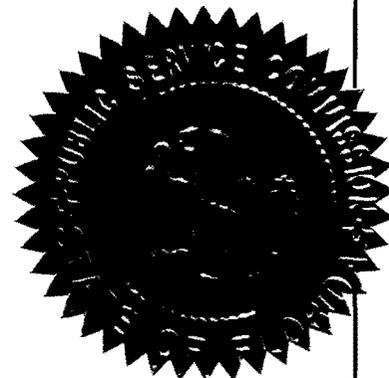


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090009-EI
NUCLEAR COST RECOVERY CLAUSE.



VOLUME 8

Pages 1321 through 1439

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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 9:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

PARTICIPATING: (As heretofore noted.)

DOCUMENT NUMBER-DATE

09383 SEP 10 8

FLORIDA PUBLIC SERVICE COMMISSION

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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 7.)

4 **CHAIRMAN CARTER:** Okay. We are back on the
5 record. And when we last left I think, Mr. Brew, you
6 were ready for cross-examination, or Mr. Rehwinkel.

7 **MR. BREW:** Yes, sir. But Mr. Rehwinkel is not
8 done.

9 **CHAIRMAN CARTER:** Oh, you weren't?
10 (Laughter.)

11 **MR. REHWINKEL:** I have a few more questions.
12 We have another set of --

13 **CHAIRMAN CARTER:** No more breaks for you.
14 You're recognized, Mr. Rehwinkel.

15 **MR. REHWINKEL:** Thank you.
16 Despite Mr. Young's admonition, Mr. Kelly
17 bought me a caffeinated coffee.

18 **CHAIRMAN CARTER:** You know, he did that on
19 purpose.

20 **MR. REHWINKEL:** Which I asked him to do.
21 Mr. Chairman, we have passed out another set
22 of documents that we would like to -- like we did last
23 time is identify them for cross-examination purposes in
24 a batch, or we can do it each time we approach the
25 witness with them.

1 **CHAIRMAN CARTER:** Okay.

2 **MR. REHWINKEL:** It's your pleasure.

3 **CHAIRMAN CARTER:** Well, let's do the batch
4 deal. Let's go for a batch. We're speaking computer
5 terminology.

6 **MR. BURNETT:** Mr. Chair.

7 **CHAIRMAN CARTER:** Yes, sir, Mr. Burnett.

8 **MR. BURNETT:** I'm sorry, sir. May I just get
9 a copy of those?

10 **MR. REHWINKEL:** I apologize. I'm sorry.

11 **CHAIRMAN CARTER:** Okay.

12 **MR. REHWINKEL:** I made the absolute minimum I
13 could because I wanted to minimize. I apologize.

14 The first document --

15 **CHAIRMAN CARTER:** That would be Number 147.

16 **MR. REHWINKEL:** Okay. And it is entitled JVT
17 3/2008 Monthly Report Excerpts.

18 **CHAIRMAN CARTER:** JET?

19 **MR. REHWINKEL:** JVT.

20 **CHAIRMAN CARTER:** Oh, JVT 3?

21 **MR. REHWINKEL:** Yes, 3/2008, March 2008
22 Monthly Report Excerpts.

23 **CHAIRMAN CARTER:** Okay.

24 **MR. REHWINKEL:** And that is a three-page
25 document. The next document is --

1 **CHAIRMAN CARTER:** 148.

2 **MR. REHWINKEL:** -- a one-page document, a
3 March 11, 2008, letter to Gary Grant. Not the actor.
4 The next document is a ten-page document.

5 **CHAIRMAN CARTER:** 149.

6 **MR. REHWINKEL:** -- entitled Rizzo/Randazzo.

7 **CHAIRMAN CARTER:** Is that R-I-Z-Z-O?

8 **MR. REHWINKEL:** R-I-Z-Z-O/R-A-N-D-A-Z-Z-O.

9 The next document is a 23-page document.

10 **CHAIRMAN CARTER:** Number 150.

11 **MR. REHWINKEL:** May 2nd, 2008, letter to Gary
12 Grant.

13 **CHAIRMAN CARTER:** May 2nd, 2000 --

14 **MR. REHWINKEL:** 2008 letter to Gary Grant. I
15 think that's enough.

16 **CHAIRMAN CARTER:** That's a different Gary
17 Grant letter than before?

18 **MR. REHWINKEL:** Yes. This is a May 2nd, 2008,
19 letter.

20 **CHAIRMAN CARTER:** Okay.

21 **MR. REHWINKEL:** The next document --

22 **CHAIRMAN CARTER:** That would be 151.

23 **MR. REHWINKEL:** -- is a one-page letter to
24 Jeff Benjamin.

25 **CHAIRMAN CARTER:** To Jeff Benjamin. Okay.

1 **MR. REHWINKEL:** The next document is a
2 27-page --

3 **CHAIRMAN CARTER:** 152.

4 **MR. REHWINKEL:** -- September 12, 2008,
5 supplemental LWA filing.

6 **CHAIRMAN CARTER:** Supplemental --

7 **MR. REHWINKEL:** LWA.

8 **CHAIRMAN CARTER:** LWA.

9 **MR. REHWINKEL:** Filing.

10 **CHAIRMAN CARTER:** You know, you could have
11 NWA, the National Wrestling Association. Okay.

12 153 will be the next one. Do you have another
13 one?

14 **MR. REHWINKEL:** Yes.

15 **CHAIRMAN CARTER:** That would be 153.

16 **MR. REHWINKEL:** A five-page SSW/WEC --

17 **CHAIRMAN CARTER:** SSW/WEC.

18 **MR. REHWINKEL:** -- 4/2009 Monthly Report
19 Excerpts.

20 **CHAIRMAN CARTER:** Okay.

21 (Exhibits 147 through 153 marked for
22 identification.)

23 **MR. REHWINKEL:** And in case anyone perceived
24 it, I passed out two documents that I do not intend to
25 use with this witness, even though the cover sheet says

1 I do. And this is PGM Board of Directors Documents and
2 Link documents.

3 **CHAIRMAN CARTER:** We don't need them?

4 **MR. REHWINKEL:** We don't need them. Just in
5 case -- these were for Mr. Lyash.

6 **CHAIRMAN CARTER:** Okeydokey. All right, Mr.
7 Rehwinkel.

8 **MR. REHWINKEL:** Thank you.

9 CONTINUED CROSS EXAMINATION

10 **BY MR. REHWINKEL:**

11 **Q.** Before we move on to this set of documents,
12 Mr. Miller, I would like to ask you a question. If you
13 could, turn to Page 13 of the December 2008 NPD Report
14 in 146, Exhibit 146.

15 **A.** Page 13, December 2008 Performance Report?

16 **Q.** Yes, sir.

17 **A.** I'm there.

18 **Q.** And Section 2.6, risk critical items.

19 **A.** Yes.

20 **Q.** Can I ask you if the first bullet point that
21 starts with the word suitability, is that sentence
22 confidential?

23 **CHAIRMAN CARTER:** I'm sorry, Mr. Rehwinkel,
24 you said Exhibit 146?

25 **MR. REHWINKEL:** Yes. The NPD -- Progress NPD

1 monthly report excerpts.

2 **CHAIRMAN CARTER:** Okay. What page?

3 **MR. REHWINKEL:** This would be the next to the
4 last page in the exhibit.

5 **CHAIRMAN CARTER:** What's the Bates stamp?

6 **MR. REHWINKEL:** It is 47-013526.

7 **CHAIRMAN CARTER:** 3526. Got it.

8 **THE WITNESS:** No, I don't thinking that's
9 confidential. Would you like me to explain what that
10 means?

11 **BY MR. REHWINKEL:**

12 **Q.** Yes. If you would read it first and then
13 explain.

14 **A.** All right. First of all, you have to read the
15 sentence ahead of it to put it into context. The
16 following risk items identified for management attention
17 for PEF include -- and then the bullet you requested me
18 to say -- suitability of the soil rock substrata for the
19 AP 1000 structures complexity of karst investigations.
20 So what this means is in the context of when this report
21 was written, we had submitted our application, we had
22 then gotten the October 6th docketing letter, it had
23 questions in it regarding geotechnical, and so we
24 responded to those, and we were waiting to have
25 additional interactions, or RAIs associated with this

1 subject. And so they required management attention.

2 Q. So just as a follow-up, this item was related
3 to -- it appeared here post October 6th?

4 A. This is definitely a post October 6th, and
5 it's post November 20th when we submitted our response
6 to the RAIs that were answered in the October 6th
7 letter.

8 Q. I said I had one question, but let me ask you
9 if you would turn to the October 2007 report. It is
10 Page 12 of that report, and it's Bate-stamped 47-017367,
11 and near the front of the document.

12 A. I'm there.

13 Q. Okay. And at the top of the page, the second
14 bullet point, is that a confidential --

15 A. No.

16 Q. Okay. Is that different from what you just
17 referred to?

18 A. It is different only in the fact that what was
19 going on in the two periods. The last answer I gave you
20 was with regards to what we knew in the December time
21 frame following the docketing and the questions in the
22 docket letter. Back in October 2007, we had just
23 completed boring for the analysis for the site, and so
24 we were analyzing all of those results and doing that
25 analysis to develop the application, particularly

1 Section FSAR 2.5 on geotechnical. And so we were
2 examining the suitability, because until the work is
3 done and you can complete all of those investigations
4 necessary to demonstrate that the plant can be sited at
5 a particular site, you know, you don't have the final
6 answer. And in the case of the October 2007 time frame,
7 we would have still been in an analysis of the raw data
8 from the borings that were taken at the Levy site.

9 Q. Okay. In a September report excerpt --

10 A. From what year?

11 Q. 2008. Would you expect that same risk item
12 that you show in the December report to be in that
13 report? And I am looking on Page 13 of that report
14 excerpt, the September 2008 report excerpt.

15 A. Yes, because -- yes, I would expect it, and
16 here is why. When you look at our COL application,
17 there really is three parts to it. There is the part
18 that points to the design control document, or what
19 people refer to as the DCD which embodies the technology
20 descriptions of the AP 1000s. There's a section of the
21 COLA related to, if you will, the reference COLA
22 portions that we're involved through Newstart to develop
23 those standard sections. And then what remains is Levy
24 specific, which is geotechnical, hydrology, weather,
25 flooding, environmental. And so it's not surprising

1 that a lot of the management attention items would be
2 site specific because they are the ones that are unique
3 to our site.

4 Q. Okay. Thank you.

5 A. Okay.

6 Q. Do you have Exhibit 147?

7 A. I do.

8 Q. And this is the March 2008 excerpt JVT report
9 monthly report excerpt.

10 A. Dated April 10th, 2008?

11 Q. Yes.

12 A. Yes, I have that.

13 Q. Okay. And this is a document you would have
14 -- or your name is -- you would have seen this?

15 A. Right. This is a report to me.

16 Q. On the Page 4 excerpts, the second page of
17 that exhibit. Can you -- first of all, this is a
18 confidential document, correct?

19 A. Yes.

20 Q. Under the risk matrix heading, the first
21 bullet point?

22 A. Yes.

23 Q. Is that something that you can read -- well,
24 let me ask you this. Is the first sentence something
25 that you can read -- the first two sentences something

1 that you can read publicly?

2 **A.** Yes, I can. Progress Energy is maintaining a
3 risk matrix for PEF COLA. The JV provides inputs to
4 this risk matrix. The risks associated with the LNP
5 site are -- and it indicates in parentheses if they are
6 new they are in blue.

7 **Q.** What about the first bullet point, can you
8 read those first two sentences?

9 **A.** Right. I would prefer to characterize this
10 one. And what it is characterizing is we have been
11 doing analysis on karst for the Levy site, and we
12 concluded they were a little bit more complex than
13 anticipated, and additional evaluation was necessary.

14 **Q.** Okay. Can you tell the Commission what you
15 mean by karst?

16 **A.** Karst has to do with features in the limestone
17 substrate where you may have a pathway, for example,
18 for, like, water to move through. And so -- or they
19 could be places where you have a void that is filled
20 with like crushed limestone or weathered limestone. So
21 what it means is it's not solid. There are little
22 pathways and crevices that you may have movement of
23 water through.

24 **Q.** Now, does the presence of calcium carbonate
25 define whether it's karst or not?

1 **A.** I'm not a geotechnical person, but it has to
2 do with can -- do you have the presence of these minute
3 cracks or fissures, whatever, and does water move, and
4 can you have the potential for dissolution.

5 **Q.** Okay. So the rock dissolving based on the
6 presence of the water and the reaction with the water
7 and the rock?

8 **A.** Typically the moving water.

9 **Q.** What does the term postulated mean there?

10 **A.** What that means is in the Levy site we do
11 borings underneath the site that characterizes what it
12 looks like below that site where the footprint of the
13 reactor sits. We also do those out in the actual free
14 field around the site. So because we don't do an
15 infinite number of borings, we don't characterize it
16 everywhere. We are taking a representative sample, and
17 so we then have to evaluate what those karst features
18 would look like based on -- inferred from what we bore
19 and get as boring results, but also inferred from
20 regional information that is available in public sources
21 for geology.

22 **Q.** And some of that involves creation of a
23 modeling?

24 **A.** Correct. And specifically the modeling that
25 we do consider is the long-term movement of water in

1 that substrate and whether it affects the ability of
2 that substrate to hold the load above it.

3 Q. Okay. Now, isn't it true that the NRC had
4 asked questions in their prefiling meetings with you
5 about this issue?

6 A. They asked questions as regards to earlier
7 documents you showed me. Yes, when we had some
8 preapplication audits, we talked about the
9 investigations for karst features and how that would be
10 done.

11 Q. Okay. And based on those conversations you
12 did additional data gathering and analysis?

13 A. It was already planned, but we probably
14 expanded it based on their comments. It would have to
15 be addressed in any case of a COLA to fully complete an
16 FSAR 2.5 section that fully characterizes the
17 geotechnical substrate to demonstrate that when the
18 plant is sitting on it, it supports the load and in a
19 seismic event that the building -- you can predict the
20 behavior of the building and it will not violate any of
21 the seismic criteria of that building.

22 Q. Okay. Now, can --

23 MR. MOYLE: Can I just make a point of
24 clarification, if I can? I mean, because I have
25 probably a few questions -- really, I hate to interrupt

1 your cross, but based on the witness' response, am I
2 correct in that any information related to karst and the
3 geology of the area -- I mean, that's not considered
4 confidential by Progress, is it?

5 **MR. REHWINKEL:** My MO is to ask the witness,
6 because I do not know.

7 Mr. Chairman, I will direct my response to
8 you, because I think it is a valid question that
9 Mr. Moyle raises, and we have had some discussions with
10 the company. This sounds strange to say that to
11 expedite this, because it is taking awhile, but it could
12 take even longer if I explored the contractual reasons
13 why the witness may or may not consider information
14 confidential.

15 I think Mr. Moyle raises a valid point, but I
16 do not know the ins and outs of the contracts under
17 which they are operating and so I am, in an abundance of
18 caution, relying on Mr. Miller's expertise with respect
19 to whether it is confidential or not.

20 **CHAIRMAN CARTER:** We will cross that bridge
21 when we get to, Mr. Moyle.

22 **MR. MOYLE:** I was hoping maybe --

23 **COMMISSIONER ARGENZIANO:** Mr. Chair.

