PROGRESS ENERGY FLORIDA
In re: Nuclear Cost Recovery Clause
Docket 100009-EI
Eighteenth Request for Confidential Classification

Exhibit B

COM ____
APA ____
ECR 1
GCL ____
RAD ____
SSC ____
ADM ____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause

DOCKET NO. 100009
Submitted for filing: August 3, 2010

REDACTED

REBUTTAL TESTIMONY OF JEFF LYASH

ON BEHALF OF PROGRESS ENERGY FLORIDA

COL. PEF agrees that project cancellation is a reasonable option for the LNP given the existing schedule shift on the LNP and the risks PEF faced on the project, and that is why PEF evaluated this option before making its decision to continue pursuing the COL. In fact, PEF decided to continue with the LNP only when PEF was able to obtain favorable terms to amend the EPC agreement and implement an extended partial suspension to focus the work on obtaining the LNP COL while maintaining the existing contractual benefits and risks under the EPC agreement during this licensing period.

This favorable amendment allowed the Company to continue with the project [redacted] to PEF and its customers. As a result, the Company was able to extend the near-term LNP costs to customers in excess of one billion dollars to the period after the LNP COL is obtained while preserving the long-term benefits of low-fuel cost, carbon-free nuclear energy generation for PEF and its customers. This is a reasonable and prudent decision under the circumstances and Jacobs does not contend otherwise. Indeed, for all the reasons provided in my direct and rebuttal testimony in this proceeding, this was the right decision for PEF, its customers, and the State of Florida.

Later in his testimony, Jacobs does claim that PEF was unreasonable with respect to PEF's execution of the EPC agreement at the end of 2008 without the Nuclear Regulatory Commission ("NRC") Limited Work Authorization ("LWA") determination in hand. (Jacobs Test., p. 12, L. 20-25, p. 13, L. 1-24, p. 14, L. 1-18). Jacobs admits, however, that he made this exact same argument last year in the 2009 nuclear cost recovery clause ("NCRC") docket. (Id., p. 12, L. 23). In that docket, the

Company's assessment of all other enterprise risks affecting the LNP as I describe in detail in my direct testimony.

Q. If termination of the EPC agreement and cancellation of the LNP was a reasonable option why didn't the Company cancel the project?

A. PEF was able to amend the EPC agreement to continue the project, focusing work on obtaining the COL under an extended partial suspension, while maintaining the favorable terms and conditions of the existing EPC agreement. In Amendment 3 to the EPC agreement, PEF further placed the majority of the milestone dates on hold until the COL is issued [redacted]. This allowed PEF to [redacted] During this licensing period, then, PEF and its customers have the benefit of [redacted]. PEF, therefore, was able to obtain the [redacted] in Amendment 3 while placing the Company and its customers [redacted].

Q. Would PEF have continued with the LNP without Amendment 3 to the EPC agreement?

A. No. In the event PEF was unable to negotiate the favorable terms to amend the EPC agreement that PEF obtained in Amendment 3 to the EPC agreement, PEF would have terminated the EPC agreement and cancelled the project. As I explained in detail in my direct testimony, the enterprise risks associated with the LNP have increased. Over the past year, there has been more uncertainty with respect to the enterprise risks facing the project. On this point, there is no disagreement between PEF and the intervenor witnesses. This increased uncertainty associated with the risks facing the project led PEF away from proceeding as quickly as possible with the LNP construction to consider cancellation of the project if PEF could not continue with the project on a longer term schedule shift. PEF determined that it would proceed with the project only if it was able to [redacted]. PEF was able to achieve these objectives in Amendment 3 to the EPC agreement. PEF, therefore, decided that cancellation of the project at this time was not in the best interests of PEF and its customers.

Q. What contractual and long-term project benefits were preserved by Amendment 3 to the EPC Agreement?

PEF was able to preserve all of the contractual benefits that PEF obtained [redacted]. These beneficial contract terms and provisions were identified in my testimony in Docket No. 090009 and include:

[redacted]

[redacted]

All of these beneficial contractual terms and provisions were maintained in Amendment 3 to the EPC agreement.

