BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST RECOVERY CLAUSE

Docket No. 090009-EI

ATTACHMENT B

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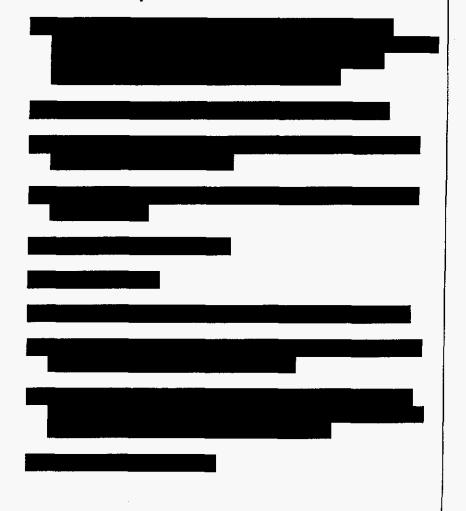
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Yes. As the President and CEO of PEF at the time, I was involved in the Company's decision to sign the EPC agreement. I approved execution of the EPC agreement at that time, I was a member of the SMC that also approved the execution of the EPC agreement,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

Why did the Company execute the EPC agreement in December 2008?

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



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Of particular concern to me and the Company at the time was

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

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

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

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1	A.	No. As I have explained, the negotiations were at an end, there were no
2		additional outstanding contract issues to resolve, and therefore
3		. I personally met with
4		senior executives of both Westinghouse and Shaw, Stone, & Webster and they
5		told me
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8		Furthermore, the Company and Consortium had negotiated the terms of
9		the EPC agreement for about two years and the Company had no reasonable
10		ground to stall the signing of the EPC agreement now that those negotiations were
11		complete. In particular, schedule uncertainty was not a valid reason to postpone
12		execution of the EPC agreement because the EPC agreement contained provisions
13		to address changes in the schedule. And, because the Consortium had invested
14		about two years in negotiations with PEF over the terms of the EPC agreement,
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21	Q.	Can you explain what a LWA is, Mr. Lyash?
22	Α.	Yes. A LWA is a limited work authorization issued by the NRC under 10 CFR
23		Parts 50 and 52. If a LWA is requested by the utility, it can be reviewed and

1		and no NRC statement that suggests the utility should be concerned with the
2		review schedule if the utility does not receive it within this thirty-day period. See
3		Exhibit No (JL-1) (Jacobs Dep. Excerpt, pp. 109, 112).
4		
5	Q.	Jacobs argues that the Company was in a weaker negotiating position with
6		the Consortium when the schedule shift occurred because PEF had signed
7		the EPC agreement. Do you agree?
8	A.	Absolutely not. PEF is in a stronger position with the Consortium with respect to
9		the schedule shift having signed the EPC agreement than if PEF had not signed it.
10		In fact, had PEF known about the NRC's position with respect to the LWA in
11		December 2008 and
12		
13		, PEF would have still executed the EPC
14		agreement and proceeded to amend the EPC agreement under the EPC's contract
15	,	suspension and amendment provisions just like PEF is doing now.
16		Executing the EPC agreement in December 2008
17		The EPC
18		agreement also provided a clear, known process for a suspension of the work,
19		subsequent rescheduling, and amendment to the EPC agreement for such events
20		like the schedule shift. If PEF had not signed the EPC agreement in December
21		2008 and the schedule shift occurred,
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REDACTED Additionally, if PEF had not executed the EPC agreement on December 31, 2008 there would have been a schedule shift regardless of the NRC's decision with respect to the LWA. The EPC agreement included the engineering and construction schedule for completion of the plants in time for their respective in-service dates in 2016 and 2017. A schedule delay would inevitably occur That delay would likely have been at least as long as the current schedule shift and probably longer due to NRC had issued a review schedule that included the LWA, For these reasons PEF would have been in a weaker position with the Consortium had it not signed the EPC agreement when it did. I know this because

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

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- Q. Jacobs also claims that PEF was unreasonable and imprudent in signing the EPC agreement in December 2008 because PEF did not have joint owners signed up before the EPC agreement was executed. Was that even likely to occur?
- No, in fact, it is unreasonable to expect potential joint owners to agree to joint A. ownership participation agreements before an EPC agreement is executed. This is a matter of common sense. The potential joint owners are being asked to contribute hundreds of millions of dollars toward the engineering, construction, and operation of the nuclear power plants, contributions that are in large part determined by the final terms of an EPC agreement for the design, engineering, procurement, and construction of the plants. No reasonable person would make such a commitment without knowing exactly what the terms of the final EPC agreement are.

