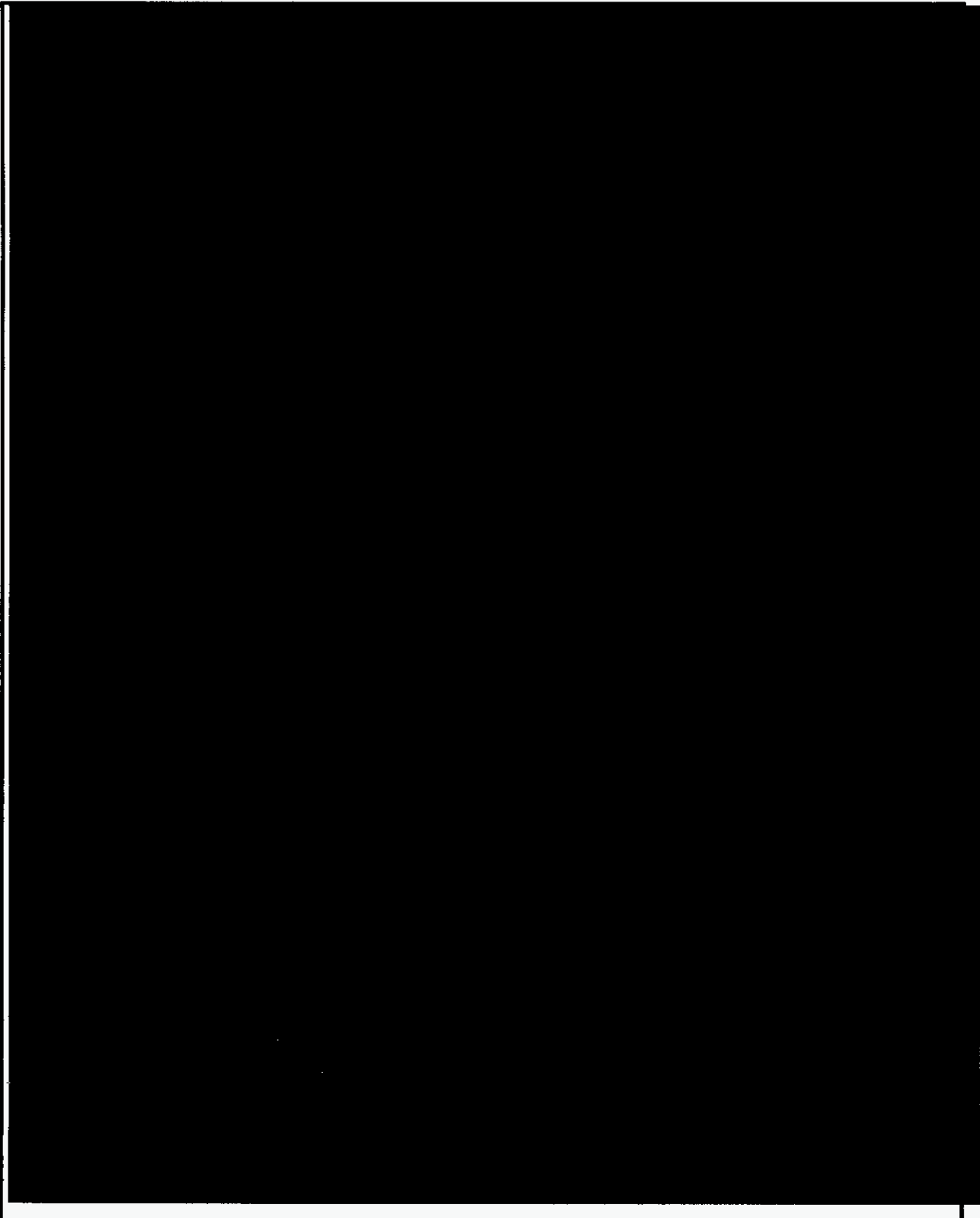
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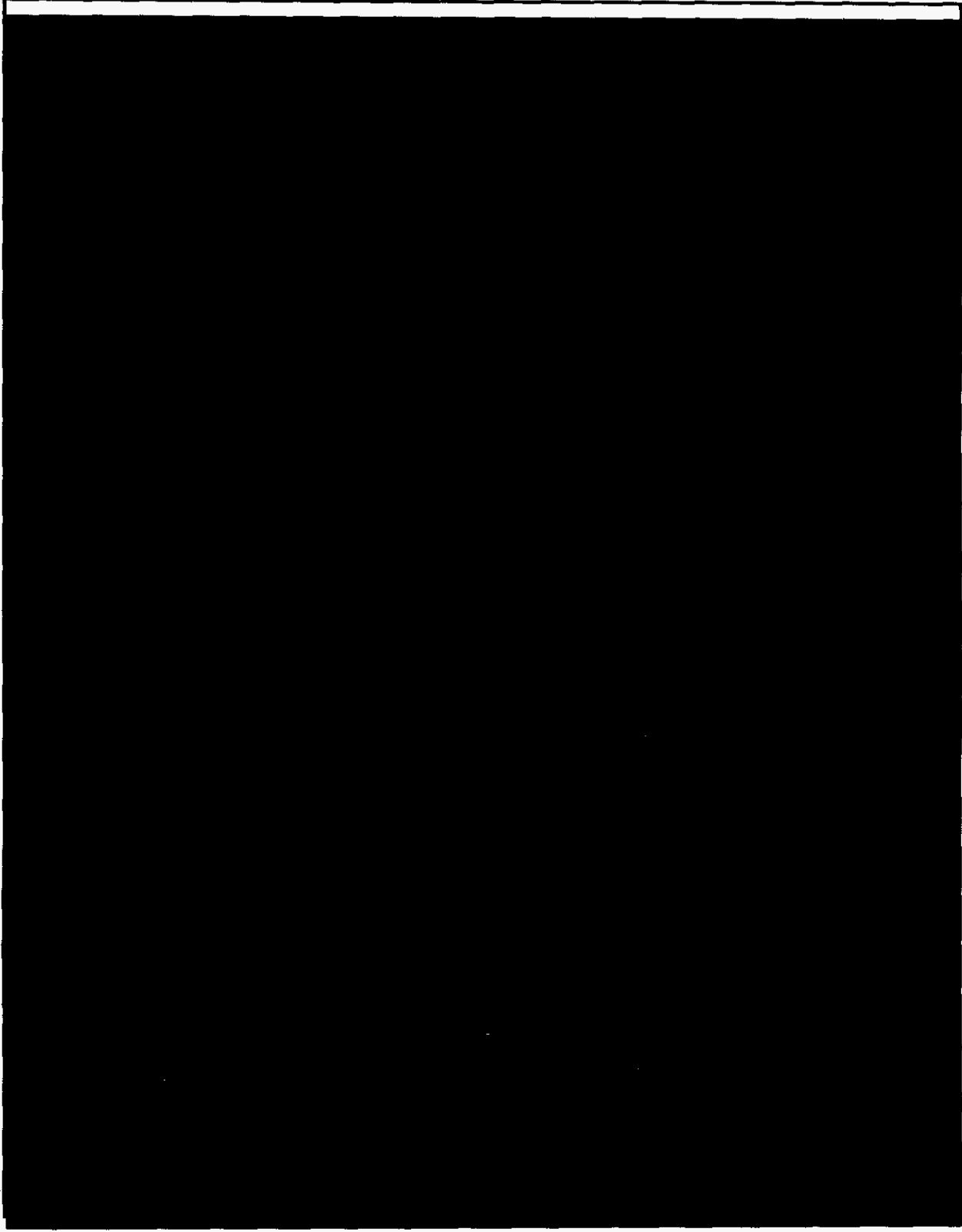
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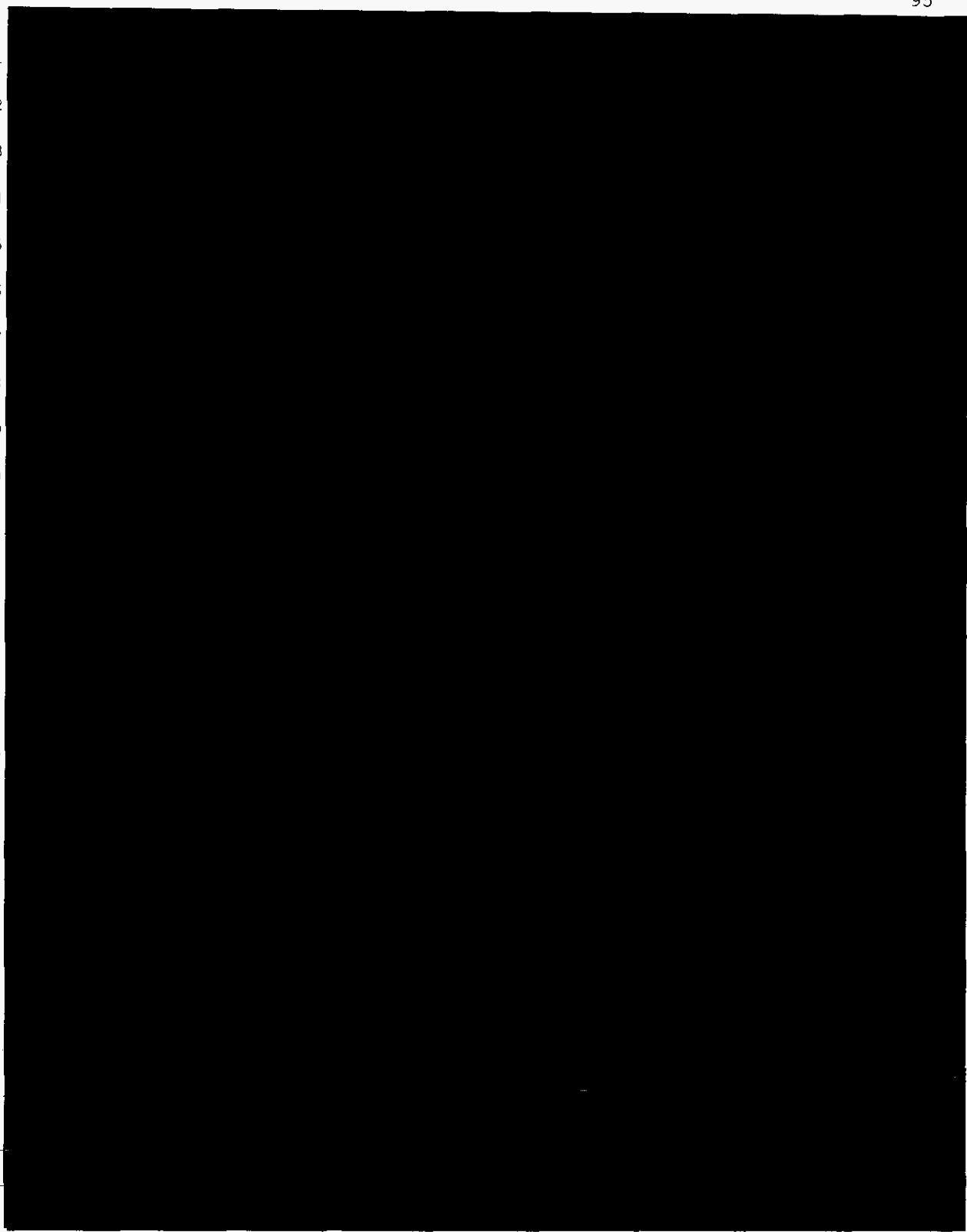
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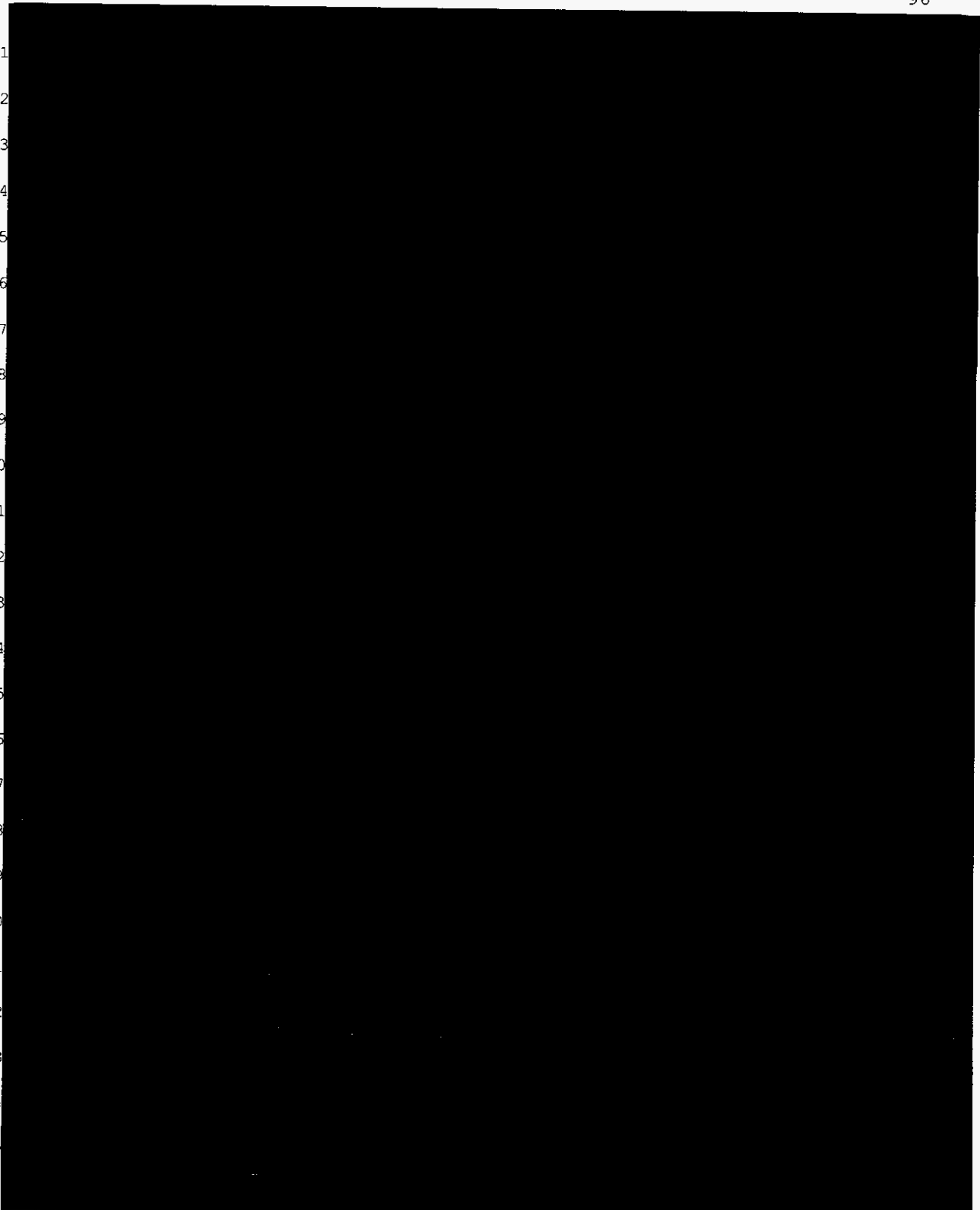


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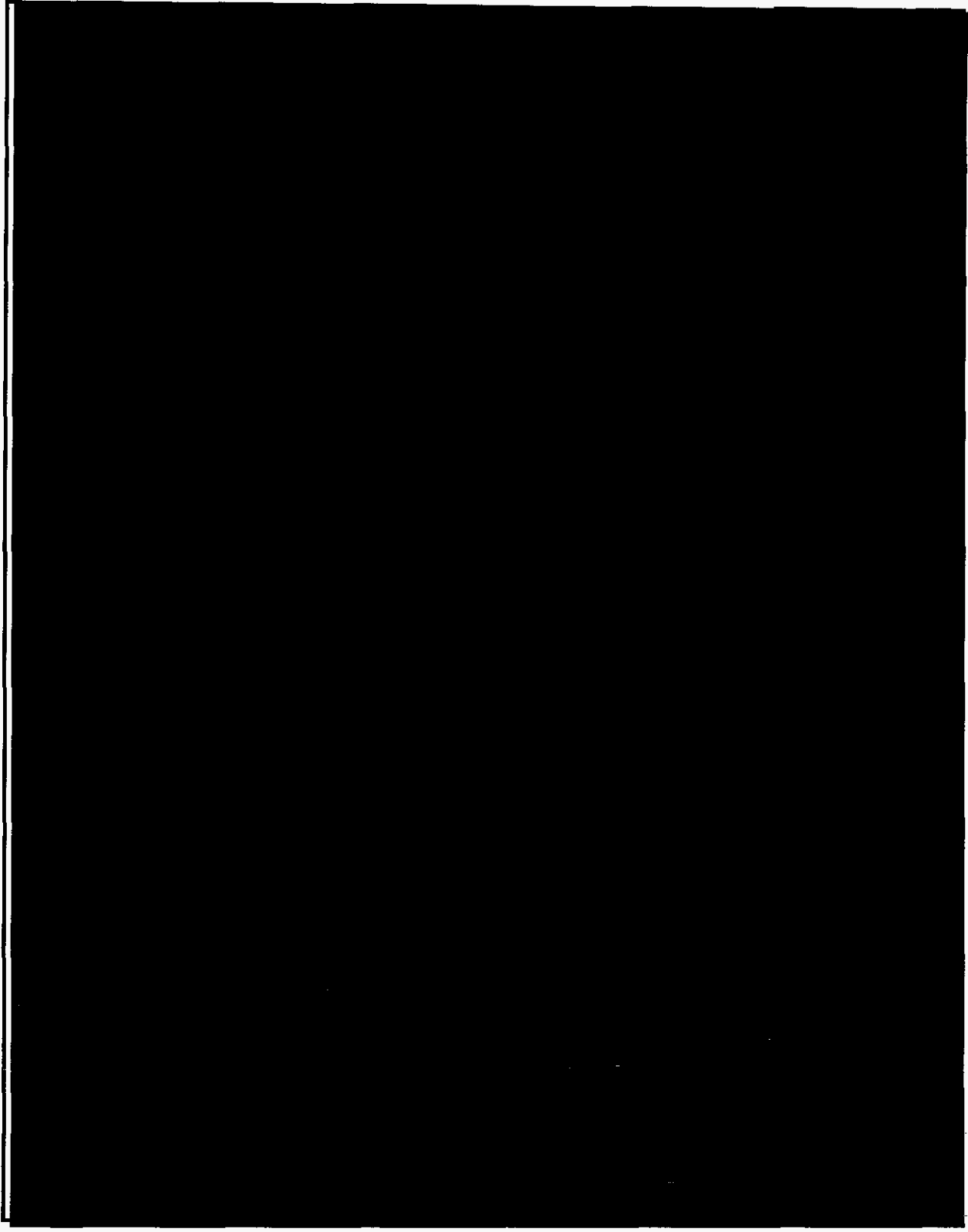
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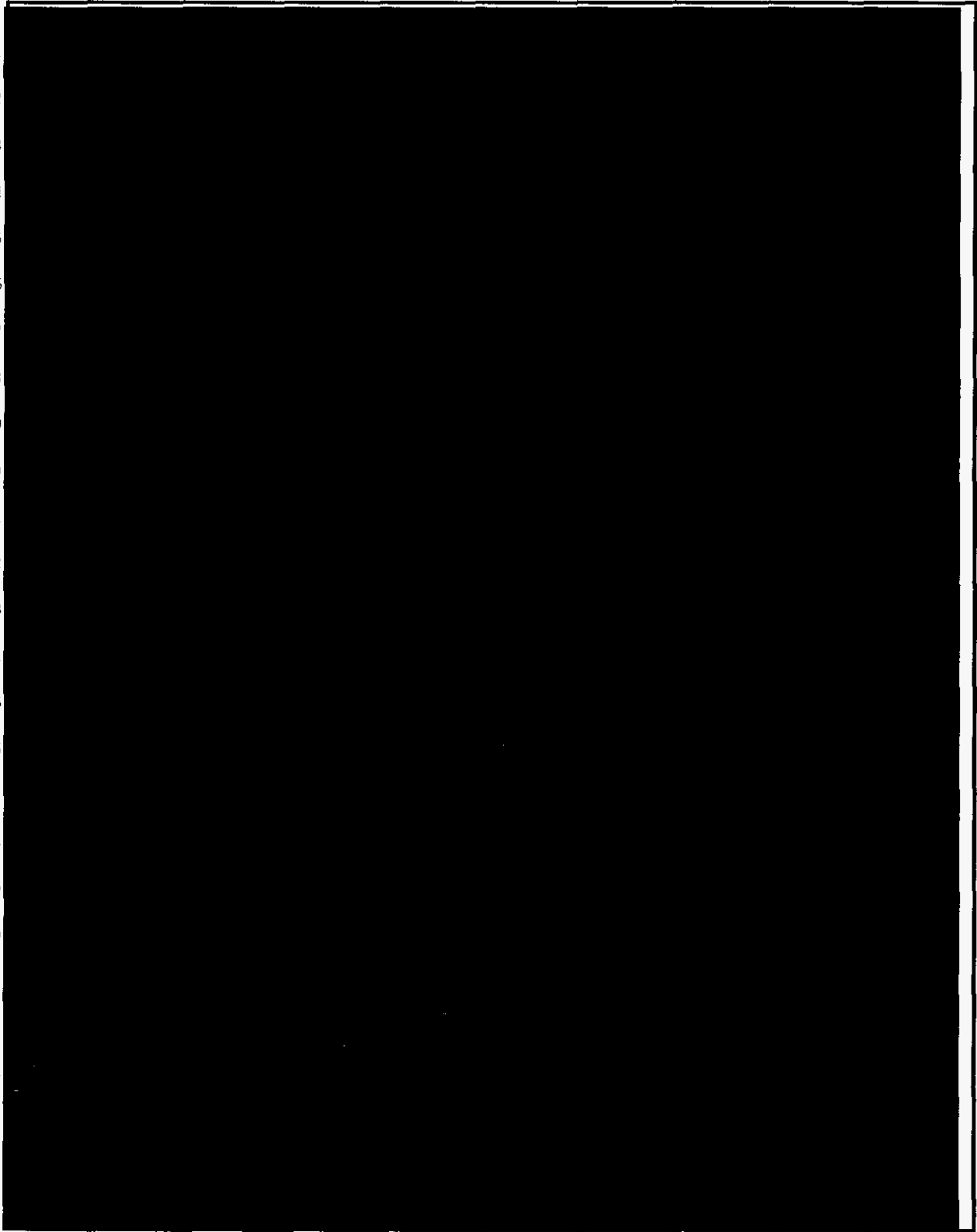
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9 BY MR. REHWINKEL:

10 Q Okay. Would it be fair to say that in the  
11 November, December 2008 time frame that the timing -- well,  
12 let me say this. That the LWA schedule was your most  
13 significant risk with respect to your overall time frame?

14 MR. WALLS: Objection. Characterization as vague  
15 and ambiguous about what you mean by significant.

16 If you can answer, go ahead.

17 A There are three dates that are important in that  
18 application. There is the EIS date, which is the  
19 Environmental Impact Statement, which allows you to fill in  
20 wetlands. The Corps of Engineers would tier their decision  
21 for a permit off of that, so that's an important date.  
22 There's an important date for the LWA, and then there's an  
23 important date for COL. Any of those dates could impact a  
24 project. So to say one is more higher risk than the other,  
25 we didn't see it -- we didn't see it that way.

1           We had evidence from prior schedules that went out  
2 that were generally consistent with the NRC's 42-month  
3 process, and so we had no reason to believe that we would  
4 not be able to get a reasonable schedule.

5 BY MR. REHWINKEL:

6           Q     Okay. But for purposes of construction, the LWA  
7 was important as far as meeting the time frames that you had  
8 in your over recall project milestone. Is that correct?

9           A     It is correct. But the EIS was important also.

10          Q     Okay.

11          A     And the COL.

12          Q     In December and -- November and December of 2008,  
13 of those three issues that you raised, the Corps of  
14 Engineers, the EIS and the LWA, was one of them more in the  
15 forefront as far as actual impact on your overall project?

16          A     We were concerned that we wanted to get favorable  
17 numbers on all of those because whether you had a one-month  
18 shift in an EIS desired date or a one-month shift in a COL  
19 date, they could have the same effect. So we didn't -- from  
20 our dialogue among my management and from our dialogue to  
21 upper management, we impressed upon the need that all dates  
22 were important.

23          Q     Okay.

24          A     And we didn't single out LWA.

25          Q     So there was -- was there -- your testimony is

1 that in the weeks leading up to the signing of the EPC -- is  
2 that there was no particular level of concern about whether  
3 the LWA would be on track as you desired it?

4 A Well, we obviously have the September 12th change  
5 to the LWA, so we knew that was -- that was a change in it,  
6 but whether we would get an LWA or not, that was never in  
7 question. We never -- we never expected or contemplated  
8 that the NRC would take 42 months to render a decision on  
9 that scope of work. That was not contemplated.

10 (The deposition recessed for lunch at 11:47 a.m.)  
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CERTIFICATE OF OATH

STATE OF FLORIDA        )  
COUNTY OF HILLSBOROUGH)

I, Penny M. Appleton, Court Reporter, certify that  
GARRY MILLER personally appeared before me and was duly  
sworn.

Witness my hand and official seal this 3rd day of  
July, 2009.

\_\_\_\_\_  
Penny M. Appleton, RPR



C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Penny M. Appleton, Court Reporter for the  
Circuit Court of the Thirteenth Judicial Circuit of the  
State of Florida, in and for Hillsborough County,

DO HEREBY CERTIFY, that I was authorized to and  
did, report in shorthand the proceedings and evidence in the  
above-styled cause, as stated in the caption hereto, and  
that the foregoing pages constitute a true and correct  
transcription of my shorthand report of said proceedings and  
evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in  
the City of Tampa, County of Hillsborough, State of Florida  
this 3rd day of July, 2009.

---

Penny M. Appleton, RPR

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## 1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2  
3   IN RE:   NUCLEAR POWER PLANT  
4            COST RECOVERY CLAUSE

Docket No:  090009

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9                   DEPOSITION TRANSCRIPT

10                   Volume II, Pages 104-262

11  
12   DEPOSITION OF:           GARRY DALE MILLER13   TAKEN AT:                 Carlton Fields  
14                               4221 W. Boyscout Boulevard, Suite 1000  
                              Tampa, Florida15   DATE & TIME:             July 2, 2009  
16                               Commencing at 12:15 p.m.17   REPORTED BY:             Penny M. Appleton, RPR  
18                               Notary Public19  
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23                   Berryhill & Associates, Inc.

24                   501 E. Kennedy Boulevard, Suite 775

25                   Tampa, Florida 33602           (813) 229-8225

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16 Associate General Counsel  
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I N D E X

	<u>PAGE</u>
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CERTIFICATE OF REPORTER:	261

E X H I B I T S

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>ID'D</u>
Late-filed Deposition Exhibit Number 3	LOI discussion documents	110
Late-filed Deposition Exhibit Number 4	EPC spending differential 2009, 2010	112
Late-filed Deposition Exhibit Number 5	Long-lead equipment purchases initiated after 1/1/2009	115
Late-filed Deposition Exhibit Number 6	March 20, 2007, letter from Lauren Young to Bob Kitchen	147

1                   (The deposition continued at 12:15 p.m. as  
2 follows:)

3                   MR. REHWINKEL: Okay. Ready to go back on the  
4 record?

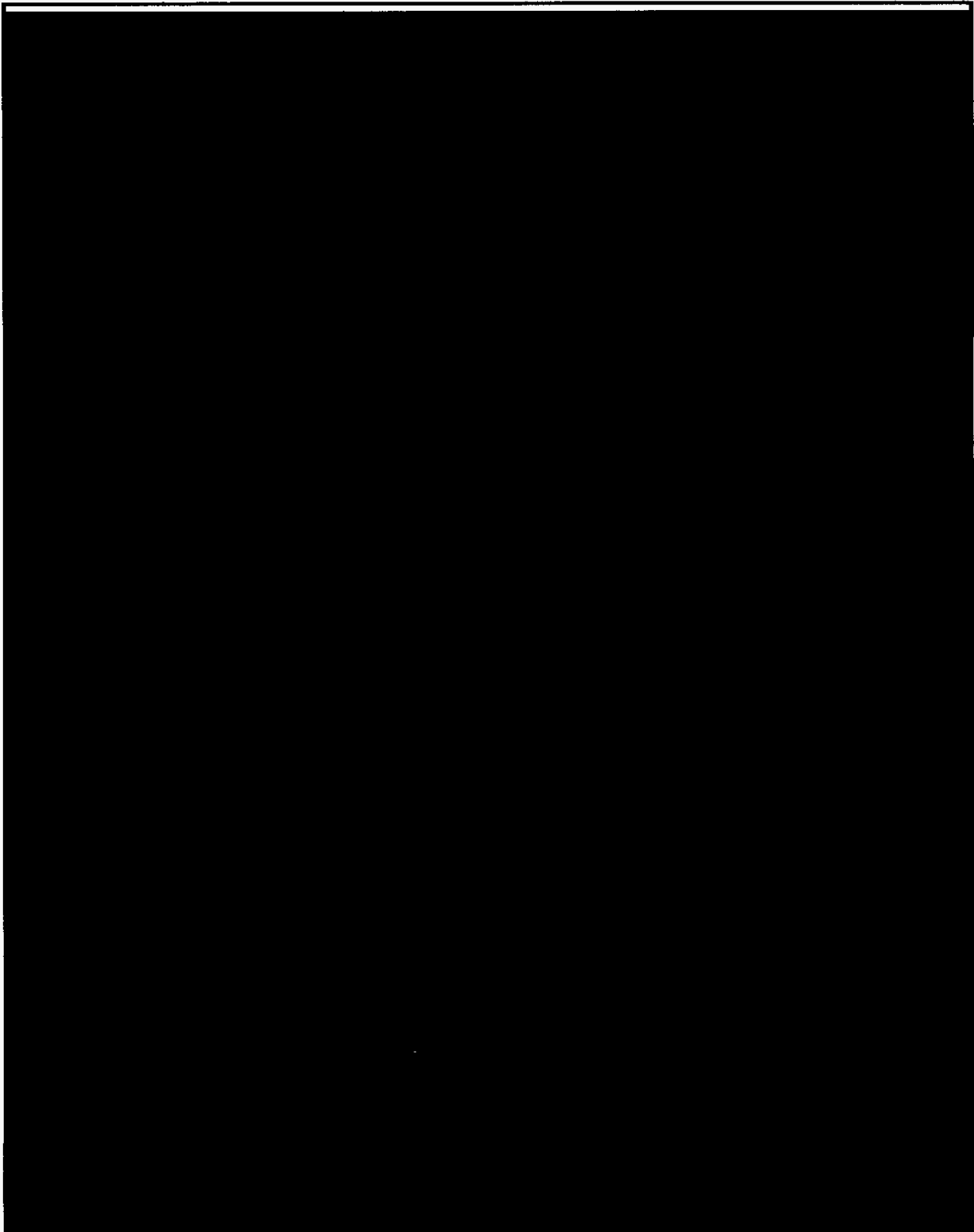
5 BY MR. REHWINKEL:



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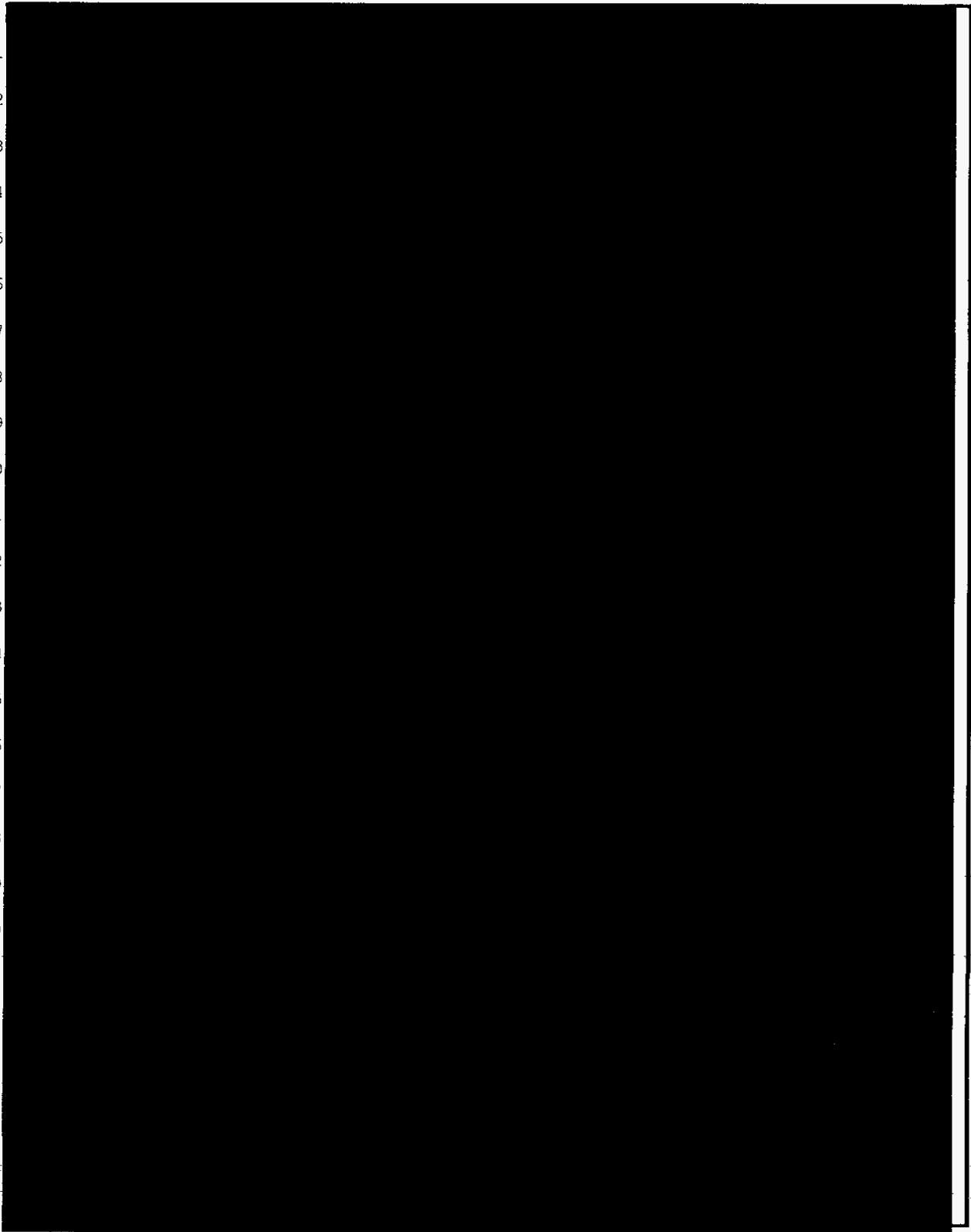
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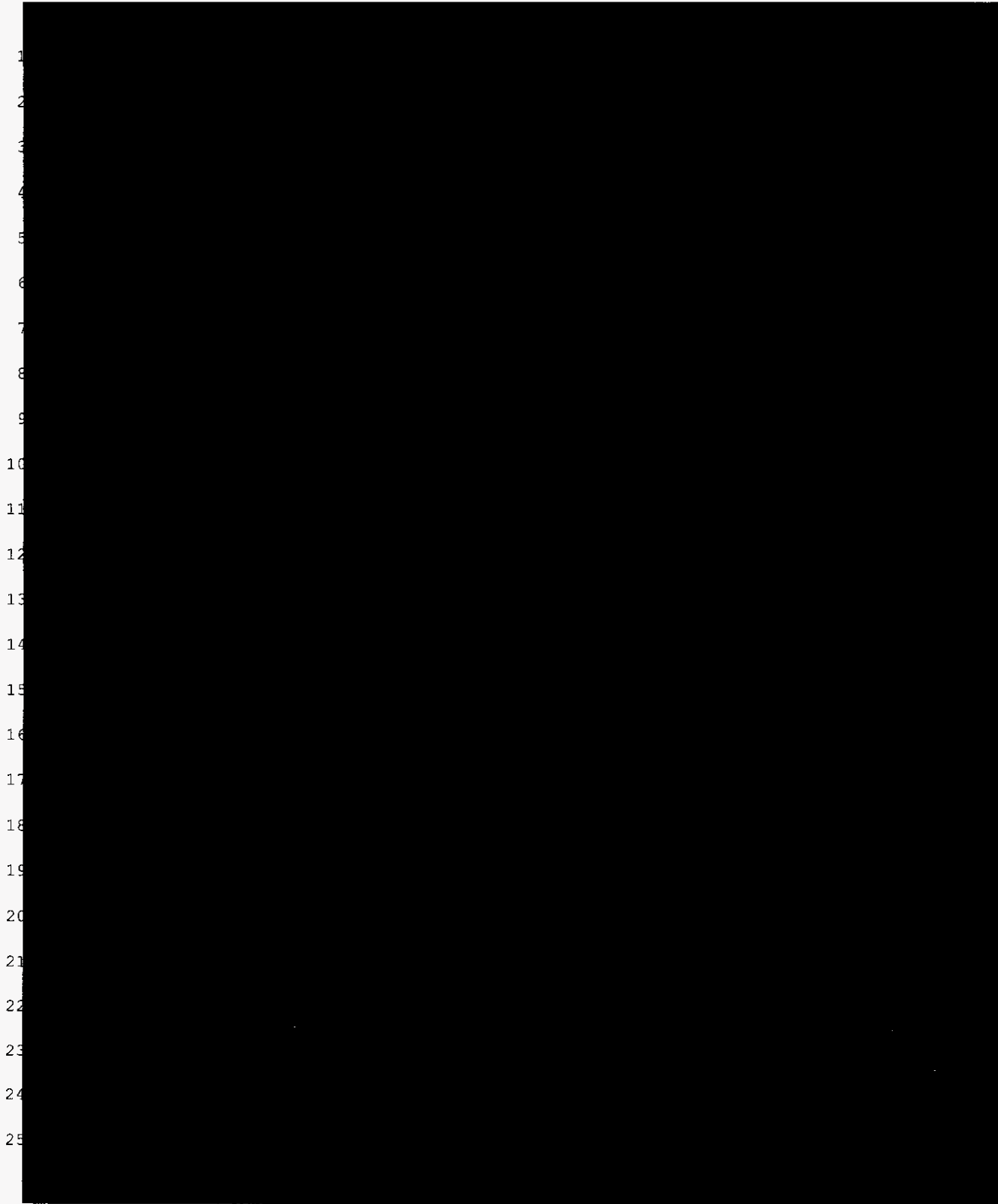
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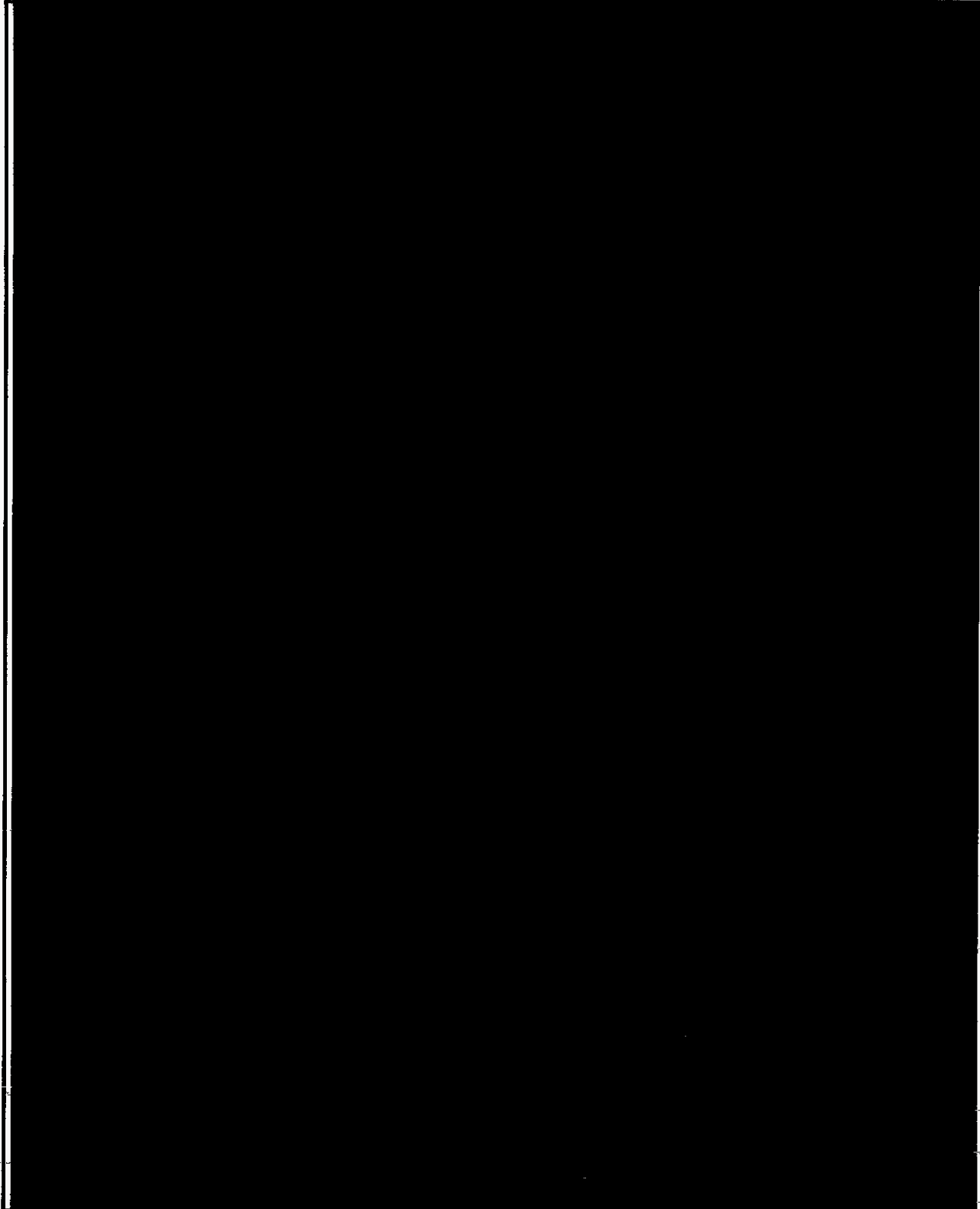




