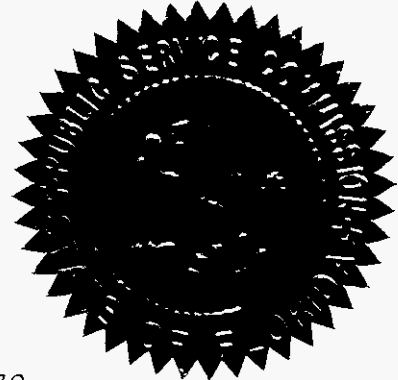


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090009-EI  
NUCLEAR COST RECOVERY CLAUSE.



VOLUME 13

Pages 2111 through 2178

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PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Thursday, September 10, 2009

TIME: Commenced at 9:30 a.m.  
Concluded at 8:26 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
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PARTICIPATING: (As heretofore noted.)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

I N D E X

WITNESSES

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NAME:	PAGE NO.
JEFFREY LYASH	
Cross Examination by Mr. Davis	2114
(Continued)	
Cross Examination by Mr. Moyle	2135
Cross Examination by Mr. Rehwinkel	2156

## EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
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10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
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23  
24  
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NUMBER:		ID.	ADMTD.
156	Need Determination Study	2121	2174
128-129			2173
155			
157	Levy Update	2174	2174

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

1  
2 (Transcript follows in sequence from  
3 Volume 12.)

## CONTINUED CROSS EXAMINATION

4  
5 **BY MR. DAVIS:**

6 Q. And I'm not going to go through the same  
7 dialogue you had with Mr. Brew on that issue. The  
8 record will reflect that. But you do agree that a point  
9 analysis is a major decision point which is your need  
10 assessment that is provided to the Commission and used  
11 in the determination of need where you do the CPVRR  
12 analysis for need.

13 A. I'm sorry, I didn't get the question out of  
14 that.

15 Q. Maybe I didn't phrase it well enough. Let me  
16 try again. That the need for Levy 1 and 2 was  
17 determined at least in part based upon a one-time  
18 cost-effectiveness analysis?

19 A. Yes, there was a cumulative present value  
20 revenue requirement analysis done in support of the need  
21 case. So, with respect to that I think your statement  
22 is correct. Although, again, it was a part of a broader  
23 need case that I think the Commission considered in  
24 granting that need.

25 Q. But, it is certainly an economic analysis that

1 the Commission relies upon in making a decision as to  
2 need and that you as a company rely upon in going  
3 forward with the project?

4 **A.** Yes, it was an analysis that the Commission  
5 relied in part on at the determination of need, and I  
6 have no objection to incorporation of that analysis as a  
7 significant part of a plant need determination. My  
8 objection is that to cycle that analysis based on  
9 volatile -- and at the time the need was granted it was  
10 with consideration of the long-term benefits, the  
11 \$92 billion worth of avoided fuel costs associated with  
12 this plant over its lifetime. And so I think that is  
13 appropriate.

14 My objection is that to use that as a test  
15 year in and year out when we know that gas prices,  
16 carbon prices, environmental costs, the economy as it  
17 ebbs and flows will change. If that is used as a  
18 substantial part of the decision in a way that it bears  
19 directly and significantly on feasibility, it will be  
20 untenable. It will place the Commission in a position  
21 where I'm not sure how they will make a decision when  
22 they see one set of numbers this month and six months  
23 from now another set of numbers changes, and six months  
24 later --

25 **Q.** Well, your need determination is made as a

1 snapshot, as well. I mean, there is no difference  
2 between a CPVRR analysis for your need determination  
3 than one could be used for the feasibility  
4 determination.

5 **A.** Well, I don't agree with you. I think there  
6 is quite a difference. This is what --

7 **Q.** Let me stop you.

8 **MR. WALLS:** Objection.

9 **CHAIRMAN CARTER:** Let him finish. Let him  
10 finish, Mr. Davis.

11 **MR. DAVIS:** Okay.

12 **THE WITNESS:** The process for a need case I  
13 think is clear and that is a required part of it. I  
14 don't think that implies that that necessarily means it  
15 is a required piece of making a feasibility  
16 determination, number one.

17 Number two, the need determination is done at  
18 a point where the project hasn't been substantially  
19 embarked upon and there isn't substantial monetary  
20 expenditures, engineering work, procurement. And so I  
21 think it is more appropriate to use that information to  
22 decide whether to undertake a project, but not on an  
23 annual basis to decide to continue a project that is  
24 already underway progressing that has accumulated a  
25 substantial set of effort and expense.

1 **BY MR. DAVIS:**

2 Q. Now, if you had wanted to, after the need  
3 determination on Levy 1 and 2, you could have chosen,  
4 meaning Progress could have chosen to proceed without  
5 cost-recovery and there would have been no requirement  
6 of demonstrating annual long-term feasibility.

7 A. I can't answer your question. I haven't  
8 thought about it and gone back and read the legislation  
9 and the need case to determine how it would apply in  
10 that instance.

11 Q. Well, if you will accept that I might know a  
12 little bit about the law --

13 A. We have established you are the lawyer and I  
14 am not.

15 Q. -- but I think the rule is pretty clear that  
16 it only applies if you are seeking cost-recovery. And  
17 so, if you didn't want to demonstrate an annual  
18 feasibility, you could forego the cost-recovery,  
19 correct?

20 A. I guess, yes, theoretically that is possible.  
21 However, as we have already discussed, the cost-recovery  
22 and prudence determination processes here are a critical  
23 piece of actually executing the project. So, as you  
24 noted rightfully in my testimony, I don't believe we  
25 could build this plant without them. So that is not in

1 effect an option.

2 Q. But the decision with the cost-effectiveness  
3 requirement is not whether or not you, Progress, would  
4 build a plant, it is whether or not the Commission  
5 determines that the ratepayers of Progress Energy are  
6 being protected in terms of the long-term feasibility of  
7 the project.

8 A. I apologize, but I didn't get the subtlety of  
9 the point or the question.

10 Q. You keep answering the question from the  
11 standpoint of a corporate decision-maker as to whether  
12 or not to build the plant. That is not the question  
13 that the Commission is asking with long-term  
14 feasibility. It is a question of whether the ratepayers  
15 are being protected by a decision to allow Progress to  
16 continue to recover costs.

17 MR. WALLS: Objection, I didn't hear a  
18 question in there. It seems like he is testifying to  
19 me.

20 CHAIRMAN CARTER: Tighten it up. Tighten it  
21 up, Mr. Davis.

22 MR. DAVIS: My question is isn't that correct?

23 CHAIRMAN CARTER: That's tight.

24 BY MR. DAVIS:

25 Q. You do see the difference there, don't you?



1           **A.** I understand what you are saying, I am just  
2 not sure how you would like me to respond here or what  
3 the question is.

4           **Q.** A yes or a no would be a way to --

5           **A.** Well, no, I don't agree with you.

6           **Q.** Okay. Let's turn for a minute to your  
7 exhibit, your JL-2. And if you will turn to Page 6,  
8 which is Table 1.

9           **A.** I'm there.

10          **Q.** If you look at the low fuel reference, you see  
11 that under three scenarios, that the -- I'm sorry, this  
12 is from the need determination docket, correct? I meant  
13 to turn to Table 2, which is Page 7.

14          **A.** Table 1 is a summary of what was presented in  
15 the need determination.

16          **Q.** I understand that.

17          **A.** Table 2 is the 20-month shift in the  
18 in-service date.

19          **Q.** Correct. And if you look at the first column  
20 at the top of Table 2, under low fuel reference, do you  
21 see that?

22          **A.** Yes.

23          **Q.** Again, you say you are not relying upon the  
24 CPVRR analysis for your feasibility filing here, but  
25 there has been a lot of statements about the results in

1 this table. You see under the low fuel reference that  
2 the Levy 1 and 2 project is not cost-effective for the  
3 no CO2 scenario, the Bingaman-Specter, the EPA no CCS,  
4 and MIT mid CO2, correct?

5 **A.** Yes, I see that. That is also the case in  
6 the -- generically in the need case that was presented.  
7 And as I recall from the need case, the conclusions of  
8 those discussions was that really the low fuel and no  
9 carbon case were not viewed in the long-term to be  
10 credible or likely, and so the focus of the discussions,  
11 at least in the need determination, was on the mid and  
12 high fuel reference cases and on the range of scenarios  
13 that regulated carbon.

14 **Q.** But things have changed a little bit since  
15 2008 with regard to natural gas prices, correct?

16 **A.** Yes. And I think things are likely to change  
17 again by 2009, as is consistent with the history of  
18 natural gas prices in the U.S.

19 **Q.** While we are talking about natural gas, I do  
20 have an exhibit I would like to ask you about because of  
21 some statements that were made in your testimony.

22 **CHAIRMAN CARTER:** Do you need a number, Mr.  
23 Davis?

24 **MR. DAVIS:** Yes, Mr. Chair.

25 **CHAIRMAN CARTER:** The number will be 156,

1 Commissioners. 156. A short title?

2 **MR. DAVIS:** A short title is need  
3 determination. I think that is what it is called.

4 **CHAIRMAN CARTER:** Need determination study?

5 **MR. DAVIS:** Yes, need determination study.  
6 Thank you.