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PEF, therefore, always expected and planned to execute the EPC agreement

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

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

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

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

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Now, however, finalization

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

Q. Are the impacts of the economy on the capital markets, financing, and regulatory and legislative uncertainty risks that the Company has considered

and will consider in making its decisions with respect to the LNP?

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

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

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Q.

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

Yes, I can because I was there, Jacobs was not. I was present at each of the Board meetings Jacobs references in his testimony and I know what was discussed.

First, he claims the Board was not adequately informed about the NRC COLA review, in particular the LWA, and joint ownership at the December 2008 Board meeting where the execution of the EPC agreement was approved. This is inaccurate and untrue.

LWA was not specifically addressed apart from the COLA because there was no reason to expect that the NRC was not going to issue the LWA at all prior to January 23, 2009, for all the reasons I have provided above. Jacobs is again relying on hindsight to suggest the Board should have been told in December about an event that did not occur until January.

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

1	Exhibit No. WRJ(PEF)-3)
2	Jacobs speculates that the Board changed its position regarding
3	whether or not joint ownership agreements were required before PEF executed the
4	EPC agreement. Exhibit No (JL-1) (Jacobs Dep. Excerpt, p. 139). As I
5	previously explained, PEF never expected to have joint ownership participation
6	agreements signed before the EPC agreement was executed. Rather, PEF
7	expected that reasonable joint ownership participants would want to know what
8	the final, executed EPC agreement provided before committing to a joint
9	ownership participation agreement. Moreover, as I have noted,
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12	Second, Jacobs claims certain words in the April 15, 2009 letter from the
13	Progress Energy CEO to the Board indicate that PEF had other reasons for the
14	schedule shift besides the NRC determination with the respect to the Company's
15	LWA request. (See Jacobs Test., p. 12; Exhibit No. WRJ(PEF)-3, pp. 42-43).
6	This claim ignores the plain language of the letter. The letter itself is dated April
7	15, 2009, which is after the NRC's determination with respect to the LWA.
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.2	. Exhibit No (JL-1)
.3	(Jacobs Dep. Excerpt, p. 142).
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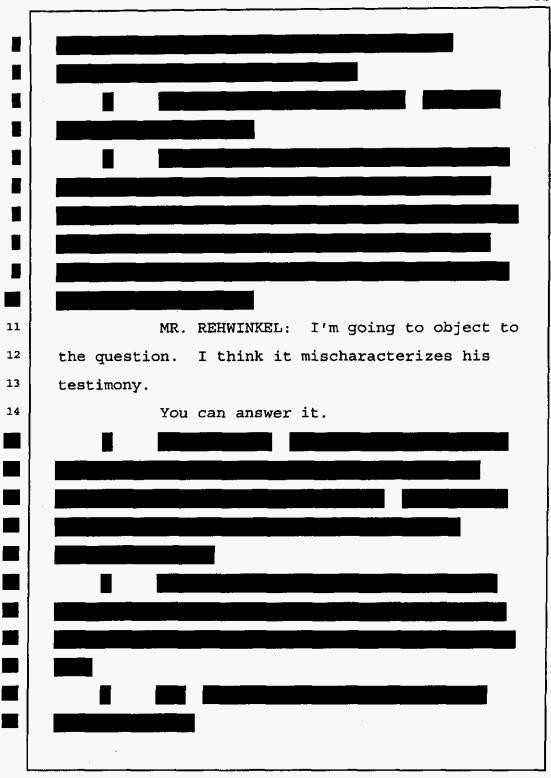
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7	(Id. at p. 143).
8	Finally, Jacobs claims that Mr. Miller's discussion about the long term
9	benefits of the LNP nuclear power plants in his direct testimony regarding the
10	feasibility of completing the power plants is at odds with the Board's discussions
11	at the April 17, 2009 Board meeting. Jacobs is wrong.
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17	This discussion is reflected under the "Summary"
18	bullet point that references the fact that "Levy nuclear remains vital to [Progress
19	Energy's] Balanced Solution." (See Exhibit WRJ(PEF)-3, p. 58 of 233). These
20	bullet points introduce issues for discussion; they do not reflect the substance of
21	that entire Board discussion. Progress Energy's Balanced Solution, however,
22	calls for advanced generation resources such as the LNP for all of the reasons
23	described in Mr. Miller's testimony.

