

FILED AUG 25, 2015
DOCUMENT NO. 05286-15
FPSC - COMMISSION CLERK

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150009-EI

NUCLEAR COST RECOVERY CLAUSE.
_____ /

VOLUME 5

Pages 631 through 692

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, August 18, 2015

TIME: Commenced at 5:00 p.m.
Concluded at 10:35 p.m.

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

REPORTED BY: MICHELLE SUBIA, CCR, RPR
Premier Reporting
(850)894-0828

APPEARANCES: (As heretofore noted.)

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

I N D E X

WITNESSES

NAME :	PAGE NO .
STEVEN D. SCROGGS	634
Examination by Ms. Cano	634
Prefiled Direct Testimony of Steven D. Scroggs	636
Examination by Ms. Christensen	652
Examination by Mr. Moyle	665
Examination by Mr. Cavros	672
Examination by Ms. Barrera	676

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

EXHIBITS

NUMBER:		ID.	ADMTD.
80	Final Order PSC-13-0598-FOF-EI	651	
81	Commission Staff Levy Unit 6/2015	652	

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

2 (Transcript follows in sequence from
3 Volume 4.)

4 CHAIRMAN GRAHAM: Okay. Rebuttal time,
5 Mr. Scroggs.

6 MS. CANO: FPL calls Mr. Steven Scroggs.
7 Thereupon,

8 STEVEN D. SCROGGS

9 was called as a witness, having been previously duly
10 sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MS. CANO:

13 Q Good evening, Mr. Scroggs.

14 A Good evening.

15 Q You were sworn earlier today, right?

16 A That's correct.

17 Q Okay. Did you prepare and cause to be filed
18 13 pages of prefiled rebuttal testimony in this
19 proceeding on July 7th, 2015?

20 A I did.

21 Q Do you have any changes or revisions to your
22 prefiled rebuttal testimony?

23 A No, I do not.

24 Q If I asked you the same questions contained
25 in your prefiled rebuttal testimony, would your answers

1 **be the same?**

2 A Yes, they would.

3 MS. CANO: Chairman Graham, FPL asks that the
4 prefiled rebuttal testimony of Steven Scroggs be
5 inserted into the record as though read.

6 CHAIRMAN GRAHAM: We will insert Mr. Scroggs'
7 prefiled rebuttal testimony into the record as
8 though read.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **REBUTTAL TESTIMONY OF STEVEN D. SCROGGS**
4 **DOCKET NO. 150009-EI**
5 **JULY 7, 2015**

6
7 **Q. Please state your name and business address.**

8 A. My name is Steven D. Scroggs. My business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

10 **Q. By whom are you employed and what is your position?**

11 A. I am employed by Florida Power & Light Company (FPL or the Company) as
12 Senior Director, Project Development. In this position I have responsibility
13 for the development of power generation projects to meet the needs of FPL's
14 customers.

15 **Q. Have you previously provided testimony in this docket?**

16 A. Yes.

17 **Q. Are you sponsoring or co-sponsoring any rebuttal exhibits in this case?**

18 A. No.

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

20 A. The purpose of my rebuttal testimony is to discuss and respond to statements
21 made by the Office of Public Counsel (OPC) Witness Jacobs and the City of
22 Miami (COM) Witness Meehan, who have filed testimony in this docket.

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

1 A. My testimony corrects mischaracterizations by Witness Jacobs with respect to
2 the basis of FPL's non-binding cost estimate range and the validity of FPL's
3 feasibility analysis. My testimony also addresses, and places into the proper
4 context within the Turkey Point Unit 6 & 7 project, the experience of the first
5 wave of U.S. AP1000 projects and how the lessons learned in these projects
6 have informed and will continue to inform FPL's planning and
7 implementation of the project. I also discuss the misleading nature of calls by
8 Witnesses Jacobs for obtaining construction bids at this stage of the Turkey
9 Point Units 6 & 7 project and describe the process FPL plans to employ within
10 the amended Nuclear Cost Recovery (NCR) statute to achieve the desired
11 level of certainty to inform the necessary decisions the Florida Public Service
12 Commission (FPSC or the Commission) must make as the project develops.
13 Finally, I address the nature of the Initial Assessments and the role they play
14 in reducing the uncertainty at this stage of the project while remaining
15 consistent with the amended NCR statute.

16

17 **PROJECT COST ESTIMATE AND FEASIBILITY**

18 **Q. Please respond to Witness Jacobs's assertion that FPL's feasibility**
19 **analysis is flawed because the analysis uses unreasonably low cost**
20 **estimates for Turkey Point 6 & 7.**

21 A. I disagree. FPL's cost estimate range for the Turkey Point Units 6 & 7 project
22 is well supported and reasonable. It is based on the original cost estimate
23 range provided in the 2008 Need Determination, was substantiated by a cost

1 estimate “check” using Westinghouse pricing information in 2010, and now
2 reflects FPL’s revised project schedule and estimated spend curve over the
3 duration of the project. FPL’s nonbinding cost estimate range has been
4 updated and reviewed in annual NCR filings each year from 2009 through
5 2014.

6
7 Further, the feasibility analysis provides multiple conservative assumptions
8 ensuring the results are appropriate for an informed decision by the
9 Commission. For example, the feasibility analysis conservatively compares
10 the breakeven cost of the next best alternative to the high end of the cost
11 estimate range for Turkey Point Units 6 & 7. Additionally, the analysis is
12 annually updated to reflect the characteristics of the improving competitive
13 technology and the evolving economic and regulatory market (for example,
14 updating fuel and emission compliance cost forecasts) in which the project
15 will operate.

16 **Q. Is FPL’s non-binding cost estimate range based on the publicly reported**
17 **costs for Vogtle Units 3 and 4 and Summer Units 2 and 3, as Witness**
18 **Jacobs claims?**

19 A. No. FPL’s cost estimate was developed using an independent government and
20 industry study of costs for a two unit project at TVA’s Bellefonte site
21 combined with cost estimates specific to the Turkey Point site for civil work
22 and supporting infrastructure. This cost estimate has been maintained through
23 the history of the project by escalating the overnight capital cost to the current

1 year, and calculating time related costs (e.g., interest during construction,
2 escalation) based on the then current project schedule. In 2010, a check of
3 this cost estimate range was conducted using a price estimate provided by
4 Westinghouse. The check confirmed that the non-binding cost estimate range
5 was inclusive of the Westinghouse price estimate. Further, the cost check
6 indicated that the likely cost of the Turkey Point 6 & 7 project was toward the
7 high end of the cost estimate range.

8 **Q. Both Witness Meehan for COM and Witness Jacobs for OPC observe**
9 **that other new nuclear projects have experienced schedule delays and**
10 **cost increases. Please respond.**

11 A. The issues experienced by first wave new nuclear construction projects are not
12 unexpected. In fact, as I have communicated throughout this project's life,
13 FPL's stepwise approach has been designed to monitor and benefit from the
14 lessons learned and experience gained by the industry as these first wave
15 projects move through licensing and construction into operation. FPL
16 continues to monitor the first wave projects through involvement in industry
17 groups, monitoring visits to the active construction sites, and involvement in
18 continuous efforts to improve quality controls and the safety oriented culture
19 of the industry supply chain that supports new nuclear deployment.

20 **Q. Witness Meehan states that FPL's feasibility analysis does not**
21 **"sufficiently consider or explain" the uncertainty of the construction**
22 **schedule and cost assumptions (p. 10-11). He later opines that a more**

1 **complete review of construction costs and schedule is needed (p. 21).**

2 **Please respond.**

3 A. FPL’s consideration of the uncertainties associated with new nuclear
4 construction schedules and costs is the driving force behind its stepwise
5 decision-making approach to new nuclear development; an approach OPC
6 Witness Jacobs now characterizes as a “minimalist approach” that is “a
7 preferable course of action” (p. 5).