7 (Exhibit Number 156 marked for  
8 identification.)

9 **CHAIRMAN CARTER:** Thank you. One second.

10 **BY MR. DAVIS:**

11 **Q.** Mr. Lyash, what I presented to you as  
12 Exhibit 156 is an excerpt from the Progress Energy  
13 Florida petition for need for Levy 1 and 2, the need  
14 determination study. Do you recognize this?

15 **A.** Not specifically, but I'm sure that is the  
16 source.

17 **Q.** And you testified in that proceeding?

18 **A.** I did, correct.

19 **Q.** And if you look at the page excerpted as Page  
20 52 and 53 at the bottom, you have testified in your  
21 rebuttal testimony that intervenors should not have  
22 relied upon the NYMEX futures gas price as an analysis  
23 of future natural gas prices. Do you recall that  
24 testimony?

25 **A.** Yes. I think I testified that they should not

1 rely solely or principally on the NYMEX futures market  
2 prices.

3 Q. And you described -- and, I'm sorry, but the  
4 person who authored this need determination study for  
5 and on behalf of Progress describes at the bottom of  
6 Page 52 and the top of Page 53 the process that Progress  
7 uses to project natural gas prices, correct?

8 A. Yes.

9 Q. And if you look at the top of Page 53, there  
10 is a statement that the way that Progress does this is  
11 to compare with other electric utility industry and fuel  
12 market information that might include NYMEX futures  
13 market prices, correct?

14 A. It might -- yes, it might as a portion of that  
15 assessment.

16 Q. So, it is not out of the ordinary for a  
17 natural gas analyst to compare their projections to the  
18 NYMEX futures market prices, correct?

19 A. No, it is not out of the ordinary for our fuel  
20 forecasters to potentially include NYMEX future prices.  
21 However, if you read this entire description, what we  
22 are saying here is that we take fuel forecasts provided  
23 by PIRA, Global Insight. We also look at other electric  
24 utility industry information, fuel market information  
25 that might include NYMEX, current contracts, current

1 market data, and we use our long-term professional  
2 judgment, and we have a full-time group of folks who  
3 produce these forecasts to make sure what we are  
4 producing is accurate and balanced.

5 So, I would agree with you that me might use  
6 NYMEX futures in that assessment, by I would also tell  
7 you we wouldn't rely principally or solely on NYMEX  
8 futures to make that decision.

9 Q. And did you review Doctor Cooper's testimony  
10 and his exhibit about the future gas prices?

11 A. Yes, I did in a cursory manner.

12 Q. And he compared NYMEX futures to other sources  
13 of future projections for gas prices and concluded NYMEX  
14 was a good predictor.

15 A. I don't agree with his conclusion and neither  
16 do our fuel forecasters.

17 Q. But they do compare their forecasts to NYMEX  
18 futures, correct?

19 A. They did and have in producing our gas  
20 forecasts.

21 **MR. DAVIS:** I have got another exhibit and  
22 this one is a confidential one. It shouldn't take too  
23 long to do this, I don't think.

24 **CHAIRMAN CARTER:** Hang on a sec. Are we going  
25 to be trying to enter this or what is the plan? Just

1 for examination purposes?

2 **MR. DAVIS:** It is, and it will be very short.

3 **CHAIRMAN CARTER:** All right. Let's let  
4 everyone get a keep first.

5 **MR. DAVIS:** This is the one I intended to  
6 start with.

7 **CHAIRMAN CARTER:** Mr. Davis, on this, are you  
8 going to use it for examination?

9 **MR. DAVIS:** Yes, I am. Just very, very quick.

10 **CHAIRMAN CARTER:** Just for cross-examination,  
11 so we don't need a number, right?

12 **MR. DAVIS:** Only cross-examination.

13 **CHAIRMAN CARTER:** You're recognized.

14 **MR. DAVIS:** And this would be Exhibit 157 for  
15 cross purposes. You are saying that we are not entering  
16 it.

17 **CHAIRMAN CARTER:** If you are going to use it  
18 just for cross-examination, I won't give you a number.

19 **MR. DAVIS:** I appreciate that, Mr. Chair.  
20 That is what I wanted to do.

21 **CHAIRMAN CARTER:** Okay. You may proceed.

22 **BY MR. DAVIS:**

23 **Q.** Mr. Lyash, I have consulted with your  
24 attorneys about how to protect any confidential  
25 information. You should be looking at the one-pager

1 there.

2 **A.** Uh-huh.

3 **Q.** And I will just represent to you that this was  
4 a response to a production request from PCS and the  
5 request -- and I will state it precisely. The request  
6 was please provide copies of all fuel price studies,  
7 forecasts, surveys, and related documents that PEF  
8 reviewed or relied upon in preparing the updated fuel  
9 forecast shown on Miller Exhibit GM-1. And this is one  
10 of those documents produced in response to that request.

11 Without reviewing any confidential  
12 information, isn't it true that this document mentions  
13 that Progress does rely upon NYMEX prices for its future  
14 projections of natural gas prices?

15 **A.** No, I wouldn't characterize it that way. It  
16 certainly indicates that we considered NYMEX as an  
17 element of producing a natural gas forecast, which I  
18 think is consistent with what I said. I don't see  
19 anything here that tells me rely on that as our proxy.

20 **Q.** Okay. And I would represent to you that this  
21 is the only document produced in response to Request  
22 Number 18 referring to natural gas prices. So is there  
23 anything in this document that tells you that other --  
24 and without revealing any confidential information --  
25 that other numbers or future projections other than

1 NYMEX were relied upon?

2           **A.** No, but I don't think that implies that we  
3 rely on NYMEX. We have a process for estimating forward  
4 fuel prices, which I think the Commission is quite  
5 familiar with and I believe historically the staff has  
6 evaluated. I think that comes into play in the fuel  
7 docket on an annual basis. So, I think it is apparent  
8 at least -- let me preface that by saying I don't run  
9 the fuels department. I am familiar with the fuels  
10 because it is a significant cost and we try to manage it  
11 prudently, but I would agree with you that the only item  
12 mentioned here is NYMEX, but I wouldn't agree with the  
13 implication that, therefore, NYMEX is what we use as our  
14 proxy.

15           **Q.** And I'm not trying to establish that. I am  
16 just trying to establish you do rely upon it. Now, if  
17 you will turn, please, to the next exhibit that we  
18 provided. This one has also been stamped confidential,  
19 and I'm not going to ask you to reveal any confidential  
20 information here.

21           **MR. BURNETT:** Mr. Chair, I'm sorry, if I may  
22 just to help Mr. Davis. I reviewed the next one that is  
23 titled Levy update for June 17th, 2009 SMC. The  
24 portions that he is included can be now publicly spoken  
25 about, so there is no reason to maintain confidentiality



1 of those excerpts.

2 **MR. DAVIS:** Okay. I appreciate that. Thank  
3 you.

4 **BY MR. DAVIS:**

5 **Q.** Mr. Lyash, if you will turn to -- well, first  
6 of all, the cover page says Levy update for SMC meeting  
7 on June 17th, 2009. What is the SMC meeting, do you  
8 know?

9 **A.** SMC stands for Senior Management Committee.  
10 The Senior Management Committee meets at least weekly  
11 and oftentimes more frequently. It is comprised of the  
12 senior officers of the company where we discuss on an  
13 ongoing basis the full range of company operations.

14 **Q.** And were you at this particular meeting on  
15 June 17th?

16 **A.** I can't recall specifically. Normally, I  
17 would be. I would have to see if I can determine  
18 whether I was at this particular one.

19 **Q.** On the third page of this document, it has  
20 economic views and --

21 **A.** I'm sorry, are you talking about Page 6? I  
22 have got a lot of missing pages here. Page 6 is the  
23 one you are referring to?

24 **Q.** This is an excerpt, and the third page is  
25 numbered as Page 6.

1           **A.**    Uh-huh.

2           **Q.**    And just so we have the context, this is a  
3 discussion of whether to proceed with Levy or how to  
4 proceed with Levy, is that correct?

5           **A.**    No, not necessarily.  In SMC, we do periodic  
6 updates on a range of projects and contemporary issues.  
7 So this may or may not have involved a decision related  
8 to Levy.  It may have just been an informational  
9 session.

10          **Q.**    Is it about Levy, however, right?  Levy update  
11 is the name of it.

12          **A.**    Oh, yes.  This portion of the presentation is  
13 an update on Levy.  Your question was did it -- was it  
14 related to a decision that SMC was making regarding  
15 Levy, and my response was no, not necessarily.

16          **Q.**    Okay.  Well, the third page I referred to is  
17 entitled economic views.  And the first number over,  
18 entire life, CPVRR methodology.

19          **A.**    Yes.  That is what the document says.

20          **Q.**    That is something that you were considering  
21 from an economic standpoint for your own  
22 decision-making, correct?

23          **A.**    No.  I would read this as a set of topics that  
24 we are going to review.  And on the next page, if I read  
25 this correctly is the CPVRR that was used during the

1 need proceeding. And so, I would -- without recalling  
2 this meeting specifically, I would say that this is just  
3 refreshing the SMC on elements of the need case and what  
4 was reflected in it. Not that we would be redoing this  
5 or using it on an ongoing basis.

6 **Q.** Well, why would you be doing that a year after  
7 the need determination?

