

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.
_____ /

VOLUME 12

Pages 1984 through 2205

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING:

CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Wednesday, August 17, 2011

TIME: Commenced at 9:33 a.m.
Concluded at 2:09 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
JANE FAUROT, RPR
Official FPSC Reporters
(850) 413-6734/(850) 413-6732

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 05996 AUG 22 =

FPSC-COMMISSION CLERK

I N D E X

WITNESSES

NAME: PAGE NO.

WILLIAM R. JACOBS, JR.

Direct Examination by Mr. Rehwinkel	1987
Prefiled Direct Testimony Inserted	1990
Cross Examination by Ms. Huhta	2015
Redirect Examination by Mr. Rehwinkel	2045

JOHN ELNITSKY

Direct Examination by Mr. Walls	2049
Prefiled Rebuttal Testimony Inserted	2051
Cross Examination by Mr. Whitlock	2088
Cross Examination by Mr. Moyle	2097
Cross Examination by Ms. White	2126
Cross Examination by Mr. Sayler	2128
Cross Examination by Mr. Brew	2149
Further Cross Examination by Mr. Moyle	2178
Redirect Examination by Mr. Walls	2192

EXHIBITS

1
2
3
4
5
6
7
8
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11
12
13
14
15
16
17
18
19
20
21
22
23
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NUMBER:		ID.	ADMTD.
166			2048
167			2048
168			2048
169			2048
170			2048
210	CONFIDENTIAL (Late-Filed ERC RFP Transmission Estimate)	2131	2200
211	Progress Risk Management Documents	2132	2200
189-193			2198
213	Handwritten Major Current 2010 and 2011 Activities	2201	2201

P R O C E E D I N G S

(Transcript follows in sequence from Volume 11.)

CHAIRMAN GRAHAM: Good morning, everyone. We will reconvene Docket Number 110009-EI, Nuclear Cost Recovery Clause. Yesterday we ended, we ended the direct testimony of Elnitsky, and we have excused Foster, and we're on the testimony of Dr. Jacobs.

MR. REHWINKEL: Good afternoon, Mr. Chairman, Commissioners. The Citizens call William Jacobs.

WILLIAM R. JACOBS, JR.

was called as a witness on behalf of the Citizens of the State of Florida and, having been duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. REHWINKEL:

Q Dr. Jacobs, can you state your name and your, who you're employed by for the record, please.

A Yes. My name is William R. Jacobs. I'm employed by GDS Associates.

Q And on, on whose behalf are you testifying here today?

A On behalf of the Office of Public Counsel.

Q Okay. Dr. Jacobs, did you cause to be filed 22 pages of direct testimony in this matter?

1 A Yes.

2 Q And I would ask you at this time if you have
3 any changes or corrections to your testimony, but
4 Commissioners, as a housekeeping matter, I believe that
5 the, the testimony that you have was refiled with two
6 corrections to it. One was Dr. Jacobs' withdrawing the
7 portions of his testimony that related to CR3 in
8 response to the motion to defer that you granted, as
9 well as the stipulation that was entered into by the
10 parties.

11 Also, Dr. Jacobs, did you file -- make any
12 corrections to your testimony that are already shown in
13 the, in the document that the Commissioners have?

14 A Excuse me. That are already shown?

15 Q Yes.

16 A Yes.

17 Q Okay. And those are on pages 6, 19, 20 and 22
18 in strike and type format?

19 A That's correct.

20 Q Okay. If I asked you the questions that are
21 contained in your testimony with the corrections that
22 are made, would it be -- and you gave -- would the
23 answers you gave be true today?

24 A Yes.

25 **MR. REHWINKEL:** Mr. Chairman, I would ask that

1 Dr. Jacobs' direct testimony be admitted into the record
2 as though read.

3 **CHAIRMAN GRAHAM:** We will enter Dr. Jacobs'
4 record -- I'm sorry. We will enter Dr. Jacobs'
5 testimony into the record as though read.

6 **BY MR. REHWINKEL:**

7 **Q** Dr. Jacobs, did you cause to be filed five
8 exhibits numbered WRJ(PEF)-1 through WRJ(PEF)-5?

9 **A** Yes.

10 **Q** Do you have any changes or corrections to make
11 to those exhibits?

12 **A** No, I do not.

13 **MR. REHWINKEL:** Mr. Chairman, Dr. Jacobs'
14 exhibits have been identified in Staff's composite
15 exhibits as -- exhibit as Exhibits 166 through 170.

16 **CHAIRMAN GRAHAM:** So noted.
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1 Evaluation Program, performed operating plant evaluations and assisted in the
2 development of the Outage Management Evaluation Program. Since joining GDS
3 Associates, Inc. in 1986, I have participated in rate case and litigation support
4 activities related to power plant construction, operation and decommissioning. I have
5 evaluated nuclear power plant outages at numerous nuclear plants throughout the
6 United States. I am currently on the management committee of Plum Point Unit 1, a
7 650 MWe coal fired power plant under construction near Osceola, Arkansas. As a
8 member of the management committee, I assist in providing oversight of the
9 Engineering, Procurement and Construction (“EPC”) contractor for this project. I am
10 currently the Georgia Public Service Commission’s (“GPSC”) Independent
11 Construction Monitor for Georgia Power Vogtle 3 and 4 nuclear project. As the
12 Independent Construction Monitor, I assist the GPSC Commissioners and Staff in
13 providing regulatory oversight of the project. My monitoring activities include
14 regular meetings with project management personnel and regular visits to the Vogtle
15 plant site to monitor construction activities and assess the project schedule and
16 budget. My resume is included as Exhibit WRJ(PEF)-1.

17
18 **Q. WERE YOU ASSISTED BY OTHER GDS PERSONNEL IN THIS EFFORT?**

19 A. Yes I was. The GDS team involved in the review and evaluation of the requests for
20 authorization to recover costs consisted of me and Mr. James P. McGaughy, Jr., a
21 former nuclear utility executive with over 37 years of experience. The resume of Mr.
22 McGaughy is attached to this testimony as Exhibit WRJ(PEF)-2. I have reviewed the
23 work of Mr. McGaughy and am familiar with his input and have incorporated and
24 adopted it as my own.

1 **Q. WHAT IS THE NATURE OF YOUR BUSINESS?**

2 A. GDS Associates, Inc. (“GDS”) is an engineering and consulting firm with offices in
3 Marietta, Georgia; Austin, Texas; Corpus Christi, Texas; Manchester, New
4 Hampshire; Madison, Wisconsin; and Auburn, Alabama. GDS provides a variety of
5 services to the electric utility industry including power supply planning, generation
6 support services, rates and regulatory consulting, financial analysis, load forecasting
7 and statistical services. Generation support services provided by GDS include fossil
8 and nuclear plant monitoring, plant ownership feasibility studies, plant management
9 audits, production cost modeling and expert testimony on matters relating to plant
10 management, construction, licensing and performance issues in technical litigation
11 and regulatory proceedings.

12

13 **Q. WHOM ARE YOU REPRESENTING IN THIS PROCEEDING?**

14 A. I am representing the Florida Office of Public Counsel (“OPC”) who represents the
15 ratepayers of Progress Energy Florida (“PEF” or “Company”).

16

17 **Q. WHAT WAS YOUR ASSIGNMENT IN THIS PROCEEDING?**

18 A. I was asked to assist the OPC to conduct a review and evaluation of requests by PEF
19 for authority to collect historical and projected costs associated with the Extended
20 Power Uprate (“EPU”) project being pursued at Crystal River Unit 3 (“CR3”), and
21 historical and projected costs associated with PEF’s Levy County Units 1 and 2
22 project (“LNP”) through the capacity cost recovery clause.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

2 A. Yes. I testified on behalf of the Florida Office of Public Counsel in the previous
3 NCRC proceedings in Dockets Nos. 080009-EI, 090009-EI and 100009-EI.

4

5 **Q. PLEASE SUMMARIZE PEF'S REQUEST FOR COST RECOVERY IN THIS**
6 **DOCKET UNDER THE NUCLEAR COST RECOVERY CLAUSE.**

7 A. ~~The total estimated revenue requirements for the CR3 EPU project are \$13.3 million~~
8 ~~for 2011 with projected total revenue requirements of \$22.7 million in 2012.~~ For the
9 LNP Project, PEF is requesting total revenue requirements to be collected in 2011 of
10 \$81 million and projecting total revenue requirements of \$135.4 million in 2012.

11

12 **II. METHODOLOGY**

13 **Q. PLEASE DESCRIBE THE METHODOLOGY THAT YOU USED TO**
14 **REVIEW AND EVALUATE THE REQUESTS FOR AUTHORIZATION TO**
15 **COLLECT COSTS SUBMITTED BY PEF UNDER THE NUCLEAR COST**
16 **RECOVERY CLAUSE.**

17 A. I first reviewed the Company's filings in this docket and assisted in the issuance of
18 numerous interrogatories and requests for production of documents. To evaluate the
19 issues related to project schedule, cost and risk management, I reviewed many
20 internal documents, status reports and correspondence with regulatory authorities. I
21 reviewed responses to discovery requests and issued additional discovery requests as
22 needed. I attended the depositions of Mr. Franke related to CR3 and Mr. Elnitsky
23 related to the LNP.

1 Q. WERE YOU ASKED BY THE OPC TO MAKE ANY ASSESMENT OF, OR
2 PROVIDE ANY JUDGEMENT ABOUT, THE ADEQUACY OF PEF'S
3 PROJECT MANAGEMENT AND COST CONTROLS?

4 A. No. Due to the time constraints of this docket this year, I was not asked to focus my
5 efforts in that area. So I offer no opinions as to the adequacy of these efforts.
6

7 **III. SUMMARY OF RECOMMENDATIONS**

8 Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS REGARDING THE
9 CRYSTAL RIVER 3 EPU PROJECT?

10 A. The Commission should not approve 2009 and 2010 CR3 EPU costs as prudent due
11 to the uncertainty of the impact of other prudence determinations of PEF's activities
12 related to the delamination of the Containment Building.
13

14 Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS REGARDING THE
15 LEVY NUCLEAR PROJECT?

16 A. The following is a summary of my recommendations related to the LNP project:
17
18 1. Only costs necessary to support processing the Combined Operating License
19 Application ("COLA") should be recovered from the customers in 2011 and 2012.
20
21 2. No transmission or transmission related costs (land acquisition, studies,
22 engineering designs, etc.) should be recovered from the customers in 2011 and
23 2012.
24 3. All preconstruction and construction costs not directly associated with pursuing
the Combined License ("COL") should be deferred or determined to be
unreasonable at this time.

1 4. PEF's request for accelerated recovery of from the remaining deferred balance
2 should be denied.

3 5. To further minimize ratepayer impact in 2012, the costs associated with
4 negotiating the Final Notice to Proceed ("FNTP") or further amendments to the
5 EPC contract should be deferred for consideration for recovery until after the
6 receipt of the LNP COL.

7 6. PEF should have the burden of affirmatively demonstrating that it is not
8 considering further delays in the scheduled LNP Commercial Operation Date
9 ("COD").
10

11 **IV. THE CRYSTAL RIVER 3 EPU PROJECT**

12 **Q. PLEASE BRIEFLY DESCRIBE THE CRYSTAL RIVER UNIT 3 EXTENDED**
13 **POWER UPRATE PROJECT.**

14 A. As I described in my testimony last year, the CR3 Extended Power Uprate project is
15 supposed to add a total of 180 MWe to the existing plant. This would be
16 accomplished by increasing reactor power output and thus steam output, increasing
17 the size and efficiency of the steam turbine and generator and increasing the accuracy
18 of instrumentation in the plant's steam system. The project was planned to be carried
19 out in three phases. Phase 1 improved the steam plant measurement accuracy of
20 process parameters and allowed the power output to be increased by about 12 MWe.
21 These improvements were made in 2007 and were placed in service on January 31,
22 2008.

23 According to the initial plans, Phase 1 was to be followed by a Phase 2 that
24 would increase the capacity and efficiency of the turbine-generator and other non-
25 nuclear parts of the plant in a 2009 outage. This would make the plant more efficient

1 and allow it to receive the 15.5% increase in steam flow that would become available
2 after the reactor upgrade planned for a Phase 3 to be implemented in a 2011 outage.
3 The efficiency increases in Phase 2 would increase the output 28 MWe, while using
4 only the current steam flow. Phase 3 would increase output by increasing reactor
5 power and steam flow adding 140 MWe for a total uprate of 180 MWe. The initial
6 plan has been modified because of two unplanned occurrences:

- 7 • The new low pressure turbines failed testing in the manufacturer's German
8 facilities necessitating repair and modification.
- 9 • The reactor containment building was damaged during the 2009 outage to replace
10 the steam generators. The steam generators are very large components for which
11 PEF made the decision to cut a large hole in the side of the cylindrical, concrete
12 containment structure, rather than utilizing the available equipment hatch. In the
13 process, the concrete separated from the rebar necessitating extensive analysis,
14 redesign and repair.

15
16 **Q. WHAT IS THE CURRENT STATUS OF THE PROJECT?**

17 A. The CR3 nuclear plant continues to be in an extended outage due to the damaged
18 Containment Building. During the retensioning of the Containment Building, a
19 second delamination occurred. The Company has evaluated various repair options
20 along with retirement of the unit. On June 27, 2011 the Company filed a status report
21 with the Commission in Docket No. 100437 EI announcing its decision to attempt a
22 repair to the unit and provided an initial, preliminary estimated cost of between \$900
23 million and \$1.3 billion and an estimated return to service date of 2014.

1 **Q. DOES THE DECISION TO ATTEMPT A REPAIR TO THE UNIT**
2 **ELIMINATE THE UNCERTAINTY CONCERNING THE FUTURE**
3 **OPERATION OF THE UNIT?**

4 A. No, it does not. The decision to attempt a repair to the unit removes uncertainty of
5 whether the unit will be retired at this time. However, the remaining uncertainties
6 related to the repair option are extensive.

7
8 **Q. PLEASE EXPLAIN.**

9 A. Notwithstanding the Company's optimism, there are tremendous uncertainties about
10 the future of the CR3 Containment Building. These range from whether the
11 Company can successfully repair the building for return to service by 2014 to whether
12 the Containment Building can be repaired at all. Repair of a post tensioned
13 containment building involving removal and replacement of most of the original
14 concrete as planned for CR3 has never been done. This is truly uncharted territory.
15 Assuming that the building can be successfully repaired, the uncertainties related to
16 the ultimate cost and schedule are also extremely large. At this time, there is no way
17 to know with any accuracy how long the repair will take and how much it will cost.
18 The Company's initial estimate of \$900 million to \$1.3 billion and return to service in
19 2014 is very preliminary and, as stated by the Company, could be affected by
20 regulatory reviews, ultimate work scope, engineering designs, testing, weather and other
21 developments. Another uncertainty is the licensability of the repaired containment
22 building. Once the building has been repaired, it is unclear if the NRC will be able to
23 license the plant for continued operation. In summary, at this time, PEF does not
24 know if the containment building can be repaired and, if it can be repaired, how long
25 it will take and how much it will cost. On July 1, 2011, PEF filed a motion seeking

1 that its request for recovery in 2012 of 2011 and 2012 costs be deferred from
2 consideration in the August 2011 NCRC hearing. This is consistent with the
3 uncertainty surrounding the CR3 EPU project.
4

5 **Q. WHAT APPROACH ARE YOU TAKING IN YOUR TESTIMONY IN LIGHT**
6 **OF THE PEF MOTION?**

7 A. In reliance upon that Motion (and what I understand to be the OPC's likely position
8 on the essence of the Motion), I will not address the substantive issues related to cost
9 recovery for the 2011 and 2012 years. I will briefly address the pending Commission
10 determinations relating to 2009 and 2010 periods as they relate to the pending and
11 expected prudence determinations in Docket No. 100347-EI and any other separate
12 case where prudence determinations related to the delamination(s) are to be made by
13 the Commission.
14

15 **Q: SHOULD THE COMMISSION APPROVE 2009 & 2010 CR3 EPU COSTS AS**
16 **BEING PRUDENT?**

17 A: No. Due to uncertainty surrounding the prudence of PEF's activities related to the
18 delamination of the CR3 Containment Building, the Commission should not make
19 any final prudence determination related to EPU costs incurred after October 2, 2009.
20 There is no need for the Commission to reach such a determination while the
21 delamination prudence case is pending. Furthermore, the Commission should take
22 note of the fact that the October 22, 2009 (Rev. 2) Integrated Project Plan ("IPP")
23 authorizing certain expenditures in 2010 and beyond, was approved after the
24 delamination was discovered on October 2, 2009. Until there is a final understanding
25 of what was known by PEF at the time post-delamination expenditures were made

1 and without a full understanding or appreciation of the legal implications of a
2 prudence determination in this docket on the Commission's available remedies in
3 other prudence determinations docket(s), no EPU costs incurred after October 2, 2009
4 should receive final approval or be determined to be prudent.

5
6 **V. THE LEVY NUCLEAR PROJECT**

7 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE RECENT HISTORY OF**
8 **THE LEVY NUCLEAR PROJECT FOR THE COMMISSION.**

9 A. As I described in my prior testimony, on December 31, 2008 PEF signed an EPC
10 contract with the Westinghouse – Shaw consortium (Consortium) to design and
11 construct two AP1000 nuclear power plants at the Levy County site. Consistent with
12 the testimony in the 2008 need determination, the projected COD's for these two
13 units at that time was the summer of 2016 for the first unit and the summer of 2017
14 for the second unit at an estimated cost of \$17.2 billion, including Allowance for
15 Funds Used During Construction ("AFUDC").¹ The project schedule which formed
16 the basis for the EPC agreement was predicated on the project receiving a Limited
17 Work Authorization ("LWA") from the NRC. The LWA would have allowed certain
18 safety related work to proceed before the project was issued its COL.

19 Approximately three weeks after executing the EPC contract, the Company
20 received notification from the NRC that the anticipated schedule for NRC approval of
21 the requested LWA would not be possible due primarily to the complex geology at
22 the Levy County site. Upon receipt of this notification, the EPC contract – executed
23 just three weeks before – was no longer viable. Instead of cancelling the EPC, on
24 May 1, 2009, the Company announced a schedule shift of at least 20 months for the

¹ See Order No. PSC-11-0095-FOF-EI at 22.

1 Levy project. The Company issued a letter to the Consortium requesting the
2 Consortium to conduct six schedule and cash flow analyses for the project (See
3 Exhibit WRJ(PEF)-3). The results of these analyses formed the basis for the
4 Company's announced plan going forward for the Levy Nuclear Project with
5 projected COD's of 2021 and 2022 at an estimated cost of \$22.5 billion, including
6 AFUDC.²

7
8 **Q. IN YOUR OPINION, IS PEF COMMITTED TO COMPLETION OF THE**
9 **LEVY NUCLEAR PROJECT?**

10 A. Notwithstanding Mr. Elnitsky's frequent deposition reference to completion of the
11 LNP as PEF's "program of record," in my opinion PEF's actions demonstrate that its
12 internal resolve to complete the LNP appears to be weakening. I base my opinion on
13 a number of factors as discussed below:

14 **1. MANAGEMENT ATTENTION OF KEY PEF MANAGERS IS BEING DIVERTED TO**
15 **OTHER ACTIVITIES.**

16 Unlike NCRC proceedings in prior years, Mr. Jeff Lyash, the PEF officer
17 responsible for the Levy Nuclear Project has failed to provide any direct
18 testimony in support of the LNP. Ms. Sue Hardison, the LNP contract
19 administrator has been reassigned to presumably more pressing PEF projects
20 while retaining some LNP responsibility. Mr. John Elnitsky, the PEF Vice
21 President directly responsible for development of the LNP, has been assigned
22 more responsibility within Progress Energy for all generation construction and
23 all major projects in 2010 and presumably increased responsibilities for the
24 CR3 return to service. (See June 17, 2011, Elnitsky deposition transcript at

² See Order No. PSC-11-0095-FOF-EI at 22.

1 p.14; March 1, 2011, Elnitsky testimony at p. 1). With the LNP on hold
2 except for activities related to the COL, he and the other members of the LNP
3 team are presumably being retasked to focus on other more pressing projects.
4 These changes demonstrate a lessening of the significance of the project to
5 Progress Energy.

6 **2. FEASIBILITY/COST-EFFECTIVENESS OF THE LNP PROJECT.**

7 PEF touts the 2011 version of the feasibility analysis filed in the testimony of
8 John Elnitsky and contained in the March 2011 LNP IPP as demonstrating
9 that the LNP project is favorable or cost effective in more cases than not.
10 However, when the 2011 Cumulative Present Value Revenue Requirement
11 (“CPVRR”) analysis is compared with the 2010 CPVRR analysis contained in
12 Commission Order No. PSC-11-0095-FOF-EI at pp. 23-24, the 2011 CPVRR
13 analysis demonstrates that the project is unfavorable and not cost effective in
14 more cases this year. It is important to note that the fuel sensitivity cases
15 where the LNP remains cost effective (mid fuel, high fuel, and carbon
16 regulation) are trending unfavorably according to PEF’s own enterprise risk
17 analysis. The decline in cost effectiveness demonstrates that this trend was
18 not ignored by the senior management of Progress Energy as demonstrated by
19 the extensive, formal scenario planning effort (discussed below) which the
20 Company undertook last year but did not reveal to the Commission until after
21 the 2010 hearing.

22 **3. INCREASED ENTERPRISE RISKS**

23 In his discussion of enterprise risks, Mr. John Elnitsky concludes:

24 While we have noticed a few favorable or slightly
25 favorable trends in the LNP enterprise risks, most
26 enterprise risks remain neutral compared to our
27 evaluation last year, and there are a couple of

1 unfavorable trends that we are watching closely to
2 determine if they represent fundamental changes in
3 the project enterprise risks.
4 (Elnitsky May 2, 2011, Direct Testimony, page 27,
5 lines 14 – 18)
6

7 The two enterprise risks with unfavorable trends are related to the lack of
8 legislation for greenhouse gas legislation and lower natural gas prices. Both
9 of these risks are fundamental drivers in the economic feasibility of the LNP.
10 In my opinion, given the importance of these two variables in the overall
11 economics of nuclear power, the unfavorable trend in these two enterprise
12 risks demonstrates an overall unfavorable trend in enterprise risks.

13 **4. LACK OF JOINT OWNERS (JO)**

14 Joint ownership does not appear to be any more likely in 2011 than in prior
15 years. While PEF has indicated that they have continued to seek potential
16 joint owners, merely meeting with three potential JO in two years does not
17 constitute progress in this area. In fact, circumstances listed below
18 demonstrate no foreseeable receipt of JO anytime soon, if ever:

- 19 • The increased estimated total project cost;
- 20 • Possible delays in the receipt of AP1000 DCD and LNP COL;
- 21 • Lack of a NCRC statute to guarantee recovery for any non-IOU JO
22 partners if the project was canceled;
- 23 • The announced change to the COD from 2016 to no sooner than 2021;
- 24 • Possible future changes to the COD beyond 2021;

- 1 • A recent statement in the media by Progress Energy’s spokesman on
2 nuclear matters that no final decision has been made to build LNP.³
3 (See Exhibit WRJ(PEF)-4)

4 **5. DIMINISHED PUBLIC SUPPORT**

5 Public support for the LNP and new nuclear power construction in general
6 appears to be declining due to several recent events. These events include:

- 7 • The Fukushima accident – the intense negative publicity due to the
8 extensive damage and radiation releases at the Fukushima plant in
9 Japan have decreased public acceptance of nuclear power in general;
- 10 • CR3 publicity – the situation at CR3 related to the damaged
11 Containment Building and the possibility that the plant may be retired
12 after spending hundreds of millions of dollars in the uprate project has
13 received extensive local press attention.
- 14 • NRC questions about the AP1000 Design – recent questions by the
15 NRC on the AP1000 design and associated potential to delay
16 certification of the AP1000 design.
- 17 • Flooding at the Ft. Calhoun nuclear power plant – dramatic pictures
18 showing the floodwaters surrounding the Ft. Calhoun nuclear power
19 plant and fears that the plant could have flooded with catastrophic
20 consequences.

21 **6. PLANNING SCENARIOS**

22 PEF’s extensive, methodical and senior executive level analysis of planning
23 scenarios indicate that PEF is seriously studying the possibility of further
24 delaying the LNP and relying primarily on gas generation in the current

³ “Maligned nuclear power fights to remain a U.S. option” By Robert Trigaux, Times Business Columnist, May 27, 2011.

1 resource planning horizon. These scenario planning activities appear to
2 demonstrate PEF's effort to do realistic planning about what actual resources
3 will be deployed to meet customer growth and demand in the increasingly
4 likely event that the LNP project is not pursued on the current schedule.

5
6 **Q. WHAT IS THE SIGNIFICANCE OF THE COMPANY'S VARIOUS**
7 **PLANNING SCENARIOS?**

8 A. As mentioned above and extensively in Witness Elnitsky's June 17, 2011 deposition
9 testimony, scenario planning is an important analytical tool used by the Company to
10 do realistic planning about its resources. Attached to my testimony is an exhibit
11 which contains the August 23, 2010, SMC Strategic Planning Retreat Scenario
12 Analysis for Progress Energy Florida (Exhibit WRJ(PEF)-5). Although the
13 presentation about various planning scenarios is heavily redacted, it demonstrates
14 PEF's realistic consideration of the possibility of a change to the COD's for Levy 1 &
15 2. Of the scenarios considered, the Moderate Change scenario appears to be the most
16 likely scenario with 2027 and 2029 COD's for Levy 1 & 2. This reasonable
17 assumption about the Moderate Change scenario is based on several factors: 1) the
18 location of the Moderate Change scenario within the presentation; 2) its frequent
19 comparison with the March 2010 "program of record" scenario throughout the
20 presentation; 3) the number of completely redacted pages immediately following the
21 comparison with the March 2010 "program of record"; 4) the relative similarity of it
22 to the March 2010 "program of record" scenario; and 5) the relative reasonableness of
23 this scenario compared with the other scenarios discussed in the presentation. While
24 there are other planning scenarios discussed in the August 23, 2010 presentation,
25 those scenarios in my opinion are less likely than the Moderate Change scenario.

1 **Q. IN YOUR OPINION, IS THE PROPOSED MERGER WITH DUKE ENERGY**
2 **NECESSARILY A POSITIVE DEVELOPMENT FOR COMPLETION OF**
3 **THE LNP?**

4 A. No, the proposed merger with Duke Energy is not necessarily a positive development
5 for completion of the LNP. As noted on page 28 of Mr. Elnitsky's May 2, 2011
6 testimony, the Duke-Progress merger may bring an influx of cash and access to
7 capital to the merged companies and benefit Progress Energy in general; however, the
8 merger has not been consummated. Moreover, there is no guarantee that the Florida-
9 based LNP will remain a focus of the merged companies or whether PEF will remain
10 a core component of the merged companies largely centered in the Carolinas. The
11 effects of the merger on the LNP and PEF will remain largely unknown until after the
12 merger is consummated and it may be some time before the merged companies'
13 position on either LNP or PEF are clearly known. While an improved balance sheet
14 of the merged entities may have some marginal impact on the theoretical viability of
15 the LNP project, there has been no overt signal from credit rating agencies that they
16 would not consider a downgrade for the merged entity when the overall economics of
17 LNP have not improved relative to the enterprise risks of natural gas prices and
18 greenhouse gas legislation and the uncertainties that remain about the future of the
19 CR3 unit.

20
21 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING PEF'S REQUEST**
22 **TO RECOVER COSTS RELATED TO LNP IN 2011 AND 2012?**

23 A. I recommend that only costs strictly necessary to support processing the COLA
24 should be recovered from the customers in 2011 and 2012. As discussed in my
25 testimony, the reason for this is my overall conclusion that there is significant doubt

1 about the ultimate completion, or timely COD, of the LNP. Specifically, reasons for
2 my conclusion include: (1) the lack of a firm commitment to the completion of the
3 project beyond the COL receipt; (2) increasing indicators of dormancy and lack of
4 interest in pursuing the project beyond the COL receipt; (3) no foreseeable
5 subscription by, or even interest from, joint owners; and (4) an active, formal and
6 serious scenario planning process that appears to be looking at a target COD of 2027
7 and 2029.

8 While the Commission may have found PEF meets the minimum test set out
9 in the 2010 NCRC order of “demonstrating an intent to build,” PEF’s actions
10 continue to demonstrate doubt as to the likelihood of completion of the project on the
11 current schedule – if at all. For this reason, customers should not be forced to bear
12 any of the costs beyond that needed to meet PEF’s Commission-endorsed goal of
13 spending hundreds of millions of dollars to receive the COL before then deciding
14 where to go next.

15 In light of the Commission’s endorsement of the Company’s proposed
16 approach in the 2010 NCRC hearing, the Commission should tightly scrutinize all
17 LNP costs and only allow actual COLA-necessary costs to be recovered from the
18 customer and either defer all non-COLA costs to a later date or determine they are
19 unreasonable at this time. No transmission or transmission related costs (land
20 acquisition, studies, engineering designs, etc.) should be authorized for recovery in
21 2011 and 2012. All preconstruction and construction costs not directly attributed to
22 achieving the COL should be deferred or determined to be unreasonable at this time.
23 To further minimize ratepayer impact in 2012, the costs associated with negotiating
24 the FNTP or further amendments to the EPC contract should be deferred for
25 consideration for recovery until after the receipt of the LNP COL.

1 **Q. IN YOUR OPINION, DO THE FACTS AND CIRCUMSTANCES RELATING**
2 **TO THE LNP PROJECT “DEMONSTRATE AN INTENT” TO BUILD THE**
3 **LNP ON THE CURRENT SCHEDULE?**

4 A. While I understand that the Commission made a finding in last year’s docket that PEF
5 had demonstrated an intent to build the plant sufficient for PEF to continue charging
6 customers in advance of the LNP COD, the perceived overall weakening in 2011 of
7 PEF’s and Progress Energy’s resolve to build the project on the current timeline is
8 troubling to me. As described in my testimony, the facts and circumstances taken as
9 a whole cause me concern and they should cause the Commission concern.
10 Especially troubling is the formal scenario planning that PEF is doing while publicly
11 maintaining that it intends to complete the LNP by 2021 and 2022. If PEF is
12 seriously considering constructing the plant – if at all – to meet a COD of 2027 and
13 2029, then it is my opinion that PEF is not realistically demonstrating an intent to
14 build the LNP within a reasonable time frame. The Commission should require
15 further testimony and impose the burden of proof of an affirmative demonstration by
16 PEF that the Company is not considering further delays in the project. Otherwise, I
17 believe that PEF may not be meeting the Commission’s standard for maintaining
18 eligibility for advanced cost recovery under Section 366.93, F.S.