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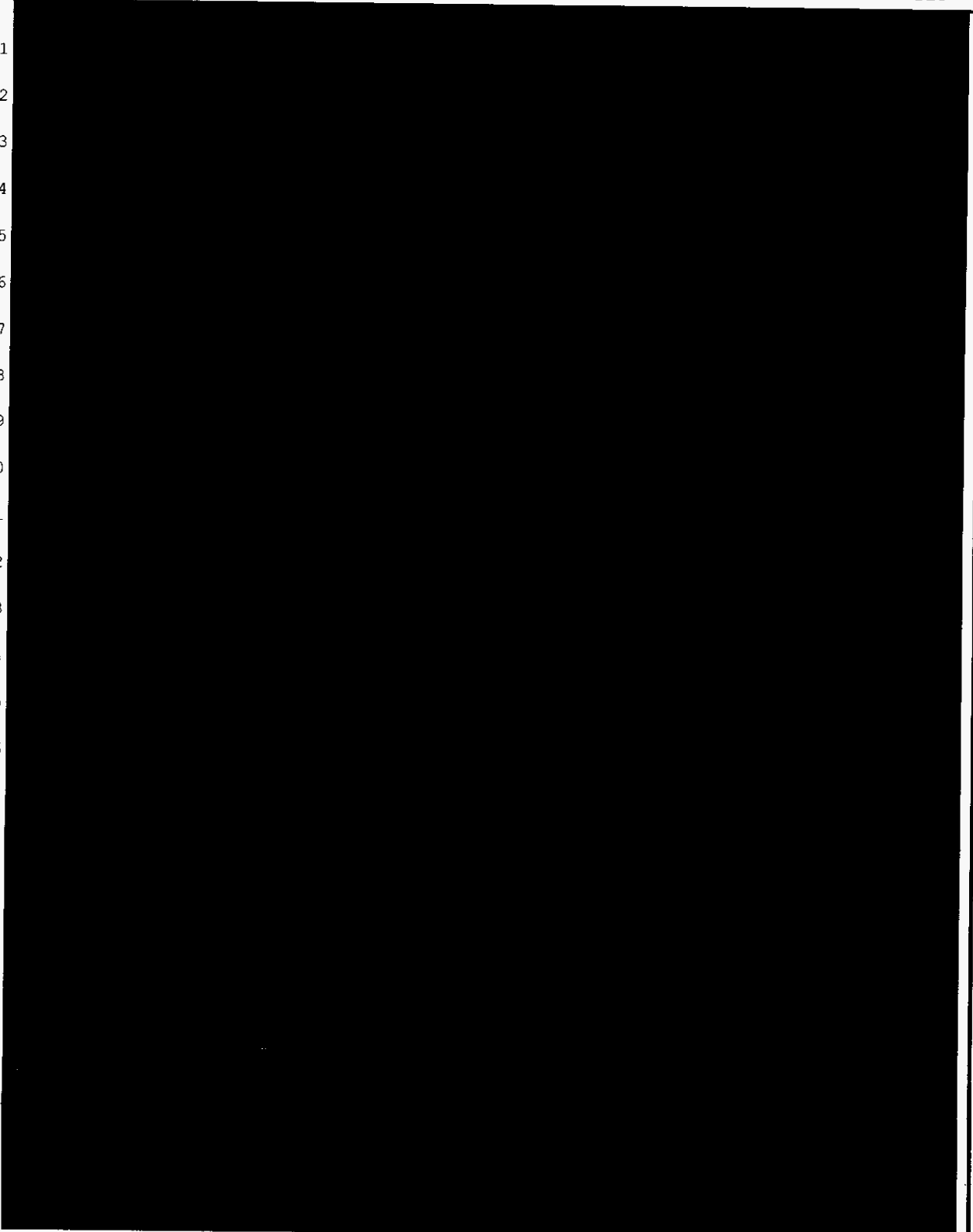
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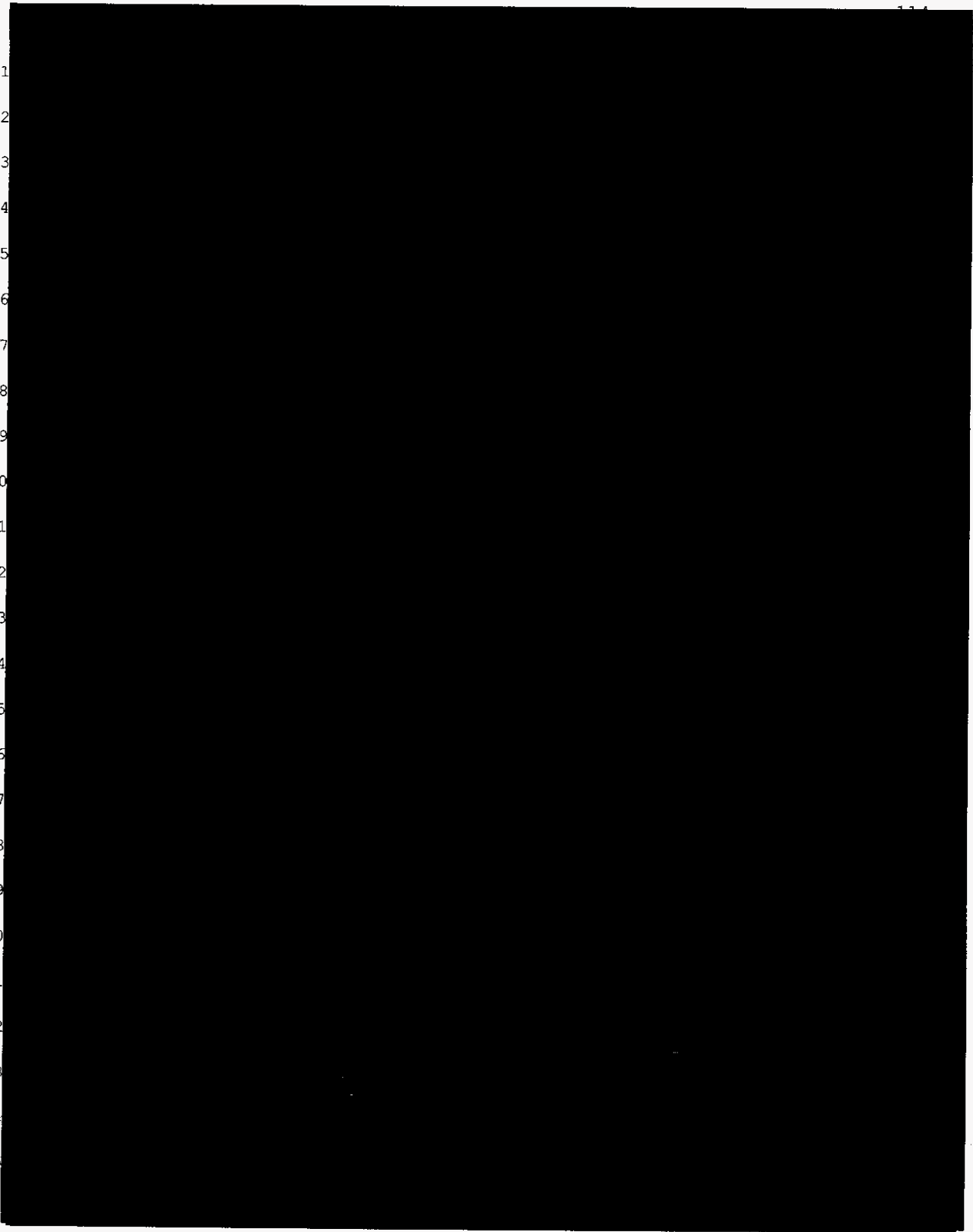
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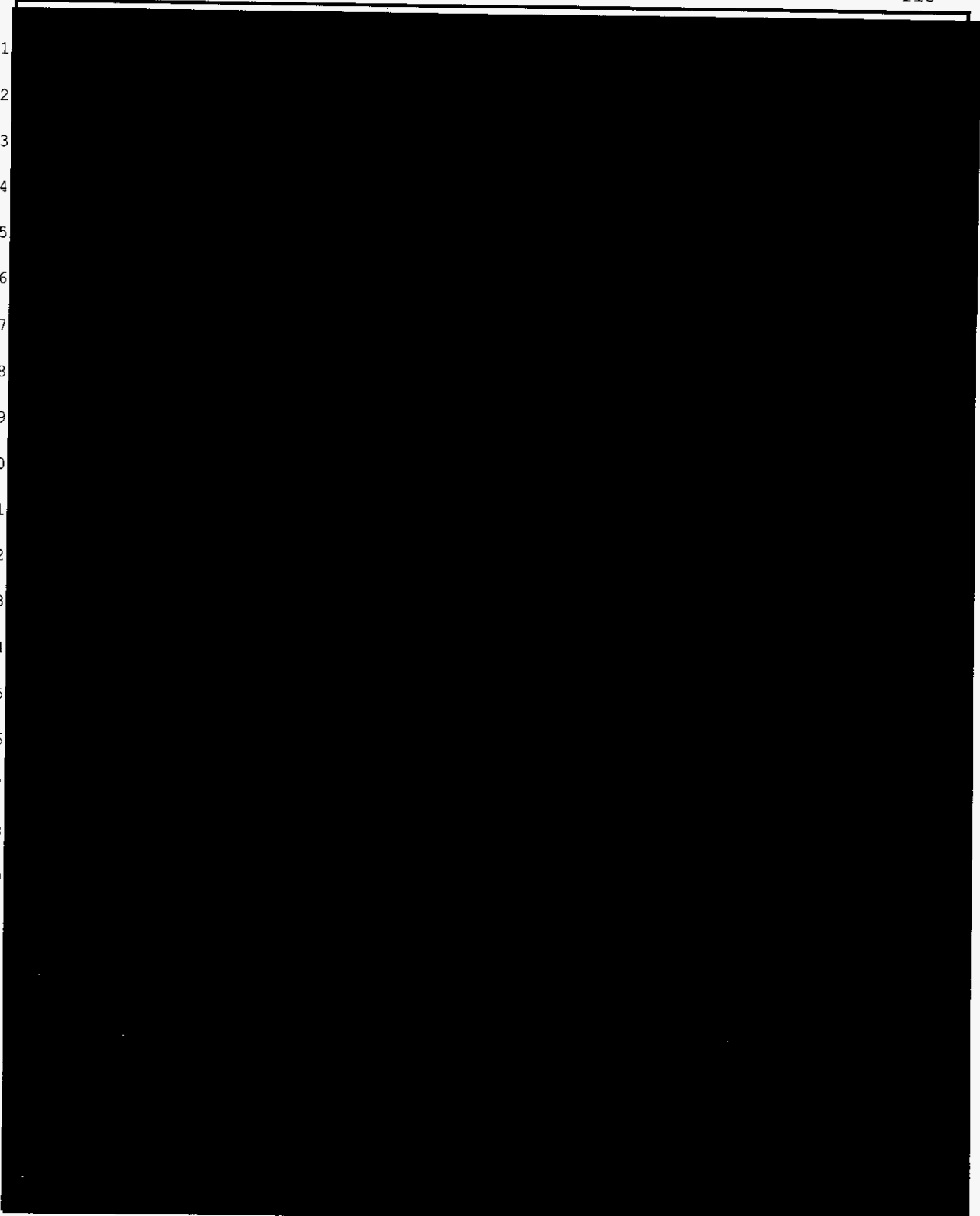
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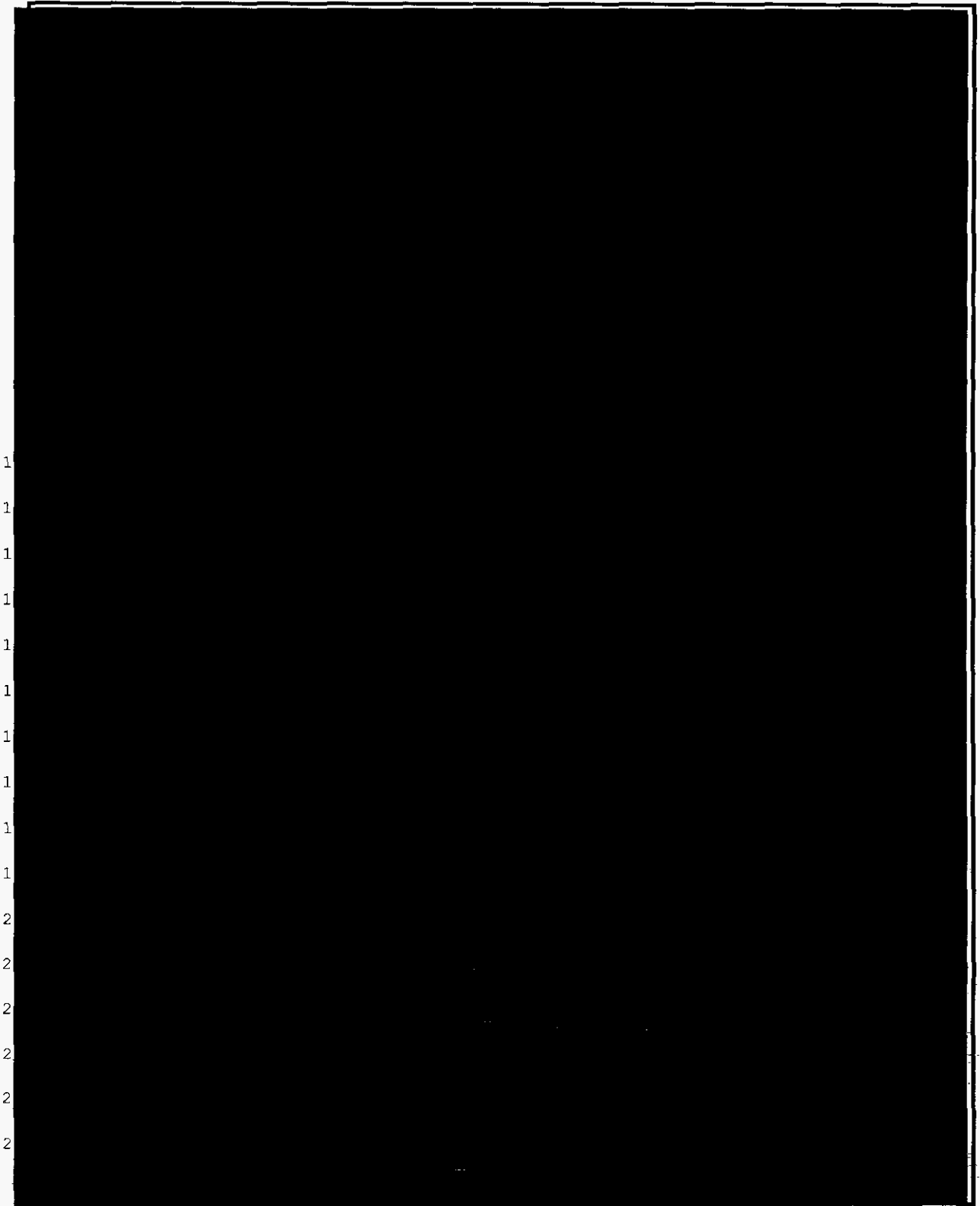


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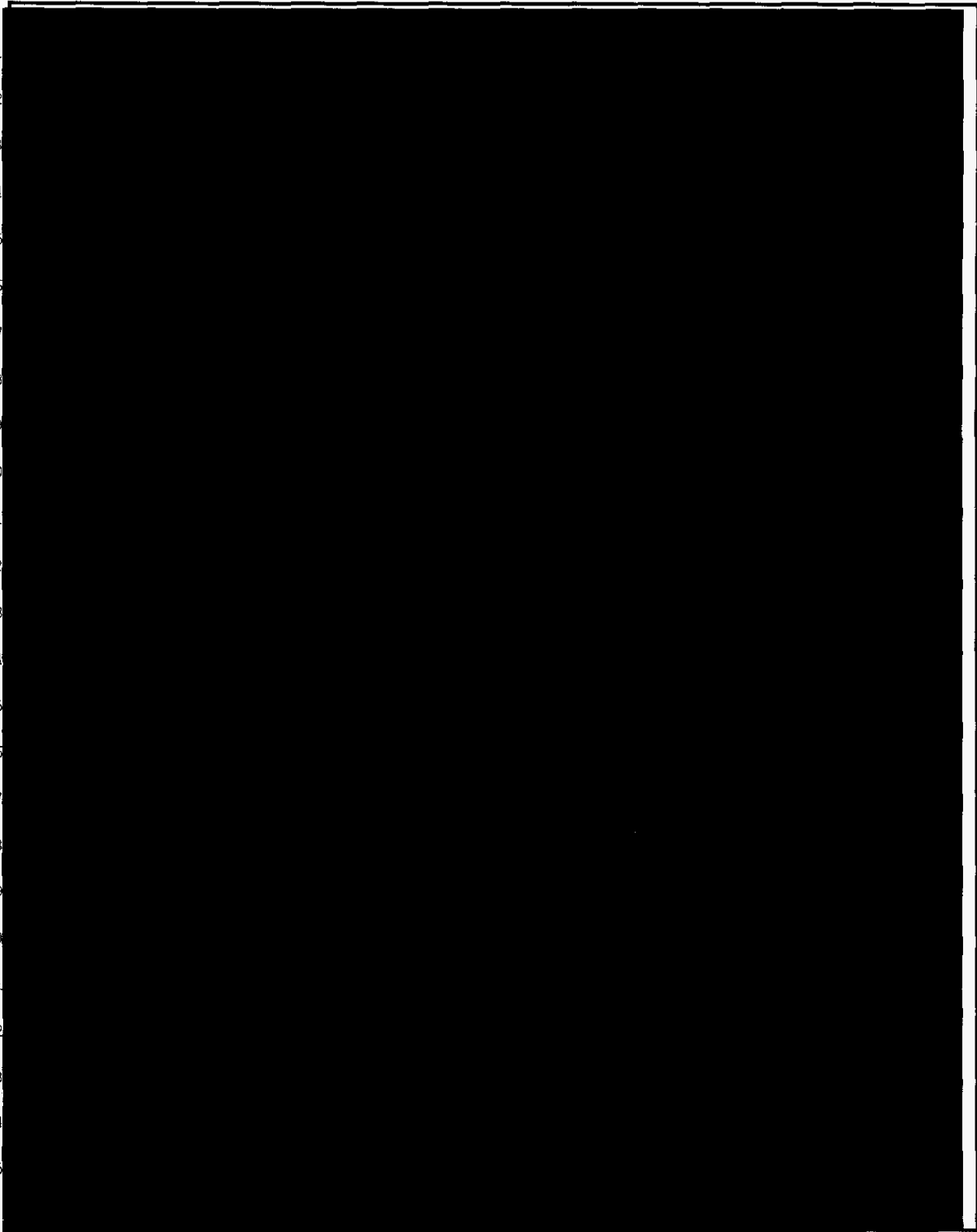
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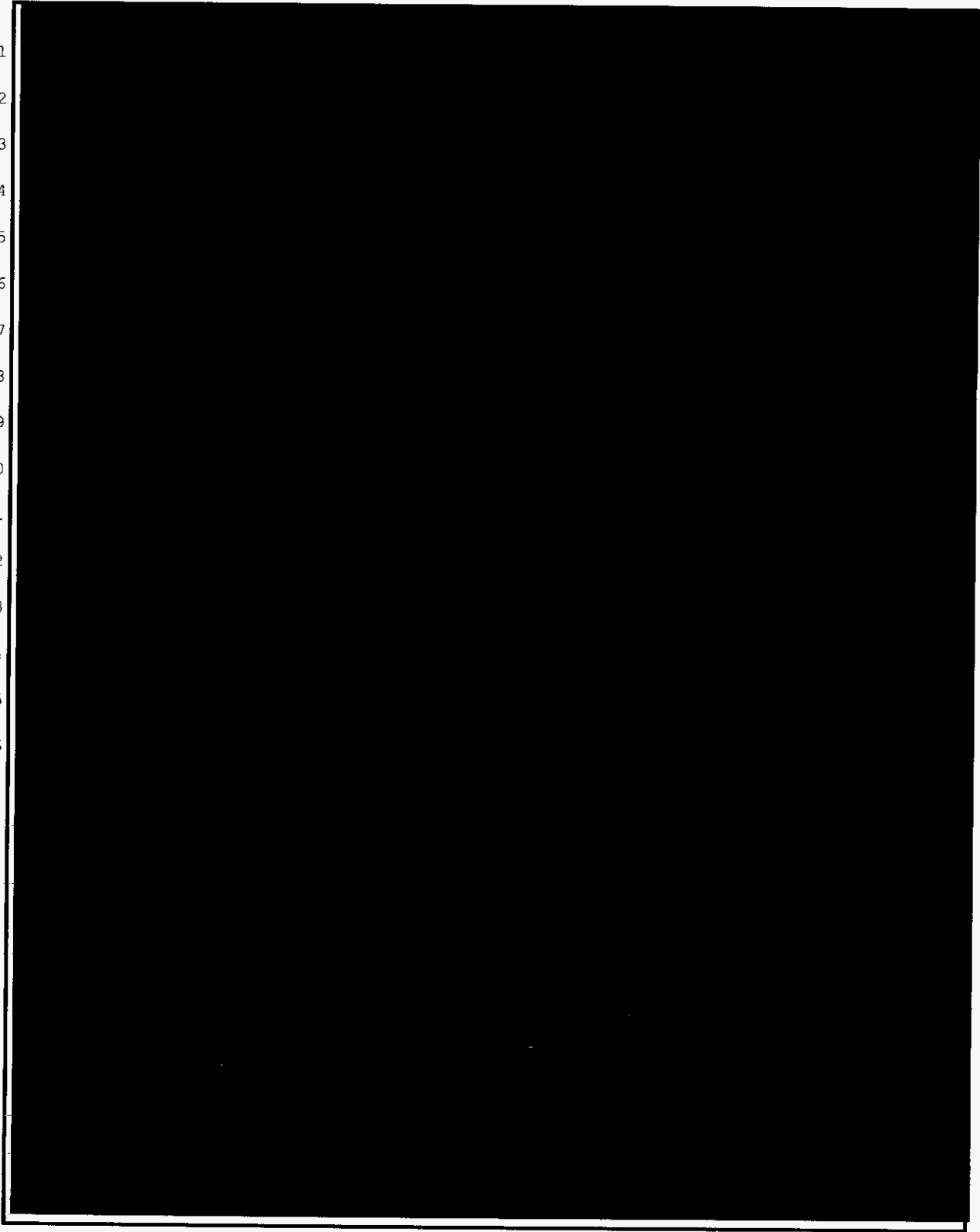
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11 Q Let's go to Page 25. We discussed the definition  
12 of feasible. And earlier in the deposition and -- I guess  
13 my question to you is does feasible as you used in -- on  
14 Page -- Pages 25 and 26, is that the definition of feasible  
15 that you use in your job ordinarily with respect to how you  
16 make decisions about nuclear generation assets?

17 A To answer your question from -- when you asked me  
18 is something technically feasible, I look at whether it can  
19 be built, whether it can be licensed, whether there's any  
20 technology fatal flaws, so that's how I would do that. I  
21 don't know if that's the question you're answering -- you're  
22 asking me. From a technical perspective, that's how I judge  
23 feasibility, can you technically build it? And then from  
24 the milestone perspective of all these major regulatory  
25 approvals, do we see any major impediment that would prevent

1 us from achieving some major, significant regulatory  
2 approval that's critical and material to the success of the  
3 project? That's how I -- that's how I view that.

4 Q But does economic feasibility play a part in -- in  
5 your day-to-day business decision making?

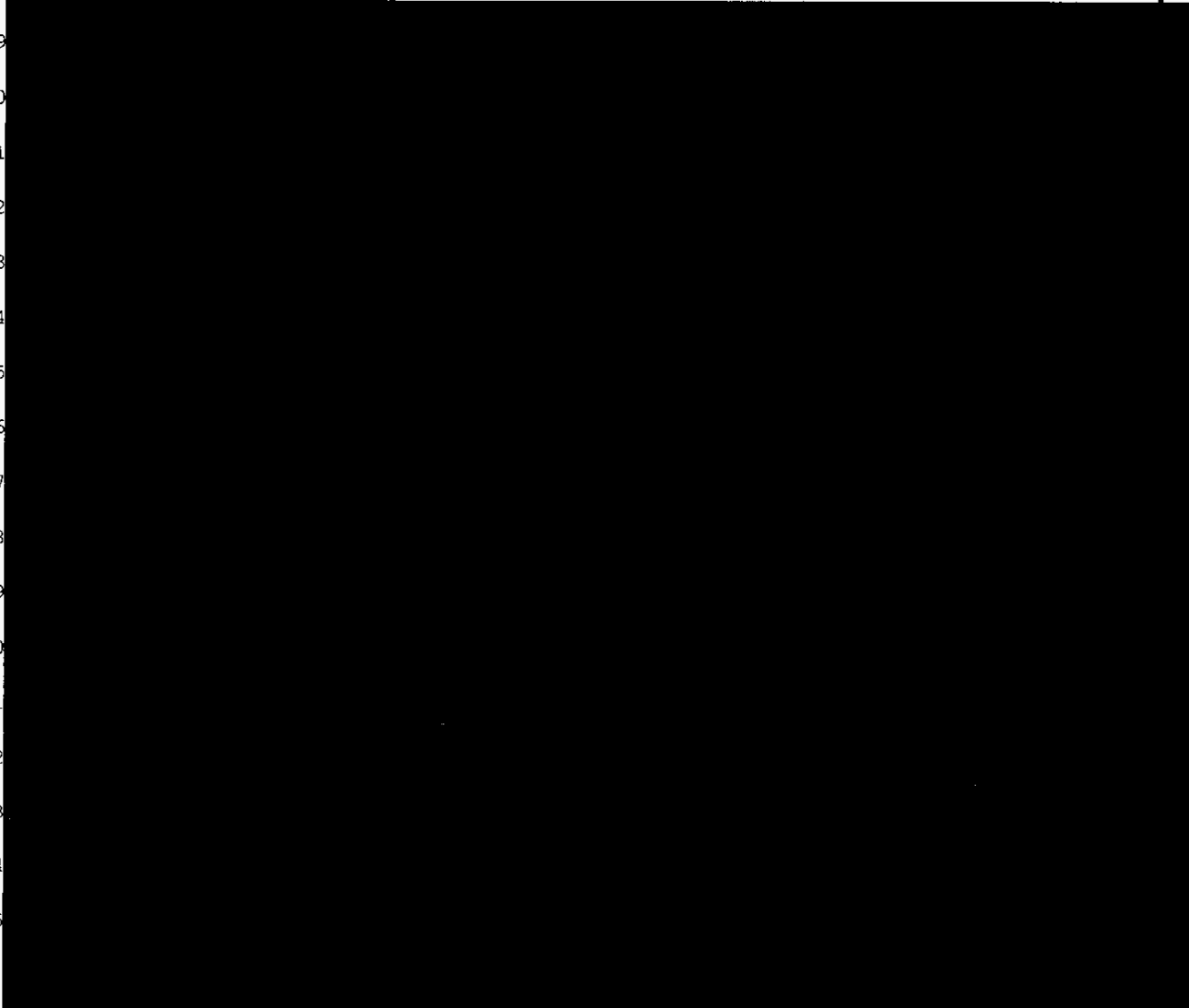
6 A As I might have said earlier, the -- the total  
7 project cost always has to be looked at, and we have to look  
8 at it in regards to the impact on the rate payers and also  
9 our company, and we do that on an ongoing basis and will  
10 always continue to do that as the project executes forward.  
11 So whether you call it feasibility or not, we do it, and we  
12 certainly would make decisions based on it if something  
13 significant or material were to happen.

14 Q On Page 26, Lines 5 through 16, you're saying the  
15 essential reasons for selecting the LNP to meet customer  
16 needs have not fundamentally changed, and then you continue  
17 to say you continue to need base load capacity. Is that a  
18 factor that impacts the feasibility?

19 A Yes. As discussed here, you read this paragraph,  
20 the essential reasons that we presented in our need case  
21 last year -- those fundamentally have not changed, the  
22 reason we selected nuclear, the reason we selected the site,  
23 that type of thing, and the reason it -- that nuclear  
24 technology's chosen as compared to other approaches, that  
25 hasn't changed.

1           Q     So and you use -- again, you use the term, on Line  
2 11, you continue to need diverse energy portfolio. Those  
3 two things are pegged to the need determination decision  
4 making. Is that right?

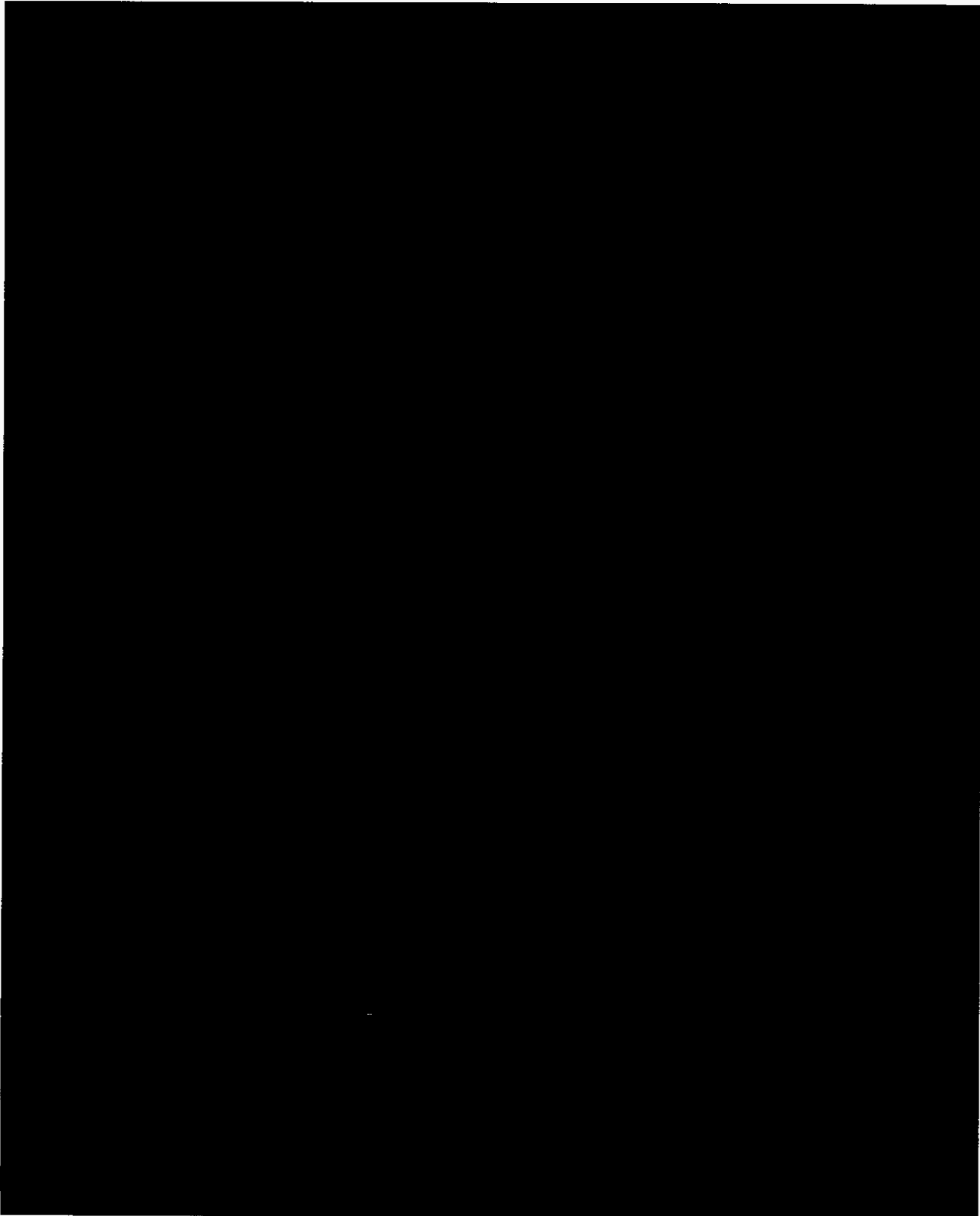
5           A     When we submitted the need case, we made the case  
6 that was a strong basis for choosing this technology as  
7 compared to others, and this paragraph reaffirms that that  
8 hasn't changed.



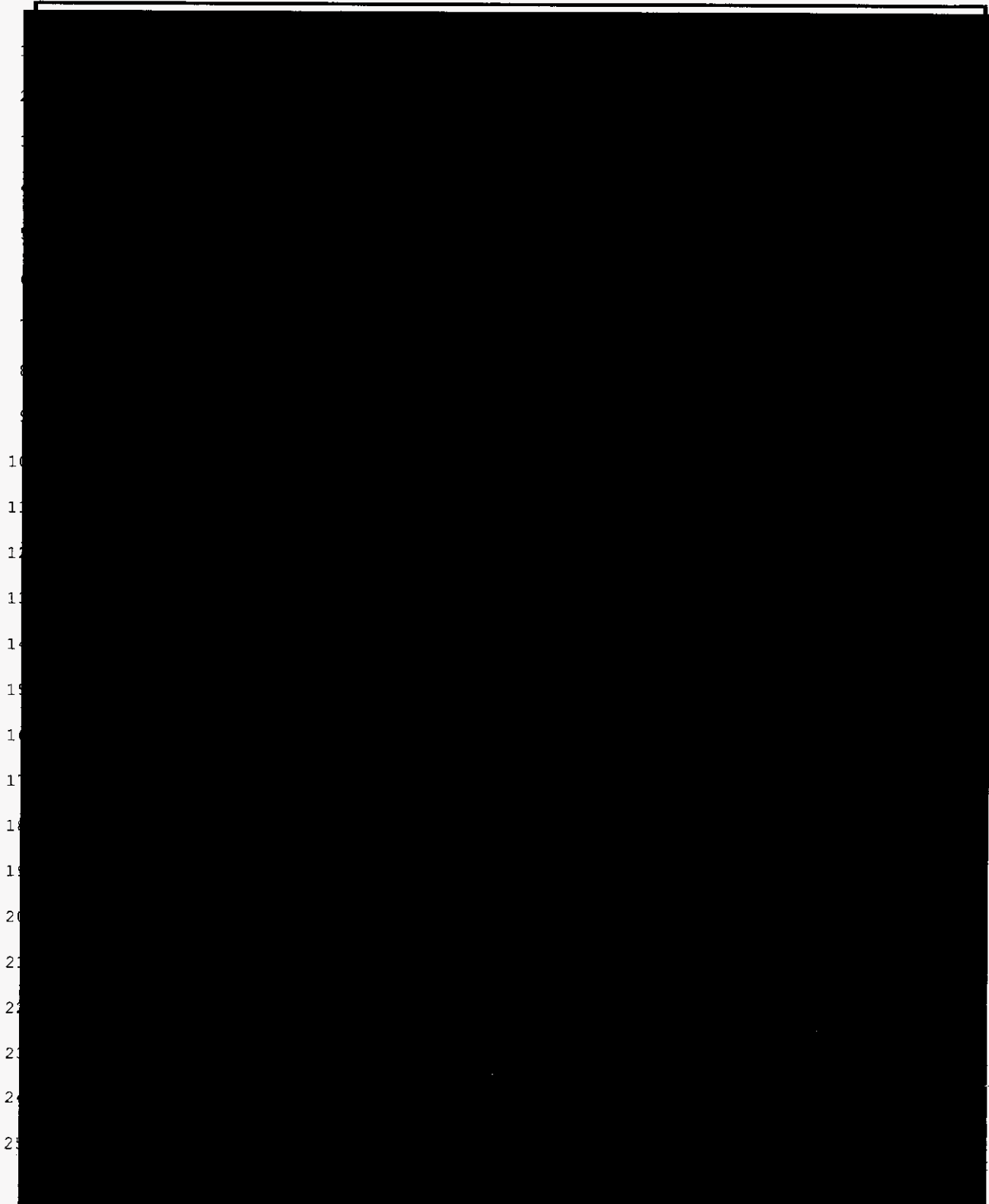
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Q Okay. Is there a target percentage of non-PEF investment in the total project that you have in mind? You, meaning PEF.

A That we have as a desire?

Q Yes.

A Or a preference?

Q Yes.

A It's -- and we said in public statements that we would prefer significant co-ownership in this, which is something less than 50 percent.

Q Okay. But close to 50 percent?

A In that range.

Q Okay.

A That's a preference.

1 Q Is the joint ownership percentage or -- let's call  
2 it joint ownership and -- well, non-PEF investment in the  
3 plant -- is that a factor that would weigh into the  
4 feasibility of the project?

5 A The --

6 Q From a total PEF cost standpoint?

7 A We answered a question in this same vein which was  
8 related to all the factors going forward, and when we  
9 answered that, as the -- as we determined the best way to  
10 proceed, we were going to weigh a number of factors, and one  
11 of those factors was status of co-ownership and status of  
12 financing because those are very important to the project.

13 Q Have you been pursuing this alternative investment  
14 all along or is this a recent development?

15 A Define recent.

16 Q Okay. That's a good -- that's a good  
17 clarification. Is that a -- is it a development that has  
18 occurred, say, since the third quarter of 2008?

19 A I have been involved with this. I don't know when  
20 the first dialogue took place, but it's been several months.  
21 I just don't know if October 1st is when it started or  
22 November 1st but --

23 Q But it was in that time -- in the third quarter/  
24 fourth quarter time frame of 2008?

25 A I just -- I don't recall. I've been involved with

1 it certainly in '09 because I've been involved in actually  
2 meetings. I don't know when the first one started.

3 Q Okay. Are the non-joint owner alternative  
4 financing discussions dependent upon your EPC  
5 renegotiations?

6 A Yes.

7 Q Are they dependent in the same way and to the same  
8 degree as the joint ownership negotiations?

9 A I don't think they're exactly the same based on  
10 the structure of the arrangement but the -- the project cost  
11 is a relevant discussion topic for both negotiations.

12 Q You're saying a relevant, not irrelevant?

13 A It's a relevant.

14 Q Okay.

15 A It's a relevant -- the project cost in the  
16 schedule is a relevant topic for negotiations in both  
17 venues.

18 Q So are you expecting any decision in the  
19 alternative financing arena before you renegotiate the EPC?

20 A I would not expect it.

21 Q That's all I have on your testimony at this time.  
22 I would like to move from the consortium to talk about the  
23 Joint Venture Team.

24 A Okay.

25 Q I was wondering if you could just kind of give me



1 a high level review of what the Joint Venture Team is and  
2 why you engaged them.

3 A As part of our preparation for a COL application,  
4 we went out for bids in late 2005 to secure an external  
5 organization that would have the wherewithal, the depth and  
6 subject matter experts to help build our COL application.  
7 After that RFP went out in our down select process, a  
8 consortium different than the EPC -- we call them the Joint  
9 Venture Team -- Sargent & Lundy, WorleyParsons and CH2M Hill  
10 were contracted to develop applications for both the Harris  
11 and Levy sites.

12 Q Okay. What -- what were the -- how did you come  
13 to select them? Were they -- was there an RFP process or  
14 did you go outside the RFP process to select them?

15 A We did an RFP.

16 Q Okay. So were there other consortiums, consortia,  
17 consortiums that came to you or was this the only one that  
18 was a combination?

19 MR. WALLS: I'm going to object to vague and  
20 ambiguous. Do you mean in the RFP response?

21 MR. REHWINKEL: Yes.

22 BY MR. REHWINKEL:

23 Q Came to you in RFP -- responded to your RFP.

24 A I am reflecting on the -- the company's that were  
25 involved that submitted a bid for us -- some of those

1 companies alone could not do the work. They would have to  
2 partner with someone else, for example, a specialty  
3 geotechnical company. Some were by themselves. They were  
4 large enough. They were a standalone, we'll do it all.

5 Q Was the JVT, as we know it today -- were they also  
6 engaged in that same form by other electric utilities to do  
7 the same kind of work?

8 A They did the early site permit for the -- for the  
9 Clinton site in Illinois.

10 Q Okay. Was that the only one?

11 A At the time, that was the only -- remember this is  
12 at the first waive of all the COLs being created, so the  
13 only precedent that was similar was ESPs, early site  
14 permits, and they had done one of those.

15 Q Okay. Did -- now the members of the team were  
16 WorleyParsons, Sargent & Lundy and CH2M Hill?

17 A That's correct.

18 Q What were their division of responsibilities --

19 A We took --

20 Q -- at the post?

21 A We took the application, and we divided it into  
22 parts, and, for example, the final safety analysis report  
23 was further divided into chapters, and then among those  
24 three companies, each of them had certain assignments. All  
25 the work flowed through Sargent & Lundy back to us from a

1 quality assurance perspective. So, for example, CH2M Hill,  
2 which is an environmental company, developed the draft of  
3 the environmental report.

4 Q Okay. What about WorleyParsons?

5 A WorleyParsons did some chapters associated with  
6 some of the onsite systems, like yard systems, as an  
7 example.

8 Q Okay. So --

9 A So it was divided up.

10 Q -- engineering?

11 A Yeah. WorleyParsons is an architect engineering  
12 firm.

13 Q Okay. And what about Sargent & Lundy?

14 A They had the overall management of the project,  
15 and then they had specific sections that they did, and many  
16 of their sections were related to the technology.

