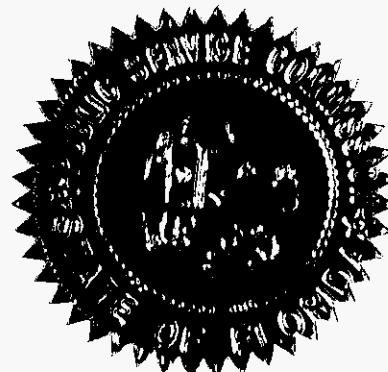


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.



VOLUME 7

Pages 1247 through 1320

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PROCEEDINGS: HEARING

COMMISSIONERS

PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, September 9, 2009

TIME: Commenced at 2:20 p.m.
Concluded at 4:10 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: RAY D. CONVERY
Court Reporter
(850) 224-0722

ORIGINAL

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

I N D E X

WITNESS

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NAME:

PAGE NO.

GARY MILLER

Continued Cross Examination
by Mr. Rehwinkel

1254

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EXHIBITS

NUMBER:		ID.	ADMTD.
143	2Q 2007 JVT Doc	1253	
144	JVT-11, 2007 Monthly Report Excerpts	1253	
145	L&P Status Slides, November 26, 2007	1253	
146	Progress NPD Monthly Report Excerpts, Various	1254	

P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 6.)

4 ACTING CHAIRMAN EDGAR: Okay. We are back
5 from lunch and I think we are about ready to get
6 started. Mr. Rehwinkel, I will look to you first.

7 MR. YOUNG: Madam Chairman.

8 CHAIRMAN CARTER: Yes, sir.

9 MR. YOUNG: Before we get started, I think
10 Progress has a document. I don't know if you want to
11 pass that out right now or if you would rather wait.

12 ACTING CHAIRMAN EDGAR: Yes.

13 MS. TRIPLETT: Madam Chair, the document we
14 circulated to parties and staff with respect to the MUR
15 costs, that came up during the cross of Mr. Franke. So
16 I think it might be more appropriate to wait until he
17 comes back for rebuttal, because I think Mr. Rehwinkel
18 wants to ask questions about --

19 ACTING CHAIRMAN EDGAR: Thank you for bringing
20 that to our attention here at the bench. And so my
21 understanding is that it's been distributed to staff and
22 to all the parties to have the chance to look at, and
23 then, yes, please do remind me or Chairman Carter,
24 whichever is appropriate at the time, when we come to
25 that. Thank you.

1 MS. TRIPLETT: Sure. And we did not provide
2 copies to the Court Reporter or Commissioners at this
3 time because I wanted to give everyone an opportunity to
4 take a look at it.

5 ACTING CHAIRMAN EDGAR: That is in keeping
6 with our discussion. Thank you.

7 MS. TRIPLETT: Thank you.

8 ACTING CHAIRMAN EDGAR: And, Mr. Rehwinkel, I
9 think right before we went to lunch, you were going to
10 distribute some documents, and I see some here before me
11 and us. If you would, walk us through what they are and
12 we'll go from there.

13 MR. REHWINKEL: Thank you, Madam Chairman.

14 Before I do that, if I could, I would like to
15 represent to you that Progress has also provided an
16 answer to the question I asked of Mr. Miller about EPC
17 contract and some dollar figures. They have given me
18 information that I would just like to ask him a couple
19 of clarifying questions about, and I think I could do it
20 in a way that he can speak publicly on such that we will
21 not need to put the confidential information into the
22 record.

23 ACTING CHAIRMAN EDGAR: Okay. Would you like
24 to begin there or do you want to --

25 MR. REHWINKEL: I'll do that after we do the

1 documents here, if that's okay.

2 ACTING CHAIRMAN EDGAR: Yes.

3 MR. REHWINKEL: I have placed four documents
4 before the Commissioners, the Court Reporter, the
5 Witness, SACE, PCS and FIPUG, as well as staff, that
6 contain information that is subject to a confidential
7 claim by the company, and I would like to identify these
8 for cross-examination purposes at this time.

9 Whether I seek to move these into evidence is
10 something I would like to address at the end of
11 cross-examination and potentially after discussion with
12 the company about how we can deal with this in the most
13 efficient way that minimizes the amount of confidential
14 information that has to be dealt with, and it may
15 require further redaction of the documents depending on
16 how the answers are given.

17 ACTING CHAIRMAN EDGAR: Okay. That seems
18 reasonable to me, and I'm seeing nods from the other
19 parties, so you may proceed.

20 MR. REHWINKEL: Okay. The first document is a
21 three-page document that is entitled 2Q 2007 JVT
22 Document, and I would just request a number for -- an
23 exhibit number for cross-examination purposes.

24 ACTING CHAIRMAN EDGAR: So you would like to
25 go ahead and mark. I am at 143, and the title, does

1 this work, 2Q 2007 JVT Doc?

2 MR. REHWINKEL: Yes. And if it's appropriate,
3 I can just do all four of these at one time, if that
4 would be okay.

5 ACTING CHAIRMAN EDGAR: So go ahead and mark
6 sequentially?

7 MR. REHWINKEL: Yes.

8 ACTING CHAIRMAN EDGAR: Okay. So this will be
9 143. Let me just catch up here on my paperwork.

10 (Exhibit No. 143 marked for identification.)

11 MR. REHWINKEL: And the second document is a
12 six-page exhibit entitled JVT-11, 2007 Monthly Report
13 Excerpts.

14 ACTING CHAIRMAN EDGAR: Okay. So we will mark
15 that as 144.

16 (Exhibit No. 144 marked for identification.)

17 MR. REHWINKEL: And the next document is a
18 three-page document entitled L&P Status Slides,
19 November 26, 2007.

20 ACTING CHAIRMAN EDGAR: Okay. We will so mark
21 L&P Status Slides, November 26, '07, as 145.

22 (Exhibit No. 145 marked for identification.)

23 MR. REHWINKEL: And then finally the 35-page
24 exhibit entitled Progress NPD Monthly Report Excerpts,
25 Various.

1 ACTING CHAIRMAN EDGAR: Okay. A document
2 marked as 146, Progress NPD Monthly Report Excerpts,
3 Various. I think we're all there.

4 (Exhibit No. 146 marked for identification.)

5 MR. REHWINKEL: Thank you. And before I ask
6 questions about these exhibits, I would like to follow
7 up, if it's okay, with Mr. Miller, about the information
8 the company provided on the break.

9 ACTING CHAIRMAN EDGAR: Okay. Mr. Miller, you
10 have that with you?

11 THE WITNESS: I'm aware of what the number is.

12 CONTINUED CROSS EXAMINATION

13 BY MR. REHWINKEL:

14 Q Mr. Miller, I would like to ask you if you
15 could answer my question with respect to a percentage of
16 the number that you referred to on TGF-2 Form P-8 at
17 line 15, column H. Do you recall that number?

18 A Yes, I do.

19 Q And you were describing changes to that number
20 that were based on some work authorization, is that
21 correct?

22 A The correct term would be "change orders."

23 Q Change order.

24 Okay. Now, those -- the number that you
25 showed -- that I was showed on the break does not

1 represent a change to the EPC as a basis -- as a result
2 of renegotiation, conclusion of renegotiation, is that
3 correct?

4 A Let me clarify your wording. That number is a
5 summation of change orders. The EPC still stands. We
6 are negotiating a change order related to the schedule
7 change. It is not the change order related to the
8 schedule change.

9 Q Okay. So these are change orders that have
10 been negotiated in 2009 after notifying the Consortium
11 of the delay in the schedule; is that correct?

12 A They're not necessarily related all to the
13 delay. Some are, some are not, but they are the
14 compilation of all change orders issued in 2009.

15 Q Okay. So do you know a percentage to the EPC
16 number that you identified on the schedule that you
17 could tell me?

18 A I do. That number is approximately
19 0.15 percent.

20 Q Okay. And -- okay. That's all I have on that
21 area. Thank you.

22 Okay. Mr. Miller, we had discussed earlier
23 about the selection of the site that you ultimately
24 purchased and are utilizing for purposes of your COLA
25 for the LNP. Do you recall that conversation?

1 A I do recall that.

2 Q Now, at the time you selected this site, you
3 decided that you needed to employ a firm to do site
4 characterization and other geotechnical-related work for
5 purposes of choosing a site and submitting a COLA; is
6 that correct?

7 A It's more complicated than what you described.
8 We had contracts to help us in the site selection
9 process, and then, once the site was selected, we then
10 selected through a bidding process a COLA preparer.

11 Q Okay. And can you state publicly who your
12 COLA preparer was for purposes of geotechnical support
13 and site characterization?

14 A Yes. First of all, the COLA preparer is a
15 consortium. We refer to them as the JVT, and that is
16 Sargent Lundy, WorleyParsons and CH2M-HILL. In the case
17 of your specific question, the geotechnical is handled
18 by CH2M-HILL.