19

20 **Q. ARE YOU SAYING THAT PEF SHOULD NOT BE ABLE TO RECOVER**
21 **COSTS THAT THEY HAVE SPENT IN RELIANCE ON THE**
22 **COMMISSION’S APPROVAL OF THE COL-RECEIPT APPROACH?**

23 A. No, I am not saying that. The Commission has made its determination in PEF’s favor
24 for the COL-receipt approach. Absent evidence that the Commission was misled by
25 the Company about its intent to complete the LNP, PEF can reasonably rely on that

1 determination as long as the Company can affirmatively demonstrate by a totality of
2 the facts and circumstances that it intends to build the LNP by 2021 and 2022. This
3 affirmative demonstration is necessary for the Commission to exercise some real-time
4 and forward looking monitoring of a project that has reached the \$1 billion mark and
5 is on its way to an ultimately customer borne overall cost of between \$22-25 billion
6 or more. As it stands today, the customers are on the hook for all of the \$1 billion
7 whether the plant ever enters commercial service. If the Commission only makes
8 reactive, after-the fact determinations of prudence, customers will be obligated to pay
9 even more as doubts persist or increase. The Commission should be flexible to the
10 evolving circumstances of large nuclear construction projects and exercise all of its
11 regulatory authority to protect customers from increased costs in times of increased
12 uncertainty.

13
14 **Q. WHAT IS OPC'S POSITION CONCERNING ACCELERATED RECOVERY**
15 **OF THE DEFERRED BALANCE AS RECOMMENDED BY MR. FOSTER?**

16 A. OPC objects to accelerated recovery of the remaining deferred balance. PEF is
17 requesting accelerated recovery of \$115.55 million plus the \$15.1 million in carrying
18 charges associated with that \$55 million ~~the remaining deferred balance which was~~
19 ~~authorized by Order No. PSC-09-0783-FOF-EI, p. 38.~~ Order No. PSC-09-0783-FOF-
20 EI permits PEF "greater flexibility to manage rates" and allows PEF "to annually
21 reconsider changes to the deferred amount and recovery schedule...." However, the
22 Commission retains jurisdiction on whether to allow PEF to accelerate recovery of
23 the deferred amount. By Order No. PSC-09-0783-FOF-EI, the Commission approved
24 a deferral amount of \$273,889,606. Recovery, of that deferred amount started in
25 2010 and is scheduled to end in 2014. PEF is two years into a five year rate

1 mitigation plan, and is now seeking to accelerate recovery of the deferred amount.
2 ~~and collect the remaining deferred balance in one year.~~ This accelerated recovery in
3 one year would adversely affect PEF's customers. In these trying economic times for
4 PEF's customers, PEF should not be allowed to accelerate the recovery of this
5 deferred amount. In addition, PEF's intent to accelerate recovery of the remaining
6 deferred balance in 2012 may indicate that Progress Energy is not committed to the
7 LNP as discussed above. It may indicate that Progress Energy may consider
8 cancelling the LNP project once all the outstanding monies approved for recovery for
9 the LNP have been recovered from the customer. In other words, PEF may not wish
10 to cancel the LNP at this time while there are millions of dollars remaining to be
11 recovered.

12
13 **Q. PLEASE SUMMARIZE YOUR REASONS FOR OBJECTING TO**
14 **ACCELERATED RECOVERY OF THE DEFERRED BALANCE.**

15 A. In light of the lack of a demonstrable improved likelihood of the LNP being built in a
16 reasonable timeframe – if at all – I fundamentally do not believe it is reasonable for
17 customers' bills to be any higher than absolutely necessary. Therefore I recommend
18 against allowing PEF to accelerate the recovery of the deferred recovery amount.
19 Further reasons for not allowing the accelerated recovery are due to customers
20 already paying in rates for the following:

- 21 • The CR3 replacement steam generators' related revenue requirement. The
22 revenue requirement associated with these assets was included in base rates,
23 beginning January 1, 2010, even though the steam generators have not gone
24 into service due to the extended outage at CR3 caused by engineering and
25 construction activities overseen by PEF;

- 1 • Replacement power costs for the extended outage at CR3 caused by
- 2 engineering and construction activities overseen by PEF; and
- 3 • Costs for the LNP plant which contribute nearly \$5 per month to the
- 4 residential bill.

5 Since customers are already incurring costs for both CR3 and LNP with no
 6 foreseeable benefit to the customer in the near future, the Commission should not
 7 allow the Company to recover the accelerated portion of its requested NCRC costs
 8 and should reduce the requested amount accordingly.

9

10 **VI. RECOMMENDATIONS**

11 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS REGARDING THE**

12 **CRYSTAL RIVER 3 EPU PROJECT?**

13 A. The Commission should not approve 2009 and 2010 CR3 EPU costs as prudent due
 14 to the uncertainty of the impact of other prudence determinations of PEF's activities
 15 related to the delamination of the Containment Building. **DELETED**

16

17 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS REGARDING THE**

18 **LEVY NUCLEAR PROJECT?**

19 A. The following is a summary of my recommendations related to the LNP project:

- 20 1. Only costs necessary to support processing the COLA should be recovered
- 21 from the customers in 2011 and 2012.
- 22 2. No transmission or transmission related costs (land acquisition, studies,
- 23 engineering designs, etc.) should be recovered from the customer in 2011 and
- 24 2012.

- 1 3. All preconstruction and construction costs not directly associated with
2 pursuing the COL should be deferred or determined to be unreasonable at
3 this time.
- 4 4. PEF's request for accelerated recovery of from the remaining deferred
5 balance should be denied.
- 6 5. To further minimize ratepayer impact in 2012, the costs associated with
7 negotiating the FNTP or further amendments to the EPC contract should be
8 deferred for consideration for recovery until after the receipt of the LNP
9 COL.
- 10 6. PEF should have the burden of affirmatively demonstrating that it is not
11 considering further delays in the scheduled LNP COD.

12

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

14 **A. Yes, it does.**

1 BY MR. REHWINKEL:

2 Q Dr. Jacobs, do you have a five-minute or less
3 summary to give of your direct testimony?

4 A Yes, I do.

5 Q Would you give that at this time.

6 A Good morning, Mr. Chairman and Commissioners.
7 In my testimony, I recommend that the Commission take
8 steps to limit costs, customer costs in light of PEF's
9 declining resolve, declining resolve and diminished
10 commitment to complete the Levy nuclear project in the
11 2021 and 2022 time frame. I also recommend that the
12 Commission deny the company's request to accelerate
13 collection of an additional \$55 million from the
14 deferred balance in the rate mitigation plan.

15 PEF's resolve and commitment to complete the
16 Levy nuclear project in 2021 for Unit 1 and 2022 for
17 Unit 2 is clearly weakening. Factors supporting my
18 conclusion include planning scenarios conducted by the
19 company and senior management of the company.

20 One of the most significant indicators of
21 PEF's extensive, methodical, and senior executive -- I'm
22 sorry. One of the most significant indicators is PEF's
23 extensive, methodical, and senior executive level
24 analysis of planning scenarios, which indicate that PEF
25 is seriously studying the possibility of further

1 delaying the LNP and relying primarily on gas generation
2 in the current planning horizon.

3 Declining feasibility and cost-effectiveness
4 of the LNP project. When the 2011 CPVRR analysis is
5 compared with the 2010 CPVRR analysis, the 2011 CPVRR
6 analysis demonstrates that the project is unfavorable
7 and not cost-effective in more cases.

8 Increased enterprise risks. The two
9 enterprise risks identified by the company with
10 unfavorable trends are related to the lack of carbon
11 legislation and lower natural gas prices. Both of these
12 risks are fundamental drivers in the economic
13 feasibility of the LNP.

14 Lack of joint ownership. Joint ownership does
15 not appear to be any more likely in 2011 than in prior
16 years. Circumstances including increased estimated
17 project costs, schedule delays, and recent statements by
18 PEF that no final decision has been made to build LNP
19 indicate no foreseeable receipt of joint owners any time
20 soon, if ever.

21 Diminished public support. Public support for
22 the LNP and new nuclear power construction in general
23 appears to be declining due to several recent events,
24 including the Fukushima event in Japan, publicity
25 related to the CR3, Crystal River 3 outage, NRC

1 questions on the AP1000 design, and recent flooding at
2 Fort Calhoun Nuclear Plant that got a lot of publicity.

3 The following is a summary of my
4 recommendations related to the LNP project. Because of
5 the increased uncertainty with the Levy nuclear project,
6 the Commission should approve as reasonable only those
7 costs which are necessary to support processing of the
8 COLA. This means that the Commission should not approve
9 as reasonable costs which have yet to be incurred in
10 2011 and 2012 related to transmission costs, costs
11 associated with negotiating the final notice to proceed,
12 or further amendments to the EPC contract, and
13 preconstruction costs or construction costs not directly
14 associated with pursuing the COL.

15 In light of the significance of the scenario
16 planning that PEF senior executives undertook, PEF
17 should have the burden of affirmatively demonstrating
18 that it is not considering further delays in the
19 scheduled LNP commercial operation date.

20 Concerning the company's request to accelerate
21 the deferred balance requested by Mr. Foster, I believe
22 that accelerated recovery of the remaining deferred
23 balance should not be allowed at this time. PEF is
24 requesting accelerated recovery of \$55 million. Given
25 the current economic situation, the costs imposed on PEF

1 customers for Crystal River 3 replacement steam
2 generators, replacement power costs due to the extended
3 outage at Crystal River 3, and costs for the LNP which
4 currently contribute nearly \$5 per month to the
5 residential bill, I do not believe it is reasonable for
6 customer bills to be any higher than absolutely
7 necessary. That concludes my opening statement.

8 **MR. REHWINKEL:** Dr. Jacobs is available for
9 cross-examination.

10 **CHAIRMAN GRAHAM:** Mr. Rehwinkel, I'm not sure
11 if I heard you ask if he was sworn.

12 **MR. REHWINKEL:** I didn't ask, but I watched
13 him be sworn yesterday.

14 **CHAIRMAN GRAHAM:** Okay.

15 **THE WITNESS:** That's correct.

16 **CHAIRMAN GRAHAM:** Okay. I just wanted to make
17 sure we had it on the record.

18 **MR. REHWINKEL:** Yes.

19 **CHAIRMAN GRAHAM:** Progress.

20 **MS. HUHTA:** Thank you, Chairman.

21 **CROSS EXAMINATION**

22 **BY MS. HUHTA:**

23 **Q** Good morning, Dr. Jacobs.

24 **A** Good morning.

25 **Q** Dr. Jacobs, you were asked to review Progress

1 Energy Florida's filings in this docket and identify any
2 issues that might be relevant to the ratepayers of
3 Progress Energy Florida; correct?

4 A That's correct.

5 Q You would agree you are -- turning to the Levy
6 nuclear project, you would agree you are providing no
7 opinion on the prudence or reasonableness of PEF's
8 project management, contracting, accounting, or cost
9 oversight controls for the LNP for 2010; correct?

10 A Could you repeat that? There were several
11 items in there, and I want to make sure I'm clear on all
12 of them.

13 Q Of course. You would agree you are providing
14 no opinion on the prudence or reasonableness of PEF's
15 project management, contracting, accounting, or cost
16 oversight controls for the LNP for 2010; is that
17 correct?

18 A That's correct.

19 Q You would agree that your testimony does not
20 include any opinion that PEF's accounting treatment of
21 the amounts PEF requested for recovery for the LNP is
22 imprudent or unreasonable.

23 A That's correct, with the clarification that
24 requesting for accelerated recovery is not determined to
25 be an accounting treatment.

1 Q Okay. But you, you have not included any
2 opinion that PEF's accounting treatments of the amounts
3 that it's requesting for recovery for the LNP are
4 imprudent or unreasonable.

5 A That's correct.

6 Q Can you turn to page 3, line 17 of your
7 testimony, 2011 testimony, Dr. Jacobs.

8 Your assignment in this docket included review
9 and evaluation of Progress Energy Florida's request to
10 collect historical costs associated with the Levy
11 nuclear project; correct?

12 A That's correct.

13 Q And you would agree that your testimony
14 includes no opinion that PEF's LNP actual costs incurred
15 for 2010 are imprudent.

16 A That's correct.

17 Q Turning to LNP estimated projected costs, in
18 the 2010 NCRC proceeding, the Commission determined that
19 PEF's decision regarding the LNP schedule shift was
20 reasonable; correct?

21 A Yes.

22 Q You would agree that the 2010 NCRC order by
23 the Commission in Docket 100009-EI approving PEF's
24 decision on a schedule shift did not in any way limit
25 cost recovery to COLA only costs; right?

1 A That was not specifically included in the
2 order. That's correct.

3 Q Did the order in any way limit PEF's recovery
4 to COLA only costs?

5 A No, it did not.

6 Q Aren't all of the costs incurred by Progress
7 Energy Florida in 2010 and 2011 and projected to be
8 incurred in 2012 based on moving forward with the
9 approach that the Commission approved in the 2010 NCRC?

10 A I don't agree with that. No.

11 Q Which costs that the company has --
12 Dr. Jacobs, did Progress Energy Florida take your
13 deposition on July 15th, 2011?

14 A Yes, they did.

15 Q During that deposition you were providing
16 sworn testimony; correct?

17 A Yes.

18 Q Do you have a copy of your deposition
19 transcript with you?

20 A Yes, I do.

21 Q Page 61, lines 23 through 25, and 62, did you
22 give the following answer to the following question in
23 that deposition?

24 "Aren't all of the costs incurred by Progress
25 Energy Florida in 2010 and projected to be incurred in

1 2011 and 2012 based on moving forward with the approach
2 that the Commission approved in 2010?"

3 Answer, "Yes, that's correct."

4 Is that accurate?

5 A Yes. That's accurate. But if I could
6 explain.

7 Q Thank you. No pending question.

8 MR. REHWINKEL: Mr. Chairman, under the rules
9 of evidence, if impeachment is made by deposition, a
10 witness is offered -- is entitled to the opportunity to
11 explain a deposition answer used to attempt to impeach
12 his, his testimony.

13 CHAIRMAN GRAHAM: I agree with the objection.
14 He's got, he's got the ability to answer the question
15 and then to explain his answer.

16 MR. REHWINKEL: Mr. Chairman, the -- my point
17 is specifically to the evidence code, not the
18 Commission's rule practice. Ms. Huhta was attempting to
19 use the deposition to impeach his live testimony. And
20 under the rules of evidence, he is, he has an absolute
21 right to explain an answer in a deposition. It's, it's
22 different than the answer yes and explain and the
23 Commission's rule, order.

24 CHAIRMAN GRAHAM: Staff?

25 MR. YOUNG: If we can hear Ms. Huhta's

1 response to that and then --

2 **CHAIRMAN GRAHAM:** Sure.

3 **MS. HUHTA:** Certainly. I would disagree with
4 that and say that the impeachment was appropriately
5 provided. The deposition is a sworn transcript.
6 Dr. Jacobs had a chance to review it even after his
7 deposition and make any corrections. And the
8 impeachment was appropriately presented.

9 **MR. YOUNG:** If Mr. Rehwinkel could point to
10 the specific rule of evidence he's talking about.

11 **MR. REHWINKEL:** I don't have the evidence code
12 with me. But impeachment by, with a deposition comes
13 with the right to explain an answer.

14 **MR. YOUNG:** If you could give us one second.

15 (Pause.)

16 **MR. REHWINKEL:** I was under the impression
17 you, you did not sustain my objection. Am I incorrect?

18 **CHAIRMAN GRAHAM:** I agreed with your
19 objection.

20 **MR. YOUNG:** He sustained it.

21 **MR. REHWINKEL:** I apologize.

22 **MR. YOUNG:** I think what happened is you want,
23 you want a ruling under the rules of evidence. He
24 agrees with your objection that the witness, per the
25 Commission practice, has the ability to explain his

1 answer.

2 MR. REHWINKEL: I apologize, Mr. Chairman. I,
3 I misheard your ruling.

4 (Laughter.)

5 CHAIRMAN GRAHAM: I mean, I --

6 MR. REHWINKEL: I'm not trying to undo your
7 ruling in my favor.

8 CHAIRMAN GRAHAM: I don't know if your
9 objection gives the witness more latitude to
10 explanation, where mine would just allow him to
11 basically complete the thought.

12 MR. REHWINKEL: Either way works. Yes.

13 CHAIRMAN GRAHAM: Okay. Let's move forward.

14 MR. YOUNG: Yes.

15 CHAIRMAN GRAHAM: Briefly, sir.

16 THE WITNESS: Yes, sir. Thank you.

17 In reviewing my deposition transcript, it
18 occurred to me that my answer during the deposition was
19 probably not correct in that the Commission, the
20 approach approved by the Commission was to move forward
21 with the COLA work. And there are costs included in
22 2011, 2012 which are not related to the COLA. So in
23 that regard, I don't agree with your, your question.

24 CHAIRMAN GRAHAM: Thank you, sir.

25 THE WITNESS: Thank you.

1 BY MS. HUHTA:

2 Q Dr. Jacobs -- excuse me. Dr. Jacobs, did you
3 provide any of this explanation during your deposition,
4 sworn deposition on July 15th, 2011?

5 A No. As I explained, in reviewing my, the
6 transcript of my deposition.

7 Q And did you provide any of this explanation in
8 the errata that you signed after you reviewed your
9 deposition, likely a couple of weeks later?

10 A No, I did not.

11 Q You would agree it is your understanding that
12 it's necessary for Progress Energy Florida to perform
13 additional land acquisition from the land they have now
14 for the LNP going forward; correct?

15 A That's correct. But not to support the COLA.

16 Q But it would be necessary for the Levy nuclear
17 project to perform additional land acquisition. That's
18 correct?

19 A That's correct. At the point in time when the
20 company has decided affirmatively, affirmatively to move
21 forward with a project, they would need to acquire
22 additional land. That's my understanding.

23 Q And you would agree that it will be necessary
24 for the company to perform an updated transmission study
25 for the Levy nuclear project; correct?

1 A Yes. Again, at the time when the decision has
2 been made to move forward with the project, they would
3 need to perform additional transmission analyses.

4 Q You would agree that it's necessary for the
5 project?

6 A Yes.

7 Q And you would agree that land acquisition is
8 going to take time and money.

9 A Yes, it will.

10 Q You would agree that performing an updated
11 transmission study for the LNP will take time and money.

12 A That's correct. I'm not disagreeing with the
13 necessity of those costs, merely with the timing.

14 Q You would agree that time and money would be a
15 cost to the Levy nuclear project?

16 A Excuse me?

17 Q You would agree that the time and money that
18 we referenced in the above question would be a cost
19 incurred by the Levy nuclear project.

20 A The money would be a cost. I don't know if
21 the time would be a cost or not.

22 Q You would agree that nowhere in your 2011
23 testimony filed in this docket have you disputed the
24 amount of transmission-related costs or land acquisition
25 costs PEF has incurred or projects to incur in 2011 or

1 2012 as unreasonable or imprudent; right?

2 A That's correct. Again, I just take issue with
3 the timing of those costs.

4 Q So you have no opinion that any specific
5 2011 or 2012 LNP cost is unreasonable or imprudent in
6 amount?

7 A In amount. That's correct.

8 Q Isn't it true that Progress Energy Florida
9 will have to negotiate a full notice to proceed for the
10 LNP?

11 A Yes.

12 Q You would agree that Progress should not
13 simply accept whatever terms its vendor, the consortium,
14 puts forth for the full notice to proceed; right?

15 A That's correct.

16 Q And that wouldn't be in the best interest of
17 Progress or its customers; correct?

18 A Correct.

19 Q You would agree that Progress Energy should
20 formulate a negotiation strategy, conduct negotiations
21 with the consortium on the full notice to proceed;
22 right?

23 A Yes, I would. Again, those, those costs are
24 not needed to go forward with the, pursuing the COL.

25 Q But you would agree that, that full notice to

1 proceed costs are necessary for the Levy nuclear
2 project.

3 A Yes, I would.

4 Q And you, you would agree that that would be a
5 cost to the Levy nuclear project.

6 A That's correct.

7 Q You would agree that nowhere in your 2011
8 testimony have you disputed the amount of the full
9 notice to proceed related costs PEF has incurred or
10 projects to incur.

11 A That's correct. Not the amount. Again, only
12 the timing.

13 Q Is it true that it's necessary -- isn't it
14 true that it's necessary for Progress Energy Florida to
15 perform preconstruction and construction work for the
16 LNP?

17 A Yes. That's correct.

18 Q Mr. Elnitsky, as project manager, has
19 testified the in-service dates for the Levy nuclear
20 project are 2021 and 2022; isn't that correct?

21 A He has testified that those are the dates
22 included in the plan of record. That's correct.

23 Q So Mr. Elnitsky has testified that the
24 in-service dates are 2021 and 2022 in front of this
25 Commission?

1 A That's correct.

2 Q And you have no reason to disagree with
3 Mr. Elnitsky that non-COL related preconstruction and
4 construction work would be necessary to meet those
5 in-service dates; correct?

6 A That's correct.

7 Q Nowhere in your 2011 testimony do you state
8 that any of the non-COL preconstruction or construction
9 costs estimated for 2011 and 2012 are unreasonable;
10 right?

11 A That's correct. Only to the extent that they
12 are, would be performed prior to receiving the COL.

13 Q You don't state anywhere that they're
14 unreasonable in amount.

15 A No. That's correct.

16 Q You don't state anywhere that they're
17 unnecessary for the LNP.

18 A That's correct.

19 Q You would agree then that your testimony for
20 2011 includes no opinion that any specific 2011 or
21 projected 2012 LNP cost is unreasonable.

22 A In amount, that's correct. But not in timing
23 of those, of those expenses.

24 Q Turning to feasibility, Dr. Jacobs, is it your
25 testimony that the LNP is -- is it your testimony that

1 the LNP is not feasible for 2011?

2 A No. In my testimony I point out that it's
3 trending to be less feasible due to the changes in some
4 of the enterprise risks. The number of cases of, in
5 which the plant is feasible in 2011 are less than in
6 2010.

7 Q You would agree then that even if something is
8 less feasible, that does not mean that it's still not
9 feasible.

10 A That's correct.

11 Q You have no opinion that the LNP is not
12 feasible.

13 A That's correct. As I said, it's trending less
14 feasible, but I don't have an opinion that it's not
15 feasible at this time.

16 Q Dr. Jacobs, have you reviewed the Levy
17 March 2009 integrated project plan attached to
18 Mr. Elnitsky's rebuttal testimony as Exhibit JE-12?

19 A Yes, I have.

20 Q You would agree, Dr. Jacobs, that the Progress
21 Energy Florida approved plan for the LNP is for
22 in-service of Unit 1 in 2021 and Unit 2 18 months later;
23 correct?

24 A That's correct. That's their current plan of
25 record.

1 Q You would agree that as of March 29, 2011, in
2 the LNP integrated project plan, Progress Energy
3 Florida's senior management approved continued spend and
4 in-service dates of 2021 and 2022 for the LNP project;
5 correct?

6 A That's correct.

7 Q You would agree this year PEF is implementing
8 the decision it presented and the Commission approved in
9 the 2010 NCRC docket; correct?

10 A Yes.

11 Q You would agree with me that PEF's plan for
12 the LNP has not changed since that presented in the 2010
13 NCRC docket; correct?

14 A I believe there were some minor changes in the
15 2011 IPP compared to the 2010 IPP, but the overall plan
16 has not changed.

17 Q The plan has not material change -- materially
18 changed in your opinion?

19 A That's correct. Particularly in terms of
20 in-service date.

21 Q You would agree that PEF's senior management
22 reviewed and approved the LNP IPP as of March 29, 2011,
23 which shows COD 2021 and 2022, and the company's
24 commitment to fund the Levy nuclear project several
25 months after the scenario analyses were reviewed?

1 A That's correct.

2 Q You're not testing that P -- you're not
3 testifying that PEF does not have the intent to build
4 the Levy nuclear project, are you?

5 A Well, what I have testified to is that it
6 appears to me that their intent to build the project is,
7 is decreasing. Specifically, I believe they have an
8 intent to pursue the COLA and receive the COL from the
9 Nuclear Regulatory Commission. At that time it's my
10 understanding that the company will make a decision as
11 to whether or not to proceed with the project. So it's
12 difficult to say they have an intent to proceed with the
13 project when they have publicly admitted that they
14 haven't decided to proceed with the project.

15 Q In your July 15th, 2011, deposition -- do you
16 have a copy of that transcript in front of you?

17 A I do.

18 Q On page 89, starting on line 10, did you give
19 the following answer to the following question?

20 "So you are not testifying that they do not
21 have the intent to build the LNP?"

22 "That's correct."

23 Is that an accurate statement of your
24 deposition transcript testimony?

25 A That's correct. And I, I added additional

1 explanation to your prior question.

2 Q Is it your opinion that Progress Energy
3 Florida should cancel the Levy nuclear project?

4 A No, it's not. I believe there is some value
5 in pursuing the combined license from the Nuclear
6 Regulatory Commission. There's very little, if any,
7 additional cost to, to pursue the COL, and so I believe
8 they're on the right course at this point in time and
9 should not cancel the project.

10 Q Is it your opinion that PEF should terminate
11 the EPC agreement and cancel the Levy nuclear project?

12 A No, it's not. In, in order to achieve the
13 COL, they will need the assistance of the Westinghouse &
14 Shaw. So I don't believe the EPC contract should be
15 terminated, nor should the project be terminated at this
16 time.

17 Q Turning briefly to rate management,
18 Dr. Jacobs, on page 19 of your testimony, starting at
19 line 16 of your 2011 testimony.

20 A Excuse me just a minute. I'll get there.
21 Okay. Excuse me. What line were you
22 referring to?

23 Q Certainly. Starting on line 16.

24 A Okay.

25 Q OPC objects to what it characterizes as

1 accelerated recovery for the remaining deferred balance
2 that was authorized by the Commission in Order Number
3 PSC-090783. Isn't it true that Commission Order
4 PSC-090783, that in that order that it says "PEF shall
5 be permitted to annually reconsider changes to the
6 deferred amount and recovery schedule for its rate
7 management plan"?

8 A That's correct.

9 Q Are you aware that this money was already
10 determined prudent in prior NCRC proceedings and is
11 already approved for recovery, notwithstanding what
12 happens with the LNP going forward?

13 A That's correct. I'm not disagreeing with the
14 recovery of this amount, merely with the timing and the
15 acceleration of these costs.

16 Q Thank you, Dr. Jacobs. That's all the
17 questions I have.

18 A Thank you.

19 **CHAIRMAN GRAHAM:** Staff?

20 **MR. YOUNG:** Staff has any -- Staff has no
21 questions. Excuse me.

22 **CHAIRMAN GRAHAM:** Commission board.
23 Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
25 Good morning.

1 **THE WITNESS:** Good morning.

2 **COMMISSIONER EDGAR:** At the beginning of your
3 prefiled testimony and also in the exhibit with your
4 resumé or bio information you mentioned briefly that
5 you're currently working for the Georgia Public Service
6 Commission as an independent monitor. Can you briefly
7 tell me how you were selected for that role?

8 **THE WITNESS:** I'm not sure of the process
9 actually. The -- in a stipulation that was reached
10 between the company and the Commission during the
11 certification process, which is similar to the need,
12 need hearing in Florida --

13 **COMMISSIONER EDGAR:** Okay.

14 **THE WITNESS:** -- in Georgia we call it the
15 certification process, it was agreed that the, it would
16 be helpful for the Georgia Public Service Commission to
17 have an independent construction monitor to monitor the
18 project, the progress of the Vogtle project on a day,
19 day-to-day basis essentially.

20 This was, I guess, a result of the experience
21 with the first Vogtle units, Units 1 and 2, that went
22 approximately \$9 billion over budget, and then ten years
23 later the Commission was left with the task of trying to
24 figure out why and what happened during that, during
25 that time frame. So they decided to -- that having

1 someone providing information really in real time to
2 them would, would be very helpful.

3 Approximately six weeks after that I was
4 contacted that I had been selected by the Commission to
5 perform that role. I had, I had worked for the Georgia
6 Commission since the late 1980s on various nuclear
7 related projects, so they were very familiar with me and
8 my experience.

9 **COMMISSIONER EDGAR:** So you're not sure if
10 others were contacted or if there was not a public
11 interview process or --

12 **THE WITNESS:** Not that I'm aware of.

13 **COMMISSIONER EDGAR:** Not in the sunshine?

14 **THE WITNESS:** Not that I'm aware of.

15 **COMMISSIONER EDGAR:** In that capacity, do you
16 consider yourself an advocate for the plant, the Vogtle
17 plant?

18 **THE WITNESS:** No, I'm not. I'm really
19 reporting the progress on the, on the project in the
20 licensing, engineering, and construction areas, and also
21 in the area of budget. I explain issues as they arrive
22 to the Commission and to the Commission staff, and I
23 testify -- there's a semiannual hearing process up there
24 that I provide testimony and testify before the hearing,
25 before the Commission twice a year. So I'm not what I

1 would call an advocate for the project, no.

2 **COMMISSIONER EDGAR:** Is there a set term for
3 your contract or for your arrangement to work for the
4 Commission in that capacity?

5 **THE WITNESS:** The -- it essentially runs
6 through the end of Unit 2, which is 2017, unless some
7 party becomes unhappy with, with the arrangement.

8 **COMMISSIONER EDGAR:** Okay. I'm going to move
9 on to page 17 of your prefiled testimony, and I'm
10 looking at the sentence that begins on line 11. "For
11 this reason, customers should not be forced to bear any
12 of the costs beyond that needed to meet PEF's
13 Commission-endorsed goal of spending hundreds of
14 millions of dollars to receive the COL before then
15 deciding where to go next."

16 I'm not sure that I understand the context of
17 the statement that the Commission has endorsed the goal
18 of spending hundreds of millions of dollars, and I'm
19 wondering if you could describe that sentence or what
20 you mean by that sentence, or more specifically what you
21 point to by asserting that that is a Commission goal.

22 **THE WITNESS:** I would agree with the
23 Commissioner, this is probably poorly worded. The
24 comment here is that I believe the customers should not
25 have to bear any costs beyond needed to meet the goal of

1 receiving the combined license for the project. The
2 company will be, will have spent hundreds of millions of
3 dollars by the time they receive the COL, but that's not
4 to imply that it's the Commission's goal that they spend
5 hundreds of millions of dollars.

6 **COMMISSIONER EDGAR:** Or endorsed as a goal?

7 **THE WITNESS:** Or endorse that goal.

8 **COMMISSIONER EDGAR:** On the next page, page
9 18, and I'm looking at lines 13 and 14 specifically, you
10 say that it is your opinion that Progress is not, quote,
11 realistically demonstrating an intent to build the LNP
12 within a reasonable time frame. What would you deem to
13 be a reasonable time frame, or, in the reverse, not a
14 reasonable time frame?

15 **THE WITNESS:** I think that the, the current
16 time frame of 2021, '22 is a reasonable time frame.
17 Beyond that, I think it becomes more of a planning goal
18 rather than an actual project. So if it were --

19 **COMMISSIONER EDGAR:** Is a planning goal --

20 **THE WITNESS:** Excuse me?

21 **COMMISSIONER EDGAR:** I apologize. I did not
22 mean to speak over you.

23 **THE WITNESS:** Oh.

24 **COMMISSIONER EDGAR:** I was just thinking about
25 what you were saying.