8 **A.** Why would we be doing a year after the need  
9 determination. Well, this is an important project to  
10 the company, and this is a -- as you have already  
11 pointed out, an element of the need determination, and  
12 we are proceeding through the phases of the project,  
13 including this activity that we are engaged in today.  
14 So I'm not sure that a reminder of these things, which  
15 is what was the CPVRR in the need case, what -- how does  
16 the nuclear cost-recovery clause behave based on that;  
17 how are our retail prices in comparison statewide,  
18 locally; what are the full economic impacts that flowed  
19 from that. That is a range of topics. I think it would  
20 be appropriate to regroup periodically the senior  
21 management team in where we started as part of the  
22 discussion of where we are going.

23 **Q.** And that is what the Commission is being asked  
24 to do in this case.

25 **A.** The Commission has access to this same CPVRR.

1 It is unchanged.

2 Q. And you can update that periodically, though,  
3 fairly easily, can you not?

4 A. We don't update as a matter of course -- yes,  
5 we can. No, we don't. As I have stated, we don't do it  
6 as a matter of course. But, in fact, we did it in  
7 response to the interrogatory that the staff asks, and  
8 so that demonstrates that we certainly can.

9 Q. Now, going back to your updated CPVRR  
10 analysis. Do you know what population increase  
11 projections you used in that?

12 A. No, I don't specifically, and I am -- let me  
13 clarify your term population increase. In producing our  
14 fuels forecast, and in updating our site plans, we  
15 review economic data which reflects Florida population  
16 and translate that into projected trends in our service  
17 territory. We use that along with a number of other  
18 factors to project load growth, both energy and peak.  
19 And so, those information are incorporated into the  
20 forecasts and site plans that we file with the  
21 Commission.

22 Q. Well, if you look back at Exhibit 156, which  
23 we have provided you previously, the need determination  
24 study, on Page 44 it has the long-term economic and  
25 demographic summary of information used in your need

1 determination study, correct?

2 **A.** Yes. These on Page 44 are some of the inputs  
3 that go into that study.

4 **Q.** And the input with regard to the PEF service  
5 area population in this case was a 1.6 percent annual  
6 growth rate, correct?

7 **A.** Yes, and that is translated into considering  
8 the other factors here. For example, personal income is  
9 a significant factor in determining statistically what  
10 customer behavior will look like that impacts energy  
11 consumption and peak load growth.

12 **Q.** And you also have real GDP annual growth,  
13 employment annual growth, and you mentioned personal  
14 income. You would expect that those numbers would have  
15 changed considerably since the 2008 need determination,  
16 correct?

17 **A.** Yes, they did change and are incorporated into  
18 the forecast that we currently have. By the way, this  
19 discussion really sort of emphasizes why I think this  
20 CPVRR approach is untenable, because these numbers have  
21 changed in a year and a year from now as we sit here  
22 they will have changed again as they likely will six  
23 months from now.

24 **Q.** Well, you are familiar, are you not, that some  
25 economists think that this is a long-term slow down in

1 the economy?

2 **A.** Yes, and I am familiar with some who don't.

3 **Q.** Well, and, you know, give me a one-handed  
4 economist is the same. And you rely upon the Bureau of  
5 Economic and Business Research from the University of  
6 Florida for your population growth data, do you not?

7 **A.** Yes. We rely on USF and a number of other  
8 sources for economic data, population growth and others.

9 **Q.** And are you familiar that BEBR, as they are  
10 called, published a study in March of 2009, which is  
11 probably more up-to-date than the one you used in your  
12 projections?

13 **A.** I'm not -- I can't say whether the one we used  
14 reflects that or not. But I will say that these  
15 forecasts are updated routinely, and they incorporate  
16 the latest economic data, and the latest forecast that  
17 we did, which I think was in May, but that is subject to  
18 check, in the May time frame was built into our forecast  
19 and still supports the long-term need for Levy.

20 **Q.** Well, not if you consider the low fuel cost  
21 scenarios, right? We don't need to go through that  
22 again, because you verified that already.

23 **A.** Yes, I think it is still supported even with  
24 the low fuel cost scenarios. And I think it is  
25 supported, because as I said, these are long-term

1 decisions that accumulate substantial benefits for the  
2 customer in fuel costs, volatile in nature and rising  
3 over time, but also accumulates substantial other  
4 benefits.

5 **Q.** Can you explain why FPL is showing a reduction  
6 in summer peak in 2017 of 10 percent and Progress is  
7 only showing a reduction of 2.6 percent?

8 **A.** No, because I don't do FPL's fuel forecasts  
9 and I'm not responsible -- or load forecasting. I'm not  
10 responsible for that. I can say that our forecasts are  
11 what they are, they are based on methods that we have  
12 employed for decades, and retrospectively they are  
13 fairly accurate.

14 **Q.** Now, if you will turn to your testimony,  
15 please. And this is my next to last question. Page 39,  
16 Line 14. And, actually I want to ask you about the  
17 sentence starting on Line 17. Rather, the company  
18 monitors these additional factors and others for  
19 fundamental changes in them that would require the  
20 company to reconsider its decision that completion of  
21 the Levy nuclear power plants is feeble. And with  
22 regard to how you do that analysis, and how you monitor  
23 these factors, you have mentioned previously that Mr.  
24 Miller's testimony is basically your analysis in a  
25 qualitative fashion, is that right?

1           **A.**    Yes.

2           **Q.**    And, then you state in this sentence that a  
3 fundamental change is what you are looking for. How do  
4 you define fundamental?

5           **A.**    I don't think fundamental can be defined in  
6 static terms. I think you have got to monitor the  
7 political, the regulatory, the technical landscape, as  
8 well as societal issues. And when a change takes place  
9 that is clearly significant and lasting that would call  
10 into question the long-term benefits of the project,  
11 then that is the sort of change that is recognizable at  
12 that point in time.

13                   I think it is impossible to set a definition  
14 of that at the front end, because the economy and issues  
15 are not static and there is just many, many moving parts  
16 to this. So, the point of my testimony here is that to  
17 rely on these sort of short-term gas price fluctuations,  
18 three dollars today, \$14 a couple of years ago, three  
19 dollars today, \$14 next year, that is not a fundamental  
20 change. And, so, to use that as a test is not a tenable  
21 approach. However, at the same time if there is a shift  
22 in cost that is so great and so impactful as to clearly  
23 be a fundamental change, then we ought -- and challenge  
24 the feasibility, then we ought to undertake that.

25           **Q.**    Is there such thing as a detailed qualitative



1 analysis?

2 **A.** Detailed qualitative -- is there such a thing.  
3 I don't know.

4 **MR. DAVIS:** Thank you.

5 **CHAIRMAN CARTER:** That completes it, Mr.  
6 Davis?

7 **MR. DAVIS:** Yes, sir.

8 **CHAIRMAN CARTER:** Mr. Moyle, you are  
9 recognized.

10 **MR. MOYLE:** Thank you, Mr. Chairman.

11 CROSS EXAMINATION

12 **BY MR. MOYLE:**

13 **Q.** Mr. Lyash, good evening. John Moyle on behalf  
14 of FIPUG. To stick with the baseball analogy, I have  
15 changed from being clean up hitter to now I am the setup  
16 man for Mr. Rehwinkel. So, I am going to --

17 **A.** I'm a Rays supporter. We could use a good  
18 setup man right now.

19 **Q.** I am going to try to make a few points and ask  
20 a few questions and take into consideration the lateness  
21 of the hour.

22 You were asked some questions about the  
23 nuclear cost-recovery rule and you provided some  
24 testimony on that. You are familiar with that rule, you  
25 have read it, correct?

1           **A.**    Yes.

2           **Q.**    I told your counsel I was going to ask you a  
3 couple of questions about it, and I think they were  
4 going to give you a copy.

5           **A.**    Thank you.

6           **Q.**    And you clarified that you weren't suggesting  
7 to the Commission necessarily how they should interpret  
8 their rule, but you were sort of given some insights as  
9 to how you currently interpret it, correct?

10          **A.**    Yes, that is all we can do.

11          **Q.**    Okay. And you had said that you determine  
12 long-term feasibility based on technological,  
13 regulatory, and execution aspects of a project, isn't  
14 that correct?

15          **A.**    Yes.

16          **Q.**    And I looked at the rule. I couldn't find  
17 regulatory and execution in there at all, and the only  
18 reference on technological was a section up in the  
19 definitions. 2H talks about cost associated with site  
20 and technology selection. I mean, the rule says what it  
21 says, but you would agree with me that cost is more the  
22 focus of this rule than things like technology,  
23 regulatory, or execution, correct?

24          **A.**    No, I wouldn't agree with that. I think the  
25 notion of feasibility has to be considered in the

1 overall context of the rule, and I think the overall  
2 focus of the rule is to establish a framework to  
3 encourage investment in technologies such as nuclear  
4 power that have the type of long-term benefits that we  
5 discussed. So, while cost is certainly a part of it, I  
6 wouldn't agree that that is the focus or the intent of  
7 the rule.

8 Q. Okay. The title of the rule has cost in it,  
9 correct?

10 A. Cost recovery, yes.

11 Q. Okay. And in the definition section there is  
12 a whole bunch of sections in there that define cost,  
13 correct?