19 Q And when did you engage CH2M-HILL through the
20 JVT?

21 A That bidding process took place in late 2005,
22 and I believe from memory the contract was executed in
23 January of 2006 to the JVT.

24 Q Now, did -- that contract for that work, did
25 it encompass work in Florida and in North Carolina?

1 A Correct, it did.

2 Q Okay. So you had one bid response that you
3 accepted that governed COLA preparation for both the
4 Harris Plant in North Carolina and the Levy County
5 Nuclear Plant in Florida?

6 A Yes. We competitively bid this as a package
7 for the preparation of two COL applications for the
8 Harris site near Raleigh and for the Levy site, and,
9 excuse me, for a second site like a Harris site, which
10 ultimately became the Levy site.

11 Q Now, did CH2M-HILL do some work to assist you
12 in making a final determination about the selection of
13 the site that the LNP project is proposed for?

14 A Yes, they did.

15 Q And after you have selected the site, did they
16 fairly quickly begin work on the COLA?

17 A Yes, they did. That work began in late 2006
18 as similar to what I said earlier, which the
19 announcement of the site was December of 2006.

20 Q Okay. So they did -- is it true that, shortly
21 after they began work on the -- isn't it true that
22 shortly after they began work on the COLA support work
23 related to the geotechnical aspect of the COLA, that
24 problems surfaced with their quality assurance of their
25 work?

1 A Yes, and let me explain. The work on the
2 Harris COLA had started back in January of 2006, and so
3 the evolution to go out and do the geotechnical borings
4 and sample collection was well under way. In the early
5 part of 2007, we identified some problems with the
6 implementation of their quality assurance program, and
7 that's what you're referring to.

8 Q Now, you say "we identified." You're talking
9 about Progress Energy Florida?

10 A That is correct. When I say "we," I'm
11 referring to my staff, Nuclear Plant Development.
12 Because they are an Appendix B under 10 CFR Part 50
13 supplier of quality-related services, it is our
14 obligation to audit and monitor the quality of their
15 work, and as we were doing an audit on them in the early
16 part of 2007, we identified problems, and it was on the
17 information and work they had done for Harris.

18 Q Okay. Now, isn't it true that the quality of
19 the work that they did -- well, let me strike that and
20 ask it this way: Isn't it true that any deficiencies in
21 the quality assurance aspect of the work that they did
22 on Harris would affect their ability to submit data
23 collected for the LNP site as well?

24 A It is -- yes, the potential is there. And so,
25 as the issues were identified on the Harris COLA, we

1 then looked for extent of condition across to the other
2 COL which was less far along in terms of its execution,
3 and then applied the same compensatory actions that we
4 did with Harris onto Levy such that we would not impact
5 the scheduled submittal, which was July of 2008.

6 Q Well, let me ask you this: When you say
7 "compensatory actions," what do you mean by that?

8 A Once the analysis of the deficiencies were
9 analyzed, there were corrective actions identified.
10 Some of those corrective actions took months or weeks to
11 implement. And so, until those were fully in place, we
12 required the contractor to implement additional
13 measures, compensatory measures, if you will, which
14 involved additional reviews and oversight until those
15 final corrective actions were in place, and then -- so
16 we maintained that for quite a while, those comp
17 actions.

18 Q Now, at the time, in the first quarter of
19 2007, is that when the deficiencies in quality assurance
20 related to CH2M-HILL came to your attention?

21 A That is when we identified the significant
22 issues. I believe it was in the March, '07 timeframe.

23 Q Now, you said earlier in an answer that you
24 identified compensatory measures to be taken in order to
25 meet the July, 2008 COLA deadline; is that correct?

1 A I did say that.

2 Q Okay. Now, was July 28th, 2008 the targeted
3 COLA application date at that time?

4 A Yes, it was.

5 Q Okay. Was that the understanding of the JVT
6 and CH2M-HILL at that time?

7 A Yes, it was.

8 Q Okay. Did CH2M-HILL do their own internal
9 analysis to look at their quality assurance compliance?

10 A Yes, CH2M-HILL did do their own independent
11 self-assessments, and they also identified some
12 deficiencies that required corrective action.

13 Q Was that done before or after you initiated
14 your audit process?

15 A From memory, I believe it was before.

16 Q Okay. Did they do that and advise you of the
17 problems, or did you discover them independently?

18 A No, they provided their report to us.

19 Q Okay. All right. Now, in March of 2007,
20 isn't true that the company issued a stop work order to
21 CH2M-HILL related to their work at the LNP site?

22 A That is correct.

23 Q And this also governed their work at the
24 Harris site?

25 A That is correct.

1 Q And isn't it true that that stop work order
2 lasted for approximately two months?

3 A In the case of -- it's -- I cannot answer your
4 question yes or no because all work was not ceased for
5 the full two months. Some work that could be
6 compartmentalized and analyzed specifically was
7 authorized to restart in advance of the two months, but
8 the majority of the deliverables from them were stopped
9 work for two months.

10 Q Okay. And did that cause a setback in the
11 schedule?

12 A I wouldn't characterize it as a setback, but I
13 would characterize it certainly challenged the ability
14 to achieve the July, 2008 submittal.

15 Q Now, was the stop work order situation
16 communicated to the NRC?

17 A Yes. The NRC had scheduled a quality
18 assurance audit of our whole organization, not just
19 CH2M-HILL, but also Sargent Lundy, WorleyParsons and
20 Progress Energy, and at that audit we shared with them
21 all the issues that had been identified with CH2M-HILL,
22 including the stop work order and the condition reports
23 and investigations that had been done following that
24 stop work.

25 Q When was the NRC's quality assurance audit?

1 A Hold on one second. I can look it up based on
2 the -- one of the exhibits in my rebuttal testimony.

3 The report was received February 15th -- no,
4 that's not right. Yes, the report was received
5 February 15th of 2008, but the audit took place well in
6 advance of that in the 2007 timeframe. It appears -- I
7 cannot recall the date and I'm trying to look for it
8 here. It was in the spring of 2007 timeframe, but I
9 don't see the specific date of when that occurred.

10 Q Was the NRC audit --

11 A Oh, here it is, I found it. I stand
12 corrected. The quality assurance conducted by the NRC
13 during the period between October 29th, 2007 and
14 November 2nd, 2007, it was following our stop work
15 order.

16 Q Okay. Was it triggered by the audit that you
17 did that resulted in the stop work order?

18 A No, it was not. The NRC was visiting several
19 of the AP1000 applicants and they had already been to
20 other sites before they came to us.

21 Q So it was going to happen no matter what?

22 A We believe that's correct, and that was
23 considered to be a preapplication audit.

24 Q Okay. So it's your testimony here today that
25 you shared the findings of the audit you did of

1 CH2M-HILL in the spring of 2007 with the NRC, is that
2 correct?

3 A That's correct.

4 Q And you shared the internal assessment that
5 CH2M-HILL did with the NRC?

6 A I believe that was made available to them
7 also.

8 Q Okay. And you shared the stop work order, the
9 fact of the stop work order with them as well?

10 A Yes, we did.

11 Q Okay. And, now, you also did -- did you do a
12 followup audit in 2007 of CH2M-HILL?

13 A We -- after we did the stop work order and
14 then after we reauthorized the work, we reduced the
15 frequency of their audits, and so we had a series of
16 audits that took place on a short timeframe after that.
17 I don't recall the specific dates of it, but most likely
18 there was one in late November. There was certainly one
19 in 2008 also. It was a reduced frequency audit of that
20 quality provider.

21 Q You're saying "reduced frequency." Do you
22 mean you reduced the interval between audits?

23 A That's correct.

24 Q Okay. So you actually increased the --

25 A Oh, yes. It's the reduced period between the

1 audits.

2 Q Okay. I thought that's what you meant. I
3 understand.

4 A It's an increased frequency of surveillance.

5 Q Now, the problems that CH2M-HILL encountered
6 in their quality assurance work or their quality
7 assurance status were a result of a lack of nuclear
8 experience with some of the personnel in their nuclear
9 business group; is that correct?

10 A That is correct, and the key word you said was
11 "some of the personnel." The leadership involved in
12 executing our project had previous experience on the
13 early site permit for the Clinton Station which was also
14 a nuclear application.

15 Q Now, that early site permit for the Clinton
16 Station did not involve an LWA?

17 A It did not.

18 Q And it did not involve a site in karst
19 topography or limestone topography?

20 A I am not familiar with the geology at Clinton.

21 Q The problems encountered by CH2M-HILL in 2007
22 caused problems with them meeting the schedule that you
23 hoped that they would meet with respect to preparing the
24 geotechnical data, isn't that correct?

25 A Repeat the question again.

1 Q The problems that CH2M-HILL encountered in
2 2007 with respect to the audits and the reviews impacted
3 their ability to meet the schedule that you had -- you
4 wanted them to meet during 2007, isn't that correct?

