

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REDACTED

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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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1 A. Yes. As the President and CEO of PEF at the time, I was involved in the  
2 Company's decision to sign the EPC agreement. I approved execution of the EPC  
3 agreement at that time, I was a member of the SMC that also approved the  
4 execution of the EPC agreement, and I worked with the Progress Energy Board  
5 that also decided to approve execution of the EPC agreement in December 2008.  
6

7 Q. Why did the Company execute the EPC agreement in December 2008?

8 A. We signed the EPC agreement primarily because of the following beneficial  
9 negotiated contract terms and provisions:

10 [REDACTED]

1 Of particular concern to me and the Company at the time was [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]

4 In March 2008, when the Company executed the Letter of Intent ("LOI")  
 5 for, among other things, the long-lead items for the project, the objective was to  
 6 progress with EPC contract negotiations and reach acceptable conclusions so that  
 7 an EPC agreement could be executed. An initial target date for completion of  
 8 negotiations was set in the LOI for late summer 2008 but by this time there were  
 9 still additional, outstanding issues, including [REDACTED], which needed  
 10 to be resolved. By the end of the year, the outstanding contract issues that needed  
 11 to be resolved were resolved and, with these issues resolved and the EPC  
 12 agreement ready for execution, [REDACTED]  
 13 [REDACTED]

14 Additionally, execution of the EPC agreement at this time was necessary  
 15 to move the project forward on schedule for completion of the units by their 2016  
 16 and 2017 in-service dates. The Company had a need determination recognizing  
 17 the Company's need for additional base load power commencing in 2016. PEF  
 18 was reasonably moving forward with the LNP to meet those in-service dates.

19  
 20 **Q. Some of the intervenor witnesses claim PEF should have waited until the**  
 21 **NRC issued its review schedule for the PEF COLA before signing the EPC**  
 22 **agreement. Was that option available to PEF?**

1 A. No. As I have explained, the negotiations were at an end, there were no  
2 additional outstanding contract issues to resolve, and therefore [REDACTED]  
3 [REDACTED]. I personally met with  
4 senior executives of both Westinghouse and Shaw, Stone, & Webster and they  
5 told me [REDACTED]  
6 [REDACTED]  
7 [REDACTED].

8 Furthermore, the Company and Consortium had negotiated the terms of  
9 the EPC agreement for about two years and the Company had no reasonable  
10 ground to stall the signing of the EPC agreement now that those negotiations were  
11 complete. In particular, schedule uncertainty was not a valid reason to postpone  
12 execution of the EPC agreement because the EPC agreement contained provisions  
13 to address changes in the schedule. And, because the Consortium had invested  
14 about two years in negotiations with PEF over the terms of the EPC agreement,

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

21 Q. Can you explain what a LWA is, Mr. Lyash?

22 A. Yes. A LWA is a limited work authorization issued by the NRC under 10 CFR  
23 Parts 50 and 52. If a LWA is requested by the utility, it can be reviewed and

1 and no NRC statement that suggests the utility should be concerned with the  
2 review schedule if the utility does not receive it within this thirty-day period. See  
3 Exhibit No. \_\_\_ (JL-1) (Jacobs Dep. Excerpt, pp. 109, 112).

4  
5 **Q. Jacobs argues that the Company was in a weaker negotiating position with**  
6 **the Consortium when the schedule shift occurred because PEF had signed**  
7 **the EPC agreement. Do you agree?**

8 **A.** Absolutely not. PEF is in a stronger position with the Consortium with respect to  
9 the schedule shift having signed the EPC agreement than if PEF had not signed it.  
10 In fact, had PEF known about the NRC's position with respect to the LWA in  
11 December 2008 and [REDACTED]  
12 [REDACTED]  
13 [REDACTED], PEF would have still executed the EPC  
14 agreement and proceeded to amend the EPC agreement under the EPC's contract  
15 suspension and amendment provisions just like PEF is doing now.