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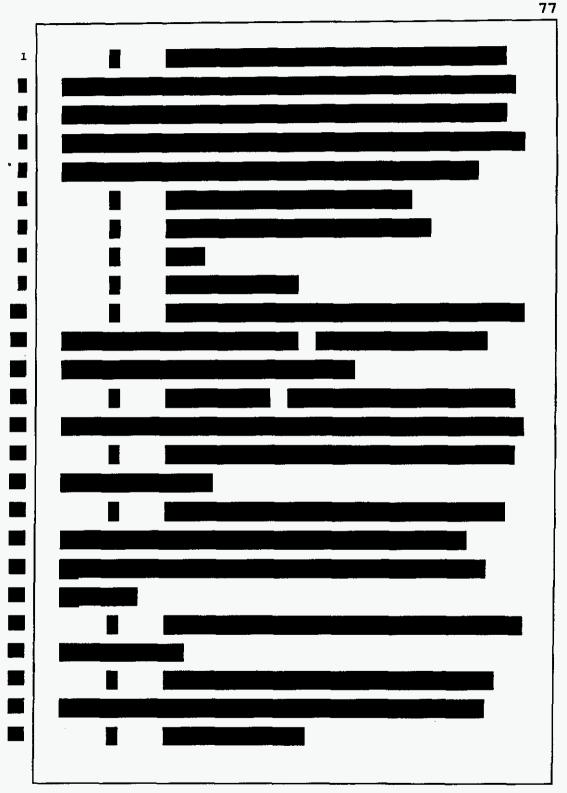


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July 27, 2009

In Re: Nuclear Power Plant Cost Recovery Clause Jacobs, Jr., Ph. D.



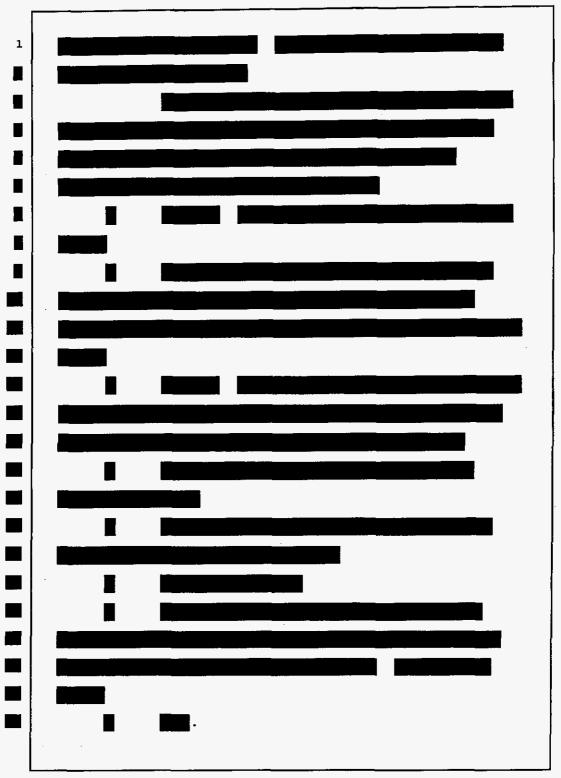
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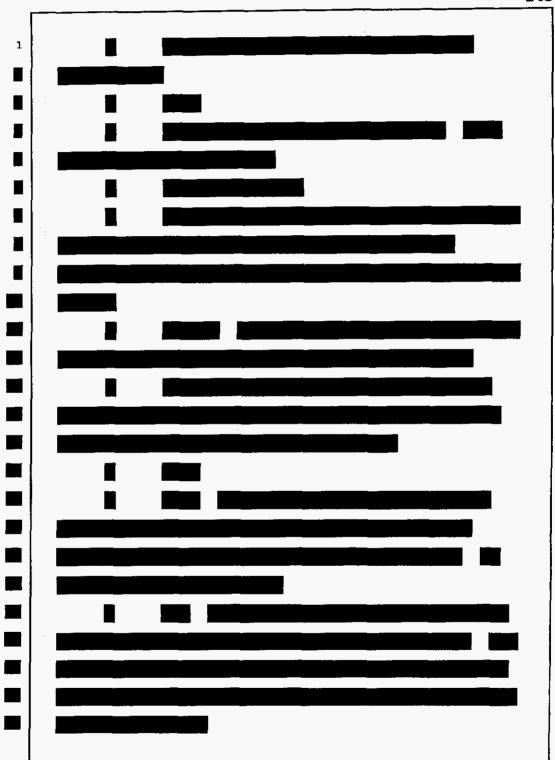
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1		* The decision must be evaluated on the basis of actual facts. The
2		review must be based on facts, not merely on opinions.
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4	Q.	What criticism does Jacobs make regarding the EPC contract?
5	A.	Jacobs argues that PEF should not have signed the EPC contract on
6		December 31, 2008 because: (1) PEF had not received a schedule from
7		the NRC for the review and approval of a requested Limited Work
8		Authorization (LWA); and (2) Joint Owners had not yet committed to the
9		project. As I will discuss, both of these contentions are without merit.
10		
11	Q.	Did Jacobs follow the appropriate prudence evaluation standard in
12		his criticism of the signing of the EPC contract?
13	A.	No. Jacobs has used hindsight to evaluate PEF management prudence
14		in signing the EPC contract in December 2008. Based on what was
5		known at the time, PEF acted prudently in signing the contract when it did
16		As I will discuss below, there were compelling reasons for PEF to sign the
7		EPC contract by December 31, 2008, which included
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21		Jacobs ignores these benefits to signing the EPC contract - he
2		does not even acknowledge them in his testimony and instead bases his

