

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

Exhibit B

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME I

PROCEEDING: DEPOSITION OF JEFFREY LYASH

DATE: August 12, 2010

TIME: 9:41 a.m. - 5:18 p.m.

PLACE: Progress Energy Florida
299 1st Avenue North
St. Petersburg, FL 33701

REPORTED BY: Stephanie A. Walters
Florida Professional Reporter
Notary Public, State of Florida

(PAGES 1 - 194)

ARGUS REPORTING/BAY PARK REPORTING
4010 WEST STATE STREET
TAMPA, FL 33609
PHONE: (813) 490-0003
FAX: (813) 831-1599

1 MR. REHWINKEL: Okay.

2 (WHEREUPON, a brief recess was taken.)

3 BY MR. REHWINKEL:

4 Q Okay. All right. My question to you was, are
5 you negotiating an EPC contract for the Harris project?

6 [REDACTED]

14 Q Okay.

15 A -- and I'm just sensitive to not disclosing
16 information that might affect competitive advantage in
17 those discussions.

18 Q Okay.

19 A But in direct answer to your question, [REDACTED]

21 MR. REHWINKEL: Okay. Well, I tell you what I
22 would like to do. I have a few questions that -- in
23 this area, and what I'm going to do is, I think,
24 before two hours are up, the court reporter and
25 myself need to go and move our cars to -- to a more

1 A I didn't quite catch the phrase in the
2 beginning, but let me -- let me see if I can answer it.
3 Yes, we continue to be involved in procuring long lead
4 time materials.

5 The scope of long lead time material
6 procurement itself hasn't changed; it's still the same
7 as set of long lead time components.

8 Given the change in the project schedule, we
9 went through a process to decide whether for those long
10 lead time materials that we were engaged in procurement
11 with -- engage means contracting, fabrication, quality
12 control, quality assurances, inspections, etc. -- which
13 of those it would be best to cancel, which it would be
14 best to suspend, and which it would be best to continue
15 to completion.

16 In the end, we -- we were -- [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Each
18 one of them was dispositioned to either [REDACTED] [REDACTED]
19 [REDACTED], you know, based on, I think, a fairly clear
20 methodology that Mr. Elnitsky addresses in quite an
21 amount of detail.

22 Q Okay. But those materials that you
23 just referenced in your answer, those items had already
24 been contracted for in the March 2008 letter of intent
25 and subsequent processes; is that correct?

█ [REDACTED]

█ [REDACTED]

3 Q Okay. Now, that provision there says that once
4 the COL is issued [REDACTED]

█ [REDACTED]; is that
6 correct?

7 A I'd have to go back and reread the body of the
8 contract in which this is embedded.

9 Q Okay.

10 A However, in general, the impact of this is that
11 under the original contact -- contract, we had
12 negotiated the ability to partially or fully suspend.

13 However, [REDACTED]

█ [REDACTED]

15 And I'm subject to check, I think it was [REDACTED]

█ [REDACTED] My

17 understanding of the intent of this was -- now, that
18 doesn't necessarily mean that the contract would be

19 [REDACTED] It provided that -- that the consortium
20 could [REDACTED]

█ [REDACTED]

22 The intent of this provision was that, in light
23 of the optimal schedule shift that we established, we
24 wanted to be able to go into a [REDACTED]

█ [REDACTED],

1 and to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 The import of this is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q Okay. And -- and what happens instead of [REDACTED]

[REDACTED], you would be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; is that fair to say?

18 A Yes, I think, but I'm a little cloudy on your

19 phrasing. I think what this means is that we have the

20 [REDACTED], and then

21 we're subject to the [REDACTED]

[REDACTED]

23 And then if we [REDACTED]

[REDACTED]

[REDACTED], then the consortium might deem this -- can

1 deem this [REDACTED]

2 Q Now, you said COLA, but you mean COL?

3 A COL. I'm sorry. Thank you.

4 Q Okay. But unless you take the action to issue
5 a notice to resume --

6 A Uh-huh.

7 Q -- the activities that are currently suspended
8 under the EPC will not resume; is that correct?

9 A Yes, and that's been true of the original EPC
10 contract as well as the current EPC contract. In other
11 words, any full or partial suspension we might
12 undertake, for any reason it was contemplated in the
13 original contract, and then we would need to issue a
14 notice to proceed.