8
9 As with many decisions in the face of uncertainty, a bounding analysis (i.e.,
10 the examination of a range of potential outcomes as compared to a singular set
11 of assumptions with a singular result) is relied upon to provide decision
12 makers the necessary foundation to make incremental decisions. FPL’s
13 feasibility analysis is uniquely designed to address this uncertainty by
14 bounding key economic factors: nuclear capital cost, and competitive
15 alternative generation lifecycle costs, including a range of fuel and emission
16 compliance costs. Further, as indicated in my May 1, 2015 testimony in this
17 docket, consistent with its measured approach to this project, FPL is currently
18 engaged in work that will provide a higher predictability in cost and schedule
19 for key activities. This work, referred to as Initial Assessments, will provide
20 additional schedule and cost granularity to better inform the feasibility
21 analysis that will support the decision to move into “preconstruction work” (as
22 that term is used in F.S. 366.93(3)(c)) following receipt of the Combined
23 License (“COL”) in early 2017, and help ensure that the future work will

1 comply with the requirements of the COL. The feasibility analysis that the
2 Initial Assessments support is scheduled to be provided for Commission
3 consideration in the 2016 NCR docket.

4 **Q. Witness Jacobs recommends that FPL incorporate “actual, binding bids”**
5 **from qualified Engineering Procurement and Construction (EPC) firms,**
6 **plus contingency, in FPL’s non-binding cost estimate range and**
7 **feasibility analysis now and prior to beginning preconstruction work (p.**
8 **15-16). What is your reaction?**

9 A. In my opinion, it is not possible to obtain “actual, binding bids” from a
10 contractor that could be relied upon at this stage of the project.

11 **Q. Please explain.**

12 A. Witness Jacobs’s call for a more definitive cost basis through “actual, binding
13 bids” is misleading as it includes an assumption that such bids can be
14 developed at this stage of the project. An actionable bid requires a detailed
15 scope of work, firm schedule milestones, and contractual terms and
16 conditions. In the absence of any of these essential components, there is an
17 incomplete basis upon which bids can be developed.

18
19 Given the impacts of recent NCR statutory amendments, FPL is unable to
20 provide the requisite level of schedule and funding commitment that would be
21 necessary to solicit meaningful and realistic bids from potential participants at
22 this stage of the project. An “actual, binding bid” from a contractor would
23 necessarily include commitments of contractor resources, material and labor

1 pricing based on current market conditions, and the financial capacity to
2 execute on a specific timeline. Until a clear path to implementation is
3 identified and approved by the Commission, FPL will not be able to obtain
4 meaningful and realistic competitive bids reflecting the combined influences
5 of current costs, a defined schedule, and associated terms and conditions
6 needed to support a more certain and executable cost and schedule estimate.
7 Bids solicited and received without a solid timeline and a well-defined set of
8 terms and conditions would be expected to reflect those uncertainties in the
9 form of additional costs.

10

11 It is simply not commercially reasonable for Mr. Jacobs to suggest that
12 vendors would be willing to provide a competitive, binding bid without this
13 kind of project and schedule definition.

14 **Q. Is a clear path to implementation achievable within the revised statutory**
15 **framework?**

16 A. Yes. In order to obtain Commission authorization to undertake
17 preconstruction work, FPL is working to better develop available information
18 on cost and schedule. This requires the work scope identified in the
19 company's Initial Assessments; work specifically identified to provide needed
20 fidelity on that which can be developed *without* preconstruction work, which
21 is more in-depth. Specifically, the Initial Assessments sharpen the focus on
22 the forward schedule sequence and critical activities to implement the project.
23 This information is needed to support the pivotal feasibility analysis that will

1 support moving from licensing activities to preconstruction work, anticipated
2 for this proceeding in 2016. If, based on the more focused work that will be
3 reflected in that feasibility study, the Commission authorizes preconstruction
4 work, then the Company would be in a position to proceed with work that will
5 include obtaining realistic and actionable bids to support the ultimate decision
6 to proceed from post-COL preconstruction work to actual plant construction.

7

8 If it were not for the very practical problems I discuss above, OPC Witness
9 Jacobs's suggestion would provide a higher predictability in cost and schedule
10 for key construction activities. But one can see the circularity in this
11 challenge. So, while agreeing conceptually with Witness Jacob's as to the
12 need to move toward that objective, FPL is taking a more pragmatic approach.

13

14 Again, this stepwise approach has served FPL and its customers very well and
15 we are endeavoring to take the right steps in time to ensure appropriate
16 decisions are able to be made at the appropriate points in time by the
17 Commission.

18 **Q. In the alternative, Witness Jacobs claims FPL should include in its non-**
19 **binding cost estimate range the owners' costs and estimates for**
20 **contractors' costs related to the Vogtle and Summer projects. Please**
21 **respond.**

22 A. With respect, this makes no sense. It further demonstrates a lack of
23 understanding of how FPL developed its estimate and is fundamentally

1 misleading. Such an approach fails to acknowledge the very real impact
2 incorporation of lessons learned from the first wave of new nuclear projects
3 are expected to have on the execution of the Turkey Point 6 & 7 project. A
4 blanket adoption of the first wave experience would not reflect anticipated
5 improvements, differences in construction of supporting infrastructure, or
6 changes in contracting or execution support. Witness Reed discusses impacts
7 of lessons learned in project execution and cost.

8 **Q. Is FPL incorporating these lessons learned at this stage of the project?**

9 A. Yes. Through our project schedule review conducted in 2014, with the
10 assistance of Chicago Bridge and Iron, many of these lessons learned have
11 been identified and guided assumptions used in the development of the
12 revised project schedule. For example, other new nuclear projects have faced
13 issues associated with the time necessary to construct, test, and validate the
14 quality of the “batch plant” concrete, which must comply with nuclear safety
15 requirements. As a result, FPL has incorporated an earlier start date for that
16 work in its revised project schedule. FPL also identified the need to perform
17 the Initial Assessments discussed in my May 1, 2015 testimony to better
18 refine the schedule prior to initiating preconstruction work as part of that
19 review. Further incorporation of lessons from the first wave of new nuclear
20 projects will be important to the development of information that will form the
21 basis of the ultimate decision to proceed to construction.

1 **Q. Please respond to Witness Jacobs’s prediction that “it is highly unlikely**
2 **that in the next round of AP 1000 construction projects, contractors will**
3 **offer fixed/firm price EPC contracts” (p. 11).**

4 A. It is debatable that the first wave contracts can accurately be characterized as
5 fixed/firm price EPC contracts, as that term has been commonly used in
6 power plant construction. FPL is very familiar with execution of true EPC
7 contracts, and we have long expressed our concern that such a contract, with
8 truly firm price components and contractually fixed price components, could
9 not be developed and implemented for a project of this scale and complexity.
10 That is why FPL has maintained the potential that the final contract may be
11 more of a set of contracts, or an EP and a C contract. In summary, FPL has
12 never relied on the expectation of a “fixed/firm price EPC contract” in order
13 to implement the Turkey Point Units 6 & 7 project or estimate project costs.

14
15 Thus, regardless of how one characterizes the nature of first round of AP 1000
16 contracts, Witness Jacobs’s point is essentially moot as far as FPL’s planning
17 is concerned.

18 **Q. With respect to the 6 scenarios in which the breakeven costs are within**
19 **the non-binding cost-estimate range, Witness Meehan claims FPL has**
20 **offered a weak endorsement of the project by categorizing these as**
21 **scenarios that “may” be economic. Please respond.**

22 A. The break-even analysis is a tool that has been developed for this project due
23 to the lengthy process of obtaining licensing approvals ahead of the timeframe

1 in which actionable bids can be obtained. The bounding approach
2 conservatively measures the project's quantitative benefits by comparing the
3 high end of the cost estimate range against an ever increasingly efficient
4 combined cycle gas fired alternative plant on an increasingly efficient FPL
5 system. Given the significant changes that have occurred in technology, fuels
6 and other markets during the duration of the Turkey Point 6 & 7 project, the
7 continued staying power of the project is a rather strong endorsement of its
8 robustness. Additionally, the qualitative benefits of zero emissions and fuel
9 diversity remain in favor of the new nuclear technology.

