



## I N D E X

## WITNESSES

	NAME:	PAGE NO.
1		
2		
3		
4		
5	JON FRANKE	
6	Continued Cross Examination by Mr. Moyle	1692
7	GARY FURMAN	
8	Prefiled Rebuttal Testimony Inserted	1725
9	WILL GARRETT	
10	Prefiled Rebuttal Testimony Inserted	1728
11	GARRY MILLER	
12	Direct Examination by Mr. Walls	1731
12	Prefiled Rebuttal Testimony Inserted	1733
13	Cross Examination by Mr. Rehwinkel	1788
14		
15		
16		
17		
18		
19		
20		
21	CERTIFICATE OF REPORTER	1814
22		
23		
24		
25		

## EXHIBITS

	NUMBER:	ID.	ADMTD.
1			
2			
3	109		1723
4	110 GF-1	1724	1724
5	111 WG-3	1727	1727
6	112 WG-4	1727	1727
7	113 WG-5	1727	1727
8	114 GM-3	1732	1732
9	115 GM-4	1732	1732
10	116 GM-5	1732	1732
11	117 GM-6	1732	1732
12	118 GM-7	1732	1732
13	119 GM-8	1732	1732
14	120 GM-9	1732	1732
15	121 GM-10	1732	1732
16	122 GM-11	1732	1732
17	123 GM-12	1732	1732

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

(Transcript follows in sequence from  
Volume 9.)

**CROSS EXAMINATION CONTINUED****BY MR. REHWINKEL:**

**Q.** I asked you a series of questions yesterday relative to this point here with respect to engineering problems that you were initially considering for exemption consideration by the NRC, but you have now decided to utilize the modification approach. Do you recall that?

**A.** Yes.

**Q.** These deal with a low pressure cross tie. Is that one of them?

**A.** That is one of them, yes.

**Q.** And boron precipitation issue?

**A.** That is the other. That is correct.

**Q.** Okay. Now it's true, is it not, that you can perform those modifications without NRC approval; correct?

**A.** Yes.

**Q.** Okay. But you cannot utilize them in generating the additional electricity from the uprate until the LAR has been approved; is that correct?

**A.** That is correct. So we, we can provide the

1 changes to the plant similar to other plants have done  
2 the same work, and then once the amendment request is  
3 approved by the NRC, we can increase the reactor power.

4 Q. Okay. On Lines 19 through 23 of Page 4 you  
5 make note that you're doing an engineering analyses and  
6 doing work such as other utilities have done on their  
7 uprate projects. Do you see that?

8 A. Yes.

9 Q. I'm paraphrasing.

10 Now the other utilities that you refer to here  
11 are utilities other than those with Babcock & Wilcox  
12 reactors; isn't that correct?

13 A. I don't believe that's true. I believe some  
14 uprate projects have been done at Babcock & Wilcox,  
15 specifically measurement similar to our Phase  
16 1 projects. So I can't say that there have not been any  
17 B&W work where equipment was procured prior to an  
18 uprate.

19 Q. Okay. Is it true though that with, with, if  
20 you exclude the MUR aspect of the uprate, that there are  
21 no Babcock & Wilcox precedents for what you are doing?

22 A. Only that the Davis-Besse facility had  
23 equipment which had the capacity similar to what we are  
24 purchasing to gain their higher power level than we are  
25 currently at. So that facility is already operating at

1 a power level significantly above our current operating  
2 level and they do have equipment in service which  
3 supports that operation.

4 Q. Now are you referring to Davis-Besse's  
5 1.6 percent power uprate in 2008?

6 A. No. That facility received an original  
7 license higher than Crystal River 3. So they are  
8 currently a Babcock & Wilcox facility operating, I  
9 believe it's about 7 percent below the target power  
10 level for Crystal River 3, approximately 9 or  
11 10 percent, percent power above where Crystal River 3  
12 currently operates.

13 Q. But Babcock & Wilcox -- I'm sorry. The  
14 Davis-Besse plant did not engage in an uprate analogous  
15 to the testimony that you offer on Page 4, Lines 19  
16 through 23; correct?

17 A. No, they did not have a separate uprate which,  
18 which follows the extended power uprate programs. They  
19 started at a higher power level with the same basic  
20 technology.

21 Q. They did not have to go through a modification  
22 approval process and a LAR process?

23 A. They had to go through an original licensing  
24 process, which I would characterize as more lengthy and  
25 more rigorous.

1 Q. And when was that?

2 A. When they achieved their original license.

3 Q. Would that have been when?

4 A. I don't know the date of Davis-Besse's  
5 original license.

6 Q. In the '60s or '70s?

7 A. I believe it's probably more likely late '70s,  
8 '80s.

9 Q. On Page 5 of your testimony you discuss a  
10 feasibility analysis that you say is contained in the  
11 IPP or integrated project plan for the uprate; is that  
12 correct?

13 A. Yes. That is correct.

14 Q. Do you have that with you?

15 A. I do not have a copy of the integrated project  
16 plan. I did not know that that would be an issue that  
17 remained today.

18 Q. Well, you have, you've noted that that's  
19 attached to Dr. Jacobs' testimony as an exhibit;  
20 correct?

21 A. That's correct.

22 Q. If -- with your counsel's permission, I'd like  
23 to -- is the document I've handed you the IPP that you  
24 referred to?

25 A. That is correct.

1           **Q.**    Okay.  Could you turn to where you have  
2 identified the page that you say contains the  
3 feasibility analysis?

4           **A.**    Well, the entire document essentially is a  
5 feasibility analysis.  There is an economic evaluation  
6 that you have marked on Page 13.

7           **Q.**    Is that primarily where the feasibility  
8 analysis is contained?

9                    And for the record --

10          **A.**    In conjunction with the following sections  
11 that talk about risk management and the susceptible --  
12 the conclusion of the integrated project plan which  
13 recommends going forward with the project.

14          **Q.**    So the section I've marked is, is Section 5.0?

15          **A.**    That is correct.

16          **Q.**    Okay.  Now is this a confidential document?  I  
17 don't think it is, is it?

18                   **MS. TRIPLETT:**  I believe that portions of it  
19 are confidential.

20                   **THE WITNESS:**  Yeah.  I believe so also.

21                   **MS. TRIPLETT:**  Can you tell me which section  
22 you're asking about again?  I just got it.

23                   **MR. REHWINKEL:**  I'm looking on Dr. Jacobs'  
24 exhibit PEF-3, which I think is 101 -- it's Page 184 of  
25 233.  And I've handed the witness the original document



1 that's not marked as an exhibit.

2 **CHAIRMAN CARTER:** Hang on a sec. Hang on a  
3 sec.

4 Ms. Triplett.

5 **MS. TRIPLETT:** Section -- that page is not  
6 confidential.

7 **CHAIRMAN CARTER:** Okay. Mr. Rehwinkel, you  
8 may proceed.

9 **MR. REHWINKEL:** Okay. Thank you. So -- you  
10 said that it is not?

11 **CHAIRMAN CARTER:** Yes. It is not. She said  
12 it is not confidential.

13 **MR. REHWINKEL:** It looks to be redacted in  
14 Dr. Jacobs' testimony.

15 **CHAIRMAN CARTER:** Okay, guys. Hang on a  
16 second. Let's get a, get a, get a meeting of the minds  
17 on the information.

18 (Pause.)

19 Mr. Rehwinkel.

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

21 **BY MR. REHWINKEL:**

22 **Q.** Mr. Franke, my question to you, and I think  
23 your counsel may well advise that it's okay to talk  
24 about this, but I may not need that kind of detail, but  
25 does the economic evaluation that's contained in this

1 part of the IPP evaluate the cost of the project versus  
2 other options to the company absent doing the project?

3 **A.** This looks primarily at whether the project is  
4 on track for the cost assumptions. That's what this  
5 does.

6 **Q.** Okay. Is there, is there any comparison in  
7 this document to other, to options such as not doing the  
8 uprate?

9 **A.** I do not believe that this document has  
10 re-performed the needs analysis. No.

11 **Q.** Okay. But it does look at the cost of the  
12 project based on your current view; is that correct?

13 **A.** Yes. It does provide a summary of that.

14 **Q.** Okay. On Page, Page 8 of your analysis, of  
15 your testimony --

16 **A.** Yes.

17 **Q.** Okay. And looking on Lines 2 through 5, you  
18 state, you testify that Dr. Jacobs has conceded that it  
19 is possible that the NRC could approve some percentage  
20 of the 140-megawatt requested increase rather than  
21 outright denying the request altogether. Do you see  
22 that?

23 **A.** Yes.

24 **Q.** Does your testimony there also suggest that  
25 you agree that that's also a possibility?

1           **A.** Of course it is. I do believe and it is my  
2 testimony that I believe we will achieve the entire  
3 power uprate as sought. I have -- you'll never have  
4 100 percent certainty with any particular regulatory  
5 action, and there's always the possibility that a lower  
6 level might be approved by the Commission. But I  
7 believe all sought power level will be achieved.

8           **Q.** In the next sentence there you say that Jacobs  
9 is just speculating that the full uprate might not be  
10 approved, and therefore his argument that PEF should not  
11 incur certain uprate costs until it has reasonable  
12 assurance that the LAR will be approved is nothing more  
13 than his unsupported personal opinion that he would  
14 manage the project differently. Do you see that?

15           **A.** Yes, I do.

16           **Q.** Are you stating there that the company does  
17 not need reasonable assurances before spending money  
18 that the ratepayers will have to reimburse them for?

19           **A.** Actually if you read my entire testimony,  
20 several places in it I provide testimony that I believe  
21 we have reasonable assurance. So, yes, I believe  
22 reasonable assurance is required.

23                   My testimony with regard to this was that in  
24 my review of Dr. Jacobs' testimony, that he had not  
25 personally looked at any of the analyses that he was

1 claiming would be a challenge to the license renewal  
2 that I had, and that in my review they provided no  
3 challenge to the uprated power.

4 **Q.** Now you stated in your summary and you stated  
5 just now that there's no challenge to receiving the  
6 NRC's approval for your uprate; is that correct?

7 **A.** No significant challenge. You're always  
8 dealing with a regulatory body and there is no  
9 100 percent certainty.

10 **Q.** Okay. Now has the NRC given you any of these  
11 assurances in writing?

12 **A.** No. The NRC's policies do not allow them to  
13 provide written approval of a document until they've  
14 completed their review. So, no, they have followed the  
15 same program and policies that even Dr. Jacobs  
16 described, which is you continue to engage with them,  
17 you follow their comments and questions. And through  
18 those interactions and questions we have continued to  
19 gain a reasonable assurance that we will achieve the  
20 uprate.

21 **Q.** And, likewise, they have not stated to you  
22 orally or verbally, I should say, that, that they're  
23 going to approve your LAR once you submit it, have they?

24 **A.** No. That would be against their rules to be  
25 able to do that.

1           **Q.**    Okay.  So your reasonable assurances are based  
2           on your interactions with the staff, their questions,  
3           and the way you feel like your engineering analysis and  
4           solutions are going; is that correct?

5           **A.**    No.  My, my reasonable assurance is based on  
6           that plus many other factors.  For example, I've  
7           personally supervised uprated license amendment requests  
8           for two different units including Crystal River 3 and  
9           over three different applications.  So I have personal  
10          in performing those.  It's also based on industry  
11          experience of watching over 104 uprates being approved  
12          by the NRC, 20 of which were similar extended power  
13          uprates on unique power plants similar, unique in a  
14          similar fashion of CR3, all 20 of which have fully been  
15          vetted through the NRC, all 20 were approved.  My  
16          reasonable assurance is based on those factors.

17          **Q.**    None of the uprates that you have described,  
18          whether ones that you were involved in directly or ones  
19          that you have observed, are Babcock & Wilcox pressurized  
20          water reactors, are they?

21          **A.**    Only the MUR and other uprates.  We have  
22          uprated Crystal River 3 a small percentage in the past.  
23          But, but as I testified yesterday, each uprate is not  
24          unique to design.  It's unique to station and site.  
25          Every power plant is designed differently.  Even if I

1 were to look at other B&W designs, the designs are  
2 varied enough that each would be a unique uprate  
3 request. So each of those 20 that I described were  
4 unique; unique enough to, to characterize them as  
5 significantly different from all others.

6 Q. Do you have the document that's attached as  
7 HT-4 to Mr. Thompson's testimony with you?

8 A. No, I do not.

9 Q. Have you seen it?

10 A. I'm not sure what it is by tab.

11 Q. Okay. This is a document entitled NRC  
12 Approved Applications for Power Upgrades.

13 A. No, I have not.

14 Q. You haven't seen that? You weren't at Dr. --  
15 strike that.

16 So you weren't aware that Mr. Thompson filed  
17 rebuttal testimony to Mr., to Dr. Jacobs?

18 A. No, I was not.

19 Q. Okay. I'd ask you to turn to Page 10 of your  
20 testimony.

21 A. I'm on Page 10.

22 Q. And this is on Lines 10 through 12. This is  
23 what we were discussing yesterday about your change in  
24 your LAR submittal plans and your expected NRC action  
25 date; is that correct?

1           **A.**    That is correct.

2           **Q.**    Okay.  On Line 14 there starts a Q and A:

3           "Does PEF have reasonable assurances that its LAR will  
4           be approved by the NRC?"  Do you see that?

5           **A.**    Yes, I do.

6           **Q.**    Okay.  Now as part of your answer continuing  
7           on to Page 11, you state on Line 6, well, Lines 5 and 6,  
8           "We gain more confidence that our ultimate LAR submittal  
9           will be complete and acceptable to the NRC."  Do you see  
10          that?

11          **A.**    Yes, I do.

12          **Q.**    Okay.  Now that implies, does it not, that  
13          when you first started off with this project you were  
14          less confident of, of getting an LAR submittal complete  
15          and acceptable to the NRC, does it not?

16          **A.**    I don't understand your question.

17          **Q.**    Well, by gaining more confidence, it implies  
18          that when you started out, you had less confidence; is  
19          that correct?

20          **A.**    Sure.  As you step through the process at each  
21          stage, you gain more and more confidence that your  
22          approval, your, your project will be approved.  But I  
23          can assure you throughout the project we've always had a  
24          high level of confidence.

25          **Q.**    Okay.  But at a time you had less confidence

1 you were spending the bulk of the money that it takes  
2 to, to, to do the uprate project; correct?

3 **A.** Actually I haven't spent the bulk of the money  
4 yet. Most of that money is being spent this fall in  
5 conjunction with the 2009 outage.

6 **Q.** But that money is, is being, is subject to  
7 recovery in this proceeding; correct?

8 **A.** I believe it is.

9 **Q.** Okay. Let's look on Page 11, Line 20, if you  
10 will, please.

11 **A.** Yes.

12 **Q.** You state there, "We recognize that as the  
13 first B&W plant to apply from an EPU, we must produce a  
14 high quality submittal." Do you see that?

15 **A.** Yes, I do.

16 **Q.** That does connote a recognition that there is  
17 something about a B&W plant that is important with  
18 respect to what you're attempting to achieve; correct?

19 **A.** No. Actually what that denotes, and I'll be  
20 clear, as a first-time B&W unit, I'm working with a  
21 vendor that is not as familiar with the uprate project  
22 as, say, General Electric. And as such, we've got to  
23 work with AREVA, the now original equipment manufacturer  
24 owner of the design for the B&W units, and there is --  
25 for -- since this is the first time AREVA as a company



1 has done it, we've put in place some additional scrutiny  
2 over their processes and what documentation they'll  
3 provide. That's what -- and what I'm talking about here  
4 is not a risk to achieving the uprate. It's that  
5 additional considerations must be put in place to ensure  
6 that the quality of the documentation, it will be, will  
7 be at the level required.

8 Q. There are other B&W plants out there that are  
9 probably waiting to see what happens with the CR3  
10 uprate, are there not?

11 A. I don't doubt that they are.

12 Q. Okay. And they're looking to what happens  
13 with CR3, are they not, because there is something about  
14 the CR3 B&W plant that is similar to what they have;  
15 correct?

16 A. I would actually characterize it differently.  
17 I think as we go through the process, they'll be able  
18 to, to gain some efficiencies in their own uprates when  
19 they choose to uprate. That's, that's what I would  
20 characterize it as.

21 Q. And that's because they were licensed at a  
22 level closer to the CR3 electrical output than the  
23 Davis-Besse one such that there is room to uprate  
24 efficiently to achieve the efficiencies that you hope to  
25 achieve; correct?