16 Executing the EPC agreement in December 2008 [REDACTED]  
17 [REDACTED] The EPC  
18 agreement also provided a clear, known process for a suspension of the work,  
19 subsequent rescheduling, and amendment to the EPC agreement for such events  
20 like the schedule shift. If PEF had not signed the EPC agreement in December  
21 2008 and the schedule shift occurred, [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally, if PEF had not executed the EPC agreement on December 31, 2008 there would have been a schedule shift regardless of the NRC's decision with respect to the LWA. The EPC agreement included the engineering and construction schedule for completion of the plants in time for their respective in-service dates in 2016 and 2017. [REDACTED]

[REDACTED]

[REDACTED] A schedule delay would inevitably occur

[REDACTED]

[REDACTED]

[REDACTED] That delay would likely have been at least as long as the current schedule shift and probably longer due to

[REDACTED]

[REDACTED]

NRC had issued a review schedule that included the LWA.

For these reasons PEF would have been in a weaker position with the Consortium had it not signed the EPC agreement when it did. I know this because

1 I was directly involved in the EPC contract negotiations with the Consortium  
2 senior management, I understand those negotiations and what the Consortium was  
3 and was not willing to do, and I understand what the current EPC agreement  
4 provides. Jacobs was not there for those negotiations. I also understand he has  
5 never negotiated an EPC agreement, never negotiated with either member of the  
6 Consortium, and never even read the PEF EPC agreement. See Exhibit No. \_\_\_\_  
7 (JL-1) (Jacobs Dep. Excerpt, pp. 14, 29, 63, 77-78).

8  
9 **Q. Jacobs also claims that PEF was unreasonable and imprudent in signing the**  
10 **EPC agreement in December 2008 because PEF did not have joint owners**  
11 **signed up before the EPC agreement was executed. Was that even likely to**  
12 **occur?**

13 **A. No, in fact, it is unreasonable to expect potential joint owners to agree to joint**  
14 **ownership participation agreements before an EPC agreement is executed. This is**  
15 **a matter of common sense. The potential joint owners are being asked to**  
16 **contribute hundreds of millions of dollars toward the engineering, construction,**  
17 **and operation of the nuclear power plants, contributions that are in large part**  
18 **determined by the final terms of an EPC agreement for the design, engineering,**  
19 **procurement, and construction of the plants. No reasonable person would make**  
20 **such a commitment without knowing exactly what the terms of the final EPC**  
21 **agreement are. [REDACTED]**

22 [REDACTED]  
23 PEF, therefore, always expected and planned to execute the EPC agreement

1 before finalizing the joint ownership participation agreements. That is what PEF  
2 meant when it frequently said in internal documents that joint ownership was  
3 “closely linked” or “closely tied to” the EPC agreement.  
4

5 **Q. Is PEF required to have joint owners or to demonstrate that there will be**  
6 **joint owners in the LNP?**

7 A. No. There is no joint ownership requirement for the LNP. PEF cannot force  
8 potential joint owners to participate in the LNP. The Commission recognized this  
9 in the Need Determination Order when the Commission encouraged PEF to  
10 pursue joint owners. The Commission did not require joint ownership for the  
11 LNP. PEF has pursued and continues to pursue joint owner participation in the  
12 LNP consistent with the Commission’s encouragement.

13 As PEF explained in the need determination proceeding, there are benefits  
14 to joint ownership for PEF and its customers in sharing the costs and risks of the  
15 LNP with other parties. PEF continues to believe those benefits exist. PEF,  
16 therefore, expects to have some level of joint ownership participation in some  
17 form in the LNP. There is also continued interest by other parties in participation  
18 in the LNP. The level and intensity of that interest changes over time, and has  
19 been affected by recent economic events, but it is still there. [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

1 [REDACTED]. Now, however, finalization  
2 of any joint ownership participation agreement will, again, depend on the costs  
3 and schedule in the amended EPC agreement. We expect to reach joint ownership  
4 participation agreements only after we have an amended EPC agreement.  
5

6 **Q. Are the impacts of the economy on the capital markets, financing, and**  
7 **regulatory and legislative uncertainty risks that the Company has considered**  
8 **and will consider in making its decisions with respect to the LNP?**

9 A. Yes. These risks were identified by management as part of the Company's risk  
10 management practices and policies, there were risk mitigation strategies  
11 developed for these risks, and those strategies have been employed by the  
12 Company throughout the course of the LNP so far. Notably, neither the Staff  
13 witnesses nor the intervenor witnesses assert that PEF's risk management  
14 practices and policies, or PEF's application of those policies with respect to the  
15 risk mitigation strategies the Company developed, are not reasonable or not  
16 prudent.