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



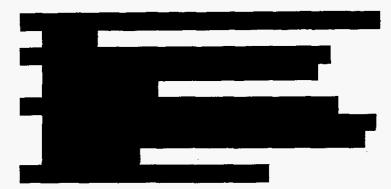
In response to Staff request DR 7, regarding cost benefits / risks associated with signing the EPC contract prior to the NRC issuance of COL/LWA schedule, PEF expanded on the benefits above, including the following:



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

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

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

PEF's EPC contract strategy was to

to the contractor to perform efficiently.

From a licensing perspective, signing the EPC contract was evidence of an active engineering, design and procurement program.

PEF reasonably anticipated that this posture would be reflected in

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	communication from the NRC that indicates any such linkage. As further
	evidence of the absence of any link between the NRC's LWA decision and
	the CH2MHill QA program, the NRC's acceptance of the QA corrective
	actions had occurred well prior to PEF's July 2008 filing for the LNP
	COLA.
	Finally, it is important to note that PEF identified the deficiencies
	that CH2MHill had in their quality assurance program through its oversight
	and audit process, and that they were corrected. These corrective actions
	were fully accepted based on the audits conducted between March 2007
	and April 2008 that verified the implementation of the revised quality
	program.
Q.	Jacobs asserts that PEF, by signing the EPC contract, has placed
	itself in a very weak position to renegotiate the EPC contract. Do
	you agree?
Α,	No. In my opinion, Jacobs is speculating with no facts to support his
	speculation. Contrary to Jacobs' implication, PEF may actually be in a
	stronger negotiating position because it signed the EPC contract on
	December 31, 2008, and confirmed the benefits of
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revised costs to accommodate the schedule of the LNP may be

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

Had PEF not signed the EPC contract by December 31, 2008, they would have faced

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

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

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

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

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7.	REASONABLENESS AND PRUDENCE OF EXECUTING THE EPO
	AGREEMENT.

Q. Was PEF reasonable and prudent in executing the EPC Agreement when it did in December 2008?

A. Yes, for several reasons, but two principal ones.

As I explain below, the schedule shift would have necessarily occurred anyway had PEF not signed the EPC agreement.