17 Q Okay. All right. So did the company have any  
18 ongoing or previous business relationship with any of the  
19 three members of the JVT?

20 A Our company did. We had previous contracts with  
21 Sargent & Lundy, previous contracts with WorleyParsons also.

22 Q Okay. But not CH2M Hill?

23 A I don't remember.

24 Q Okay. All right. The -- when did -- when did you  
25 select the JVT?

1 A It was the December '05, January 2006 time frame.

2 Q December '05, 1/06 --

3 A Right.

4 Q -- time frame?

5 A It was in that time frame.

6 Q Okay. When did they start doing work for you?

7 A Immediately.

8 Q Immediately?

9 A I mean, right after the contract was signed.

10 Q Okay. Had you selected a site at the time they  
11 started working?

12 A The Harris site was announced in January of 2006,  
13 so it's down select had already occurred, and then we made  
14 the public announcement in January of 2006.

15 Q So they immediately started working really more  
16 in -- in the North Carolina site?

17 A That's correct.

18 Q Okay. When did they start working on the Levy  
19 site?

20 A The Levy site -- they began to work on that in the  
21 fall of 2006, in the September time frame.

22 Q Okay. And was that everybody, all three members  
23 of the consortium?

24 A That's correct, all three.

25 Q Now, did you have a site selected at that time?

1           A     The -- in the case of the Levy site, the process  
2 for selecting a site was more difficult because of a lot of  
3 the geology and availability of water in the State of  
4 Florida, so we went through a very detailed siting process  
5 and went to several sites, and then in the September time  
6 frame, we had concluded which site we were going to select.  
7 We had not made a public announcement. We did advise the  
8 NRC of that, and we began to work in earnest to build its  
9 application as part of that.

10          Q     Okay. So what -- was CH2M Hill the most important  
11 member of the JVT as far as that process getting underway?

12          A     I would say they were all important.

13          Q     Okay. So did the -- did the JVT assist you in  
14 evaluating the sites from a geotechnical standpoint?

15          A     We had separate contracts for siting through a  
16 company named ENERCON that helped us on the siting process.  
17 We did bring to bear Sargent & Lundy's input as part of  
18 that -- that work, but contractually, that work was done  
19 under a separate company. So, as an example, CH2M Hill  
20 supported some boring on the site before the site was  
21 selected.

22          Q     Let me just step back and ask you about the  
23 timeline for the LN -- for the LNP Project. What was the  
24 most important factor as far as establishing your time  
25 frame, your timeline? Let me --

1           A     There are two big things you have to consider.  
2     First, you have to select a site and know that you have that  
3     site under your control, so meaning you have a sales and  
4     purchase agreement placed on that site so you have the  
5     ability to purchase it. Then you have to determine how long  
6     it will take you to build the application based on that  
7     site, and then from there, then knowing when your  
8     application goes in, then the 42-month COL review is the  
9     next big sequence in the work scope. So as we selected the  
10    Levy site, then we judged how long it would take to develop  
11    its application.

12           Q     Okay. So -- so you really worked forward to  
13    develop your time frames, rather than have a need and work  
14    backwards?

15           A     Well, in the time frame you're talking about, we  
16    had not submitted the need yet.

17           Q     Right.

18           A     This is 2006 and then 2007 in the time frame we're  
19    talking about. So but as we built the need case and then we  
20    proposed the dates for the -- to meet the need, they  
21    incorporated our knowledge of when the site was selected and  
22    our knowledge of the development of the COL application to  
23    ensure that those dates could be achieved.

24           Q     So your COL and COD dates were really driven  
25    primarily by the site selection?

1           A     For any site in the United States and any utility,  
2 you must have the site selected first, and that will then  
3 drive timeline. So as companies went out and looked for a  
4 site and did a selection -- did a siting process, that's the  
5 first step, and so you can't build a schedule until that is  
6 determined.

7           Q     Okay. So were you always the lead on planning the  
8 LNP Projects?

9           A     I have been with this organization from its  
10 initiation in 2005.

11          Q     Okay. And would you be considered the lead?

12          A     Yes. I was in charge of the siting of the Levy  
13 Project.

14          Q     Okay. And were you -- you were involved in all  
15 the decisions about the major milestones --

16          A     I was.

17          Q     -- of the project? At what point did you decide  
18 that an LWA concept might be necessary?

19          A     We -- in the late 2007 time frame going into early  
20 2008, we knew we would need an LWA by that point because we  
21 discussed it in a January presentation. So sometime in the  
22 second half of '07, as we began to firm up the timeline,  
23 that's when it became evident to us that an LWA was  
24 important for our overall in-service date we were trying to  
25 achieve.

1 Q So the LWA need was based on meeting a target COD?

2 A Right. Given the date I picked the site, the time  
3 to develop my application and given that I want to achieve a  
4 2016 service date, that dictates that I would have needed an  
5 COL for that -- needed an LWA for that site.

6 Q Okay. Just -- just in order to get everything  
7 done in the -- the series that you needed it done?

8 A That is correct.

9 Q Okay. So your decision maybe late 2007 on an LWA  
10 was still up in the air, if you will, based on the scope of  
11 the LWA. Is that right?

12 A It actually changed in the early months of 2008 as  
13 we began -- as we had more detailed analysis of the rule and  
14 of the guidance that was being drafted.

15 Q Okay. Did -- did you -- did you make the decision  
16 in consultation with the JVT about the site and the  
17 characteristics of the site with respect to the need for the  
18 LWA?

19 MR. WALLS: I'm going to object as vague and  
20 ambiguous.

21 If you understand, go ahead.

22 A The JVT had -- had input to that, but it was more  
23 driven by our discussions with Westinghouse and Shaw on how  
24 long it took to build the site once you had first concrete,  
25 and first concrete assumes you have excavated the hole. So



1 while the JVT may have given some input, what drove LWA  
2 decision making is actually the constructor.

3 BY MR. REHWINKEL:

4 Q Okay. So once you got a site -- I guess, it's the  
5 Rayner property became your site. Correct?

6 A That is correct.

7 Q Okay. You still had decisions to make about where  
8 to place the reactor -- the reactors. Correct?

9 A That is correct.

10 Q Okay. And those would be driven by, not only the  
11 geology of the site but your perimeter and certain setbacks,  
12 if you will, from that perimeter of the property. Is that  
13 correct?

14 A That is correct. What you're referring to is  
15 called the exclusionary area boundary, EAB --

16 Q Okay.

17 A -- which requires that plant have a buffer around  
18 it.

19 Q Okay. Were there any other factors that drove  
20 where you would put that?

21 A Yes.

22 Q What were those?

23 A Geology. Specifically, we did borings in the  
24 summer of 2007 in a grid fashion to characterize the  
25 limestone surface below -- below the ground surface, and let

1 me explain. The -- the Levy site has a sandy soil  
2 overburden of approximately 60 foot thick, and below that is  
3 limestone that is competent limestone that extends down to  
4 probably 5,000 feet down.

5           So we did drilling on a grid to determine the  
6 uniformity of the top of that surface. It undulates, like  
7 this. That undulation is minor with respect to the fact  
8 that it's 5,000 foot thick, but it is significant to us to  
9 avoid over excavation, not having to dig any farther than we  
10 had to.

11           Q     So what you're telling me is you were looking for  
12 a place that met your EAB requirements and that would  
13 minimize the amount of excavation you would have to levelize  
14 the top of that overburden?

15           A     An easier way of saying it is we were trying to  
16 find a place that would limit the depth of the excavation.

17           Q     Okay.

18           A     So in essence, where the limestone came closest to  
19 the surface that was uniform.

20           Q     Okay. And did you also have considerations about  
21 the 100-year flood plain and whatnot?

22           A     We had considerations based on where the wetlands  
23 were. The -- the site itself is above a Category 5 surge  
24 level, and we know that our grading plan actually raises the  
25 power block by a few feet and establishes a new flooding

1 pattern for that site, which would obviously be designed to  
2 prevent flooding of the reactors. So it was considered, but  
3 primarily EAB, to be able to get reactors in the center of  
4 the site and then understanding what the geotechnical  
5 surface looked like below the -- below the ground.

6 Q Okay. And now, this is work that you -- PEF did  
7 not have in-house expertise to do?

8 A That is correct. This is in-the-field drilling,  
9 taking core samples.

10 Q So who in the JVT was responsible for doing this  
11 work?

12 A The siting contract for that portion of the  
13 work -- it's non -- it's non-nuclear safety work to do this  
14 grid pattern we're discussing here. CH2M Hill did that, and  
15 that was done as a subcontract under the JVT because they  
16 had the geologists and the arrangements with -- to be able  
17 to secure the appropriate company that would do the coring  
18 and collect the lab samples and execute that laboratory  
19 analysis.

20 Q Did CH2M Hill -- did their geotechnical work for  
21 PEF always fall in the category of non-safety related?

22 A That non-safety was only for the purposes of  
23 siting. Once the site was determined and once we -- and  
24 with the knowledge of that -- results of that grid work we  
25 did, we then located the two reactors. At that point,

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1 you're then doing boring in support of the COL application,  
2 and that is nuclear safety-related work.

3 Q Okay. So the site selection or reactor siting  
4 type geotechnical work that they did -- was any of that work  
5 useful in the FSAR or COLA process?

6 A It was useful, and the information was available,  
7 but because it was not done under a quality program, it  
8 cannot be credited toward the analysis.

9 Q Okay. So it can't be used to support the  
10 project -- the application, but it could be used by the NRC  
11 staff to evaluate other data that they receive in this COLA  
12 process. Is that fair?

13 A In theory. That's correct.

14 Q Okay. Now, did you use CH2M Hill for this  
15 process, the siting, non-safety siting process, because they  
16 were part of the JVT?

17 A Correct. Because we knew they would have the full  
18 scope of all the safety-related boring on the site, and  
19 their knowledge and experience they gained through this  
20 initial gridding would be extremely useful and productive  
21 for that.

22 Q Okay. What types of geotechnical insight  
23 characterization work did you need? We've talked about  
24 the -- called siting non-safety stuff. You needed that.  
25 You needed geotechnical work for the FSAR process.

1 A Yes. Let me -- can you state your question again?

2 Q Okay.

3 A What is your question?

4 Q Yeah. My question is what -- what types of  
5 geotechnical insight characterization work did you require?  
6 For what purposes?

7 A Okay.

8 Q And we already did the one.

9 A Right. So let's do site characterization first.  
10 Beyond geotechnical environmental walk-downs for endangered  
11 or protected species, any previous hazardous land use that  
12 could be there, so those kind of site characterizations,  
13 which are typically done on the ground.

14 In the case of geotechnical, we did borings for  
15 siting purposes. We did borings for the application  
16 purposes, and now we are -- we recently -- we had done some  
17 boring associated with some of the construction on the site  
18 that are not related to the nuclear portions of the  
19 application.

20 Q The BOP?

21 A The BOP or in this case, say, for example, borings  
22 that we did at the barge canal for the -- locating the  
23 intake structure.

24 Q Okay. What about the Army MEPDES process? That's  
25 a permit you would have to get?

1 A For the barge slip?

2 Q Yes.

3 A For the site, there is a 440 permit required  
4 that's associated with the wetlands that are on the site,  
5 and because we, in our application, refer to the fact that  
6 we're going to have a barge slip, to actually site the barge  
7 slip also is a permit that's handled under an ERP to  
8 actually construct most of that facility, so Army Corps of  
9 Engineers is clearly involved with our site.

10 Q Okay. What about the SCA for the Florida DEP?

11 A We submitted a site certification application on  
12 June 2nd of last year, and that went in about a month ahead  
13 of our application to the NRC.

14 Q Okay. And did you require geotechnical work for  
15 that?

16 A That is primarily -- it's primarily related to  
17 environmental, but from hydrology perspective in  
18 understanding groundwater movement, there is a relationship  
19 to geology from that.

20 Q Okay. So did CH2M Hill provide that -- any  
21 geotechnical work in support of an SCA?

22 A It's -- for whatever geotechnical work that was  
23 embodied in the SCA, that would have come from CH2M Hill.

24 Q Okay.

25 A It's probably useful for you to understand that we

1 created an environmental part of our application. The site  
2 certification -- 80, 85 percent is identical information.  
3 So we created it under the COLA, and then we just add to  
4 that to satisfy other SCA requirements which are unique to  
5 Florida and the Power Plant Siting Act.

6 MR. REHWINKEL: Okay. At this time, I would like  
7 to ask him questions about some of the documents that  
8 are listed out here, and I don't know if you have a  
9 copy of those with you, but this is that first set  
10 that --

11 MS. TRIPLETT: I didn't get a chance to separate  
12 that. They're all in numerical order.

13 MR. REHWINKEL: Okay.

14 MS. TRIPLETT: You call out the Bates numbers.

15 MR. REHWINKEL: All right. I'll --

16 MS. TRIPLETT: I mean, I have the first one.

17 BY MR. REHWINKEL:

18 Q Yeah. The first one is really not necessarily  
19 about CH2M Hill, but this is -- this is Bates 47-014347, and  
20 this is a -- I guess it's some form of an audit relating to  
21 WorleyParsons.

22 A Okay.

23 Q Are you familiar with this?

24 A Let me look at the document. Yes. I remember  
25 this.

1 Q Okay. And this is an audit report issued on  
2 January 12th, 2007. Is -- was this an audit that was  
3 evaluating the quality assurance and quality control  
4 measures that WorleyParsons had in place?

5 A It was. The reason is we are executing a project  
6 that is nuclear-safety related, so we have something  
7 referred to as an authorized supplier list for companies  
8 that can provide nuclear quality-related products and  
9 services. WorleyParsons is on that list, and so we have an  
10 ongoing requirement from 10 C.F.R. 50, Appendix B that we  
11 monitor their activities to produce quality products for us,  
12 and that's what this was in support of.

13 Q Okay. Do you know if this audit report found  
14 any -- had any concerns or found any problems?

15 A I've not looked at this report in quite a while,  
16 so I have to look at it.

17 Q Okay. The first paragraph on Page 1 of 3, which  
18 is Bates stamp 47-014349 may be helpful.

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(A caller joined the conference call.)

MR. WALLS: Who just joined?

MR. MOYLE: Jon Moyle. My cell dropped in a bad spot, so I'm rejoining.

BY MR. REHWINKEL:

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7 Q Okay. Now, was WorleyParsons, the -- the entity  
8 within, were they charged with any quality control  
9 responsibilities within the overall Joint Venture Team or  
10 was that Sargent & Lundy?

11 A No. All three companies in the Joint Venture Team  
12 have some scope of work that is quality related, and so they  
13 are all on our authorized supply list to provide quality  
14 services, all three companies.

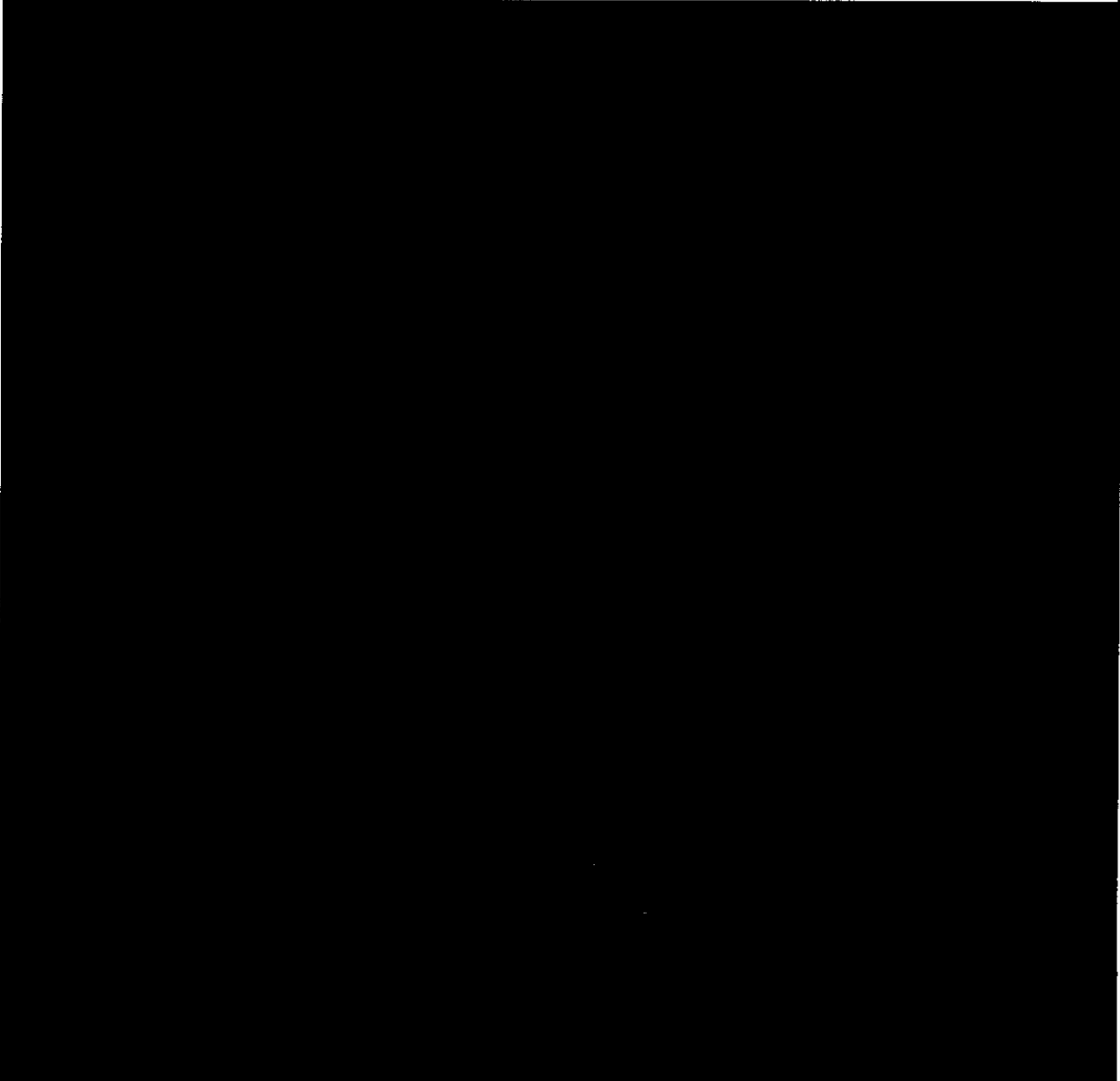
15 Q Okay. Was there any particular member of the JVT  
16 that was responsible for overall quality assurance and  
17 quality control within the Joint Venture Team?

18 A As Appendix B suppliers, each of these companies  
19 has their own QA program, and they're responsible to  
20 implement that in accordance with 10 C.F.R. 50. The -- so  
21 each is responsible individually for their program.

22 Q Okay. But you're saying no one member had some  
23 sort of a supervisory quality assurance role with respect to  
24 the Joint Venture Team?

25 A Well, all products pass through Sargent & Lundy on

1 the way to -- from a sort of a process prospective, they  
2 pass Sargent & Lundy on the way to Progress Energy, but each  
3 company is individually responsible for the development and  
4 implementation of their QA program, and they're on our  
5 contract, authorized supplier list, as individual companies,  
6 not as the JVT.



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MR. REHWINKEL: Okay. The next document is one that comes from a conversation that I had with counsel for PEF about a March 20th, 2007, letter that is referenced in another document. And at this time, I'd like to make a late-filed deposition exhibit request for the March 20th letter from Lauren Young to Bob Kitchen related to geotechnical fieldwork at LNF.

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1 MS. TRIPLETT: That's Number 6?

2 MR. REHWINKEL: Yes. Now, counsel has provided me  
3 a copy of this letter, and I was wondering do you have  
4 a copy --

5 MS. TRIPLETT: I do.

6 MR. REHWINKEL: -- with you? Late-filed as March  
7 20 letter from Lauren Young to Bob Kitchen.

8 BY MR. REHWINKEL:

9 Q Are you familiar with this letter?

10 A I am.

11 Q Okay. What is the reason for this three-page  
12 letter?

13 A The reason for this is the -- we are mobilized for  
14 borings at the Levy site during this time frame, and we  
15 singled out this scope of work that was under their  
16 cognizance and reviewed the activities that were coming out  
17 of the Harris COLA and applied those -- those -- those  
18 concepts to the Levy to make a determination of whether we  
19 would allow the boring operation to continue to collect the  
20 samples. And so this is a systematic way of reviewing that  
21 and providing the basis to let that -- let that work, which  
22 is the physical boring of rock samples on the site,  
23 continue.

24 Now, even though the rock collection continued,  
25 the analysis of those results would not be a product that

1 would be allowed at that point. In other words, you collect  
2 rock samples. Then you go back to the office, and you do  
3 analysis on what is it telling you. That report and  
4 analysis would not be received just to collect the samples  
5 here, and you see this is the work in progress, drilling,  
6 boring, sample collection and geophysical surveys, which  
7 means you stick a probe down the hole to collect raw data.

8 Q So you're saying the analysis that flowed from  
9 this data collection would not be acceptable for FSAR  
10 submittals?

11 A No. I'm saying we -- until we had corrective  
12 actions in place for their quality issues we identified in  
13 the stop work, we were not prepared to accept those.

14 Q Okay.

15 A But the work has been credited and is what -- is  
16 the basis for our application, all the work that was done  
17 under this.

18 Q Okay. Do you have 47-014256, which is a common  
19 cause analysis report from CH2M Hill Nuclear Business Group?  
20 Are you familiar with this document?

21 A I am familiar with it, but it's been awhile since  
22 I looked at it.

23 Q Okay. This, I believe, is a self-analysis that  
24 CH2M Hill did based on, I guess, some of the concerns that  
25 were raised in an earlier audit. Is that correct?

1 A That is correct.

2 Q Now, was this also the NRC -- was the NRC doing  
3 some auditing of CH2M Hill on their activities in Carolina?

4 A We had a QA audit on the Harris COLA that was  
5 conducted in the Raleigh office, and we made available to  
6 the NRC all of the information that had occurred at the --  
7 with CH2M Hill regarding the Harris COLA and the boring and  
8 those activities.

9 Q Okay. Were the activities and concerns that were  
10 raised in your audit as well as CH2M Hill's audit of  
11 themselves -- were they a cause for concern to you?

12 A They were. And they needed to be addressed, and  
13 we worked with them very closely to ensure that corrective  
14 actions -- first of all, that this was done, what's referred  
15 to as common cause, meaning look at all these examples that  
16 we have of where you had a problem and what is common to  
17 those and what are the corrective actions to address the  
18 common theme that -- whether it be management or some  
19 larger, higher level programatic process -- those were all  
20 important to ensure that the problems that caused the issues  
21 that we identified were corrected, and so yes, it was very  
22 important to us.

23 Q Are you familiar with -- on Bates 47-014268?

24 A Oh, is it the same?

25 Q Yeah. I'm on the same document. I apologize.

1 I'm sorry. 47-014267, which is Page 6 of the report.

2 A Okay.

3 Q And under the project management heading there,  
4 their own analysis seems to indicate that there was a lack  
5 of nuclear knowledge within the ranks of the CH2M personnel.  
6 Is that a fair characterization?

7 A I believe that the characterization is they have  
8 not -- their depth in this -- in nuclear safety work is not  
9 as deep as in non-nuclear safety work.

10 Q Okay. It says there on the second full paragraph  
11 there the project team was primarily made up of non-NBG  
12 personnel located at several CH2M Hill offices throughout  
13 the USA. NBG is CH2M Hill's internal nuclear business group  
14 name.

15 A Uh-huh.

16 Q Is that correct?

17 A That's correct.

18 Q And those are the people that you contracted with.  
19 Is that correct?

20 MR. WALLS: Those, being?

21 MR. REHWINKEL: The NBG segment of CH2M Hill.

22 A The NBG segment of CH2M Hill is delivering a  
23 quality service to us.

24 BY MR. REHWINKEL:

25 Q Okay. And only people who are certified in this



1 area can deliver FSAR eligible data analysis and reports.  
2 Is that right?

3 A You have to have technically qualified,  
4 experienced people. They must operate under quality  
5 processes to produce product that can be used for an  
6 application.

7 Q Okay. And did CH2M Hill find that there was a  
8 large degree of a lack of that qualification?

9 MR. WALLS: Objection to the characterization.  
10 Go ahead.

11 A The -- they say very clearly in this second  
12 paragraph here highly qualified non-NBG personnel were used  
13 in this project to provide the required technical expertise,  
14 geologic, geotechnical, seismic. They were well-qualified;  
15 however, their experience in the commercial nuclear side  
16 was -- was less, and so the NBG group using them did not  
17 adequately prepare them for doing the same work, doing the  
18 same kind of analysis based on their education and  
19 experience but doing it in a way where there is a quality  
20 pedigree to it, and the paper trail was there.

21 BY MR. REHWINKEL:

22 Q Okay. But it says they were inexperienced in  
23 operating in a commercial nuclear quality environment.  
24 Correct?

25 A Which is what I just said, is they understand it

1 technically. They are qualified in terms of geology,  
2 geotechnical people, et cetera, but when you go out and do  
3 work in the field under nuclear program, there are  
4 additional things you must do and the way you must document  
5 the process you're doing, and they were inexperienced in  
6 that.

7 Q Were you aware of that lack of experience when you  
8 hired CH2M Hill?

9 A When we did our down select and looked at all the  
10 companies that were being proposed, CH2M Hill, as part of  
11 their work on the Exelon ESP, was one of the experienced  
12 companies. They did this same scope of work, i.e., bore  
13 many holes, do the analysis and then develop that part of  
14 the ESP permit, which is very similar to what goes in an  
15 FSAR Chapter 2.5. They did that same work.

16 Q Now, did the people that were working on the PGN  
17 projects -- were they the same ones that did the Exelon ESP?

18 A Some of the leadership was.

19 Q Okay. What about the -- the subordinates?

20 A I don't remember all of the specific people.

21 Q Okay. Does this internal report seem to indicate  
22 that -- that the -- the CH2M Progress Energy COLA Project  
23 Manager was experienced in previous commercial nuclear work  
24 having worked on the Exelon and TVA early site permitting  
25 projects. But does it -- it says here, though, however,

1 this was the first project that the CH2M Hill Progress  
2 Energy COLA Project Manager had initiated in a commercial  
3 nuclear quality environment. Is that correct?

4 A The statement from this report is -- it's there.  
5 This is their report. This is their statement of what they  
6 believe to be correct.

7 Q Okay. Now, did --

8 A And read --

9 Q Yeah. Go ahead.

10 A Read the words, this was the first project that  
11 that manager had initiated is the key phrase there.

12 Q But it does say in the first sentence of the next  
13 paragraph that the project team was primarily made up non-  
14 NBG personnel located at several CH2M Hill offices  
15 throughout out the USA. So does that indicate that the --  
16 the people working under the project lead did not have the  
17 nuclear experience?

18 A They may or may not have. Understand how CH2M  
19 Hill is structured. They do nuclear work and non-nuclear  
20 work, and the actual work out in the field is very similar,  
21 and so the leadership of the projects at the NBG level or  
22 outside the NBG level draw upon technical resources in the  
23 staff level.

24 Q Was the NRC aware of this report here?

25 A Oh, yes. We -- as we worked with the NRC, we made

1 all documents available to them as part of our initial  
2 findings, what's called condition reports. Now I assume  
3 they got this. We certainly made everything available to  
4 them they wanted.

5 Q Okay. Were -- did -- did they also do an  
6 independent audit of CH2M Hill --

7 MR. WALLS: Objection.

8 BY MR. REHWINKEL:

9 Q -- with respect to the PEF Project -- the PGN  
10 Project?

11 MR. WALLS: Objection as to who you mean by they?

12 MR. REHWINKEL: The NRC.

13 A The NRC inspects applicants, and in this case,  
14 there was a quality assurance audit that was performed, and  
15 so they were inspecting or auditing Progress Energy. And  
16 now we use quality providers that do Appendix B level  
17 service, like CH2M Hill, and so the work product that we  
18 were getting in our activities overseeing this company were  
19 inspected, but this company alone does not get its own  
20 direct NRC inspections. It's through us.

21 BY MR. REHWINKEL:

22 Q Okay. Did the NRC issue any kind of findings  
23 about the quality assurance and quality control work of CH2M  
24 Hill with respect to the Carolina work they were doing?

25 A They did.

1 Q And when did that occur?

2 A I can't remember the time frame, but it's in  
3 this -- it's in this time frame of the March, April time  
4 frame.

5 Q Okay.

6 A And now, that's when they came to our offices to  
7 do the review. The report followed by weeks, and but that  
8 report did summarize their observations to what they saw.  
9 There were findings that required a response from us.

10 Q Okay. Now would the findings of the -- the NRC  
11 reviewers, auditors, whatever you want to call them -- would  
12 that have been made aware -- would that have been -- that  
13 information have been made available to the technical review  
14 staff of the NRC?

15 A The audit was conducted by quality assurance  
16 personnel, and the internal distribution of their report --  
17 I do not remember who all it goes to. I did know it went to  
18 the region, the inspection region, not just Washington, but  
19 I don't know all the people on the list.

20 Q Fair enough. Do you have 47-016811? This is an  
21 April 5th, 2007, letter to Russ -- Russel Bettinger at CH2M  
22 Hill from Deborah Loudenslager with your -- you're copied on  
23 it.

24 A Uh-huh.

25 Q Are you familiar with this?

1 A I'm familiar, but it's been quite awhile.

2 Q I understand. And this is -- this is your audit  
3 of CH2M Hill. Correct?

4 A Uh-huh.

5 Q And the audit team, including Michael Janus, who  
6 is in your organization. Is that right?

7 A That's correct.

8 Q In fact, there's -- I think these two other  
9 people, Deborah Loudenslager and Paul Sneed, work in your  
10 organization?

11 A Paul Sneed does but not Deborah Loudenslager. And  
12 we have an organization at our company that does ongoing  
13 reviews of all our Appendix B suppliers. She's in that  
14 organization.

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Q And when you say "this document," you're talking about the CH2M Hill self-common cause analysis?

A That's correct. But I draw your attention back to the audit report subject line. This audit was performed March 5th through March 8th.

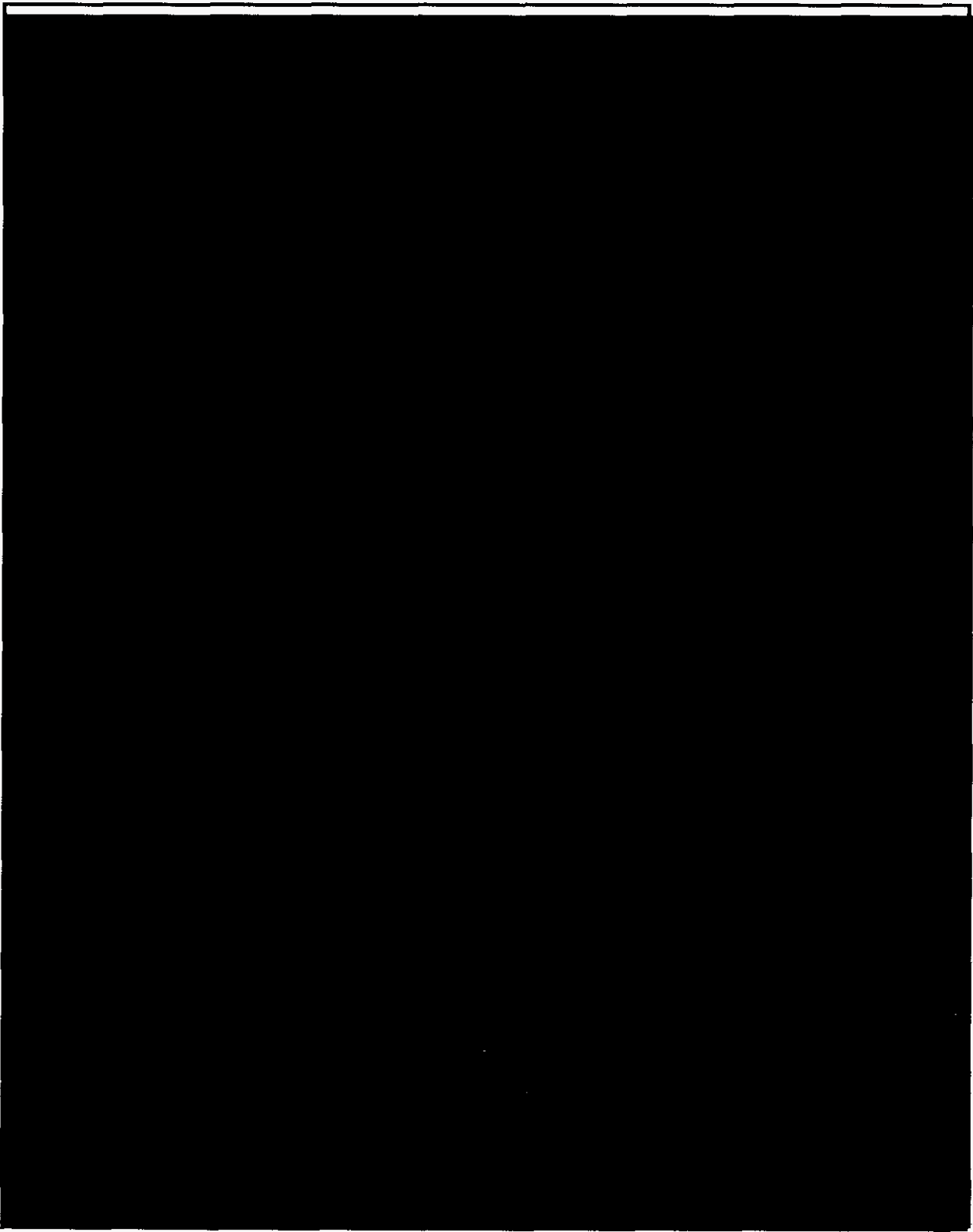
Q Okay.

A Is what this is talking about.

Q Yes.

A So now ask your question.

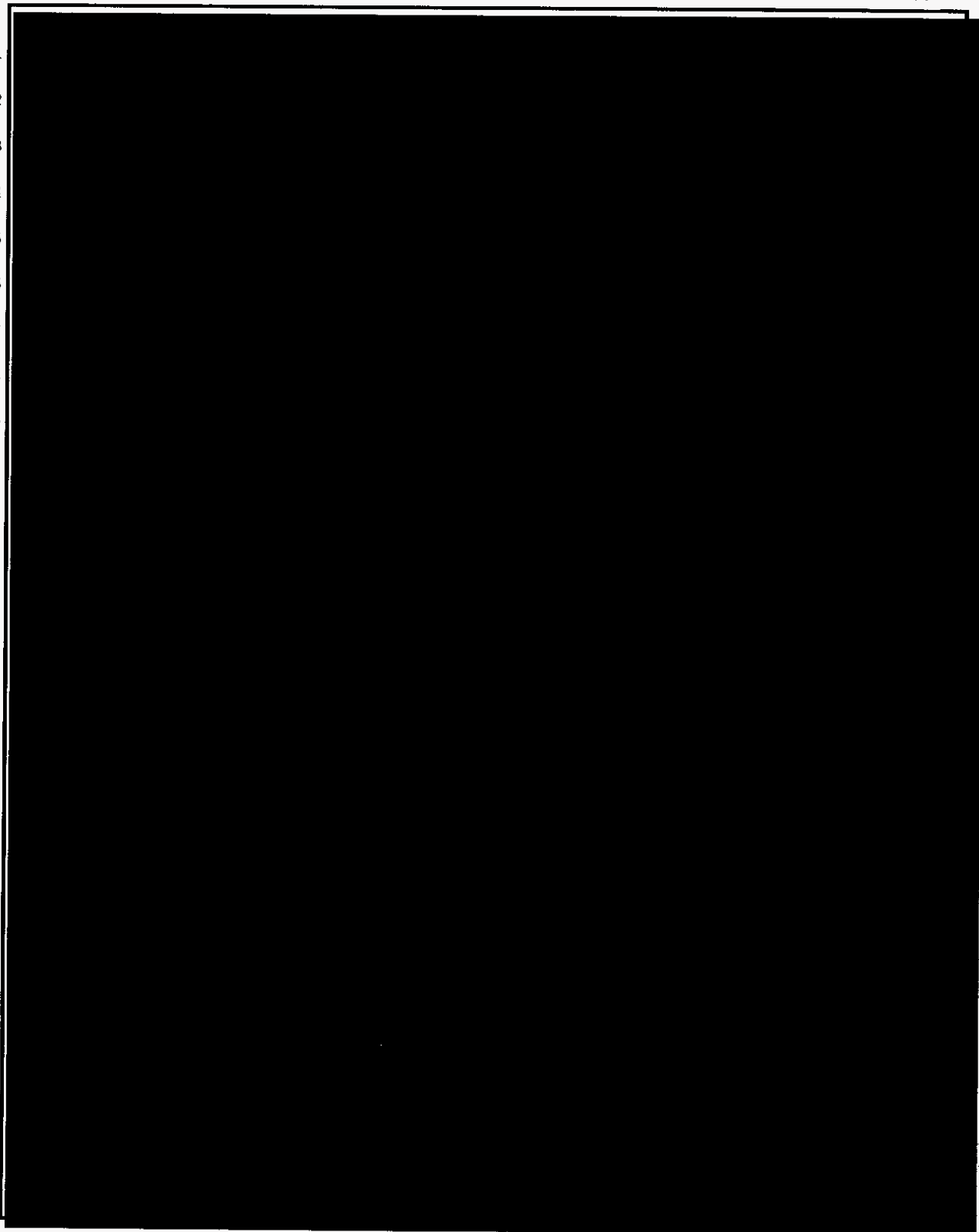
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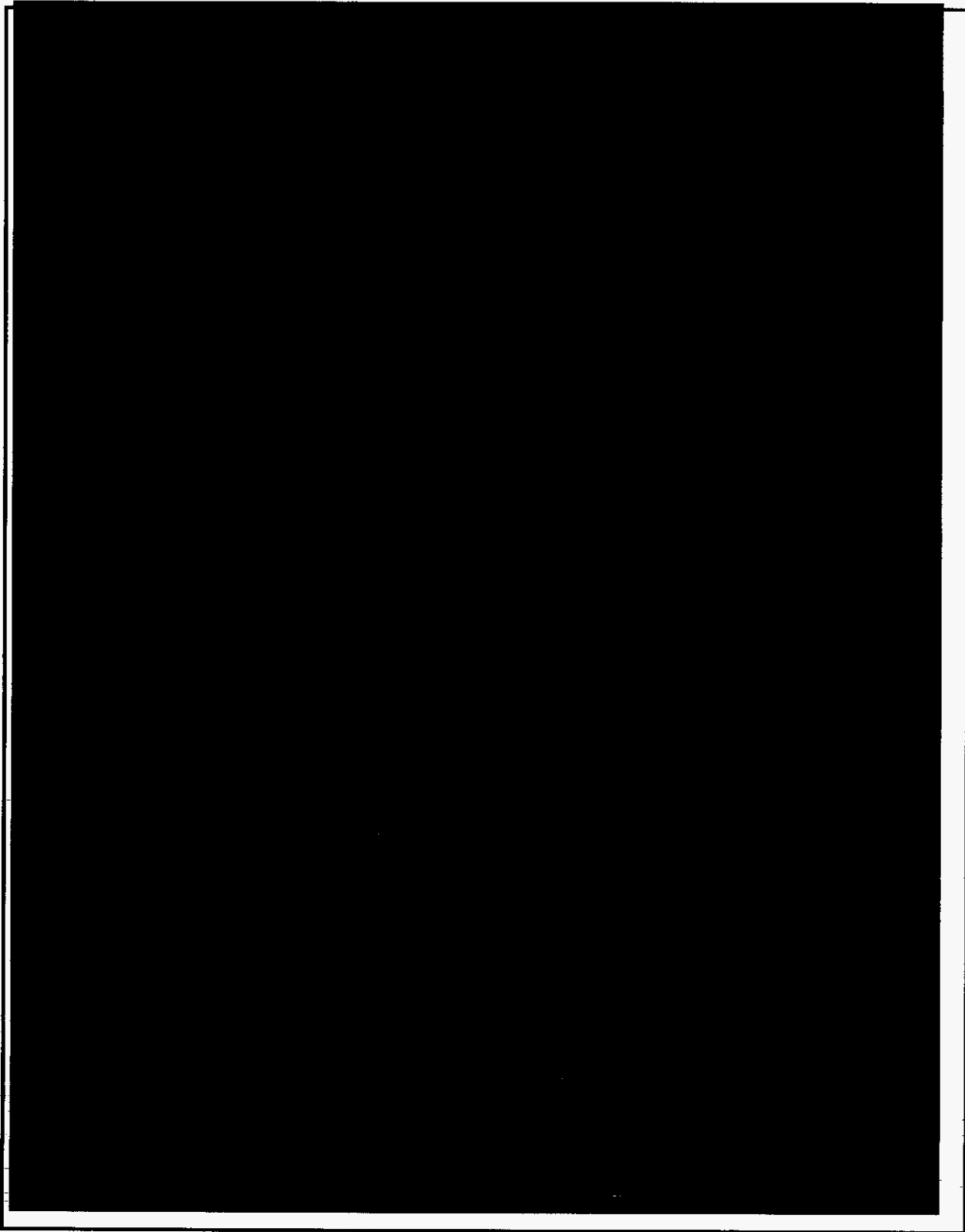