17 These risks cannot be eliminated; they can only be monitored and  
18 managed with appropriate responsive risk mitigation strategies. These risks also  
19 exist, however, for any generation or other utility project and certainly they exist  
20 for any long term, base load generation project like the LNP. It is unreasonable to  
21 expect a utility to eliminate these risks or obtain certainty with respect to these  
22 risks for a nuclear power plant project. If that was the expectation, no utility  
23 would build a nuclear power plant.

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**Q. Jacobs makes several statements about the Progress Energy Board at pages 12-14, 16 and 20 of his testimony. He claims the Board was not adequately informed prior to execution of the EPC agreement, he claims the Board had other reasons for delaying the project besides the schedule shift, and he claims that the Board had a different view than Mr. Miller with respect to the feasibility of completing the nuclear power plants. Can you address these claims?**

**A. Yes, I can because I was there, Jacobs was not. I was present at each of the Board meetings Jacobs references in his testimony and I know what was discussed. First, he claims the Board was not adequately informed about the NRC COLA review, in particular the LWA, and joint ownership at the December 2008 Board meeting where the execution of the EPC agreement was approved. This is inaccurate and untrue. [REDACTED] [REDACTED] [REDACTED]. The LWA was not specifically addressed apart from the COLA because there was no reason to expect that the NRC was not going to issue the LWA at all prior to January 23, 2009, for all the reasons I have provided above. Jacobs is again relying on hindsight to suggest the Board should have been told in December about an event that did not occur until January.**

Jacobs is simply wrong that the status of joint ownership was not discussed. [REDACTED] (at page 110 of Jacobs

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Exhibit No. WRJ(PEF)-3) [REDACTED]  
[REDACTED] Jacobs speculates that the Board changed its position regarding whether or not joint ownership agreements were required before PEF executed the EPC agreement. Exhibit No. \_\_\_ (JL-1) (Jacobs Dep. Excerpt, p. 139). As I previously explained, PEF never expected to have joint ownership participation agreements signed before the EPC agreement was executed. Rather, PEF expected that reasonable joint ownership participants would want to know what the final, executed EPC agreement provided before committing to a joint ownership participation agreement. Moreover, as I have noted, [REDACTED]  
[REDACTED]  
[REDACTED]

Second, Jacobs claims certain words in the April 15, 2009 letter from the Progress Energy CEO to the Board indicate that PEF had other reasons for the schedule shift besides the NRC determination with the respect to the Company's LWA request. (See Jacobs Test., p. 12; Exhibit No. WRJ(PEF)-3, pp. 42-43). This claim ignores the plain language of the letter. The letter itself is dated April 15, 2009, which is after the NRC's determination with respect to the LWA.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Exhibit No. \_\_\_ (JL-1)  
(Jacobs Dep. Excerpt, p. 142).

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. (Id. at p. 143).

Finally, Jacobs claims that Mr. Miller's discussion about the long term benefits of the LNP nuclear power plants in his direct testimony regarding the feasibility of completing the power plants is at odds with the Board's discussions at the April 17, 2009 Board meeting. Jacobs is wrong. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] This discussion is reflected under the "Summary" bullet point that references the fact that "Levy nuclear remains vital to [Progress Energy's] Balanced Solution." (See Exhibit WRJ(PEF)-3, p. 58 of 233). These bullet points introduce issues for discussion; they do not reflect the substance of that entire Board discussion. Progress Energy's Balanced Solution, however, calls for advanced generation resources such as the LNP for all of the reasons described in Mr. Miller's testimony.









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\* The decision must be evaluated on the basis of actual facts. The review must be based on facts, not merely on opinions.

**Q. What criticism does Jacobs make regarding the EPC contract?**

**A.** Jacobs argues that PEF should not have signed the EPC contract on December 31, 2008 because: (1) PEF had not received a schedule from the NRC for the review and approval of a requested Limited Work Authorization (LWA); and (2) Joint Owners had not yet committed to the project. As I will discuss, both of these contentions are without merit.