1           **A.** Not so much. Let me, let me make sure that  
2 I'm clear in how I'm describing this. Each plant in the  
3 United States, each station has a unique set of  
4 equipment, a unique set of design parameters and a  
5 unique licensing basis. So as each unit goes through  
6 the process of an extended power uprate, which  
7 approximately 25 percent of the plants in the United  
8 States have gone through, their gains on industry  
9 knowledge on how this program and process works, there  
10 will be pieces of the uprate at Crystal River 3 which  
11 will benefit the other B&W units. There will be pieces  
12 of uprates performed at GE plants' boiling water  
13 reactors that will benefit those licensees that follow  
14 me as well. I anticipate other Westinghouse plants who  
15 might seek uprates might also benefit just as much as  
16 another B&W unit.

17           The fact that it's B&W really is, it has some  
18 relevancy, but it's not an overriding concern. Once  
19 again, each plant is unique. As the industry gains  
20 experience with uprating the power limits of reactors,  
21 that benefit provides benefit to the entire industry.

22           **Q.** Thank you. Can you turn to Page 13 of your  
23 testimony, your rebuttal testimony.

24           **A.** Yes.

25           **Q.** Okay. And on Lines 14 through 17 you note

1 that there are four other -- four of the seven B&W units  
2 have a low pressure cross tie system in them; is that  
3 correct?

4 **A.** That is correct.

5 **Q.** Now were those original to the plants or were  
6 they added?

7 **A.** I believe -- I'm not certain. I believe at  
8 least one of the facilities added the low pressure cross  
9 tie after original license.

10 **Q.** But it could be more?

11 **A.** It could be more.

12 **Q.** Okay. Doesn't that suggest that with respect  
13 to the modifications that you're seeking for an increase  
14 in power, that there is a design weakness in the B&W PWR  
15 reactor?

16 **A.** Absolutely not. The -- there's not any  
17 specific design weakness unique to B&W reactors. In  
18 order to uprate power to meet other licensing  
19 requirements, many stations, in fact, I would -- I can't  
20 say all, but I would say most stations have had to do  
21 some form of modification through the years.

22 **Q.** And just to be clear, Mr. Franke, I was not  
23 suggesting that there's a weakness with respect to the  
24 current operation. My, my question was as to the  
25 ability to uprate the unit, and I think that's the

1 answer you've given me.

2 I just wanted to make clear I wasn't  
3 suggesting there's a problem at the plant today because  
4 of this low pressure cross tie issue.

5 **A.** No. Actually in this case, if I could be more  
6 specific, the design itself would -- and this is one of  
7 those cases that you mentioned before where we were  
8 dealing with a manual operator action exemption. And  
9 so -- and in fact in this case it had more to do with a  
10 new regulatory position. We, we felt that there was  
11 technical justification at some point to do the uprate  
12 without this modification, but, after interactions with  
13 the NRC, chose for expediency and for regulatory  
14 assurance and confidence to go with a modification as  
15 opposed to a, an option which used probability  
16 assessment to determine if this particular condition  
17 would require the modification.

18 **Q.** Thank you. On Page 14 -- I'd like to ask you  
19 again about the Davis-Besse issue. On Lines 3 and 4 you  
20 state that the requested uprate requests only a modest  
21 increase from the current license power level at other  
22 B&W plants, and then you cite the Davis-Besse unit.

23 **A.** That's correct.

24 **Q.** And you state that they were up, uprated to  
25 2,817 megawatts thermal; is that correct?

1           **A.**    Yes, sir.

2           **Q.**    Now that only represented though, what, a  
3           3.8 percent increase in their license?

4           **A.**    It represents a significant increase, however,  
5           over current licensed power level at CR3. That was my  
6           point. CR3 is currently licensed at 2,609 megawatts  
7           thermal. So the increase from 2,609 to 2,817, which is  
8           a level a similar B&W unit has already been approved for  
9           a power level by the NRC, is a significant increase in  
10          output.

11          **Q.**    But the incremental change to the unit's  
12          output was only 3.8 percent; correct?

13          **A.**    The end (phonetic) point is all that really  
14          matters. So it is a small delta between what the  
15          original license was and the second one. But the NRC  
16          doesn't look at, in no manner do they look at the  
17          increase in power when they're making their, their  
18          approval or their conclusions. They look at the final  
19          power level only. So the final power level is the only  
20          number that's worthy of comparison.

21          **Q.**    I misstated. I said 3.8. I think it's  
22          1.6 percent. It was a measurement uncertainty recapture  
23          uprate; correct?

24          **A.**    I believe you are correct.

25          **Q.**    Okay. Which is not the bulk of the uprate

1 that you are seeking to achieve with CR3; correct?

2 **A.** Actually it's, the 2,817 megawatts thermal  
3 represents a large percentage of what we are seeking.  
4 We're seeking an increase from 2,609 to 3,014. So  
5 getting to 2,817 would be a substantial uprate to CR3.

6 **Q.** And the Davis-Besse uprate was a, basically an  
7 improvement to the plant instrumentation; correct?

8 **A.** That is correct. However, they had already  
9 achieved a license to a power level with the same  
10 technology at a much higher amount than, than Crystal  
11 River 3.

12 **Q.** So the 1.6 percent increase at Davis-Besse is  
13 relatively small compared to the 20 percent or 180  
14 megawatt increase that you're seeking at CR3; correct?

15 **A.** Only on a percentage basis. It is only 7  
16 percent above the power level we are seeking.

17 **Q.** Well, now wasn't there a -- there was a power  
18 uprate in 1981 at CR3; correct?

19 **A.** Yes. And then again there was one in this  
20 decade as well, I believe. 2003, 2004.

21 **Q.** What was that for?

22 **A.** That was some margin that had not, had already  
23 been previously licensed that we actually took advantage  
24 of and increased reactor power.

25 **Q.** So is that one of the uprates that you refer

1 to in your earlier testimony?

2 **A.** Actually, no, I didn't count that one. It was  
3 relatively small.

4 **Q.** Okay. That was 2007, 1.6 percent, or is that  
5 the MUR?

6 **A.** No. The 2007 was the 1.6 percent.

7 **Q.** Okay. On Page 14 down there on Lines 17 and  
8 18, with respect to the issues that are discussed above,  
9 you say that all of these issues have been resolved?

10 **A.** We have resolved -- we are to the point on all  
11 these issues where we are confident a separate license  
12 submittal would not be required to resolve these issues,  
13 or that license amendment has been submitted and is well  
14 through the process to have regulatory assurance that  
15 they would be resolved.

16 **Q.** And is that the control rod ejection?

17 **A.** Yes. Currently one of the four issues that  
18 Dr. Jacobs reviewed. We did submit a separate license  
19 amendment request. That license amendment is currently  
20 in the very final stages of review, and we have  
21 assurance that it will be approved within the next  
22 couple of weeks.

23 **Q.** Okay. But Items 1, 2 and 3 above that --  
24 well, on Lines 14 through 17 of Page 14, those have only  
25 been resolved in the sense that you do not -- you have

1 decided you do not need to seek a license amendment for  
2 that or an exemption; is that correct?

3 **A.** Yes. We're confident we do not require  
4 separate license amendments for those particular  
5 technical issues.

6 **Q.** Okay. But you have not actually made the  
7 modifications.

8 **A.** No. They will not be completed until we spend  
9 that money that, that you're suggesting I not spend, as  
10 well as finalize the license amendment request.

11 So, yes, we would have to actually work  
12 through the process, spend the money to both do the  
13 evaluations and the modifications to resolve them.

14 **Q.** Okay. And they won't ultimately be resolved  
15 until they're approved in the LAR in 2011, if then;  
16 right?

17 **A.** Yes. But -- and they would be approved in  
18 conjunction with the other issues involved with the LAR.

19 **Q.** Let me ask you to turn to Page 18 of your  
20 testimony.

21 **A.** Yes.

22 **Q.** The Q and A that starts on Line 12, you state  
23 on Line 15 that none of the risks on the risk matrix are  
24 risks related to achieving the LAR. They're related to  
25 cost and scheduling. Do you say that?



1           **A.**    That is correct.

2           **Q.**    Okay.  Now is this a matter of semantics?  
3           Because if you don't achieve the license amendment for  
4           the LAR approval of these items, then -- well, if you  
5           don't achieve it by your schedule on your outage  
6           schedule, then that is a problem, is it not?

7           **A.**    Well, let's be careful.  In answering this  
8           question I need to be a little more specific.  The risk  
9           matrix in this case is tracking cost and schedule risk  
10          against budget, not against achieving the goal of the  
11          projects.  For example, we are currently developing the  
12          modification to be installed in 2011 for the low  
13          pressure cross connect.

14                 What I was making the point of is that this is  
15          not a risk to achieving a license.  And, in fact, by  
16          choosing this option, there is no license condition I  
17          need to request from the NRC.  This is a real good  
18          example.

19                 You know, the prior license condition of the  
20          plant, it required a manual operator action to fulfill a  
21          function that the NRC would prefer being an automatic  
22          action.  As a result, we had an exemption which allowed  
23          a manual operator action.  By choosing to install the  
24          low pressure cross connect, I eliminate the need for  
25          that exemption.  So I have eliminated the licensing risk

1 that the NRC would, would continue to authorize that  
2 exemption under an uprated condition. So the licensed  
3 risk has been eliminated.

4 Why it remains on my risk matrix is because  
5 the modification has not been fully developed. We are  
6 uncertain as to what the actual schedule required for  
7 installing that modification. My 2011 outage is a  
8 42-day business plan schedule right now, and I do not  
9 know enough about this modification to know for certain  
10 that that particular modification can be installed  
11 inside a 42-day window. We have high confidence that it  
12 can, but we have not finalized the modification yet. So  
13 once that mod is finalized, we'll understand what  
14 actions are required to mitigate that risk against the  
15 outage schedule. However, in no manner does it risk the  
16 schedule of achieving the uprated power of the unit,  
17 which is right now at the end of my 2011 outage.

18 Q. Okay. If you'd give me one minute, I may have  
19 just one more question for you.

20 **CHAIRMAN CARTER:** Absolutely, Mr. Rehwinkel.

21 (Pause.)

22 **MR. REHWINKEL:** That's all I have. Thank you.  
23 Thank you, Mr. Franke.

24 **CHAIRMAN CARTER:** Mr. Brew.

25 **MR. BREW:** No questions.

1           **CHAIRMAN CARTER:** Mr. Davis.

2           **MR. DAVIS:** No questions.

3           **CHAIRMAN CARTER:** Mr. Moyle, you're  
4 recognized.

5           **MR. MOYLE:** Thank you, Mr. Chairman.

6                           **CROSS EXAMINATION**

7           **BY MR. MOYLE:**

8           **Q.** Mr. Franke --

9           **A.** Yes, sir.

10          **Q.** -- I have just a couple of questions.

11                        In response to a question posed by  
12 Mr. Rehwinkel a second ago, you were talking about  
13 tracking your cost and schedule against a budget for the  
14 uprate projects. You do track your cost and schedule  
15 against a set budget; correct?

16          **A.** Yes, we do.

17          **Q.** Okay. And that budget number is a, is a firm  
18 number; correct?

19          **A.** The budget is a firm number. Now we do have  
20 processes for revising those budget figures.

21          **Q.** And typically when you budget, you put a  
22 contingency in for a certain percent, maybe 5 or  
23 10 percent?

24          **A.** That's correct. We, we follow a process by  
25 which we determine what the cost of a risk might be and

1 then a percentage of that risk challenge, and then that,  
2 that ends up with being a certain portion of contingency  
3 plan costs might be funded by a contingency.

4 Q. You're not involved in the, in the Levy  
5 nuclear power plant project, in the budgeting process in  
6 that, are you?

7 A. No.

8 Q. I understand you're the guy with Crystal River  
9 3; correct?

10 A. That is correct.

11 Q. Okay. And a couple of points in your  
12 testimony that I wanted to refer you to. Page 4 --

13 A. Is this my rebuttal testimony?

14 Q. Yes, sir.

15 A. Yes. Page 4.

16 Q. Yeah. On Line 11 you state, quote, "Any  
17 prudent utility would work with the NRC staff prior to  
18 the submittal of its license application to ensure the  
19 successful approval of the application after it is  
20 submitted."

21 And then on Page 11 there's some further  
22 discussion, I think, up at the top of the page. You  
23 start on Line 10 and you say, "Rather than choose a  
24 course of action in a vacuum, without input from the  
25 NRC, PEF is more proactive in raising and discussing

1 issues and solutions with the NRC. Even when PEF is  
2 fairly certain about how an issue should be resolved, we  
3 discuss it with the NRC in an abundance of caution."

4 Am I interpreting this correctly that this is  
5 part of the process that you engage in to, to get your  
6 level of comfort that things will go well for you when  
7 you submit your application?

8 **A.** Yes. For, for example, in fact, Dr. Jacobs  
9 had the opportunity to review the minutes where we went  
10 up to D.C. and met with the technical reviewing staff  
11 that would be reviewing our uprate both in 2008 and 2009  
12 to discuss those points where we had identified would,  
13 might need some special license consideration, some  
14 special consideration with regard to the way the  
15 information was presented or the technical solution  
16 chosen.

17 And, in fact, the four items that we've been  
18 discussing today and that were discussed by Dr. Jacobs  
19 and in my own rebuttal testimony were issues that we had  
20 brought to the Commission that we wanted to have clear  
21 understanding on how to deal with. So that's, that's  
22 what this is representing, that before you spend the  
23 money headed down one technical path or you, you commit  
24 to a regulatory review schedule that would impact the  
25 overall project, that you in essence look down the path

1 to identify places where you need to make sure you've  
2 followed the right path so that when you get to the end  
3 you're not told to back up and do a different, take a  
4 different tack.

5 Q. Okay. And you talked about, you know,  
6 committing to a regulatory schedule. I mean, you would  
7 agree that it would not be prudent to interact with the  
8 NRC and fail to bring up an important point in  
9 conversations with them that would impact your project;  
10 correct?

11 A. I just think it's important to maintain a, a  
12 good dialogue with the NRC during all stages. Your  
13 question seems to be very specific, and I, I can only  
14 answer vaguely.

15 Q. Well, let's put it, let's frame it this way.  
16 There's three key points in your process, A, B and C.  
17 You have an interaction with the NRC to make sure things  
18 are moving along, you're going to get your reasonable  
19 assurance. It wouldn't be a good idea or it wouldn't be  
20 prudent to only bring up A and B and omit to bring up C;  
21 correct?

22 A. I'd have to know what C was. I don't know  
23 what --

24 Q. Just assume it's something critical to the  
25 project or important to the project.

1           **A.**    It would have to be something that, that --  
2           the parameters that we would want to discuss with the  
3           NRC would be those parameters which affected the  
4           licensing direction that the staff would be reviewing.  
5           If it had nothing to do with the licensing aspect of a  
6           project, it would not be worthy of discussion.  If it  
7           was a licensing condition that was well vetted in the  
8           industry and well understood, it would not be worthwhile  
9           discussing with the Commission.

10           **Q.**    If it were a licensing issue that was not well  
11           vetted, that there was some uncertainty surrounding it,  
12           that would be something you'd want to bring up; correct?

13           **A.**    If you would anticipate that there might be a  
14           problem with that condition.

15           **Q.**    Okay.  And the final point I wanted to raise  
16           with you is, you know, I read your testimony to send a  
17           pretty strong message that you think everything is going  
18           to go okay.  I mean, you used the term reasonable  
19           assurance that you're going to, you're going to get  
20           this.  Some have suggested, well, maybe you should wait  
21           until you get the NRC to approve before moving forward.  
22           And you take a different view; correct?

23           **A.**    Absolutely.  I think the cost to my customers  
24           would be prohibitive of waiting.

25           **Q.**    Okay.  Do you think, given the high level of

1           certainty that it appears that you all have at this  
2           point, to the extent that the NRC did not approve  
3           everything as asked and if there was a negative impact  
4           on consumers, that it would be appropriate for that risk  
5           to be borne by you as compared to the consumers?

6           **A.**    I don't even understand your question.  Could  
7           you please repeat it?

8           **Q.**    Okay.  Sure.  Let's do a hypothetical.  You're  
9           asking for A, B and C from the NRC.  Okay?  All of them  
10          are important, all of them have cost.  If the NRC in  
11          this process says, thanks for your application, I know  
12          we met a number of times, we're only approving A and B  
13          and we're not approving C, would you agree that C should  
14          not be borne, the costs associated with C, if it were  
15          not approved, that those costs should not be borne by  
16          ratepayers?

17          **A.**    I believe the process is a prudency review  
18          that we're currently undergoing.  And once those costs  
19          were considered prudent, that they would follow the  
20          regulation on recovery.  I'm not a recovery expert  
21          though.

22                   **MR. MOYLE:**  That's all I have.

23                   **CHAIRMAN CARTER:**  Thank you, Mr. Moyle.

24                   Staff.

25                   **MR. YOUNG:**  No questions.



1           **CHAIRMAN CARTER:** Commissioner Skop, you're  
2 recognized.

3           **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
4 Good morning, Mr. Franke.