15 There are also some provisions in the contract
16 for us to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q All right. You can't [REDACTED] -- you can't
21 ask them [REDACTED]

[REDACTED]

23 A That's correct.

24 Q On Page 6 of your testimony --

25 A Can I put way this or should I keep this

1 Q It's on the next page then.

2 A Yeah, yes.

3 Q And what does it show on the incremental
4 change?

5 A It shows the incremental change as ■ ■ ■
■ ■ ■.

7 Q Okay. And how much of that is escalation?

8 A ■ ■ ■

9 Q Okay. On the -- the page I've -- the prior
10 page there, below the \$17 billion estimate, there are a
11 set of assumptions; is that right, that are material to
12 that estimate being accurate; is that correct?

13 A Yes.

14 Q Now, are those listed in order of magnitude?

15 A No.

16 Q They're not?

17 A No, it's just the list of assumptions.

18 Q Okay. What is the first assumption there?

19 A The first assumption says Class 5, slash, Class
20 4 estimate according to the Association for the
21 Advancement of Cost Estimating International Guidelines.

22 Q Okay. Do you know what those are?

23 A Generally. Although, this -- this particular
24 area is Mr. Elnitsky's area of focus.

25 Q Okay. Do you -- are you generally familiar

[REDACTED]

10 Q Do you know what that means in terms of the
11 overall price of the EPC?

12 A Yes, I'll give you my view.

13 Q Okay.

14 A Although, let me -- let me say that, again,
15 this is embodied -- this is embedded in a larger
16 contract. Mr. Elnitsky has more information on this, as
17 do our legal folks.

18 But the primary intent of this is, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 To the extent that the work that we authorize
23 to be performed [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Does that -- is that clear?

4 Q Yes. So this work that will occur in this
5 prolonged suspension period, [REDACTED]

[REDACTED]

7 A Correct.

8 MR. WALLS: Objection to the characterization
9 but go ahead.

10 BY MR. REHWINKEL:

11 Q Okay.

12 A Perhaps. If we authorized it, we would have to
13 authorize the work. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q Yeah.

19 [REDACTED]

[REDACTED]

21 Q Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 Q So is it your testimony that you have a price,
3 an overall price for the EPC contract, an understanding
4 of what that is?

5 A [REDACTED]
6 [REDACTED] The EPC contract contains
7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13 So our estimating methodology, as we've
14 discussed, [REDACTED]
15 [REDACTED], to estimate the delivered price, but the
16 delivered price can be affected by those [REDACTED]
[REDACTED] or those other factors.

18 This amendment preserves that [REDACTED]
[REDACTED] in the contract; it
20 preserves the [REDACTED]
[REDACTED] it preserves [REDACTED]
[REDACTED] And so with respect to that, the nature of
23 this estimate --

24 Q And you're pointing to the 17.6 --

25 A The 17.6 billion -- that the nature of this

1 estimate is consistent with the estimate that was
 2 developed when the original EPC was signed.

3 Q And the only material difference between the
 4 two is [REDACTED] that would occur between now and --
 5 and --

6 A Right -- well, you pointed out earlier, on Page
 7 11 of the IPP, there is a table that breaks down the
 8 [REDACTED] delta, and I'll just summarize it.

9 EPC incremental schedule shift, this is
 10 primarily related to long lead time purchase order
 11 disposition, [REDACTED].

12 Design change proposals, [REDACTED], these are

13 [REDACTED]

[REDACTED]

[REDACTED] So, in

16 essence, they're very specific scope changes for the
 17 project.

18 Q Would the shield building be one of them?

19 A No, no. They can -- I'm sorry. I can't come
 20 up with some examples, but they can be a range of
 21 issues. They can be [REDACTED] related or -- or --

22 and [REDACTED], which essentially takes those

23 [REDACTED] that we talked about, as well as other

24 [REDACTED] assumptions, and moves those forward.

25 That's the majority of the estimate. That's

1 [REDACTED] Contingency, which is [REDACTED], and
2 that contingency was related to -- with the passage of
3 time, reevaluating, monetizing the kind of project risks
4 that you do -- and I don't want to bore you here -- and
5 then some additional owners cost that we identified over
6 the intervening time. So at any rate, that's what makes
7 up the delta.