1 **THE WITNESS:** Let me continue then. If the
2 project were --

3 **COMMISSIONER EDGAR:** Actually, no, let me.
4 From that answer, and maybe I'm hearing you wrong, but I
5 kind of infer that a planning goal is a bad thing. So
6 could you elaborate on that point?

7 **THE WITNESS:** No. A planning goal is not a
8 bad thing. But it's my opinion that the NCRC
9 legislation is not meant to support planning goals.
10 It's meant to support actual development of actual
11 nuclear projects, not projects that may be happening 15
12 to 20 years in the future.

13 **COMMISSIONER EDGAR:** What do you believe, in
14 the context of everything that we are dealing with right
15 now, would be something that Progress should be doing to
16 realistically demonstrate an intent that they are not
17 doing?

18 **THE WITNESS:** Well, one thing would be to -- a
19 firm and written sworn testimony that they are planning
20 to build the project in 2021, 2022; that they don't have
21 another goal for the project and another time frame in
22 mind.

23 The other thing is that the company is sending
24 out mixed messages. They say the project plan of record
25 is 2021, 2022, but many statements they have they say

1 2021, 2022 or later. The spokesperson for the company
2 says, well, we haven't really decided finally if we're
3 actually going to build the plant or not. That decision
4 is yet to come. So that's kind of a mixed message
5 between our intent is to build it on one hand, but we
6 haven't decided if we're going to build it or not on the
7 other hand. So they need to be more -- clarify their
8 intent, I believe.

9 **COMMISSIONER EDGAR:** All right. Thank you.

10 **THE WITNESS:** Thank you.

11 **CHAIRMAN GRAHAM:** Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

13 And I'm going to pick up where Commissioner
14 Edgar left off on the, on the idea of intent. So if I
15 understand right, part of the reason -- part of your
16 concern with the idea of the company's intent is the
17 fact that they haven't ironclad said that on the 20 --
18 2020 or 2021 we're going to be completed with this
19 project; is --

20 **THE WITNESS:** That's correct. They're not --
21 in my mind, they're not committed to the project.

22 In addition, the scenario planning that, that
23 we had talked about and Mr. Elnitsky reviewed indicate
24 to me that they were seriously considering moving the
25 project out to the 2027, 2029 time frame. And I think

1 that would be beyond the time frame that would be
2 appropriate under the NCRC for cost recovery.

3 **COMMISSIONER BRISÉ:** I'm going to reask a
4 question that was posed earlier, because I don't think I
5 got a clear answer.

6 What is the company not doing that would imply
7 that they are not on the path of seeking to complete by
8 the, by 2020 or 2021, other than inferences?

9 **THE WITNESS:** Well, they are clearly taking
10 the steps needed to achieve receipt of the combined
11 license, but they are not saying that they're committed
12 to build the project. They're saying on one hand our
13 intent is to build it; on the other hand we haven't
14 decided whether or not we're going to build it. To me
15 that's confusing.

16 **COMMISSIONER BRISÉ:** Okay. So I guess we'll
17 move on from that.

18 Is part of your concern the impact to
19 ratepayers with respect -- because you mentioned timing
20 as an issue and not that the project may be imprudent or
21 anything like that -- but part of it is timing, so the
22 impact on consumers, and with the backdrop that it may
23 never occur, as, as you imply?

24 **THE WITNESS:** Yeah. That's exactly right.
25 And the costs that we're talking about are really very

1 minor in terms of the overall project. But in some way
2 they're symbolic that the company needs to spend only
3 what's needed to get to the COL. They -- by that point
4 in time they will have spent a billion dollars on this
5 project and not have decided whether to go forward or
6 not. It's time to draw a line in the sand and say only
7 spend what's needed to get to the COL and no more.

8 **COMMISSIONER BRISÉ:** I want to ask you a
9 broader question. Do you think that the nuclear cost
10 recovery clause or rule established by the Legislature
11 is bad policy?

12 **THE WITNESS:** I don't believe it's bad policy.
13 I believe the intent was to encourage the development of
14 nuclear power projects in Florida, and many states have
15 similar type rules in the country. But it needs to be
16 utilized to develop a project, as I stated earlier, not
17 to support a project that's out in the planning horizon,
18 but actual, real projects.

19 **COMMISSIONER BRISÉ:** On to the issue of joint
20 owners. Is it your opinion that the COL puts the
21 company in a better posture to actually go out and seek
22 joint owners?

23 **THE WITNESS:** Well, I think that would put
24 them in a better posture. But in my opinion, they're
25 not going to have any joint owners sign up until they

1 decide to build the project. I think as long as they're
2 saying we haven't decided yet whether we're going to go
3 forward or not, there are no joint owners who are going
4 to want to step up and put money into the project.

5 **COMMISSIONER BRISÉ:** Okay. That's all I have
6 for now. Thank you.

7 **CHAIRMAN GRAHAM:** Commissioner Brown.

8 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

9 On page 14 of your amended prefiled testimony
10 you cite several recent events that, evidence that show
11 a declining public support. And I wanted to point one
12 out, and one item you identified was the NRC questions
13 about the AP1000 design. Is that still your opinion at
14 this point?

15 **THE WITNESS:** No. Those, those have been
16 resolved. Those questions have been resolved. When I
17 wrote this testimony, there were some concerns about
18 containment pressure analyses, shield building, stress
19 analyses, but those have been resolved with the issuance
20 of the final safety evaluation report by the NRC staff
21 last week.

22 **COMMISSIONER BROWN:** Thank you. That's all.

23 **CHAIRMAN GRAHAM:** Dr. Jacobs, I've got a
24 question for you. Commissioner Brisé asked a question
25 about spending money to receive the COL. Let me

1 understand if I understood your, your answer correctly,
2 that they shouldn't be spending any other money until
3 they receive their COL. Or if they spend any money,
4 it's only in, in the process of receiving the COL; is
5 that correct?

6 **THE WITNESS:** Only money needed to -- in
7 support of receiving the COL. That's correct.

8 **CHAIRMAN GRAHAM:** Now if they did that and
9 then at that point they decided to move forward, how far
10 would that push the schedule back?

11 **THE WITNESS:** I don't believe it would have
12 any schedule impact. There's quite a bit of float in
13 the, in the schedule. They are, they are planning to
14 receive their COL in 2013, and have Unit 1 online in
15 2021, some five years later. Georgia Power is going to
16 do that in about a four-year period. So I think there's
17 probably a year float in their, in their schedule, and
18 so I don't think that would have any schedule impact.

19 **CHAIRMAN GRAHAM:** So if they don't move
20 forward with their transmission study right now, if they
21 wait until after the COL comes through, everything
22 should work fine and they should be on schedule for the
23 2021 startup?

24 **THE WITNESS:** Yes. I believe that, that work
25 could be accelerated to have no overall schedule impact.

1 **CHAIRMAN GRAHAM:** Okay. Commissioner Balbis.

2 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

3 And, and I had a very similar question as to
4 what you just asked, and I just wanted you to clarify.

5 So you reviewed the integrated project plan
6 that was included as an exhibit for a previous witness's
7 testimony; correct?

8 **THE WITNESS:** That's correct. Yes.

9 **COMMISSIONER BALBIS:** Now I assume that your
10 statement that only pursuing activities that are
11 necessary to obtain the COL are what Progress should be
12 doing. And in doing so, it would not affect the
13 in-service date of 2020 and 2021; correct?

14 **THE WITNESS:** That's correct.

15 **COMMISSIONER BALBIS:** So I would assume then
16 that those activities that are not part of the COL, the
17 transmission work, land purchases, et cetera, are not on
18 the critical path for the project schedule?

19 **THE WITNESS:** That's correct.

20 **COMMISSIONER BALBIS:** And I looked through
21 this, the integrated project plan. Is that the only
22 document you reviewed? Is there a more detailed
23 schedule that clearly shows what critical path items
24 are?

25 **THE WITNESS:** I'm sure there is. I have not

1 reviewed -- I only relied on reviewing the IPP. But,
2 but I, I'm familiar with the schedule required to build
3 an AP1000 due to my work for the Vogtle project. I know
4 that schedule in detail, and I know the durations of
5 activities that are required. And there's enough float
6 in the Levy County schedule to complete any work that's
7 needed, any work that would be delayed.

8 **COMMISSIONER BALBIS:** And just based on the
9 information in the integrated project plan and your
10 experience for the Georgia plan? I'm just trying to
11 understand. Because that's a very powerful statement
12 that you made in determining what is on a critical path
13 and what is not, and I want to understand what you're
14 basing that on. So if you can elaborate on that again.

15 **THE WITNESS:** Sure. Well, specifically we've
16 said the transmission studies, I don't know if that's
17 what you're referring to, but there's several years of
18 time to complete the transmission studies and any
19 transmission work that needs to be done, and that work
20 could be accelerated. I don't believe that work has to
21 be done prior to receiving the COL. And, again, since
22 the company hasn't even decided to build the project, it
23 seems to spend additional money before making that
24 decision is not reasonable.

25 **COMMISSIONER BALBIS:** Okay. Let me go and

1 change gears a little bit.

2 You had mentioned a few times, and you just
3 mentioned it again, that the company has not made an
4 ironclad decision to build the project; correct?

5 **THE WITNESS:** That's correct.

6 **COMMISSIONER BALBIS:** And would you agree that
7 the purpose of the -- well, with the statute and with
8 the Commission rules on our annual review of advanced,
9 of advanced nuclear cost recovery includes a feasibility
10 analysis?

11 **THE WITNESS:** Yes.

12 **COMMISSIONER BALBIS:** And so wouldn't the
13 purpose of the feasibility analysis is to determine if
14 it is still cost-effective or still makes sense to move
15 forward with the project?

16 **THE WITNESS:** That's certainly one factor.
17 And the company, I think, has testified on several
18 occasions that that's one of many factors that have to
19 be, have to be looked at and considered in making the
20 decision to move forward.

21 **COMMISSIONER BALBIS:** So I guess my point is
22 that it's never an ironclad decision in that every year
23 we will continue to look at and make sure there are,
24 there are no factors that have changed that would change
25 the decision whether or not to move forward. So I'm

1 just trying to understand what you mean by ironclad.

2 **THE WITNESS:** I'm not sure I used the word
3 "ironclad." But a decision to move forward would be
4 once they authorize the EPC contractor and issue a final
5 notice to proceed, I would say that would be, that would
6 be a final decision that the company had decided to move
7 forward with the project.

8 **COMMISSIONER BALBIS:** And would it make sense
9 to enter into the EPC contract before having the COL?

10 **THE WITNESS:** Most plants do. But in this
11 situation where they have had to defer it, I think it's
12 reasonable to get the COL and to attempt to negotiate a
13 new amendment to the EPC contract. I think those
14 negotiations are going to be potentially difficult, but
15 that's appropriate.

16 **COMMISSIONER BALBIS:** Okay. Thank you. No
17 further questions.

18 **CHAIRMAN GRAHAM:** Any other Commissioners?
19 Redirect.

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

21 **REDIRECT EXAMINATION**

22 **BY MR. REHWINKEL:**

23 Q Dr. Jacobs, when asked by Ms. Huhta about
24 whether you agree that Mr. Elnitsky testified about the
25 plan of record and the in-service or CODs of 2021 and

1 2023, you said you agreed that he testified about that,
2 to that; is that correct?

3 A That's correct.

4 Q Does your agreement mean that you agree that
5 those are the CODs for the plan?

6 A I'm sorry. Could you repeat that?

7 Q Does your agreement that Mr. Elnitsky
8 testified to that plan of record mean that you agree
9 that those are the in-service or the CODs that, that
10 Progress would --

11 A No. I'm sorry. No. That -- I was agreeing
12 that that was what Mr. Elnitsky testified to. I would
13 point out that the plan of record can be changed at any
14 point in time and has been.

15 Q That was my next question. Has Progress ever
16 had a plan of record or contained in an IPP that they
17 have changed?

18 A Yes. Certainly.

19 Q Did they -- have they ever had a program of
20 record or an IPP that they have spent differently from?

21 A Yes.

22 Q Did your review of the IPP and the testimony
23 you heard here today change your opinion as to PEF's
24 intent to meet the COD of 2021 and 2023 for the LNP?

25 A No, it has not.

1 Q On page 89 of your deposition, when Ms. Huhta
2 asked you about -- she asked you a specific question:
3 "So you are not testifying that they do not have the
4 intent to build the LNP?" And you said that is correct.
5 "That's correct."

6 Was there a date associated with that intent
7 to build in her question, a COD?

8 A Yes. I inferred that her date was in the
9 2021, 2022 time frame.

10 Q Since 2008, the 2008 determination of need,
11 there have been three NCRC hearings that you've
12 testified in; is that right?

13 A Yes.

14 Q 2009, 2010, and 2011; correct?

15 A That's correct.

16 Q In each of those proceedings, relative to 2008
17 determination of need, has Progress been in a going
18 forward mode or in a retreat or contraction mode with
19 respect to constructing the LNP?

20 A I would say in a retreat mode.

21 **MR. REHWINKEL:** No further questions. Thank
22 you.

23 **CHAIRMAN GRAHAM:** Sorry. Okay. We need to
24 enter some exhibits into the record?

25 **MR. REHWINKEL:** Yes, Mr. Chairman. The

1 Citizens would move Exhibits 166 through 170 into the
2 record.

3 **CHAIRMAN GRAHAM:** We will move, barring no
4 objections, 166, 67, 68, 69, and 170 into the record.

5 (Exhibits 166, 167, 168, 169, and 170 admitted
6 into evidence.)

7 Are there any other exhibits that need to be
8 entered into the record? No?

9 **MS. HUHTA:** No, Chairman.

10 **CHAIRMAN GRAHAM:** Okay. Are we done with this
11 witness?

12 **MR. REHWINKEL:** Yes. May Mr. -- Dr. Jacobs be
13 excused?

14 **CHAIRMAN GRAHAM:** Are there any objections to
15 excusing Dr. Jacobs for the remainder?

16 **MR. YOUNG:** No, sir. He can be excused.

17 **CHAIRMAN GRAHAM:** Okay.

18 **THE WITNESS:** Thank you.

19 **CHAIRMAN GRAHAM:** Sir, thank you for your
20 testimony.

21 **THE WITNESS:** Thank you.

22 **CHAIRMAN GRAHAM:** Now are we to, based on the
23 stipulation, to the rebuttal?

24 **MR. WALLS:** That's correct. And Progress
25 would call Mr. Elnitsky to the stand.

1 **CHAIRMAN GRAHAM:** Thank you.

2 **JOHN ELNITSKY**

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

6 **DIRECT EXAMINATION**

7 **BY MR. WALLS:**

8 **Q** Mr. Elnitsky, since you were here for hours
9 yesterday, I don't think we need to reintroduce you to
10 the Commission, so let's move on.

11 Have you filed rebuttal testimony with
12 exhibits in this proceeding on July 25, 2011?

13 **A** Yes.

14 **Q** And do you have a copy of that with you?

15 **A** Yes, I do.

16 **Q** Do you have any changes to make to this
17 rebuttal testimony or the exhibits?

18 **A** No, I do not.

19 **Q** If I asked you the same questions asked in
20 your rebuttal testimony today, would you give the same
21 answers?

22 **A** Yes, I would.

23 **MR. WALLS:** We request that the July 25, 2011,
24 prefiled rebuttal testimony of Mr. Elnitsky be moved in
25 evidence as if it was read in the record today.

1 **CHAIRMAN GRAHAM:** We will move Mr. Elnitsky's
2 July 25th, 2011, prefiled rebuttal testimony into the
3 record as though read today.

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1 ("SMC") and to make recommendations for the continued management and
2 execution of the LNP to the SMC.

3
4 **Q. Did you file direct testimony in this proceeding?**

5 A. Yes, I did.

6
7 **Q. Have you reviewed the Intervenor and Staff Witness Testimony in this
8 Docket?**

9 A. Yes. I reviewed this testimony and I provide rebuttal testimony to the testimony
10 of William R. Jacobs, Jr., Ph.D. ("Jacobs") filed on behalf of the Office of Public
11 Counsel ("OPC"). The testimony filed jointly by Mr. William Coston and Mr.
12 Kevin Carpenter on behalf of the Florida Public Service Commission ("FPSC" or
13 the "Commission") Staff includes no recommendations with respect to the LNP,
14 therefore, no rebuttal testimony to the Commission Staff testimony is required.
15 Mr. Thomas G. Foster will also provide rebuttal testimony to Jacobs' testimony
16 with respect to the LNP on behalf of PEF in this proceeding.

17
18 **II. PURPOSE AND SUMMARY OF REBUTTAL TESTIMONY.**

19 **Q. What is the purpose and summary of your rebuttal testimony?**

20 A. I will first address the issues that must be decided by the Commission in this
21 proceeding and explain that all of these issues are undisputed by any Intervenor or
22 Staff witness in this proceeding. In particular, no witness has filed testimony in
23 this proceeding disputing the prudence of any cost incurred by PEF on the LNP in

1 2010 or the reasonableness of any actual/estimated cost and projected cost that
2 PEF has incurred or expects to incur on the LNP in 2011 and 2012. Further, no
3 witness has filed testimony in this proceeding disputing PEF's analysis of the
4 long-term feasibility of completing the LNP. Finally, no witness has filed
5 testimony in this proceeding disputing the prudence of PEF's LNP project
6 management, contracting, accounting, and cost oversight controls.

7 Next, I will explain that, instead of raising any substantive challenge to
8 PEF's testimony, OPC instead effectively asks the Commission to reconsider and
9 reverse its determination last year that PEF's decision to proceed with the LNP on
10 a slower pace was reasonable. Jacobs admits that the Commission determined
11 last year that PEF demonstrated that PEF intends to build the LNP (Jacobs Test.,
12 p. 18, L. 4-5), and that PEF's decision to proceed with the LNP on a slower pace
13 by extending the partial suspension of the EPC agreement was reasonable, and
14 that PEF is, therefore, entitled to rely on that decision to recover its costs. (Jacobs
15 Test., p. 18, L. 20-23). I testified on direct that PEF's actual/estimated 2011 LNP
16 costs and projected 2012 LNP costs are reasonable and necessary to move the
17 LNP forward on a schedule with the expected in-service dates for Levy Units 1
18 and 2 in 2021 and 2022, respectively. I further testified that PEF was moving
19 forward with the work represented by these costs in 2011 and 2012 with the intent
20 of meeting the current estimated in-service dates for Levy Units 1 and 2 in 2021
21 and 2022. (Elnitsky May 2, 2011 Direct Test., p. 20, L. 4-10). Jacobs cannot and
22 does not dispute this and other PEF evidence that PEF has the present intent to
23 build the LNP in 2021 and 2022.

1 Jacobs, nevertheless, recommends that the Commission deny PEF the
2 recovery of certain reasonable costs for the LNP in 2011 and 2012, not because
3 those costs are unreasonable in amount or because they are not necessary to the
4 project to maintain the current LNP schedule, which Jacobs nowhere asserts in his
5 testimony, but simply because Jacobs speculates that PEF may not intend to build
6 the LNP in the future. This recommendation undermines the Commission's
7 determination last year that PEF's decision to proceed with the LNP is reasonable
8 and is inconsistent with the way cost recovery works under the nuclear cost
9 recovery statute and, for that matter, under the regulatory compact in Florida.

10 Finally, I will address Jacobs' opposition to PEF's proposed 2012 LNP
11 rate management plan that was initially approved by the Commission in Order
12 No. PSC-09-0783-FOF-EI. Mr. Foster provides rebuttal testimony regarding
13 Jacob's mischaracterization of the Order approving the plan and PEF's current
14 proposed rate management plan. I will address Jacob's erroneous speculation that
15 PEF's proposed 2012 rate management plan "may indicate that Progress Energy
16 is not committed to the LNP." (Jacobs Test., p. 20, L. 5-6). Quite the opposite,
17 PEF's proposed 2012 rate management plan reflects PEF's commitment to the
18 LNP because the proposal reduces the customer rate impact in 2013 and 2014
19 when the LNP costs increase due to the contract amendment to end the partial
20 suspension of the project under the EPC agreement and issuance of the full notice
21 to proceed ("FTNP") to commence construction of the Levy units.
22
23

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

2 A. Yes, I am sponsoring the following exhibits to my rebuttal testimony:

- 3 • Exhibit No. ___ (JE-12), the confidential LNP March 2011 Integrated Project
4 Plan (“IPP”);
- 5 • Exhibit No. ___ (JE-13), the confidential LNP April 2010 IPP;
- 6 • Exhibit No. ___ (JE-14), the PEF July 27, 2010 scenario analysis;
- 7 • Exhibit No. ___ (JE-15), selected, relevant discovery requests in the 2010 and
8 2011 nuclear cost recovery clause (“NCRC”) proceedings; and
- 9 • Exhibit No. ___ (JE-16), excerpts of Jacobs’ deposition testimony in Docket
10 No. 090009-EI.

11 Exhibits Nos. ___ (JE-12) through (JE-15) were prepared by me or the Company
12 under my direction and control, or they are documents regularly used by the
13 Company in the normal course of business, and they are true and correct. Exhibit
14 No. ___ (JE-16) is an excerpt of the prior sworn testimony of Jacobs. I have
15 numbered my rebuttal exhibits as if the exhibits filed with my March 1, 2011
16 Direct Testimony (three exhibits, numbered JE1 through JE-3) and May 2, 2011
17 Direct Testimony (eight exhibits, numbered JE-1 through JE-8), were numbered
18 sequentially, which means my first rebuttal exhibit would be Exhibit No. ___ (JE-
19 12, as indicated above.

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1 **III. PEF TESTIMONY UNDISPUTED BY INTERVENORS AND STAFF.**

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

3 A. My understanding is that, pursuant to Section 366.93, Florida Statutes, and Rule
4 25-6.0423, F.A.C., the Commission will determine (1) the prudence of PEF's
5 actual LNP costs for 2010; (2) the reasonableness of PEF's actual/estimated LNP
6 costs for 2011; (3) the reasonableness of PEF's projected LNP costs for 2012; (4)
7 the prudence of PEF's project management, contracting, and oversight controls
8 for 2010; and (5) the prudence of PEF's accounting and cost oversight controls
9 for 2010. The Commission will also review and approve the Company's analysis
10 of the feasibility of completing the nuclear power plants pursuant to Rule 25-
11 6.0423(5)(c)5, F.A.C.

12
13 **Q. Have the Staff and intervenor witnesses asserted in their testimony that**
14 **PEF's actual LNP costs for 2010 are not prudent?**

15 A. No, they have not. The Staff witnesses reviewed the adequacy of the internal
16 controls and management oversight of the LNP to assist the Commission in its
17 assessment of the reasonableness of the Company's cost recovery requests for the
18 LNP. See Staff Test., Exhibit No. ___ (CC-1) at page 1. As I explained above, as
19 a result of this review by Commission Staff of the LNP for 2011, Staff witnesses
20 expressed no recommendations for the LNP.

21 Likewise, Jacobs specifically says in his testimony that he was asked by
22 OPC to conduct a review and evaluation of PEF's requests for authority to collect
23 historical costs associated with the LNP. (Jacobs Test., p. 3, L. 17-22). Nowhere

1 in his testimony, however, does Jacobs identify any historical 2010 LNP cost that
2 PEF seeks to collect that he finds was imprudently incurred. As a result, no Staff
3 or Intervenor witness in their testimony in this proceeding disputes PEF's
4 testimony and other evidence that the actual costs for the LNP in 2010 were
5 prudently incurred.

6
7 **Q. Have the Staff or intervenor witnesses asserted in their testimony that any of**
8 **PEF's actual/estimated 2011 costs and projected 2012 costs for the LNP are**
9 **unreasonable?**

10 A. No. The Staff witnesses and Jacobs do not identify any specific, actual/estimated
11 2011 LNP cost or any projected 2012 LNP cost that is not reasonable. Again,
12 OPC witness Jacobs says he was asked by OPC to conduct a review and
13 evaluation of PEF's requests for authority to collect projected costs associated
14 with the LNP. (Jacobs Test., p. 3, L. 17-22). Jacobs, however, nowhere identifies
15 any actual/estimated 2011 LNP cost or projected 2012 LNP cost that he claims is
16 unreasonable. Jacobs does recommend that the Commission deny PEF's request
17 to recover certain costs from customers in 2011 and 2012, but Jacobs, in essence,
18 is recommending that the Commission defer the recovery of these costs to some
19 period of time after 2012, not that the Commission deny recovery of these costs
20 outright because they are unreasonable. (Jacobs Test., p. 16, L. 21-24, p. 17, L.
21 15-25, p. 18, L. 20-25, p. 19, L. 1-2, p. 21, L. 17-24, p. 22, L. 1-9). Jacobs
22 nowhere asserts in his testimony that these costs were unreasonable because they
23 were not necessary for the LNP under the current LNP schedule or because they

1 were unreasonable in amount. None of the Staff or intervenor witnesses, then,
2 challenge the reasonableness of any of PEF's specific cost estimates for the LNP
3 for 2011 and 2012.
4

5 **Q. Do the Staff or intervenor witnesses assert that PEF's LNP 2010 project**
6 **management, contracting, and oversight controls are unreasonable or**
7 **imprudent?**

8 A. No, they do not.
9

10 **Q. Do the Staff or intervenor witnesses assert that PEF's 2010 LNP accounting**
11 **and cost oversight controls are unreasonable or imprudent?**

12 A. No, they do not.
13

14 **Q. Do the Staff or intervenor witnesses assert that PEF has not demonstrated**
15 **the long-term feasibility of completing the LNP pursuant to Rule 25-**
16 **6.0423(5)(c)(5)?**

17 A. No, they do not.
18

19 **IV. INTERVENOR RECOMMENDATIONS SHOULD BE REJECTED**
20 **BECAUSE THEY ARE CONTRARY TO THE EVIDENCE, THE**
21 **COMMISSION'S ORDER LAST YEAR APPROVING PEF'S APPROACH**
22 **TO THE LNP, AND THE NUCLEAR COST RECOVERY STATUTE AND**
23 **RULE.**

24 **Q. If the intervenor witness does not make any of the claims you have just**
25 **described what does the intervenor witness claim in his testimony?**

1 A. As noted previously, the Staff witnesses make no recommendations to the
2 Commission with respect to the LNP. Jacobs, on the other hand, recommends
3 that the Commission limit PEF's recovery of costs from customers in 2011 and
4 2012 to some unspecified amount that Jacobs asserts is "strictly necessary" to
5 support processing the Combined Operating License Application ("COLA") for
6 the LNP with the Nuclear Regulatory Commission ("NRC"). (Jacobs Test., p. 16,
7 L. 23-25). Jacobs asserts that the recovery of all other 2011 and 2012 LNP costs -
8 - specifically all transmission-related costs, EPC contract amendment and FTNP
9 negotiation costs, and all other preconstruction and construction costs, including
10 presumably long lead equipment ("LLE") costs, necessary to meet the current
11 LNP schedule -- should be "deferred to a later date," presumably after 2012, or
12 determined to be unreasonable "at this time." (Jacobs Test., p. 17, L. 15-25).

13 Jacobs states that he makes these recommendations despite "the
14 Commission's endorsement of the Company's proposed approach in the 2010
15 NCRC hearing." (Jacobs Test., p. 17, L. 15-16). Indeed, Jacobs admits PEF is
16 entitled to recover all costs PEF reasonably spends in reliance on the
17 Commission's approval of the Company's decision to proceed with the LNP on a
18 slower pace last year - what Jacobs calls the "COL-Receipt Approach." (Jacobs
19 Test., p. 18, L. 20-24, 25). He testifies that he is not saying that PEF is not
20 entitled to recover such costs in reasonable reliance on the Commission's decision
21 as long as PEF demonstrates by the "totality of the facts and circumstances" that
22 PEF intends to build the LNP by 2021 and 2022. (Jacobs Test., p. 19, L. 1-2).

23

1 **Q. Does Jacobs testify that the “totality of the facts and circumstances”**
2 **demonstrate that PEF does not presently intend to build the LNP on the**
3 **current schedule with in-service dates for Levy Units 1 and 2 in 2021 and**
4 **2022?**

5 **A.** No. Jacobs expresses his own subjective “significant doubt” about PEF’s ultimate
6 completion of the LNP or completion of the LNP by the current, scheduled in-
7 service dates for Levy Units 1 and 2 based on his speculation about PEF’s intent
8 and the current enterprise risks associated with the LNP (Jacobs’ Test. p. 16, L.
9 24-25, p. 17, L. 1-7), but he nowhere asserts an opinion that PEF does not
10 presently intend to build the LNP on the current schedule. Jacobs cannot express
11 that opinion because it is not correct.

12 Jacobs acknowledges that I repeatedly testified in my deposition that it is
13 PEF’s intent to complete the LNP by 2021 and 2022 as currently planned, i.e. the
14 “program of record” for the LNP. (Jacobs Test., p. 11, L. 10-11). He simply
15 chooses to ignore this testimony and the undisputed evidence that the “program of
16 record” is established by SMC approval of the revised LNP Integrated Project
17 Plan (“IPP”) in March 2011. SMC approval of this IPP approves spending for the
18 LNP in 2011 and 2012 based on the current LNP project schedule with in-service
19 dates for Levy Units 1 and 2 in 2021 and 2022, respectively. PEF’s requests for
20 cost recovery in this docket for its actual/estimated 2011 and projected 2012 LNP
21 costs are based on this IPP, as I explained above and in my direct testimony. See
22 Elnitsky May 2, 2011 Direct Test., p. 12, L. 21-23, pp. 13-19, p. 20, L. 1-10. A
23 copy of this IPP is attached to my rebuttal testimony as Exhibit No. __ (JE-12).

1 PEF's current IPP for the LNP reflects the Company's commitment to the
2 LNP consistent with the Company's decision in March 2010 to proceed with the
3 LNP on a slower pace by executing an amendment to the EPC agreement to
4 continue the partial suspension and focusing near-term work on obtaining the
5 Combined Operating License ("COL") for the LNP. This decision is reflected in
6 the April 2010 IPP approved by SMC and attached as Exhibit No. ___ (JE-13) to
7 my rebuttal testimony. The Commission determined that this decision was
8 reasonable in Order No. PSC-11-0095-FOF-EI in Docket No. 100009-EI. The
9 Company confirmed its commitment to the implementation of this decision for
10 the LNP when it approved the current LNP IPP in March 2011.

11 Jacobs cannot and does not dispute this testimony and evidence of PEF's
12 commitment to the LNP and its present intent to build the LNP on the current
13 schedule with in-service dates for Levy Units 1 and 2 in 2021 and 2022. As a
14 result, there is no reasonable basis for Jacobs' "significant doubt," "concerns,"
15 and opinion that PEF's "internal resolve to complete the LNP appears to be
16 weakening" – or however else he characterizes it in his testimony – because the
17 Company has committed to proceed with building Levy Units 1 and 2 with the
18 approval of the current IPP for the LNP consistent with the April 2010 decision
19 that the Commission ruled was reasonable. The Company is incurring costs in
20 2011 and 2012 to implement that decision. See, e.g., Elnitsky May 2, 2011 Direct
21 Test., p. 5, L. 12-23, p. 6.
22

1 Q. Are Jacobs' recommendations consistent with the Commission's ruling last
2 year that PEF's decision to proceed with the LNP on a slower pace is
3 reasonable?