14 A. Yes.

15 Q. And this probably isn't fair, but have you  
16 ever heard of a term in para materia? Do you know what  
17 that means?

18 A. No. It sounds like a legal term.

19 Q. It's one of those Latin --

20 A. I would prefer that we discuss engineering  
21 terms.

22 Q. -- and I think it means that you have got to  
23 read things kind of in the overall context. And I guess  
24 it is still -- you would agree with me, given the fact  
25 that you have been on staff at the NRC and have been in

1 regulated environments, that rules when they are  
2 interpreted and applied, that words should be given  
3 their plain meaning, correct?

4 A. Yes, within the overall intent of the  
5 legislation or rule.

6 Q. Okay. And to the extent that a rule is clear  
7 on its face, you really don't need to look for intent,  
8 you would agree with that as well, correct?

9 A. No, I think intent is always an important part  
10 of understanding and applying any rule.

11 Q. With respect to the long-term feasibility  
12 section of the rule, the long-term feasibility section  
13 of the Rule 5C5, it doesn't talk about technological,  
14 regulatory, or execution aspects, does it?

15 A. Which page are you on, just so I make sure I  
16 get that?

17 Q. Well, this is -- on my copy it is Page 2, but  
18 the correct section of the rule is C5, 5C5.

19 A. Okay.

20 Q. Do you see that, by May 1 of each year?

21 A. I do.

22 Q. It doesn't use the words, technological,  
23 regulatory, or execution in that portion of the Rule  
24 5C5, does it?

25 A. No. It also doesn't use the term cost. It

1 sort of purposely, I think, uses the word long-term  
2 feasibility. So while it doesn't include technical, or  
3 regulatory, or legal, or project management, or cost,  
4 and I would view that as giving the fact that the cost  
5 is not there as important a weight as if it had been  
6 there.

7 Q. You understand that the purpose of this  
8 proceeding is for you to present evidence and convince  
9 this Commission to permit you to recover costs from my  
10 clients and others, correct?

11 A. Yes, I do.

12 Q. And I think you also indicated in response to  
13 a previous question that you do agree that total project  
14 costs are an important part of determining long-term  
15 feasibility, correct?

16 A. Yes. Total project cost is certainly  
17 important in that context.

18 Q. All right. Now, you spent ten-plus years at  
19 the NRC, is that right?

20 A. Nine.

21 Q. And you have been with us most of the day  
22 today, correct?

23 A. Yes.

24 Q. I found it interesting, Mr. John Frank, you  
25 were here when he testified, correct?

1           **A.**    Yes, I was.

2           **Q.**    And he spoke about the uprate project and the  
3           need to stay close to the NRC, to go meet with them, to  
4           find out what they are thinking. The way he described  
5           it he kind of had reasonable assurance that he was going  
6           to get a thumbs up on his application even though it had  
7           not been submitted. You recall that, correct?

8           **A.**    Yes, I do.

9           **Q.**    Do you agree with his approach as he outlined  
10          it in terms of saying it is prudent and reasonable to  
11          stay close to the NRC and to try to understand what they  
12          are thinking?

13          **A.**    Yes. I not only agree with it, I believe very  
14          strongly. It was applied in the case of the Levy COL  
15          and continues to be applied in that manner today.

16          **Q.**    And that would include having discussions and  
17          conversations about key items in your project, correct?

18          **A.**    Yes.

19          **Q.**    Given his testimony and your answers, I am  
20          puzzled by something that I wanted to draw to your  
21          attention. And before I do, there has been a lot of  
22          conversation about the LWA and the EPC and the  
23          interrelation between those two. You would agree with  
24          that, correct?

25          **A.**    I would certainly agree that this qualifies as

1 a lot.

2 Q. And would you also agree, and I think there  
3 was some discussion about it, that the LWA was a key  
4 component. That it triggered certain actions to be  
5 taken pursuant to the EPC?

6 A. Yes. I think the LWA is a critical milestone.  
7 But it is no more or less critical than, for example,  
8 the final environmental impact statement, or the final  
9 safety evaluation report, or the license issuance, or  
10 the site certification. So, yes, I agree it is  
11 significant, but I don't agree that it is more  
12 significant than many others.

13 Q. Okay. The thing I want to draw your attention  
14 to is found on Page 13, Line 6. Would you just read  
15 into the record for us, please, out loud the two  
16 sentences that start on Line 6, I traveled?

17 A. "I traveled to Washington to meet with the NRC  
18 to explain that the company was prepared to execute the  
19 EPC agreement for the LNP and to generally discuss the  
20 company's COLA. We did not specifically discuss the  
21 LWA, but at no time in this meeting or in any of the  
22 prior meetings with the NRC did the NRC ever inform us  
23 that the NRC was not going to issue an LWA for the LNP  
24 as the company requested."

25 Q. And given your experience at the NRC, and in

1 government, and in the regulatory world, you would agree  
2 that given the previous testimony of your other witness,  
3 that that was probably a topic that you should have  
4 brought up when you traveled to Washington just before  
5 the execution of the EPC contract to specifically say,  
6 hey, this LWA is important. Where are we on this, how  
7 is it going, and try to get some information, you would  
8 agree with that, would you not?

9 **A.** Yes. And as a matter of fact, I would tell  
10 you that we had extensive discussions with the staff on  
11 these things. Let me point out that as I said --

12 **Q.** Well, wait a minute. Hold on.

13 **A.** Can I answer the question?

14 **CHAIRMAN CARTER:** Let him finish. You may  
15 finish.

16 **THE WITNESS:** Yes. The NRC typically when  
17 they have an issue that is going to be impactful is very  
18 plain about it. That has been my experience with the  
19 Commission and it is my experience today. I think Mr.  
20 Miller pointed out that where the NRC had concerns with  
21 the notion of a partial EIS and supported the LWA, they  
22 very clearly let us know that it was their view to  
23 support that effort. A full EIS would be required and  
24 we ought to consider changing our plan, and we did.

25 I viewed the LWA as important, but, frankly,



1 no more important than the FEIS or the FSER or the COLA.  
2 On many occasions I and the staff visited with technical  
3 staff and senior management of the Commission to review  
4 the status of the project, our expectations about the  
5 schedule to make sure they were clear on what our plan  
6 was, including prior to issuance of the COLA. In my  
7 drop in visits, I clearly talked to them about what our  
8 schedule was and what reliance we placed on each of  
9 these milestones, including the LWA.

10 I had no particular reason to call out the LWA  
11 specifically or separately from the rest of the schedule  
12 because I had no reason to believe that there was an  
13 issue particularly affecting that. And at no time did  
14 they voice a concern to me about their ability to  
15 meet -- generally meet our schedule, but certainly not  
16 specifically related to a -- when I heard it, it was a  
17 shocking decision about LWA taking the same timeline as  
18 the license.

19 Q. Who did you go to Washington with for this  
20 trip?

21 A. For this particular trip?

22 Q. Yes, sir, the one that is referenced on --

23 A. I believe that involved Jim Scarola, our chief  
24 nuclear officer, and Bill Johnson, the president of our  
25 holding company. But I also had other interactions

1 beyond this with the staff over the months leading up to  
2 it.

3 Q. Yes, sir. And what I want to do is talk about  
4 the trip that you reference in your testimony just  
5 before the execution of the EPC. I appreciate you  
6 telling me about the other trips. The one I want to  
7 spend a minute focusing on is the one that you and Mr.  
8 Johnson and Mr. Scarola went to. All three of you all  
9 are senior management with the company, correct?

10 A. Correct.

11 Q. And is it your testimony that going up there  
12 meeting with Commissioners and staff during the course  
13 of those meetings you did not bring up once the status  
14 of the LWA?

15 A. No, I wouldn't agree with that  
16 characterization. We brought up the overall status of  
17 the project, what our expectation was for milestone  
18 reviews, meaning FEIS, LWA, FSER, COLA issuance. As  
19 well as other issues related to completion of the LSAB  
20 hearings, schedules for admission of contentions,  
21 contested hearings that might flow from that, as well as  
22 generic industry events, design certification document  
23 Rev 17 review, our COLA, et cetera. So we talked about  
24 that full range of issues to make sure that we  
25 understood that the Commission understood that the

1 actions we were taking and the decisions we were making.  
2 And that if they had concerns with those, we would have  
3 expected them to put those concerns forward.

4 And, in fact, we did talk about some concerns.  
5 Concerns related to the DCD process, concerns related to  
6 the progress on the reference COLA. And there was not a  
7 particular boring in on the LWA in isolation because it  
8 did not stand out for us above any one of a number of  
9 other milestones that would have to be met to keep the  
10 project on this schedule.

11 Q. So, you just told me you talked about a lot of  
12 things in that meeting when you, and Mr. Johnson, and  
13 Mr. Scarola went up there, but isn't it true that one of  
14 the things you did not specifically discuss was the LWA?  
15 If you can answer yes or no, I would appreciate it.

16 A. No, that is not true.

17 Q. So how do I read your statement on Line 8, "We  
18 did not specifically discuss the LWA." Is that  
19 incorrect?

20 A. Well, let me explain my answer. We discussed  
21 the LWA in the context of the overall licensing  
22 activity, but if your question is did you specifically  
23 bore in on whether an LWA would be issued by a  
24 particular date and put that question in that succinct  
25 form to the Commission, no, we did not.