8 Q By the way, there is a number here at the top
9 on -- [REDACTED]. That should be a billion, not million,
10 right?

11 A Oh, yes, it should, right.

12 Q All right. Well, we'll take that.

13 A Now, see, if it was that number, it would
14 substantially reduce our enterprise risk and we might
15 decide to proceed even more aggressively.

16 Q Do you understand the sentence here? It says,

17 [REDACTED]

[REDACTED]

[REDACTED] Can you tell me what

20 that means to you?

21 A No, I'm not sure what that means.

22 Q Okay. Do you know what it means when it says,

23 [REDACTED]

[REDACTED]

[REDACTED]

1 project manager would manage a project of this nature.

2 We have made a decision to proceed, and we
3 will, on a number of occasions, reaffirm that decision,
4 if it is correct, and we will meter what we will allow
5 the consortium to do, consistent with the evolution of
6 that decision.

7 Q Okay. So your testimony here today is, there
8 is a presumption that you will issue that notice to
9 proceed in [REDACTED], assuming that a COL is issued prior to
10 that timeframe?

11 A That's correct.

12 Q I think in your testimony you indicate that the
13 expected timeframe for the COL is 2012; is that right?

14 A Yes, December 2012, perhaps January 13.

15 Q Okay. Well, why do you say perhaps January 13?

16 A Well, we have the NRC schedule. However, there
17 are a set of mandatory and contested hearings, and you
18 must make an assumption about once the final safety
19 evaluation report and the final Environmental Impact
20 Statement are issued about the timeliness -- timeliness
21 isn't the right word -- about the schedule for those
22 hearings.

23 Q Okay.

24 A And we would expect those hearings to conclude
25 in the fourth quarter of '12 or early first quarter of

1 kind of -- if we can kind of -- right here where it

2 says, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 And then it continues on, [REDACTED]

9 [REDACTED] and it

10 continues on to that language that you read earlier.

11 A Uh-huh.

12 Q My question is, is there more to this paragraph
13 "m" than just the [REDACTED] for any
14 compensation for work being done during the suspension
15 on a basis, other than the [REDACTED]?

16 A Yeah, I think I understand your question. So,
17 you know, the primary purpose is as I stated before, but
18 we recognize -- and it's embedded in the estimate --
19 that there are some -- just as there are some
20 demobilization costs, for example, to demobilize the
21 Project Management office, there are remobilization
22 costs associated with putting that back in place.

23 So there are very particular costs associated
24 with demobilizing and remobilizing from the partial
25 suspend -- from where we were at the partial suspension

1 and back again.

2 And so the first sentence [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED]

8 So this is really related to the fact that
9 we're transitioning the project to a partial suspension
10 and then have to transition it back, and that during the
11 term of the partial suspension we're going to continue
12 work, and it could be on any number of topics.

13 And so we want to make sure that the costs
14 associated with those things are accurately
15 characterized and reflected.

16 Q So, for instance, if -- if the consortium was
17 aware that the way they worked at Vogtle or SCANA
18 changed their thinking about how the construction ought
19 to proceed, they could not use that section there to
20 negotiate changes to the prices in the contract?

21 A If I understand your question, [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] There are provisions
23 in the original contract on [REDACTED] [REDACTED] [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 So those kind of provisions [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. But
3 this doesn't introduce [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

5 Q Okay.

6 A Now, that isn't to say that [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] So, [REDACTED] [REDACTED], when this
8 contract -- when we -- post-COL issuance, if you
9 consider where the -- where the rest of the industry
10 will be at that point, there will be substantial
11 construction experience at Vogtle.

12 So there will be substantial experience with
13 module design and fabrication with scheduling sequence.
14 The Sanmen Haiyang projects will be headed towards
15 substantial completion. I think the Sanmen first unit
16 is 2013, so it will be nearing completion.

17 And so there may be elements of that experience
18 that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED]. So there may be a [REDACTED] [REDACTED] [REDACTED], but
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED]

22 Q If the company could get all of the costs that
23 you have spent to date and any costs that you are
24 legally obligated as of September 1 -- September 1,
25 2010, guaranteed for recovery over an acceptable period

1 the costs of proceeding from today to license issuance,
2 which we estimate at [REDACTED], and the cost of
3 proceeding with that and then subsequently canceling,
4 which moves that number from [REDACTED] to [REDACTED].