5           **THE WITNESS:** Good morning. Good morning,  
6 Commissioner.

7           **COMMISSIONER SKOP:** I just wanted to briefly  
8 go over your testimony starting on Page 14, Lines 9  
9 through 18. And on that Dr. Jacobs expressed concerns  
10 with respect to the issues discussed or identified  
11 during the May 8 -- May 2008 meeting between PEF and the  
12 NRC, and I guess those four issues are there.

13           Taking those issues individually on Page 15,  
14 Lines 3 through 15, would it be correct to state that  
15 the core flood line break event in conjunction with the  
16 electrical loss of power, that Progress has implemented  
17 a modification to mitigate approval risk or any approval  
18 risk in lieu of seeking the exemption that's discussed  
19 on that page?

20           **THE WITNESS:** That's exactly the case I was  
21 discussing earlier. By installing the modification, we  
22 have eliminated licensing risk on that item.

23           **COMMISSIONER SKOP:** Okay. On, moving on to  
24 Page 16 with respect to the Page 16, Lines 4 through 19,  
25 regarding the boron precipitation question or

1 phenomenon, is it safe to say that Progress is  
2 mitigating the approval risk on that issue in the same  
3 manner in which it's addressing the core flood line  
4 break?

5 **THE WITNESS:** Yes. I agree. By installing  
6 this modification, the exemption risk for requiring a  
7 manual action in this case is eliminated and that risk  
8 no longer exists.

9 **COMMISSIONER SKOP:** Okay. And moving on to  
10 Page 17, Lines 4 through 19, they talk about again the  
11 small break loss of coolant accident and how the company  
12 has addressed it. And in relation to that, would it be  
13 fair to say that Progress has found precedent by virtue  
14 of a modification that has been installed on another B&W  
15 plant and that it's using that precedent to essentially  
16 qualify by extension the same modification?

17 **THE WITNESS:** That is correct. We're  
18 installing equipment that has been used for accident  
19 transients at another B&W facility and is part of their  
20 technical specifications as approved by the NRC using  
21 similar equipment to mitigate the small break LOCA  
22 transient at Crystal River 3.

23 **COMMISSIONER SKOP:** Okay. And then finally on  
24 the fourth issue that was identified, Page 18, Lines  
25 1 through 10, with respect to the control rod ejection

1 analysis, is it correct to understand that Progress has  
2 submitted a separate LAR which, when approved by the  
3 NRC, will close this issue?

4 **THE WITNESS:** That is correct. And my  
5 understanding of the status of that LAR is that the  
6 safety evaluation has been written by the NRC and it's  
7 in its approval process. So the technical review has  
8 already been complete on that license amendment.

9 **COMMISSIONER SKOP:** Okay. So going, going  
10 back to Page 14 in relation to the concerns expressed by  
11 Dr. Jacobs, would it be fair to say that Progress is  
12 aware of each of those concerns and working prudently to  
13 address those concerns to mitigate any regulatory  
14 approval risk?

15 **THE WITNESS:** I agree completely.

16 **COMMISSIONER SKOP:** All right. Thank you.

17 **CHAIRMAN CARTER:** Thank you.

18 Commissioners, anything further from the  
19 bench?

20 Redirect?

21 **MS. TRIPLETT:** No redirect. And we would move  
22 Exhibit 109 into evidence.

23 **CHAIRMAN CARTER:** Any objections? Without  
24 objection, show it done.

25 (Exhibit 109 admitted into the record.)

1 Chris, give me a little volume. Let's move  
2 now with Witness Furman that the parties have stipulated  
3 to.

4 **MS. TRIPLETT:** Yes, sir. We would request  
5 that the prefiled rebuttal testimony for Gary Furman be  
6 moved into the record as though read. Entered into the  
7 record as though read.

8 **CHAIRMAN CARTER:** That's correct, right, a  
9 stipulation on this witness?

10 The prefiled testimony of the witness will be  
11 inserted into the record as though read.

12 **MS. TRIPLETT:** He has one exhibit, Number 110,  
13 on the Comprehensive Exhibit List.

14 **CHAIRMAN CARTER:** Any objections to Exhibit  
15 110? Without objection, show it done.

16 (Exhibit 110 marked for identification and  
17 admitted into the record.)

18 **THE WITNESS:** Excuse me. May I be excused?

19 **MR. BREW:** No. You stay right there.

20 (Laughter.)

21 **MS. TRIPLETT:** I'm sorry. Mr. Chairman, may  
22 Mr. Franke be excused from the remainder of the  
23 proceeding?

24 **CHAIRMAN CARTER:** Thank you, Mr. Franke.

25 **THE WITNESS:** Thank you, Chairman.

**IN RE: NUCLEAR COST RECOVERY CLAUSE****BY PROGRESS ENERGY FLORIDA****FPSC DOCKET NO. 090009****REBUTTAL TESTIMONY OF GARY FURMAN**

1 **Q. Please state your name.**

2 **A. My name is Gary Furman.**

3

4 **Q. Did you file Direct Testimony on March 2, 2009 in this docket?**

5 **A. Yes, I filed direct testimony in support of PEF's actual costs for the transmission**  
6 **work in support of the Levy Nuclear Project.**

7

8 **Q. Have you reviewed the testimony of Public Service Commission Staff (Staff)**  
9 **and all interveners, including that of Jeffrey A. Small, filed on behalf of**  
10 **Staff?**

11 **A. Yes, I have read all the above referenced testimony.**

12

13 **Q. What is the purpose of your rebuttal testimony?**

14 **A. The purpose of my rebuttal testimony is to respond to any intervener**  
15 **testimony challenging the prudence of 2007 costs for the transmission**  
16 **work supporting the Levy Nuclear Project.**

17

18 **Q. Do you have any exhibits to your rebuttal testimony?**

1 A. Yes, I have the following exhibit.

- 2 • Exhibit No. \_\_\_\_ (GF-1), Testimony of Dale Oliver in Support of Site  
3 Selection Costs.

4 This exhibit is true and correct.

5  
6 **Q. Do any of the intervener's testimonies challenge the prudence of PEF's 2007**  
7 **transmission costs?**

8 A. None of the testimony seems to challenge the prudence of PEF's 2007  
9 transmission costs of the Levy Nuclear Project. To the extent that any of the  
10 testimony can be deemed to challenge the prudence of those costs, the prudence  
11 of the 2007 Levy transmission costs is supported by the Dale Oliver's testimony  
12 in support of site selection costs, which was filed in Docket 080009 and adopted  
13 by me as indicated in my March 1, 2008 testimony. Dale Oliver's site selection  
14 testimony filed in Docket 080009 is attached as my Exhibit No. \_\_\_\_ (GF-1) to  
15 this testimony.

16  
17 **Q. Does this conclude your testimony?**

18 A. Yes, it does.

19

1                   CHAIRMAN CARTER: Now let's move to Witness  
2 Garrett on the rebuttal.

3                   MS. TRIPLETT: We would request that his  
4 rebuttal testimony be entered into the record as though  
5 read.

6                   CHAIRMAN CARTER: And it's my understanding  
7 from the parties that this witness has been stipulated  
8 to on rebuttal; is that correct? Is that correct,  
9 gentleman?

10                   Okay. The prefiled testimony of the witness  
11 will be inserted into the record as though read.

12                   Were there exhibits for Witness Garrett?

13                   MS. TRIPLETT: Yes, sir. 111 through 113.

14                   CHAIRMAN CARTER: Are there any objections?  
15 Without objection, show it done.

16                   (Exhibits 111 through 113 marked for  
17 identification and admitted into the record.)

18

19

20

21

22

23

24

25

**IN RE: NUCLEAR COST RECOVERY CLAUSE****BY PROGRESS ENERGY FLORIDA****FPSC DOCKET NO. 090009****REBUTTAL TESTIMONY OF WILL GARRETT**

1 **Q. Please state your name.**

2 **A. My name is Will Garrett.**

3

4 **Q. Did you file Direct Testimony on March 2, 2009 in this docket?**

5 **A. Yes, I filed direct testimony in support of PEF's actual costs for the Levy and**  
6 **CR3 Uprate Nuclear Projects.**

7

8 **Q. Have you reviewed the testimony of Public Service Commission Staff (Staff)**  
9 **and all interveners, including that of Jeffrey A. Small, filed on behalf of**  
10 **Staff?**

11 **A. Yes, I have read all the above referenced testimony.**

12

13 **Q. What is the purpose of your rebuttal testimony?**

14 **A. The purpose of my rebuttal testimony is to respond to any testimony**  
15 **challenging the prudence of 2006 and 2007 costs for the Levy and CR3**  
16 **Uprate projects.**

17

18



1 **Q. Do any of the testimonies challenge the prudence of 2006 and 2007 costs?**

2 **A.** None of the testimony seems to challenge the prudence of 2006 and 2007 costs,  
3 except for Jeffrey A Small's testimony as filed in Docket 080009. To the extent  
4 that any of the testimony can be deemed to challenge the prudence of those costs,  
5 the prudence of the 2006 and 2007 Levy costs is supported by certain testimony  
6 filed in Docket 080009, which I indicated in my March 2, 2009 testimony that I  
7 would be supporting in this docket. Specifically, the testimony I filed in Docket  
8 080009 is attached as Exhibit WG-3 to this testimony. In addition, Lori Cross'  
9 site selection testimony is attached as Exhibit WG-4 to this testimony. With  
10 respect to Jeffrey A. Small's testimony, I filed rebuttal testimony to that  
11 testimony in Docket 080009 which I have attached as Exhibit WG-5 to this  
12 testimony.

13  
14 **Q. Does anything Mr. Small mentions in his rebuttal testimony or audit finding**  
15 **cause PEF to reconsider the prudence of its decision to allocate the Lybass**  
16 **land costs in the manner it chose?**

17 **A.** No. In fact, Mr. Small simply pointed out that there are alternatives. He did not  
18 argue that PEF's method was inappropriate and he did not recommend one of the  
19 alternatives. PEF, in selecting its preferred approach, had previously considered  
20 each of the alternatives presented by Mr. Small and, after reviewing the results of  
21 each approach, rejected them for reasons more fully described in my rebuttal  
22 testimony from Docket 080009. PEF's method is the fair and prudent method to  
23 make this valuation under the circumstances pursuant to the applicable  
24 accounting regulation.

1  
2  
3  
4

**Q. Does this conclude your testimony?**

**A. Yes, it does.**

1                   **CHAIRMAN CARTER:** Okay. Call your next  
2 witness.

3                   **MR. WALLS:** We call Garry Miller.

4                   **GARRY MILLER**

5 was called as a witness on behalf of Progress Energy  
6 Florida and, having been duly sworn, testified as  
7 follows:

8                   **DIRECT EXAMINATION**

9 **BY MR. WALLS:**

10                  **Q.** Mr. Miller, would you please introduce  
11 yourself again to the Commission and provide your  
12 business address?

13                  **A.** Yes. My name is Garry Miller. My address is  
14 100 East Davie Street, Raleigh, North Carolina.

15                  **Q.** And I believe you've already been sworn in;  
16 that's correct?

17                  **A.** That's correct.

18                  **Q.** Okay. Who do you work for and what is your  
19 position?

20                  **A.** I work for Progress Energy Carolinas, and my  
21 position is General Manager, Nuclear Plant Development.

22                  **Q.** And have you filed prefiled rebuttal testimony  
23 with exhibits in this proceeding?

24                  **A.** I have.

25                  **Q.** Okay. And do you have that with you?

1           **A.**    I do.

2           **Q.**    Okay.  Do you have any changes to make to this  
3 prefiled rebuttal testimony and exhibits?

4           **A.**    I do.  There are two typos I would like to  
5 correct.  The first typo is on Page 20 of my rebuttal  
6 testimony.  It's on Line 21.  The date should be  
7 May 1st, 2009.  The second correction is on Page 49 on  
8 Line 22.  Again it's a date error, May 1st, 2009.

9           **Q.**    And with these changes, Mr. Miller, if I asked  
10 you the same questions in your prefiled rebuttal  
11 testimony today, would you give the same answers?

12          **A.**    Yes, I would.

13          **MR. WALLS:**  We request that the prefiled  
14 rebuttal testimony be moved into evidence as if it was  
15 read in the record today.

16          **COMMISSIONER EDGAR:**  The prefiled rebuttal  
17 testimony of this witness will be entered into the  
18 record as though read with the changes noted by the  
19 witness.

20          **MR. WALLS:**  And I believe we have exhibits for  
21 identification for Mr. Miller that are Number 114  
22 through 123.

23          **COMMISSIONER EDGAR:**  So noted.  Thank you.

24                 (Exhibits 114 through 123 marked for  
25 identification.)

**IN RE: NUCLEAR COST RECOVERY CLAUSE****BY PROGRESS ENERGY FLORIDA****FPSC DOCKET NO. 090009****REBUTTAL TESTIMONY OF GARRY MILLER**1 **I. INTRODUCTION AND QUALIFICATIONS.**

2

3 **Q. Please state your name and position.**

4 A. My name is Garry Miller. I am the General Manager of Nuclear Plant  
5 Development ("NPD") for Progress Energy. I am responsible for the siting,  
6 technology selection, engineering, licensing, regulatory, pre-construction  
7 planning, contracts, and other scope of activities for the development,  
8 engineering, and construction of the Company's nuclear power plants in Levy,  
9 County, Florida, designated as Levy Units 1 and 2 (the "Levy Nuclear Project" or  
10 "LNP") for Progress Energy Florida, Inc. ("PEF" or the "Company").

11

12 **Q. Are you the same Garry Miller who filed Direct Testimony in Docket No.**  
13 **090009?**

14 A. Yes. I filed direct testimony in support of PEF's actual costs for the LNP on  
15 March 2, 2009 and I adopted the testimony of Daniel L. Roderick, as well as my  
16 testimony, both filed in Docket No. 080009 with respect to the actual costs  
17 incurred in 2006 and 2007 for the LNP. The testimony of Mr. Roderick is

1 attached to my rebuttal testimony as Exhibit No. \_\_\_\_ (GM-3). My testimony  
 2 from Docket 080009 is attached to my rebuttal testimony as Exhibit No. \_\_\_\_  
 3 (GM-4). I understand that the Commission is reviewing the prudence of the 2006,  
 4 2007, and 2008 LNP costs and my March 2, 2009 testimony and my adoption of  
 5 the testimony of Mr. Roderick and my prior testimony supports the prudence of  
 6 all of these actual costs. I also filed direct testimony on PEF's behalf on May 1,  
 7 2009 in support of the reasonableness of the actual/estimated 2009 and projected  
 8 2010 LNP costs.

9  
 10 **Q. Have you reviewed the Intervenor and Staff Testimony filed in this Docket?**

11 **A.** Yes, I have. I have reviewed and I will provide rebuttal testimony to the  
 12 following intervenor and Staff direct testimony: (1) William R. Jacobs, Jr.  
 13 ("Jacobs"), filed on behalf of the Office of Public Counsel ("OPC"); (2) Arnold  
 14 Gundersen, filed on behalf of Southern Alliance for Clean Energy ("SACE"); (3)  
 15 Mark Cooper, filed on behalf of SACE; (3) Peter Bradford, filed on behalf of  
 16 White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs  
 17 ("PCS Phosphate"); and (4) Mr. William Coston and Mr. Geoff Cryan, filed on  
 18 behalf of the Florida Public Service Commission ("FPSC" or the "Commission")  
 19 Staff. I did not review the testimony of Mr. Small filed on behalf of the  
 20 Commission Staff. My understanding is that Mr. Small addresses the allocation  
 21 of costs to the LNP for land held for future use for one of the Levy parcels and  
 22 Mr. Will Garrett will address that testimony on behalf of the Company. Mr. Jeff

1 Lyash will also provide rebuttal testimony to certain Intervenor and Staff witness  
2 direct testimony in this proceeding.

