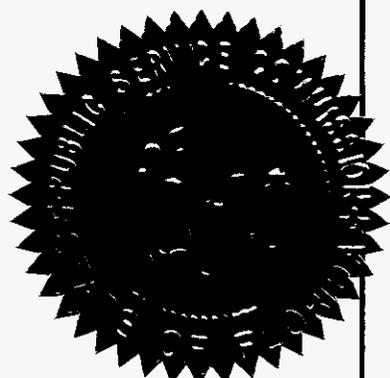


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.
_____ /



VOLUME 11

Pages 1815 through 1965

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PROCEEDINGS: HEARING

COMMISSIONERS

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

DATE: Thursday, September 10, 2009

TIME: Commenced at 2:20 p.m.
Concluded at 4:55 p.m.

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

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

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P R O C E E D I N G S

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

4 CHAIRMAN CARTER: Back on the record, and when
5 we last left, Mr. -- where is Mr. Rhewinkel?

6 MR. BREW: He was here a second ago.

7 CHAIRMAN CARTER: He was fetching another box.
8 I probably don't even want to know what that means,
9 right? Okay. Mr. Walls, have you guys talked -- you
10 and Mr. Rehwinkel, did y'all get together on that
11 confidential information?

12 MR. WALLS: Yes, sir, and as soon as he gets
13 back -- we were going to talk about one of the items,
14 and he left, but we'll talk about it.

15 CHAIRMAN CARTER: Okay. I've got -- I don't
16 want to mess up the record by going -- can you go see if
17 you can find him? I appreciate it.

18 I guess while we're waiting on Mr. Rehwinkel
19 to come back -- I did say 2:15, did I not? Okay. So
20 we'll probably -- tonight we'll go until.

21 We're waiting on Mr. Rehwinkel.

22 COMMISSIONER EDGAR: Mr. Chairman, I
23 apologize. It says 2:12 in my office. Did you say a
24 time that you intend to go to right before I walked in?

25 CHAIRMAN CARTER: I said until.

1 COMMISSIONER EDGAR: Until. Okay. I've got
2 it.

3 CHAIRMAN CARTER: Mr. Rehwinkel.

4 MS. RHEWINKEL: Thank you. My apologies for
5 being late.

6 CHAIRMAN CARTER: Mr. Moyle says it was
7 dilatory. Is that the right what word? Mr. Moyle,
8 what's the right word?

9 MR. MOYLE: Yeah. It doesn't sound as bad as
10 late, but it means the same thing.

11 MS. RHEWINKEL: Well, I wasn't dilly-dallying,
12 but I was late.

13 CHAIRMAN CARTER: You may proceed.

14 CONTINUED CROSS EXAMINATION

15 BY MS. RHEWINKEL:

16 Q Thank you.

17 Mr. Miller, before I continue on the line of
18 questioning that we were on before, yesterday during
19 your direct I asked you about impact evaluation related
20 to Paul Rizzo work. Do you recall that question?

21 A I do.

22 Q And have -- on the break you showed me some
23 information I believe that shows that -- the additional
24 costs for Mr. Rizzo's work plus the deductions from what
25 would be paid to the other vendor essentially resulted

1 in a wash. Is that correct?

2 A That's correct.

3 Q Okay. Thank you for that clarification.

4 And earlier in the day I was asking you
5 questions about Mr. or Dr. Jacobs' testimony and I asked
6 you where he said -- I think it was on page -- I was
7 asking you a question about what he said, and you were
8 looking in the deposition. Did you locate what you were
9 referring to?

10 A Yes, sir; however, it was not in the
11 deposition. It was in the direct testimony.

12 Q Okay.

13 A And so, just for clarity, you were asking me
14 about the statement on page 12 of my rebuttal, line 5.

15 Q Yes.

16 A The basis for that statement is in the direct
17 testimony of Mr. Jacobs on page 6 and on line number 20.

18 Q Yes.

19 A All right. So I'll just read, "Signing such a
20 huge contract with so many risky issues remaining
21 unresolved or the outcomes not fully understood can lead
22 to renegotiation that can make the overall project costs
23 more expensive," and then he's going to go on to say,
24 "These unresolved risky issues include," and on the next
25 page there is probably three, four, five, six items on

1 here, LWA schedule, joint owners, COL schedule,
2 deterioration of capital markets, broad economic
3 weaknesses and legislative uncertainties. And so the
4 statement that's in my rebuttal testimony is saying that
5 it's unlikely that you would get clarity on all of these
6 items, particularly including those ones under No. 4 of
7 page 7 of his direct testimony that you would at any
8 point in time have clarity and, if you will, to use his
9 language, issues that are resolved, more outcomes not
10 fully understood.

11 Q But he doesn't use the word "eliminate"?

12 A I'm sorry, sir?

13 Q I'm sorry. He does not use the word
14 "eliminate" or "eliminated."

15 A You're correct; however, when you -- it's just
16 the way I've read his direct testimony to say, "with so
17 many issues remaining unresolved or outcomes not fully
18 understood," meaning they're not dispositioned or -- if
19 you will, or resolved such that you have clarity on
20 them, and that's what my comment is about on page 12.

21 Q Let's go back to your testimony on page 13 and
22 14.

23 A Okay.

24 Q I was trying to ask you about the words you
25 used at the top of page 14 on line 1. Did you mean to

1 state there, instead of the two words that you used, the
2 sixth and seventh word on that line, "into another
3 year"?

4 A No, it was not meant to read that. The
5 specific line on page 13, if you will, and line 4, where
6 the word starts, "In addition," that statement is an
7 absolute statement that gives a date in it.

8 Q Okay. I'm talking about on page 13 going to
9 the top of page 14.

10 A Right. And so my point is, if you're having
11 trouble understanding the language on line 1 of page 14,
12 particularly the two words you've pointed out, I would
13 ask you to go back to page 13 where it's stated very
14 clearly, beginning on line 4, where it starts with the
15 sentence, "In addition."

16 Q But you're not trying to convey there that
17 there would be a whole other calendar period that
18 someone was asserting that there should be -- that that
19 should pass, is that right?

20 A Let me see if I can paraphrase. There was a
21 window of opportunity, and that window of opportunity
22 had an end date, and that end date did not involve the
23 phrase at the top of page 14, the two words you said,
24 that you pointed out to.

25 Q You testified yesterday, did you not, that you

1 learned in late December that the NRC was going to give
2 you its milestone letter by January 30th or 31st; is
3 that correct?

4 A That's correct.

5 Q Okay. Did you convey that to the Consortium?

6 A I don't know if I conveyed it to the
7 Consortium, but I certainly conveyed it to our senior
8 management.

9 Q Did they convey it to the Consortium?

10 A I don't recall if they did or not.

11 Q So you don't know if that was a consideration
12 on when to sign the EPC?

13 A There is -- that is addressed in my rebuttal
14 testimony, and let me see if I can locate that
15 specifically in here. That specific question you're
16 asking is identified.

17 Okay. Yes. Page 13, line 8, where it says,
18 "This decision."

19 Q Yes. How do you know that's the case?

20 A We know that by virtue of the ongoing
21 negotiations and their communication to us of the window
22 of opportunity.

23 Q Is it your testimony here that the Consortium
24 would have preferred to not sign a contract or make a
25 sale to Progress Energy Florida at all if they could

1 not -- if you could not reach agreement as reflected
2 in -- as reflected in this paragraph, lines 1 through 11
3 of page 13?

4 A To answer your question, it's a
5 multiple-answer question, and so I'd like to point to
6 parts of my text here that would answer it.

7 First of all, I would point you to page 14,
8 line 8 where it starts with, "As a result." So that was
9 an outcome from not doing that, and then I'm going to
10 also point you to page 17, line 7. So I cannot answer
11 your question of what would be the ultimate outcome. We
12 just know what was available in this window of
13 opportunity and we knew the consequences of -- beyond
14 the window of opportunity, of what you would not get,
15 but we still didn't have clarity on, as it says on line
16 7 here, of whether this would happen or not.

17 Q Does it make business sense that the
18 Consortium would have behaved in a way contrary to the
19 first five words on line 8 of page 17?

20 A Okay. On page 17, what line, sir?

21 Q Line 8.

22 A Line 8. The point is is we don't know because
23 it's their decision based on their business execution of
24 what they would do, and so I cannot tell you with
25 certainty 100 percent what they would have done.

1 Q Okay. But we can agree, can we not, that the
2 value of the transaction was in the billions with a B;
3 correct?

4 A That is correct.

5 Q Okay. And does it make any sense in the
6 business world that that company would have foregone the
7 ability to make a sale?

8 A I would be speculating if I tried to tell you
9 what I believe they would do because I do not know the
10 other negotiations they had ongoing both that were
11 public and non-public and their willingness to continue.

12 Q Okay. Well, they did share with you, did they
13 not, some of the other negotiations that they had
14 ongoing; correct?

15 A We are aware of negotiations, for example,
16 with FPL which have been in the media.

17 Q Okay. Back on page 12 of your rebuttal
18 testimony. It's not a line number, but it's the second
19 bullet after line 21. Do you see that?

20 A Yes, sir.

21 Q Okay. Now, can you point me to somewhere in
22 your testimony where that phrase there is characterized
23 with a little more specificity?

24 A Do you mean what it's referred to as?

25 Q Yes.

1 A Well, let me look here slowly and see if I can
2 locate it.

3 Q I can't characterize it, so I'm depending upon
4 you to help had me out here. I can't do it publicly, I
5 mean.

6 A I understand, and I'd request you not call it
7 out, what we refer to it as.

8 I'm not sure if the phrase for this is
9 actually detailed out in my rebuttal testimony.

10 Q You know what that number represents, do you
11 not, I mean, what that -- how to describe that? Okay.
12 I'm going to find a way to characterize that with some
13 other information. It may be in your deposition, but I
14 don't know that that's --

15 A It could be.

16 Q Okay. But we don't have that in the record at
17 this time, and I think Mr. Lyash may refer to it in his
18 testimony. But how do you know that -- are you
19 expecting to retain this benefit or favorable contract
20 term and/or condition, are you expecting to retain that
21 in a renegotiation?

22 A Yes, if you're referring to the last bullet on
23 page 12.

24 Q Yes.

25 A Yes, we are.

1 Q And how do you know you will?

2 A Based on ongoing discussions as part of our
3 negotiations.

4 Q How do you know --

5 CHAIRMAN CARTER: Mr. Moyle. One second --

6 MR. MOYLE: I mean, I don't think it's fair
7 for a witness -- he couldn't answer something a minute
8 ago because it was speculation and it required him to
9 speculate as to what may be the result of negotiations,
10 so then he's asked this question and he can speculate,
11 oh, yes, this will be retained, and they both of them
12 call for speculation and both of them are inappropriate.

13 CHAIRMAN CARTER: To the objection, both to
14 Mr. --

15 MR. WALLS: Well, I'm not sure it's an
16 objection to a question. He's objecting to the witness'
17 answer.

18 CHAIRMAN CARTER: Hang on a sec, now. The
19 objection is to the process.

20 MR. WALLS: If I might clarify this process,
21 the witness is talking about negotiations that he is
22 involved with personally. The other series of questions
23 were based on a hypothetical: What would happen if?
24 This set of questions is asking specifically about
25 negotiations that Mr. Miller is involved in.

1 CHAIRMAN CARTER: Mr. Moyle.

2 MR. MOYLE: But my point is, if he said -- if
3 the question was along the lines of past tense, as we
4 sit here today, do you have a representation of this,
5 and there's probably hearsay objections and things
6 getting into the record beyond that, but the question as
7 I heard it phrased was, projected into an event in the
8 future, do you expect in the future to be able to retain
9 this when you sit down and negotiate, and there's just
10 no way of answering that because it's wholly dependent
11 on the actions of a third party, you know, that is going
12 to be on the other side of the table, and I just think
13 it's not appropriate.

14 MR. WALLS: If I might briefly respond.

15 CHAIRMAN CARTER: Sure.

16 MR. WALLS: The witness was responding based
17 on his personal knowledge. That's not hearsay. He's
18 involved in these negotiations today.

19 CHAIRMAN CARTER: Okay. Mr. Rhewinkel.

20 MS. RHEWINKEL: Well, I would just prefer to
21 in my post-hearing comments make note of where
22 speculation may or may not have been self-serving. So I
23 have -- I would just prefer to move on with my
24 questioning. I'm satisfied with the answer that I've
25 gotten so far.

1 CHAIRMAN CARTER: Let's move on.

2 MS. RHEWINKEL: Although I understand
3 Mr. Moyle's objection.

4 CHAIRMAN CARTER: Okay. Just move on.

5 BY MS. RHEWINKEL:

6 Q Do you have Mr. Lyash's testimony with you?

7 A No, I do not.

8 Q Can I show you on page 7 of his confidential
9 testimony a bullet point that's the second one after
10 line 10 --

11 A Yes.

12 Q -- and ask you if the characterization there
13 is the same one that we were referring to?

14 A It is.

15 Q Okay. How do you know that you got or you
16 received that benefit the first time around or when you
17 signed the contract?

18 A I know that from my participation in the
19 negotiation of the EPC contract and the buildup of the
20 final overnight CAPEX contract price.

21 Q Well, to know whether you've got it, would you
22 have to know whether any other entities that the
23 Consortium was doing business with would have received
24 it or been offered it, that benefit?

25 A I'm sorry, sir. Are you asking me, do I know

1 for a fact that other companies have received it?

2 Q Is it a benefit -- let me ask it this way: Is
3 it a benefit that you would receive compared to what
4 other companies may or may not have received negotiating
5 with the Consortium?

6 A I believe the answer to your question is it
7 depends when, what happened in a certain year versus
8 some other year.

9 Q Okay. So do you know -- how would you know
10 whether you got it or didn't get it is my question?

11 A The reason I would know that is because, as we
12 went through the negotiation and we actually had work
13 done by the Consortium to build up an indicative price,
14 and then, as that worked its way through the final
15 negotiations and as I watched the numbers, that's how I
16 know.

17 Q Now, once you renegotiate the EPC, if you do
18 that successfully, why would you still be allowed to
19 have that benefit?

20 A First of all, sir, we're not renegotiating the
21 EPC. It's a change order to the EPC. The EPC is in
22 full effect right now. I know that from our discussions
23 with the Consortium and the insights we're getting on
24 dollar changes associated with the schedule changes
25 we've asked for.

1 Q Page 14 of your rebuttal testimony, lines 2
2 through 5, there's a statement that begins with
3 "Likewise."

4 A Yes, sir.

5 Q Okay. How certain are you that that was going
6 to be the position of the Consortium?

7 A That position was communicated to us by the
8 Consortium.

9 Q Isn't it true that it was not communicated in
10 writing?

11 A That is correct, that it was not. It was done
12 through multiple interactions with the Consortium.

13 Q Was this done even in the face of you
14 expressing concern about your -- the timing of your LWA
15 and review milestone?

16 MR. WALLS: Objection, mischaracterization of
17 his testimony.

18 CHAIRMAN CARTER: To the objection, Mr.
19 Rehwinkel.

20 MS. RHEWINKEL: I'll rephrase the question,
21 Mr. Chairman.

22 CHAIRMAN CARTER: Okay. Rephrase.

23 BY MS. RHEWINKEL:

24 Q Did senior management negotiating with the
25 Consortium inform them of the impending LWA review

1 schedule during negotiations?

2 A I believe they talked about the status of our
3 schedule.

4 Q Okay. And you say "talked about," to the
5 Consortium?

6 A Yes.

7 Q Okay. And is it your testimony, if you know,
8 that the statement that is reflected in the sentence
9 that we just referred to in your testimony was
10 communicated to the company even in the face of those
11 talks between the company and the Consortium?

12 A I'm sorry. Your question had two parts and I
13 didn't follow it.

14 Q Okay. You stated that the company had talks
15 with the Consortium about the LWA schedule.

16 A We had talks with the Consortium on the status
17 of our review schedule by the NRC, which included all
18 three parts.

19 Q And wasn't it important to you to make sure
20 that the schedule was as you assumed it to be in
21 negotiating the terms and conditions and the pricing in
22 the EPC?

23 A It was important; however, we had no evidence
24 to think that we were going to get the call on
25 January 23rd that we received on the LWA.

1 Q Okay. But you did express to them that it was
2 important -- "them," meaning the Consortium, that it was
3 important that you get the LWA schedule as you expected
4 to as part of the negotiations; correct?

5 A I do not know if we expressly talked about LWA
6 other than beyond the other EIS and the COL, because all
7 three dates were important to the overall execution of
8 our project.

9 Q Okay. So, to that degree, you communicated
10 that to the Consortium; correct?

11 A We communicated the status of the fact that
12 we -- the status of the review schedule.

13 Q Now, in the face of those communications, is
14 it your testimony that the Consortium maintained the
15 position as reflected in this sentence on lines 2
16 through 5 of page 14?

17 A It is my testimony that that sentence on page
18 14 beginning on line 2 that starts with "Likewise," that
19 was -- that is an accurate statement and it was without
20 regard to the review schedule by the NRC.

21 Q When you say "without regard," you're saying
22 from their standpoint they didn't care what your review
23 schedule said; right?

24 A Yes, sir. If I can take you back to page 13
25 and line 2, that was a definitive window of opportunity.

1 Q So is it --

2 A And as I further state on line 8 of that same
3 page where it says, "This decision."

4 Q So you expect the Public Service Commission to
5 agree with you that, if you did not adhere to the
6 statement on page 13 -- well, actually the statement on
7 page 14, lines 2 through 5, that the whole deal would
8 have been off and you would not have negotiated an EPC
9 with Westinghouse/Shaw, Stone & Webster?

10 A No, sir, that's not what you would take from
11 this. This statement on page 14, line 2 is saying what
12 was the immediate event that would likely take place.
13 How it would be resolved long-term and whether it would
14 be fully resolved I don't know because that's
15 hypothetical.

16 Q Okay. Let's go to page 15, line 15, the Q&A
17 there. It's not true, is it, Mr. Miller, that
18 Dr. Jacobs claims that PEF would not have signed the
19 agreement if they had received the NRC review schedule
20 that they ultimately received in early December; is it?

21 A What is your specific question?

22 Q He doesn't say what this question implies,
23 does he?

24 A Under my deposition there was a hypothetical
25 question that he asked me.

1 Q That I asked you.

2 A Excuse me, that you asked me, sorry.

3 So now I've read it, so what's your specific
4 question?

5 Q Dr. Jacobs does not say what you said he said
6 here, does he?

7 A I'll have to go back and read the language in
8 his --

9 Q Well, do you have his testimony with you?

10 A I do.

11 Q Okay. And I think it's on page 11.

12 A Page 11.

13 Q Carrying over to page 12.

14 A Right. So the basis of the question on my
15 rebuttal testimony on page 15 is the Q&A that's on page
16 11 starting with the question, and then the answer is
17 no.

18 Q Well, Dr. Jacobs quotes your deposition
19 testimony correctly; does he not?

20 A He does.

21 Q Okay. I mean, he's not trying to convey to
22 the Commission something other than what's in the
23 testimony that he puts right there in his direct; is he?

24 A He is not; however, the line of questioning
25 that occurred in my deposition was very specific on the

1 questions I was asked and what I answered, and so the --
2 you cannot draw a no from just that Q&A which is present
3 from my deposition.

4 Q Well, let's look at page 12 of Dr. Jacobs'
5 testimony on lines 4 and 5. Do you disagree with that
6 first sentence there starting, "The EPC contract"?