5 And he's saying we should have evaluated that
6 as a fourth option, and what my testimony says is that
7 was evaluated.

8 It -- in the process of deciding whether to
9 proceed or cancel in the present time, it necessarily
10 has to be considered as part of that discussion, because
11 your decision is to proceed to the COLA and to the
12 license and beyond. So my point is that we did consider
13 it as part of the option to cancel the project today.

14 Q Okay. And so the incremental costs that are
15 referenced on lines 8 and 9, that [REDACTED] minus the [REDACTED] --

16 A Uh-huh.

17 Q -- those are the dollars that you describe as
18 on a clearly insignificant basis; is that right?

19 A And, also, the dollars -- the difference
20 between [REDACTED] and [REDACTED], which is immediate cancellation or
21 cancellation post-COLA. That delta is [REDACTED].

22 And when I use the term "relatively
23 insignificant," keep in mind we're discussing this --
24 you know, no dollar is, in and of itself, significant.
25 You know, we manage the pennies here, and so that's not

1 the intent of my comment.

2 The intent of my comment here is that this is a
3 \$17.16 billion project that has tremendous customer
4 benefits. As I mentioned earlier, over a billion a year
5 in fuel savings; over a hundred billion for 40 years;
6 plus, potential carbon costs avoidance.

7 And that -- when you consider this decision,
8 you must not only consider this [REDACTED] [REDACTED] of costs,
9 you must consider the lost opportunity or the lost
10 benefit for having made the decision to cancel, because
11 you're really responsible -- or you ought to be
12 considering both sides of that equation.

13 And so my comment on the [REDACTED] [REDACTED] is not
14 that a dollar is insignificant, it's that given the
15 scale of the project and the opportunity that it
16 represents, and given the fact that we believe this
17 project will proceed, and we intend to proceed, that
18 number is not determinative.

19 Q But from the customers' standpoint, if the
20 likelihood of cancellation is greater than not, a
21 hundred, or 200, or 300 or \$400 million is very
22 significant. You would agree with that?

23 A Yes, I've already agreed every dollar is
24 significant. I don't agree that it's more likely than
25 not that this won't proceed, which is -- which is the

1 Q Is that part of the reason [REDACTED]

[REDACTED]

4 A The -- it's certainly a part of that, a part of
5 that process, yes, although not the only one. [REDACTED]

[REDACTED]

8 Q Okay. Page 32 of your testimony, is it fair to
9 say that -- actually, on 31, starting at the bottom on
10 line 22, through line 9 of 32?

11 A Give me a second to read that.

12 Q Sure.

13 A Okay.

14 Q Okay. Is the crux of that portion of your
15 testimony that it's a close call with respect to
16 evaluating these risks and making the decision to
17 proceed with the project?

18 A No, I wouldn't characterize it as a close call.
19 What I'm acknowledging here is that our assessment, I
20 think, clearly tells us that proceeding with the
21 project, and proceeding with it in the manner that --
22 that we've established, is the optimal decision.

23 And that call, I would not characterize as
24 close. We think that's clear. What I'm acknowledging
25 here, however, is that reasonable people fully armed

1 process does.

2 Q Okay. But the -- the amounts that are -- that
3 the company is projecting for the costs of the units are
4 basically what they expect that are the jurisdictional
5 amount that consumers will be responsible for paying
6 for?

7 A Yes, wholesale or retail jurisdictions.

8 Q Yeah. Well, retail jurisdiction --

9 A Uh-huh.

10 Q -- is that right?

11 A The --

12 Q What I'm trying to get to is, since there are
13 provisions of the EPC that govern costs that might be
14 [REDACTED], and
15 what I'm trying to ask is, does the 3rd Amendment
16 reflect -- or do the -- does the updated estimated
17 in-service cost of the unit reflect any project costs
18 that aren't included in these estimates, that would be
19 borne by the vendors or the consortium.

20 A No, [REDACTED]

21 [REDACTED]

22 Q Okay?

23 A So the -- you know, [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED].

2 Q Okay. Early on, you discussed with
3 Mr. Rehwinkel, he asked you whether the absence of joint
4 owners, to date, represented an enterprise risk. Do you
5 recall that?

6 A Yes.

7 Q And I wanted to just touch on that a little bit
8 differently. The absence of joint owners, would you
9 agree, affects several of the enterprises that you
10 discussed, doesn't it, such as financing of the project?