1           **Q.**    Wouldn't you agree that generally in  
2   interacting with regulatory entities, whether it be the  
3   Florida Public Service Commission, or DEP, or another  
4   entity, that typically the applicant or the petition  
5   seeking relief from the governmental agency puts issues  
6   on the table that they would like to discuss?

7           **A.**    Yes, and I think this is a two-way street. I  
8   would expect in my experiences that state agencies like  
9   the DEP, the PSC, and federal agencies like the NRC  
10   would do the same.

11          **Q.**    Let me direct your attention to Page 5,  
12   Line 22. And specifically you state on Line 22, "The  
13   company never expected potential joint owners to sign a  
14   joint ownership participation agreement before the EPC  
15   agreement was executed." Was that part of the reason  
16   why you executed the EPC to increase your chances of  
17   getting joint ownership?

18          **A.**    No, I wouldn't link those two in that manner.  
19   They are certainly linked in that we didn't expect joint  
20   owners to commit and sign a joint owners agreement, an  
21   O&M agreement and make their capital contributions  
22   without an EPC, but we would not move to sign an EPC  
23   that we didn't think was ready and right just to  
24   facilitate joint ownership discussions.

25          **Q.**    This contract amendment that needs to be

1 negotiated as a result of the withdrawal of the LWA, you  
2 would agree that that is a significant or material  
3 portion of the EPC that needs to be renegotiated,  
4 correct?

5 **A.** Yes. I think the contract change order and  
6 amendment is certainly significant, but I want to make  
7 sure everybody understands that the EPC contract is not  
8 being renegotiated. That is a fully executed contract  
9 that sets terms and conditions. There is a provision in  
10 the contract to negotiate a change order and amendment,  
11 and what we are doing currently is negotiating just that  
12 change order and amendment, and in that context, yes, it  
13 is significant.

14 **Q.** And given the fact that that has not yet been  
15 done, you wouldn't have any objection, would you, to  
16 bringing that matter back before the Commission when you  
17 nail down that amendment so that they could then  
18 understand fully and more appropriately the cost, the  
19 overall total cost of the project?

20 **A.** No, I would expect during next year's  
21 proceeding of this nature that we would address that  
22 with the Commission. And if that negotiation has some  
23 item that arises that is impactful to the feasibility of  
24 the project perhaps before.

25 **Q.** But, in the meantime, you are saying put it

1 off till next year, this year you are asking for \$12  
2 plus recovery from residents on 1,000 kilowatt hours,  
3 correct?

4 **A.** Yes, because I think the feasibility of this  
5 plant still remains intact. And not only that, but in  
6 the response to the interrogatory with respect to the  
7 outcome of this, we did a plus or minus up to 25 percent  
8 on capital construction cost, which I think shows  
9 clearly that the plant still -- even under that test  
10 which I don't agree with -- economically feasible.

11 **Q.** And that 25 percent worst-case scenario that  
12 would add 4 billion-plus to it potentially?

13 **A.** Not necessarily. That particular case in the  
14 analysis, yes.

15 **Q.** Okay. And just so we are clear on that, that  
16 that is just a mathematical calculation, 25 percent of  
17 17.2 billion, correct?

18 **A.** That is correct.

19 **Q.** Back on the joint owner point, you would  
20 similarly agree that it is probably not likely for a  
21 joint owner to sign on now while you have this material  
22 significant outstanding issue related to the EPC yet to  
23 be negotiated, correct?

24 **A.** Yes, I think it is likely the joint owners  
25 would want to wait until this change order is executed

1 in order to execute the EPC agreement.

2 Q. Do you agree that it makes sense to explore  
3 strategic partnerships?

4 A. Yes, I do.

5 Q. Have you done that?

6 A. Yes, we have.

7 Q. But as we sit here today, you don't have any  
8 letters of intent or agreements in that respect?

9 A. No, we have no final commitment to the  
10 project. But, as we have said from the beginning, joint  
11 ownership has significant advantages not only for our  
12 company, but for our customers and the state.

13 We have engaged in those discussions very  
14 meaningfully with a range of partners, municipals,  
15 co-ops, potential financial partners, and IOUs. Those  
16 discussions have progressed far and substantially, and  
17 we have reached agreement with joint owners on a number  
18 of aspects of the project, but we have not yet got to  
19 final commitment from them.

20 Q. You have had meaningful discussions with other  
21 Florida based IOUs?

22 A. We have reached out to the Florida IOUs to  
23 determine whether they are interested in the project.

24 Q. Have you had meaningful discussions or is it  
25 preliminary?

1           **A.**   I would prefer not to characterize the  
2           particular state of any discussions because they are  
3           confidential.

4           **Q.**   Okay. You would agree that to the extent that  
5           there could be a strategic partnership forged that that  
6           may be a good thing for ratepayers to the extent that  
7           economies of scale could be realized, correct?

8           **A.**   Yes. I think the nature of these strategic  
9           partnerships is to spread the risk, easing customer  
10          price impact, and to engage a broader set of resources  
11          in the project. Those are the benefits, I think, that  
12          accrue as a result of if we were to strike such an  
13          alliance.

14          **MR. MOYLE:** Mr. Chairman, if you would just  
15          give me a minute.

16          **CHAIRMAN CARTER:** Absolutely.

17          **BY MR. MOYLE:**

18          **Q.**   A couple of final lines, hopefully. You were  
19          here when Mr. Reed testified, an expert for FPL?

20          **A.**   No, I wasn't.

21          **Q.**   You were not? Mr. Reed indicated he thought a  
22          go slow approach and a decision not to execute an EPC  
23          made more business sense. I take it you would not agree  
24          with that assessment?

25          **A.**   No, I wouldn't, but I'm not familiar with the



1 basis for Mr. Reed's conclusion. Perhaps it is the best  
2 thing for FPL, I can only comment on what is best for  
3 Progress Energy. And in this case, we have a need for  
4 the base load generation, and so moving at the pace that  
5 we have and continue to move we think is the best  
6 decision for us and our customers.

7 **Q.** A couple of other final points. Page 9,  
8 Line 10. You state that partially in response to this  
9 question about negotiations and the need to sign the EPC  
10 contract that the company had no reasonable ground to  
11 stall the signing of the EPC agreement now that those  
12 negotiations were complete. Is it your testimony that  
13 you do not believe uncertainty related to the LWA was a  
14 valid reason to maybe put off the execution of the EPC  
15 for a period of time?

16 **A.** I'm not sure whether my answer is yes or no  
17 here because I can't think of the structure of the  
18 question. But, I think it certainly would have been  
19 something that might have been an issue for us, although  
20 we had no reason to delay executing the EPC, but it was  
21 not an issue that the consortium would have taken into  
22 consideration.

23 We have been negotiating with these folks for  
24 two years consistently and constantly. Those  
25 negotiations had moved to the point where all of the

1 issues had been resolved with respect to the EPC and we  
2 had captured significant value for our shareholders and  
3 our customers in that contract. And so there really was  
4 no more negotiations to be done on the contract.

5 **Q.** Sir, in response to a question from Mr. Brew,  
6 I thought you had said that you had not yet made a  
7 decision to move forward with Levy, is that correct?

8 **A.** No, I didn't it in exactly that context. What  
9 I said was that we have committed to the project and our  
10 intention is to build the project. And we have made  
11 decisions all the way along the way to take the next  
12 step and execute the next milestone, but that we would,  
13 as we have done consistently evaluate whether  
14 continuation of the project and commitment to the next  
15 step is warranted. And so we have done that all the way  
16 along the way and we did that after careful  
17 consideration with respect to executing the EPC  
18 contract.

19 **Q.** Maybe I wrote it down wrong. If a decision  
20 has not been made to move forward with the project, you  
21 would agree it probably wouldn't make sense to execute  
22 an EPC contract, correct? I mean, that is a big  
23 significant contract where you commit a lot and off you  
24 go, correct?

25 **A.** Yes, it is certainly a big decision and it is

1 a significant step and it is a decision not to be taken  
2 lightly. I think maybe this is a matter of semantics.  
3 I don't believe you are suggesting that we should make a  
4 decision at a point in time to build the plant and then  
5 not constantly reevaluate that and make a sequence of  
6 decisions to continue the project. That would not be  
7 the way any reasonable manager would manage such an  
8 undertaking.

9 Q. And I think given our conversation we are in  
10 agreement that with respect to making an evaluation that  
11 your company has to make an evaluation that costs are an  
12 important component of that, just like this Commission  
13 has to make an evaluation and costs are an important  
14 component of that, correct?

15 A. Yes.

16 Q. And, finally, a little bit on the contract  
17 negotiations. Did you negotiate, were you at the table  
18 on any of these discussions?

19 A. Yes.

20 Q. Okay. And is it fair to ask you who -- you  
21 know, a lot of times in negotiations one party has kind  
22 of a higher ground or more leverage in the negotiations.  
23 Who had the higher ground or the leverage in the  
24 negotiations with Westinghouse?

25 A. I don't know that you can characterize this as

1 one party having higher ground than the other. I was  
2 involved in these negotiations for the entire duration  
3 of the negotiations up to and including execution of the  
4 EPC contract, which has my signature on it.