5 A It is correct that it did impact it; however,
6 as you know, we did achieve the July, 2008 submittal as
7 planned.

8 Q Do you have Exhibit 143 in front of you?

9 A Yes.

10 Q Okay. Are you familiar with this document?

11 A Yes, I am.

12 Q Is this a quarterly report from the Joint
13 Venture Team to you?

14 A Yes. And what I've characterized is this is
15 the document that we would actually review in person
16 every quarter as part of our ongoing oversight of the
17 COLA preparation.

18 Q Okay. I would like to ask you to turn to the
19 second page of the exhibit which is Bates-stamped
20 47-009242. Do you see that?

21 A I do see that page.

22 Q Okay. Now, the very first line up there says,
23 "LNP COLA Report, Session 2Q 2007 Meeting," and that's
24 the meeting you're referring to?

25 A That's correct.

1 Q Okay. Now, this entire page is marked in
2 yellow, which indicates that there's a claim of
3 confidentiality for this. So any question I ask you, I
4 would like you to pause and contemplate whether you can
5 answer it out loud or whether you need to refer to
6 information in a nonverbal way.

7 A Okay.

8 Q There are five bullet points on this page.
9 The bottom three bullet points that start with the word
10 "submittal," do those relate to the collection of
11 geotechnical information related to your COLA
12 application?

13 A Stand by.

14 Yes.

15 Q Do they relate to the LWA aspect of the COLA
16 application?

17 A It's not clear whether they would or would not
18 because some of these items relate to the overall review
19 of the geotechnical characteristics of the site. It may
20 or may not have any impact on LWA.

21 Q Isn't it true that Progress told the NRC on
22 November 20th, in response to the RAIs -- November 20th,
23 2008, in response to the RAIs that they gave you on
24 October 6th, that, for purposes of evaluating the LWA
25 and the COLA, the geotechnical information applied to

1 both equally? You were not limiting the geotechnical
2 data that supported the LWA specifically, is that
3 correct?

4 A Yes, but I'd characterize it differently. The
5 information that we provided as part of the application
6 that describes the geotechnical features and
7 geosubstrate, that information was available for either
8 purpose as the NRC needed it.

9 Q So this information -- this information --
10 well, let me ask you this: Can you read the information
11 out loud in the bullet points?

12 A These are associated with what's referred to
13 as an impact evaluation, which is like a change order,
14 so I'd prefer not to.

15 Q Okay. The second -- or the second of those
16 three bullet points that starts with the word
17 "submittal" --

18 A Yes.

19 Q -- isn't it fair to say that these
20 addressed -- well, can you -- do you see the word "NRC"
21 there?

22 A I do.

23 Q All right. Can you describe whether there was
24 work done to -- related to those three words?

25 A Yes, and let me see if I can characterize

1 this. As part of the preapplication interactions of the
2 NRC with Progress Energy as a COL applicant, they come
3 to our site and they review documents that we're
4 preparation that we're going to be submitting as part of
5 our application. So they actually visited the Levy
6 site. And as part of that visit, they were sharing with
7 us things that they considered that needed to be
8 addressed in the application. And so this language here
9 is referring to one of the subjects, and I'm doing this
10 from memory, but I believe this is what this was. And
11 so our discussion of this was to do the analysis that
12 they had indicated to us on that preapplication
13 interaction such that we would include that in the COL
14 itself.

15 Q Okay. Now, the word after NRC there --

16 A Yes.

17 Q -- does that reflect that there was that
18 sentiment on the NRC staff?

19 A I'm not sure that's the right word to
20 characterize it. This report was written by our
21 external contractors. They certainly brought it up and
22 they wanted to see it addressed as part of our
23 application.

24 Q Okay. Now, is the subject matter that follows
25 those three words that I asked you about, is that a

1 subject matter that showed up in 2008 in RAIs that the
2 NRC submitted to you?

3 A We've had hundreds of RAIs and on very many
4 subjects related to geotechnical. I would suspect this
5 question, we probably had RAIs on the subject of this
6 same subject. I don't remember specific details because
7 of the number of RAIs we process.

8 Q Okay. But there are RAIs that are attached to
9 Mr. -- or Dr. Jacobs' testimony in the October 6 letter
10 that we could look at at a later point?

11 A We could, and in that page that you're on, if
12 you go to the fourth bullet and you see the last word on
13 that line?

14 Q Yes.

15 A All right. So that is something that I know
16 that word has been addressed in some RAIs because it has
17 to be addressed as part of, long-term, will that
18 geotechnical substrate change?

19 Q Okay. But it's true that you submitted
20 information as part of your COLA and as part of your LWA
21 supplement that you thought addressed these issues and
22 still got additional questions from the NRC staff about
23 them?

24 A I don't know specifically if we received
25 questions regarding specifically these items. I would

1 have to go do a comparison to see that, but that would
2 not be unusual to get RAIs.

3 Q The individual whose name shows in the last
4 bullet point there, is that something you can state
5 publicly?

6 A Yes. CH2M-HILL.

7 Q I apologize. Before the parenthetical.
8 There's three that start with "submittal."

9 A Yes.

10 Q And there's -- there are two words there, a
11 name of a firm and a man's name.

12 A Oh, I see. You're talking about on the last
13 bullet?

14 Q Yes. I apologize.

15 A I believe I can say that.

16 Q Okay. Was this individual working with the
17 JVT in the second quarter of 2007?

18 A Yes.

19 Q Was he working on geotechnical data
20 collection?

21 A Yes, he was.

22 Q Even at that time?

23 A He was reviewing early boring information as
24 part of his scope of work at that time.

25 Q Okay. Now, was his scope of work more related

1 to supporting the Consortium, the Consortium rather than
2 the JVT and the COLA application work?

3 A It actually evolved over time. Their
4 expertise involves also foundation design. So later on
5 they played a larger role in the foundation design which
6 was submitted in our application.

7 Q Okay. Can you turn to the last page of
8 Exhibit 143, please. I see you've got a black dot and
9 then four subcategories with hollow dots, if you will.

10 A Yes, I see those.

11 Q Okay. The third one there that starts with
12 the two words, "the preliminary," do you see that?

13 A I see that.

14 Q Okay. Is this your recollection of findings
15 that were made as part of the geotechnical data
16 collection at that time?

17 A Yes. This period of time, in that third
18 quarter of 2007 leading into the fourth quarter, we were
19 doing fieldwork, and so yes, this is related to what we
20 were seeing from the fieldwork.

21 Q Okay. Now, would this condition be supportive
22 of placing a nuclear power plant on top of this area?

23 A Yes. The answer to your -- the question
24 you're asking me is, did this information that's
25 contained in this third hollow bullet -- does that

1 suggest that the power plant cannot be sited on that
2 site? The answer is no. It has to be analyzed,
3 however, and it has to be included in the scope of the
4 COL application.

5 Q Now, would the NRC have been made aware of
6 these preliminary findings?

7 A The NRC, as part of their geotechnical audit,
8 came to the site and they looked at our analysis, which
9 included both soil samples, core samples and down-hole
10 logging. So I don't recall if they actually looked at
11 the specific values from it, but it was certainly
12 available to them.

13 Q Okay. Can I ask you to turn to Exhibit 144?

14 A Okay.

15 Q Now, do you recognize -- and this is an expert
16 from a document, but do you recognize this document?

17 A I do.

18 Q In fact, your name is on here on the first
19 page.

20 A Yes, I do.

21 Q And can we say what this document is?

22 A It's a monthly status report provided by our
23 COLA preparer.

24 Q And what is the date of it?

25 A November 20, 2007.

1 Q Okay. If I could get you to turn to the
2 second page.

3 A Okay.

4 Q And I believe at the bottom of it it says page
5 2 and it's Bates-stamped 47-007804.

6 A Yes, I see that.

7 Q This document is all yellow, so it is under a
8 claim of confidentiality.

9 Can you tell me -- can you read the first --
10 to yourself, can you read the first line or the first
11 sentence in that top paragraph and tell me if that
12 sentence is confidential?

13 A Well, certainly the whole report was
14 confidential. I believe that I could paraphrase this
15 without revealing anything. So let me read it and
16 decide how I want to state that.

17 Q Thank you.

18 A This statement revolves around the overall
19 schedule for the COL preparation. Certain chapters were
20 not progressing as we preferred, and that's what this
21 statement is talking about.

22 Q Okay. Is one of the chapters of the three
23 listed here one that deals with the geotechnical
24 information?

25 A Yes.

1 Q The heading of this section, is that something
2 you can read publicly?

3 A Yes. This heading of this particular section
4 was Issues Requiring Management Attention.

5 Q Is this -- the matter that's described in this
6 document, is this a matter that required further action
7 by the JVT management?

8 A Yes.

9 Q Can you tell me whether it required the
10 expenditure of additional funds?

11 A I do not recall it costing more funds. We
12 required them to take action because they were under
13 contract to produce the deliverable to us, and we had
14 established dates in that contract, and so it was their
15 requirement to provide what they needed to do to resolve
16 this issue.