24 **CHAIRMAN CARTER:** Commissioner Argenziano.

25 **COMMISSIONER ARGENZIANO:** Yes. In regards to

1 that question, and I don't know, maybe staff can help me
2 here, why would anything pertaining to the karst nature
3 of the topography or geography, whatever you want to
4 call it, be confidential at this point? Maybe somebody
5 could -- if it is, and I'm not even sure.

6 **CHAIRMAN CARTER:** Mr. Burnett.

7 **MR. BURNETT:** Thank you, Mr. Chair.

8 Mr. Chair, to the subject confirmation by Mr.
9 Miller, if the question is rooted without reference to a
10 document of what is the geological nature and questions
11 about the geology of the site, certainly that's nothing
12 that I could imagine would be confidential. However, if
13 the question is asked with respect to a document, that
14 can be the basis for a contractual change order or a
15 modification to a contract, that's what I think brings
16 the hesitation. So I agree that those are very distinct
17 issues. But if we don't reference a specific document
18 that is perhaps being used as a contractual amendment or
19 something to do with a contract, we're fine to talk
20 about rocks.

21 **CHAIRMAN CARTER:** Okay. I think that will get
22 us where we need to be. Mr. Rehwinkel, you may proceed.

23 **MR. REHWINKEL:** Thank you, Mr. Chairman.

24 **BY MR. REHWINKEL:**

25 Q. Mr. Miller, can the remaining portions of that

1 paragraph be read, that paragraph, that bullet point
2 there?

3 **A.** I do not have a problem with reading these
4 two. I don't think that's necessarily a confidential
5 issue by itself. Additional evaluation and possibly
6 fieldwork investigations may be required. This is a
7 risk that requires close attention so as not to delay
8 the COLA submittal.

9 **Q.** Okay. Now, the purpose of that statement is
10 that at this time, this report was written in April 2008
11 for the month of March 2008, and you are running up
12 close to the deadline for submitting your COLA, is that
13 correct?

14 **A.** That's correct.

15 **Q.** And the deadline is the end of July, but you
16 have got to sometime in advance of that actually have it
17 in form and review, correct?

18 **A.** That's correct.

19 **Q.** Okay. Now, some of the response to this
20 concern here was occurring at this same time in Chicago,
21 correct?

22 **A.** Explain your question, again.

23 **Q.** Was there a meeting going on with the JVT and
24 Mr. Rizzo related to revolving some of these concerns?

25 **A.** I don't know -- I don't understand your

1 question and what you are asking. We certainly had
2 Rizzo involved in this time frame in foundation design
3 and that it relates to this subject.

4 Q. Okay. Well, let's turn to the next page, Page
5 9 of this monthly report. And with respect to this
6 bullet point here, can you tell me what that refers to
7 starting -- the bullet that starts with the word meeting
8 under Task Number 2, 3, et cetera?

9 A. You asked me for the first bullet?

10 Q. Yes.

11 A. And I think I can provide that to you. The
12 meeting was held in Chicago to develop JV
13 recommendations for a success path for development of
14 FSAR Section 2.5.4 and supporting documents. JV
15 recommendations are documented in Impact Evaluation 137.

16 Q. Okay. What does that refer to?

17 A. I don't recall specifically what Section 2.5.4
18 is. It is certainly in the geotechnical portion of the
19 FSAR. I don't recall specifically what the issue was at
20 that time. If that is the foundation section, I would
21 have to pull the FSAR out and look at that subsection
22 number.

23 Q. Okay. Let me ask you to turn to Exhibit 148.

24 A. Okay.

25 Q. This is a letter from Debra Loudenslager to

1 Gary Grant?

2 A. Right.

3 Q. Dated March 11, 2008?

4 A. Correct. And I would not consider this
5 confidential any longer.

6 Q. Okay. So this is just a letter saying that
7 the company is going to be auditing CH2M HILL as a
8 follow-up to the six-month audit frequency following the
9 stop work order that we discussed earlier?

10 A. This is a notice that they will be doing the
11 follow-up six-month frequency audit.

12 Q. Okay. This is just an example of what we
13 discussed earlier with the increased frequency of the
14 audits?

15 A. It is. As a matter of fact, if you look at
16 the second paragraph it explains that obviously the stop
17 work order occurred in March of 2007. You could see
18 there was an audit conducted October 1st through the 4th
19 of 2007, so that was the first follow-up audit. Now,
20 this is the next follow-up audit that's going on.

21 Q. Okay. Let me ask you to turn to Exhibit 149.

22 A. Okay.

23 **CHAIRMAN CARTER:** So we are all on the same
24 page, just kind of mention the cover on it.

25 **MR. REHWINKEL:** This is Rizzo/Randazzo

1 Documents.

2 **CHAIRMAN CARTER:** Okay, thank you. You may
3 proceed.

4 **BY MR. REHWINKEL:**

5 **Q.** Are you familiar with this document?

6 **A.** Only since I looked at it here a few moments
7 ago. But I do understand generally the scope of what
8 this is about.

9 **Q.** Okay. Do you know where this -- does this
10 document describe a meeting?

11 **A.** It does, and there is a typo at the top of
12 this. This meeting probably occurred March 6th, 2008,
13 at the Sargent & Lundy offices in Chicago.

14 **Q.** Is this the meeting that was referred to in
15 the previous -- well, Exhibit 147, on the last page of
16 that exhibit?

17 **A.** I would believe this is probably that meeting,
18 because -- and the way I can tell that is because in the
19 previous one it referred to a certain Section 2.5.4, and
20 if you look under Section 5 of the document we are
21 talking about now, this is Document Exhibit 149, that's
22 the subject of the division of responsibility.

23 **Q.** Okay. And under Section 5 on that Page 1 of
24 this exhibit -- well, let's go back up under attendees.
25 Are people who are attending this meeting, is that

1 confidential?

2 **A.** No, not at this point.

3 **Q.** Okay. So we have Paul Rizzo of Paul C. Rizzo
4 Associates, another, Mike Edwards from Paul Rizzo, and
5 then three people from CH2M Hill?

6 **A.** Correct.

7 **Q.** And a man named Anthony Randazzo of
8 Geohazards, and A.K. Singh of Sargent & Lundy, is that
9 right?

10 **A.** That's correct.

11 **Q.** Now, Mr. Randazzo is the head of the Geology
12 Department at the University of Florida, is that right?

13 **A.** I'm not aware of that. He could be. I don't
14 know him.

15 **Q.** Okay. What about Item 2 under purpose of the
16 meeting, is that confidential?

17 **A.** I'd like to paraphrase it, if I could.

18 **Q.** Okay.

19 **A.** The thrust of this purpose is a meeting to
20 develop an approach that would finalize the development
21 of the FSAR that would provide the overall conclusion
22 and address everything such that it would demonstrate
23 the site had no fatal flaws for siting an AP 1000 power
24 plant there, and it had to be technically appropriate,
25 economical, and defensible.

1 **Q.** Okay. Would I be mistaken if I characterized
2 this as the purpose of this meeting was to support a
3 conclusion that had already been drawn?

4 **A.** No. Based on the time frame of this meeting,
5 the work was still in progress and they were developing
6 the necessary analysis to demonstrate that the AP 1000
7 could be sited at the site. It was still in progress,
8 particularly the foundation design.

9 **Q.** Section 4 of this first page here.

10 **A.** Yes.

11 **Q.** This referred -- well, let me strike that. Is
12 the information in Section 4 confidential, or Item 4 on
13 Page 1 of the document?

14 **A.** Let me review this. I don't believe the
15 overall thrust or the paraphrasing of this would be
16 confidential.

17 **Q.** Okay. Well, could you paraphrase it for me,
18 then?

19 **A.** It is discussing findings of site geology and
20 site visits to examine exposed Avon Park formation. And
21 exposed meaning places there has been a vertical cut on
22 a wall so you can actually see the layers of what some
23 exposed -- once you make that cut, such as like you
24 could see along the barge canal, for example. And they
25 are talking about methodology that Rizzo is using to

1 address the occurrence of voids below the site, and what
2 they would consider to be the probability of those voids
3 and the probability of their sizes.

4 **Q.** And that's an issue that was important to
5 resolve for purposes of NRC review and ultimately
6 approval of the LWA and the COLA, correct?

7 **A.** Yes, because this site being in Florida has
8 the potential for karst features, so you would have to
9 address this for any site that you selected in Florida,
10 and this would have to be addressed in the submittal of
11 the COL application.

12 **Q.** Okay. Now, in Item 5 of this document, is it
13 true that this -- well, could you tell me what's going
14 on here?

15 **A.** Yes, and I actually talked about this earlier.
16 As we furthered the evaluation of the site by reviewing
17 all the borings, the regional geotechnical analysis, and
18 as we advanced the design of the foundation for the Levy
19 site, it became very clear that they were coupled
20 together obviously, and so what you see here in a
21 statement, it says that. Site geology and foundation
22 conceptual design are closely coupled. And to
23 facilitate the completion of the FSAR portions 2.5 that
24 relate to the foundation design, we transferred the work
25 that was in progress from CH2M Hill to Paul Rizzo

1 Associates, who was also working under the consortium.
2 So all this work is still within what we refer to as the
3 JVT, our COLA preparer, but it was transferred among the
4 parties of the JVT. And you recall from my earlier
5 statement that was based on the need to have subject
6 matter experts that could support the foundation design
7 of the roller compacted concrete bridging mat.

8 Q. Okay. So, on the next page, Page 2 of this
9 document, that first sentence, is that confidential?

10 A. The concept I can address.

11 Q. Okay.

12 A. As part of this change we had to address the
13 scope additions to some subcontractors and the scope
14 deletions of others.

15 Q. Okay. Was there additional funds associated
16 with that, expenditure of funds?

17 A. I would have to go back and look at the actual
18 impact evaluation form. I don't recall.

19 Q. Would you be surprised if it was not?

20 A. Would I be surprised if there is not what,
21 sir?

22 Q. If it did not cost more?

23 A. I just don't recall, because I don't know if
24 that particular impact evaluation included other scope
25 changes that were not related just to the DOR changes.

1 **Q.** How difficult would it be for you to determine
2 that?

3 **A.** I would just go request this impact evaluation
4 that addressed this DOR. I do not have it here with me.

5 **Q.** Could that be done before you come back on
6 rebuttal?

7 **A.** I don't know if I can get it here in hard
8 copy, but, probably.

9 **Q.** But the answer?

10 **A.** Oh, the answer, yes. I could get the answer.

11 **Q.** Well, could I ask that you do so without
12 asking for a late-filed exhibit, and we could ask about
13 it after exchanging information off the record?

14 **A.** Yes.

15 **Q.** Thank you. Look at the last paragraph under
16 this Section 5, this Item 5. It starts off it was
17 agreed. Can you tell me what is involved there and why
18 the decision that is reflected in the last sentence.
19 First of all, can this be read publicly?

20 **A.** I would say no in this case because it has to
21 do with other preparations we were making for the rest
22 of the regulatory process.

23 **Q.** Okay.

24 **A.** The first sentence I can address.

25 **Q.** Okay. Well, I'm more interested in the reason

1 for the last sentence there. Is that what your answer
2 was?

3 **A.** That's the sentence that I'm reluctant to say
4 here for confidential reasons.

5 **Q.** Okay. Item 7, is there anything here that is
6 confidential? Let me ask it this way: The document
7 that is described in Item 7, was that given to the NRC?

8 **A.** I don't recall. And it could have been
9 referenced in the FSAR. I just don't -- I would have to
10 go back and look.

11 **Q.** Are you familiar with that document?

12 **A.** No. I'm not familiar with the details of it.
13 I knew it existed.

14 **Q.** Do you know what the conclusions of it were?

15 **A.** Well, fundamentally when all the work was done
16 the site is suitable to deploy an AP 1000 at that site.

17 **Q.** Okay. Item 9, field investigations. Can you
18 review that section there on Page 2 and Page 3 of this
19 document and tell me what's going on there?

20 **A.** This is under field investigations, correct?

21 **Q.** Yes.

22 **A.** The whole content of Section 9 has to do with
23 the pace of how the borings devices advance through the
24 substrate and places where it goes faster or slower, and
25 in cases where it moves faster, what other additional

1 information you collected including the actual sample
2 itself that would explain the reason for that.

3 And let me give you a simple example. If you
4 go through hard limestone, it goes a certain speed. If
5 you then enter a zone, let's say a pocket where it is
6 filled with crushed limestone, it would change the speed
7 of the way the boring would be advanced.

8 Q. Is this something that Paul Rizzo is going to
9 do to supplement or independently assess work that had
10 been already done?

11 A. This is more a matter of he is reviewing the
12 results of the boring and reviewing all the information
13 available from that to understand why the boring results
14 were as they were.

15 Q. Can you turn to the next page of this document
16 and tell me are you familiar with this document here?

17 A. I am not.

18 Q. You have never -- you are not even aware of
19 its existence?

20 A. Until I saw it. I'm not surprised it is
21 related to our site, but I have no problems with
22 answering questions on it.

23 Q. This is a letter -- can I describe who this is
24 to and who this is from?

25 A. This one is a little bit not clear to me since

1 I don't know the context of how the letter was created.

2 Q. Well, it's subject to a claim for
3 confidentiality and I'm willing to treat it that way.
4 Let me just ask you, the conclusion on Page 5 of the
5 letter, can you turn to that page? And this kind of
6 goes along the lines of Mr. Moyle's question. There is
7 a sentence, the second sentence in that paragraph that
8 starts to our knowledge. Can you read that just to
9 yourself first and tell me if that can be stated
10 publicly?

11 A. I believe this is, because it is a
12 geotechnical subject that is probably represented in our
13 FSAR 2.5 final version. To our knowledge, our
14 assessment of the lateral extent of dissolution features
15 associated with vertical fractures within the Avon Park
16 Foundation limestone is new information that is not
17 otherwise available in the geologic community.

18 Q. Okay. What about the -- so, is this stating
19 that the assessment or characterization of the site and
20 the geology of the site is new?

21 A. Since I don't know the context of the letter,
22 I can't answer your question, but it could be a
23 comparison of what's in the public domain for research
24 that describes geologic formations in Avon Park and what
25 did we see as we did borings here locally on the site.

1 But without knowing the overall subject, I can't answer
2 your question.

3 Q. Let me do this. Let's set this exhibit aside
4 for a second and ask you to turn, if you would, to --
5 there is a nonconfidential exhibit in your -- it's the
6 September 12th LWA supplemental filing.

7 A. Yes, I see that.

8 Q. 152. Do you have that?

9 A. I do.

10 Q. Can you turn to -- well, this is the document
11 that you responded to the NRC with respect to the scope
12 of the LWA, is that correct?

13 A. This is the document that we responded to the
14 September 15th letter, and that included LWA, because
15 there were more subjects in here than just LWA.

16 Q. Correct. But there is an Attachment 2, which
17 is Bate's 64-000064. Do you see that?

18 A. I see that.

19 Q. And is Attachment 2 information that was
20 requested by the NRC for both COLA and LWA evaluation?

21 A. I see that.

22 Q. Okay. And if you could turn to Page 7 of that
23 attachment, please. Are you familiar with this
24 document?

25 A. I reviewed it when it was created, but it has

1 been quite awhile.