This decision also preserves the long-term benefits of nuclear generation for the Company, its customers, and the State of Florida. These long-term benefits are fuel portfolio diversity, reduced reliance on fossil fuels for energy production, carbon free energy generation, and base load capacity with a relatively low cost fuel source. The LNP will provide PEF with fuel portfolio diversity, reduce PEF's reliance on fossil fuels for energy production, and provide essentially carbon-free energy production, regardless of the impact of global warming concerns and attendant with the LNP as quickly as possible is approximately [redacted], the estimated cost to terminate the EPC agreement and cancel the project is [redacted], and the estimated cost to amend the EPC agreement and defer most capital costs until the COL is obtained is [redacted]. Again, the Company's decision will defer over $1 billion in capital costs for the LNP until after the COL is obtained. Further, for an estimated [redacted] --- the difference over this period between immediate cancellation and proceeding with the project by extending the partial suspension and focusing work on the COL --- the Company preserves the favorable terms and conditions of the EPC agreement and the long-term benefits of nuclear generation. The Company also avoids any lost benefits of sunk costs in the project for the Company and its customers if the project is not terminated.

As I explained in my direct testimony, termination of the EPC agreement and cancellation of the project involves not only [redacted], and administrative costs to conclude the project, it also involves an opportunity cost because the benefit of some of the costs already incurred on the LNP, or the sunk project costs, may be lost upon termination of the EPC agreement and project cancellation. The lost benefit of these sunk costs is likely if there is no renewed effort for nuclear generation in Florida for the foreseeable future. These lost opportunity costs are difficult to identify and therefore estimate, but they certainly exist in the event of project cancellation and should be and were considered in the Company's evaluation of the LNP options.

Q. Jacobs claims that PEF failed to consider all costs because PEF did not consider at this time the costs of cancellation of the project in 2013 after the COL is obtained. Do you agree with his claim?

A. No, I do not. As I explained above, Jacobs' argument boils down to an argument that PEF should have immediately cancelled the project because there are increased uncertainties and risks that are unlikely to diminish by the time PEF obtains the LNP COL. Jacobs believes today that PEF will likely terminate the project after PEF receives the LNP COL in 2013 because of these project uncertainties and risks. This is, in essence, an argument that PEF should immediately cancel the project. PEF did evaluate the immediate cancellation option including the costs of that option.

It makes no sense to compare the estimated costs of cancellation three years from now to the estimated costs of cancellation or continuation today if one now believes as Jacobs apparently does that the project uncertainties and risks are so great that the project will be cancelled in the future. If that is the case, immediate cancellation is the reasonable option and one would simply consider the estimated costs of immediate cancellation in the evaluation, just as PEF did in its evaluation of the LNP options. It also makes no sense to compare the estimated costs of cancellation options at different points in time when one is trying to decide whether or not project cancellation or continuation is in the best interests of the utility and its customers. Obviously the costs of future cancellation after three or four more years of project investment, approximately [redacted], will be higher than the costs of immediate cancellation of the project, approximately [redacted]. However, since the decision must be made at a particular point in time, the costs of the options must be estimated at the time the decision will be made.

This does not mean that PEF ignored the likely future costs if decisions were made at a different point in time in its discussions evaluating the LNP options before the Company. PEF certainly understood at the time it evaluated these options and made its decision that PEF would be spending more money on this project over the next three to four years and still face potential termination of the project at a future point in time. These costs were discussed at SMC and Board meetings evaluating the presentations on the LNP options facing the Company.

These additional costs are in fact evident in the presentations made to the SMC and the Board. I have reviewed the Company's express estimate of the costs of continuing the project under the partial suspension and cancelling the project shortly after receipt of the COL included as Exhibit No. ___ (JE-6) to Mr. John Elnitsky's rebuttal testimony. Obviously, this option incorporates the costs of the extended partial suspension option the Company selected, which is estimated at approximately [redacted] over the licensing period between 2010 and 2012. This amount is included in the SMC presentation included in Exhibit No. ___ (JL-6) to my direct testimony. In addition, the Company estimates an incremental cost for cancellation at the end of that period of [redacted], for a total estimated cost of [redacted]. This incremental amount includes [redacted], wind down costs, and the estimated balance on long lead equipment (LLE) that can be found within the cancellation option by amount or the nature of the costs in Exhibit No. ___ (JL-6) to my direct testimony. The Company, therefore, was clearly aware of the estimated additional environmental costs, in particular greenhouse gas ("GHG") compliance costs of some type, for fossil fuel energy generation. Under this long-term view, preserving the LNP new nuclear generation option with the COL focus approach makes sense. Accordingly, as I explained in my direct testimony, it is the Company's reasonable management judgment, that new nuclear generation is still the appropriate long-term future base load generation for the Company and its customers.