5 Neither party would I consider to have higher  
6 ground or more leverage. We come from different places  
7 and we negotiate the terms and conditions of the  
8 contract from different perspectives, but at the end of  
9 the day, I think what we got here is an EPC contract  
10 that captures significant value for our customers.

11 Q. So my impression that you all have 17 billion  
12 allocated for a nuclear project, have money to spend,  
13 that led me to believe that you all had probably a  
14 better negotiating position as compared to a vendor who  
15 had a product that the vendor wished to sell, is that  
16 correct?

17 MR. WALLS: Objection, asked and answered.

18 CHAIRMAN CARTER: To the objection.

19 MR. MOYLE: I think it is following up on his  
20 answer on a clarifying point.

21 CHAIRMAN CARTER: Ms. Helton.

22 MS. HELTON: I'm having a hard time  
23 distinguishing how Mr. Moyle's question that he just  
24 asked is different from the leverage question that he  
25 asked before which the witness answered.

1                   **CHAIRMAN CARTER:** Okay. Sustained. Move on.

2                   **BY MR. MOYLE:**

3                   **Q.** Let me refer you to your testimony on Page 9,  
4 again. These are on the contract discussions, and this  
5 is in a confidential section, so I am going to try to  
6 tread lightly.

7                   Do you see on Line 17 where it talks about the  
8 consortium's decision?

9                   **A.** Yes.

10                  **Q.** And then there is an infinitive after that, do  
11 you see that?

12                  **A.** Uh-huh.

13                  **Q.** That is overstated, is it not? I mean, that  
14 word used in there, that wasn't something that you all  
15 had to do?

16                  **A.** Which word are you referring to? Perhaps I'm  
17 not sure of the word.

18                  **Q.** To require?

19                  **CHAIRMAN CARTER:** I think on the confidential,  
20 Mr. Moyle, it is okay to talk about what number a word  
21 in the sentence it is, because it is confidential. So  
22 let's stay focused.

23                  **BY MR. MOYLE:**

24                  **Q.** Do you see that?

25                  **A.** No, I don't think it is overstated when taken

1 in the context of the last six words in the sentence.

2 **MR. MOYLE:** Thank you for your time.

3 **CHAIRMAN CARTER:** Mr. Rehwinkel.

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

5 CROSS EXAMINATION

6 **BY MR. REHWINKEL:**

7 **Q.** Good evening, Mr. Lyash.

8 **A.** Good evening.

9 **Q.** Hopefully good night shortly. I heard a hear  
10 hear back there.

11 Well, I know you have heard enough about  
12 feasibility and you are eager to talk about prudence in  
13 the LWA, so I will ask a few questions about that. I  
14 actually would like to follow up on the question that  
15 Mr. Moyle asked you about the meeting in Washington that  
16 you attended with Mr. Scarola and Mr. Johnson. Do you  
17 recall those questions?

18 **A.** Yes.

19 **Q.** And I think your testimony is, and this is on  
20 Page 13, starting on Line 6, that this was immediately  
21 prior to the execution of the EPC agreement?

22 **A.** Yes.

23 **Q.** So what does that mean, is it sometime in late  
24 December, or sometime in December?

25 **A.** Yes. This would have -- I'm sorry, I can't

1 precisely put a date on it, but this would have been in  
2 the November or early December time frame.

3 Q. Okay. And your testimony was that you did not  
4 separate the LWA from the rest of the COLA, and there  
5 were questions or the inquiries you made to the NRC  
6 staff regarding their decisions or their inclination  
7 about your schedule, is that correct?

8 A. That is correct.

9 Q. Isn't it true that from the date of filing of  
10 the COLA in July of 2008, that the NRC staff had placed  
11 extra focus on the LWA aspects of your filing?

12 A. No, I wouldn't characterize it in that manner.

13 Q. Okay. There was a September 5th meeting with  
14 the NRC staff where they communicated to you that they  
15 wanted certain activities included in the LWA, is that  
16 correct?

17 A. Yes, it is.

18 Q. And it was specifically about the LWA, was it  
19 not, that meeting?

20 A. I believe there were other topics covered at  
21 the meeting --

22 Q. Primarily.

23 A. -- in addition to just the LWA. As Mr. Miller  
24 pointed out, the geotechnical questions and the RAIs  
25 that go back and forth are applicable to more than the

1 LWA. They are generically applicable to the docketing  
2 of the COLA and the COLA review itself. So, any  
3 geotechnical question or dialogue on those would have  
4 been not necessarily attributed to the LWA, but just  
5 attributed to the docketing process for the COLA. They  
6 did make the specific request that you cite, which is  
7 particularly the LWA, to expand that scope.

8 Q. And that was primarily the focus of the  
9 September 5th meeting, was it not?

10 A. As I said, I believe there were other issues,  
11 geotechnical issues discussed at the meeting. One of  
12 the issues was certainly this LWA issue.

13 Q. And on September 12th you made a filing, a  
14 supplemental filing related to the LWA, isn't that  
15 correct?

16 A. Yes, it is.

17 Q. And that really wasn't a supplemental filing  
18 on any other aspect of your COLA, was it?

19 A. No, I don't believe it was. It was responsive  
20 to the staff's request that we incorporate the diaphragm  
21 wall and the permeation grouting into the LWA request to  
22 support the docketing of the application.

23 Q. And on October 6th you got your docketing  
24 letter accompanied by additional RAIs that focused on  
25 aspects of the LWA, isn't that correct?



1           **A.** No. We got the docketing letter that included  
2 RAIs on geotechnical issues, which as both I and Mr.  
3 Miller have said are applicable to the license  
4 application broadly, not specifically related to the  
5 LWA.

6           **Q.** And isn't it true that the October 6th letter  
7 made three separate references in three separate  
8 paragraphs to the geotechnical aspects of your filing?

9           **A.** Yes.

10          **Q.** So in that context, your assertion or your  
11 testimony to the Florida Public Service Commission that  
12 you expect them to accept is that you did not -- you  
13 nevertheless gave no additional credence to the LWA as a  
14 specific scheduling challenge?

15          **A.** Yes, that is correct, and let me explain my  
16 basis for that. I will tell you that in my experience  
17 both working for the Commission and working with the  
18 Commission on the licensee side of the table over 25  
19 years, where there are issues that the Commission has of  
20 this magnitude and nature, they are not reticent to put  
21 them in front of the licensee, and they did no such  
22 thing related to this LWA, first.

23          Second, while these geotechnical questions and  
24 RAIs certainly relate to the LWA, they relate more  
25 directly to the COLA, and are typical of the NRC method

1 of doing business. They may ask questions because there  
2 is an unresolved issue, or as the PSC does, they may  
3 just ask questions to create a record of the question  
4 and the answer to establish the basis for their COLA  
5 docketing and their docketing review. So, neither I nor  
6 anybody else in the company, while these interactions  
7 are significant, saw them at all as unusual with respect  
8 to how the NRC behaves on these licensing issues.

9 Q. How many pending applications for COLA were  
10 there at the time that you made your -- let's say on  
11 December 1st, 2008?

12 A. Your question is how many --

13 Q. Let me strike that and ask this question. At  
14 the time you, Mr. Scarola, and Mr. Johnson went to  
15 Washington, how many pending COLAs were there before the  
16 NRC?

17 A. I'm sorry, I can't give you a specific number,  
18 I think there were somewhere between ten and 20 pending  
19 COLAs and early site permits, but at various stages --  
20 announced, but at various pages of the process. I can't  
21 give you a number on how many had been docketed.

22 Q. Was it over ten?

23 A. I can't say.

24 Q. Well, that's fine. And so my question to you  
25 following that is that at the time you went to

1 Washington and met with NRC staff immediately preceding  
2 the signing of your EPC, your COLA was the only one that  
3 had an LWA as a part of it, isn't that correct?

4 A. Yes. I think as Mr. Miller established,  
5 Southern Company had an LWA associated with their ESP.

6 Q. Right. But I asked about COLAs, and that is  
7 the only one, right?

8 A. Yes.

9 Q. And yours was the first LWA as a part of a new  
10 rule that went into effect in 2007 relating to LWAs,  
11 correct, that was part of a COLA?

12 A. That was part of a COLA, yes. I'm not clear  
13 whether there were other work authorizations associated  
14 with other facilities not associated with a COLA which  
15 the LWA rule was applicable.

16 Q. So on top of the question I asked you earlier  
17 about the attention that the staff had given to your  
18 LWA, you also were the only one as a part of a COLA at  
19 this time you met with the NRC staff, right?

20 A. Yes.

21 Q. Okay. Now, all of these other pending  
22 applications, regardless of the number of them, and  
23 there was more than a handful, would you agree with  
24 that?

25 A. Yes.

1           **Q.** They all had FSERs, they had environmental  
2 impact statement milestone requests pending, is that  
3 correct?

4           **A.** I'm sorry, are you asking about a specific  
5 application?

6           **Q.** All of them. All of the applications would  
7 have had an environmental impact statement aspect to  
8 them, would they not?

9           **A.** They would have, yes.

10          **Q.** Okay. And all of them would have had the  
11 safety report, was it FSER aspect, as well?

12          **A.** Yes.

13          **Q.** Okay. But yours is the only one that had an  
14 LWA, right?