**Q. Did Jacobs follow the appropriate prudence evaluation standard in his criticism of the signing of the EPC contract?**

**A.** No. Jacobs has used hindsight to evaluate PEF management prudence in signing the EPC contract in December 2008. Based on what was known at the time, PEF acted prudently in signing the contract when it did. As I will discuss below, there were compelling reasons for PEF to sign the EPC contract by December 31, 2008, which included [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Jacobs ignores these benefits to signing the EPC contract – he does not even acknowledge them in his testimony – and instead bases his

"Yes, there were commercial reasons or other benefits for PEF signing the EPC agreement on December 31, 2008 rather than January 2009. Those reasons and benefits are stated below.

[REDACTED]

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In response to Staff request DR 7, regarding cost benefits / risks associated with signing the EPC contract prior to the NRC issuance of COL/LWA schedule, PEF expanded on the benefits above, including the following:

[REDACTED]

[REDACTED]

1 Q. In your opinion, were the reasons stated by PEF in its  
2 responses reasonable?

3 A. Yes. The advantages to enter into the EPC contract by December 31,  
4 2008, were substantial both in terms of cost and maintaining the LNP  
5 schedule. Jacobs' testimony does not mention these reasons despite his  
6 having been advised of this information.

7 Further, as I identified in my direct testimony, PEF had thoroughly  
8 reviewed the EPC contract terms and conditions including engaging Price  
9 Waterhouse Coopers to perform an independent review of the contract.

10 PEF's EPC contract strategy was to [REDACTED]

11 [REDACTED]

12 [REDACTED] designed to provide incentive

13 to the contractor to perform efficiently. [REDACTED]

14 [REDACTED]

15 From a licensing perspective, signing the EPC contract was  
16 evidence of an active engineering, design and procurement program.  
17 PEF reasonably anticipated that this posture would be reflected in

1 communication from the NRC that indicates any such linkage. As further  
2 evidence of the absence of any link between the NRC's LWA decision and  
3 the CH2MHill QA program, the NRC's acceptance of the QA corrective  
4 actions had occurred well prior to PEF's July 2008 filing for the LNP  
5 COLA.

6 Finally, it is important to note that PEF identified the deficiencies  
7 that CH2MHill had in their quality assurance program through its oversight  
8 and audit process, and that they were corrected. These corrective actions  
9 were fully accepted based on the audits conducted between March 2007  
10 and April 2008 that verified the implementation of the revised quality  
11 program.

12  
13 **Q. Jacobs asserts that PEF, by signing the EPC contract, has placed**  
14 **itself in a very weak position to renegotiate the EPC contract. Do**  
15 **you agree?**

16 **A.** No. In my opinion, Jacobs is speculating with no facts to support his  
17 speculation. Contrary to Jacobs' implication, PEF may actually be in a  
18 stronger negotiating position because it signed the EPC contract on  
19 December 31, 2008, and confirmed the benefits of [REDACTED]  
20 [REDACTED]  
21 [REDACTED] The  
22 revised costs to accommodate the schedule of the LNP may be

1 . comparable or lower than what they would have been had the EPC  
2 contract not been signed in 2008.

3 Had PEF not signed the EPC contract by December 31, 2008, they  
4 would have faced [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] In my opinion,  
11 having locked in these cost and schedule savings by signing the EPC  
12 contract, PEF was in a stronger position to renegotiate the contract than if  
13 these terms were not previously secured.

14

15 **Q. Jacobs states that PEF should have had joint owners in place prior**  
16 **to signing the EPC contract. Do you agree?**

17 **A.** No. Jacobs mischaracterized the meaning of the statements found in the  
18 LINC meeting minutes that "JO work and EPC are closely tied." Rather  
19 than his implication that LNP joint owners were necessary before signing  
20 the EPC, the statement has to do with the desire of potential joint owners  
21 to have the EPC in place before they signed a joint owner agreement.

22 The sequence anticipated from PEF's early 2008 discussions with  
23 the prospective joint owners was that the finalized joint owner agreements

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**V. REASONABLENESS AND PRUDENCE OF EXECUTING THE EPC AGREEMENT.**

**Q. Was PEF reasonable and prudent in executing the EPC Agreement when it did in December 2008?**

A. Yes, for several reasons, but two principal ones. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] As I explain below, the schedule shift would have necessarily occurred anyway had PEF not signed the EPC agreement.