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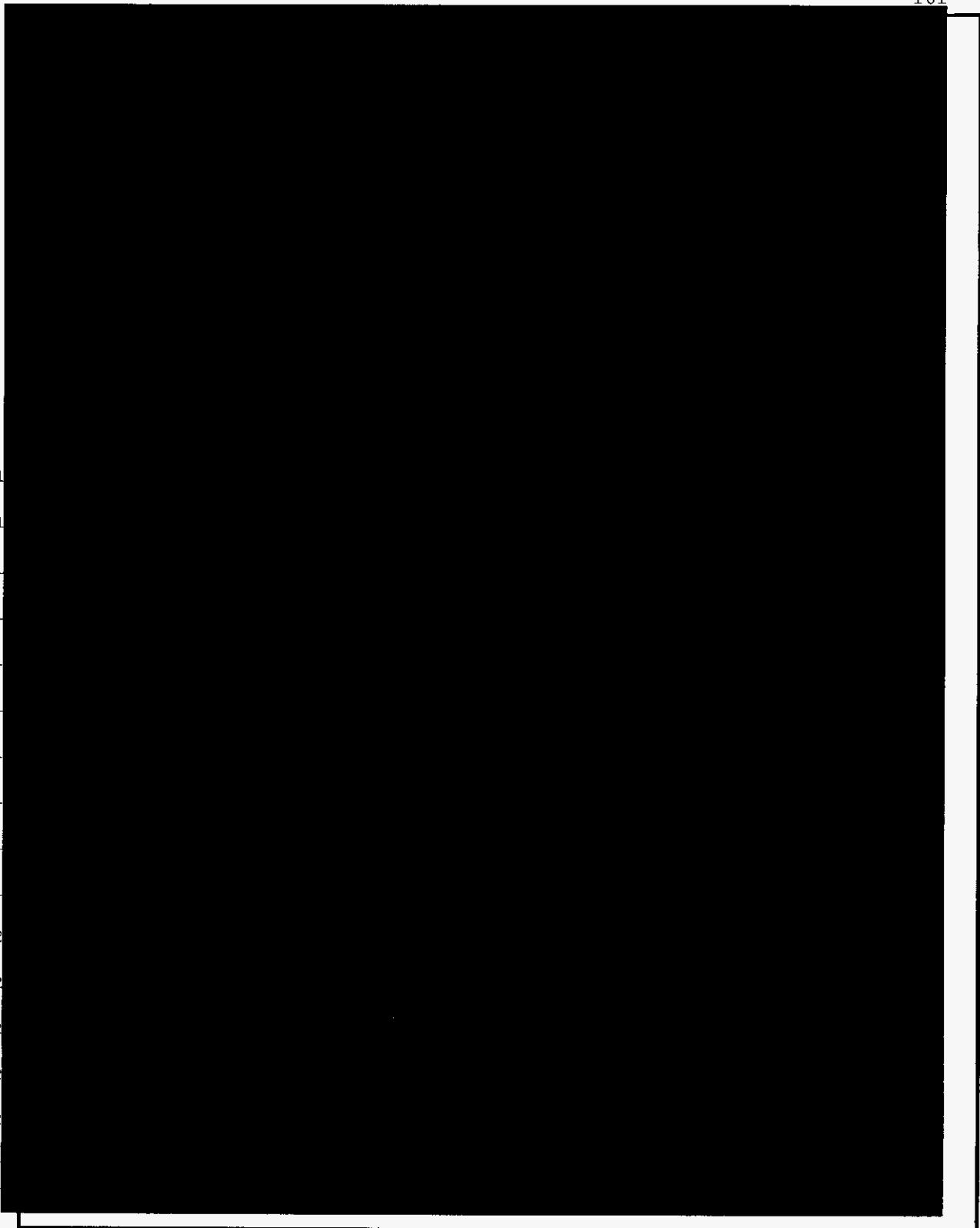


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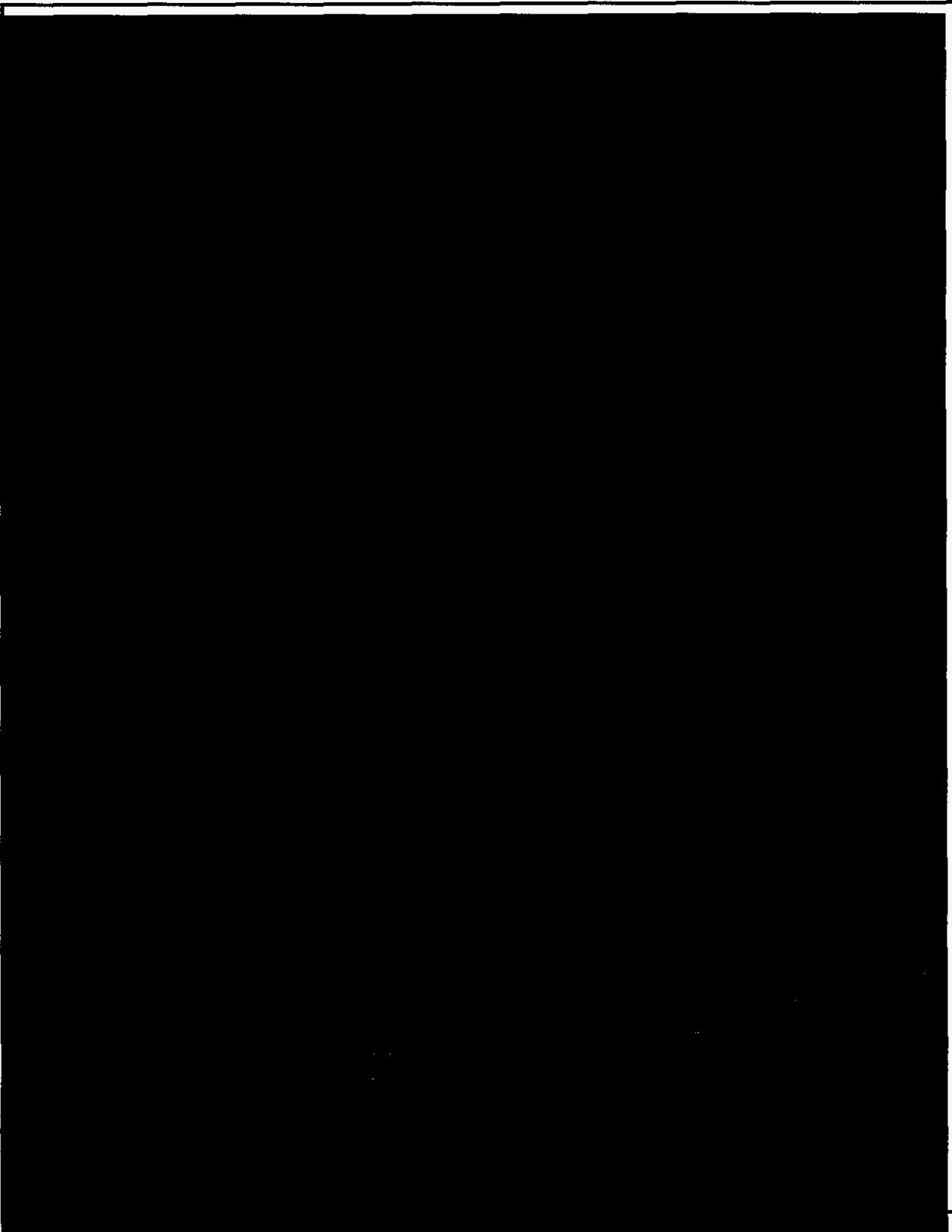
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13 Q Okay. On -- do you have 47-011691, which is a  
14 letter March 23rd, 2007, from Timothy Cleary? Does he work  
15 in your organization?

16 A Tim Cleary was my predecessor in my position,  
17 General Manager of Nuclear Plant Development.

18 Q Okay. Was he that at this -- okay. I thought  
19 you -- you were not the General Manager?

20 A At that time, I was not.

21 Q Okay. What was your title then?

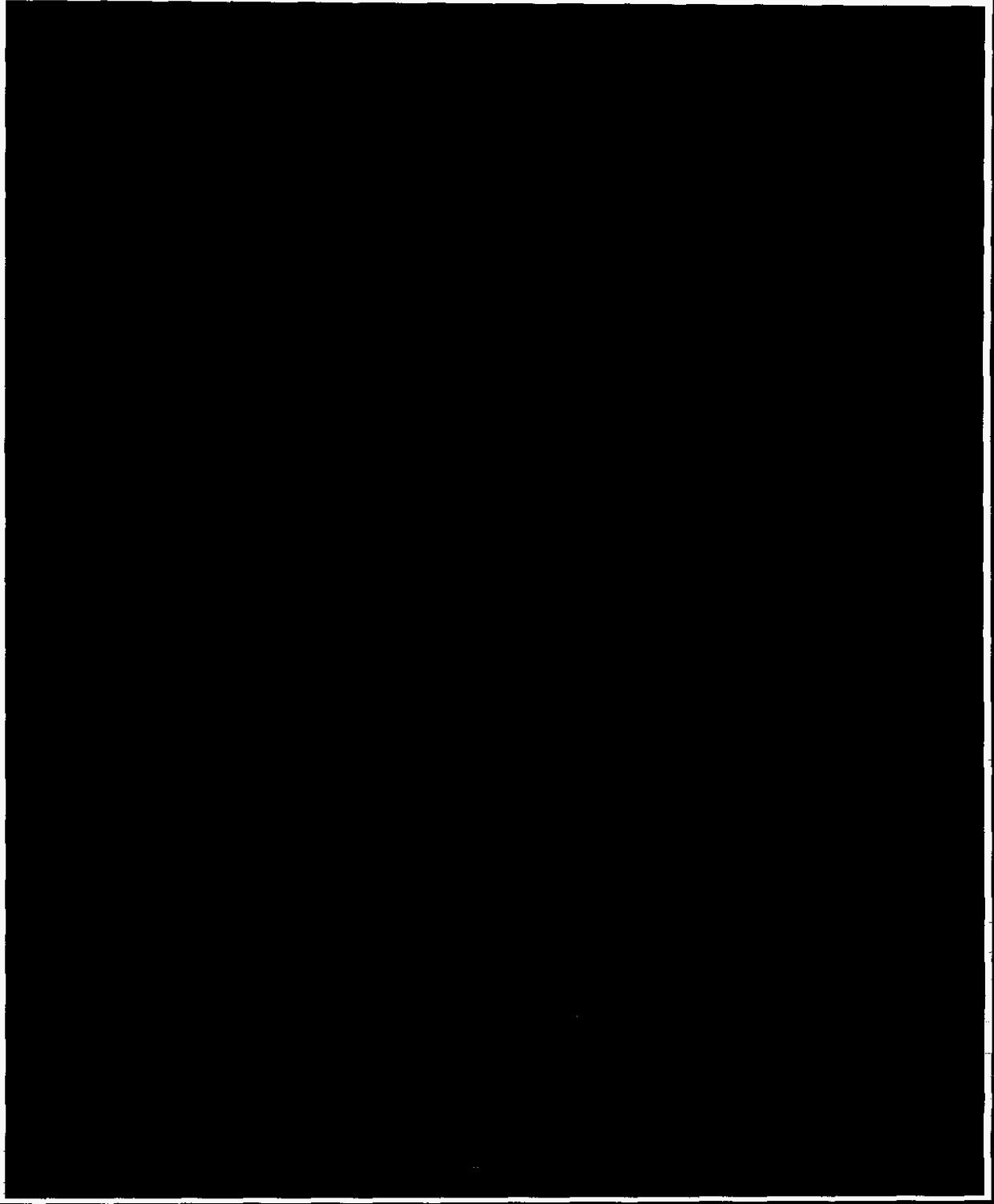
22 A Manager -- I don't recall, but I think it was  
23 Manager of Engineering Licensing. I don't remember.

24 Q Okay. So any way, this was a letter from Tim  
25 Cleary to Lauren Young. What is -- are you familiar with

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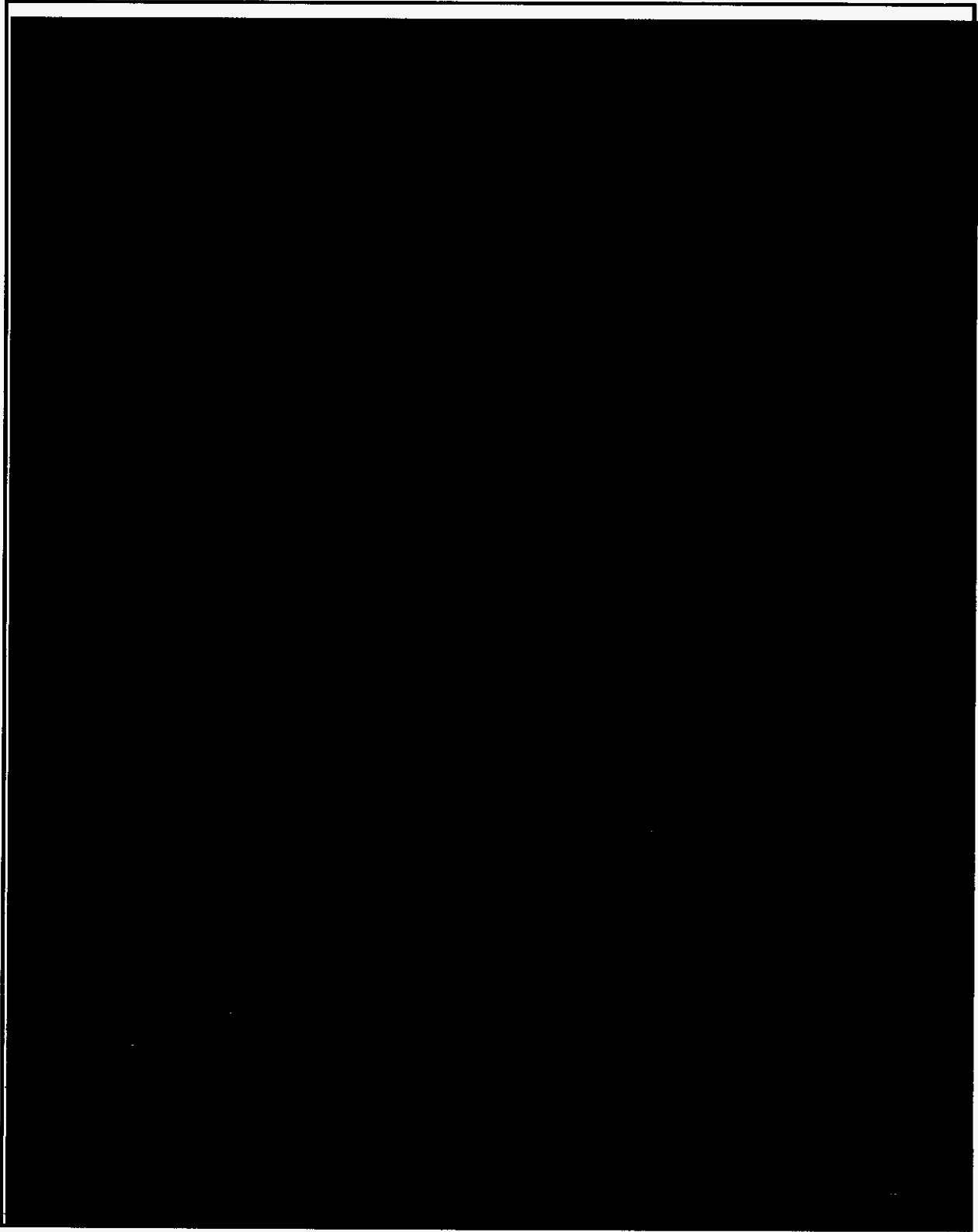
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Q Okay. Okay. I ask you to turn to Document 47-015846, and on the front of this is a -- it says it's a May 2nd, 2008, letter to Mr. Gary Grant from Deborah Loudenslager, and it copies you on it, I believe. Are you familiar with this?

A Again, I'm familiar, but it's been awhile.

Q And there's a note that says revised May 8th,



1 2008, on the first page.

2 A Okay. I'm familiar with it.

3 Q And this is at 47-015846.

4 A Okay.

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1 Q Okay. Let me ask you to turn, first of all, to --  
2 to Page 015861, and this is a letter from an individual at a  
3 firm called MACTEC, M-A-C-T-E-C, all caps.

4 A I see that.

5 Q Are you familiar with them?

6 A I am.

7 Q Who is the principal at MACTEC?

8 A It's this individual, Allan Tice. You see that?

9 Q Okay.

10 A In the first sentence?

11 Q Yes. What was the purpose of MACTEC being  
12 involved in this -- this audit?

13 A Because the original problem that was identified  
14 way back in year 2007 was geotechnical related on the  
15 borings and the fact that we wanted to ensure that  
16 everything was in order, we brought a third-party subject  
17 matter expert in -- the company's called MACTEC -- to give  
18 us an independent review of their work and make sure that  
19 everything was in order that would support our COL  
20 application.

21 Q Okay. Now, did this -- are you familiar with this  
22 independent assessment report that MACTEC provided?

23 A I remember it. I don't remember the details of  
24 it.

25 Q Okay.

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1           A     I remember that it occurred. I remember us  
2 bringing them in.

3           Q     Would it be fair to say, if you look under the  
4 calculation section of that first page of 015861, that  
5 Mr. Tice identified some problems with calculations?

6           A     That would be -- that is what he states here.

7           Q     Okay. And then starting on 015863, there's a --  
8 I'll call it a matrix. It's just kind of a table or a chart  
9 with -- looks like it has some observations and comments  
10 about CH2M Hill's work. On Page 015865, he makes a notation  
11 in the box that is on the left-hand side labeled DSC-FL-009.  
12 You see that?

13          A     I see that.

14          Q     Is it fair to say that this -- that Mr. Tice or  
15 MACTEC expressed a concern about the dates of completion for  
16 five of the checklists were the same and that the forms are  
17 filled out by the same person, unlikely all five holes  
18 finished on same day?

19          A     That appears to be what he's stating -- what he's  
20 saying here.

21          Q     Would that have been a serious source of concern  
22 to you?

23          A     Yes. We would have to investigate and resolve it  
24 and see why he identified that -- that observation.

25          Q     What about at the bottom --

1           A     And you see that in the next column, clarify when  
2 the bore holes were completed, and check the dates on the  
3 forms -- those are actions that we -- we were taking.

4           Q     Okay. What about at the bottom where it says,  
5 FLS-FL-807, geophysics field log for down hole logging, some  
6 blanks were not filled in, some changes not initialled, and  
7 then in the far column, it says, Could be a candidate for a  
8 condition report and assessment of importance of missing  
9 information? Was that an area of concern?

10          A     Well, the fact that he identified it as an adverse  
11 condition -- it could be a potential to create an adverse  
12 condition report on, we would have followed up on this.

13          Q     How about on the next page, 015866?

14          A     Okay.

15          Q     Are you familiar with the last item there, Field  
16 boring logs for AD-01 through AD-04?

17          A     I know what it's -- I know what it's talking  
18 about, but I'm not familiar with the specific item. I'd  
19 have to -- it's just been awhile since I looked at this.

20          Q     Would this have been in Florida or Carolina?

21          A     I don't recall. I would have to go back and pull  
22 the -- let me see if I can see anything in here that would  
23 tell me that. This would have been Florida because of the  
24 depth.

25          Q     Okay. Does he raise a question about geologically

1 incorrect descriptions, such as coal and quartz crystals and  
2 limestone, as far as their characterization of a pathology?

3 A That's the question he's raising here. Some  
4 descriptions appear geologically incorrect -- he's got coal,  
5 quartz crystals -- and were not corrected by QC log  
6 reviewer.

7 Q What about the item in the paragraph --

8 A Oh. It says -- oh. The QC reviewer made his  
9 corrections on the original fill logs in violation of  
10 procedure.

11 Q Okay. Would that be a concern as far as the --

12 A It would require a followup.

13 Q What about the next one about very poor recovery  
14 zones? Do you know what that refers to?

15 A Yes. The -- when you bore into limestone, if  
16 there is a small pocket, for example, that the bore rig  
17 passes through, and, let's say, that pocket is filled with  
18 soil, sand or weathered limestone, because the boring is  
19 done with water, it could have a potential to wash that out,  
20 so you have a poor recovery when you pull the sample out  
21 because it's been washed out.

22 Q In other words, you might drill a 200-foot hole  
23 and get 175 feet of sample?

24 A That's correct.

25 Q Okay. And it says, Driller noted as interpreting

1 some zones as voids and others as having no difference in  
2 drilling resistance. Is there a concern there that -- that  
3 the characterization of the core might be -- might not match  
4 the actual strata that it's coring through?

5 A State your question again so I can understand.

6 Q He's expressing a concern there that the -- that  
7 the core might not actually reflect -- reflect the  
8 characteristics of the rock that is being bored through.

9 A What he's saying is because some zones -- he's  
10 making an interpretation it's a void or having no difference  
11 in drilling resistance. He's suggesting that it's passing  
12 through something that could be softer than hard limestone.

13 Q Or that could be holes?

14 A Or it could be something -- in theory it could be.

15 Q Yeah. What about the -- the notation on the far  
16 right in the italics? Are those PEF's comments?

17 A I'd have to go back to the report and how it was  
18 generated. This report is signed out by Allan Tice, so this  
19 would be -- probably, it's their observations, but we had  
20 dialogues with them because the individual that was with  
21 him, which is identified in the first paragraph, Ron Knott  
22 of Progress, he was one of my engineers, my civil  
23 geotechnical person. So he was with him on this. So I  
24 don't recall how it was done, but this could reflect both of  
25 their input.

1 Q What does it mean on the far, right column where  
2 it says, Careful review of GINT log for showing potential  
3 voids will be needed for the poor recovery zones here and  
4 potentially in other locations; note that AD-3 and AD-4,  
5 both located in the south plant site reactor area, had the  
6 worst recoveries? Was that a source of concern?

7 A What they're saying here is the GINT logs which  
8 describe -- describes the boring process and what you're  
9 recovering as you go, which then refers back to further  
10 graphs of the rock samples which are taken as you come  
11 out -- because a drilling speed that suggests the drill  
12 moves faster through something could suggest that you may  
13 have a void or it could be filled with something soft, it  
14 needs to be documented well and have careful review, and  
15 they've identified this. AD-3 and AD-4 are locations, and  
16 the south plant is the Unit 1 location.

17 Q Uh-huh.

18 A And then it says they had the worst recoveries.

19 Q Did this kind of assessment reporting cause you  
20 concern?

21 A Well, it caused us concern in the fact that there  
22 was still additional documentation issues that had to be  
23 worked through that we required CH2M Hill to fix.

24 Q Now, would the NRC have been -- have seen this  
25 report?

1           A     I don't know. We would certainly give it to them  
2 if they asked. I don't know.

3           Q     So by a year after the problems were evaluated and  
4 as you're coming upon the COLA and LWA submittal, were you  
5 satisfied that CH2M Hill was -- was doing a quality job for  
6 you?

7           A     They were performing an overall quality job  
8 because, as you can see, they were effective. However, that  
9 doesn't mean they were perfect and in all areas they were  
10 doing everything correctly, so we still had to observe their  
11 activities closely and continue to audit them on an  
12 increased frequency to ensure that their product met our  
13 standards.

14          Q     Now do you have Document 47-012337, which is a  
15 letter from you to Mr. Jeff Benjamin at CH2M Hill dated  
16 September 25th, 2008?

17          A     I wrote this.

18          Q     Do you remember writing this letter?

19          A     I do.

20          Q     Were you happy when you wrote this letter?

21          A     No.

22          Q     This letter -- you start off saying you're writing  
23 this letter to express your concern -- I am writing this  
24 letter to express my concern with the timeliness and  
25 frequency in which CH2M Hill has provided the requested



1 performance monitoring information on Progress -- to  
2 Progress Energy. You see that?

3 A I do.

4 Q Was this letter separate and apart from the -- the  
5 work problems that you had experienced with CH2M Hill or was  
6 it just another of the fact of the problems -- another in a  
7 list of problems that you had?

8 A The corrective actions for the issues that we've  
9 already discussed, one of those corrective actions was their  
10 own performance report with metrics that -- that it's  
11 referring to here, and so that was an action that they took  
12 as a corrective action coming out of this large non-stop  
13 work -- stop work order.

14 So what you're seeing in this letter is -- is  
15 exactly what it says. They were inconsistent in their  
16 delivery, and we had to prompt them, and so I went above  
17 this individual's name to their Senior Vice President to  
18 express my concern. I had calls and -- with this individual  
19 and sent this formally to make sure his company knew that we  
20 were not satisfied that they were being responsive in  
21 providing this information.

22 Q Okay. Let me ask you about Document 47-015843,  
23 and this is a letter from Michael Janus to Mr. Gary Grant  
24 dated August 25th, 2008. Do you see that?

25 A I do.

1           Q     And this is, I guess -- this is called Source  
2 Surveillance at CH2M Hill for Progress Energy COLA  
3 Development Project. Does this relate to your Florida  
4 project?

5           A     It could actually be related to both.

6           Q     Okay. Do -- are you familiar with what this --  
7 the findings of this surveillance?

8           A     I would have to review it to go back and look.

9           Q     I'm really interested on the next page -- it's  
10 47-015845, the second paragraph. Does this indicate that  
11 there were ongoing problems with CH2M Hill?

12          A     Let me make sure I understand which paragraph  
13 you're referring to. The one in the bottom?

14          Q     The very last paragraph under summary.

15          A     So as you see, as a result, the surveillance  
16 determined that they had identified and either had completed  
17 or was on track to complete the corrective actions for the  
18 top -- for the ten open non-conformances. All right. I've  
19 read it.

20          Q     In the middle of that paragraph, it says the  
21 statement, The surveillance was able to verify that the  
22 necessary corrective actions from the audit non-conformances  
23 that directly impacted the Levy COLA had been properly  
24 implemented and completed by CH2M Hill. Does this indicate  
25 that they finally had fixed their problems?

1           A     This indicates that the corrective actions  
2 associated with the audit non-conformances were fixed.

3           Q     Okay. But, again, you had this letter on  
4 September 25th that was after --

5           A     That's true.

6           Q     -- this thing?

7           A     This is not a non-conformance. This is a  
8 management expectation of their management to send me a  
9 report, and they were not meeting my expectations.

10          Q     And the report was to document that they had  
11 implemented the procedures that they had agreed to in order  
12 to continue doing work for PFC?

13          A     Right. There were a number of metrics that were  
14 described in what we refer to as the performance -- the  
15 performance metrics report, and we had agreed upon a format  
16 of what would be in it, and we had provided those under  
17 discovery, those reports.

18          Q     Do you agree with the statement here that the --  
19 their non-conformances had directly impacted your COLA?

20          A     Where's the statement?

21          Q     I apologize. It's in the middle of that second  
22 paragraph under the heading, Summary, on Page 2.

23          A     The fact that it says, The corrective actions from  
24 the non-conformances that directly impacted the Levy COLA  
25 had been implemented and corrected?

1 Q Yes. Did the non-conformances from the audit  
2 impact your COLA, your certificate -- your COL application?

3 A It did not prevent us from achieving the targeted  
4 submittal date. However, we clearly had to work through  
5 these issues to be able to submit that application. So it  
6 was not an impact from a date, and they carried the burden  
7 of the cost of all these activities of their corrective  
8 actions, but nonetheless, we certainly had an involvement  
9 with them to correct these items so we could submit our  
10 COLA.

11 Q Okay. I'm going to skip the NRC and the  
12 interrogatories for now because of time, and let me -- I may  
13 come back to them, but let me -- I want to go to the -- the  
14 NPD, or Nuclear Plant Development, performance reports,  
15 starting with 47-017356.

16 MS. TRIPLETT: Charles, can I -- before you  
17 start --

18 MR. REHWINKEL: Yes.

19 MS. TRIPLETT: -- I was trying to get the  
20 documents in order, and one of them was missing. I  
21 just want to make sure you wrote it down right. It's  
22 several down in your stack.

23 MR. REHWINKEL: Okay.

24 MS. TRIPLETT: 147-19360? It's probably like four  
25 or five documents through your list. Like the seventh

1 on your --

2 MR. REHWINKEL: Yes.

3 MS. TRIPLETT: That's it, 19360?

4 MR. REHWINKEL: Yes.

5 BY MR. REHWINKEL:

6 Q You're familiar with these reports, and I want to  
7 start with the October 2007 that starts at 47-017 --

8 A Okay.

9 Q -- 356. This is something that you signed and  
10 submitted to your management?

11 A That's right. This is my organization's report  
12 that we submit to others outside of our organization and  
13 what we also use to document internally the status of  
14 activities.

15 Q Okay. On Page 017359, if you could turn to that.  
16 This is under Section 1.3 schedule.

17 A Yes.

18 Q Okay. In here you say, under the PEF COLA, the  
19 project is 55 percent complete. Fieldwork delays completing  
20 the vibratory ground motion report and insufficient progress  
21 made on certain FSAR and ER chapters are the biggest  
22 challenges to the schedule. JVT is developing a plan to  
23 expedite the schedule to improve the targeted COLA submittal  
24 date from 8/22/08 to 7/31/08. Is this referring to the CH2M  
25 Hill work?

1           A     It says certain FSAR chapters -- first of all,  
2 fieldwork delays is primarily CH2M Hill. Vibratory ground  
3 motion report would be CH2M Hill. Certain FSAR and ER  
4 chapters -- I don't know about certain FSAR chapters, but  
5 the ER is CH2M Hill.

6           Q     Okay. And FSAR 2.5 would be the one where CH2M  
7 Hill was doing a lot of work. Is that right?

8           A     That is correct.

9           Q     Okay. On this August 22nd, 2008, COLA target  
10 submittal date, was that originally your COLA submittal?

11          A     No. No. What that's referring to -- as we built  
12 the schedule working with the JVT of what it -- of what they  
13 believed that was necessary to actually get the schedule --  
14 get the COLA completed and submitted, their schedule was  
15 producing an 8/22 date, and we were not accepting that date,  
16 and our direction to them was to figure out what it takes to  
17 pull the work forward to bring it back to our original  
18 target, which was 7/31.

19          Q     Okay. On the next page, 017360, which is Page 5  
20 of your report under 1.4, key issues, you say in Bullet  
21 Number 2, The July 2008 submittal is challenged based on  
22 site geotechnical analysis requirements. Is that because of  
23 just the site itself or because of the quality and the pace  
24 of CH2M Hill's work?

25          A     Well, the -- the stop work order had some effect,

1 but it was more complex. There were more borings, and so  
2 the actual work took longer because the geology there, the  
3 actual boring process, actually physically took longer, and  
4 let me explain. Harris has rock close to the surface. So  
5 you go through less soil to get to it, so you switch over on  
6 your drilling rig boring attachments sooner, and once you  
7 get into hard competent material, it goes much faster.

8 Q Okay. The last bullet item in that key issues  
9 is -- says that JVT has developed an action plan to address  
10 NRC QA audit non-conformance conditions. Is that related to  
11 CH2M Hill?

12 A It is, but, again, NRC inspects Progress Energy,  
13 and so any findings they had are really ones that we respond  
14 to, but they were related to CH2M Hill work.

15 Q Okay. And it says, The plan includes a complete  
16 review of CH2M Hill field activity for geotechnical  
17 investigation at Harris and Levy and correction of  
18 deficiencies. Is that what we kind of went through with the  
19 CH2M Hill documents a minute ago?

20 A Right. And what that implies is the problems were  
21 found on Harris, so we had to review all the Harris  
22 information and make sure the corrections were made, but  
23 because they were also doing Levy, we wanted to make sure  
24 that the same problems didn't exist there, so we swept  
25 through all that documentation in addition.

1 Q Okay. The next page, Page 6, kind of a little bit  
2 change of subject for a minute. The next to the last bullet  
3 item there, which is under the Look Ahead section, it refers  
4 to a December 2007 Board of Directors meeting to request  
5 approval of a need filing and joint ownership percentage  
6 ownership. Do you know what that's about?

7 A Well, I know what the -- I know what the Board of  
8 Directors meeting was going to discuss, the need filing. I  
9 don't remember the joint ownership percentage ownership,  
10 other than the fact that that's something that we were  
11 considering.

12 Q Okay. So they weren't going to approve a certain  
13 percentage there?

14 A By virtue of the fact that that data point is in  
15 this, it's only a look ahead of things that we know that  
16 were going to be happening because it's in my report. So we  
17 must have been -- we must have been aware at the time we  
18 wrote this that there was a discussion at the board about  
19 finding the need to move ahead with Levy.

20 Q Okay. Let's turn, if you will, to Page 11 of that  
21 report, which is 47-017366.

22 A Okay.

23 Q On 2.5.5, PEF potential and/or pending scope  
24 changes, the fourth bullet says, Independent review of down  
25 hole measurements. Do you know what that refers to?



1 A I don't recall but -- I don't recall.

2 Q Could that have been a followup to the MACTEC  
3 report?

4 A No. The MACTEC was an independent audit. What  
5 we're looking at here -- my recollection of the subject --  
6 and it may not be precise -- is when you do a down hole  
7 measurement, there are different techniques to do that, and  
8 so we were having discussions at the time about, based on  
9 the way we did it, to do a particular measurement should we  
10 consider a different way of doing it and to augment the data  
11 to facilitate the NRC review. That would have been the  
12 subject here, not the audit report.

13 Q Okay. Is that gamma gamma and other things that  
14 the NRC asked about in one of the RAIs?

15 A It could be. There are different ways to do down  
16 hole measurements, and I know we had some dialogue about  
17 should we consider other alternatives. That's what this is  
18 about, but I don't recall the specifics of it.

19 Q Did the NRC staff suggest to you that you should  
20 use certain techniques that you ended up not using?

21 A I don't recall.

22 Q Okay.

23 A The NRC staff came to the site before we submitted  
24 our application and after our application went in on  
25 geotechnical, and so we had dialogues with them. Some of it

1 is very technical and very subject matter expert where they  
2 talk their language, if you will. I don't know if  
3 specifically they recommended a certain technique over  
4 another.

5 That's not typical for them to do that. They put  
6 the burden on the applicant to identify how they're going to  
7 do it, and then they commented on it after they get it.

8 Q Okay. They did ask you in your -- in one of the  
9 RAIs why you didn't use certain techniques. Correct?

10 A I don't recall, but that could be the case.

11 Q Okay. Okay. Now to the high risk issues, 2.6.

12 A All right.

13 Q It says -- and this is your report up to  
14 management. It says, The following risk items identified  
15 for management attention for PEC include -- and this is PEC,  
16 I understand, but it actually identified issues with the  
17 CH2M Hill fieldwork plan.

18 A Uh-huh.

19 Q An independent assessment team was formed to  
20 evaluate an NQA-1 compliance of fieldwork implementing  
21 procedures, field data and fieldwork plan.

22 A Uh-huh.

23 Q Is that one of the things we looked at with  
24 MACTEC? Is that what that's referring to?

25 A Well, looking at the time frame of this, October

1 of 2007, I don't remember the date of the MACTEC report, but  
2 this is --

3 Q Yeah.

4 A -- this is actually prior to MACTEC's report.  
5 This is the -- the broader CH2M Hill issue that was  
6 identified in the Harris COLA in the field activities and  
7 as -- then when the NRC did their audit of our activities,  
8 they looked at all those documents. So this is referring to  
9 that. It's broader than the MACTEC report by far.

10 Q Okay. So who did the independent assessment?

11 A There was a team established that was members of  
12 the Joint Venture Team, and we gave direction to that team  
13 that actually looked at the audit findings that we had,  
14 looked at the additional information that the NRC identified  
15 as part of their review, and then this team was set out to  
16 ensure that the analysis, causal analysis, and corrective  
17 actions for all those things were comprehensive. It was a  
18 combination of several members of all these parties.

19 Q Okay. And this -- this assessment was as to the  
20 general -- the fieldwork of CH2M Hill generally, not just at  
21 this Carolina site?

22 A That's correct. It would be any of the quality  
23 work they were doing.

24 Q Okay. So on the next page, Page 12, 47-017367,  
25 this is, The following risk items identified for management

1 attention for PEF include -- and the last bullet item says,  
2 JVT scheduled performance must be closely monitored and  
3 improved. CH2M Hill in particular has been unsuccessful in  
4 meeting schedules. Critical areas include geotechnical,  
5 parenthesis, FSAR 2.5, close parenthesis, period.  
6 Environmental report, the method of meteorological data, the  
7 evaluation of meteorological data and preparation of the  
8 site certification application SCA. You see that?

9 A I see that.

10 Q So you identified at least as early October of  
11 2007 that this was a risk?

12 A Well, we identified that their performance in  
13 producing the chapters for, such as, the FSAR 2.5 or  
14 chapters in the ER or the portions of the SCA -- that they  
15 were falling behind the schedules that we had for COLA  
16 development and SCA development.

17 Q So the risk would be as to the schedule?

18 A Correct.

19 MR. WALLS: Objection. What schedule?

20 THE DEPONENT: The COLA schedule.

21 MR. REHWINKEL: Yes. That's the schedule I meant.

22 THE DEPONENT: The COLA schedule.

23 BY MR. REHWINKEL:

24 Q Okay. On Page 14 of this report, 47-017369, are  
25 you familiar with Item 4.4.1, NRC QA audit?

1 A Yes.

2 Q Okay. And we just discussed that in the -- this  
3 is what the independent assessment team was looking at?

4 A That is correct.

5 Q Okay. How did you communicate to the NRC about  
6 the, I guess, the CAR, or Corrective Action Reports? Is  
7 that right?

8 A The way we communicate is we clearly -- as you  
9 know, CH2M Hill had done some internal assessments. We did  
10 assessments of them. We called them audits. Then the NRC  
11 comes and audits us. We made all that information available  
12 to them, shared with the NRC the corrective action reports  
13 to the NRC. Then they also go in and independently look at  
14 the work product from CH2M Hill and look at our work  
15 product.

16 Q Okay. On Page 17, licensing updates Items 6.2  
17 PEF, there is again a discussion of the 8/22 date needing to  
18 move to July 30th, and it says 2007, but that should be  
19 2008. Right?

20 A That is a typo.

21 Q Now, you mentioned 12/31/2008 to be eligible for  
22 production tax credits but the -- the July 30th, 2007 --  
23 2008, date -- was that for a certain purpose with respect to  
24 the NRC's workload or what was the reason that that was --  
25 that that date was established as a target?

1 A July?

2 Q Yeah.

3 A July 30th of 2008 was important for a couple of  
4 reasons. We wanted adequate float in the schedule as  
5 compared to a December 31st -- I call it a litmus test for  
6 being eligible for production tax credits. If your COLA had  
7 not been accepted by December 31st, you had the potential  
8 for not being eligible for that.

9 There was -- there was discussion in the industry  
10 whether it had to be submitted or accepted. We chose to say  
11 we wanted to make sure it's accepted so there's no doubt.  
12 So that's what that -- that's the significance of the 12/31  
13 column.

14 The other thing is July 30th had a significance  
15 from the NRC's review. The NRC schedules the review of  
16 COLAs by fiscal years, and, as you know, those run October  
17 to October, and so it was important that our COLA be  
18 delivered as we had told them it would be such that the  
19 resources would be available to support that, and they would  
20 not reassign our resources if our COLA didn't get in.

21 Q Okay. Had you always been planning on a July  
22 30th, 2008, submittal date?

23 A When we first started the Levy Project, we  
24 probably didn't know the exact date, and somewhere along the  
25 way, as we built the schedule, we submitted a risk response.

1 It's a regulatory information summary where the NRC asks  
2 you, Give us your plans for submitting your documents, and  
3 at that point, we would have firmed up the exact date and  
4 submitted it to them so they would be able to ensure that  
5 resources were established to do that. But until the site  
6 was selected and until the original schedule was built and  
7 proposed to us by the COLA preparer, we couldn't firm up the  
8 date.

9 Q Okay. I'd like to ask you to turn to the December  
10 2007 report at 47-006241 and specifically to Page  
11 47-006251 --

12 A Okay.

13 Q -- which is Page 11 of the report. And you show  
14 as a high risk issue following risk items identified for  
15 management attention -- and it's NRC identified issues with  
16 CH2M Hill fieldwork plan, and the next item for PEF, the  
17 second bullet, is suitability of the soils/rock substrata  
18 for AP1000 structures. Is this the first time you  
19 identified that as a -- as a -- well, you had it in the  
20 October report. Was that always a high risk issue?

21 A I would have to go back and look at the reports.  
22 Clearly, we were collecting rock core samples, and we were  
23 analyzing those, and so we had to work through the  
24 suitability of this as part of that analysis. Beyond that I  
25 think this was just more -- this was basically we were

1 collecting data, analyzing it, and we had a risk on this  
2 because we wanted to ensure that the -- we collected all the  
3 data necessary and we were able to analyze it and produce  
4 the analysis we needed to support it.

5 Q Now, who was collecting this data? Was this CH2M  
6 Hill?

7 A It would be CH2M Hill but also our -- my  
8 organization was reviewing their analysis in an ongoing  
9 fashion.

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16 Q Did you ever have to engage Westinghouse and any  
17 other vendor to come in and supplement or assist with the  
18 geotechnical data collection that CH2M Hill was contracted  
19 to provide?

20 A Not the geotechnical data collection.

21 Q Was there other aspects of their work you had to  
22 do that with?

23 A We brought in an external company under -- called  
24 Paul Rizzo Associates.

25 Q Uh-huh.

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1           A     They are expert in foundation designs, and based  
2 on the geotechnical results we were getting and the analysis  
3 of the foundation, we brought them to help support the  
4 development of FSAR Chapter 2.5.

5           Q     Okay.. When did you do that?

6           A     I don't recall the exact date, but their work  
7 product is -- is part of the COLA that went in on July 30th.  
8 It would have been late 2007 or early 2008, but I don't  
9 remember the specific date.

10          Q     Okay.

11          A     I think it's in early 2008, like, maybe February.  
12 Understand Paul Rizzo Associates does not do -- they  
13 themselves do not do direct fieldwork. They don't do  
14 borings. They are an analytical company.