17 Q Is it -- go ahead.

18 A And again, as I stated earlier, the July, 2008
19 was achieved.

20 Q The term "impact evaluation" or "IE," is
21 that -- can you describe what that is?

22 A An impact evaluation is the vehicle that was
23 used under the master service agreements and work
24 authorizations associated with this particular vendor,
25 and they were referred to as an impact evaluation

1 because a scope change, for example, could have not only
2 a cost element, it could have a schedule element to it,
3 and so we called it the impact evaluation; but it was
4 the mechanism to authorize scope changes, either
5 increase or decrease, and if there was any schedule
6 associated with that, that's how that would be handled.

7 Q Can you state here today whether -- are you
8 testifying here that there were no impact evaluations
9 made or authorized to resolve the problems that are
10 identified in this paragraph?

11 A I'm testifying I don't recall. I know the
12 actions were taken to resolve the issues and they
13 resulted in our timely submittal. I just don't recall
14 because we processed quite a bit of impact evaluations
15 over the period on different subjects.

16 Q Isn't it possible that there were impact
17 evaluations authorized to resolve this issue?

18 A Is it possible? I suppose it's possible, but
19 I don't recall that that would -- we would not authorize
20 a scope change for -- because they're behind, if that
21 makes sense to you. We would -- we had contracted with
22 the COL preparer to develop our application for this
23 site on a specific schedule, and the schedule was laid
24 out and they were executing that. So their requirement
25 was to get the necessary resources and subject matter

1 experts to deliver that application on time.

2 Your specific question to me, was there impact
3 evaluation forms for that, I don't recall. I don't know
4 why we would have unless there was additional scope
5 required that was causing some of the difficulty
6 associated with the schedule execution. It would have
7 to have been tied to additional scope to be able to
8 execute the COLA preparation and achieve that date. We
9 would not give them a change order or an impact
10 evaluation because it was taking longer than they
11 expected because we had negotiated a contract for that.

12 Q Okay. Under quality -- can you read the next
13 heading there? Is that -- can I read that publicly?

14 A Yeah. The headings that you're referring to
15 in this confidential document were standard over several
16 months, so it's a format question you're asking, so I do
17 not mind saying what that -- it says "Quality Issues."

18 Q Okay. So under that heading, there are two
19 items identified here; is that correct?

20 A That is correct.

21 Q And these relate specifically to Progress
22 Energy Florida, is that correct?

23 A That is correct.

24 Q Now, the first item relates to a discussion we
25 had earlier about NRC; is that right?

1 A That is correct.

2 Q And what was the outcome of that evaluation?

3 A Ask your question again. Are you asking me
4 specifically what does this bullet mean?

5 Q What was the outcome, and I'm -- of the
6 evaluation that's referred to in that line?

7 A As I said earlier, when we had the stop work
8 order associated with the CH2M-HILL execution, we looked
9 for extended condition across to the Levy COLA, and
10 there was extended condition because they were applying
11 similar processes for Levy. And so the work associated
12 with the in-field work, we took compensatory actions and
13 made specific changes to address that so that work could
14 be restarted on a shorter time, but the remaining
15 changes that were necessary to be resolved prior to the
16 stop work stopped the work for both the Harris and the
17 Levy COLA.

18 Q The second item there, what was the reason for
19 that?

20 A There are two vendors in this bullet listed by
21 name. Do you see that?

22 Q Yes, I do.

23 A Those vendors did work under our COLA
24 preparer, and their work is included in the fieldwork
25 that was done, and this bullet talks about findings that

1 were identified in the November, '07 timeframe without
2 saying more than I can.

3 Q Did these findings have an impact on the
4 schedule?

5 A Again, no. We submitted our COLA July of
6 2008, as planned.

7 Q Did they have an impact -- did they delay the
8 vendor's delivery of deliverables?

9 A They did delay it in terms of the initial
10 baseline schedule for the preparation of various
11 chapters that would be fed into the final COL
12 development. So yes, in that respect it did; however,
13 for the people with the key date, which was the final
14 submittal of the COL, it did not.

15 Q There are two items in the parenthetical
16 there. With respect to the second three-word item in
17 that parenthetical, can you tell me what was the reason
18 for that being done?

19 A You're talking about in the parentheses of the
20 second bullet under --

21 Q Yes, sir.

22 A -- under Quality Issues?

23 One of those companies, the one that's named,
24 did this evaluation, and we had an independent group do
25 that likewise.

1 Q Why did you need an independent group to do
2 that?

3 A This is for assurance that it was resolved
4 expeditiously.

5 Q And was this at least an indirect result of
6 the problems that were identified in the spring of '07?

7 A It was. Let me point out that independent --
8 the rest of the language in there, that was -- those
9 individuals were under contract already.

10 Q Can you turn to the next page, which is page 3
11 of this report excerpt? Do you see that?

12 A I go from page 2 to page 4.

13 Q Oh, I'm sorry. I'm using a slightly different
14 document.

15 On page 4, yes. And again, this is the same
16 report, November 20, 2007?

17 A Yes.

18 Q All right. On page 4 here -- and again, this
19 is a confidential document, so I would like to ask you,
20 under the -- I can say "project schedule" --

21 A Right.

22 Q -- paragraph, right?

23 The second paragraph there, can you describe
24 to me the reason for that sentence relative to your
25 assertion that the COLA submittal date was July, 2008?

1 A Let me read this. The first sentence has to
2 do with, based on the status to date, what's likely to
3 happen. The baseline discussion has to do with what was
4 originally done back in the prior year, what was
5 established in the prior year. I'm not sure I can
6 answer a question beyond that without saying more.

7 Q Okay. Well, let me ask you this: The second
8 date in that paragraph, is that a typo?

9 A No. The original target was later and it was
10 moved up.

11 Q Well, actually I'm looking at the year.

12 A Oh, that is a typo, yes.

13 Q Okay. So it should be --

14 A 2008.

15 Q Okay. All right. So there are -- so is it
16 true that the schedule changed?

17 A It is true that we advanced the target for
18 that schedule.

19 Q Okay. Now, isn't it true that, to do that,
20 you had to make changes to scope of work?

21 A The scope of work to prepare a COL application
22 is the same whether you submit it July or August. It's
23 the same.

24 MR. REHWINKEL: Mr. Chairman, I would like to
25 ask permission to approach the witness. I want to show

1 the company attorney first what --

2 CHAIRMAN CARTER: You may do so.

3 It's a great day. Isn't it?

4 BY MR. REHWINKEL:

5 Q I'll need that document back but --

6 A My copy does not have the same --

7 Q It does not, I understand. I wanted to ask
8 you a question. If you could look at the middle of page
9 three of that document, which I did not include in the
10 exhibit, and tell me if there were scope changes that
11 were made to achieve a certain target date?

12 A Yes, in that context, there was a scope change
13 to advance the COL submittal by one month; that is
14 correct.

15 Q And does that mean that the July, 2008 date
16 was not the original target date?

17 A When the initial baseline schedule was
18 established by the COL preparer, they had mapped it out
19 and it had resulted in one month later.

20 Q Thank you.

21 I apologize for the cumbersomeness of this,
22 but the confidentiality makes it somewhat difficult.

23 CHAIRMAN CARTER: You're doing a great job.
24 Keep on.

25 / / / / /

1 BY MR. REHWINKEL

2 Q Okay. In the sentence that begins "JVT is,"
3 do you see that back on page four of the November 20,
4 2007 document?

5 A Yes, I see that line.

6 Q Can you just tell me what is involved in
7 executing that sentence there?

8 A Let me think of how I can paraphrase that
9 without revealing what it is. If I have a scope of work
10 to do that's going to take 20 hours for one person to do
11 it, potentially I can do that in less than 20 hours if I
12 add a second person and they share that work. It's in
13 that context.

14 Q Did doing that increase the expenditures by
15 PEF?

16 A There was -- as part of our the overall
17 schedule execution and the development of that revised
18 July, 2008 target, I do recall there was a specific
19 impact evaluation form for August to July in order to
20 achieve our final service date. So that is true, but it
21 was also based, not just on the in-service date that we
22 had for the plants being placed in service, but the
23 production tax credits that was under the energy bill,
24 the EPACT 2005, there was not clarity in what it meant
25 to have your application accepted. So we wanted to make

1 sure there was plenty of float in the time that our COL
2 was submitted and docketed in 2008 --

3 Q Okay.

4 A -- to maintain eligibility for the production
5 tax credits.

6 Q Now, the last bullet on that page 4 indicates
7 in the parenthetical a timeframe that the fieldwork for
8 that FSAR section was behind your targeted schedule; is
9 that right?

10 A Without revealing the content and confidential
11 matter, as of the date of this report, the number in
12 parentheses was for that portion of that identified
13 section of the application.

14 Q Can I ask you to turn to the next page, which
15 I believe is page 5. Is that what you show?

16 A Yes.

17 Q Okay. This is November 20th, 2007, and this
18 is a confidential page. Is the "under-risk" matrix --
19 is that -- those first two sentences there, is that
20 confidential?