Second, PEF did properly assess and manage the risks associated with the LNP at the time of EPC contract execution, including the regulatory approval risk including the LWA. Based on what PEF knew at the time of signing the EPC agreement, and not having the benefit of what later occurred as Jacobs does, PEF reasonably expected issuance of a LWA on an acceptable schedule. PEF certainly did not expect, and had no reason to expect, that the NRC would adopt a review schedule that effectively eliminated the issuance of an LWA entirely. Indeed, as late as December 4, 2008, approximately three weeks before the EPC agreement was executed, NRC leadership responsible for the Levy project made statements in public meetings near the Levy site about their expectations for completing an

1           LWA review in approximately two years, as further discussed below. Just  
2 because a risk materializes does not mean PEF should have known it would occur  
3 or that PEF's risk management was in any way improper. That is the case here.  
4 The elimination of all risks prior to execution of the EPC agreement was simply  
5 impossible. And, if as Jacobs suggests, PEF should have either eliminated all  
6 risks or waited until PEF had certainty, PEF would never build the LNP, or any  
7 project for that matter.

8           Third, execution of the EPC agreement at this time was appropriate to  
9 keep the LNP on schedule to meet the in-service dates for the Levy units. The  
10 EPC agreement was the best means to meet the schedule most efficiently and  
11 productively and to ensure more certainty as to schedule and cost as the project  
12 moved forward. Proceeding without an EPC agreement would have required  
13 some other contractual mechanism(s), such as a new *Letter of Intent* and  
14 continuation of the separate master service agreement work orders with the  
15 Consortium, to keep the project moving forward at all but that certainly would  
16 mean a schedule shift or delay.

17  
18 **Q. What were the contractual benefits that PEF preserved for PEF and its**  
19 **customers by executing the EPC Agreement on December 31, 2008?**

20 **A. These favorable contract terms and conditions included, but are not limited to:**

21  


[REDACTED]

1 As a member of the PEF team negotiating the EPC agreement with Westinghouse  
2 and Shaw, Stone, & Webster (the "Consortium"), [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] Mr. Lyash explains in his testimony that, based on direct  
12 discussions with the Consortium's senior management, [REDACTED]

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[REDACTED]

As a result, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The EPC agreement established the detailed  
timeframe for all of the activities necessary to design and build the Levy units.

[REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED] given that there was no  
indication that such a change by the NRC was forthcoming.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Q. But Jacobs claims you said in your deposition that PEF would not have signed the EPC agreement if PEF had received the NRC review schedule the NRC issued in February in early December. Is that right?**

**A. No, what I clearly said was that it could not be signed "in the form" that it was signed because the schedule shift necessarily caused changes in the EPC agreement. But recall that** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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Q. Jacobs also argues PEF is in a weaker position now because it executed the EPC Agreement than PEF would have been if PEF did not execute the EPC Agreement. Do you agree?

A. No. [REDACTED]

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[REDACTED]  
[REDACTED] we would

not be in a strong negotiating position, as Jacobs implies, without any support whatsoever. Indeed, Jacobs never even read our EPC agreement, he has never negotiated one, and he has never negotiated with either member of the Consortium. See Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt, pp. 14, 29, 77-78).

**Q. Jacobs also claims PEF's bargaining position would have improved had PEF delayed signing the EPC agreement until the LWA and the other risks "were known or clarified." Do you agree?**

**A.** No. As I explained above, it is impossible to eliminate all risk or achieve certainty with respect to all risks on a project, which is what Jacobs suggests PEF should have done. Risks can only be "known" or "clarified" with certainty when the risk occurs or the passage of time or events eliminate the risk. Waiting for all

1 **Q. Did the NRC tell PEF not to submit a COLA with a LWA or that PEF's**  
2 **COLA would be rejected if it included a LWA?**

3 **A. No, it did not. In fact, the NRC's public stance based on the amendment to the**  
4 **rule in 2007 and public comments was that the NRC would in fact entertain LWA**  
5 **requests and, therefore, considered them appropriate. In a May 22, 2007 public**  
6 **meeting, the NRC indicated that review of an LWA, resulting in issuance of the**  
7 **FEIS and FSER could in fact be completed in 12 plus or minus 6 months.**