15          Q     Okay. Let me ask you to turn to the January 2008  
16 report, and this is specifically at Page FPFC 1-9000017 or  
17 47-006274. Do you have that one?

18          A     Stand by, Charles.

19               MR. REHWINKEL: I'm sorry. You don't have the  
20 January? If you don't have it, I'll just --

21               MS. TRIPLETT: What was the number again?

22               MR. REHWINKEL: This is the January report. I  
23 just want to ask about one page, and we can use this.

24               MS. TRIPLETT: Okay.

25 By MR. REHWINKEL:

1 Q There's a statement in there in the middle of the  
2 page about a September 30th date, which I think is something  
3 we talked about a little earlier. Is this about the time  
4 frame you found out that that was kind of a make-or-break  
5 date for getting the COLA in to the NRC staff?

6 A Well, as I said earlier, the original casting of  
7 the July 30th was to give us adequate room toward production  
8 tax credits eligibility. However, based on the fact this is  
9 in here, we must have been involved in a meeting in the NRC  
10 where this dialogue took place, where they were saying in  
11 public meetings that because of their fiscal year, which is  
12 9/30 is the end of the fiscal year, that if you have COLAs  
13 that go after that, they may reassign your -- the resources  
14 that they had reserved for you.

15 Q Okay.

16 A That's what that's referring to.

17 Q On -- do you have Document 47-007788 -- 7 --  
18 yeah -- 788? Is that one I asked you about? That's the  
19 June 2008 report, and I would ask you to look at Page 15,  
20 which is 47-007802.

21 A Okay.

22 Q Okay. 5.3 is PEF site engineering. Is -- it says  
23 that specifically NPD Engineering -- that's your  
24 organization -- has been working closely with the JVT and  
25 Paul Rizzo Associates on the site geotechnical sections of

1 the COLA and nuclear island foundation design. Is that what  
2 you were talking about earlier?

3 A Yes. We brought them in to help augment the  
4 development of the section because the nuclear island  
5 foundation design was a critical -- a critical scope of work  
6 that we needed some -- another subject matter expert brought  
7 to bear on that -- on that section.

8 Q Had you gotten behind on that because of the delay  
9 in the deliverables?

10 A It wasn't -- it was not progressing to our  
11 satisfaction.

12 Q And Westinghouse complained about that?

13 A No. It's not a Westinghouse issue. We -- my  
14 organization -- we were concerned about our progress on  
15 finishing those chapters, and because we had to make certain  
16 decisions on the foundation design approach, we needed an  
17 expert who could come in who could help us with that down  
18 select on the foundation design.

19 Q Do you have 47-013472, which is the September  
20 report?

21 A Okay.

22 Q And I would ask you to look at Page 5, which is  
23 47-013476.

24 A Okay.

25 Q In the Look Ahead section, the last -- next to the

1 last bullet item, it says, LNP-NRC review schedule meeting  
2 11/12. Do you know what that refers to?

3 A We had proposed a meeting with the NRC, a two-day  
4 meeting.

5 Q Okay.

6 A And they declined.

7 Q This is the one you --

8 A Right.

9 Q -- testified about earlier?

10 A Right.

11 Q On Page 13 of this report in the high risk  
12 critical item section, in your listing of the items, the  
13 very first one is the -- again, the same one about the  
14 suitability of the soil rock substrata for AT1000  
15 structures, and I don't know that this is the first time it  
16 shows up, but you have complexity of karst investigations.  
17 Is that -- was that a new dimension to that risk or is it  
18 further explication here?

19 A The reason this was added -- because in the  
20 dialogue that took place with the NRC following our July 30  
21 submittal, part of the analysis that they wanted to  
22 understand was the engineered backfill approach we're using,  
23 which is called a roller-compacted concreted bridging mat.  
24 It is not only backfill, it also serves as a large mat that  
25 spreads the load out, and so they were interested in the

1 analysis for how big could you have as a karst below that  
2 and it would not be felt because of the way this mat spreads  
3 the load out at the plant, and so that's why this was added,  
4 because part of their REIs which came in later on October  
5 6th were related to that subject.

6 Q Okay. That was where they were asking questions  
7 about the modeling that you had used to -- about the  
8 substrata of limestone underneath the RC6?

9 A That is correct.

10 Q Okay. And next is the November report, which is  
11 47-013492, and on Page 5, which is 47-013496, under Section  
12 1.4 --

13 A Okay.

14 Q -- you identify key issues as -- the second item  
15 is the LNP geotechnical RAIs to support COLA review  
16 schedule. You see that?

17 A Uh-huh.

18 Q And this would have been issued sometime in  
19 December?

20 A This report would have been issued in December.

21 Q Okay. Do you know about when?

22 A I cannot tell, but it would -- it would have been  
23 following the end of November.

24 Q Okay. I understand.

25 A But I don't know what day, whether December 10th

1 or December 15th. I don't know when it was signed out.

2 Q Okay. And then on Page 14 on your high risk  
3 critical items, you do not show a risk to the LWA schedule  
4 here. Is that correct?

5 A I do not see it listed.

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Q And that would have been about December 2nd?

A In the December time frame.

Q Okay.

A Well, no. I take that back. As a matter of fact, it says that later on down here. It says this -- this report had the advanced knowledge because it says December 3rd.

Q Okay.

A It says in the bullet one, two, three, four, five down.

Q Okay. Let me ask about the December report, which would be at 47-013514.

A Yes.

Q Okay. Now does this have a date on it? Do you know when this would have been issued?

A It would have been issued in January of 2009.

Q Do you know when in January?

A From what I have here, I cannot tell.

Q Is there any way to find out when this was

1 completed?

2 A I'm not sure how we would be able to do that  
3 because it's signed and then transmitted. I don't know.

4 Q Okay. Well, let me ask you to turn to Page 13,  
5 which is 47-013526, and this is under the Section 2.6, the  
6 risk/critical items, and under the many bullet points for  
7 PEF, you have the first one is feasibility that we've seen  
8 before. Then eight down, NRC review schedule for COLA -- is  
9 there any way to find out whether this relates to -- was  
10 written before or after you heard from NRC?

11 A It's going to be close, and the reason I say that  
12 is because in this document there are financial summaries,  
13 and those numbers don't typically become available until  
14 after on the 10th of the month, and then it takes us days to  
15 incorporate that into the final product, so it will be very  
16 close to those days in that time frame, but I cannot tell  
17 exactly.

18 Q But the report does not mention the January 23rd  
19 teleconference, does it?

20 A I would -- if it was issued before that -- if it  
21 was issued after it, it would say it. Based on the language  
22 that's on Page 18, I would infer from that that we had not  
23 heard when this report was issued because it says NRC has  
24 indicated the COLA review schedule will be issued by January  
25 30th.



1 Q Okay. So now, you have -- as compared to the  
2 November report, you have an NRC review schedule risk item.  
3 Well, it's on -- it's on there, but it's further down --

4 A Okay.

5 Q -- on Page 14.

6 A Right. And we added it in that month because we  
7 submitted the RAIs that they needed -- that came with the  
8 docketing letter, and we were keeping a vigilance on  
9 anything we needed to do to support their review of that  
10 information to be able to deliver our schedule.

11 Q But you had it now characterized in November as a  
12 risk.

13 MR. WALLS: Objection. Mischaracterizes the  
14 document.

15 BY MR. REHWINKEL:

16 Q Yeah. It lists it as a risk.

17 MR. WALLS: Objection. Mischaracterizes the  
18 document.

19 BY MR. WALLS:

20 Q On your November report?

21 A It's listed under 2.6 for either a high risk or a  
22 critical item for management attention.

23 Q Okay.

24 A Then in this case, this was a management attention  
25 where we needed to support whatever the NRC needed to

1 provide the schedule to us because in the month of  
2 November -- that's when we submitted our RAIs response on  
3 geotechnical on November 20th.

4 Q So in the December report, you have now listed a  
5 limited work authorization approval in there for the first  
6 time. Is that right?

7 A It is not listed in November.

8 Q Okay. Do you have the October report? On Page  
9 14 -- okay. On Page 14 of the October report at 47-019373,  
10 the NRC review schedule for COLA is listed.

11 A Uh-huh.

12 Q And on September at 47-013484, it's listed.

13 A 47 --

14 Q In the September report. I'm sorry.

15 A Oh, you went back to another one. Okay. All  
16 right.

17 Q You see that as the last bullet item?

18 A What page?

19 Q Page 13 or 47-013484.

20 A Yep. I see that.

21 Q It's there. Now do you have the June report with  
22 you at 47-007800?

23 A What page of the report?

24 Q Page 13. So is it not listed because the COLA had  
25 not been filed?

1           A     Probably. I don't recall exactly our logic at the  
2 time we were developing that part of the chapter, but it's  
3 most likely the fact that we had not even not submitted our  
4 application.

5           Q     Okay.

6           A     It would be premature to -- to ask about it.

7           Q     Okay. But back to the December report, the LWA  
8 item on this list on Page 13 -- why would that have been on  
9 there for the first time in the December report?

10          A     I don't recall the specific reason we added it,  
11 but based on the fact that we had changed the scope of the  
12 LWA on September 12th and we wanted to make sure if there  
13 was any issues associated with that change, we probably  
14 added it on there for that reason, but I just don't recall.  
15 It's one of the things that we clearly -- all schedules we  
16 were interested in, the COLA schedule, the LWA schedule, but  
17 because of the September 12th change, we wanted to make sure  
18 if they needed any information that we were providing that.

19          Q     Okay. On Page 18 of your December report,  
20 47-013531, as you discussed earlier, it says, The NRC has  
21 indicated that the LNP COLA review schedule will be issued  
22 by January 30, 2009. Do you know how you would have known  
23 that?

24          A     That would have come through dialogue with our NRC  
25 project manager where he has given his expectation of what

1 the schedule would be.

2 Q Okay. Let's look at the March 2009 report. Do  
3 you have that? On Page 11 or 59-00012.

4 A Okay.

5 Q Under 4.3, PEF site engineering.

6 A All right.

7 Q Is this referring to the -- the Rizzo-related  
8 activity underneath the RCC mat?

9 A Are you referring to 4.3?

10 Q Yes.

11 A The answer is yes. The analysis that was done by  
12 Paul Rizzo associated with the potential for any formation  
13 and how would the bridging mat bridge over that. That's  
14 what this topic is related to.

15 Q Okay. On Page 22 of that report under Section  
16 5.5, Levy licensing challenges, it says here, Geotechnical  
17 complexity of the LNP site may delay LWA issuance resulting  
18 in a schedule delay. NPD is working with the NRC to review  
19 LWA scope and other actions that may improve schedule. Now  
20 is this what we talked --

21 A This appears to be carryover from the previous  
22 month because by then we would have known -- we would have  
23 had the schedule delivered to us February 18th. We were  
24 considering other options, as we talked about in my  
25 testimony, and so -- and we did have dialogue after the

1 schedule to see if we could make an improvement of it. As  
2 you know, that did not come to fruition.

3 Q So on Page 1 of this report, it says that -- that  
4 you signed the original on May 1st, 2009.

5 A Okay.

6 Q Is that right?

7 A (Witness nodded affirmatively.)

8 Q Is this -- is this just one of the -- is this a  
9 paragraph that just didn't get updated? Because that's --  
10 this is not quite consistent with the testimony with respect  
11 to what you knew when you filed on May 1st. Right?

12 MR. WALLS: Can you direct him to the page again?

13 BY MR. REHWINKEL:

14 Q Yeah. I'm sorry. This is Page 22 under 5.5,  
15 59-00023.

16 A So let me explain.

17 Q Yes.

18 A So if you go back and look at the February 18th  
19 NRC letter, which proposed the schedule for us, it says the  
20 LWA is not included in the schedule.

21 Q Right.

22 A And it says that -- matter of -- I think that's  
23 actually in -- I saw it in here -- that we would have  
24 further dialogue on potential scope changes of the LWA, and  
25 they were going to wait for our response on that. So while

1 we had a schedule and we were considering our options and  
2 were having a dialogue with the NRC, could we reduce the LWA  
3 scope and still get a useful LWA in advance of the COL that  
4 was useful enough considering the risk we were undertaking?  
5 So that was still going on in March.

6 Q Okay. But as of May when this was done, they just  
7 hadn't updated that?

8 A Yes. That's when I signed it out, not when he  
9 wrote this paragraph.

10 Q Okay.

11 A So this is reflecting March, you know, what we did  
12 in -- because we made a significant change in the format of  
13 the document. I think you see that from these two as  
14 comparison.

15 Q Yes.

16 A And so we went through some significant changes in  
17 the format, and there was some -- these take a little longer  
18 to get out because of that, but he wrote this in the context  
19 of March, and we were having dialogue with the NRC on scope.

20 Q Okay. On Page 6, which is 59-00007, you list the  
21 top 10 risks to the project. And can you explain to me  
22 on -- what the before and after means with respect to the  
23 item that's the third one down, limited work authorization,  
24 LWA, not approving -- not approved, causing late start of  
25 site works?

1           A     This -- this risk -- the way this table works is  
2 for any particular risk it has a probability and a  
3 consequence, and we judge that before any actions are taken  
4 to say if you do nothing, what is -- what is the risk level?  
5 And then we judge it after we identify mitigating actions,  
6 like working with the NRC closely to resolve their questions  
7 and help them to facilitate their review, that type of  
8 thing. Then we judge the risk afterwards, and the risk is a  
9 blend of the probability and consequence. And so in this  
10 case, what this is saying for this Number 24 that we had  
11 judged it with no action. It would be a red risk, and with  
12 actions the risk went down to that color, a lower color. So  
13 that's what that means.

14           Q     Purple.

15           A     Okay.

16           Q     So what is -- what is -- how does purple relate to  
17 red?

18           A     Lower.

19           Q     Lower? So -- okay. On Page 8, you have your  
20 before and after. So Item 3 in the before -- okay. It's  
21 Item Number 24. It's in a red severe impact, high  
22 probability box. Is that right?

23           A     From a consequence prospective.

24           Q     Okay. And then after treatment it's in a  
25 significant impact, high probability box. So what I don't

1 understand is how did that -- first of all, how did -- how  
2 is that the -- the assessment after all that has happened?

3 A The assessment would have been you're in March.  
4 You've already got information from them that the full scope  
5 of the LWA requested they will not do in advance of the COL.  
6 So we're trying to take actions to mitigate the consequence  
7 of that and reduce the severity of consequence, and so as  
8 you see, that 24 moved to the left down in impact by the  
9 fact that we were trying to negotiate a smaller LWA scope  
10 and minimize the impact of the schedule change. That would  
11 have been the logic that would have been going on at the  
12 time this was being worked on.

13 Q Okay. Did that turn out to be accurate as far as  
14 how the impact that it had?

15 A The ultimate impact based on our decision making  
16 and the various alternatives ended up being still the  
17 original schedule change that we've talked about in the May  
18 1st testimony of greater than -- of 20 months or greater,  
19 but we had a goal coming out of the February 18th schedule  
20 to try to work with them to see if we could come up with an  
21 alternative that would have less impact on the schedule  
22 change.

23 Q Okay. So this is very situational to the post NRC  
24 letter, rather than the risk all along with the LWA?

25 A These risks maps and a risk characterization is a



1 living item, and it can change based on new information or  
2 things that pass where the -- the probability is gone and it  
3 just drops off.

4 Q Okay. I would like to ask about some LINC  
5 documents now, L-I-N-C.

6 MR. WALLS: Would you like to take a break?

7 MR. REHWINKEL: Yeah. Sure.

8 (A brief recess was had.)

9 BY MR. REHWINKEL:

10 Q Okay. Okay. I'm going to go to the documents  
11 that are the LINC, L-I-N-C, documents. What I'd like to do  
12 is go to the stack of documents that starts on 47-020428. I  
13 don't know that I want to talk about that first one after  
14 all. Can you -- before we get started, can you tell me what  
15 the L-I-N-C or LINC Committee is?

16 A It's the Levy Integrated Nuclear Committee, and I  
17 characterize it as a -- a committee of senior managers that  
18 oversights the activities of Levy because it affects  
19 multiple parts of the company. Clearly, my organization is  
20 affected, but it affects communication, legal, finance, and  
21 so it is a forum where leadership from those organizations  
22 comes together, and they discuss the status of the project  
23 and -- and provide guidance and recommendations and  
24 direction.

25 Q And who do they provide that guidance,

1 recommendation and direction to?

2 A It could be anybody that's participating in some  
3 way for the Levy Project, from my organization to even  
4 somebody in corporate communications.

5 Q Do they assist the Board of Directors in any  
6 decision making roles?

7 A It's not that -- that's not the kind of  
8 relationship it is. Leadership that runs the LINC may do  
9 that, but the LINC itself as a body does not do it.

10 Q Okay. And do you have some -- a member of your  
11 team or your organization on the LINC?

12 A John Elnitksy.

13 Q Okay. Now he's your -- your --

14 A My Vice President.

15 Q Okay.

16 A In advance of him was Danny Roderick.

17 Q Okay. Now are -- are you fully apprised of the  
18 activities of the LINC?

19 A I am aware of them, and some meetings I have  
20 attended.

21 Q Okay. Well, what I'd like to do is ask you about  
22 some of the documents, and I'd like to go to this --

23 47-020428 --

24 A Okay.

25 Q -- is a document dated January 5, 2009. Are you

1 generally familiar with these types of documents?

2 A Yes.

3 Q So this is the most recent one that we were  
4 provided, and the first document in that or the bottom  
5 document in that stack at 020469 is dated March 31, 2008.  
6 Do you see that?

7 A I do.

8 Q Okay. What I'd like to do is just quickly go  
9 through these documents and ask you about a few items in  
10 here. There's a -- I guess this is somewhat of an  
11 informational document, kind of giving -- showing what's  
12 going on with the LINC and what they're discussing and what  
13 they've decided and what's coming up. Is that fair?

14 A A weekly snapshot of activities in progress.

15 Q Okay. So on March 31, 2008, there's an item up in  
16 the key activities underway section that talks about  
17 reviewing a limited work authorization option. You see  
18 that?

19 A Oh, I'm sorry.

20 Q I apologize. I'm going back to -- this is at  
21 020469, March 31, 2008. What's the date?

22 A March 2008. This was site construction planning,  
23 Roderick ongoing reviewing LWA option.

24 Q Okay. Is this -- this just shows that this was an  
25 issue under consideration at that time?

1           A     Yes.  Because at this time we would have been  
2     developing the actual package that would go to the NRC that  
3     would be submitted in July.

4           Q     Okay.  And then on the next page, April 7, 2008 --  
5     and I say the next page.  I'm going from the bottom to the  
6     top.

7           A     That's what I did.

8           Q     April 7, 2008, there's a recent accomplishments  
9     item which -- which denotes the completed LOI, and it says,

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          You see that?  And that's what we  
discussed earlier, and it, again, has the LWA item up in  
the -- at the top?

          A     Uh-huh.

          Q     Okay.  On the next page, April 14, 2008, under the  
near-term deliverables/milestone, the top two items, I  
guess, are new to this chart.  Is that why they're in  
lighter --

          A     Yes.

          Q     -- print?

          A     It changes.

          Q     It says, EPC negotiations start, and it has  
aggressive timetable.  It has EPC signature by -- I don't  
know -- c-o-n issue date in July.  I don't know what that --

1 what is c-o-n?

2 A I don't know what this is saying. Aggressive  
3 table as EPCs by -- I cannot recall what -- something looks  
4 like it's truncated out of this -- this cell.

5 Q Could it be the certificate of need at the PFC?  
6 Were you expecting it in July?

7 A Oh. I understand your question, but I'm having  
8 trouble deciphering this note here from April of last year.  
9 Aggressive timetable has EPCs by --

10 Q Looks like a slash S slash, which I think -- I  
11 would submit to you means signature.

12 A I cannot resolve what this says.

13 Q Are you aware whether there was -- you were a  
14 negotiator on this?

15 A Yes. I was the management lead for the  
16 negotiations.

17 Q Okay.

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5 Q Okay. On the April 21st date, moving forward  
6 another week, there's an item in here -- well, I guess it  
7 was in the prior one too, limited work authorization  
8 decision as moving up to a 4/23 date. Do you know -- is  
9 this, again, just kind of deciding scope of the LWA?

10 A My recollection of this was as we were doing our  
11 final decision on the final scope and the final language of  
12 the LWA part of the application.

13 Q Okay. On the next, April 28th, in the near-term  
14 deliverables/milestone section -- this is 47-020465. It  
15 says, Levy Project management/issues May 14, 2008, Lyash  
16 discuss Levy key project issue with PGN board. Do you know  
17 what those issues would have been?

18 A I'm having trouble finding your comment.

19 Q Right in the middle on that.

20 A Assigned to Lyash. Discuss key Levy Project  
21 issues with the PGN board. I do not know what the subject  
22 was other than an overview of the project and where we were  
23 with regard to submitting the application.

24 Q Okay.

25 A But it was probably also an update on the EPC

1 contract negotiations, that type of thing.

2 Q Let's move forward in time to -- this is August  
3 25th, 2008, 47-020447.

4 A Catch up with you. 446. August 25th?

5 Q Yes.

6 A I see that.

7 Q Okay. And it says under recent accomplishment  
8 about the middle of the page -- the last -- next to the last  
9 bullet says, Provided COLA overview to NRC staff in D. C.  
10 August 21st. Well-received by staff. Follow-up plan  
11 regarding LWA. Was -- so you had a meeting on the 21st as  
12 well as the 28th?

13 A The NRC meeting that took place was on -- you're  
14 thinking of July 28th. This is August.

15 Q August. Okay.

16 A August 21st after -- when we over viewed our COL  
17 application to the NRC.

18 Q Okay. And you say -- when you say it's well-  
19 received by staff, was that overall?

20 A Overall.

21 Q Okay. But what about with respect to the LWA?

22 A And follow-up plan regarding LWA -- this probably  
23 relates back to our dialogue earlier, what was the  
24 discussion regarding LWA in the meeting and that -- as I  
25 said earlier, I was not at that meeting.

1 Q Okay. On September 8th at 020445, it says planned  
2 activity there at the bottom of the Page, and one of them is  
3 a -- is drop-by visit, went to NRC to discuss schedule,  
4 licensing, LWA and other COLA items. Do you see that?

5 A Yes.

6 Q Would that have been done?

7 A That was the September 9th meeting that I  
8 attended; Jim Scarola, the CNO, and Bob Kitchen. This is  
9 the meeting where we impressed upon them the priority of our  
10 project and wanting to influence how they assigned resources  
11 to our schedule.

12 Q All right.

13 A So your question -- it did occur.

14 Q Okay. And then on September 15th, under items of  
15 interest, you state updated COLA to move diaphragm wall  
16 inside LWA scope in response to NRC RAIs and to prevent  
17 delay in sufficiency determination docketing; reserve right  
18 to move outside LWA going forward. Is -- would you have  
19 been getting RAIs at this early in September?

20 A We were getting -- we had dialogues going with the  
21 commission as soon as the application went in, and we were  
22 providing information. Some of that was verbal. Some was  
23 actually written. After October 6 when it was docketed,  
24 it's all by written correspondence.

25 Q Okay.



1           A     So in this case, I would say RAIs is the broader  
2 use of the term.

3           Q     Okay. Now let me step back for a second and ask  
4 you to go to 0204448, which is the August 18th.

5           A     Going backwards?

6           Q     Yeah. Just for a second. In the near-term  
7 deliverable/milestones, there is no item in there related to  
8 the COLA milestones schedule. Would you agree?

9           A     I agree.

10          Q     Okay. The next day -- the next week, August 25th,  
11 and near the bottom of that deliverable/milestone column,  
12 you see the COLA milestone schedule.

13          A     I see that.

14          Q     And you have November 1, 2008, and Bob Kitchen is  
15 the owner of that issue, I guess. This is -- this is your  
16 guesstimation about -- is this the 60 days?

17          A     Correct. That would be 60 days for sufficiency  
18 and another 30 days for a schedule.

19          Q     Okay. All right. So that's 90. Okay.

20          A     From July 30th.

21          Q     Right. And then on the next, September 1, you  
22 have that same assessment, November 1? Same thing on  
23 September 8th. Same thing on September 15th, September  
24 22nd. Then you get to September 29th. It's -- the  
25 milestone changes to November 14th. Why would that have

1 been?

2 A Most likely, it would have been because of  
3 dialogue with Bob Kitchen and the NRC project manager based  
4 on the change in the LWA scope, which we responded to in  
5 their time to issue a COL. That's about -- instead of 30  
6 days, about 37 days. He must have had some information that  
7 he got from the NRC project manager that suggested that's  
8 probably mid November.

9 Q Okay. On September 22nd, if we could step back a  
10 week, planned activities for next update -- the last item  
11 there is kick off meeting for internal Levy audit by audit  
12 services regarding risk mitigation and project controls. Do  
13 you see that?

14 A Yes.

15 Q What would they have been evaluating with regard  
16 to risk?

17 A How we identify risk and develop mitigating plans.  
18 I don't remember all the scope of the audit services audit.  
19 We've had several, but I do remember the portion on the  
20 project controls part of that.

21 Q Okay. On September 29th, we established that  
22 they -- you -- your assessment was that the milestone, the  
23 COLA milestone, schedule was moved out two weeks.

24 A The review schedule.

25 Q Yes. Well, is that what that -- is this -- just

1 to be clear, is this your expectation of when you would hear  
2 back from them about what you ultimately got -- that  
3 document that you ultimately got in February?

4 A Correct. This COL milestone schedule -- the  
5 actual schedule first comes as milestones, dates.

6 Q Okay.

7 A And this is the review schedule we received  
8 February 18th.

9 Q Okay. On -- at the middle of that page, under  
10 items of interest, it says, Completed all NRC RAIs,  
11 anticipate acceptance of application docketing by early  
12 October. Again, this is the broader RAIs?

13 A That's correct.

14 Q Okay.

15 A And the broader RAIs could include some written  
16 documentation, but it also included dialogue.

17 Q Okay. All right. On October 6, you have the same  
18 milestone schedule of November 14th, and then on October  
19 13th, a week after your docketing or acceptance letter, it  
20 says under recent accomplishments that you expect the COL  
21 schedule in mid November. Is that right?

22 A Correct.

23 Q Okay. And but you still have -- so you still have  
24 that same date there. Then on October 20th items of  
25 interest, it says, Additional NRC RAIs provided regarding

1 Levy geotechnical issues, response planned by October 31st.

2 Now, when did you ultimately respond to those RAIs?

3 A November 20th.

4 Q Okay. Was -- was there a reason that it took 20  
5 more days than you first contemplated?

6 A The complexity of the analysis that they asked in  
7 the request on October 6th.

8 Q Okay.

9 A We could not complete it in three weeks.

10 Q Okay. And then on -- at the planned activities at  
11 the bottom, it says, Continue to work with Shaw, WEC on RAI  
12 responses for geotechnical areas for Levy site. And is  
13 that -- was that assistance from them to speed things up  
14 because of CH2M Hill issues?

15 A No. It has to do with their interaction on the  
16 fact that whatever foundation design we choose and put in  
17 the application they have to be able to implement it, so  
18 it's a constructor input on that.

19 Q Okay. There's an item here on October 20th that  
20 says, NRC meeting geotechnical 11/12/08, and the status is  
21 provide response to RAIs, alternate 11/07. Can you tell me  
22 what that's --

23 A That was the proposed meeting we requested that  
24 they declined to have.

25 Q Okay. And what is alternate 11/07 referring to?

1           A     We proposed the week before if they couldn't go  
2 the week of 11/12.

3           Q     Okay.

4           A     And, as I said earlier, we had drafted the RAIs,  
5 and we wanted to preview those to them.

6           Q     Okay.

7           A     They declined to do that.

8           Q     On November 3rd, 020437, items of interest,  
9 continuing work on NRC RAIs on Levy geotechnical issues.  
10 Draft responses complete. That's where you say you  
11 requested the meeting, and they declined.

12          A     Uh-huh.

13          Q     But we see now that -- and it said COLA milestone  
14 schedule release is now projected for mid December. And  
15 what was the basis for that change?

16          A     Again, that would have been based on an ongoing  
17 dialogue that Bob Kitchen had with the project manager based  
18 on when they would receive our information and when they  
19 would likely be able to produce the schedule, as complicated  
20 by the holidays.

21          Q     Okay. On -- I think this item is throughout in  
22 previous weeks, but up at the top there, under key  
23 activities underway, joint owner discussions, it says, JO  
24 work and EPC are closely tied, and I think you stated that  
25 earlier.

1           A     They are.

2           Q     Okay.  So it -- it said that week after week here  
3 leading up to the signing.  All right.  So we go on into  
4 November 17th on 020435.  The -- it says, Provide -- at  
5 planned activities for next update, Provide geotechnical RAI  
6 responses to NRC.  Schedule follow-up discussions.  Did you  
7 do that?

8           A     We provided those.  They went in November 20th,  
9 and we attempted to schedule follow-up discussions, but they  
10 needed more time to review the RAIs.

11          Q     Okay.  Did you ever have follow-up discussions  
12 before?

13          A     Well, they came -- I have to get my dates right.  
14 So this would have been November 2008.  They actually had an  
15 audit of our site geotechnical, so they actually came back  
16 to the Levy site in early 2009, and a lot of that discussion  
17 continued, but we made ourself available for any questions  
18 they had regarding RAI responses that we submitted on  
19 November 20th.

20          Q     Okay.  But the -- so on November 24th, 020434,  
21 under recent accomplishments, it says you filed a geotech --  
22 Levy geotechnical RAI responses with NRC 11/20.

23          A     Uh-huh.

24          Q     Two-day follow meeting requested.  Was that also  
25 declined?

1           A     That was the two-day meeting -- they declined that  
2 even after we submitted it.

3           Q     Okay. So it's a different but same?

4           A     No. This case -- this is referring to the two-day  
5 meeting that we had requested was declined.

6           Q     It says, Two-day follow meeting.

7           A     Two-day follow meeting requested. I don't recall  
8 that we asked for a second two-day meeting after they  
9 submitted it, but they didn't -- they didn't receive it.  
10 They did not want to do it either way.

11          Q     Okay. So you kept asking, and they kept --

12          A     We want your response, and we'll review that, and  
13 then we'll get back with you.

14          Q     Okay. All right. Now on December 8th, the --  
15 under the deliverable/milestone section, it says, COLA  
16 milestone schedule release -- now you have January 9th, and  
17 the status is after review of geotechnical RAI response.  
18 What made you go from December 1 to December 8th and change  
19 the projected schedule?

20          A     Again, this would have been based on input  
21 provided from the NRC project manager because that date --  
22 that's not a date we can predict. We can only get that  
23 from -- from discussions with them, and this is at the point  
24 where the impact of the holidays was becoming more apparent.

25          Q     Okay. On January 5th, 2009, you have -- actually,

1 let's go to December 29. I apologize. That's 020429. This  
2 is the first after many weeks where -- well, this -- I'm  
3 sorry. This is the last time that it says JO work and EPC  
4 are closely tied. So you signed the contract two days after  
5 the date of this document, and then on January 5th, 2009,  
6 you report in recent accomplishments that you've signed an  
7 EPC contract, and now it says joint owner discussions are in  
8 the final stages with muni's and co-ops. Scheduling follow  
9 on talk with TECO site visit and planning in progress. Is  
10 there -- has there -- what has happened with respect to the  
11 linkage of the JO and the EPC in this one week?

12 A Until the EPC was executed, it was subject to  
13 change, and so once it's executed, it now forms the basis  
14 for the final negotiations with the JOA. So it was  
15 available, and so that was now not -- of all the things that  
16 were being discussed, that one was now fixed in time, and  
17 that was able to be used in the negotiations.

18 Q Okay.

19 A Prior to that, if the EPC would have changed, it  
20 obviously rippled right over and could have changed the JOA  
21 negotiations.

22 MR. REHWINKEL: On Document Number 47-020417 --  
23 this is something called a Planning Activity Serial  
24 Log. Do you have that? It's in the LINC section.  
25 Yeah. It's near the bottom of the list. I think it's



1 one of the last two documents.

2 THE DEPONENT: That's not it. I know what it  
3 looks like.

4 MR. REHWINKEL: It looks like that.

5 THE DEPONENT: It's an ongoing log.

6 BY MR. REHWINKEL:

7 Q There it is. Are you familiar with this document?

8 A I am familiar with it.

9 Q Okay. This one is dated -- it says, Revised  
10 February 13th, 2009, and then it says, Start date April 7,  
11 2008, and this is a log of certain major activities?

12 A The LINC in its function -- certain activities  
13 would get a planning activity associated with that, and you  
14 see those in the pages that follow, like on Page 418, 419  
15 and the Bates number, et cetera, and that's what these are.  
16 The log itself is just a list of the ones that follow in  
17 those -- those next pages.

18 Q Okay. What can you tell me about the item midway  
19 down the page -- it says, Levy schedule contingency-  
20 confidential date 9/22/08? On 020424 there's a document  
21 that discusses that.

22 A I don't recall what -- what this means. This is  
23 not a typical transmittal from the manager who ran the LINC.  
24 These are. These one pagers for each week come out weekly.  
25 This is not something that's typically transmitted, so I

1 don't recall what this is.

2 MR. REHWINKEL: Okay. And I think this just --  
3 not for your purposes, but I think this references a  
4 document that has been subject to a privilege claim.  
5 Am I correct?

6 MS. TRIPLETT: Right. It's on the privilege log.  
7 BY MR. REHWINKEL:

8 Q Well, my question to you is what can you tell me  
9 about any Levy schedule contingency that would have occurred  
10 in the September 2008 time frame?

11 A September 2008. I cannot recall what this would  
12 be.

13 MR. REHWINKEL: Before you -- I'm not trying to  
14 get him to disclose any privileged information, and  
15 certainly, if you have any concerns, express them.

16 MR. WALLS: I was just trying to figure out which  
17 document it was on the log --

18 MR. REHWINKEL: Okay.

19 MR. WALLS: -- the privilege log because Dianne  
20 probably knows better than I do. I mean, if he knows  
21 who was involved, you know, that's one thing, but we're  
22 not -- of course, we'll direct him not to disclose  
23 privileged communications.

24 MR. REHWINKEL: That's correct. And I'm not  
25 asking him to do so.

1 BY MR. REHWINKEL:

2 Q But I want to know if -- if he -- if there's  
3 anything you can tell me about any contingency related to  
4 the Levy schedule that may have been under -- considered or  
5 discussed in September of 2008.

6 A I do not recall. I do know what it's not, and  
7 it's not related to whether we'd get an LWA or not because  
8 we would not have that knowledge at this time, but I do not  
9 recall what this was about and what work was done. I don't  
10 recall.

11 Q Okay.

12 A And I may not have been involved as part of this.

13 Q Do you know whether there were any considerations  
14 of significantly changing the LNP schedule?

15 A I'm not aware of any at that time.

16 Q Okay. On -- do you have Document 47-019896 in  
17 front of you? And this is the Levy Integrated Nuclear  
18 Committee deliverable log dated -- revised 1/23/09. Do you  
19 see that?

20 A Okay.

21 Q Are you familiar with this?

22 A I am not. This would be something that the  
23 project manager that runs the LINC meeting would maintain,  
24 but the items here typically would be reflected in the  
25 weekly snapshots or in the minutes of the meeting.

1 Q Okay. Do you have any knowledge about an item  
2 that would have been discussed in May of 2007 that talked  
3 about identified plan for COLA amendment in JO -- that's  
4 joint owner, I assume -- not final by July 31?

5 A Can you show me where you see May of '07?

6 Q It's 806, which I think the meeting occurred on  
7 May of '07?

8 A Oh. This is year -- in this year 2008, Meeting  
9 Number 6?

10 Q Oh. May 7th.

11 MR. WALLS: Yeah. It's May 7th, 2008. The first  
12 number on the far left is the year. The next number is  
13 the number of the meeting.

14 MR. REHWINKEL: Yes.

15 MR. WALLS: And then the next number is the date.

16 MR. REHWINKEL: Yes.

17 A All right. So this was -- so this is --

18 BY MR. REHWINKEL:

19 Q May of '08.

20 A All right. So now -- now that I know where you're  
21 at.

22 Q Okay. What is referring -- what are they  
23 referring to here as identify plan for COLA amendment if JO  
24 not final by 7/31?

25 MR. WALLS: And let me interpose that Mr. Shiller

1 is legal counsel to the company.

2 MR. REHWINKEL: Okay.

3 MR. WALLS: So if this involves disclosing legal  
4 advice, say that, and don't disclose legal advice.

5 A In the COLA, there is -- a portion of that is the  
6 financial wherewithal of the company that is applying for  
7 the application.

8 BY MR. REHWINKEL:

9 Q Okay.

10 A If we had to close on co-ownership, that would  
11 have been affected by that -- by the fact that the amount  
12 that our company is carrying would be less than the total  
13 amount of the project. So it impacts the financial part of  
14 the application.

15 Q On Page 47-019898 -- this is from Meeting Number  
16 13, day September 26. On the last bullet item there, it  
17 says, Notification of COL docketing by NRC expected 10/06,  
18 and under action and comments it says that it was docketed  
19 10/06 and notified in advance on 10/3. What is that?

20 A That means they called me verbally to say that  
21 they would be docketing our application and that we would  
22 get that letter in the next few days. So we got a verbal  
23 heads up that we had -- they had had their vote, and they  
24 had agreed to docket our application, and then the paperwork  
25 will come out, the notification, officially in the next few

1 days.

2 Q Okay. I wanted to ask you about a document in --  
3 this is the stack that says management reports, which is a  
4 little bit later on. I want to make sure I ask about this.  
5 This is a Document at 61-000070, and it's nuclear -- Levy  
6 Nuclear Plant discussions on the Levy Project schedule.  
7 It's dated April 9th.

8 A Yes.

9 Q Are you familiar with that?

10 A I am.

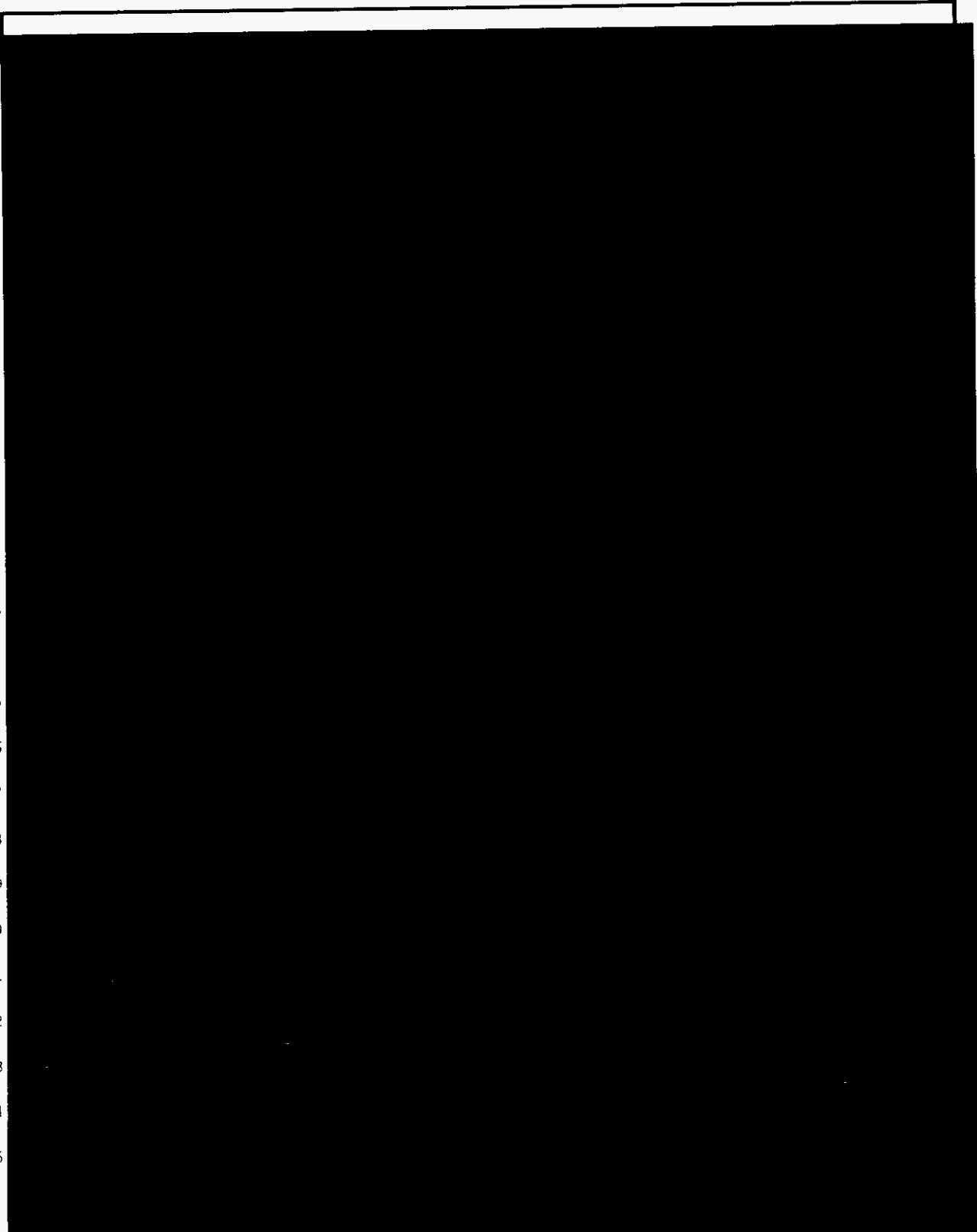
11 Q Okay. It says your name and Jeff Lyash.