7 A Is this confidential?

8 Q No, it's not marked that way on --

9 A Okay. All right. Because it says it at the
10 top of the page, that's why I asked.

11 It is a true statement that, before the final
12 contract amendment is done that incorporates the
13 schedule shift, there are extensive revisions in several
14 of the exhibits to the EPC agreement.

15 Q And that's what your deposition testimony
16 says, isn't it, that's quoted there?

17 A Where is the quote?

18 Q Well, I'm talking -- well, strike that
19 question.

20 Let's look on page 16 of your rebuttal
21 testimony --

22 A Okay.

23 Q -- on line 7 through ten.

24 A Yes, sir.

25 Q Now, you did not negotiate the provisions --

1 provision or provisions in the EPC agreement that's
2 described in those lines with the LWA schedule in mind;
3 did you?

4 A The provisions this is referring to is not
5 just for LWA. It would be for anything that would drive
6 the need for that.

7 Q But I guess my question -- let me ask it a
8 little bit better here. You were not anticipating when
9 you were negotiating the EPC that the LWA would be
10 effectively denied, correct?

11 A That is correct. To be specific, if you're
12 referring to what's in lines 7 and 8 of page 16, those
13 provisions?

14 Q Yes.

15 A Those provisions were negotiated probably
16 early 2008.

17 Q So they weren't negotiated with respect to the
18 LWA schedule list that you managed in the fall of 2008,
19 nor with the idea that the LWA would be denied; correct?

20 A They were not. They were put in place to
21 handle exactly what it talks about on lines 7 and 8.

22 Q But you're saying that that provides a
23 mechanism -- I won't ask --

24 A I think in the summary statements, I think
25 there is language -- there is a framework that's now

1 inside the contract.

2 Q Okay. On lines 20 through 23 of page 16, why
3 would this be the case with respect to the behavior of
4 the Consortium, whereas, if you had not negotiated --
5 not executed the EPC by the end of the year, their
6 behavior would have been different?

7 A Let me explain without discussing what's
8 actually written here.

9 Many of the large engineered equipment for the
10 Levy Plant under the EPC agreement come from
11 sub-parties. For example, our reactor vessel and steam
12 generator is being fabricated by Doosan in Changwon,
13 Korea, and those are separate companies. And so their
14 decisions obviously can be impacted by the Consortium.

15 Q But you knew in late December, did you not,
16 that by the end of January that you were going to get a
17 decision from the NRC about your review schedule;
18 correct?

19 A We anticipated getting our review schedule by
20 the end of January.

21 Q But apparently you had been told with some
22 degree of specificity that you would, correct?

23 A Yes, however, as I said earlier, we were also
24 told we were going to get it in December, too. So we
25 were, you know, expecting to get it in January based on

1 the latest information from our project manager.

2 Q Did you have a specific date instead of
3 sometime in January, you had a specific date --

4 A Before the end of January.

5 Q On page 17 of your testimony in lines 3
6 through 6, that is speculation, is it not, the sentence
7 that starts, "Thus"?

8 A No, sir. That is our belief based on what we
9 have in place.

10 Q But you don't really know that until you
11 conclude their EPC change order negotiations, correct?

12 A I cannot say it with finality; however, based
13 on the ongoing negotiations and our discussion with the
14 Consortium, I think what we're seeing as early estimated
15 indicative numbers supports what we say here.

16 Q Okay. On page 17, lines 7 through 10 -- I
17 think we've already discussed that. I'll move on.

18 On page 19, lines 11 through 15 -- actually on
19 line 12, does Dr. Jacobs use the term "mere presence"?

20 A I would have to go back and look specifically
21 in his deposition and his direct testimony to validate
22 the word.

23 Q I guess the record will -- well, is -- have
24 you placed into evidence or into -- as an exhibit his
25 deposition testimony that uses the word "mere presence"?

1 A I have in my rebuttal exhibit, Exhibit No.
2 GM-3, and I will -- that is what's attached to my
3 rebuttal.

4 Q Well, let me ask you this: Rather than you
5 spending the time to go through that, if the words "mere
6 presence" are in his deposition, it would be in that
7 section that you've attached?

8 A I don't recall, when we developed this, if
9 it's the exact wording or if it's our interpretation of
10 his wording.

11 Q Okay. On page 21 of your testimony, your
12 rebuttal testimony --

13 A Yes.

14 Q -- lines -- well, in that Q&A at the top of
15 the page there, you're giving a description that
16 somewhat repeats what you said in your direct testimony
17 describing the LWA; correct?

18 A It is a refresher.

19 Q Okay. And on lines 10 through 12 you state,
20 "So we are excavating a hole, keeping the water out and
21 placing rebar and forms awaiting the commencement of
22 construction under the LWA scope," correct?

23 A Right. That is a sort of a generalized,
24 paraphrased way of explaining the overall scope of work
25 from excavation through the pouring of first concrete.

1 Q But the NRC doesn't look at it in that
2 simplistic terms, do they?

3 A Certainly not, and if you look at our
4 submittal letter on July 30th, we're very explicit
5 exactly what we want to do: Placement of
6 roller-compacted concrete, placement of permeation
7 grouting. It's very specific and technical language.

8 Q And it has a geotechnical or geological
9 complexity to it, does it not?

10 A I'm sorry, what does?

11 Q What you described there, the excavating the
12 hole and keeping the water out.

13 A And you said -- you asked me, does it have a
14 complex geotechnical --

15 Q Does it have a geological complexity to it?

16 A The LWA or the LWA activities?

17 Q That activity in the LWA.

18 A In this case it is the activity of excavating
19 the hole which requires the installation of the
20 diaphragm wall and grouting is difficult because of
21 groundwater, and then, beyond that, you place
22 roller-compacted concrete and mud mat and water membrane
23 and forms for rebar and rebar.

24 Q That's also difficult based on the type of
25 rock that you're doing the grouting in, correct?

1 A Grouting in limestone is pretty common.

2 Q Okay. On page 22 of your rebuttal testimony,
3 are you familiar with 10 CFR parts 50 and 52?

4 A I am.

5 Q Okay. Is there anything in those rules that
6 carries with them a presumption that an LWA will be
7 approved?

8 A In both 50 and Part 52, considering the scope
9 of those two 10 CFRs, licenses for plants, ESPs, COLs
10 and LWAs, there is no presumption that the applicant
11 will be granted that permit or authorization.

12 Q Is there any statement by the NRC that gives
13 any presumption of granting an LWA under those rules?

14 A Again, there would not be because the
15 regulatory body would not give a presumption of
16 everybody will get it if they ask. They just would not
17 do that because you have to demonstrate the proper
18 information necessary to secure that approval or
19 authorization.

20 Q The LWA rule that you refer to in this -- on
21 page 22 of your rebuttal testimony was not written for
22 the benefit of any single company, was it?

23 A It was not. It was written for the benefit of
24 the industry.

25 Q Okay.

1 A That revision of the rule that took place in
2 2007.

3 Q Now, there's nothing in the rule that is
4 intended to address or accommodate a particular
5 geological condition at a particular site; is there?

6 A I'm not aware that it's that explicit. It
7 describes a regulatory process that says the applicant
8 will provide the necessary information. The NRC will
9 review that and then render a decision.

10 Q Okay. But there's nothing in here that says
11 that, if you have a geologically complex site, that
12 you're still going to get an LWA as long as you apply;
13 does it?

14 A It does not say that, nor does it say, if you
15 have a geologically easy site, you're going to get an
16 LWA.

17 Q So it's not intended to shortcut the process
18 for NRC review of geological conditions when the public,
19 health, safety and welfare is impacted with respect to
20 nuclear energy; correct?

21 A The LWA process is -- the answer to your
22 question is -- and I'll see if I can answer it so I
23 don't get the tense yes or no right, but the purpose of
24 the LWA rule is to provide a mechanism for the NRC to
25 give prior approval to work activities that should be

1 regulated and authorized by the NRC for the protection
2 of the public health and safety, such as engineered
3 backfill which can have a consequence on the foundation
4 and the earthquake response of a plant.

5 Q But the activities that are governed by an LWA
6 and under which they cannot be done without the LWA once
7 they are within the scope of an LWA would be subject
8 to -- could be reviewed under a COLA; correct?

9 A As a matter of fact, in our case the work
10 scope that was previously under the LWA, that work scope
11 is still in the COLA and would still be authorized under
12 the COL.

13 Q So there really is no difference in the review
14 standard by the NRC staff whether it's in an LWA or a
15 COLA, as long as it has to be in one or the other;
16 correct?

17 A It will always be in both, but the LWA would
18 be asking for permission on a particular scope of the
19 construction in advance of the COL issuance.

20 Q So my question to you is the -- by having
21 activities authorized under an LWA is not some sort of a
22 streamlined regulatory review, correct?

23 A I don't refer to that as a streamlined. The
24 Part 52 process in general is referred to as a
25 streamlined process. LWA is embodied in that, but it's

1 also under Part 50, so I don't necessarily know if
2 that's the right phrase to call it streamlined.

3 Q Okay. But there's not a lowering of the
4 standard of review?

5 A Oh, no, sir. As a matter of fact, the work
6 scope review is still the same to validate the nuclear
7 safety implications of that work.

8 Q Do you know anymore about the Vogtle site and
9 whether the LWA there was -- well, let me ask it this
10 way: There was an LWA issued as a part of the ESP at
11 the Vogtle site, correct?

12 A That is correct.

13 Q And you -- do you have any knowledge today
14 that you didn't have yesterday about the time frame that
15 that LWA was approved?

16 A I do, but I have not seen the immediate direct
17 documents. I just know from discussions.

18 Q What do you know?

19 A It was approximately 24 months.

20 Q Okay. And was a milestone letter issued in
21 that regard?

22 A I don't know if, when the ESP was issued or
23 whether, if the LWA request came at a different time
24 than the ESP, if a letter was issued or not. I don't
25 recall. I've not seen that information.

1 Q But what's clear is that, before December 31,
2 2008, you were not aware of what that milestone -- of
3 what the time frame for the LWA review for Vogtle was,
4 correct?

5 A Well, noting that their LWA was done under an
6 ESP, I did not review that schedule.

7 Q Because you didn't think it was particularly
8 instructive for your case, correct?

9 A I did not know if it would be instructive
10 based on the subject of the detailed information
11 provided under their ESP.

12 Q Let me ask you to turn to page 25 of your
13 testimony, and actually as part of my question if I
14 could ask you to turn back to 24, there's a sentence
15 that starts on 24 and carries over to the first three
16 lines of 25. Do you see that?

17 A I do.

18 Q Now, as part of the activities that are
19 described in this sentence here that's in these three
20 and a half lines, did you ask the NRC about the LWA
21 review timeline?

22 A At what meeting or forum?

23 Q After October 6, 2008.

24 A I think you've asked this question before, and
25 we asked for what is the status of the schedule on all

1 three items, EIS, LWA and COL.

2 Q And as a part of the activities that you
3 describe here, did you receive an answer?

4 A The schedule is coming, and then, when it was
5 not delivered in December, the schedule was coming in
6 January, by the end of January.

7 Q Okay. Now, did they tell you that you were
8 going to get a schedule in December with a specific
9 date?

10 A It was always -- typically the way they
11 communicate is "by the end of the month." That is
12 typically the way they would say it.

13 Q Okay. And at some point in December they told
14 you that they -- that the holiday schedule was going to
15 make it difficult, is that correct?

16 A That is correct, and the basis for that was
17 certain subject matter experts that were involved in the
18 development of the schedule were unavailable to help
19 finish the schedule development.

20 Q And that was certainly -- well, do you know
21 what time of the month that was?

22 A I do not remember.

23 Q But it was in December?

24 A Well, again, we had dialogue ongoing with the
25 NRC project manager in November and December, so

1 probably we asked him several times during those two
2 months.

3 Q On page 25, lines 4 through 16, you describe
4 documents that you utilized to manage the risks that you
5 face --

6 A Yes.

7 Q -- in your project, correct?

8 A That's correct.

9 Q Now, just so I'm sure, each one of the -- I
10 count an integrated project plan on line 4, on line 8,
11 the NPD reports. Line 9 starts to describe LINC meeting
12 documents, so you have those three documents. Is the
13 December 4th, 2008 meeting or statement by Brian
14 Anderson contained in or reported in any of those
15 documents?

16 A Unlikely. As I stated earlier, his statement
17 was unremarkable to us. We would have expected him to
18 state that very information.

19 Q Let's turn to page 28 of your rebuttal
20 testimony, please. On lines 5 through 7 there, you
21 state that the request that you received in early
22 September to include certain activities in LWA scope
23 indicated that the NRC was reviewing the LWA as PEF
24 requested the NRC to do; is that correct?

25 A That is correct, and that statement means, by

1 virtue of the fact they were asking us to modify the LWA
2 scope in the September 5th call, told us that they were
3 evaluating the LWA.

4 Q Okay. But the activities that they asked you
5 to include in there were activities that you had assumed
6 that you could do without any authorization from the
7 NRC, correct?

8 A That is correct because excavation is not an
9 activity covered by an LWA. The diaphragm and the
10 grouting were only for the purposes of excavation.

11 Q But just -- I just want to make sure. These
12 are not activities they said move it out of your COLA
13 and move it into the LWA to get it authorized earlier.
14 You were just not going to include it in any type of
15 authorization request to the NRC, correct?

16 A It was our position that the diaphragm wall
17 and grouting could be done in -- and excavation done in
18 advance of an LWA, and then the LWA would cover
19 engineered backfill forward.

20 Q But at the time you filed your COLA, you had
21 an LWA that excluded these activities?

22 A We did; however, in the cover letter on
23 July 30th, we identified the fact that our intent was to
24 install a diaphragm wall and grout to facilitate
25 dewatering and excavation.

1 Q So at the time that you filed your COLA, you
2 didn't have any doubt that the NRC was going to
3 entertain and review your LWA that you had filed as part
4 of the COLA; right?

5 A We did not have any doubt July 30th that they
6 would not review and issue an LWA.

7 Q So the additional activities that you added in
8 on September 12th didn't enhance the likelihood that you
9 were going to get an LWA review schedule the way you
10 wanted it, did it?

11 A I don't know if you could say it didn't
12 enhance it. We added scope and removed scope as part of
13 that September 12th change. I do not see that that
14 meant that we would not get an LWA because the fact that
15 they asked us to modify the scope indicated to us they
16 were reviewing it for the purposes of making an LWA
17 decision.

18 Q Well, didn't they ask you to modify the scope
19 because they believed that it needed to be reviewed as
20 part of the LWA rather than you do it without
21 authorization?

22 A They did.

23 Q And on page 28, line 10, there's a statement
24 that says, "There were no inherent problems in applying
25 the design to the site that prevented NRC review." Do

1 you see that?

2 A Yes.

3 Q Now, is that statement something that's
4 written anywhere?

5 A No. That statement is our observation of the
6 NRC's action to docket our COL on October 6th 2008.
7 That was an indication to us from their review that
8 there was no inherent problems in applying the design to
9 the site that prevented their review.

10 Q Again, there's no standard that you could
11 point to, a staff guidance or any rule, commentary that
12 says, if you get a COLA and an LWA docketed, that there
13 are no inherent problems in it?

14 A No, sir, and let me explain. To prepare a COL
15 application, a COLA, there are certain regulatory guides
16 that help define the content of what that COLA must
17 contain, and they're very specific. And so, as the COL
18 application is submitted, the NRC will take it and
19 review it against the regulatory guide. I don't recall
20 the reg guide number right offhand but it started as
21 DG-1145. That does not say, however, that that
22 guarantees that the COL will be approved, because the
23 NRC is going to take many months to review it in quite
24 detail.

25 Q Let me ask to you turn to page 29, please, and

1 I want to visit our old friend, the 18-month/30-month
2 issue here on line 14 through 23.

3 A Yes.

4 ACTING CHAIRMAN EDGAR: Mr. Rehwinkel, would
5 you pause for a moment? Commissioner Skop, did you have
6 a question?

7 COMMISSIONER SKOP: Yes, Madam Chair. Just
8 before we move on, I had some questions on Mr.
9 Rehwinkel's previous line of questioning because, again,
10 I'm trying to get a better understanding of some of the
11 points that are being made because they are very subtle
12 points. But on page 19, lines 18 through 23 of your
13 rebuttal testimony, you speak to the LWA and under what
14 federal regulations and parts that the NRC issues those
15 under, and that the LWA allows a utility that's
16 constructing a nuclear plant to do certain site work
17 prior to the issuance of the COL; correct?

18 THE WITNESS: That's correct.

19 COMMISSIONER SKOP: And again, I'm not an
20 expert on licensing. I've done nuclear submarines for
21 the Navy, but the commercial nuclear is not my
22 expertise, so I'm trying to learn along the way, but did
23 the ability to request a limited work authorization,
24 LWA, originate as a result of the NRC's revised
25 licensing process?

1 THE WITNESS: No, sir; it did not. As a
2 matter of fact, if you go back to when Crystal River was
3 built, they received prior approval to do some work in
4 advance of their construction permit, but the LWA
5 process has been around for quite a few years, and it
6 was in two parts, LWA 1 and LWA 2. What happened in
7 2007 was the NRC revised the rules to remove those
8 things which really did not have a nexus to nuclear
9 safety, that would be governed by other state and local
10 approvals. So -- and I'll give you a specific example.
11 In the case of Vogtle, they're excavating right now, and
12 that is not done under an LWA because that was removed
13 from LWA scope under the revisions that took place in
14 Part 50 and Part 52 in 2007, and a way of looking at it
15 is, for those kind of activities that you may do to
16 build like a WalMart, the NRC concluded they have no
17 safety nexus so they don't need to review those;
18 however, for any work activity that clearly does have
19 some nexus to safety through the foundation or how the
20 nuclear island will behave in a seismic event, then
21 they, you know, reserve the right to provide prior
22 approval of that work.

23 COMMISSIONER SKOP: So I guess this was not
24 the first LWA that the NRC has ever considered, correct?

25 THE WITNESS: It's not. They were called

1 Limited Work Authorization 1 and Limited Work
2 Authorization 2 in the past.

3 COMMISSIONER SKOP: How about in the current
4 review of new nuclear plants, is this the first LWA?

5 THE WITNESS: In the current wave of new
6 plants, our application included an LWA and, as we
7 stated earlier, the Southern Company application for an
8 ESP, early site permit, included -- subsequently
9 included an LWA for that.

10 COMMISSIONER SKOP: Okay. Which -- if I may
11 ask, which LWA has been actually considered and acted
12 upon by the NRC?

13 THE WITNESS: The LWA that was part of
14 Southern's -- for the Vogtle site.

15 COMMISSIONER SKOP: And was that granted or
16 denied?

17 THE WITNESS: It was granted about a month
18 ago.

19 COMMISSIONER SKOP: All right. And with
20 respect to the current licensing process, would you
21 agree that that's still relatively untested and not
22 fully robust?

23 THE WITNESS: It is going through a testing.
24 The new Part 52, which is the new part, has three
25 components: ESP, design certification and COLs. ESPs,

1 there have been several of those issued. The design
2 certification, there are at least two technologies that
3 are design certified, including the AP1000. And the COL
4 applications, under the third part, COLs, that's now in
5 progress.

6 COMMISSIONER SKOP: And with respect to
7 exercising its authority, the NRC makes its own
8 independent decisions with respect to regulatory
9 approvals; is that correct?