4 A. No, they are not. Jacobs may claim that he is not saying that PEF is not entitled to
5 recover costs reasonably incurred in reliance on that Commission ruling (Jacobs
6 Test., p. 18, L. 20-23), but that is exactly what he is doing with his
7 recommendations. Despite his statements to the contrary, Jacobs recommends
8 that PEF should not recover from customers some of the costs that PEF must
9 incur in reliance on the Commission ruling approving PEF's approach to the LNP
10 to meet the scheduled in-service dates for the Levy units under that Commission-
11 approved approach.

12 PEF is entitled to recover costs reasonably incurred in reliance on the
13 Commission's approval of PEF's decision to proceed with the LNP on a slower
14 pace – just as Jacobs admits. PEF requests cost recovery in 2011 and 2012 for
15 costs reasonably incurred by PEF to implement that decision and PEF is entitled
16 to recover those costs from customers.

17 Notably, Jacobs did not make this argument last year when the issues of
18 the reasonableness of PEF's decision to proceed with the LNP on a slower pace
19 and the reasonableness of PEF's projected 2011 costs were before the
20 Commission. The Commission determined that PEF's decision was reasonable
21 and that PEF's then projected 2011 LNP costs were reasonable. Now, for the first
22 time, Jacobs asserts that the Commission should defer some of these 2011 LNP

1 costs and, in addition, some 2012 projected LNP costs necessarily incurred to
2 implement the decision approved as reasonable by the Commission.

3 In his testimony this year, Jacobs appears to be concerned that customers
4 are responsible for the prudent costs incurred through 2012 on the LNP whether
5 or not the LNP enters commercial service. He complains that customers will be
6 “on the hook” to pay that and more for the LNP because the Commission must
7 make prudence determinations. (Jacobs Test., p. 19, L. 3-9). For this reason, he
8 claims the Commission should be “flexible” and “protect customers from
9 increased costs in times of increased uncertainty.” (Id.). In other words, Jacobs
10 asserts the Commission should ignore what the statute and rule provide and deny
11 cost recovery for reasonable and prudent costs incurred on the LNP. This is the
12 exact same argument that Jacobs and intervenors asserted last year and that the
13 Commission has rightly rejected time and time again.

14 The nuclear cost recovery statute provides that PEF is entitled to recover
15 its prudently incurred costs on the LNP. The nuclear cost recovery rule provides
16 for the recovery of reasonable actual/estimated and projected costs in advance of
17 the true-up of those costs estimates when they are reviewed for prudence.
18 Nothing in the nuclear cost recovery statute or rule provides that the Commission
19 can deviate from permitting the recovery of reasonable estimated and projected
20 costs and the recovery of prudently incurred costs on a nuclear power plant
21 project.
22

1 Q. Using Jacobs' term, are customers "on the hook" for costs under the nuclear
2 cost recovery statute that they otherwise would not have to pay as customers
3 of a regulated electric utility?

4 A. No. The enactment of the nuclear cost recovery statute and rule in Florida does
5 not mean that customers pay costs that they otherwise would not be obligated to
6 pay if the statute and rule did not exist. Customers are always obligated to pay the
7 reasonable and prudent costs incurred by the electric utility to provide them
8 reliable electric service. As I explained in the hearing last year, whether the
9 Company is putting in a new transmission line, substation, or power plant, the
10 costs to provide those assets necessary to provide customers with service are paid
11 by the customers that receive that service. In return, the Company is obligated to
12 provide them electric service at rates set by the Commission based on a
13 reasonable return on the Company's investment. The nuclear cost recovery
14 statute and rule simply change the timing of the recovery of certain reasonable
15 and prudent costs incurred for nuclear power plant projects. They do not change
16 the fundamental regulatory compact between the regulated electric utility and its
17 customers that requires the utility to provide customers with reliable, around-the-
18 clock electric service and, in return, requires the customers to pay the reasonable
19 and prudent costs to provide that service, including a reasonable return on the
20 utility's investment.

21 This regulatory compact exists even if the utility cancels the project. If the
22 utility prudently cancels a nuclear power plant project, the nuclear cost recovery
23 statute and rule provide that the utility is entitled to recover its prudently incurred

1 costs from customers. This same result occurs on other, non-nuclear construction
2 projects however. If the utility prudently cancels another power plant project or
3 other utility project, the utility is still entitled to recover from customers the
4 prudently incurred costs on that project prior to and as a result of the project
5 cancellation. The recovery of such prudently incurred cancellation costs on
6 projects other than a nuclear power plant project are simply addressed as a matter
7 of the utility's rate base, and may or may not require an adjustment in the utility's
8 rates, while the recovery of prudently incurred cancellation costs on a nuclear
9 power plant project are addressed in the nuclear cost recovery clause docket. The
10 principle, however, is the same; the utility is entitled to recover such prudently
11 incurred costs from customers because that is the nature of the regulated utility
12 business of providing reliable electric service to customers. These points are
13 relevant because every year, Jacobs continues to base his arguments and
14 recommendations on his apparent dislike of the nuclear cost recovery statute and
15 rule notwithstanding the fact that the statute and rule did nothing to change the
16 fundamental principles of regulatory cost recovery.

17
18 **Q. What about Jacobs' discussion of a number of factors that he says affects**
19 **PEF's resolve to complete the LNP, can they be considered a reason for the**
20 **Commission to deny cost recovery under the nuclear cost recovery statute?**

21 **A.** No, they cannot. Even Jacobs does not go this far in his recommendations based
22 on his discussion of these factors. To explain further, the factors that Jacobs
23 discusses in his testimony do not demonstrate that PEF does not presently intend

1 to build the LNP on the current schedule and Jacobs is careful not to draw that
2 conclusion from them. These factors also do not demonstrate that any 2010 cost
3 incurred on the LNP was imprudent, nor do they demonstrate that the
4 actual/estimated 2011 and projected 2012 LNP costs are unreasonable. Again,
5 Jacobs does not draw those conclusions from his discussion of the identified
6 factors. Jacobs further does not assert that PEF has failed to demonstrate that the
7 LNP is feasible, despite the subjective doubts he claims to have about completion
8 of the LNP because of the identified factors. He nowhere asserts in his testimony
9 that PEF should terminate the EPC agreement and cancel the LNP project. In
10 fact, because Jacobs recommends that the Company should continue to recover
11 from customers the costs necessary to obtain the LNP COL from the NRC, Jacobs
12 agrees that the Company should not cancel the LNP, but instead should proceed
13 with the project.

14 In his testimony, Jacobs discusses the following as factors that concern
15 him: (1) the LNP management team, (2) the feasibility/cost effectiveness of the
16 LNP, (3) the increased enterprise risks according to Jacobs' view, (4) the lack of
17 joint owners, (5) the public support for the LNP and new nuclear development,
18 and (6) the Company's so-called planning scenarios. Jacobs further questions the
19 benefit of the proposed merger between Duke Energy and Progress Energy to the
20 LNP. Based on Jacobs' mischaracterization or lack of understanding about a
21 number of these factors that concern him, he concludes that these factors are
22 "troubling" because he perceives an "overall weakening" in PEF's resolve to
23 build the LNP on the current timeline, although, again, Jacobs is careful not to say

1 that PEF does not intend to build the LNP on the current project schedule.

2 (Jacobs Test., p. 18, L. 1-9).

3 Before turning to address each of these factors that concern Jacobs, it
4 bears emphasis that the factors Jacobs discusses in his testimony are not
5 revelations that Jacobs has discovered or made about the LNP. Instead, most of
6 the factors Jacobs discusses in his testimony are the very same enterprise risks or
7 other factors that I discuss in my direct testimony, and that we have discussed
8 now for several years. In fact, Jacobs quotes (sometimes incompletely) what I say
9 about them when I explain the Company's qualitative feasibility analysis this year
10 for the LNP.

11
12 **(i) Enterprise Risks.**

13 **Q. What factor that apparently caused Jacobs concern will you address first?**

14 **A.** I will first address Jacobs' belief that enterprise risks have increased, although as I
15 note above, he does not believe the enterprise risks have increased such that PEF
16 should cancel the LNP. The Company likewise concluded that the LNP should
17 not be cancelled at this time. In the Company's assessment of the enterprise risks
18 on the LNP (see Elnitsky May 2, 2011 Direct Test., pp. 21-53), we determined
19 that the LNP is still feasible from a qualitative and quantitative perspective. As a
20 result, we determined that the current LNP feasibility analysis confirmed the
21 Company's decision last year to proceed with the LNP on a slower pace that the
22 Commission approved in Order No. PSC-11-0095-FOF-EI. (Elnitsky May 2,
23 2011 Direct Test., p. 48, L. 12-21).

IN RE: NUCLEAR COST RECOVERY CLAUSE**BY PROGRESS ENERGY FLORIDA****FPSC DOCKET NO. 110009-EI****REBUTTAL TESTIMONY OF JOHN ELNITSKY**1 **I. INTRODUCTION.**2 **Q. Please state your name and business address.**3 A. My name is John Elnitsky. My business address is 299 1st Avenue North, St.
4 Petersburg, Florida.

5

6 **Q. Are you the Progress Energy officer responsible for the Levy Nuclear**
7 **Project?**8 A. Yes. I am the Vice President of New Generation Programs and Projects
9 ("NGPP") for Progress Energy, Inc. In this position I am the officer responsible
10 to Progress Energy Florida, Inc. ("PEF" or the "Company") for all aspects of the
11 LNP, including engineering, licensing, transmission and the direct management of
12 the Engineering, Procurement, and Construction ("EPC") agreement with
13 Westinghouse and Shaw, Stone, & Webster (the "Consortium"). Mr. Jeffrey
14 Lyash is the LNP Executive Sponsor at the senior management level of Progress
15 Energy. He has responsibility for LNP governance and execution oversight, but I
16 am the officer with direct responsibility for management of the LNP. It is my
17 responsibility to report on the LNP to the Senior Management Committee

1 (ii) The so-called planning scenarios.

2 Q. You mentioned that Jacobs mischaracterizes or does not understand some of
3 the factors that he discusses in his testimony, can you explain what you
4 mean?

5 A. Yes. I'll start with the so-called "planning scenarios" that Jacobs discusses at
6 length in his testimony and that he attaches portions of as an incomplete exhibit to
7 his testimony. These scenario analyses were prepared for both PEF and Progress
8 Energy Carolinas, Inc. ("PEC"), and discussed by senior managers individually
9 and for the combined operations of both PEF and PEC, as part of an ongoing
10 effort to begin thinking strategically about hypothetical business environment
11 scenarios that could conceivably occur in the future, however unlikely they may
12 be to occur. Therefore, these scenario analyses were not part of the PEF and PEC
13 resource and major project planning efforts.

14 Each year, PEF for example, engages in resource planning and planning
15 for the LNP that accounts for existing and likely future business and
16 environmental factors that affect or can affect the Company's resource planning
17 decisions, including the LNP. This resource and project planning effort is
18 reflected in the Company's Ten Year Site Plan ("TYSP") process that culminates
19 in the annual TYSP filed with the Commission by the Company in April each
20 year and the qualitative and quantitative feasibility analysis for the LNP filed with
21 the Commission in May each year. Both of these efforts account for existing
22 business and environmental conditions, such as actual Company sales, credit
23 agency reports, LNP costs, and likely future business and environmental

1 conditions, such as fuel and carbon cost forecasts and projected LNP costs, among
2 others, as explained more fully for the LNP in the qualitative and quantitative
3 feasibility analysis included in my May 2, 2011 direct testimony. The scenario
4 analyses referenced in Jacobs' testimony were undertaken by the Company to
5 specifically think about possible, however unlikely, future business and
6 environmental conditions, and what the impacts might be to the companies if the
7 unlikely conditions in fact occurred in the future.

8
9 **Q. Why did the Company engage in these scenario analyses?**

10 **A.** In these scenario analyses the Company was preparing for the unexpected by
11 strategically thinking about the future and what the Company might do if the
12 unexpected occurred. We were intentionally thinking "outside the box" in these
13 scenario analyses. It is important for the Company to think strategically about
14 what might occur no matter how unlikely because we are all aware that
15 sometimes the unexpected does in fact occur and it is best to be prepared for that
16 unexpected event to the extent possible. I also repeatedly explained in my
17 deposition that these scenario analyses, however, were not part of the Company's
18 annual resource planning or planning for the LNP.

19 I am responsible for the LNP plan and that plan is represented in the
20 current IPP for the project attached as Exhibit No. ____ (JE-12) to my rebuttal
21 testimony. This is the current plan or "program of record" as I refer to it for the
22 LNP that I repeatedly mentioned in my deposition and that serves as the base line
23 in the scenario analyses Jacobs references. (See, e.g., Exhibit WRJ(PEF)-5, p. 2

1 of 34, referencing the “March 2010 scenario” as a “key assumption” and others as
2 “sensitivity” analyses to that March 2010 scenario). Notably, these scenario
3 analyses were prepared between mid-June to August 2010, after the Company
4 made its decision to continue the LNP on a slower pace that is reflected in the
5 April 2010 IPP attached as Exhibit No. __ (JE-13) to my rebuttal testimony, but
6 before the Company approved the current IPP for the LNP in March 2011 that is
7 attached as Exhibit No. ___ (JE-12) to my rebuttal testimony. As reflected in the
8 current LNP IPP, the decision from the April 2010 IPP to proceed with the LNP
9 on a slower pace with the intent to build Levy Units 1 and 2 in 2021 and 2022
10 remains unchanged. As I explained in my direct testimony in May, the Company
11 is implementing that decision.

12
13 **Q. How does Jacobs characterize these scenario analyses in his testimony?**

14 **A.** Jacobs attempts to use these scenario analyses documents as evidence of some
15 sort of mysterious and clandestine plot to forego the LNP in an effort to support
16 his view that PEF may not ultimately intend to go forward with the LNP. For
17 example, he picks one of the scenarios and takes the position that this particular
18 possible but unlikely scenario is in fact more likely to occur than the other,
19 possible but unlikely scenarios that were identified in these documents. He infers
20 this despite the fact that there was no determination in the scenario analyses or
21 anywhere else by the Company that any of these scenarios were likely to occur or
22 more likely to occur than other scenarios. (Jacobs Test., p. 15, L. 15-25). Jacobs
23 also goes so far as to say that these scenario analyses were prepared and reviewed

1 because of the Company's alleged recognition that the cost effectiveness of the
2 LNP was trending unfavorably in the Company's 2011 cumulative present value
3 revenue requirements ("CPVRR"), quantitative feasibility analysis compared to
4 the Company's 2010 CPVRR analysis. (Jacobs Test., p. 12, L. 10-21). Jacobs
5 concludes that these scenario analyses documents demonstrate that PEF is
6 considering a change in the current LNP project schedule. (Id., p. 15, L. 1-4, 12-
7 15, p. 14, L. 21-24).

8 I am surprised that Jacobs would characterize these scenario analyses as a
9 "serious[] stud[y of] the possibility of further delaying the LNP," and "realistic
10 planning" about what to do "in the increasingly likely event that the LNP project
11 is not pursued on the current schedule," because Jacobs heard me explain what
12 these scenario analyses are for several hours in my deposition this year. (Jacobs
13 Direct Test., p. 14, L. 21-24, p. 15, L. 1-4). Jacobs, of course, did not prepare
14 these scenario analysis documents, does not know why they were prepared, and
15 was not present at the senior management meetings and retreat where they were
16 discussed. I was present, I participated in the discussions regarding these
17 documents, and I know why they were prepared. As I have explained, these
18 documents were not used to make any planning decision for the LNP in either
19 2010 or in 2011. Those decisions are reflected in the 2010 IPP and the 2011 IPP
20 for the LNP that I have included as exhibits to my rebuttal testimony.

21 Jacobs further is flat wrong and mischaracterizes these scenario analyses
22 when he attempts to link them to what he calls the "declining cost effectiveness"
23 of the Company's current CPVRR quantitative feasibility analysis. (Jacobs Direct

1 Test., p. 12, L. 17-21). Nothing could be further from the truth. There was no
2 link between the Company's current CPVRR quantitative feasibility analysis and
3 the scenario analyses. You will find no mention of the Company's 2011
4 quantitative CPVRR feasibility analysis for the LNP in the scenario analysis
5 documents. One obvious reason for this -- that Jacobs fails to inform the
6 Commission -- is that the current quantitative feasibility analysis was not prepared
7 until April 2011, prior to filing the Company's May 2011 testimony in this
8 proceeding. This quantitative feasibility analysis was, therefore, prepared months
9 after the scenario analyses were prepared and discussed in June-August 2010.
10 The Company could not and did not know the results of the 2011 CPVRR
11 feasibility analysis when it prepared and discussed the scenario analyses
12 documents. Jacobs' statement that the claimed decline in the cost effectiveness of
13 the LNP based on a comparison of the 2011 CPVRR analysis to the 2010 CPVRR
14 analysis was a factor in the development and review of the scenario analyses is
15 false and misleading. (Jacobs Test., p. 12, L. 6-21).

16
17 **Q. Did the Company plan to make a different decision with respect to the LNP**
18 **as a result of the routine strategic planning sessions and scenario analyses?**

19 **A.** No, it did not. That was not the purpose of the scenario analyses. As I explained
20 above, the scenario analyses were the spring board for discussions about the
21 Company's responses to unlikely or unexpected future events that dramatically
22 altered the business environment from what the Company expected or thought it
23 might be. This was made clear in one of the scenario analysis documents that

1 Jacobs omits from his exhibits to his testimony. I have attached as Exhibit No. ___
2 (JE-14) to my rebuttal testimony the precursor to the scenario analysis document
3 Jacobs attached as an exhibit to his testimony. This PEF scenario analysis dated
4 July 27, 2010 makes clear at page 6 that one of the considerations for the
5 Company "to keep in mind" was that "we're not 'picking' a scenario." See
6 Exhibit No. ___ (JE-14), p. 6 of 39, attached to my rebuttal testimony (emphasis
7 added). In other words, the Company was not making any resource planning or
8 project decision based on the scenario analyses. This was precisely because these
9 scenario analyses were based on events or circumstances that the Company did
10 not expect and believed were unlikely to occur.

11
12 **Q. Do you agree with Jacobs' statement that the Company did not reveal these**
13 **scenario analyses to the Commission until after the 2010 hearing?**

14 **A.** No, I do not, because the implication is that they are somehow relevant to the
15 proceeding or asked for last year when that is not the case. If the Company
16 believed that it was obligated to provide these scenario analyses in response to
17 discovery requests in the proceeding last year or that they were in any way
18 relevant to the proceeding the Company would have provided them. I have
19 included as Exhibit No. ___ (JE-15) to my rebuttal testimony, a composite exhibit
20 of the discovery requests last year and this year to demonstrate this point. Last
21 year, the requests for SMC presentations were drafted in the context of the
22 Company's decision to continue or cancel the LNP. See requests 1, 9, and 10 for
23 the 2010 NCRC discovery in Exhibit No. ___ (JE-15). The scenario analyses

1 were not prepared until June-August 2010 – well after the decision was made to
2 continue the LNP – and as I explained above, they had nothing to do with that
3 decision. These scenario analyses were not prepared by my project team for the
4 LNP and they were not presented to SMC for any decision with respect to the
5 LNP. In fact, as I pointed out, the scenario analyses on their face made clear that
6 no decision would be made based on the discussions about the scenario analyses
7 and no decision with respect to the LNP was in fact made based on these scenario
8 analyses. See Exhibit No. ____ (JE-14), p. 6 of 39, attached to my rebuttal
9 testimony.

10 We never considered these scenario analyses relevant to the LNP decision
11 precisely because they were not relevant to that decision or to any SMC decision
12 regarding the LNP. This year, however, the Company was asked a much broader
13 question, requesting all documents including strategic plans or similarly named or
14 functionally equivalent documents provided to SMC which include options for the
15 LNP in service dates. See request 29 for the 2011 NCRC discovery in Exhibit
16 No. ____ (JE-15) to my rebuttal testimony. The scenario analyses were prepared
17 by the PEF strategic planning group and they did in fact include optional LNP in
18 service dates based on various unlikely and unexpected future business or
19 environmental circumstances as I explained above. Accordingly, we provided the
20 documents in response to this specific question in the discovery even though they
21 are irrelevant to any decision that was made or that will be made on the LNP.
22
23

1 (iii) **The feasibility/cost effectiveness of the LNP.**

2 **Q. You mentioned Jacobs' claim that the current CPVRR analysis for the LNP**
3 **demonstrates a declining cost-effectiveness for the LNP, do you agree with**
4 **that assessment?**

5 **A.** No. Jacobs places too much emphasis on the year-to-year changes in the annual
6 CPVRR analysis performed for the LNP. This is contrary to the opinion Jacobs
7 expressed in the 2009 NCRC proceeding in Docket No. 090009-EI. There, 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. He agreed that no
12 utility would evaluate a long term, base load nuclear power plant based on year-
13 to-year changes in forecasts because, if the utility did use the annual forecasts to
14 evaluate a long-term base load project, the utility would never build the nuclear
15 power plant. See Exhibit No. ___ (JE-16) to my rebuttal testimony. Jacobs was
16 correct in his deposition in Docket No. 090009-EI, but he has apparently changed
17 his opinion in this docket for some unexplained reason.

18 It is correct that the current LNP CPVRR analysis is different from the
19 LNP CPVRR analysis in 2010, but that CPVRR analysis in 2010 was also
20 different from the CPVRR analysis in the 2009 NCRC docket and the CPVRR
21 analysis in the 2008 need determination docket for the LNP, Docket No. 080148-
22 EI. The current LNP CPVRR analysis still demonstrates that the LNP is feasible
23 in more cases than not – a point which Jacobs does not dispute – similar to but not

1 exactly the same as the CPVRR analysis that the Commission determined
2 demonstrated the LNP was cost effective in the 2008 need determination docket.
3 See Order No. PSC-08-0518-FOF-EI in Docket No. 080148-EI. We fully expect
4 that the CPVRR analysis for the LNP in 2012 will be different from the 2011
5 CPVRR analysis and all prior CPVRR analyses.

6 Annual changes in the CPVRR analyses are expected because there are
7 annual changes to the inputs in the CPVRR modeling analysis, such as changes in
8 the fuel forecasts, costs of resources, and load forecasts, to name a few. That is
9 why we have consistently maintained that the CPVRR analysis should not be
10 considered a litmus test for the LNP. As I explained in my May 2, 2011 direct
11 testimony, the Company continues to believe that the long-term projections upon
12 which the CPVRR analysis are based on are necessarily uncertain and subject to
13 change from year-to-year. That is why this analysis cannot be considered the sole
14 basis for a decision to proceed or not with the project. It is simply one factor
15 among many factors that must be considered in making that decision. (Elnitsky
16 May 2, 2011 Direct Test., p. 52, L. 19-23, p. 53, L. 1-4). The Commission agreed
17 that the feasibility of a long term project like the LNP cannot be made on instant
18 circumstances reflected in the annual CPVRR analyses. See Order No. PSC-09-
19 0783-FOF-EI, p. 32, Docket No. 090009-EI. The Commission pointed out that
20 the annual economic analysis should be used to track and evaluate trends, not
21 make the ultimate feasibility decision apart from a consideration of all other
22 relevant factors. Id. That is exactly the way the Company uses the CPVRR
23 analysis.

1 The Company identified an unfavorable trend in the fuel forecasts and
2 carbon costs this year from last year for the reasons that I explained in my May 2,
3 2011 Direct Testimony. The Company will continue to track and evaluate these
4 forecast factors to see if the unfavorable trends represent fundamental rather than
5 temporal changes in the forecast factors. That has not occurred yet, a one to two-
6 year trend is not a fundamental change, but it may still occur. If it does, the
7 Company will consider that factor in its annual quantitative and qualitative
8 feasibility analysis along with all other factors, just as the Commission
9 contemplates the Company will do to make a decision about the LNP.
10

11 **(iv) The LNP management team.**

12 **Q. You mentioned that there were other mischaracterizations or**
13 **misunderstandings in Jacobs' testimony, can you explain what they are?**

14 **A.** Yes. Jacobs points to the fact that Mr. Lyash is not providing testimony in the
15 NCRC proceeding this year as an indication that management attention is being
16 diverted from the LNP and that PEF's resolve to complete the LNP "appears" to
17 be weakening. (Jacobs Direct Test., p. 11, L. 11-18). Mr. Lyash did not provide
18 direct testimony in the NCRC proceeding this year because there is no reason for
19 him to do so. Mr. Lyash provided testimony last year because the SMC and
20 Progress Energy Board made an important decision to continue with the LNP
21 rather than cancel the project. The reasonableness of that decision was directly at
22 issue in the NCRC proceeding last year and the Commission determined, based

1 on the evidence, that the Company's decision was reasonable in Order No. PSC-
2 11-0095-FOF-EI.

3 As I explained in my May 2, 2011 direct testimony, the Company is
4 currently proceeding with the work on the LNP necessary to implement that
5 decision. I am responsible for implementing the LNP work consistent with that
6 Company decision in accordance with the current expected in service dates for
7 Levy Units 1 and 2 in 2021 and 2022. Accordingly, I have provided direct
8 testimony in this proceeding to explain the Company's implementation of that
9 decision.

10 When the Company faces another decision on the LNP that requires senior
11 management and Board approval, Mr. Lyash likely will again provide testimony
12 explaining that decision and the reasons for it to the Commission. Mr. Lyash is
13 still the Levy Program Executive Sponsor with responsibility for the LNP
14 governance and execution oversight. Mr. Lyash is still a member of the SMC and
15 he will be responsible for any presentations to the Board for the LNP as the Levy
16 Program Executive Sponsor. Accordingly, when the Company makes another
17 major decision with respect to the LNP Mr. Lyash likely will provide testimony
18 before the Commission in the NCRC proceeding to explain that decision. In the
19 meantime, there is no need for Mr. Lyash to provide testimony in the current
20 NCRC proceeding because we are implementing the decision the Company made
21 last year to continue with the LNP on a slower pace rather than cancel the project.

22 Jacobs also does not understand the LNP staffing when he draws
23 conclusions about my role and Ms. Hardison's role on the LNP. Let me be clear

1 that the LNP has always been part of the Company's management of all of its
2 major new projects. Previously the LNP was under the Nuclear Plant
3 Development ("NPD") organization and now it is under the NGPP organization,
4 but it was never its own, stand-alone department, especially in these early stages
5 of the project's development. As a result, the leaders of the NPD and later the
6 NGPP, which include me, always had responsibilities for projects other than just
7 the LNP. That will likely remain the case in the early stages of the LNP project.
8 Additionally, while Ms. Hardison has assumed another role in the Company, her
9 position on the LNP project has been filled by another Progress employee. Ms.
10 Hardison retained responsibility for the LNP during the transition between her
11 leaving this position and her replacement coming up to speed on the LNP.
12 Accordingly, Ms. Hardison's role on the LNP has been assumed by another
13 individual, it has not been divided up with Ms. Hardison's new responsibilities.

14 In general, however, if Jacobs is trying to make the point that the staffing
15 of the LNP has leveled off that should not be surprising with the Company's
16 decision to proceed with the LNP on a slower pace. The staffing levels for the
17 LNP will increase when the Company terminates the current, extended partial
18 suspension of the project and proceeds with the current plan to build Levy Units 1
19 and 2 in 2021 and 2022. As I explained in my May 2, 2011 direct testimony, that
20 decision will be made in the next year or two as the Company prepares for and
21 negotiates an amendment to the EPC agreement to end the partial suspension and
22 issue the FTNP.

23

1 (v) **Joint Owners.**

2 **Q. What other misunderstandings or mischaracterizations did you identify in**
3 **Jacobs' testimony?**

4 **A.** I also take issue with Jacobs' characterization of the Company's position with
5 respect to joint owners. The Company has maintained contact with the potential
6 joint owners when there was a reason to have discussions with them. Jacobs
7 ignores the fact that most of the factors he claims demonstrates that joint
8 ownership participation in the LNP is not foreseeable were factors that were at
9 issue last year in the NCRC proceeding when the reasonableness of the
10 Company's decision to proceed with the LNP rather than cancel it was decided by
11 the Commission. (Jacobs Direct. Test., p. 13, L. 17-24). The joint owners were
12 well aware of this proceeding and this pending issue before the Commission.
13 Until the Commission determined that the Company's decision was reasonable,
14 there was no reason to discuss potential joint ownership with the potential joint
15 owners. After the Commission determined that the Company's decision to
16 proceed with the LNP was reasonable, the Company met with the joint owners. I
17 was present at these meetings, and I heard what the joint owners had to say,
18 Jacobs was not present and he therefore has no basis to opine on what interest the
19 potential joint owners do or do not have in the LNP. I can say that none of the
20 factors identified by Jacobs in his testimony were identified by the potential joint
21 owners as impediments to their ultimate participation in joint ownership in the
22 LNP. The potential joint owners continue to express their interest in joint
23 ownership in the LNP at the appropriate time.

1 (vi). **Public Support for the LNP and new nuclear projects.**

2 **Q. What about Jacobs' belief that there is diminished public support, do you**
3 **agree with his concern that this represents a lack of resolve for the LNP?**

4 **A.** No. I believe Jacobs' claimed assessment of what he calls the diminished public
5 support reflects a mischaracterization or misunderstanding of what I said in my
6 direct testimony. The Company evaluated the Fukushima incident and AP1000
7 Design issues as part of its qualitative assessment of the enterprise risks facing the
8 LNP. See Elnitsky May 2, 2011 Direct Test., p. 10, L. 16-23, p. 11, L. 1-3, 15-23,
9 p. 12, L. 1-19, p. 23, L. 14-23, p. 24-25, p. 26, L. 1-15. I did not say that these
10 enterprise risks diminished our resolve to proceed with the LNP on the current
11 program of record identified in the current LNP IPP attached as Exhibit No. ____
12 (JE-12) to my rebuttal testimony. They do not. Neither do the alleged Crystal
13 River Unit 3 ("CR3") publicity or the recent flooding at the Ft. Calhoun nuclear
14 power plant that Jacobs mentions. (Jacobs Test., p. 14, L. 10-13, L. 17-20).
15 While some of these enterprise risks may result in additional delays or costs
16 associated with the AP1000 design document review by the NRC or the LNP
17 COLA review, as I explained in my direct testimony, none of them are a reason at
18 this time for the Company to determine that the overall qualitative analysis of
19 enterprise risks favors a change in the Company's approach to the LNP.

1 (vii) **The Proposed Merger.**

2 **Q. Jacobs takes issue with your assessment that the proposed merger with Duke**
3 **Energy is a positive or favorable trend in the enterprise risks for the project.**
4 **Do you agree with him?**

5 **A.** No. I agree that the merger is not yet consummated, a point I made in my direct
6 testimony, but I disagree that this means the potential merger is not a favorable or
7 positive trend for the LNP. Jacobs acknowledges that the potential merger may
8 improve PEF's access to capital (Jacobs Test., p. 16, L. 5-8), which is the very
9 reason the credit rating agencies have expressed their views that the potential
10 merger is in fact a positive development for PEF, and the reason I explained this
11 was a favorable trend for the LNP. See Elnitsky May 2, 2011 Direct Test.,
12 Exhibit No. __ (JE-5). There is, therefore, no reason to speculate about future
13 "overt signals" from the credit rating agencies regarding the LNP and the
14 proposed merger as Jacobs does. (Jacobs Test., p. 16, L. 13-19). The credit rating
15 agencies are well aware of the Company's LNP and they have issued overt signals
16 that the proposed merger is a favorable development for PEF. See Elnitsky May
17 2, 2011 Direct Test., Exhibit No. __ (JE-5).