3  
4 **Q. Do you have any exhibits to your rebuttal testimony?**

5 **A.** Yes. I am sponsoring the following exhibits:

- 6 • Exhibit No. \_\_\_\_ (GM-3), Testimony of Daniel L. Roderick filed in Docket No.  
7 080009 with respect to the actual site selection incurred in 2006 and 2007 for the  
8 LNP;
- 9 • Exhibit No. \_\_\_\_ (GM-4), Testimony of Garry Miller filed in Docket No. 080009  
10 with respect to the actual costs incurred in 2006 and 2007 for the LNP;
- 11 • Exhibit No. \_\_\_\_ (GM-5), Excerpts of the Jacobs Deposition, witness for the  
12 Office of Public Counsel (“OPC”), taken July 27, 2009 in this proceeding;
- 13 • Exhibit No. \_\_\_\_ (GM-6), PEF Response to OPC Third Set of Interrogatories to  
14 PEF, No. 36;
- 15 • Exhibit No. \_\_\_\_ (GM-7), PEF Responses to Staff Fourth Set of Interrogatories to  
16 PEF, No. 39 and PCS Phosphate’s First Set of Interrogatories to PEF, No. 6;
- 17 • Exhibit No. \_\_\_\_ (GM-8), October 6, 2008 NRC letter from Brian Anderson, Lead  
18 Project Manager, to Mr. James Scarola, Senior Vice President and Chief Nuclear  
19 Officer, Progress Energy, Inc.
- 20 • Exhibit No. \_\_\_\_ (GM-9), Excerpts of NRC Official Transcript of Proceedings,  
21 Levy Nuclear Plant Combined License Application Public Meeting: Afternoon  
22 Session, Docket No. 52-029 and 52-030, December 4, 2008 at Crystal River,  
23 Florida;

- 1 ● Exhibit No. \_\_\_\_ (GM-10), Progress Energy correspondence with the NRC  
2 regarding the NRC resolution of the CH2MHILL quality assurance;
- 3 ● Exhibit No. \_\_\_\_ (GM-11), June 2009 Consortium Monthly Project Status Report;  
4 and
- 5 ● Exhibit No. \_\_\_\_ (GM-12), PEF Response to PCS Phosphate's First Set of  
6 Interrogatories to PEF, No. 10.

7 The Jacobs deposition excerpts are taken from the sworn deposition testimony. The  
8 other exhibits were prepared by the Company and are true and correct.

9

10 **II. SUMMARY OF REBUTTAL TESTIMONY.**

11 **Q. Please summarize your rebuttal testimony.**

12 A. This proceeding concerns the prudence of PEF's actual costs incurred on the LNP  
13 and the reasonableness of PEF's estimated 2009 and projected 2010 LNP costs.  
14 Neither Staff nor the intervenors challenge the prudence of any specific, actual  
15 cost that PEF incurred on the LNP. Neither Staff nor the intervenors challenge  
16 the reasonableness of any specific, estimated and projected LNP cost.

17 OPC and other intervenors do claim that PEF was unreasonable and  
18 imprudent in executing the Engineering, Procurement, and Construction ("EPC")  
19 contract for the LNP when PEF did in December 2008. They are wrong. PEF's  
20 execution of the EPC Agreement in December 2008 was a reasonable and prudent  
21 management decision. Notably, intervenors do not claim the EPC agreement was  
22 an unreasonable or imprudent contract for PEF and its customers, indeed, they fail  
23 to note the benefits of signing the EPC agreement at all. These benefits for PEF



1 far outweighed the risks that were known at that time and justified execution of  
2 the contract. OPC and intervenors improperly rely on information learned after  
3 the EPC agreement was executed to claim the risk of regulatory approval was  
4 higher than it really was when the EPC agreement was signed. They also refer to  
5 a multitude of other risks, such as the impact of the economy on sales, load, and  
6 financing, federal and state regulatory policy uncertainty, among others, to claim  
7 PEF should have waited to execute the EPC agreement until there was more  
8 certainty regarding these risks. PEF properly assessed and managed these risks  
9 throughout the project, including at the time of EPC contract execution, but it is  
10 impossible to obtain certainty on all risks before proceeding with a long-term  
11 project like the LNP. Under the view of OPC and intervenors, no long-term  
12 project, including any nuclear power plant, would ever be built.

13 Indeed, intervenors SACE's and White Springs' real challenge here is to  
14 the decision to proceed with the development of nuclear power plants in Florida at  
15 all. Under the guise of addressing the feasibility of completing the LNP they  
16 claim changes in projections of load and fuel forecasts from one year to the next,  
17 rehash risks that were identified in the need proceeding and that are present with  
18 the development of the LNP or any other nuclear power plant, and then suggest  
19 that the Commission reverse its decision rendered just last year granting the need  
20 to move forward with the LNP. PEF, however, does not make decisions with  
21 respect to this long-term project that way. PEF view this project in terms of its  
22 long-term benefits when it addresses the cost and risk of proceeding with the  
23 LNP. Year-to-year variations in load, fuel forecasts, and other factors are

1 expected, especially when the period to site, permit, design, engineer, and  
2 construct the plant is approximately ten years, but they cannot be controlling,  
3 otherwise no utility, including PEF, would ever build a nuclear power plant, or  
4 any long-term, base load generation project.

5 That does not mean PEF ignores the risks associated with the development  
6 of the LNP. Rather, PEF appropriately identifies the risks, analyzes them,  
7 implements appropriate mitigation strategy, and then monitors them, but all risks  
8 cannot be eliminated. The mere fact that a risk that was identified materializes as  
9 an actual event does not mean that PEF acted unreasonably or imprudently and it  
10 does not mean you stop the project if you still maintain the view of the long-term  
11 benefits of the project.

12  
13 **III. PEF TESTIMONY UNDISPUTED BY INTERVENORS AND STAFF.**

14 **Q. What do you understand the Commission will determine in this proceeding?**

15 A. My understanding is that, pursuant to Section 366.93, Florida Statutes, and Rule  
16 25-6.0423, F.A.C., the Commission will determine (1) the prudence of PEF's  
17 actual LNP costs for 2006, 2007, and 2008 and (2) the reasonableness of PEF's  
18 actual/estimated LNP costs for 2009 and projected LNP costs for 2010. The  
19 Commission also reviews PEF's program management, contracting, and oversight  
20 controls and PEF's accounting and cost oversight controls to determine if they are  
21 reasonable and prudent. Finally, the Commission will review and approve the  
22 Company's analysis of the feasibility of completing the nuclear power plants  
23 pursuant to Rule 25-6.0423(5)(c)5, F.A.C.

1

2 **Q. Have any of the Staff and intervenor witnesses asserted in their testimony**  
3 **that PEF's actual LNP costs for 2006, 2007, and 2008 are not prudent?**

4 A. No, they have not. Not a single Staff or intervenor witness contends that any of  
5 the actual costs the Company incurred for the LNP for 2006, 2007, and 2008 are  
6 imprudent.

7

8 **Q. Have any of the Staff or intervenor witnesses asserted in their testimony that**  
9 **any of PEF's actual/estimated 2009 costs and projected 2010 costs are**  
10 **unreasonable?**

11 A. No, none of them assert that any specific actual/estimated 2009 LNP cost or any  
12 specific projected 2010 LNP cost is not reasonable. As I explained in my May 1,  
13 2009 direct testimony, PEF's actual/estimated 2009 LNP costs, excluding  
14 transmission costs, are approximately \$275.9 million, as shown by cost category  
15 on Schedule AE-6 of Exhibit No. \_\_\_\_ (TGF-1). Likewise, I explained that PEF's  
16 projected 2010 LNP costs, excluding transmission costs, are approximately  
17 \$100.4 million, as shown by cost category on Schedule P-6 of Exhibit No. \_\_\_\_  
18 (TGF-2). I further explained at pages 16 and 17 of my direct testimony that these  
19 actual/estimated 2009 LNP costs and projected 2010 LNP costs reflected the  
20 current schedule shift and the Company's focus on obtaining key state and federal  
21 permits for the LNP while fulfilling previous contractual obligations. I also  
22 explain what these estimated and projected costs are for and why the Company  
23 must incur them in 2009 and 2010 at pages 18 to 24 of my May 1, 2009 direct

1 testimony. None of the intervenor witnesses challenge the reasonableness of any  
2 of these specific cost estimates and projections.

3 OPC's witness, Jacobs, does make the generic claim at page 27 of his  
4 testimony, that PEF has not met its burden to demonstrate that the "projected"  
5 costs for 2009 and 2010 are reasonable. He bases his position on the simple  
6 assertion that the 2009 and 2010 costs are not known because the impact of the  
7 suspension of the EPC agreement. (Jacobs Test., p. 27, L. 6-7, 8-10). First, it  
8 should be noted that Jacobs does not challenge the reasonableness of any of the  
9 specified 2009 and 2010 costs that the Company must incur to fulfill existing  
10 contractual obligations and to obtain the necessary state and federal permits for  
11 the LNP. Second, Jacobs' assertion is simply wrong; these obligations and this  
12 work are known now, and will have to be met and performed in 2009 and 2010.  
13 Further, it is unlikely that the suspension and modification of the EPC agreement  
14 will have a material impact on PEF's expenditures on the LNP in 2009 or 2010.  
15 The nature of the work projected for this year and next is largely permitting and  
16 licensing, which will proceed regardless of the results of the ongoing  
17 modifications of the EPC agreement. It is, of course, possible PEF's projected  
18 costs may change, but that is the nature of projections. That is what the true-up  
19 mechanism is for in the rule. In sum, the costs we have projected continue to be  
20 reasonable estimates for the LNP work that must be done in 2009 and 2010.

21

1 **Q. Do the Staff or intervenor witnesses assert that PEF's LNP program**  
2 **management, contracting, and oversight controls are unreasonable or**  
3 **imprudent?**

4 A. No, they do not.

5

6 **Q. Do the Staff or intervenor witnesses assert that PEF's LNP accounting and**  
7 **cost oversight controls are unreasonable or imprudent?**

8 A. No, they do not.

9

10 **IV. INTERVENOR AND STAFF TESTIMONY.**

11 **Q. What do the intervenor witnesses claim in their testimony?**

12 A. Jacobs' testimony boils down to two basic assertions. First, he claims PEF's  
13 decision to sign the EPC contract when it did was not reasonable under the  
14 circumstances that he erroneously describes, based primarily on the benefit of  
15 improper hindsight. Jacobs characterizes the Nuclear Regulatory Commission  
16 ("NRC") review of the Company's Limited Work Authorization ("LWA") request  
17 leading up to execution of the EPC agreement based not on what the NRC  
18 actually said and did at that time but based on what the NRC said and did after the  
19 EPC agreement was executed. Jacobs further engages in innuendo about joint  
20 ownership and "other reasons" for the schedule shift in the project that  
21 demonstrate Jacobs either does not understand Progress Energy senior  
22 management and the Board's decision-making process regarding the execution of  
23 the EPC agreement for the LNP, or is intent on mischaracterizing it. Indeed, what

1 is most revealing about Jacobs' opinion is what he knows but fails to tell this  
2 Commission about the reasons for execution of the EPC agreement. Mr. Jacob's  
3 recommendations all flow from this single erroneous claim. If PEF was  
4 reasonable in signing the EPC agreement when it did, which I demonstrate below,  
5 then Mr. Jacob's recommendations should be rejected.

6 Second, Jacobs and the other intervenor witnesses challenge PEF's  
7 feasibility analysis in my testimony. They claim it is inadequate based on  
8 unstated "standards," when no specified feasibility "standards" appear anywhere  
9 in the rule and, further, argue for a feasibility review that undermines any  
10 regulatory certainty for this project and fails to promote utility investment in  
11 nuclear power plants as the Legislature directed. Further, such a "feasibility"  
12 review is simply not the way reasonable, prudent management views the  
13 feasibility of completing a long-term, base load nuclear generation project. Such  
14 projects must be assessed based on the long-term benefits they provide customers,  
15 and that is the way management approaches them. No one would ever build a  
16 nuclear power plant, or any other, long-term, base load generation, based on  
17 yearly changes in fuel, cost, or load projections.

18 I will respond to the testimony of these intervenor witnesses from my  
19 perspective as the person responsible for the licensing, pre-construction, and  
20 contract negotiation and management of the LNP. Mr. Lyash will provide  
21 rebuttal testimony from senior management's perspective on the testimony  
22 challenging PEF's decision to sign the EPC agreement and the feasibility of  
23 completing the plant.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

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

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

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

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

REDACTED

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

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

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

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

21





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

REDACTED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

[REDACTED]

As a result, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] given that there was no

4 indication that such a change by the NRC was forthcoming.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14

15

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

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

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

[REDACTED]

[REDACTED]

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

**A. No.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] we would

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

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

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

1 "other risks" that Jacobs identifies to be "known or clarified" means you would  
2 never build this project or any other long-term project. All long-term projects  
3 have such "other risks" -- the risks with respect to changing economic conditions,  
4 project financing, potential changes in political and regulatory support and policy,  
5 and the supply of labor and material needs-- that Jacobs and the other intervenor  
6 witnesses identify in their testimony. Certainly a project like the LNP that takes  
7 ten years to site, license and permit, design, engineer, and construct has these  
8 "other risks." All of them cannot be eliminated or "clarified" with any certainty  
9 during the course of this project. Jacobs admitted as much in his deposition,  
10 agreeing that he did not know that these "other risks" could be fully resolved at  
11 the time of execution of the EPC agreement and that they are "ongoing issues."  
12 See Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt, pp. 53-54).

13  
14 **Q. Did PEF properly analyze and manage the LWA and "other risks" that**  
15 **Jacobs and some of the other intervenor witnesses raise?**

16 **A.** Yes. Consistent with PEF corporate risk management policy, the LNP risk  
17 management process actively identifies and tracks risk in a logical, coherent  
18 framework. This risk management process allows PEF to evaluate, prioritize, and  
19 develop courses of action to mitigate or avoid major project risks. PEF's risk  
20 management process includes (1) risk management planning, (2) risk  
21 identification, (3) qualitative risk analysis, (4) quantitative risk analysis, (5) risk  
22 response planning, and (6) risk monitoring and control. PEF's nuclear project risk  
23 management process is contained in the Nuclear Plant Development Process

1 Document for Risk Management and the Company's Project Management Center  
2 of Excellence. This risk management process was independently reviewed by  
3 Gary R. Doughty, with Janus Management Associates, Inc., and determined to be  
4 consistent with best management practices in the industry, including well-  
5 managed nuclear projects, and the risk management practices used by the United  
6 States Department of Defense and the DOE. Jacobs and Staff admittedly  
7 reviewed PEF's project management, contracting, and oversight controls, which  
8 include PEF's risk management policies and processes, and nowhere in their  
9 testimony do they express the opinion that PEF's risk management policies and  
10 processes were unreasonable or imprudent.

11 I will now turn to and explain how PEF analyzed the LWA issue and the  
12 "other risks" that Jacobs claims the mere presence of which rendered  
13 unreasonable the execution of the EPC agreement and explain why PEF was  
14 reasonable in its analysis of these issues or risks and reasonable in its approach to  
15 them under its risk management policies and processes.

16  
17 **VI. THE LWA.**

18 **Q. Can you remind us what a LWA is, Mr. Miller?**

19 **A.** Yes. As I explained in my May 1, 2008 direct testimony, a LWA is a limited  
20 work authorization issued by the NRC under 10 CFR Parts 50 and 52. It allows a  
21 utility that is constructing a nuclear plant to do certain site work prior to the  
22 issuance of the COL. Thus, when the COL is issued, the utility can begin actual  
23 construction of the safety-related nuclear reactor building. The LWA request was

1                   **CHAIRMAN CARTER:** Now let's move to Witness  
2 Garrett on the rebuttal.

3                   **MS. TRIPLETT:** We would request that his  
4 rebuttal testimony be entered into the record as though  
5 read.

6                   **CHAIRMAN CARTER:** And it's my understanding  
7 from the parties that this witness has been stipulated  
8 to on rebuttal; is that correct? Is that correct,  
9 gentleman?

10                   Okay. The prefiled testimony of the witness  
11 will be inserted into the record as though read.

12                   Were there exhibits for Witness Garrett?

13                   **MS. TRIPLETT:** Yes, sir. 111 through 113.

14                   **CHAIRMAN CARTER:** Are there any objections?  
15 Without objection, show it done.

16                   (Exhibits 111 through 113 marked for  
17 identification and admitted into the record.)



1 part of the Combined Operating License Application (“COLA”) and can be  
2 reviewed and authorized by the NRC in advance of the overall issuance of the  
3 COL.

4  
5 **Q. What scope of work was included in PEF’s LWA?**

6 A. In the Company’s COLA filed with the NRC on July 30, 2008, the Company  
7 included a LWA that included the following scope of work: Preparation of the  
8 nuclear island foundation surface with dental concrete; placement of the Roller  
9 Compacted Concrete (“RCC”) under the nuclear islands; installation of the  
10 mudmat beneath each nuclear island; installation of waterproofing beneath the  
11 mudmat for each nuclear island; installation of rebar in the nuclear island concrete  
12 foundations; erection of safety-related concrete placement forms; installation of  
13 the Turbine Building, Annex Building, and Radwaste Building foundation drilled  
14 shafts; installation of circulating water piping between the cooling tower basins  
15 and the entrance point to the turbine building condensers; and installation of the  
16 raw water system intake structure and make-up line to the cooling tower basin.  
17 The Company also indicated that other preconstruction dewatering work, the  
18 diaphragm wall and permeation grouting, necessary for the excavation of the site  
19 where the foundation of the units would be placed would be performed that was  
20 outside the scope of the LWA. This work was later included in the scope of the  
21 LWA at the NRC’s request, as I also described in my May 1, <sup>2009</sup>~~2008~~ direct  
22 testimony.

