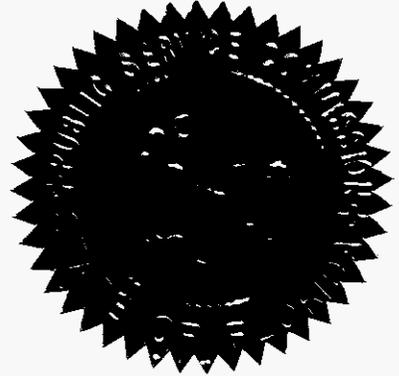


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090009-EI

In the Matter of:  
NUCLEAR COST RECOVERY CLAUSE.



VOLUME 12

Pages 1966 through 2110

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING.  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

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 5:00 p.m.  
Concluded at 7:00 p.m.

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

REPORTED BY: CLARA C. ROTRUCK  
Court Reporter  
(850) 224-0722

**ORIGINAL**

PARTICIPATING: (As heretofore noted.)

DOCUMENT NUMBER-DATE

09448 SEP 10 2009

FPSC-COMMISSION CLERK

## I N D E X

## WITNESSES

NAME: PAGE NO.

HUGH L. THOMPSON, JR.

|                                    |      |
|------------------------------------|------|
| Cross Examination by Mr. Rehwinkel | 1969 |
| Cross Examination by Mr. Brew      | 1989 |
| Redirect Examination by Mr. Roach  | 1995 |

GARY DOUGHTY

|                                      |      |
|--------------------------------------|------|
| Direct Examination by Mr. Roach      | 1999 |
| Prefiled Rebuttal Testimony inserted | 2001 |
| Cross Examination by Mr. Rehwinkel   | 2017 |
| Cross Examination by Mr. Moyle       | 2031 |

JEFFREY J. LYASH

|                                      |      |
|--------------------------------------|------|
| Direct Examination by Mr. Walls      | 2033 |
| Prefiled Rebuttal Testimony inserted | 2035 |
| Cross Examination by Mr. Brew        | 2078 |
| Cross Examination by Mr. Davis       | 2106 |

EXHIBITS

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

| NUMBER:                                | ID.  | ADMTD. |
|--|------|--------|
| 124 through 127                        |      | 1998   |
| 155 EPA Analysis of HR 2454, June 2009 | 2096 |        |

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

(Transcript follows in sequence from  
Volume 11.)

## CROSS EXAMINATION

BY MR. REHWINKEL:

Q Mr. Thompson, can you show me in these two  
documents where the rule is that you're referring to?

A Where the rule is that I'm referring to?

Q Or the rule -- the parts of the rule that  
you've read related to the LWA.

A The first parts I read dealt with the  
background, which is --

Q What is the citation?

A My citation is 57416, Federal Register Notice,  
Volume 17, on the background document.

Q So do you know the CFR section?

A That was the regulation portions I looked at.

CHAIRMAN CARTER: I think we're two ships  
passing in the night. Would you ask your question  
again, Mr. Rehwinkel?

MR. REHWINKEL: I'm asking if he can give me a  
CFR citation to the parts of the rule that he read.

THE WITNESS: 10 CFR Part 52.

BY MR. REHWINKEL:

Q Okay. The whole thing?

1           A     Well, I read those portions of it sufficient  
2 to understand the key elements that were identified for  
3 the LWA activities that would be permitted and those  
4 activities -- what would be required for a licensee to  
5 be able to do, and then with the changes that resulted  
6 between the rulemaking activities that they originally  
7 started out with an LWA and what they came out with  
8 eventually.

9           Q     So is it your testimony that you can't tell me  
10 where in 10 CFR Part 52, which provisions within there  
11 that you reviewed?

12          A     You mean these three key provisions that I  
13 identified in my testimony?

14          Q     Yes, sir.

15          A     At this moment, I can't define -- there's  
16 about 40 pages in there, I would have to review those in  
17 detail, but there's a number of comment sections in the  
18 Federal Register Notice.

19               MR. ROACH: Mr. Chairman, this is a pretty  
20 thick stack of papers. Do you want to give him a few  
21 minutes to take a look at it?

22               MR. REHWINKEL: I'm in no hurry. I don't mean  
23 that in a flippant way, Mr. Chairman. I want him to be  
24 able to answer the question. If he can't give me a  
25 citation to the rule, that could be his answer, I don't

1 know. I think it's a fair question. He said he  
2 reviewed the portions of the rule that he needed to  
3 provide this part of his testimony, and I think I'm  
4 entitled to cross-examine him on that.

5 CHAIRMAN CARTER: Mr. Thompson, do you need a  
6 moment?

7 THE WITNESS: Yes, I need a moment.

8 CHAIRMAN CARTER: You got it.

9 MR. ROACH: If counsel has a specific section  
10 he wants to ask about, it might be helpful for the  
11 process to point him to it and he can say whether he  
12 read it or not.

13 MR. REHWINKEL: I can't do that, because I  
14 don't know what provisions he's read.

15 CHAIRMAN CARTER: Okay, hold on. Mr. Thompson  
16 is going to review the document and he's going to answer  
17 the question, based upon what he looked at. So let's  
18 don't get frisky.

19 THE WITNESS: What I did, I read the rule in  
20 some sense, but what I went through was the Commission  
21 papers and the background associated with those to find  
22 out what the LWA allowed and what it didn't allow. I  
23 did not have to go through and read every detailed  
24 section in the comments and the public comments on the  
25 rule. So that's what my position was based on

1 primarily, not trying to re-read the regulation, but  
2 reading the Commission statements and what they had in  
3 place with respect to what an LWA process was supposed  
4 to permit a licensee to have and what was required.

5 For example, an environmental impact statement  
6 was required, and they had to -- would not be required  
7 to have an LWA -- you know, evacuation -- you know, for  
8 evacuating the -- not evacuating, but excavating the  
9 site activities. So it differentiated what the two  
10 things were related from.

11 CHAIRMAN CARTER: Okay, you may proceed. Go  
12 ahead, Mr. Rehwinkel.

13 MR. REHWINKEL: Thank you. We may come back  
14 to this, but let me move on.

15 CHAIRMAN CARTER: I think he answered your  
16 question, he said he looked at all of the comments and  
17 all, so he won't be able to point to it, so let's move  
18 on.

19 MR. REHWINKEL: Yes, exactly.

20 BY MR. REHWINKEL:

21 Q Can I ask you to turn, Mr. Thompson, to page  
22 20, the bottom of page 20 and the top of page 21?

23 A Okay.

24 Q Okay. You state at the top -- there is a  
25 question at the bottom of page 20 and an answer at the

1 top of page 21. The answer says, "Yes, the NRC has  
2 raised the acceptance review standard in 2007 at the  
3 Commission's direction." Do you see that?

4 A Right.

5 Q Is that written down somewhere?

6 A That's new reg -- NRO Reg. 100, "Acceptance  
7 Review Process for Design Certification and Combined  
8 License Applications," dated September 26, 2007.

9 Q So that's what you cite on the next page, page  
10 22, the NRO Reg. 100?

11 A Correct.

12 Q Okay. And on page 22, line 7, you ask the  
13 question, "What was the intent behind the NRC's change  
14 in the acceptance review standard?"

15 A Correct.

16 Q And you testify as to an intent, and where is  
17 that intent written down? Or is that based on an  
18 analysis that you have done?

19 A Well, that intent is written down. Also, I  
20 was present with the NRC EDO, Luis Reyes and Bill  
21 Borhardt, in their office. I was working with  
22 Mitsubishi Heavy Industries, and we were discussing with  
23 them what the plans would be for getting a DCD review,  
24 and that's when they basically told me what the  
25 Commission was doing.

1           There is a -- let me see if I have a reference  
2 here on it.

3           There is a staff requirements memo, I hate to  
4 give you all this gobbledy-gook, but it's going to come  
5 out, it's an SRM COM DEK 07-0001/COM JSM 07-001, "Report  
6 of the Combined License Review Task Force," June 22,  
7 2007.

8           Let me explain what that document -- that  
9 document was -- the chairman -- Chairman Klein and  
10 Commissioner Merrifield had put together a task force to  
11 look at how to improve the NRC staff licensing of the  
12 new applications that were coming in, and lots of them  
13 were coming in, so what they decided that they needed to  
14 do was to increase the technical review that's done  
15 before docketing, such that the docketing not only has a  
16 completeness, but it meets the technical requirements  
17 associated for having confidence that the application  
18 meets NRC requirements.

19           Originally the project managers themselves  
20 just did the completeness review, and the project  
21 manager is not the subject matter expert. The new  
22 review process they put in place and put it in and gave  
23 the staff the 60 days rather than the 30 days, said that  
24 they would also give pieces of -- well, the entire  
25 application would be reviewed by the technical staff who

1 would have to do the technical reviews later on. That  
2 process was put in place informally in the early 2007s,  
3 and then formally I think it was put in place in the  
4 first part of 2008. But it was in place during this  
5 period.

6 Q So my question was, is the intent that you  
7 describe here written down? You're saying it's written  
8 down in the document that you gave a citation to?

9 A That's correct.

10 Q Is that an official NRC document?

11 A That it is.

12 Q I ask you to turn to page 25 of your  
13 testimony.

14 A Okay.

15 Q You testify here about the December 4, 2008 --

16 A Correct.

17 Q -- meeting and the statement by Brian  
18 Anderson, is that correct?

19 A That's correct.

20 Q Okay. Now, were you at that meeting?

21 A No, I was not.

22 Q Were you advising or working for Progress  
23 Energy during 2008?

24 A No, I was not.

25 Q Not? Okay. Are you the one that discovered

1 this transcript and advised all the witnesses here today  
2 that have included it in their testimony on rebuttal?

3 A Patty Laramore, who was my licensing  
4 assistant, found this in my request for her to review  
5 for publicly available documents. What I was wanting to  
6 do was look at what the document available for the  
7 managers who were making decisions up until the December  
8 time frame, what did they know and what would they  
9 reasonably know. This was one of the documents that  
10 was -- we identified.

11 Q Have you included the transcript as an exhibit  
12 to your testimony?

13 A Yes, I did. I included portions of the  
14 transcript, it's not the whole transcript. I do have it  
15 if you want to read the whole transcript.

16 Q Okay. Can you tell me who asked the question  
17 that you say that Mr. Anderson answered?

18 A Just a moment. What was it, hold it?

19 Q I think Mr. Miller said stand down.

20 A Oh, stand down? Stand by.

21 The individual who asked the question is  
22 Robert Fetrow, F-e-t-r-o-w, who lives in Inglis,  
23 Florida.

24 Q Does he work for Progress Energy?

25 A I don't believe so.

1           Q     Based on your experience with NRC staff, why  
2 would they have answered his question and not Progress  
3 Energy's question about the time frame?

4           A     It was an NRC meeting, and NRC meetings are  
5 intended to explain to the public what their  
6 responsibilities are. They are requesting public input  
7 as to what areas of the environmental review they would  
8 like to do, and they are also wanting to be able to  
9 establish a presence that they are going to do their job  
10 right.

11                   NRC has a health and safety job, and they owe  
12 it to the citizens of Florida, they owe it to the  
13 citizens of any part of the country that has a license  
14 application to not only explain the process, but give  
15 the individuals there who are concerned citizens answers  
16 and an opportunity to raise questions. And part of this  
17 was to establish the scoping meeting for the  
18 environmental impact statement. But in addition to  
19 that, they wanted to explain the NRC process and they  
20 also explained the opportunities to participate in a  
21 hearing and what the hearing process was that NRC was  
22 going to have. So if they really wanted to know the  
23 full framework of opportunities to participate in the  
24 NRC licensing process, this was the meeting that put  
25 that in place.

1 Q On page 26 of your rebuttal testimony, can you  
2 look at lines 12 through 14?

3 A Yes.

4 Q Do you see that statement there? It says  
5 there, "My experience with the NRC is that it strives to  
6 be open and to provide applicants and the public with  
7 honest answers to questions." Do you see that?

8 A Yes.

9 Q Are you stating there that Mr. Anderson gave a  
10 dishonest answer?

11 A No. No, just the opposite, he gave an honest  
12 one. I'm saying that NRC has responsibilities for  
13 openness, integrity, they have opened it for clarity,  
14 for reliability, but one of -- and independence, and all  
15 I was saying, one of the things a project manager wants  
16 to do is not lose credibility. So his activities -- and  
17 he is responsible for interfacing with the public, he is  
18 responsible for interfacing with the technical reviewers  
19 and the NRC staff and he is responsible for interfacing  
20 with the licensee. So all of these three broad areas  
21 are his responsibilities, and he needs to be not only  
22 independent, but he needs to be forthright and frank and  
23 honest with all of them. And in this case, I'm saying  
24 he was.

25 Q Was this an accurate answer?

1           A     Yes.

2           Q     How was it accurate?

3           A     It gave his opinion.  It gave his opinion at  
4 the time, as he stated.

5           Q     How do you know it was his opinion at the  
6 time?  Did you ask him?

7           A     It was a transcribed meeting.  It was a formal  
8 meeting that NRC has part of their process.  This was  
9 not some back-door comment when somebody secretly made a  
10 tape-recording of somebody's comment.  This was a formal  
11 part of NRC's meeting.  I have no question of the  
12 integrity of Mr. Anderson.

13          Q     My question was, did you ask him if this was  
14 accurate?

15          A     Well, I gave you my broader answer.

16          Q     I think you're obligated to say yes or no.

17          A     Would you ask the question one more time?

18          Q     Did you ask Mr. Anderson --

19          A     No.

20          Q     Okay.  So he said two years on December 4,  
21 2008, and what was the review schedule for the LWA a  
22 little over a month later?

23          A     They didn't have a review schedule for the  
24 LWA.  They made it the same part as the COLA review  
25 schedule.

1 Q So are they going to review the LWA?

2 A I'm sorry?

3 Q Did they decide to review the LWA on -- did  
4 they announce a decision about reviewing the LWA on  
5 January 23, 2009?

6 A Yeah, my reading of the information, and I was  
7 not part of that phone call on January 23rd, though.  
8 The notes that I've read from the briefing material was  
9 that they made a decision at that time. They did not  
10 have adequate resources to conduct the LWA review at an  
11 earlier time frame than the COLA review. I found that  
12 very surprising, but -- that they put those reviews  
13 together.

14 Q You found it surprising to read about it?

15 A No, I found it surprising they made the  
16 decision to do it separate and combined.

17 Q When were you hired by Progress Energy to work  
18 on this case?

19 A The early part of August.

20 Q So that's when you were surprised?

21 A That's when I surprised. I didn't -- I had  
22 not been working for them.

23 Q So Mr. Anderson gave an answer that it would  
24 take -- they were going to look at -- according to your  
25 reading of his transcript, that it was going to take --

1 the NRC was going to take two years to do their entire  
2 review process through the limited work authorization?

3 A Correct.

4 Q Did that turn out to be the NRC's decision?

5 A Not for the -- not for the Levy. It was  
6 consistent with what they did on Vogtle, but not for the  
7 Levy one.

8 Q But they weren't talking about Vogtle down  
9 there in Crystal River on December 4, 2008, were they?

10 A No, but he was talking about a ballpark, and  
11 the ballpark was what they were planning. The planning  
12 that they were talking about primarily is the  
13 environmental review schedule, and that's about 24  
14 months and that's consistent with published NRC guidance  
15 and public documents.

16 Q Can you show me in this transcript where an  
17 environmental impact statement is mentioned?

18 A In the transcript?

19 Q That you cite in your testimony.

20 A I didn't cite that in my testimony, but if you  
21 want me to go back and go through the transcript, I'm  
22 glad --

23 Q I'm just asking you about this portion that  
24 you quote here, that you're offering as testimony to the  
25 Public Service Commission.

1           A     No, I was giving you my experience and  
2 knowledge of what NRC normally does on a -- talking  
3 about the environmental impact statement.

4           Q     But Mr. Anderson's quote that you included in  
5 your testimony specifically references the limited work  
6 authorization, does it not?

7           A     No, it doesn't. It includes the entire  
8 process, and the entire process includes the  
9 environmental impact statement associated with it.  
10 That's what the LWA rule requires.

11          Q     Let me ask you to look on page 26, and that  
12 first sentence on line 1. Can you show me where in that  
13 sentence it references the environmental impact  
14 statement?

15          A     It doesn't have that in the first sentence.  
16 In the second sentence, it has "our entire review  
17 process." I highlighted "entire," emphasis added.

18          Q     I only see, on lines 1 through 4, one  
19 sentence. Am I mistaken?

20          A     I don't know. What I have, it says -- my  
21 quote is, "Just to give you a ballpark time frame, we  
22 expect that somewhere on the order of two years will be  
23 required to complete our entire" -- I have emphasis  
24 added -- "review process for the limited work  
25 authorization."

1 Q Okay. That's one sentence, right?

2 A Correct.

3 Q That refers to the limited work authorization,  
4 doesn't it?

5 A No, it says, "our entire review process."

6 Q "For the limited work authorization," correct?

7 A Correct. The NEPA process requires, if you're  
8 making a major decision, you have to have an  
9 environmental impact statement associated with it.  
10 That's what the LWA rule, as I articulated earlier,  
11 requires.

12 Q How many LWAs had the NRC reviewed at the time  
13 Mr. Anderson made this statement under the new rule?

14 A I don't believe they had completed a review of  
15 any.

16 Q So on page 26, lines 14 through 18, you state,  
17 "If they had known of any serious LWA review delays, it  
18 is my opinion that they would have simply said that  
19 there are some issues with this site that will take  
20 longer than our usual schedule, and we cannot provide  
21 any ballpark estimate at this time." Do you see that?

22 A Yes.

23 Q Now, my question I asked about -- I emphasized  
24 the word "usual." Did you hear that in my tone?

25 A No. Do it for me one more time.

1 Q Never mind.

2 Where was this usual schedule, where did that  
3 come from, if this rule had really not been used before?

4 A I'm really sorry, I'm a little hard of  
5 hearing.

6 Q I apologize.

7 A But if you will point me to what you have  
8 questions about in my testimony, I will hopefully be  
9 able to respond to you.