12 A Yes.

13 Q What was this document for?

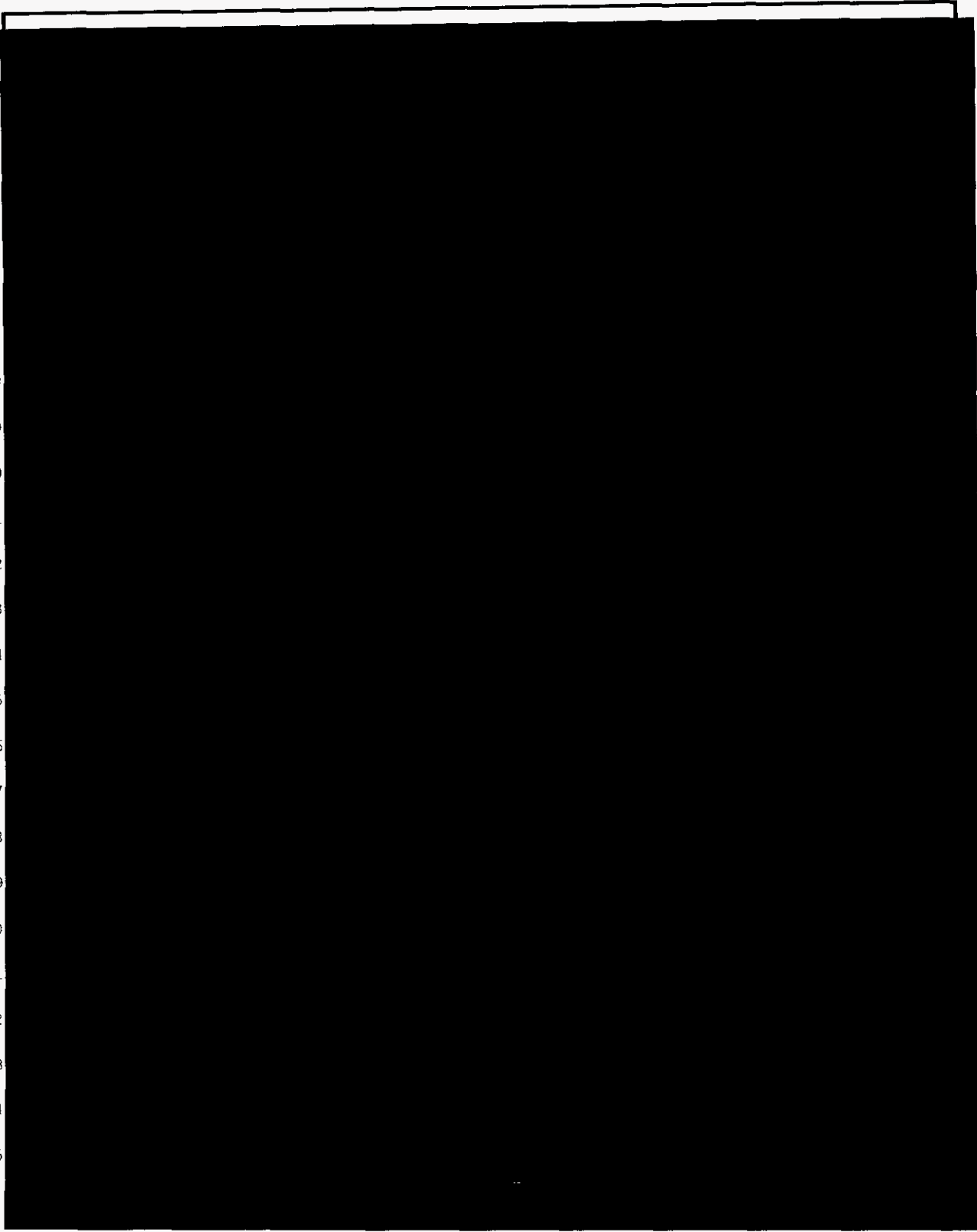
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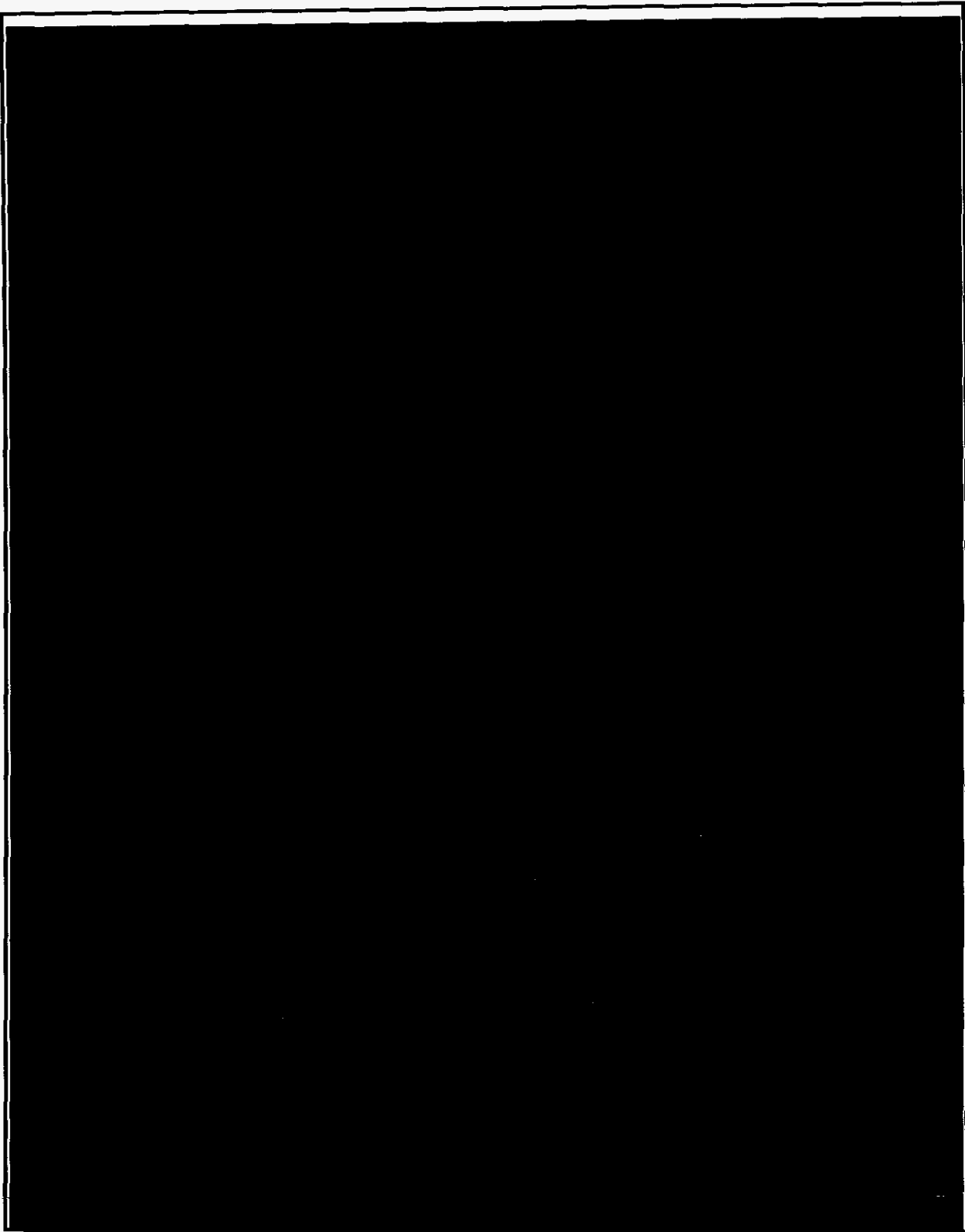
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Q Okay. Let me skip down, if I can, to 61-00087 and -- and 88. I want to talk about these two together.

THE DEPONENT: I know what he's looking at.

MR. REHWINKEL: These two documents that -- I guess these are 20-month and 36-month scenarios.

MS. TRIPLETT: Do you know what the Bates number is?

MR. REHWINKEL: I'm sorry. 00087.

THE DEPONENT: I am familiar with the document.

MR. REHWINKEL: I can kind of -- I assumed this was all part of the same presentation.

THE DEPONENT: No. That is not.

MR. REHWINKEL: You didn't share this with them? Okay. We can --

MS. TRIPLETT: 87 and 88?

MR. REHWINKEL: Yeah.

1 THE DEPONENT: Okay. Thank you.

2 BY MR. REHWINKEL:

3 Q All right. Can you tell me -- okay. First of  
4 all, up in the upper, left-hand corner of the document, it  
5 says total project estimate Rev 6, signed EPC, and says it  
6 at both of those. You see that?

7 A Yes.

8 Q What does Rev 6 refer to?

9 A Revision 6.

10 Q Okay. Were there like several different scenarios  
11 run or is this a document that is living, and then you've  
12 modified it over a course of time?

13 A The latter is correct. This -- this is a large  
14 spreadsheet that calculates cost, and it has been used. It  
15 was used for the need case, and so this is a revision level  
16 you're looking at.

17 Q Okay. And signed EPC is just the status of it  
18 after the EPC was signed?

19 A Meaning -- meaning this was reflected EP -- signed  
20 EPC cash flows.

21 Q Okay.

22 A But in the case of these two documents, one is  
23 a -- one has a 20-month shift, and one has a 36-month shift.

24 Q Correct. So 87 -- the one that's 87 is a 20-month  
25 delay, and the one at 88 is a 36-month delay. Is that

1 correct?

2 A It is correct for the purposes of calculating  
3 short-term performance.

4 Q I understand. I'm not suggesting or asking  
5 whether these have been decided upon or anything like this.

6 A Okay.

7 Q You're looking at the cost of the project if you  
8 do these things based on what you know at the time you ran  
9 these numbers?

10 A That's correct.

11 Q Okay. So the -- it looks like the one -- the  
12 36-month one, if you look at the lower, left-hand corner, it  
13 says working TPC estimate for Rev 6 scenarios 3/19/2009. So  
14 was this done on March 19th?

15 A It was done in support of a March 19th  
16 presentation that we provided under discovery to senior  
17 management committee.

18 Q Okay.

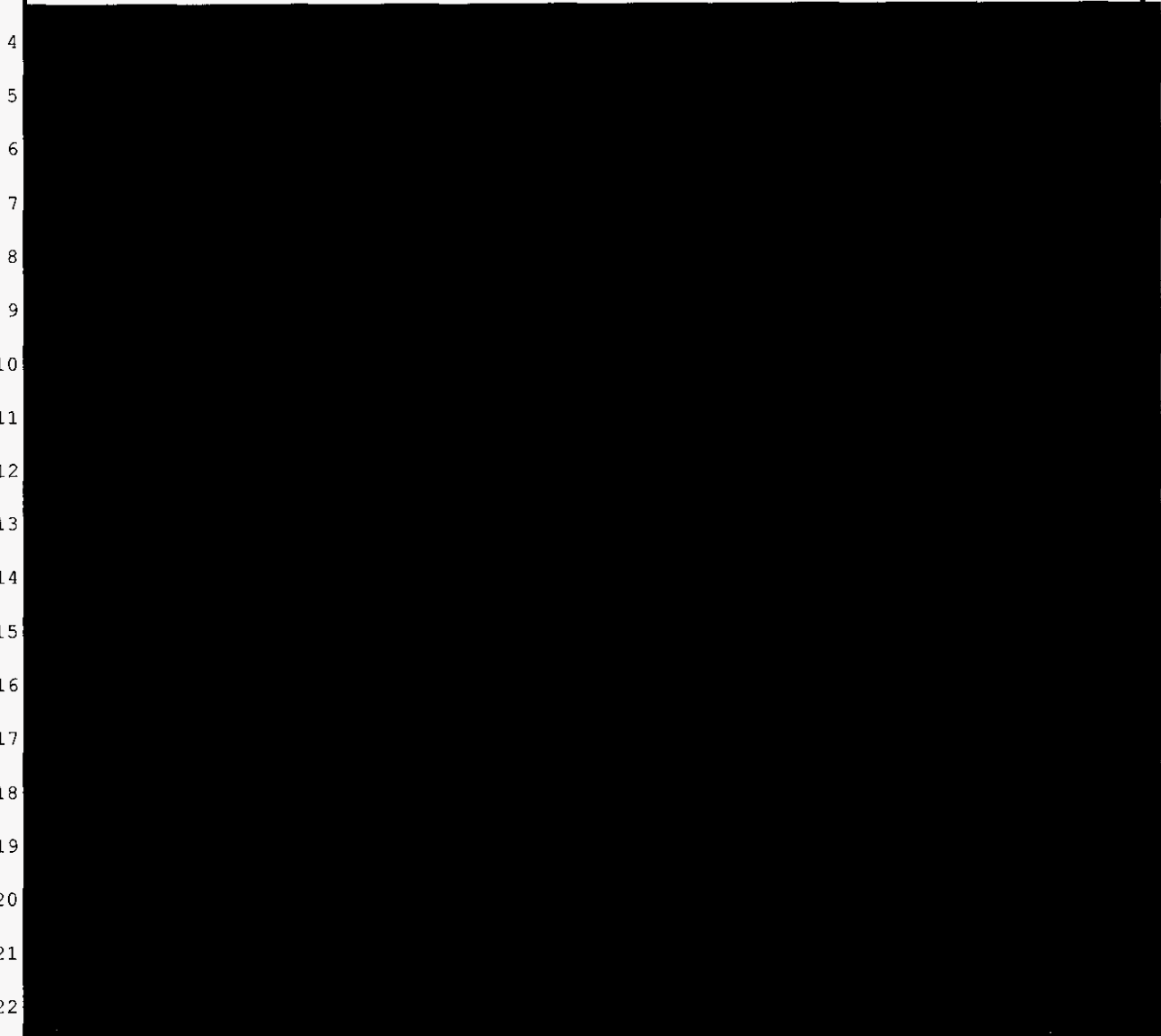
19 A And I want to say -- is that the 36 month?

20 Q Yes.

21 A That was done on March 19th, so this one was the  
22 one that was used in the March 23rd presentation.

23 Q Okay. And the 087 -- was it done at the same time  
24 or was it done -- it does not have a date in the lower,  
25 left-hand corner.

1           A     The 0087 would have been done, most likely, two  
2 weeks or one week before that date because it was used in  
3 the March 16th meeting with senior management.



23                   MR. WALLS:  Objection.  Which two numbers are you  
24 referring to?

25                   MR. REHWINKEL:  I'm sorry.  The total and the

1 total project numbers under total projected.

2 BY MR. REHWINKEL:

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24 Q So what is -- what is that -- there's a -- what's  
25 the -- the -- so you're saying there's no significance to

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1 that number?

2 A I'm saying this -- this was an existing  
3 spreadsheet, and it has many years in it, and it has  
4 columns. We did not use those columns, and those numbers  
5 are not meaningful. For the short term, we use them to help  
6 us predict capital spending in the year '09, '10 and '11,  
7 which were used, and they show up in the management reports  
8 on the 16th and the 23rd. The program automatically is  
9 calculating out in the future, but these numbers are  
10 unreliable because we have not incorporated the EPC contract  
11 amendment.

12 Q Okay. Now what you -- is what you have done,  
13 going back to that document that -- that we just talked  
14 about -- about -- on Page 9 of that April 9th document where  
15 it talks about defer as much capital spending as possible  
16 until after the COL is issued, does the -- do these  
17 documents reflect any of the total project cost impact of  
18 deferring capital throughout years?

19 A These were done by looking at the capital spending  
20 that we believe we would have to do in the '09, '10, '11  
21 time frame, and that was predicated based on moving work  
22 out, moving cap out -- capital spending out that was  
23 associated with the schedule shift, such as pouring  
24 concrete, building the plant.

25 Q So you did not make any projections about the

1 overall total cost if you shifted capital dollars into out  
2 years?

3 A It would be unreliable at this point to do that  
4 without a -- at least a negotiated contract price change  
5 with at least cash flows in a macro scale across the life of  
6 the project. Without that these out years are not reliable,  
7 and we would not make a management decision based on these  
8 numbers.

9 Q So what -- is it fair to say that what these  
10 numbers reflect is -- assuming that there was no change to  
11 the pricing of EPC as you know it today, this is what the  
12 impact would be?

13 A No. I wouldn't even say that and because there's  
14 other parameters in this spreadsheet that we did not adjust  
15 that we will probably look at again as we update our total  
16 project cost estimate. An example of that is escalation.

17 In the month -- in the last half of '08 -- and  
18 most likely what we'll find out for the first half of '09 --  
19 escalation is tracking at lower than what we predicted. We  
20 have not adjusted this spreadsheet for that because we were  
21 not trying to calculate our total project cost --

22 Q Okay.

23 A -- just calculate short-term capital spending.

24 Q The only variable in here is shifting capital  
25 dollars past a COL date?



1           A     The only thing that was changed for this run  
2 was -- that was a complicated shift because certain things  
3 we held in '09, '10 and '11 based on when we thought they  
4 would occur. Other things we pushed out for either a 20-  
5 month or a 36-month scenario without changing the numbers  
6 and pushed them out in time.

7           Q     I'm just asking because I have to understand the  
8 basis for this, and I understand -- I think I understand  
9 what you're saying, is that it's unrealistic to assume that  
10 only one thing changes, and that's the timing of your  
11 capital dollars --

12          A     That's correct.

13          Q     -- past a certain date. But if that  
14 unreasonable -- if those unreasonable factors came true,  
15 that would be the impact, even though it's not realistic to  
16 assume that?

17          A     Even beyond what you just said, though, we would  
18 go back in and incorporate the best insight on all things  
19 that affect the total project cost, fuel cost, nuclear fuel  
20 cost, escalation, anything that -- information that was  
21 available that could influence that final number. We would  
22 incorporate all insights.

23          Q     Do you have -- I've got a document section that's  
24 entitled Risk, and it starts in 47-016061. This is --  
25 starts with 47-016061, and I want to ask you about this

1 document.

2 A Okay.

3 Q A December 18th, 2007, letter.

4 A Yes.

5 Q Are you familiar with this?

6 A I am.

7 Q Okay. And it is one of your internal auditors, to  
8 Joe Donahue, Vice President of Nuclear Engineers. Is that  
9 Mr. Elnitsky's predecessor?

10 A Before an organizational change, but yes. He  
11 would have been my manager at this time.

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Q S&L?

A In this case, our owner engineer is Sargent & Lundy and Worley. Worley actually did that work for us.

Q Okay. The next document, which starts at 73-00003 --

A Yes.

Q -- are you familiar with that?

A This is a page out of a snapshot out of our risk tool prior to our migration to the new platform.

Q When would this document have been generated?

A This was in the late '08, early '09 because we migrated -- began to migrate everything to a different platform in February, and so the output looks different.

Q Okay. If I could get you to turn to the last page, which is -- it says Page 18 of 20, and it is 73-000009.

A Yes.

Q And what does this refer to?

A This refers to limited work authorization

1 approval.

2 Q Is this document -- was this document created  
3 before January 1st, 2009?

4 A This would have been in place before that because  
5 you see where it says under comments, LNP, IPP Rev 0 Risk  
6 6.1.08 incorporates -- it points back to the IPP because  
7 this risk is in there, and you can also see under the  
8 strategy where there's the Number 1 where it actually has  
9 historically that the COLA is already docketed and that we  
10 moved LWA scope.

11 Q Okay.

12 A So it's at least -- it's after that -- that point  
13 in time.

14 Q Now does this identify the LWA approval as a high  
15 risk?

16 A It identifies that the risk level overall of the  
17 activity, which incorporates probability and significance,  
18 would be a high risk activity.

19 Q What does initial probability highly likely mean?

20 A In this case, we -- and this is a bad choice of  
21 how this one's worded. We did expect to get an LWA, but  
22 impact of not getting it would be significant, and so that  
23 creates a risk level of high, and that's why it's scored,  
24 like you saw in the -- the other performance where we saw  
25 red. That's why.

1           Q     Okay.  So it had been red before the letter came  
2 from the NRC, and then the way it was treated after the  
3 letter came, based on the circumstances that were in effect  
4 at that time, made it purple?

5           A     From initial probability, it was red because it  
6 was an -- as initial probability because it's -- I said that  
7 incorrectly.  It would have had an initial risk that was  
8 high because it has a large consequence to the project if  
9 you do not get an LWA.  The question you asked me implied  
10 did that change after the -- the October 6th letter?  Is  
11 that the question you asked?

12          Q     No.  I was -- I was trying to kind of compare this  
13 highly likely, high initial risk, high current risk.  If you  
14 use that matrix analogous, it would be red and red, it seems  
15 like, before and after?

16          A     All right.  Unfortunately, I cannot tell you when  
17 this was last updated to see if it updated after the -- we  
18 got the call on January 23rd, which would have made it  
19 after -- the red would have been on it after also.  I cannot  
20 tell because it's a snapshot of a living database.

21          Q     On the strategy section under -- in the middle  
22 there, right smack in the middle of that one, LWA integrated  
23 with LNP COLA and docket -- and then they go on to say NRC  
24 review schedule is expected by January 30 of '09.

25          A     Right.

1 Q So it would have been no earlier than whenever you  
2 knew that.

3 A Right.

4 Q But it doesn't look like it's after you found out  
5 about the January 23rd meeting.

6 A And even if it was, we were migrating the risk,  
7 and let me explain. We contracted our owner engineer to  
8 come in and help us review all of our existing risk, rescore  
9 them on probability and consequence, review all of our  
10 mitigating actions, identify additional risks that we did  
11 not have existing in our database that were now present as  
12 we executed the EPC contract, and so that new platform  
13 was -- was -- we moved it too and migrated it, so there's a  
14 revised database that would have superseded this example.  
15 We migrated the concept and then -- it's in the new  
16 database.

17 Q Okay. On the next document, which is 47-020116 --

18 A Okay.

19 Q -- is this just an earlier version of the document  
20 that we just talked about?

21 A It looks like that. Matter of fact, it looks like  
22 it's a bigger printout of activities because this is all  
23 kinds of risk. This is a broader printout.

24 Q Okay. Is there any way to tell when this document  
25 was generated?

1           A     I can only tell when it was printed. I cannot  
2 tell when it was -- what the status of it was, and it  
3 appears to be printed on January 27th.

4           Q     Okay. On the Page 54 of 57 -- I'm sorry. Let's  
5 go -- let's don't go there. Let's go to 46 of 57, which is  
6 the same Number 175.

7           A     Yes.

8           Q     You see that?

9           A     Yes.

10          Q     This is Docket Number 47-020126.

11          A     Yes. This is the same item as we just looked at.

12          Q     Okay. It's slightly different because it says  
13 under the -- at the top, left-hand, it says, Risk  
14 information for all facilities, where the previous item  
15 says, Risk information assigned to Bob Kitchen. Otherwise,  
16 it looks very similar.

17          A     It looks similar to me.

18          Q     Okay. What does it mean when it says the risk  
19 identified on -- or identified on 17 May '07?

20          A     If you go back into the database, that risk would  
21 have been created in that time frame.

22          Q     Okay. So would the characterizations about highly  
23 likely, significant high and high have been the same all  
24 this time?

25          A     Not necessarily.

1 Q Okay.

2 A Because this is a living database, and we update  
3 it and -- as the project progresses.

4 Q Okay. What about on Page 34 of 57 --

5 A Going backwards.

6 Q -- which is Risk Number 132?

7 A Okay.

8 Q What does it mean there when -- it says, Levy site  
9 geotechnical acceptability, and it shows the status as being  
10 closed. What does that mean?

11 A What this means is at the time this was created  
12 and the work that we worked through, we had done enough  
13 analysis that we believed that the -- the site was suitable  
14 for the foundation, as evidenced by the fact we submitted an  
15 application later in that year in 2008. So this one here  
16 required no further action.

17 Q Does this have any relationships whatsoever to the  
18 LWA and the NRC review of the LWA?

19 A This is broader. This is what is the geotechnical  
20 characteristics of the Levy site, and have we identified  
21 anything in that review that would make this site not  
22 suitable? And the answer is no because obviously we did the  
23 analysis, and we produced all the documentation to submit to  
24 the NRC that the site was favorable.

25 Q How does it interrelate to Risk 185, which is on



1 54 of 57, which is LNP geotechnical conclusions and  
2 foundation, looks like, design?

3 A So this was identified in June of '08, so  
4 something came up that -- that suggests to us that we  
5 incorporate this in. Adverse feature -- oh. Notice in the  
6 issue description --

7 Q Uh-huh?

8 A -- the sufficiency letter. So that gives you an  
9 idea of the timing of when this was actually last updated  
10 because it incorporated that. So this issue would have been  
11 included in that. It relates to Items 132 that have been  
12 closed, which you have indicated. But what we did is after  
13 the questions came up and -- with the October 6th docketing,  
14 we put it back in the system, but it's changed because this  
15 is now a more narrow focus of what they're looking at, this  
16 analysis of bridging mat function and what's below that, and  
17 that's what this is about.

18 Q Well, when you mention that sentence about a Levy  
19 COLA sufficiency letter dated October 6th, the NRC presented  
20 13 questions associated with the Levy COLA geotechnical  
21 sections.

22 A Yes.

23 Q Now those are the RAIs that were related to the  
24 LWA. Correct?

25 A Those RAIs are much broader than anything in the

1 LWA. For example, the analysis of how large a void can be  
2 below the bridging mat is not an LWA-related topic.

3 Q So you're saying those RAIs that were -- came back  
4 to you on October 6th were not related at all to the NRC's  
5 review of the LWA?

6 A I'm saying that the geotechnical questions they  
7 asked were broad, and they included subjects that were not  
8 related to LWA. They may have had something -- some  
9 question in it related to LWA. I'd have to go back and look  
10 at the questions and do one at a time look, but my point is  
11 the questions they submitted were broader than anything  
12 associated with an LWA, such as the analysis of how large a  
13 void could be below the bridging mat.

14 Q So were there -- in your opinion, are you starting  
15 that there was no linkage between those RAIs and their  
16 statement in the October 6th letter about the complexity of  
17 the geotechnical characteristics of that site?

18 A Well, the LWA in general -- to do the analysis,  
19 they have to understand the geotechnical characteristics of  
20 the site, and because we have a limestone and an engineered  
21 backfill, that is part of that geotechnical complication,  
22 but my point to you is it's not just LWA. It's  
23 geotechnical. So it's the whole FSAR 2.5 section that  
24 they're asking questions on.

25 Q But isn't it true -- or is it true that the LWA

1 decision was delayed because they did not feel comfortable  
2 with the geotechnical data that they had at the time you  
3 filed the LWA?

4 MR. WALLS: Objection. Calls for speculation,  
5 mischaracterization.

6 But go ahead.

7 A Ask your question again, if you don't mind.

8 BY MR. REHWINKEL:

9 Q Yes. That's fine. Is the LWA -- was the  
10 reason -- let me ask it this way. Was the NRC's reluctance  
11 to issue -- to make a decision on the LWA the way you wanted  
12 it based on their desire to look closer at the geotechnical  
13 characteristics of the site?

14 A Their discussions with us about the -- not being  
15 able to produce an LWA related to the fact that they said  
16 the time it would take them to review that scope of work,  
17 because it is closely coupled with the geotechnical review,  
18 would take them the full amount of time, meaning as long as  
19 a COL.

20 Q So is it fair to say that they were not willing to  
21 separate out any geotechnical assessment necessary for the  
22 LWA from any geotechnical assessment necessitated for the  
23 broader foundation issue?

24 A And they could not because the engineered  
25 backfill, which is part of the LWA scope, is relied upon in

1 the geotechnical analysis, so you could not uncouple them  
2 from that perspective.

3 Q So that degree -- these risks that are identified  
4 in 185, 175 and 132 are all linked?

5 A They're all geotechnical but the -- the way they  
6 affected the NRC development of review schedule and the  
7 ultimate time it takes to do a COL or an LWA -- it's much  
8 more complicated and sort of case by case.

9 Q Well, was it -- was it reasonable to assume that  
10 there was no linkage as far as your risk assessment between  
11 their broader geotechnical concerns and their reluctance to  
12 issue the LWA milestones as you would prefer?

13 A Our reasoning was we knew that the -- that the --  
14 once the hole was excavated, the analysis for the engineered  
15 backfill and the rebar and the mud mat, those were, we  
16 believed, to be relatively straightforward because we were  
17 going to make available to them information from roller-  
18 compacted concrete testing that we were going to do on the  
19 bridging mat design.

20 We did understand that they had to analyze the  
21 soil structure interaction which depends on that engineered  
22 backfill, that RCC bridging mat, but it gets back to what we  
23 talked about earlier, which is, again, I was able to  
24 actually develop all my application and analysis and do all  
25 the borings in 18 months and then hand them the results of

1 the analysis and make available all the calculations that  
2 they'd want to look at. So we still would not have expected  
3 42 months to render a decision on the scope in the LWA, even  
4 though some of that relates to geotechnical.

5 Q Is it your view that the NRC -- well, did you get  
6 any indications the NRC had any issues of competence with  
7 the data that CH2M Hill was providing through the COLA?

8 A We did not get any issues of competence. We  
9 get -- we got feedback on they needed additional  
10 information.

11 Q Was it related to the problems that CH2M Hill had  
12 had as they had observed in their auditing process?

13 A I have not seen any linkage from the NRC that says  
14 they have a concern over the analysis or the results  
15 presented in our application that relates back to the stop  
16 work order that we had early in the project.

17 Q Do you have the IPP draft or the version that's at  
18 47-018709? If it'll be easier, I can just hand this.

19 A I'm familiar with that document.

20 Q Okay. This is -- this is not the current version  
21 of the IPP.

22 A It's --

23 Q It has Garry Miller, David Tietzer, initial  
24 publication September 5, '08?

25 A That is not the executed copy.

1 Q Okay.

2 A But it's -- September 5th was the draft -- was the  
3 Rev 0.

4 Q Okay. My question to you is on 47-018742 you do  
5 some risk assessment. Is that correct?

6 A Correct.

7 Q And on Page 34 of 71, under the nuclear generation  
8 specific risks, Item Number 8 says limited work  
9 authorization LWA approval. And what is the risk that you  
10 associate with that?

11 A I need to get the copy so I can read it.

12 Q Okay.

13 A But it's -- there it is. Right there. It's  
14 critical to a -- as a consequence, but we had a low  
15 possibility we would not get one.

16 Q Very low, actually. Right?

17 A Right. Very low.

18 Q Okay.

19 A But it was -- from an overall risk, those two  
20 together, this caused it to be a high risk, and you can see  
21 it's in this part of the -- the table versus being over  
22 there.

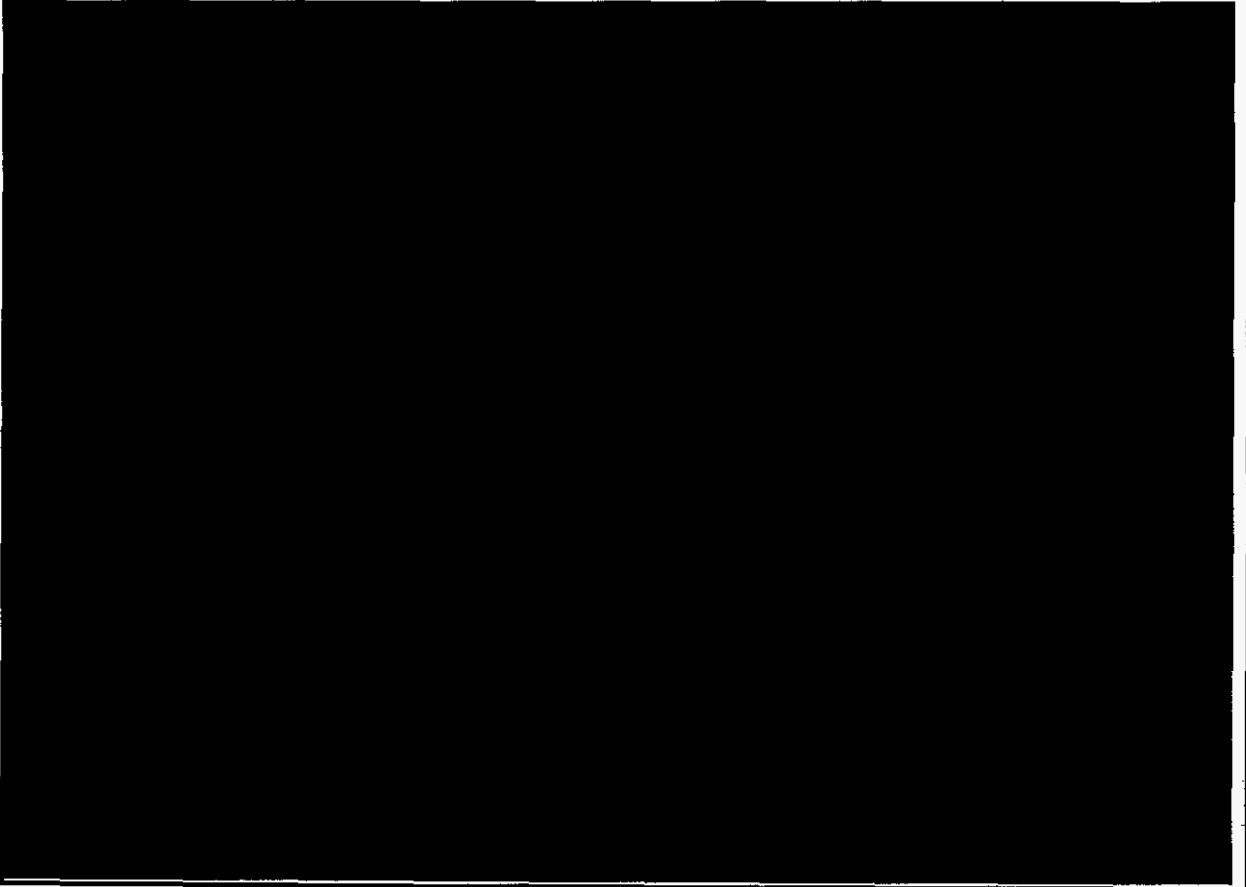
23 Q Okay. You mean it's in the --

24 A It's in that broad area in the center.

25 Q Okay. So would this characterization here have it

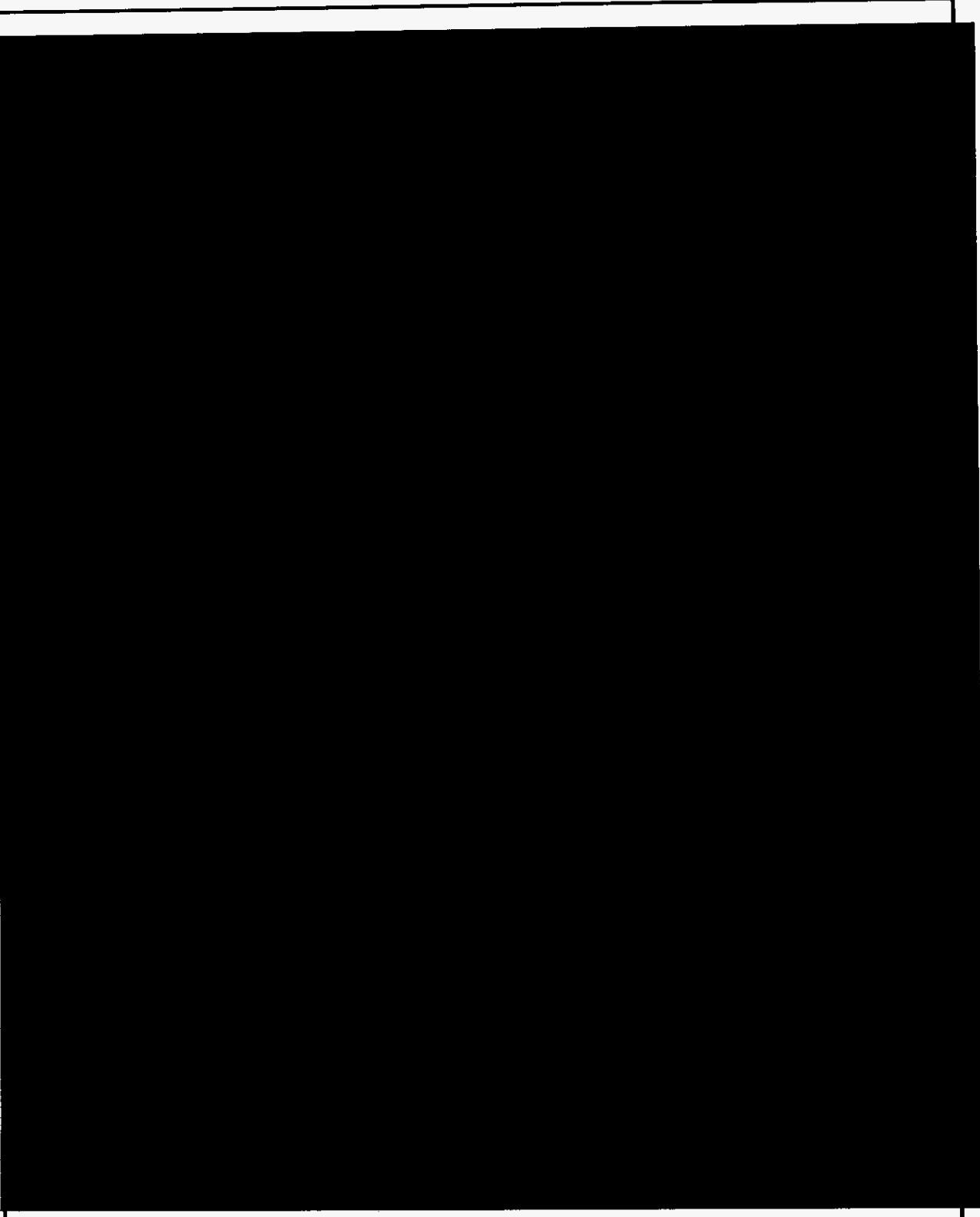
1 in a high risk watch list, so to speak?

2 A Well, from an overall project prospective, it was  
3 one of those items that we felt in -- as we reviewed the  
4 project, that was one of those ones that rose to the level  
5 that we would want to advise management of that item, and  
6 that document you have was developed in September of 2008, I  
7 believe, and so as you look at all the various risks we've  
8 identified for the project, that clearly is one that we  
9 wanted to bring to their attention. In that document, all  
10 of those things that are listed are the higher risks for the  
11 projects -- for this project.