10 THE WITNESS: That is correct.

11 COMMISSIONER SKOP: Based upon some of the
12 prior questioning from Mr. Rehwinkel, did PEF reasonably
13 expect that, upon submitting the necessary information
14 and, you know, providing all that was required, that the
15 NRC would act favorably upon its LWA submittal?

16 THE WITNESS: Yes, we did reasonably expect we
17 would get one.

18 COMMISSIONER SKOP: Okay. And then, just
19 adding upon that, because I know that there was some
20 discussion in the examination about the change of scope,
21 either adding or removing work scope from the LWA
22 application, would adding or removing scope be fatal to
23 an LWA application if all of the necessary information
24 was provided?

25 THE WITNESS: No, it would not.

1 COMMISSIONER SKOP: Okay. All right. Thank
2 you.

3 CHAIRMAN CARTER: Mr. Rehwinkel.

4 BY MS. RHEWINKEL:

5 Q Thank you, Mr. Chairman.

6 Mr. Miller, on page 29, lines 14 through 12,
7 this is essentially reiterating a point you made in your
8 direct testimony; correct?

9 A I'm sorry, which lines again?

10 Q I apologize. Fourteen through 23.

11 A Yes. I had made this statement earlier.

12 Q Okay. Does NRC staff have the ability to
13 devote additional resources to the same degree that a
14 private electric utility does for purposes of making
15 reviews of geological information and other information
16 in the COLA?

17 A Yes, they have flexibility on any particular
18 skill set or subject matter. The NRC, however, does
19 have total cost constraints. While they're fee-based,
20 in other words, applicants like Progress Energy pay for
21 their application, the Congress sets a budget for them
22 and they must live within the budget. How they spend
23 that budget in terms of what areas and the way they
24 spend it, that's under their cognizance to do that.

25 Q Now, Progress Energy Florida can spend as much

1 as they need to get the COLA filed if they have a
2 deadline involved; correct?

3 A State your question again, please.

4 Q Progress Energy has the ability to spend as
5 much as is necessary to get a COLA application filed by
6 a deadline that they find is necessary to meet a need, a
7 generation need?

8 A We have control over the development of our
9 application, yes, but we would do that within a
10 reasonable expectation of cost. It's not do it no
11 matter what it costs.

12 Q But in the case of getting the COLA filed by
13 July 30th, 2008, that was a very high priority for your
14 company; correct?

15 A It was.

16 Q It was, in fact, probably one of the highest
17 priorities; correct?

18 A It was very high for our company, yes, because
19 it supported the overall execution of the Levy project.

20 Q And cost would have been a relatively small
21 consideration if you needed to get the data done and get
22 the work done, get the data collected, the analysis done
23 and get the application filed to meet a deadline;
24 correct?

25 A Not exactly, and let me explain. The purpose

1 of the July 30th for us was not only the COL in-service
2 date, but also to maintain eligibility for production
3 tax credits, which meant your COLA had to be accepted by
4 the end of the year, and so we would weigh the value of
5 that versus the cost it takes to accelerate the COL
6 application development and make sure that those were
7 balanced and reasoned.

8 Q Well, isn't it also true that you had
9 negotiated the pricing for the EPC prior to the filing
10 of the COLA?

11 A We had not concluded the negotiations on the
12 total contract price before the COLA was submitted.

13 Q A significant amount of it had been done,
14 correct?

15 A A significant amount of work had been done
16 toward it, but it was not complete.

17 Q Okay. So you were fairly committed to getting
18 an EPC signed and getting a need -- a generation need
19 met by 2016 in the first half of 2008, correct?

20 A Yes. As submitted in our need determination
21 back in March of last year, we were taking the necessary
22 actions to advance the project to meet that in-service
23 date. Those included submitting the COL application and
24 further, later in the year executing the EPC contract.

25 Q And as we discussed yesterday in your direct,

1 there was a significant effort expended by the company
2 to advance the target date for your COLA for one month;
3 correct?

4 A We didn't -- I didn't say the word
5 "significant." We took actions to advance it one month.

6 Q Because it was important to do so, correct?

7 A Correct.

8 Q Okay. And you did identify a deadline in the
9 September timeframe to make sure that you met the NRC's
10 deadlines for getting COLAs docketed before the end of
11 the year, correct?

12 A State your question again.

13 Q There was a September timeframe that you were
14 trying to beat to get COLAs filed -- to get your COLA
15 filed, that the NRC had to give an indication of that
16 you needed to do in order to get docketed by the end of
17 the year; correct?

18 A It's not quite that simple. There are two
19 things going on. First of all, the federal government
20 works on a different fiscal year than everybody else,
21 and they allocate resources for a particular project
22 based on information you send them in advance. So they
23 reserve the resources, but they are reserved by calendar
24 years -- or, excuse me, by fiscal years, which I believe
25 is October 1st for them. So our application, as planned

1 by the NRC in their resource loading, was intended to go
2 in in the fiscal year governed by July, 2008.

3 The second issue, though, is this issue with
4 the eligibility for production tax credits by having
5 your COL accepted by the end of 2008. The issue there
6 was there was ambiguity in whether it had to be
7 submitted or accepted, and so we wanted to make sure
8 there was no concern for us, so we wanted to get it in
9 in time to go through its necessary review and be
10 docketed in advance of the end of December.

11 Q Hadn't the NRC put utilities on notice that
12 they had to have their applications in by the end of
13 September in order to get docketed to ensure that they
14 got docketed by the end of the year, 2008?

15 A There was dialogue in the industry, yes, that
16 the NRC was telling utilities that, you know, if you're
17 concerned about this deadline of production tax credits,
18 do not expect to submit your application late and then
19 guarantee that it will be docketed by the end of the
20 year. That was in informal industry meetings that they
21 would say that.

22 Q But that dialogue was reflected, was it not,
23 in certain monthly reports that were produced by your
24 organization?

25 A Most likely it was because clearly we were

1 intent on ensuring that our application would be
2 submitted on time to make us eligible.

3 Q Now, you had a pretty -- you had established a
4 goal of filing your COLA by July 30th, and that was an
5 important goal within your company; correct?

6 A That is correct.

7 Q You had a significant amount of money invested
8 in the site, the land; correct?

9 A In this case, and based on the dollar value,
10 to me the number was significant.

11 Q And you had a significant amount invested
12 already in terms of the COLA preparation, correct?

13 A That's correct.

14 Q And you had a significant amount of money
15 invested already in the long-lead purchases under the
16 NOI, correct?

17 A Under the LOI.

18 Q LOI, I apologize.

19 A We had authorized that LOI in March, and so
20 there was money being spent on the long-lead procurement
21 chain.

22 Q And how much millions of dollars?

23 A I believe that number is confidential.

24 Q Okay. Millions?

25 A Oh, yes.

1 Q Many millions?

2 A It was -- without giving the number --

3 Q Okay. So you had all this invested, so it was
4 important for you to meet that deadline; correct?

5 A Yes, sir; it was.

6 Q Okay. Now, on the other side, you're saying
7 the NRC -- it's your belief that the NRC could have met
8 the review schedule that -- of your data you had
9 collected in your 18 months in 30 months, correct?

10 A Yes.

11 Q Okay. But they didn't have the same
12 considerations at stake that you did, did they?

13 A They did not; however, that's why my 18 months
14 versus their 30 months, I'm giving them allowance for
15 the fact that they're not under the same pressures as I
16 was. So I would reasonably believe that, if I could do
17 all this work, including the borings, and complete that
18 in 18 months, reasonably, at their pace they should be
19 able to do that review in 30 months.

20 Q Okay. But I think, as we reviewed yesterday,
21 you acquired your site at the end of December, 2006;
22 correct?

23 A Actually what I said was we announced the site
24 December of 2006. We then closed it at a later date,
25 closed the property.

1 Q But you began work on the site, data
2 collection and site characterization on the site right
3 around that time if not shortly thereafter; correct?

4 A We were -- yes. In the late 2006 timeframe,
5 we were collecting data at the site.

6 Q Okay. So -- and that was about 18 months
7 before your COLA deadline, correct?

8 A That's correct.

9 Q So that really defined your timeframe for
10 collecting, analyzing and submitting the data to the
11 NRC; correct?

12 A That's correct. Just to be clear, the time it
13 took from when we were mobilized at the site, collecting
14 geotechnical borings, doing all the analysis, doing the
15 foundation design, packaging the application and
16 submitting it, about 18 months.

17 Q And that was about the last time, give or take
18 a month or two, that you could have done this and met
19 all of the licensing, tax credit deadlines and your COD
20 deadline; correct?

21 A No, I wouldn't say that's correct because we
22 were docketed on October 6th. So we still had margin
23 with respect to December 31st.

24 Q I was talking about, as far as getting the
25 application in, you've got to get it in time to get it

1 docketed. It takes a couple of months, maybe 90 days to
2 get it docketed?

3 A Typically 60.

4 Q But again, the NRC staff, under totally
5 different set of time constraints, correct, budgetary
6 time constrains, resource time constraints, and they're
7 doing a different thing. They're reviewing data.
8 They're not collecting it. They're not packaging it.
9 They're not submitting it. Correct?

10 A They're not; however, we've done the work,
11 collected the raw data, package it, analyze it, provide
12 the results of that analysis, and we hand that over to
13 them in great detail.

14 Q Did you look at a discovery response that was
15 provided to Public Counsel's Office that constituted
16 your LWA analogous request for Crystal River 3?

17 A I don't recall looking at it, but that was
18 done what, 30 years ago?

19 Q Would you accept my representation that this
20 set of correspondence is essentially the correspondence
21 between the company and the NRC staff to get the LWA
22 activity -- type activity done for CR 3?

23 A I've not seen the document and I cannot
24 comment on if that's the package --

25 Q Can I show it to you? Do you mind if I show

1 it to him?

2 CHAIRMAN CARTER: You may approach.

3 MR. WALLS: Is Mr. Rehwinkel representing that
4 this is, based on his research, all of the documents
5 that were submitted for that?

6 MS. RHEWINKEL: I'm representing to you this
7 is the documents that were provided to me in response to
8 that question in discovery.

9 MR. WALLS: Do you mean from the company?

10 MS. RHEWINKEL: Yes.

11 MR. WALLS: As to what they might have that
12 remains from that long ago?

13 MS. RHEWINKEL: That's correct.

14 THE WITNESS: Without going through every page
15 and reading every word, I generally understand what this
16 document is.

17 BY MS. RHEWINKEL:

18 Q Can you tell me what it is?

19 A If appears to be a request where they note the
20 fact that a construction permit was filed, but they're
21 requesting to start some work in advance of the decision
22 on the construction permit.

23 Q Was the NRC staff's -- the NRC's level of
24 documentation that was required in 1967, '68 similar to
25 what they request today for an LWA?

1 A No, sir.

2 Q Is it much more extensive today?

3 A The analysis in general for most licensing
4 activities is much more detailed today than in 1968.

5 Q Okay. So -- and what we're talking about here
6 is you being a company that's in the very first wave of
7 applications in the last 30 years essentially, correct,
8 for nuclear power plants?

9 A Can you state your question again?

10 Q Your company's application, your COLA that was
11 filed is part of the first wave, if you will, of COLA
12 applications since the late '60s, early '70s; correct?

13 A Yes, there's been approximately 30 years since
14 the licensing process for new plants took place.

15 Q Okay. So -- and you state I think in your
16 testimony that your LWA was only one of 17 COLAs,
17 correct?

18 A Yes. Of the COL applications, and they
19 include all the various sites, ours had an LWA. No
20 others did, and then we had -- the ESP at Vogtle had
21 one.

22 Q Okay. Is it fair to say that, in your
23 company's management, there's nobody that's at a senior
24 level today that was at a senior level 30 years ago in
25 the last wave of nuclear power plant construction?

1 A I believe your question is asking me about the
2 demographic makeup of our company, and --

3 Q Is it correct that today there's nobody in
4 senior management in a nuclear development organization
5 that was in senior management 30 years ago in the last
6 wave of nuclear power plant construction?

7 A It's unlikely.

8 Q Okay. What about the NRC, is there anybody
9 there today that was a senior NRC official today that
10 was there 30 years ago, or was it even called the NRC
11 back then?

12 A No. If you look at this letter, this is the
13 U.S. Atomic Energy Commission. This is before the NRC
14 was formed.

15 Q Okay. So is there anybody that's senior today
16 in NRC in that was senior back then?

17 A I would not know the answer to your question.

18 Q But probably not?

19 A Probably -- 30 years later, probably not.

20 Q So you're making a judgment about comparing
21 your 18 months to their 30 months and you're the very
22 first LWA ascended to a COLA in 30 years?

23 A That's true, however, again I have to
24 reiterate that we did the work in 18 months and we hand
25 over the results of that work and the analysis as a

1 package that's already completed. So they don't have to
2 go back out and do the borings and collect the rock
3 samples and do the analysis because we've already done
4 that.

5 Q The document I've asked you about from the CR
6 3 LWA analogous activity, that's less than 15 pages;
7 correct?

8 MR. WALLS: I'm going to object to this line
9 of questioning.

10 MS. RHEWINKEL: This is my last question.

11 MR. WALLS: Okay. Again, if Mr. Rehwinkel
12 would like to look at the discovery response, the
13 response asked for any documents that existed at that
14 time. I just want it to be clear from the record that
15 this is not and we cannot represent that this was all
16 the documents that were submitted at the time. It's
17 what remains.

18 CHAIRMAN CARTER: To the objection, Mr.
19 Rehwinkel.

20 MS. RHEWINKEL: I'll withdraw the question.

21 CHAIRMAN CARTER: Okay.

22 MS. RHEWINKEL: Mr. Miller, as fun as it's
23 been talking to you today and yesterday and in your
24 deposition, this is the last question I'm going to have
25 for you in this docket.

1 THE WITNESS: Okay.

2 MS. RHEWINKEL: Thank you.

3 CHAIRMAN CARTER: Mr. Brew.

4 CROSS EXAMINATION

5 BY MR. BREW:

6 Q Thank you, Mr. Chairman.

7 Good afternoon, Mr. Miller.

8 A Good afternoon.

9 Q Just to avoid the code, I'll just ask half my
10 questions and you can nod.

11 A Okay.

12 Q As a cleanup matter from yesterday, I had
13 asked you if the CO2 price figures in your exhibit from
14 your direct GM-2 were the same numbers that the company
15 had used in their need case, and you said you'd get back
16 to us when you came up on rebuttal.

17 Can you confirm for me now that the numbers
18 used on your exhibits in your direct were in fact the
19 same numbers as the need case?

20 A Yes. I have validated that our system
21 planning organization updated the GM-2 exhibit,
22 including, for example, the NOx, SOx, et cetera;
23 however, in the case of the CO2 columns, after their
24 review and analysis, the numbers are numerically the
25 same.

1 Q So the only change then was the footnote in
2 that exhibit noting the existence of the Waxman Markey
3 Bill, but not changing any of the values for CO2 prices?

4 A If your question's specific to CO2 --

5 Q Yes.

6 A -- your answer is correct, the footnote 2 is
7 the change.

8 Q Okay. Thanks.

9 For rebuttal purposes, both you and Mr. Lyash
10 introduced testimony on the project feasibility issues;
11 is that right?

12 A That's correct.

13 Q And on page 48 of your testimony in lines 9
14 and 10, you describe the feasibility from a project
15 management perspective. Do you see that?

16 A Line 9.

17 Q Page 49, excuse me.

18 A Yes, but from a project management perspective
19 meaning from my perspective.

20 Q That's exactly what I wanted to get to.

21 So if I were to ask questions from a financial
22 or other perspective, those would be better addressed to
23 Mr. Lyash, but from a project management perspective, I
24 can go ahead and ask them to you?

25 A I think that's probably accurate.

1 Q Okay. From a project feasibility perspective,
2 you've already got your need certification; correct?

3 A That is correct.

4 Q And the site certification from the state,
5 right?

6 A Yes, the site certification order was issued
7 August 26th for the Levy site.

8 Q Okay. Based on those two approvals, is the
9 company prepared to say that it will definitely move
10 forward with the projects?

11 A As we state in our testimony, my testimony in
12 several places, we say we are committed to this project,
13 and I could locate that for you, but it's stated in here
14 either in my May 1st or my direct, but in a broader
15 sense, we are committed to the project and we're
16 executing and taking the necessary actions and
17 deliberate steps. As always, we're continuing to
18 evaluate on an ongoing basis moving forward.

19 Q Okay. And that's pretty much what you say on
20 page 49 on lines 17 and 18. Do you see that?

21 A Yes.

22 Q Okay. So that you're continuing to determine
23 whether to proceed?

24 A That's correct.

25 Q And so, if a circumstance is developed such as

1 you reference, the review of the Vogtle COLA, which is
2 the reference COLA for the AP1000?

3 A Currently the reference COLA is the Vogtle
4 COLA.

5 Q Right. And that the NRC's approval of the
6 reference COLA is a predicate to review of yours?

7 A It is. It is -- our COLA points to our COLA
8 content which is embodied in the reference COLA for
9 Vogtle.

10 Q Okay. And so, if the NRC approved the COLA
11 for Vogtle, would the company then positively say that
12 they're going to moved forward with Levy, or would they
13 still need to consider other factors on an ongoing
14 basis?

15 A The company would consider other factors on an
16 ongoing basis.

17 Q Okay. And so, just to follow straight
18 through, if the company received its COLA from the NRC,
19 would the answer still be the same; the company would
20 still need to look at that and other factors in deciding
21 whether to continue to proceed?

22 A Yes, and this is through the life of the
23 project we always consider all of the considerations
24 which are applicable to this project, and you do that on
25 an ongoing basis.

1 Q So, if I can refer you back to page 10 of your
2 rebuttal. Do you have it?

3 A I do.

4 Q And on line 15 you begin a sentence that
5 says -- see, we can talk about this without code. "No
6 one would ever build a nuclear power plant or any other
7 long-term baseload generation based on yearly changes in
8 fuel costs or load projections." Do you see that?

9 A I do.

10 Q Would it also be true on the flip side that no
11 one would ever build a nuclear power plant or any other
12 long-term baseload generation based on a single-snapshot
13 determination?

14 A That is correct. For a number of factors, you
15 would consider that on an ongoing basis, not just a
16 single snapshot on any day.

17 Q Okay. And that being the case, wouldn't it
18 also be appropriate for the Commission in overseeing the
19 project to continue to review those questions on a
20 continuing, ongoing basis?

21 A I think that -- yes, I think that's what's
22 established in the Capacity Cost Recovery rules that
23 require us to come back on an annual basis to review our
24 project.

25 Q Okay. That's fine.

1 I'm trying not to retrace the items covered by
2 Mr. Rehwinkel, but I did have one question on your
3 discussion that referred to your testimony on page 17.

4 A Okay.

5 Q Oh, I'm afraid I have to resort to code, I'm
6 sorry. Line 3, the sentence that begins "Thus."

7 A Yes.

8 Q In your discussion with Mr. Rhewinkel, you
9 characterized this sentence as reflecting the company's
10 belief. Did I hear you right?

11 A Yes, based on -- it's the company's belief
12 based on what we know that that action has resulted in.

13 Q Okay. For the Commission to test that belief,
14 wouldn't we need to sit down and do a review after the
15 facts are known and you've finally resolved the EPC
16 issues?