Second, PEF did properly assess and manage the risks associated with the LNP at the time of EPC contract execution, including the regulatory approval risk including the LWA. Based on what PEF knew at the time of signing the EPC agreement, and not having the benefit of what later occurred as Jacobs does, PEF reasonably expected issuance of a LWA on an acceptable schedule. PEF certainly did not expect, and had no reason to expect, that the NRC would adopt a review schedule that effectively eliminated the issuance of an LWA entirely. Indeed, as late as December 4, 2008, approximately three weeks before the EPC agreement was executed, NRC leadership responsible for the Levy project made statements in public meetings near the Levy site about their expectations for completing an

 LWA review in approximately two years, as further discussed below. Just because a risk materializes does not mean PEF should have known it would occur or that PEF's risk management was in any way improper. That is the case here. The elimination of all risks prior to execution of the EPC agreement was simply impossible. And, if as Jacobs suggests, PEF should have either eliminated all risks or waited until PEF had certainty, PEF would never build the LNP, or any project for that matter.

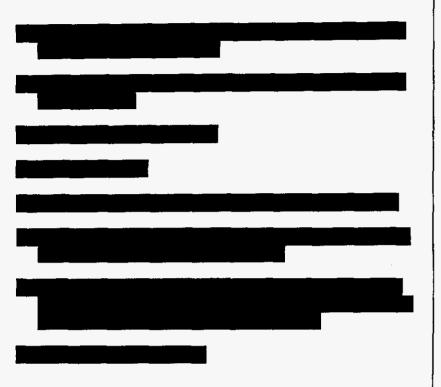
Third, execution of the EPC agreement at this time was appropriate to keep the LNP on schedule to meet the in-service dates for the Levy units. The EPC agreement was the best means to meet the schedule most efficiently and productively and to ensure more certainty as to schedule and cost as the project moved forward. Proceeding without an EPC agreement would have required some other contractual mechanism(s), such as a new Letter of Intent and continuation of the separate master service agreement work orders with the Consortium, to keep the project moving forward at all but that certainly would mean a schedule shift or delay.

- Q. What were the contractual benefits that PEF preserved for PEF and its customers by executing the EPC Agreement on December 31, 2008?
- A. These favorable contract terms and conditions included, but are not limited to:



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As a member of the PEF team negotiating the EPC agreement with Westinghouse and Shaw, Stone, & Webster (the "Consortium"),

Mr. Lyash explains in his testimony that, based on direct discussions with the Consortium's senior management,

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8	As a result,	
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18	The EPC agreement established the detailed	
19	timeframe for all of the activities necessary to design and build the Levy units.	
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3	,	given that there was no
4		indication that such a change by the NRC was forthcoming.
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15	Q.	But Jacobs claims you said in your deposition that PEF would not have
16		signed the EPC agreement if PEF had received the NRC review schedule the
17		NRC issued in February in early December. Is that right?
18	A.	No, what I clearly said was that it could not be signed "in the form" that it was
19		signed because the schedule shift necessarily caused changes in the EPC
20		agreement. But recall that
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4 Q .	Jacobs also argues PEF is in a weaker position now because it executed the
5	EPC Agreement than PEF would have been if PEF did not execute the EPC
6	Agreement. Do you agree?
7 A.	No.
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10		we would
11		not be in a strong negotiating position, as Jacobs implies, without any support
12		whatsoever. Indeed, Jacobs never even read our EPC agreement, he has never
13		negotiated one, and he has never negotiated with either member of the
14		Consortium. See Exhibit No (GM-5) (Jacobs Dep. Excerpt, pp. 14, 29, 77-
15		78).
16		
17	Q.	Jacobs also claims PEF's bargaining position would have improved had PEF
18		delayed signing the EPC agreement until the LWA and the other risks "were
19		known or clarified." Do you agree?
20	A.	No. As I explained above, it is impossible to eliminate all risk or achieve
21		certainty with respect to all risks on a project, which is what Jacobs suggests PEF
22		should have done. Risks can only be "known" or "clarified" with certainty when
23		the risk occurs or the passage of time or events eliminate the risk. Waiting for all
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Q.	Did the NRC tell PEF not to submit a COLA with a LWA or that PEF'
	COLA would be rejected if it included a LWA?

A. No, it did not. In fact, the NRC's public stance based on the amendment to the rule in 2007 and public comments was that the NRC would in fact entertain LWA requests and, therefore, considered them appropriate. In a May 22, 2007 public meeting, the NRC indicated that review of an LWA, resulting in issuance of the FEIS and FSER could in fact be completed in 12 plus or minus 6 months.

A.