21 A The fact that we have a risk matrix is not
22 confidential.

23 Q Okay. What about the item in the
24 parenthetical there?

25 A It depends on what you're going to ask me

1 about those -- what it says in the parentheses.

2 Q Okay. I guess what I want to know, what I
3 want to ask you about is the items that are in that
4 color at the bottom of the page, the first bullet of the
5 new color.

6 A Yes. To be able to answer this question,
7 there were activities going on that represented risks to
8 executing and submitting the COL as planned.

9 Q And were some of those what we just discussed?

10 A Correct.

11 Q Now, the hollow -- the second hollow bullet
12 under the first bullet under that risk matrix item is
13 the same thing we read about in that second quarter,
14 2007 report; is that right?

15 A The language looks similar.

16 Q Okay. Can you turn to the next page in that
17 document, and can you tell me what this document is or
18 represents?

19 A Yes. Hold one second. Let me make sure
20 I understand.

21 Q This is Bates 47-007842. Is that what you
22 show?

23 A Yes. This is a schedule of the COLA
24 preparation.

25 Q Does it show whether the COLA preparation

1 tasks are on target or not?

2 A The print is small, so please stand by.

3 You cannot infer it -- unless I cannot see it,
4 you cannot infer the answer to your question from this
5 page alone because those actions that are in the
6 schedule you're requesting are not on this page.

7 Q Okay. Let's turn to the last page then, which
8 has got even smaller print. This is a similar document?

9 A It is, and, again, in the WBS of the schedule,
10 there are activities associated with the final prep of
11 the COL, what's referred to as preflighting, before you
12 submit it to make sure all the linkages are correct and
13 the requirement -- to meet the requirements of the NRC,
14 the packaging, and I cannot locate those actions on
15 here, and those are the ones that you would really need
16 to look at.

17 Q You said WBS?

18 A Work breakdown structure.

19 Q Is that what this --

20 A This is a schedule but the activity names are
21 typically related to a WBS task, and I'm looking for the
22 task that says package the COLA and preflight it and
23 submit it for final owner's review, and I don't see that
24 on these pages. So the answer to your question is I
25 cannot answer it.

1 Q Okay. Well, halfway down do you see the two
2 blue -- the first three blue lines on that page that go
3 horizontally across?

4 A You're on page 7848?

5 Q Yes.

6 A All right. I see the heading.

7 Q Well, there's three large thick blue lines,
8 the first three. There's more. There's six of them.
9 I'm talking about the first three. Do you see those?

10 A No, I'm not following you.

11 Q I'm talking about these (indicating)?

12 A Yes, the headings.

13 Q Yes. Between the -- in the two sections that
14 are created by those three headings, and there's a
15 column about halfway across the page that has the
16 letters BL, do you see that?

17 A A column --

18 Q A column heading in the green.

19 A And what does the column heading say?

20 Q I think it says "baseline variance."

21 A Yes, I see that.

22 Q Okay. I hope I didn't disclose confidential
23 information there.

24 A That's not a problem.

25 Q Okay. If you go down under that column

1 heading, you see some three-digit numbers with a minus
2 sign in front of them. Do those relate to tasks?

3 A In general -- let me answer your question --
4 if you have a schedule and there is a baseline and then
5 there's a variance to that schedule, you would show
6 numbers as positive or negative with respect to where
7 you are with the original baseline.

8 Q Were these numbers cause for concern at this
9 time?

10 A Yes, and I think some of the items you pointed
11 out to -- as part of our dialogue, was related to our
12 concern and the actions we were taking to address it.

13 Q Can I ask you to turn to the third -- I mean,
14 to Exhibit 145, the LNP Status Slide. Are you familiar
15 with this document?

16 A Yes.

17 Q Okay. It has your name on it.

18 A Yes.

19 Q And what was the purpose of this document?

20 A I do not recall why I prepared it, but
21 obviously I did do it. I don't remember -- I do not
22 recall what the purpose and what, you know, venue that
23 it was used in.

24 Q Okay. Can you turn to the last page of that
25 document, which I think is 47-010372. Do you see that?

1 A I see that.

2 Q Okay. And this document is all in yellow.

3 A Yes.

4 Q So I assume there's a claim of confidentiality
5 for at least some of the information on it.

6 The heading here, can I read that?

7 A Yes.

8 Q Okay. So it says, "Levy COLA." What about
9 the item under the bullet, next to the bullet there; can
10 you read that publicly?

11 A Which bullet?

12 Q The first bullet. I'm sorry.

13 A "Levy COLA, July 2008 Submittal."

14 Q All right. Now, what about the two diamonds
15 underneath that bullet; can those be read publicly?

16 A No, but I can paraphrase.

17 Q Okay.

18 A As we've discussed, in this period in late
19 2007, the progress on the development of specific
20 chapters that would be submitted in the COL application
21 was not meeting our expectations.

22 Q Okay. So this is very consistent with what
23 we've been talking about with respect to the schedule?

24 A That's correct, and we took actions and we
25 submitted July, 2008.

1 MR. BURNETT: Mr. Chair.

2 CHAIRMAN CARTER: Sir.

3 MR. BURNETT: Apologies for interrupting. I
4 believe, with confirmation from Mr. Miller, that this
5 document has -- due to the passage of time is no longer
6 confidential. So this may be -- if you could confirm
7 that, my belief there.

8 THE WITNESS: Yeah, I believe this passed to a
9 point where we probably can open this particular page.

10 MR. BURNETT: I'm sorry to interrupt, but I
11 believe we can speak about --

12 CHAIRMAN CARTER: So it's the page, not the
13 entire document, just this page?

14 THE WITNESS: Yeah, this individual page
15 because that's really all he's asking me questions on.

16 CHAIRMAN CARTER: Okay. Mr. Rehwinkel.

17 BY MR. REHWINKEL:

18 Q Okay. Thank you.

19 So this document here says that, with respect
20 to the Levy COLA and the 2008 submittal date for the
21 COLA, that it is challenged based on site geotechnical
22 analysis; is that right?

23 A That's correct.

24 Q And "challenged" means that you foresee some
25 difficulty in meeting it, is that right?

1 A It means --

2 Q At this time?

3 A -- that there was a challenge in meeting the
4 schedule to submit the COL on this particular subject.

5 Q Now, the fact that this document -- can I --
6 on the first page of it where it says your name, can I
7 read that, that whole --

8 A Yeah, I believe that's acceptable.

9 Q Okay. So it says, "November 26, 2007,
10 developed for Jeff Lyash by Gary Miller," right?

11 A That's correct.

12 Q Now, if you're doing this for Jeff Lyash, that
13 must mean Jeff Lyash has to present this -- make a
14 presentation to somebody maybe even above Jeff Lyash; is
15 that right?

16 A That's correct, but at the same time it could
17 be some other venue. I just don't recall what it was
18 for.

19 Q Okay. And it says in here, going back to the
20 last page here, that "actions being developed to recover
21 schedule." Do you see that?

22 A I do.

23 Q What are those actions, if you can say?

24 A Well, the actions that we had talked about.
25 The progress by the Consortium was not -- the JVT was

1 not where we expected to be able to achieve the July
2 2008 submittal. So we required them to add additional
3 resource and take those necessary actions, including
4 working longer, if necessary, to advance that work so
5 that our July, 2008 submittal would be met, and as I've
6 stated several times, we met it.

7 Q And it included the expenditure of additional
8 resources?

9 A That was not the intent. You'll recall from
10 our previous questions and answers we did authorize an
11 impact evaluation form for advancing the schedule a
12 month because that's what we needed; however, the fact
13 that they fell behind the execution of the work that was
14 in their contract under their existing scope, that was
15 what they had to take care of.

16 Q Do you know whether they did expend additional
17 resources regardless of whether they got additional
18 funds from Progress, "they" meaning the JVT?

19 A I suspect they did, but that was not part of
20 what we covered.

21 Q Okay. I would like to turn now to Exhibit
22 146, and this is excerpts from -- well, could we state
23 the title of this document on the first page there? Can
24 you read the -- tell me what this document is?

25 A Well, generally this whole package is

1 performance reports.

2 Q Okay. And it's reports by whom to whom?

3 A This report would be from my organization to
4 my management.

5 Q Okay. And on this first page, that's your
6 signature there at the bottom?

7 A That's correct.

8 Q Okay. On the second page of this report, this
9 says, "October, 2007" up at the top.

10 A Yes.

11 Q And this is page 4 of the document, correct?

12 A Correct.

13 Q All right. Under 1.3, "Schedule," do you see
14 that heading?

15 A I do.

16 Q The second paragraph there, is this
17 document -- is this paragraph consistent with what we
18 have been talking about with respect to the JVT and the
19 schedule?

20 A The first few sentences of this relate to that
21 same subject.

22 Q Okay. I'm going to ask you to turn to the
23 next page in the exhibit, and under 1.4, "Key Issues,"
24 do you see that?

25 A I do.

1 Q The second bullet item, can you read the
2 second sentence in that bullet item?

3 A Because this sentence was stated earlier, I
4 have no problem with stating the sentence. "The July,
5 2008 submittal was challenged based on site geotechnical
6 analysis requirements."