2 **Q.** Okay. Well, let's go to the letter. Turn
3 back, if you would, to the letter. There's a two-page
4 letter from James Scarola to the NRC.

5 **A.** Correct.

6 **Q.** And then on the third page there is a bc to
7 Bill Johnson, your Chairman and CEO.

8 **A.** Yes.

9 **Q.** Danny Roderick and yourself?

10 **A.** Yes.

11 **Q.** Okay. So this is a document that was
12 important?

13 **A.** Oh, yes. I was well aware at the time, but I
14 have not looked at it for awhile, particularly the
15 attachment.

16 **Q.** All right. And back to this Page 7 of the
17 attachment here, and this is all public knowledge,
18 right?

19 **A.** Yes.

20 **Q.** Could you read this paragraph next to the
21 last -- down that page?

22 **A.** I'M going to have to ask you to take me to the
23 page, again.

24 **Q.** I'm sorry, Page 7. This is Bate's 64-000070.

25 **A.** Correct. And this is on Page 7.

1 Q. Yes.

2 A. And you would like me to read which --

3 Q. The next to the last paragraph, it starts with
4 the average width.

5 A. The average width-to-height ratio of features
6 associated with vertical fractures is 1H:5V, limiting
7 the lateral extent of these features to approximately
8 20 percent of the vertical extent, as supported by
9 geophysical testing and field observations. Dr. Anthony
10 Randazzo, a subject matter expert, is supportive of that
11 approach that the horizontal dimension is a fraction of
12 the vertical dimension of the feature.

13 Q. Now, is this -- this is something that you
14 submitted to the NRC for them to consider and rely upon
15 in evaluating your LWA, correct?

16 A. Yes.

17 Q. And does it appear to you to be the subject of
18 the document that we were discussing in Exhibit 149?

19 A. I'm not a geology or geotechnical expert, so
20 the subjects sound familiar, but I don't know
21 specifically if it's the same subject. It has to do
22 with, I believe, if there is a feature does that feature
23 generally run vertically or does it run horizontally.

24 Q. Okay. Well, if you would turn back to 149 and
25 Page 1 of that letter. There is a -- two-thirds of the

1 way down there is a sentence that starts "the five" do
2 you see that?

3 **A.** Yes.

4 **Q.** And then I don't know if that's confidential
5 or not, but it looks like that there are five principles
6 that someone is being asked to comment upon.

7 **A.** Yes, I agree with your characterization.

8 **Q.** Okay. And on the fourth item on the second
9 page of that letter it appears to relate to that item
10 that you read about in the September 12th supplemental
11 report, correct?

12 **A.** It looks to be a similar subject. But, again,
13 I have to remind you, I'm not a geologist or a
14 geotechnical expert.

15 **Q.** Okay. Now, didn't the statement that you read
16 from the September 12th filing, wasn't that the subject
17 of further inquiry by the NRC on October 12th as part of
18 their RAIs?

19 **A.** You mean the October 6th letter?

20 **Q.** I'm sorry, the October 6th, 2008, letter.

21 **A.** I would have to go back and review it, because
22 as I stated earlier, we have many RAIs that come in, and
23 I would have to go back and review specifically what was
24 on a particular letter. But, in principle, we could get
25 several questions on any particular subject.

1 **Q.** But didn't the NRC ask about a question about
2 the statement -- the representation that Doctor Randazzo
3 supported this aspect of the geology?

4 **A.** I would have to go back to the October 6th
5 docketing letter and look at the questions and validate
6 what you are asking me.

7 **Q.** Do you have that with you?

8 **A.** I do.

9 **Q.** Could you take a look at it, please? And this
10 is also an exhibit to Doctor Jacobs' testimony, correct,
11 the October 6th letter?

12 **A.** It is an attachment exhibit to my rebuttal
13 testimony.

14 **Q.** Okay.

15 **A.** So I am looking at -- in my case it is GM-8 on
16 my rebuttal testimony.

17 **Q.** Okay. And on Page 2 of the RAIs --

18 **A.** All right. Let me go to there. Are you
19 reading the page numbers at the top?

20 **Q.** The bottom.

21 **A.** My copy does not show page numbers. I only
22 have it as pages of the exhibit.

23 **Q.** Okay. Let's look at 5 of 10, then.

24 **A.** Page 5.

25 **Q.** Do you see the second item on there, the

1 second RAI?

2 **A.** The supplement sites, Doctor Randazzo.

3 **Q.** Yes.

4 **A.** Yes.

5 **Q.** Okay. And this is the NRC staff asking a
6 further question about the statement that you made on
7 September 12th, correct?

8 **A.** That's what this is, correct.

9 **Q.** Okay. So isn't it correct -- doesn't it
10 appear from the letter to Doctor Randazzo from Mr. Rizzo
11 that the characterization that the NRC is asking further
12 questions about is one that presents a new view of the
13 geology of the area that's not documented in the
14 literature?

15 **A.** From the information in front of me, I cannot
16 draw the conclusion you are drawing. Sir, I would have
17 to go back and review what was in the original COLA and
18 FSAR sections associated with this subject and follow
19 the path of all the documents and RAIs to draw the
20 conclusion you did.

21 **Q.** Well, let's look at the October 6th letter in
22 the RAI. Doesn't it appear from this RAI that the NRC
23 staff is suggesting that they have received a conclusory
24 statement without any information that documents it?

25 **A.** The phrase that you refer to, sir, is but does

1 not summarize the information documenting the statement
2 that the lateral extent of dissolution features
3 developed along fractures is about 20 percent of the
4 vertical dimension.

5 **THE COURT REPORTER:** Slow down.

6 **CHAIRMAN CARTER:** No coffee tomorrow.

7 (Laughter.)

8 **THE WITNESS:** Right. So it is asking for
9 backup information for the summary statements that are
10 presented in our RAI response. It's asking for
11 additional backup.

12 **BY MR. REHWINKEL:**

13 **Q.** If I could ask you to go back to Exhibit 149.

14 **A.** Okay. I'm at Exhibit 149.

15 **Q.** Is it fair to characterize this document that
16 the company's contractor, Mr. Rizzo, is asking Doctor
17 Randazzo to support their conclusion about the lateral
18 extent of dissolution features associated with vertical
19 fractures within the Avon Park formation limestone?

20 **A.** Again, I would have to point out to you that I
21 am not a geologist, I am not a geotechnical person, and
22 this is a very technical subject. So without sitting
23 here and having a longer review of this, I cannot
24 validate your statement. I would have to spend -- a
25 slow read of this and probably ask questions of some of

1 my staff to answer your question.

2 Q. We have established, Mr. Miller, have we not,
3 that the meeting in March of 2008 was at a time when
4 Paul Rizzo was brought in to supplement the geotechnical
5 effort, correct?

6 A. Particularly the foundation design.

7 Q. And the deadline was drawing near, correct?

8 A. The deadline of July 2008 was coming.

9 Q. And Paul Rizzo, the company's contractor,
10 wrote a letter in May of 2008, less than three months
11 from the deadline for filing of the COLA, correct?

12 A. May 22nd, 2008, is in advance of July 2008.

13 Q. Yes. And less than three months?

14 A. Yes.

15 Q. And it states here in the conclusion section,
16 the last sentence there, I don't know if that could be
17 read publicly or not, that begins with consequently.
18 Can that be read publicly?

19 A. I don't know the context of how this letter
20 was created, so I would prefer not to.

21 Q. That's fine.

22 A. I think the sentence speaks for itself of what
23 it states.

24 Q. This is apparently a significant issue that
25 they are seeking Doctor Randazzo's support on such that

1 they sent it to the NRC. That they, you, submitted it
2 to the NRC as part of your LWA supplemental filing,
3 correct?

4 **A.** It is. But I would like to characterize it as
5 we create analysis and information that we submit in our
6 application. It comes from a wide variety of sources,
7 including things that we actually do field
8 investigations on, literature search, subject matter
9 experts, and here is a case where we are going to a
10 subject matter expert to get an opinion.

11 **Q.** Now, on the last two pages of Exhibit 149 is a
12 draft it looks like of a letter in -- what do you call
13 this, draft changes form?

14 **A.** Yes.

15 **Q.** That shows where Doctor Randazzo did not agree
16 totally with the representations that Mr. Rizzo was
17 asking him to agree with, is that correct?

18 **A.** I would have to review this letter in detail
19 slowly to come to your conclusion.

20 **Q.** It looks like the red items in here show
21 strikings of words that probably water down, if you
22 will, the opinion that Doctor Randazzo was willing to
23 give. Is that correct?

24 **A.** I don't know if watered down is the correct
25 term for what you see here. Typically, when most

1 letters are drafted they go through revisions before
2 they are finalized. So I don't consider the term
3 watered down to be the right way to characterize. These
4 are markups that are going to be incorporated in the
5 final version.

6 **Q.** This is not a mere draft, though, is it? In
7 the upper left-hand corner we see some initials and
8 dates and all. This is part of the QA process, is it
9 not?

10 **A.** I don't know what the context of this -- how
11 this document was created and for what purpose, so I
12 can't answer your question if this is a quality document
13 or not.

14 **Q.** But that is generally how it is done, is it
15 not?

16 **A.** This document, the fact that it has got a by
17 and a checked by, it is certainly a technical document.
18 I don't know if it is a quality-related document.

19 **Q.** Okay. Mr. Miller, if I could move to the May
20 2nd, 2008, audit letter. And this is Exhibit Number
21 150. Do you have that with you?

22 **A.** Yes, I do now.

23 **Q.** Okay. Are you familiar with this document? I
24 think on the second page of the exhibit, I think you
25 will see your name.

1 **A.** Yes. I remember when this was done and I
2 remember the report.

3 **Q.** Okay. Now, is this a document that is a
4 result of the stop work order and issues that were
5 discovered in the first quarter of 2007?

6 **A.** It is by virtue of the fact that they were on
7 increased -- an increased frequency of having audits
8 done on them, and so this is a follow-up audit. It
9 appears to be done in the March timeframe of 2008, and
10 so it is related to what happened in March of 2007.
11 However, I do have to remind you that all of our quality
12 providers, under our Appendix B program we have to audit
13 them no matter what. This one happens to be getting
14 their audits more frequently, this company does.

15 **Q.** Okay. Now, just in fairness, this is a
16 document dated May 2nd, 2008, revised May 8th, 2008. Do
17 you see that on the first page?

18 **A.** I do.

19 **Q.** And in the second paragraph, the last sentence
20 of that paragraph seems to say something very positive
21 about the vendor, is that correct?

22 **A.** It does.

23 **Q.** Okay. But isn't it also true that this
24 document contains an attachment towards the back at
25 Bate's 47-015861 with a letter from MACTEC, M-A-C-T-E-C,

1 all caps?

2 **A.** Yes, I see that.

3 **Q.** Okay. Can you tell me what this MACTEC
4 letter -- can you characterize that in a way that is not
5 confidential?

6 **A.** Yes. As part of this audit, we had an extra
7 subject matter expert participate on that audit and that
8 person was a MACTEC employee. They also do geotechnical
9 boring and handle sample logs, those type of things.
10 And so we had them on the team to provide additional
11 expertise to look at the execution of quality activities
12 by CH2M Hill.

13 **Q.** Okay. Now, what you just described would not
14 be part of a routine audit of your vendors under the QA
15 program, is that correct?

16 **A.** Not necessarily. It depends on who we are
17 going to do an audit on, and this is not unique to new
18 plants. We do it in our operating fleet. We would like
19 to have people that are cognizant of the work they do
20 because you have a much better informed audit when you
21 do that. And so it's not always done, but in this case
22 we chose to do it.

23 **Q.** And what you chose to do with respect to
24 bringing MACTEC along to supplement your audit, if you
25 will, was because of the history of this vendor with

1 respect to the gathering of this data in support of your
2 COLA, correct?

3 **A.** That is correct. In this case we did add them
4 to the team because of the work experience at Harris.

5 **Q.** Now, is it also true that attached to this
6 letter that's on 015861 is a matrix that reflects the
7 results of the observations of Mr. Tice?

8 **A.** There is an attachment at the back, it is a
9 table, and it is observations from this individual who
10 participated on the team.

11 **Q.** Okay. Was I not supposed to say his name?

12 **A.** Probably not.

13 **Q.** I apologize.

14 **CHAIRMAN CARTER:** You were doing so well, Mr.
15 Rehwinkel.

16 **MR. REHWINKEL:** I didn't say his first name,
17 so maybe nobody knows who he is.

18 **BY MR. REHWINKEL:**

19 **Q.** Okay. Let me ask you if you would turn to
20 47-015864?

21 **A.** Yes.

22 **Q.** Does the MACTEC representative --

23 **A.** Yes.

24 **Q.** -- does he identify in the next to the last
25 line on this table some problems with the collection of

1 data?

2 **A.** Stand by as I read this. The item you
3 referred to was an observation associated with the
4 administrative aspects of completing the paperwork for
5 this. And it's important to point out, and that is in
6 the case of what was identified at Harris and what we
7 were looking for for an extended condition at Levy. The
8 issues that we found under the quality assurance program
9 of CH2M Hill were generally related to documentation.
10 For example, documentation of training records,
11 documentation of expertise. In the case of logs for
12 when they collected samples, the precision of filling
13 out all the blanks and putting their name and dates in
14 certain places. There was also document control issues.
15 All of those things that we looked at, we looked at for
16 the case of Levy. What it was not was technical. The
17 quality of their work in terms of the technical
18 precision of what they did and the validity of their
19 technical results.

20 And so what you see here is additional
21 observations, but you also see in the summary cover
22 sheet from this same report, which includes this as an
23 attachment, the comment that says the PGN audit team has
24 concluded that with the exception of the administrative
25 anomalies, CH2M Hill is effectively implementing their

1 quality program.

2 So this row you asked me to look at here is an
3 example of additional administrative anomalies and we
4 required them to go correct those.

5 Q. Could you turn to 47-015866, which is another
6 two pages --

7 A. Yes.

8 Q. -- further on. And the last item here that
9 starts up near the top and continues most of the page
10 and then on to the next page, is that an administrative
11 item or is that one related to the technical quality of
12 the work?

13 A. He is making a technical observation is what
14 he is making. And without going through the details,
15 he's referring to recovery zones. The boring process to
16 collect samples involves a water lubricated boring
17 mechanism. So as it bores through the limestone, if it
18 hits a pocket where it is filled with, say, sand or some
19 very heavily weathered limestone, it may wash that out.
20 And so when you pull that sample to the surface and you
21 have ten feet of core you expect to pull out, you may
22 not get ten feet because you washed some of it out.

23 And that is referred to as recovery, so he is
24 talking about recovery zones here in his notes. So with
25 this observation we would have gone back and looked at

1 that particular log and followed up technically, also.

2 Q. Well, what about the paragraph in that column
3 that starts lithologic and discontinuity and the
4 concerns he raises there. Are those administrative with
5 respect to the geological descriptions?

6 A. Well, I think he is making technical
7 observations, but these are not necessarily adverse
8 findings. Personally, I can't read these and tell you
9 that these are necessarily a problem. He is clearly
10 making comments on what he saw in the field boring logs.
11 Where he said he indicates, for example, he says seems
12 consistent with what I understand about that setting.
13 And he talks about some zones where there is some soil
14 inside. And then he has got some comments where
15 something may be incorrect and we would have followed up
16 and see if it was -- see if his comment was correct or
17 not.