Q. Was the LWA identified in the Company's risk management process?

Yes, all LNP regulatory approvals, schedule events, and other factors possibly having an impact on the LNP were identified as a potential risk in the Company's risk management process, identified in the risk management tool or register, evaluated for likelihood and impact or consequence, given an impact statement, and a response or action plan. It is important to remember that this is a "living" document and process; it constantly changes and the risk matrix is constantly revised as needed to address subsequent events or changes over time. For example, leading up to the filing of the COLA with the LWA, the risk assessment focused on meeting the date targeted for filing the COLA, which was met. After the COLA was filed in late July 2008, the risk assessment addressed the regulatory approval risk as the next step in the process.

LWA approval	l was	separatel	y identifie	d and	evaluated

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This risk assessment was included in the Company's Integrated Project

Plan, which provided senior management with the details on the project scope to support funding for the LNP and EPC contract execution. Subsequent to filing the COLA, the NRC review schedule for the COLA, which included the LWA, was included for management attention in the monthly Nuclear Plant

Development ("NPD") Performance Reports. The COLA and the interaction with the NRC was also a standard topic at the weekly Levy Integrated Nuclear

Committee ("LINC") meetings. The LINC provided the means by which senior management and all Company departments involved in or affected by the LNP reviewed, addressed the status of the LNP, and identified action items for the LNP on a weekly basis. Through the LINC and NPD Performance Reports, as with other project documents, the interactions with the NRC regarding the COLA, including the LWA, and NRC review schedule were communicated to management.

Notably, Jacobs agreed in his deposition that PEF had identified the COLA, including the LWA, approval as a risk, and developed and implemented a reasonable risk mitigation plan for this risk. First, he agreed that after submitting the COLA to the NRC, the Company did not have control over the project schedule, rather the NRC did. See Exhibit No. ___ (GM-5) (Jacobs, Dep. Excerpt, p. 45, L. 3-8). Second, he agreed that he had reviewed the Company's

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risk management process and that this risk management was part of the project management processes that he found to be reasonable and prudent. (Id. at p. 45, L. 16-23). Third, he agreed the Company's risk management process included a risk matrix that identified the COLA licensing issue, including the LWA, as a risk, and that the Company developed a risk management action plan for this licensing risk that involved what most utilities do with respect to that risk,

(Id. at pp. 45-47). He further agreed that this risk mitigation action plan was the only reasonable action plan to address the licensing risk and that the Company would not have done something different. (Id. at p. 48, L. 2-17). Finally, he agreed that PEF implemented this risk mitigation action plan with respect to the COLA and LWA and that he did not have an opinion that PEF did not do something that it should have done with respect to this risk mitigation strategy. (Id. at P. 48, L. 18-25; p. 49, L. 1-3). In other words, Jacobs recognizes that PEF did everything that PEF reasonably could have done to address the potential risk that the NRC did not issue a schedule for the LWA and other items in the PEF COLA consistent with PEF's requested schedule.

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- Q. Did the Company prepare the design analysis necessary to develop a sound LWA scope of work?
- A. Yes, it did. The Company's LWA scope was developed by the Joint Venture team as part of the COLA application using industry recognized domestic and

1		because excavation is not construction
2		dewatering activities are unrelated to the
3		components ("SSC's"), which is the ca
4		the LNP. Again, the dewatering work
5		Company can excavate the hole and ke
6		request that PEF include the dewatering
7		that the NRC was reviewing the LWA,
8		when the NRC docketed the Company'
9		6, 2008, that action indicated that the en
10		review and that there were no inherent
11		that prevented NRC review. Jacobs ag
12		the COLA represented by the October 6
13		going to undertake to review the COLA
14		the LWA. See Exhibit No (GM-5)
15		
16	Q.	Did the inclusion of the dewatering it
17		the Company's requested review scho
18		granted?
19	A.	No. The inclusion of the dewatering ite
20		impact the review schedule at all. It did
21		work in order to perform it more in para
22		the construction schedule could still be

because excavation is not construction under the NRC's LWA rule and the
dewatering activities are unrelated to the safety-related structures, systems, and
components ("SSC's"), which is the case with respect to the dewatering work on
the LNP. Again, the dewatering work is necessary only for the excavation so the
Company can excavate the hole and keep the ground water out. The NRC's
request that PEF include the dewatering work in the LWA scope in fact indicated
that the NRC was reviewing the LWA, as PEF requested the NRC to do. Further,
when the NRC docketed the Company's COLA, including the LWA, on October
6, 2008, that action indicated that the entire application was sufficient for NRC
review and that there were no inherent problems in applying the design to the site
that prevented NRC review. Jacobs agreed in his deposition that the docketing of
the COLA represented by the October 6, 2008 letter meant that the NRC was
going to undertake to review the COLA application and everything in it, including
the LWA. See Exhibit No (GM-5) (Jacobs, Dep. Excerpt, p. 89, L. 1-13).