7 Q And this is what you reported to your
8 management --

9 A Yes.

10 Q -- above you? Okay.

11 Down at the last bullet item under Key Issues
12 on this page, can you tell me if you can state any of
13 the information in this bullet item publicly?

14 A I can summarize.

15 Q Okay.

16 A What this particular discussion is talking
17 about is the action planned to deal with the quality
18 assurance findings that were identified both from their
19 audits, our audits, our stop work, and then subsequently
20 what will happen in the next month will be an NRC
21 review. As part of all that, they're taking actions,
22 and it's talking about the fact that we're going to
23 follow that work and make sure it does -- it's done in a
24 timely manner to support both COLA submittals.

25 Q Now, is this issue that's discussed here any

1 different from the NRC audit issue that we discussed
2 earlier?

3 A The general issue is the same, and, again,
4 remember, it was first they identified some issues, we
5 then did an audit, we did a stop work, and then
6 subsequently the NRC came in and reviewed all of that
7 and then they issued a report on that and had some
8 additional items that they identified. And so the
9 corrective actions for all those things collectively are
10 embodied in the work going on.

11 Q In your answer, the first "they" you used, I
12 think you meant -- referred to CH2M-HILL?

13 A In this case it was CH2M-HILL.

14 Q I'd like to ask you to turn to page -- you can
15 skip the next page and turn to page 10 of that October,
16 2007 excerpt. Do you see that?

17 A Yes.

18 Q Under the -- at the very bottom under the
19 heading 2.5.2, "PEC Scope Change Authorized," that's not
20 Progress Florida. That's Carolina, is that right?

21 A Correct, but it's still confidential.

22 Q I apologize.

23 So the action that's referred to in here does
24 not refer to any work done in Florida?

25 A I think the answer to your question is, if it

1 says PEC, that's Progress Energy Carolinas.

2 Q Okay. Let's go to 2.5.4 on page 11, and this
3 is a confidential document, I'll remind myself. Do you
4 see that --

5 A I do.

6 Q -- on page 11 of the report excerpt?

7 Can you read this paragraph to yourself and
8 tell me what of this you can state publicly?

9 A Yes. There is a similar dialogue in my
10 rebuttal testimony regarding this subject, and it refers
11 back to questions you asked me earlier today. When we
12 went out and bid the work to prepare two COLAs, we did
13 that with two sites and, because we at that point had
14 not identified where in Florida the Levy -- where we
15 would actually build a nuclear site, we bid it out as
16 two sites like the Harris site. And so this paragraph
17 is talking about the fact that, after the site was
18 selected -- and again, this is embodied in my rebuttal
19 testimony -- the fact that there are specific
20 differences in the Levy site versus Harris and some of
21 those involve additional scope that had to be done,
22 authorized in order to prepare a full and complete COL
23 for that site. A prime example: Levy is a marine site,
24 Harris is not. And so there are certain aquatic species
25 measurements you do for a marine site that we would not

1 do at Harris.

2 Q So the last sentence in that paragraph refers
3 to the scope of work that you did not specifically
4 identify for the Levy site at the time you engaged the
5 JVT?

6 A That's -- let me see if I can explain it.
7 Again, when we bid out the COL preparation, we bid it as
8 two sites like Harris. Once Levy was selected, then we
9 looked at what are the unique features of Levy that will
10 require additional analysis or evaluations or field
11 investigations or fieldwork that would be required
12 because that site is not quite the same as a Harris type
13 site, and what this statement is talking about is
14 associated with, as we went through that process, for
15 example, the Cross Florida Barge Canal, we had to do
16 marine sampling on that barge canal and salinity and
17 tidal kind of measurements and bathymetry. Well, those
18 are things that we would not do at Harris because it's
19 not a marine site, and so they were not in the original
20 Harris scope. So, while the process of bidding out the
21 two applications collectively results in an overall less
22 cost for both of them, that does not mean that they're
23 exactly the same site, and so Levy had additional scope
24 that had to be authorized as part of that.

25 Q Okay. So it wasn't a matter of catching up

1 because of the time it took to identify the site, the
2 Levy site?

3 A Oh, no, sir. This is strictly the fact that
4 it has different features and those features have to be
5 addressed through investigation.

6 Q Okay. Thank you.

7 Bathymetry, is that fish?

8 A Depth.

9 Q Depth. Okay.

10 Under 2.5.5, can I read this heading?

11 A The heading, yes.

12 Q "PEF, Potential and/or Pending Scope Changes."

13 And can you tell me about the first bullet item there?

14 Is that what we've been referring to?

15 A You recall, yes, the original baseline
16 schedule versus the actual schedule that we targeted,
17 that's what that's referring to.

18 Q Okay. And what about the fourth item there,
19 is that the item we referred to on a prior exhibit
20 about --

21 A That relates to again -- to respond to
22 questions that occurred during the geotechnical audit by
23 the NRC, we concluded it would be best, to make our
24 application more complete, to have an independent
25 review, and that's what that's referring to, and

1 obviously you can read the subject, what it's about.

2 Q Is this an independent review of one of the
3 vendor's fieldwork?

4 A I would characterize it as an independent way
5 of doing the same measurement and presenting that
6 information also.

7 Q But can you say whose measurements were being
8 reviewed?

9 A Well, obviously, the work -- the broad scope
10 of work we're talking about is geotechnical; however,
11 under geotechnical, there were subcontractors under that
12 that were under CH2M-HILL, and some of those did certain
13 measurements, and at the time this was -- and I'm doing
14 this from memory -- was we felt like, based on some
15 preapplication submittal interactions with the NRC, our
16 application would be more complete by having an
17 independent measurement of a certain characteristic.

18 Q Was this independent measurement directly or
19 indirectly related to the issues that surfaced in March,
20 2007?

21 A If you're asking me, are they related to
22 quality issues, no.

23 Q Okay. Under 2.6, "High Risk Issues," the
24 first bullet point here, this relates to -- can you say
25 who this relates to, which company?

1 A The first bullet?

2 Q Yes.

3 A In the late-'07 NRC audit, they identified
4 some deficiencies, and this is referring to -- it's a
5 discussion about that and what's going on about that.

6 Q Okay. Did this have any bearing on the work
7 that was being done in Florida for the LNP site?

8 A Read the first sentence under this one, under
9 this heading.

10 Q I understand that, but I'm asking, did it have
11 any bearing on the work that was being done in Florida?

12 A Well, again, as the issues were identified and
13 we identified as potential extended conditions, so we
14 took actions to resolve that for Levy, and this -- it
15 relates to the fact that Harris was done -- the
16 fieldwork where the problem was identified occurred many
17 months in advance of Levy.

18 Q All right. On the next page, which is page 12
19 of this excerpt which is confidential, does this section
20 here at the top of the page relate to Levy work?

21 A Yes.

22 Q And on the last bullet point there, can you
23 tell me what that refers to?

24 A It refers to the subject we have been
25 discussing, which was the execution of one of the COLA

1 preparer contractors in meeting their schedule.

2 Q Does this issue persist throughout the
3 engagement of this preparer throughout the COLA
4 preparation?

5 A I think the question you're asking me, the
6 amount of time that they were behind, did that continue
7 through to the end? The answer is no because, as they
8 took corrective action as we increased our monitoring of
9 their execution, they began to catch up, and so
10 subsequently we did complete the application and submit
11 it on time, July, 2008.

12 Q Okay. Can you turn to page 14 of this
13 exhibit, under Section 4.4.1, "NRC QA Audit." Do you
14 see that?

15 A Yes.

16 Q Now, is this section related specifically to
17 one company or is this an overall progress issue?

18 A In general that would relate to both COLs
19 being developed.

20 Q Okay. Let me ask you to turn into the
21 December report and to page five, under 1.5.

22 A Yes.

23 Q Is there anything confidential about the third
24 bullet item?

25 A No. It is well -- it's in public information

1 that we had a meeting with the NRC January 10th.

2 Q Okay. And this was January 10th of 2008?

3 A That's correct.

4 Q Was there any quality assurance issues related
5 to the audit discussed at that meeting?

6 A I don't recall, and that was not the purpose
7 of that meeting.

8 Q On page 11 of this excerpt, again, just so I
9 understand, 2.5.4 under the section "DEF Authorized Code
10 Changes," the next to the last sentence of that first
11 bullet point, that's again describing the issues related
12 to the differences in the Levy site versus the Harris
13 site?

14 A I would take exception. It's not issues.
15 It's the fact that the Levy site is not the Harris site,
16 and so what was bid as a baseline scope, there were
17 increases for the Levy site.

18 Q Okay. The next page, page 12.

19 A Yes.

20 Q Is there any -- on the third bullet item
21 there, and this is under the section 2.5, "High Risk
22 Issues," and this is the section of that that relates to
23 PEF; is that correct?

24 A Yes.

25 Q The last bullet point here in that section at

1 the top of page 12, is that again -- is that any
2 different than we've already discussed with respect to
3 this subject matter?