10 **Q. Witness Meehan also implies that FPL should consider a significant**
11 **deferral of the Turkey Point 6 & 7 project (i.e., to 2047) and meeting**
12 **interim needs with gas plants. Please respond.**

13 A. FPL believes that the history of nuclear power in the U.S. and in the FPL
14 system, along with the many qualitative benefits Turkey Point 6 & 7 is
15 expected to provide, support deployment of the technology on its earliest
16 practicable timeframe. However, FPL's stepwise approach on this project is
17 not inconsistent with Witness Meehan's suggestion. As I have discussed in
18 prior testimony, FPL employs a continuous check and adjust process, with the
19 potential use of "off-ramps" to control project expenditures as new
20 information is developed.

21

22

23

INITIAL ASSESSMENTS

1
2 **Q. Please respond to Witness Jacobs's contention that FPL's Initial**
3 **Assessments are not related to or required for obtaining the COL.**

4 A. Although the Initial Assessments are not "required" to obtain the COL, they
5 are in fact related to the COL process. Initial Assessments are achievable and
6 reasonable to provide a more robust cost and schedule estimate to be used for
7 the feasibility analysis. The feasibility analysis is part of the NCR process
8 that enables FPL to obtain a COL. (FPL previously has stated that absent the
9 NCR statute and rule, FPL would not be able to pursue its new nuclear power
10 plant investments.) In order to obtain the cost recovery that allows FPL to
11 obtain and then maintain the COL, the NCR filing requirements must be
12 satisfied. Additionally, conduct of the Initial Assessments better informs the
13 technical work necessary to maintain compliance with the COL.

14 **Q. He also claims that the Initial Assessment costs "as described by FPL" (p.**
15 **17) are preconstruction work beyond those activities that are necessary to**
16 **obtain or maintain a COL. Please respond.**

17 A. The Initial Assessments have a specific purpose, which is to increase the
18 project schedule certainty for use in the feasibility analysis required by the
19 cost recovery process and to support authorization to begin preconstruction
20 work. This purpose is essentially what Witness Jacobs suggests would be
21 served by engaging in the time and cost intensive effort to obtain binding bids
22 from contractors. For the reasons I have discussed above, this is not a
23 commercially practicable or viable option at this step of the project. However,

1 we will obtain a more refined schedule and cost data through the Initial
2 Assessment work in progress. This will facilitate the review process at the
3 next major step in this project, i.e., a Commission determination of whether
4 FPL should proceed to pre-construction work. Further, as discussed above,
5 this cost recovery process is fundamental to FPL's pursuit and maintenance of
6 the COL.

7 **Q. Witness Jacobs ultimately recommends that only costs related to, or**
8 **necessary for, obtaining the COL be approved for recovery at this time.**
9 **Please respond.**

10 A. FPL is only seeking to recover costs related to, or necessary for, obtaining the
11 COL at this time. It is FPL's view that this recovery request could have
12 included the costs associated with the Initial Assessments, had FPL chosen to
13 seek recovery of those costs at this time. Instead, FPL has proposed to defer
14 recovery until the decision to proceed to preconstruction work and the
15 supporting feasibility analysis, which those Initial Assessment activities
16 support, is presented to the Commission.

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

18 A. Yes.

1 BY MS. CANO:

2 Q And there were no exhibits to your rebuttal,
3 correct?

4 A Correct.

5 Q Would you please provide a summary of your
6 rebuttal testimony to the Commission.

7 A Yes. Good evening, Chairman and
8 Commissioners. The purpose of my rebuttal testimony is
9 to respond to statements by Office of Public Counsel
10 Witness Jacobs and City of Miami Witness Meehan.

11 FPL is aligned with many of the perspectives
12 shared by Witness Jacobs. However, Witness Jacobs'
13 testimony includes an incorrect characterization of how
14 the FPL cost estimate has been developed. His
15 testimony also overlooks the independent and bounding
16 nature of the cost estimate range that has stood the
17 test of multiple reviews since it was first introduced
18 in 2007.

19 Witness Jacobs' testimony includes misleading
20 statements with respect to the level of cost certainty
21 that can be obtained by seeking binding bids now,
22 especially in light of the restrictions on
23 pre-construction work in place as a result of the 2013
24 amendments to the Nuclear Cost Recovery Statute.

25 Additionally, Witness Jacobs' discussion of

1 the initial assessment plan for 2015 and 2016
2 mischaracterizes the nature of the work. He fails to
3 acknowledge that the work will further improve the
4 accuracy of the project schedule, which is an important
5 component of the feasibility analysis required to be
6 submitted to this Commission. In order to continue
7 pursuit and later maintenance of the combined license,
8 the NCRC filing requirements must be satisfied.

9 Witness Jacobs' position on initial
10 assessments appears to be counter to his calls for
11 increased costs certainty in other areas of the
12 project. FPL's approach will improve the accuracy of
13 the construction schedule by focusing on studies that
14 are appropriate and achievable now, without engaging in
15 intensive bid development work that is not likely to
16 yield significant improvements and accuracy until later
17 in the development process.

18 Witness Meehan's testimony fails to
19 acknowledge the manner in which FPL has implemented an
20 approach to recognize and address the unique nature of
21 the Turkey Point Unit 6 and 7 project. His testimony
22 cites uncertainties in the project schedule without
23 acknowledging that reducing such uncertainties is the
24 very purpose of FPL's step-wise approach.

25 I look forward to answering your questions.

1 This completes my summary.

2 MS. CANO: The witness is available for cross
3 examination.

4 CHAIRMAN GRAHAM: OPC?

5 MS. CHRISTENSEN: Yes, we have three exhibits
6 to hand out. One of them has been premarked as --
7 I think it was 43 --

8 CHAIRMAN GRAHAM: Okay.

9 MS. CHRISTENSEN: -- on Staff's exhibit list.
10 I think it's the Deposition Exhibit 9, yes,
11 Exhibit Number 43, lated-filed Exhibit 9 to the
12 deposition of Steven Scroggs.

13 The other two exhibits are comprised of final
14 order to -- final order approving the Levy Revised
15 and Restated Stipulation and Settlement. And then
16 the Commission Staff's Levy Audit for June of
17 2015. If we could have those marked for
18 identification.

19 CHAIRMAN GRAHAM: Okay. So let's go with the
20 final order as Exhibit Number 80.

21 (Exhibit No. 80 was marked for
22 identification.)

23 MS. CHRISTENSEN: Okay.

24 CHAIRMAN GRAHAM: For simplicity. And we'll
25 do the Commission Staff Levy Audit June 2015 as

1 81.

2 (Exhibit No. 81 was marked for
3 identification.)

4 MS. CHRISTENSEN: Okay.

5 CHAIRMAN GRAHAM: And you said the other one
6 was already labeled at what number?

7 MS. CHRISTENSEN: Forty-three on composite
8 exhibit list.

9 CHAIRMAN GRAHAM: Okay.

10 MS. CHRISTENSEN: Somewhere in here -- here
11 we go.

12 EXAMINATION

13 BY MS. CHRISTENSEN:

14 Q Good evening, Mr. Sim (sic.) We're going to
15 work today. On Page 8 of your rebuttal testimony, let
16 me refer you to that, Lines 8 through 10. Let me know
17 when you get there.

18 A I'm there.

19 Q Okay. In that part of your testimony, you
20 state Witness Jacobs' suggestion to use actual bids
21 would prove a higher predictability in the cost and
22 schedule for key construction activities, correct?

23 A "If it were not for the very practical
24 problems I discuss above," I believe that's how that
25 starts.

1 Q So your response to my question is, yes, it
2 would?

3 A Yes, if you include the complete statement.

4 Q Okay. And on Page 6 of your rebuttal
5 testimony, referring you to Lines 19 through 23, you
6 state that given the impacts of the recent NRC (sic)
7 Statutory Amendments, FPL is unable to provide the
8 requisite level of schedule and funding commitment that
9 would be necessary to solicit meaningful and realistic
10 bids from potential participants at this stage of the
11 project; is that correct?