- tems in the scope of the LWA mean that edule for LWA issuance would not be
- ems in the scope of the LWA did not d require re-sequencing of the physical site allel, rather than in series, to ensure that met, which was the case.

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As the Staff audit report notes, the Company retained Burns & Roe to		
assist the Company in its EPC contract negotiations by reviewing the initial price		
book and supporting cost library data and initial construction schedule provided		
the Company by the Consortium. Burns & Roe noted		
to include the dewatering work in the LWA scope at the		
NRC's request in September 2008. Burns & Roe was not provided the NRC		
review schedule and was not commenting on the schedule for regulatory review		
and approval of the I WA at all		

Inclusion of these items within the LWA still left the NRC approximately thirty (30) months to review and issue the LWA from the COLA submittal. The Company identified the site, engaged the necessary COLA contractors and subcontractors to develop the site design, had the engineering and geological testing and analysis completed, including the drilling and technical evaluation of 108 soil borings, completed the geotechnical evaluation, prepared the design for the sub-foundation and foundation, and submitted this information to the NRC in approximately eighteen (18) months. The Company reasonably believed about 30 months was sufficient time to review what it took the Company about 18 months to complete and provide to the NRC. This is the principle reason, together with

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Q. Did the Company maintain a close interface with the NRC with respect to its LWA and COLA?

Yes, it did. The Company began with meetings, presentations, and written responses to the NRC and its technical reviewers even before it submitted its COLA with the LWA to explain to the NRC the Levy site, the COLA, and the LWA. These occurred on January 10, 2008, February 20, 2008, March 5, 2008, and June 30, 2008. Coinciding with the submittal of the COLA to the NRC the Company met with the NRC technical reviewers on July 28, 2008 to update the prior presentations and review the LWA scope. After the COLA was submitted the Company and the NRC had calls or meetings on September 5, 2008, September 9, 2008, October 1, 2008, December 3-4, 2008, and January 6, 2009 in addition to written communications. A list and brief description of some of these interactions with the NRC regarding the Company's COLA, including the LWA, is attached as Exhibit No. ____ (GM-7) to my rebuttal testimony. In addition, PEF's staff regularly communicated with the NRC staff during the time period on a frequent basis. Finally, prior to execution of the EPC agreement, Mr. Jeff Lyash

and Mr. Bill Johnson went to Washington to meet with the NRC leadership. At no time during or following any of these interactions with the NRC did the NRC indicate that it would not review the LWA before the COL thereby effectively eliminating the LWA for the LNP.

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By the way, if the Company had assessed the risk of not obtaining the LWA Q. would the Company's mitigation plan and efforts been any different than it was?

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No. Even though the Company assessed the risk of not obtaining a LWA

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the Company always recognized that the

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Accordingly, the Company fully invested in its mitigation plan to maintain the interaction with the NRC and see to it that the NRC had what it needed to make that decision. In fact, there is no dispute that those are the appropriate actions to take and that we were executing our mitigation plan. This is what you do after you submit the permit or application, is maintain interaction with the agency and timely respond to inquiries – a point with which Jacobs agrees. See Exhibit No. (GM-5) (Jacobs, Dep. Excerpt pp. 47-48). And, as Jacobs also agrees, once the Company submits its permit or application to the agency for review and approval, the Company loses control over its ability to move the project forward. (Id. at p. 45, L. 3-8). That control goes to the agency during the review process. That was certainly true for the Company's COLA and LWA submittal to the NRC.

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To determine if completion of the plant is capable of being done or carried out from a project management perspective, we evaluate whether the plant is both technically feasible and legally feasible. Jacobs does not dispute that these are in fact factors in determining the feasibility of completing nuclear power plants. See Exhibit No. (GM-5) (Jacobs Dep. Excerpt p. 120).