18 And that is how this report was handled. We
19 went back to the organization that was involved in this
20 work and had them review these and validate these were
21 not a technical problem.

22 Q. He notes, does he not, in the far right column
23 that the location of these recovery zones was directly
24 under the reactor -- south plant reactor site, is that
25 right?

1 **A.** It's not -- you cannot infer that from what he
2 has got. I would have to go back and look at those
3 codes where the boring numbers were labeled, and it's
4 not confidential, I could say AD-3, for example. And
5 then I would have to go look at that, where it fits with
6 respect to the footprint of the plant. Because,
7 remember, we take core borings not just under the
8 footprint of the nuclear island, but also the turbine
9 island, the waste processing building, annex building,
10 and the general site.

11 But he says -- and I can say that, it's
12 located in the south plant site reactor area. I just
13 don't know if that is under the nuclear island or some
14 farther out location associated with the south reactor.

15 **Q.** Would the NRC have received this document?

16 **A.** When the NRC comes to visit us and does a
17 quality review, all documents like this are provided to
18 them, because the NRC is looking to validate that we are
19 doing our obligation under 10 CFR 50, Appendix B, to
20 oversight our contractors who provide quality services.
21 So as evidence of that in the criterion related to that
22 we would give them this document.

23 Now, this is dated May of 2008, and I don't
24 recall all the meetings that we have had with the NRC
25 where this would have come up, but we certainly would

1 make it available to them.

2

3 Q. Can I ask you about -- if you return to your
4 Exhibit -- is it GM-8? The October 6th, 2008, letter.

5 A. Yes.

6 Q. This was the letter you received from the NRC
7 after Exhibit 152 was submitted, is that right? This is
8 the next correspondence you received relative to your
9 LWA?

10 A. I'm not sure what question you are asking me.

11 Q. I apologize. The October 6th letter you
12 received from the NRC, was that in response to your
13 September 12, 2008, letter and your COLA?

14 A. The proper way to characterize it is we
15 submitted our application on July 30th, it included LWA.
16 We then on September 12th subsequently revised the scope
17 of the LWA. This is the first numbered correspondence
18 from the NRC to us since that date.

19 Q. And this letter has been one much discussed in
20 depositions and testimony, et cetera, so it's a key
21 document in this matter, correct?

22 A. Yes.

23 Q. And this was a key document, an important
24 document to the company for a multitude of reasons,
25 correct?

1 **A.** Yes.

2 **Q.** One of which was the good news that they had
3 docketed your COLA?

4 **A.** That was the most significant outcome from
5 this letter is our sufficiency review was completed and
6 it was technically sufficient to docket.

7 **Q.** Okay. And, the first -- on the first page of
8 this letter at the bottom, the paragraph that starts as
9 discussed with your staff, this was the -- well, this
10 states, "As discussed with your staff, the date that we
11 intend to publish this schedule for review cannot be
12 determined until additional information is provided by
13 you." Not a big surprise, correct?

14 **A.** It has happened on several applications.

15 **Q.** And it states, "Although our acceptance review
16 determined that the LNP COLA is complete and technically
17 sufficient, the complex geotechnical characteristics of
18 the Levy County site require additional information in
19 order to develop a complete and integrated review
20 schedule." Was that a concern to you?

21 **A.** No. The fact is that we would have preferred
22 to not have to answer RAIs as part of the October 6th
23 docketing letter, so it is not -- a concern is not the
24 right phrase. We would have preferred to receive an
25 October 6th letter and them say we will send you your

1 schedule, let's say, 30 days from then. So we knew that
2 our schedule would be delayed until we answered the
3 questions in here.

4 Q. Okay. Now, we have talked about in looking at
5 these exhibits, and I apologize for the tediousness of
6 them, but we have looked at the exhibits that
7 demonstrate that you spent a lot of -- your vendor spent
8 a lot of time collecting data, analyzing it, and
9 preparing it to submit to the NRC, correct?

10 A. It is accurate to say our vendors and our
11 staff spent a lot of time on the Levy site
12 site-specifics because that is the major portion of our
13 application that is unique to our site.

14 Q. And, in doing so, there are several references
15 and probably less than the ultimate number of contacts
16 relating to the NRC communication with you about issues
17 that they would like to see addressed in your
18 application, correct?

19 A. You are going to have to rephrase -- start
20 your question over again. I lost it half way through.

21 Q. The NRC made many contacts, you and the NRC,
22 and you and your vendor and the NRC had many discussions
23 with the NRC staff about what they would like to see
24 addressed with respect to geotechnical information?

25 A. Yes, but let me characterize it the way it

1 occurs. We had -- before we submitted our application,
2 we had publicly noticed meetings where we discussed the
3 geological features of the site, such as January 10th.
4 But in addition to that there were preaudit visits to
5 the Levy site by NRC individuals, both technical and
6 those looking at quality programs. And so those were
7 the two interactions that you are referring to.

8 Q. Would there have been any other phone calls or
9 other informal conversations with the NRC staff?

10 A. Well, there could have been. Until we
11 submitted the application that was not likely.

12 Q. Okay. And it was the company's opinion that
13 the 18 months that you spent gathering the information
14 was thorough and complete and that you had enough
15 information to present to the NRC for them to make a
16 decision without additional RAIs, correct?

17 A. No, that is not correct. If you look at a
18 typical NRC review schedule, there are typically eight
19 major milestones. And the first one on the safety
20 evaluation report, which is the nuclear side of the
21 review, there are four major milestones. The first one
22 is RAIs, and for the Levy site that milestone extends
23 through February of 2010. So we would expect RAIs after
24 submittal.

25 Q. I misstated my question. You expected you had

1 submitted enough information to get a review schedule
2 without further RAIs, correct?

3 **A.** Yes. We expected that we developed an
4 application that was technically sufficient and complete
5 to be docketed and the review to start.

6 **Q.** But that did not happen. And let's turn to
7 the next page of the October 6th letter, and this one
8 starts off and says, "As necessary, other RAIs will be
9 issued separately." What is that other RAIs referring
10 to?

11 **A.** What they are saying here is the application
12 has been docketed and now they are going to start this
13 process of RAIs on all subjects, hydrology, weather,
14 environmental, population in the area, all of those
15 things. You would expect those to all be issued
16 separately from this October 6th letter, and we are
17 continuing to receive RAIs, and would expect to continue
18 to receive RAIs and supplemental RAIs through February
19 of next year.

20 **Q.** But then it says, "Because of the scheduling
21 uncertainty in the areas of geotechnical science and
22 structural engineering, the NRC staff does not intend to
23 commence a review of these areas until all RAIs are
24 sufficiently answered." Do you see that?

25 **A.** I do.

1 **Q.** Now, that refers not only to your LWA aspects
2 of your application, but I guess the foundational
3 aspects that we've discussed a little bit earlier today.

4 **A.** This would refer to the broader geotechnical
5 suitability of the site for the plant.

6 **Q.** But it would relate to the LWA?

7 **A.** Because certain subjects are on both the LWA
8 and both the overall geotechnical, it could relate to
9 it.

10 **Q.** Well, they continue on for all other sections
11 of the LNP COLA, the NRC staff intends to commence
12 reviews based on the availability of resources. Do you
13 see that?

14 **A.** I do.

15 **Q.** So is there a dichotomy presented here by the
16 NRC staff that indicates that everything but the
17 geotechnical aspects of this review will be resource
18 driven, while the geotechnical review will be less so?

19 **A.** No, I don't think that is the proper way to
20 characterize this. In the NRC staff, as they review an
21 application, they divide up the piece-parts of an
22 application, and it depends on subject matters experts.
23 Some of those subject matter experts are NRC staff,
24 others are outside national labs, like Pacific Northwest
25 National Lab.

1 And so this paragraph is talking about how
2 they are going to assign resources and when those
3 resources would be committed to the review. That's what
4 this sentence is at the top of two are referring to.

5 **Q.** There's special mention made of the
6 geotechnical aspect of the review here, correct?

7 **A.** It is, that is correct.

8 **Q.** And, finally, in this next paragraph there is
9 a sentence that starts because of, "Because of the
10 complexity of the site characteristics and the need for
11 additional information, it is unlikely that the LNP COLA
12 review can be completed in accordance with this
13 requested time line. The NRC staff expects to interact
14 with you as the safety and environmental review
15 schedules are developed." Do you see that?

16 **A.** I do.

17 **Q.** So in three paragraphs, the geotechnical
18 aspect of the application have been highlighted by the
19 NRC staff. Would you agree with that, three successive
20 paragraphs in this letter?

21 **A.** I agree that geotechnical is in each of these
22 three paragraphs.

23 **Q.** But isn't it true -- wouldn't you agree with
24 me that they are given special mention apart from the
25 other aspects of the application that you filed?

1 **A.** Well, they are, but I have to go back and
2 remind you, as we stated earlier, our application is
3 three large components, and the site-specific portion is
4 dominated by things like geotechnical. So the DCD
5 portion and the referenced COLA are driven by other
6 schedules, so it is not surprising to me they would
7 focus on geotechnical as an example of something that
8 was site-specific that would drive our schedule.

9 **Q.** How many LWAs have the NRC reviewed under
10 their new LWA rule?

11 **A.** At what point?

12 **Q.** At the time that you filed this on
13 September 12th?

14 **A.** This was an LWA submitted with the early site
15 permit for the Southern Vogtle Units 3 and 4.

16 **Q.** It was submitted. Had it been reviewed?

17 **A.** I suspect it was probably in review at that
18 point because it has now been approved.

19 **Q.** But at the time the NRC staff had not
20 reviewed, completely reviewed an LWA request, correct?

21 **A.** If you judge that based on they had not
22 approved and issued an LWA, the answer is that did not
23 occur until about a month ago for the Southern Company
24 Vogtle Station.

25 **Q.** Did they give Vogtle a review schedule?

1 **A.** I don't recall what they got under their ESP.

2 **Q.** You didn't go look and see what the Vogtle
3 milestone review was, or if there was one related to
4 their LWA?

5 **A.** I did not.

6 **Q.** So there was no reliance made on the way they
7 treated the Vogtle LWA with respect to the milestone
8 review letter in your decision-making in 2008, correct?

9 **A.** We did not look at the Vogtle letter for that.

10 **Q.** Now, was the Vogtle LWA in any way analogous
11 to the LWA that you submitted on September -- with your
12 COLA and in your supplement with respect to the
13 geological and geotechnical complexity?

14 **A.** In regards to what we submitted in the COL in
15 July of 2008, there were similarities, and then in the
16 September 12th there was additional scope added to our.
17 So the similarities would be, for example, after the
18 hole was excavated, engineered backfill, they had it.
19 We had it also. Ours just provides some additional
20 foundation technical support. Then things like mud mat,
21 forms for the bottom foundation, possibly rebar, those
22 are similar.

23 **Q.** But with respect to permeation grouting and
24 diaphragm wall, those aspects were not part of the Vogtle
25 LWA?

1 **A.** They are not part of Vogtle's LWA because they
2 are not part of their scope of work that's going to be
3 completed before first concrete. They are far enough
4 away from the Savannah River and the groundwater levels
5 are such that they did not require diaphragm walls or
6 permeation grouting.

7 **Q.** They didn't have any issues about karst
8 topography?

9 **A.** I am not familiar enough with their geology to
10 answer your question on that.

11 **Q.** But you are not aware that there was any karst
12 topography involved?

13 **A.** I'm just not aware. I'm just not familiar
14 with their geology to answer your question.

15 **Q.** Progress and/or your vendors did not make any
16 inquiry as to that aspect of the Vogtle LWA for purposes
17 of evaluating the likelihood of getting the review
18 schedule you wanted, is that correct?

19 **A.** We did not. Obviously they submitted an LWA
20 under an ESP, which is a different licensing process
21 than we did under our COLA. I do not know the final
22 scope they had in their LWA, if it was the same as ours,
23 and their geology is different.

24 **Q.** So an LWA submitted with an ESP would be
25 different from an LWA submitted with a COLA in the sense

1 that you would not have the bridging, if you will, of
2 the consideration of the geotechnical data for both
3 aspects of the review, is that correct?

4 **A.** I don't believe what you said is correct. So
5 I'm going to ask you to repeat it, again, so I can
6 validate that.

7 **Q.** Okay. Now, in your COLA report you have
8 submitted geotechnical data that is intended to apply to
9 both your LWA -- at the time you filed it in the July
10 and September filings, you submitted geotechnical data
11 for the NRC to review in their consideration of both the
12 LWA and the COLA generally, correct?

13 **A.** Correct. And a prime example of that would be
14 the engineered backfill is the LWA scope and it is
15 necessary for an LWA approval and it's necessary for the
16 final overall geotechnical review.

17 **Q.** So if you submitted a COLA with an ESP you
18 would not have that same kind of a commonality of the
19 use of geotechnical data, is that correct?

20 **A.** That is not correct, and let me explain. The
21 Vogtle site. I understand that site is on engineered
22 backfill. I'm not familiar with what's below it and how
23 far you go down before you hit traditional bedrock.
24 However, I know that engineered backfill was in the
25 scope of their LWA. For them to complete the equivalent

1 of the FSAR 2.5 section analysis that says how would the
2 plant behave in a seismic event and what will the
3 compression of that plant sitting on that soil, that
4 engineered backfill do, they would have to have that
5 same information for both purposes.

6 The NRC would not have authorized an LWA on
7 engineered backfill for Vogtle without understanding the
8 global consequences of that for seismic and, if you
9 will, dead weight of the plant sitting on it.

10 Q. Are you saying engineered backfill?

11 A. Engineered backfill as opposed as to just
12 backfilled as you would go like in a parking lot. It is
13 engineered because it's blended.

14 Q. Is that the only aspect of the ESP and LWA
15 combination that would be analogous to the LWA and COLA?

16 A. No, it goes beyond that. I'm not familiar
17 with their exact scope, but I believe Southern's scope
18 for the LWA was the engineered backfill, it was the mud
19 mat, it was forms for the bottom foundation. We had
20 those similar things in our application for our LWA, but
21 the design of that engineered backfill for them and
22 their forms is all related to the foundation
23 suitability.

24 Q. What was the NRC staff's reaction to your
25 assertion that the dewatering activities at other

1 nonnuclear sites should be taken into consideration by
2 them?

3 **A.** We had technical discussions -- and I take
4 this in the context of before the September 12th change
5 of our LWA scope?

6 **Q.** Yes.

7 **A.** It's not so much related to its comparison of
8 can it be done on nonnuclear applications like a
9 building, like that, it's more related to the nexus to
10 nuclear safety. We are going to place grout in the
11 bottom of where we are going to excavate and the purpose
12 of that is to seal it so we can dewater the excavation.
13 However, that grout we take no credit for in our
14 application for any safety-related purpose. Likewise,
15 the diaphragm wall we do not take any credit for for any
16 safety-related purposes, so from our perspective it
17 was -- we did not deem it to be necessary to be an LWA
18 scope.

19 **Q.** So the diaphragm wall is something that
20 basically after the dewatering occurred, and the
21 foundation and the RCC is in place there, and then your
22 35-foot-thick foundation is put in there, that wall
23 becomes irrelevant, is that right?