8  
9 **Q. Was the LWA identified in the Company's risk management process?**

10 **A. Yes, all LNP regulatory approvals, schedule events, and other factors possibly**  
11 **having an impact on the LNP were identified as a potential risk in the Company's**  
12 **risk management process, identified in the risk management tool or register,**  
13 **evaluated for likelihood and impact or consequence, given an impact statement,**  
14 **and a response or action plan. It is important to remember that this is a "living"**  
15 **document and process; it constantly changes and the risk matrix is constantly**  
16 **revised as needed to address subsequent events or changes over time. For**  
17 **example, leading up to the filing of the COLA with the LWA, the risk assessment**  
18 **focused on meeting the date targeted for filing the COLA, which was met. After**  
19 **the COLA was filed in late July 2008, the risk assessment addressed the**  
20 **regulatory approval risk as the next step in the process.**

21 **LWA approval was separately identified and evaluated [REDACTED]**  
22 **[REDACTED]**  
23 **[REDACTED]**

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[REDACTED]

This risk assessment was included in the Company's Integrated Project Plan, which provided senior management with the details on the project scope to support funding for the LNP and EPC contract execution. Subsequent to filing the COLA, the NRC review schedule for the COLA, which included the LWA, was included for management attention in the monthly Nuclear Plant Development ("NPD") Performance Reports. The COLA and the interaction with the NRC was also a standard topic at the weekly Levy Integrated Nuclear Committee ("LINC") meetings. The LINC provided the means by which senior management and all Company departments involved in or affected by the LNP reviewed, addressed the status of the LNP, and identified action items for the LNP on a weekly basis. Through the LINC and NPD Performance Reports, as with other project documents, the interactions with the NRC regarding the COLA, including the LWA, and NRC review schedule were communicated to management.

Notably, Jacobs agreed in his deposition that PEF had identified the COLA, including the LWA, approval as a risk, and developed and implemented a reasonable risk mitigation plan for this risk. First, he agreed that after submitting the COLA to the NRC, the Company did not have control over the project schedule, rather the NRC did. See Exhibit No. \_\_\_ (GM-5) (Jacobs, Dep. Excerpt, p. 45, L. 3-8). Second, he agreed that he had reviewed the Company's

1 risk management process and that this risk management was part of the project  
2 management processes that he found to be reasonable and prudent. (Id. at p. 45,  
3 L. 16-23). Third, he agreed the Company's risk management process included a  
4 risk matrix that identified the COLA licensing issue, including the LWA, as a  
5 risk, and that the Company developed a risk management action plan for this  
6 licensing risk that involved what most utilities do with respect to that risk,  
7 namely, [REDACTED]  
8 [REDACTED]  
9 [REDACTED] (Id. at pp. 45-47). He further agreed that this risk  
10 mitigation action plan was the only reasonable action plan to address the licensing  
11 risk and that the Company would not have done something different. (Id. at p. 48,  
12 L. 2-17). Finally, he agreed that PEF implemented this risk mitigation action plan  
13 with respect to the COLA and LWA and that he did not have an opinion that PEF  
14 did not do something that it should have done with respect to this risk mitigation  
15 strategy. (Id. at P. 48, L. 18-25; p. 49, L. 1-3). In other words, Jacobs recognizes  
16 that PEF did everything that PEF reasonably could have done to address the  
17 potential risk that the NRC did not issue a schedule for the LWA and other items  
18 in the PEF COLA consistent with PEF's requested schedule.

19  
20 **Q. Did the Company prepare the design analysis necessary to develop a sound**  
21 **LWA scope of work?**

22 **A.** Yes, it did. The Company's LWA scope was developed by the Joint Venture  
23 team as part of the COLA application using industry recognized domestic and

1 because excavation is not construction under the NRC's LWA rule and the  
2 dewatering activities are unrelated to the safety-related structures, systems, and  
3 components ("SSC's"), which is the case with respect to the dewatering work on  
4 the LNP. Again, the dewatering work is necessary only for the excavation so the  
5 Company can excavate the hole and keep the ground water out. The NRC's  
6 request that PEF include the dewatering work in the LWA scope in fact indicated  
7 that the NRC was reviewing the LWA, as PEF requested the NRC to do. Further,  
8 when the NRC docketed the Company's COLA, including the LWA, on October  
9 6, 2008, that action indicated that the entire application was sufficient for NRC  
10 review and that there were no inherent problems in applying the design to the site  
11 that prevented NRC review. Jacobs agreed in his deposition that the docketing of  
12 the COLA represented by the October 6, 2008 letter meant that the NRC was  
13 going to undertake to review the COLA application and everything in it, including  
14 the LWA. See Exhibit No. \_\_\_ (GM-5) (Jacobs, Dep. Excerpt, p. 89, L. 1-13).