10 Q Okay. On line 17, you reference a usual  
11 schedule. Do you see that?

12 A Yes.

13 Q Okay. Now, where did this usual schedule come  
14 from, this being the first LWA associated with a COLA?

15 A No, it's the usual environmental impact  
16 statement review schedule.

17 Q On the next page, page 27 of your testimony --

18 A Yes.

19 Q -- on lines 4 through 7, you reference  
20 information available to PEF when it signed the EPC  
21 contract. How do you know what information was  
22 available to PEF at the time they signed the EPC  
23 contract?

24 A This was the information that was publicly  
25 available that I found.

1 Q Okay. Not stuff that they told you?

2 A I'm sorry?

3 Q Not information that they told you about?

4 A No, no, no. This was information -- there was  
5 one, I can't remember whether we found it separately or  
6 not, was the notes of the telephone call of -- of the  
7 January 23rd NRC phone call, but what I was looking at  
8 was the information that was publicly available, readily  
9 available at the time that the EPC contract was signed  
10 that I was able to identify.

11 Q Now, did you see any evidence that Progress  
12 Energy Florida had considered this December 4th  
13 statement by Mr. Anderson in any of its decision-making  
14 related to the EPC contract?

15 A I didn't look at any of their decision-making  
16 process. I looked at what was publicly available and  
17 what they knew or should have known, so that was the  
18 standard I used when looking at it, and certainly they  
19 were present at the meeting.

20 Q So you don't have any knowledge about whether  
21 they relied on the statements made by Mr. Anderson on  
22 December 4, 2008, with respect to their decision-making,  
23 do you?

24 A No, I don't, I just know it was information  
25 that they knew or should have known.

1 Q So it's really a matter of what they could  
2 have known rather than what they should have known?

3 A I think it's what they knew.

4 Q But you don't know whether they knew it, do  
5 you?

6 A Well, they were there at the meeting. I mean,  
7 I --

8 Q You don't know whether they relied on it, do  
9 you?

10 A It's information that was available for them  
11 to rely on if they wanted to. I don't know.

12 Q On page 33 of your testimony --

13 A Okay, 33?

14 Q Yes, lines 6 through 15.

15 A Okay.

16 Q Within that Q&A, you reference on lines 10 and  
17 11 discussions with NRC power uprate project managers,  
18 do you see that?

19 A Yes.

20 Q Can you tell me who those people were that you  
21 talked to?

22 A John Stang and Tom Alexson.

23 Q Okay. On lines 14 and 15, you say, "There  
24 have been no cases where a power level approved by the  
25 NRC was smaller than that requested by the licensee."

1 Do you see that?

2 A Yes.

3 Q Have any Babcock & Wilcox plants been the  
4 subject of an LAR for an uprate to the magnitude that  
5 CR-3 is being uprated to?

6 A No.

7 Q So is there any precedent for a Babcock &  
8 Wilcox PWR reactor being subject to an LAR request for  
9 this magnitude?

10 A Is there any precedent?

11 Q Yes.

12 A The NRC has established a very detailed  
13 guidance for what needs to be put in an extended power  
14 uprate application. They did that in 2003. They  
15 divided it into two parts, one part dealing with boiling  
16 water reactors and one part dealing with pressurized  
17 water reactors. To the extent that there are a number  
18 of pressurized water reactors that have power uprates,  
19 those portions would be precedence for the Crystal River  
20 uprate. There are no specific B&W designs that I'm  
21 aware of that have made such a request.

22 Q Is it correct that the uprate for the Crystal  
23 River 3 reactor is about 20 percent of the current  
24 licensed output of the plant?

25 A That sounds about right.

1           Q     Okay.  Is it your testimony that the magnitude  
2 of the uprate request is really not a relevant  
3 consideration, that an uprate is an uprate?

4           A     My testimony is that the existing framework  
5 for granting an uprate has been established in detail by  
6 the Commission.  It's been -- they've exercised it over  
7 20 times for extended power uprate, and this is a  
8 program the NRC has touted as being one of their premier  
9 regulatory programs that they have high -- give high  
10 priority to, established clear time frames for  
11 conducting licensing reviews, and is one where I believe  
12 that they have established what the basis and the  
13 guidelines that a licensee would need to provide in  
14 order to have confidence that their licensed amendment  
15 would be approved.

16                 The NRC has also established additional  
17 guidance, I think it was in May -- May or March of this  
18 year -- of last year -- no, this year, which  
19 established, again, the higher level of review such that  
20 the interactions between the licensees and the NRC staff  
21 before they submit a licensing amendment are done so  
22 that the issues are identified well in advance of the  
23 license amendment being submitted.  The results of those  
24 activities, there should be a high level of confidence  
25 that a license amendment would actually be approved once

1 it's submitted.

2 Q So you're testifying on page 33, lines 14 and  
3 15, that there is no precedent for approval of an LAR  
4 for less than the amount of uprate requested by the  
5 licensee, correct?

6 A I think that's correct. I'm saying that there  
7 are no cases where a license application has been  
8 submitted and the NRC said, you asked for 20 megawatts,  
9 you're going to get 18.

10 Q There's no case where a Babcock & Wilcox PWR  
11 reactor has asked for an uprate of 180 megawatts,  
12 correct?

13 A Correct.

14 MR. REHWINKEL: That's all the questions I  
15 have. Thank you.

16 CHAIRMAN CARTER: Mr. Brew?

17 MR. BREW: Thank you, Mr. Chairman.

18 CROSS EXAMINATION

19 BY MR. BREW:

20 Q Good evening, Mr. Thompson. In your 25 years  
21 at the AEC and the NRC, you served in various positions  
22 that you mentioned, is that right, in your testimony?

23 A Yes, that's correct.

24 Q And was one of those other positions a  
25 technical assistant to Commissioner Peter Bradford?

1 A Yes, it was.

2 Q In the context of your review of the materials  
3 for your testimony here, did you ever talk to Brian  
4 Anderson?

5 A No, I did not.

6 Q And if I can refer you to your testimony on  
7 page 20 -- 19 and 20, where you reference the October 6,  
8 2008, docketing letter from the NRC, do you see that?

9 A Just a moment. On 19 and 20?

10 Q 19 and 20.

11 A Yes, the October 6 in the middle of the page,  
12 yes.

13 Q What I want to ask you about is the sentence  
14 that begins on the last line of 19 and moves over to 20,  
15 which says, "The letter also stated that the NRC would  
16 'require additional information from PEF about the  
17 complex geotechnical characteristics of the Levy site'  
18 before it could develop an integrated review schedule."  
19 Do you see that?

20 A Correct.

21 Q Actually, it says -- the actual quote from the  
22 letter says, "develop a complete and integrated review  
23 schedule." Would you accept that?

24 A That's okay. Was I misquoted, you're saying?

25 Q I think so.

1                   MR. ROACH: That part is not in quotes, I  
2 don't think, is it? The quotes stop at the end of the  
3 word "site."

4 BY MR. BREW:

5                   Q     It is not quoted, but would you accept that  
6 the actual quote is for a complete and integrated  
7 schedule?

8                   A     That's fine.

9                   Q     Okay. Based on your experience of years at  
10 the NRC and letters such as this, would you expect that  
11 the staff would be saying exactly what they mean, no  
12 more, no less?

13                  A     Yes, absolutely.

14                  Q     And so when they say that before coming up  
15 with a complete and integrated schedule, they need  
16 answers to certain questions?

17                  A     Correct.

18                  Q     And said -- and no reasonable inference can be  
19 drawn other than that staff needs more information?

20                  A     I think the reasonable information in this  
21 particular case was they had a number of areas that they  
22 could commence their review. It had sufficient level of  
23 information that they would -- we would be willing to  
24 establish their -- start their reviews on other  
25 sections. I believe in the particular areas with the

1 geotechnical ones, they said they didn't have enough  
2 information to start their review.

3 Q And that they would not develop a complete and  
4 integrated schedule until they got that information?

5 A That's correct.

6 Q Okay. And then they got that information in a  
7 response on November 20, 2008, is that right?

8 A Correct.

9 Q And on pages 25 and 26 of your testimony,  
10 which you were just discussing with Mr. Rehwinkel, you  
11 discussed the Thursday, December 4, 2008, public scoping  
12 meeting --

13 A Right.

14 Q -- do you recall that?

15 So the -- Progress supplied the responses to  
16 the request for additional information on the  
17 geotechnical on November 20th, which was the Thursday  
18 before Thanksgiving?

19 A Right.

20 Q The scoping meeting was held the Thursday  
21 after Thanksgiving?

22 A Correct.

23 Q Do you have any basis to assume that Mr.  
24 Anderson was at all referring to the schedule for review  
25 of the LWA based on any review of the responses at that

1 point in time?

2 A I wouldn't think he had any specific feedback  
3 from the geotechnical people at that time.

4 Q Were you here throughout the day today?

5 A Yes, I was.

6 Q Did you hear the discussion with Mr. Miller  
7 about the fact that because of the holidays, certain  
8 people that were required for that review had limited  
9 availability?

10 A Yes, I heard that.

11 Q And you have no reason to dispute that?

12 A I used to work at NRC, so I sure don't have a  
13 reason to --

14 Q After December 15th, it's hard to find  
15 anybody.

16 A Except me, when I was there, and Peter was  
17 always there.

18 Q Peter was there?

19 A Peter was always there.

20 Q Wouldn't it be a reasonable inference, then,  
21 that the reference to a 24-month review that Mr.  
22 Anderson made at the scoping meeting was a general  
23 statement of the NRC process and not intended as a  
24 specific comment on the Levy review?

25 A No. It was -- I agree, it established what

1 the NRC expectation would normally be.

2 Q And so if I can refer you to the transcript  
3 that's appended to your testimony?

4 A Correct.

5 Q At the bottom of page -- this is HT-3.

6 A Okay.

7 Q At the bottom of page 28 of 29, which reads,  
8 "The detailed review schedule activities will be made  
9 publicly available once we have completed the  
10 development of our schedule. That would more accurately  
11 reflect where staff actually was at the time," they'll  
12 will set a schedule once they have been through that  
13 information?

14 A Correct.

15 Q Okay. Is it a fair statement from the review  
16 of the materials you looked at that throughout 2008, the  
17 NRC staff were well aware of Progress's interest in the  
18 limited work authorization and its importance to the  
19 proposed schedule?

20 A Yes.

21 Q And would it also be reasonable to assume that  
22 the NRC made clear to Progress what their needs were to  
23 establish a schedule?

24 A Yes.

25 MR. BREW: That's all I have.

1 CHAIRMAN CARTER: Thank you, Mr. Brew.

2 Mr. Jacobs?

3 MR. JACOBS: Mr. Chairman, SACE has no  
4 questions.

5 CHAIRMAN CARTER: Mr. Moyle?

6 MR. MOYLE: No questions.

7 CHAIRMAN CARTER: Staff?

8 MR. YOUNG: No questions.

9 CHAIRMAN CARTER: Commissioners, anything from  
10 the bench?

11 COMMISSIONER EDGAR: No, sir.

12 CHAIRMAN CARTER: Redirect?

13 MR. ROACH: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. ROACH:

16 Q Mr. Thompson, you were given these two  
17 exhibits, or potential exhibits, with 10 CFR Part 50 and  
18 10 CFR Part 52. Let me direct your attention, if I  
19 could, to 10 CFR Part 50.10. It is on page 14 of 10 CFR  
20 Part 50.

21 A Okay.

22 Q Do you want to take a minute to look at it, or  
23 are you familiar with this?

24 COMMISSIONER EDGAR: Excuse me, did you say  
25 the page number?

1                   MR. ROACH: It's page 14 of the book, it's  
2 entitled, 10 CFR Part 50.

3                   COMMISSIONER EDGAR: Thank you.

4 BY MR. ROACH:

5                   Q     You were asked for references to the  
6 information that's on page 15 of your testimony. Does  
7 this appear to be the section you were referencing?

8                   A     That's correct.

9                   Q     And in your testimony, you say there are three  
10 things that changed. There's the change to the  
11 definition of *construction*, and I'm just paraphrasing,  
12 but the third thing is they require the preparation of  
13 an environmental impact statement, do you see that?

14                  A     Correct.

15                  Q     When you were asked questions about the  
16 December 4th meeting, you were talking back and forth  
17 with the question-and-answer about the limited work  
18 authorization and where it said anything about an  
19 environmental impact statement, do you recall those  
20 questions?

21                  A     Correct.

22                  Q     Is an environmental impact statement part of  
23 the limited work authorization application?

24                  A     It's required to be part of the limited work  
25 authorization, or, in the case of Levy, they made it,

1 the environmental impact statement cover the entire  
2 activities.

3 Q So you say the entire process for the limited  
4 work authorization, that would also include an  
5 environmental impact statement?

6 A And it also included the limited work  
7 authorization.

8 Q Let me, if I could, refer you to page 30 of  
9 your testimony, the January 23rd phone call.

10 A Okay.

11 Q And this is when the NRC finally said that  
12 they weren't going to -- you asked about what the  
13 schedule was set on January 23rd on this conference  
14 call, is that correct?

15 A Correct.

16 Q And why did the NRC say that they weren't  
17 going to be able to do the schedule in the 24 months?

18 A They said they didn't have adequate staff  
19 resources.

20 MR. ROACH: No further questions.

21 CHAIRMAN CARTER: Exhibits?

22 MR. ROACH: I would like to move the admission  
23 of Exhibits 124 to 127.

24 CHAIRMAN CARTER: Are there any objections?

25 Without objection, show it done.

1 (Exhibit Nos. 124 through 127 admitted into  
2 the record.)

3 CHAIRMAN CARTER: Anything further for this  
4 witness?

5 MR. REHWINKEL: Mr. Chairman, I assume that  
6 the Commission will take official notice --

7 CHAIRMAN CARTER: Absolutely, absolutely, for  
8 the record. For the record, we'll just take official  
9 notice of 10 CFR Part 50 and 10 CFR Part 52.

10 MR. REHWINKEL: Thank you.

11 CHAIRMAN CARTER: Okay, you may be excused.  
12 Call your next witness.

13 MR. ROACH: I would like to call Gary Doughty.

14 COMMISSIONER EDGAR: I'm sorry, I apologize  
15 for interrupting you, I was trying to beat you. I know  
16 that we're all anxious to keep moving, but could we take  
17 five minutes?

18 MR. ROACH: I second that request.

19 COMMISSIONER EDGAR: Or seven, but just a few.

20 CHAIRMAN CARTER: We are taking five.

21 (Brief recess.)

22 CHAIRMAN CARTER: We're back on the record,  
23 and when we last left, you were calling your next  
24 witness.

25 MR. ROACH: Yes, sir, call Gary Doughty.

1 Whereupon,

2 GARY DOUGHTY

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

6 DIRECT EXAMINATION

7 BY MR. ROACH:

8 Q State your name and your work address.

9 A Gary Robert Doughty, 412 White Columns Way,  
10 Wilmington, North Carolina.

11 Q And you have been sworn previously?

12 A Yes, sir, I have.

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

15 A I am employed by Janus Management Associates,  
16 Incorporated, and I am president.

17 Q And has your rebuttal testimony of 15 pages  
18 been pre-filed on August 10th in this proceeding?

19 A Yes.

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

22 A No.

23 Q If I ask you the same questions today, would  
24 you give the same answers?

25 A Yes.

1                   MR. ROACH: I would like to ask that the  
2 prefiled testimony be inserted into the record as if  
3 read.

4                   CHAIRMAN CARTER: The prefiled testimony of  
5 the witness will be inserted into the record as though  
6 read.

7                   MR. ROACH: Mr. Chairman, there are no  
8 exhibits to this testimony.

9                   CHAIRMAN CARTER: Good.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**IN RE: NUCLEAR COST RECOVERY CLAUSE  
FPSC DOCKET NO. 090009**

**REBUTTAL TESTIMONY OF GARY R. DOUGHTY**

1 **Q. Please state your name, occupation, and address.**

2 A. My name is Gary R. Doughty. I am President of Janus Management  
3 Associates, Inc. My business address is 412 White Columns Way,  
4 Wilmington, North Carolina 28411.

5

6 **Q. What is the purpose of your testimony in this proceeding?**

7 A. I provided direct testimony on March 1, 2009, regarding my assessment of  
8 the prudence of Progress Energy Florida's (PEF's) project management  
9 and project controls for the Levy Nuclear Project (LNP). I am submitting  
10 this testimony to rebut assertions made by Dr. William R. Jacobs, Jr.  
11 ("Jacobs"), witness for the Florida Office of Public Counsel, of "issues and  
12 concerns" he raised regarding PEF's execution of an Engineering,  
13 Procurement and Construction (EPC) contract with Westinghouse Electric  
14 Corporation and Shaw, Stone & Webster on December 31, 2008.

15

16

17

1 **Q. Please describe your prior testimony in these proceedings.**

2 A. My direct testimony presented my expert opinion with respect to the  
3 reasonableness and prudence of PEF's management decision processes  
4 and project management and controls as they relate to the LNP. I found  
5 that PEF's LNP decision processes, project management and controls are  
6 reasonable and prudent. I also found that the LNP has a sophisticated  
7 risk management process in place that is consistent with industry best  
8 practices.

9  
10 **Q. What standard should be followed in assessing prudence?**

11 A. There are several elements to an appropriate prudence standard:

12 \* Any determination of the prudence of a management decision must be  
13 based on what was known or reasonably should have been known by the  
14 utility managers at the time the decision was made, and not based on the  
15 outcome or result of the decision.

16 \* Hindsight review is impermissible.

17 \* One's own judgment should not be substituted for that of management.

18 The prudence standard recognizes that reasonable persons can have  
19 honest differences of opinion and there may be more than one prudent  
20 decision under the circumstances.

21 \* There is a presumption of management prudence.

22

REDACTED

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

3  
4 **Q. What criticism does Jacobs make regarding the EPC contract?**

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

10  
11 **Q. Did Jacobs follow the appropriate prudence evaluation standard in  
12 his criticism of the signing of the EPC contract?**

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

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

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

1 criticism on an event that took place in late January 2009. On January  
2 23, 2009, well after the signing of the EPC contract, the NRC informed  
3 PEF that it had decided to review the applications for the LWA and the  
4 Combined Operating License (COL) for LNP on the same schedule. This  
5 effectively eliminated the benefits of seeking the LWA and resulted in a  
6 change in the overall LNP schedule. Jacobs asserts that PEF  
7 management should have foreseen this action by the NRC and hence not  
8 signed the EPC contract. A fair reading of the documents and what was  
9 known by PEF management in 2008 do not support his allegations.