12 A With the correction that it was the Nuclear
13 Cost Recovery Statute Amendment. I believe you said
14 NRC.

15 Q Oh, okay.

16 A Sorry.

17 Q With that correction, referring to the
18 Nuclear Cost Recovery Statute, would that be a correct
19 statement?

20 A That's correct.

21 Q Would you agree with Witness Jacobs that
22 actual bids would provide a higher predictability in
23 the cost and schedule for key construction activities?

24 A Yes, if they were achievable. And when they
25 are achievable, they will provide that increased

1 accuracy.

2 Q In your rebuttal testimony on Page 7, Lines
3 16 through 22, in there you say that "In order to
4 obtain Commission authorization to undertake
5 pre-construction work, FPL is working to better develop
6 available information on cost and schedule."

7 And you're using the initial assessment
8 studies to do this; is this correct?

9 A That's correct.

10 Q And you say that these initial assessment
11 studies are being done to comply with the Nuclear Cost
12 Recovery requirement that a feasibility study be done
13 and presented to the Commission prior to the beginning
14 of pre-construction work, correct?

15 A That's correct.

16 Q And you would agree that the initial
17 assessments are not required to obtain the COL?

18 A Yes, I would agree. They're not required by
19 the NRC. I do believe that they are related to
20 obtaining the combined license by their support role
21 here in the feasibility analysis.

22 Q Well, let's explore that a little bit more.
23 You have a copy of Exhibit Number 43 in front of you?

24 A Yes.

25 Q In looking at Exhibit 43, this was a

1 presentation made by you regarding the nuclear power
2 projects, correct?

3 A Yes.

4 Q And I'll refer you to Pages 10 and 11 of the
5 May 4th presentation. Can you turn to there?

6 A May 4th presentation?

7 Q Right. The back presentation, there were two
8 presentations, the one in the back, Pages 10 and 11.

9 A Okay.

10 Q Okay. You're there. And those list the
11 initial assessment activities, correct?

12 A Yes.

13 Q And you have them categorized by groups?

14 A Correct.

15 Q Okay. Looking at Group A, would you agree
16 that none of the Group A studies that are being
17 provided, are being provided to the NRC to obtain the
18 COLA?

19 A That's correct.

20 Q And looking at the Group B studies that
21 you've identified there, none of those studies are
22 being provided to the Nuclear Regulatory Commission to
23 obtain the COLA, correct?

24 A That's correct.

25 Q Category C, none of those studies are being

1 provided to the Nuclear Regulatory Committee to obtain
2 the COLA?

3 A That's correct.

4 Q And finally, Category D, those studies, none
5 of them are being provided to the Nuclear Regulatory
6 Commission to obtain the COL, correct?

7 A That's correct.

8 Q Okay. Now, you explain on Page 12 of your
9 rebuttal testimony, Lines 10 through 13 -- I'll let you
10 get there.

11 A I'm there.

12 Q Okay. You explain the initial assessments
13 are needed to provide a better cost and schedule
14 estimate to be used in the feasibility study to receive
15 funds under the NRC to obtain the COL so they are
16 related to the COL process.

17 Am I understanding your explanation
18 correctly?

19 A Essentially correct, yes.

20 Q Okay. Referring back to Exhibit 43 on Page 1
21 of the first presentation.

22 A Page 1 of the February 18th presentation?

23 Q Correct.

24 A Okay.

25 Q There's a summary of issues and at the bottom

1 **there's an area called project schedule and a topic**
2 **called initial assessments. Do you see that?**

3 A Yes.

4 Q **It's correct that under the key points, you**
5 **note that 5 million of the total initial assessment**
6 **costs are going through a CWIP account for 2016?**

7 A The initial location that those costs will
8 reside is in the C-W-I-P, yes.

9 Q **Okay. In your rebuttal on Pages 12 and 13,**
10 **you state "The initial assessment better informs the**
11 **technical work necessary to maintain compliance with**
12 **the COL"; is that correct?**

13 A That's another aspect of the initial
14 assessments is to ensure that we can conform and comply
15 to the combined license when it's issued, yes.

16 Q **Well, let me go through a little bit of the**
17 **groups that we talked about previously. Would you**
18 **agree that none of the Group A studies are specifically**
19 **being created to maintain the COL in front of the**
20 **Nuclear Regulatory Commission?**

21 A No.

22 Q **They are being created to be provided to the**
23 **Nuclear Regulatory Commission?**

24 A I believe your answer was are they being --
25 or your question was are they being conducted to ensure

1 we conform with the combined operating license.

2 Q I'm not sure that that was my question.

3 A Well, please restate.

4 Q Okay. I just want to make sure -- let me be
5 very specific. None of the studies that you have
6 listed under Group A are specifically being created to
7 provide to the NRC to maintain your COL; is that
8 correct?

9 A That's not correct.

10 Q How are they being created to be provided to
11 the NRC?

12 A Again, when we look at the schedule and our
13 ability to refine the schedule, we need to understand
14 that the work that we're planning to be done and the
15 sequence in which that work is done will eventually
16 conform and comply with the combined license.
17 Therefore, that allows us to -- in the future, the
18 results of these studies will help confirm that we are
19 maintaining compliance with the COL.

20 Q I'm not sure that's actually responsive to my
21 question. Let me just ask this another way. And you
22 may have already answered this, but I'm just going to
23 try it again.

24 Are any of the Group A studies being created
25 to be given to the Nuclear Regulatory Commission?

1 A Yes.

2 Q Which studies that are under Group A will be
3 provided to the NRC?

4 A Let me specifically explain my answer.

5 MS. CHRISTENSEN: I'm going to object if I
6 can't get a yes or no, unless he's going to point
7 to the specific studies.

8 CHAIRMAN GRAHAM: Let's try breaking your
9 answer down piece by piece.

10 MS. CHRISTENSEN: Okay.

11 CHAIRMAN GRAHAM: Let's walk it through it.

12 BY MS. CHRISTENSEN:

13 Q Let me try this again, then. Please point to
14 any of the studies under Category A that will be
15 provided directly to the Nuclear Regulatory Commission.

16 A The results of the studies under Category A
17 will provide information that the Nuclear Regulatory
18 Commission will rely on in the future to determine that
19 we are --

20 MS. CHRISTENSEN: I'm going to object.

21 CHAIRMAN GRAHAM: Let me see if I understand
22 the question. You want to know what specific
23 things under A are going to be reported, and
24 you're saying that the results of all of them are
25 going to create all of this?

1 THE WITNESS: The results of the studies --
2 and I'm really not trying to be difficult. I'm
3 trying to answer.

4 CHAIRMAN GRAHAM: Well, if you can't answer a
5 question, that's fine to say you can't answer it.
6 I think she wants to know of all of those things
7 that are listed there, specifically which ones are
8 going to go? You're saying every single one of
9 them?

10 THE WITNESS: I'm saying every single one of
11 them. And I'm having difficulty answering yes or
12 no because the request is which are going to be
13 specifically and explicitly provided to the NRC.
14 I don't know that any of these individual studies,
15 as they're conducted here, will be independently
16 provided to the NRC.

17 CHAIRMAN GRAHAM: Okay. That answers her
18 question.

19 MS. CHRISTENSEN: And then I will ask no
20 further questions along that line. I think we've
21 got our answer on those studies.

22 CHAIRMAN GRAHAM: Okay. They have plenty of
23 time to fix whatever ambiguity that may be there.

24 BY MS. CHRISTENSEN:

25 Q Okay. And I assume that if that is true for

1 **the Group A studies, that's also true for the studies**
2 **being conducted on B, C and D, correct?**

3 A Correct.

4 Q **Okay. I'm going to refer you to the handout**
5 **that was provided related to the final order approving**
6 **the Levy Revised and Restated Stipulation and**
7 **Settlement.**

8 Are you aware that Duke has terminated the
9 EPC contract for construction of the nuclear -- Levy
10 Nuclear Plant and has elected not to complete the
11 construction of the Levy Nuclear Power Plant?