In terms of these future, long-term benefits and even the total project cost to achieve those benefits, the incremental costs of cancelling the project after receipt of the COL compared to immediate cancellation of the project are clearly insignificant on a relative basis. Cancellation after COL is estimated at [redacted] while immediate project cancellation is estimated at [redacted] for a difference of [redacted]. This difference largely reflects the fact that cancellation after COL occurs at least three years later after continued spending on the project over that time period. This difference, however, does not account for the fact that PEF will have completed certain LLE that will be available for salvage value or the fact that, in reality, the balance for disposition of the LLE will actually be lower due to the fact that three years of additional payments will reduce that to an amount lower than the LLE disposition costs estimated upon immediate cancellation which were used in generating the cost estimate upon cancellation after COL receipt. Therefore, the likely difference will be lower than [redacted], although PEF cannot accurately estimate how much lower it will be.

In any event, even if the full [redacted] estimated amount for cancellation after COL is compared to the estimated cost of immediate cancellation [redacted]) and the cost of proceeding with the project under the partial suspension to receipt of the COL [redacted]), the differences are [redacted] and [redacted] respectively. In other words, PEF will incur at most an additional [redacted] if it decides to cancel the project shortly after receipt of COL than if it decided to immediately cancel the project. PEF will also incur an additional [redacted] on the LNP to preserve the project contractual and long-term benefits during the licensing period compared to project cancellation at the end of the licensing period. This amount is only [redacted]) more to pay to preserve these contractual and long-term benefits when proceeding with the project under the partial suspension during the licensing period and terminating the project at the end of that period is compared to the differential between proceeding with the project during the licensing period and immediate project cancellation.

None of these incremental estimated values rise to a magnitude that affects the Company's decision to continue with the LNP or cancel the project. It is simply unreasonable to conclude that a decision as important as project cancellation or continuation will turn on amounts in these ranges no matter which of these incremental comparisons Jacobs believes should be used (which he does not identify in his testimony). These incremental, estimated costs are a small fraction of the total project costs and the total project benefits that will be obtained upon the completion of the investment of those costs in the project. To decide to continue or cancel this project, the decision must turn on an evaluation of the total project costs, benefits, and risks and that is exactly what PEF did.

PEF first determined that the LNP was qualitatively and quantitatively feasible. The quantitative economic feasibility analysis compared the total project costs to the total, quantifiable benefits of the LNP. Once PEF determined the LNP was feasible from a qualitative and quantitative analysis of the LNP project benefits and costs, PEF decided if proceeding with the project was in the best interests of the Company and its customers even if the project was feasible. The Company's assessment of the risks led the Company to focus on the costs of each evaluated option over a three-year project continuation period. This three-year period corresponded to the expected licensing period and, therefore, allowed PEF to focus on deferring capital investment, if possible, during this period to mitigate the risk of exposing substantial capital investment to the uncertainties associated with the licensing on the project. As a result of this analysis, PEF narrowed the options down to project cancellation or continuation under an extended partial suspension to focus work on obtaining the COL. The decision between these two options again depended on PEF's ability to mitigate the regulatory and other project enterprise risks through an amendment to the EPC agreement that preserved the contractual and long-term project benefits of continuing to pursue new nuclear generation [redacted]. PEF reasonably made its decision based on this assessment of the LNP costs, benefits, and risks.

Q. By the way, are you aware that Jacobs has testified on behalf of the Georgia Public Service Commission regarding the Vogtle AP1000 nuclear reactors that Georgia Power Company plans to license, construct, and operate in Georgia?

does not even mention these risks in his testimony before the Georgia Public Service Commission in the Vogtle AP1000 matter.

Q. Did the Florida PSC Staff Auditors review the EPC agreement amendments in this proceeding?

A. Yes, they did. The staff auditors reviewed the EPC agreement and its amendments. In particular, the staff auditors reviewed and commented on Amendment 3 to the EPC agreement, which implements PEF's decision to extend the partial suspension and focus work on the LNP COL. Audit staff agreed that PEF was able to preserve the existing contractual benefits of the EPC agreement in Amendment 3. Audit staff notes that Amendment 3 to the EPC agreement (a [redacted] (b) maintains [redacted] (c) maintains [redacted] (d [redacted] and (e) maintains the [redacted] (Staff Audit Report, p. 9). Audit Staff concluded that the Company was able to negotiate a favorable amendment with limited fee impact. (Id.). PEF agrees with the audit staff conclusion that PEF was able to obtain a favorable amendment that preserved the contractual benefits of the EPC agreement with limited fee impact to PEF and its customers.