10  
11 **Q. On what does Jacobs rely for this criticism?**

12 **A.** Jacobs points to a letter from the NRC to PEF on October 6, 2008. He  
13 alleges the letter should have been read by PEF as a clear sign that the  
14 LWA would not be reviewed in a timely manner and implies the ultimate  
15 decision by the NRC regarding the LWA was somehow foreshadowed by  
16 this letter. These allegations are without merit.

17 Contrary to the testimony of Jacobs, a fair reading of the NRC's  
18 October 6 letter would not have caused PEF management to assume that  
19 a LWA would not be approved by the NRC. The NRC letter, in the first  
20 paragraph, states their acceptance of the COL application for docketing.

"This letter informs you that the NRC staff has completed its  
acceptance review and has determined that your application  
is acceptable for docketing."

1 Later in the letter, the NRC states:

“As discussed with your staff, the date that we intend to publish a schedule for review cannot be determined until additional information is provided by you. Although our acceptance review determined that the LNP COLA is complete and technically sufficient, the complex geotechnical characteristics of the Levy County site require additional information in order to develop a complete and integrated review schedule. Enclosure 1 contains this Request for Additional Information (RAI).

As necessary, other RAIs will be issued separately. Because of the scheduling uncertainty in the areas of geotechnical science and structural engineering, the NRC staff does not intend to commence a review of these areas until all associated RAIs are sufficiently answered.”

1 This letter would not have been of particular concern to a utility manager  
2 because they were aware there were geotechnical issues to address as  
3 part of the site specific review process and were preparing to address  
4 those issues.

5

6 **Q. Should the receipt of Requests for Additional Information from the**  
7 **NRC have put PEF on notice there was a serious problem with the**  
8 **LWA application?**

9

10 A. No. RAIs are a normal part of the NRC licensing process – they are  
11 regularly used by the NRC to gather additional information. Receipt of  
12 RAIs would be appropriately viewed as a part of the process as it moved  
13 forward. In response to the NRC’s request for additional information, PEF  
14 immediately set about to respond to the RAIs. In fact, as indicated in

1 Jacobs Exhibit WRJ (PEF)-3, PEF had begun responding to the NRC  
2 RAIs by early October and completed its responses by November 20,  
3 2008.

4  
5 **Q. Was it reasonable for PEF to expect NRC approval of an LWA review**  
6 **schedule based on the response to the NRC geotechnical RAIs?**

7 A. Yes. After submitting its responses on November 20, 2008, PEF did not  
8 receive any additional RAIs related to geotechnical issues. PEF offered to  
9 meet with NRC technical representatives at the time of the geotechnical  
10 RAI submittal, but the NRC declined to meet. PEF interpreted this as an  
11 indication that there was nothing further needed at that time for the NRC  
12 to process the LWA request. Based on industry experience, PEF  
13 reasonably expected that providing responses to the NRC RAIs would  
14 lead to a LWA review schedule. The NRC decision in late January 2009  
15 to review the LWA on the same schedule as the COL was a complete  
16 surprise not only to PEF, but also to the industry.

17  
18 **Q. Did the NRC make public statements after the October 6, 2008 letter**  
19 **regarding their expectations for their review of the LWA?**

20 A. Yes. NRC leadership on December 4, 2008 made statements at an LNP  
21 public meeting regarding their expectation for the time period for the NRC  
22 to review the LWA request. The NRC Project Manager for Levy (Brian

1 Anderson) in response to a question from the public at the LNP EIS  
2 Scoping meeting, stated:

3 **“Just to give you a ballpark time frame, we expect that  
4 somewhere on the order of two years will be required to  
5 complete our entire review process for the limited work  
6 authorization. And that’s a ballpark time frame. The detailed  
7 review schedule activities will be made publicly available once  
8 we’ve completed the development of our schedule.”** [Transcript of  
9 EIS public meeting held at Crystal River, FL on December 4, 2008,  
10 [www.nrc.gov](http://www.nrc.gov), NRC ADAMS #ML083520102.]  
11 [Emphasis added]

4 This response, which reinforced PEF’s assumptions regarding the  
5 NRC review of the LWA, clearly shows that Jacobs’ strained  
6 reading of the October 6 letter is without basis. This information  
7 was not included in Jacobs’ testimony.

8  
9 **Q. You mentioned earlier that Mr. Jacobs did not mention in his  
10 testimony the benefits to PEF of executing the EPC contract in  
11 December 2008. What were those benefits?**

12 **A.** The Office of Public Counsel requested information related to  
13 PEF’s basis for signing the EPC contract in its data request No. 63,  
14 wherein they asked:

15 “The EPC contract for the Levy Nuclear Project was signed  
on December 31, 2008. Please explain if there were any  
commercial reasons or other benefits for signing on  
December 31, 2008 rather than signing in January 2009.  
For example, were the prices or terms and conditions only  
guaranteed through December 31, 2008? Would signing in  
January 2009 have required significant changes or  
renegotiation of the contract?”

12 PEF’s response stated:

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

[REDACTED]

1  
2  
3  
4  
5

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

[REDACTED]

[REDACTED]

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

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

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

10 PEF's EPC contract strategy was to [REDACTED]  
11 [REDACTED]  
12 [REDACTED] designed to provide incentive  
13 to the contractor to perform efficiently. [REDACTED]  
14 [REDACTED].

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

1 recognition of their increased sensitivity to the timeliness of NRC license  
2 review activity. With a signed EPC contract PEF established that LNP  
3 was in the first review tier along with the only other two plants (Vogtle and  
4 Summer) that had signed EPC contracts.

5  
6 **Q. Jacobs implies there was a connection between the NRC's decision**  
7 **with respect to the LWA and the stop work order PEF issued to**  
8 **CH2MHill in 2007 for quality controls deficiencies identified by PEF.**  
9 **Is he accurate?**

10 A. No. Jacobs points to certain QA issues with CH2MHill, and implies that  
11 may have been a problem with respect to the NRC's review of the LWA  
12 application. This is wrong for several reasons. First, it should be noted  
13 that the issues he points to arose out of work performed by CH2MHill at  
14 the Harris Nuclear Plant and not at LNP. In a March 2007 QA audit of  
15 CH2MHill geotechnical work on Harris, Progress Energy identified a  
16 number of QA programmatic deficiencies and issued a stop work order to  
17 CH2MHill on COLA deliverables. Based on Progress Energy's  
18 assessment of completed corrective actions, this stop work order was  
19 lifted on May 1, 2007. The NRC in October and November 2007  
20 conducted a selective audit of the implementation of the Harris QA  
21 program related to the development of the Harris COLA deliverables. The  
22 results of the NRC audit were provided to Progress Energy in February  
23 2008 and identified issues were addressed in a Progress Energy response

1 the following month. In April 2008 the NRC indicated the Progress Energy  
2 reply was responsive to all NRC concerns and that they had no further  
3 questions or comments.

4 CH2MHill performed similar work on LNP's geotechnical studies  
5 which were underway at the time Progress Energy was addressing the  
6 Harris QA issues. The March 2007 Progress Energy QA audit of  
7 CH2MHill addressed their work at both Shearon Harris and LNP, and the  
8 March 12, 2007 stop work order applied to CH2MHill's work for both  
9 plants. As of March 23, 2007 based on assessments and direct field  
10 observations, CH2MHill was released to continue field work at the LNP  
11 site, and the stop work order was fully lifted on May 1, 2007. Subsequent  
12 Progress Energy audits in October 2007 and April 2008 showed progress  
13 in addressing the identified QA programmatic issues. In particular the  
14 April 2008 audit comments indicated effective implementation of the  
15 CH2MHill quality program. The same QA programmatic corrective actions  
16 that were taken for Harris work were implemented contemporaneously for  
17 LNP, and the NRC's April 2008 statements were taken as an indication  
18 that no uncorrected QA problems with CH2MHill's work existed at LNP.

19 There is no legitimate basis for Jacobs to suggest that the NRC  
20 may have been unwilling to commit to developing the LNP LWA review  
21 schedule based on the deficiencies of a contractor. There is nothing in the  
22 NRC's October 6, 2008 LNP COLA docketing letter or any other

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

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

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

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

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

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

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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

14  
15 **Q. Jacobs states that PEF should have had joint owners in place prior**  
16 **to signing the EPC contract. Do you agree?**

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

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

1 would follow the LNP need determination from the Florida Public service  
2 Commission and the signing of the EPC contract. This sequence was  
3 reflected in LINC Weekly Updates at least through January 2009, when  
4 joint owner negotiations were continuing after PEF signed the EPC  
5 contract.

6  
7 **Q. Jacobs criticizes the PEF management of risks for the LNP. Do you**  
8 **agree?**

9 A. No. Based on Jacobs' testimony, he seems to require all risks to be  
10 eliminated, which is extremely difficult and is likely to be an unreasonable  
11 expense. The elimination of all risk may take excessive funding and effort  
12 that is better spent on other areas of the project. Indeed, the Project  
13 Management Body of Knowledge (PMBOK), a primary reference for the  
14 LNP Risk Management Process Document, states that "It is seldom  
15 possible to eliminate all risk from a project."

16 As I testified in my direct testimony, the LNP risk management  
17 process follows the best practices and procedures of the PMBOK; it has  
18 defined processes for risk identification, risk analysis (qualitative analysis  
19 and, where appropriate, quantitative analysis), risk response planning, and  
20 risk monitoring and control. These processes provide PEF management  
21 with a logical and coherent framework to evaluate, prioritize, and develop  
22 courses of action to mitigate, transfer, or avoid major project risks. In my  
23 opinion, the LNP risk management process in place is consistent with best

1 practices for risk management in the industry and consistent with what I  
2 have observed on well-managed projects, including nuclear construction  
3 projects, of a similar scope and size to the LNP.

4

5 **Q. Does this complete your testimony?**

6 **A. Yes.**

7

1 BY MR. ROACH:

2 Q Please summarize your testimony.

3 A Mr. Chairman and Commissioners, in my opinion,  
4 Dr. Jacobs has relied on hindsight to evaluate the  
5 prudence of Progress Energy Florida's decisions, and he  
6 has speculated rather than using facts in making some of  
7 those opinions.

8 For instance, Dr. Jacobs inaccurately  
9 describes the position of the Nuclear Regulatory  
10 Commission likelihood of approving a limited work  
11 authorization for the Levy nuclear project at the time  
12 it sent its letter on October 6, 2008.

13 Second, Dr. Jacobs implies there was a  
14 connection between the NRC's decision with respect to  
15 the LWA and the stop-work order Progress Energy issued  
16 to a contractor in 2007 on the Harris plant for quality  
17 control deficiencies identified by Progress Energy.  
18 There is no such documented linkage.

19 Third, Dr. Jacobs presumes Progress Energy  
20 placed itself in a very weak position to renegotiate the  
21 engineer procured construction contract. This  
22 characterization is speculation, and actually, Progress  
23 Energy may have been in a stronger position to make a  
24 change order rather than what Dr. Jacobs presumes.

25 And fourth, Dr. Jacobs states Progress Energy

1 should have had joint owners in place prior to the  
2 signing of the EPC contract. What he doesn't consider  
3 is that the prospective joint owners may have wanted a  
4 project that had the EPC contract in place because of  
5 the greater cost certainty to them and to the project.  
6 In my opinion, Progress Energy acted prudently when it  
7 entered into the EPC contract on December 31, 2008, and  
8 what it knew and could have known at the time, and that  
9 summarizes my testimony.

10 MR. ROACH: The witness is available for  
11 cross-examination.

12 CHAIRMAN CARTER: Mr. Rehwinkel?

13 MR. REHWINKEL: Thank you, Mr. Chairman.

14 CROSS EXAMINATION

15 BY MR. REHWINKEL:

16 Q Good afternoon, Mr. Doughty.

17 On page 6 of your rebuttal testimony, could  
18 you turn to there?

19 A Yes, I'm there.

20 Q On line 10 through 12, you start off, "PEF  
21 interpreted this as an indication" -- well, let me start  
22 over again and ask you this way: You relate a series of  
23 events here of a filing of the RAI's responses on  
24 November 20, 2008, do you see that?

25 A Are you talking about the page before, or that

1 6 --

2 Q I'm on page 6.

3 A Yes.

4 Q Okay. And you state that PEF offered to meet  
5 with NRC technical representatives at the time of the  
6 geotechnical RAI submittal, but the NRC declined to  
7 meet, do you see that?

8 A Yes.

9 Q And that is based on something that PEF  
10 employees told you?

11 A Yes.

12 Q And then you state further that this was  
13 interpreted by PEF as an indication that there was  
14 nothing further needed at that time from the NRC to  
15 process the LWA request, is that correct?

16 A Yes.

17 Q And how do you know that, they interpreted it  
18 that way?

19 A We conducted an interview with Mr. Miller.

20 Q And the only reason -- the only reasonable  
21 interpretation of the declining to meet was that  
22 everything was good?

23 A There was no further indication of additional  
24 RAIs and there was no indication that they requested  
25 additional information.

1 Q Did you ask the NRC staff why they declined to  
2 meet?

3 A No.

4 Q So you don't know why they declined to meet,  
5 do you?

6 A Other than that they didn't require any  
7 additional information, no.

8 Q That is the only reason, the only logical  
9 reason that they would decline to meet?

10 A That's what I interpreted.

11 Q But you don't know whether there was any  
12 holidays that interfered with them making an appointment  
13 to meet with Progress?

14 A Well, we didn't say that -- they didn't meet  
15 on Thanksgiving weekend, no.

16 Q There is no documentation as to the reason the  
17 NRC declined to meet, is there?

18 A No.

19 Q You state, continuing on line 12, "Based on  
20 industry experience, PEF reasonably expected that  
21 providing responses to the NRC RAIs would lead to an LWA  
22 review schedule." Do you see that?

23 A Yes.

24 Q What is this industry experience that you are  
25 talking about?

1           A     The experience in terms of their previous  
2 experience with respect to interactions with the NRC.  
3 They were keeping the NRC up to date. They had  
4 submitted the RAIs and turned them around in detailed  
5 fashion, that is, they were comprehensive responses to  
6 the RAIs, and, in my view, they were -- it was  
7 reasonable to expect that they would get a schedule.

8           Q     You evaluated the RAIs for their technical  
9 sufficiency?

10          A     I'm not an expert in geotechnical information,  
11 but I did review the RAIs.

12          Q     Did you review them for technical sufficiency?

13          A     No.

14          Q     And the industry experience that you refer to  
15 here, is that based on all the other LWA review  
16 schedules that had been established by the NRC?

17          A     No, because none had been established.

18          Q     Now, were you with the Progress Energy folks  
19 in January of 2009 when the LWA notification was  
20 received by teleconference?

21          A     I was not in the meeting, but I was at  
22 Progress Energy Carolina headquarters.

23          Q     So you were there -- you were part of -- you  
24 were surprised on that day?

25          A     Say that again.

1 Q You were surprised on that day?

2 A I didn't know it on January 23rd, but it  
3 would be after that.

4 Q Okay. So is the statement that it was a  
5 complete surprise to PEF based on something Mr. Miller  
6 told you?

7 A Mr. Miller, Mr. Kitchen, and there may have  
8 been one or other two people whom we interviewed.

9 Q Who in the industry told you they were  
10 surprised?

11 A That was what was related to me in terms of  
12 Progress Energy people getting calls from people in the  
13 industry in the similar situations who were surprised  
14 that the LWA was not -- was -- schedule was not separate  
15 from the COL when done earlier.

16 Q What similar situations do you mean? I mean,  
17 there was no other LWA pending --

18 A No, other people were applying for COLAs and  
19 contacted PEF and expressed surprise.

20 Q Okay, but there was nobody else that had a  
21 COLA and an LWA pending at the time, right?

22 A Correct.

23 Q Okay. On page 7, you, like everyone else it  
24 seems, quotes this November 8th statement by Mr.  
25 Anderson here, is that correct, up on line -- starting

1 on line 3 --

2 A Yes.

3 Q -- December 4, 2008?

4 A I'm sorry, I interrupted your question. Could  
5 you say it again?

6 Q I guess you're one of all of the rebuttal  
7 witnesses to Dr. Jacobs that quotes the December 4,  
8 2008, statement by Mr. Anderson here, correct?

9 A I do quote it here, yes.

10 Q Okay. Now, you have chosen to highlight the  
11 portions of the statement by Mr. Anderson that excludes  
12 the phrase "a ballpark time frame" twice, correct? You  
13 have chosen not to highlight those two phrases, right?

14 A Those two phrases. There is one phrase that  
15 reads "just to give you a ballpark time frame."

16 Q And you don't highlight that, do you?

17 A No.

18 Q And then, "and that is a ballpark time frame,"  
19 you don't highlight that, either, right?

20 A No, I didn't.

21 Q Okay. Is that because you consider that to be  
22 extraneous and unimportant information in this  
23 statement?

24 A I included the entire statement, but the most  
25 important part was what I highlighted.

1 Q And you know that is important because of all  
2 the other LWAs that the NRC has given time frames on?

3 A No. As we have already discussed, there are  
4 no other LWAs. This is specific to this plant.

5 Q Okay. On line 4, you state that, "this  
6 response reinforced PEF's assumptions regarding the NRC  
7 review of the LWA." How do you know that that  
8 reinforced their assumptions?

9 A This was consistent with the -- this is my  
10 opinion -- consistent with -- they were at the meeting,  
11 "they" being Progress Energy personnel, and it was  
12 another indication of the expected time for an LWA and  
13 that an LWA would be forthcoming.

14 Q You were not at the meeting, were you?

15 A No, sir.

16 Q So how do you know this reinforced their  
17 assumptions?

18 A I said that's my opinion.

19 Q Okay. But what was that opinion based on?

20 A This and the other information that they were  
21 working with with respect to their application and  
22 interaction with the NRC.

23 Q Wouldn't you, to know -- to form this opinion,  
24 wouldn't you need to know that they relied on this  
25 information with respect to their opinions about the LWA

1 and NRC review of it?