17 A I'm sorry. What are the EPC issues you're
18 referring to?

19 Q Resolving the change order renegotiation and
20 the items that you have ongoing.

21 A If you're asking me, do they need to wait to
22 see the outcome of that -- is that your question?

23 Q No. My question is whether or not -- to test
24 what you just said was the company's belief, wouldn't we
25 need to know how things actually turned out in terms of

1 what you've actually negotiated?

2 A I don't think so. I think the fact that we
3 know what was in the executed EPC agreement and we know
4 what framework that provides, and we know what would
5 have been outcomes had we not executed, I think that
6 evidence is present today to make that conclusion.

7 Q Does the Commission have in front of it how
8 things have changed from what you signed in the EPC?
9 They can't because you haven't completed those
10 negotiations, right?

11 A There is a change order in progress.

12 Q So the only way to test how things have
13 changed is to actually have an explanation from the
14 company once you've effected those changes, right?

15 A Yes, but your question's more general. In the
16 long-term execution of this project, there will be
17 changes, both scope additions and scope removals to the
18 EPC contract as part of our project execution, and so I
19 would expect through this proceeding yearly that,
20 through discovery, those kind of things would be
21 reviewed.

22 Q No, but my question here was specific as to
23 this statement in this section of your rebuttal and how
24 the Commission could test whether your belief that
25 you're stating today is accurate, and my question is:

1 Isn't the only way to test that is to actually see what
2 you finally negotiate in terms of the change order?

3 A No, sir, because you cannot quantify the other
4 outcome if you have not taken this action.

5 Q No, I'm not asking for a counterfactual. I'm
6 asking for -- to compare what you signed, what's in
7 effect now and what will change, which will be what will
8 be in effect once you execute the change order. That's
9 not a counterfactual argument. That's this is A and
10 this is B, right?

11 A Correct, but what's your question with regard
12 to A and B?

13 Q My question with regard to A and B is, the
14 only way to test what you stated your belief was in this
15 sentence is as to actually have both of those pieces of
16 information in front of the Commission?

17 A No, sir, because what you're asking me is,
18 under the existing framework of an executed EPC, we're
19 going make a schedule shift and that will produce a
20 certain change. The question you're asking me to
21 compare that to, because of the word that's on line 4 --
22 one, two, three, four five, six -- the sixth word starts
23 with an S. To be able to judge that, you would have to
24 know what would have been the outcome had no action
25 occurred on December 31st.

1 Q Well, to evaluate that one word, to evaluate
2 the -- where you ended up, you'd have to actually have
3 the executed change order, wouldn't you, in terms of the
4 benefits that you claimed that may have been retained or
5 changed?

6 A If you're asking me, sir, do you need to see
7 the change order after it's executed to confirm that
8 those items that are on page 12 are still there, you
9 could look at the EPC contract agreement after that
10 point.

11 MR. BREW: Thank you. That's all I have.

12 CHAIRMAN CARTER: Thank you, Mr. Brew.

13 Mr. Davis.

14 CROSS EXAMINATION

15 BY MR. DAVIS

16 Q Thank you, Mr. Chair.

17 Mr. Miller, good afternoon.

18 A Good afternoon.

19 Q I'll try to be brief.

20 You mentioned in your opening summary that, in
21 response to an exhibit that Mr. Gundersen had placed in
22 the record, that you -- and I'll identify the specific
23 exhibit in a minute, but that the slippage in your
24 schedule that that letter could cause has been accounted
25 for in your schedule as you have today; is that right?

1 A No, that's not correct, what I said. What I
2 said was our existing schedule prior to the movement of
3 the design certification amendment SER date had float
4 just like it did with the reference COLA. So when the
5 April 3rd, 2009 letter went to WEC that changed the
6 design certification amendment schedule which moved the
7 SER into December of 2010, we had some float in our
8 schedule. So that helps mitigate some of the impact of
9 that change. That was what my statement was.

10 Q So you weren't talking about the extra 20 to
11 36 months which you now have in your schedule?

12 A No. I was referring to the changes that are
13 driven in the COL schedule.

14 Q Okay. Now what about the July 28, 2009 letter
15 that came to Progress with regard to your schedule.

16 A Well, that's the letter I'm referring to.
17 That letter --

18 Q You said April 3rd.

19 A Right. The April 3rd letter was from NRC to
20 Westinghouse which is what moved the DCD Rev 16 and Rev
21 17 review schedule, and it refers to it in that document
22 that the design certification schedule is changing.
23 Well, it changed and it was announced and transmitted on
24 April 3rd of 2009, which moved it's dates, and then that
25 had a ripple effect and it moved the -- our COLA date

1 also, and both of those dates have now been republished.

2 Q Well, just to be clear for the record that
3 what we're talking about is the first letter, the
4 April 3rd, 2009 letter from the NRC -- I'm trying to
5 find -- was Gundersen 62, that's -- no. The April 3rd
6 letter is the new start letter, is that right?

7 A I think you should see that the April 3rd
8 letter is a letter from NRC to Westinghouse providing a
9 revised DCD amendment review schedule, which moved the
10 SER date to December, 2010.

11 Q Okay. And the letter, the second letter that
12 you're referring to, we've not made -- is Gundersen's --
13 you called it a late-filed exhibit, right, that -- the
14 NRC letter from July 28th, 2009?

15 A I believe you're referring to the letter from
16 Sara Kirkwood to the ASLB judges?

17 Q Yes, I am.

18 A Yes.

19 Q And that, for the record, is Exhibit 69, okay.

20 So, now, obviously, when you received this
21 July 28, 2009 letter which is Exhibit 69, you had
22 additional float in your schedule at that point; right?

23 A No. That letter points out the fact there has
24 been movement in the design certification schedule.

25 There has been movement in the reference COLA schedule,

1 and my statement earlier is we had float in our schedule
2 because our COLA went in after many of the first wave
3 AP1000s because our site was announced later. So that
4 gave us some float to help mitigate some of that change;
5 however, obviously the letter does state there still
6 could be some change to our schedule.

7 Q And just so we're clear, this is an exhibit
8 that I'm going to talk about from the -- that we've
9 previously entered when we were discussing FPL, and this
10 is SACE Exhibit 132, and I'd like to go ahead and place
11 that in the record for Progress as well.

12 CHAIRMAN CARTER: Okay. That would be -- hang
13 on a second. Let me go to the back pages.

14 MR. DAVIS: Well, that's what -- I asked a
15 question of the --

16 CHAIRMAN CARTER: It's going to have to be a
17 new exhibit.

18 MR. DAVIS: I was told that I needed to make
19 it an exhibit for this part of the matter.

20 CHAIRMAN CARTER: Right. I'm going to give
21 you a number for it, for this one, for the Progress --

22 MR. DAVIS: I believe that was 153 --

23 CHAIRMAN CARTER: Hang on a second. Staff?

24 MR. YOUNG: I just got an indication from
25 Progress that they don't mind it being labeled as 132.

1 Just to keep the record clean, if they don't object to
2 it, that's fine.

3 CHAIRMAN CARTER: Okay. Then, Mr. Walls, is
4 that correct?

5 MR. WALLS: Yeah, if it's already been entered
6 in the record, I would assume we could use the same
7 number rather than making it more confusing by having it
8 in twice.

9 CHAIRMAN CARTER: That's fine. You may
10 proceed.

11 MR. WALLS: I would just like to have a copy
12 of it.

13 MR. DAVIS: I'll pass one out. Thank you.

14 CHAIRMAN CARTER: You may proceed. Less is
15 more. And this is Exhibit 132.

16 Mr. Davis, make sure you leave -- for both the
17 Commissioners here --

18 MR. DAVIS: And for the Court Reporter?

19 CHAIRMAN CARTER: No, no, for both the
20 Commissioners here. There we go.

21 COMMISSIONER ARGENZIANO: I can't hear you,
22 Mr. Chairman.

23 CHAIRMAN CARTER: I'm talking to Mr. Davis and
24 I'm trying to get Mr. Davis to get him to leave another
25 exhibit so you'll have a copy, Commissioner.

1 COMMISSIONER ARGENZIANO: Thank you very much.

2 CHAIRMAN CARTER: Thank you. And it's listed
3 in -- Commissioner Argenziano, from our current list,
4 it's listed as Exhibit No. 132.

5 COMMISSIONER ARGENZIANO: 132, okay.

6 CHAIRMAN CARTER: But, for ease of operation,
7 I wanted just to have a copy for each one of us.

8 COMMISSIONER ARGENZIANO: Thank you. I
9 appreciate that.

10 CHAIRMAN CARTER: Mr. Davis, you may proceed.

11 BY MR. DAVIS:

12 Q Let me identify this exhibit for the record.
13 It is Exhibit 132, but this is a letter from a Mr. David
14 Matthews, Director, Division of New Reactor Licensing
15 with the NRC to David Matthews, and let me ask you,
16 Mr. Miller, who is David Matthews.

17 A David Matthews is in charge of the new reactor
18 licensing organization.

19 Q And is he affiliated with Westinghouse/Shaw or
20 is he --

21 A No, sir; he is NRC.

22 Q He's NRC. So this letter that Mr. Matthews
23 has received has to do with further delays to the NRC's
24 review of the AP1000 design certification, correct?

25 A That's not correct what you state. This

1 letter is from Dave Matthews to Robert Sisk. Robert
2 Sisk is a Westinghouse manager. So, just for
3 correctness --

4 Q Thank you for pointing that out. I knew
5 Westinghouse was in here somewhere.

6 A Right, and then to follow that -- the specific
7 comment is -- what they're saying in here is they are
8 not going to be able to meet a specific ACRS Committee
9 date in November of 2009.

10 Q And that was -- in paragraph 2, that was as a
11 result of Westinghouse not providing the design
12 information necessary to resolve staff concerns; right?

13 A That is correct.

14 Q And I've double-sided this. If you'd look on
15 the second page, please, that in the second to the last
16 paragraph, at this point in time, which was August 27th
17 of 2009, the NRC is saying that they cannot support a
18 schedule that had previously been provided in reviewing
19 this particular issue, and they say that it's very much
20 up in the air; is that correct?

21 A I wouldn't say it's very much up in the air.
22 I would say what they're saying here specifically is
23 there was -- Chapter 6 was scheduled to be reviewed in
24 an Advisory Committee on Reactor Safeguards -- what
25 we've heard as ACRS. That was scheduled for November,

1 2009. Because that was not ready for that meeting, they
2 will have to take an action to figure out when to
3 reschedule that work.

4 Q And you're much more familiar with the issue
5 than I am. Can -- there's a sentence here that says,
6 "The submitted information failed to resolve the
7 long-standing fundamental questions related to the
8 design basis, debris source term, the limiting system
9 flows, in-vessel testing, the magnitude of debris
10 bypassing the pump screens and the choice of the
11 limiting accident scenario." Can you describe what that
12 means in sort of shorthand?

13 A In paraphrase, in a loss-of-coolant accident
14 where water is on the floor of containment, it is
15 recirculated back into the reactor vessel. And so, if
16 there's debris inside the containment, that will get
17 into the fluids such as if you leave fibrous material in
18 there. And so when they refer to source term, they're
19 talking about material like some fibrous material. As
20 it recirculates in the -- as part of the passive core
21 cooling system there, there are limiting system flows
22 based on the pressure drops across various places where
23 this debris would carry, such as, if you had a small
24 orifice, it may block it and create a change in the
25 pressure. So what this is describing is the resolution

1 of analysis associated with the amount of the source
2 term, its transport as it's moving in the passive
3 cooling through the vessel in a post-loss-of-coolant
4 accident scenario.

5 Q So, in other words, if you've got debris
6 that's being picked up by your pumps, it could plug the
7 pipes that are responsible for cooling the reactor and
8 preventing a meltdown; is that right?

9 A That's not correct, sir. Because this is a
10 passive containment cooling system that's part of the
11 AP1000, there are no pumps. It is all driven by natural
12 convection.

13 Q Okay. You could still plug the pipes, though?

14 A In this case the pipes are a large diameter.
15 So they're concerned about the flow rate through the
16 smaller places that would -- and how much bypass flow is
17 around those to ensure that there is adequate flow
18 through the core post-shutdown do keep the core cooled
19 down.

20 Q And the NRC says this is a long-standing
21 fundamental question or questions. Does this refer even
22 back to the first generation of reactors?

23 A When you say "first generation of reactors,"
24 do you mean the ones operating now?

25 Q The ones operating now which I guess would be

1 specifically a Westinghouse design reactor, would it
2 not?

3 A You cannot compare these because this
4 information -- the concept of recirculating is
5 applicable to existing power plants, but this is a very
6 technology-specific calculation based on how
7 recirculation flow takes place in containment. This is
8 a passive core cooling system, so it works very
9 different than what's, say, at Crystal River or St.
10 Lucie or Turkey Point.

11 Q When it says "long-standing," how
12 long-standing does this -- how long-standing has this
13 issue been, is what I'm trying to get to?

14 A I do not now the answer to the question. Dave
15 Matthews wrote this letter, and from his perspective
16 related to the review of the design certification,
17 that's the phrase he used, but I don't know how long it
18 is.

19 Q Now, this is the most recent information we
20 could obtain from NRC about this issue. Have you
21 followed any subsequent releases about this issue?

22 A I am not aware of any additional published
23 information on this subject.

24 Q And so there's no new schedule for this ACRS
25 review?

1 A I am not aware that an ACRS substitute meeting
2 has been scheduled for this Chapter 6.

3 Q Okay. And this could be an additional delay
4 to the final design certification of the AP1000?

5 A While it could be, it doesn't have to be. It
6 depends on how the schedule is resolved to incorporate
7 an additional ACRS meeting to review this Chapter 6
8 content associated with the containment sump
9 recirculation.

10 Q And you've said in your prior testimony this
11 afternoon that the AP1000 is certified, and it's in
12 Revision 17 at the moment; right?

13 A The answer is yes, it is certified, and it is
14 in Rev 17, and let me explain. AP1000 is a certified
15 design. That design is certified based on a design
16 control document that's Revision 15, and that
17 certification is included in Appendix Delta, Appendix D,
18 to 10 CFR Part 52. There are two revisions outstanding,
19 Rev 16 and Rev 17, that make changes to the certified
20 design. And so what's being processed is a design
21 certification amendment that incorporates Rev 16 and Rev
22 17.

23 Q Does one of those have to do with the
24 certification for hard-rock sites versus other sites?

25 A Yes. I believe Rev 16 includes that change.

1 Q And your site, I believe you testified, is not
2 considered a hard-rock site?

3 A It is not, and our application points to Rev
4 17 content.

5 Q Okay. And Rev 17 is what's being held up
6 right now, is that correct?

7 A I don't know if this is a Rev 16 or a Rev 17,
8 but it's one those two is what this subject is
9 regarding.

10 Q Okay. Thank you. Just one second and I'll
11 proceed. I might have passed my notes out to somebody
12 when I was passing out the exhibit.

13 CHAIRMAN CARTER: Well, I didn't get them. I
14 only got this one page here. I probably couldn't read
15 your writing anyway.

16 MR. DAVIS: I wouldn't think so.

17 MS. RHEWINKEL: You may have given them to
18 Mr. Walls.

19 MR. DAVIS: In which case he can continue with
20 my cross-examination. I'll be happy to let him.

21 MR. WALLS: No, I don't have them but I'd be
22 glad to take them.

23 BY MR. DAVIS:

24 Q You'd be glad to throw them out.

25 All right. I think I remember what I was

1 going to ask anyway.

2 I believe you -- Mr. Miller, you told Mr. Brew
3 that you were talking about the definition of
4 feasibility when we talk about long-term feasibility
5 from the standpoint of a project manager; is that right?

6 A It's correct to say that in my rebuttal
7 testimony -- I gave a perspective in the rebuttal
8 testimony from project management and it refers to Jeff
9 Lyash would give that perspective from an executive
10 level, I believe is the language he pointed to.

11 Q And your perspective as a project manager is
12 that the Commission should not consider the cost
13 effectiveness of an already approved need determination
14 facility such as this in its feasibility review,
15 correct?

16 A Sir, define "cost effectiveness."

17 Q Well, you specifically said that you thought
18 feasibility involved technical feasibility and
19 regulatory feasibility, and neither of those have cost
20 effectiveness in them; right?

21 A Those two are not costs.

22 Q Okay. And that was all you defined as
23 feasibility, correct?

24 A In the direct testimony, however, in the
25 rebuttal testimony I answered this question

1 specifically, and I'm looking for the location where
2 that is, the question about do we consider costs, and
3 the answer is, yes, costs would be considered.

4 Q Well, page 49, I believe, line 7.

5 A Yes.

6 Q And --

7 A But it starts on page 48 with a question on
8 line 15.

9 Q And your response to that question is the
10 company always considers total costs, and we're not
11 asking your opinion about what the company considers in
12 its feasibility. The question here today is what the
13 Commission should consider in determining long-term
14 feasibility as it decides not whether to build a
15 reactor, but whether to put the ratepayers financially
16 on the hook for paying for your reactor; is that right?

17 A Are you asking me what the Commission's
18 decision has to be based on?

19 Q Well, I mean, your commentary on costs has to
20 do with what you as a project manager consider for
21 moving forward with a reactor; is that right?

22 A It is, but it's also representative of my
23 company's position that we do not believe that a CPVRR
24 analysis done yearly is the correct vehicle to judge
25 that the project is feasible from a cost perspective.

1 Q Well -- but you're talking about from your
2 company's cost perspective, but the Commission has
3 responsibilities to the ratepayers; right?

4 A The Commission is, you know, responsible for
5 the ratepayers.

6 Q And as a project manager, you believe that the
7 Commission should trust Progress to manage costs and
8 weigh those costs against the benefits of the project as
9 part of the company's decision-making process?

10 A I believe the Commission should consider the
11 following things: Is the plant technically able to be
12 built? Is that technology viable? Can we deploy it at
13 that site? Can it be feasably completed? Can you
14 secure all the regulatory approvals as part of that to
15 make sure that you can indeed license and operate that
16 plant, such as site certification, such as a nuclear COL
17 license? I think cost is relevant, but I don't believe
18 that a cost algorithm or analysis that's so specific as
19 the CPVRR is the correct way to do that. And I'll give
20 you an example where cost comes into play.

21 We're negotiating a change order currently,
22 right now, that will result in a contract amendment that
23 changes the schedule dates in it. If the Consortium was
24 to come back with an unreasonable, unprincipled dollar
25 value -- and I'll just make an absurd one, they doubled

1 the contract price -- then we would say this project is
2 no longer feasible from a cost perspective.

3 Q But that's, again, your company's
4 decision-making process. We're talking hear today about
5 the Commission's decision-making process in looking at
6 long-term feasibility. So, I mean, despite the billions
7 that you hope to recover from the ratepayers prior to
8 one kilowatt-hour of electricity being generated by Levy
9 1 and 2, you believe that the need determination is the
10 only time that the PSC should look at the economic
11 feasibility of the plant; is that correct?

12 A Sir, what do you define as economic
13 feasibility?

14 Q Well, what do you define as economic
15 feasibility?

16 A I define it as they will on an annual basis
17 review our costs and they would look at how those costs
18 have changed and what drives those changes, and, as I
19 stated earlier, if there is some unprincipled,
20 unreasonable change to the cost, then we will say the
21 plant is no longer feasible.

22 Q Excuse me. You have no --

23 MR. WALLS: Can I object a second. I think
24 the witness wasn't finished with his answer.

25 THE WITNESS: Yes. I will tell you what it is

1 not. It is not a CPVRR calculation that compares --
2 does this comparison on an annual basis comparing the
3 gas and the CO2 when those things are volatile and
4 change year to year.