Audit staff also addressed the mitigation of risk under Amendment 3 to the EPC agreement. Specifically, audit staff concluded that Amendment 3 [redacted] (Id.). PEF, again, agrees that PEF was able to mitigate the risk to the Company and its customers through Amendment 3 to the EPC agreement.

Q. Will PEF continue to evaluate the options for proceeding with the LNP including the option of project cancellation and termination of the EPC agreement?

A. Yes. As audit staff notes in its audit report, the Company's amendment to the EPC agreement allows the Company to continue to [redacted] to the Company and its customers. PEF will, of course, evaluate the project at each important step in the project to determine not only that the project remains feasible but that, even if the project is feasible, it is in the best interests of the Company and its customers to continue with the project. This is simply reasonable, prudent project management that PEF has employed and will continue to employ on the LNP.

Q. Jacobs concludes his testimony regarding the LNP by re-stating arguments he made in the 2009 NCRC proceeding. Do you have any response to these arguments?

A. Yes, I do. At pages 12-15 of his direct testimony, Jacobs opines that (1) it was unreasonable for PEF to sign the EPC agreement when it did on December 31, 2008

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Q. WHAT IS THE POTENTIAL IMPACT OF THE COMPANY SIGNING THE EPC CONTRACT WITH THE KNOWN OUTSTANDING RISKS?

A. The economic impact of PEF's execution of the EPC contract is unknown at this time. The Company is currently attempting to renegotiate the EPC contract with the consortium. From an overall project cost standpoint they are clearly in a weaker position to renegotiate the signed contract than if they had delayed signing until the LWA schedule and other risks were known or clarified. [redacted]. As a minimum the Company will incur additional carrying costs due to spending money under the EPC agreement earlier than would have been required if they had not signed. The answer to this question will become clearer once the EPC contract has been renegotiated.

Q. WHAT IS YOUR CONCLUSION REGARDING PEF'S EXECUTION OF THE EPC CONTRACT ON DECEMBER 31, 2008?

A. In my opinion, the Company's decision to sign the EPC contract on December 31, 2008 given the uncertainty that existed with the LWA, the lack of committed joint owners and the myriad of other uncertainties including the deteriorating economy, the chaos in the financial markets and the uncertain federal and state regulatory climate was not reasonable. I do not believe the company has met its burden of demonstrating that this action was reasonable or prudent. This decision may result in significant extra cost to the project that could have been avoided with a more cautious approach given the known risks and uncertainties at the time of signing. At the very least, the Commission does not have sufficient information to determine whether 2009 and 2010 EPC contract related costs are reasonable.

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

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

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

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause

DOCKET NO. 100009
Submitted for filing: August 3, 2010

REDACTED

REBUTTAL TESTIMONY OF JOHN ELNITSKY

ON BEHALF OF
PROGRESS ENERGY FLORIDA

In any event, PEF has included as Exhibit No. ___ (JE-6) to my testimony the Company's express evaluation of the costs of continuing with the project by amending the EPC agreement and focusing on obtaining the COL and then cancelling the project. This is called "Option 4" in Exhibit No. ___ (JE-6) and this is the option that Jacobs says PEF should have evaluated. As I have explained, PEF evaluated this "Option 4" because the costs of this "option" were inherent in PEF's evaluation of all options for the LNP.

As you can see in Exhibit No. ___ (JE-6), "Option 4" includes the [redacted] in costs for "Option 3," Continued Partial Suspension, because PEF will incur these costs over the next three years to obtain the COL for the LNP. These are the same costs that are included in the SMC presentations included in Exhibit No. ___ (JL-6) to Mr. Lyash's direct testimony and Exhibit No. ___ (JE-2) to my direct testimony.