2 A I don't know that they didn't rely on it. It  
3 is consistent with -- as Mr. Miller explained, it was  
4 not news in terms of a change in what the NRC was  
5 saying, so it was part of that overall communication  
6 process.

7 Q But you don't know whether they relied on it  
8 or not, do you?

9 A I don't know for certain that they relied on  
10 this specific statement, but that it was part of the  
11 overall environment that they were dealing with with  
12 respect to their LWA application.

13 Q So you can't say with any certainty that it  
14 reinforced any assumptions they might have held  
15 regarding the NRC's review of the LWA, can you?

16 A I did say it, and I stand by that.

17 Q You can say with certainty that it did?

18 A No, not with certainty.

19 Q Okay. All right.

20 You've criticized, it seems to me, on line  
21 6 and 7, Dr. Jacobs for not including this information  
22 in his testimony, do you not, "this information" meaning  
23 the December 4, 2008, statement by Mr. Anderson?

24 A Can you point me to a place?

25 Q Well, it says, "This information was not

1 included in Jacobs' testimony."

2 A Correct.

3 Q Is that a criticism of Dr. Jacobs' testimony?

4 A It's a fact.

5 Q Okay. How many Progress Energy witnesses on  
6 direct included this information?

7 A On direct, none.

8 Q None. Is that another fact?

9 A Yes.

10 Q Okay, thank you.

11 A But it also has been explained by Mr. Miller  
12 as to why, and I explained it in my previous answer.

13 Q Well, did you review the discovery responses  
14 that the company gave about meetings that they had with  
15 NRC staff?

16 A I did review some, yes.

17 Q Did you review any that contained December 4,  
18 2008?

19 A Say that again.

20 Q Did you review any that disclosed this  
21 December 4, 2008, communication with NRC staff about the  
22 LWA?

23 A This is -- are we talking about this same  
24 meeting?

25 Q Yes.

1           A     This meeting was a noticed meeting for the  
2 public, so I don't know that it constituted a separate  
3 communication, formal communication, with the NRC by the  
4 Progress Energy folks. It was a public meeting.

5           Q     Did you review discovery that listed other  
6 public meetings, publicly noticed meetings, with NRC  
7 staff?

8           A     Well, publicly noticed -- yes, NRC publicly  
9 noticed meetings with Progress Energy personnel, not for  
10 the purposes of public dissemination of information.

11          Q     Okay. I thought Mr. Miller said they just  
12 forgot about it. Wasn't that his explanation why it  
13 wasn't in the direct?

14               MR. ROACH: I object. I don't think that does  
15 justice to Mr. Miller's answer.

16               CHAIRMAN CARTER: To the objection, Mr.  
17 Rehwinkel?

18               MR. REHWINKEL: Mr. Doughty said that Mr.  
19 Miller explained why it wasn't in the direct testimony,  
20 so I'm asking him to explain further his testimony here  
21 today.

22               THE WITNESS: It was my recollection of his  
23 testimony earlier today or -- yes, earlier today.

24 BY MR. REHWINKEL:

25           Q     Is that because he forgot?

1           A     I don't recall.

2           Q     Okay, let's turn to page 10 of your rebuttal  
3 testimony.

4           A     I'm at page 10.

5           Q     Okay, on -- the Q&A that starts on line 6 and  
6 continues on down for the next page and a half relates  
7 to the CH2M Hill quality assurance issues, is that  
8 correct?

9           A     Yes.

10          Q     Now, you state that Dr. Jacobs' pointing to QA  
11 issues with CH2M Hill is wrong, first because it rose  
12 out of work performed by CH2M Hill at the Harris nuclear  
13 plant and not at LNP, is that correct?

14          A     The question I answer is is he accurate, and  
15 the answer is no, and then I point out that he has  
16 pointed to certain QA issues with CH2M Hill at the  
17 Harris plant.

18          Q     So is it your testimony that the issues, the  
19 QA issues that related to CH2M Hill in North Carolina,  
20 had nothing to do with the work they were doing at LNP?

21          A     No. The stop-work order applied to both --  
22 any work that CH2M Hill was doing.

23          Q     On lines 17 through 19, you say, "Based on  
24 Progress Energy's assessment of completed corrective  
25 actions, this stop-work order was lifted on May 1,

1 2007," do you see that?

2 A I see that.

3 Q Is there an implication in your testimony  
4 there that once the stop-work order was lifted relative  
5 to CH2M Hill's work, that Progress Energy had determined  
6 they had completed corrective actions?

7 A This is a statement of fact, and as Mr. Miller  
8 explains and in the review of the documents that I did,  
9 Progress Energy closely monitored all the work that CH2M  
10 Hill did, including increasing the audit frequency.

11 Q But on May 1, 2007, CH2M Hill had not  
12 corrected all of the deficiencies noted in both their  
13 internal audit as well as Progress Energy's audit,  
14 correct?

15 A Correct. There was a -- compensatory measures  
16 taken, which Mr. Miller explained, and there were action  
17 items that had to be completed by CH2M Hill.

18 Q On page 11 of your rebuttal testimony -- no,  
19 let me move on to page 12.

20 You have not negotiated an EPC contract, have  
21 you?

22 A Yes.

23 Q You have?

24 A Yes.

25 Q For who?

1 A For Northeast Utilities.

2 Q Have you negotiated an EPC contract for a  
3 nuclear power generating station?

4 A Not that are similar to the contract in this  
5 case, but large contracts I have reviewed that are  
6 similar.

7 Q Did you advise Progress Energy Florida about  
8 negotiation of their EPC contract before December 31,  
9 2008?

10 A No, I did not.

11 Q Aren't you speculating about the relative  
12 bargaining position of PEF and the consortium with  
13 respect to renegotiating any aspect of the EPC contract?

14 A I'm stating the alternative view based on my  
15 knowledge of what Progress Energy knew at the time and  
16 what was in the EPC contract and the description of the  
17 negotiation process and the benefits of the contract  
18 situation.

19 Q So the answer is yes, you're speculating, to  
20 some degree?

21 A I'm making a judgment, yes.

22 Q Okay. And on page 13, lines 10 through 13,  
23 the non-confidential parts of that, do you see that?

24 A Yes.

25 Q You are stating an opinion about PEF being in

1 a stronger position to renegotiate the contract than if  
2 those terms were not previously secured, do you see  
3 that?

4 A Yes.

5 Q That's really based on information that you  
6 were told by Mr. Miller and others?

7 A No. I reviewed the EPC contract in either  
8 late January or early February in two different  
9 sessions, in addition to being introduced to the  
10 concepts that Progress Energy was seeking by Mr. Miller  
11 prior to doing my review. After reviewing the contract  
12 and seeing where the benefits accrue, I'm making that  
13 judgment myself, because there is a change order process  
14 that is in place, and my knowledge of contracting and so  
15 forth, and contract administration, this is a stronger  
16 position for them, in my judgment, than it would be if  
17 they had to re- -- to start negotiations over again.

18 Q But it remains to be seen how those contract  
19 renegotiations turn out, does it not?

20 A It does.

21 Q Thank you.

22 MR. REHWINKEL: No further questions. Thank  
23 you.

24 CHAIRMAN CARTER: Mr. Brew?

25 MR. BREW: No questions for this witness.

1 CHAIRMAN CARTER: Mr. Davis?

2 MR. DAVIS: None, thanks.

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

5 MR. MOYLE: I have just a couple of questions.

6 CROSS EXAMINATION

7 BY MR. MOYLE:

8 Q We spent a lot of time in the last couple of  
9 days talking about a couple of statements made by  
10 officials; for example, the October 6 letter from the  
11 NRC. You are familiar with that letter, right?

12 A Yes, sir.

13 Q And then there is a December 4th statement by  
14 an NRC official at a public meeting, you're familiar  
15 with that statement --

16 A Yes.

17 Q -- you've included it in your testimony?

18 Wouldn't you agree, sir, that those statements  
19 speak for themselves?

20 A Yes.

21 Q And wouldn't you also agree that this  
22 Commission can look at those statements just like you or  
23 any other witness and make a judgment as to what is  
24 being said in those statements?

25 A If they have other information, but the

1 statements, as you just said and as I agreed, speak for  
2 themselves, so they can draw conclusions from those  
3 statements, if that's what you mean.

4 Q I understand, but as we sit here today, you  
5 don't have any kind of special expertise that allows you  
6 to get into the mind of somebody writing a letter and  
7 go, well, here's what they were really thinking? I  
8 mean, the fact is the letters speak for themselves,  
9 correct?

10 A Correct.

11 MR. MOYLE: That's all I have.

12 CHAIRMAN CARTER: Thank you.

13 Staff?

14 MR. YOUNG: No questions.

15 CHAIRMAN CARTER: Commissioners? Redirect?

16 MR. ROACH: No, sir.

17 CHAIRMAN CARTER: And there are no exhibits?

18 MR. ROACH: No exhibits.

19 CHAIRMAN CARTER: Anything further for this  
20 witness?

21 Thank you, sir. You may be excused.

22 Call your next witness.

23 MR. WALLS: Progress Energy calls Jeff Lyash.

24 MR. REHWINKEL: Mr. Chairman, while Mr. Lyash  
25 is coming to the stand, I have talked to the other

1 parties, including Progress Energy, and with your --

2 (Brief pause.)

3 CHAIRMAN CARTER: Now, what were you saying,  
4 Mr. Rehwinkel?

5 MR. REHWINKEL: Yes, Mr. Chairman, I have  
6 talked to the other parties, including Progress. If it  
7 would be okay with you, we would like to change the  
8 order slightly where Mr. Brew, Mr. Davis and Mr. Moyle  
9 would go, and then I would go last and ask questions if  
10 I had any.

11 CHAIRMAN CARTER: Okay, that will be fine.

12 MR. REHWINKEL: I think it may save some time.

13 CHAIRMAN CARTER: No problem. Mr. Brew --  
14 wait a minute. Let's do this, how about Mr. Walls,  
15 you're recognized.

16 MR. WALLS: Thank you.

17 Whereupon,

18 JEFFREY J. LYASH

19 was called as a witness on behalf of Progress Energy  
20 Florida, Inc., and, having been previously duly sworn,  
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WALLS:

24 Q Mr. Lyash, will you please introduce yourself  
25 to the Commission and provide your business address?

1           A     Yes. My name is Jeffrey J. Lyash, and my  
2 business address is 410 South Wilmington Street,  
3 Raleigh, North Carolina.

4           Q     Have you already been sworn in as a witness?

5           A     I have.

6           Q     Who do you work for and what is your position?

7           A     I work for Progress Energy, and my position is  
8 Executive Vice-President of Corporate Development.

9           Q     Have you filed prefiled rebuttal testimony  
10 with exhibits in this proceeding?

11          A     I have.

12          Q     And do you have that with you?

13          A     I do.

14          Q     Do you have any changes to make to this  
15 prefiled rebuttal testimony or exhibits?

16          A     I do not.

17          Q     If I asked you the same questions asked in  
18 your prefiled rebuttal testimony today, would you give  
19 the same answers?

20          A     I would.

21               MR. WALLS: We request that the prefiled  
22 rebuttal testimony be moved into evidence.

23               CHAIRMAN CARTER: The prefiled testimony of  
24 the witness will be inserted into the record as though  
25 read.

**IN RE: NUCLEAR COST RECOVERY CLAUSE  
BY PROGRESS ENERGY FLORIDA**

**FPSC DOCKET NO. 090009**

**REBUTTAL TESTIMONY OF JEFF LYASH**

1 **I. INTRODUCTION AND QUALIFICATIONS.**

2 **Q. Please state your name and business address.**

3 A. My name is Jeff Lyash. My current business address is 410 S. Wilmington St.,  
4 PEB 13, Raleigh, North Carolina 27602.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am currently employed by Progress Energy, Inc. as the Executive Vice President  
8 of Corporate Development. I assumed my current position on July 6, 2009. Prior  
9 to this appointment, I was employed by Progress Energy Florida, Inc. ("PEF" or  
10 the "Company") as its President and Chief Executive Officer ("CEO") from 2006  
11 until July 6, 2009. In this role, I had overall responsibility for the operations of  
12 Progress Energy Florida.

13

14 **Q. What was your role with respect to the development of the nuclear power  
15 plants, Levy Units 1 and 2?**

16 A. The Levy nuclear power plants, Levy Units 1 and 2, when constructed will be  
17 PEF assets so in my position as the President and CEO of PEF I had broad  
18 responsibility for the development of the Levy nuclear power plant project

1 ("LNP"). As the LNP progressed, the Nuclear Plant Development ("NPD")  
2 organization was formed as a separate group from the Nuclear Generation group  
3 to take responsibility for the LNP. At that point, in early 2008, the NPD reported  
4 to me for direct line accountability for the LNP development. I also served as the  
5 chair of the Levy Integrated Nuclear Committee ("LINC"), which is comprised of  
6 PEF leaders with organizational accountability for areas that support the LNP.  
7 The group helps coordinate activities that cross multiple organizational areas  
8 because of the integrated nature of the LNP. LINC scheduled meetings at least  
9 monthly and sometimes weekly to review project activities, evaluate business  
10 conditions, address emerging issues, and discuss agenda items.

11 In my new role as Executive Vice President of Corporate Development,  
12 the NPD will still report to me and I will continue to have management  
13 responsibility for the LNP. Also, as President and CEO of PEF and now as  
14 Executive Vice President of Corporate Development, I am a member of the  
15 Senior Management Committee ("SMC"), which has senior management  
16 responsibility for the LNP. I have briefed the SMC and participated in the SMC's  
17 decisions with respect to the LNP, and I have briefed the Progress Energy Board  
18 regarding the LNP.

19  
20 **Q. Please describe your educational background and professional experience.**

21 A. I graduated with a bachelor's degree in mechanical engineering from Drexel  
22 University in 1984. Prior to joining Progress Energy, I worked with the Nuclear  
23 Regulatory Commission ("NRC") in a number of capacities. While with the

1 NRC, I served as a senior resident inspector, a project manager, a project  
2 engineer, and a section chief. In 1993, I joined Progress Energy, and spent eight  
3 years at the Brunswick Nuclear Plant in Southport, North Carolina, ultimately  
4 becoming Director of Site Operations. In January 2002, I assumed the position  
5 of Vice President of Transmission/Energy Delivery in the Carolinas. On  
6 November 1, 2003, I was promoted to Senior Vice President of Energy Delivery-  
7 Florida. On June 1, 2006, I was promoted to President and CEO of PEF. On  
8 July 6, 2009, I was appointed the Executive Vice President of Corporate  
9 Development for Progress Energy, which is the position I currently hold.

10  
11 **Q. What is the purpose of your rebuttal testimony?**

12 **A.** I will explain why execution of the Engineering, Procurement, and Construction  
13 (“EPC”) contract with Westinghouse and Shaw, Stone & Webster (the  
14 “Consortium”) by PEF at the end of December 2008 was reasonable and prudent  
15 based on the information we had at the time. In sum, execution of the EPC  
16 agreement in December 2008 preserved benefits that were obtained for PEF and  
17 its customers after about two years of hard-fought negotiations with the  
18 Consortium. Execution of the EPC agreement in December 2008 also provided  
19 an orderly framework to accommodate potential adjustments to the schedule such  
20 as the schedule shift that has resulted from NRC’s decision with respect to the  
21 Limited Work Authorization (“LWA”).

22 I will also explain why the LNP remains feasible, and why the  
23 intervenors’ approach to feasibility is inconsistent with the long-term nature of the

1 project, would make the Need Determination proceeding meaningless, and would  
2 stop the project.

3  
4 **Q. Have you reviewed the Intervenor and Staff Testimony filed in this Docket?**

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

19  
20 **Q. Do you have any exhibits to your rebuttal testimony?**

21 A. Yes. I am sponsoring the following exhibits:

- 22 • Exhibit No. \_\_\_ (JL-1), Excerpts of the Deposition of Jacobs, witness for the  
23 Office of Public Counsel (“OPC”), taken July 27, 2009 in this proceeding; and

- 1 • Exhibit No. \_\_\_ (JL-2), PEF's response to Commission Staff's Second Set of  
2 Interrogatories No. 33 requesting an updated cumulative life-cycle net present  
3 worth revenue requirements calculation for the LNP compared to the cumulative  
4 life-cycle net present worth revenue requirements cost-effectiveness analysis  
5 presented in the Need Determination proceedings for Levy Units 1 and 2.

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

## 8 9 **II. SUMMARY OF REBUTTAL TESTIMONY.**

### 10 **Q. Please summarize your rebuttal testimony.**

- 11 A. Intervenors challenge the reasonableness and prudence of the Company's  
12 decision to execute the EPC Agreement in December 2008 and the adequacy of  
13 the Company's feasibility analysis presented in the direct testimony of Garry  
14 Miller in this proceeding. The Company's decision to execute the EPC  
15 Agreement on December 31, 2008 was reasonable and prudent. By signing the  
16 EPC Agreement when it did the Company preserved the contractual benefits that  
17 the Company had negotiated over two years and established the contractual  
18 mechanisms to move the LNP forward toward completion. The Company  
19 expected to receive a reasonable NRC review schedule, including the LWA,  
20 based on what the NRC said and did up to that point. The Company did not  
21 know in December 2008 what the NRC would say about the LWA request in late  
22 January 2009. The Company never expected potential joint owners to sign a  
23 joint ownership participation agreement before the EPC agreement was

1 executed. The potential joint owners reasonably wanted to know what the final,  
2 signed EPC Agreement provided before they signed any type of joint ownership  
3 participation agreement. These were risks at the time the EPC Agreement was  
4 signed, and there were others, but the Company was aware of and had evaluated  
5 these risks, and had adopted risk mitigation plans for them consistent with the  
6 Company's risk management policies. No one contends that PEF's risk  
7 management policies and risk mitigation plans were unreasonable or imprudent.

8 PEF's feasibility analysis is adequate and consistent with our  
9 understanding of the purposes of the rule and nuclear cost recovery statute.  
10 PEF's feasibility analysis represents the necessary analysis to determine if long  
11 term, base load nuclear generation projects, like Levy Units 1 and 2, can be  
12 completed. The variations of the cost-effective analysis that the various  
13 intervenors propose are unworkable for assessing the long term viability of the  
14 LNP. PEF does not make decisions about long term, base load generation  
15 projects like the LNP based on year-to-year fluctuations in projections, which is  
16 what the intervenors propose. This approach to feasibility provides no  
17 regulatory certainty and is inconsistent with the statutory and regulatory purpose  
18 of encouraging utility investment in nuclear power plants.