23

1 **Q. In layman's terms, can you describe what this LWA work turned out to be?**

2 A. Yes. The diaphragm wall and permeation work are necessary for dewatering the  
3 site. In other words, we are digging a hole and keeping the ground water out.  
4 The diaphragm wall keeps water out from the peripheral sides of the excavation  
5 and the permeation grouting keeps water from percolating up from the bottom of  
6 the excavation. The only reason for the installation of the diaphragm wall and  
7 grout is to establish a water barrier to support the dewatering required for  
8 excavation. The other items within the LWA scope generally provide a flat  
9 surface and placement of rebar and forms for the later foundation construction for  
10 the units which would only be poured upon issuance of the COL. So, we were  
11 excavating a hole, keeping the water out, and placing rebar and forms awaiting  
12 the commencement of construction, under the requested LWA scope.

13  
14 **Q. Why did PEF include a LWA in its COLA?**

15 A. PEF included a LWA in its COLA because certain preconstruction work was  
16 necessary at the site to meet the in-service dates for Levy Units 1 and 2. In the  
17 Commission proceeding on the Company's petition for a determination of need  
18 for Levy Units 1 and 2, the Company presented the LNP schedule as an exhibit to  
19 the testimony of Daniel Roderick. This schedule included the LWA and was the  
20 schedule necessary to meet the 2016 and 2017 in-service dates for the units. The  
21 Company presented evidence in that proceeding that additional base load nuclear  
22 generation was needed in this time period. In its Order granting the Company's

1 petition, the Commission agreed that PEF had demonstrated a reliability need for  
2 base load capacity by 2016.

3 A LWA was also appropriate for the LNP. Allowance of certain  
4 preconstruction work in advance of a Construction Permit, now replaced by the  
5 COL under the new Part 52 process, is a long-standing practice of the NRC. The  
6 NRC even amended its rules under 10 CFR Parts 50 and 52 in 2007 to provide for  
7 LWA work scope that can be authorized by the NRC for execution prior to a  
8 COL, and to address other specific preconstruction work that can be done without  
9 any NRC authorization. With the LWA rulemaking in 2007, therefore, the NRC  
10 was informing and reaffirming the industry that preconstruction work prior to the  
11 issuance of a COL was allowed and could be granted. Otherwise, there was no  
12 reason for the NRC to adopt a revised rule specifically providing for the issuance  
13 of LWAs under 10 CFR Parts 50 and 52.

14  
15 **Q. Was the fact that no LWA had been issued by the NRC a reason not to**  
16 **request a LWA?**

17 **A.** No. The amended LWA rule is relatively new and there have been only a limited  
18 number of COLAs filed with the NRC so far so the lack of precedent under the  
19 current LWA rule is not surprising. What is surprising is Jacob's reliance on this  
20 lack of precedent to claim that PEF should have assumed the NRC would take a  
21 "conservative" position regarding the review of the requested LWA. (Jacobs, p.  
22 10, L. 1-11). Apparently, Jacobs believes PEF should have assumed the NRC  
23 would not grant the LWA review schedule PEF requested because the NRC had

1 not granted any LWA review schedule. This makes no sense. Under this logic,  
2 no one should ever request an LWA because none had been issued. By extension  
3 under the same logic, no utility should build an advanced technology nuclear  
4 power plant in the United States because none have been built. PEF certainly was  
5 reasonable in relying on the NRC's implementation of a recently revised rule that  
6 expressly provided for LWAs despite the lack of any precedent.

7 Additionally, as I noted above, the NRC has as a matter of practice  
8 authorized certain preconstruction work in advance of a permit or COL under  
9 prior iterations of the NRC's rules. In fact, regulations at the time allowed the  
10 performance of non-nuclear related site activities at the Crystal River Unit 3  
11 ("CR3") site. Indeed, the closest geological conditions to the LNP site are at the  
12 CR3 site, not the Vogtle site, and the CR3 unit was successfully constructed and  
13 has been operating for about 30 years.

14  
15 **Q. Was the NRC aware that PEF was going to request an LWA in its COLA?**

16 **A.** Yes. PEF first notified the NRC in a public meeting on January 10, 2008 that the  
17 LNP COLA would include a LWA request. On March 5, 2008, PEF formally  
18 notified the NRC in response to RIS 2008-001 that its COLA would include an  
19 LWA. Also, on June 30, 2008, prior to submitting its COLA with the LWA to the  
20 NRC at the end of July 2008, PEF management met with the NRC to review the  
21 COLA submittal and LNP schedule.

22

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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

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

1 international experts in such fields as site engineering and geology, including Paul  
2 C. Rizzo Associates, Inc., Moretrench, and Soletanche. Notably, Jacobs'  
3 company has hired Paul C. Rizzo Associates, Inc. and Jacobs considers Mr. Rizzo  
4 to be a highly qualified geotechnical expert. See Exhibit No. \_\_\_\_ (GM-5)  
5 (Jacobs, Dep. Excerpt, pp. 38-40). The design incorporated proven applications  
6 of site design and engineering to the preconstruction and LWA activities. For  
7 example, the dewatering work, the diaphragm wall and permeation grouting, are  
8 common to construction in areas with high ground water tables. Florida projects  
9 with similar excavation and dewatering designs include the construction of  
10 additional cooling towers at the Crystal River Energy Complex, which included  
11 sheet pile excavations with grouted seals and the Miami, Florida, NW 4<sup>th</sup> Street  
12 Sewage Pump Station, which used steel sheet piling and extensive cement  
13 grouting. Additional larger scale domestic and international projects using similar  
14 excavation and dewatering designs as the Levy Project are identified in Exhibit  
15 No. \_\_\_\_ (GM-6) to my rebuttal testimony.

16  
17 **Q. What about the NRC's request that you include the dewatering work in the**  
18 **LWA scope in September 2008. Did that indicate that the NRC was**  
19 **concerned with the dewatering work or the sub-foundation design for the**  
20 **LNP?**

21 **A.** No, it did not. All this request indicated was that the NRC wanted to review the  
22 dewatering work in connection with its review of other LWA work. Prior to this  
23 request, PEF had excluded the dewatering work from the scope of the LWA



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

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

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

23 [REDACTED]

1 [REDACTED] As the Staff audit report notes, the Company retained Burns & Roe to  
2 assist the Company in its EPC contract negotiations by reviewing the initial price  
3 book and supporting cost library data and initial construction schedule provided  
4 the Company by the Consortium. Burns & Roe noted [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] to include the dewatering work in the LWA scope at the  
11 NRC's request in September 2008. Burns & Roe was not provided the NRC  
12 review schedule and was not commenting on the schedule for regulatory review  
13 and approval of the LWA at all.

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

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

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

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

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

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

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

23

1 Q. You mentioned the NRC October 6, 2008 letter indicating that the NRC had  
2 docketed the Company's COLA earlier, Jacobs claims the Company was  
3 unreasonable in assuming that there would not be at least a long delay in the  
4 LWA review and issuance after receiving that letter. Do you agree?

5 A. No, I do not. The part of the October 6, 2008 NRC docketing letter relevant to  
6 Jacobs' comments says:

7 "Your application submittal letter requested that the NRC consider the following  
8 milestones when preparing our complete and integrated review schedule: Final  
9 Environmental Impact Statement ("FEIS") in June 2010, [the LWA] issuance in  
10 September 2010, and COL issuance in January 2012. Because of the complexity  
11 of the site characteristics and the need for additional information, it is unlikely  
12 that the LNP COLA review can be completed in accordance with this requested  
13 timeline. The NRC staff expects to interact with you as the safety and  
14 environmental review schedules are developed."

15 See Exhibit No. \_\_\_ (GM-8) to my rebuttal testimony. When the NRC says that it  
16 is "unlikely" the LNP COLA review can be completed in accordance with "this"  
17 requested "timeline" the NRC clearly means the dates for each of the items  
18 specifically identified in the preceding sentence – the FEIS, LWA, COL – might  
19 shift but the NRC does not say that the NRC was "unlikely" to review any of the  
20 items in the "requested timeline" – such as the LWA -- at all, which is what the  
NRC ultimately did. Reviewing the LWA for issuance at the same time as the  
COL means no LWA will be issued because the very purpose of the LWA is to  
allow the utility to commence the work within the LWA scope before the COL  
issuance. Jacobs even agreed in his deposition that the decision to review the  
LWA on the same schedule as the entire COLA meant there will be no LWA  
before the COL. See Exhibit No. \_\_\_ (GM-5) (Jacobs, Dep. Excerpt, p. 87, L. 19-  
23).

1           The NRC, therefore, did not say in the letter the October 6, 2008 letter that  
2 it was “unlikely” PEF would get the LWA, which is in effect what occurred.  
3 Instead, the only reasonable reading of the October 6, 2008 letter -- and the way I  
4 and everyone else at PEF read it -- was that it might be “unlikely” to get the LWA  
5 in September 2010, or any of the other requested items on the “timeline”  
6 requested, because the NRC tied the statement that it was “unlikely” to get the  
7 review to the “timeline” PEF requested. Nowhere in the letter, however, does the  
8 NRC say that it was “unlikely” PEF was going to get a LWA at all. If the NRC  
9 intended to say that it was “unlikely” PEF would get a LWA, then, the NRC  
10 would have said so directly, instead of referencing the specific “timeline” for the  
11 items PEF requested.

12           The NRC did say, as Jacobs points out, that its uncertainty about the  
13 specific “timeline” for the items requested by PEF was because of the complexity  
14 of the site characteristics, but that is not all the NRC said. Jacobs ignores the full  
15 statement, which was the NRC was uncertain about the requested “timeline”  
16 because “of the complexity of the site characteristics and the need for additional  
17 information.” This letter was received only two months after PEF submitted its  
18 COLA to the NRC so it is not surprising that the NRC might need some  
19 “additional information” to address the complexity of the site before developing  
20 the review schedule. The NRC included Requests for Additional Information  
21 (“RAIs”) with the October 6, 2008 letter requesting further information about the  
22 site that the Company answered on November 20<sup>th</sup>. After this information was  
23 provided the NRC did not in any way indicate that it was insufficient to develop

1           **was somehow a cause for concern regarding the Company's LWA request.**

2           **Do you agree?**

3    A.    No. The purpose of the NRC's review of the Company's COLA is the application  
4           of the AP1000 design to the specific Levy site. NRC review of the general  
5           deployment of the AP1000 reactor design is underway under a separate Reference  
6           COLA ("R-COLA"). This means that the NRC then focuses its review of the  
7           PEF COLA on how Levy site-specific characteristics such as geology,  
8           seismology, etc., meet the design assumptions of the AP1000 Design Control  
9           Document, or "DCD" for specific deployment at the Levy site. As part of this  
10          review geotechnical questions through RAIs are expected.

11                 The NRC docketed the Levy COLA, including the LWA, which indicated  
12                 that the NRC believed the application was technically sufficient for application of  
13                 the AP1000 design to the Levy site even with the complex geotechnical and site  
14                 characteristics. The NRC would not have docketed the PEF COLA if the NRC  
15                 doubted the ability to construct the AP1000 nuclear power plants on the Levy site  
16                 because of the site geology or other site characteristics.

17                 The mere fact that the NRC was asking such questions about the complex  
18                 site characteristics does not mean that the NRC was not going to issue the LWA.  
19                 The design, engineering, and construction of nuclear power plants are complex,  
20                 but that does not mean it cannot be done. The five nuclear power plants operating  
21                 in Florida today were built on complex sites, including the one at Crystal River  
22                 within 10 miles of the Levy site and closer to the coast. PEF addressed the site  
23                 complexity in its detailed geotechnical review of the site to arrive at the site sub-

1 foundation and foundation design that PEF submitted to the NRC with its COLA  
2 including its LWA. And, prior to January 23, 2009, the NRC never said it could  
3 not issue the LWA for reasons of site complexity or for any other reason.  
4

5 **Q. What about Jacobs claim at page 7 of his testimony that the failure to receive**  
6 **the review schedule within thirty days of the October 6, 2008 letter was**  
7 **reason enough for PEF to be concerned about its requested review schedule,**  
8 **was that a reason for PEF to believe its requested review schedule was in**  
9 **jeopardy with the NRC?**

10 **A.** No. The NRC told us in the October 8, 2008 letter that the NRC was not going to  
11 issue the review schedule until the NRC received additional information from the  
12 Company. We, therefore, did not expect a review schedule from the NRC before  
13 a reasonable time after November 20, 2008, which is the date PEF answered the  
14 NRC's RAIs, for the NRC to review the additional information PEF provided and  
15 develop a review schedule. This time period, however, included the holidays and  
16 we were told by the NRC that holiday schedules were impacting the development  
17 of the review schedule. The delay had nothing to do with the substance of PEF's  
18 requested review schedule.

19 Moreover, there is no rule or obligation of any type for the NRC to release  
20 a review schedule within thirty days of docketing the COLA. Even Jacobs agreed  
21 that there is no NRC requirement to issue a review schedule thirty days after the  
22 COLA is docketed, no NRC statement voluntarily committing to such a release  
23 schedule, and no NRC statement that suggests the utility should be concerned



1 with the review schedule if the utility does not receive it within this thirty-day  
2 period. See Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt, pp. 109, 112).

3  
4 **Q. After PEF received the October 6, 2008 letter from the NRC and before PEF**  
5 **signed the EPC agreement, did the NRC make any additional public**  
6 **statements regarding the NRC's expectations for the time required to review**  
7 **an LWA request?**

8 A. Yes. On December 4, 2008, NRC leadership responsible for the Levy project  
9 made statements at a Levy public meeting specifically regarding their expectation  
10 for the time period for the NRC to review a LWA request. The NRC Project  
11 Manager for Levy (Brian Anderson) in response to a question from the public at  
12 the Levy Environmental Impact Statement ("EIS") Scoping meeting, stated:

13 Just to give you a ballpark time frame, we expect that somewhere on the  
order of two years will be required to complete our **entire** review process  
for the limited work authorization. And that's a ballpark time frame. The  
detailed review schedule activities will be made publically available once  
we've completed the development of our schedule.

14 See Exhibit No. \_\_\_ (GM-9) to my rebuttal testimony, (emphasis added). This  
15 NRC response was made after the Company had received the October 6, 2008  
16 docketing letter that Jacobs misinterprets. This response was also made at a  
17 public meeting specifically focused on Levy and was only approximately three  
18 weeks in advance of the Company's decision to execute the EPC agreement. This  
19 response was also made by the same Brian Anderson who signed the October 6,  
20 2008 docketing letter as the NRC Lead Project Manager. See Exhibit No. \_\_\_  
21 (GM-8) to my rebuttal testimony. Mr. Anderson's statement about the time frame

1 for NRC review of the LWA at the NRC scoping meeting for the Levy project  
2 reinforced PEF's belief that the LWA approval, separate from the COL issuance,  
3 was still expected for the LNP and still within the PEF review schedule that PEF  
4 had requested. Again, PEF provided the NRC approximately 30 months to review  
5 and approve the LWA that was premised on work PEF performed and provided to  
6 the NRC in about 18 months and, here, the NRC Staff management on the LNP  
7 said the NRC could complete the entire LWA review process in about 24 months.

8  
9 **Q. Jacobs also claims that PEF was unreasonable in believing that the NRC**  
10 **would grant an LWA after the October 6, 2008 letter because of PEF's**  
11 **efforts to impress on the NRC the need for the NRC to meet the Company's**  
12 **"aggressive" schedule. Do you agree with his characterization of what was**  
13 **communicated to the NRC?**

14 **A.** No, I do not. What the Company meant when it said its schedule was aggressive  
15 was that one of the requested items was requested on a timeline that was a couple  
16 of months ahead of the schedule for the item that the NRC had publicly identified.  
17 This was the FEIS, which PEF was requesting a couple of months earlier than the  
18 NRC had previously indicated that it could issue a FEIS. The Company did not  
19 mean that the schedule for all of the items requested was "aggressive," as Jacobs  
20 implies at page 9, lines 1-2 of his testimony. The approximate 30 months allotted  
21 for review and issuance of the LWA was definitely not an aggressive schedule,  
22 given that the Company had taken 18 months to prepare all of the material  
23 necessary for the LWA, and the NRC had publicly said on December 4, 2008 that

1 its entire LWA review process would take about 24 months. Likewise, the  
2 requested 42-month period for issuance of the COL was not aggressive but in fact  
3 was in line with numerous public statements by the NRC regarding when a COL  
4 could be expected. The NRC did in fact issue a review schedule that  
5 accommodates issuance of the COL in approximately 42 months.