In my direct testimony and, as Jacobs notes, in my deposition I explained that technical feasibility means can the AP1000 design selected for this site be deployed at the Levy site. Based on my project management experience working with this design and its application to the Levy site, the input from the team of experts we have employed to assist us on this project, and my own nuclear and mechanical engineering background and experience, I testified that the LNP is technically feasible. Nothing we have seen or reviewed suggests that the AP1000 design cannot be deployed at the site, indeed, regulatory reviews are proceeding to do just that. All Jacobs can come up with to claim there is an issue about the technical feasibility of the plants is a in its March 2009 report regarding the

Company's adoption of its revised risk mitigation program. Jacobs Test., p. 19,

L. 25-32.

in the May 2009 Consortium Monthly Project Status Report that

Jacobs references.

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See Exhibit No. ___ (GM-11) to my rebuttal testimony.

Again, there is always regulatory uncertainty prior to actually obtaining the regulatory license or permit, and therefore some risk that it might not be obtained. This does not mean you do not go forward with the project. If it did, you would never build a nuclear power plant.

I described in detail in my direct testimony the current regulatory status of the LNP, explaining what we have achieved, what we did not achieve - the LWA discussed in detail above, what we have done in response to that change in the NRC review process, and what our expectations are for the future permits, approvals, authorizations, and licenses for the LNP. Jacobs fails to acknowledge the numerous land use authorizations, permits, licenses, or other approvals that have been achieved for the LNP that are included in my direct testimony and the numerous ones that are on schedule that are identified in my testimony and at Exhibit 3 on page 19 of the Staff Report reviewing PEF's Project Management Internal Controls for the Nuclear Plant Uprate and Construction Projects. See Exhibit Number CC-1 to Staff Testimony. For example, the Administrative Law Judge issued his recommended decision and order to approve PEF's SCA on May 15, 2009. The point is, despite the NRC decision regarding the LWA, the NRC has deemed PEF's COLA sufficient for review and established a schedule consistent with PEF's other requested timelines, including issuance of the COL in 42 months. There is no reason to expect that PEF will not be able to obtain the authorizations, permits, and licenses to construct and operate the Levy units at the Levy site.

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1	risk matrix, you have to come up with a risk
2	mitigation or action plan; correct?
3	A Yes.
4	Q What was that risk mitigation or
5	action plan for the COLA?
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13	Q And do you believe that to be a
14	reasonable action plan or mitigation strategy for
15	that risk?
16	A I think that's what most utilities do,
17	yes.
18	Q Would you agree with me that that risk
19	mitigation action plan or strategy would be the
20	same no matter what risk level you assign to the
21	COLA or LWA application?
22	A I don't think I would agree with that.
23	I think if you assigned it a higher risk number
24	further up the matrix, you would develop more
25	resources to making sure that those actions

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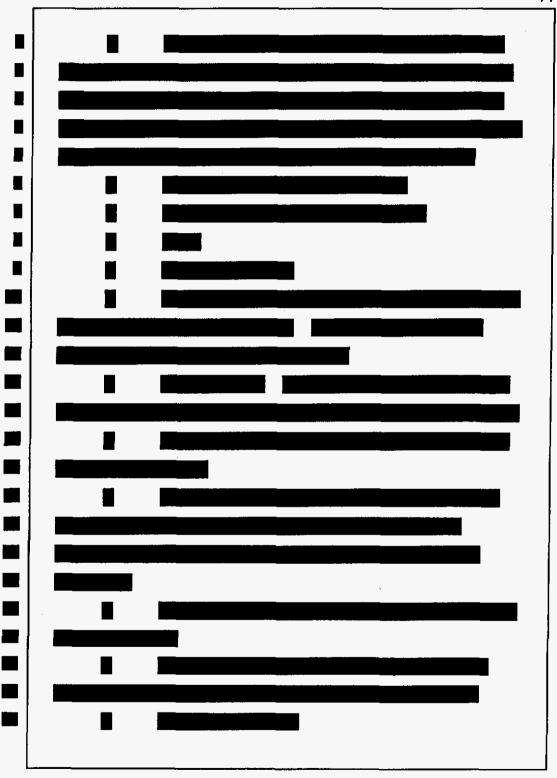
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