5 BY MR. DAVIS:

6 Q Now, you do know that your need determination
7 is based upon a CPVRR calculation; right?

8 A I do because the statutes required us to
9 submit that as part of our need determination filing.

10 Q And that is a one-time projection into the
11 future upon which a decision to build a nuclear power
12 plant is made?

13 A We submitted that per the regulations, the
14 statutes for the need determination filing.

15 Q And a need determination is based upon -- at
16 least in part, upon those calculations; correct?

17 A It was last year when the order was issued.

18 Q And you're saying that the Commission
19 shouldn't consider a similar economic analysis as it
20 looks at long-term feasibility each year?

21 A What I'm saying is I do not believe that is
22 the proper algorithm or vehicle to make a decision
23 whether a project is feasible year to year.

24 Q As the only part of the decision, is that what
25 you're saying?

1 A That's correct, because you cannot ignore
2 technical, regulatory, other things that are associated
3 with this.

4 Q So you agree to add to your definition of
5 feasibility economic feasibility as long as it's not
6 solely based on a CPVRR calculation?

7 A I believe that it is relevant to consider
8 costs when you consider feasibility. The example I gave
9 earlier of an unprincipled doubling the contract price
10 would tell me the project is not feasible from a cost
11 perspective.

12 Q But again, we're not talking about your
13 decision-making. We're talking about the Commission's
14 decision-making. So you didn't provide any basis for
15 the Commission to make a decision on the economic
16 feasibility of the project, did you?

17 MR. WALLS: I'm going to object. Asked and
18 answered.

19 CHAIRMAN CARTER: To the objection, Mr. Davis.

20 MR. DAVIS: I'll withdraw the question. It
21 has been answered.

22 Thank you. That's all I have.

23 CHAIRMAN CARTER: Thank you.

24 Mr. Moyle, good afternoon.

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CROSS EXAMINATION

BY MR. MOYLE:

Q Thank you, Mr. Chairman.

Just when I thought I was beginning to understand this, the followup to the conversation that you just had with counsel I found interesting because yesterday we had some conversations, and it sounds like you are indicating that economic analysis and the cost is a key component of long-term feasibility; correct?

A Cost is a consideration for feasibility. If you go back to the rule and you ask yourself feasibility to complete the power plant, I have to technically be able to do it, I have to be able to license it and get all the regulatory approvals. The cost is relevant to whether you'd move forward if you had some unprincipled change.

Q I appreciate that, and, you know, we're going to try to hit this as quickly as we can, yes/no, and explain it if need be.

So the cost is relevant. You said that you didn't think the CPVRR calculation was the appropriate algorithm or vehicle to determine those costs necessarily. Is that correct?

A It is correct I said that the CPVRR method done annually is not the right vehicle to make a yes/no

1 feasibility determination.

2 Q Okay. And as we sit here today in front of
3 this commission, I mean, isn't the CPVRR calculation
4 attached to Mr. Lyash's testimony? That's the best cost
5 information that we have as we sit here today that's
6 been filed with this commission, correct?

7 A That was filed with the Commission per a
8 request from staff.

9 Q Okay. So the answer is yes?

10 A Yes.

11 MR. WALLS: I'm going to object. That
12 mischaracterized his testimony.

13 CHAIRMAN CARTER: Mr. Moyle, to the objection?

14 MR. MOYLE: I think he answered the question.
15 He said that was the best cost information that we have
16 as we sit here today, so I don't --

17 CHAIRMAN CARTER: Mr. Walls?

18 MR. WALLS: I didn't get my objection in, but
19 I'll let him stand on the record.

20 CHAIRMAN CARTER: Mr. Moyle, you may proceed.

21 BY MR. MOYLE:

22 Q You -- also, to explore your suggestion about
23 unprincipled and unreasonable numbers, the -- you said,
24 if the price doubled, clearly that would be unreasonable
25 and unprincipled; correct?

1 A Correct.

2 Q And I'm not really comfortable with
3 unprincipled because most negotiations I've been in are
4 kind of dollars and cents, and principle is -- you know,
5 the reasonableness issue is what I'm more comfortable
6 with, so let's focus on reasonableness. You would
7 agree, would you not, given the fact that, if the price
8 doubled, that would be unreasonable, then it becomes a
9 matter of degree as to when the price becomes
10 unreasonable; correct?

11 A No. The issue is I don't think there is a
12 specific dollar value that's a litmus test of it's a go
13 or no go.

14 Q But you would agree that a finder of fact that
15 has to determine reasonableness or prudence or long-term
16 feasibility would need to make a judgment as to the
17 all-in costs and what those costs were, and then say,
18 you know what, I think this is either prudent,
19 reasonable or feasible or not, that the cost component
20 needs to be part of the calculus; correct?

21 A I believe that, in terms of feasibility, cost
22 is a consideration, and you look at the changes that are
23 occurring year to year and see what drove those changes
24 and see if those are reasonable and principled.

25 Q Okay. So you said that doubling the cost

1 would be unreasonable, and in this situation we don't
2 have an executed change order to the contract, and I
3 think we've established yesterday that potentially it
4 could be up to four billion dollars on a 25-percent band
5 increase. Given that --

6 MR. WALLS: Objection, that mischaracterizes
7 the testimony.

8 CHAIRMAN CARTER: I think he was referring to
9 the hypothetical he asked yesterday. You may proceed.

10 BY MR. MOYLE:

11 Q I guess -- wouldn't you believe it would be
12 reasonable and prudent for this commission, if it so
13 desired, to tell the company, when you get better
14 information as to the overall impact of this change
15 order and we can determine the order of magnitude as to
16 what it would be, would you please bring that back in
17 front of us so that we can use that information to make
18 our judgment? Wouldn't that be a reasonable way to
19 proceed in your judgment?

20 A No, sir; I do not degree with your series of
21 events that took place. I believe that we have provided
22 information of the feasibility of the project as it
23 exists today. We are in the process of doing a change
24 order. That information will be available in the next
25 round of this review because this is an annual process.

1 It will be ongoing. This is one change order. There
2 will be others in the future. I don't think it's
3 necessary for them to hold judgment until that's
4 resolved.

5 Q If this commission said to you in their
6 result, they said, you know, we applied our rule that
7 requires detailed information about long-term
8 feasibility, we interpret it that we feel we need more
9 information with respect to costs, and given the
10 variability, that could range between 17 billion and
11 20 billion, please bring the number back to us when you
12 get it, you would be able to do that; correct? I mean,
13 the company could actually bring that number back after
14 the change order was negotiated; correct?

15 A You said a lot of things in your statement
16 here, and so I'm going to -- first of all, you used a
17 range like 17 to 20 billion, and we've not said that
18 anywhere in our discussion that we expect our value to
19 be 20 billion. We've not said that. Beyond that,
20 though, obviously the Commission has the prerogative to
21 direct and request whatever they see fit and we would be
22 responsive to whatever they asked for, but we do not
23 believe it's necessary to provide that information in
24 advance of the normal process that's been established in
25 the rules for the Capacity Cost Recovery review.

1 Q And just so that we're speaking on the same
2 wavelength here, hopefully. I mean, right now you're at
3 17.2 billion; correct?

4 A Correct.

5 Q And with respect to projected changes, you had
6 a discussion yesterday that, you know, the top end of
7 the increase could be approximately 25 percent; correct?

8 A No, sir. What I said specifically is the --
9 there is an exhibit in Jeff Lyash's testimony that has a
10 CPVRR calculation, and it has, I want to say from
11 memory, a minus 15, minus 5, plus 5, plus 15, and plus
12 25 differences in the CAPEX, and what I said was the
13 information we're getting from the Consortium insights
14 in terms of estimated indicative prices for the schedule
15 shift is well within that range.

16 Q Yes, sir. But if we assume that it was at the
17 top end at 25 percent, that would be over four billion;
18 correct?

19 A I would have to do the calculation, but I
20 didn't say it was at the top end of the range.

21 Q Yes, sir. Are you familiar with environmental
22 permitting as somebody who's been involved in nuclear
23 permitting? Have you ever secured environmental
24 permits, ERP, environmental resource permits?

25 A I am involved -- we just received an ERP for

1 the barge slip at the Levy project.

2 Q Are you aware of a legal construct in
3 environmental permitting that, to the extent that there
4 is a range of possibilities, that the regulator will
5 assume the worst case scenario for the purposes of
6 considering the permit?

7 A I am not a lawyer and I'm not aware of what
8 you're discussing.

9 Q So you're not aware of that construct at all?

10 A I am not aware of what you're describing.

11 Q And I have some questions with respect to the
12 contract, and there's been a lot of conversation about
13 that, it's confidential, it's difficult to wade through.
14 But you and Mr. Lyash both have testimony with respect
15 to contract provisions. So is it a safe for me to
16 assume that, to the extent you both have testimony about
17 certain provisions and things like that, that both of
18 you are capable of commenting on contract negotiations
19 and contract revisions?

20 A Yes, sir.

21 Q Okay. So I'm going to limit my conversation
22 with you on that given your answer.

23 Could I direct you to page 7 -- wait a minute.
24 It's page 12 of your rebuttal. You see the first bullet
25 point there in 12 that talks about fixed or firm?

1 A That is a confidential bullet.

2 Q Yes, sir. The percentage -- your counsel has
3 told me that the percentage is confidential, but the
4 fact whether it's fixed or firm or not is not considered
5 confidential. You would agree with that, would you not?

6 A Yes, I would agree, and as a matter of fact we
7 have said in our SEC 8-K when we announced the EPC
8 signing that we said it was greater than 50 percent.

9 Q That what was greater than 50 percent?

10 A The fixed/firm percentage. That's in the
11 public record.

12 Q Okay. So we can talk about the fact that
13 greater than 50 percent of your contract price is fixed,
14 correct?

15 A Yes, that has been announced, fixed/firm.

16 Q Okay. Now, using the 72-point -- I'm sorry,
17 the 17.2 billion, given what you've stated publicly
18 about more than 50 percent being fixed, wouldn't it be
19 reasonable to then assume that there's an unfixed
20 portion that could have wide variability with respect to
21 the overall price?

22 A No, sir. First of all, I didn't say greater
23 than 50 percent, or let's say greater than half which is
24 way the language was in the 8-K. Greater than half is
25 fixed or firm. The other part is target.

1 Q What's the difference between fixed and firm?

2 A Fixed means fixed, i.e., it is -- the price
3 today is the same as the price next year, the year after
4 that. There is no escalator. Firm escalates with some
5 percentage. It's defined by some index or some number.

6 Q So fixed is a dollar today, a dollar in 2020,
7 and firm is a dollar today, but in 2020 it's a dollar
8 with as escalator; correct?

9 A It is, but the escalators are defined.

10 Q When you signed the EPC contract with
11 Westinghouse, did y'all make an announcement of that
12 fact that you had signed an EPC contract? I mean, was
13 that publicly known?

14 A Yes, sir. I referred to the SEC 8-K we issued
15 on January 5th of 2008. That's why I was able to say to
16 you that the fixed/firm was greater than half.

17 Q Okay. And did you issue a press release or
18 did Westinghouse issue a press release to indicate that
19 this contract had been signed, do you know?

20 A I believe we did, and I believe they did also.

21 Q Okay. And how many other contracts prior to
22 that date had Westinghouse signed with respect to the
23 AP1000, if you know?

24 A Two.

25 Q So yours was the third?

1 A That is correct.

2 Q Okay. And prior to this, it had been a very
3 long time since nuclear technology had been put in place
4 in the United States; correct? I mean, we're talking a
5 20, 30 year hiatus; is that right?

6 A That is correct.

7 Q And Westinghouse is in the business of selling
8 equipment, nuclear reactors, nuclear services; correct?

9 A That is their business.

10 Q And it's hard to second-guess or judge
11 negotiations when you're not there, but I found
12 something in your testimony interesting that's on page
13 13, line 9, where it starts, "The Consortium's." Do you
14 see that?

15 A Yes.

16 Q Do you consider that sentence confidential?

17 A Yes, I do.

18 Q This suggests to me that the -- there were key
19 factors on the Consortium's end that greatly influenced
20 these negotiations. Is that a fair reading of that?

21 A Let me paraphrase to avoid discussing what's
22 in here. We were one customer of Westinghouse and Shaw.
23 They had other customers that were also in negotiations.
24 Our negotiations have been ongoing for two years.

25 Q Do you -- have you ever purchased a house?

1 A I have purchased several.

2 Q Have you ever had a situation where you are
3 presenting a contract and the realtor says, well, you
4 know, you better hurry up and put your best offer in
5 because I think there's another one coming in? Has that
6 ever happened to you in buying a house?

7 A I have experienced that, yeah.

8 Q Do you think that maybe in the course of
9 negotiations things like that could have happened in the
10 negotiations with the Consortium?

11 A No, sir, because, as I stated earlier, our
12 negotiations have been ongoing for two years beginning
13 in December of 2006. So I would not consider that to be
14 rushed.

15 Q There was a few areas -- just to shift gears a
16 little bit. You've covered a lot of ground and I'm
17 going to try not to be duplicative. Page 35, line 14,
18 and I'll quote, you stated, "The NRC would not have
19 docketed the PEF COLA if the NRC doubted the ability to
20 construct the AP1000 nuclear power plants on the Levy
21 site because of the site geology or other
22 characteristics."

23 Now, you're not suggesting that the mere fact
24 that the matter has been docketed is tantamount to the
25 NRC signing off on the site, particularly with respect

1 to the geotechnical aspects of the site; are you?

2 A No, sir, and this sentence does not state
3 that. What we're saying here is based -- they docketed
4 it, and if they had some serious doubt that was present
5 based on their review of the materials during the
6 docketing review, they wouldn't docket it.

7 Now, that's not to say they've made a decision
8 because it's going to take many months of RAIs on
9 various issues, including geology, hydrology, et cetera,
10 they will go through. This was just an acknowledgement
11 of the fact that, if they felt like there was a fatal
12 flaw of that site that was not addressed in the
13 application, they would not docket it.

14 Q And I'm confused as to how you get that
15 from -- the October 6th letter is the docketing letter,
16 is that right?

17 A That's correct.

18 Q And we talked about that yesterday, and they
19 specifically raised geotechnical concerns in that
20 letter; correct?

21 A They did not raise concerns. They asked
22 geotechnical questions.

23 Q Okay. But you interpret that letter -- is it
24 your testimony you interpret that letter that the NRC
25 does not have doubt about the ability to construct the

1 AP1000 at the Levy site? Is that how -- did you glean
2 that from the October 6th letter?

3 A What I gleaned is what I stated here, and
4 specifically as it reads, we do not believe they would
5 have docketed the COLA if they had reviewed the content
6 and then doubted seriously the ability to place those
7 plants on that site.

8 Q Did they confirm that? Did you talk to
9 anybody about that or is that --

10 A It's not written anywhere. It's just our
11 observation of their action.

12 Q And then yesterday I had asked you, in terms
13 of gleaning from the letter, couldn't you glean that
14 maybe the LWA schedule wasn't going to proceed as
15 requested, and you've said you couldn't glean that from
16 the letter; correct?

17 A No. What I said was I could not glean that we
18 would not get an LWA from that letter.

19 Q The LWA is a important piece of the Levy Power
20 Plant, correct?

21 A It is.

22 Q I have a couple of questions. You talk about
23 risk and risk associated with the project. Have you all
24 done a risk analysis as it relates to the location
25 physically of the proposed Levy project vis-a-vis the

1 Crystal River Nuclear Power Plant?

2 A I don't understand your question. Are you
3 asking about emergency planning?

4 Q Well, the proposed power plants are supposed
5 to be within nine miles of each other, approximately;
6 correct?

7 A Yeah, approximately that much, nine, 10 miles.

8 Q And I'm questioning as to whether that
9 presents any kind of risk with respect to your
10 generation assets being located within a close
11 proximity. Is that a risk that you have identified and
12 evaluated?

13 A Yes. As a matter of fact, I would
14 characterize -- that risk that you're asking about is
15 exactly why the Levy Plant is not at the Crystal River
16 site. As we did a site selection and considered various
17 sites around the state, the short list included the
18 Crystal River site. It has approximately 3200 megawatts
19 at that site. The addition of 2200 more at that site
20 would be a concentration of resources that would not be
21 in the best interests of our ratepayers because that
22 would represent too much asset at one physical location
23 that could be subject to some weather event or something
24 like that. So that was clearly considered, and that's
25 why it's not at Crystal River.

1 Q And what weather events did you analyze in
2 making the determination that you couldn't co-locate?

3 A A weather event might be a hurricane, for
4 example. That site is at a ten-foot elevation at
5 Crystal River. The Crystal River Unit 3 is actually
6 built on a berm up above the rest of the site, but, more
7 importantly, the transmission lines coming out of that
8 site run close to each other. So, in a hurricane that's
9 spinning off tornadoes or just a tornado event, you
10 could have a tornado take out several transmission lines
11 and separate those stations from the grid. And so
12 that's why system reliability considers the location of
13 all those assets at one place.

14 Q You're familiar hurricanes can have a breadth
15 and scope of damage greater than nine miles, correct?

16 A Oh, certainly.

17 Q Did you all identify as a risk in your
18 evaluation as to the ability to dispose of spent fuel
19 rods?

20 A And when you -- ask your question more
21 specifically, please.

22 Q Did you consider the risk of not having a
23 place to dispose of the spent nuclear fuel rods other
24 than on site as part of your risk evaluation?

25 MR. WALLS: Commissioner, can I object to this

1 line of questioning?

2 We've gotten rather far afield of what's at
3 issue in this case. I mean, if Mr. Moyle wanted to ask
4 those questions, he should have asked them in the need
5 case last year. We're getting into all kinds of risks.
6 Is he going to go through every risk that possibly
7 existed of siting the plant at Levy? This is getting
8 pretty far afield, and it's 4:30 and we have three
9 witnesses to go.

10 CHAIRMAN CARTER: To the objection, Mr. Moyle.

11 MR. MOYLE: Well, a couple of things. First
12 of all, he talks about risk specifically in his rebuttal
13 testimony.

14 Secondly, you know, my cross is coming up
15 maybe on, I don't know, 20 minutes at this point. You
16 know, this is the last line of questions that I'm going
17 to ask.

18 Thirdly, you know, there's a feasibility rule
19 that charges you all with making a decision with respect
20 to feasibility. I think it's surely within the ambit of
21 the -- and the scope of the rule to ask as to whether
22 that risk has been part of the evaluation and whether
23 there's a plan to dispose of these rods going forward.

24 CHAIRMAN CARTER: Ms. Helton.

25 MS. HELTON: If you'll give me a minute, Mr.

1 Chairman, to look at the testimony, I would like to see
2 what he says about risk in his prefiled testimony.

3 CHAIRMAN CARTER: Take a moment.

4 MR. YOUNG: Mr. Moyle, can you point to the
5 page?

6 MR. MOYLE: I had -- I think it was a number
7 of places. I had 17 and 22 written down, "All other
8 risks were known or clarified." It states on line 22,
9 quote, "Risk can only be known or clarified with
10 certainty when the risk occurs or the passage of the
11 time or events eliminate the risk."

12 MS. HELTON: If you'd let me read to myself,
13 we'll get through this much more quickly.

14 Mr. Chairman, from what I've seen in the
15 prefiled testimony, it does seem to me that this witness
16 testifies to risk. So this does seem to me an
17 appropriate subject for cross-examination.