6  
7 **Q. Was the work of CH2MHILL a factor in the NRC's determination regarding**  
8 **the review schedule for the LWA and COL as Jacobs implies at page 10 of**  
9 **his testimony?**

10 **A.** No, it was not. First, Jacobs does not tell the Commission that the quality  
11 assurance issues with CH2MHILL were first identified on the Harris project in  
12 North Carolina through PEF management oversight and quality assurance  
13 procedures that led PEF to identify this, step in and implement procedures to  
14 ensure that the issues were corrected, and monitor the work carrying over to the  
15 LNP COLA. As a result, what this demonstrates is that PEF's quality assurance  
16 management processes work.

17 Second, the CH2MHILL issues did not involve the quality of the technical  
18 work they performed rather their issues were with the extensive documentation of  
19 the review of that work and the extensive documentation of the qualifications and  
20 training of the reviewers to meet NRC standards that the NRC rules require.

21 These issues were corrected.

1 Third, these issues did not delay the completion of this work in time to  
2 submit the LNP COLA. The LNP COLA, with the LWA, was timely submitted  
3 at the end of July 2008.

4 Finally, the Company worked closely with the NRC technical staff  
5 throughout the COLA process. The NRC participates in the site investigations  
6 and testing and all information is made available to the NRC. If this  
7 documentation issue was a concern to the NRC they certainly would have told  
8 PEF that it was. The NRC did not. In fact, as a result of the Progress Energy  
9 corrective actions taken with respect to the CH2MHill work on the Harris COLA,  
10 the NRC was involved in an audit review and, on April 7, 2008 issued a letter to  
11 PEF regarding this review in which the NRC stated that: "The staff has reviewed  
12 the responses provided in the PE letter dated March 3, 2008, which address each  
13 of the issues identified in the NRC audit report as Audit Response Request (ARR-  
14 01) and found that PE's reply to the ARR-01 is responsive to our concerns. We  
15 have no further questions or comments at this time." See Exhibit No. \_\_\_ (GM-  
16 10) to my rebuttal testimony.

17  
18 **Q. When the NRC informed PEF that it was not going to review the LWA**  
19 **earlier than the COL such that there could be no LWA in advance of the**  
20 **COL for the LNP, did the NRC indicate that its decision was in any way**  
21 **based on something PEF did or did not do?**

22 **A.** No, the NRC's reason for not reviewing the LWA in advance of the COL was that  
23 the NRC believed it needed more time to review the geotechnical issues for both

1 the LWA and the COL. At no point on January 23, 2009 or thereafter did the  
2 NRC tell PEF that its decision not to review and therefore not to issue the LWA  
3 was because PEF did something it should not have done or did not do something  
4 it should have done. This decision was a complete surprise to PEF and to the  
5 industry.

6  
7 **VII. THE "OTHER RISKS" WERE PROPERLY EVALUATED AND**  
8 **MANAGED.**

9 **Q. You discussed the Company's risk management policies and practices with**  
10 **respect to the LNP earlier, did those policies and practices address the "other**  
11 **risks" that Jacobs and the other intervenor witnesses mention?**

12 **A.** Yes, it did. In fact, we had identified these "other risks" early in the project,  
13 incorporated them into our risk matrix, and in fact brought them to management's  
14 attention in the IPP and other documents before the EPC agreement was executed.  
15 For example, project financing, material cost escalation, and the availability of  
16 skilled craft labor, among many others, were identified as risks, evaluated, and  
17 assigned risk mitigation strategies that the Company employed throughout the  
18 past year and continues to employ, as modified when necessary to do so. PEF has  
19 appropriately managed these risks under the changing circumstances and will  
20 continue to do so. Notably, again, not one intervenor or Staff witness challenges  
21 PEF's risk management policies and practices as unreasonable.

22 Risk management, however, does not mean risk elimination or risk  
23 certainty. Jacobs, again, relies on Board statements and presentations in April

1 2009 under the circumstances that existed then, namely, the NRC determination  
2 driving the schedule shift had already occurred, to claim PEF should have done  
3 something differently in December. See Jacobs Test., pp. 12-14. In April 2009,  
4 the Company was looking forward, not backwards, trying to make the best  
5 decision at that point with respect to the LNP project. In any event, as I explained  
6 above, these risks were known from the beginning of the project and they were  
7 actively monitored and managed under various risk mitigation strategies. It is  
8 simply unrealistic and in fact impossible to wait for the elimination of risk or risk  
9 certainty as Jacobs and the other intervenor witnesses suggest. If PEF did that  
10 PEF would never build the LNP or any other long-term project for that matter.  
11 No utility would.

12  
13 **Q. Jacobs also asserts that the Company should not have executed the EPC**  
14 **Agreement when it did because PEF did not have joint owners signed up at**  
15 **page 15 of his testimony. Do you agree?**

16 **A.** No. Jacobs apparently does not understand the fundamental business reality that  
17 no joint owner is going to sign a joint ownership agreement and commit to  
18 investing in a project without an executed EPC agreement that explains what that  
19 commitment is in a final executed form. This is what the Company meant when it  
20 said that joint ownership was "linked to" or "closely tied to" the EPC agreement.

21 Furthermore, the Company has always expressed an interest in having  
22 joint ownership in the LNP, commencing in the need proceeding. The Company  
23 explained there the benefits of sharing costs and risk through joint ownership to

1 PEF and its customers. The Company still prefers joint ownership for these  
2 reasons. But the Company cannot force joint owners to participate. The ultimate  
3 decision to sign a joint ownership agreement of some type will be made by each  
4 potential joint owner participant. Even Jacobs agrees that Progress doesn't have  
5 any control over potential joint owners to make them sign a joint ownership  
6 agreement. See Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt p. 45, L. 9-15).

7  
8 **Q. Mr. Gundersen, at page 9 of his testimony, claims the LNP schedule also**  
9 **received a "setback" when the NRC Atomic Safety and Licensing Board**  
10 **ruled that it would hear certain contentions to the LNP. Do you agree with**  
11 **his characterization?**

12 A. No, I do not. Potential hearings to address contentions is part of the public  
13 participation in this regulatory process for review of new nuclear power plant  
14 licenses, it is anticipated, and it is in fact incorporated in the LNP COL schedule.  
15 Therefore, it is not a "setback" to the schedule if such hearings take place; the  
16 schedule provides time for such hearings.

17  
18 **Q. Mr. Gundersen also claims at page 10 of his testimony that PEF's COLA**  
19 **process has not taken into account critical emergency planning issues**  
20 **involving the proximity of the LNP to the Crystal River site. Do you agree?**

21 A. No, I do not. Once the Levy site was selected and work began on development of  
22 the Levy Emergency Plan ("EP"), Progress Energy engaged the affected counties  
23 of Citrus, Levy, and Marion Counties, and the State of Florida on the

1 development of this plan in February 2007, taking into account the proximity of  
2 the two sites, and the overlapping Emergency Planning Zones (“EPZs”). The  
3 Levy EP is a key component of the Levy COLA submitted on July 30, 2008, and  
4 is included in Part 5 of the COL application. The layout of emergency planning  
5 Protective Actions Zones (“PAZs”) were specifically designed based on the  
6 proximity of these two sites in consultation with the affected counties and the  
7 State of Florida. Further, Progress Energy has responded to RAIs from the NRC  
8 on the Levy EP, as with other site-specific subjects, including questions about the  
9 overlapping EPZs. Progress Energy has also contracted an Evacuation Time  
10 Estimate (“ETE”) analysis that considers simultaneous evacuations from both  
11 sites, that is expected to be completed this August, and will be provided in a  
12 future update to the Levy EP.

13  
14 **VIII. FEASIBILITY.**

15 **Q. Mr. Miller do you believe your feasibility analysis in your testimony complies**  
16 **with what the Commission requires?**

17 **A.** Yes, I do. The rule requires the Company to file a detailed analysis of the long-  
18 term feasibility of completing the power plant. Rule 25-6.0423(5)(c)5, F.A.C.  
19 The rule does not say feasibility of the project, as Jacobs erroneously asserts at  
20 page 18 of his testimony. Since feasibility means “capable of being done or  
21 carried out,” the rule requires us to analyze whether completion of the power plant  
22 is capable of being done or carried out.



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

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

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

6                       I described in detail in my direct testimony the current regulatory status  
7           of the LNP, explaining what we have achieved, what we did not achieve – the  
8           LWA discussed in detail above, what we have done in response to that change in  
9           the NRC review process, and what our expectations are for the future permits,  
10          approvals, authorizations, and licenses for the LNP. Jacobs fails to acknowledge  
11          the numerous land use authorizations, permits, licenses, or other approvals that  
12          have been achieved for the LNP that are included in my direct testimony and the  
13          numerous ones that are on schedule that are identified in my testimony and at  
14          Exhibit 3 on page 19 of the Staff Report reviewing PEF's Project Management  
15          Internal Controls for the Nuclear Plant Update and Construction Projects. See  
16          Exhibit Number CC-1 to Staff Testimony. For example, the Administrative Law  
17          Judge issued his recommended decision and order to approve PEF's SCA on May  
18          15, 2009. The point is, despite the NRC decision regarding the LWA, the NRC  
19          has deemed PEF's COLA sufficient for review and established a schedule  
20          consistent with PEF's other requested timelines, including issuance of the COL in  
21          42 months. There is no reason to expect that PEF will not be able to obtain the  
22          authorizations, permits, and licenses to construct and operate the Levy units at the  
23          Levy site.

1            Jacobs does not dispute this. He simply rehashes the LWA issuance and  
2 calls it a “regulatory problem.” Jacobs Test., p. 20, L. 1-7. That is his  
3 characterization, not the NRC’s. The NRC has accepted the LNP COLA for  
4 review and issued a review schedule. The NRC would not have done so if the  
5 NRC believed there was an existing “regulatory problem” with the site. Jacobs  
6 and the other intervenors further claim the federal and state “energy policy  
7 landscape” render the project infeasible based on their own speculation about  
8 what that energy policy will ultimately be and their own speculation about the  
9 resulting future effects of that policy, if and when and in whatever form it is  
10 ultimately passed. This is nothing more than an argument for one energy policy  
11 over another. This Commission has already determined there is a need for the  
12 LNP after a proceeding where all those alternative energy policy arguments were  
13 made. The “feasibility” analysis under the Commission’s rule implementing the  
14 nuclear cost recovery statute following a determination of need cannot be the  
15 vehicle to revisit that determination now or each year. Mr. Lyash will address this  
16 argument in detail from the Company’s senior management perspective in his  
17 rebuttal testimony.

18  
19 **Q. Do you have similar concerns with the “feasibility” analysis that OPC and**  
20 **the intervenors seem to suggest is required each year?**

21 **A.** Yes, I do. Jacobs never explains what he believes this “feasibility” analysis to be  
22 in his direct testimony but Mr. Cooper says it is the cost-effectiveness analysis  
23 that FPL performed and that appears to be what they are all suggesting. In fact,

1 Jacobs ultimately conceded that was the case in his deposition. See Exhibit No.  
2 \_\_\_\_ (GM-5) (Jacobs Dep. Excerpt, pp. 115-117). We, of course, performed this  
3 analysis for the need case because the need statute required it, and we included it  
4 in our discussion of feasibility last year because we had just completed our need  
5 case while this docket was on-going. But the rule here does not say provide a  
6 detailed analysis showing the project is cost-effective, rather, it says provide a  
7 detailed analysis showing the completion of the nuclear power plant is feasible.  
8 These are two different things. Mr. Lyash will address this issue from the  
9 Company's senior management perspective, but from a project management  
10 perspective, that is not the way we view the feasibility of completion of the LNP.  
11 I explained in my direct testimony, in my deposition, and again here in my  
12 rebuttal testimony the Company's perspective regarding whether completion of  
13 the LNP is feasible.

14  
15 **Q. Do you mean to say that the total project cost is not a consideration in the**  
16 **Company's determination of whether completion of the nuclear power plants**  
17 **is feasible?**

18 **A.** No, I do not. The Company always considers the total project cost of the project.  
19 As I explained in my May 1, 2008 direct testimony, the Company provided the  
20 Commission its current, approved, budgeted total cost for the LNP, which at this  
21 time remains approximately \$17.2 billion. As I further explained, that total  
22 project cost estimate may change depending on the outcome of the current  
23 negotiations with the Consortium to amend the EPC agreement, but until those

1 negotiations are concluded, the total capital cost estimate remains the current  
2 budgeted amount of \$17.2 billion. The fact that this total project cost number  
3 may change and likely will change does not affect our determination that the LNP  
4 is still feasible because we have no reason to believe today that the negotiations  
5 with the Consortium will yield an unreasonable, unprincipled revised project cost  
6 estimate for the schedule shift and amendment to the EPC agreement.

7 Again, PEF is not asking the Commission to “ignore” cost, as Jacobs  
8 asserts at page 21 of his testimony, rather PEF is saying that, based on what PEF  
9 knows today, PEF does not believe that PEF will receive commercially  
10 unreasonable price terms from the Consortium for the EPC contract amendment  
11 such that the completion of the nuclear power plants is not “capable of being done  
12 or carried out,” i.e. not feasible. This is not some “theoretical” determination, as  
13 Jacobs calls it, (Jacobs Test., p. 21, L. 7); rather it is the reasonable and prudent  
14 project management process of evaluating the LNP in a measured, step-wise way.

15 As I explained in answer to the discovery responses Jacobs refers to,  
16 which I have attached as Exhibit No. \_\_\_ (GM-12) to my rebuttal testimony, the  
17 Company has and will continue to consider project costs, among many other  
18 factors in determining whether to continue to proceed with the project, i.e.  
19 whether the completion of the plants is capable of being done or carried out. The  
20 Company weighs all of these factors, which include the risks identified by the  
21 intervenors, against the benefits of proceeding with the LNP. These benefits are  
22 explained in my May 1, <sup>2009</sup>~~2008~~ direct testimony: (1) PEF continues to need base  
23 load capacity in the future; (2) new, advanced-design nuclear power remains the

1 best available technology to provide reliable, base load electric service and make  
2 significant reductions in greenhouse gas emissions, (3) nuclear generation meets  
3 the need for more diverse energy portfolio, and (4) nuclear generation reduces  
4 PEF's reliance on fossil fuels that can be volatile in price, subject to supply  
5 disruptions, and susceptible to foreign government and market influences.

6  
7 **Q. Does Jacobs really disagree with your point that the cost of the project is not**  
8 **per se determinative of the project's feasibility?**

9 A. No, he does not. He says he disagrees but he then admits that "project cost is not  
10 the sole factor in determining if a project is feasible." (Jacobs Test., p. 21, L. 16-  
11 17) (emphasis added). That is what "per se" means, that project cost is not "per  
12 se" determinative of feasibility means it is not "by itself" the, or the "sole,"  
13 determinative factor.

14  
15 **Q. By the way, do you agree that your statements that the continued long-term**  
16 **benefits that led the Company to select the LNP have not fundamentally**  
17 **changed are inconsistent with the April 15, 2009 Board presentation?**

18 A. No, Jacobs is wrong again when he asserts this at page 20 of his testimony. Mr.  
19 Lyash was there and will address this in his rebuttal testimony, but from  
20 reviewing the presentation bullet points, which serve as discussion points during  
21 the meeting, I see that my statements regarding the fact that the reasons for  
22 developing nuclear generation are fundamentally unchanged are encompassed in  
23 that presentation. While Mr. Johnson emphasizes the near-term impacts and risks

1 on proceeding with the LNP the summary includes the discussion point that Levy  
2 nuclear remains vital to Progress Energy's Balanced Solution. See Exhibit No.  
3 WRJ(PEF)-3, p. 58 of 233. I know that the Balanced Solution encompasses the  
4 development of nuclear generation for the reasons that I describe that were the  
5 basis for our need petition and that are included in our current IPP for the LNP.

6  
7 **Q. Did the Company comply with Commission Rule 25-6.0423(8), F.A.C.?**

8 A. Yes, it did. The Rule requires the utility to file a detailed statement of project  
9 costs sufficient to support a Commission determination of prudence and that is  
10 what the Company did. Under the Commission's rule, the prudence  
11 determination is limited to actual costs incurred, in this case for the LNP, the costs  
12 incurred from 2006 to 2008. The Company filed the necessary detailed statement  
13 of project costs for the Commission to make this prudence determination. In fact,  
14 not a single intervenor or Staff witness challenges the prudence of any of the  
15 Company's actual costs incurred from 2006 to 2008, as I explained earlier.  
16 Indeed, even Jacobs must acknowledge that his claim that the Company was  
17 unreasonable in signing the EPC agreement does not affect the Commission's  
18 determination of prudence in this proceeding (as made clear in his  
19 recommendations), because the EPC agreement was signed on the last day of  
20 2008 and all 2008 and prior year LNP costs had already been incurred. See  
21 Exhibit No. \_\_\_ (GM-5) (Jacobs Dep. Excerpt, p. 35, L. 5-16).