11 A I would characterize joint ownership as a risk
12 mitigation strategy, not as a risk in and of itself.

13 Q Okay. But the absence of joint owners does
14 affect how the project will be financed, doesn't it?

15 A Yes.

16 Q And it does affect the rate impacts on Progress
17 consumers?

18 A Yes, if you -- and I think you can see that in
19 the customer price impact and in the feasibility study
20 that we did -- a hundred percent ownership of the -- by
21 Progress Energy will certainly require collection of
22 more -- certainly weighs on one side of the equation,
23 but that additional ownership comes with the related
24 benefit --

25 Q Understood.

1 Q Okay. Thank you, Mr. Lyash. That's all I
2 have.

3 MR. MOYLE: We'll allow anyone else to go next,
4 if they want to. I'm probably going to take longer
5 than Mr. Brew.

6 MR. WHITLOCK: This is Jamie Whitlock on behalf
7 of SACE. I just have a few questions.

8 Was that Mr. Moyle?

9 MR. MOYLE: Yes. Go ahead.

10 MR. WHITLOCK: Mr. Moyle, I appreciate it.

11 **CROSS-EXAMINATION**

12 BY MR. WHITLOCK:

13 Q Mr. Lyash, good afternoon. Can you hear me
14 okay?

15 A Yes, I can.

16 Q I just have a couple of questions for you.
17 First of all, I just wanted to make sure I understand --
18 and I know you're probably tired of talking about
19 Amendment 3 to the EPC, but I did have another question
20 in that regard.

21 And what my question is, assuming that Progress
22 Energy has issued the combined operating license,
23 Progress then has [REDACTED]
[REDACTED] or whatever the terminology is; is
25 that correct?

1 A Yes.

2 Q Okay. And can you explain to me what -- what
3 will -- again, assuming the COL is issued, what will be
4 going -- what will be the negotiations between Progress
5 and the consortium during those [REDACTED] [REDACTED]?

6 A Well, the -- first, let me say that the purpose
7 of the [REDACTED] [REDACTED] isn't intended to be solely or
8 necessarily related to any negotiations with the
9 consortium, so --

10 Q Okay.

11 A -- yeah, I mean, fundamentally, the reason why
12 we included [REDACTED] [REDACTED] is by [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] the issuance of the license, then the
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] associated with the generic
15 design certification that Progress on the reference COLA
16 and on the Levy COLA, now, in a certain sense, [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 So in putting the [REDACTED] [REDACTED] on it acknowledges a
21 few things. One is, we want to make sure that we have
22 adequate time before and after the license is issued to
23 carefully consider whether -- whether the circumstances
24 were proceeding, and if so, on what timeframe.

25 So in other words, were creating room for

1 decision-making. We also anticipate, as we talked with
2 Mr. Brew and Mr. Rehwinkel about, that we will have
3 joint owners in the project, and we wanted to make sure
4 there was time for us to conclude any remaining
5 activities with potential joint owners.

6 These are examples of how the ears might be
7 used, so hopefully I'm answering your question. That
8 [REDACTED] [REDACTED] is not to imply that that will be negotiating
9 time with the consortium, although very well might be.

10 Q Right, right. And that does -- that does
11 generally answer my question.

12 Did you say that during that period that would
13 give -- and I just might have misheard you or I didn't
14 completely hear what you said -- time to consider to
15 proceed at that point? Was that what you said?

16 A Yeah, what I said was, or at least what I meant
17 to say, was, you know, we are intending to proceed with
18 the project, but there are various points along the way
19 where we've got to look at the circumstances and
20 reconfirm that this is in the customers' best interest
21 and the company's best interest to do so.

22 And as you approach issuance of the license,
23 that certainly is a process that you will go through
24 again.

25 Q Sure, sure. So it's fair to say that assuming

1 the combined operating license is issued, at that point
 2 Progress will certainly -- although you -- you -- you
 3 know, you say you intend to proceed at this point, but
 4 y'all will certainly reevaluate that decision at that
 5 point; is that fair?

6 A Yeah, we -- yes, we'll we reevaluating -- not
 7 reevaluating, is a term I wouldn't use -- we're
 8 consistently evaluating enterprise and project risks, to
 9 insure that that decision remains a valid -- one that's
 10 in the best interest of our customers, and we'll
 11 certainly be doing that up to and through the -- the
 12 issuance of the license.