18
19 **V. PEF'S PROPOSED RATE MANAGEMENT PLAN IS APPROPRIATE**
20 **BECAUSE OF THE CURRENT COMPANY PLAN TO COMPLETE THE**
21 **LNP BY 2021 AND 2022.**

22 **Q. Jacobs objects to the Company's proposed rate management plan for the**
23 **LNP. Do you have any response to his objections?**

24 **A.** Yes. Mr. Foster will address Jacobs' incorrect characterization of the Company's
25 proposed rate management plan and the Commission's prior order approving that

1 plan. However, I wanted to address Jacobs' rank and incorrect speculation that
2 the Company's proposal is an indication that the Company is not committed to the
3 LNP. First, the exact opposite is true; the Company's proposal is an indication of
4 the Company's commitment to build the Levy Units on the current planned
5 schedule with in service dates for Levy Units 1 and 2 in 2021 and 2022. PEF
6 proposes its current rate management plan to reduce the customer rate impact due
7 to the LNP in 2013 and 2014 when the Company plans to increase spending on
8 the LNP under the current plan to meet the 2021 and 2022 scheduled in-service
9 dates for Levy Units 1 and 2.

10 Second, PEF is entitled to recover the costs under the LNP rate
11 management plan no matter what decision the Commission makes with respect to
12 the Company's proposal. These prudent costs do not represent "dollars remaining
13 to be recovered" in the sense that Jacobs apparently uses these words because
14 they are not subject to disallowance no matter what decision the Company makes
15 in the future with respect to the LNP. (Jacobs Test., p. 20, L. 7-9). These costs
16 were determined prudent by the Commission and, therefore, PEF is entitled to
17 recover them from customers, whether or not PEF in the future cancels the LNP
18 or completes the LNP.

19
20 **VI. CONCLUSION.**

21 **Q. What should the Commission determine in this proceeding?**

22 **A.** The Commission should determine the issues that must be decided by the
23 Commission in this proceeding. They are: (1) whether PEF's 2010 LNP costs are

1 prudent; (2) whether PEF's 2010 project management, contracting and oversight
2 controls are prudent; (3) whether PEF's 2010 accounting and cost controls are
3 prudent; (4) whether PEF's actual/estimated 2011 LNP costs are reasonable; (5)
4 whether PEF's projected 2012 LNP costs are reasonable; and (6) whether the
5 Commission should approve PEF's analysis of the long-term feasibility of
6 completing the LNP. On these issues the Company's testimony and other
7 evidence is undisputed. OPC has also raised again the issue of whether PEF
8 intends to proceed with the LNP sufficient to obtain cost recovery under the
9 nuclear cost recovery statute. Once again, PEF demonstrated its present intent to
10 build the LNP on the current project schedule and Jacobs cannot and does not
11 dispute that intent. Accordingly, I believe the Commission should decide these
12 issues favorable to PEF.

13
14 **Q. Does this conclude your testimony?**

15 **A. Yes.**

1 BY MR. WALLS:

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

4 A Yes, I do.

5 Q Will you please provide that to the Commission
6 at this time?

7 A All right. Good morning, Commissioners.

8 As you know, I'll be providing rebuttal
9 testimony to the OPC Witness William Jacobs. And, you
10 know, I had a rebuttal summary prepared and, you know, I
11 think we talked about most of my rebuttal testimony
12 yesterday. So I will go to just one key point, and that
13 really is this question of project execution and what's
14 in my rebuttal testimony about intent to build.

15 We talked yesterday at length about big "I,"
16 small "i", options, final decisions. I'm just going to
17 speak to you as the project manager.

18 I think that my testimony clearly articulates,
19 both in the direct testimony and rebuttal, our actions
20 to proceed with this project on a current schedule, and
21 I would ask you to judge us by those actions. We have a
22 detailed project plan, a detailed project execution plan
23 that clearly articulates the critical path activities
24 necessary to move forward with this project and achieve
25 a 2021 in-service date for the first unit.

1 We've met every key milestone within our
2 control to execute that project plan. And just by way
3 of example, the discussion around equipment or
4 activities other than those that directly support the
5 license, we are currently manufacturing reactor coolant
6 loop piping, pressurizers, variable frequency drives,
7 and core makeup tanks. Those are part of the
8 dispositional long-lead equipment purchase orders last
9 year and items that it was more economical to continue
10 work on than it was to suspend or cancel. We will make
11 payments for those long-lead equipment items in 2011,
12 2012, and beyond.

13 We have not taken any irreversible actions
14 regarding construction. We continue to review each
15 year, as part of our preparations for updating the
16 integrated project plan and as part of these
17 proceedings, the decision to move forward with a full
18 notice to proceed for construction. And that certainly
19 is a very critical decision in this process and
20 something that we would come in front of the Commission
21 again to discuss before taking that action.

22 I'm available to answer any questions
23 regarding my rebuttal testimony.

24 **MR. WALLS:** We tender Mr. Elnitsky for cross.

25 **CHAIRMAN GRAHAM:** Thank you. Who's going

1 first?

2 Mr. Whitlock.

3 **MR. WHITLOCK:** Thank you, Mr. Chairman.

4 **CROSS EXAMINATION**

5 **BY MR. WHITLOCK:**

6 Q Good morning, Mr. Elnitsky.

7 A Good morning.

8 Q It probably doesn't seem like too long ago for
9 you that you got out of that chair, but I appreciate you
10 coming back and visiting with us this morning.

11 Just a quick question on your summary. I
12 believe you said in regards to Progress's intent moving
13 forward you'd ask the Commission to judge based on your
14 plan and your actions; correct?

15 A I said judge us by our actions.

16 Q By your actions. And would you also agree
17 that the Commission should also judge on the evidence in
18 the record before them?

19 A Yes, I would.

20 Q Okay. And I believe you testified yesterday
21 that Progress has not made a final decision of whether
22 or not to build the Levy nuclear project; correct?

23 A That's correct.

24 Q Okay. In fact, are you familiar with one of
25 the exhibits, it's Exhibit WRJ-4 to Mr. Jacobs'

1 testimony?

2 A You'll have to point me to that. I'm not --

3 Q Okay. It's a, it's a news articles from the
4 *St. Petersburg Times* where a Progress spokesman, a
5 Mr. Hughes, made a statement. Are you familiar with
6 that?

7 A If that is the same news article that was
8 referenced in my deposition, my first deposition, then,
9 yes, I am.

10 Q Okay. I'm not sure if it was or not. But
11 what this -- this article attributes the following quote
12 to Mr. Hughes. "We have not changed the intended
13 technology for Levy County, Hughes says," quote, "but,
14 importantly, we also have not made a final decision to
15 build. That decision is still a few years away." Are
16 you familiar with that?

17 A I'm familiar with that statement from that
18 article. Yes.

19 Q Is that an accurate statement?

20 A I think on his part, yes.

21 Q Okay. And when it says the decision is still
22 a few years away, this article is dated, anyway,
23 May 27th, 2011. So I guess we could probably agree to
24 assume the statement was made somewhere around that
25 time?

1 A That's correct.

2 Q Okay. So the decision is still a few years
3 away. Would that -- would it be fair to say that that
4 decision is most likely going to be made after receipt
5 of the combined operating license?

6 A No. I would say it's more accurate to say
7 it's consistent with the timing we would expect for a
8 full notice to proceed.

9 Q Okay. But it also would be consistent with --
10 a few years from May of 2011 would be consistent with
11 the second quarter of 2013; correct?

12 A Yes. I would agree that if the calendar
13 doesn't change, that's right.

14 Q Do you expect the calendar to change?

15 A No, I do not.

16 Q Okay. I didn't know if you knew something I
17 didn't that I needed to know. Thank you.

18 A You never know.

19 Q Looking at your, your rebuttal testimony, kind
20 of in keeping along the same line of questioning, on
21 page 4.

22 A Let me just get there a minute.

23 Q Okay. Sure.

24 A Okay.

25 Q I'm looking kind of starting at the beginning

1 of that page, but focusing on lines 4 and 5.

2 A Okay.

3 Q You state, "but simply because Jacobs
4 speculates that PEF may not intend to build the LNP in
5 the future." Do you see that?

6 A Yes, I do.

7 Q Okay. And we, we established yesterday and
8 we've, we've reestablished again this morning, Progress
9 has not made a final decision of whether or not to build
10 the Levy nuclear project; correct?

11 A Yes.

12 Q So saying that Mr. Jacobs is speculating that
13 Progress may not build that in the future would not be
14 an accurate statement, would it?

15 A Yes. I think that mischaracterizes how this
16 overall sentence is put together. If you start at the
17 beginning again, this is referencing solely based on a
18 speculation that PEF may not intend to build. It
19 doesn't talk about final decision to build.

20 Q Okay. But there's been no final decision to
21 build; correct?

22 A Yes.

23 Q Okay. And I think, I think we reached
24 agreement yesterday that it's somewhat illogical to say
25 you intend to do something when you haven't made a final

1 decision to actually do that thing; correct?

2 **A** No.

3 **Q** You did not agree with that statement
4 yesterday; is that your testimony?

5 **A** You did not allow me to finish my explanation
6 of that statement yesterday.

7 **Q** Okay. I certainly don't recall prohibiting
8 you from saying anything you wanted to yesterday. But
9 if that's your testimony today, we'll roll with it.

10 **MR. WALLS:** I would object to Mr. Whitlock's
11 comment on record. That wasn't a question. That was a
12 statement, and he's not here to testify.

13 **MR. WHITLOCK:** He's accurate, Mr. Chairman,
14 I'm not here to testify.

15 **CHAIRMAN GRAHAM:** If you like, we can go back
16 and the court reporter -- and find out what was asked
17 and what was completed.

18 **MR. WHITLOCK:** That'd be fine.

19 **THE COURT REPORTER:** That wasn't me. I wasn't
20 here.

21 **CHAIRMAN GRAHAM:** We cannot do that, is that
22 what I'm hearing?

23 **THE COURT REPORTER:** That wasn't my record, it
24 was Jane's. So we'd have to get Jane to do that.

25 **CHAIRMAN GRAHAM:** Can she -- is that something

1 that she can work on?

2 **THE COURT REPORTER:** Yes, sir, we can. But we
3 need to get note to the office.

4 **CHAIRMAN GRAHAM:** Okay.

5 **MR. WHITLOCK:** Mr. Chairman, I'm not too
6 worried about it. I just want the record to be clear
7 that Mr. Elnitsky is contradicting his testimony from
8 yesterday by inferring that I didn't allow him to say
9 something, to finish an answer, when I gave him every
10 opportunity to, to qualify his answer or what not.

11 **CHAIRMAN GRAHAM:** I do not recall specifically
12 that question. So short of us pulling the, pulling it
13 back out from the court reporter, which I would imagine
14 we can have in a couple of hours?

15 **MR. YOUNG:** Hopefully. I think we can.

16 **CHAIRMAN GRAHAM:** Short of that, I'll offer
17 his statement to be, because basically what counsel said
18 was he disagreed, that I believe I did give you the time
19 to answer that question.

20 **MR. WALLS:** I understand. But we can
21 stipulate the record is what the record is and we can
22 address it in briefs.

23 **CHAIRMAN GRAHAM:** Okay.

24 **MR. WHITLOCK:** That's fine, Mr. Chairman.

25 Thank you.

1 BY MR. WHITLOCK:

2 Q Mr. Elnitsky, looking at page 14 of your
3 rebuttal testimony.

4 A Okay.

5 Q Let's see. And going over to page 15, you go
6 into somewhat of an editorial discussion on the
7 regulatory compact. Is that accurate?

8 A No.

9 Q Do you discuss the regulatory compact?

10 A Yes, I do.

11 Q Okay. Did Mr. Jacobs' testimony say anything
12 about the regulatory compact, the fundamental principle
13 of the existence of a regulatory compact? Was that
14 addressed in Mr. Jacobs' testimony?

15 A No.

16 Q So, therefore, the fact that you've included
17 it in your rebuttal testimony would be accurately
18 characterized as editorializing; correct?

19 A No.

20 Q Now the nuclear cost recovery statute and rule
21 provide for advanced recovery of, of prudently incurred
22 costs; correct?

23 A Yes.

24 Q Does the regulatory compact provide for
25 advanced recovery of costs?

1 A No.

2 Q So when you say on page 15, lines 15 and 16,
3 "the fact that the statute and rule did nothing to
4 change the fundamental principles of regulatory cost
5 recovery," that's not an accurate statement, is it?

6 A Yes, it is.

7 Q Then why do we have the statute and the rule,
8 Mr. Elnitsky?

9 A The statute and the rule provides no
10 substantial fundamental change to the fact that all
11 costs incurred by the utility are subject to recovery
12 pending the prudence review. What the nuclear cost
13 recovery clause does is provide for early recovery of
14 those costs. But the fundamental principle that I talk
15 about here in terms of prudence and in terms of all
16 costs incurred by a utility being recovered, if they are
17 reasonable and prudent, does not change.

18 Q So the nuclear -- there's no, there's no real
19 need for the nuclear cost recovery statute and rule; is
20 that your testimony?

21 A No.

22 Q Would Progress be proceeding with the Levy
23 nuclear project absent the rule and the statute?

24 A No.

25 Q So it's certainly had a fundamental change on

1 Progress's plans and activities relating to the Levy
2 nuclear project, the statute and the rule have; correct?

3 A Yes.

4 Q Thank you.

5 If I could direct you to, please, sir, to page
6 18, lines 7 through 10.

7 A Okay.

8 Q And would it be an accurate characterization
9 of that testimony essentially to say Progress continues
10 to evaluate enterprise risks, and should there be a
11 fundamental change, as you, as you characterize it,
12 Progress will then determine if it is prudent to
13 continue with the LNP or to cancel the LNP? Is that an
14 accurate characterization? I probably could have read
15 it as fast as I tried to characterize it, but --

16 A Yes. I would say the testimony is as written.

17 Q Okay. Okay. So ultimately that, that's a
18 decision for the Commission to make, is it not?

19 A Which decision?

20 Q The decision of whether or not ultimately
21 Progress should be allowed to continue with the Levy
22 project or not.

23 A I think the decision is to review whether a
24 decision made by the company is reasonable and prudent.

25 Q Right. And if the Commission were to rule,

1 say, that Progress doesn't have the intent to actually
2 construct the LNP and therefore is not eligible for cost
3 recovery, would that be the end of the Levy nuclear
4 project?

5 A Yes.

6 Q Thank you. Mr. Elnitsky, I think those are
7 all my questions for you this morning. Thank you, sir.

8 A Thank you, sir.

9 CHAIRMAN GRAHAM: Mr. Moyle.

10 CROSS EXAMINATION

11 BY MR. MOYLE:

12 Q Good morning.

13 A Good morning.

14 Q You did testify last night, did you not, that
15 it would be illogical to have an intent to do X if a
16 decision to do X had not yet been made; correct?

17 A Yes. But I was not allowed to finish the
18 explanation of that.

19 Q Okay. I just wanted to be clear, because I
20 thought you had said that wasn't what you said. But
21 that was what you said last night; correct?

22 A What I tried to explain last night, in
23 addition to that statement, is that there are certain --

24 Q Well, I, I don't --

25 A Again, you won't let me answer the question.

1 Q No. No. I just was trying to understand.

2 A Same thing as last night.

3 MR. MOYLE: Mr. Chairman, I was just asking
4 him about his testimony last night. I thought he said,
5 no, he didn't say it when my counsel asked that. We can
6 go back and read the record. But part of y'all's
7 decision is to judge credibility, and Mr. Elnitsky and I
8 have had a lot of conversations -- you may have a chance
9 to talk about that, you may not. But I'm not, I'm not
10 asking you the why question per my lessons of law school
11 that I didn't always follow last night.

12 CHAIRMAN GRAHAM: Mr. Moyle, we'll make sure
13 that -- that'll get handled on the redirect, I'm sure.

14 BY MR. MOYLE:

15 Q There's been a lot of discussion about intent.
16 The intent to move forward with this project ultimately
17 is made by the board of directors of the company; is
18 that correct?

19 A That's correct.

20 Q Okay. And that -- the board of directors is
21 informed by the Senior Management Committee; correct?

22 A Yes.

23 Q And you're not on the Senior Management
24 Committee, but Mr. Dolan and Mr. Lyash are; is that
25 correct?

1 A That's correct, as well as others.

2 Q And you're aware that both Mr. Dolan and
3 Mr. Lyash have appeared before this Commission and
4 provided testimony previously.

5 A That's correct.

6 Q Mr. Lyash, I think, was here last year;
7 correct?

8 A As was I. Yes, sir.

9 Q And I think you testified -- you don't go to
10 every Senior Management Committee meeting; correct?

11 A That's correct.

12 Q And neither Mr. Dolan or Mr. Lyash have
13 provided any testimony in this proceeding this year that
14 addresses the intent of the company to move forward with
15 the project; is that correct?

16 A Yes. That's correct.

17 Q And we talked yesterday a little bit on the,
18 on the SEC filings. You're aware, are you not, that,
19 that the SEC filings -- you inform investors typically
20 of matters of material impact on the company in your SEC
21 filings. Is that something we can agree on?

22 A Yes, sir.

23 Q So given, given that general agreement, if we
24 go to the SEC filings --

25 A I'm going to need that again. I don't have it

1 in front of me.

2 Thank you, sir.

3 Q And I'm going to ask you a couple of questions
4 about this. But, but nuclear projects are complicated
5 to execute, they involve a lot of risk, a lot of money;
6 correct?

7 A Yes, they are complicated.

8 Q And if I -- investors consider whether a
9 company is involved in a nuclear project as part of
10 investment decisions; isn't that right?

11 A I would assume so.

12 Q Okay. The first page of the, of the SEC
13 filings, the 10Q filed on 8/6/10, which was about a year
14 ago, under the section -- this is on, starting on page
15 3 on the, on the right-hand, lower right-hand corner.

16 A Yes, sir.

17 Q Where it says, "Potential new construction."
18 You flip over to page 4, it says, quote, if the license
19 schedule remains on track and if the decision to build
20 is made, the first of the two proposed units could be in
21 service in 2021. The second unit could be in service 18
22 months later. Do you see that?

23 MR. WALLS: I'm going to object to the
24 question as asked and answered and cumulative. I
25 believe this exact same question was asked both by

1 Mr. Sayler and Mr. Moyle last night and yesterday. So
2 we're going to go tread new ground -- or go back over
3 the same stuff we went over for hours yesterday.

4 **CHAIRMAN GRAHAM:** I think I'll allow the
5 question. I need for him to refresh me. Yesterday was
6 a long time ago.

7 **THE WITNESS:** Yes. That's what it says here.

8 **BY MR. MOYLE:**

9 Q Okay. And then if you flip over to the, to
10 the statement, the 10Q filed on 5/9/11, page 24.

11 A Okay.

12 Q You know what, actually just go to the, go to
13 the more recent one that's on page 28. It's the 8/8/11.
14 And tell me when you're there.

15 A I'm on page 28.

16 Q Okay. You would agree that there's no
17 corresponding statement in the 8/8/11 nor in the 5/9/11
18 document. And the 5/9/11 document has the same heading,
19 Potential New Construction, that has the in-service
20 dates; correct?

21 A That's correct.

22 Q So you would also agree, would you not, that a
23 reasonable inference -- I mean, sometimes you have to
24 have decisions and facts made by inference. You're
25 aware of that; correct? You can draw reasonable

1 inferences?

2 A Yes.

3 Q Okay. Wouldn't a reasonable inference, one
4 possible reasonable inference that can be drawn from the
5 fact that you previously were listing an in-service date
6 and now you're not is that the intent may have changed?

7 A I think it depends on your perspective.

8 Q Okay. And I'm just asking you, is that, from
9 your life experiences, is that a reasonable inference
10 that can be drawn? And I think we've established that
11 statements in here are material. If a statement is
12 appearing a year ago and now it's not appearing, isn't
13 it a reasonable inference that can be drawn that, well,
14 they said it a year ago, now they're not saying it;
15 maybe their intent has changed? Would you agree that's
16 a reasonable inference?

17 A I think it has to depend on the totality of
18 the information, and I won't speculate for what someone
19 else may make as an inference. I think you have to read
20 this whole statement to draw a conclusion.

21 Q All right. And I'm just asking you to focus
22 on, on, on the facts that I've given you. You know,
23 we've agreed that material statements are put in these
24 SEC filings. There was a statement that it's coming
25 online 2021. Now it's not there. Do you think it's

1 unreasonable that someone could draw an inference that
2 the intent may have changed?

3 A It seems to me it would be unlikely if you
4 read the two paragraphs above it in the context of what
5 was in previous statements. They don't seem to be
6 contradictory in my mind.

7 Q Okay. So, so given your reluctance to agree
8 with me with respect to the reasonable inference, you
9 know, and it's your testimony, if I understand it,
10 that absolutely we're moving forward and this is going
11 to be built in 2021, in 2021 and '22 as set forth in the
12 8/6/10 statement; correct?

13 A My statements were that our actions are
14 continuing to proceed with the project on the project
15 schedule, that it does the things necessary to achieve a
16 2021 in-service date.

17 Q Okay. And sometimes people on Wall Street
18 listen in on these PSC hearings to find things out. So
19 you would, you would then make the representation that
20 the first of the two proposed units could be in service
21 in 2021?

22 A That's correct.

23 Q Okay. And people could rely on that
24 statement, notwithstanding the fact that it's not in
25 your most recent SEC filings?

1 **A** Yes, because nothing in the most recent SEC
2 filing contradicts that fact.

3 **Q** Okay. Do you think maybe going forward that
4 when you're reviewing SEC filings, that since that is
5 the intent, that maybe the suggestion would be made to
6 put that back in your, your upcoming SEC filings when
7 the units are going to come into service since that's a
8 material representation?

9 **A** I can certainly make that suggestion.

10 **Q** Okay. Do you think maybe -- could it be
11 possible that some of the lawyers or the Senior
12 Management Committee's members were uncomfortable with
13 that representation and removed it from the updated SEC
14 filings?

15 **MR. WALLS:** Objection. Speculation.

16 **CHAIRMAN GRAHAM:** I agree with the objection.

17 **BY MR. MOYLE:**

18 **Q** Do you, do you know why it was removed? Do
19 you know why it was removed? You said yesterday you had
20 reviewed the SEC filings.

21 **A** No, I do not.

22 **Q** You would agree that the intent could change
23 as we go forward; correct? The intent to go forward
24 with Levy could change?

25 **A** Yes.

1 Q Okay. And you mentioned, you know, the, the
2 Duke merger coming up. We talked yesterday about, about
3 the new company will have three nuclear licenses on its
4 plate. Isn't it true that when the merger is
5 accomplished, that PE -- Progress Energy, Progress
6 Energy will be a minority interest on the, on the new
7 combined board?

8 **MR. WALLS:** Objection. Lack of foundation and
9 speculation.

10 **MR. MOYLE:** I think it's relevant in terms of
11 intent moving forward. We've talked about uncertainty.
12 They've talked about the upcoming Duke merger. I think
13 it's a fair question. I think he was asked the question
14 in his deposition and has information on it. I can lay
15 a foundation, if, if need be done.

16 **CHAIRMAN GRAHAM:** I agree with you, Mr. Moyle.
17 Continue.

18 **THE WITNESS:** Yes. Progress Energy, as I
19 understand it, is the minority membership on the board.
20 They exist -- let me correct that. The existing board
21 of director members from Progress Energy would represent
22 a minority membership on the new Duke Energy board.

23 **BY MR. MOYLE:**

24 Q Okay. So as we move forward, the majority
25 votes of the current Duke Energy Company, if they had a

1 different view, they could in effect say let's change
2 course at a board meeting; correct?

3 A Yes, they could.

4 Q And currently as we sit here today, the Senior
5 Management Committee could likewise say let's change
6 course at a Senior Management Committee meeting;
7 correct?

8 A More likely at a board of directors meeting,
9 but, yes.

10 Q Has there been discussion at Senior Management
11 Committees about changing courses?

12 A No.

13 Q Never?

14 A No, not to my understanding.

15 Q When you go to those Senior Management
16 Committee meetings, do, do they ask you to come in and
17 present sort of a status and, and receive your report,
18 and then say thank you and then have a discussion?

19 A No. They ask me to attend any of the meetings
20 where we're talking about major capital projects.

21 Q But you don't know, as you sit here today,
22 whether the Levy project has ever been discussed by the
23 Senior Management Committee outside your presence;
24 correct?

25 A No, I do not.

1 Q I'm going to shift gears with you a little
2 bit, if I can.

3 There was an issue that FIPUG identified
4 through the prehearing process, and it's Issue 21, which
5 asks for the total all-inclusive cost. And your company
6 answered that in their prehearing statement that the
7 total estimated cost for the Levy Units 1 and 2 nuclear
8 project, including AFUDC and sunk costs, as of 2011 is
9 approximately \$22.5 billion. They list your name after
10 that answer. Are you familiar with that?

11 A Yes, I am.

12 Q Okay. And can you tell me how much out of,
13 out of that two point -- I'm sorry -- 22.5 billion, how
14 much are sunk costs?

15 A Yes, I can. If you'd give me just a moment to
16 refer to my record here.

17 (Pause.)

18 I've got -- this number I've got right in
19 front of me. I could find you another if I go looking
20 further. But as of the IPP that was, integrated project
21 plan approved on March 29th of 2011, project to date
22 actuals were 616 million.

23 Q So, so we're not very far into the spend at
24 this point with respect to sunk costs; correct?

25 A That's correct.

1 Q Okay. And there was discussion yesterday
2 about the AFUDC and the carrying costs. And you would
3 agree with Mr. Thomas [sic] that out of the
4 \$22.5 billion, approximately 5 billion is in carrying
5 costs?

6 A I think that's approximately correct. I'm not
7 exactly familiar with all the AFUDC calculation, but I
8 think that sounds about right.

9 Q Okay. So you would agree also that to the
10 extent that there's time delays, the AFUDC, that
11 continues to clip along at a 13% rate; correct?

12 A That's correct.

13 Q I want to focus on a couple of portions of
14 your testimony, if I could. What is your understanding
15 as to the purpose of rebuttal testimony that you filed?

16 A To address the issues addressed by Dr. Jacobs
17 in his testimony and/or the Staff testimony, if
18 applicable.

19 Q So given that, you would agree that to the
20 extent that somebody hasn't filed testimony on a
21 particular issue, it's probably not appropriate to bring
22 up in your rebuttal testimony issues that no one has
23 necessarily objected to or taken issue with?

24 A I would say in general that's correct.

25 Q Okay. So my co-counsel had asked about, you

1 know, made a comment about editorializing, that you had
2 put some language in there that didn't necessarily
3 address a point. On page 6 I think you also go on at
4 great lengths to point out that certain Intervenors did
5 not take issue with, with, with certain portions of
6 prefiled direct testimony; is that right?

7 A Would you show me your reference, sir? I'm on
8 page 6.

9 Q Well, okay. It starts on line 13, "Have the
10 Staff and Intervenor witnesses asserted in their
11 testimony that PEF's actual LNP costs for 2010 are not
12 prudent?"

13 A Yeah. I see that.

14 Q Okay. And then it goes, goes on on page 7,
15 goes on on page 8. And as I read it, you know, you're
16 simply making the point, again, not rebutting what
17 anybody has said, but, you know, arguing or trying to
18 suggest that just because some testimony on direct was
19 filed and there wasn't Intervenor testimony rebutting
20 it, that it's a done deal, that ought to be a fact
21 that's admitted and accepted. You don't -- you're not
22 contending that, are you?

23 A I think the testimony speaks for itself.

24 Q Right. But just because there's not testimony
25 filed by an Intervenor, you're not suggesting that the

1 Commission has to accept the direct testimony. Because
2 we have this process, we have cross-examination. Facts
3 can come out that may suggest that there's other
4 evidence that could be relied on to make a finding
5 different than the testimony. You would agree with
6 that, would you not?

7 **MR. WALLS:** I'm going to object. It calls for
8 a legal conclusion. The witness isn't here to testify
9 about what the Commission's practice or procedures are.

10 **MR. MOYLE:** Well, I'm asking for his
11 understanding of it, so I think that, you know, avoids
12 the legal conclusion issue. And, you know, if the legal
13 conclusion is being put forward as the basis, you know,
14 he's talking about prudence in here and is it a
15 prudent -- that's a legal conclusion.

16 **CHAIRMAN GRAHAM:** I will allow the question.
17 I think what Mr. Moyle is asking for is his opinion, not
18 a legal opinion, but just his opinion, his laymen's
19 opinion.

20 **THE WITNESS:** Would you ask me the question
21 again, sir?

22 **BY MR. MOYLE:**

23 Q Sure. You, you would agree that just because
24 some witness files direct testimony and an Intervenor
25 does not necessarily address the direct testimony in

1 prefilled testimony, that the facts as asserted in the
2 direct testimony originally filed are not binding on
3 this Commission. That the way this process works is you
4 then have a hearing, witnesses take the stand, they're
5 tested on their assertions, and, you know, there can be
6 concessions, there can be changes, somebody could, the
7 Commission could determine a witness is not credible and
8 not find the facts persuasive. You would agree that's
9 how the process works; correct?

10 A To the best of my understanding, yes, sir.
11 There's a back and forth exchange like we've had over
12 the last two days.

13 Q For example, to the extent that the issue of
14 intent, you've said, yeah, that's the intent. But if
15 the Commission said, well, you know, it's a little
16 surprising that we didn't have Mr. Dolan or Mr. Lyash
17 here, you know, maybe an inference can be drawn. I
18 mean, that could be part of the process here that
19 ultimately the Commission has to exercise the judgment,
20 correct, as you, as you understand it?

21 A If your question is does the Commission have
22 to exercise judgment, yes, I would agree.

23 Q Do you know the average amount of time that
24 someone is a customer of, of your company?

25 A No, I do not.

1 Q Has that, do you know, has that question ever
2 been looked at? I know you guys keep a lot of records
3 on a lot of things, but do you know if that, if that
4 issue has ever been examined?

5 A I suspect folks in our customer organization
6 would be able to answer that. I'm not familiar with
7 those studies though.

8 Q Are you familiar with kind of the, what you
9 see in the paper occasionally about how often somebody
10 stays in a house before moving?

11 A No.

12 Q All right. And I ask that question because I
13 want to talk for a minute about your testimony on page
14 14 of your rebuttal. And you state, on line, starting
15 on line 9 -- actually the full sentence starts on line
16 8. But the portion that I want to draw your attention
17 to is, is that the costs to provide assets necessary to
18 provide customers with service are paid by the customers
19 that receive that service. Do you agree with that?