12 MS. CANO: Excuse me. Consistent with
13 Ms. Helton's request that we lodge objections at
14 the outset of questioning on documents, I will go
15 ahead and let folks know that I intend to object
16 to Exhibit Numbers 80 and 81 as being irrelevant
17 to the Turkey Point 6 and 7 project.

18 CHAIRMAN GRAHAM: Okay.

19 MS. CHRISTENSEN: Do you want me to respond
20 to the objection now or wait until we move it into
21 the record?

22 CHAIRMAN GRAHAM: Well, this is a final order
23 so there's really no need to move this into the
24 record, correct?

25 MS. CHRISTENSEN: No. And the other issue is

1 related to the Commission's audit. And it may or
2 may not be necessary to move it into the record,
3 it depends on what his level of awareness is, so
4 let me -- if I can repeat my question.

5 MS. MÉNDEZ: I am sorry, but the City of
6 Miami, if it is not going to be moved into the
7 record, we would ask that the Chair and the
8 Commission take judicial notice of both of these
9 items. I just wanted to make that clear for the
10 record.

11 CHAIRMAN GRAHAM: Mary Anne, since you teed
12 this up.

13 MS. HELTON: I think that it would be
14 appropriate at this time for the counsel for OPC
15 to suggest why this line of questioning might be
16 relevant or why, in particular, the Staff audit
17 with the Levy Unit is relevant to this proceeding
18 for Florida Power & Light.

19 MS. CHRISTENSEN: This is directly relevant
20 to his rebuttal testimony that the initial
21 assessment studies and the costs related to that
22 are necessary to obtain the COL. And it is
23 pertinent as to what is happening with the Levy
24 Plant since that nuclear plant has been terminated
25 or the construction of that nuclear plant is

1 terminated but they are proceeding with the COL.

2 MS. HELTON: So Mr. Chairman, if you think
3 that is relevant to Mr. Scroggs' testimony, then
4 it would be appropriate for Ms. Christensen to ask
5 questions concerning the Levy audit.

6 CHAIRMAN GRAHAM: Let's inch through this and
7 see where it goes.

8 MS. CHRISTENSEN: And I appreciate it, it's a
9 few short questions just to --

10 BY MS. CHRISTENSEN:

11 Q Mr. Scroggs, you are aware that Duke has --
12 are you aware that Duke has terminated the EPC contract
13 for construction of the Levy Nuclear Power Plant and
14 has elected not to complete construction of the Levy
15 Nuclear Power Plant?

16 A I'm generally aware, yes.

17 Q Okay. And would you agree that that is a
18 very strong indication by Duke of a lack of intent to
19 build that twin AP1000 plant, correct?

20 A Yes.

21 Q Okay. And I would refer you to the
22 Commission Staff Audit of the Levy Power Plant for June
23 2015. Would you agree that despite the cancellation of
24 the EPC and the very public decision to elect not to
25 complete, that the NRC has continued to process the COL

1 application for the Levy Nuclear Power Plant? Correct?

2 A That's my understanding of the status of the
3 COL.

4 Q Okay. And just referring you to page -- I
5 believe it is 8 and 9 of the Staff Audit Report that
6 indicates -- let me know when you're there.

7 A Eight and 9?

8 Q It starts at the bottom of Page 8 and it goes
9 over onto Page 9. If you need a minute, you can just
10 read that brief section.

11 A Okay.

12 Q Okay. Have you had a chance to review that
13 section?

14 A Yes.

15 Q Okay. You would agree that rather than
16 refusing, the NRC refusing to process the COL
17 application for the Levy Nuclear Power Project, the NRC
18 has made the COLA for the Levy the lead application?
19 Is that correct?

20 A It's a process of how they handle the AP1000
21 and the Part 52.

22 Q Do you know whether or not they are the lead
23 project for the -- or the next lead project for the
24 AP1000? Are you aware of that?

25 A Yes.

1 Q Okay. So let me just be clear. I have one
2 last question. If the initial assessment work was not
3 done, FPL could still receive the COL for Turkey Point
4 Unit 6 and 7? Would that be correct?

5 A That's correct.

6 MS. CHRISTENSEN: I have no further
7 questions.

8 CHAIRMAN GRAHAM: Retail Federation?

9 MR. LAVIA: No questions.

10 CHAIRMAN GRAHAM: FIPUG?

11 MR. MOYLE: Just a couple.

12 EXAMINATION

13 BY MR. MOYLE:

14 Q Mr. Scroggs, on Page 5, Line 9 --

15 A I'm there.

16 Q -- you state, quote, "As with many decisions
17 in the face of uncertainty," and you go on and talk
18 about the bounding analysis and detail some of the key
19 economic drivers, correct?

20 A That's correct.

21 Q Okay. And so there's a lot of uncertainty
22 associated with the Nuclear Project Turkey Point 6 and
23 7, correct?

24 A There's a lot of uncertainty about any major
25 project.

1 Q Yeah. And with respect to -- you had
2 identified the range of fuel and emissions compliance
3 costs. You would agree that fuel forecasts that
4 predict the cost and price of fuel at a point in time
5 that is eight or nine years from operation are not
6 things you can have a great deal of confidence in,
7 correct?

8 A I do not agree that.

9 Q So you would state the opposite would be
10 true, that you can have a great deal of confidence in
11 long-range fuel forecast?

12 A What I would -- no, I would not say a great
13 deal of confidence. I would say that it's the process
14 of this Commission and the process of the Ten-Year Site
15 Planning Process to make these decisions with the best
16 information that's available. We've gone through a
17 rigorous process and we continue that process with many
18 different projects and we have applied it here.

19 Q Is it easier to forecast something at a
20 closer point in time as compared to something further
21 out in time as a general proposition?

22 A As a general proposition, yes.

23 Q Okay. And are you aware with respect to how
24 FPL made some forecasts in a docket last year for fuel
25 forecast with respect to what they will be doing and

1 **what the actual results have been within a year period**
2 **of time?**

3 MS. CANO: Objection. Mr. Scroggs doesn't
4 cover fuel forecast in his rebuttal testimony.
5 This is outside the scope.

6 MR. MOYLE: Well, he talks about the
7 uncertainties and uses the range of fuel.

8 CHAIRMAN GRAHAM: Where are you talking
9 about?

10 MR. MOYLE: Page 5, Line 15, the uncertainty
11 by bounding key economic factors: Nuclear capital
12 cost, competitive alternative generation life
13 costs, including a range of fuel and emissions
14 compliance costs.

15 MS. CANO: I'm sorry, that portion of his
16 testimony discusses the uncertainty that's covered
17 by the project cost estimate which accounts for
18 those things. He's not talking about fuel
19 forecasting in that section.

20 CHAIRMAN GRAHAM: I am going to have to agree
21 with her.

22 MR. MOYLE: Can I follow up with him?

23 CHAIRMAN GRAHAM: Sure.

24 BY MR. MOYLE:

25 **Q So are fuel forecasts part of what you looked**

1 **to? Don't you have a range of fuel forecasts that you**
2 **used in doing your feasibility analysis?**

3 A I provide capital cost input to Witness Sim
4 and his resource planning group, who then incorporates
5 the other economic assumptions, including a range of
6 fuel forecasts and compliance, emissions compliance
7 forecasts.

8 Q **Are you comfortable talking about fuel**
9 **forecasts?**

10 A No.

11 Q **Okay. So then I take it that fuel forecasts**
12 **are part of the economic feasibility analysis, that**
13 **you're not comfortable talking about that portion of**
14 **the feasibility analysis?**

15 A It's not my testimony that I sponsor.
16 Witness Sim is perfectly able to explain to you the
17 assumptions around fuel cost forecasting.

18 Q **Do you know -- I'm a little confused by your**
19 **statement that you don't think that there can be a**
20 **binding EPC contract, is that right, a fixed price?**
21 **When I say fixed price -- maybe I have used the wrong**
22 **term.**

23 A Well, correct. That's right. And I do
24 recall Witness Jacobs tonight shared that -- I think he
25 corrected himself on the stand that the Southern

1 Georgia Power contract wasn't fixed but firm. There's
2 a significant difference in fixed and firm. And in my
3 understanding and expectation, we would not expect to
4 ask for or receive a fixed price contract for Turkey
5 Point 6 and 7.