19  
20 **III. EXECUTION OF THE EPC AGREEMENT.**

21 **Q. Were you involved in the Company's decision to execute the EPC Agreement**  
22 **on December 31, 2008?**

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

6  
7 **Q. Why did the Company execute the EPC agreement in December 2008?**

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

10

[REDACTED]

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

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

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

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

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

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

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

20  
21 **Q. Can you explain what a LWA is, Mr. Lyash?**

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

1 authorized by the NRC in advance of the overall issuance of the Combined  
2 Operating License ("COL"). If the LWA is issued, it allows the utility  
3 constructing a nuclear plant to do certain site work prior to the issuance of the  
4 COL. Thus, when the COL is issued, the utility can begin actual construction of  
5 the safety-related nuclear reactor building. A LWA request was part of the  
6 Company's Combined License Application ("COLA") for the LNP.

7  
8 **Q. What did the NRC do with the Company's LWA request?**

9 A. On January 23, 2009, the NRC told us that the NRC was going to review the  
10 Company's LWA on the same schedule as the NRC's review of the COL. This  
11 communication is reflected in the Company's document included as an exhibit to  
12 Jacobs' testimony at page 28 of 233 of Exhibit WRJ(PEF)-3. The NRC's  
13 decision to review the LWA and COL concurrently rather than sequentially meant  
14 in effect that the NRC cannot issue a LWA for the LNP. The sole purpose of the  
15 LWA rule is to expedite the NRC's review of certain construction activities to  
16 allow them to begin before the COL is issued. If the LWA is reviewed and issued  
17 on the same schedule as the COL, those construction activities cannot take place  
18 before the issuance of the COL.

19  
20 **Q. Did the Company have any reason to believe the NRC was going to do what**  
21 **it did with the Company's LWA request when the Company signed the EPC**  
22 **agreement?**

1 A. No. The Company had no reason to believe in December 2008 that the NRC was  
2 going to review and issue a LWA at the same time as the COL for the LNP. In  
3 our dealings with the NRC prior to January 23, 2009, there was no indication  
4 from the NRC that the NRC was not going to issue a LWA until it issued the  
5 COL. To the contrary, prior to January 23, 2009, we had every reason to believe  
6 that the NRC was in fact considering the Company's LWA request as we  
7 proposed.

8 First, the NRC has a rule that allows LWA requests. That rule was  
9 amended in 2007 with utility industry input to better clarify the use of LWAs on  
10 nuclear power plant projects. The fact that the NRC has a rule, and that the NRC  
11 worked with the industry to refine that rule, indicates that the NRC was willing to  
12 and would review and issue LWAs. Jacobs, OPC's witness, agrees the existence  
13 of the LWA rule was an indication to utilities that LWAs could be granted on new  
14 nuclear projects. See Exhibit No. \_\_\_ (JL-1) (Jacobs Dep. Excerpt, pp. 79-80).

15 Second, the Company met with the NRC several times before and after it  
16 submitted its COLA to explain the COLA, including the fact that the COLA  
17 included a LWA request and what that LWA request entailed. At no time during  
18 these discussions did the NRC indicate that it was not going to issue a LWA for  
19 the LNP.

20 Third, the Company submitted its COLA with the LWA on July 31, 2008.  
21 In September, the NRC requested that the Company revise its LWA request to  
22 include certain preconstruction work -- the dewatering work necessary for  
23 excavation -- that the Company believed was outside the LWA scope and exclude

1 certain preconstruction work that the NRC believed did not need to be included in  
2 the LWA. The fact that the NRC had requested these revisions to the LWA scope  
3 indicated that the NRC was in fact considering the Company's LWA request.

4 Additionally, the Company revised its LWA to accommodate the NRC's  
5 request and, after it had done so, the NRC docketed the COLA with the revised  
6 LWA on October 6, 2008. By docketing the COLA with the LWA, the NRC  
7 indicated that the Company had met the heightened standard of rigorous technical  
8 review that the NRC applies to its determination to accept for review a COLA and  
9 that the COLA -- including the LWA -- was sufficient for NRC review.

10 Finally, the NRC did say that it needed additional information because of  
11 the geotechnical complexity of the site to develop the review schedule. The NRC  
12 included Requests for Additional Information ("RAIs") with the October 6, 2008  
13 letter. These RAIs are a normal part of the NRC licensing review process and  
14 were answered by the Company on November 20, 2008. The NRC at no time  
15 said the Company's responses to these RAIs were insufficient. Again, these  
16 actions indicated that the NRC was considering the Company's COLA, including  
17 the LWA, as PEF had requested.

18  
19 **Q. Were you personally involved in communications with the NRC prior to**  
20 **execution of the EPC agreement?**

21 **A.** Yes, I met with NRC commissioners and staff to discuss the LNP in several  
22 meetings called "drop in" meetings. The NRC permits as a matter of practice  
23 "drop in" meetings with the NRC commissioners and staff. These are scheduled

1 meetings to discuss the status of applications or projects before the NRC. The  
2 purpose of these meetings was to discuss the process for the new license  
3 applications, the general status of the LNP, and to make sure that we were aware  
4 of the NRC's expectations and that we were meeting those expectations. I had  
5 several "drop in" meetings regarding the LNP, including one meeting  
6 immediately prior to execution of the EPC agreement. I traveled to Washington  
7 to meet with the NRC to explain that the Company was prepared to execute the  
8 EPC agreement for the LNP and to generally discuss the Company's COLA. We  
9 did not specifically discuss the LWA, but at no time in this meeting, or in any of  
10 the prior meetings with the NRC, did the NRC ever inform us that the NRC was  
11 not going to issue a LWA for the LNP as the Company requested.

12 I was also informed about the discussions and communications between  
13 our staff and the NRC staff regarding the COLA prior to our execution of the EPC  
14 agreement. At no time was I informed or did I see any indication from the NRC  
15 that the NRC was not going to issue a LWA for the LNP.

16  
17 **Q. Are you aware that certain intervenor witnesses claim PEF should have**  
18 **known that the NRC was not going to grant the review schedule PEF**  
19 **requested before signing the EPC agreement?**

20 **A.** Yes, I am, but their claims benefit from the hindsight knowledge of what the NRC  
21 said about the LWA in January 2009. The NRC never told the Company nor  
22 intimated that the NRC would not issue the LWA until it issued the COL. In our  
23 experience with the NRC, when the NRC wants to tell us something they do so,

1 they do not leave room for doubt. When the NRC determined in January 2009  
2 that it was going to review the LWA on the same timeline as the COL and not  
3 sequentially as PEF had requested that is what the NRC expressly said it was  
4 going to do. See Exhibit WRJ(PEF)-3, p. 28 of 233. Even OPC witness Jacobs  
5 concedes that the NRC's January 2009 statement on the LWA clearly expressed  
6 the NRC's intentions. See Exhibit No. \_\_\_ (JL-1) (Jacobs Dep. Excerpt, p. 87).  
7 There is no dispute that the NRC did not make that same express statement to  
8 PEF prior to January 23, 2009. (Id. at p. 100).

9 The intervenors make much of the statement by the NRC in the October 6,  
10 2008 docketing letter that the NRC was unlikely to complete the LNP COLA  
11 review in accordance with PEF's requested timeline. See Exhibit WRJ(PEF)-3,  
12 pp. 1-10 of 233. The intervenors read more into this statement than is there,  
13 again, because they know what the NRC ultimately said in January 2009. In  
14 doing so, however, they miss the critical point that the NRC was indicating in this  
15 very statement that the NRC was still reviewing the LWA and had not decided  
16 then that it was not going to issue the LWA as the NRC ultimately concluded  
17 months later. In fact, the "timeline" that the NRC referred to included issuance of  
18 the LWA by September 2010. The "timeline" also included issuance of the Final  
19 Environmental Impact Statement ("FEIS") in June 2010 and COL issuance in  
20 January 2012. When the NRC said it was unlikely that the COLA review – which  
21 included the LWA – could be completed in accordance with "this requested  
22 timeline" that "timeline" included the LWA. See Exhibit WRJ(PEF)-3, p. 2 of  
23 233. At most, the NRC was stating that one or more of those items might not be

1 issued in accordance with PEF's requested schedule. The only reasonable reading  
2 of this language is that the specifically requested dates for the FEIS, LWA, and  
3 COL that PEF requested might slip by weeks or a few months. But, nothing in  
4 that letter could be reasonably interpreted as suggesting that the NRC was not  
5 going to issue a LWA at all. That is the way PEF interpreted the October 6, 2008  
6 docketing letter.

7  
8 **Q. The intervenors also reference the NRC's statements about the complexity of**  
9 **the site characteristics in this October 6, 2008 letter and the NRC's request**  
10 **for additional information as reasons for concern regarding the Company's**  
11 **LWA request. Do you agree?**

12 **A.** No. It is important to remember that the purpose of the NRC's review of the  
13 Company's COLA is the application of the AP1000 nuclear power plants to the  
14 specific Levy site. NRC review of the AP1000 design itself is already underway  
15 under a separate reference COLA. As a result, the NRC will focus its review of  
16 the PEF COLA on the site characteristics to determine how that AP1000 design  
17 for the nuclear power plants will actually be built on the Levy site. This review  
18 requires the NRC to ask geotechnical questions through RAIs. The fact that the  
19 NRC issues RAIs means the NRC is doing its job. It does not mean the NRC has  
20 "doubts" or "concerns" --- or that there were problems with the Company's  
21 COLA or LWA --- in the way the intervenor witnesses seem to use these words.

22 The mere fact that the NRC was asking geotechnical questions and  
23 questions about the site characteristics does not mean that the NRC was not going

1 to issue the LWA. To the contrary, by docketing the Levy COLA, including the  
2 LWA, the NRC indicated that it believed the application was technically  
3 sufficient to indicate that the AP1000 design could in fact be applied to the Levy  
4 site despite the complex geotechnical and site characteristics. The NRC would  
5 not have docketed the PEF COLA if the NRC had "serious doubts" or "concerns"  
6 about building the AP1000 nuclear power plants on the Levy site because of the  
7 site geology or other site characteristics.

8 The fact that the NRC acknowledged the complexity of the site also does  
9 not mean there was a problem with PEF's COLA or LWA. Designing,  
10 engineering, and building nuclear plants is complex; however, it has been done  
11 numerous times in the past, including on many "Greenfield" sites, and there are  
12 five nuclear power plants operating for decades in Florida today that were built on  
13 complex sites, including the one at Crystal River within 10 miles of the Levy site  
14 and closer to the coast. PEF addressed the Levy site complexity in a detailed  
15 geotechnical review to arrive at the site sub-foundation and foundation design that  
16 took eighteen (18) months to complete. Under its requested timeline, PEF  
17 provided the NRC approximately thirty (30) months to review and issue the  
18 LWA. This was, in PEF's view, more than enough time to review all the  
19 information that PEF had developed in eighteen (18) months and issue a decision.

20 Before January 23, 2009, the NRC never said that the geotechnical review  
21 scope required the same duration for the LWA review as the COL review. In fact,  
22 the NRC never said on January 23, 2009 that the site complexity or geotechnical  
23 questions alone meant the LWA could not be issued. Rather, the NRC linked the

1 review of the geotechnical scope to the NRC's lack of resources to process the  
2 LWA sequentially rather than concurrently with the COL. See Exhibit  
3 WRJ(PEF)-3, p. 28 of 233. There is no dispute that this was the first time that the  
4 NRC had stated that lack of resources would cause a lengthy delay in processing  
5 PEF's LWA request. More important, given that PEF was able to complete its  
6 geotechnical analysis in eighteen months, there was no reason for PEF to believe  
7 at the time it executed the EPC agreement that lack of NRC resources would  
8 necessitate such a long delay in processing the LWA.

9  
10 **Q. Was there some reason to expect PEF's requested review schedule was in**  
11 **jeopardy because the NRC did not issue the review schedule thirty days after**  
12 **the PEF COLA was docketed on October 6, 2008?**

13 **A.** No. The NRC in fact told us in that letter that the NRC was not going to issue the  
14 review schedule until the NRC received additional information from the  
15 Company. The October 6, 2008 letter included RAIs that were answered by the  
16 Company on November 20, 2008. So, there was no reason to expect a review  
17 schedule from the NRC before November 20, 2008 or some reasonable time after  
18 that date to allow the NRC time to review the additional information and develop  
19 a review schedule. At that point, however, the release of the review schedule by  
20 the NRC was impacted by the holidays; it had nothing to do with the substance of  
21 PEF's requested review schedule. Even Jacobs, OPC's expert, agreed that there is  
22 no NRC requirement to issue a review schedule thirty days after the COLA is  
23 docketed, no NRC statement voluntarily committing to such a release schedule,

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

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

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

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

22 [REDACTED]  
23 [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED] A schedule delay would inevitably occur

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

NRC had issued a review schedule that included the LWA.

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

1 I was directly involved in the EPC contract negotiations with the Consortium  
2 senior management, I understand those negotiations and what the Consortium was  
3 and was not willing to do, and I understand what the current EPC agreement  
4 provides. Jacobs was not there for those negotiations. I also understand he has  
5 never negotiated an EPC agreement, never negotiated with either member of the  
6 Consortium, and never even read the PEF EPC agreement. See Exhibit No. \_\_\_\_  
7 (JL-1) (Jacobs Dep. Excerpt, pp. 14, 29, 63, 77-78).  
8

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

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

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

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

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

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

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

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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

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

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

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

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

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

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

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

1 Exhibit No. WRJ(PEF)-3) [REDACTED]

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

10 [REDACTED]

11 [REDACTED]

12 Second, Jacobs claims certain words in the April 15, 2009 letter from the  
13 Progress Energy CEO to the Board indicate that PEF had other reasons for the  
14 schedule shift besides the NRC determination with the respect to the Company's  
15 LWA request. (See Jacobs Test., p. 12; Exhibit No. WRJ(PEF)-3, pp. 42-43).  
16 This claim ignores the plain language of the letter. The letter itself is dated April  
17 15, 2009, which is after the NRC's determination with respect to the LWA.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]. Exhibit No. \_\_\_ (JL-1)

23 (Jacobs Dep. Excerpt, p. 142).

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

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

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

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

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

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

**IV. FEASIBILITY.**

**Q. Have you read the intervenor witness testimony with respect to the Company's feasibility analysis under Rule 25-6.0423(5)(c)5, F.A.C.?**

A. Yes, I have. There certainly has been a lot of discussion and opinions about what feasibility means under this rule and what the Company should or should not do to provide a feasibility analysis consistent with the intent of the rule. The Company has provided a feasibility analysis consistent with the purpose of the rule in Mr. Miller's direct testimony. I will explain why the Company believes it has provided the detailed analysis of the feasibility of completing the nuclear power plants, Levy Units 1 and 2, in the manner that a utility must assess the feasibility of completing a long-term, base load generation project like the Levy Units 1 and 2 nuclear power plants.

**Q. What is your understanding of what the rule requires?**

A. The rule states in relevant part that the Company "shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant." Rule 25-6.0423(5)(c)5, F.A.C. The Commission's Need Determination Order for Levy Units 1 and 2 said essentially the same thing. There are no requirements or standards in the rule, however, that spell out what this feasibility analysis is supposed to look like. The Company is simply directed to provide a detailed analysis of the feasibility of completing the power plant.

1 **Q. What does this rule mean to the Company?**

2 A. The Company has always understood the provisions of the rule should be read in  
3 light of the purpose of the rule, which is to establish alternative cost recovery  
4 mechanisms for the recovery of costs incurred in the siting, design, licensing, and  
5 construction of nuclear power plants in order to promote electric utility  
6 investment in nuclear power plants. We believe this purpose applies to the entire  
7 rule, including the feasibility analysis requirement in subsection (5)(c)5. We  
8 understand this was the legislative purpose too in directing the Commission to  
9 develop alternative cost recovery mechanisms for such costs. The Florida  
10 Legislature wanted to promote electric utility investment in nuclear power plants  
11 in Florida. From the utility's perspective, if the Florida Legislature wants to  
12 promote electric utility investment in nuclear power there must be alternative cost  
13 recovery mechanisms for the utility's recovery of its prudently incurred costs in  
14 the siting, design, licensing, and construction of nuclear power plants. Without  
15 such alternative cost recovery mechanisms the Company would not have  
16 embarked upon the development of nuclear power plants in Florida.

17  
18 **Q. Why is it important to remember the purpose of the rule in evaluating the  
19 utility's analysis of the feasibility of completing the power plants?**

20 A. Because there are benefits to adding nuclear power plants to PEF's system that  
21 are not directly addressed by the feasibility analysis suggested by the intervenors.  
22 These benefits are, in our view, the reasons the Florida Legislature wanted to  
23 encourage utility investment in nuclear power plants in Florida in the first place.

1 These benefits were also recognized by the Company and the Commission in the  
2 Need Determination proceeding and Need Determination Order for Levy Units 1  
3 and 2.

4 First, the State and the Company value fuel portfolio diversity. No one  
5 wants the Company to be too dependent on one source of fuel to produce energy.  
6 The LNP will always provide PEF with fuel portfolio diversity, no matter what  
7 might change in year-to-year cost and load projections. Fuel portfolio diversity  
8 will always be a long term benefit of the LNP.

9 Second, the addition of the LNP reduces PEF's reliance on fossil fuels for  
10 energy production. This will always be true too, no matter what cost and load  
11 projections might change from year-to-year. This is another long term benefit of  
12 the LNP.

13 Third, the production of energy from the LNP will always be essentially  
14 carbon free energy generation. No matter what the impact of global warming  
15 concerns and the attendant legislation and regulation of carbon emissions now and  
16 in the future, the LNP will provide essentially carbon-free energy production.  
17 That is another valuable, long term LNP benefit.

18 Finally, no matter what projections might change from year-to-year, the  
19 LNP will provide unparalleled base load capacity with a relatively low cost fuel  
20 source for PEF and its customers. This will also be a long term LNP benefit.