15  
16 **Q. Did the inclusion of the dewatering items in the scope of the LWA mean that**  
17 **the Company's requested review schedule for LWA issuance would not be**  
18 **granted?**

19 **A.** No. The inclusion of the dewatering items in the scope of the LWA did not  
20 impact the review schedule at all. It did require re-sequencing of the physical site  
21 work in order to perform it more in parallel, rather than in series, to ensure that  
22 the construction schedule could still be met, which was the case. [REDACTED]

23 [REDACTED]

1 [REDACTED] As the Staff audit report notes, the Company retained Burns & Roe to  
2 assist the Company in its EPC contract negotiations by reviewing the initial price  
3 book and supporting cost library data and initial construction schedule provided  
4 the Company by the Consortium. Burns & Roe noted [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] to include the dewatering work in the LWA scope at the  
11 NRC's request in September 2008. Burns & Roe was not provided the NRC  
12 review schedule and was not commenting on the schedule for regulatory review  
13 and approval of the LWA at all.

14 Inclusion of these items within the LWA still left the NRC approximately  
15 thirty (30) months to review and issue the LWA from the COLA submittal. The  
16 Company identified the site, engaged the necessary COLA contractors and  
17 subcontractors to develop the site design, had the engineering and geological  
18 testing and analysis completed, including the drilling and technical evaluation of  
19 108 soil borings, completed the geotechnical evaluation, prepared the design for  
20 the sub-foundation and foundation, and submitted this information to the NRC in  
21 approximately eighteen (18) months. The Company reasonably believed about 30  
22 months was sufficient time to review what it took the Company about 18 months  
23 to complete and provide to the NRC. This is the principle reason, together with

1 the advice of all our experts and input from the industry regarding the propriety of  
2 an LWA for the LNP, that the Company evaluated the risk of not obtaining the  
3 LWA [REDACTED]. And, at no time before January 23, 2009 did the NRC  
4 indicate that it was not going to review the LWA at all, which was the effect of  
5 the NRC's subsequent decision to review the LWA work only on the same time  
6 schedule as the COL.

7  
8 **Q. Did the Company maintain a close interface with the NRC with respect to its**  
9 **LWA and COLA?**

10 **A.** Yes, it did. The Company began with meetings, presentations, and written  
11 responses to the NRC and its technical reviewers even before it submitted its  
12 COLA with the LWA to explain to the NRC the Levy site, the COLA, and the  
13 LWA. These occurred on January 10, 2008, February 20, 2008, March 5, 2008,  
14 and June 30, 2008. Coinciding with the submittal of the COLA to the NRC the  
15 Company met with the NRC technical reviewers on July 28, 2008 to update the  
16 prior presentations and review the LWA scope. After the COLA was submitted  
17 the Company and the NRC had calls or meetings on September 5, 2008,  
18 September 9, 2008, October 1, 2008, December 3-4, 2008, and January 6, 2009 in  
19 addition to written communications. A list and brief description of some of these  
20 interactions with the NRC regarding the Company's COLA, including the LWA,  
21 is attached as Exhibit No. \_\_\_\_ (GM-7) to my rebuttal testimony. In addition,  
22 PEF's staff regularly communicated with the NRC staff during the time period on  
23 a frequent basis. Finally, prior to execution of the EPC agreement, Mr. Jeff Lyash

1 and Mr. Bill Johnson went to Washington to meet with the NRC leadership. At  
2 no time during or following any of these interactions with the NRC did the NRC  
3 indicate that it would not review the LWA before the COL thereby effectively  
4 eliminating the LWA for the LNP.