13 Q Mr. Rehwinkel had asked you about certain
 14 clause in Amendment 3 that would -- that discussed there
 15 would be the need to discuss in some [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 A Yes.

18 Q Now, will there also be negotiations on, you
 19 know, as far as construction timelines, or is it
 20 Progress' position that there is a hard timeline in
 21 place right now?

22 A Well, we will -- let me see if -- from what I
 23 understand your question --

24 Q I didn't phrase that the best way. I
 25 apologize.

1 A That's okay. The -- the terms and conditions
 2 in the structure in the EPC contract [REDACTED].
 3 However, the original EPC contract had a [REDACTED]
 4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 5 [REDACTED] that once you change the in-service date of the
 6 project [REDACTED], and so we will need to go through a
 7 process with the consortium to [REDACTED]
 8 [REDACTED].

9 Q Right.

10 A [REDACTED]. We
 11 won't necessarily wait until 2013 to do that. We just
 12 [REDACTED], but I would
 13 not anticipate that the [REDACTED]
 14 [REDACTED] will change substantially; they'll just move
 15 in time.

16 Q Move sequentially, essentially?

17 A Yes.

18 Q Okay. And I guess -- and due to the -- due to
 19 the delay, obviously and these [REDACTED]
 20 [REDACTED], there could also be cost increases relating to
 21 the possible construction; is that accurate?

22 A Well, our estimate, the \$17.6 billion estimate,
 23 includes escalating the price of the project, consistent
 24 with taking our -- the basis of the original contract
 25 and moving that out in time, and it also includes a

1 I'm sorry -- Jeff Corbett is Senior Vice President of
2 Energy Delivery Carolina; Michael Lewis, Senior Vice
3 President of Energy Delivery Florida; Mark Mulhern,
4 Chief Financial Officer; and John McArthur, who is a
5 Senior Vice President of -- of Services and General
6 Counsel for the company. I think I've got them all.

7 Q Okay. Thank you. Thank you for doing that.

8 And so the presentation that's set forth as the
9 exhibit was made to the group that you just named?

10 A Yes.

11 Q Okay. And then, specifically, on Page 6, am I
12 reading that exhibit correctly, which shows that -- you
13 know, the top of it is labeled a 2019 COD versus a 2021
14 COD?

15 A Yes.

16 Q Okay. What is "COD"?

17 A Commercial operations date.

18 Q Okay. And so the two charts there, I guess the
19 -- it's a -- the difference, a delta is more than
20 [REDACTED], correct?

21 A Yes.

22 Q And so then the number, the [REDACTED] -- or
23 [REDACTED], is that -- is that a good number?

24 A Well, I think the -- what do you mean a good
25 number?

1 36-month revision, project cancellation or project
2 continuation with EPC amendment, which is the 2021
3 option.

4 And what this table is doing is trying to keep
5 them -- as we are doing rough order of magnitude
6 estimates, not our -- not our disciplined and approved
7 estimates, but, directionally, as the negotiations are
8 ongoing, what our thinking is at the time.

9 Q Did you -- were you making this presentation to
10 the group?

11 A I believe John Elnitsky made the presentation;
12 I was present.

13 Q Okay. But if -- if maybe say, for example,
14 Bill Johnson said -- at that point, if he had said the
15 difference between the 2019 and the 2021 date under this
16 chart looks to be -- you know, we're closer now to
17 ██████████ ██████████, that the answer to that question
18 would have been, "That's right," correct?

19 A Well, the answer would have been, as the table
20 displays. You have a Class 4 rough order magnitude on
21 2019, a Class 5 rough order magnitude on 2021, the delta
22 reflects the escalation due to time, and just a
23 continuation of the embedded escalation assumptions over
24 an additional two-year period.

25 Q Okay. I'm about done with this, but tell me

1 another [REDACTED] [REDACTED] Are we at a point where we may not
2 be, you know, still able to achieve our goals?"

3 A Oh, that conversation clearly came up.
4 You're -- the difficulty I'm having is, we don't discuss
5 concepts like throwing good money after bad; we're
6 discussing the merits, and the risks, and the decision
7 on how to proceed with a real project on a real schedule
8 that has real benefits for our customers.