18 CHAIRMAN CARTER: Overruled. You may proceed.

19 BY MR. MOYLE:

20 Q Why don't you take a stab?

21 A Sir, I'd like to answer this question in two
22 parts. First of all, spent fuel disposal is addressed
23 in our application, our COL application, and if I can --
24 I don't know if this the right order, but if I can ask a
25 question of the Chairman, permission here.

1 CHAIRMAN CARTER: Mr. Miller, you had a
2 question of the Chair?

3 THE WITNESS: Yes, sir. The question was in
4 regard to spent fuel disposal or high level waste, and
5 we have -- under a separate docket under the NRC, our
6 COL application has parties to -- intervention on that
7 application and subjects related to waste of the plant.
8 So I would like to look limit my discussion to avoid
9 getting into those issues because we have this other
10 proceeding going on under the ASLB.

11 CHAIRMAN CARTER: You may do so, and -- I
12 mean, you may do so. We'll tread lightly.

13 Mr. Moyle, you may proceed.

14 BY MR. MOYLE:

15 Q Yes, sir, and in response to that, is that a
16 secret docket or a confidential docket that you just
17 referenced?

18 A Oh, no, sir. What I'm saying is, in our COL
19 application, there's a process for individuals,
20 organizations to intervene, and there has been
21 intervention on our COL application and contentions have
22 been admitted, and those contentions are still pending
23 for a hearing.

24 Q Yes, sir. And I guess -- I don't want to get
25 into the weeds on this. All I want to do is ask a

1 couple of high-level questions with respect to your plan
2 for handling the spent nuclear fuel rods with respect to
3 the Levy project.

4 A Okay.

5 Q Do you have a plan to handle those?

6 A Well, first all, the AP1000 is designed for
7 approximately 19 years of storage of discharged fuel
8 that's been used in the reactor. So that's the first
9 point.

10 The layout of the site accommodates a
11 potential future expansion for dry storage on the site.
12 So we have that.

13 Then the third is, the federal government,
14 under the Waste Policy Act of 1982, still has the
15 obligation to receive our spent nuclear fuel and process
16 that from a federal perspective.

17 Q So how many years capacity will you have at
18 the Levy site for spent fuel rods?

19 A Well, as I said, when you start up the
20 reactor, there will be 19 years of storage in the spent
21 fuel pools, which is a significant amount of time to
22 watch the resolution of the federal waste repository
23 process and then from there take an action, if
24 necessary, to construct spent fuel storage on site, dry
25 storage, if necessary.

1 Q Okay. The project obviously is designed for
2 greater than 18, 19 years; correct?

3 A Oh, that's correct.

4 Q Thank you. Thank you for that, Mr. Chairman.
5 And the final point, just to draw your
6 attention to page 48, line 18, you were asked the
7 question about the total project cost.

8 A Line 18.

9 Q Your response to the question about total
10 project, you say, no, I do not, and I quote, "The
11 company always considers the total project cost of the
12 project." Wouldn't you agree that, in addition to the
13 company considering the total project cost of the
14 project, that this commission should also consider the
15 total project cost of the project when making its
16 determination and analysis of the long-term feasibility?

17 A Well, there is a separate requirement under
18 the rules to provide the total project costs separate
19 from the long-term feasibility rule.

20 Q Okay. And if you could just answer that yes
21 or no, I'd appreciate it.

22 A Oh, yes, they should -- it is right -- it is
23 appropriate for them to consider it because it's in the
24 rules for us to provide it.

25 MR. MOYLE: That's all I have. Thank you.

1 CHAIRMAN CARTER: Thank you, Mr. Moyle.

2 Staff?

3 MR. YOUNG: No questions.

4 CHAIRMAN CARTER: Commissioners, anything from
5 the bench?

6 COMMISSIONER EDGAR: No, sir. Redirect?

7 REDIRECT EXAMINATION

8 BY MR. WALLS:

9 Q Just one.

10 Mr. Miller, you may recall that Mr. Brew was
11 asking you questions about page 17, lines 3 to 6.

12 A Page 17, line 3 through 6.

13 Q Yes.

14 A Yes.

15 Q And he was asking you questions about whether
16 you had to wait to see how the amendment worked. Do you
17 recall that?

18 A Are you asking me what his questions were?

19 Q Yes. Do you recall that?

20 A He was asking a question in regard to seeing
21 how the amendment plays out.

22 Q Okay. But you do have a signed EPC agreement
23 right now, right?

24 A Yes, and we have an executed EPC contract in
25 full effect.

1 Q And you can go to that EPC agreement and look
2 at it and see that it has the benefits in it that you
3 identified on pages 12 and 13 of your rebuttal
4 testimony?

5 A That's correct. Those benefits listed on page
6 12 and 13 as bullets are in that executed EPC.

7 MR. WALLS: No further questions.

8 CHAIRMAN CARTER: Okay. Exhibits?

9 MR. WALLS: We'd like to move into evidence
10 Exhibits 114 through 123.

11 CHAIRMAN CARTER: Are there any objections?

12 Without objection, show it done.

13 (Exhibit Nos. 114 through 123 admitted into
14 the record.)

15 CHAIRMAN CARTER: Anything further for this
16 witness from any of the parties?

17 Thank you, Mr. Miller.

18 MR. WALLS: May Mr. Miller be excused from
19 this hearing?

20 CHAIRMAN CARTER: He may be excused.

21 Call your next witness.

22 MR. ROACH: Hugh Thompson.

23 CHAIRMAN CARTER: One second.

24 Okay. You may proceed.

25 / / / / /

1 Whereupon,

2 HUGH LLOYD THOMPSON, JR.

3 was called as a witness on behalf of Progress Energy
4 Florida and, having been previously sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ROACH:

8 Q State your name and work address.

9 A Hugh Lloyd Thompson, Jr., 1000 Potomac Street
10 Northwest, Washington, D.C.

11 Q Have you previously been sworn in this
12 proceeding?

13 A Yes.

14 Q By whom are you employed and in what position?

15 A I am employed by Talisman International as a
16 vice-president.

17 Q Has your rebuttal testimony of 34 pages and
18 accompanying exhibits been prefiled on August 10th in
19 this proceeding?

20 A Yes.

21 Q Do you have any changes or corrections to your
22 testimony?

23 A Yes, I do.

24 Q What are they?

25 A First, on page 23, line 3 and 4, delete the

1 word "at the regulatory information conference in March,
2 2008."

3 Q Okay.

4 A Second, on page 32, line 8, the NRC accession
5 number should be MLO33640024.

6 Q With those corrections, if I asked you the
7 same questions today, would you give the same answers?

8 A Yes, I would.

9 MR. ROACH: I'd like to ask that the prefiled
10 testimony be inserted into the record as though read.

11 CHAIRMAN CARTER: The prefiled testimony of
12 the witness will be inserted into the record as though
13 read.

IN RE: NUCLEAR COST RECOVERY CLAUSE**FPSC DOCKET NO. 090009****REBUTTAL TESTIMONY OF HUGH L. THOMPSON, JR.**1 **I. INTRODUCTION AND EXPERIENCE.**2 **Q. Please state your name, occupation, and address.**3 A. My name is Hugh L. Thompson, Jr. I am Vice President of Talisman
4 International, LLC. My business address is 1000 Potomac Street, NW,
5 Suite 300 Washington, DC 20007.6
7 **Q. What is the purpose of your testimony in this proceeding?**8 A. I have been asked to evaluate certain assertions and conclusions in
9 the direct testimony filed in this proceeding by William R. Jacobs, Jr.,
10 Ph.D. (Jacobs) on behalf of the Florida Office of Public Counsel. My
11 testimony presents the results of my evaluation, in rebuttal to the
12 testimony of Jacobs, as it relates to the Nuclear Regulatory
13 Commission (NRC) licensing process for the Levy Nuclear Project
14 (LNP) and certain aspects of the Crystal River Unit 3 Extended Power
15 Uprate project.16
17 **Q. Please state your professional experience and education.**18 A. I have more than 35 years of nuclear safety experience, including
19 senior level management positions at the U.S. Nuclear Regulatory

1 Commission (NRC). From 1996 to 1998 I was the Deputy Executive
2 Director for Regulatory Programs at the NRC. In that position, I
3 directed the licensing, inspection, and rule making activities for all NRC
4 licensed nuclear reactors, the oversight of the U. S. Department of
5 Energy's (DOE's) high-level radioactive waste program, the
6 decontamination and decommissioning of contaminated sites, and the
7 material licensees regulated by both the 29 Agreement States and the
8 NRC. I also held the positions of Director of the Office of Nuclear
9 Material Safety and Safeguards, Director of the Division of Licensing
10 and Director of the Division of Human Factors Safety for the Office of
11 Nuclear Reactor Regulation. I was an NRC Environmental Project
12 Manager for draft and final NEPA statements for both construction
13 permits and operating licenses. I have provided expert testimony in
14 NRC licensing hearings and testified in state and local governmental
15 hearings. I have testified before Congressional committees and the
16 NRC Commission on topics such as safety issues at licensed nuclear
17 facilities, NRC's high-level waste program, potential NRC oversight of
18 DOE facilities and Y2K safety concerns.

19
20 During the period that I was the Deputy Executive Director for
21 Regulatory Programs, I was directly involved in NRC Chairman
22 Jackson's initiative to establish the Commission's Direction Setting
23 Issues, which included one issue that focused on reactor licensing for

1 future applications. That strategy was the foundation for the current
2 NRC licensing approach which includes early site approvals,
3 standardized plant approvals, limited work authorizations (LWAs), and
4 combined construction and operating licenses.

5
6 At Talisman, I have provided expert regulatory assistance in cases
7 involving NRC regulatory actions, including lost spent fuel,
8 independent reviews of safety allegations at reactors and fuel cycle
9 facilities and operational issues at fuel cycle facilities. I have also
10 supported DOE and DOE contractors. I chaired an Independent
11 Technical Review Panel evaluating safety concerns related to planned
12 DOE remediation at a low-level radioactive waste burial site and have
13 supported both the National Nuclear Safety Administration and the
14 Idaho National Laboratory in safety programs. I was the Team Leader
15 for the Talisman review of the regulatory breakdown between the
16 Canadian Nuclear Safety Commission and Atomic Energy of Canada
17 Limited that resulted in the temporary shutdown of the AECL NRU
18 medical production reactor in Canada. I am currently advising the
19 Babcock & Wilcox Company in its plans and interactions with the NRC
20 for the licensing of their new Medical Isotope Production System
21 reactor. I have been advising and supporting Caldon (now Cameron) in
22 its interactions with the NRC concerning their measurement
23 uncertainty recapture power flow meter. I currently am serving as a

1 member of the Environmental, Safety, Security and Health Committee
2 of the Board of Governors for the Argonne National Laboratory
3 Oversight Board.

4
5 Earlier in my career, I served for five years as an officer in the U.S.
6 Navy nuclear submarine program and for two years as a nuclear
7 licensing engineer at Alabama Power Company.

8
9 I received a B.S. degree in Naval Science from the U. S. Naval
10 Academy, an M.S. Degree in Nuclear Engineering from the Georgia
11 Institute of Technology, and a J.D. degree from George Washington
12 University.

13
14 **Q. Are you sponsoring any exhibits to your testimony?**

15 **A.** Yes, I have prepared several exhibits to my testimony. Exhibit No.
16 ____ (HT-1) is my current curriculum vitae. Exhibit No. ____ (HT-2) is
17 the December 3, 2008 Meeting Slides, "Levy Nuclear Plant Limited
18 Work Authorization Scope" also found at www.nrc.gov, NRC ADAMS
19 #ML090760470. Exhibit No. ____ (HT-3) is an excerpt of the NRC
20 December 4, 2008 public scoping meeting transcript that I quote later
21 in my testimony. Exhibit No. ____ (HT-4) is a table that lists 127 power
22 uprates that have been approved by the NRC. This table was

1 compiled by me from publically available information. All of these
2 exhibits are true and correct to the best of my knowledge and belief.

3

4 **Q. What methodology have you used to conduct your review?**

5 A. I reviewed the direct testimony and the exhibits submitted by Jacobs in
6 this docket and the direct testimony of Garry Miller. I also reviewed
7 documents available from the NRC including NRC regulations
8 governing Combined License applications (COLA); documents related
9 to the Limited Work Authorization Rulemaking in 2007;
10 correspondence between the NRC and PEF regarding the COLA
11 submitted by Progress Energy Florida (PEF) for the Levy plants; NRC
12 press releases, transcripts of public meetings; the status of Design
13 Certification Reviews being conducted by the NRC; and documents
14 related to power uprate applications submitted to the NRC. I also
15 contacted the two most recent NRC staff members who had and
16 currently have direct oversight of the NRC power uprate program to
17 verify my understanding of the NRC's past actions approving power
18 uprates.

19

20 **Q. What standard did you use to determine whether decisions made**
21 **by PEF during the period being reviewed in this Docket were**
22 **prudent?**

1 A. I have used the standard articulated by the Florida Public Service
2 Commission in the Final Order under Docket No. 080009-EI,
3 (November 12, 2008) which states (at page 28), ". . .the standard for
4 determining prudence is consideration of what a reasonable utility
5 manager would have done, in light of conditions and circumstances
6 which were known, or reasonably should have been known, at the time
7 the decision was made."

8

9 **Q. How did you apply this standard?**

10 A. In reviewing Jacobs' testimony, I evaluated his criticisms of decisions
11 made by PEF managers in light of information that was available to the
12 Company at the time the decisions were made.

13

14 **Q. Is this the standard that Jacobs applied in his review and
15 evaluation of PEF's cost recovery application?**

16 A. No, I do not believe so. In explaining how he determined whether the
17 costs submitted for recovery in this Docket are prudent and
18 reasonable, Jacobs states (at page 4) that, "The Company must
19 employ prudent contracting and project management and risk
20 management procedures and practices to ensure that the costs are
21 prudently incurred. The scope of work must be reasonable and the
22 Company must ensure that the costs are reasonable by means of
23 competitive bidding or other methods . . ." To state that "the

1 procedures and practices must be prudent to ensure that the costs are
2 prudent and that the scope of work must be reasonable to ensure that
3 the costs are reasonable” is a circular standard that begs the question
4 of how he determined whether the decisions made by PEF were
5 prudent and whether PEF's management of the Levy project had been
6 reasonable. Most importantly, it's not clear from that standard whether
7 Jacobs evaluated the prudence of PEF decision making based on
8 information that was available to the Company at the time decisions
9 were made or whether he relied mainly upon hindsight. This flaw in his
10 standard is evident in several of his conclusions which appear to be
11 based on his knowledge of events that occurred subsequent to the
12 decisions, rather than information that was available to the Company at
13 the time the decisions he is evaluating were made. In some cases he
14 is even conjecturing on what decisions the NRC staff will be making in
15 the future.

16
17 **II Levy Nuclear Project.**

18 **Q. Please describe the NRC licensing process for new nuclear power**
19 **plants.**

20 **A.** Prior to 1989, nuclear power plants were licensed by the NRC
21 pursuant to regulations at 10 CFR Part 50. These regulations provided
22 for a two-step licensing process that required applicants to first apply
23 for and obtain a Construction Permit to authorize construction of the

1 plant, then, approximately two years before construction was complete,
2 they had to apply for and obtain an Operating License from the NRC to
3 authorize commercial operation. All nuclear power plants currently
4 operating in the United States were initially licensed using this two-step
5 process.

6
7 In 1989, the NRC established an alternative licensing process for new
8 nuclear power plants with the issuance of 10 CFR Part 52. The NRC's
9 intention in establishing this alternative process was to "achieve the
10 early resolution of licensing issues and enhance the safety and
11 reliability of nuclear power plants." (54 FR 15372) Under these
12 regulations, an applicant may submit a combined license application
13 (COLA) authorizing both construction and operation of the plant. The
14 application must contain essentially the same information as would
15 have been provided in an Operating License application and specify
16 the inspections and tests that the applicant would perform and the
17 acceptance criteria that would demonstrate that the completed plant
18 had been constructed in compliance with NRC requirements.

19
20 In addition to establishing a one-step application process, the 10 CFR
21 Part 52 regulations contained other provisions intended to streamline
22 the licensing process, including the ability to reference a certified

1 standard power plant design, to obtain an early site permit, and to
2 obtain a limited work authorization.

3
4 **Q. Please explain the design certification process.**

5 A. Under the 10 CFR Part 52 regulations, reactor designers may apply for
6 a standard design certification from the NRC. An application for design
7 certification must include sufficient information to allow the NRC to
8 determine whether the design complies with all applicable NRC
9 requirements and can be built and operated safely. A design
10 certification application is independent of any specific site where the
11 design may be built. If the NRC determines that the design satisfies all
12 applicable requirements, it will certify the design through a rulemaking,
13 which then may be referenced by COLA applicants. Issues that have
14 been resolved in the design certification rulemaking do not need to be
15 reconsidered during the COLA review. Design certification
16 applications currently under review by the NRC have been submitted
17 by GE-Hitachi, Areva Nuclear Power, and Mitsubishi Heavy Industries.
18 The NRC also has under review an amendment to the previously
19 approved Westinghouse AP 1000 design certification.

20
21 **Q. What topics are evaluated by the NRC during its review of a**
22 **design certification application?**

1 A. The NRC safety review of a design certification application evaluates
2 the design basis, limits on operation and the applicant's safety analysis
3 of structures, systems, and components of the plant. These safety
4 evaluations are made independent of any site-specific issues.

5
6 **Q. What are the benefits of design certification in expediting the new
7 reactor licensing process?**

8 A. These provisions of 10 CFR Part 52 were included in the regulations
9 for the purpose of expediting the NRC's review of COLAs. An
10 applicant for a COLA may reference a certified design in its application.
11 If the design already has been certified by the NRC, any issues that
12 were resolved in the design certification proceeding do not need to be
13 reconsidered in the COLA review. The COLA submitted by PEF
14 references the AP 1000 design that has been submitted by
15 Westinghouse for NRC certification. The Westinghouse design
16 certification application is currently being reviewed by the NRC.

17
18 **Q. Is the status of the design certification of the AP 1000 nuclear
19 plant a risk to the successful completion of the Levy project, as
20 stated by Jacobs in his testimony (at page 7)?**

21 A. No. While there are schedule uncertainties as to when the NRC's
22 licensing review will be completed, the status of the design certification
23 reviews is not a risk to the successful completion of the Levy project.

1 In fact, of the 17 COLAs that have been submitted to the NRC, 16 of
2 them reference designs that are currently still under review by the NRC
3 and have not received design certification approval. Seven of the
4 pending COLAs, including PEF's application for the Levy plants,
5 reference the AP 1000 design currently being reviewed by the NRC.
6 The only pending COLA that references a certified design that is not
7 under review at this time is the application for South Texas Project
8 Units 3 and 4, which references the GE Advanced Boiling Water
9 Reactor (ABWR).