20 A Yes. I state in this testimony -- the
21 complete sentence is, "As I explained in the hearing
22 last year, whether the company is putting in a new
23 transmission line, substation, or power plant, the costs
24 to provide those assets necessary to provide customers
25 with service are paid by the customers that receive that

1 service."

2 Q So is it a reasonable inference to infer that
3 it's not fair to impose costs on customers who do not
4 receive the benefit of the service for which they are
5 being charged?

6 A I would say no.

7 Q How do you reconcile your answer no to the
8 testimony that you just read?

9 A Part of what also is done here as part of the
10 customer's obligation is investments that'll be required
11 for assets that will provide service in the future as
12 well. And whether or not they're a customer at that
13 point would depend on how long they're in the service
14 area.

15 Q Do you -- you talk a little bit about, on page
16 15, line 15, you talk about the statute and rule did
17 nothing to change the fundamental principles of
18 regulatory cost recovery. I assume that you have an
19 understanding of fundamental principles of regulatory
20 cost recovery?

21 A In terms of how new assets go into service and
22 those costs are recovered, yes, sir.

23 Q Okay. Are you familiar with the term
24 "intergenerational equity"?

25 A I've heard you use it before.

1 Q I'm sorry?

2 A I've heard you use it before.

3 Q Do you have any understanding outside of --
4 well, let me ask it this way. Intergenerational
5 transfer, have you heard that term ever used in the
6 regulatory context?

7 A No.

8 Q Okay. Would you agree with the, with the
9 proposition or the tenet that one generation of
10 customers should not incur cost to pay for facilities
11 that benefit another generation of customers?

12 A No, I would not agree.

13 Q Okay. So if intergenerational equity or
14 intergenerational transfer stood for that proposition,
15 you would, you would just say that's, that's wrong,
16 correct, from your standpoint? You would disagree with
17 that regulatory tenet, if it exists?

18 A I don't understand your question. You'll have
19 to ask me that again.

20 Q Okay. You, you talk about the regulatory cost
21 recovery, and I'm trying to get your understanding as to
22 the, whether you have an understanding of a policy as it
23 relates to shifting costs from one generation of
24 customers to another. And I think you've said, well,
25 that's, that's okay to shift the costs from one

1 generation of customers to another. Is that correct?

2 A I think what I said yesterday in response to a
3 similar question is that customers today benefit from
4 investments that were made by customers in the '70s.
5 Likewise for the Levy plant, customers in the future
6 will benefit from investments that are made today.

7 Q Okay. And so would you agree or disagree with
8 this statement: One generation of customers should not
9 incur costs to pay for facilities that benefit another
10 generation of customers?

11 A I would disagree. I think for large
12 investment projects that's necessary, especially for
13 long duration projects.

14 Q And we've agreed, I think, yesterday that to
15 the extent economic benefits are realized from the Levy
16 plant, they're not realized until 2029?

17 A That's correct.

18 Q If the average time on which a Progress
19 customer was on the system was, say, 15 years, somebody
20 sold a house and moved to California, or a business, you
21 know, relocated, you would agree that the Levy nuclear
22 plant would not provide any benefit to those customers
23 who were not going to be here beyond 15 years; correct?

24 A I would agree it would not provide benefit to
25 that individual customer. But I think our

1 responsibility as a utility that will be here for a long
2 time is to ensure that we'll have reliable and
3 affordable service in the future.

4 Q I'm going to shift gears with you, if I can.
5 Are we doing okay on time and --

6 CHAIRMAN GRAHAM: Fine. Fine.

7 MR. MOYLE: Mr. Chairman, I have an excerpt of
8 a confidential document that is attached to
9 Mr. Elnitsky's rebuttal testimony. My understanding is,
10 is that you all have redacted copies, and so I'm going
11 to pass out the unredacted version that will have the
12 information that I think, as we try to honor
13 confidentiality, will make the conversation go a little
14 smoother.

15 CHAIRMAN GRAHAM: Okay.

16 MR. MOYLE: And then at the appropriate point
17 in time I would probably need to pick those up. And my
18 plan is to give them back to Progress.

19 CHAIRMAN GRAHAM: Okay. Staff will help you
20 pass that out. Staff.

21 MR. MOYLE: I'd be happy to do it. I have
22 some issues --

23 CHAIRMAN GRAHAM: No.

24 (Document being passed out.)

25 I would have thought it would have been an

1 easier process myself.

2 Mr. Moyle, please continue.

3 **MR. MOYLE:** Thank you.

4 **BY MR. MOYLE:**

5 Q Mr. Elnitsky, I've provided you a, a document
6 which I'd represent is an excerpt from the Levy Nuclear
7 Project Integrated Project Plan dated March 29, 2011.
8 Would you briefly review that and confirm -- if you need
9 to compare it to the original, please do so -- but
10 confirm that this indeed is an excerpt from the IPP plan
11 of March 29, 2011?

12 A Yes, that appears correct.

13 Q And what is the purpose of an IPP or
14 integrated project plan?

15 A An integrated project plan details for our
16 Senior Management Committee the approach in terms of the
17 scope of the project, the schedule, and the activities
18 to be undertaken for that project.

19 It does two things: It provides authorization
20 for the project to continue with activities and
21 long-term authorization for the overall project; and
22 then in the near-term it provides specific appropriation
23 or approval of monies to be spent during a given period.
24 And in the case of this particular IPP, it approved the
25 spending of money through the middle of 2012.

1 Q How often do you prepare an IPP?

2 A It depends on the project. They are tied
3 normally to project gates such as go initiate, go
4 contract, go build, or they are tied to other major
5 milestones in the project execution plan or as requested
6 by the Senior Management Committee.

7 Q So you said that this authorized expenditures
8 through the middle of 2012?

9 A No. What I said is it authorizes expenditures
10 for the overall project. It actually approves the
11 specific monies that will go in the budget and be spent
12 during the period between now and the next IPP in 2012.

13 Q So when is the next IPP?

14 A It would likely be about the same time frame.

15 Q Annual?

16 A March or April of 2012. Usually what we do is
17 in support of these proceedings we will do pre-briefs in
18 January reviewing the feasibility analysis and the
19 CPVRRs and the other factors of the project, and then
20 we'll come into the Senior Management Committee for an
21 IPP update prior to going forward with the nuclear cost
22 recovery proceedings.

23 Q So is it your testimony that these are, this
24 is an annual document?

25 A Yes, it is, in general.

1 Q And I was unclear about your comments about
2 authorizing spends to a milestone. Didn't you just
3 suggest that, that there's sometimes authorizations of
4 spending money to a particular milestone?

5 A No. Let's be clear. There's a difference in
6 my vernacular here at least between authorization and
7 then what we're approved to spend. The IPP will
8 authorize the overall project. The SMC is a matter of
9 their controls on this particular project, gives us
10 appropriations or authority to spend a certain amount of
11 money during a certain period of time; in this case,
12 through the middle of 2012.

13 Q Okay. So just so I'm clear, when your Senior
14 Management Committee and your board -- does your board
15 consider these IPP plans?

16 A Yes, they do.

17 Q Okay. When they do it then, they are --
18 basically it's a, it's a budgetary process that works on
19 an annual basis as compared to, okay, here's this
20 project, and we're before you today and would ask you
21 that you approve it, and it's a two-and-a-half-year
22 spend which will take us through, for example, the COL
23 issuance. It's the former, not the latter?

24 A It's more the former, but I'd have to qualify
25 that. It depends on the specific project, what period

1 of time they would approve monies for. It's not
2 directly tied to budgeting. It's tied more to the
3 project schedule.

4 Q So if it's tied to the project schedule more
5 so, then what is the project schedule point that will
6 occur in the middle of 2012?

7 A There's no specific project milestone in the
8 middle of 2012. What the Senior Management Committee
9 asks for was that's about the point when we should
10 receive the final environmental impact statement and our
11 final safety evaluation report. So we propose to them
12 that would be the likely time to come back in and update
13 the integrated project plan.

14 Q Did you consider tying it to the receipt of
15 the COL?

16 A We will likely have another milestone in the
17 future that's tied to receipt of the COL. Yes, sir.

18 Q Would it be a reasonable assumption that
19 someone could make that having the budget tied to the
20 COL is a stronger indication of intent to having the
21 budget tied to a less significant milestone event?

22 A No. I think that would be an inappropriate
23 conclusion. I think you really have to read the IPP in
24 terms of its overall scope and approvals to get the
25 context of how this improves the overall project.

1 As I mentioned, this tool is used two ways.
2 One, to authorize the overall project, and then to give
3 specific increments of approval in terms of how the
4 project moves forward.

5 Q Let me flip you -- let's work off the page
6 numbers at the top of the document, and it's an excerpt,
7 but let me flip you to page 15 of 38, if I could.

8 A Okay. Yeah. I'm on page 15 of 38 at the top
9 of the document.

10 Q Okay. Is everything something we can discuss
11 publicly on this document except the yellow shading on a
12 couple of the numbers?

13 A Yes. The yellow shaded items are things that
14 are commercially sensitive in terms of future
15 negotiations. So, yeah, the rest of it though is fine.

16 Q All right. So what, what does this chart
17 represent that is contained on, on, on Page 15 of 38?

18 A This is part of our project management
19 processes. We have a standard set of project management
20 procedures for all major projects, and, in fact, all
21 projects in the company.

22 One of those standards is a risk management
23 process that requires us to develop a risk register;
24 identify those items in terms of both their probability
25 and their impact; establish mitigation actions for those

1 items; and evaluate using a formula known as expected
2 monetary value what the potential costs are of those
3 items, should they occur; and then incorporate those
4 costs into our contingency accounts.

5 Q How big is your contingency account as we sit
6 here today?

7 A I'd have to pull my estimate out. Just a
8 minute.

9 MR. WALLS: Excuse me, Mr. Elnitsky. Is that
10 a confidential number?

11 THE WITNESS: Yeah. I'm going to look. It's
12 in the IPP as well, so I just want to look and see if I
13 can point at it.

14 Mr. Moyle, if you -- I don't know if you --
15 you don't have this page in there. In the full document
16 that's Exhibit JE-12 --

17 BY MR. MOYLE:

18 Q Yes, sir.

19 A -- on page 9 of 38 by the docket number, page
20 numbers at the top, you'll see the, starting on the
21 prior page, page 8 and continuing to page 9 is a
22 specific overall cost breakdown for the overall project.
23 And you'll see in there two line items related to
24 contingency. Line item number 16, EPC contract
25 contingency, this is on page 9, and line item number 31,

1 which are owner contingencies. Those are the amounts
2 that are currently estimated in the expected value for
3 the project. Do you follow me, or do I need to go back?

4 Q No. I think I have it.

5 And just so I'm clear, so what, what do those
6 numbers represent, that there should be three zeros
7 after them?

8 A That's correct. Those are all in thousands.

9 Q In thousands?

10 A Yeah.

11 Q Okay. So, so the, the contingencies that
12 are -- to the extent any of these happen on this
13 probability chart, if they actually happen, where would
14 they be picked up? In line 16 under the EPC contract
15 contingency?

16 A It depends on which items. In general they
17 would be under either line 16 or under line 31.

18 Q All right. So I guess -- would you then
19 suggest if I, you know, this one risk, number six on the
20 chart --

21 A Yes.

22 Q -- that has a potential impact of more than
23 150 million; correct?

24 A If you go to the next page, page 16 of 38,
25 line item number 6, you'll see the expected monetary

1 value number in the column that's labeled EMV. Again,
2 that's calculated by determining the impact and the
3 probability, and then multiplying those to provide an
4 expected monetary value of that risk.

5 Q Well, you're more familiar with this document
6 than I am. But -- so the, the number down here where it
7 says -- the way I read that is greater than 150 million;
8 is that not correct?

9 A Yeah. Let me though walk you back through the
10 process. So you have to have two things: You have to
11 have probability and impact. The impact scale here is
12 just to show these risks relative to one another. The
13 expected monetary calculation on the next page is done
14 by multiplying the probability times the expected
15 impact, and that's how that number is achieved. And
16 that's the number that then goes into the contingency
17 account.

18 Q All right. And what does something have to do
19 to be a top tier project risk; more likely than not to
20 happen or significant in terms of monetary impacts?

21 A It's really the top items in terms of either
22 their monetary impact or schedule impact on the project.
23 This is a subset of a much more extensive risk register
24 that's been developed for the project, and this is
25 really showing the largest either dollar impact or

1 schedule impact items.

2 Q You would agree that this chart represents
3 some significant potential risk and some significant
4 potential cost impacts and delay impacts to the project;
5 correct?

6 A No. I would say it better represents all
7 risks that are associated with the project and our
8 management of those risks.

9 Q Okay. So if you assume that half of these,
10 half of these things happened, wouldn't that have an
11 impact on the cost of the project?

12 A Only to the extent that it would require us to
13 spend part of the monies that we have included in our
14 estimate as contingency to deal with those risks.

15 Q Would it have an impact on the timing of the
16 project if half of these or all of these risks came to
17 be?

18 A It depends.

19 Q Mr. Elnitsky, you disagree, if I, if I read
20 your rebuttal testimony, with the position that OPC has
21 taken with respect to the accelerated recovery; correct?

22 A Yes. In the extent to how it's, how
23 Dr. Jacobs characterized the rationale for that
24 recovery.

25 Q Okay. And just so we understand the

1 positions, OPC is saying essentially that the ratepayers
2 should retain some additional dollars in the upcoming
3 year, and Progress has taken the position that, no, we'd
4 like to accelerate and get more of those dollars from
5 the ratepayers as suggested by OPC. Is that fair?

6 A Yes.

7 Q Okay. And yesterday we, we spoke and spent
8 some time talking about the bad economy, the high
9 unemployment rates, the sluggish, depressed housing
10 market. Wouldn't you agree -- or let me just phrase it
11 this way. During these difficult economic times, as you
12 admitted and testified to yesterday, would your company
13 be willing to retreat from its position of seeking this
14 accelerated cost recovery to allow ratepayers to keep a
15 few extra dollars in their pockets during these trying
16 and difficult economic times?

17 A No. I think our testimony is as stands. Part
18 of the rationale was to also try to mitigate the rate
19 increases that would be seen in 13 and 14.

20 Q So the answer is no?

21 A No.

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

23 CHAIRMAN GRAHAM: Thank you, Mr. Moyle.

24 Ms. White.

25 CROSS EXAMINATION

1 BY MS. WHITE:

2 Q Good morning.

3 A Good morning.

4 Q I just have basically one question. I want to
5 talk a minute about the intergenerational issues that
6 Mr. Moyle was discussing with you. And would you agree
7 with me that it would be reasonable for the Commission
8 to balance these intergenerational issues when they're
9 looking at the timing of cost recovery?

10 A If you mean can they make a judgment different
11 than -- I guess I don't understand your question.
12 Reasonable in terms of what kind of judgment?

13 Q Well, is it a reasonable thing for the
14 Commission to do to balance intergenerational issues by
15 timing cost recovery?

16 A Only as they continue to comply with the
17 existing statute.

18 Q So if there are issues that are not required
19 for recovery by the statute, then you would agree with
20 me that the Commission has the discretion to determine
21 some timing of recovery, that's within their authority?

22 A I would say yes.

23 MS. WHITE: Okay. Thank you. That's all I
24 have.

25 CHAIRMAN GRAHAM: Thank you.

1 **MR. SAYLER:** No, sir. That will be another
2 document which I will discuss right now. We would like
3 to also identify for entering into the record this
4 document.

5 **MR. YOUNG:** Excuse me, Mr. Chairman. I'm a
6 little, I'm a little confused.

7 **MR. SAYLER:** Oh, excuse me.

8 **MR. YOUNG:** Are we -- is there a document
9 that's going to be coming, a late-filed exhibit?

10 **MR. SAYLER:** Yes. A late-filed exhibit, and
11 we would like to identify that as 210.

12 **CHAIRMAN GRAHAM:** All right. Now let's back
13 up. There is only two documents that I know of.
14 There's one that I believe Mr. Moyle passed out. Is
15 that the one you're talking about?

16 **MR. SAYLER:** No, sir. I'm not speaking about
17 that one. And I believe that would be a demonstrative
18 exhibit because that's actually an exhibit to his
19 direct -- or rebuttal testimony, and so --

20 **CHAIRMAN GRAHAM:** That's what I thought. Now
21 we have the one Mr. Rehwinkel passed out during the
22 break.

23 **MR. SAYLER:** Yes. And once I get into my
24 cross, I will bring that up for proffering as an exhibit
25 into the record.

1 **CHAIRMAN GRAHAM:** Okay. So what are you and
2 Mr. Elnitsky talking about right now?

3 **MR. SAYLER:** Yesterday on direct when I was
4 asking him about estimated non-COLA costs, transmission
5 line, transmission EPC RFPs, things of that nature, he
6 was able to provide actual dollar amounts for all of
7 them except for the transmission RFP EPC, and he could
8 better explain why it's a confidential number and why it
9 needs to come in as a late-filed exhibit.

10 **CHAIRMAN GRAHAM:** Okay.

11 **THE WITNESS:** Basically, sir, that's a
12 budgetary number that we are using in advance of
13 contract negotiations, so I would rather not put that
14 number out publicly. That would give bidders an unfair
15 advantage in terms of what our expectations are, the
16 cost of that work.

17 **CHAIRMAN GRAHAM:** Okay.

18 **THE WITNESS:** So we'll provide that as a
19 confidential number.

20 **CHAIRMAN GRAHAM:** Okay.

21 **MR. SAYLER:** And the suggested short title
22 would be Confidential EPC RFP Transmission Estimate.

23 **CHAIRMAN GRAHAM:** And do we give that a
24 hearing number?

25 **MR. YOUNG:** Yes, sir. You give it -- I guess

1 you give it a hearing number Number -- hearing Exhibit
2 Number 210. And can we get the title again, but a
3 little slower?

4 **MR. SAYLER:** Sure. Confidential EPC RFP
5 Transmission Estimate.

6 **CHAIRMAN GRAHAM:** Okay. Now I understand
7 where we are. Mr. Sayler.

8 **MR. SAYLER:** Please pardon the confusion.

9 **CHAIRMAN GRAHAM:** That's all right.

10 (Late-Filed Confidential Exhibit 210
11 identified for the record.)

12 **BY MR. SAYLER:**

13 **Q** Thank you again, Mr. Elnitsky, for yesterday,
14 and I promise today will be much shorter. I'm going to
15 aim for thirds, maybe even sixes, to keep my cross very
16 short today.

17 Before you an exhibit has been passed out
18 called, entitled -- the description is Progress Risk
19 Management Documents. Are you familiar with these
20 documents?

21 **A** Yes, I am.

22 **Q** Did you help prepare them?

23 **A** The project risk management instruction is one
24 of the procedures that we developed as part of the
25 Project Management Center of Excellence and that I

1 approved or submitted for approval to my manager. And
2 part of my team participated in developing the update to
3 the enterprise risk management standard for the whole
4 company.

5 Q All right. And if you will turn to your most
6 recent IPP, which is Exhibit JE-12.

7 A Okay.

8 Q Page 13 of 38.

9 MR. SAYLER: Mr. Chairman, could we get an --
10 could I ask for an exhibit number for this exhibit?

11 CHAIRMAN GRAHAM: Sure. It's going to be 211.

12 MR. SAYLER: 211. Short title, I would
13 recommend Progress Risk Management Documents.

14 CHAIRMAN GRAHAM: Progress, Progress Risk --
15 excuse me -- Risk Management Documents.

16 (Exhibit 211 marked for identification.)

17 Please continue.

18 BY MR. SAYLER:

19 Q All right. You would agree that on that page
20 --

21 A Which -- I'm sorry. Which page are we on now?

22 Q Okay. Page 13 of 38, if you look at the, your
23 exhibit page number.

24 A Yes.

25 Q It says, "Risk Matrix."

1 A That's correct.

2 Q Would you agree that both of these documents
3 are identified and used in the IPP?

4 A Both of the procedures?

5 Q Yes. Both of the procedures.

6 A Yes. The second one is only used as a
7 reference to the scaling used on page -- this is 15, I
8 guess, of 38. Yeah. 15 of 38.

9 Q Okay. And you would agree that these
10 documents require Progress to provide a probability and
11 impact analysis for each of the identified risks?

12 A I would agree that the first document, Project
13 Risk Management, does. That's the, that's the basic
14 governing docket for how the risk section of the IPP is
15 developed.

16 Q All right. And I -- and just for the record,
17 the two document titles are Project Risk Management, and
18 then the other document is Enterprise Risk Management.
19 In the IPP it's Standards, but on the updated version
20 it's Enterprise Risk Management Framework; is that
21 correct?

22 A Correct.

23 Q All right. And you would agree that the
24 documents are, require that the company calculate an
25 estimated monetary value associated with each of the

1 identified risks?

2 A That's correct.

3 Q All right. And you would also agree that
4 Progress Energy does not analyze any of the enterprise
5 risks facing the Levy project according to these two
6 documents; is that correct?

7 A That is correct.

8 Q All right. Thank you. If you will please
9 turn to page 15 of 38 in that IPP, please.

10 A Okay.

11 Q And these are the non-COLA risks that are
12 facing the project; is that correct?

13 A Yes. That's correct.

14 Q If you would look at risk item number 4,
15 that's a confidential item.

16 A Yes.

17 Q And you would agree that that corresponds in
18 the probability impact matrix in that almost bottom
19 right-hand yellow box; correct?

20 A That is correct. Number 4 is at a critical
21 impact but low probability.

22 Q All right. And if you'll turn to the next
23 page, there's a description of risk number 4 in the
24 bottom right where it says risk, and then there's a,
25 kind of a short paragraph. Do you see that?

1 A Yes, I do.

2 Q All right. If you will read to yourself that,
3 but also mainly focus on the, the parenthetical, and
4 especially the parenthetical after the word "obtaining."

5 A Okay.

6 Q Would you agree that these risks are risks
7 that Progress Energy must mitigate; is that correct?

8 A That is correct.

9 Q And if Progress Energy fails to mitigate this
10 risk number 4, then Progress will not be able to go
11 forward with the Levy project; is that correct?

12 A Well, no. Specifically this risk talks to not
13 being able to complete -- I'm trying to say this in a --
14 this risk number four talks specifically to the
15 timeliness of this activity. The risk number 11 is more
16 to the overall ability to complete that activity.

17 Q Okay. And that was going to be my next
18 question. If Progress was unable to mitigate risk
19 number 11, then that would lead to Progress not going
20 forward with the project; is that correct?

21 A That's correct.

22 Q All right. If you'll please turn to page 3 of
23 your direct -- or your rebuttal testimony, please.

24 A All right. Hang on a second. Page 3?

25 Q Yes, sir.

1 A Okay. I'm on page 3.

2 Q All right. At the bottom of the page, lines
3 21 to 23, you testify Dr. Jacobs cannot, does not
4 dispute this and other PEF evidence that PEF has the
5 present intent to build the LNP in 2021 and 2022. Do
6 you see that?

7 A Yes, I do.

8 Q And, and you underlined the word "present" in
9 your testimony; is that correct?

10 A That's correct.

11 Q And when you underline it, that's an emphasis.

12 A That's correct.

13 Q All right. If you were to define the phrase
14 present tent -- "present intent," would you agree that
15 present implies that the intent is more temporary or
16 fleeting?

17 A Ask that again. I'm trying to make sure I
18 respond to your --

19 Q All right. Present before the word intent --

20 A Yeah.

21 Q -- in the context of present intent, would you
22 agree that that may create a strong implication that one
23 is potentially going to change their mind in the future?

24 A It might. But the intention of this specific
25 underlining was to reference the current time.

1 Q Okay. So that is the current intent of
2 Progress; correct?

3 A That's correct.

4 Q All right. It you'll look at the next page,
5 the top two lines where you testify Dr. Jacobs,
6 nevertheless, recommends that the Commission deny
7 Progress Energy Florida recovery for certain reasonable
8 costs for the LNP in 2021 and 2022. Do you see that?

9 A Yes, I do.

10 Q Would you agree that Dr. Jacobs is
11 recommending that the Commission deny recovery for
12 certain reasonable costs in 2011 and 2022, is that
13 correct, and those are those non-COLA costs?

14 A That's correct.

15 Q All right. Isn't it true that you cannot show
16 me anywhere in Dr. Jacobs' testimony where he has said
17 the Commission should deny recovery for costs that
18 Progress has already incurred in 2011, can you?

19 A No, I cannot.

20 Q All right. Has Progress incurred any costs
21 for the last four months of 2011?

22 A Yes, we have.

23 Q Please explain.

24 A I'm sorry. Ask that question again. The
25 previous four months or the coming four months?

1 Q Coming four months, September through the end
2 of the year.

3 A So have we incurred costs for the next four
4 months?

5 Q Right.

6 A Yes. We have costs that we will be required,
7 obligations we'll be required to meet in the next four
8 months.

9 Q But if incurred means spent or legally
10 obligated the company, you would have had to have
11 incurred those costs before today.

12 A The obligations were put in place prior to
13 today, but we have milestone payments that we'll have to
14 make in the final four months of this year.

15 Q Okay. But, for instance, yesterday regarding
16 land that you have not yet purchased, I believe you said
17 the dollar amount was about a million dollars of
18 budgeted transmission land that you haven't yet
19 purchased in 2011. If you haven't purchased that, then
20 you haven't incurred that cost; is that correct?

21 A For land that would be true. That would not
22 be true for all aspects of the project though.

23 Q All right. Has Progress incurred costs, any
24 costs for 2012?

25 A Yes.

1 Q And when you mean incurred, you spent or
2 legally obligated the company today or before today for
3 that spend in 2012; correct?

4 A That's correct. As part of existing
5 contracts.

6 Q All right. Please turn to page 12 of your
7 testimony.

8 A Page what?

9 Q Page 12.

10 A Okay.

11 Q Here you discuss about Progress must incur in
12 reliance upon the Commission ruling -- it's lines 8 and
13 9. Actually I'll read it. "Despite his statements to
14 the contrary, Jacobs," Dr. Jacobs, "recommends Progress
15 should not recover from customers some of the costs that
16 Progress must incur in reliance on the Commission ruling
17 approving Progress's approach to the LNP to meet the
18 scheduled in-service dates for the Levy units under the
19 Commission-approved approach." Do you see that?

20 A Yes, I do.

21 Q And you would agree that the Commission-
22 approved approach could be summarized as going slower
23 and achieve the COLA; is that correct?

24 A I would agree it could be summarized that way.
25 I think though that would require more detailed

1 definition as was provided in some of the documents that
2 articulated exactly what that approach would include
3 last year.

4 Q Okay. And the order, or the ruling of that
5 Commission is embodied by Order Number 11-0095-FOF-EI,
6 which was issued in February of 2011; is that correct?

7 A I think -- I don't know. I take your word for
8 it.

9 Q Okay. The most recent Commission --

10 A I don't have that in front of me. If that's
11 the most recent order, yes.

12 Q Yeah. The final order that, for last year's
13 NCRC proceeding, that's the order we're referring to.

14 A I'll take your word that that's the number on
15 it. I don't know for a fact.

16 Q Would you agree that that order does not
17 require Progress to incur any estimated or actual costs
18 that were approved last year?

19 A Yes. I would agree it does not require us to.

20 Q Okay. And would you agree that Progress has
21 not incurred any costs in -- any 2012 projected costs in
22 reliance on that order?

23 A No, I would not agree. We have costs in 2012
24 that we incurred as a result of long-lead equipment
25 disposition and contracts that are in place as a result

1 of that decision to move forward on a slower pace.

2 Q But things like the transmission study,
3 transmission RFP EPC, the purchase of the transmission
4 land, and other things we discussed yesterday, those are
5 costs that you haven't yet incurred; correct?

6 A That's correct.

7 Q And they're included in the projected 2012.

8 A That's correct. Right.

9 Q Would you generally refer to page 14 and 15 of
10 your testimony.

11 A All right.

12 Q And I'm more concerned about the discussion on
13 14 starting on line 21 through page 15, line 16. It's
14 a, it's where you discuss in your testimony regulatory
15 compact. Do you see that?

16 A Yes, I do.

17 Q And Mr. Elnitsky -- Mr. Elnitsky. I
18 apologize, sir.

19 A That's okay.

20 Q You would agree that you are not an attorney;
21 correct?

22 A Yes, I would agree.

23 Q And we'll --

24 A Thank goodness. No. Sorry.

25 Q And I think our Chairman is happy that he's

1 not an attorney as well.

2 But while in the Navy building nuclear subs
3 and operating nuclear submarines for our country, did
4 you study the legal aspects of regulatory ratemaking
5 including regulatory compact?

6 A No, I did not.

7 Q And since coming to Progress Energy in 2007,
8 have you had much time in your busy schedule to make a
9 study of the legal aspects of regulatory ratemaking,
10 including the regulatory compact?

11 THE COURT REPORTER: Excuse me, Mr. Sayler.
12 You need to slow down.

13 MR. SAYLER: Slower?

14 THE COURT REPORTER: Uh-huh.

15 MR. SAYLER: Okay. Sorry.

16 BY MR. SAYLER:

17 Q Since coming to Progress Energy in Florida in
18 2007, have you had much time in your busy schedule to
19 make a study of the legal aspects of regulatory
20 ratemaking, including the regulatory compact?

21 A Yes. I have been required as part of my
22 professional development to learn more about the
23 regulatory process.

24 Q All right. And did you make that study
25 between the time Dr. Jacobs filed his testimony and

1 drafting your rebuttal?

2 A No.

3 Q Okay. How many abandoned or canceled
4 non-nuclear power plants are included in the rate base
5 of Florida electric utilities?

6 A No nuclear plants to my understanding.

7 Q How about non-nuclear?

8 A At least one to my understanding.

9 Q All right. And was it included 100%?

10 A That's my understanding.

11 Q All right. Do you have an order number where
12 that was approved?

13 A No. But I understand it was one of Florida
14 Power & Light's coal plants that was canceled.

15 Q All right. How many abandoned or canceled
16 nuclear plants are included in rate base? I believe you
17 said zero.

18 A I said none, not that I know of.

19 Q Okay. How about around the country?

20 A I'm not really in a position to answer that.
21 I would have to speculate. As an example, I'm not sure
22 what treatment some of the other utilities have gotten
23 for their projects.

24 Q All right. You would agree that on line, page
25 15, line 2, you use the term "prudently cancels." Is

1 that correct?

2 A That's correct. In the context of the
3 sentence, if the utility prudently cancels another power
4 plant project or other utility project.

5 Q All right. Is that within the context of the
6 regulatory compact or within the context of the NCRC
7 statute?

8 A My understanding, within the normal regulatory
9 compact.

10 Q All right. Do you have a copy of the NCRC
11 statute?

12 A No, I do not.

13 Q All right. With your permission, I'll read a
14 relevant portion of it related to canceling of a
15 project. 366.93(6) states -- I will paraphrase it
16 because it's rather wordy. If the utility elects not to
17 complete or is precluded from completing construction of
18 the nuclear power plant ... the utility shall be able to
19 recover all prudent preconstruction and constructions
20 costs incurred ...