24 **A.** It is irrelevant in the fact it is not
25 credited in any way for the nuclear safety aspects of

1 the nuclear island foundation.

2 Q. It's not intended to provide stability, or
3 structure, or support for the foundation?

4 A. It is not credited. And it might be useful
5 just to make sure -- let me explain this diaphragm wall
6 and grout. What you do is you first install the
7 diaphragm wall to create a periphery that is water tight
8 so water cannot move laterally into the area you are
9 going to excavate. Then you go within that and you
10 drill and then you grout the top surface of the
11 limestone to seal it. And then what that does is it
12 creates what we refer to as a bathtub.

13 With the seal around the outside and the seal
14 at the bottom you can then go in and dewater and begin
15 to lower and excavate that. And then inside that large
16 opening then you go back in with the engineered
17 backfill, which is about 30 or so feet thick of an
18 engineered blend of materials to create a roller
19 compacted concrete bridging mat. Once all that is in,
20 again, we did not credit the grout nor did we credit the
21 diaphragm wall as supporting any safety-related purpose
22 in the design of the foundation.

23 Q. But the NRC staff looked beyond your assertion
24 that you weren't seeking credit for the permeation
25 grouting as far as strengthening the strata underlying

1 your mat, correct?

2 A. They looked --

3 Q. They did not -- they didn't look at it from
4 that standpoint. They looked at it from the standpoint
5 of whether it would increase the dissolution rates of
6 groundwater flowing against the area that you had
7 grouted, correct?

8 A. Let me answer your question more simply. What
9 they were looking for with those two items is to ensure
10 they had no impact on any nuclear safety-related
11 function. So, for example, the grouting that was in the
12 limestone, would it effect the characteristics of the
13 limestone such that it behaved differently.

14 Q. Right. So they weren't so much concerned
15 about whether you were taking credit for or not for the
16 strengthening of the limestone, they were looking at
17 whether it had other unintended impacts, correct?

18 A. That's what they wanted to assess and confirm.
19 We made presentations over telephone calls with them to
20 suggest to them that this will not be an issue, but they
21 chose to take the time to do that themselves and draw
22 their own conclusion.

23 Q. And they did that through RAIs on October 6th
24 that you provided answers to on the 20th of November,
25 correct?

1 **A.** Well, and let me say it a different way. We
2 were unable to convince them prior to September 12th, so
3 we moved the work into the scope of the LWA to prevent
4 our COLA from being held up. And if you look at the
5 letter, when we do that we point out the fact that we
6 are still reviewing that scope of work, whether it
7 should be in the LWA or not.

8 **Q.** But the NRC staff was not impressed with your
9 argument about the nonnuclear dewatering activities
10 because they did not deem that to be analogous to their
11 nuclear safety-related mission, is that correct?

12 **A.** Your phrase that they were not impressed, let
13 me -- I don't agree with that phrase. The point is
14 while that's information we provided them, their mission
15 is to ensure the health and safety of the public, and so
16 they felt the need to consider the diaphragm wall and
17 grouting in their review of the nuclear safety aspects
18 of the foundation and geotechnical design.

19 **Q.** They didn't indicate to you that they were
20 really going to consider that in any way, did they?

21 **A.** Ask your question, again.

22 **Q.** The information you provided about the
23 nonnuclear dewatering activities at construction sites
24 around the country, they did not -- they indicated to
25 you that they were not going to consider that in their

1 review, isn't that correct?

2 **A.** I don't recall the discussions. I think the
3 point is they were looking beyond whether it could be
4 done, because it has been -- because it has been done on
5 other nonnuclear applications. They were looking at
6 other aspects of their review.

7 **Q.** Do you recall addressing this issue in your
8 deposition?

9 **A.** I don't recall.

10 **MR. REHWINKEL:** Mr. Chairman, if you would
11 give me just a minute. I am almost done.

12 **CHAIRMAN CARTER:** Absolutely.

13 **BY MR. REHWINKEL:**

14 **Q.** Do you recall -- and I could show you your
15 deposition, but let me just ask you, on Page 55 of your
16 deposition, do you recall me asking you about the
17 dewatering measures in typical large construction
18 projects in Florida and your discussion of those with
19 the NRC staff?

20 **A.** I generally remember that discussion.

21 **Q.** And I asked you actually on Page 11, Lines 1
22 through 8 -- this is on Page 55 of your deposition,
23 starting on Line 3. Actually, on Page 11, Lines 1
24 through 8, you state that comparing what you were
25 proposing to dewatering measures in typical large

1 construction projects in Florida, there was not a lot of
2 difference, is that right?

3 And your answer there was the point of this
4 statement in my testimony is to say in areas where there
5 is high groundwater, techniques like this are commonly
6 used to facilitate construction.

7 My question to you, okay, did you make that
8 point to the NRC staff. Answer, we did. Okay. What
9 was their reaction to that, and your answer was we
10 understand your comment.

11 **A.** Yes.

12 **Q.** Okay. My question to you was they did not
13 seem to give you any indication that they were really
14 going to consider that as part of their review, did
15 they?

16 **A.** No. I think my comment in my deposition is
17 correct. We understand your comment, but that is not
18 the basis for their making their decision. They were
19 going to look to ensure that there was no impact from
20 the diaphragm wall and the grout on the nuclear safety
21 function of the foundation design.

22 **Q.** And when would you have had these
23 conversations? I'm not saying necessarily you, but your
24 company with the NRC staff?

25 **A.** After January 23rd, when the proposed schedule

1 was communicated to us, we had dialogue with the NRC
2 following that to discuss with them why they felt there
3 was so much time needed to review the LWA. And we
4 probably at that point in time, if not earlier, talked
5 about this. But our point was to tell them, as we
6 believe, you can do the review of these two features,
7 the diaphragm wall and the grout, and conclude that in
8 advance of the overall COL.

9 Q. But your conversation with the NRC staff to
10 bring to their attention these other nonnuclear
11 dewatering measures was well before you got the letter
12 from the NRC staff saying when they would consider the
13 LWA concurrent with the COL, correct?

14 A. I can't answer your question yes or no,
15 because I don't know what venue you're talking about.
16 If you recall, we had meetings, technical meetings with
17 the staff in January, June, August, and we had several,
18 so in any of those forums we could have talked about
19 this. I just don't recall, but I would not expect them
20 to say -- I would not expect the NRC to say solely
21 because you can do this at a building in Miami, that
22 that is the basis for them not to review it. We would
23 not expect them to say that.

24 Q. Okay. When you said January, I wanted to make
25 sure you weren't talking about 2009, you were talking

1 about 2008.

2 **A.** 2008. But, now later on, as I said, after
3 January 23rd, 2009, we had calls with them. We did talk
4 about the time that they believed they needed to review
5 the LWA request and why we believed it should not take
6 that much time. We did have that dialogue.

7 **Q.** Okay. But certainly you did not get any
8 feedback from the NRC prior to December 31st, 2008, that
9 indicated to you that they gave a lot of credence to
10 your analogy about dewatering at nonnuclear construction
11 locations, correct?

12 **A.** I don't understand your phrase gave a lot of
13 credence. We shared that information with them because
14 it is how you do it, but I was not expecting for them to
15 draw a judgment on it in terms of the LWA.

16 **MR. REHWINKEL:** Mr. Chairman, that's all the
17 questions I have for Mr. Miller.

18 Thank you, Mr. Miller.

19 **CHAIRMAN CARTER:** Thank you. Mr. Brew.

20 **MR. BREW:** Thank you, Mr. Chairman.

21 Good evening, Mr. Miller.

22 **THE WITNESS:** Good evening.

23 **MR. BREW:** I don't have any red documents and
24 we are not going to talk in code.

25 **CHAIRMAN CARTER:** We are all grateful for

1 that.

2 CROSS EXAMINATION

3 **BY MR. BREW:**

4 Q. One quick follow-up on the discussion you just
5 had. My understanding from all the documents you have
6 been through is that certainly throughout 2008 in your
7 discussions with the NRC, Progress was crystal clear
8 about its reasons for the LWA and its importance to the
9 schedule, is that right, to the NRC?

10 A. It was clear to us and we communicated that to
11 the NRC that the LWA was important for our overall
12 schedule.

13 Q. Overall schedule. And that was communicated
14 not only to the NRC technical staff, but in your
15 meetings with the NRC senior staff, is that right?

16 **CHAIRMAN CARTER:** Mr. Brew, before you go on,
17 hang on one second.

18 Mr. Rehwinkel, please make sure your
19 microphone is off, please, sir.

20 **MR. REHWINKEL:** I apologize.

21 **CHAIRMAN CARTER:** No problem.

22 You may continue.

23 **MR. BREW:** Thank you.

24 **BY MR. BREW:**

25 Q. And is it also fair to say that throughout

1 that period in the discussions back from the NRC they
2 responded by telling you what they needed?

3 **A.** What they needed --

4 **Q.** In terms of information, what they needed to
5 review?

6 **A.** I'm not -- I don't understand what your
7 question is asking.

8 **Q.** Well, I'm just trying to get to how you all
9 communicated. You communicated what you needed in terms
10 of the limited work authorization and its importance to
11 the schedule. And the feedback you got from the NRC
12 staff was in terms of what they needed, is that right,
13 in terms of information?

14 **A.** It was more two-way dialogue. And let me
15 explain. When we had meetings, say, in January of 2008,
16 and in June of 2008, and in August of 2008, those were
17 technical meetings, and so it was not a one-way
18 communication. It was a two-way dialogue of
19 understanding more about the site, more about our
20 application. As we had meetings with management, such
21 as in September of 2008, we were communicating to them
22 the importance of the schedule to us. Now, clearly
23 their letter of October 6 is requesting more information
24 from us.

25 **Q.** Okay. And so throughout that two-way

1 communication what you were getting back from the NRC
2 was what they needed to do their job, right? The
3 information they required to do their job to set a
4 schedule that would allow for a timely and thorough
5 review of the information?

6 **A.** That is one element of it, but it was not just
7 what it takes to review their schedule. They were
8 preparing for receipt of our application, so they wanted
9 to understand what our site was like, and so these
10 technical presentations, including the presentation made
11 right after the COL was submitted, was for the purposes
12 to overview the COL application with them to facilitate
13 their review and make it go more efficiently.

14 **Q.** Close enough. Okay. In your Direct Testimony
15 on Page 27 you refer to the updated fuel forecast and
16 environmental forecast that you supplied, which are
17 shown in your Exhibits GM-1 and GM-2. Do you see that?

18 **A.** Yes. And just for clarity, this is my Page 27
19 of my May 1st, 2009.

20 **Q.** That's correct. I am referring to --
21 throughout this I will be referring to your May
22 testimony.

23 **A.** Okay.

24 **Q.** So do you see that?

25 **A.** I do.

1 **Q.** How did you apply the information on that
2 exhibit to any analysis in your filing?

3 **A.** The information that is included in GM-1 and
4 GM-2 is not used further in this filing of this May 1st,
5 2009 filing.

6 **Q.** Okay. Now, on GM-2 you have a footnote that
7 applies with respect to the CO2 cost estimates that
8 refers to the impacts of the Waxman-Markey bill. Do you
9 see that?

10 **A.** I do.

11 **Q.** So I take it from that that the CO2 cost
12 estimates shown there simply repeat what was filed in
13 the need case?

14 **A.** This information in GM-1 and GM-2 was provided
15 through our system planning, and I would have to go back
16 and review it side-by-side to validate your question.
17 But I recall from memory in the need it was generally
18 EPA, MIT, and other CO2 subjects.

19 **Q.** So you don't know of whether this information
20 was simply a repeat of the need documentation or not?

21 **A.** Actually, I don't have anything in front of me
22 that would actually validate that. I do not know the
23 answer to that.

24 **Q.** Okay. Would you accept, subject to check,
25 that these are the values that were shown in Mr. Crisp's

1 (phonetic) exhibit in the need filing?

2 **A.** Would I validate that subject to check?

3 **Q.** Yes.

4 **A.** Yes.

5 **Q.** Okay. On Page 25 of your May testimony, you
6 begin a discussion on the feasibility of the Levy
7 project. Do you see that?

8 **A.** Yes.

9 **Q.** And on Line 18 you say the LNP is also
10 feasible from a project milestone perspective. Do you
11 see that?

12 **A.** Yes.

13 **Q.** And you mention in the next sentence that you
14 achieved every major LNP project milestone with the
15 exception of the LWA, is that right?

16 **A.** That is what it says on Page 25.

17 **Q.** And the LWA was a big miss that we have
18 already talked about, but my question is going forward,
19 because of the LWA decision, do virtually all of the
20 project milestones change?

21 **A.** Because of the -- first of all, let me go
22 back. You said this was a big miss, and let me just
23 point out that the LWA scope, while it is not going to
24 be provided in a LWA approval, that LWA scope of work is
25 embodied in the COL, so it comes in that approval.

1 Q. Okay.

2 A. But to answer your second point is based on
3 the NRC determination that the LWA would take as long as
4 a COL, therefore, a COL will not be issued, that does
5 mean that subsequent milestones will move.

6 Q. So the expected date for the first concrete
7 pour would change?

8 A. That's correct.

9 Q. And installing the reactor vessel?

10 A. That is correct.

11 Q. And start-up testing?

12 A. All of the dates that you are describing that
13 are associated and tied to the work that's embodied in
14 the LWA, that work will move.

15 Q. Okay. And as well as the expected commercial
16 operation dates?

17 A. The expected commercial in-service date, yes,
18 will move also.

19 Q. And you don't have specific expected dates for
20 any of those items today, right?

21 A. As I stated earlier, we have not decided on
22 the final schedule shift and so that information is not
23 available to date.

24 Q. So when you say that the project is feasible
25 from a project milestone perspective, you can't say that

1 specifically going forward because you haven't
2 reestablished those project milestones?

3 **A.** No, that's not what this is intended to state.
4 This comment here, the LNP is also feasible from a
5 project milestone perspective, this is referring to
6 regulatory approvals that we're achieving as we execute
7 this project. We have secured comprehensive land use
8 amendment changes, we have secured zoning plan changes,
9 we have secured the zoning permit itself, we have
10 secured site certification, and all of these various
11 regulatory approvals are being met as we go. Obviously
12 we now know that we will not receive an LWA and that
13 that scope of work will be in the COL, but this is
14 referring to the fact that we are executing and getting
15 the proper regulatory approvals as we proceed that make
16 this project feasible.

17 **Q.** Well, you just referred to achievements in the
18 past tense, and I'm talking about milestones going
19 forward. And so from a going-forward perspective, in
20 terms of meeting project milestones, you would have to
21 reestablish what those milestones are going to be first,
22 wouldn't you?

23 **A.** Going forward --

24 **Q.** Yes.

25 **A.** -- the milestones related to the start of

1 preconstruction work and then construction work through
2 start-up extension will be reset.

3 Q. Okay. So you can't say that you are going to
4 meet milestones if you haven't set them yet, right?

5 A. Technically, yes. But the point is from a
6 feasibility perspective there is nothing that we see
7 that makes it infeasible to move that milestone, say,
8 for first concrete, secure the necessary regulatory
9 approval to do that, and then execute that.