In addition, if PEF cancels shortly after obtaining the COL, PEF will incur incremental costs estimated at [redacted] See Exhibit No. ___ (JE-6) to my testimony. These costs include the [redacted] under the EPC and fuels contracts that are identified in the cancellation option included in Exhibit No. ___ (JL-6) to Mr. Lyash's direct testimony and Exhibit No. ___ (JE-2) to my direct testimony. These costs also include the estimated balance of [redacted] on the equipment costs for selected long lead equipment ("LLE") compared to option 2, project cancellation, in Exhibit No. ___ (JL-6) to Mr. Lyash's testimony. Finally, the incremental costs for this option include incremental legal and other project wind-down costs that were also identified in option 2, project cancellation, in Exhibit No. ___ (JL-6) to Mr. Lyash's testimony. As a result, the nature and in most cases the amount of the estimated costs of this "Option 4" that Jacobs says PEF should have evaluated are contained within the Company's presentations to management regarding the project options and this "option" was therefore an inherent part of the Company's evaluation of the project options.

The total estimated cost to cancel the project shortly after obtaining the COL under "Option 4" is [redacted]. This includes the estimated [redacted] to continue with the partial suspension and obtain the COL and the incremental, estimated [redacted] in cancellation and project wind-down costs to cancel the project after obtaining the COL. It bears emphasis that the estimated incremental costs are conservatively high. PEF has not offset these costs with salvage value for equipment that will be completed and available commercially for new or replacement parts on other projects. PEF has also conservatively included the full balance of the LLE disposition costs from the project cancellation option in this option even though PEF will continue with LLE payments under this option for three additional years and therefore lowering the final disposition costs for this equipment if the project is cancelled after the COL is obtained.

The estimated costs of [redacted] to continue with the partial suspension of the project and shortly after we obtain the COL we cancel the project, is higher than the estimated cost of [redacted] to cancel the project in early 2010 at the time PEF made its decision. See Exhibit No. ___ (JL-6) to Mr. Lyash's testimony. The difference in the estimated costs of these options necessarily follows from the fact that the cancellation decisions are not made at the same time under these two options.

Q. Does this information affect your recommendation to management?

A. No, it does not. The difference between cancellation of the project after obtaining the COL and cancellation in 2010 is at most an estimated [redacted] Even Jacobs concedes that PEF should be required to justify its decision only if the costs of cancellation after the COL is obtained are "significantly" greater than immediate cancellation of the project. (Jacobs Test., p. 8, L. 31-33). Jacobs nowhere defines what he means by "significantly" greater costs in his testimony.

The cost differential in the timing of project cancellation, however, can realistically be considered significant only in terms of the total project costs and benefits. The cancellation decision terminates the project and ends the potential for future project costs and benefits, therefore, the question is whether the incremental increase in the costs of cancellation in the future compared to cancellation today are significant in terms of the total project costs and benefits. The incremental cancellation costs of an estimated [redacted] is insignificant compared to the estimated billions of dollars in estimated total project costs and total project benefits in fuel and carbon cost savings and other future, long-term project benefits. It is unreasonable to consider an additional [redacted] on a project of this magnitude in terms of costs and benefits to be determinative with respect to the decision to proceed with or cancel the project.

Q. If cancellation was a reasonable option for the LNP why didn't PEF decide to cancel the project?

A. PEF was able to obtain favorable terms to amend the EPC agreement and extend the partial suspension of the project to continue the work to obtain the COL while mitigating the project risks until the COL was obtained for the project. If PEF was unable to obtain these favorable terms to amend the EPC agreement and continue the work necessary to obtain the COL, PEF would have cancelled the project.

As I explained in my direct testimony beginning at page 22, in the fall of 2009 PEF identified three reasonable options for the LNP. These options included (1) proceeding as quickly as possible with the LNP, (2) negotiating a longer schedule shift and suspension of the EPC agreement to focus work on the COL, and (3) project cancellation. Proceeding with option one on a 36-month schedule shift was aggressive given the schedule risks facing the project, exposed the Company and customers to the largest near-term capital investment and customer price impact of all options, and provided the least flexibility with respect to the other enterprise risks facing the project. As a result, PEF did not favor this option.

PEF focused on the second option. This option minimized the near-term capital investment in the project until the COL was obtained, lowered the near-term customer price impact, and minimized the capital investment exposed to the other enterprise risks. To pursue this option, however, the Company needed the Consortium's agreement to [redacted] and enter into a longer term partial suspension of the work unrelated to the COLA work until the COL was obtained. Without that agreement from the Consortium the Company would have decided on the cancellation option.

To pursue the second option, the Company first negotiated [redacted] under the EPC agreement. [redacted] to work with the Consortium on an

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agreement for a longer term partial suspension of all work except work necessary to obtain the COL until the COL was obtained. As a result, the Company evaluated the options and recommended this second option to senior management for the reasons that I have described above and described in more detail at pages 29 and 30 of my direct testimony. This recommendation was accepted by the SMC subject to the Company's ability to obtain a favorable amendment of the EPC agreement to implement this option.