10
11 It is not a risk to the approval of any of the pending COLAs that the
12 designs they reference have not been certified because it is very
13 unlikely that any of these advanced reactor designs will ultimately not
14 be approved by the NRC. The process being used by the NRC to
15 review the design certification applications is set forth in a detailed
16 Standard Review Plan. The technical acceptance criteria that must be
17 met are well known by both the NRC reviewers and the reactor
18 designers and have been met for these submittals. The design
19 certification reviews currently being conducted by the NRC ultimately
20 will obtain sufficient information from the applicants to demonstrate that
21 the requirements have been met either by the original submittals,
22 augmented by RAI responses, or by amendments to the applications.
23

1 An additional reason for not regarding the NRC review of the AP 1000
2 design as a risk to the Levy project is that the NRC has previously
3 approved an earlier Design Certification Application (DCA) for the AP
4 1000 by rulemaking on January 27, 2006 (71 FR 4464). The current
5 NRC AP 1000 design certification proceeding is reviewing
6 modifications and improvements to the earlier approved design to
7 address issues that would otherwise need to be resolved on a case-by-
8 case basis by the COLA applicants and address additional issues that
9 the NRC staff had left as open items in its prior approval. As noted in
10 Mr. Miller's testimony, Progress Energy has joined a consortium of
11 utilities in the NuStart Energy Development program as a cost effective
12 approach to ensure technical issues regarding new reactor designs are
13 adequately addressed in a timely manner.

14
15 **Q. What topics does the NRC evaluate in its review of a COLA?**

16 **A.** Initially, the NRC determines whether the application contains sufficient
17 technical detail to demonstrate that the proposed plant will satisfy the
18 NRC requirements for a detailed review. If the application is
19 sufficiently complete and provides adequate bases to determine
20 whether the NRC licensing requirements will be met, the NRC docket
21 the application for review. The NRC technical staff then reviews the
22 application pursuant to a Standard Review Plan (SRP) that specifies
23 the acceptance criteria for satisfying each licensing requirement. The

1 areas reviewed generally include site characteristics, design of the
2 plant, analyses about how the plant would respond to hypothetical
3 accidents, plans for plant operations, technical qualifications of the
4 applicant to operate the plant, environmental impacts of the plant, and
5 emergency plans, among other topics. If the COLA references a
6 certified design, any issues that were resolved during the design
7 certification review do not need to be reconsidered in the COLA
8 review. In conducting its review, it is typical for the NRC staff to send
9 requests for additional information (RAIs) to the applicant to make sure
10 that it has sufficient information to determine whether the licensing
11 requirements have been met.

12
13 **Q. What is a limited work authorization?**

14 **A.** A limited work authorization (LWA) allows a COLA applicant to perform
15 safety-related site preparation work in advance of a COLA being
16 issued by the NRC. In 2007, the NRC made revisions to its limited
17 work authorization regulations to clarify the activities that require an
18 LWA and the approval process for obtaining an LWA. The NRC stated
19 that it was making these revisions "to enhance the efficiency of its
20 licensing and approval process for production and utilization facilities,
21 including new nuclear power reactors" (72 FR 57416). The NRC's
22 review of PEF's application for an LWA to conduct site preparation
23 activities at the Levy site is discussed later in my testimony.

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Q. When did the NRC update its LWA rule and why?

A. The NRC began its initial efforts to update its LWA rule in 1998, while I was still the Executive Director for Regulatory Programs. This was part of NRC's efforts to update its regulatory program in anticipation of future reactor license applications. That effort was placed on hold when the NRC staff decided, based on public comments it had received, that the proposed rulemaking was not sufficient to improve the effectiveness of its processes for licensing future nuclear power plants (71 FR 12782). In March 2006, the Commission issued a new proposed LWA rule for public comment. After considerable public comment and input, much of it led by the Nuclear Energy Institute (NEI) and including comments from Progress Energy (Progress Energy letter from B. McCabe to A. Vietti-Cook, dated May 30, 2006), the proposed LWA rule was revised to the one that we have today. I should note that Progress Energy is identified in the NRC rulemaking SECY paper as one of seven nuclear power plant licensees that commented on the proposed rule. I reviewed the Progress Energy comment letter and I saw that Progress Energy highlighted, very early in its pre-licensing communications to the NRC, the importance of an LWA. In its comment letter, Progress Energy stated that an LWA could accelerate a plant's construction completion date by more than a year. This new rule became effective in 2007, just in time for the anticipated

1 new reactor license applications. This rule established the site
2 activities that could be conducted without prior NRC staff approval and
3 focused the NRC LWA review on those activities that had a reasonable
4 nexus to radiological, health and safety, or the common defense and
5 security. There are three key provisions. First, redefining
6 "construction" of a nuclear site so that work that involves only non-
7 safety related activities can be conducted without prior NRC staff
8 approval. This included site excavation. Second, requiring NRC
9 approval to conduct excavation, the setting of piles, and foundation
10 construction, for any structure which is required to be included in the
11 various Safety Analysis Reports. And, third, requiring the preparation
12 of an Environmental Impact Statement for an LWA request.

13
14 **Q. Would the NRC have amended its LWA Rule in 2007 if it did not**
15 **intend for licensees to use the process?**

16 A. No, it is clear that the NRC and the nuclear industry wanted to have an
17 LWA process available for new license applicants that was compatible
18 with and part of the new 10 CFR Part 52 licensing process.

19
20 **Q What is the basis for your opinion?**

21 A. First, I was directly involved in the Direction Setting initiative that
22 focused on the licensing of future reactors while I was the Deputy
23 Executive Director for Regulatory Programs at the NRC. That effort led

1 to the initial NRC rulemaking efforts to clarify and to make the LWA
2 regulatory process compatible with the new 10 CFR Part 52 regulation.
3 (See SECY-98-282, www.nrc.gov, NRC ADAMS #ML032801416). As
4 I described earlier, this proposed rulemaking effort covered a number
5 of areas; however, the changes proposed for the LWA regulations
6 were not sufficient to address industry needs and expectations. Based
7 on comments from the Nuclear Energy Institute (NEI), the organization
8 that represents the nuclear industry in generic interactions with the
9 NRC, the proposed regulation that resulted from that initial effort did
10 not go far enough and NEI proposed more extensive changes. The
11 NRC evaluated the NEI comments and essentially agreed with them.
12 However, NRC concluded that the changes were sufficiently different
13 from the proposed rule that it elected to treat the NEI comments in a
14 new rulemaking. NRC then started the rulemaking for the LWA all over
15 again in 2006. Thus the NRC clearly indicated to the public and the
16 nuclear industry that it was worth spending NRC resources on the
17 LWA process and that the NRC expected the nuclear industry to be in
18 a position to use LWAs if needed to meet projected construction
19 schedule needs.

20
21 In addition, in July 2006, the NRC announced the planned creation of a
22 new NRC office to prepare for the industry's interest in licensing and
23 building new nuclear plants in the near term. (NRC Press Release 06-

1 096). The new Office of New Reactors was formed in January 2007
2 and, to ensure timely licensing reviews, it is focused only on the
3 licensing and environmental reviews of new reactors. In this new
4 Office, NRC established the Division of Site and Environmental
5 Reviews. That Division's sole responsibility is to conduct the
6 environmental portion of early site permit reviews and all
7 environmental reviews needed for COLA applicants, including LWAs.
8 Thus by the time that PEF had decided to request an LWA, the NRC
9 had not only established a new regulation for reviewing and issuing
10 LWAs, but it had also established an Office that was responsible for
11 conducting those reviews in a timely schedule, provided that an
12 acceptable application had been submitted.

13
14 **Q. Was the process you have described the process that was used**
15 **by PEF in its LWA request for the Levy sites?**

16 A. Yes it was. First, consistent with the NRC process, PEF notified the
17 NRC staff in March 2008 that the Company intended to request a LWA
18 in parallel with the COLA application. (PEF letter from Garry Miller to
19 NRC March 5, 2008). This is consistent with the guidance that the
20 NRC staff gave at a public meeting with NEI on February 20, 2008. At
21 that meeting the NRC staff specifically stated:

22 "... applicants who notify the NRC that they will be requesting an LWA
23 at the same time that they notify the NRC that they will be submitting a

1 combined license application will get their LWA request scheduled in
2 concert with their combined license request and resources will be
3 allocated to both reviews.” (NRC March 11, 2008 Memorandum from
4 Nanette Giles to William Reckley, www.nrc.gov, NRC ADAMS
5 #ML080630030).

6 The NRC staff then noted that applicants who request an LWA after
7 submitting their COLA do so at the risk of impacting their COLA
8 schedule. (Id.).

9
10 Clearly PEF was fully in conformance with the NRC staff guidance for
11 early notification of plans to request a LWA and for including it as part
12 of the COLA.

13
14 **Q. Was it appropriate for PEF to request an LWA for initial site work?**

15 **A.** Yes. PEF had decided that the LWA was needed to meet the planned
16 construction schedule. As I stated earlier, not only had the NRC
17 promulgated a new LWA rule to permit new reactor licensees to
18 request an LWA so that critical safety related work could begin early,
19 but it also established a new office whose responsibility was to conduct
20 the requested licensing reviews in a timely fashion, so that the
21 licensing schedule would not adversely impact the planned completion
22 of construction date.

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Q. When was the Levy site COLA submitted?

A. PEF submitted the COLA application on July 28, 2008 and the NRC staff started its 60 day acceptance review on August 4, 2008. In that application, PEF included its request for an LWA to be issued in advance of the COL to allow the early performance of certain safety-related construction activities. PEF provided requested specific milestone dates for the Final Environmental Statement, the LWA and the COL. PEF then noted that they looked forward to meeting with the NRC staff to further discuss the review schedule.

Q. When did the NRC staff complete its acceptance review?

A. The NRC staff informed PEF on October 6, 2008 that the COLA was sufficiently complete and the staff could docket the application and commence its review.

Q. Did the acceptance letter set forth a schedule for the Levy COLA review?

A. No. The letter stated that the PEF COLA review schedule would be dependent on the design certification review of the AP 1000 application and the NRC review of the reference COLA, which at the time was the application that had been submitted by the Tennessee Valley Authority for the Bellefonte plant. The letter also stated that the NRC would

1 require additional information from PEF about the “complex
2 geotechnical characteristics of the Levy site” before it could develop an
3 integrated review schedule. Thirteen RAIs were appended to the NRC
4 letter. PEF provided the additional information requested by these
5 RAIs to the NRC by November 20, 2008.

6
7 **Q. Do the NRC standards that apply to COLA submittals require**
8 **more complete applications and more robust analysis in support**
9 **of those applications than it previously required for operating**
10 **license applications submitted under 10 CFR Part 50?**

11 **A.** Yes, they do. Because of the large number of COLA submittals that
12 the NRC anticipated and the work load required to review a large
13 number of applications, the NRC advised applicants and stated
14 publicly that it would require COLA submittals to be more complete and
15 technically adequate than it had historically required for docketing.
16 Additionally, the NRC Commissioners directed the staff to allocate
17 resources for COLA reviews based on several factors, including “the
18 quality and completeness of the application itself.” (NRC Staff
19 Requirements Memorandum for SECY-06-187).

20
21 **Q. Have there been any changes in the scope and depth of the NRC**
22 **acceptance reviews since the Levy site was announced?**

1 A. Yes, the NRC has raised the acceptance review standard in 2007, at
2 the Commission's direction. Acceptance reviews had been a standard
3 part of the regulatory processing that ensured that new license and
4 license amendments were complete and that all the sections were
5 addressed. The regulations in 10 CFR Part 2 prescribe the
6 requirements for determining the acceptability of an application. In
7 accordance with 10 CFR 2.101(a) for a COLA or Section 2.815 for a
8 design certification, an application will be assigned a docket number
9 after the tendered application had been evaluated for completeness.
10 These sections provide that the NRC may determine, at its discretion,
11 the acceptability for docketing of an application based on the technical
12 sufficiency of the application as well as the completeness of the
13 application.

14
15 The NRC staff's previous practice had been to conduct these
16 acceptance reviews within 30 days. However, in June 2007, the
17 Commission directed the staff to determine acceptability of COL
18 applications on the basis of the technical sufficiency as well as its
19 completeness, within a period of 60 days. This additional review time
20 was provided to raise the acceptance bar on the technical quality of the
21 license applications, reduce the need for NRC requests for additional
22 information, and to enable the staff to establish a reasonable baseline
23 review schedule. As noted in the guidance to the staff for conducting

1 these reviews, set out in NRO Office Instruction NRO-REG-100,
2 "Acceptance Review Process for Design Certification and Combined
3 License Applications," the baseline schedule was 30 months for a COL
4 review. The performance measure for the staff's acceptance review
5 was set at 75 calendar days.

6
7 **Q. What was the intent behind the NRC's change in the acceptance
8 review standard?**

9 **A.** The intent was to make the process of the NRC reviewing the COLA
10 and docketing much more than simply verifying that an applicant has
11 submitted all of the sections required to be addressed in the license.
12 Rather, it was changed to ensure that the application would not be
13 docketed unless its technical content had been reviewed in sufficient
14 depth to determine that it was of high quality and that the NRC staff
15 could establish a realistic schedule. Acceptance for docketing meant
16 that the NRC was ready to devote resources to the particular
17 application, because the technical quality of the design could be
18 applied to the site. The NRC would never docket a COLA if it did not
19 have reasonable assurance that the site and the certified design would
20 be likely to meet the NRC regulatory requirements. This is consistent
21 with what occurred here.
22

1 **Q. Were there other indications from the NRC that it intended to**
2 **conduct its COLA reviews in a timely manner?**

3 A. Yes, there were. In a speech at the Regulatory Information
4 Conference in March 2008, NRC Chairman Klein said, "Our agency
5 has in place the staff, the expertise, and the policies to oversee a safe
6 expansion in domestic nuclear power – assuming that our high
7 standards for safety and security are fully met." ... and later "I
8 mentioned earlier that the NRC has become a much more efficient
9 agency, and this includes our new streamlining approach to licensing
10 potential new plants." (NRC Chairman Klein, May 1, 2008 Remarks at
11 the North American Energy Summit, www.nrc.gov, NRC ADAMS
12 #ML081260274; also at [http://www.nrc.gov/reading-rm/doc-](http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2008/s-08-018.html)
13 [collections/commission/speeches/2008/s-08-018.html](http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2008/s-08-018.html)).

14
15 As I will discuss in more detail later, once the NRC has completed its
16 acceptance review and concluded that the license application is
17 technically sufficient that the NRC staff can conduct its review, the staff
18 establishes a review schedule that is consistent with its performance
19 measures.

20
21 **Q. Was it unreasonable for PEF management to expect that the NRC**
22 **would complete the licensing review of the LWA in a timely**
23 **manner?**

1 A. No, it was not unreasonable to expect that the NRC would complete
2 the entire LWA process in a timely manner. As I noted earlier, in order
3 to grant an LWA, the NRC staff will need to conduct both the
4 environmental review required by the National Environmental Policy
5 Act (NEPA) and the related review of the safety related items
6 requested by the licensee as part of the LWA. The NRC's baseline
7 planning assumption for producing a Final Environmental Impact
8 Statement (FEIS) is 24 months. As the NRC states on its public web
9 page:

10
11 "Currently, the NRC staff estimates that the environmental review
12 process will take approximately 24 months. This includes scoping,
13 issuance of the Draft EIS, a comment period, and issuance of the Final
14 EIS. The NRC staff currently conducts its environmental reviews using
15 NUREG-1555, "Environmental Standard Review Plan (ESRP)." (see
16 [http://www.nrc.gov/reactors/new-reactors/regs-guides-](http://www.nrc.gov/reactors/new-reactors/regs-guides-comm.html#erp)
17 [comm.html#erp](http://www.nrc.gov/reactors/new-reactors/regs-guides-comm.html#erp)).

18
19 As I stated earlier, the NRC had long been aware of PEF's plans and
20 need for obtaining a LWA. This dialogue had begun in 2007. In 2008,
21 PEF provided a 90-day early LWA notification before COLA submittal
22 and then included the request for an LWA in its COLA, consistent with
23 the NRC's guidance for a timely review. PEF's request for an LWA

1 came as no surprise to the NRC. In fact the NRC had received pre-
2 application briefings from PEF on the LWA in order to ensure there
3 would be no surprises and that NRC staff would be able to plan its
4 review of the PEF LWA request.

5
6 Based on my review of the publically available documents, the clearest
7 statement of what the NRC baseline for conducting the entire LWA
8 review and approval process was provided at the NRC's public scoping
9 meeting. These scoping meetings, typically held in the local vicinity of
10 the proposed reactor site, are one of the key steps in the
11 environmental review process for a new license application. For the
12 Levy plant, that meeting was held on Thursday December 4, 2008. The
13 NRC staff at that meeting included both the NRC Licensing Project
14 Manager, Brian Anderson, and the NRC Environmental Project
15 Manager, Doug Brunner. The senior NRC manager present at the
16 meeting was Drew Persinko, who was the Deputy Division Director of
17 the Site and Environmental Review Division, Office of New Reactors.
18 He had management oversight responsibility for all environmental
19 reviews underway at that time. At that meeting, a member of the public
20 asked a question directly addressing the issue of timing of the review
21 for the Levy LWA. Mr. Anderson responded with the following:
22

1 Just to give you a ballpark time frame, we expect that somewhere
2 on the order of two years will be required to complete our **entire**
3 (emphasis added) review process for the limited work
4 authorization. And that's a ballpark time frame. The detailed
5 review schedule activities will be made publically available once
6 we've completed the development of our schedule." (see Exhibit
7 No. ___ (HT-3), page 28 of 29, also at www.nrc.gov, NRC
8 ADAMS #ML083520102).

9
10 If the NRC project managers or even the Deputy Division Director, who
11 was present, had any expectation that the review time would not be in
12 the two year time frame, they would have said so. My experience with
13 the NRC is that it strives to be open and to provide applicants and the
14 public with honest answers to questions. If they had known of any
15 serious LWA review delays, it is my opinion that they would have
16 simply said that there are some issues with this site that will take
17 longer than our usual schedule and we cannot provide any ball park
18 estimate at this time. Just to state again, both NRC Project Managers
19 were present and their Deputy Division Director were present at this
20 meeting.

21
22 **Q. When it signed the Engineering, Procurement and Construction**
23 **(EPC) contract on December 31, 2008, did PEF have reason to**

1 **believe that the NRC would not review its LWA application in a**
2 **timely manner?**

3 A. No, not based on my review of the information that was available to
4 PEF management at that time. As I have just stated in response to
5 earlier questions, the information available to PEF when it signed the
6 EPC contract was that the NRC had revised its licensing process to
7 expedite the licensing of new nuclear power plants, it had established
8 an Office of New Reactors to provide timely licensing reviews and it
9 had promulgated a new rule to clarify the process for applicants to
10 obtain limited work authorizations. The Chairman of the NRC was
11 stating to the public that the NRC intended to review license
12 applications in a timely manner. PEF management had clearly
13 informed the NRC that they were requesting a LWA to meet the
14 planned construction schedule. They knew that the COLA was
15 technically sufficient for the NRC licensing review because it had been
16 docketed by the NRC. Most importantly, at the NRC public meeting
17 that had just been held on December 4, 2008, the NRC stated that the
18 baseline schedule for the entire LWA process would be on the order of
19 two years. Both NRC Project Managers for the Levy project and their
20 Deputy Division Director were aware that PEF had requested an LWA,
21 having been briefed on the details of the requested LWA on December
22 3, 2008 (see Exhibit No. ____ (HT-2), "Response to Information Need
23 No. TL-2-003 - 12/03/2008 Meeting Slides, "Levy Nuclear Plant Limited

1 Work Authorization Scope.", www.nrc.gov, NRC ADAMS #
2 ML090760470). The NRC Licensing Project Manager stated publicly
3 the next day, during the same month that the EPC contract was
4 signed, that the NRC intended to complete its review process for the
5 LWA "somewhere on the order of two years." Based on the
6 information available to PEF in December 2008, it would have been
7 reasonable for PEF management to believe that its application for an
8 LWA would be reviewed by the NRC in a timely manner, even if not on
9 the specific schedule initially requested.