10 Q. You just don't know when they are, right?

11 A. We have not established the new dates for the
12 in-service date.

13 Q. Or any of the other interim milestones that I
14 just mentioned a minute ago?

15 A. Well, those interim milestones that are
16 related to the execution of the construction of the
17 plant will be established based on the in-service date
18 because you work back from that. You allow for the
19 start-up power extension time and then you allow for
20 approximately 48 months of construction, and then in
21 advance of that work that is referred to as
22 preconstruction.

23 And just for the record, when I use
24 preconstruction and construction, that is Westinghouse
25 terminology for work done before first concrete. It is

1 not the nuclear regulatory legal version of what
2 preconstruction and construction is.

3 Q. Do you also have a milestone in terms of
4 executing an agreement with potential joint owners or
5 partners, or is that something you can't speak to?

6 A. I can speak to it generally, and certainly Mr.
7 Lyash, who will be providing rebuttal testimony, can
8 give more details. But our intention is to complete
9 negotiations on a change order to our existing EPC
10 contract that incorporates the schedule change and then
11 the joint owners agreements would follow behind that.

12 Q. So you don't have a specific milestone for
13 achieving agreements with joint owners anymore?

14 A. That is not part of my scope of my duties, so
15 I cannot comment on that.

16 Q. That's fine. On Page 26, again, of the May
17 testimony. On Line 7 you say that PEF continues to need
18 base load capacity in the future. Do you see that?

19 A. Yes.

20 Q. If that need for base load capacity is prior
21 to 2018, the Levy units won't be available to serve
22 that, will they?

23 A. If there is additional generation needed
24 before 2018 it will be provided through other generating
25 assets, and that is covered in the Ten-Year Site Plan

1 that's submitted every April.

2 Q. But in terms of the sentence in your testimony
3 here, to the extent that -- where you say PEF continues
4 to need base load capacity in the future and new
5 advanced design nuclear remains the best available
6 technology, the second part of that sentence is not
7 available with respect to capacity needs prior to at
8 least 2018, depending upon what the schedule slippage
9 eventually turns out to be?

10 A. To be correct in answering your question, the
11 resource as a nuclear resource is baseload that provides
12 all three of those things, greenhouse gas emissions,
13 diverse energy portfolio, and reduced reliance on fossil
14 fuels such as natural gas.

15 Q. Okay. Let's just stop to stick with my
16 question.

17 A. All right.

18 Q. My question was if the capacity need is before
19 the in-service date of the units, those units can't
20 serve that capacity need, right?

21 A. If there is a capacity need -- no. If the
22 capacity need is before 2018, these units would not be
23 available to do that.

24 Q. Okay. And that capacity need would have to be
25 met through some other resource?

1 **A.** That's correct.

2 **Q.** Okay. With respect to your comment that
3 advanced nuclear power remains the best available
4 technology -- do you see that on Lines 8 and 9?

5 **A.** Yes.

6 **Q.** Did you do any updated analysis of other
7 resource alternatives?

8 **A.** In our Ten-Year Site Plan we continue to
9 review all generations and additions every time we
10 submit that. Is that the question you are asking?

11 **Q.** No. I'm saying you're making a statement that
12 advanced design nuclear power remains the best available
13 technology, and I'm asking whether or not when you say
14 remains there is a technical analysis that you performed
15 to support that?

16 **A.** I need to ask you are you asking me did we do
17 a CPVRR to do that?

18 **Q.** Did you do it?

19 **A.** We did not in support of my Direct Testimony.

20 **Q.** Okay. That brings me to my next question.
21 Getting back to GM-1 and 2?

22 **A.** Yes.

23 **Q.** Am I correct that GM-1 and 2 have been
24 superseded by Mr. Lyash's rebuttal?

25 **A.** In an exhibit to Mr. Lyash's rebuttal there is

1 a CPVRR calculation that was requested by the staff, and
2 in that CPVRR calculation there are updated numbers for
3 GM-1 and GM-2.

4 Q. Okay. So your exhibits have been superseded
5 by the rebuttal?

6 A. Correct.

7 Q. Is new advanced design nuclear power the best
8 available technology to provide reliable baseload
9 electric service and make significant reductions in
10 greenhouse gas emissions at any cost?

11 A. No.

12 Q. Is that taken into account in your analysis
13 here?

14 A. Yes, qualitatively.

15 Q. Qualitatively but not quantitatively?

16 A. Not in a CPVRR calculation.

17 Q. Or any other calculation that you have
18 provided?

19 A. No, not in a calculation, but in a
20 quantitative -- excuse me, in a quantitative and
21 qualitative perspective in regards to our knowledge of
22 the cost of the project.

23 Q. And the cost of the project as we have
24 discussed a number of times is currently unknown, is
25 that right?

1 **A.** The cost of the project is being revised;
2 however, we have insight to what it will be revised to.

3 **Q.** Okay. Is your insight to what it will be
4 revised to appear anywhere in the testimony filed in
5 this docket?

6 **A.** No, because that information is after this May
7 1st filing.

8 **Q.** Okay. So there is nothing in this docket that
9 would provide that updated information?

10 **A.** There is, and it's in the context of Jeff
11 Lyash's rebuttal testimony where in the CPVRR
12 calculation there are some ranges for various capexs,
13 minus 5 percent, plus 5 percent, plus 15 percent, plus
14 25 percent.

15 **Q.** Okay. But apart from Mr. Lyash --

16 **MR. BUTLER:** Mr. Chair, I'm sorry, I don't
17 think the witness was finished answering.

18 **MR. BREW:** Oh, I'm sorry.

19 **BY MR. BREW:**

20 **Q.** Are you done?

21 **A.** No, I'm not. And so in the context of the
22 fact that there is a rebuttal exhibit that is going to
23 be discussed later, and it has additional capex ranges,
24 based on the insight we know we are well within that
25 range.

1 **Q.** Okay. Let me keep it simple. Speaking to
2 your testimony and not Mr. Lyash's, which we will get to
3 later --

4 **A.** Okay.

5 **Q.** -- is there any quantitative assessment of the
6 updated cost?

7 **A.** Not in my testimony.

8 **Q.** Okay. Or in the rebuttal that you have
9 submitted?

10 **A.** Not in my rebuttal.

11 **MR. BREW:** That's all the questions I have,
12 Mr. Chairman.

13 **CHAIRMAN CARTER:** We are going to give the
14 court reporter a break. Let's take ten, everybody.

15 (Off the record.)

16 **CHAIRMAN CARTER:** We are back on the record.
17 And when we left Mr. Brew had finished his
18 cross-examination.

19 Mr. Davis, you're recognized, sir.

20 **MR. DAVIS:** Thank you.

21 CROSS EXAMINATION

22 **BY MR. DAVIS:**

23 **Q.** Good evening, Mr. Miller.

24 **A.** Good evening.

25 **Q.** I just have a few questions for you. I

1 promise to be brief. I want to turn your attention,
2 please, to your May 1st, 2009, Direct Testimony. Do you
3 have that in front of you?

4 **A.** I do.

5 **Q.** I'm going to stick with that in the time that
6 I have this evening. First of all, you probably are
7 still on Page 25 in that testimony, or are you?

8 **A.** I am now.

9 **Q.** Okay. You would agree, then, that Page 25 and
10 Page 26 of your testimony, these two pages is the
11 detailed analysis of long-term feasibility of completing
12 a power plant that was filed by Progress on May 1st?

13 **A.** No, I do not consider these two pages alone to
14 be the detailed analysis of long-term feasibility for
15 completing the power plant. These two pages summarize
16 that. The collection of all the information provided in
17 our Direct Testimony both on March 2nd and May 1st,
18 which document all the actions we are talking and the
19 achievements we have made represent that collection, and
20 it is summarized on Page 25 and Page 26.

21 **Q.** Well, give me some specifics then. Whose
22 other testimony contains the detailed analysis of
23 long-term feasibility?

24 **A.** Sir, what I'm saying is my testimony contains
25 that because what it's doing, it's going through and

1 explaining how we are taking actions to complete all the
2 regulatory approvals, and those are happening as
3 expected. We are following and working with the
4 technology vendor to advance the review of that
5 information. We are following the construction of
6 plants in China. I have personally been there myself to
7 witness their construction.

8 So we are taking all of those actions
9 necessary to complete the power plant, and so from our
10 perspective of all the actions we have taken and taking
11 that into collective, those are summarized here that it
12 is technically achievable, regulatorily achievable,
13 also.

14 Q. So those other parts of the testimony are
15 contained within your Direct Testimony, is that what you
16 are saying?

17 A. Correct.

18 Q. So if we are looking for that detailed
19 analysis, it is in your Direct Testimony?

20 A. It is in there, and it is in there by virtue
21 of the all the accomplishments that we have done and the
22 fact that we are indicating that everything is moving
23 ahead with no obstacles to complete the power plant.

24 Q. And you just mentioned China. Are you relying
25 upon the Chinese experience with the AP 1000 reactor for

1 the idea that you are moving toward long-term
2 feasibility here in Florida?

3 **A.** I think the efforts going on -- yes. The
4 efforts going on in China certainly relate to the
5 long-term feasibility because it is a demonstration of
6 the technology as it is being built demonstrating that
7 it can be built, and it is in progress. So you
8 certainly have to consider that. That is supportive of
9 the technical viability of this technology.

10 **Q.** You don't consider China's nuclear regulatory
11 program anywhere comparable to that of the Nuclear
12 Regulatory Commission in the United States, do you?

13 **A.** I don't know what the word comparable means
14 the way you phrased it, but they are different.

15 **Q.** Is it as stringent as the NRC in the United
16 States?

17 **A.** I don't have insight on whether it's as
18 stringent or not.

19 **Q.** And do you know anything about the reputation
20 of the Chinese officials who are part of that program?

21 **A.** I'm not sure what you're asking.

22 **Q.** Do you know if any have been convicted for
23 taking bribes, for instance?

24 **A.** I'm aware of media reports that individuals
25 that were involved in the down select of technologies to

1 deploy in China, both at the Haiyang site, the Sanmen
2 site, and I want to say it is the Tai Cang (phonetic)
3 site, and the decisions on whether to purchase AP 1000s
4 or Areva EPRs, that some of the individuals involved in
5 that decision-making of which technology to deploy,
6 there have been allegations concerning that.

7 **Q.** Now, going back to the long-term feasibility
8 submittal, did Progress ask for any additional time to
9 submit further information for demonstration of
10 long-term feasibility of completing the reactor?

11 **A.** No, we did not request additional time for a
12 detailed analysis of long-term feasibility of completing
13 the power plants because we did not need it because it
14 is contained in my testimony.

15 **Q.** Now, the rebuttal testimony submitted by
16 Progress was submitted on or about August 10th, is that
17 correct?

18 **A.** I have it here. Yes, August 10th.

19 **Q.** And there's further information that I guess
20 you are relying upon now for the demonstration of
21 long-term feasibility in the August 10th testimony, is
22 that right?

23 **A.** No. The August 10th testimony is responding
24 to the testimony that other organizations provided, and
25 we are providing rebuttal to that, and so we are adding

1 some additional clarifications.

2 Q. So you're still relying then upon the May 1st
3 submittal as your demonstration of long-term
4 feasibility?

5 A. That is correct.

6 Q. Now, with regard to the need determination for
7 the Progress Levy 1 and 2, I'd like to quote briefly
8 from Order Number PSC-08-0518-FOF-EI, issued
9 August 12th, 2008. And this is on Page 24 where there
10 is the statement that PEF shall provide a long-term
11 feasibility analysis as part of its annual cost-recovery
12 process, which in this case shall also include updated
13 fuel forecasts, environmental forecasts, nonbinding
14 capital cost estimates, and information regarding
15 discussions pertaining to joint ownership. Let me ask
16 you, first of all, did you provide an updated nonbinding
17 capital cost estimate?

18 A. Yes.

19 Q. It's the same as was provided in the need
20 docket, correct?

21 A. While the number is the same, the analysis for
22 that number is different because that number is based on
23 a budget that was part of the integrated project plan
24 approval that was approved in December of 2008. The
25 value is the same, approximately 17.2 billion, but it is

1 not the same analysis that was built for the need
2 determination filing. It has been revised.

3 Q. And it has been revised to be the same?

4 A. Well, it was being refined and the number
5 turned out to be the same, but nonetheless it was
6 revised.

7 Q. Did you provide that analysis for how the
8 number was revised and turned out to be the same?

9 A. We provided the IPP under discovery and large
10 subsections of the costs are provided in there.

11 Q. Okay. Now, did you provide updated fuel
12 forecasts?

13 A. We did.

14 Q. Did you provide updated environmental
15 forecasts?

16 A. We did.

17 Q. Now, you're talking about the tables, Exhibit
18 GM-1 and GM-2?

19 A. That is correct. GM-1 is the fuel update and
20 GM-2 is the environmental forecast update.

21 Q. And I believe you just told Mr. Brew that you
22 didn't know whether or not GM-2 contained updated
23 environmental data for CO2?

24 A. In the context did we add additional columns
25 of different sources. He was asking his question in

1 regard to the Waxman-Markey bill.

2 Q. Well, he also asked you if these were the same
3 numbers as were provided in your need docket.

4 A. Oh, I misinterpreted his question. These
5 numbers are updated from that, but I took his question
6 to be did we change the categories of CO2.

7 Q. No. I must have missed something when he
8 asked the question, because I believe you said that you
9 would need to compare the numbers to determine whether
10 they had been updated or not.

11 A. Yes, I said that. That was probably my
12 language, but when he asked the question, I was looking
13 at the title of the CO2, and I thought he was asking
14 me -- because the question line had talked about the
15 Waxman-Markey bill, was he asking about were they the
16 same.

17 The numbers that are in here clearly were
18 updated from the need determination, and I apologize if
19 I made that not clear before.

20 Q. And I want to be as clear as we can be here.
21 Are you stating that the numbers for EBF CO2, EPA CO2,
22 MIT CO2, and Lieberman-Warner CO2 were updated from the
23 need determination?

24 A. The overall -- I'm not sure if any individual
25 number is updated for any particular year, but the

1 overall environmental forecast was redeveloped and
2 submitted as part of my GM-2 submittal here as an
3 exhibit, and it was performed by system planning. So it
4 is not just a repeat of last year's. It was reviewed
5 and updated. But I would have to look at any individual
6 number to tell you if it has changed.

7 **MR. BREW:** Excuse me, Your Honor.

8 **CHAIRMAN CARTER:** Mr. Brew.

9 **MR. BREW:** If the witness is going to change
10 his testimony, then I need to know that. What I asked
11 him was to confirm that the numbers for CO2 shown on his
12 exhibit were the same numbers as were presented in the
13 need case. And he said subject to check, that was true.
14 If he's changing his testimony, I need to know that.

15 **CHAIRMAN CARTER:** Well, let's ask him, again.

16 **MR. DAVIS:** Go ahead.

17 **CHAIRMAN CARTER:** Mr. Brew, you're recognized.

18 CONTINUED CROSS EXAMINATION

19 **BY MR. BREW:**

20 **Q.** Mr. Miller, on your GM-2, the numbers under
21 the column Lieberman-Warner CO2 dollars per ton, are
22 those the same numbers that the company submitted in the
23 need case?

24 **A.** I would have to validate that column if they
25 are the same numbers as the need case.

1 Mr. Rehwinkel, and I think he indicated it was an
2 excerpt of stuff that you had submitted to the NRC, is
3 that right?

4 **A.** Stand by. Let me locate 142.