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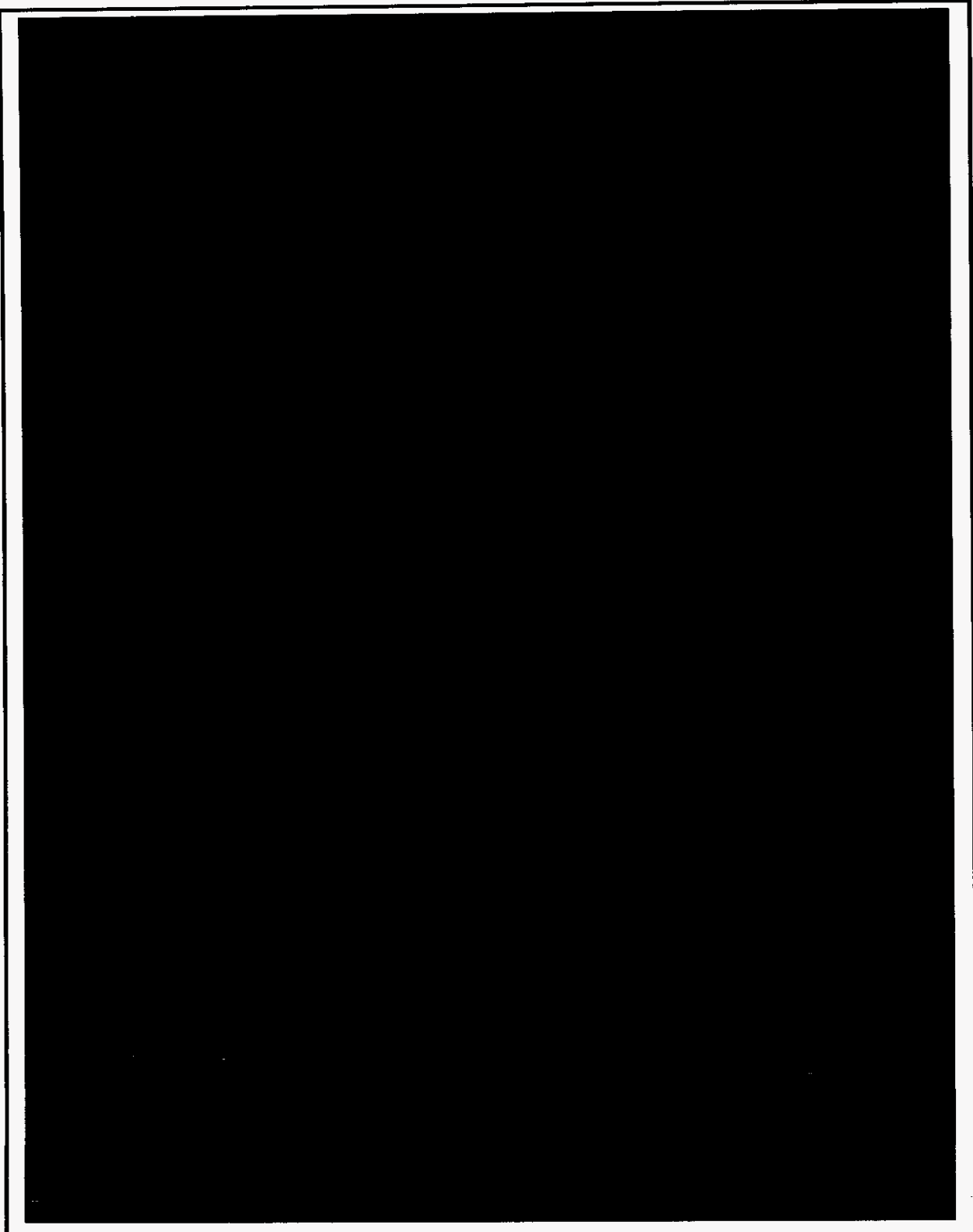
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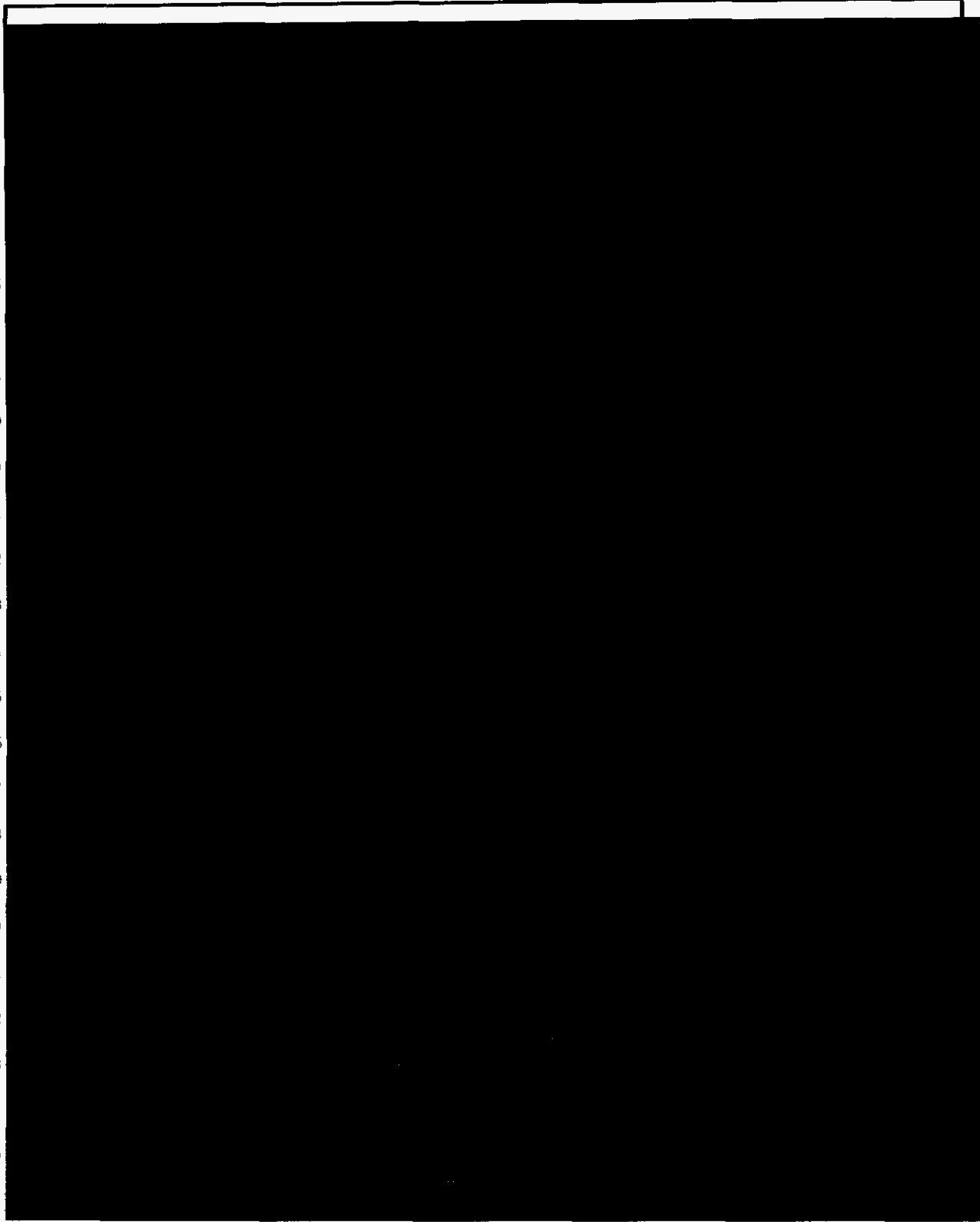


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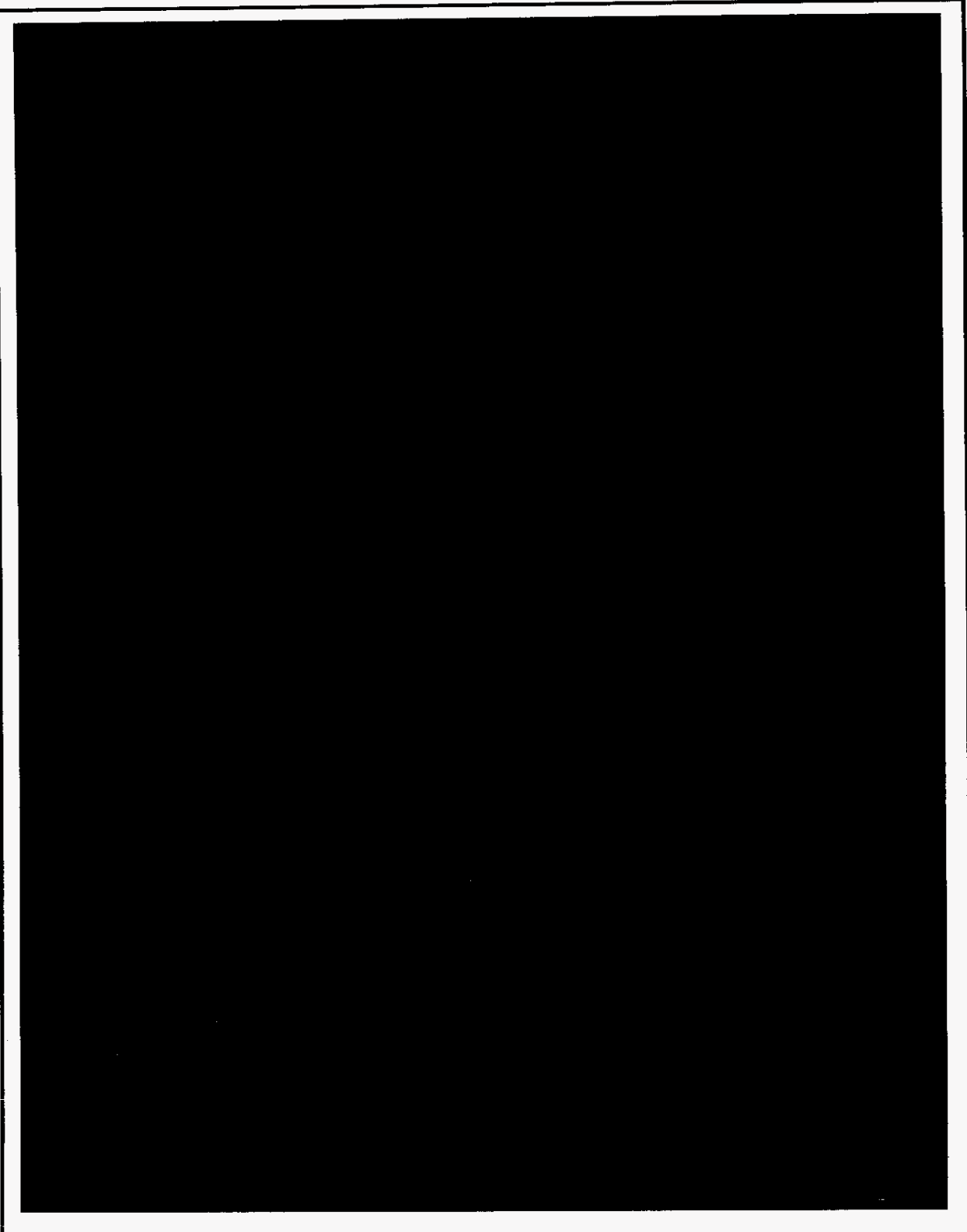
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10 Q Okay. Do you have Interrogatory 62 in front of  
11 you?

12 MR. WALLS: No. Actually, we don't because we  
13 only go up to 49.

14 MR. REHWINKEL: That's 62, but you just filed it  
15 the other day. I understand.

16 A Okay.

17 BY MR. REHWINKEL:

18 Q Could you explain to me why the -- you say we  
19 should ignore or disregard the financial information that is  
20 in OPC 47-004375 to 004433?

21 A The Janus Management Organization, which did this  
22 independent review of our project controls, had access to  
23 some of our spreadsheets and included some spreadsheet  
24 information erroneously in their report, and that's why we  
25 say it should be disregard. I'd have to go back and look at

1 the document specifically.

2 MR. WALLS: And they reported what they reviewed.

3 THE DEPONENT: Correct.

4 BY MR. REHWINKEL:

5 Q Okay. So you're not saying that they generated --  
6 that they attached a document that you all generated? That  
7 PEF generated?

8 A That's correct. I'd have to go back and look at  
9 the -- the process and what those Bates number pages look  
10 like, but that was -- but when that was brought to my  
11 attention, I realized that -- that should not have gone in  
12 their report, so it should be disregarded.

13 MR. WALLS: In what they reviewed.

14 THE DEPONENT: Correct.

15 BY MR. REHWINKEL:

16 Q Well, was -- is what they included in their report  
17 was that -- what was the nature of that information with  
18 respect to why it was generated in the first place?

19 A When they came to my organization to independently  
20 review our activities, they looked at a wealth of documents,  
21 contracts, change orders and analysis. They looked at some  
22 of our cost analysis, and they erroneously picked this up,  
23 and that's how this occurred.

24 Q When was that document that they erroneously  
25 picked up -- when was it generated?

1           A     Let's see. It would have been -- this was done in  
2 the -- in the early part of this year, 2009, time frame. I  
3 know it was done as we were preparing for our May 1st  
4 filing. This was done in advance of that. It was in that  
5 time frame.

6           Q     What -- I think the document generated an estimate  
7 of the total project cost at around 21 billion dollars. Do  
8 you recall that?

9           A     I would have to go back and look at the document,  
10 the actual document itself that you're referring to here and  
11 pull it back out.

12          Q     Was the purpose of that document to look at  
13 potential financial impacts of the schedule shift?

14          A     I mean, it was not that because we've done only  
15 two analysis for that, and I was involved in both of those,  
16 and those were done to support the March 16th meeting and to  
17 support to the March 23rd meeting for the 20 month and the  
18 36, which you have already -- we looked at a few moments ago  
19 as part of this dialogue.

20               MR. REHWINKEL: Okay. I apologize for the length  
21 of my questions.

22               THE DEPONENT: I don't mind.

23               MR. REHWINKEL: I am done with my questions. If  
24 anyone has questions, now's the time.  
25

CERTIFICATE OF OATH

1  
2 STATE OF FLORIDA )  
3 COUNTY OF HILLSBOROUGH)  
4

5 I, Penny M. Appleton, Court Reporter, certify that  
6 Garry Miller personally appeared before me and was duly  
7 sworn.

8 Witness my hand and official seal this 5th day of  
9 July, 2009.

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18 Penny M. Appleton, RPR  
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C E R T I F I C A T E

1  
2 STATE OF FLORIDA

3 COUNTY OF HILLSBOROUGH  
4

5 I, Penny M. Appleton, Court Reporter for the  
6 Circuit Court of the Thirteenth Judicial Circuit of the  
7 State of Florida, in and for Hillsborough County,

8 DO HEREBY CERTIFY, that I was authorized to and  
9 did, report in shorthand the proceedings and evidence in the  
10 above-styled cause, as stated in the caption hereto, and  
11 that the foregoing pages constitute a true and correct  
12 transcription of my shorthand report of said proceedings and  
13 evidence.

14 IN WITNESS WHEREOF, I have hereunto set my hand in  
15 the City of Tampa, County of Hillsborough, State of Florida  
16 this 5th day of July, 2009.  
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25 Penny M. Appleton, RPR

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## 1                                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2  
3   IN RE:   NUCLEAR POWER PLANT  
4            COST RECOVERY CLAUSE  
5   \_\_\_\_\_ /

Docket No: 090009

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9                                   DEPOSITION TRANSCRIPT

10                                  Volume II, Pages 263-323

11  
12   DEPOSITION OF:               GARRY DALE MILLER13   TAKEN AT:                     Carlton Fields  
14                                   4221 W. Boyscout Boulevard, Suite 1000  
15                                   Tampa, Florida16  
17   DATE & TIME:                 July 2, 2009  
18                                   Commencing at 12:15 p.m.19  
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21  
22   REPORTED BY:                 Penny M. Appleton, RPR  
23                                   Notary Public

24                                   Berryhill &amp; Associates, Inc.

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1 (The deposition continued as follows:)

2 MR. MOYLE: This is Jon Moyle. I have some, but  
3 I'll defer.

4 MS. BENNETT: This is Lisa Bennet, and Anna  
5 Williams is right here with me. We have a couple of  
6 questions related to that last line of questioning, but  
7 I need to just a have a minute with staff to -- to make  
8 sure I'm asking the right questions.

9 MR. REHWINKEL: Okay. Is Jay Brew still on?

10 MR. BREW: Jay Brew is here. I'm going back  
11 through my notes so I don't try to cover the same  
12 ground that Charles has been through.

13 EXAMINATION

14 BY MR. BREW:

15 Q While I do, good afternoon, Mr. Miller.

16 A Good afternoon.

17 Q My name is Jay Brew. I'm an attorney for PCS  
18 Phosphate.

19 A Okay.

20 Q And first, I admire your stamina at this point.

21 A Thank you.

22 Q In response to the -- PCS's first set of  
23 interrogatories, do you happen to have them with you?

24 A I believe I do. Stand by.

25 Q Okay.

1           A     I have them in front of me now. This is Questions  
2 1 through 25.

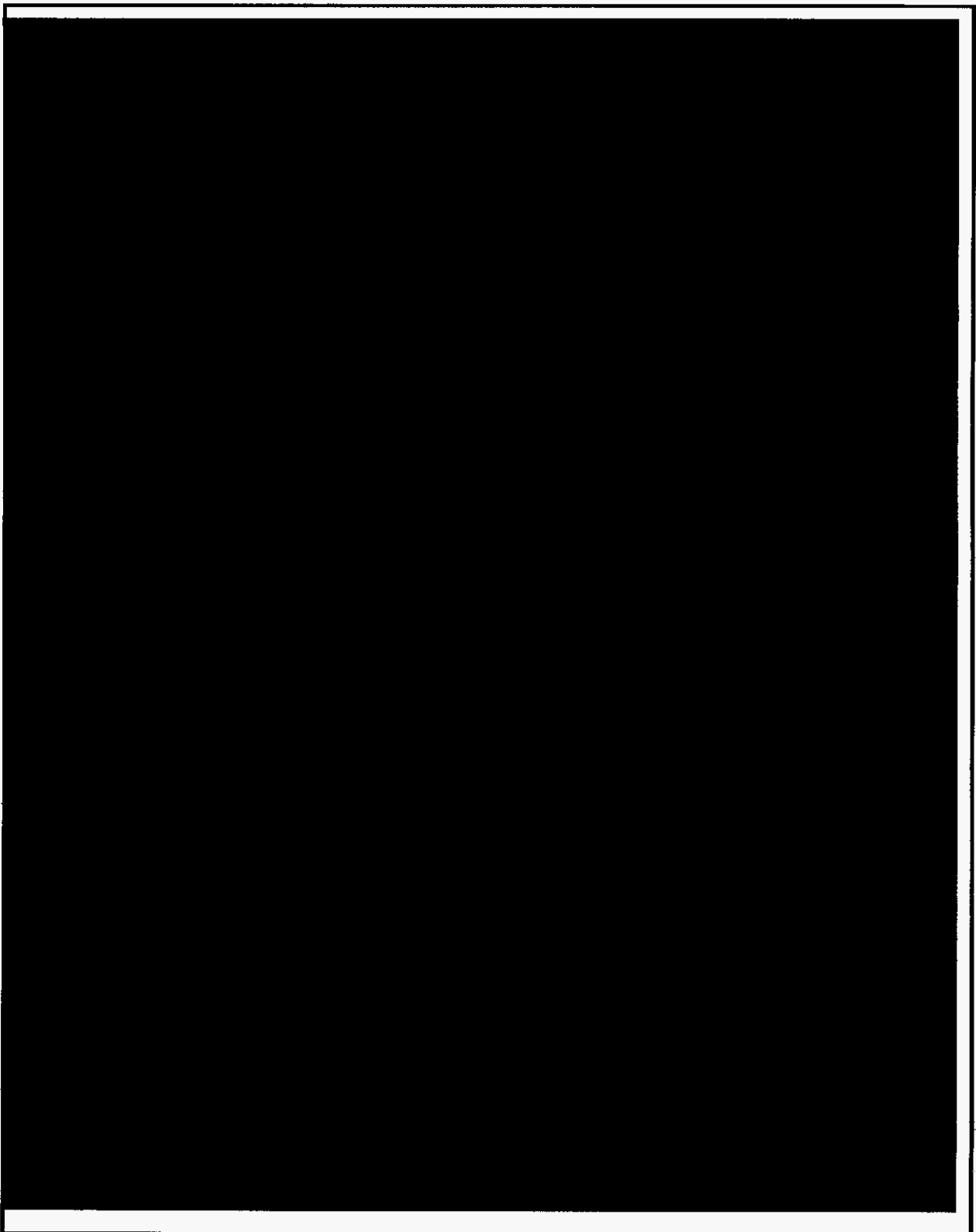
3           Q     That's correct. And just take a look at the first  
4 one, which asks about the current estimate of the in-service  
5 date.

6           A     Question Number 1. Yes. Okay.

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Q Okay. And so that analysis is expected to be completed sometime this year?

A Yes, this year.

Q Can you be more specific as to when you expect it?

A The analysis is in progress right now. We're hopeful -- we're hopeful that it will be completed in the August time frame.

Q Okay. Now as part of that analysis, is Progress going to go back to its board for a go/no-go decision on the project?

A That will be the decision of our senior management and our president. I don't know if that's required or not.

Q Okay. That's beyond the scope of what you're doing?

A That is -- yes. I will advise our senior



1 management and -- so they can make an informed decision on  
2 the schedule shift, and then I'm sure the board will be  
3 briefed. I don't know if it requires a permission.

4 Q Okay. Bear with me. I'm trying to jump around  
5 and not be repetitive, but I did want to go back actually to  
6 the last topic you were discussing on the -- on the -- with  
7 the NRC staff and the -- the decision with respect to not  
8 approving the -- the LWA.

9 MR. WALLS: Object to the characterization.

10 MR. BREW: Okay. Let me get to a question then.

11 A Just to clarify, it's not that they did not  
12 approve the LWA. They said it would take as long as a COL,  
13 so that scope is in the COL.

14 BY MR. BREW:

15 Q Okay. That's what -- that's what I wanted to just  
16 talk about for a minute. I thought you said earlier that  
17 or -- am I correct that Progress never intended that the LWA  
18 would cover all of the geotechnical issues that have to go  
19 through the COLA. Is that right?

20 A That is correct. The LWA only covers  
21 preconstruction activity or what they refer to as  
22 construction from a regulatory perspective but activities  
23 that are in advance of first concrete when the COL was  
24 issued.

25 Q Okay. And the issue -- what you heard from the

1 NRC staff is that review of the LWA issues would take at  
2 least as long as the geotechnical review of the COLA?

3 A That is correct.

4 Q And that for their purposes, they deem as  
5 practical to try to uncouple them?

6 A That is correct.

7 Q Okay. So, in effect, once you filed in September  
8 to add the dewatering issues to the LWA, you were locked  
9 into that?

10 MR. WALLS: Object to vague and ambiguous what you  
11 mean by locked in.

12 BY MR. BREW:

13 Q Okay. Did you have any indication that the -- the  
14 NRC staff deemed those issues as -- that they could not  
15 uncouple those -- the LWA issues from the geotechnical  
16 review prior to, I guess, your January conference call?

17 A They -- they had not had any discussion with us  
18 that said that the LWA timeline would take as long as the  
19 COL based on LWA scope, not before January 23rd. There was  
20 no discussion on that.

21 Q Okay. On Page 12 of your May testimony.

22 A Okay. I'm there.

23 Q And in the Q and A that begins at Page 7, you talk  
24 about the option that the company evaluated with respect to  
25 LWA.

1           A     Yes.

2           Q     And you mention the company chose the third  
3 option. That was based on the presentation of those options  
4 to the board?

5           A     No. That was a decision -- an informed decision  
6 by our -- my staff to our management based on the relative  
7 value -- the relative pros and cons of each of those  
8 options.

9           Q     So it was a Levy team decision as opposed to a  
10 senior management or Board of Director's decision?

11          A     It was a Levy team decision and recommendation to  
12 our senior management. I do not recall that the board was  
13 involved in this decision.

14          Q     It was a recommendation to senior management?

15          A     Correct.

16          Q     And the -- that recommendation did not take into  
17 account the impact of the schedule shift in terms of total  
18 project cost of schedule because you're still working on  
19 that?

20          A     The March 16th and March 17th presentations  
21 were -- excuse me -- March 16th and March 23rd presentations  
22 to the senior management committee where we went through our  
23 options and discussed our recommendation to shift the  
24 schedule, we did not have revised cost at that point. We  
25 did attempt to analyze the short term, which we felt like we

1 did with some precision, but the total project cost is still  
2 not available.

3 Q And no estimates on the total project cost were  
4 presented in those presentations?

5 A That was not part of that scope. Our focus was on  
6 short-term capital spending in the next two to three years.

7 Q Do you know if there were any other meetings or  
8 discussions with senior management that discussed total  
9 project cost impact?

10 A I'm sure they were discussed in terms of they want  
11 the total project cost, but in terms of giving numbers,  
12 without a negotiated contract amendment, you cannot  
13 calculate those numbers.

14 Q Okay. The -- the 17.2 billion total project cost  
15 from the need case --

16 A Yes.

17 Q -- that was done prior to having an EPC. Right?

18 A That is correct.

19 Q So how is this different?

20 MR. WALLS: How is what different?

21 BY MR. BREW:

22 Q How does the need to renegotiate the EPC have a  
23 bearing on the total project cost estimate?

24 MR. WALLS: Vague, ambiguous.

25 Do you understand?

1           A     I believe I understand his question. It is we  
2 were able to calculate a total project cost for the need  
3 filing before the EPC was executed, so why can we not do  
4 that now? Well, the answer is -- the answer is we had  
5 documentation that was a buildup of the price for the plant,  
6 and we had that in the February time frame of 2008, which  
7 was the basis for our need filing. The final negotiated EPC  
8 did not change the number significantly and so the price --  
9 the total project cost stays approximately the same number.

10 BY MR. BREW:

11           Q     Mr. Miller, your testimony on -- the May testimony  
12 on Page 15 -- and you discussed this with Mr. Rehwinkel  
13 related to the ongoing feasibility.

14           A     On Page 15?

15           Q     Page 15, Line 10. It starts with, The continuing  
16 need for base load generating capacity.

17           A     I see -- I see where you're at in my testimony.

18           Q     Okay. And you reference it at Page 25, either  
19 way, but do you have any involvement in Progress'  
20 preparation of the 10-year site plan?

21           A     I provide input to that.

22           Q     Okay. With the -- with the schedule slippage, is  
23 there any base load capacity that Progress will be adding  
24 over the next 10 years?

25           A     I do not know the answer to that question based --

1 as -- as asked by you, which is based on the schedule  
2 change.

3 Q That's correct.

4 A I do not know if that will affect --

5 Q Okay.

6 A -- any generated additions prior -- in the next --  
7 you say 10 years?

8 Q With the scope of the 10-year site plan, yes.

9 A I do not know.

10 Q Okay. Mr. Miller, you said earlier today that in  
11 addition to the regular meetings and drop-ins, you would  
12 have regular discussions with the NRC project manager.

13 A That is correct.

14 Q Okay. Are those discussions that you would have  
15 directly or would it be Mr. Kitchen or individual staff  
16 people?

17 A It's typically Mr. Kitchen because he is my  
18 Manager of Nuclear Licensing, and part of his charge is to  
19 oversee the COL development, and so he has an ongoing  
20 dialogue with the project managers. It's typically every  
21 week, and you could have one week where it doesn't occur  
22 because of holidays, but it's on the average about every  
23 week.

24 Q Okay. And during the period that you've been  
25 talking about with Mr. Rehwinkel, from the filing of the

1 application in July through January, am I correct that you  
2 would have had regular discussions regarding the LWA and the  
3 geotechnical issues?

4 A In the context of the application being docketed  
5 and then what RAIs were necessary to develop on the  
6 schedule, we would have those discussions.

7 Q Okay. In your discussions with the staff,  
8 particularly around the January 23rd conference call, can  
9 you describe what was the nature of the staff concern? Was  
10 it the -- there simply was too much information to look at?

11 A The --

12 Q With respect to the LWA.

13 A The call that occurred on January 23rd when they  
14 discussed the LWA, the fact that it would not come before a  
15 COL, they discussed it from the framework of the sequence of  
16 work they needed to do would take that much time.

17 Q Okay. And their discussion of that sequence of  
18 work occurred for the first time with that conference call?

19 A For -- that would result in an LWA not coming  
20 before a COL, the first time that they said that to us was  
21 January 23rd.

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MR. BREW: Thanks very much. That's all I have.

MS. WILLIAMS: This is Ann from the PSC. Can we ask a couple questions?

MR. REHWINKEL: Yes.

EXAMINATION

BY MS. WILLIAMS:

Q I just wanted to -- Mr. Miller, I'm Anna Williams, and I wanted to go back to your last line of questioning when you were discussing with Mr. Rehwinkel some of the inaccuracies in a document. I just wanted to ask you if it was -- we couldn't really hear very well, and we wanted to know if it was the PFC staff financial audit or the PFC



1 staff management audit that is stated was based on  
2 inaccurate information.

3 A Stand by. We're going to pull the document so we  
4 can be very specific here.

5 Q Okay. Thank you.

6 A This was a report not done by the auditors by the  
7 staff. This was a report done by a third-party company, and  
8 that company's -- that company's name is Janus. Stand by.

9 MR. REHWINKEL: Interrogatory 62. Do you have it?

10 THE DEPONENT: No.

11 A So this was -- this was -- no. Clearly not  
12 anything from the PFC or the staff. This was a third-party  
13 company named Janus Management. The leadership -- the  
14 fellow who is a leader in that organization -- his name is  
15 Gary Doughty.

16 MS. WILLIAMS: Okay. That's all we needed. Thank  
17 you.

18 THE DEPONENT: Okay.

19 MR. MOYLE: I have a few questions for you.

20 THE DEPONENT: Okay.

21 MR. MOYLE: Can you hear me up there? I'm using a  
22 BlackBerry speakerphone.

23 THE DEPONENT: I can hear you fine.

24 MR. MOYLE: Okay. I'll try to be brief. I just  
25 have some follow-up questions and will try not to be

1 redundant. Let me -- there's been a lot of talk  
2 about --

3 MR. REHWINKEL: Can you state your name for the  
4 court reporter?

5 MR. MOYLE: Sure. J-o-n, first name; last name  
6 Moyle, M-o-y-l-e; Keefe Anchors Gordon & Moyle, 118  
7 North Gadsden Street, Tallahassee, Florida.

8 MR. WALLS: We didn't recognize your voice, Jon.  
9 Sorry.

10 MR. MOYLE: That's okay. It's been a long day.

11 EXAMINATION

12 BY MR. MOYLE:

13 Q Let me refer you to your testimony that was filed,  
14 I believe, May 1. And you talk about the options that you  
15 considered when you got word that the LWA could not be  
16 processed in advance of the COL. There were three options  
17 you considered. Correct?

18 A That is correct.

19 Q Okay. The exemption from the LWA -- describe that  
20 process, what you understand of that process?

21 A There is a process under Part 50 that we would  
22 request an LWA. The -- what you do is you request the  
23 equivalent work scope that would be inviting that LWA, and  
24 you ask permission from that from the NRC.

25 It is an existing process that already is in

1 place. So you can refer to -- I believe it's in Part 50.  
2 Somewhere in there is where it describes that exemption  
3 process.

4 So what you would be doing, you would be asking  
5 the NRC to say ignore the LWA rule. Instead, I would like  
6 to have an exemption from the requirement that you  
7 preapprove this scope of work before I do it.

8 Q Are you familiar with the waiver of variance  
9 process that is found in Chapter 120 of Florida Statutes?

10 A I am not.

11 Q Okay. Do you know if the federal exemption  
12 process that you've referenced as Parts 50 and 52 of the  
13 Code of Federal Regulations contemplates a time frame for  
14 action on the exemption request?

15 A I do not know if there is a time frame for a  
16 decision on an exemption request that's consistent with  
17 what's in the Florida Statutes.

18 Q Okay. And I just was wondering about the Florida  
19 Statutes because I'm more familiar with that, but don't  
20 worry about those. But I'm just trying to understand what  
21 you all did to analyze the exemption option. And did you  
22 talk with anybody at the NRC about -- about what they  
23 thought if you had requested an exemption?

24 A We secured external counsel on this matter that  
25 were -- that were very familiar with NRC Rules and

1 Regulations.

2 Q All right. But with respect to talking to them,  
3 you have -- I think you testified earlier there was a  
4 project manager within the NRC. Is that right?

5 A That is the project manager assigned to the Levy  
6 Project I was referring to.

7 Q Okay. Who is the project manager?

8 A Brian Anderson.

9 Q And he is a federal government employee?

10 A He is.

11 Q Okay. Did you have any conversations with him --  
12 I think you earlier talked about weekly discussions. Did  
13 you have any conversations with him about this exemption?

14 A We did not.

15 Q And, as we sit here today, you're not aware of the  
16 time frame that could be involved in seeking an exemption?

17 A I don't recall it. I just don't recall it from  
18 our discussions that we had with our external counsel, if  
19 there is one or if it has time.

20 Q And you said in your testimony you determined --  
21 this is on Page 13, Lines 2 through 4.

22 A Lines 2 through 4? I see that.

23 Q And I'll quote, "The company determined, however,  
24 that obtaining an exemption from the LWA is uncertain and  
25 risks even further delay." Why did you -- why did you --

1 why did you say that it's uncertain?

2 A The reason I say that is because our analysis and  
3 our consultation with our external counsel -- we had a  
4 better understanding of the risk and the process associated  
5 with the part -- with this exemption process, and we were  
6 concerned that it would be challenged and delayed such that  
7 you would not get a decision, and then ultimately the  
8 decision could be no, you cannot have the exemption.

9 Q Did you have any information that pursuing this  
10 exemption would -- would extend you beyond the time frame  
11 for the COL?

12 A From our own understanding of how the NRC  
13 processes work, individuals that would have been involved in  
14 this exemption request may have been the same individuals  
15 who were working on our COLA.

16 Q Did they tell you that if you filed an exemption  
17 they would be required to pull staff off the COLA? Did they  
18 tell you that?

19 A The NRC did not tell us that. We did not advise  
20 the NRC when we were going through this analysis that we  
21 were considering this. The individuals involved in our  
22 project management -- we did not advise them on our analysis  
23 and evaluation of this exemption consideration.

24 Q Did you have the relationship with the people  
25 processing applications at the NRC that you felt comfortable

1 raising it with them or maybe not?

2 A We have a positive relationship with the  
3 leadership team of the Nuclear Regulatory Commission that's  
4 involved in the review of our application. We did not feel  
5 it was necessary to talk to those individuals about this  
6 because they're focused on the implementation of the COL  
7 process under Part 52. What we were considering was an  
8 exemption under Part 50, which is a very different process.

9 Q No. I understand. And some of these questions --  
10 I've done some environmental permitting and worked with  
11 regulators. Sometimes the informal conversation will give  
12 you insight to information, but I'm just trying to  
13 understand. It sounds like those informal conversations  
14 with respect to the exemptions never took place. Correct?

15 A I don't recall having any conversations with the  
16 individuals that were reviewing our application on this  
17 other approach.

18 Q Okay. And when you state in your testimony on  
19 Line 4, Risk even further delay, what are you referring to?  
20 I'm unclear about the delay as compared to what?

21 A The delay would be if we go down the path of  
22 seeking an exemption and we are unable to get that approval  
23 and it is pushed into an extended litigation, then we still  
24 don't have a result being able to do the work, and in the  
25 meantime, if we stayed on the same 2016 schedule, that would

1 create an awkwardness in the fact that we would still have  
2 to move the schedule but we had not taken the action to  
3 reduce our capital spending pending the schedule shift.

4 Q Why do you believe there's a likelihood that the  
5 exemption would be challenged if it were granted?

6 A That statement is based on our analysis and also  
7 our discussions with our legal counsel.

8 Q I don't want to -- I don't really care about, you  
9 know, the legal advice you're getting, but I'm trying to  
10 understand the basis for the belief, you know, that you  
11 think you'd be challenged. And has any environmental  
12 organization come to you and said, Hey, you know, we're  
13 taking you on tooth and nail on every aspect of this  
14 project?

15 A Our COL -- we have intervention by three parties  
16 on our application currently. We also have intervention on  
17 our site certification application.

18 Q Who's intervened on your site certification  
19 application?

20 A The people -- some individuals on the call.

21 Q Do you know how many parties are -- have  
22 intervened in your certification?

23 A I do. And I can name them. That's all public  
24 record.

25 MR. WALLS: I believe so.

1 BY MR. MOYLE:

2 Q I'm just trying to understand your understanding  
3 of the likelihood of a challenge.

4 A Your question is -- we have already experienced  
5 intervention on our COL, and we have contentions that are  
6 outstanding that are being dispositioned by the Atomic  
7 Safety and Licensing Board. We also had intervention on our  
8 site certification application, and so we envision that  
9 this -- taking this route, which is clearly being done in  
10 lieu of the Part 52 process, which is what it's really  
11 designed for, would invite challenge.

12 Q I want to ask you just a couple question about  
13 this -- the drop-by meetings. Those are what? Casual,  
14 informal meetings where you kind of drop by staff and just  
15 check in?

16 A Yeah. What they are is that you can schedule  
17 meetings with the NRC. For example, I could call our  
18 project manager or his supervisor, and I could schedule to  
19 go up and have a one-on-one discussion with them, but when  
20 you get beyond a certain number of people, there is a  
21 requirement under the NRC rules that meeting be publicly  
22 noticed.

23 Q Did you all regularly have these drop-by meetings?

24 A Regular drop-by meetings are a typical activity of  
25 operating and plants under -- nuclear plants that are under



1 development. That is a standard way that we maintain a  
2 relationship with the regulators and get input from what  
3 they're thinking and as we advise them on what we're seeing.  
4 That's a standard process.

5 Q You have previously used, I think, the term "heads  
6 up" in response to a question. Do you know was there any --  
7 did you go to these drop-by meetings?

8 A I was in some of those. For example, September  
9 9th, 2008.

10 Q Are there any records or notes of these drop-by  
11 meetings? Do you know?

12 A There are typically not because they are -- they  
13 are an informal dialogue between the licensee or an  
14 applicant and the NRC staff. There's typically not, like,  
15 for example, meeting minutes, if that's what you're asking.

16 Q And I'm just -- contemporaneous notes, I guess.  
17 There are not contemporaneous notes that necessarily occur  
18 from these meetings. Is that right?

19 A That's correct.

20 Q And then you talked about the public meeting, and  
21 that is a different animal. Correct?

22 A I'm sorry. Say your question again.

23 Q You talked about a public meeting where it's a  
24 publicly noticed meeting. That's a different animal than a  
25 drop-by meeting. Correct?

1           A       That is correct. The publicly noticed meeting  
2 will have a notice that goes out. I think it's at least 10  
3 days before the meeting. It will say what the meeting's  
4 about, what the agenda is, who is going to participate, and  
5 typically, those meetings will also have a presentation,  
6 would actually be put back on the ADAMS under the NRC  
7 website for viewing by the public.

8           Q       Okay. And when you had these public meetings,  
9 were other -- other people in attendance besides you and the  
10 NRC staff?

11          A       That was common to have other utilities, other law  
12 firms, other interested parties that would listen in, either  
13 on the phone or in person.

14          Q       So there are records of these public meetings.  
15 Correct?

16          A       Yes. You can go to the NRC website, and they're  
17 listed in chronological sequence.

18          Q       Okay. And you never -- it was never brought up  
19 with you, at either the drop-by meetings or in the public  
20 meetings, that you were never given a heads up that the LWA  
21 was not going to be issued in advance of the COL?

22          A       That is correct. And let me say that  
23 affirmatively. In all the interactions we had with the NRC,  
24 both in public meeting forums and drop in where we had  
25 smaller discussions -- in all of those dialogues, we did not

1 get any indication from the NRC that the LWA would not be  
2 issued because it took as long as a COL. That first  
3 indication from the NRC came January 23rd.

4 Q And that was a telephone call. Correct?

5 A That is correct.

6 Q Did that surprise you that that's how that was  
7 communicated to you?

8 A They were calling us to advise us what they were  
9 proposing to put in the schedule, and the fact that we were  
10 told over the phone versus in paper -- I think they wanted  
11 to tell us before we saw it in writing.

12 Q In response to some questions from Mr. Rehwinkel,  
13 I took a note that you had indicated there was 17  
14 applications pending. Is that right?

15 A My understanding from media literature is there  
16 was approximately 17 applications submitted to the Nuclear  
17 Regulatory Commission for new nuclear plants.

18 Q And do you know how many of those were in advance  
19 of the one that you submitted?

20 A I would be speculating on the number. I don't  
21 remember how many were in advance of ours. There were  
22 certainly some before and certainly some after.

23 Q And did you say that none of them had included an  
24 LWA request, except yours?

25 A I had confirmed through David Matthews, who is a

1 leader in the NRC in the nuclear reactor office  
2 leadership -- the new reactor office leadership, that all  
3 other COLs -- none of those included a limited work  
4 authorization request.

5 Q Before filing your application, did you all go and  
6 look at the pending applications that were filed?

7 A We are aware of the applications that are being  
8 submitted as part of the AP1000 fleet which most -- which  
9 look most like our application, and so we've been involved  
10 with our peers on that, including some going over and  
11 looking at some of their chapters, and they've come over and  
12 looked at some of our chapters as we were preparing these  
13 applications for quality -- to do a quality peer review.

14 Q And really, where I'm trying to go with this is  
15 just to get your impression. It struck me as a little  
16 unusual that out of 17 applications none of them had an LWA,  
17 and maybe there was something that could be gleaned from  
18 that. Did you question that as to why none of the other  
19 applications didn't have an LWA request associated with  
20 them?

21 A Well, our knowledge of what's going on in the  
22 industry -- for example, let remind you that there are only  
23 four utilities that have executed EPC contracts that know  
24 actually when physical work would start to construct a  
25 plant, and you have to look at their individual schedules,

1 and you have to also consider when their COLs would be  
2 delivered to see if they even needed one. So it's a very  
3 utility-specific request, and if you had a site that you had  
4 a COL in but you really didn't have a plan for when you'd  
5 start construction, you would most likely not request an  
6 LWA. As an example, our Harris application does not have an  
7 LWA request.

8 Q Is Southern moving forward with their nuclear  
9 project? Do you know?

10 A They are.

11 Q Is Florida Power & Line also moving forward with  
12 their project?

13 A My understanding from discussions with my peers  
14 yesterday is they submitted a COL application in the last  
15 two days.

16 Q You have -- shifting gears just briefly, you spent  
17 a lot of time talking about cost as part of an analysis. Am  
18 I correct in that in addition to considering things like the  
19 capital markets and the regulatory environment, you know,  
20 your rate case, that you also regularly and routinely  
21 consider the cost of the Levy Nuclear Project?

22 A Well, we're in the early stages of the Levy  
23 Project since the need was approved August 12th so but -- so  
24 my point was as we progress through the project we will also  
25 be cognizant of what the total cost estimates are as we

1 calculate in what the as-spent costs are as we Progress  
2 through the execution of the project, and if some  
3 significant event took place in the world or in our economy  
4 or in the United States that had some significant impact on  
5 the total project cost, we would certainly pause and decide  
6 whether that impacted our decision to move forward.

7 Q Do -- are you -- as part of your job  
8 responsibility, do you follow the capital markets?

9 A That is not my specific job responsibility.

10 Q Do you know if there was consideration of -- of  
11 discontinuing the efforts to site the nuclear plant last  
12 year in the fall when the capital markets were extremely  
13 volatile on behalf of your company?

14 A I am not aware that there was any discussion in  
15 that regard, and our actions do not reflect that we would  
16 have that -- that we had a discussion like that. We -- our  
17 actions were we continued to move forward with the project.