21 Would you agree that the statute does not say
22 that a company canceling a nuclear power plant must
23 prudently cancel?

24 A I think what you just read me is that if the
25 utility is precluded or elects to cancel.

1 Q Correct.

2 A I think that's what -- I'll take your word for
3 what that says there. It sounds correct though to me.

4 My understanding was that the nuclear
5 recovery -- excuse me. My understanding was that the
6 statute tried to provide additional clarity around
7 cancellation procedures.

8 MR. SAYLER: May I approach the witness?

9 CHAIRMAN GRAHAM: Sure. Sure.

10 THE WITNESS: Yeah. That's correct.

11 BY MR. SAYLER:

12 Q All right. Would you agree that the nuclear
13 cost recovery statute does not require a utility to
14 prudently cancel? The utility can elect to cancel
15 and/or be precluded from building by, say, a negative
16 ruling by the NRC or some other regulatory body; is that
17 correct?

18 A Yes, with the exception that the last half of
19 that sentence does say they would be allowed to recover
20 all prudent preconstruction and construction costs. So
21 that would infer to me that the Commission would
22 determine whether the actions that the utility had taken
23 during a cancellation were in fact prudent.

24 Q I suppose that would be open for
25 interpretation. But my understanding of the nuclear

1 cost recovery statute is that utilities come in with
2 estimated, actual, and projected costs. The Commission
3 reviews for reasonableness and then customers pay for
4 that. And then the following year during the true-up
5 proceeding, the Commission then declares those costs
6 prudent. And then once they're declared prudent, then
7 by operation of the statute there doesn't seem to be any
8 kind of subsequent "did the utility prudently cancel the
9 project?"

10 A I guess what I don't understand then is how
11 would the determination be made to recover all prudent
12 preconstruction and construction costs? That would have
13 to happen somewhere. My, my understanding of that would
14 be that the Commission would review those cancellation
15 costs as part of their normal proceedings.

16 Q Okay. Thank you.

17 A But, again, I'm not a lawyer.

18 Q Would you agree that there's no regulatory
19 compact involved with the NRC statute, but that the NRC
20 statute provides the company a statutory right?

21 A No. I think, as we just discussed, I think
22 it's consistent with the normal recovery procedures for
23 canceled projects.

24 Q All right. If a utility building a
25 non-nuclear project imprudently cancels that project, do

1 you agree that then the Commission could disallow some
2 or all of those company costs as being imprudent?

3 A Yes, I would think so.

4 Q All right. Thank you. If you'll turn to
5 pages 21 through 22 of your testimony.

6 A Okay.

7 Q Here you're answering a question. The
8 question is on page 21, line 13. "How does Dr. Jacobs
9 characterize these scenario analyses in his testimony?"
10 If you'll just take a moment to familiarize yourself
11 with those pages.

12 A Okay.

13 Q And once you're done, we will focus on page
14 23, lines 12 through 15.

15 A Okay. I'm on page 23.

16 Q Do you see where in your testimony you say
17 "false and misleading"? Is that correct?

18 A Yes.

19 Q Would you agree that that is a serious charge
20 to make against a fellow expert witness; wouldn't you
21 agree?

22 A I think it's factually correct.

23 Q Would you also agree that Dr. Jacobs expressly
24 uses the term "trend" in his testimony on page 12, 14
25 through 16 of his testimony?

1 A Yes, he does.

2 Q Would you also agree that he never testified
3 that the 2011 CPVRR analysis was a factor in producing
4 the 2010 scenario analysis; is that correct?

5 A That's correct.

6 Q Would you agree that your testimony that
7 Dr. Jacobs' information was false and misleading was
8 perhaps a bit overstated?

9 A No. I think my point here in this particular
10 sentence was to draw the connection between the timing
11 of the CPVRR analysis and when that was done, and the
12 fact that that was actually completed well after the
13 scenario analysis work was done.

14 Q All right. Isn't it true that Mr. Lyash has
15 testified before the Public Service Commission last year
16 and in a prior year regarding nuclear cost recovery?

17 A That's correct.

18 Q And even Mr. Vinnie Dolan has testified in the
19 recent rate case proceeding.

20 A That's correct.

21 Q And you would agree that neither of them, nor
22 a single member of the Senior Management Committee is
23 here to testify under oath that Progress is
24 unequivocally committed to building the plant; is that
25 correct?

1 A That's correct. However, there were no
2 decisions --

3 **MR. SAYLER:** Thank you. I have no more
4 questions.

5 **CHAIRMAN GRAHAM:** Would you like to continue
6 that thought, sir?

7 **THE WITNESS:** Say again, sir?

8 **CHAIRMAN GRAHAM:** Do you want to complete that
9 answer?

10 **THE WITNESS:** Yes, sir. What I was going to
11 say is the reason that Mr. Lyash is not here during
12 these proceedings is there were no substantial decisions
13 that had to go before our board of directors this year.
14 We are executing the project as we saw last year.

15 **CHAIRMAN GRAHAM:** Thank you.

16 Mr. Brew.

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

18 **CROSS EXAMINATION**

19 **BY MR. BREW:**

20 Q Good afternoon, Mr. Elnitsky.

21 A Good afternoon, Mr. Brew.

22 Q And I'm pleased to say afternoon and not
23 evening.

24 A Yes, sir.

25 Q Could I refer you to your rebuttal at page 30,

1 please?

2 A Page 30? Just one moment.

3 Q Okay. In your answer, beginning on line 14,
4 which says, "In general, however, if Jacobs is trying to
5 make the point that the staffing of the LNP has leveled
6 off, that should not be surprising with the company's
7 decision to proceed with the LNP at a slower pace," do
8 you see that?

9 A Yes, I do.

10 Q Has, in fact, the company's staffing of the
11 LNP leveled off?

12 A Yes, it has.

13 Q And what does level off mean? Have you
14 stopped hiring?

15 A We are not hiring, nor are we redeploying
16 anyone.

17 Q Okay. Are you -- have you curtailed your
18 activities with respect to training?

19 A You mean training of operators?

20 Q Yes.

21 A Or training in general?

22 Q Both. Let's take training of operators first.

23 A We have curtailed activities associated with
24 training of operators.

25 Q Okay. And with training of other project

1 personnel?

2 A No. That training continues to support the
3 skills needed to manage the project.

4 Q Okay. And the next sentence in that testimony
5 says that the staffing levels for the LNP will increase
6 when the company terminates the current extended partial
7 suspension of the project and proceeds, I assume, with
8 the full notice to proceed. Is that what you would
9 mean?

10 A Yes, sir. The sentence says, "proceeds with
11 the current plan to build Levy Units 1 and 2 in '21 and
12 '22."

13 Q And so from a timing perspective, your intent
14 is to gear up staffing and training once you've made the
15 decision, the full notice to proceed in this issue?

16 A In practical terms we would begin staffing
17 increases probably in late 2012 or early 2013 as we
18 approach the full notice to proceed.

19 Q Okay. And are there risks in terms of meeting
20 project costs and schedules associated with potential
21 difficulty in recruiting and staffing?

22 A Yes. There are some risks associated with
23 attracting and retaining operators for nuclear plants.

24 Q Okay. I wanted to move back to your
25 discussion in your rebuttal, which I guess goes back to,

1 starts I guess on page 19, and follows on the exchange
2 between you and Public Counsel on the scenario analyses
3 when you're ready.

4 A Okay. Are you on page 19?

5 Q Well, I'm -- these questions pertain to the,
6 the series of questions that follow in this scenario
7 analysis.

8 A Yes, sir.

9 Q Because I, I thought I had followed your
10 positions on the scenario, strategic planning scenarios,
11 their analyses and what they are or aren't with respect
12 to resource planning. But I got a little confused with
13 the discussion yesterday, so I just wanted to walk
14 through it again.

15 A Okay.

16 Q My understanding, at least with respect to the
17 analyses we're talking about in your and Dr. Jacobs'
18 testimony, is that the company engaged in some strategic
19 planning in the summer of 2010 from like mid-May till
20 the retreat in August; is that right?

21 A That's correct.

22 Q Okay. And that you were involved in that
23 strategic planning effort but not responsible directly
24 for performing the scenarios; right?

25 A That's correct. My organization did not do

1 any of those analyses or any of the work associated with
2 those presentations.

3 Q And so your involvement, as I understood it,
4 was primarily related to providing inputs for those
5 scenario analyses.

6 A Inputs in terms of construction costs, yes,
7 sir.

8 Q Okay. And so specifically construction cost
9 and scheduling capital spending plans for a particular,
10 in particular Levy?

11 A That's correct.

12 Q And for other generation projects that might
13 be described in the scenario planning?

14 A Yes. Basically what we did was provide
15 generic cost estimates for those different type assets.

16 Q Okay. And this effort was important enough
17 that the Senior Management Committee devoted a retreat
18 to it to talk through those scenario planning analyses?

19 A The Senior Management Committee and several
20 members of leadership.

21 Q Okay. Did you attend that group retreat?

22 A Yes, I did.

23 Q Okay. Now in his rebuttal, Dr. Jacobs
24 introduced presentation materials from the August 23rd,
25 2010, retreat, and that was his Exhibit WRJ-5. Do you

1 recall that?

2 A Yes, I do.

3 Q And that presentation for the scenario
4 analysis listed five alternatives, if I'm correct. One
5 was March 2010?

6 A That's correct. But let me just get it out so
7 I have it in front of me.

8 Q Sure.

9 A Okay.

10 Q Okay. So one was March 2010; right?

11 A That's correct.

12 Q Then there was a, what was described as
13 business as usual?

14 A That's correct.

15 Q Then three was moderate change?

16 A That's correct.

17 Q Then there was a technology driven?

18 A That's correct.

19 Q And aggressive mandates.

20 A That's correct.

21 Q Okay. And your rebuttal responded and -- with
22 an exhibit that included an earlier version of that
23 document from, from July; right?

24 A That's correct.

25 Q And that's your Exhibit JE-14?

1 A In the redacted form. Yes, sir.

2 Q In the redacted form. Yes. I don't -- I'm
3 hopefully not going to get into anything near
4 confidential. And that's what's described in your
5 rebuttal testimony on page 24?

6 A Let me just get back to my rebuttal. I think
7 that's correct. That's correct.

8 Q Okay. And a basic change from one version to
9 the next, other than the point you made in your
10 rebuttal, was the addition of the March 2010 scenario;
11 is that right?

12 A That's correct. For completeness, the program
13 of record was included.

14 Q Okay. And so that's, and that's reflected on
15 page 2 of Mr., Dr. Jacobs' exhibit under the heading of
16 Key Assumptions Updates, if you go to page 2.

17 A Ask me your question again about page 2.

18 Q Oh. The page 2 simply states that the, in
19 terms of key assumptions and updates was the addition of
20 the March 210 -- 2010 scenario.

21 A That's correct.

22 Q Okay. And as you just mentioned and you
23 discussed yesterday with Mr. Sayler, the intent of that
24 was to add the program of record.

25 A That's correct.

1 Q And the program of record, which was
2 March 2010, reflects the actual current approved
3 resource plan that reflects Levy commercial operation
4 dates in 2021 and 2022; is that right?

5 A That was correct.

6 Q And that was designed to reflect the company's
7 current resource plan that was also reflected in the
8 approved IPP for that year, which was approved in April?

9 A In terms of the Levy project, yes.

10 Q Okay. And that same program of record would
11 have also been reflected in the company's filed Ten-Year
12 Site Plan that would appear, because that was your
13 actual resource plan?

14 A Yes. With the exception that the Ten-Year
15 Site Plan did not, does not yet have Levy 1 and 2 in it
16 because it's not in that ten-year window yet. That's
17 the only --

18 Q Because it's beyond the ten-year horizon.

19 A It's just beyond the horizon.

20 Q Okay. But in all respects it's consistent
21 with that program of record?

22 A Yes, sir.

23 Q Okay. Now as I understand it, from the actual
24 plan, the actual program of record, Progress is the sole
25 owner of 2,200 megawatts at Levy, but the scenario

1 analysis including the March 2010 assumed a 50% interest
2 in both Levy units; is that right?

3 A That is correct.

4 Q So the scenario analysis including the
5 March 2010 scenario assume half of the Levy capacity?

6 A That's correct. To be consistent with the
7 other scenarios.

8 Q Okay. Half of the capital requirements?

9 A That's correct.

10 Q And half of the residential bill impacts?

11 A That's correct.

12 Q That would otherwise be associated with Levy?

13 A At 100%.

14 Q At 100%?

15 A Yes, sir.

16 Q So if I can refer you to page 10 of
17 Dr. Jacobs' exhibit, which is a presentation slide in
18 redacted form labeled Strategic Capital.

19 A Let me get -- these are numbered differently.
20 Is that the -- I'm sorry. Is that the August 23rd
21 presentation?

22 Q Yes. That's correct.

23 A And you're on which page again?

24 Q I'm on page 10 of 34. It's slide number 9.

25 A Oh, that'll help. Sorry. Thank you. All

1 right. I'm on, I'm on the page.

2 Q Okay. So the, the strategic capital charted
3 there for all of these studied scenarios only reflect
4 half of the expected Levy investment; is that right?

5 A That's correct. It assumes a 50% ownership.

6 Q Okay. And if I can refer you to slide number
7 20.

8 A Okay.

9 Q Is a slide labeled Scenario Implications for
10 Key Plan Components; is that correct?

11 A That's correct.

12 Q And slide number 22 is labeled Strategic
13 Issues and Considerations?

14 A That's correct.

15 Q With a column for near-term decisions and a
16 column for longer term strategy considerations?

17 A That's correct.

18 Q I guess I'm kind of baffled. To the extent
19 that senior management was devoting this time and effort
20 to talking about these strategic issues, why would it
21 work off a historic baseline that only includes half the
22 cost of Levy's? So my question really is is the program
23 of record really to, for the company to have 50%
24 interest in Levy, or did you change the program of
25 record for the purpose of this scenario analysis?

1 A No. What was done for the purpose of the
2 scenario analysis was to be consistent. And, again,
3 part of this exercise is to stress our thinking around
4 how we might apply resource plans to these different
5 future views of the world. To be consistent in that
6 approach we assumed 50% ownership in all scenarios. We
7 could have just as easily done it at 100%.

8 Q But the historic baseline, the March baseline
9 was a historic document at that point that reflected a
10 plan to at this point own 100% of the Levy units. So
11 all of the analysis -- I mean, to me it's like if you're
12 shopping for a car and you're looking at your options,
13 and I really like the \$50,000 BMW, but I'm going to
14 assume it costs \$20,000. Isn't, isn't my analysis of my
15 options totally distorted by the fact that I'm not
16 reflecting the full cost?

17 A Well, and, again, it would be if that was the
18 purpose of this analysis. The purpose of this analysis,
19 again, was to stress our thinking about how we would
20 respond to some of these future events if they were, in
21 fact, to occur and what that would mean in terms of our
22 options around resource planning.

23 Q But part of the purpose of that retreat was to
24 talk about strategic issues and considerations and to
25 discuss near-term decisions and longer term strategy,

1 but only assuming half of the Levy puzzle; right?

2 A That's correct.

3 MR. BREW: Okay. That's all I have. Thank
4 you.

5 CHAIRMAN GRAHAM: Thank you very much. Is
6 that all the Intervenors?

7 Staff?

8 MR. YOUNG: No questions.

9 CHAIRMAN GRAHAM: Okay. Back to the
10 Commission board.

11 Commissioner Balbis.

12 COMMISSIONER BALBIS: Thank you, Mr. Chairman.
13 I have a few questions for this witness.

14 You've talked, and other witnesses have talked
15 about the, quote, non-COLA item. Can you list those
16 again please that are, that you're expecting to
17 accomplish in the next two years?

18 THE WITNESS: Yes, sir. Let me just -- I've
19 got a pretty good list for you here. Yes, sir. There's
20 major current 2011 activities, and it'll go into 2012
21 beyond what is required just for the COLA. That
22 includes the other environmental permitting
23 requirements, meeting the conditions of certification
24 that will allow us to start construction mobilization,
25 and the permits associated with that. We completed the

1 disposition of long-lead equipment. And what that means
2 is there are certain milestone payments required for
3 long-lead equipment that will continue to be
4 manufactured during this time frame and/or for the
5 restart of that long-lead equipment for those items that
6 we have suspended.

7 As we mentioned, we plan to update the
8 transmission studies to be ready to go to RFP for
9 engineering, procurement, and construction services to
10 meet the critical path requirement to have transmission
11 system online to support back feed to the plant for the
12 2021 in-service.

13 We have started prep -- we will start
14 preparations for negotiations of EPC amendment to end
15 the current partial suspension, the current suspension,
16 and to issue a full notice to proceed. We stayed
17 engaged with industry groups associated with the AP1000,
18 and the Nuclear Industry Institute partially is helping
19 to craft regulation and responses to events such as
20 Fukushima. We continue joint owner negotiations and
21 engagements. We've completed the qualification of the
22 roller compacted concrete approach that will be used as
23 part of the site preparations. We will, as part of the
24 COLA, submit revision three later this year. We will go
25 to what's called the Advisory Committee on Reactor

1 Safeguards in October to brief them on our COLA. And
2 then starting next year we will prepare for the Atomic
3 Safety and Licensing Board activities that are required
4 to get the COLA.

5 And then the final sort of major permitting
6 activity is working with the U.S. Army Corps of
7 Engineers around the 404 permits and working through a
8 thing called a least environmentally damaging practical
9 alternative analysis that they have to complete that's
10 actually different from what the NRC does as part of
11 their final environmental impact statement.

12 **COMMISSIONER BALBIS:** Okay. Then other than
13 the last few items which are associated with the COLA --

14 **THE WITNESS:** Yes, sir. Those are COLAs.
15 Yeah.

16 **COMMISSIONER BALBIS:** Would you agree with
17 Mr. Jacobs when I asked him the question are any of
18 those items on the critical path and that they would
19 delay the in-service date of the projects, and he
20 indicated that none of those items are critical path
21 items; do you agree with that?

22 **THE WITNESS:** No, I do not. And the reason is
23 we have a pretty detailed project schedule that we've
24 provided in production of documents that clearly lays
25 out critical path activities necessary to maintain the

1 current 2021 service date.

2 And I will say that if we were to, for
3 example, stop payment on long-lead equipment that is
4 already in process, we would have to break those
5 contracts. That would mean we would have to renegotiate
6 those contracts. It would move us to a different point
7 in the queue, and I think would directly impact the
8 in-service date.

9 **COMMISSIONER BALBIS:** Now you mention there's
10 a detailed schedule that's already in the record.

11 **THE WITNESS:** Yes, sir.

12 **COMMISSIONER BALBIS:** Can you identify what
13 that is? Where is it?

14 **THE WITNESS:** It's -- Mike, can you -- there's
15 a production of documents document that has a detailed
16 plan. It's a --

17 **MR. WALLS:** Yes. It's been produced in
18 discovery. It's not in the record. We can certainly
19 introduce it as a late-filed exhibit. I do have the
20 document number. It's 11PMA-DR1 Levy, L-E-V-Y,
21 -20-000006. That's the Bates number on the document.
22 And we can provide it as a late-filed exhibit. We did
23 produce it in discovery.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 Mr. Chairman, I would request that that be

1 entered as a late-filed exhibit if it clearly shows what
2 items are critical path items and what are not.

3 **THE WITNESS:** Yes, it does. It articulates in
4 red -- you'll see on the color version of it what the
5 critical path activities are through the project.

6 **MR. MOYLE:** Mr. Chairman, we've had over the
7 years issues arise about late-filed exhibits coming in.
8 And usually we can work through it, but there have been
9 a couple of occasions where a late-filed exhibit came in
10 that had stuff that was like, you know, where did this
11 come from? No opportunity to ask or cross on it. So I
12 suspect we might be able to work through it. But if
13 this exhibit has never been part of the record or
14 offered, at least we'd like a chance to look at it. And
15 if there are any questions -- you know, it sounds like
16 it's an important document as to reconcile what
17 Mr. Jacobs testified to as to the critical path. It's
18 not in currently. I would like to have that
19 opportunity.

20 And then the other, the other thing is the
21 question was asked about the non-COL items. I guess
22 there was a list that was read, and I don't know if that
23 list that was being read was an exhibit. If it, if it
24 was, I'd like to know what the exhibit was. And if it's
25 not, you know, I'd like to similarly take a look at the

1 exhibit. I think, I think that's kind of part of due
2 process and fairness to the, to the litigants.

3 **THE WITNESS:** Can, can I respond to both of
4 those or is that out of order?

5 **CHAIRMAN GRAHAM:** Actually I'd like to hear
6 your response.

7 **THE WITNESS:** First off, in terms of this
8 schedule, it was discussed as part of our deposition.
9 Mr. Sayler, you asked me specifically about the detailed
10 schedule. I think it was actually provided as one of
11 the production of documents. Originally it was going to
12 be a late-filed exhibit, and then we found that it had
13 already been provided in production of documents. So
14 there was an opportunity to discuss it. I've referred
15 to it several times during the course of discussion.

16 In terms of the list of things I just read
17 off, those are all documented in the integrated project
18 plan. Those things are all in that document as
19 activities that are underway this year and next year.

20 **MR. REHWINKEL:** Mr. Chairman --

21 **CHAIRMAN GRAHAM:** Hold on. Let me finish with
22 Mr. Moyle.

23 **MR. MOYLE:** It's, it's a little bit of, I
24 mean, a little bit of a legal, legal issue. I
25 appreciate Mr. Elnitsky -- I'm not suggesting anything

1 untoward or anything. It's just simply that the record
2 as it exists, certain documents have been entered,
3 everybody has had the chance to put the documents in,
4 you know, and here's one that was produced in a depo
5 that's not in that, you know, it sounds like a
6 significant document. And I just wanted to raise that
7 in part -- not, you know, not, not to trying to prevent
8 the information being provided, because you guys need to
9 make your decision based on the best available
10 information, but at least have the opportunity to, you
11 know, to look at it, spend a little time with it, and to
12 the extent there are any questions, ask him about it. I
13 think just the way the process works that that ought to
14 be an opportunity afforded.

15 **CHAIRMAN GRAHAM:** Mr. Rehwinkel.

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

17 I want to agree with what Mr. Elnitsky said,
18 that this document was discussed in the deposition.
19 Mr. Elnitsky gave us an opportunity to look at it in the
20 deposition and it was produced to us. We have no
21 objection to the document coming in as a late-filed
22 exhibit. However, I would say that the practice before
23 the Commission has been that late-filed exhibits are
24 admitted subject to objection once they are received.

25 I've seen the document. I have every

1 confidence that what the company will -- what
2 Mr. Elnitsky is talking about producing is, is exactly
3 what we've seen and I have no authenticity issues with
4 it. I think it would be helpful for the record.

5 But I am not -- I acknowledge Mr. Moyle's
6 objection, concern, but I think the Commission's
7 practice has been to make those subject to any objection
8 once they're received.

9 **CHAIRMAN GRAHAM:** Well, the question I have
10 before I go to Staff, I know it's been referred to
11 several times during the past couple of days. Staff,
12 where's our -- let's just assume that this document
13 comes in and Mr. Moyle or somebody else has a
14 substantial objection to something that's in there.
15 What are our recourses at that point?

16 **MS. HELTON:** Mr. Chairman, can I address you
17 and the rest of the Commission on this issue and talk to
18 the parties about it?

19 I am very familiar with the concern that
20 Mr. Moyle has with respect to late-filed exhibits and I
21 am very familiar with the specific issue that he is
22 raising. I think we are very far from that here in this
23 instance. This is a document that we're discussing that
24 is in existence in this room right now, that it's my
25 understanding that if it hasn't already been shared with

1 Mr. Moyle, it's ready to momentarily be shared with
2 Mr. Moyle. So he will have the opportunity to look at
3 it and review it hopefully before the close of the
4 hearing and he can ask questions about it.

5 It's my understanding that this is a document
6 that has been produced through the course of these
7 proceedings, that the parties have had an opportunity to
8 look at it, that it has been produced in the production
9 of documents. So this is, this is an instance where
10 we're, where we're, at least some of us are familiar
11 with the document. It's not something that is a gotcha
12 that -- it's something that everyone has the opportunity
13 or has had the opportunity to review.

14 All of that being said, when we have
15 late-filed exhibits, which I don't think is a really
16 good practice actually, I think the Staff would agree
17 with that, but when we have them, I believe that the
18 appropriate method to use to deal with them is to set
19 the date for when the late-filed exhibit would be due,
20 to set the date by when any objections to the late-filed
21 exhibit must be provided to the Commission in writing.
22 And then the proper, the proper procedure will be used
23 based on what the objection is to resolve the objection,
24 and a decision will be made whether that will be part of
25 the record for you to make your decision.

1 **CHAIRMAN GRAHAM:** Is it possible that, is it
2 possible to enter it as a late-filed exhibit only to
3 those things that were asked about or talked about
4 during the course of this hearing?

5 **MR. WALLS:** Can I offer another alternative?

6 **CHAIRMAN GRAHAM:** Sure.

7 **MR. WALLS:** We have the document here. We can
8 pass it out. They can ask questions.

9 **CHAIRMAN GRAHAM:** Your mic is not on.

10 **MR. WALLS:** We have the document here. We
11 have the witness here. We can ask questions now about
12 the document.

13 **CHAIRMAN GRAHAM:** Well, the only problem
14 you'll run into is, and not to call Mr. Moyle an expert
15 or not an expert, he may want to sit down and refer to
16 other engineers or other things that may come up with
17 questions that he may want to ask or things that may not
18 be, that he understands. Don't get me wrong, I
19 understand where you're coming from. But giving it to
20 him now and letting him read over it -- had he been
21 given a week to digest it and bounce it off other
22 people, he may have other questions to ask.

23 **MR. WALLS:** I understand that. But I do want
24 to reiterate that we produced this document in
25 discovery. It was used at a deposition and discussed at

1 a deposition that Mr. Moyle attended by phone. So
2 everyone had an opportunity to ask questions about this
3 document. And, quite frankly, you know, we have
4 thousands, if not millions, of documents related to this
5 case. We can't bring every one of them here and
6 introduce them into evidence. We would, you know,
7 engulf you in documents. But this is not a document
8 that, that no one saw. This is a document that was
9 available for review and was actually discussed in
10 deposition.

11 **CHAIRMAN GRAHAM:** And don't misunderstand me,
12 we may be perfectly fine with this. I'm kind of asking
13 a what-if question. Because I know it's referred to
14 several times during this, and I didn't know if we could
15 just use this document specifically for the questions
16 that were asked and answered back to this document.
17 Quite honestly, I thought this was part of the stuff
18 that we've already had as a filed exhibit.

19 **MR. MOYLE:** Mr. Chairman, if I -- just to the
20 point, I mean, I'll, you know, as we work through this
21 use my best efforts to try to work through it. But
22 it's, candidly it's not how business is done at the
23 Public Service Commission when a case is presented. I
24 mean, you have the prefiled testimony with all these
25 exhibits. You have rebuttal testimony with all these

1 exhibits. So to the extent that a document was
2 available in a deposition, there has to be a decision, a
3 litigation strategy made to say should we put this with
4 the testimony or not? And to allow, you know, sort of a
5 backdoor, oh, you know, here it comes -- if that's how
6 it's going to be done, then, you know, then I think
7 there needs to be clarity on it.

8 But, but it's, you know, not how things are
9 historically and traditionally done because you go
10 through this prehearing process and the exhibits are all
11 identified. And just because something was produced in
12 a deposition, you know, doesn't necessarily mean, okay,
13 well, you know, now, now it comes in.

14 **MS. HELTON:** Mr. Chairman, I think one thing
15 that is important to remember here for this proceeding
16 and all Commission proceedings is we aren't under the
17 same standard as, as a judge may be in a, in a courtroom
18 in a civil matter or a criminal matter. This is an
19 administrative proceeding.

20 I don't believe that we have the same issue
21 here as we have with other late-filed exhibits because
22 of the fact that the exhibit right now that we're
23 discussing is in the room, Mr. Moyle will have the
24 opportunity to, to look at it, and Mr. Walls has offered
25 the opportunity for him to be able to ask questions

1 about it.

2 All that being said, I think it would be very
3 helpful to, perhaps it would be very helpful to you and
4 the other Commissioners to read, for me to read what
5 Chapter 120 says about what the evidence is that you're
6 supposed to be looking at. So if you would --

7 **CHAIRMAN GRAHAM:** Well, let's do this. Let's
8 continue with the questions that the Commission board
9 members have. Right now Commissioner Balbis has got the
10 floor. We will make sure that Mr. Moyle and everybody
11 else has a copy of that document. They can review it.
12 We will take a break for lunch. After lunch we can come
13 back and make a determination if we're going to allow
14 this to be entered into the record or not.

15 **MR. YOUNG:** And, Mr. Chairman, just for
16 information purposes, we have the document right here
17 and we're going to pass it out.

18 **CHAIRMAN GRAHAM:** Yes, please.

19 Now if, Commissioner Balbis, if you'll
20 continue.

21 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
22 And I think I have one last question. And I do
23 appreciate you allowing him to continue on the last
24 question that he did answer.

25 And I just want to clarify that again. You

1 mentioned that a Mr. Lyash or Mr. Dolan did not appear.
2 Could you, could you state that again as to why they're
3 not here this year?

4 **THE WITNESS:** Yes, sir. You know, from our
5 perspective, what we are here this year doing is just
6 describing how we have implemented the decision that was
7 made last year around moving forward on a slower pace.
8 That was a very detailed process that we went through
9 last year to make that decision, including several
10 briefings to the board of directors. And really
11 Mr. Lyash was here last year to explain those interfaces
12 with the board.

13 Our assessment this year was that really it
14 was about executing the plan as it had been put
15 together. And since I'm the individual responsible for
16 the project management aspects of this, we thought it
17 appropriate that I'd be the one to speak to how we're
18 executing it.

19 **COMMISSIONER BALBIS:** Okay. Thank you. I
20 have no further questions.

21 **CHAIRMAN GRAHAM:** Commissioner Brown.

22 **MR. YOUNG:** Mr. Chairman, before Commissioner
23 Brown starts, can I, can I note that that document is
24 confidential? And we highlighted the word
25 "confidential" on it. So if any questions arise from

1 the document, I just want to note that for the record.

2 **CHAIRMAN GRAHAM:** Okay. Thank you.

3 **COMMISSIONER BROWN:** Thank you.

4 Mr. Elnitsky, can you please turn to the
5 Annual 10K, Bate stamp number 22.

6 **THE WITNESS:** Just one second, ma'am.

7 All right, Commissioner. I'm on page 22 Bate
8 stamp.

9 **COMMISSIONER BROWN:** Third paragraph, towards
10 the end of the third paragraph where it begins, "Work
11 has been suspended on the remaining long-lead time
12 equipment items, and PEF has been in suspension
13 negotiations with the selected equipment vendors, which
14 we anticipate concluding by the end of the first quarter
15 of 2011." Is that -- did you help prepare this?

16 **THE WITNESS:** Yes, I did.