6 **Q What's your understanding of the difference**
7 **between fixed and firm?**

8 A Fixed is just what it might imply, a dollar
9 value for a delivered product. Whereas, firm is
10 agreed-upon material, quantities, timelines, manhours,
11 and that the buyer takes the risk on the material cost,
12 the labor cost and other factors.

13 **Q When you say, "the buyer," would that be FPL**
14 **or the contractor?**

15 A In a contract, there is usually a buyer and a
16 seller, so FPL would be the buyer in this instance.

17 **Q So who would take the material costs on a**
18 **firm contract, FPL, or you can say Bechtel, for**
19 **example? Who would have that risk?**

20 A Again, the -- in my understanding of the use
21 of the term firm and nuclear power plant contracting,
22 the builder, the contractor, Bechtel, Chicago Bridge &
23 Iron, Westinghouse, some consortium, would guarantee
24 the number of manhours needed to construct the amount
25 of material perhaps needed to construct, the number of

1 pieces of specific equipment. They would not guarantee
2 the material price, the labor rates, the productivity.

3 And all of those things are negotiable. But
4 the more that you negotiate to be on the ledger of the
5 contractor, the more margin that contractor places into
6 his or her bid.

7 Q Okay. So help me with this. On Page 10,
8 Line 12, you say, quote, "In summary, FPL has never
9 relied on the expectation of a, quote, 'fixed/firm
10 price EPC contract,' end quote. In order to implement
11 the Turkey Point Unit 6 and 7 project or estimate
12 project costs."

13 Is that your testimony?

14 A That's correct.

15 Q Okay. And when you use fixed/firm there,
16 you're saying fixed or firm? Is that what that means?

17 A Or some combination of the two.

18 Q And with respect to the notion that it's
19 impossible to obtain actual bids from a contractor at
20 this point in time, that's your -- what you think, or
21 do you know that?

22 A Again, this is based on my discussion with
23 many experts in the field, including FPL's engineering
24 and construction business unit and their experience
25 with not only nuclear construction, but other

1 construction. And I think to be very clear, you could
2 potentially obtain a fixed price bid.

3 But without being able to narrow down the
4 terms and conditions under which that work would be
5 done, a very firm schedule to work with them and a
6 completely fleshed out design that would be enacted.
7 There are so many uncertainties that the fixed price
8 that you would obtain would have no value.

9 So what we're trying to communicate here is
10 that it's not commercially reasonable to obtain a fixed
11 price at this stage of the project with the work left
12 to be done in the pre-construction period.

13 **Q Do you know how Duke -- wasn't Duke able to**
14 **do it?**

15 A I'm not aware of what they received.

16 **Q One way or the other?**

17 A I can only say that they're no longer
18 proceeding.

19 **Q But you don't have any information about**
20 **their EPC contract with respect to whether it was**
21 **fixed/firm and at what point they got that, correct?**

22 A I don't have any firsthand information of
23 that contract.

24 **Q Did you have any conversations with any**
25 **people who might be submitting bids, like Bechtel or**

1 **Westinghouse or a consortium or Chicago about providing**
2 **a binding bid?**

3 A Could you specify the time frame?

4 Q **Since you made your filings in this test --**
5 **from January 1 of this year?**

6 A No, I have had no conversations with bidders.

7 Q **Page 11 you use the off-ramps term. And**
8 **Mr. Reed suggested off-ramps include an off-ramp to**
9 **cancel a project.**

10 Do you have a different understanding of
11 off-ramp, that it does not include that, or could an
12 off-ramp include canceling a project?

13 A It could. That's an ultimate off-ramp.

14 Q **I'm sorry?**

15 A That would be the ultimate off-ramp.

16 Q **It would be like turning off the car maybe,**
17 **right?**

18 A (No response.)

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

20 CHAIRMAN GRAHAM: SACE?

21 MR. CAVROS: Thank you, Chairman. Just a
22 couple of questions.

23 EXAMINATION

24 BY MR. CAVROS:

25 Q **I want to visit the off-ramp, Mr. Scroggs.**

1 **Does the company have any dates for off-ramps at this**
2 **point, any tentative dates where it will review the**
3 **project and those dates will serve as potential**
4 **off-ramps?**

5 A Yes, I believe I communicated our intent.
6 Looking at the project schedule as a result of the 2014
7 review, we intend to present a cost estimate and
8 feasibility analysis in 2016 to support moving to
9 pre-construction work once the combined license is
10 obtained.

11 Q **The combined license probably will not be**
12 **obtained until 2017, though; isn't that correct?**

13 A That's correct.

14 Q **So the feasibility study in 2016 will -- how**
15 **will it be informed by the COL?**

16 A Again, the process under which we operate is
17 to provide the earliest practicable schedule for
18 delivery of these units. We anticipate, based on the
19 NRC's published schedule, that they'll be in a position
20 to make a decision on the combined license in 2017.

21 We feel it's important to give the Commission
22 the opportunity to look at the analysis and make a
23 determination on whether or not, once that combined
24 license is obtained in the spring of 2017, should we be
25 able to proceed with pre-construction work on the

1 project or not.

2 So that is spelled out in my testimony, I
3 believe in the May testimony, that we intend to file in
4 2016, give the Commission the opportunity to make the
5 decision on contingent upon receipt of the COL in 2017.
6 The COL itself has -- doesn't have an input into the
7 feasibility analysis.

8 Q So next year, you'll have another sunk cost
9 of about \$20 million, is that -- you testified to that
10 earlier?

11 A That's the projection, yes, sir.

12 Q Okay. And I want to revisit this issue
13 again. And you may have -- I believe you provided some
14 testimony on it earlier, and that is Page 3, the very
15 first line there where you say there was an "Estimate
16 check using Westinghouse pricing information in 2010."

17 Why haven't you done a check since then?

18 A Again, without firming up the schedule and
19 having that information available, we didn't believe
20 that we were going to obtain any better information
21 than we currently have. The cost estimate range is
22 bounding, as you've seen by the Concentric Study. Our
23 cost estimate is above that of the current Southern
24 Vogtle project.

25 So, again, we believe we provided a bounding

1 analysis that should give the Commission comfort that
2 we bracketed the range of outcomes and allow them to
3 make that incremental decision and move forward.

4 **Q But this last check was done five years ago.**
5 **Certainly there's been some changes within the last**
6 **five years regarding pricing information and the like,**
7 **wouldn't you agree?**

8 A Again, our information is that there hasn't
9 been any significant information that would make a
10 difference to the analysis. The moving forward, right,
11 we will definitely be engaging Westinghouse and the
12 other contractors to refine those cost estimates with a
13 firm schedule, terms and conditions and a defined
14 design and scope of work.

15 MR. CAVROS: Thank you.

16 CHAIRMAN GRAHAM: City of Miami?

17 MS. MÉNDEZ: No questions.

18 CHAIRMAN GRAHAM: Staff?

19 MS. BARRERA: We have some questions.

20 Earlier you all received a packet with
21 exhibits, and I will be referring to Exhibit 38,
22 which consists of Interrogatory 15, 19, 22 and 35.

23 CHAIRMAN GRAHAM: I want to make sure the
24 witness has those in front of him.

25 MS. BARRERA: So I just want to make sure

1 that everybody has it. And, also, I will be
2 referring to Exhibit 38A.

3 THE WITNESS: I have 38 and 38A.

4 MS. BARRERA: Yes.

5 CHAIRMAN GRAHAM: What other ones did you
6 say?

7 MS. BARRERA: Pardon?

8 CHAIRMAN GRAHAM: Which other ones did you
9 say?

10 MS. BARRERA: I said part of 38 -- 38
11 comprises several interrogatory responses, and it
12 would be Interrogatory Number 15, Number 19,
13 Number 22 and 35.