22

1 **IX. STAFF REPORT: PEF'S PROJECT MANAGEMENT INTERNAL**  
2 **CONTROLS FOR THE NUCLEAR PLANT UPRATE AND**  
3 **CONSTRUCTION PROJECTS.**

4 **Q. Have you reviewed the Staff Report on PEF's Project Management Internal**  
5 **Controls for the Nuclear Plant Upate and Construction Projects?**

6 A. Yes, I have.

7

8 **Q. Are you familiar with the cost increases in the Competitively Bid Contracts**  
9 **that Staff references in the Report?**

10 A. Yes. As Staff indicates, the costs under the contracts with the Joint Venture Team  
11 on the LNP have increased beyond their original contract amount. As Staff notes  
12 we have explained, these cost increases are the result of additions to the scope of  
13 work and not the result of errors or inefficiency. Indeed, Staff nowhere includes  
14 in the report any error or inefficiency with respect to these costs that they found  
15 and they note that the Company documented these additions as directed by  
16 Company policies and procedures. I did want to supplement the explanation  
17 provided in the report for these increases.

18 As Staff explains, the Joint Venture Team was engaged after a competitive  
19 bid process for the COLA preparation for both the Harris and Levy sites. PEF  
20 was aware that the Greenfield site in Florida compared to the existing nuclear site  
21 in North Carolina would result in higher costs. PEF notes that PEF believed that  
22 bidding both COLAs out at the same time would still result in efficiencies and  
23 costs savings compared to separate requests for proposal ("RFPs") for both sites



1 and that the bids from all bidders for the Florida site would be proportionally  
2 higher. Compared to other, multiple site RFPs done sequentially in the industry  
3 the Harris and LNP COLA RFP results were more favorable. Also, each scope  
4 change for the JVT contract was separately evaluated against industry standards  
5 and target time and material costs to ensure PEF obtained the most competitive  
6 cost value for the work. Once the Levy site was selected, its unique geology,  
7 hydrology, and other environmental surroundings -- compared to the "reference  
8 site" described in the RFP for the COLA work -- drove the need for specific  
9 contract work scope changes. For example, the Levy site required 108 borings to  
10 characterize the geotechnical substrate while the Harris reference site in the RFP  
11 only required 84 borings simply because the Levy site geology is different.  
12 Likewise, Levy is a marine site where cooling water make-up is drawn from the  
13 Gulf of Mexico. Specific aquatic species sampling was necessary to fully  
14 characterize this site, whereas marine type sampling work was not included in the  
15 reference site RFP. In each case where a work scope change was necessary for  
16 the Levy COLA work, PEF management went through a detailed review to  
17 validate the incremental scope and the associated cost. All of these costs,  
18 therefore, were reasonable and prudent and necessary for the completion of the  
19 Levy COLA filed with the NRC.

20  
21 **X. CONCLUSION.**

22 **Q. Does this conclude your rebuttal testimony?**

23 **A. Yes.**

1 **BY MR. WALLS:**

2 Q. Mr. Miller, do you have a summary of your  
3 rebuttal testimony?

4 A. I do.

5 Q. Would you please provide that?

6 A. Yes. The Intervenors make two claims in this  
7 proceeding regarding the Levy project. First, they  
8 claim PEF should not have signed the EPC agreement when  
9 PEF did at the end of 2008. They also claim PEF has not  
10 demonstrated that the completion of the Levy nuclear  
11 power plants is feasible. Neither claim has any merit.

12 PEF's execution of the EPC agreement in  
13 December 2008 was a reasonable and prudent management  
14 decision. Execution of the EPC agreement at that time  
15 was beneficial to PEF and its customers for the reasons  
16 explained in my testimony. Execution of the EPC  
17 agreement was also necessary to move the LNP project  
18 forward on schedule.

19 Finally, execution of the EPC agreement  
20 provided the necessary framework to address the schedule  
21 shift that did occur in an established, orderly and  
22 reasonable manner that has benefited PEF and its  
23 customers.

24 Second, the completion of the Levy nuclear  
25 power plants is feasible. There is no reason to believe

1 the Westinghouse AP1000 reactor design cannot be  
2 installed at the Levy site, and there is no reason to  
3 believe that we cannot obtain the necessary regulatory  
4 permits and licenses for the LNP.

5 Finally, there is no reason to believe that  
6 the cost or reasons for the LNP have fundamentally  
7 changed.

8 PEF did not and cannot determine the  
9 feasibility of completing the Levy nuclear power plants  
10 based on a year-to-year change in load and fuel forecast  
11 as the Intervenor suggests. If that was the feasibility  
12 test, no long-term baseload project including any  
13 nuclear power plant would ever be built.

14 I will briefly address the NRC letter  
15 identified by SACE witness Mr. Gundersen as a late  
16 exhibit. Mr. Gundersen claims the letter proves his  
17 point that the NRC review schedule for the LNP is not  
18 realistic. Quite simply, Mr. Gundersen does not  
19 understand our COL review schedule. We had float in the  
20 NRC review schedule with respect to the AP1000 design  
21 certification amendment and the referenced COLA, which  
22 should help mitigate the effect of recent changes to  
23 these specific schedules. We will incorporate any COL  
24 schedule changes into the revised Levy schedule and  
25 associated change order to the EPC agreement that we are

1 currently negotiating with the consortium. Thank you.

2 **MR. WALLS:** We tender the witness for cross.

3 **CHAIRMAN CARTER:** Mr. Rehwinkel.

4 **MR. REHWINKEL:** Thank you, Mr. Chairman. And,  
5 no, I'm not going to say no questions.

6 **CHAIRMAN CARTER:** I would have been  
7 disappointed if you said no questions. You're  
8 recognized, sir.

9 **MR. REHWINKEL:** Thank you.

10 **CROSS EXAMINATION**

11 **BY MR. REHWINKEL:**

12 **Q.** Good afternoon again, Mr. Miller.

13 **A.** Good afternoon.

14 **Q.** Can I ask you to turn to Page 12 of your  
15 testimony.

16 **A.** Okay. I'm there.

17 **Q.** Actually, I apologize, let's go to Page 11 and  
18 lines, start with Lines 17 through 20.

19 **A.** I'm there.

20 **Q.** Okay. Why is it not true that your surprise  
21 that the NRC -- strike that question.

22 Let me, let me go and ask you about the  
23 December 2008, December 4th, 2008, meeting. I think you  
24 testified yesterday you were unaware of the statements  
25 that were made at this meeting by Mr. Anderson; is that

1 correct?

2           **A.** Yes. I believe I might have said I didn't  
3 recall that because his statement was not remarkable at  
4 the time. It would be something we would expect him to  
5 say, so I just didn't recall that he said it. I was  
6 present at the meeting.

7           **Q.** Okay. So after he said it, did you  
8 communicate to anyone in the management that he had said  
9 that?

10           **A.** I did not. There were other management  
11 present at the meeting. Again, it was -- his comment is  
12 what we would expect based on ongoing dialogue with the  
13 NRC through the year.

14           **Q.** Did you report this statement in any report to  
15 management?

16           **A.** I did not.

17           **Q.** Does this statement by the NRC show up in any  
18 LINC document, L-I-N-C?

19           **A.** I do not know.

20           **Q.** You seem to have a very good memory. Do you  
21 recall it being in one?

22           **A.** I do not recall seeing it in a LINC one, but I  
23 cannot validate that.

24           **Q.** But you wouldn't be surprised if it doesn't  
25 show up in any LINC document, would you?

1           **A.**    I just don't recall.

2           **Q.**    Okay.  What about the NPD reports that you  
3 were responsible for preparing and submitting to  
4 management; did it show up in any of those?

5           **A.**    No, it would not.  But, again, let me point  
6 out his comment was not remarkable to us when he said  
7 it.  That's what we would expect him to say based on  
8 industry understanding of what the LWA process would  
9 take.

10          **Q.**    Is it your testimony that you relied on this  
11 statement in any way in making decisions about signing  
12 the EPC?

13          **A.**    It is, it is not my testimony that that's the  
14 case.  It's my testimony that that's just another  
15 example of how the NRC continued to reinforce that LWAs  
16 were viable regulatory vehicles for our project, and  
17 clearly he said it three weeks before we executed the  
18 EPC.

19          **Q.**    How many LWAs have been approved under the LWA  
20 rule that he was referring to in his statement?

21          **A.**    At the time he made the statement?

22          **Q.**    Yes.

23          **A.**    At that point there was only one LWA under  
24 review other than ours.

25          **Q.**    Okay.  So there were not LWAs that they were

1 referring, that he was referring to when he made this  
2 statement; is that correct?

3 **A.** I'm not sure what your question means, sir.

4 **Q.** In the, in the plural.

5 **A.** Let me go to my portion of the testimony where  
6 I actually have captured his comment directly.

7 **Q.** Okay.

8 **A.** And read it.

9 **Q.** And where is that?

10 **A.** I can get it. It's also in the -- there's an  
11 exhibit to my testimony, it's GM-9, which has the  
12 transcript in it.

13 **Q.** Okay.

14 **A.** He was answering questions regarding when  
15 could work start at the site, and he answered the  
16 question in the context of what was governed by the LWA.  
17 And so he made a comment, and I'm trying to locate it in  
18 my testimony here. And I want to make sure I say it  
19 correctly, so if you'll stand by.

20 **MR. WALLS:** Mr. Miller, if you'd turn to Page  
21 28 of 29 of that exhibit.

22 **THE WITNESS:** Of the GM? Thank you.

23 **MR. REHWINKEL:** Where are you looking?

24 **CHAIRMAN CARTER:** I think he said Page 29. 28  
25 and 29 I think it was.

1           **THE WITNESS:** All right. It starts on Page 28  
2 of Exhibit GM-9. And so this was -- so let me explain  
3 the backdrop of this. This was a draft environmental  
4 EIS scoping meeting. In other words, the meeting was  
5 the NRC to the public where they were soliciting input  
6 for the development of the environmental impact  
7 statement for the Levy site. So this meeting is NRC to  
8 public. However, because of the importance of this  
9 meeting, obviously we were there. And it was on the  
10 subject of the Levy project.

11           He was, he was getting questions associated  
12 with when could work start at the Levy site, and he  
13 answered in the context of what was restrained by the  
14 limited work authorization. So he made the comment, and  
15 it shows up in GM-8 (sic.) on Page 28 of 29, starting at  
16 Line 19, "Just to give you a ballpark time frame, we  
17 expect that somewhere on the order of two years will be  
18 required to complete our entire review process for the  
19 limited work authorization. And that's a ballpark time  
20 frame." And his comments continue.

21           **Q.** Okay. Now you have attached, have you not, a  
22 portion of a transcript here, the last page of the  
23 transcript?

24           **A.** Of GM-9?

25           **Q.** Yes. I'm talking about of the actual



1 transcript itself. I can't read that. Is that Page 33  
2 is the last page and you're reading from Page 32?

3 **A.** Yes.

4 **Q.** Okay. And the page before that is Page 26?

5 **A.** It appears to be the case.

6 **Q.** Okay. What was the question that was asked  
7 and why didn't you include that?

8 **A.** The question, it shows up at the top of the  
9 page I was reading from. "Will they be able to start  
10 work on the site like the middle of next year once the  
11 state issues the permit to do aux buildings, roads and  
12 stuff like that to the site, or will it be a longer  
13 process than that?"

14 Then Mr. Cameron, who was the facilitator of  
15 the public meeting, responds. And then he proceeds on  
16 with the, Mr. Anderson answering the question.

17 **Q.** Well, who asked the question?

18 **A.** I don't have the full transcript here with me  
19 at the table. I just have specific pages out of it as  
20 my exhibit.

21 **Q.** Now how many times did you or your staff meet  
22 with NRC staff and, about the LWA once you filed it on  
23 September -- filed it completely on September 11, 2008?

24 **A.** I would have to go back and count these up.  
25 But we had a meeting after the COL submitted on

1 July 30th, so we had a meeting the following month to do  
2 an overview of the COL application and all its  
3 constituent parts. We had a management meeting on  
4 September 9th where I attended and our chief nuclear  
5 officer, went to the NRC to meet with the NRC leadership  
6 on that. And then we then had obviously a telecon on  
7 September 5th to discuss the scope of the LWA, and then  
8 we refined that and submitted that September 12th.

9 And then later in the year, late November,  
10 early December time frame, Mr. Jeff Lyash, who was the  
11 CEO and President of Progress Energy Florida at the  
12 time, along with Bill Johnson, our CEO and President of  
13 Progress Energy, Inc., traveled to Washington, D.C., to  
14 meet with NRC leadership and certain -- and specific  
15 commissioners on our project.

16 **Q.** Now at any of those meetings you've just  
17 listed did you ask the NRC or the NRC staff when they  
18 would be able to give you a decision on the LWA review  
19 schedule?

20 **A.** I'm not sure if, if the question you asked is  
21 the exact way the, the dialogue went. We submitted our  
22 application, and then we had obviously discussions on  
23 the LWA scope. And then until we got into the October  
24 6th letter then had questions on, that we had to respond  
25 to that we submitted on November 20th, then there became

1 when are we going to receive a schedule? We did not  
2 expect to see the schedule until after we had submitted  
3 the RAI responses that were embodied in the October 6th  
4 letter. But after we submitted them, we continued to  
5 ask when we would receive the schedule.

6 Q. What did they tell you?

7 A. Well, actually it was sort of a sliding  
8 schedule. First it was expected to be in December, then  
9 in, then in January of '09.

10 Q. Okay. But I'm asking you did you ask them how  
11 long it would take them to review your, your, your LWA?

12 A. I'm sure we had that dialogue in meetings, but  
13 I cannot recall on any specific date of when because it  
14 was in the context of how it related to an EIS.

15 And let me explain what I'm saying is an  
16 applicant can pursue an LWA with either a partial EIS or  
17 a full EIS. We concluded that the partial EIS had the  
18 potential to be challenged and intervened on and certain  
19 NRC staff didn't support it. So because of that, that  
20 date, which takes approximately 22 to 24 months to  
21 create an EIS, will constrain the ability to issue an  
22 LWA. So in theory you could actually finish the LWA  
23 safety evaluation analysis but you cannot issue it  
24 because you need the EIS before you can do it. So  
25 that's where the dialogue of 24 months comes from that's

1 typical in the industry because of the waiting for a  
2 full EIS.

3 Q. So in your conversations with the NRC or the  
4 NRC staff did they tell you 24 months?

5 A. I'm sure we had discussions and they said that  
6 probably is a typical number. But I cannot recall  
7 specific days because it was generally something that  
8 was assumed in the industry.

9 Q. So you did not make any specific inquiries  
10 about how long it would take your LWA to be reviewed and  
11 a decision received from the NRC?

12 A. Oh, I'm sure we did that because I know as an  
13 example we probably did it at the February meeting where  
14 we had the Army Corps of Engineers there present because  
15 they were a partner, if you will, that would make a  
16 decision that would tier off the EIS. And the whole  
17 purpose of having that discussion was to facilitate the  
18 EIS being completed to support an LWA.

19 But what I cannot do is give you a specific  
20 date and a specific conversation because it was an  
21 ongoing dialogue on this subject.

22 Q. Okay. Let me be clear. I'm asking after you  
23 filed your, your COLA and supplemented it with your  
24 September 12th LWA did you ask the NRC staff or the NRC  
25 when you would -- how long it would take them to review

1 your LWA and give you a decision?

2 **A.** Yes. In regard to your specific question, I  
3 believe at the September 9th meeting where we went to  
4 Washington, D.C., myself and our, our Chief Nuclear  
5 Officer, Jim Scarola, I believe we had that discussion,  
6 and we probably asked the question and we talked about  
7 the schedule.

8 **Q.** And what did they tell you?

9 **A.** I don't recall anything remarkable from the  
10 conversation other than they were going to review the  
11 schedule once they made the decision on the docketing.

12 **Q.** So isn't it true they did not answer your  
13 question about -- they did not give you a time frame?

14 **A.** They would not give us a specific commitment  
15 because until the COL is docketed and they confirm the  
16 sufficiency and technical adequacy of the COL, they're  
17 not going to make a commitment on any schedule.

18 **Q.** Okay. And that docketing occurred on October  
19 6th, or at least that's when you found out about it.

20 **A.** It was actually docketed officially on October  
21 6th. We were given notification prior to that.

22 **Q.** Okay. From that point forward did you ask  
23 them how long it would take for your LWA to be reviewed?

24 **A.** We probably -- I don't know if we specifically  
25 asked that question other than the broader question of

1 when will we get this schedule that has all three dates  
2 in it, the EIS, LWA and the COL?

3 Q. So you were more concerned about when you'd  
4 get the letter than what the time frame for review of  
5 the LWA would be?