15          **A.** I think we have established that, yes.

16          **Q.** Yet you gave no -- you paid no specific  
17 attention to that in your conversations with the NRC  
18 staff immediately before the signing of the EPC. That  
19 is your testimony, correct?

20           **MR. WALLS:** Objection, asked and answered many  
21 times.

22           **CHAIRMAN CARTER:** To the objection, Mr.  
23 Rehwinkel.

24           **MR. REHWINKEL:** My question was the first time  
25 it was asked and answered after establishing certain

1 other facts.

2 **CHAIRMAN CARTER:** Ms. Helton.

3 **MR. REHWINKEL:** I can withdraw the question.

4 I know it is getting late.

5 **CHAIRMAN CARTER:** Okay. We will be here -- we  
6 will just be without air conditioning, but we will be  
7 here. You may proceed.

8 **MR. REHWINKEL:** Thank you.

9 **BY MR. REHWINKEL:**

10 **Q.** On Page 10 of your rebuttal testimony, Mr.  
11 Lyash, starting on Lines 14 through 18, you state the  
12 sole purpose of the LWA rule is to expedite the NRC's  
13 review of certain construction activities to allow them  
14 to begin before the COL is issued. Do you see that?

15 **A.** Yes.

16 **Q.** And you are talking about the current rule,  
17 the LWA rule?

18 **A.** Yes, although this is also true of the prior  
19 LWA rule.

20 **Q.** Okay. So, when you state expedite the NRC's  
21 review, you are not stating that as part of expediting  
22 the NRC's review that there is any lessening of the  
23 standard for review?

24 **A.** No. I think there are -- no, I'm not. There  
25 are specific standards established for how to review

1 this LWA, and I don't think they are any less or  
2 different than the standards that are generically  
3 applied to technical material review. The purpose of  
4 this rule is to extract the scope of work that would be  
5 covered by an LWA, and to review it separately in  
6 advance and independently from the rest of the broader  
7 set of activities so as to permit the licensee to begin  
8 those activities before the license is issued.

9 Q. And you would agree there is no presumption in  
10 the rule that because an LWA is filed that it will be  
11 granted, is that correct?

12 A. That is correct in this case and in all  
13 regulatory cases of this nature, I would think.

14 Q. And there is no presumption in the rule that  
15 an LWA will be considered on a specific time frame  
16 regardless of the complexity of the issues that are  
17 presented in the LWA, is that correct?

18 A. Yes, that is correct. I think there is a  
19 general expectation and discussion that the Commission  
20 has had in numerous forums about what they saw as the  
21 time frame for LWA and environment impact statement  
22 issuance, but that does not warrant that that is  
23 necessarily what they will deliver, as we have seen in  
24 this case.

25 Q. And there has been a lot of testimony today,

1 and I think even in your testimony about a December 4th  
2 statement by Bryan Anderson. Are you familiar with that  
3 statement?

4 **A.** I am. You didn't say that is in my testimony,  
5 did you?

6 **Q.** I really don't know. It seems like it has  
7 been in everybody's, but --

8 **A.** No, it is not in my testimony, but I am  
9 certainly familiar with it.

10 **Q.** Okay. Now, were you present when he made that  
11 statement?

12 **A.** No, I wasn't present.

13 **Q.** Did you receive a report from any of your  
14 subordinates that told you about the statement?

15 **A.** No. I received a report on the hearing and  
16 the content of it, but it didn't specifically call out  
17 this statement. As we have said, it is not a remarkable  
18 statement, and I think what it indicates is that Mr.  
19 Anderson in his project management activities felt  
20 comfortable making that statement given the knowledge he  
21 had of our COLA and LWA process at the time.

22 **Q.** But you don't know that for sure, that is just  
23 speculation on your part?

24 **A.** No, I don't know that for sure, but it is more  
25 than speculation. I worked with this agency for nine

1 years, so I know that what their standards are, and I  
2 think is unlikely, although I can't guarantee it, that a  
3 project manager at a public meeting being transcribed if  
4 he knew that there was a significant deviation in what  
5 the utility expected and they were planning to issue,  
6 would make a statement of that nature. He would avoid  
7 that statement. So, that is the context I put it in.

8 Q. You didn't report this statement to the board  
9 of directors in any meeting that they held regarding  
10 decisions to sign the EPC, did you?

11 A. No, I did not.

12 Q. Were you here when Mr. Miller was asked a  
13 question about feasibility, and he stated, "I think if  
14 the cost of the project doubled that he would consider  
15 it not to be feasible"?

16 A. I was here when he made statements of that  
17 nature, yes.

18 Q. Okay. I mean, did I mischaracterize what he  
19 said? I was doing it in a very broadbrush way.

20 A. I think you did it broadly enough.

21 Q. So, if that -- we know that that -- do you  
22 agree with that?

23 A. Do I agree with --

24 Q. With what he said regarding that if the cost  
25 double you would consider it to be not feasible?



1           **A.** All other things being static --

2           **Q.** Yes.

3           **A.** -- if the cost of the project doubled, then I  
4 think you could very well conclude that it is not  
5 feasible.

6           **Q.** Okay. Is there a number between doubling and  
7 the current price that you would consider to be the  
8 break-even point about feasibility?

9           **A.** No.

10          **Q.** There is not a number?

11          **A.** No, there is not a number. And the reason  
12 there is not a number is, as we have said many times,  
13 the capital cost purely is not the sole determinant of  
14 the feasibility of this project. For example, if the  
15 cost of steel doubled, and that were the reason for the  
16 project escalation increase, that doubling of steel  
17 might effect a broad range of other alternatives and  
18 escalate them right with it. So, there are enough  
19 moving parts to this that I think you cannot establish a  
20 number.

21          **Q.** Well, my question was along the lines of your  
22 clarification, all other things being kept equal.

23                   **MR. REHWINKEL:** But, I will withdraw that.

24 Mr. Chairman, that is all the questions I have. Thank  
25 you.

1                   **CHAIRMAN CARTER:** Thank you. Staff.

2                   **MR. YOUNG:** No questions.

3                   **CHAIRMAN CARTER:** Commissioners. Commissioner  
4                   McMurrian, you're recognized.

5                   **COMMISSIONER McMURRIAN:** Thank you. Good late  
6                   evening, Mr. Lyash.

7                   **THE WITNESS:** Good evening, Commissioner.

8                   **COMMISSIONER McMURRIAN:** I was listening to  
9                   the questions from Mr. Moyle about the joint ownership,  
10                  but I couldn't recall, did you tell us already that you  
11                  had discussed or your company had discussed with other  
12                  Florida IOUs joint ownership of the nuclear plants?

13                  **THE WITNESS:** Yes, Commissioner. We have  
14                  reached out to other Florida IOUs to discuss their  
15                  interest in joint ownership in our facility and the  
16                  potential that there might be reciprocal joint  
17                  ownerships if and when any of them were to undertake  
18                  such a project. So we have done that.

19                  **COMMISSIONER McMURRIAN:** Okay. And I have two  
20                  or three, I think, Mr. Chairman.

21                  **CHAIRMAN CARTER:** You're recognized.

22                  **COMMISSIONER McMURRIAN:** If you were to come  
23                  to an agreement with a Florida IOU for joint ownership  
24                  of Levy 1 and 2, can you tell me whether your company  
25                  has an opinion on whether such a Florida IOU would be

1 able to seek advanced recovery of their share of the  
2 preconstruction costs from their customers?

3 **THE WITNESS:** I haven't personally and I don't  
4 believe our company has come to a conclusion on that.  
5 Although I would say, you know, just based on my  
6 exposure to this point, I would think that would be  
7 consistent, in my reading that would be consistent with  
8 the intent of the legislation.

9 **COMMISSIONER McMURRIAN:** Okay. And I guess  
10 one other question. If you believe that new policies or  
11 regulations would be helpful to encourage joint  
12 ownership of nuclear plants in particular, you would  
13 suggest that to the appropriate policymakers or  
14 regulators, wouldn't you?

15 **THE WITNESS:** We would. If such an  
16 opportunity were desired and we were asked to comment on  
17 that we would certainly give our input on it.

18 **COMMISSIONER McMURRIAN:** Okay. Thank you.  
19 That's all I have, Mr. Chairman.

20 **CHAIRMAN CARTER:** Commissioner Skop, you're  
21 recognized.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
23 I will try and make this brief. Good evening, Mr.  
24 Lyash.

25 **THE WITNESS:** Good evening.

1                   **COMMISSIONER SKOP:** If I could turn your  
2 attention to Page 33 of your testimony, please.

3                   **COMMISSIONER ARGENZIANO:** Excuse me,  
4 Commissioner Skop, what page did you indicate?

5                   **COMMISSIONER SKOP:** 33 of the rebuttal  
6 testimony.

7                   **COMMISSIONER ARGENZIANO:** Okay, thank you.

8                   **THE WITNESS:** Yes, sir.

9                   **COMMISSIONER SKOP:** And in response to a  
10 question that was presented on Line 4, can you briefly  
11 explain on Lines 6 through 8 the significance of the  
12 response to that question?

13                   **THE WITNESS:** I'm sorry, Commissioner, I am on  
14 Page 33.

15                   **COMMISSIONER SKOP:** Yes, Page 33.