5  
6 **Q. By the way, if the Company had assessed the risk of not obtaining the LWA**  
7 **██████████ would the Company's mitigation plan and efforts been any**  
8 **different than it was?**

9 **A. No. Even though the Company assessed the risk of not obtaining a LWA ██████████**  
10 **██████████ the Company always recognized that the ██████████**  
11 **██████████ Accordingly, the Company fully invested in its mitigation plan to**  
12 **maintain the interaction with the NRC and see to it that the NRC had what it**  
13 **needed to make that decision. In fact, there is no dispute that those are the**  
14 **appropriate actions to take and that we were executing our mitigation plan. This**  
15 **is what you do after you submit the permit or application, is maintain interaction**  
16 **with the agency and timely respond to inquiries – a point with which Jacobs**  
17 **agrees. See Exhibit No. \_\_\_ (GM-5) (Jacobs, Dep. Excerpt pp. 47-48). And, as**  
18 **Jacobs also agrees, once the Company submits its permit or application to the**  
19 **agency for review and approval, the Company loses control over its ability to**  
20 **move the project forward. (Id. at p. 45. L. 3-8). That control goes to the agency**  
21 **during the review process. That was certainly true for the Company's COLA and**  
22 **LWA submittal to the NRC.**

1           To determine if completion of the plant is capable of being done or carried  
2 out from a project management perspective, we evaluate whether the plant is both  
3 technically feasible and legally feasible. Jacobs does not dispute that these are in  
4 fact factors in determining the feasibility of completing nuclear power plants. See  
5 Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt p. 120).

6           In my direct testimony and, as Jacobs notes, in my deposition I explained  
7 that technical feasibility means can the AP1000 design selected for this site be  
8 deployed at the Levy site. Based on my project management experience working  
9 with this design and its application to the Levy site, the input from the team of  
10 experts we have employed to assist us on this project, and my own nuclear and  
11 mechanical engineering background and experience, I testified that the LNP is  
12 technically feasible. Nothing we have seen or reviewed suggests that the AP1000  
13 design cannot be deployed at the site, indeed, regulatory reviews are proceeding  
14 to do just that. All Jacobs can come up with to claim there is an issue about the  
15 technical feasibility of the plants is a [REDACTED]  
16 [REDACTED] in its March 2009 report regarding the [REDACTED]  
17 [REDACTED] and prior to the  
18 Company's adoption of its revised risk mitigation program. Jacobs Test., p. 19,  
19 L. 25-32. [REDACTED]  
20 [REDACTED] in the May 2009 Consortium Monthly Project Status Report that  
21 Jacobs references. [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

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█ See Exhibit No. \_\_\_ (GM-11) to my rebuttal testimony.  
Again, there is always regulatory uncertainty prior to actually obtaining the regulatory license or permit, and therefore some risk that it might not be obtained. This does not mean you do not go forward with the project. If it did, you would never build a nuclear power plant.

I described in detail in my direct testimony the current regulatory status of the LNP, explaining what we have achieved, what we did not achieve – the LWA discussed in detail above, what we have done in response to that change in the NRC review process, and what our expectations are for the future permits, approvals, authorizations, and licenses for the LNP. Jacobs fails to acknowledge the numerous land use authorizations, permits, licenses, or other approvals that have been achieved for the LNP that are included in my direct testimony and the numerous ones that are on schedule that are identified in my testimony and at Exhibit 3 on page 19 of the Staff Report reviewing PEF’s Project Management Internal Controls for the Nuclear Plant Uprate and Construction Projects. See Exhibit Number CC-1 to Staff Testimony. For example, the Administrative Law Judge issued his recommended decision and order to approve PEF’s SCA on May 15, 2009. The point is, despite the NRC decision regarding the LWA, the NRC has deemed PEF’s COLA sufficient for review and established a schedule consistent with PEF’s other requested timelines, including issuance of the COL in 42 months. There is no reason to expect that PEF will not be able to obtain the authorizations, permits, and licenses to construct and operate the Levy units at the Levy site.

REDACTED

1 risk matrix, you have to come up with a risk  
2 mitigation or action plan; correct?

3 A Yes.

4 Q What was that risk mitigation or  
5 action plan for the COLA?

6 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 Q And do you believe that to be a  
14 reasonable action plan or mitigation strategy for  
15 that risk?

16 A I think that's what most utilities do,  
17 yes.

18 Q Would you agree with me that that risk  
19 mitigation action plan or strategy would be the  
20 same no matter what risk level you assign to the  
21 COLA or LWA application?

22 A I don't think I would agree with that.  
23 I think if you assigned it a higher risk number  
24 further up the matrix, you would develop more  
25 resources to making sure that those actions



Docket 090009-EI  
Progress Energy Florida  
Exhibit No. \_\_\_\_ (GM-11)  
54 Pages

**THIS DOCUMENT IS REDACTED IN ITS ENTIRETY**