21 Whatever a feasibility analysis may show, the importance of these long  
22 term benefits of the LNP cannot be ignored or dismissed. These long term  
23 benefits are consistent with the legislative policy of this state and the purpose of

1 the nuclear cost recovery statute and rule for these are the reasons to encourage  
2 utility investment in nuclear power plants in the first place.

3  
4 **Q. Do you agree that the feasibility analysis that the intervenors propose is**  
5 **appropriate for nuclear power plants?**

6 A. No, I do not. The intervenor witnesses all seem to suggest that the feasibility  
7 analysis should be a type of annual cost effective analysis that compares the  
8 cumulative present value revenue requirements for the LNP to other generation  
9 alternatives based on load, fuel, and emission cost forecast changes each year.  
10 Evaluating the changes in these factors annually is more appropriate for  
11 generation plants that meet a shorter term need than the base load need that long  
12 term nuclear power plants meet. For example, if the Company has a need for  
13 power in the next one to four years, this type of analysis is appropriate to assess  
14 the most cost effective generation alternative between such units as natural gas-  
15 fired or oil-fired Combustion Turbines or natural gas-fired Combined Cycle  
16 generation units. These are flexible generation resources with relatively short  
17 siting, engineering, and construction periods. With such a short term planning  
18 horizon, changes in annual load, fuel, and emission forecasts are relevant to the  
19 Company's decision to build such resources.

20 This is not the type of analysis that should be undertaken annually when  
21 the Company has a longer term, base load need that will be met by a long term,  
22 base load generation project, such as the LNP. PEF is undertaking the LNP to  
23 provide long term, base load generation capacity from the lowest fuel cost and

1 only carbon free generation commercially available to the Company. The  
2 Company is not evaluating the decision to move forward with the LNP each year  
3 based on a comparison of the annual changes in the projections of capital and  
4 operation and maintenance (“O&M”) costs, fuel costs, load, and emission costs.  
5 These projections can and will change from year to year. Gas price forecasts  
6 increase and decrease, emission cost and carbon tax estimates change, and load  
7 forecasts can vary from year to year, especially when the economy is in a  
8 recession like this year. If the Company applied changes in such forecasts to  
9 decide whether to stop or restart the project each year, the Company could never  
10 build a nuclear power plant.

11  
12 **Q. Is this just the Company’s position in this docket or is this position standard**  
13 **utility resource planning in the industry?**

14 A. No reasonable utility manager will plan to build a nuclear power plant, or any  
15 base load generation plant for that matter, using an annual feasibility analysis in  
16 the manner suggested by the intervenor witnesses. These are long term, base load  
17 projects. They are not planned and built based on changes in cost, fuel, load, and  
18 environmental forecasts in a year, two years, or even in a ten-year period of time.  
19 These base load generation projects are built with the expectation that they will  
20 serve customers for sixty (60) years or more. It is over that time frame that the  
21 Company must evaluate capital costs, fuel costs, load, and environmental costs  
22 and policy.

23

1 **Q. Does Jacobs in fact agree with the Company's position that the cost effective**  
2 **analysis he proposes for feasibility cannot be used to make the decision that**  
3 **the LNP is or is not feasible?**

4 A. Yes, he did. Despite asserting in his pre-filed testimony that the Company's  
5 feasibility analysis was inadequate because it contained no cost-effective type  
6 analysis, Jacobs agreed that the results of such a cost-effective analysis are not  
7 determinative of the feasibility of completing the nuclear power plants. In fact, he  
8 agreed that even if changes in the fuel, emissions, or other forecasts demonstrated  
9 that the nuclear power plant was not cost effective the Commission should not  
10 determine that the project should not go forward and the Company should not  
11 determine that it is not feasible to go forward with the project. See Exhibit No.  
12 \_\_\_\_ (JL-1) (Jacobs Dep. Excerpts, pp. 124-125). He agreed that a nuclear power  
13 plant is a long term project that must be evaluated based on the long term, 60  
14 years "or more" benefits to customers. (Id, pp. 125-126.) He also agreed that no  
15 utility would evaluate a long term, base load nuclear power plant based on year-  
16 to-year changes in forecasts. In fact, as he admitted, if a utility did use annual  
17 forecasts to evaluate a long term base load project the utility would never build  
18 the nuclear power plant or any other base load generation plant. (Id.).

19  
20 **Q. If the Company believes that feasibility analysis for a base load nuclear plant**  
21 **cannot be a cumulative present value revenue requirements, cost-effective**  
22 **type analysis, why did the Company present a cost effective analysis to**  
23 **support the Levy Units in the Need Determination proceeding?**

1 A. The Company presented that analysis in the Need Determination proceeding  
2 because the need determination statute required it. But that statute further  
3 required the Commission to determine whether the nuclear power plant will  
4 provide “the most cost effective source of power taking into account the need to  
5 improve the balance of fuel diversity, reduce Florida’s dependence on fuel oil and  
6 natural gas, reduce air emission compliance costs, and contribute to the long-term  
7 stability and reliability of the electric grid.” §403.519(4)(b)3, Fla. Stats.

8 (emphasis supplied). These are the same long-term nuclear power generation  
9 benefits that I described above. These benefits cannot be ignored or dismissed in  
10 evaluating the feasibility of completing the nuclear power plants. They are  
11 consistent with the legislative purpose behind the nuclear cost recovery statute  
12 and rule because they are reasons to encourage utility investment in nuclear power  
13 plants. The problem is the feasibility analysis proposed by the intervenor  
14 witnesses in their pre-filed testimony does ignore these long-term benefits of base  
15 load nuclear power generation.

16  
17 **Q. Did the Company prepare an updated cumulative present value revenue**  
18 **requirements analysis in this proceeding similar to what the Company**  
19 **prepared in the Need Determination proceeding?**

20 A. Yes, but only because the Commission Staff asked the Company to answer Staff  
21 discovery requesting this analysis from the Company. The Company did not  
22 prepare this analysis in the normal course of business and had not prepared it  
23 before the Commission Staff asked for it. The Company still considers the

1 analysis inappropriate to determine the feasibility of completing the nuclear  
2 power plants.

3  
4 **Q. What does the Company's updated analysis show?**

5 A. The Company's updated cumulative present value revenue requirements analysis  
6 demonstrates that the LNP is still cost effective and slightly more cost effective  
7 than the analysis in the Need Determination proceeding demonstrated even with  
8 the schedule shift to the LNP. The main drivers in this updated analysis are  
9 higher long term natural gas price forecasts and increases in the costs of  
10 alternative generation resource options that offset some of the cost increase for the  
11 LNP. The Company's updated analysis for the LNP was provided in response to  
12 Commission Staff's Second Set of Interrogatories to the Company No. 33 and is  
13 included as Exhibit No. \_\_\_ (JL-2) to my rebuttal testimony. It used the same  
14 approach used in the Need Determination proceeding and evaluated the LNP  
15 using preliminary project cash flow approximations for a 20 month and a 36  
16 month schedule shift based only on information currently available. The  
17 Company used its updated fuel forecasts, emission forecasts with the exception of  
18 carbon costs (because the range in the Need Determination proceeding was still  
19 considered representative of potential regulatory outcomes), updated alternative  
20 generation cost estimates, and updated load and energy forecasts based on the  
21 Company's 2009 Ten Year Site Plan. All of the Company-specific updated  
22 information was provided based on information used in the normal course of the

1 Company's utility business and in the same manner used in and approved in the  
2 Need Determination proceeding.

3 As you may recall, the analysis in the Need Determination proceeding  
4 showed that the LNP was more cost effective than an all gas generation portfolio  
5 in all but one of the mid-fuel and high-fuel, carbon cost impact scenarios. As you  
6 may also recall, the Commission and the Company focused on these scenarios  
7 because the low fuel and the no carbon cost scenarios were considered highly  
8 unlikely. The 80 percent and 50 percent joint ownership scenarios were  
9 progressively less cost effective than the 100 percent ownership scenario because  
10 the value of the LNP fuel cost savings outweighed the cost sharing under the joint  
11 ownership scenarios. The analysis from the Need Determination proceeding is  
12 duplicated in Table 1 of Exhibit No. \_\_\_ (JL-2) to my rebuttal testimony.

13 For both the 20 month and the 36 month schedule shift cases, the LNP is  
14 more cost effective than an all gas generation portfolio in all of the mid-fuel and  
15 high fuel, carbon cost scenarios and more cost effective than the scenarios from  
16 the Need Determination proceeding. Additionally, in the base case, the LNP is  
17 more cost effective with the 20 month and 36 month schedule shifts in all of the  
18 excess capital cost scenarios, with 5 percent, 15 percent, and 25 percent higher  
19 costs. This was not the case for the base case scenario in the Need Determination  
20 proceeding. Finally, the joint ownership scenarios are again progressively less  
21 cost effective than the 100 percent ownership case because the benefits of the  
22 LNP fuel savings still outweigh the cost sharing under the joint ownership  
23 scenarios. The updated analysis with preliminary, estimated LNP cash flows for a

1 20 month and 36 month schedule shift, are shown in Tables 2 and 3 in Exhibit No.  
2 \_\_\_ (JL-2) to my rebuttal testimony, respectively.

3  
4 **Q. What about the intervenors' assertions that the LNP is not cost-effective. Do**  
5 **those assertions undermine the Company's updated analysis?**

6 A. No, they do not. The intervenor witnesses speculate about what an updated cost-  
7 effective analysis for the LNP would show but they never address what it actually  
8 shows. They were provided this analysis in discovery but apparently fail to or  
9 choose not to respond to it. Moreover, the intervenors' approach to natural gas  
10 and carbon forecasts is not consistent with the way utilities project such matters.  
11 For example, some of the intervenors rely on NYMEX futures prices for long  
12 term natural gas forecasts. This is inconsistent with the Company's fuel forecasts  
13 that were approved in the Need Determination proceeding and that are routinely  
14 reviewed and approved in other proceedings before the Commission. My general  
15 understanding of the NYMEX futures prices is that they are indicative only of the  
16 spot price that month when the futures price settles. They are not indicative of  
17 long term gas prices and in fact the futures price for natural gas the very next year  
18 will vary widely each day you review the futures price. This is simply not how  
19 utilities forecast natural gas prices. In any event, the intervenor witnesses rely on  
20 nothing more than speculation about the cost effectiveness of the LNP. PEF's  
21 updated analysis renders their speculation moot.

22

1 **Q. Since the Company has now performed an updated cost-effective analysis for**  
2 **the LNP with the potential schedule shift impacts, does the Company believe**  
3 **this is an appropriate analysis to use to determine feasibility?**

4 A. No. Even though the Company's updated analysis shows that the LNP is still cost  
5 effective using preliminary cash flows for a 20 month and 36 month schedule  
6 shift, the Company still believes this is an inappropriate method to assess the  
7 feasibility of completing the nuclear power plants for all the reasons that I have  
8 already explained.

9 The intervenors certainly want to use this type of cost effective analysis to  
10 claim that the LNP is not feasible. In essence, they argue that PEF's cost  
11 recovery, at least for the years 2009 and 2010, should be at risk unless the  
12 Company can demonstrate to the Commission's satisfaction that the LNP is  
13 "feasible" using this or a similar cost effective type test based on capital cost, fuel  
14 cost, load, and emission cost forecasts. To illustrate why this type of cost  
15 effective analysis cannot be used in this way, consider what would happen if the  
16 Company's updated analysis this year had shown that in every fuel and carbon  
17 cost scenario the LNP was not cost effective because of changes in fuel or  
18 emission cost forecasts and the intervenors convinced the Commission to open a  
19 separate docket to assess the feasibility of the LNP. If by the time that docket  
20 went to hearing, updated forecasts demonstrated the LNP was in fact the most  
21 cost effective generation alternative, is the Commission supposed to decide  
22 feasibility based on the initial forecasts from the Need Determination proceeding,  
23 the forecasts the next year demonstrating the LNP was no longer cost effective,

1 the forecasts from the next, subsequent year showing the LNP was again cost  
2 effective, or should the Commission wait another year to determine if the LNP is  
3 feasible based on the intervenors' proposed cost-effective feasibility analysis?

4 The intervenors' approach to feasibility is simply unworkable, there is no  
5 regulatory certainty if it is employed, and the LNP project cannot be stopped and  
6 started while the intervenors argue about feasibility based on changes in forecasts  
7 every year that affect the cost effectiveness analysis they propose. The  
8 Company's presentation of its prudently incurred actual costs and reasonably  
9 incurred estimated and projected costs cannot be held hostage in this way. Even  
10 Jacobs agrees that feasibility is forward-looking and has nothing to do with the  
11 prudence determination of actual costs, as some of the intervenors argue. See  
12 Exhibit No. \_\_\_ (JL-2) (Jacobs Dep. Excerpt, pp. 123-124). If the Company  
13 knew this was the way the Commission was going to determine feasibility the  
14 Company would have never initiated the LNP project. Simply put, the  
15 intervenors' feasibility argument discourages, rather than encourages, utility  
16 investment in nuclear power plants and it is therefore inconsistent with the  
17 purpose of the nuclear cost recovery statute and rule.

18  
19 **Q. How does the Company analyze the feasibility of completing the nuclear**  
20 **power plants?**

21 **A.** The Company analyzes feasibility in the way Mr. Miller describes in his direct  
22 testimony in this docket. The feasibility of completing the nuclear power plants  
23 means they are capable of being completed. This does involve technical and legal

1 feasibility, namely, can the AP1000 design be successfully installed on the Levy  
2 site and can all legal and regulatory licenses and permits be obtained for the LNP.  
3 As Mr. Miller explains in his direct and rebuttal testimony in this docket, there is  
4 a reasonable basis to conclude today that the AP1000 design can be successfully  
5 installed at the Levy site and that all necessary licenses and permits can be  
6 obtained for the LNP.

7  
8 **Q. Does the Company only consider technical or regulatory feasibility when**  
9 **considering the feasibility of completing the nuclear power plants?**

10 A. No. The Company does consider the total project cost in this analysis, along with  
11 fuel costs, load, environmental regulations and costs, and federal and state  
12 legislative and regulatory policy, among other factors. But this is a qualitative  
13 analysis, involving the constant monitoring of these factors for fundamental  
14 changes that would call into question the continuing feasibility of completing the  
15 nuclear power plants. It is not the rote quantitative cost-effective type analysis  
16 that the intervenors propose based on year-to-year fluctuations in forecasts and  
17 projections.

18 To explain further, the total project cost for the LNP, for example,  
19 certainly can be a factor in determining the capability of completing the nuclear  
20 power plants under certain circumstances. But the Company does not have any  
21 “magic” number in mind and is not aware of any such “magic” number that is  
22 determinative of the capability of completing the nuclear power plants today.  
23 Rather, the Company expects the Consortium to behave as a rational business

1 entity in addressing the cost and schedule impacts of the current schedule shift  
2 caused by the NRC's LWA determination.

3 The Company expects that any proposed schedule and cost amendment to  
4 the EPC agreement presented by the Consortium will be principled and  
5 meaningful under the circumstances. By a principled and meaningful  
6 amendment, PEF means that any schedule adjustment and cost increase will be  
7 rationally related to the schedule shift that must occur and reasonably supported.  
8 The Company will not accept an unprincipled and thus unreasonable cost  
9 increase. But the Company has no reason to expect such an unreasonable  
10 proposal from the Consortium.

11 Likewise, the Company will consider such additional factors as fuel costs,  
12 load, environmental costs, and federal and state energy policy. The Company  
13 constantly monitors such factors on an on-going basis throughout the Company's  
14 management of the LNP. But the Company cannot make decisions about the  
15 feasibility to complete the nuclear power plants based on temporary fluctuations  
16 that occur year-to-year in the forecasts or projections for these additional factors.  
17 Rather, the Company monitors these additional factors, and others, for  
18 fundamental changes in them that would require the Company to reconsider its  
19 decision that completion of the Levy nuclear power plants is feasible.

20 For example, the repeal by the Florida Legislature of the nuclear cost  
21 recovery statute, while not expected, would be such a fundamental change in state  
22 policy that the Company would have to evaluate the feasibility of completing the  
23 nuclear power plants in light of that change. Also, and again unlikely today, if

1 there was a fundamental change in the federal energy policy which indicated there  
2 would no be any greenhouse gas regulation on the horizon the Company would  
3 have to take that change into account in its feasibility analysis. But, as these  
4 examples demonstrate, these are fundamental changes in these factors that affect  
5 the long term benefits of nuclear power generation in the State. They are not  
6 temporary, year-to-year fluctuations in forecasts and projections. The Company  
7 cannot stop and start the LNP based on such temporary fluctuations. If the  
8 Company did focus its feasibility analysis on such temporary fluctuations, the  
9 Company would never build the nuclear power plants.

10  
11 **Q. Are there other potential factors that the Company may review to assess the**  
12 **feasibility of completing the nuclear power plants?**

13 A. Under certain circumstances there may be. For example, force majeure events  
14 may determine the feasibility of completing the plants if such an unforeseeable  
15 Act of God event were to occur and affect completion of the plant. Similarly, a  
16 critical path supply failure, such as the closure of the Japan Steel Works forging  
17 facility could be an event that affects the feasibility of completing the plants.  
18 Likewise, if there is a substantial project delay that takes the completion of the  
19 plant out beyond any reasonable forecast horizon, the Company would have to  
20 take that into account in evaluating the feasibility of completing the nuclear power  
21 plants. Also, if there were some event that precluded the Company from  
22 reasonably financing the nuclear power plants at all the Company would have to

1 factor that event into its analysis of the feasibility of completing the plant. But  
2 none of these events are reasonably expected to occur.

3  
4 **Q. If the Company expects a revised cost proposal from the Consortium soon**  
5 **why doesn't the Company stop spending money and wait until it knows what**  
6 **the new total estimated LNP cost is?**

7 A. The Company cannot stop and start the LNP project. Stopping the project entirely  
8 will only lead to further delay, a disorderly and inefficient management of the  
9 project, and resulting higher costs to PEF and its customers. That is not in the  
10 best interests of the Company or its customers. Rather, the reasonable steps to  
11 take are what the Company has done. The Company has implemented the  
12 orderly, known procedures in the EPC agreement to suspend the work, reduce  
13 spending for only those items that must be incurred, preserve the benefits of that  
14 work, and obtain information to determine the appropriate schedule shift and  
15 resulting revised project cost. The Company firmly believes these are the right  
16 steps to take and that the Company is taking reasonable and prudent actions.