The Company's objectives for a favorable amendment to the EPC agreement to implement this option are described in detail at pages 32 and 33 of my direct testimony. Briefly, however, the Company first wanted to maintain the favorable terms and conditions of the existing EPC agreement and amend only the contractual milestones and schedule affected by the shift in project schedule. The Company also wanted to [redacted] These objectives allowed the Company to proceed with the work on the project necessary to obtain the COL while maintaining the existing contract benefits and risks [redacted]

PEF was able to achieve each of these objectives in Amendment 3 to the EPC agreement. Amendment 3 allowed PEF to implement the COL focused option while maintaining the favorable terms of the EPC agreement and the [redacted] under the EPC agreement to PEF and its customers during the licensing period. As a result, the SMC and the Board decided to pursue the COL focused option.

Q. Does Jacobs address PEF's objectives for its decision to continue the project through an amendment to the EPC agreement?

A. No, he does not. Jacobs does not address PEF's direct testimony explaining PEF's objectives to amend the EPC agreement to implement its COL focus decision at all. He does not even mention Amendment 3 to the EPC agreement. The Staff testimony including the Staff audit report, however, does discuss the benefits of Amendment 3 to the EPC agreement.

The Staff auditors reviewed the EPC agreement and its amendments in the course of the Staff audit of the LNP. Audit Staff explained that Amendment 3 [redacted] (Audit Staff Report, p. 9). Audit Staff further explained that Amendment 3 [redacted] (Id.). Audit Staff also explained that this amendment maintained [redacted] (Id.). In sum, Audit Staff expressed the belief "that the company was able to negotiate a favorable amendment with limited fee impact." (Id.).

Audit Staff also addressed the commitment of capital and risk allocation under Amendment 3 to the EPC agreement. Audit Staff noted that "the amendment allowed the company to maintain [redacted]. (Id.). Audit Staff further explained that the amendment maintains the [redacted] that existed when the EPC agreement was signed [redacted]. (Id.). Finally, Audit Staff noted that "this amendment allows the company [redacted] (Id.). As a result, the Staff Audit report confirms PEF's belief that PEF obtained the necessary favorable terms in Amendment 3 to the EPC agreement to implement its decision to continue the project and extend the partial suspension to focus work on obtaining the COL for the project.

Q. Did the Audit Staff address PEF's LNP decision?

A. Yes, they did. After auditing the LNP project, including the Company's decision for the LNP, Audit Staff concluded that "given the uncertainties facing the company," the decision to keep "the project progressing, without further substantial investment of cost, is a reasonable approach by PEF at this point in time." (Staff Audit Report, p. 4).

V. REGULATORY AND TECHNICAL FEASIBILITY.

Q. Gundersen claims that there are unresolved technical safety issues with the AP1000 design that represent a "significant risk" of scheduling delays. Do you agree?

A. PEF agrees that there is additional uncertainty regarding the NRC LNP COL review schedule. The reasons for this increased uncertainty regarding the NRC LNP COL review schedule are discussed in detail at pages 16 to 21 of my direct testimony. This is the reason PEF concluded that the minimum possible schedule shift was 36 months and that by the fall of 2009 that option was fairly optimistic and aggressive. This risk was incurred. Termination provisions that provide for the payment of costs upon the termination or cancellation of a contract are standard utility industry terms in EPC and other utility construction contracts. It is standard practice in the electric utility industry to include such terms in utility design and construction contracts of all types. Termination provisions providing for costs upon contract cancellation or termination are necessary in the industry to ensure that utilities can obtain EPC and other utility construction contracts at reasonable prices. In fact, it is unlikely that an electric utility can obtain an EPC or other utility construction contract without a provision providing for the payment of costs upon cancellation or termination of the contract by the utility.