18 Q You have to renegotiate the EPC contract given the  
19 slippage. Is that right?

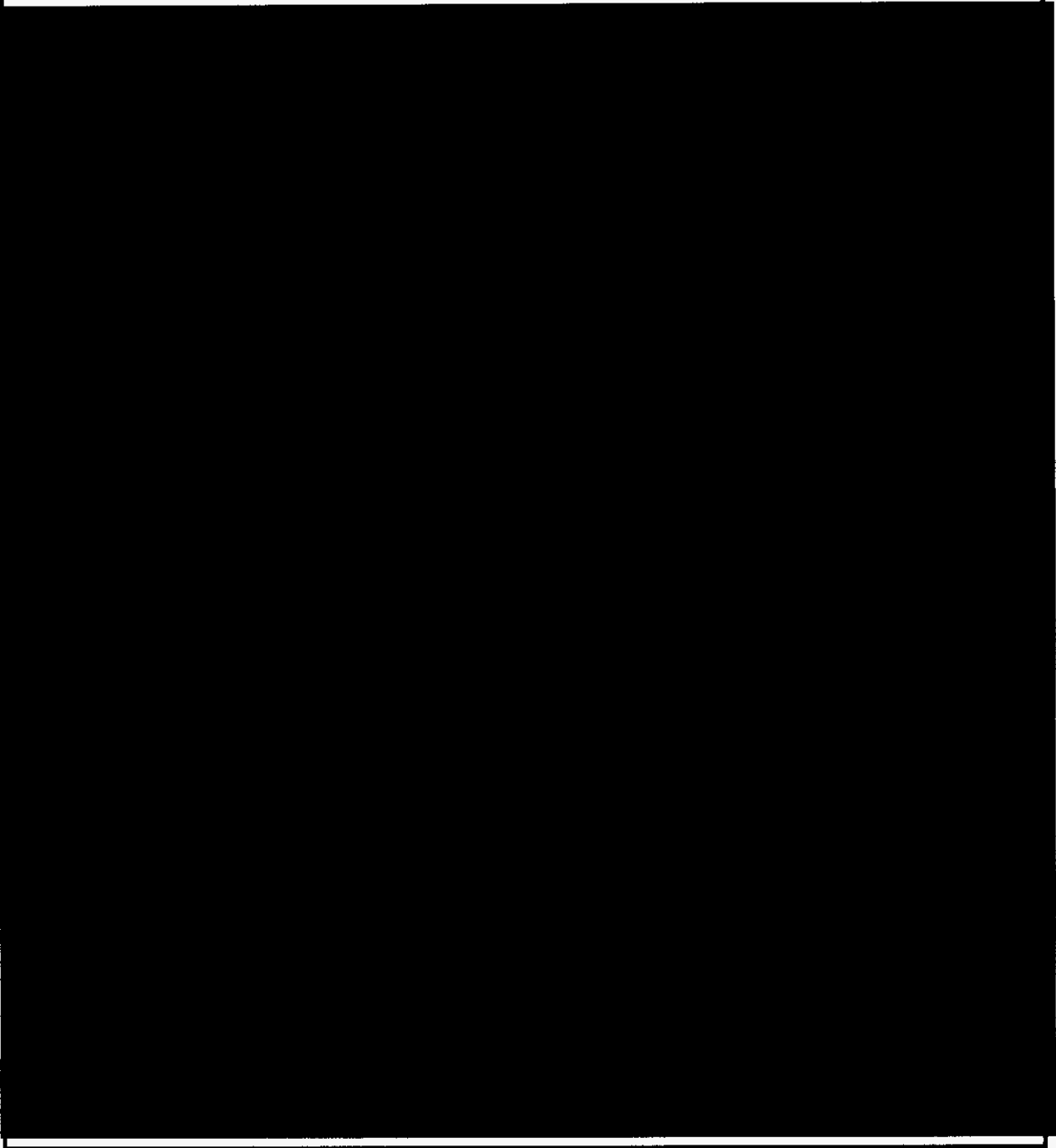
20 A We have to negotiate an amendment to the EPC  
21 contract agreement. We have the -- the agreement is still  
22 in force.

23 Q Okay. Have you produced the EPC contract in this  
24 case?

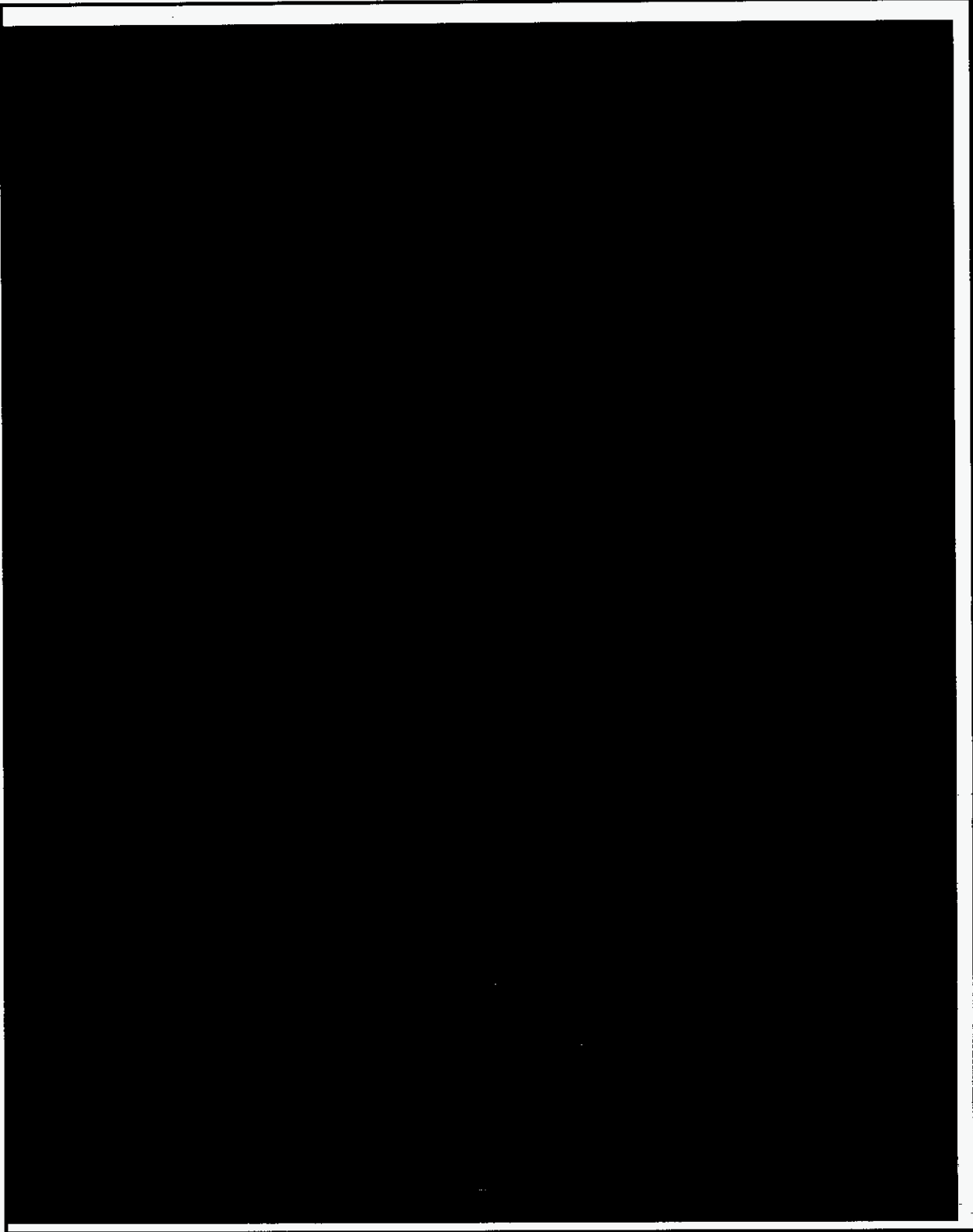
25 A We have produced it and --

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MR. WALLS: Under the terms of confidentiality  
that we're bound by.  
BY MR. MOYLE:



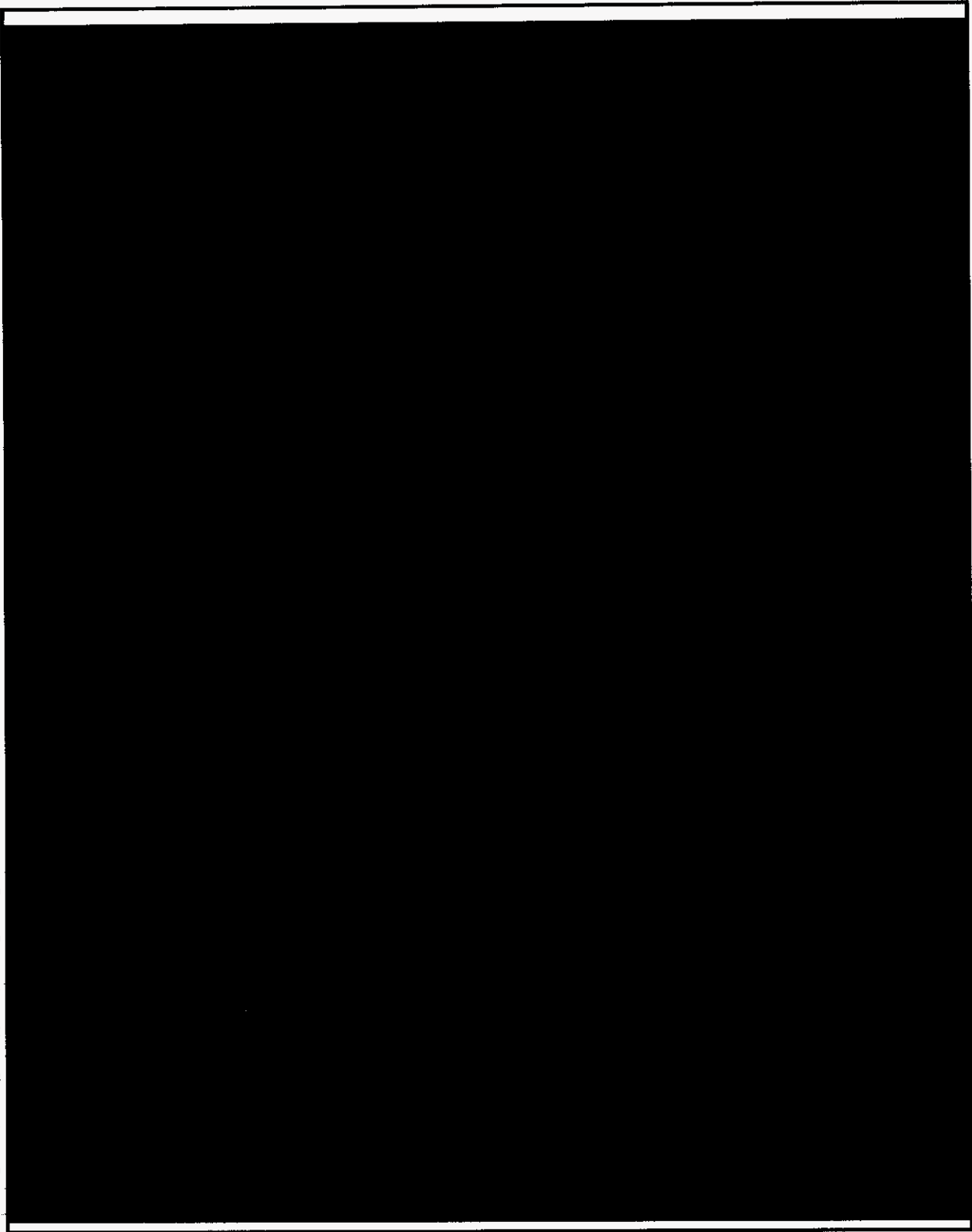
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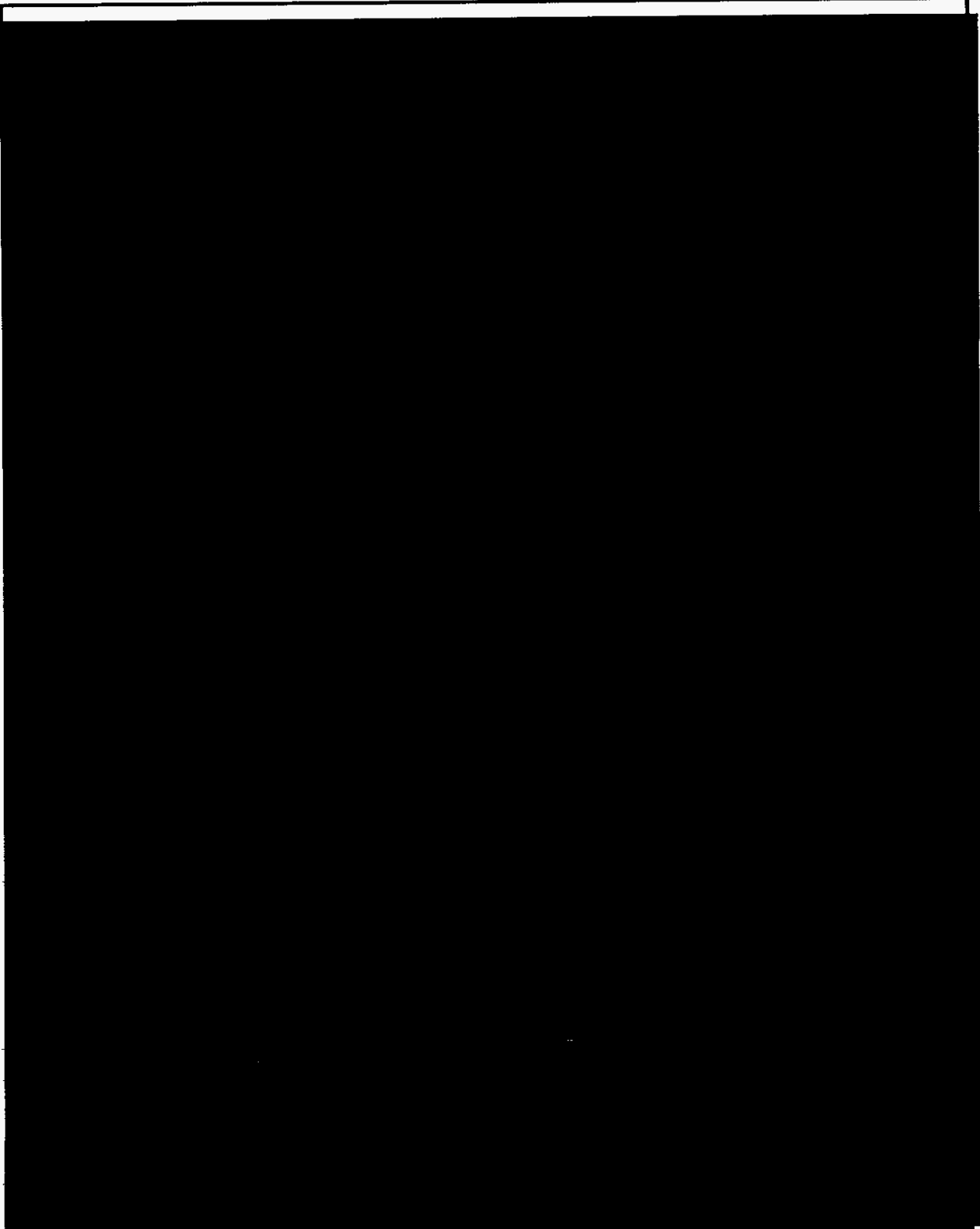


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20 Q Okay. Just a couple more questions, and I  
21 appreciate your time and patience on a holiday weekend. You  
22 were asked some questions about partners. Do you have any  
23 letters of intent executed with any partners at this point?

24 A In terms of your phrase, a letter of intent, we do  
25 not have at this point letters of intent that are leading to

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1 the closing that would be the next -- the next stage before  
2 you set the closing date. I interpret your question to be  
3 do we have a letter of intent signed that says we will close  
4 on this agreement on a certain date, and I'm not aware that  
5 those are in place yet.

6 Q And maybe I should have asked for an understanding  
7 of letter of intent so we're talking about the same thing.  
8 I have some familiarity that in advance of signing a  
9 full-blown contract oftentimes there are documents that are  
10 executed in advance of the fully articulated, binding  
11 agreement. Is that your understanding?

12 A Yes. And in the case of the EPC, we had a letter  
13 of intent that we talked about earlier.

14 Q Would you anticipate also having letters of intent  
15 executed by any partners who may join with you in the LNP  
16 Project?

17 A I don't recall if that's the way we're approaching  
18 it. I know we have non-disclosure agreements in place with  
19 those perspective partners, and I know they have had acces  
20 to our EPC. I just don't recall if a letter of intent or an  
21 MOU or something similar to that is in place that says  
22 that -- I don't know if there's anything like that in place.

23 Q If something like that was in place, do you think  
24 you'd be aware of it?

25 A I'm sorry. Say your question again.

1           Q     If an MOU or a letter of intent was in place with  
2 a partner, presumably that would be something you'd be aware  
3 of, given your role in this project?

4           A     Well, my role from a co-ownership participation is  
5 to support those negotiations by providing technical and  
6 regulatory and financial information for them. Our legal  
7 counsel is involved with their legal counsel on the various  
8 documents and agreements.

9           Q     Just a couple of other questions.

10          A     I'm sorry. Did you ask a question?

11          Q     Yes. You're an employee of what company?

12          A     Progress Energy Carolina.

13          Q     And who is the parent of Progress Energy  
14 Carolinas?

15          A     Progress Energy, Inc.

16          Q     Since you're working on the Levy Project, am I  
17 correct in presuming that your -- your expense related to  
18 this is allocated between the Harris Project and the Levy  
19 Project?

20          A     You are correct. My expense is allocated between  
21 these two projects.

22          Q     Are there -- are there any costs that you're aware  
23 of associated with the Levy Project that have been spent to  
24 date for recovery that has not been sought?

25          A     In our May 1st filing, all of the expenditures

1 associated with the Levy Project are included in that. I am  
2 not aware of anything outside of that May 1st filing.

3 Q Okay. And what I was trying to get at is there  
4 was a lot of questions about CH2M Hill and some of their  
5 engineering work and maybe a few things that could have been  
6 done differently. You're not aware of any adjustments that  
7 have been made or any decreases in price or something you  
8 guys saying we're not going to pay for this because of the  
9 deficient service, are you?

10 A In regards to CH2M Hill, we told them that their  
11 recovery actions would be covered by their expenses directly  
12 and we would not pay those, and the work they do for both  
13 applications is highly segregated in our accounting system,  
14 particularly for the work they were doing that we've been  
15 talking about, which is geotechnical. They're physically  
16 different sites. They were mobilized at different times.  
17 The individuals involved in the sites, including the company  
18 that did the drilling, were separate companies, so that work  
19 is treated in accounting space separate under Progress  
20 Energy Carolinas than the work they did at Levy, which is  
21 treated under Progress Energy Florida.

22 Q The company we're dealing with here is Progress  
23 Energy Florida. Correct?

24 A That is correct. Progress Energy Florida is the  
25 legal entity that entered into the EPC contract.

1 Q Okay. Do you know if there is any -- any costs  
2 that Progress Energy of Florida has expended to date  
3 associated with the Levy Project for which it is not seeking  
4 recovery from rate payers?

5 A That sound like the same question you asked me a  
6 few moments ago, and the answer is I am not aware of any  
7 money spent on the Levy Project that we've not identified  
8 full recovery from rate payers. I will point out, though,  
9 the language which is in my testimony of the timing of that  
10 recovery, which is on the bottom of Page 16, where we  
11 propose a 50 percent reduction in the cost recovery over  
12 what is entitled to be collected under it, but at the same  
13 time, we are still pointing out what our -- our costs are  
14 associated with the Levy Project and putting that in the  
15 record through our May 1st filing.

16 Q Just one more line of questioning, and I think  
17 we'll be done. There was a lot of testimony about the karst  
18 system in Florida. You're familiar with that geological  
19 system?

20 A I am.

21 Q Sinkholes are part of that system typically as  
22 well, are they not?

23 MR. WALLS: Objection to the characterization as a  
24 system.

25 But go ahead.

1           A     A sinkhole could be developed from a -- from a  
2 large karst feature which is below the surface or a sinkhole  
3 could be developed by moving fluids underneath the surfaces  
4 which washes out the soil, and it then collapses.

5                     In our case, we went through the detailed analysis  
6 of the Levy site to demonstrate that there are not sinkhole  
7 features and -- that would be attributed to anything from  
8 some large karst feature that's below the site. That is  
9 addressed in our analysis.

10 BY MR. MOYLE:

11           Q     And that includes the soil -- the borings that you  
12 did?

13           A     Correct. That's why there were so many borings,  
14 about 108, and some of those borings are quite deep as  
15 compared to we did a fewer number at our other application  
16 for the Harris site, and that was to ensure we could  
17 sufficiently quantify the characteristics and the depth of  
18 what those -- if there were any karst features, that we  
19 would see those in our borings, and we could analyze those.

20           Q     Have you ever heard or do you have any information  
21 about a landfill in either Pasco or Pinellas County in which  
22 DEP denied a landfill permit because of concerns over karst  
23 conditions including sinkholes?

24           A     I am not familiar with that case.

25                     MR. MOYLE: All right. Thank you. Thank you for



1 your time.

2 MR. JACOBS: Hi. Good afternoon. This is Leon  
3 Jacobs. I'm with the firm of Williams and Jacobs. I  
4 represent Southern Alliance for Clean Energy.

5 THE DEPONENT: Hello, Leon.

6 MR. JACOBS: We were the party that you were  
7 referring to earlier that entered in the -- in the site  
8 certification proceedings.

9 If it's okay, there are two other counsel,  
10 co-counsel, on the line with me, Jamie Whitlock and  
11 Gary Davis. I had to step out for awhile, and I would  
12 like -- they filed for qualified representative status  
13 with the commission, but an order hasn't been entered  
14 yet. I think it will be helpful, because they were  
15 sitting on the whole process and to avoid any redundant  
16 questions, if I handed them off to -- to do the  
17 examination of Mr. Miller, if that's okay with  
18 everyone.

19 MR. WALLS: Are you meaning just one of them or  
20 are they both --

21 MR. JACOBS: Oh, no. Just one. Just one.

22 MR. WALLS: Okay. That's fine.

23 EXAMINATION

24 BY MR. WHITLOCK:

25 Q Mr. Miller, good evening. How are you?

1 A I'm doing fine.

2 Q Can you hear me okay?

3 A Yes, I can. I hear you clearly.

4 MR. WALLS: If you could, just identify yourself  
5 for us.

6 MR. WHITLOCK: This is Jamie Whitlock. I'm an  
7 attorney with Gary Davis and Associates and appearing  
8 on behalf of the Southern Alliance for Clean Energy.

9 BY MR. WHITLOCK:

10 Q Mr. Miller, I'm going to be brief as I can, and if  
11 I am redundant in anything, I apologize in advance. As  
12 you're well aware, we've covered a lot of ground today, and  
13 I appreciate you sticking around and your patience.

14 A You're welcome.

15 Q Looking at your testimony, if you have that in  
16 front of you --

17 A Okay.

18 Q -- on Pages 14 and on Page 15 -- on Page 15/6, you  
19 referred to a period of uncertain federal energy policy.  
20 Just briefly elaborate on what you're referring to there.

21 A Let's take two examples, the ongoing deliberations  
22 by the Congress of the United States associated with cap and  
23 trade for carbon, and another example of that would be  
24 deliberations ongoing with respect to renewable energy  
25 portfolio requirements and whether new nuclear is included

1 in that or not. That's two examples.

2 Q And so now have -- and so as far as these two  
3 examples, have you -- have you included these in your  
4 analysis or in any of your testimony?

5 A The purpose of this testimony on -- and this is on  
6 Page -- top of 15 that you're referring to. It's referring  
7 to the fact as we make our decision on the overall shift  
8 that we make in the Levy Project schedule, we're going to  
9 consider these -- the reducing the financial demands on the  
10 company and its customers during a period of uncertain  
11 federal policy regulation and the economic downturn. I  
12 don't understand what your question is. It is exactly what  
13 we say -- what we say in my testimony here.

14 Q So prior to the schedule shift, were you -- was  
15 PEF considering the uncertain federal energy policy and the  
16 economic downturn?

17 A Well, when we submitted our need case March 11th  
18 of last year, we were not in an economic downturn, and as we  
19 submitted that analysis and talked about nuclear versus  
20 other technologies, we certainly had different examples of  
21 carbon approaches based on Waxman, Lieberman, other  
22 different kinds of models, so we were following energy  
23 policy regulations at that point also, and it's reflected in  
24 our need filing.

25 Q And since the time of your need filing, would you

1 agree that the energy policy is even more uncertain now than  
2 it was then?

3 A It's certainly changing faster, and there are  
4 certain things that are playing out that we would like to  
5 see how they settle, such as carbon.

6 Q Have you looked at the Waxman/Markey bill anywhere  
7 in your testimony. I believe in your second exhibit, GM-2,  
8 of your testimony.

9 A Yes.

10 Q I don't see anywhere across the top there where  
11 you considered Waxman/Markey. Is that correct?

12 A That is not in this table.

13 Q So it's not in this table. Have you done any  
14 subsequent analysis using the renewables and the other  
15 provisions of the Waxman/Markey bill?

16 A If you're asking have we done something similar to  
17 what was in the need case, I have not done that analysis,  
18 and I don't have -- I've not seen it. For the Waxman/Markey  
19 proposed legislation.

20 Q Okay. Staying with Exhibit GM-2, now as far as  
21 the cost that you have listed in that table going across the  
22 top of the table --

23 A Yes.

24 Q -- there's some different costs for carbon there.  
25 Correct?

1           A     For different -- different carbon taxing  
2 approaches.

3           Q     Right. And so which -- which of those numbers is  
4 is PEF relying on? It's not entirely clear.

5           A     Let me go back. Go back to my testimony, and I'm  
6 going to take you back, if I can find it in here. What we  
7 do is we reflect the fact that we updated these, and we had  
8 interrogatories that went out recently that talked about  
9 that. Is think we just refer to the fact that I'm providing  
10 updates to that information. It's on Page -- let find it  
11 here. Stand by. The question's under Page 27. It's on  
12 Line 2. Has the company updated its fuel forecast/  
13 environmental forecast? The answer is yes, consistent with  
14 the requirement set forth in the order. We have prepared  
15 those, and those updated tables are provided as the GM-1 and  
16 GM-2.

17          Q     So beyond that PEF has not done anything else?

18          A     I'm not aware of anything else that we've done.  
19 We provided the updates to the tables as required by the  
20 order.

21          Q     And so those updates to the table -- would that  
22 include the provisions contained in the Waxman/Markey bill?

23          A     Look at the note on the GM-2 at the bottom, Note  
24 2.

25          Q     And so those potential impacts have now been

1 considered?

2 A It says they will be reviewed when more  
3 information is available, and, as you know, that legislation  
4 is still in progress, and it has not been approved by both  
5 sides and gone through conference yet, so it's subject to  
6 change still.

7 Q Okay. So you haven't done anything further  
8 specifically on Waxman/Markey?

9 A And we're certainly following it, the legislation,  
10 but until it -- you know, we are watching how it plays out  
11 as it goes through both House and Senate and as it goes  
12 through conference committee.

13 Q Staying on Page 15 and looking at Line 12, you  
14 reference that PEF continues to need base load advanced  
15 nuclear generating capacity on its system, and PEF in  
16 Florida needs a more diverse energy portfolio to decrease  
17 their dependence on fossil fuels. Do you see where I'm  
18 referencing?

19 A I do.

20 Q Okay. Now would you agree that renewables and  
21 efficiencies would also be a means to achieve a diverse  
22 energy portfolio as well as nuclear technology?

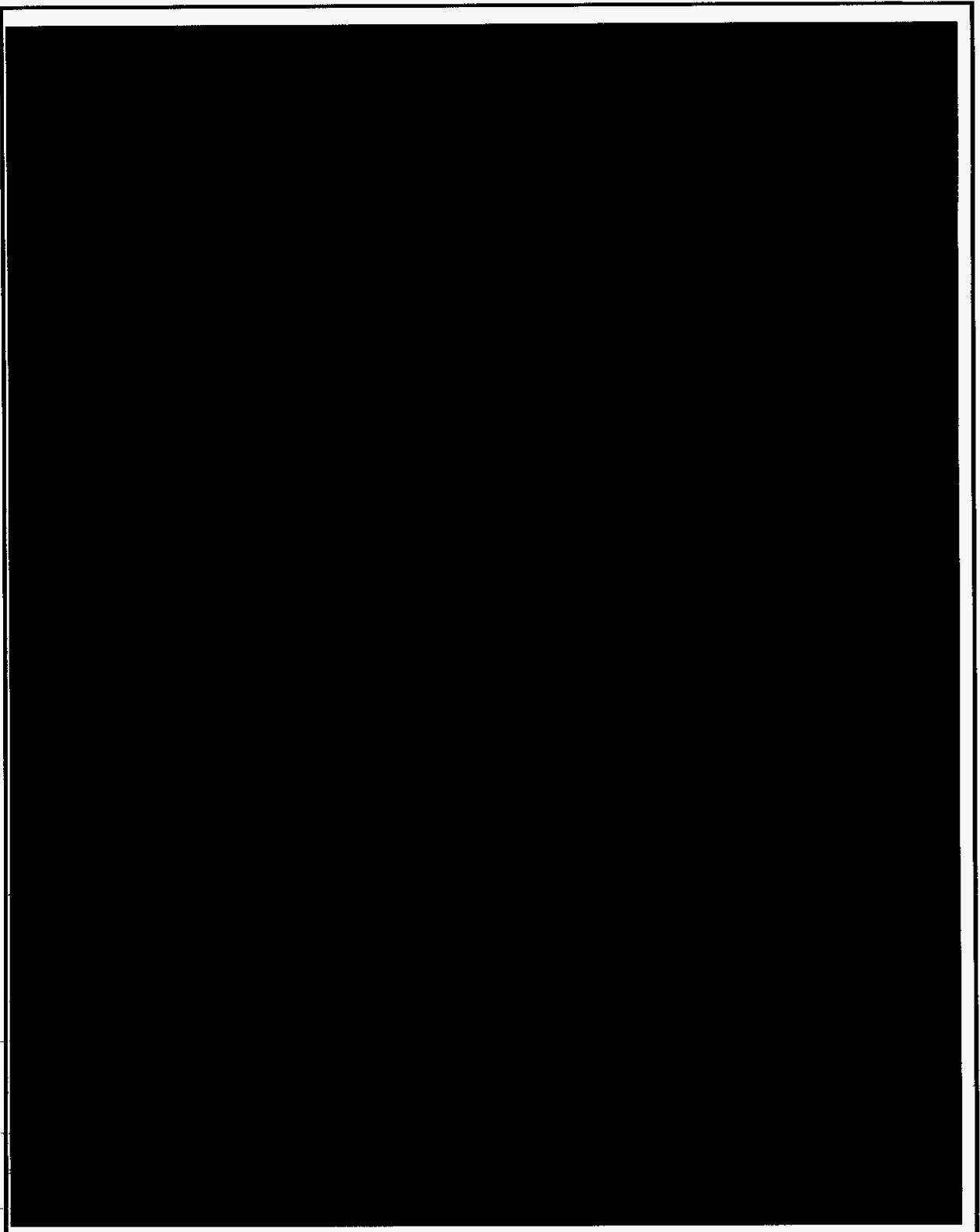
23 A Our company has a balanced portfolio approach, and  
24 it involves renewables, energy efficiency programs and base  
25 load state of the art plants. We believe we need all three

1 of those to meet the needs of our customers and meet that in  
2 the best way. So the answer to your question is while it  
3 doesn't list those there, because this is comment about  
4 their volatility in price and supply, our company direction  
5 is to have energy efficiency programs and also to support  
6 the use of renewables.

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1  
2 Q And so now would Progress -- would Progress have  
3 to incur such -- that type of cost and make these -- make  
4 these payments for -- for other types of technologies, to  
5 your knowledge? Does Progress customarily have to do that?

6 A I believe your question is asking in general for  
7 the nuclear industry if you're deploying a new nuclear  
8 plant, do you have spend money to reserve space in line?

9 Q I'm actually talking about for other energy  
10 technologies besides nuclear. Wind. Coal.

11 A I do not know the answer to your question.

12 Q Is that because your speciality is nuclear power?

13 A That is correct. Because I have not been involved  
14 in contracting for pulverized coal plants or windmills.

15 Q Okay. Moving over to Page 25, Line -- excuse me.  
16 I'm sorry. Page 25 -- yeah -- Line 12. Essentially, the  
17 question is, Why is the Levy Nuclear Project feasible? Do  
18 you see where I am?

19 A I do.

20 Q You say, First, the AP1000 reactor design remains  
21 a viable nuclear technology, and I'm wondering what are you  
22 basing that on?

23 A I'm basing that on the status of the certification  
24 of the AP1000 design and the ongoing analysis for any  
25 revisions that are occurring and the fact that no -- there's

1 no technological issues that have come up that have not been  
2 able to be solved to deploy this technology at the Levy  
3 site.

4 Q Revision 17 of the AP1000 has not been certified  
5 by the NRC, has it?

6 A It has not.

7 Q And how many AP1000 reactors are there active in  
8 the United States right now?

9 A AP1000 is a new technology. There are no AP1000s  
10 built or in operation in the United States.

11 Q I'm sorry. There are --

12 A There are none.

13 Q -- AP1000 reactors?

14 A There are none.

15 Q Okay. And so you mentioned China in here. So are  
16 you basing your opinion that it's a viable and feasible  
17 choice on the fact that they're using this technology in  
18 China?

19 A No. I am basing -- that is relevant information,  
20 but the actual basis for the technical feasibility is our  
21 knowledge of the ongoing analysis for the AP1000 and its  
22 design finalization, and as we work through and that design  
23 finalization progresses, we are not aware of any technical  
24 issues that would prevent that plant from being built and  
25 operated at the Levy site.

1 Q As far as on the ground operating experience, you  
2 don't have any basis for that statement, do you?

3 A For most of the new technologies that are being  
4 proposed in the United States, the -- the -- like, for  
5 example, ESPWR by GE, the AP1000, those are new technologies  
6 that are unlike the ones built 30 years ago, and they are  
7 not in operation in the United States. We have not built  
8 plants in the United States in approximately 30 years.

9 Q Moving on to another issue that's been discussed  
10 several times with you -- the issue is joint ownership. A  
11 potential co-owner -- would they need a certificate of need  
12 from the Public Service Commission as well?

13 A It depends on who they were.

14 Q Okay. If you could, elaborate on that for me,  
15 please.

16 A It depends on what regulatory structure they  
17 function under, whether it's under PFC, for example, or not.

18 Q Okay. So, for example, if it was a municipal  
19 co-owner, would they need a certificate of need?

20 A I don't know -- that's not my background to know  
21 what they need. I don't know specifically what it takes for  
22 them to get approval for a new plant.

23 Q What about investor-owned utilities?

24 A Regulated investor-owned utilities that are  
25 governed under a public service commission -- they would

1 likely be similar to us, but that's my opinion. This is not  
2 something I'm familiar with.

3 Q Okay. And I'm going to try and wrap up here. I  
4 know it's been a long day for you. Do you know of any  
5 connection between the NRC's concerns over LWA and the  
6 problems with AP1000 certification or the ongoing AP1000  
7 certification?

8 MR. WALLS: I'm going to object as vague and  
9 confusing and assumes facts not in evidence.

10 If you understand, go ahead.

11 A Well, I don't understand what he's talking -- what  
12 you're referring to as problems with the AP1000. Let me  
13 explain to you what's going on with the AP1000 Rev 17. The  
14 AP1000 design control document Rev 15 was certified by the  
15 NRC, I believe, in December of 2005. Subsequent to that,  
16 the Westinghouse submitted a Revision 16 to the design  
17 control document and after that in September of '08  
18 submitted a Rev 17. Those two revisions will be  
19 incorporated into one amendment to the design certification.  
20 That design certification is reflected in 10 C.F.R., Part  
21 52, Appendix D.

22 That is an ongoing review by the NRC of those two  
23 revisions that they will fold into one amendment of the  
24 certification. We monitor that and that -- those  
25 activities, and they're moving ahead. There is a schedule

1 for that, and that schedule for that is such that those  
2 activities occur before the -- the logical tie into our  
3 schedule, and that's the status. That is not related to LWA  
4 discussions.

5 BY MR. WHITLOCK:

6 Q Okay. So there was never -- never any concern  
7 with an LWA relating to the AP1000 technology?

8 A That is correct.

9 Q Okay. Based on -- since the filing of the -- or  
10 since the issuance of the determination of need, do you have  
11 updated -- does Progress have updated demand projections?

12 A I don't know specifically when our last update was  
13 done. That is something we do on recurring basis, and we  
14 make submittals under the ten-year Integrated Resource Plan  
15 on an ongoing basis. We do that every year.

16 Q And so you're not familiar with the latest demand  
17 projection?

18 A Only -- I'm not familiar -- I've not seen the  
19 details of it. I'm certainly aware based on what I read in  
20 the paper about the economy and the economic downturn and  
21 how that could have some impact on our load.

22 Q So has demand increased or decreased?

23 MR. WALLS: Objection. Vague and ambiguous as to  
24 what time period you're talking about.

25 BY MR. WHITLOCK:

1 Q From 2007 to 2008, did demand increase or  
2 decrease?

3 MR. WALLS: Lack of foundation objection.

4 But go ahead, if you know.

5 A I don't know from 2007 back. I don't know because  
6 it was on an increasing trend, and so I don't know how today  
7 compares with 2007.

8 BY MR. WHITLOCK:

9 Q Okay. How about from 2008 until today?

10 MR. WALLS: Objection. Lack of foundation.

11 Go ahead, if you know.

12 A It don't know other than it's either flat or  
13 slightly declining. That's -- and that's only from my  
14 hearing discussions. It's not something I'm directly  
15 involved in, so you would need to get that information as  
16 part of our official filings.

17 BY MR. WHITLOCK:

18 Q Okay. Now on Page 26 of your testimony, Line 23,  
19 you note that shifting the project to this time period is  
20 reasonable and prudent given the unexpected events that have  
21 transpired.

22 A I see that in the testimony.

23 Q Could you just elaborate briefly for me on the  
24 unexpected events you're referring to?

25 A Well, the unexpected event in this case is the

1 decision by NRC that they could not issue approval for the  
2 scope of work in the LWA prior to the COL.

3 Q So it should have been unexpected event, rather  
4 than events, plural?

5 A If you want to be -- it could be -- this is  
6 referring to an event, which was the LWA decision by the  
7 NRC. We clearly had multiple dialogues and tried to change  
8 the outcome, so that's why plural was used, but it is the --  
9 all of this relates to the LWA determination by the NRC.

10 MR. WHITLOCK: Okay. Give me one second, and I  
11 think I'm almost finished. Mr. Miller, thank you so  
12 much. Again, thank you for your patience. I know it's  
13 been a long day for you. Those are all my questions.

14 THE DEPONENT: You're welcome.

15 MR. WALLS: I believe that's it for everyone on  
16 the phone. Is that right?

17 I just have a few questions, Garry, just to  
18 followup.

19 THE DEPONENT: Okay. All right.

20 EXAMINATION

21 BY MR. WALLS:

22 Q One of them I want to go back to your discussion  
23 with Mr. Rehwinkel about the time period the NRC had to  
24 review the LWA, and you referred to the fact they were  
25 reviewing on the 42-month COL issuance time frame now. In

1 your schedule, how long did the NRC have to review the LWA  
2 based on the schedule you had requested?

3 A We had requested an LWA in the -- in the latter  
4 part of 2011, approximately a year ahead of the COL. That's  
5 what we had requested.

6 Q And so, roughly, how many months does --

7 A About twelve.

8 Q How many months from the time you filed the COLA  
9 application to that point did the NRC have to review the  
10 LWA?

11 A As compared to the 18 months it took us to prepare  
12 our application and submit the finished analysis to the NRC,  
13 it was on the order of 30 months that we were expecting from  
14 them.

15 Q And you mentioned that 18 months, and then during  
16 that 18 months is when you identified the site, retained  
17 experts to review that site, did the analysis and testing to  
18 come up with a foundation design, prepared that design, put  
19 it in the package and gave it to the NRC. All that work  
20 took you 18 months. Right?

21 A That is correct.

22 Q And how long did you give the NRC to review it?

23 A The LWA scope or the COL?

24 Q The LWA scope.

25 A We were requesting approximately 30 months.



1           Q     And you gave them all the information that you had  
2 on that LWA?

3           A     We gave them completed analysis of all the  
4 geotechnical features and characteristics and the completed  
5 analysis on the foundation.

6           Q     You were asked a number of questions about your  
7 audits for both WorleyParsons and CH2M Hill. Do you recall  
8 those series of questions?

9           A     I do.

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4 Q And was your application submitted to the NRC on  
5 the time frame that you expected to submit it?

6 A It was, July 30th, 2008.

7 Q And were these firms, WorleyParsons and CH2M Hill,  
8 responsible for the costs that were necessary to correct  
9 their paperwork deficiencies and quality review  
10 deficiencies?

11 A They were responsible for the cost for them to  
12 take actions to correct those problems.

13 Q And so we're not asking customers to pay for that  
14 because we didn't pay them to do that. Correct?

15 A That's correct.

16 MR. WALLS: That's all the questions I have.

17 MR. REHWINKEL: Thank you very much. I assume you  
18 will not waive reading and signing.

19 MR. WALLS: Oh, no. We will also like to order a  
20 copy on an expedited basis, please.

21 (The deposition concluded at 5:55 p.m.)  
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CERTIFICATE OF OATH

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STATE OF FLORIDA            )  
COUNTY OF HILLSBOROUGH)

I, Penny M. Appleton, Court Reporter, certify that  
GARRY MILLER personally appeared before me and was duly  
sworn.

Witness my hand and official seal this 5th day of  
July, 2009.

\_\_\_\_\_  
Penny M. Appleton, RPR

C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Penny M. Appleton, Court Reporter for the  
Circuit Court of the Thirteenth Judicial Circuit of the  
State of Florida, in and for Hillsborough County,

DO HEREBY CERTIFY, that I was authorized to and  
did, report in shorthand the proceedings and evidence in the  
above-styled cause, as stated in the caption hereto, and  
that the foregoing pages constitute a true and correct  
transcription of my shorthand report of said proceedings and  
evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in  
the City of Tampa, County of Hillsborough, State of Florida  
this 5th day of July, 2009.

---

Penny M. Appleton, RPR

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1 RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

2 ERRATA SHEET

3  
4 I, GARRY MILLER, have read the foregoing  
5 deposition given by me on July 2nd, 2009, in Tampa, Florida.  
6 Corrections should be made as follows:

7 PAGE: LINE: ERROR/AMENDMENT AND REASON THEREFOR:

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21 Subject to these corrections, my testimony reads as  
22 given by me in the foregoing, signed this \_\_\_\_\_ day of  
23 \_\_\_\_\_, 2009.

24 \_\_\_\_\_  
25 Garry Miller

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