14 CHAIRMAN GRAHAM: Okay.

15 MS. BARRERA: Okay.

16 THE WITNESS: I have those.

17 EXAMINATION

18 BY MS. BARRERA:

19 Q Okay. Please review Exhibit 38, FP&L's
20 response to OPC's Interrogatory Number 15. In it, you
21 provide a definition of pre-construction work. Do you
22 see it?

23 A I see it.

24 Q Okay. And in your -- if you can turn to your
25 July rebuttal testimony on Pages 5, Lines 21 and 22,

1 **you also refer to pre-construction work. The question**
2 **is how do you define the phrase pre-construction work?**

3 A I believe we discussed this earlier, that
4 pre-construction work is that work that is authorized
5 to be conducted after receipt of the combined operating
6 license by the Commission.

7 Q **Okay. Could you please turn to your May**
8 **testimony on Page 24, Lines 10 through 12.**

9 A I'm there.

10 Q **Okay. Are you using the same definition of**
11 **the phrase pre-construction work that appears in your**
12 **July rebuttal testimony and in your response to**
13 **Interrogatory Number 15?**

14 A Yes. And those are both using the same
15 definition and understanding of the term
16 pre-construction work.

17 Q **Okay. Is it your understanding that OPC**
18 **Witness Jacobs' testimony is that FP&L underestimated**
19 **its costs because it did not account for costs to**
20 **contractors and other AP1000 projects did not fully**
21 **recover?**

22 A Yes, it's my understanding that Witness
23 Jacobs believes we were low because of not accounting
24 for certain costs in the Vogtle project.

25 Q **Okay. And in your opinion, should FP&L**

1 calculate its estimates at this phase of the
2 proceedings to include costs that a contractor may not
3 fully have recovered at some other project?

4 A No, I do not believe that that's appropriate.

5 Q Okay. Please turn to what has been
6 identified for the record as Exhibit 38A, which is
7 FP&L's response to OPC's Interrogatories Numbers 16 and
8 18.

9 A I have it.

10 Q Okay. Did you prepare this document or was
11 it prepared under your direction?

12 A I prepared it.

13 Q Okay. And there's an affidavit attached to
14 the exhibit with your signature attesting that you
15 prepared the responses to Interrogatories 16 and 18; is
16 that correct?

17 A Yes, ma'am.

18 Q And this document kept by -- is this document
19 kept by FP&L and in the regular course of its business
20 as a regulated entity?

21 A I'm sorry, could you restate your question?

22 Q Yes. Is this one of the documents that FP&L
23 keeps as a regular course of business?

24 A The affidavit or the response?

25 Q I'm sorry, the responses to the

1 **interrogatories.**

2 A They're not produced on a regular course of
3 business. They are produced in specific response to
4 this request.

5 **Q Okay. Thank you.**

6 MS. BARRERA: At this time, Staff requests
7 that FP&L's response to OPC's Interrogatories
8 Number 16 and 18, which are identified in the
9 Comprehensive Exhibit List as Exhibit 38A, be
10 admitted into the record.

11 MS. CHRISTENSEN: I'm going to object for
12 several reasons. One, the responses to the
13 interrogatories that were proposed were
14 nonresponsive. The scope of the response,
15 particularly under 16, is beyond this witness's
16 expertise in that it goes into legal analysis.

17 And the same for interrogatory response to
18 Number 16, it's nonresponsive to the question that
19 was proposed. There's been no foundation laid to
20 enter these interrogatories into the record.

21 And finally, this is an attempt at
22 supplemental rebuttal testimony that these
23 responses came in subsequent to the filing of
24 rebuttal testimony. These issues were fully teed
25 up as part of Witness Jacobs' testimony and could

1 have been responded to in rebuttal testimony.
2 They should not be allowed to supplement their
3 rebuttal testimony through their interrogatory
4 responses.

5 So for those objections, I would ask that
6 these interrogatory responses be kept out of the
7 record.

8 MS. BARRERA: May I respond?

9 CHAIRMAN GRAHAM: Yes, please.

10 MS. BARRERA: Yes. Section 120.569(2)(g)
11 Florida Statutes, provides that evidence of a type
12 commonly relied upon by a reasonably prudent
13 person in the conduct of their affairs shall be
14 admissible.

15 As far as laying a foundation for the
16 document, there is an affidavit by the witness
17 that he's the one that prepared those responses.

18 The objections that -- with all due respect,
19 the objections that OPC has proffered are not
20 valid objections in a legal proceeding.

21 Basically, the only objection at this point that
22 the Commission should consider is whether or not
23 these responses are relevant to the issues here.
24 If they're not responsive to their questions --
25 and may I remind everybody that this is OPC's

1 questions that they asked. So whether it's after
2 rebuttal or supplemental rebuttal is irrelevant
3 because they asked the question and it was
4 answered.

5 As far as whether or not those questions are
6 responsive -- the answers are responsive to the
7 questions, that's something for the trier of fact
8 to determine and give it the weight that it's due.
9 So the only objection here that would be valid
10 would be if it's relevant or not. And I pose to
11 you that this is relevant.

12 The question in Interrogatory Number 16
13 specifically asked about Mr. Scroggs' testimony
14 regarding pre-construction work. The response
15 specifically answers the question and explains how
16 the initial assessment studies relate to obtaining
17 the COLA. Interrogatory 18, the question and
18 response discusses specifics of Witness Scroggs'
19 rebuttal testimony. So we are, once again,
20 requesting that these exhibits be admitted into
21 the record.

22 MS. CHRISTENSEN: May I briefly respond?

23 CHAIRMAN GRAHAM: Sure.

24 MS. CHRISTENSEN: Ms. Barrera indicated under
25 120 the standard is whether or not these would be

1 responses relied upon by somebody in the ordinary
2 course of their business. He clearly answered no.

3 The other issue is these are obviously
4 out-of-court statements being offered for the
5 truth of the matter asserted within. They haven't
6 laid a proper foundation for allowing these
7 hearsay statements into the record. And my other
8 objections still stand.

9 And to the extent that they are relevant, I
10 don't think relevancy is the only standard by
11 which this Commission judges whether or not
12 evidence comes into the record. We do still abide
13 by the Evidence Code. And, you know, to be
14 relevant, they have to actually be responsive to
15 the question that was being proffered or asked in
16 the discovery question. They don't respond to the
17 question and that's why they're not relevant.

18 So for those reasons, again, I renew my
19 objection and ask for them to be removed. And
20 besides the fact the witness is here, and if she
21 wants to reask the question, he's here to answer
22 the question.

23 MS. BARRERA: Well, I could ask Mr. Scroggs
24 to just --

25 CHAIRMAN GRAHAM: Ms. Barrera, hold on, hold

1 on.

2 MS. BARRERA: Okay.

3 CHAIRMAN GRAHAM: Mary Anne. Now, you knew
4 this was coming. I have a question. If a
5 question is asked through an interrogatory and it
6 is not responsive, let's just say the person just
7 goes off on a complete different tangent just so
8 he can get something out there, what is the
9 recourse for you to stop something like that
10 coming into the record, because you're saying --
11 I'm not saying that this is the case here -- but
12 in general, what is the recourse, what happens,
13 how do you stop that from coming in just because
14 he threw something out there that could have been
15 arbitrary?

16 MS. HELTON: I've never seen this done, but
17 I'm assuming that you could move to strike the
18 answer to the discovery as unresponsive to your
19 question.

20 CHAIRMAN GRAHAM: And when is the time that
21 that should happen; anytime?

22 MS. HELTON: Let me see when this was
23 answered.

24 There's not a time set out in the law to do
25 so. The affidavit was signed on July the 23rd of

1 this year. And I'm assuming that's about the time
2 that the response would have been served by FPL.

3 CHAIRMAN GRAHAM: Okay. So, now, what is
4 your legal advice on this specific situation?

5 MS. HELTON: My legal advice in this
6 situation is that if you believe that it's
7 relevant to the proceeding and if you believe the
8 answer is responsive in the discovery request,
9 that you admit it and give it the weight that it
10 deserves.