16                   **THE WITNESS:** And just to make sure I have the  
17 right line, what you are asking about is the statement  
18 that says the company's updated cumulative present value  
19 revenue requirement analysis demonstrates that LNP is  
20 still cost-effective?

21                   **COMMISSIONER SKOP:** Yes.

22                   **THE WITNESS:** And your question, I'm sorry?

23                   **COMMISSIONER SKOP:** Okay. On Page 4 you are  
24 presented with the question and your response beginning  
25 on Line 5 basically through Line 8, in response to the

1 updated analysis, what did the company's projections  
2 show?

3 **THE WITNESS:** Yes. The company's response to  
4 the interrogatory was that analysis that is exhibit, I  
5 think JL-2. And what it showed was that the Levy plant  
6 remains cost-effective, and for the mid-fuel reference  
7 case and the carbon center is slightly more  
8 cost-effective than was presented in the need case.

9 It also goes on to assess capital sensitivity  
10 to the project, and shows that in this range of minus 15  
11 to 25 percent that the Levy project even with somewhat  
12 escalated capital cost, the escalations that we would  
13 anticipate to take place as a result of the passage of  
14 time is still cost-effective.

15 **COMMISSIONER SKOP:** In furtherance of that,  
16 would it also be correct to understand that based upon  
17 the company's updated analysis, that it is slightly more  
18 cost-effective even at this time even with the schedule  
19 shift as a result of the LWA denial?

20 **THE WITNESS:** That is correct.

21 **COMMISSIONER SKOP:** Okay. All right. Moving  
22 to Page 34 of your rebuttal testimony, Lines 20 through  
23 23 on that page.

24 **THE WITNESS:** Yes, sir.

25 **COMMISSIONER SKOP:** The question arose about

1 joint ownership, and can you basically explain the  
2 significance of those lines of testimony as they pertain  
3 to joint ownership and what the opportunity costs might  
4 be?

5 **THE WITNESS:** Yes. If I understand your  
6 question, the testimony says that joint ownership  
7 scenarios, because the plant is cost-effective and  
8 produces a clear net benefit for the customers, at less  
9 than 100 percent ownership you would expect a reduction  
10 in the total of the benefit to the customers. And so in  
11 a case where you were taking less than 100 percent  
12 ownership, you are necessarily transferring not only the  
13 cost but the attendant benefit to the co-owner, and that  
14 is really what that is reflecting.

15 **COMMISSIONER SKOP:** Okay. So, although joint  
16 ownership may or may not be a good thing, that comes  
17 with the trade-off to the extent that you -- if you sell  
18 part of the generating asset, you also give up part of  
19 the expected fuel savings costs that you would bring to  
20 your customers, is that correct?

21 **THE WITNESS:** Yes, that is correct. And the  
22 presumption here, though, is that we would -- if we were  
23 to take on partners we would be transferring not only  
24 the costs, but that benefit, hopefully to other citizens  
25 of Florida.

1                   **COMMISSIONER SKOP:** Okay. Thank you.

2                   **CHAIRMAN CARTER:** Commissioners, anything  
3 further from the bench? Redirect.

4                   **MR. WALLS:** No, sir.

5                   **CHAIRMAN CARTER:** Exhibits 128 and 129, is  
6 that right?

7                   **MR. WALLS:** Yes, that is correct.

8                   **CHAIRMAN CARTER:** Are there any objections?

9                   **MR. BREW:** No objections.

10                  **CHAIRMAN CARTER:** Okay. We have got to go --  
11 128 and 129 entered.

12                   (Exhibit Numbers 128 and 129 admitted into the  
13 record.)

14                  **CHAIRMAN CARTER:** Now let's go to the back  
15 pages. You have got 155?

16                  **MR. BREW:** Yes.

17                  **CHAIRMAN CARTER:** Are there any objections?

18                  **MR. WALLS:** No.

19                  **CHAIRMAN CARTER:** Without objection, show it  
20 done.

21                   (Exhibit Number 155 admitted into the record.)

22                  **CHAIRMAN CARTER:** Mr. Davis, you have got 156?

23                  **MR. DAVIS:** Chair, I had 156, and I would also  
24 since the Progress counsel said that the Levy update  
25 document that I presented is not confidential, go ahead

1 and mark that as Exhibit 157 and have that entered,  
2 please.

3 **CHAIRMAN CARTER:** Okay, let's do this. Are  
4 there any objections to 156?

5 **MR. WALLS:** No.

6 **CHAIRMAN CARTER:** Without objection, show it  
7 done.

8 (Exhibit Number 156 admitted into the record.)

9 **CHAIRMAN CARTER:** Mr. Burnett, you said in  
10 reference to this Levy update document that was marked  
11 confidential that you waived the confidentiality on it,  
12 is that correct?

13 **MR. BURNETT:** No, sir, not waive it. It is  
14 just that those particular pages at this time are no  
15 longer confidential. Just a slight clarification.

16 **CHAIRMAN CARTER:** Semantics.

17 **MR. BURNETT:** Yes, sir.

18 **CHAIRMAN CARTER:** 157, any objections, Mr.  
19 Burnett?

20 **MR. BURNETT:** No, sir.

21 **CHAIRMAN CARTER:** Okay. So we will call that  
22 short title, Levy Update. Without objection, show it  
23 entered.

24 (Exhibit Number 157 marked for identification  
25 and admitted into the record.)



1                   **CHAIRMAN CARTER:** Anything further for this  
2 witness from any of the parties? Mr. Lyash, you may be  
3 excused.

4                   **THE WITNESS:** Thank you, Mr. Chairman.

5                   **CHAIRMAN CARTER:** I need all the lawyers to  
6 pay attention. Did we do 155? Yes, we did. And 156,  
7 that was by Mr. Davis -- 156 and 157 by Mr. Davis. 155  
8 by Mr. Brew entered. Okay.

9                   I need all the lawyers to pay attention. Mr.  
10 Anderson, is that you back there?

11                   **MR. ANDERSON:** Yes, sir.

12                   **CHAIRMAN CARTER:** Okay. Staff, you're  
13 recognized for concluding matters and additional  
14 procedures.

15                   **MR. YOUNG:** Yes, sir. The critical dates.  
16 Hearing transcripts are due --

17                   **CHAIRMAN CARTER:** Hang on. Let Mr. Anderson  
18 get here so he can take notes. Mr. Wright. You may  
19 proceed.

20                   **MR. YOUNG:** Yes. Hearing transcripts, daily  
21 transcripts. Briefs are due September 18th, 2009.  
22 Staff's recommendation will be filed on October 7th,  
23 2009. And it will be to you at agenda conference, which  
24 is October 16th, 2009.

25                   **CHAIRMAN CARTER:** Before I ask Commissioners,

1 let me ask any of the parties -- are there any further  
2 matters from any of the parties? Mr. Moyle.

3 **MR. MOYLE:** I have not participated in this  
4 proceeding before this year, so I guess the only  
5 question I have is that is there some reason why this  
6 has to be done on this time frame in that, you know,  
7 next week we have the two days of Power and Light and  
8 then we have PEF. I mean, if there is a statutory time  
9 frame or something --

10 **CHAIRMAN CARTER:** Are you trying to say you  
11 are not having fun? That's what it sounds like to me.

12 **MR. MOYLE:** I'm just saying I think the  
13 quality of my brief might be improved if there was  
14 additional time.

15 **COMMISSIONER EDGAR:** It's a marathon, Mr.  
16 Moyle. It's a marathon.

17 **CHAIRMAN CARTER:** Ms. Helton, you're  
18 recognized.

19 **MS. HELTON:** Mr. Young may be able to address  
20 this more specifically, but it is my understanding that  
21 this time frame is imposed on all of us by our rule, and  
22 so that we can ensure that we have a decision in time to  
23 roll it into the fuel hearing in November.

24 **CHAIRMAN CARTER:** Okay. There is your answer.  
25 Anything from any of the rest of the parties before I go.

1 back to staff? Commissioners, anything further? Staff,  
2 anything further?

3           **COMMISSIONER ARGENZIANO:** What time do we meet  
4 tomorrow, Mr. Chairman?

5           **CHAIRMAN CARTER:** I beg your pardon,  
6 Commissioner Argenziano?

7           **COMMISSIONER ARGENZIANO:** I'm only kidding. I  
8 said 9:00 o'clock tomorrow?

9           **CHAIRMAN CARTER:** Would be 9:00 p.m. tomorrow.  
10 With that, we are adjourned.

11                   (The hearing concluded at 8:26 p.m.)  
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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

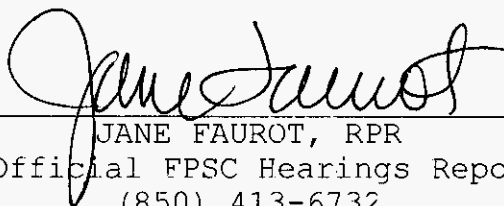
3 COUNTY OF LEON )

4  
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
6 Services Section, FPSC Division of Commission Clerk, do  
hereby certify that the foregoing proceeding was heard  
at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I  
8 stenographically reported the said proceedings; that the  
9 same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

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

13 DATED THIS 11th day of September, 2009.

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15   
16 \_\_\_\_\_  
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