6 A. No, sir. What my point is, we wanted all  
7 three dates because all three were important to the  
8 overall timeline. We did not focus on any one of the  
9 three in particular because all three were assumptions  
10 in our logic of our schedule.

11 Q. Okay. But you are saying that you did not ask  
12 after October 6th directly to the NRC or the NRC staff  
13 how long it would take them to review your LWA; is that  
14 your testimony?

15 A. I don't recall specifically in any forum that  
16 dialogue. We clearly had ongoing questions to them when  
17 will we get our schedule and, you know, and obviously we  
18 wanted all three dates.

19 Q. But it was important for you to ask on  
20 September 9th about that. You had that, you and  
21 Mr. Scarola had that conversation with, I assume, senior  
22 NRC officials; is that correct?

23 A. That's correct. But we had that same  
24 discussion on EIS, LWA and COL --

25 Q. But you did not --

1           **A.**    -- because all three dates were important.

2           **Q.**    I'm sorry.  But you did not have that  
3 conversation as you can recall after October 6th.

4           **A.**    After October 6th I personally was not in a  
5 meeting in Washington where I had a one-on-one  
6 discussion of that.  However, as I stated, we continued  
7 to ask the NRC project manager, Brian Anderson, when we  
8 would receive our schedule for all three dates because  
9 all three were important.  And then the meeting I  
10 referred to earlier of Mr. Lyash and Mr. Johnson  
11 traveling to Washington, I was not present at that  
12 meeting, so I cannot comment on the discussion at that  
13 meeting.

14          **Q.**    You never asked Mr. Anderson?

15          **A.**    Mr. -- sir, I don't understand your question.

16          **Q.**    Well, let me finish it.  You never -- so -- I  
17 just want to be clear because this is important.  I want  
18 to ask you never asked Mr. Anderson how long it would  
19 take to review your LWA after October 6th.

20          **A.**    I don't recall the specific dates that I would  
21 have had that conversation.  But we had ongoing  
22 dialogue, just not in publicly noticed meetings or  
23 drop-ins in Washington, D.C.  We would -- we had calls,  
24 my licensing manager and myself, and we would talk about  
25 it, but we were waiting for the date of all three dates,

1 EIS, LWA and COL.

2 Q. Let me ask you this this way. If you had  
3 received information, somebody from Progress had  
4 received a statement from Mr. Anderson or someone senior  
5 enough to rely upon their statement that the LWA would  
6 be considered over a certain time frame, wouldn't that  
7 have been reported in one of the important management  
8 documents that you've discussed in your testimony?

9 A. I'm not sure what your question means, sir.  
10 Ask it again, please.

11 Q. Okay. If Mr. Anderson had given you a time  
12 frame for review of your LWA between October 6th and  
13 December 31st, 2008, wouldn't that have been reported in  
14 a, in a management report? Wouldn't that have been  
15 significant enough to report?

16 A. It would only be significant if it was greatly  
17 different than what we expected. So if he would have  
18 called and said instead of 30, let's say instead of 24  
19 or 30 months to get this approval, we believe it's going  
20 to take 42, like which is what's played out, we would  
21 certainly have notified management promptly of that  
22 information.

23 Q. Okay. Do any of the management reports that  
24 you provided, let's start with the NPD report, does it  
25 state anywhere in there that you expected to get an LWA



1 in 24 months?

2 **A.** The, the actual schedule that was actually  
3 embodied in the IPP actually assumes that as part of our  
4 regulatory approval process based on when the LWA work  
5 is, is shown as starting in the field.

6 **Q.** So was -- is it correct then that Progress  
7 Energy Florida's management strategy was that no news is  
8 good news about the LWA schedule?

9 **A.** No, sir. I disagree with that connotation.  
10 We had, as evidenced by our, all the information we  
11 provided under interrogatories, we had many interactions  
12 with the NRC both in publicly noticed meetings, in  
13 management drop-ins, in routine conversations on  
14 telephone calls. And so I would not characterize it the  
15 way you did.

16 **Q.** Did -- would you have been surprised if the  
17 NRC staff would have told you their time frame for  
18 review of your LWA in advance of, of the written  
19 document that you ultimately received on February 18th?

20 **A.** In essence they did do that by calling us  
21 January 23rd, sir.

22 **Q.** Okay. Would you have been surprised if they'd  
23 have told you that before January 23rd?

24 **A.** I don't understand your question.

25 **Q.** Well, they communicated to you on January 23rd

1 because they had decided it; correct?

2 **A.** That's correct.

3 **Q.** Okay. And the letter you got afterwards  
4 really was just putting it in writing; isn't that  
5 correct?

6 **A.** It is except for the fact we tried to  
7 intercede after we got the January 23rd call to change  
8 the outcome of the February 18th letter.

9 **Q.** Okay. But January 23rd was essentially when  
10 they had made their decision.

11 **A.** I'm not sure when internally they made the  
12 decision. But on January 23rd they communicated that  
13 decision to us via telecon.

14 **Q.** Okay. And that was, that was an official act  
15 on their part. It was not an informal notification; is  
16 that correct?

17 **A.** I would consider that official because of the  
18 people that were on the phone on both sides. It was a,  
19 an important call.

20 **Q.** Okay. So let me ask my question again.  
21 Wouldn't you have been surprised if you would have  
22 learned on an informal basis what your review schedule  
23 was from the NRC staff?

24 **A.** Are you asking me would I have expected to  
25 hear this informally in advance of an official call? Is

1 that your question?

2 Q. Yes. Yes.

3 A. I would not expect to hear that because the  
4 NRC processes are very deliberate and very, very, if you  
5 will, systematic in how they do that. And their  
6 management that reviewed the schedule and made a  
7 decision to issue it and authorize Brian Anderson to  
8 send it, send it out probably came to a decision-making  
9 that culminated in calling us.

10 Q. Okay. So isn't it correct then that on  
11 December 4th, 2008, Mr. Anderson was not making a  
12 statement that rose to the level of significance or as  
13 an official act of the agency with respect to the LWA  
14 schedule, review schedule?

15 A. State your, state your question again, please.

16 Q. Isn't it true that the statement by  
17 Mr. Anderson on December 4th to a member of the public  
18 did not rise to the level of official, of an officially  
19 authorized act of the NRC with respect to your LWA  
20 review schedule?

21 A. He was not making an official notification to  
22 us by what he said. However, as a project manager over  
23 the Levy Nuclear Plant representing the NRC in a public  
24 forum answering questions to the public, he represented  
25 NRC staff when he said that and represented the

1 knowledge of obviously what he had at the time of how an  
2 LWA would be processed.

3 Q. Now was -- do you have any knowledge, any  
4 special knowledge about whether Mr. Anderson was making  
5 a statement based on kind of generically how they plan  
6 to handle LWAs or specifically how they were going to  
7 handle yours?

8 A. In the context of the way the question was  
9 asked, the question was asked about our site and the  
10 start of work on our site. So I would have to read from  
11 his transcript that he was answering a question with  
12 Levy as the backdrop of what he was answering.

13 Q. Okay. So let's go to that statement again. I  
14 know you read it out loud. But on Page 28 of 29 of your  
15 exhibit he uses the term "ballpark" on Line 19, does he  
16 not?

17 A. He does.

18 Q. Okay. Is that generally the way NRC  
19 communicates review schedules to the company?

20 A. No. The actual official review schedule is  
21 much more specific and has milestone dates with a  
22 specific day of the month.

23 Q. Okay. And that's because there is an  
24 expectation by the industry, you've got a lot of money  
25 involved in this, to have some, some ability to rely on

1 these dates; correct?

2 **A.** That's correct.

3 **Q.** Okay. And in the next line, Line 20, he uses  
4 the word "somewhere," well the phrase "somewhere on the  
5 order of." Does that imply any specificity or  
6 preciseness of time frame?

7 **A.** That's a judgment of what "somewhere on the  
8 order" means "of two years."

9 **Q.** Okay. You're building a 17-plus billion  
10 dollar nuclear plant. That's not precise for your  
11 purposes, is it?

12 **A.** It's not precise, but I do not read that as  
13 42 months.

14 **Q.** Okay. And then on Line 23, or 22 and 23 he  
15 closes by recap, recapping, "And that's a ballpark time  
16 frame." Correct?

17 **A.** That's correct.

18 **Q.** Okay. So and ballpark and time frame again do  
19 not connote any level of specificity; right?

20 **A.** Again, they do not. However, they also do not  
21 suggest 42 months.

22 **Q.** Now let's go look above that. I guess this is  
23 Mr. Anderson again talking in the paragraph above. And  
24 on Line 15 he says, "And, like I said, we're still  
25 developing the complete review schedule. And once that

1 review schedule is completed that will be publicly, made  
2 publicly available." Do you see that?

3 A. I do.

4 Q. Okay. So he's -- before he gives you this  
5 ballpark, somewhere on the order of statement, he's  
6 stating that they haven't finished their developing the  
7 schedule; right?

8 A. That's correct.

9 Q. Okay. And then again after on Lines 23, 24  
10 and then on to the next page, he says, "The detailed  
11 review schedule activities will be made publicly  
12 available once we've completed the development of our  
13 schedule." Correct?

14 A. That is correct.

15 Q. So again he's reiterating that there's no  
16 finality to any decision-making with respect to the  
17 schedule; correct?

18 A. As of December 4th he is stating that it is  
19 not final, the schedule is not.

20 Q. Okay. Would you go back to Page 12 of your  
21 rebuttal testimony, please?

22 A. Okay.

23 Q. On Lines 5 through 7 you state that Dr. Jacobs  
24 says that PEF should have either eliminated all risks or  
25 waited until PEF had certainty. Do you see that?

1           **A.**    I do.

2           **Q.**    Where does Dr. Jacobs say that they should  
3 have eliminated all risks?

4           **A.**    I would have to go back and look in his  
5 deposition and locate that information.  I don't recall  
6 the specific line.

7           **Q.**    Well, can I, can I give you a copy of his  
8 deposition and ask you -- do you have it with you?

9           **A.**    I do.

10          **Q.**    Okay.  Can you tell me where that is?

11          **A.**    If you'll stand by, I will see if I can locate  
12 that.

13          **Q.**    Okay.

14                   (Pause.)

15          **MR. WALLS:**  If it will help move things along,  
16 we could look this up at lunch and come back and provide  
17 it.

18          **MR. REHWINKEL:**  That's fine with me.

19          **THE WITNESS:**  It's a long document.  Sorry.

20          **MR. REHWINKEL:**  I don't mind getting the  
21 answer to that.

22          **THE WITNESS:**  Okay.  You want to take me to  
23 the page?

24          **BY MR. REHWINKEL:**

25               **Q.**    Can you look on Page 143 of your testimony, of

1 your -- of Mr. Jacobs' deposition?

2 **A.** Can you give me another number sequence?

3 It's -- oh, I see. Page, I have 78. There it is  
4 right -- I don't have Page 143 with me. My exhibit only  
5 has through 120.

6 **MR. REHWINKEL:** Okay. Can I approach and hand  
7 him the deposition? Before I do that, I need to consult  
8 with counsel.

9 (Pause.)

10 Mr. Chairman, due to the potential for  
11 Mr. Miller to rely on -- I don't know what he's going to  
12 say, but the potential for him to rely on confidential  
13 information to answer this question, I'm willing to move  
14 on to another line.

15 **CHAIRMAN CARTER:** Move on.

16 **MR. REHWINKEL:** And get this answer at some  
17 point further after they've had a chance to look it  
18 over.

19 **CHAIRMAN CARTER:** Okay. Move on.

20 **MR. REHWINKEL:** Thank you.

21 **BY MR. REHWINKEL:**

22 **Q.** Okay. Okay. I want to ask you on Page 13,  
23 well, Page 12 and 13 of your testimony some questions  
24 that you may need to point to the answers to.

25 **A.** Okay.



1           **Q.** Or paraphrase as you, if you're aware of doing  
2 it appropriately.

3           On Line 4 of Page 13 you describe a certain  
4 action that you believe would not have occurred. Do you  
5 understand my question there?

6           **A.** I believe I do. Are you talking about the  
7 first few words in Line 4 of Page 13?

8           **Q.** Yes. That and the following "in addition"  
9 language there.

10          **A.** Yes.

11          **Q.** Okay. Was there any time in 2008 prior to  
12 this time frame where a similar statement or condition  
13 had been laid down by the consortium?

14          **A.** Not the way the one condition that it starts  
15 on Page 13, Line 2, where it says, "I was," there.

16          **Q.** Yes.

17          **A.** That is very specific, and nothing like that  
18 had occurred prior.

19          **Q.** Was it -- Mr. Chairman, I know the question I  
20 need to ask. It's difficult to ask it with this, this  
21 kind of information.

22                 Are you familiar with the date that I have in  
23 mind that I'm asking about Mr. Miller?

24          **A.** I think I know what you're, what you're  
25 thinking about. Yes.

1 (Laughter.)

2 Q. This is going to look bizarre in the  
3 transcript.

4 CHAIRMAN CARTER: The Lotto drawing was last  
5 night.

6 Is there a way that you can answer the  
7 question based upon the confidential information without  
8 --

9 THE WITNESS: I think I can make some  
10 statements that might, that are, that are in the public,  
11 not the specific language, but I believe you're asking  
12 me a question about the LOI.

13 BY MR. REHWINKEL:

14 Q. Yes.

15 A. And some of the language embodied in the LOI.

16 Q. Yes.

17 A. And you're asking me is that language like  
18 this language?

19 Q. Yes.

20 A. And the answer is no.

21 Q. Was the company given -- I need a thesaurus to  
22 get some, some similar kind of words here.

23 Did a date come and go in 2008 that was  
24 analogous to this date?

25 A. No, sir, not that was analogous to this as

1 represented by Page 13, the statement on Line 2 that  
2 started with "I was."

3 Q. I think I'll, I think I've asked this question  
4 to Mr. Lyash in his deposition, so I think I'll try to  
5 ask it to him and let you, save you some time on the  
6 stand hopefully.

7 On Page 12, Line 18, you ask a question --  
8 there's a question asked there. Do you see that?

9 A. Yes, I do.

10 Q. Okay. And that's not a confidential question,  
11 is it?

12 A. The question is not confidential.

13 Q. Okay. Can you tell me whether the benefits  
14 that, that you list in the answer below Line 20 will be  
15 preserved in any renegotiation of the EPC or any  
16 renegotiation of an amendment to the EPC or change  
17 order?

18 A. The answer to your question is yes. Because  
19 the EPC is still in full effect and what we're doing is  
20 negotiating a change order which adjusts certain dates  
21 within the EPC agreement, it is our expectation as of  
22 today that we would expect these items beginning on row  
23 21 of Page 12 and continuing through on Page 13, the  
24 bullets, that we would expect those to remain present in  
25 the, after the change order is added to the EPC

1 agreement.

2 Q. Do you have a 100 percent assurance that  
3 that's the case?

4 A. No, sir. In any negotiation, until it's  
5 complete you cannot give a 100 percent. However, I have  
6 been involved in the negotiations and I have not seen  
7 any evidence that would suggest that that would happen.

8 Q. On Line -- on Page 14 -- let me ask you this  
9 actually. Turn on Page 13, the last line there.

10 A. Line 12?

11 Q. Yes. And there is a statement that begins  
12 after "senior management," that is confidential. Do you  
13 see that?

14 A. That is correct.

15 Q. Okay. Now the phrase that, that continues on  
16 to the next page, the sixth and seventh word there on  
17 Line 1, do you see those?

18 A. Excuse me. On Line 1 of Page 14?

19 Q. Yes. Of Page 14.

20 A. The sixth word? I'm sorry. Your question is  
21 what?

22 Q. Well, if you count the words across including  
23 the date as a word --

24 A. Yes.

25 Q. Okay. Do you see those two words, one

1 beginning with an A and the other beginning with a Y?

2 **A.** I do.

3 **Q.** Okay. Did anyone suggest that that would be  
4 the duration of any extension?

5 **A.** I do not understand your question.

6 **Q.** Well, was anyone suggesting that that be the  
7 time frame that someone should wait?

8 **A.** I'm sorry. I still don't understand your  
9 question.

10 **MR. REHWINKEL:** Mr. Chairman, let me consult  
11 with staff -- the counsel for the company for a second.

12 **CHAIRMAN CARTER:** Okay. Take a moment.

13 (Pause.)

14 Mr. Rehwinkel, why don't you also take a  
15 moment to get with the attorney for the other side so  
16 that when we come back, we'll be ready to deal with that  
17 other issue that you mentioned that they were going to  
18 give you some clarity on.

19 **MR. REHWINKEL:** Okay.

20 **CHAIRMAN CARTER:** Okay. See you guys at 2:15.

21 (Recess taken.)

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA        )  
                                  :  
COUNTY OF LEON        )

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11<sup>th</sup> day of September, 2009.

Linda Boles  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734