10
11 **Q. When did PEF learn that the NRC intended to review its LWA**
12 **request on the same schedule as its COLA review?**

13 A. The NRC staff held a scheduling telephone conference with PEF on
14 January 23, 2009. In that call, the NRC representatives told PEF that
15 the LWA as requested and the COLA geotechnical review "require the
16 same critical path duration" and that the NRC staff does not "have the
17 resources to process an LWA." Based on my review, this appears to
18 be the first time that availability of NRC resources was raised as an
19 issue that would affect the timing of the PEF LWA request.

20
21 **Q. Since the NRC had identified complex geotechnical issues at the**
22 **Levy site in its docketing letter of October 6, 2008, should PEF**
23 **management have anticipated that the review of geotechnical**

1 **issues would delay the NRC's consideration of PEF's LWA**
2 **request because the NRC does "not have the resources to**
3 **process an LWA?"**

4 A. No, I don't believe so. The October 6 letter was accompanied by RAIs
5 requesting information the NRC would need to address geotechnical
6 issues at Levy. PEF had responded to those RAIs in a timely manner,
7 completing its response to the NRC by November 20, 2008. After
8 submitting this information, PEF had reason to believe that it was
9 working with the NRC staff to resolve the geotechnical issues at the
10 Levy site. The following month, on December 4, the NRC Licensing
11 Project Manager, who was the author of the October 6 NRC
12 acceptance letter, stated publicly that he expected the entire LWA
13 review to be completed in "somewhere on the order of two years."
14 (See Exhibit No. ____ (HT-3) to my rebuttal testimony).

15
16 In addition, PEF held periodic telephone conferences with the NRC
17 staff to discuss COLA and LWA status and progress. The summary of
18 the NRC and PEF January 6, 2009 teleconference included a
19 discussion of LWA vs. COL impacts, with no indication that the NRC
20 did not have resources to conduct an LWA review. The summary
21 notes indicate that, as late as January 6, 2009, both the LWA and
22 COLA reviews were in progress. (see email from Douglas Bruner to

1 Paul Snead, January 12, 2009, www.nrc.gov, NRC ADAMS #
2 ML091510037).

3
4 Based on the ongoing dialogue it had with the NRC about the status
5 and process for reviewing the Levy COLA and LWA requests, as
6 described above, it would have been reasonable for PEF management
7 to have been surprised to learn in the January 23 phone call that the
8 NRC did not have adequate resources to process the PEF LWA
9 request.

10
11 **III. Crystal River 3 Power Uprate Project.**

12 **Q. Did you review Jacobs' Testimony regarding the Crystal River 3**
13 **Extended Power Uprate Project?**

14 **A.** Yes I did.

15
16 **Q. Do you agree with his testimony?**

17 **A.** I agree with the part of his testimony that describes the planned
18 uprates but I disagree with his statements concerning risk
19 management.

20
21 **Q. Please explain your disagreement.**

1 A. I disagree with Jacobs' testimony because it attempts to portray
2 Extended Power Uprates as risky business when in fact it is not a risky
3 business for a number of reasons.

4
5 First, the NRC has been granting power uprates since the 1970's as a
6 way to generate more electricity from licensed nuclear plants. This
7 program is well established and there have been 127 power uprates
8 approved by the NRC staff as of July 22, 2009. This currently totals
9 approximately 15,600 MWt or approximately 5,700 MWe. Exhibit No.
10 _____ (HT-4) provides a list of the power uprates that have been
11 approved by the NRC.

12
13 Second, since 2001, power uprates applications have been given high
14 priority and the NRC staff has been conducting these reviews on
15 accelerated schedules. (See SECY 01-0124). This means that the
16 Commission and the NRC staff highly support this program and want
17 to see power uprates approved smartly. The Commission has been
18 holding out the success of this program as one of its key
19 accomplishments, stating that "[c]ollectively, these uprates have added
20 generating capacity at existing plants that is equivalent to more than
21 five new reactors." . (see NRC Backgounder "Power Uprates for
22 Nuclear Plants," www.nrc.gov, NRC ADAMS #ML081260274, also at
23 <http://www.nrc.gov/reading-rm/doc-collections/fact->

1 [sheets/poweruprates.pdf](#)). As part of the planning for new uprates,
2 NRC is currently projecting uprates that are being planned out to 2012.
3 (See Table 3, NRC webpage for Power Uprates).

4
5 Third, to help ensure regulatory predictability for Extended Power
6 Uprates, NRC adopted Review Standard RS-001, "Review Standard
7 for Extended Power Uprates (www.nrc.gov, NRC ADAMS #
8 ML023610659), in December 2003. This standard went through
9 extensive public review and comment and has been endorsed by the
10 NRC's Advisory Committee on Reactor Safeguards (ACRS).
11 Endorsement by the ACRS provides additional assurance that the
12 licensee will know what is needed to get NRC's approval for Extended
13 Power Uprates. This guidance is over 300 pages long and is very
14 comprehensive. It ensures that a sound safety basis is demonstrated
15 for the requested Extended Power Uprate.

16
17 **Q. Does meeting this guidance mean that the PEF License**
18 **Amendment Request addressed all the substantial engineering**
19 **issues in order to support the detailed technical analysis that the**
20 **NRC expects?**

21 **A.** Yes, it does. Similar to the acceptance review done for the COLA, the
22 LAR will undergo an NRC staff acceptance review. If it is technically
23 complete the NRC staff will then docket the LAR request and establish

1 the licensing review schedule. Extended Power Uprate amendment
2 requests require the most significant amount of engineering and
3 analysis and typically involve substantive physical changes in the
4 plant.

5
6 **Q. Are you aware of any instances where the NRC staff has not**
7 **approved the full amount of the Extended Power Uprate**
8 **requested?**

9 A. No. Based on my review of the NRC staff annual status update reports
10 to the NRC Commissioners since 2001 and my discussions with the
11 NRC Power Uprate project managers for the Power Uprate Program,
12 for the power uprates that the NRC has completed the licensing
13 review, there have been no cases where the requested power uprate
14 was not granted. Also, there have been no cases where a power level
15 approved by the NRC was smaller than that requested by the licensee.

16
17 **Q. Does the fact that the CR3 uprate will increase the approved**
18 **power level by the largest percentage of any B&W plant create an**
19 **unreasonable risk?**

20 A. No it does not. As I have stated earlier, NRC has given the power
21 uprate program a very high priority and it has never reduced the power
22 level that a licensee has requested. While the NRC will clearly require
23 the LAR to meet the acceptance requirements and be sufficient to

1 address the technical requirements and licensing issues set forth in
2 RS-001, that process is well established and includes a straight
3 forward path to completion.

4
5 **Q. How long does it normally take to get NRC approval of an**
6 **Extended Power Uprate?**

7 A. Review and approval of an LAR for an Extended Power Uprate
8 typically takes about a year. The NRC process also includes
9 interactions with the NRC staff before submittal to clarify any issues
10 regarding the scope of the LAR, thus resulting in a more complete
11 application when submitted.

12
13 **Q. Does this complete your testimony?**

14 A. Yes, it does.
15

1

2

3

4

5

MR. ROACH: And, Mr. Chairman, there are four exhibits to the testimony, HT-1 through HT-4. I think they've been previously identified as Exhibits 124 through 127.

6

7

CHAIRMAN CARTER: On page 19, Commissioners, No. 124 through 127. You may proceed.

8

9

(Exhibit Nos. 124, 125, 126 and 127 admitted into the record.)

10

BY MR. ROACH:

11

12

Q Mr. Thompson, could you summarize your testimony?

13

A Yes, I would.

14

15

Mr. Chairman, Commissioners, thank you for the opportunity to be here today.

16

17

18

19

20

21

22

23

I guess a little bit about my background. I was 35 years of nuclear experience, actually a little bit more. Twenty-five years of that were at the Nuclear Regulatory Commission. I had multiple positions there, including a project manager, Director of the Division of Licensing, and then the final positions I held were the Deputy Executive Director for Operations, which is the number two position at the NRC.

24

25

I've been asked by Progress Energy to review Dr. Jacobs' testimony and provide my remarks in rebuttal

1 to some of the positions that he presented.

2 In my summary I'd like to talk about two in
3 particular. The first deals with the Levy LWA schedule
4 and the EPC contract when it was signed. My view was --
5 Dr. Jacobs -- in my words, Dr. Jacobs says that the
6 company should have assumed that the LWA schedule and
7 the COLA schedule would be the same. I disagree based
8 on my review of the information that was available at
9 the time that the EPC was signed. For example, in 2007
10 NRC established the regulatory framework for requesting
11 an LWA, and then also in 2007 NRC established the Office
12 of New Reactors who had the responsibility for reviewing
13 all of the details associated with the licensing
14 application reviews which included the LWA, the safety
15 review, and the environment -- supporting environmental
16 reviews. In the following year, the latter part of that
17 year and in 2008, NRC put out the guidance that a
18 licensee should follow if they wanted an LWA. And
19 during 2008, Progress Energy followed that guidance,
20 submitted the application. In fact, it was sufficient
21 to be docketed. And then NRC, in following its
22 environmental process, held a scoping meeting in
23 December which we've heard about earlier today, and at
24 that scoping meeting the individual who was responsible
25 for both the licensing review of the COLA and the

1 license review schedules for the LWA described to the
2 public in one of the NRC's formal meetings what those
3 different review schedules were, and then he provided
4 the ballpark figure of two years for doing the reviews
5 associated with that.

6 So at the time the EPC contract was signed in
7 December, it was reasonable for Progress Energy not only
8 to think that they would have a COLA, an LWA review
9 schedule that was earlier than the COLA review schedule,
10 but they also thought it would be received in a timely
11 timeframe.

12 The second item I'd like to discuss is the
13 Crystal River Extended Power Uprate. In the extended
14 power uprate program, Dr. Jacobs says that's a
15 significant licensing risk, and I disagree having
16 reviewed the documentation and the program that
17 currently is in place by the NRC.

18 The NRC's had the power uprates in place since
19 the late 1970s, and they actually have granted more than
20 127, at least according to my record, of power uprates
21 by the end of -- by July. And, secondly, they've
22 also -- that program has received high priority by the
23 Commission for doing the licensing reviews. The
24 Commission gets reports annually on how well they're
25 doing in the projections.

1 And, finally, there have been no cases where
2 NRC has not granted the extensions the uprates have
3 requested or have granted power uprates at a lower level
4 than was requested. And to ensure the applications are
5 complete and the NRC knows what they're doing and
6 licensees know what they're doing, NRC has adopted very
7 detailed guidance documents for everybody. So the
8 process that's in place is one that does basically the
9 very low-risk licensing aspect. And that completes my
10 summary.

11 MR. ROACH: Mr. Thompson is available for
12 cross-examination.

13 CHAIRMAN CARTER: Mr. Rehwinkel.

14 CROSS EXAMINATION

15 BY MS. RHEWINKEL:

16 Q Thank you, Mr. Chairman.

17 Good afternoon, Mr. Thompson.

18 A Good afternoon.

19 Q My name is Charles Rehwinkel with the Office
20 of Public Counsel.

21 Are you familiar with the LWA rule that you
22 reference in your testimony?

23 A Okay.

24 Q Did you say yes?

25 A Yes, that's fine.

1 Q And have you read the rule?

2 A I'm sorry?

3 Q Have you read the rule?

4 A Have I read the rule in detail? No.

5 Q Have you ever read it?

6 A I read the Commission paper that -- that
7 promulgated the rule. I basically -- when I was in NRC,
8 I dealt with the rulemaking with LWAs earlier in my
9 life, but in this particular specific rule, I read the
10 statement of considerations and those aspects associated
11 with what the Commission wanted to do with the rule, why
12 were they putting the process in place. My aspect is
13 looking at the process, not the detailed specifics of
14 the rule.

15 Q So you don't know whether the rule is intended
16 to encourage favorable consideration of LWAs?

17 A The rule puts in place a framework for someone
18 who wants to request an LWA to be able to know what is
19 required and what information they need to supply, how
20 they need to supply it and what they can expect to get
21 from the NRC when they submit that if the NRC approves
22 it. The rulemaking was developed after a substantial
23 number of interactions with the industry, and in
24 particular when the NRC initially started the rulemaking
25 activities, it didn't allow the excavation to the extent

1 that the industry really thought that it ought to be,
2 and in fact the rulemaking started over and had a second
3 rulemaking that specifically culled out the -- and
4 improved the excavation rule as part of the requirements
5 that did not require -- part of the activities that did
6 not require a detailed LWA approval while the -- and it
7 did identify those things related to system structures
8 and components related to reactor safety which did. I
9 think that has been pretty much addressed in some detail
10 earlier by Mr. Miller in more detail than I have.

11 Q And you're saying you know this because you've
12 read a summary of the rule or a report about the rule
13 but not the rule itself?

14 A I'm saying that because I read the NRC papers
15 that had the rule, sent the rule up and summarized it
16 and identified what the purpose was.

17 Q So the answer to my question is yes, you know
18 this even though you haven't read the rule?

19 A Yes, I know that because I've read the
20 material that submitted the rule and promulgated the
21 rule up to the Commission and they approved it.

22 Q Have you read parts of the rule?

23 A Yes.

24 Q Which parts?

25 A I don't recall.

1 Q Have you read parts of the rule that relate to
2 the application that PEF filed for their LWA?

3 A I don't understand your question.

4 Q Have you read parts of the rule that are
5 relevant to your testimony here today?

6 A My testimony goes to process, not to the rule.
7 I didn't come here to testify about the rule. I came
8 here to testify about the process, the regulatory
9 framework that had been put in place, and the NRC put in
10 place a rule. I did read and have identified the rule.
11 There is a *Federal Register* notice that promulgated that
12 rule formally. If you want to know that *Federal*
13 *Register* notice, I'll give it to you.

14 Q Page 15 of your testimony, could you turn to
15 that?

16 A Okay.

17 Q Well, actually if you could turn to page 14 of
18 your testimony, and starting on line 2, you're
19 testifying about the rule; aren't you?

20 A On line 2 --

21 Q Yes.

22 A -- on page 14?

23 Q Yes, the Q&A there.

24 A That was a rule that started in 1998 when I
25 was there.

1 Q Okay.

2 A And that was starting the rulemaking process.

3 Q Now, at the bottom -- well, on line 10,
4 starting with March, 2006, is this the rulemaking
5 process that resulted in the rule that's in existence
6 today?

7 A No. It started the process that resulted --
8 let me correct myself. That started the process of the
9 rule that's in place today, but it went through many,
10 many different changes to be able to become final.

11 Q Okay. But in -- on line 23 of page 14 --

12 A Right.

13 Q -- are you testifying there about a new rule
14 that became effective in 2007 is the extant rule?

15 A That's correct. That is the rule that's in
16 place today.

17 Q Okay. Now, on page 15, line 1, isn't it true
18 that you're telling the Commission about what the rule
19 does, starting --

20 A That's correct.

21 Q Yes?

22 A That's correct.

23 Q Okay. So you are here testifying about the
24 rule?

25 A I am. I'm testifying about the rule and the

1 things that are in the rule.

2 You asked me had I read it in detail, and I
3 have not read it in detail. I read the Commission
4 documents that were proposed and the summary statements
5 in the rulemaking itself.

6 Q But you haven't read the rule --

7 A I have read those portions of the rules that
8 relate to these issues --

9 Q You have?

10 A -- that are in my testimony.

11 Q So you can -- if I give you a copy of the
12 rule, you can show me what you've looked at?

13 A I believe so.

14 MS. RHEWINKEL: Okay. Mr. Chairman, I'd like
15 to ask for an exhibit to be passed out.

16 MR. YOUNG: And where is this? Is this the 10
17 CFR --

18 CHAIRMAN CARTER: Do you need a number,
19 Mr. Rehwinkel?

20 MS. RHEWINKEL: Yes, Commissioner. I actually
21 have an exhibit that's in two parts.

22 CHAIRMAN CARTER: Hang on, hang on. We're not
23 picking you up on the mikes when you turn away like
24 that.

25 This is No. 154, Commissioners. Short title?

1 MS. RHEWINKEL: This is 10 CFR Part 50 and 52,
2 and it's in two parts. I apologize, Commissioners.
3 This is an extensive document and I'll try to be
4 expeditious about getting it passed out.

5 CHAIRMAN CARTER: Give me a short title again,
6 Mr. Rehwinkel, 10 CFR --

7 MS. RHEWINKEL: 10 CFR Part 50 and 52, Parts
8 50 and 52.

9 CHAIRMAN CARTER: Okay. Parts 50 and 52.

10 THE WITNESS: Is this -- this is a different
11 one? Oh, okay.

12 CHAIRMAN CARTER: This is going to be a
13 composite then, since you've got two parts, so it would
14 be 154-A and 154-B.

15 MS. RHEWINKEL: That sounds good. Thank you.

16 CHAIRMAN CARTER: So let's go with, Part 50
17 will be 154-A, Commissioners, and Part 52 will be 154-B.

18 Okay. Mr. Rehwinkel, does that work for you?

19 MS. RHEWINKEL: Yes, thank you.

20 CHAIRMAN CARTER: Okay. You may proceed.

21 COMMISSIONER EDGAR: Mr. Chairman, just a
22 question, do we need to mark if it's part of -- is this
23 a --

24 CHAIRMAN CARTER: Is it the entire rule or
25 parts of the rule or --

1 COMMISSIONER EDGAR: Do we need to mark it and
2 enter it if it's --

3 CHAIRMAN CARTER: Let me ask Ms. Helton.

4 COMMISSIONER EDGAR: -- a federal regulation?

5 MS. HELTON: If I'm understanding what this
6 is, this is from the Code of Federal Regulation, which
7 is the FERC's rules, or I guess it's the NRC's rules,
8 and is readily available and is similar to our rules in
9 the Florida Administrative Code, and I think this is
10 something that we can just all rely on and not have to
11 have it marked, if that's your pleasure, Mr. Chairman.

12 COMMISSIONER EDGAR: Mr. Chairman, whatever is
13 your pleasure. I think we've probably in my experience
14 done it both ways.

15 CHAIRMAN CARTER: Well, I've already embarked
16 on this journey with 154-A and B.

17 MS. RHEWINKEL: It's possible that we won't
18 need to move this into evidence either way.

19 CHAIRMAN CARTER: Commissioners, let's just
20 cancel Block No. 154. So we'll just cancel that exhibit
21 number. That block will just be cancelled. And,
22 Mr. Rehwinkel, you may proceed with your
23 cross-examination. We won't enter it, but this No. 154,
24 for the record, that block will be canceled.

25 Mr. Rehwinkel.

1 COMMISSIONER EDGAR: And I would say,
2 Mr. Chairman, I apologize for interrupting you and the
3 attorney, but even though it's a lot of trees, if you
4 are going to ask questions about it, I appreciate having
5 a copy provided because I don't have it memorized.

6 MS. RHEWINKEL: Okay. Thank you. And it was
7 a fair question to ask, and I appreciate it.

8 CHAIRMAN CARTER: It's only 700 pages.

9 You may proceed.

10 (The transcript continues in sequence with
11 Volume XXX.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

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

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

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

DATED this 11th day of September, 2009, at Tallahassee, Leon County, Florida.

Ray D. Convery

RAY D. CONVERY