4 A No, and let me point out, what you're seeing
5 here, as a management team, we had very close oversight
6 of what was going on here and taking actions to ensure
7 our schedule would be recovered and be able to meet our
8 target submittal date, and so you're seeing that
9 reflected in the report.

10 Q The January, 2008 report, page 9, if we can
11 turn to that page; do you see that?

12 A All right.

13 Q Under 2.4.2, "PEF COLA Development."

14 A What page?

15 Q I'm sorry. Page 9. It's Bates
16 FPSC1-9-0000009. Do you have that?

17 A I'm not following you. I see the June, 2008
18 report is the next one in my package.

19 Oh, no, I stand -- you're still on the January
20 one?

21 Q Yeah, the page --

22 CHAIRMAN CARTER: One second, Mr. Rehwinkel.
23 Mr. Rehwinkel, one second. Commissioner Skop?

24 COMMISSIONER SKOP: Never mind. I was going to
25 say it was the next page in the document I have, so --

1 MR. REHWINKEL: Okay. The pages are not --
2 okay, I see. You're on page 9 of January, 2008. The
3 cover sheet's missing. That's what threw me off.

4 THE WITNESS: Okay. Yes, yes.

5 CHAIRMAN CARTER: Okay. We're all on the same
6 page now?

7 THE WITNESS: Literally.

8 BY MR. REHWINKEL:

9 Q The middle of that paragraph there --

10 A Under which section?

11 Q 2.4.2, "PEF COLA Development," is that
12 sentence there that starts, "The improvement," is that
13 confidential?

14 A The way that was structured, I would prefer to
15 paraphrase it if I can. We looked at how -- let's just
16 back up to a higher level. The COLA is many sections
17 and you can subdivide that down into subsections, and so
18 we went through a process to better define this piece
19 parts of the work to be able to better expedite its
20 execution. And you see the subjects, the ones it
21 included there.

22 Q Okay. And I guess there's a word on the one,
23 two, three, four, five, six, seven -- no, sixth line
24 here, the one that starts with the word "The." Do you
25 see the fourth word there? It begins with an S.

1 A Yes, I see that word.

2 Q Okay. Does that denote some level of effort?

3 A Yes.

4 Q Okay. Resources?

5 A It denotes resources of our oversight and
6 their leadership team of their contract organization.

7 Q Okay. If you could turn to the June report,
8 page 12, can you describe, on the hollow bullet point
9 item that starts with the letter six -- I mean, the word
10 six, what's happening in that as being described there?

11 A There are two technical subjects addressed in
12 this. Let me describe this at a high level.

13 As we talked about earlier, there are
14 preapplication interactions with NRC where they review
15 the progress of your COL development and they provide
16 comment on that and ask questions, and based on the
17 questions we get and some of what they say, what they
18 would expect to see in an application, then we adapt and
19 make sure that we include that in our application so
20 that would facilitate a more efficient review.

21 Q Okay. So this wasn't necessarily an area of
22 concern by the NRC?

23 A No. All sites, AP1000 sites have gotten these
24 visits, and they've gotten feedback and they've taken
25 action.

1 Q Okay. The next page, page 15, under 5.3, "PEF
2 Site Engineering."

3 A Yes.

4 Q Can you tell me what the second sentence there
5 that begins with the word "Specifically" is referring
6 to? Can you paraphrase that?

7 A Yes. The -- let me see how I could describe
8 this. Let me describe this in a simple way and that
9 will then set the stage for a more complicated answer.
10 If I was at the Harris site, I can go in and I can clear
11 off about ten foot of sandy soil, and it's a rock site
12 so I can create an excavation by blasting a hole in the
13 rock, and that creates the foundation for where the
14 plant will be built. In the case of Levy, because of
15 groundwater and the layers that exist at that site,
16 sandy soil over a competent limestone base, followed
17 then by bedrock very deep, we -- the foundation design
18 is more complicated and so we brought in an expert, Paul
19 Rizzo, to help support us in the foundation design, but
20 that foundation design, including the engineered
21 backfill, is coupled with the geotechnical of what's
22 below that, because in our case the engineered backfill
23 is not just raising the level of where the plant's going
24 to be built, but it's also providing a bridging
25 function. In other words, at the Levy site there's

1 about 60 to 70 foot of sandy soil overburden over the
2 limestone, and we have remove that, and then we have to
3 then put something back on top of that that the reactor
4 foundation will sit on, and the bottom of that
5 foundation is at minus 40 feet. So you need to go from
6 like minus 70 to minus 40, adding in 30 feet of
7 something in there that will bear that load and then
8 that will have the proper behavior in a seismic event.

9 Because of the geology in Florida, that
10 bridging mat, which is engineered backfill, has more
11 functions. And so this is referring to the fact that
12 we're bringing in someone to help us with the final
13 design of that foundation.

14 Q When you say "bringing in," you're talking
15 about Paul Rizzo?

16 A Correct, and when I say "bringing in," he was
17 brought in under the JVT as a quality provider of a
18 service.

19 Q Okay. When we looked at -- when we just saw
20 his name in an earlier exhibit, that was not work under
21 the JVT?

22 A It was, but that was a different scope of work
23 than what this is.

24 Q Okay. Now, isn't it true that he was also
25 brought in to help with issues that he had been having

1 with another vendor in the collection of geotechnical
2 data?

3 A No. What you say is not the correct
4 characterization. He was brought in to provide us
5 independent review of that, what was coming up as part
6 of the data coming up out of the ground.

7 Q Okay. Were there any responsibilities that
8 were transferred from one vendor to Mr. Rizzo?

9 A Yes. As we entered into 2008 and we were
10 approaching the COLA submittal, certain subsections
11 within the FSAR were reassigned to -- for completion
12 from CH2M-HILL to Paul Rizzo because of the close
13 coupling to the foundation design which they were
14 designing.

15 Q So that was something that needed to be done
16 in order to assure that that aspect of the COLA was
17 completed to meet your deadline?

18 A That's correct, but it was also more than just
19 a timing issue; it was a subject matter expert
20 requirement because the foundation design for Levy is
21 more complicated because of the fact that the engineered
22 backfill is not just backfill. It actually serves a
23 bridging mat function over the limestone.

24 Q But it was initially not contemplated that Mr.
25 Rizzo's firm would need to do that?

1 A It was originally not contemplated, but that
2 evolved through the analysis of the site that we
3 determined that we would need that additional capability
4 and subject matter expertise.

5 Q Now, did any of the information that Mr. Rizzo
6 worked on, did it have any bearing on the LWA
7 evaluation?

8 A Well, the scope of the work that he worked on,
9 such as the roller-compacted concrete or what's referred
10 to as the bridging mat -- some people would call it the
11 engineered backfill -- that was part of the scope that
12 was in the original LWA request.

13 Q And by original -- and it was also still in
14 there after September 12th, correct?

15 A That is correct.

16 Q Let's go to September, 2008, page 13, excerpt.
17 Now, this is section 2.6, "High Risk/Critical Items."

18 A Yes.

19 Q And the last bullet point in that section is
20 one of the risk -- is one of the items that is listed in
21 there, is that correct?

22 A That's correct.

23 Q Can it be publicly stated?

24 A Yes, I can state this. This has to do with --
25 it's -- under the category of what's requiring

1 management attention, it's NRC review schedule for the
2 COL.

3 Q Okay. And this --

4 CHAIRMAN CARTER: Just one second,
5 Mr. Rehwinkel. Commissioner Skop.

6 COMMISSIONER SKOP: Thank you, Mr. Chairman.
7 Mr. Rehwinkel, which page are you on?

8 MR. REHWINKEL: I'm on Bates-stamped
9 47-013484, page 13 of the September, 2008 report
10 excerpt.

11 COMMISSIONER SKOP: Okay. All right. Thank
12 you.

13 CHAIRMAN CARTER: You may proceed.

14 BY MR. REHWINKEL:

15 Q The LWA schedule is not separately identified
16 as a risk in this section?

17 A It is not.

18 Q Is that because at this time you had not
19 received the October 6 letter from the NRC?

20 A It's not in there because we had submitted an
21 LWA request and we had no reason to add it on as a risk
22 because we had not received any information that would
23 suggest we had a problem.

24 Q Okay. Page 14 of this report, October, 2008,
25 Section 2.6.

1 A Yes.

2 Q Again, one of the next to the last bullet
3 point items is the same?

4 A The same.

5 Q NRC review schedule for COLA.

6 A Correct.

7 Q And you're saying you had probably gotten the
8 October 6th letter at this time. Because this is a
9 report for October, you would have prepared it early
10 November --

11 A That is correct.

12 Q -- or completed it?

13 A We would have had the knowledge of the October
14 6th letter.

15 Q Okay.

16 A And we would know that the review schedule was
17 contingent upon our answering the RAIs which are
18 embodied in the October 6th letter. So we had
19 management attention to get those answers in.