11 And if there are further follow-up questions
12 that OPC has with respect to the question that it
13 posed and the answer given by Florida Power &
14 Light, that you give Ms. Christensen the
15 opportunity to ask those questions.

16 CHAIRMAN GRAHAM: That's what we do.

17 Ms. Christensen, if you have any when
18 Ms. Barrera's done -- are you done?

19 MS. BARRERA: No, I'm not.

20 CHAIRMAN GRAHAM: Okay. When she's done, if
21 you have any further questions, I guess if you
22 want to drill down a little deeper on these two
23 questions, I will allow that.

24 MS. CHRISTENSEN: I guess at what point would
25 it be appropriate to move to strike the

1 nonresponsive portions of the discovery responses
2 that are being moved into evidence?

3 CHAIRMAN GRAHAM: Mary Anne.

4 MS. HELTON: Well, I'm assuming you could --
5 I mean, why don't you point out for us what is
6 exactly unresponsive in your opinion.

7 MS. CHRISTENSEN: If you can -- I can do that
8 with more specificity, if you want, before
9 tomorrow morning. But I believe that anything
10 after -- essentially all initial assessment
11 activity support requirements down would be --

12 CHAIRMAN GRAHAM: Ms. Christensen, let's make
13 this simple. Since we've already agreed to come
14 back tomorrow to deal with Sim, let's let Staff
15 finish with their questions and we'll just -- at
16 that point, we'll allow you to ask your questions
17 and be with more specificity tomorrow morning.

18 MS. CHRISTENSEN: Okay. I can do that.

19 CHAIRMAN GRAHAM: Ms. Barrera.

20 MS. BARRERA: Thank you.

21 BY MS. BARRERA:

22 **Q Mr. Scroggs, could you please turn to the**
23 **response to Exhibit 38A, Interrogatory Number 16. In**
24 **the middle paragraph, it states that "During**
25 **construction, FP&L must submit to the NRC evidence of**

1 **compliance."**

2 Isn't it true that the NRC's required
3 evidence of compliance that is discussed here does not
4 apply to the various studies included in the initial
5 assessment study activity?

6 A The evidence of compliance referred to as
7 ITAAC is going to be made up of a lot of information.
8 Some of that information may come from these initial
9 assessments. So explicitly, no, there isn't a form
10 that these initial assessments satisfy that will
11 directly relate to the NRC.

12 **Q Okay. Please return to the Exhibit 38A, the**
13 **FP&L response to Interrogatory Number 18. Can you**
14 **please read the second and third sentence of the**
15 **response to Part A?**

16 A "This pre-construction work is anticipated to
17 include a series of engineering studies and plans that
18 will support bid specifications or other relevant
19 detail documentation. This documentation will describe
20 the scope of work, firm schedule milestones and outline
21 terms and conditions for the execution of the work."

22 **Q And then at the last sentence of the response**
23 **to Part B, you state that "Accordingly, FP&L is**
24 **performing initial assessments to support approval to**
25 **proceed to the next phase of pre-construction"; is that**

1 **correct?**

2 A That's correct.

3 **Q Can you clarify the difference, if any,**
4 **between the pre-construction work being described in**
5 **this response and FP&L's initial assessment studies?**

6 A The pre-construction work described in Part A
7 is that work that's consistent with the definition of
8 pre-construction in the Statute Section 3C, work done
9 after the COL.

10 The work done in the initial assessments is
11 to support a feasibility analysis that the Commission
12 will use in determining whether or not FPL can proceed
13 to that pre-construction work.

14 **Q Thank you.**

15 Can you please turn to Page 9 in your
16 rebuttal at Line 19 where you state, "Further
17 incorporation of lessons from the first wave."

18 A Yes.

19 **Q Okay. And on Exhibit 38, Interrogatory**
20 **Number 19, please turn there. And we asked about --**
21 **the OPC asked lessons learned and the impact on the**
22 **current project estimate. Can you please clarify which**
23 **lessons from the first wave require further**
24 **incorporation and explain why?**

25 A If you're tying the testimony on Page 9 with

1 this discussion?

2 **Q Uh-huh.**

3 A This Page 9 testimony talks about the
4 ultimate decision to proceed to construction, all
5 right. So this is the decision that follows the
6 pre-construction work that will develop the actual
7 binding bids in the final total amount of information
8 that we'll present and ask the Commission to allow us
9 to move on to construction.

10 So in that, we would hope to incorporate any
11 lessons learned that are relevant to the contracting,
12 to the nuclear oversight, to the construction process
13 or the bidding process itself.

14 **Q Thank you.**

15 Can you please turn to Exhibit 38, FPL's
16 response to OPC's Interrogatory Number 22.

17 A I'm there.

18 **Q Okay. OPC asks for the level of cost to**
19 **obtain binding bids, and the response is up to**
20 **100 million; is that correct?**

21 A That's correct.

22 **Q Please turn to your rebuttal testimony**
23 **Page 12, Lines 17 through 22.**

24 A I'm there.

25 **Q Are you asserting that FP&L's initial**

1 **assessment activity will provide FP&L with the same**
2 **level of project schedule certainty and cost estimation**
3 **as securing binding bids?**

4 A No, absolutely not.

5 Q Okay. Will the \$100 million cost to obtain
6 the binding contracts include or exclude the cost for
7 initial assessments?

8 A That's exclusive of the cost of initial
9 assessments.

10 Q And under your understanding of Witness
11 Jacobs' recommendation, will the \$100 million cost to
12 obtain binding contracts include or exclude the cost --
13 I'm sorry, I asked that already.

14 Please turn to Exhibit 38, Interrogatory 35
15 where FP&L states that natural gas plant projects are
16 shorter in duration and better defined.

17 A I see that.

18 Q What does the term bettered defined mean?

19 A I would note that I don't believe I sponsored
20 this response, but I would be happy to give you my
21 opinion.

22 Q If you can, that's fine.

23 A Better defined are there is a significant
24 number of --

25 MR. MOYLE: I object. He's already testified

1 that he's not the natural gas guy and now he's
2 saying he doesn't have information about this.
3 It's not appropriate to have him answer this
4 question.

5 MS. BARRERA: He says he could answer the
6 question, it just means better defined. That's
7 all we're asking for. If he knows what better
8 defined means, I don't think it hurts.

9 CHAIRMAN GRAHAM: I'll allow him to answer
10 the question.

11 THE WITNESS: In nuclear construction, we're
12 talking about first of a kind and second wave. In
13 combined cycle construction, we have had many
14 combined cycle units built, not only within
15 NextEra Energy but within FPL. So we have a much
16 higher level of understanding of the costs and
17 risks associated with combined cycle than we do
18 with new nuclear construction.

19 MS. BARRERA: Thank you. I have no further
20 questions.

21 CHAIRMAN GRAHAM: Okay. Commissioners,
22 unless you're dying to answer your questions --
23 ask your questions right now.

24 COMMISSIONER BRISÉ: We're coming back
25 tomorrow.

1 CHAIRMAN GRAHAM: Yes. Tomorrow morning
2 we're going to start with Ms. Christensen to go
3 over this Interrogatory 16 and 18. And you can
4 point out, as Mary Anne said, those things that
5 are nonresponsive or you can ask to get the
6 questions actually responsive and then we'll move
7 on through the Commissioners and then redirect.

8 MS. CHRISTENSEN: Okay.

9 CHAIRMAN GRAHAM: And then we'll take up
10 Witness Reed and then Sim. And we are meeting
11 back here tomorrow morning at 9:30.

12 Okay. So we are done for the evening. Thank
13 you very much. Travel safe.

14 (Whereupon, proceedings were adjourned at
15 10:35 p.m.)

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MICHELLE SUBIA, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 634 through 691, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 25th day of August, 2015.

Michelle Subia

MICHELLE SUBIA, CCR, RPR
NOTARY PUBLIC
COMMISSION #FF127508
EXPIRES JUNE 7, 2018