The EPC contract termination provisions are reasonable and prudent. They are consistent with accepted, best utility industry contracting practice and industry standards for utility construction projects. Before PEF executed the EPC agreement, PEF confirmed that the EPC contractual termination provisions were reasonable and prudent and consistent with industry best contracting practices by having the EPC agreement audited by PricewaterhouseCoopers. As the Staff Audit report notes, "the audit determined that the EPC contract was [redacted] of this type." (Staff Audit Report, p. 33). This independent audit included all major articles and contract terms and conditions including the suspension and termination provisions of the EPC agreement. (Id. at pp. 33-34). The Staff Auditors also reviewed the EPC agreement and its terms and conditions and they nowhere find in the Staff Audit Report that the termination provisions and termination and cancellation costs are unreasonable or imprudent. For all these reasons, the EPC agreement termination provisions and resulting

Option 4 - Cancel at Receipt of COLA

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dollars in millions

Option 3: Continued Partial Suspension	PTD	2010	2011	2012	2010 - 12 3-Yr Total
EPC Payments	86.0	[redacted]			
LLM Payments & WEC Support	240.0				
LLM PO Dispositon Costs	-				
Transmission	36.8				
COLA	83.2				
Wetland mitigation	-				
Other Owner's Cost	82.2				
Total Option 3 - Decision Path per SMC	528.2				

Option 4: Partial Suspension; Cancel Post-COLA	Inc Costs 2013
EPC Cancellation Fee	[redacted]
Fuel Cancellation Fee	
Other WEC/ SSW Cancellation Costs	
Estimated balance of equipment costs for selected LLE	
Incremental Legal + staff disposition	
Other	
Total Incremental Costs	
Total Option 4	

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause	DOCKET NO. 100009-EI Submitted for filing: August 3, 2010

REDACTED

REBUTTAL TESTIMONY OF JON FRANKE

ON BEHALF OF PROGRESS ENERGY FLORIDA

V. LAR COSTS.

Q. What does the Staff Audit Report recommend with respect to the CR3 Uprate project costs?

A. Audit Staff recommends that the Commission consider whether an additional [redacted] for the LAR re-write and additional engineering work by AREVA for the LAR application resulted from inadequate management oversight. (Staff Audit Report, p. 59). Audit Staff's recommendation is based on the July 2009 expert panel report that I previously mentioned and PEF's subsequent, internal adverse condition report in response to the expert panel recommendations. In sum, the expert panel report found, as I explained above, that PEF had not incurred the costs and performed the work necessary to that point to prepare a draft EPU LAR capable of NRC acceptance review. As Audit Staff notes, the Company had to expend resources to strengthen the EPU LAR submittal to prepare a quality LAR draft that, if submitted, was acceptable for review by the NRC. PEF did expend these resources on the design, engineering, and procurement work for the EPU to enhance the LAR and subsequent expert panel reviews confirmed that the work had been done and that the LAR submittal met NRC acceptance standards.

Q. Did the Company's internal adverse conditions report conclude that the Company had not provided adequate management oversight for the LAR prior to the submittal of the draft LAR to the expert panel?

A. Yes. PEF initially relied too heavily on AREVA to prepare the draft LAR for review by the expert panel and did not engage sufficient management oversight of that work as early as PEF should have. PEF subsequently added these

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an action plan to address them, and corrected them. Further expert panel reviews in November 2009 and January 2010 confirmed that these recommendations were adequately addressed. See, e.g., Exhibit No. ____ (JF-8).

This demonstrates PEF's prudent project management, contracting, and oversight controls. PEF reviewed and re-reviewed the LAR work, corrected any work that was not up to par, and ensured a final, sufficient and adequate work product consistent with standards at the time the LAR must be submitted. This is exactly what is supposed to occur when prudent project management and oversight controls are in place, and this is how those project management and oversight controls are supposed to be implemented to identify and remedy any issues on a timely basis.

Q. Audit Staff identifies change order costs for AREVA for certain LAR work and questions whether these costs represent avoidable work and costs. Were these change orders for avoidable or duplicative LAR work?

A. No. Audit Staff questions two change orders PEF executed with AREVA. Neither one of these change orders involves avoidable or duplicative LAR work. The fact that they are "change" orders means they are for additional, not duplicative or avoidable, work.

The first change order Audit Staff questions is Change Order 23 in the amount of [redacted]. This change order is for the work necessary to re-write the LAR to comply with the revised LAR template to meet evolving industry standards and NRC expectations. Change Order 23 expressly states the LAR re-write effort was to re-write sections of the LAR to comply with the revised template and other new scope activities. It is not payment to AREVA to re-write poorly drafted LAR sections. Indeed, Change Order 23 further expressly states that the expert panel "comment incorporation is considered part of the original scope of activities and is not included in this scope of work" (emphasis added). See Exhibit No. ___ (JF-5) to my rebuttal testimony.