5 **Q.** It is the one that has the nice graphic of the
6 nuclear power plant superimposed.

7 **A.** Okay. I have it here now.

8 **Q.** And did this get submitted to the Nuclear
9 Regulatory Commission?

10 **A.** I'm not sure of the source of this document
11 based on where it came from, but this looks to be a
12 figure out of probably either -- this is Part 6 LWA and
13 site redress plan, which is part of the application. It
14 is Figure 1.0-3 Rev 0.

15 **Q.** And I have not been down to the site, but it
16 looks like your site runs right along Highway 19, isn't
17 that right?

18 **A.** It is to the east of Highway 19, the site is.
19 That's shown on Figure 2.3-10, which shows the wetlands.
20 You can see the Highway 19 on that figure.

21 **Q.** And it looks like the road is disconnected
22 there, doesn't it? I mean, what's going on there, do
23 you know?

24 **A.** I think that is a graphic anomaly. It's not
25 disconnected in real life.

1 **Q.** All right. And is this the wetlands
2 delineation that was done for the project? I mean,
3 wetlands delineation is a key piece of the permitting
4 process, isn't it?

5 **A.** Yes, it is. And this is the wetlands
6 delineation for the purposes of this Figure 2.3-10. The
7 actual delineation process is more complicated as you
8 ground truth it and you work with the Corps of
9 Engineers.

10 **Q.** Presumably this will get updated to show
11 exactly where things are, is that right?

12 **A.** I would characterize it as there will be more
13 precision added to it.

14 **Q.** Also, you were shown Confidential Exhibit 146,
15 which had a whole bunch of monthly progress reports in
16 it, a compilation, and you were asked to read certain
17 things. I have a couple of questions about that if you
18 could put that in front of you, and tell me when you
19 have it.

20 **A.** I do.

21 **Q.** All right. The second page of the exhibit, I
22 guess it's showing up as Page 4, it's an executive
23 summary portion, correct?

24 **A.** Of the October 2007 report?

25 **Q.** Yes, sir.

1 **A.** Yes.

2 **Q.** And am I correct in that every one of these
3 reports, even though it is not set forth in here, they
4 have an executive summary portion, is that right?

5 **A.** Typically.

6 **Q.** And what's the purpose of an executive
7 summary?

8 **A.** Typically, an executive summary in a document
9 like this is to provide sort of a succinct overview.

10 **Q.** And wouldn't it be true that you put in the
11 executive summary the key components of the project?

12 **A.** That you want to bring attention to as part of
13 the review, you would do that.

14 **Q.** You don't consider the labels under 1-1, 1-2,
15 1-3, 1-4, and 1-5 confidential, do you?

16 **A.** No.

17 **Q.** And it caught my eye that cost is listed as
18 the second matter in the executive summary, correct?

19 **A.** It is.

20 **Q.** And as we sit here today with respect to cost,
21 you are not able to provide meaningful updates of the
22 total project cost to this Commission, correct?

23 **A.** We cannot provide a revised total project cost
24 based on on-going negotiations with a change order to
25 our EPC contract. We have the latest available budgeted

1 cost that has been approved through our senior
2 management.

3 Q. Yes, sir. How about Page 24, Line 12. And I
4 guess -- is that the point you were making where I quote
5 until PEF is able to negotiate an EPC contract, or EPC
6 amendment with the consortium, PEF will not be able to
7 provide meaningful updates to the total project cost, is
8 that where we stand today?

9 A. That is correct. That statement still is
10 correct. We have insight from the consortium on the
11 dollar value that they estimate -- and these are
12 indicative numbers for some of the schedule changes that
13 we are considering. However, we have not completed the
14 negotiations on the contract amendment, and so then to
15 roll those and the associated payment schedules which
16 are embodied in the EPC into a final calculation to
17 predict total project costs, that has not been done yet.

18 Q. And the way -- because I'm going to ask you
19 some questions about the EPC contract, and you have been
20 asked about change orders, but the way these things work
21 it's not done with a conversation. I mean, to get this
22 thing changed and to nail down a cost don't you have to
23 execute either a change order or an amendment to the
24 contract?

25 A. In this case, change orders that involve a

1 schedule change are a contract amendment, but they are
2 both covered under the change order provisions of the
3 contract.

4 Q. Okay. And you have not done a contract
5 amendment with respect to the slippage in schedule as we
6 sit here today, correct?

7 A. In regards to your term slippage, the schedule
8 is being shifted. We have not completed a contract
9 amendment that incorporates the schedule shift into the
10 EPC.

11 Q. And given the fact that your testimony is you
12 can't provide a meaningful update, I would take it that
13 it's envisioned that the ultimate resolution of this
14 matter would be rather significant in terms of dollars,
15 wouldn't that be a fair assumption? And I say that
16 because Mr. Rehwinkel asked you some questions about a
17 confidential document and had you look at some lines,
18 and I think at the end of the day you said the
19 percentage change was like 1/15th of one percent, was
20 that right, when you did that analysis with
21 Mr. Rehwinkel earlier?

22 A. His question was very specific, and, yes, I
23 answered 0.15 for the specific question he asked me.

24 Q. Okay. And, you know, given the situation
25 here, and we had some testimony yesterday that nuclear

1 plants are very involved, and high capital costs, and
2 that delays are a significant risk. It's a fair
3 assumption, is it not, that the anticipated
4 renegotiation could have a meaningful and significant
5 impact on the overall project costs, you would agree
6 with that, would you not?

7 **A.** I would not characterize it as necessarily
8 meaningful and significant. It is certainly an impact.
9 And until the negotiations are complete you cannot
10 ascertain the full amount of the change whether up or
11 down. And there's two steps in it. We first negotiate
12 that contract amendment and then we then lay that into
13 our total project cost calculation.

14 **Q.** So you can't -- as we sit here today, you
15 can't tell this Commission whether you believe that that
16 change will be material or not?

17 **A.** In terms of the contract negotiations on that
18 contract change order, I have insight to the numbers
19 have been provided by the consortium for that schedule
20 shift, and I have stated earlier that those numbers are
21 well within, percentage-wise, the CPVRR analysis which
22 is provided in the rebuttal testimony by Jeff Lyash.

23 **Q.** And the top end of that range is what,
24 25 percent, correct?

25 **A.** That is correct.

1 Q. All right. So if we use that number for the
2 purposes of this conversation, if you assumed it was
3 going to be at the top end of that, 25 percent of
4 17 billion is over 4 billion, correct?

5 A. It is, but I did not say at the top end of
6 that range. I said well within.

7 Q. But the fact of the matter is as we sit here
8 today we don't really know?

9 A. We have insight that gives us the magnitude of
10 that change, and that is prior to completion of our
11 negotiations which we would expect improvement in that
12 number. And so we have some insight into the percentage
13 change in the overnight capex price.

14 Q. In your confidential exhibit that I was
15 referring you to --

16 A. Which one, sir?

17 Q. 146.

18 A. Okay.

19 Q. There was a -- and if you will give me a
20 minute, I'll find it, but I saw a term in here that
21 talked about price escalation as a continuing
22 reoccurring change. Do you have any information about
23 price escalation as a risk?

24 **MR. BURNETT:** Mr. Chair, I don't think
25 Mr. Moyle is there yet, but I think he is dangerously

1 close to disclosing material out of that confidential
2 document by his characterizations.

3 **MR. MOYLE:** I'm sorry.

4 **CHAIRMAN CARTER:** Mr. Moyle, take a moment if
5 you need to.

6 **MR. MOYLE:** I'm going to hold on to this and
7 come back to it. If you will give me a minute, we'll
8 find it.

9 **CHAIRMAN CARTER:** Take a minute. Take a
10 minute.

11 **MR. MOYLE:** I've found it. I apologize to
12 counsel on that.

13 **BY MR. MOYLE:**

14 **Q.** But it's on Page -- this is on the
15 October 2008 performance report. The number at the
16 bottom is 1-47019373, and it's the fourth bullet point
17 up that I wanted to ask him about. And it doesn't
18 provide any detailed numbers or anything, but it looks
19 to me like it's a concept.

20 **A.** I see the item, and I'm trying to recall in
21 the context of October 2008 what was going on then. Do
22 you have a specific question?

23 **Q.** Well, I think this shows up in some other
24 reports, and it looks like it may be a carry along, but
25 what is it that is referenced there when you use those

1 words?

2 **A.** In general, as the project progresses, and as
3 we execute work, and as we turn on additional work, we
4 are always in a realtime assessment of how much do
5 things actually cost and are there new scope changes
6 that would actually involve a change to the overall
7 total project costs, and those could be either up or
8 down. So I'll give you an example. We removed rail
9 from the site scope of work, and that is a reduction in
10 the total project cost.

11 **Q.** The use of the word in the bullet point I
12 showed to you, and I can count, the fifth word over,
13 that doesn't indicate down, does it?

14 **A.** No, that one does not.

15 **Q.** That indicates up, correct?

16 **A.** It does. However, as you know and probably
17 understand that in some cases indices that follow that
18 parameter may go up or down.

19 **Q.** In your 30-plus years of being in the power
20 business, have you typically found over the passage of
21 time that costs go up or down?

22 **A.** Because of the driving of inflation, typically
23 things do go up, but that is not always the case.

24 **Q.** Let me ask you a question, because I want to
25 understand the needed change to the -- you know, to the

1 EPC contract. And that contract was executed on
2 December 31st, 2008, correct?

3 **A.** That is correct.

4 **Q.** And there has been a lot of discussion about
5 the LWA, and you were notified in January that you
6 weren't going to get your LWA, and that was your
7 testimony, correct?

8 **A.** Yes. My testimony is that we were notified on
9 January 23rd that the LWA would not be issued in advance
10 of the COL.

11 **Q.** If you had gotten that letter, that January
12 letter where they said the LWA is not going to happen,
13 if you had gotten it before December 31st, do you think
14 you would have moved forward and executed an EPC
15 contract?

16 **A.** That subject you're asking me is covered in my
17 rebuttal testimony.

18 **Q.** Do you want me to hold that conversation until
19 rebuttal?

20 **A.** Yes, because I'm going to point to some lines
21 in my rebuttal testimony that are confidential.

22 **Q.** The letter of October 6th that was sent to you
23 that said your case has been docketed, Mr. Rehwinkel
24 read you some lines there about -- they refer to the
25 complexity of the site characteristics. Wouldn't you

1 think that a fair reading of the letter, particularly
2 the last -- or the first two paragraphs on the second
3 page where they talk about scheduling uncertainty and,
4 you know, staffing issues, that that's sending a signal
5 that it doesn't look like your request is going to be
6 able to be granted?

7 I mean, they specifically say, "It is unlikely
8 that the LPN COLA review can be completed in accordance
9 with this requested time line." I mean, isn't it a fair
10 interpretation that they are sending you a message there
11 that you are not going to be able to get this LWA as
12 sought?

13 **A.** No. We do not read that letter at all to say
14 that we would not get an LWA. And particularly when you
15 consider the fact that just -- this is October 6th.
16 Just three weeks ahead of that we submitted a revision
17 to the LWA scope per their request. And so certainly
18 they were considering the LWA, because they just asked
19 us to revise the scope.

20 **Q.** Did anybody call Brian Anderson as he
21 indicated in his last sentence there and said if you
22 have any questions, please call me or send me an e-mail,
23 did anybody follow up and say, Brian, it looks like you
24 are not going to be able to process this per our
25 request, could you confirm that? Was there any

1 conversation or discussion with respect to that?

2 **A.** Yes. We had on-going dialogue with Brian
3 Anderson, and we also had dialogue with senior managers
4 in the NRC after this letter. And in no cases did any
5 of those individuals indicate prior to January 23rd that
6 an LWA would not be granted in advance of the COL.

7 **Q.** Isn't the real significant -- I mean, you
8 signed the EPC on the 31st so that you could meet a
9 milestone, isn't that correct?

10 **A.** That is not correct. And there is also
11 information in my rebuttal testimony related to that
12 subject.

13 **Q.** Well, I don't want to get to rebuttal now.
14 Let's just focus on your direct, Page 25, Line 18.

15 **A.** Yes, I see Line 18.

16 **Q.** You say the LPN is also feasible from a
17 project milestone perspective. To date, PEF has
18 achieved every major LNP project milestone with the
19 exception of the LWA. Specifically, PEF chose a site,
20 selected a reactor technology, obtained a need
21 determination, applied for the SCA, applied for the COL,
22 and executed an EPC.

23 Isn't it a fair reading to indicate -- to
24 infer that executing an EPC agreement is a milestone?

25 **A.** It is, but it is in the context of it is a

1 necessary step in advancing the project. And if you go
2 back to the need case that we submitted a year ago, we
3 had given the expectation that we would conclude an EPC
4 agreement before the end of the year. But it is a
5 milestone from the perspective of to advance the project
6 this is a necessary step to provide you the contractual
7 mechanisms to advance the work both engineering-wise and
8 long-lead engineered equipment purchasing and
9 procurement.

10 Q. So why did you -- I mean, the 31st is the end
11 of the year, it's the last day. A lot of times people
12 are getting ready for football games and celebrations.
13 Why did you rush to get it done on the 31st of 2008?

14 A. Well, I think the point that it was signed on
15 December 31st does not indicate that it was rushed. We
16 had negotiations on-going since December of 2006, so
17 over two years of negotiations. So I would not consider
18 it as rushed.

19 Q. Fair point. Was there a negative consequence
20 if you had waited and signed it on January 30th, 2009?

21 **MR. BURNETT:** Mr. Chair.

22 **CHAIRMAN CARTER:** Mr. Burnett.

23 **MR. BURNETT:** We are in an area now that is
24 covered in rebuttal, and I believe that the question
25 could conceivably call for confidential information.

1 So, again, I just wanted to alert Mr. Moyle of that
2 fact.

3 **CHAIRMAN CARTER:** Mr. Moyle, tread lightly.

4 **MR. MOYLE:** I will. He may be able to answer
5 it yes or no. I don't think it asks for anything
6 specific.

7 **THE WITNESS:** So ask your question again.

8 **BY MR. MOYLE:**

9 Q. Do you believe that signing this on
10 December 31st as compared to January 30th would have
11 worked a material disadvantage to your company, given
12 the other things that were going on at that point in
13 time, particularly the correspondence from the NRC and
14 other matters?

15 **MR. BURNETT:** Mr. Chair.

16 **CHAIRMAN CARTER:** Mr. Burnett.

17 **MR. BURNETT:** I'm sorry to interrupt again. I
18 have to advise Mr. Miller not to answer that question
19 verbally. If the Commission is interested in getting to
20 this topic, we can point to confidential sections in his
21 rebuttal testimony that address this. But he cannot
22 provide a verbal response to that question one way or
23 the other. Sorry to interrupt.

24 **CHAIRMAN CARTER:** Okay. Mr. Moyle, another
25 question.

1 **MR. MOYLE:** I'm going to have to think about
2 that one. Let me sleep on it.

3 **CHAIRMAN CARTER:** Take a minute. Don't sleep
4 on it literally, but just take a minute.

5 **BY MR. MOYLE:**

6 **Q.** Did you happen to read your company's position
7 as set forth in the prehearing order?

8 **A.** I did read the prehearing order.