20 Q Okay. And on page 19 of this exhibit, under
21 Section 6.2 --

22 A Yes.

23 Q -- PEF, can you just tell me generally what's
24 in that section or what that's discussing?

25 A Stand by. Let me read it.

1 Q Sure.

2 A This section is summarizing the October 6th
3 letter, and it has cut and paste from that letter in the
4 text here.

5 Q Is there anything particularly confidential
6 about what's here?

7 A The portions that are in italics should be
8 verbatim cut and paste from the October 6th letter. The
9 information at the bottom of this which talks about the
10 scope of the LWA, that is consistent with the September
11 12th public submittal.

12 Q Okay. So this is in here more for information
13 to management?

14 A Well, it's in there because we had received
15 our schedule, and so it's an acknowledgement of what
16 they said in the schedule, that they need more
17 information, and because this is October and it follows
18 the September, it's acknowledging also the scope of the
19 LWA.

20 Q Okay. And on page 5 of the November report,
21 if you'll page forward into the November report excerpt,
22 do you see that, Bates 47-013496?

23 A I see that.

24 Q Okay. And this has a section called "Key
25 Issues," 1.4; do you see that?

1 A Yes.

2 Q Is this -- what is the purpose of this section
3 here?

4 A It's items of management focus just as the
5 second bullet which we just referred to in your our last
6 dialogue.

7 Q And page 14 of November, 2008, again, you have
8 the bullet point in Section 2.6, NRC Review Schedule for
9 COLA.

10 A Yes.

11 Q Page -- let's go to the December, 2008 report,
12 and specifically -- well, look on page five. Under Key
13 Issues, the fourth bullet point, have you information in
14 there that can be read publicly?

15 A That is public. We executed the EPC on
16 December 31st of 2008.

17 Q Okay. So this means that at least portions of
18 the information in this document were placed in here
19 after the first of the year 2009?

20 A In general, this report is created probably
21 ten to 15 days into the next month because it's held up
22 by the completion of financial data that would need to
23 be going into the report.

24 Q Okay. On page 13, under Section 2.6, "Risk
25 Critical Items," the last bullet point -- well, first of

1 all, two, four -- sixth from the bottom we say that "NRC
2 reviews schedule for COLA."

3 A Yes.

4 Q Okay. And then -- but the last bullet point
5 is a new one. Can you read that one?

6 A Yes. LWA, limited work authorization
7 approval.

8 Q Okay. Now, why is that in here?

9 A Because in the execution of the activities
10 leading up to first concrete, the next big evolution,
11 because of the September 12th change in LWA scope, is
12 all constrained by the LWA. So we're raising this to --
13 on our -- in terms of our management attention because
14 it is the next big evolution that will take place that
15 will govern the control of physical site work. So we're
16 placing an emphasis on getting that done. And the
17 reason I say that is because, if you are in the month of
18 let's say September, before September 12th we would have
19 planned on installing the diaphragm wall, installing the
20 grout, and then excavating-dewatering as part of our
21 preconstruction activities. Because of this
22 September 12th scope-change letter, that now -- LWA
23 is -- that timeline includes those activities, and so
24 you now need the LWA to start that work, and so that's
25 why it's getting visibility here.

1 Q Why is it in here and not in the November
2 report?

3 A I don't recall specifically why it's in
4 December versus November other than the fact that we're
5 now looking ahead to when we're going to start physical
6 work on the site and what's going to constrain you from
7 doing that, which is the LWA.

8 Q So it was a concern to put in here in the
9 first week or two of January, 2009, but not the first
10 week or two of December of 2008.

11 A No. This report clearly is written after the
12 end of December. It always is because of the financial
13 information which is in the report.

14 Q But I guess my question is, why isn't this
15 same concern listed as a high-risk critical item in the
16 month before?

17 A At the time -- let's see, I'm going back and
18 I'm trying to do this from memory. Back in November,
19 2008, there was no issues or concerns we had with LWA
20 approval. We had changed the scope as identified in the
21 September 12th letter, but I believe, and this is from
22 memory, that this was just merely stating the fact that,
23 looking ahead, the activities that are going to next
24 come to the site are going to governed by the LWA
25 approval. So that becomes an important next regulatory

1 step, no different than some of the other items we have
2 on here, such as land acquisition or other things which
3 are things that we were working on to be able to advance
4 the project.

5 Q Okay. In the -- let's see. If we can go back
6 to the -- let's go back to page 17 of the November
7 report.

8 A All right.

9 Q The very top bullet point item on page 17,
10 there is the word "problems." Do you see that?

11 A Yes.

12 Q Okay. Now, isn't it true that the event
13 that's described here occurred in the first week of
14 December, 2008?

15 A I don't recall the exact week, but it was end
16 of the year 2008, and that date sounds reasonable.

17 Q So this is information from December, 2008
18 that's in the November report?

19 A I don't recall the specifics of when the work
20 started and when the instructions were reviewed in
21 preparation for the work in the field.

22 Q Well, isn't it true that there was a stop work
23 order issued with respect to this contractor that's
24 referred to in the first line of that bullet point?

25 A That's correct; however, the work had not

1 commenced at the site yet. We reviewed his procedures
2 for executing the work at the site and we were not
3 satisfied, and so the work was not allowed to start.

4 Q But isn't it true that stop work order was
5 issued in the first week of December of 2008?

6 A I don't recall the specific date.

7 It is possible that, when this report was
8 finalized, that someone had insight in what happened in
9 the first week of December and included it in November.
10 That is a possible outcome here.

11 Q Okay. But in the first week of December,
12 2008, is it your testimony that the LWA or limited work
13 order -- limited work authorization approval was not an
14 item that should have been included in the High
15 Risk/Critical Items section?

16 A It is my testimony that I had -- did not have
17 a concern whether we received an LWA in November -- that
18 I had a concern in November, 2008 that we would not get
19 an LWA. I did have not that concern in November and I
20 did not have that concern in December either.

21 Q Well, what was -- what happened in the first
22 week of January that caused you to have it?

23 A Well, again, as I said earlier, this relates
24 to, as you look ahead to what activities are going to
25 occur next on the site, those activities are the work

1 associated with the diaphragm wall and grout which are
2 now constrained by an LWA. So we're looking ahead
3 toward the next major approval.

4 Q Okay. Let me ask you to turn to page 189 of
5 the December report, under 6.2, PEF, and the first part
6 of that is the same thing -- through the italics, is the
7 same thing that's in the November report; correct?

8 A That's correct.

9 Q Now, this next paragraph that starts, "A
10 response," is that confidential, those two sentences?

11 A Since it's historical, I don't think that
12 would be confidential any longer.

13 Q Okay. And it says here in the second
14 sentence, "NRC has indicated that the LNP COLA review
15 schedule will be issued by January 30, 2009." Do you
16 see that?

17 A I see that.

18 Q Okay. When did you learn about that?

19 A Well, again, based on when this report was
20 authored, the final version of it, and when it was
21 actually signed out, we had an ongoing dialogue with our
22 project manager for the NRC, and as we continued to ask
23 them when are we going to get our schedule, sometime in
24 December he clearly told us we're going to get it in
25 late January, and that's why this was written in here.

1 Q So this information was learned in December?

2 A Most likely.

3 MR. REHWINKEL: Madam Chairman, that's all the
4 questions I have from these four exhibits, but I do have
5 several others. I don't know if -- I mean, I'm well
6 prepared to continue or we can take a break and get
7 another set of documents ready.

8 ACTING CHAIRMAN EDGAR: Okay. Well, I'll tell
9 you, Rehwinkel, my mental thinking prior to you asking
10 was that we would go till about 4:15, but if this is a
11 more -- again, it's your cross. If this is a more
12 appropriate break in the action, so to speak, then we
13 can do that now because I know I could use a stretch.

14 MR. REHWINKEL: Okay. Thank you.

15 ACTING CHAIRMAN EDGAR: So, should we --

16 MR. REHWINKEL: I'll get another set of
17 documents.

18 ACTING CHAIRMAN EDGAR: And should we keep
19 these? I mean, I'm never sure with the red documents --

20 MR. REHWINKEL: I'll tell you what, it would
21 probably be appropriate to keep them until we're done
22 with this section of the cross and then maybe we'll take
23 a break and decide how to proceed.

24 ACTING CHAIRMAN EDGAR: I'm getting a nod from
25 our staff as far as confidential document treatment.

1 Okay. That's sounds good.

2 Then, Mr. Rehwinkel, thank you for the
3 suggestion, and we are on break until 4:20.

4 (The transcript continues in sequence with
5 Volume 8.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, RAY D. CONVERY, do hereby certify that I was
5 authorized to and did stenographically report the
6 foregoing proceedings at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that the foregoing
9 transcript is a true record of my stenographic notes.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorney or counsel connected with the action, nor am I
14 financially interested in the action.

15 DATED this 10th day of September, 2009, at
16 Tallahassee, Leon County, Florida.

17
18
19
20 

21 _____
22 RAY D. CONVERY
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24
25