17  
18 **V. CONCLUSION.**

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

20 A. Yes.

21  
22  
23

1 BY MR. WALLS:

2 Q Do you have a summary of your rebuttal  
3 testimony?

4 A I do.

5 Q Will you provide it to the Commission, please?

6 A Yes.

7 Good evening, Commissioners. I'm providing  
8 rebuttal testimony to the Intervenors' contentions that  
9 the company's decision to execute the EPC contract in  
10 December of 2008 was neither reasonable nor prudent, and  
11 to the contention that the feasibility analysis provided  
12 by Gary Miller in this docket was somehow deficient or  
13 inadequate.

14 PEF's decision to execute the EPC contract in  
15 December of 2008 was reasonable and prudent. Contrary  
16 to Intervenors' contentions, we never expected potential  
17 joint owners to sign up before the execution of the EPC  
18 contract. The potential joint owners reasonably wanted  
19 to know what the final signed EPC agreement provided  
20 before they signed the joint ownership participation  
21 agreement.

22 In addition, in December 2008, the company did  
23 not know and should not have known that the NRC would  
24 not approve the LWA before issuing the combined license.  
25 PEF reasonably and prudently acted on this information

1 that was available at the time, and by so doing was able  
2 to preserve the contractual benefits that had been  
3 secured through two years of intense negotiations. All  
4 risks associated with the Levy project were identified,  
5 analyzed and appropriately managed by the company  
6 through the adoption of risk mitigation plans consistent  
7 with the company's risk mitigation policies.

8 Finally, the feasibility analysis provided by  
9 Mr. Miller is adequate and consistent with the purpose  
10 of the nuclear cost recovery statute and rule. PEF's  
11 analysis is proper for assessing the feasibility for  
12 long-term projects such as LNP.

13 The analysis offered by Intervenors, on the  
14 contrary, would present an unworkable framework whereby  
15 long-term feasibility is constantly reevaluated based on  
16 year-to-year fluctuations in projections. If the  
17 company based its decision on stopping and restarting  
18 the project each year on these annual fluctuations, the  
19 company could never build the nuclear power plant. Such  
20 an approach would lead to a decrease in regulatory  
21 certainty, lead to an increase in costs and ultimately  
22 result in no nuclear generation being built in the  
23 state.

24 Further, the Intervenors' proposition that the  
25 Commission should make no decisions now regarding the

1 prudence and feasibility of the Levy project would also  
2 do away with regulatory certainty, and would, I believe,  
3 result in no nuclear generation being built. This is  
4 surely not the purpose of the nuclear cost recovery  
5 statute and rule, which are both intended to encourage  
6 utility investment in nuclear power plants. Indeed, if  
7 feasibility is viewed as strictly a cost-effective  
8 analysis, as the Intervenors suggest, PEF would never  
9 have initiated the LNP project.

10 That concludes my statement. Thank you.

11 MR. WALLS: We tender Mr. Lyash for cross.

12 CHAIRMAN CARTER: Mr. Brew?

13 CROSS EXAMINATION

14 BY MR. BREW:

15 Q Good evening, Mr. Lyash. I want to follow up  
16 first on a question I asked Mr. Miller, since you both  
17 sponsored testimony on feasibility. Has Progress Energy  
18 made a final decision on whether to proceed with the  
19 Levy project?

20 A Progress Energy has initiated -- the answer is  
21 no, but let me explain.

22 Progress Energy has entered into this Levy  
23 project with the full intent of taking the project to  
24 completion and in the best interests of the  
25 shareholders, but with any project of this size, we

1 constantly evaluate and reevaluate that decision at each  
2 milestone and reaffirm the decision to proceed. That's  
3 what we have done and we will continue to do. So we  
4 have no indication presently that this project cannot  
5 and will not be completed, but we will constantly assess  
6 that.

7 Q So would you agree, then, that that decision  
8 to go forward is not a static, one-time one, but is one  
9 that you continually and sequentially review?

10 A That's correct, as we would do with any  
11 project of this magnitude, and frankly, any project that  
12 we would implement.

13 Q Okay. You made a statement in your summary  
14 that's similar to a statement that appears on page 6 of  
15 your rebuttal that appears on line 10 through 12, which  
16 says, "PEF's feasibility analysis represents the  
17 necessary analysis to determine if long-term basal  
18 nuclear generation projects like Levy Units 1 and 2 can  
19 be completed." Do you see that?

20 A Yes, I do.

21 Q Does the nuclear cost recovery rule apply --  
22 feasibility analysis apply to projects like Levy, or  
23 Levy?

24 A I'm sorry, can you ask that last part again?

25 Q I will try it a different way. Is the

1 feasibility analysis required under the rule project-  
2 specific?

3 A I think the rule is generic in nature, but the  
4 project in front of us is Levy, and so feasibility  
5 determination in this instance would apply to Levy.

6 Q So when the rule says -- requires a detailed  
7 analysis of the long-term feasibility of completing the  
8 power plant, it means Levy in this context?

9 A Yes, I would agree.

10 Q So Progress is required to file an annual  
11 feasibility analysis that pertains to Levy?

12 A Yes, the feasibility analysis at issue today  
13 is with respect to the Levy nuclear project.

14 Q Not any nuclear plant in Florida?

15 A Yes, I believe that's correct.

16 Q Okay. Now, you mentioned in your summary, you  
17 mention on page 6, you mention later in your testimony  
18 your concern about feasibility analysis that relies on  
19 year-to-year variability in various items, is that  
20 right?

21 A Yes.

22 Q Okay. Is the schedule shift that's been  
23 announced a year-to-year variation or is it a permanent  
24 one?

25 A I would think that the schedule shift here is

1 permanent in nature. It's particularly the 20-month  
2 extension in the in-service, or in the commencement of  
3 safety-related concrete pour, yes.

4 Q So that's not something you expect to vary  
5 year to year, this is a shift in the schedule that's  
6 going to be permanent?

7 A Well, I would expect year to year that we  
8 would see shifts in the schedule, forward and backward,  
9 for many variety of reasons, and that those schedule  
10 shifts would be evaluated and considered within the  
11 context of the overall project. So while this year,  
12 because of the issue with the LWA that has been  
13 discussed in detail, we see a permanent shift that  
14 impacts the project, I'm not sure that this will be  
15 unique in the overall life of the project.

16 Q Would you consider a schedule delay of 20 to  
17 36 months to be a significant delay?

18 A Yes, I would consider that significant in  
19 terms of the established project schedule. In terms of  
20 project feasibility, however, given that this is a 60-  
21 to 80-year asset and the scale of the benefits that  
22 accrues, I'm not sure a 20-month shift in terms of that  
23 broader context is significant.

24 Q In terms of year-to-year variations, when was  
25 the last time Progress Energy Florida experienced a

1 negative customer growth?

2 A Likely some 20 to 30 years ago.

3 Q Okay, so the drop in the customer -- in  
4 Progress's sales that they've recently experienced you  
5 would consider to be a significant development?

6 A Well, I think the economic recession -- the  
7 answer is yes in the short term. I think the economic  
8 recession we're seeing today is certainly significant  
9 and, in a lot of senses, unprecedented. However, our  
10 customer growth projections in the future continue to be  
11 positive, and, in fact, just within the last 18 months  
12 we've set some record peaks on our generation system.  
13 So I think it is certainly significant in the short  
14 term; however, once again, I don't consider that to be  
15 significant in terms of the long-term viability or  
16 benefits of the Levy project.

17 Q Between 2008 and 2009, your ten-year site  
18 plan, Progress has lowered its long-term low growth  
19 forecast, hasn't it?

20 A That's correct. We reflected our view of the  
21 current economic recession and the shift in customer  
22 growth into our ten-year site plan filing.

23 Q So -- I'm sorry, are you finished?

24 A Yes.

25 Q Okay. So Progress expects the ramifications

1 of the recession to have a lasting impact?

2 A Yes, I think the ramifications of any  
3 recession have a lasting impact, and we have reflected  
4 what we think the extent of that impact is into our ten-  
5 year site plan. However, in terms of the need or the  
6 benefit from the Levy project, they do not impact that  
7 conclusion.

8 Q They don't impact, what was that?

9 A I said in terms of the need for the Levy  
10 station and in terms of the long-term benefits to the  
11 customers, those lasting impacts of the recession which  
12 are reflected in our ten-year site plan don't impact our  
13 conclusion.

14 Q But the schedule shift takes the Levy units  
15 out of your ten-year site plan, doesn't it?

16 A Potentially. We have not settled on a date  
17 yet. We're considering a 20- to 36-month window, which  
18 would place the Levy units either within or just at the  
19 horizon of the ten-year site plan.

20 Q And so if you need base load capacity within  
21 that ten-year horizon, you'll need to get it from  
22 another source, is that right?

23 A Yes, we'll need to meet our resource needs  
24 during that ten-year window by some method. It does not  
25 make the Levy decision irrelevant to the ten-year site

1 plan, because we might bridge that need with different  
2 methods with or without the Levy units.

3 Q But if you built new capacity, that would  
4 affect your need for additional capacity that would be  
5 represented by Levy, wouldn't it?

6 A We have not made a decision to build  
7 additional capacity. We currently have a combined -- we  
8 currently have a combustion turbine in the ten-year site  
9 plan. It might perhaps impact the size or the nature of  
10 that project. It could perhaps be covered with purchase  
11 power agreements or other variables in the plan.

12 Q My question was, if you built additional  
13 capacity, that would affect the need for the capacity  
14 when you would need the capacity for the Levy units,  
15 wouldn't it?

16 A Yes, it might, but that would be very  
17 scenario-specific. It would depend on the nature of the  
18 decision that we made and a number of other factors that  
19 would bear on that.

20 Q And you haven't made those judgments yet?

21 A Well, we're in the process -- no, we're in the  
22 process, as I said, now of evaluating where to place the  
23 Levy schedule, what is the optimum schedule to flex to  
24 here, and that decision will in significant part inform  
25 those short-term generation decisions.

1                   However, I must say that regardless of what  
2 short-term decision is made with respect to the Levy  
3 project -- generation other than Levy in the site plan,  
4 the nature of a large base load unit like Levy that  
5 accrues the benefits that come with it in terms of fuel  
6 diversity, fuel costs, environmental impact and the  
7 long-term benefit produced, that need for the Levy units  
8 in our plan really -- over that long-term period really  
9 is unaffected by short-term decisions we may make about  
10 other generation necessary to fill the gap.

11               Q     The generic benefits you were just talking  
12 about are -- you've kind of mentioned on page 28 of your  
13 testimony.

14               A     Did you say 28?

15               Q     28, yes.

16               A     Thank you.

17               Q     Are those the kind of benefits that you're  
18 referring to, fuel portfolio diversity, lessened  
19 reliance on fossil fuels and carbon-free energy  
20 generation?

21               A     Yes, those as well as the long-term cost  
22 benefits to the customers accrued by the low and stable  
23 fuel price related to nuclear power.

24               Q     Okay, so whether there are actually cost  
25 benefits to consumers is a function of how much the unit

1 actually costs, is it not?

2 A Yes, the unit cost is certainly one of the  
3 factors in the benefits that accrue to customers.

4 Q So it's not a -- you don't get these benefits  
5 regardless of cost, right?

6 A You do get these benefits -- many of these  
7 benefits regardless of cost, although I'm not suggesting  
8 that cost is irrelevant. So, for example, the value of  
9 a diverse fuel portfolio, reduction in reliance on  
10 fossil fuels, the reduction in carbon emissions  
11 associated with the generating stack, these are benefits  
12 that really accrue to the customer regardless of the  
13 particular capital construction cost. So they remain in  
14 any case. Now --

15 Q Could I --

16 A Just one last, and then I'll stop. But I  
17 don't mean to suggest that cost is not a relevant  
18 factor, it's just not the only factor.

19 Q Okay. Can you get all of those same benefits  
20 from biomass?

21 A No, not at this scale or for this period of  
22 time.

23 Q Could you get it a lot more economical?

24 A Pardon me?

25 Q Could you get it much more economical?

1           A     No. I believe to accumulate these benefits  
2 the Levy nuclear project is the most economical way to  
3 do that. That was, I think, vetted fairly extensively  
4 in the need case.

5           Q     In the need case, okay.

6                     Let's talk about in the latter part of your  
7 testimony you discuss an updated cumulative present  
8 worth revenue requirement analysis that you performed in  
9 response to a staff information request, is that right?

10          A     That's correct.

11          Q     And among other things, you say that this is  
12 not the type of analysis that you would normally  
13 perform, but you're doing it for the purposes of this  
14 proceeding?

15          A     That's correct.

16          Q     Okay. Would you agree that for purposes of  
17 the feasibility analysis under the rule, the Commission  
18 needs some kind of analysis showing that the project is  
19 likely to provide net benefits to consumers over time?

20          A     Well, let me, if I may, let me tell you my  
21 view of feasibility. I think feasibility, certainly as  
22 Mr. Gary Miller --

23          Q     Let me stop you. Again, just if you can  
24 answer my question and then explain. Don't answer your  
25 own question.

1           A     I'm sorry, can you restate the question?

2           Q     Whether or not the Commission in this  
3 proceeding needs in its economic and feasibility  
4 analysis some analysis of whether there are likely to be  
5 net economic benefits to consumers over the life of the  
6 plan?

7           A     Yes, I think a qualitative analysis of that  
8 needs to be part of the discussion, and I think that's  
9 what has been provided in Mr. Miller's testimony.

10                    You know, this -- I think feasibility goes to,  
11 as Mr. Miller said, can the plant be built technically,  
12 is there a fatal flaw in the design, can it be  
13 constructed, can it be operated, will it deliver the  
14 benefits, and cost, which you implied in a previous  
15 question is a part of that, is certainly an issue and  
16 should not be ignored. However, that total cost for the  
17 project I think needs to be viewed in the long term,  
18 not -- my point was not based on a cumulative net  
19 present value revenue requirement that fluctuates month  
20 to month or year to year.

21           Q     But under the rule, customers are paying for  
22 the cost currently, even though they won't actually see  
23 any of those benefits for another decade?

24           A     Yes, under the legislation, customers are  
25 paying for a portion of the plant cost and carrying cost

1 in anticipation of substantial long-term benefit, that's  
2 correct.

3 Q And that's expected in this case to amount to  
4 several billions of dollars before the units go into  
5 service, is that right?

6 A That's correct.

7 Q Okay. So a part of that same rule requires  
8 this feasibility analysis to be performed, is that  
9 right?

10 A It does.

11 Q And so part of that analysis needs to make  
12 sure that the dollars ratepayers are spending up front  
13 is being well spent, is that right?

14 A I think that's the purpose of a prudence  
15 determination as to whether those costs are being  
16 prudently incurred.

17 Q No, there are two purposes here. One is  
18 prudence, the other is feasibility.

19 A Correct.

20 Q Do you equate the two?

21 A No, I don't.

22 Q So I'm talking feasibility. So would you  
23 agree that the, part of the purpose of the feasibility  
24 in the requirement is to make sure that the dollars that  
25 consumers are going to be spending continue to be

1 well-spent?

2 A Now, I can only read the rule as it's stated,  
3 and that is that the legislation requires that a  
4 determination of feasibility be performed. And as I  
5 said previously, I think that that is technical,  
6 regulatory, operational feasibility to complete the  
7 plant, and as a part of that qualitatively, I think  
8 total cost needs to be considered, keeping in mind that  
9 the benefits to this plant are large and very long-term.

10 Q Can the project be considered to be feasible  
11 if it's not expected to be cost-effective for consumers?

12 A Yes, it can, but it depends on what cost-  
13 effectiveness standard you're comparing it to.

14 I think, for example, if, as has been  
15 presented in a number of the Intervenors' testimony, the  
16 test is as we provided in response to the interrogatory;  
17 in other words, a point-in-time cumulative present value  
18 revenue requirement. I could conceive that the plant  
19 would, with respect to that one test, prove to be not  
20 the most cost-effective solution at a given point in  
21 time, and I could conceive that a year later the plant  
22 would, per that test once again, prove to be cost-  
23 effective.

24 So I'm trying to answer your question  
25 straightforwardly. Yes, I think there are circumstances

1 where you could craft a feasibility test based on cost  
2 that would not show a positive net present value.

3 Q What I'm trying to get to is I'm trying to  
4 find out does Progress object to the cumulative present  
5 value revenue requirement analysis, or does it object to  
6 providing any quantitative analysis of cost benefits for  
7 consumers?

8 A Well, we certainly object to the notion that  
9 that cumulative present value revenue requirement  
10 outside the need test is a valid test, and we provided  
11 it because the Commission asked, and if the Commission  
12 asks, we will continue to provide it. In this  
13 particular case, that showed better benefits than we  
14 showed in the need, but I don't consider it relevant to  
15 this decision. I think the Commission should certainly  
16 consider, for example, whether the total project cost  
17 has changed in a magnitude or in a way that would make  
18 the project not feasible.

19 So we don't object to cost being incorporated  
20 into the discussion of feasibility and being considered  
21 as part of it, but I think by the nature of the length  
22 of this project and the scale, it's going to be a  
23 qualitative discussion, as opposed to a very  
24 quantitative point-in-time analysis.

25 Q So you object to demonstrating to the

1 Commission that consumers are likely to see net benefits  
2 from the project over time?

3 A No, I object to the notion that we should use  
4 a cost-based net present value test on an annual basis  
5 to make that decision.

6 Q Do you have a different test in mind?

7 A I think it's the one that we proposed, or the  
8 one that we included in the testimony, and that is, to  
9 provide the Commission with an assessment of whether the  
10 project continues to be feasible from a technology,  
11 execution, regulatory and licensing point of view, to  
12 update, as the Commission requested in the need order,  
13 our fuel forecast and our environmental cost  
14 projections, and at the point in time to provide our  
15 best estimate total project cost, all of which we have  
16 done. I think that, given that information, it puts the  
17 Commission in an adequate position to assess whether the  
18 project remains feasible.