9 **Q.** All right. I am going to -- I want to refer
10 you to Page 10 of the prehearing order, and you talk
11 about the EPC contract -- I say you, the company does.

12 **A.** I do not have a copy of that with me here at
13 the desk. I'm on Page 10.

14 **Q.** Your kind counsel provided you a copy. I want
15 to focus your attention on the last paragraph, and
16 there's a sentence in there that says, and I quote, "In
17 addition, the EPC contract execution provided an orderly
18 framework for the adjustment to the schedule and the
19 amendment of the EPC contract for such risk as the NRC
20 decision regarding the LWA that occurred."

21 Now, I read that to indicate that the contract
22 might be able to be readily amended or changed given
23 that wording, but as we sit here today, it has been
24 what, six, seven, eight months since the January
25 notification that the LWA was not going to happen and

1 the need to renegotiate the contract became apparent,
2 isn't that correct?

3 **A.** The time frame you are describing from the
4 time that we suspended the work to today, that time
5 frame is on the order of the months you talked about.
6 But the line you point to in here, there is text in my
7 rebuttal testimony that's related to this that's
8 considered confidential.

9 **Q.** Well, this isn't confidential, is it?

10 **A.** No, this is not.

11 **Q.** And I don't want to talk about --

12 **A.** That is a summary level statement.

13 **Q.** Yes, sir. And the summary statements are
14 typically done where the parties sort of put the key
15 things up front that they want people to really focus
16 on, and I want to focus on this if I can. But you would
17 agree that as we sit here today, the EPC contract that
18 you executed hasn't worked in a way in which the
19 amendment has been executed, correct?

20 **A.** I would not agree with that, and it is because
21 of the actual schedule shift itself and our company's
22 decision on that. And I'll explain in general terms.
23 As it states, the EPC contract provides an orderly
24 framework for the adjustment to the schedule and the
25 amendment of the EPC contract. And when it talks about

1 schedule, inside the EPC there is obviously -- as you
2 can imagine, there are several dates in there. So if
3 you were -- depending on what you are changing, the time
4 it takes to negotiate that change order and incorporate
5 that as an amendment to the EPC is based on the
6 complexity of the change you're making.

7 In this case, we required the consortium to do
8 a detailed analysis for us on various schedule shift
9 scenarios, provide that to us so we can make informed
10 decisions, and then once we set that then we go out and
11 we finalize the change order. So it's a measure of the
12 complexity of the change. This one is more complex
13 because we needed an analysis to be able to make an
14 informed decision.

15 Q. Do you know was this October 6th letter from
16 the NRC to you all with respect to your request for
17 certain dates, was this shared with the EPC contractor?
18 Did they have a copy of this letter, do you know, when
19 they were negotiating?

20 A. That letter is publicly available. I'm almost
21 certain they would have reviewed it. We certainly
22 shared with them what was in it, because we would have
23 discussed it in routine monthly meetings.

24 Q. Did any of those folks look at it and say,
25 hey, this looks like it may not be happening as

1 originally sought?

2 **A.** I'm not sure what you mean by is happening,
3 but none of them said we read this letter to say we will
4 not get an LWA approval for this site.

5 **Q.** Did you all consider dropping the C out of the
6 EPC?

7 **A.** Yes. In the early stages, as we were
8 considering the contract structure for EPC and EP and C,
9 we did consider both, however, we went with EPC.

10 **Q.** And why did you make that decision?

11 **A.** We made that decision because these are very
12 complex facilities that require a great degree of
13 interaction between the engineer and the procurement
14 organization, which is typically the engineering
15 organization, and also the constructor. This is a heavy
16 modularized facility meaning that you have got
17 engineering and procurement and construction going on at
18 remote locations and then these modules are coming to
19 the site. And we felt like that if we had multiple
20 prime contracts, i.e., one with EP, one with the
21 constructor, we would find ourselves arbitrating
22 disagreements between them on scope and schedule and
23 delays, and we chose to put this as an overall EPC and
24 put that burden on them to work between those details
25 themselves. And so for that reason we went with a

1 combined EPC contract to place the risk of those
2 interactions on this complex plant between the parties
3 of the consortium.

4 Q. And did you select a vendor who had knowledge
5 and familiarity with the AP 1000 design?

6 A. Westinghouse and Shaw, is that your question?

7 Q. Yes, sir.

8 A. Yes, they both have extensive knowledge with
9 the AP 1000.

10 Q. And is that important?

11 A. It's very important to us.

12 Q. Were you here yesterday when Mr. Reed
13 testified?

14 A. Yes, I was.

15 Q. I asked him some questions about the EPC
16 contract, and he said that -- and I'm summarizing, this
17 is the general gist of what I took it to be, was that it
18 made more sense to push off the execution of an EP and
19 maybe a C contract for as long as you could to keep your
20 options open. I take it you would disagree with his
21 analysis?

22 A. I do not know why he said what he did because
23 I don't understand their business decision process. For
24 us, as we looked at how to execute this work, we
25 believed an EPC was the proper structure. We believe

1 that the site engineering that interfaced with the
2 AP 1000 power block is best served in that EPC. And so,
3 in our case, Shaw is doing the site specific design of
4 the yard and the surfwater types and things that are
5 connecting to the power blocks because they will be
6 integrally involved with that as they construct the
7 plant.

8 **Q.** So you disagreed with his view as expressed
9 yesterday in terms of delaying the decision on the EPC
10 contract?

11 **A.** From a Progress Energy perspective, I
12 disagree.

13 **Q.** There was also a little discussion about heavy
14 metal forgings. Have you all made arrangements to get
15 in line for the heavy metal forgings that apparently are
16 only made in Japan?

17 **A.** We have secured slots and some work has
18 progressed in terms of procurement documents for long
19 lead equipment, and particularly those ones that are
20 engineered equipment, like the reactor vessel and the
21 steam generators that require ultralarge forgings.

22 **Q.** Have you paid a \$10 million reservation fee,
23 or any size reservation fee to secure a slot in the
24 queue for those items?

25 **A.** In our case it was not done as a reservation

1 fee because of our schedule. We executed an LOI in
2 March of last year which started the procurement process
3 for those long lead components. And so as an example,
4 we have secured slots in a procurement process for the
5 reactor vessel and steam generators. So ours is
6 different because our schedule required us not just to
7 get the reservation of a slot, but to also begin to
8 advance the work.

9 **Q.** You are ahead of the queue as compared to
10 Power and Light, correct?

11 **A.** In terms of the -- if you're talking about a
12 queue such as in the supply chain for, like, a reactor
13 vessel, we would be ahead of them.

14 **Q.** Has your company made a go/no go decision with
15 respect to the Levy Nuclear Power Project at this point?

16 **A.** Your term go/no go is a difficult term to
17 answer. Our company is advancing this project in
18 deliberate steps. And that involves, as you know,
19 executing the EPC on December of last year. Later in
20 this process, there is a full notice to proceed that
21 will authorize the contractor to staff up the site and
22 begin the heavy construction, and that event has not
23 taken place yet.

24 **Q.** Now, you would agree that exploring strategic
25 partnerships is something that makes sense with respect

1 to the Levy Nuclear Power Project, correct?

2 **A.** I would, and we said that in our need
3 determination, and we also talk about that in our
4 testimony.

5 **Q.** And are you -- there's no reason why you
6 wouldn't want to explore such a strategic partnership
7 with, in addition to munies and co-ops, investor-owned
8 utilities in Florida, correct?

9 **A.** We would consider joint ownership arrangements
10 with other IOUs.

11 **Q.** Has that been explored as we sit here today in
12 earnest?

13 **A.** I cannot provide those details because, as you
14 can imagine, co-owner negotiations are confidential. I
15 am -- I probably should just stop with that.

16 **Q.** As we sit here today, you don't have any
17 executed joint ownership agreements or letters of
18 intent, correct?

19 **A.** I am not aware of those being executed.
20 However, I'm not in the direct process of negotiation
21 with those parties, so I would not have immediate
22 knowledge of it.

23 **MR. MOYLE:** Can I have just a minute?

24 **CHAIRMAN CARTER:** Sure.

25 **MR. MOYLE:** Just a couple more and I think I

1 will be done.

2 **BY MR. MOYLE:**

3 Q. Now, sir, you're familiar with the PSC rule
4 that is informing these proceedings, correct?

5 A. I am.

6 Q. And you're aware also that one component
7 requires a -- detailed information be provided with
8 respect to long-term feasibility, correct?

9 A. Yes, I believe the phrase is detailed analysis
10 of the long-term feasibility of completing the power
11 plant.

12 Q. Thank you. Because I have the rule, but I
13 have misplaced it. So I appreciate that.

14 You don't read that to suggest that costs are
15 not something that should be considered, do you?

16 A. I do not. And I address your specific
17 question in my rebuttal testimony. Would you like me to
18 refer to it?

19 Q. No. No, I want to wait for your rebuttal.
20 We'll have another conversation then. And I guess with
21 respect to feasibility, or, you know, prudence, there is
22 probably different meanings of those, but you would
23 agree, would you not, that asking this Commission to
24 make a decision which impacts the rates that my clients
25 and others pay, and they are charged with following the

1 rule, and asking them to make a decision on long-term
2 feasibility without having a good handle on all-in
3 project cost is a tough question to pose to them,
4 correct?

5 A. I don't agree that it is a tough question,
6 because in this direct testimony dated May, I address
7 specifically technology regulatory approvals. The cost
8 is addressed in my rebuttal testimony.

9 Q. And we've talked about that in terms of --
10 well, I don't want to go back and repeat that. And you
11 would agree that that cost is the same number that you
12 used in your need case and that there is a pending
13 contract amendment that may affect costs as we have
14 discussed, correct?

15 A. I would agree that there is an approved cost
16 which is contained in my testimony on Page 25, for
17 example, of the May testimony. I also point out that we
18 have insight to the change based on our on-going
19 discussions with our consortium and that insight gives
20 us information about the cost of this project, and from
21 that perspective, it's still feasible.

22 Q. Do you have a document that reflects that
23 insight?

24 A. We have --

25 Q. I mean, do you have a document that is

1 authored by the person whose insight you are referring
2 to?

3 **A.** There is not a document, per se, of how we
4 analyzed the values. We have values for various
5 scheduled scenario analysis which are estimated and
6 indicative and from those values we can look at those
7 and compare them, for example, to what's in the CPVRR
8 calculations in the rebuttal testimony of Jeff Lyash.

9 **Q.** I appreciate that. And one final line. As
10 time goes on, my clients and other consumers continue to
11 pay costs, carrying costs related to this project,
12 correct?

13 **A.** Correct.

14 **Q.** So you would agree that delays work against
15 the interest of the consumers as it relates from a cost
16 perspective, correct?

17 **A.** State your question, again.

18 **Q.** That because there's carrying costs associated
19 with this, that to the extent that delays occur and the
20 delays push the ultimate in-service date out, that that
21 works against consumer interest from a cost perspective,
22 correct, because they'll have additional carrying costs?

23 **A.** It will effect the carrying costs, and in this
24 particular case the regulatory decision by the NRC was
25 something they made that we now have to react to as part

1 of our project execution.

2 **MR. MOYLE:** That's all I have, Mr. Chairman.

3 Thank you.

4 **CHAIRMAN CARTER:** Thank you.

5 Staff.

6 **MR. YOUNG:** No questions.

7 **CHAIRMAN CARTER:** Commissioners.

8 Redirect.

9 **MR. BURNETT:** No, sir. And we would move 97
10 and 98, please.

11 **CHAIRMAN CARTER:** Okay. Let's deal with that
12 first. Are there any objections to 97 and 98? Hearing
13 none, show it none.

14 (Exhibit Number 97 and 98 admitted into the
15 record.)

16 **CHAIRMAN CARTER:** Now let's go to the back
17 pages. We start I believe at 141, is that correct,
18 staff?

19 **MR. YOUNG:** Yes, sir.

20 **MR. REHWINKEL:** Mr. Chairman, after talking
21 with the company and other parties, Public Counsel would
22 move Exhibits 140 through 150, and 152. We did not
23 cross on 151 and 153.

24 **CHAIRMAN CARTER:** I think you got 141. Is
25 that right, staff? 140 is Progress.

1 **MR. REHWINKEL:** I meant 141. Did I say 140?
2 I apologize. 141 through 150.

3 **CHAIRMAN CARTER:** You have got to stay awake.
4 This sleep deprivation is not good for you.

5 141 through --

6 **MR. REHWINKEL:** 150, and 152.

7 **CHAIRMAN CARTER:** Are there any objections?

8 **MR. BURNETT:** No, sir.

9 **CHAIRMAN CARTER:** Okay. And what about 153?

10 **MR. REHWINKEL:** I did not cross on 151 or 153,
11 so --

12 **CHAIRMAN CARTER:** So we don't do 151 and we
13 won't do 153, right?

14 **MR. REHWINKEL:** That is correct.

15 (Exhibit Numbers 140 through 150, and 152
16 admitted into the record.)

17 **CHAIRMAN CARTER:** Okay. Anything further on
18 direct for this witness from any of the parties?

19 **MR. REHWINKEL:** Mr. Chairman.

20 **CHAIRMAN CARTER:** Mr. Rehwinkel.

21 **MR. REHWINKEL:** I talked with counsel for
22 staff, and just as a housekeeping matter with respect to
23 the confidential information that we have put out there,
24 and I'm nervous because we have put out so many exhibits
25 that have red covers on them.

1 **CHAIRMAN CARTER:** You can have my mine back.

2 **MR. REHWINKEL:** If it's appropriate, whatever
3 is the correct thing to do, we may need to collect the
4 documents.

5 **MS. CIBULA:** According to the prehearing
6 order, you are supposed to collect all the confidential
7 exhibits and the court reporter will keep the copy that
8 she has, and that will be kept in the Commission Clerk's
9 confidential files.

10 **MR. REHWINKEL:** Okay. With respect to the
11 parties who have signed nondisclosure agreements, is it
12 my understanding they can keep theirs?

13 **MS. CIBULA:** No. You're supposed to collect
14 them all and take them back.

15 **CHAIRMAN CARTER:** You thought you were going
16 to get rid of it.

17 **MR. REHWINKEL:** Okay.

18 **MR. DAVIS:** I'd like to ask a point of order
19 about that. I mean, if we want to keep these over the
20 evening to be able to review them in case we want them
21 to use them on cross-examination of another witness, why
22 shouldn't we be able to do that?

23 **MS. CIBULA:** I guess you can work that out
24 with Mr. Rehwinkel to see whether he'd be willing to let
25 you keep those documents.

1 **MR. DAVIS:** Okay.

2 **MR. REHWINKEL:** I think, Mr. Chairman, we can
3 talk to the company. It is their information that we
4 have, and we can work that out. I appreciate Ms.
5 Cibula's point about the order.

6 **CHAIRMAN CARTER:** Anything else before we
7 leave? Anything else from any of the parties?

8 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

9 **CHAIRMAN CARTER:** Commissioner Argenziano.

10 **COMMISSIONER ARGENZIANO:** Just tomorrow same
11 time, same place?

12 **CHAIRMAN CARTER:** Same time, same place.

13 9:30.

14 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

15 **CHAIRMAN CARTER:** We are adjourned.

16 (The hearing adjourned at 7:15 p.m.)

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STATE OF FLORIDA)
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COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 10th day of September, 2009.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732