17 **COMMISSIONER BROWN:** And is that an accurate
18 statement? Has it been completed by the first quarter
19 of 2011?

20 **THE WITNESS:** It was not completed. It was --
21 let me correct myself. It was completed in the first
22 quarter of 2011, with the exception of two items that we
23 just recently completed in August. Those were rather
24 complicated negotiations around some international
25 hedging factors that it took us more time to get to a

1 conclusion, but I think in the end was a better answer
2 by taking that time to do that.

3 **COMMISSIONER BROWN:** Are there -- is there --
4 are there fees and charges associated with the, with
5 those suspensions?

6 **THE WITNESS:** Yes, there are. What we
7 captured -- the way we've described those in my
8 testimony is as disposition costs.

9 **COMMISSIONER BROWN:** Okay.

10 **THE WITNESS:** And the idea there was to try to
11 capture those things that were really one time sort of
12 breakage fees associated with the decision we made last
13 year to go slower. That, that number came in under, I
14 think it was said yesterday in open forum, 22.5 million
15 was what that ultimately resulted in. But that was part
16 of going through this process to negotiate really for
17 each of the 14 items that were long-lead equipment.

18 **COMMISSIONER BROWN:** So is that the final
19 number for the disposition?

20 **THE WITNESS:** Yes, ma'am.

21 **COMMISSIONER BROWN:** Okay. Thank you. That's
22 all.

23 **THE WITNESS:** Thank you.

24 **CHAIRMAN GRAHAM:** Any other Commission
25 questions? Well, before we move on to redirect or

1 anything, I think we're going to take a recess for
2 lunch. We'll take a recess until 1:30. And during that
3 time, we'll give everybody time to grab lunch and also
4 to review this document. Also for Staff to legally
5 figure out where we need to be if we decide to move
6 forward with this document, and we can make some
7 determinations at that time. Is there anything that we
8 need to discuss or talk about prior to this lunch break?
9 Mr. Young?

10 **MR. YOUNG:** I'm sorry, sir. Can you say that
11 again? Can you repeat the question?

12 **CHAIRMAN GRAHAM:** No. I was just asking is
13 there anything else we need to talk about before we can
14 recess for the lunch break?

15 **MR. YOUNG:** Oh, yes, there is. Staff would
16 note that for Witness Franke, Exhibits 186, 187, and
17 188 will not be entered into the record.

18 **CHAIRMAN GRAHAM:** Okay.

19 **MR. YOUNG:** And I think Mr. Moyle handed out a
20 confidential document for demonstration, just for
21 information purposes, demonstration purposes. So I
22 think this will probably need to be collected because
23 it's my understanding this is a part of Mr. Elnitsky's
24 prefiled testimony exhibit.

25 **CHAIRMAN GRAHAM:** That's correct.

1 **MR. MOYLE:** That's right. And I think I've
2 gotten it from most of the parties. Maybe if I can get
3 Staff to help get it from you guys, that would work,
4 from the Commissioners.

5 **CHAIRMAN GRAHAM:** Is that it, Mr. Young?

6 **MR. YOUNG:** I think that's it until we return
7 from lunch break.

8 **CHAIRMAN GRAHAM:** Okay. We will be in recess
9 until 1:30. Thank you.

10 (Recess.)

11 **CHAIRMAN GRAHAM:** All right. I think we could
12 get started. I think I left it with -- we were
13 concluding the questions back here on the Commission
14 board, and I was going to go back to Mary Anne to tell
15 us where we are legally or what we should do next.

16 **MS. HELTON:** Perhaps we can ask Mr. Moyle
17 whether he has any objections to the exhibit that had
18 been at issue, before we left, being entered into the
19 record.

20 **MR. MOYLE:** Other than what I have already
21 stated?

22 **MS. HELTON:** Other than what you have already
23 stated, or maybe you have had a change in heart, Mr.
24 Moyle.

25 **MR. MOYLE:** It's a tough issue just because I

1 don't want it to become a practice where all of a sudden
2 stuff is coming in without a heads-up that it's coming
3 in. But, I think, I have had a chance to look at it
4 over lunch, and to the extent that I could be permitted
5 to ask questions about it, then I wouldn't -- I would
6 withdraw the objection to it coming in.

7 **CHAIRMAN GRAHAM:** So specifically for this
8 case for this time, you are not objecting right now?

9 **MR. MOYLE:** Provided I can ask the witness
10 some questions about the document.

11 **CHAIRMAN GRAHAM:** Sure. We'll allow you to
12 ask those questions right now.

13 **FURTHER CROSS EXAMINATION**

14 **BY MR. MOYLE:**

15 Q. Mr. Elnitsky, the document that was just
16 recently handed out before we took a break, I don't see
17 a title on it.

18 **MS. HELTON:** And, actually, Mr. Chairman, it
19 probably would be good idea to mark it for
20 identification purposes at this point before Mr. Moyle
21 gets started.

22 **CHAIRMAN GRAHAM:** For identification purposes
23 we will mark it 212.

24 **MS. HELTON:** Oh, I'm sorry. That was what we
25 marked as 212? Okay. I'm confused. It has already

1 been marked as Exhibit Number 212.

2 **CHAIRMAN GRAHAM:** Yes.

3 Mr. Moyle.

4 **MR. MOYLE:** Thank you. Have we given this a
5 short title?

6 **CHAIRMAN GRAHAM:** No, we have not.

7 **BY MR. MOYLE:**

8 **Q.** Mr. Elnitsky, what would be an appropriate
9 short title for this?

10 **A** There is a title on the box there right above
11 my signature. We'll just call it LNP full notice to
12 proceed, readiness requirements timeline.

13 **CHAIRMAN GRAHAM:** LNP --

14 **THE WITNESS:** LNP full notice to proceed,
15 readiness requirements timeline.

16 **Q** What's a critical path?

17 **A** Critical path activities are those paths
18 through a schedule that drive the overall duration of
19 the schedule. So you'll see, for example, on a document
20 like this several items that are occurring in parallel.
21 Those items that are critical path are what drive the
22 overall schedule.

23 **Q** I'm a handicap with a law degree and a history
24 degree, so I don't have a whole lot of familiarity with
25 critical path, but I'm told that critical paths are

1 linked, that they are not sort of separate stand-alone
2 independent lines which are reflected in this document.

3 Am I being told correctly?

4 A That is correct. Each individual line on here
5 is a separate set of activities. The items that are
6 linked in red are those items that are currently the
7 critical path activities.

8 Q But it's not a critical path that typically
9 you would see where all the activities are linked
10 together, correct?

11 A There is a version of this in the next level
12 of detail that shows that linkage. For this document,
13 we just show those in red to show the items that link to
14 form the critical path.

15 Q When you talk about the other document, what
16 are you referencing?

17 A There is a more detailed schedule that's down
18 below this, it's the next level of project management
19 below it.

20 Q And that is your signature on the document?

21 A Yes, that is correct. We update this usually
22 on about a monthly basis.

23 Q But it looks to me like the last update on
24 this, unless I'm missing something, was back in January
25 of this year. Is that right?

1 A I think this is the last one that we were
2 asked to provide as a production of documents as I
3 understand it.

4 Q But you do have -- you update it on a monthly
5 basis, is that right?

6 A That's correct, yes, sir.

7 Q So you do have more current versions?

8 A Yes, sir.

9 Q So right before we took a break, and you've
10 been kind to share with me the list that you read, so
11 thank you for that, but I think the question that was
12 pending was what are the tasks that are on the critical
13 path that Commissioner Balbis asked you, is that right?

14 A I don't think so. I thought what Commissioner
15 Balbis asked me was what are all the work activities
16 that are underway not associated with the license.

17 Q That are not associated with the license?

18 A I think that's what he asked. That was what
19 my response was. I may have misunderstood.

20 Q Okay. And so you read into the record what is
21 contained on this handwritten note, is that right?

22 A That's correct.

23 Q So to the extent that something wasn't on the
24 critical path that was based on what you read, there
25 wouldn't necessarily be a need to pursue that activity

1 as we sit here today, correct?

2 A Ask me the question again? Would there be a
3 need to --

4 Q Sure. To the extent that the list that you
5 read and the list that I have in my hand, to the extent
6 that it's on the critical path, there wouldn't be a need
7 to pursue it as we sit here today or in the next year,
8 correct?

9 A Yes, but I would qualify that in that some
10 activities, if they were to stop, the change in those
11 schedules would then place them on the critical path.
12 For example, if we were to stop production on certain
13 long-lead equipment items.

14 Q Any others?

15 A I would say that's the biggest one right now.

16 Q Let me take you to the top of this document.
17 I'm going to try to be careful, but do you see up on the
18 very top of the document after it says start Phase I
19 amendment negotiations, that's -- if I'm not telling you
20 where that is, I guess that's okay to use that --

21 A I see it, yes.

22 Q So is that item confidential, just in terms of
23 what it entails?

24 A No, I would say it's not.

25 Q Okay. So it says fuel contract --

1 A That I would not read out loud.

2 Q I'm sorry?

3 A I would not read the rest of that statement
4 out loud, please.

5 Q Okay. I understand that typically when you're
6 fueling -- you're loading a nuclear power plant, how far
7 in advance do you need to load it, load the fuel?

8 A The fuel load will normally be accomplished
9 somewhere between six and 12 months before initial
10 criticality associated with -- there is a specific
11 finding that you have to get through as part of the
12 licensing process that authorizes you to actually load
13 fuel, and that means the plant has to be at an adequate
14 level of completion to meet that finding.

15 Q And the nuclear fuel market, I assume is not
16 like the market for buying milk in that you can't just
17 rely on it being there, is that right?

18 A It's another long-lead equipment type item
19 that you have to deal with.

20 Q But the market is such that you can get
21 nuclear fuel a year or two in advance of needing it to
22 be loaded, isn't that correct?

23 A Not exactly. The only way to have that happen
24 would be to have preexisting contracts in place and
25 preexisting orders in place. The lead time associated

1 with being able to get those deliveries is longer from a
2 contracting perspective to get your positions in the
3 queue.

4 Q How long out in advance do you need to have
5 those contracts?

6 A I can speak specifically to the AP1000.
7 Normally, that fuel contract is in place about the same
8 time you would go to the full notice to proceed to
9 support the construction schedule.

10 Q All right. So on the chart here, the full
11 notice to proceed is that little flag, isn't that right?

12 A That's correct. It's a major milestone. The
13 flag just represents a major milestone.

14 Q All right. But the contract doesn't line up
15 with the flag, isn't that right?

16 A There you're talking about the fuel contract?

17 Q Yes, sir.

18 A. Yes. And the reason for that is the fuel
19 contract was another item that we had to deal with in
20 terms of contracts that needed to be changed to
21 implement the decision made last year to move forward on
22 a slower schedule. So that's another contract that we
23 still have to negotiate and amend.

24 Q. But if you just testified that, you know, you
25 need from an advanced time the contract with fuel to

1 coincide with the notice to proceed, the way I'm looking
2 at this chart, there's a lot of activity and a decent
3 amount of money that's being spent that seems to me
4 prematurely, wouldn't you agree?

5 A. No, and if I can explain. The reason you see
6 that milestone flag in place that's back in basically
7 December of '11, is that is -- and the only reason I'm
8 pausing, let me make sure I'm careful about that
9 particular contract. You see the language that's
10 associated with the information that's in parentheses
11 behind where it says fuel contract and that flag?

12 Q Yes, sir.

13 A All right. The problem is the existing
14 contracts as they exist have certain provisions in them
15 that we need to renegotiate to align with the current
16 project schedule. That's why that flag is so much in
17 advance of the full notice to proceed.

18 Q. And that ties into a red line, correct?

19 A. That's correct. That red line being the
20 overall EPC contract amendment negotiation and
21 negotiations to support the full notice to proceed.

22 Q. Have you done much negotiation in your career
23 in the Navy or with Progress Energy?

24 A. Yes, sir.

25 Q. I've done some as a lawyer on behalf of

1 clients, and I will represent to you that I have never
2 had a negotiation that took 20 months.

3 A. You have obviously never worked with
4 Westinghouse. (Laughter.) I don't mean that to be
5 flippant, and I know Westinghouse is certainly listening
6 to this conversation, but that is a fact.

7 Q. That to me seems like an unusually long time
8 to put a deal together, wouldn't you agree?

9 A. Yes, sir, it is. And it's predicated on the
10 experience we had in negotiating Amendment 3 to the
11 contract and what that took to do. This is, you know,
12 as you can imagine, a very major contract negotiation
13 that will have to be completed.

14 Q. And Mr. Jacobs has suggested that, well, maybe
15 you don't need to spend the money to get ready for
16 contract negotiations just yet, that that can be
17 deferred and save ratepayers some money, isn't that
18 correct?

19 A. Yes, sir, that's his testimony.

20 Q. Again, not being overly qualified to talk
21 about this, but just to make sure I understand it, there
22 is a legend up there, there is a dotted line, and that
23 says float, right?

24 A. That's correct.

25 Q. What is float?

1 A. Float normally on a schedule like this
2 indicates the start of activities that might start in
3 advance of when those items would be required, per the
4 critical path or per the schedule. Part of prudent
5 project management is to where possible try to get out
6 in front of some of these activities so that they don't
7 get to be on the critical path for the project.

8 Q. In terms of this document, it shows
9 completions out in 2021 and 2022, correct, as you have
10 testified to previously?

11 A. That's correct. It shows Unit 1, you see the
12 diamond that says Unit 1 commercial operations, or CO in
13 mid-2021 and then Unit 2 in 2022.

14 Q. And do you consider it confidential how much
15 float time you have built into this document?

16 A. No, I wouldn't say that.

17 Q. Okay. So for the magnitude of this project,
18 at least if I'm reading this document right, there is
19 not a tremendous amount of float time that is provided
20 for, is that correct?

21 A. That is correct.

22 Q. And when you're preparing a document like
23 this, don't you typically build in sufficient float
24 time, because things happens, circumstances change, you
25 just need maybe a little more time than allocated?

1 A. Yes, and I think we have done that
2 commensurate with the elements on this schedule.

3 Q. I'm sorry?

4 A. I think we have done that in terms of building
5 in applicable float for the key activities on the
6 schedule.

7 Q. So what is the total float time for your Levy
8 project?

9 A. The total float time right now in terms of our
10 motion from -- excuse me, from full notice to proceed to
11 mobilization, which is the big piece we are watching
12 right now, is about six months. I don't have a detailed
13 construction schedule yet to provide you float for the
14 actually construction phase. That will be part of the
15 negotiations in the full notice to proceed.

16 Q. So looking down at another read item on this,
17 we have had a lot of discussion about the transmission
18 study?

19 A. Yes, sir.

20 Q. Am I reading the document correctly so that it
21 shows all of the transmission activity coming to a
22 conclusion -- can I state the date?

23 A. Yes, I think that's fine.

24 Q. At the end of 2019?

25 A. That's correct.

1 Q. So the project doesn't come on-line for
2 another 18 months, right?

3 A. That's correct.

4 Q. So the notion about pushing off the
5 transmission study, you would agree it's logical that it
6 could be pushed out, according to this document, for 18
7 months, correct?

8 A. No, I would not. And the reason for that, if
9 I can explain, is it's necessary to have the
10 transmission system complete and backfeed available to
11 the plant in order to meet what's called the 103G
12 finding that allows us to load fuel. So we have to have
13 power to the site from a basically certified and
14 reliable transmission system as part of the steps in the
15 project. So it's not tied directly -- the long answer
16 to your question, it's not tied directly to the COD
17 date, it's really tied to plant conditions required to
18 load fuel and commence start-up.

19 Q. All of this has kind of been happening
20 pretty -- well, let me ask just a couple more. You see
21 on the left hand side of this document it says FNTF
22 REV1, 1 December '10?

23 A. I'm sorry, where are you looking?

24 Q. Right here on this left-hand corner, right
25 here?

1 A. Oh, yes. Okay.

2 Q. What is that?

3 A. I'm sorry, can you point again? I'm not
4 seeing the place you're looking at.

5 Q Right here on the left --

6 A. Oh, that is just the key to when this was last
7 updated. I think that is just his -- that's my project
8 scheduler's coding. It goes all the way back to where
9 the actual file location is for this document, if that
10 is what you're looking at. That's just the nomenclature
11 for the name in the file.

12 Q. Mr. Elnitsky, all of this kind of happened
13 pretty quickly with this document. I appreciate you
14 answering the questions. I was interested in matching
15 the items that you had on your handwritten piece of
16 paper to this, and I was hoping I could argue that all
17 the items that are on this handwritten list that don't
18 fall on critical path are not things we need to be
19 spending money on. Would you kind of agree with that?

20 A. No, I would not. And, again, because if you
21 stop doing some of those activities, those activities
22 then become the critical path because it disrupts the
23 schedule.

24 Q. Before I approached you about getting this
25 list, I had talked to your lawyer, and said, hey, I

1 would like to get a copy of this list. And I will
2 represent your lawyer said, well, just go talk to him
3 and you can get that. And you had some other papers up
4 there with you, is that right?

5 A. That's correct.

6 Q. And could you just tell us what those other
7 papers are, and this paper and kind of why you prepared
8 it?

9 A. They are just notes in terms of key talking
10 points and things that are in my testimony just for my
11 reference.

12 Q. And the document you gave me, you ripped it in
13 half, isn't that right?

14 A. That's correct.

15 Q. What was on the bottom half of it?

16 A. It was some notes related to submarine
17 acquisition in case you wanted to ask me again this year
18 about my submarine background.

19 Q. We'll probably save that for deposition.

20 A. All right. It's always fun.

21 Q. And we'll probably have this marked, but up at
22 the title of this document, it says major current,
23 2001 -- I'm sorry, 2010 and 2011 activities, and then
24 there is a little note that says project in tailspin.
25 Is that right?

1 Q. Mr. Elnitsky, you may recall that you were
2 asked several questions by a couple of the intervenor
3 attorneys regarding intergenerational equity and whether
4 customers today should pay for power plants in the
5 future. If you had to meet customer energy needs, what
6 is the quickest and cheapest power plant you could build
7 for customers?

8 A. The quickest and cheapest would be a simple
9 cycle gas turbine, or you will see it referred to in
10 resource plans as CT, combustion turbine. That normally
11 is somewhere in the 75 to \$100 million range, and 18 to
12 24-month project schedule.

13 Q. And is it a prudent project management
14 practice for a utility to have a fleet of CTs?

15 A. No. Because of their lower heat rates, they
16 are one of the more fuel expensive generation assets to
17 have.

18 Q. You were also asked -- I won't say -- I was
19 going to say a number, but I think it was hours of
20 questions about scenario analysis documents. And in
21 particular, I believe it was Mr. Brew had asked you if
22 there was a retreat that was devoted to the scenario
23 analysis, and I believe he used that term in his
24 question to you. Was the August 2010 retreat devoted to
25 the scenario analysis?

1 A. No.

2 Q. Can you explain what that retreat was, how
3 much time was involved in that retreat, and how much of
4 the time at that retreat was spent on the scenario
5 analysis?

6 A. That retreat is part of our SMC annual
7 business planning process. The agendas normally include
8 everything from resource planning, to personnel
9 planning, to secession planning, you know, to all the
10 different aspects of running the business. In terms of
11 the scenario analyses discussion, as recall it was maybe
12 two hours of a two-day event.

13 Q. And I believe you were asked some questions
14 today about the August 23, 2010, SMC strategic plan and
15 retreat scenario analysis by both Mr. Brew and I believe
16 another intervenor attorney. Do you have that document
17 in front of you?

18 A. Let me just get it out here, again, sir. Yes,
19 I have it in front of me.

20 Q. And if you could turn to Slide 22.

21 A. Okay.

22 Q. And I believe you were directed, your
23 attention to this slide which is titled strategic issues
24 and considerations, and down there with respect to Levy
25 it has near-term decisions. Do you see that?

1 A. Yes, I do.

2 Q And it also has longer-term strategy
3 considerations. What are the longer-term strategy
4 considerations for Levy?

5 A. As articulated here, and really consistent
6 with the project plan, continued joint owner
7 negotiations, continue ongoing feasibility analysis as
8 we have discussed is something that we would do each
9 year, and then it says capital market availability and
10 terms, which I think is referring to continue to work
11 with the markets on how we would finance the project.

12 Q. Is there any reason to do all of these
13 longer-term strategies if the project is not going to be
14 built?

15 A. I would say no.

16 Q. And, in fact, this is a PowerPoint
17 presentation that was presented to senior management,
18 right?

19 A. That's correct.

20 Q. They didn't sign this document, did they?

21 A. No, they did not.

22 Q. And, in fact, when it comes to the Levy
23 document, when they approve something, do they sign it?

24 A. Yes. And you can see in the integrated
25 project plans that are in my exhibits they each have

1 signature pages in the front where the SMC members
2 responsible signed it.

3 Q. And in that exhibit, which I think is Exhibit
4 JE-12, Pages 3 of 38, 4 of 38, and 5 of 38, does that
5 contain the senior management committee signatures to
6 the March 2011 IPP for the Levy Nuclear Project?

7 A. Let me just get there and make sure I'm
8 looking at the right thing. Yes. In the March 2011 IPP
9 there is actually a couple of copies of the signature
10 pages, because people were in different places
11 physically, and we did some of the discussion via Vcom,
12 but you do see the signatures starting the second half
13 of Page 3. Senior management approval, Mr. Johnson, Mr.
14 Dolan, Mr. Lyash, Ms. Sims, and Mr. Mulhern (phonetic).
15 The remaining signatures are on the copies of the
16 subsequent pages.

17 Q. And what are the dates of those signatures?

18 A. Mr. Johnson's is 3/29/11, and the others are
19 similar; all the same date.

20 Q. Is that after the August scenario analysis of
21 2010?

22 A. Yes, it was.

23 Q. And what were they signing off on on this
24 March IPP document?

25 A. They were approving the project plan as

1 articulated in the document and approving the budget
2 requirements for the next 12 months.

3 Q. And what is the document plan, or the plan of
4 record as you have referred to it for the Levy project?

5 A. As articulated in the scope of this project
6 and in the document, it's the activities necessary to
7 bring Unit 1 in service in 2021 and Unit 2 in 2022.

8 Q. Now, you were asked a number of questions
9 about whether you have made a final decision to build
10 the Levy project. Do you recall that?

11 A. Yes, I do.

12 Q. Is it reasonable or responsible for a utility
13 manager to make an ironclad commitment to build a
14 project no matter what?

15 A. I would say no. I think the reasonable thing
16 to do from a project management perspective is to
17 continue to review the factors that affect the project
18 each year and adjust those as necessary.

19 **MR. WALLS:** No further questions.

20 **CHAIRMAN GRAHAM:** Okay. I think there are
21 some exhibits that need to be entered.

22 **MR. WALLS:** Yes. We would move into evidence
23 the witness' Rebuttal Exhibits JE-12 through JE-16,
24 which are numbered 189 through 193 on the staff's
25 exhibit list.

1 **CHAIRMAN GRAHAM:** Let's move in 189, 190, 191,
2 192, and 193 into the record.

3 (Exhibit Number 189 through 193 admitted into
4 the record.)

5 **CHAIRMAN GRAHAM:** Is that all you had?

6 **MR. WALLS:** Yes, but we did have this
7 confidential late-filed exhibit on the EPC RFP
8 transmission estimate, and we have a handwritten
9 document, but we could put that in or provide a later
10 typed document.

11 **CHAIRMAN GRAHAM:** My understanding was
12 everything on that handwritten document was in other
13 exhibits.

14 **MR. WALLS:** Not on this one. This is a
15 particular RFP budget number that's confidential, but we
16 do have the number and we have it on a handwritten
17 document. We could either do that, or provide it
18 however the parties and the Commission wish.

19 **MR. YOUNG:** Mr. Chairman, this stems from
20 Exhibit Number 210, which OPC requested. It's the
21 confidential EPC RFP transmission estimate.

22 **CHAIRMAN GRAHAM:** All right. So you want to
23 enter Number 210 and 212 into the record?

24 **MR. YOUNG:** If OPC can speak to that, if they
25 wish to enter it into the record.

1 **MR. SAYLER:** We're okay with it being
2 handwritten, so long as we can get some copies made so
3 we can have a copy to take home with us today, we'll
4 forgo having a late-filed.

5 **CHAIRMAN GRAHAM:** One more time.

6 **MR. SAYLER:** If we can have the handwritten
7 note photocopied so we can take a copy of it with us
8 today, then we'll forgo requesting a late-filed on it.

9 **CHAIRMAN GRAHAM:** All right.

10 **MR. YOUNG:** That's fine with staff. If
11 Progress can make a copy of it, we can distribute it
12 before we leave today.

13 **CHAIRMAN GRAHAM:** Okay. So we are moving 212
14 into the record.

15 **MR. YOUNG:** 210. And note that it is a
16 confidential number and should be treated as such.

17 **CHAIRMAN GRAHAM:** I got 210. 212.

18 **MR. YOUNG:** 212 is the -- I call it the PEF's
19 LNP planning schedule, yes, sir. And staff has no
20 objection. That was from Commissioner Balbis' request.

21 **COMMISSIONER BALBIS:** Yes.

22 **CHAIRMAN GRAHAM:** Okay.

23 **MS. HELTON:** And I believe, Mr. Chairman, that
24 Mr. Moyle, since he was able to cross-examine on the
25 exhibit that he now has no objections on this particular

1 exhibit.

2 CHAIRMAN GRAHAM: That is correct.

3 MR. MOYLE: That's right.

4 MR. YOUNG: Or any other intervenor, just for
5 the record.

6 CHAIRMAN GRAHAM: That is correct.

7 (Exhibits 210 and 211 admitted into the
8 record.)

9 CHAIRMAN GRAHAM: Okay. Progress, that's all
10 the things you have, correct?

11 MR. WALLS: Yes.

12 CHAIRMAN GRAHAM: There is 211 that we have
13 not entered into the record yet. Whose is that?

14 MR. SAYLER: OPC would move that Exhibit 211
15 be moved into the record.

16 CHAIRMAN GRAHAM: Okay. If there is no
17 objection to that?

18 MR. WALLS: No objection.

19 CHAIRMAN GRAHAM: Okay. So it looks like we
20 have everything entered into the record. Let me go back
21 and make sure.

22 MR. MOYLE: Mr. Chairman, I would like to move
23 as 213 the handwritten notes that I questioned the
24 witness about.

25 CHAIRMAN GRAHAM: Okay. That's the one I

1 thought that was part of other exhibits, but if you want
2 to specifically put that into the regard, we can do that
3 as 213 if there is no objection?

4 **MR. WALLS:** I don't object to it, but it is
5 part of another exhibit.

6 **MR. MOYLE:** Well, by having it in the record,
7 we can compare it to the other exhibit and see if
8 there's things in or not, and the project in tailspin
9 comment was probably not on the other document.

10 **CHAIRMAN GRAHAM:** Do you have a short title
11 for it?

12 **MR. MOYLE:** Project in tailspin.

13 **MR. WALLS:** Well, I do object to that title.

14 **MR. MOYLE:** You can call it Handwritten Major
15 Current 2010 and 2011 Activities.

16 **CHAIRMAN GRAHAM:** Okay. So no objection to
17 entering 213 into the record?

18 **MR. YOUNG:** Can Mr. Moyle repeat the title,
19 please?

20 **MR. MOYLE:** Major Current 2010 and 2011
21 Activities. And we will need to get copies.

22 (Exhibit 213 marked for identification and
23 admitted into the record.)

24 **CHAIRMAN GRAHAM:** All right. None of Mr.
25 Frank's exhibits are going into the record?

1 **MR. YOUNG:** No, sir. Per the stipulation,
2 none of Mr. Frank's exhibits will not be entered into
3 the record.

4 **CHAIRMAN GRAHAM:** And Exhibit 154, Foster, is
5 not going into the record, is that correct?

6 **MR. YOUNG:** Yes, sir, 154 of Witness Foster
7 will not be entered into the record.

8 **CHAIRMAN GRAHAM:** And I believe that we have
9 everything else entered into the record. I do not have
10 197 checked off of my sheet. That may be an error on my
11 part, the Concentric report.

12 **MR. YOUNG:** Yes, sir. I have that as entered
13 into the record already.

14 **CHAIRMAN GRAHAM:** Okay. All right.

15 **MR. YOUNG:** Before we adjourn, Mr. Chairman, I
16 would note that the standing request from Mr. Whitlock
17 has been provided, but I think he is no longer pursuing
18 that request on the excerpts from the testimony
19 yesterday for Mr. Elnitsky.

20 **CHAIRMAN GRAHAM:** Mr. Whitlock.

21 **MR. WHITLOCK:** Mr. Chairman, the transcript
22 confirms my recollection of the questioning, and there
23 was no question on redirect, so I will let the record
24 stand as it is. Thank you.

25 **CHAIRMAN GRAHAM:** Okay. Any other matters to

1 be addressed other than critical dates?

2 MR. YOUNG: No, sir, not at this time.

3 CHAIRMAN GRAHAM: Intervenors or Progress?

4 Okay. Let's go over the critical dates.

5 MR. YOUNG: I think Mr. Sayler wants to say
6 something.

7 MR. SAYLER: Thank you.

8 I was just going to ask that after everything
9 concludes, if we can get copies of those two handwritten
10 notes afterwards.

11 CHAIRMAN GRAHAM: Yes.

12 MR. YOUNG: Yes. That's not a problem. If he
13 we can provide the copy, we will make copies right away.

14 MR. SAYLER: Thank you.

15 CHAIRMAN GRAHAM: Mr. Young, critical dates.

16 MR. YOUNG: You see I'm happy. Hearing
17 transcripts are expedited. Briefs are due on September
18 the 8th, 2011, for a staff recommendation to be filed on
19 October 12th, 2011, to a Special Agenda October 24th,
20 2011.

21 CHAIRMAN GRAHAM: Are there any questions or
22 concerns about those dates? I see nobody shaking their
23 head no, so I assume yes.

24 All right. Before we adjourn, I want to
25 personally thank everybody for your diligence during

1 this, and for the day we had yesterday. I want to thank
2 staff for putting all of this together and making it
3 pretty straightforward. Of course I want to thank my
4 Commission board for last week and this week; I want to
5 thank Commissioner Edgar for keeping me on the straight
6 and narrow and going in the right direction.

7 And if there's nothing else, I move that we
8 adjourn and everybody travel safe.

9 (The hearing concluded at 2:09 p.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTERS

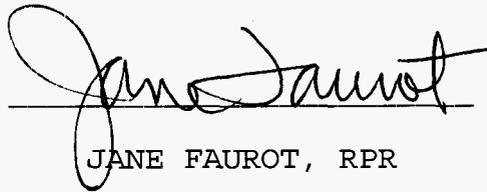
COUNTY OF LEON)

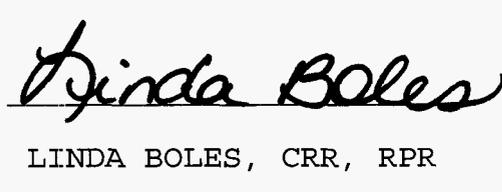
WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 22nd day of August, 2011.


JANE FAUROT, RPR


LINDA BOLES, CRR, RPR

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