19 Q So you want to provide a qualitative  
20 assessment and not actually try to demonstrate that it's  
21 cost beneficial to consumers, is that right?

22 A Yes. However, as I said, what I'm objecting  
23 to is the notion that the cost beneficial test is the  
24 specific cumulative present revenue requirement test  
25 that was asked for in the interrogatories. I'm not

1 objecting to an overall feasibility assessment that  
2 incorporates total cost.

3 Q Total cost and net benefits to consumers, net  
4 economic benefits to consumers?

5 A Well, I think that this assessment -- I'm  
6 sorry, could you rephrase the question? I want to  
7 answer yes or no, but that one --

8 Q Your answer said you didn't object to  
9 providing information on total cost.

10 A Correct.

11 Q What I asked is, do you object to providing an  
12 analysis that shows a net economic benefit to consumers,  
13 whether they exist or not?

14 A No, and I think we have done that. However,  
15 if you're suggesting that we provide a quantitative  
16 analysis --

17 Q Yes.

18 A -- for example, of the value of fuel  
19 diversity, of the value of reducing reliance on fossil  
20 fuel, of the value of long-term reduction of CO<sup>2</sup>, those  
21 are things that are difficult, if not impossible, to  
22 quantify with a point estimate.

23 Q Would Progress undertake this project if you  
24 couldn't show to senior management that it was likely to  
25 provide net benefits to Progress, economic benefits?

1           A     No, in this particular case, although there  
2     are projects that we undertake on our system year in and  
3     year out that provide no net benefit to Progress Energy.  
4     As example, the significant expansion of energy  
5     efficiency programs that's currently underway, they  
6     really have no net economic benefit to the company;  
7     however, we propose and implement those because we view  
8     them as having net benefits to the customers in the long  
9     term and an important part of the mix.

10           Q     Are there any capital investments in  
11     generation that the company would make if the company  
12     didn't expect it would see a net economic benefit?

13           A     No, that would be unlikely, and primarily  
14     because you need to raise capital in order to implement  
15     these projects, so unless we can show that we can  
16     provide a return to the investors for the capital raised  
17     and invested, it's unlikely we would have the capital to  
18     execute the project.

19           Q     Let's talk a little bit about the analysis you  
20     did provide that shows up in your Exhibit JL-2. When  
21     you're ready?

22           A     Yes.

23           Q     I would like to refer you to page 13 of that  
24     exhibit.

25           A     I'm sorry, I have pages 1 through 10, 10 being

1 the Table 5, and then pages 1 through 13 in the  
2 appendix.

3 Q This would be -- it's labeled 13 of 23 at the  
4 upper right-hand corner, but it's 3 of 13 at the bottom  
5 of the page in your appendix.

6 A 13 of 23 in the upper right-hand corner?

7 Q Right, yes, part of the appendix. Do you have  
8 that?

9 A Yes, I do.

10 Q And that is the Levy Nuclear June '09 Review  
11 Emission Cost Estimates?

12 A Yes.

13 Q And am I correct that for the columns that  
14 label CO<sup>2</sup> costs per ton that the numbers shown in those  
15 four columns are the same numbers that the company  
16 supplied in its need case last year?

17 A Yes, I believe that's correct. We updated  
18 emission costs, in other words, our resource planning  
19 group executed a review, and where there were changes in  
20 the numbers over the course of the year, for example,  
21 NO<sub>x</sub>, O<sub>x</sub> or mercury had moved, those numbers were  
22 updated. Where there was no indicated change in the  
23 number, those numbers would have been reported at the  
24 same level they were last year. And as you rightfully  
25 point out, the CO<sup>2</sup> numbers, although we reviewed and

1 updated them, are unchanged, because nothing with  
2 respect to that of significance has changed.

3 Q Now, Mr. Miller in his exhibit noted the  
4 existence of the Waxman-Markey Bill. Are you familiar  
5 with that bill?

6 A Generally.

7 Q Generally?

8 MR. BREW: Mr. Chairman, I would like at this  
9 time to mark for identification the document that I've  
10 circulated.

11 CHAIRMAN CARTER: The number would be 155.

12 (Exhibit No. 155 marked for identification.)

13 MR. BREW: And your short title, if I may,  
14 would be EPA Analysis of HR 2454, June 2009.

15 MR. WALLS: If I could just clarify that this  
16 is an excerpt of a larger document?

17 MR. BREW: That's correct.

18 MR. WALLS: Do you happen to know what the  
19 total pages are of the larger document?

20 MR. BREW: I can get the entire document for  
21 you. It's around 30 pages. I was trying to save trees.

22 MR. WALLS: Understood.

23 CHAIRMAN CARTER: You may proceed.

24 THE WITNESS: Am I looking at the correct  
25 document here?

1 BY MR. BREW:

2 Q That's it, yes.

3 Now, Mr. Lyash, are you aware that the U.S.  
4 House of Representative approved -- passed the American  
5 Clean Energy and Security Act of 2009 in June of this  
6 year?

7 A Yes, I am, they did pass that by one vote.

8 Q Yes, indeed.

9 A Remarkable.

10 Q And that's HR 54. So that's currently the  
11 Bill that's passed the House of Representatives, is that  
12 right?

13 A That's correct.

14 Q And the document that I have handed to you is  
15 a summary of the -- an analysis of that bill that was  
16 performed by the Environmental Protection Agency, do you  
17 see that?

18 A Yes, I do.

19 Q And if I can refer you to what is I think the  
20 third page of this document that's labeled 25 in the  
21 lower right-hand corner?

22 A Yes.

23 Q And the title of that sheet is labeled Offset  
24 and Allowance Prices, do you see that?

25 A Yes.

1 Q Since I've circulated this in color, it shows  
2 scene 2, which is Allowance Price, in green on the  
3 chart?

4 A Uh-huh.

5 Q And if you look at that, would you agree with  
6 me that through the year 2030, allowance prices are not  
7 expected to exceed \$30 a ton in 2005 dollars?

8 A Yes, that's what this graph depicts.

9 Q So that would be the EPA's assessment of the  
10 bill as passed, is that right?

11 A I'll take you at your word. I'm unfamiliar  
12 with the document.

13 Q So for the emission allowances that you  
14 employed on page 13 of 23, at 2030 under the column  
15 Lieberman-Warner, you show a cost of \$158 a ton, is that  
16 right?

17 A That's correct.

18 Q And under the MIT CO<sup>2</sup> version, it was \$117 a  
19 ton?

20 A Yes.

21 Q And then the EPA old version from last year  
22 was \$63 a ton?

23 A Yes.

24 Q And then the EBS study was \$42 a ton?

25 A Correct.

1 Q Okay. Is there a bill called Lieberman-Warner  
2 that's currently pending in front of the U.S. Congress?

3 A No, I don't believe there is.

4 Q Okay, so a current update of what Congress is  
5 intending on climate change and the cost of carbon  
6 trading is more accurately reflected in the EPA analysis  
7 than in the values that you've used from last year's  
8 need case, would you agree with me?

9 A No, I wouldn't.

10 Q Because?

11 A Well, first I'd like to say that I'm not at  
12 all convinced, and neither are most folks watching the  
13 process, that the Waxman-Markey bill at the end of the  
14 day will be the one that passes. It passed the House of  
15 Representatives by one vote. There are significant  
16 issues that all parties engaged have with the bill.  
17 There is nothing at the present time moving in the  
18 Senate in support of it. So although I think you could  
19 get a wide range of views on this, I'm not convinced  
20 that Waxman-Markey in fact represents the long-term  
21 carbon policy.

22 The second is that even with the Waxman-Markey  
23 bill, while EPA has their estimate of what carbon  
24 pricing would do, this is one estimate of that behavior.  
25 There are a multitude of other investments.

1           The third point that I'd make is that if the  
2 country's objective as stated is to, in fact, reduce  
3 carbon emissions over time, I think the general  
4 consensus, and certainly as an example what came out of  
5 the EPRI MERGE analysis, would say that carbon pricing  
6 would likely have to be driven much higher than this to  
7 positively impact carbon.

8           So while I would agree with you that  
9 Waxman-Markey and that EPA's assessment of Waxman-Markey  
10 indicate lower carbon prices than we have here, I  
11 wouldn't be able to conclude from that that this in fact  
12 is more representative of the likely outcome than a  
13 range of other alternatives.

14           Q     Okay. Let's start from the premise that it is  
15 the House bill and that there are changes to come as  
16 this debate unfolds. Would you agree with me that in  
17 the Waxman-Markey bill, 35 percent of allowances are  
18 initially allocated for free to the electric industry to  
19 mitigate the rate impacts on consumers of implementing  
20 the cap and trade program?

21           A     Yes, that is in the bill, I agree.

22           Q     And so to the extent that allowances are  
23 allocated to utilities to mitigate the rate impacts on  
24 consumers, that would affect the cost-benefit analysis  
25 for this plant?

1           A     Yes, certainly the split between allocation  
2 and auction is an important piece of this legislation.

3           Q     And another important piece would be whether  
4 or not to allow offsets as a way of complying with the  
5 statute, is that right?

6           A     That's a piece of it, and, in fact, that's a  
7 very controversial piece, that, my opinion, is unlikely  
8 to be preserved, but that's my opinion.

9           Q     But you would agree that the inclusion of  
10 offsets in Waxman-Markey was another piece of that bill  
11 designed to keep the cost of compliance down while  
12 actually achieving lower emissions?

13          A     Yes, I would agree that it's the intent. I'm  
14 not sure that it will be implemented, or that in the end  
15 it will be cost-effective.

16          Q     But would you agree with me that both of these  
17 features were included in the Waxman-Markey bill for the  
18 express purpose of mitigating the cost of compliance on  
19 the U.S. economy?

20          A     I would agree that that's part of the reason.  
21 I don't think that's probably the entire reason.

22          Q     Okay. In your exhibit, moving back to page 16  
23 of 23, you provide -- you have a series of pages  
24 providing your updated long-term fuel forecast, and 16  
25 of 23 is the mid-reference fuel table?

1 A I'm sorry, let me get to where you are first.

2 Q Okay. Take your time.

3 A 16 of 23, this is a mid-reference fuel  
4 table --

5 Q The mid-reference fuel table, that's right.  
6 Hold that page, but back on page 33 of your rebuttal  
7 testimony, line 17, you say the company used its updated  
8 fuel forecast?

9 A What page?

10 Q I'm sorry for jumping. It's page 33, line 17.  
11 It says, "The company used its updated fuel forecast."  
12 Do you see that?

13 A Yes.

14 Q In reference to the mid-reference fuel  
15 forecast, is that a Progress long-range fuel forecast?

16 A Yes. We have -- as a matter of process and  
17 routine, we update our fuel forecast. In developing  
18 that updated fuel forecast, we use a wide range of  
19 industry projections to develop that that have proved to  
20 be fairly reliable for us over the long term, and  
21 incorporate those against our system. So this is a  
22 specific Progress Energy fuel forecast, but based on a  
23 fairly well-established and accepted industry approach  
24 to doing such estimates.

25 Q So this is not a Nimax forecast or an Energy

1 Information forecast, this is a Progress Energy  
2 forecast?

3 A This is -- as required, this must be a  
4 Progress Energy-specific fuel forecast, because it  
5 applies to the availability of these fuels in Florida.  
6 We don't really have indigenous fuel supplies, so we've  
7 got to get them on the market and get transportation to  
8 get them here. But it's based on independent, industry  
9 accepted, forward fuel pricing, multiple inputs, in  
10 order to develop that. It's not something we develop  
11 entirely on our own.

12 Q But if I compare the numbers that you  
13 developed in this forecast on your exhibit with what Mr.  
14 Miller filed in his direct, would you agree with me that  
15 through the year 2022, the gas prices in your forecast  
16 are consistently lower than what Mr. Miller filed back  
17 in May?

18 A Well, I don't have Mr. Miller's in front of  
19 me. I can say that what Mr. Miller filed in May was  
20 based on our then-fuel forecast, and when requested in  
21 the interrogatory to provide this information, we did  
22 not do a special fuel forecast for this. We updated  
23 this to reflect the fuel forecast that we had produced  
24 as a matter of course in the interim.

25 Q I'm focusing on what you got to, not how you

1 got there. Would you agree that the forecasts shown on  
2 your mid-reference forecast don't consistently exceed  
3 the fuel table for Mr. Miller's exhibit until the year  
4 2030 and beyond?

5 A I don't have Mr. Miller's exhibit in front of  
6 me.

7 Q Okay. But if you were to compare the two, it  
8 would show that basically you show lower fuel prices for  
9 the first 12 years and higher fuel prices from year 2030  
10 and on out?

11 A I don't have Mr. Miller's forecast, so I can't  
12 confirm or deny your assertion.

13 (Brief pause.)

14 BY MR. BREW:

15 Q Do you have Mr. Miller's exhibit now?

16 A Yes, I have this exhibit.

17 Q That would be his Exhibit GM-1, and I was  
18 showing you the gas portion of that, which is page 2 of  
19 2.

20 A Uh-huh.

21 Q So would you agree with me that from 2009 to  
22 2021, the prices shown on your forecast are lower in all  
23 those years than in Mr. Miller's forecast in May?

24 A Excuse me, I'm just taking a minute to look at  
25 it.

1 Q Sure.

2 A Yes, and again, I'm not quite as familiar with  
3 Mr. Miller's GM-1 and exactly what this table represents  
4 with respect to notions of fuel price, but I would say  
5 that this mid-reference fuel table that's in the  
6 interrogatory response generally shows lower fuel prices  
7 in the early years for gas and higher for distillate.

8 Q And higher for what?

9 A In some cases, a little higher for distillate.

10 Q And just sticking to the gas cost, it shows  
11 higher -- your exhibit shows higher gas prices in years  
12 2030 and beyond?

13 A The two forecasts appear to converge as you go  
14 out in time, but slightly higher in the mid-reference  
15 fuel case in response to the interrogatory.

16 Q Okay, thanks.

17 A I might add that, just having reflected on  
18 it --

19 Q Wait a second. I would rather that you waited  
20 for a question rather than just sort of adding.

21 Thank you, Mr. Lyash, that's all I have.

22 CHAIRMAN CARTER: Mr. Davis?

23 MR. DAVIS: Yes, Mr. Chair, I'll try to be  
24 brief because Mr. Brew covered some of the questions I  
25 was going to ask.

## CROSS EXAMINATION

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

BY MR. DAVIS:

Q Good evening, Mr. Lyash.

A Good evening.

Q And I will try not to keep you too long.

First of all, you're not a lawyer, right?

A That's correct.

Q And I'm not saying that as if it's a big deal to be a lawyer, but --

A No offense taken.

Q Actually, my parents didn't want me to be a lawyer, so there you go, but I play one on TV.

The reason I asked you that question is you have made certain recommendations or certain statements in your testimony to the Commission about how they should interpret their rule on determining long-term feasibility of the Levy 1 and 2 project, right?

A I have made statements about how we interpret the requirement for long-term feasibility and how we view that. The Commission is certainly in a position to make a decision as they see fit.

Q So you're not suggesting that you have the correct legal interpretation of that term, *long-term feasibility*?

A I would never presume to do the Commission's

1 business for them. I would respectfully try to put  
2 forward the information I think is relevant in their  
3 decision.

4 Q Okay. And you were testifying about your  
5 interpretation of long-term feasibility from the  
6 standpoint of a corporate executive of Progress Energy,  
7 correct?

8 A Yes, and to the extent that our own legal  
9 staff has reviewed the requirement and discussed with me  
10 how our legal department's view of that requirement  
11 stands.

12 Q And that was my next question, I appreciate  
13 that. So you were assisted by legal counsel in writing  
14 your testimony on that point, correct?

15 A Well, this -- now, this is my testimony, so  
16 this represents my personal views and the views of the  
17 company.

18 Q After consulting with your legal counsel about  
19 that?

20 A I consult with my legal counsel daily as we go  
21 through the course of business on this and every other  
22 issue, so yes.

23 Q So in other words, this is legal argument from  
24 your legal counsel?

25 A No, this is my testimony, and it represents my

1 views and the views of the company.

2 Q Okay. Well, let me just ask first of all with  
3 regard to Levy 1 and 2, Progress wouldn't build those  
4 units without the cost recovery provision in Florida  
5 law, right?

6 A Well, that's a hypothetical. However, I would  
7 tell you that without the legislation that was passed  
8 and the rules that were implemented on alternative cost  
9 recovery, I think constructing this plant would be  
10 certainly more difficult and perhaps not possible. I  
11 personally couldn't recommend that we would proceed with  
12 a project like this without that regulatory certainty  
13 and financial support.

14 Q As a matter of fact, on page 27 of your  
15 testimony, line 14, you state, "Without such alternative  
16 cost recovery mechanisms, the company would not have  
17 embarked upon the development of nuclear power plants in  
18 Florida"?

19 A Correct.

20 CHAIRMAN CARTER: Get a little closer to the  
21 mike, Mr. Davis.

22 MR. DAVIS: I apologize. Usually my voice  
23 carries without it.

24 BY MR. DAVIS:

25 Q So you have provided an opinion that -- let me

1 make sure I'm not misinterpreting your opinion -- that  
2 as a corporate manager, you don't believe that  
3 feasibility includes an economic analysis?

4 A No, what I said was I don't believe  
5 feasibility includes the type of point estimate analysis  
6 that's represented in this interrogatory.

7 And I'm not saying that we wouldn't provide  
8 this or that it isn't informative, but my position is  
9 that that sort of an economic analysis on a recurring  
10 basis annually is not something that we do for any major  
11 capital investment, nuclear or non-nuclear, and it  
12 should not be the test in this case, because it's  
13 untenable, it's unimplementable. What I did not say is  
14 that total project cost and the impact of that on the  
15 feasibility of the project should not be a  
16 consideration. I think it should.

17 (Brief pause at 6:58 p.m.)

18 (The transcript continues in sequence with  
19 Volume 13.)

## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )

3 COUNTY OF LEON )

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

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

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

15 DATED this 11th day of September, 2009, at  
16 Tallahassee, Leon County, Florida.

17  
18  
19 

20  
21 \_\_\_\_\_  
22 CLARA C. ROTRUCK  
23  
24  
25