On its face, Change Order 23 makes clear this [redacted] payment was for additional work and that it was not payment to correct prior work. Change Order 23 also makes clear that the "LAR re-write effort" work is [redacted], not [redacted] as indicated in the Staff Audit Report. (Staff Audit Report, p. 5). AREVA was entitled to more compensation for more work to conform the LAR to additional requirements based on evolving industry standards and NRC expectations.

The second Change Order that Audit Staff questions is Change Order 25 for an additional [redacted]. This Change Order is for additional engineering work scope required to support the LAR. It included engineering work to incorporate EPU Phase 3 work into the LAR. The [redacted] was therefore paid to AREVA for additional engineering work scope required to complete the LAR based on the EPU phase work. See Exhibit No. ___ (JF-6) to my rebuttal testimony.

Q. Did PEF pay AREVA twice for the same work to draft the LAR?

A. No. AREVA will only be paid the original contract amount of [redacted] to write the LAR sections reviewed by the expert panel in July 2009 utilizing the Ginna LAR submittal as the initial model. These payments are identified at line items 8.28, 8.28 revised, and Note 2 in the "Deliverable Section" on page 4 of the

Work Authorization No. 84 between PEF and AREVA for design and engineering work to support the CR3 Uprate project, including the work to support the LAR. These line items demonstrate that AREVA was paid [redacted] for LAR inputs and draft comment responses and that AREVA will be paid another [redacted] when the LAR is submitted to the NRC. See Exhibit No. ___ (JF-7) to my rebuttal testimony. That is all AREVA will be paid for the initial draft LAR work. After the expert panel issued its report and recommendations, AREVA corrected their quality issues and re-wrote the LAR sections at AREVA's own cost. PEF paid AREVA no additional compensation for this corrective work.

PEF met with AREVA prior to AREVA submitting each invoice under Work Authorization No. 84 and Change Order 23. That is why the costs for work to re-write portions of the LAR do not show up in subsequent AREVA invoices to PEF. However, AREVA did in fact correct portions of the LAR without charging PEF for those corrections. Subsequent expert panels confirmed that these corrections were made. See, e.g., Exhibit No. ___ (JF-8) to my rebuttal testimony. PEF, however, paid AREVA no additional compensation for that work.

Q. Why was a revised LAR template necessary for the LAR?

A. The revised template for the LAR was required to ensure that the LAR submittal met evolving industry standards and NRC expectations for LAR submittals. At the time PEF initiated the project in 2007, PEF asked the NRC what LAR submittal should be used by PEF as a model for its LAR submittal for the CR3 EPU. The NRC suggested the Ginna LAR submittal as a model. The Ginna LAR

2 to Phase 3 in the amount of [redacted] is due to "possible vendor error." (Staff Audit Report, p. 43). Nowhere in the report does Audit Staff assert that the LPTs issues were the result of PEF imprudence. PEF in fact prudently managed the LPTs through vendor oversight and took appropriate action when the vendor issues were identified. Audit Staff notes that PEF's Quality Assurance group rejected this product component because of the failure to meet contractual acceptance criteria in recognizing the importance of PEF's Vendor Oversight Plan in the Staff Audit Report. (Id., p. 53).

Q. Has PEF resolved the LPTs issues with Siemens?

A. Yes. PEF recently resolved the LPTs issues with Siemens. As a result of that settlement, PEF [redacted] the low pressure turbine rotors under a new Letter of Intent ("LOI") executed with Siemens. This [redacted] identified by Audit Staff associated with re-scheduling the LPTs from Phase 2 to Phase 3. The [redacted] to PEF and its customers all other circumstances being equal. The [redacted] will be reflected in the true-up of costs in the 2011 NCRC docket. In addition, Siemens agreed [redacted]

VII. CONCLUSION.

Q. Will the CR3 Uprate project be successfully completed at a reasonable and prudent cost to the Company and its customers?

Docket 100009
Progress Energy Florida
Exhibit No. ____ (JF-5)

Pages 1 through 10 are redacted in their entirety

Docket 100009
Progress Energy Florida
Exhibit No. ____ (JF-6)

Pages 1 through 8 are redacted in their entirety

Docket 100009
Progress Energy Florida
Exhibit No. ____ (JF-7)

Pages 1 through 91 are redacted in their entirety

Docket 100009
Progress Energy Florida
Exhibit No. ____ (JF-8)

Pages 1 through 8 are redacted in their entirety