9 And one of the elements of that, which goes to
10 the notion you're putting forth, is that the Senior
11 Management Committee and the Board very clearly
12 discussed what are the risks; what are the likely and
13 unlikely outcomes; is this the right investment for the
14 customers and the company; and do we believe this will
15 be successful in the long term?

16 And if the answer to those questions were no,
17 then we would recommend canceling the project, but that
18 is not what we saw and that is not what we recommended.

19 So the underlying notion that says are we
20 making a sound investment here is at the heart of the
21 discussion.

22 Q Were there any -- and I'm not going to ask you
23 to name names or anything -- but were there any
24 dissenting views expressed within your Senior Management
25 Committee about -- about which options to -- which

1 A Well, as we discussed several times,
2 consequential to the decision to place Levy on this
3 schedule, there is about [REDACTED] of capital
4 investment that would have been made before the license
5 issuance, that now is made after the license issuance
6 and at a later date.

7 So as a consequence of the schedule alternative
8 we selected, the short-term investment in capital in
9 Levy is reduced.

10 Q So just so I'm clear on this, this Oppenheimer
11 quoting here, it's not your testimony that you're --
12 you're saying -- you're not necessarily asserting this
13 as true, correct, the Oppenheimer statement?

14 A It's true that they said it --

15 Q Right. Is that --

16 A -- and it's true that --

17 Q -- your belief, what's set forth in there?

18 A Well, that's irrelevant. What's true is that
19 that was Oppenheimer's statement, and, therefore, that
20 was Oppenheimer's view, and Oppenheimer is a --
21 Oppenheimer is advising on investment.

22 So this is not a matter of what I -- what my
23 belief is; this is a matter of what financial analysts
24 and investors believe, and so it's just merely here to
25 illustrate that -- that -- that this process is watched

1 process laid out in the legislation and with the
2 Public Service Commission, and that is what we're
3 focused on following.

4 You're asking me whether there was -- is
5 another way to do this, and what I'm saying is we're
6 doing this as the legislature has set the policy and
7 as the process is defined.

8 BY MR. MOYLE:

9 Q Right. And you -- you know, your lawyer made
10 an objection on a legal conclusion, and lawyers can look
11 at statutes and argue and interpret things. Yet, you
12 know, you're, in my view, a fact witness and maybe some
13 expertise.

14 But my question is really simple -- and it
15 doesn't even have to be part of the -- you know, the
16 legislation -- but if it were able to be done legally,
17 would Progress Energy consider sharing some of the
18 additional [REDACTED] costs with rate-payers? You can
19 answer yes or no, and it's not even would you; it's
20 would you consider doing it.

21 MR. BURNETT: Jon, are you -- this may help --
22 are you asking Mr. Lyash if he would consider no
23 longer being a regulated utility and having open
24 comp --retail competition being unregulated and act
25 as, like, a normal business, like Wal-Mart?

1 MR. MOYLE: No, no, I'm simply asking -- you
2 know, I think we've established that there is [REDACTED]
3 [REDACTED] give or take, in additional costs
4 associated with this -- with this delay --

5 THE WITNESS: No, I didn't say we've
6 established that, but continue.

7 MR. MOYLE: -- but that if Progress Energy
8 would be willing to consider some type of a sharing
9 mechanism of those additional costs with
10 rate-payers?

11 MR. WALLS: Objection to the foundation. It
12 assumes facts not in evidence and mischaracterizes
13 testimony. Same objection about legal conclusions.

14 THE WITNESS: We have a fairly clear and
15 unambiguous process that was established in policy
16 by the legislature and that we're involved in
17 implementing.

18 And so you're asking me, hypothetically, would
19 we entertain some other approach to nuclear
20 construction and cost recovery.

21 It's not obvious to me that we would, because
22 we have a perfectly acceptable process that's before
23 us, that we're focused on implementing.

24 BY MR. MOYLE:

25 Q And doesn't that process put a hundred percent

1 Q -- and then the last bullet point says, quote,

2 [REDACTED]
3 [REDACTED].

4 A Uh-huh.

5 Q I'm having difficulty reconciling those two
6 statements and was hoping that you could explain?

7 A Yeah, let me clarify that for you. Our
8 objective here, that we've said and that we achieved, is
9 to [REDACTED].

10 [REDACTED] But what we -- what we needed to
11 defer is that the contract itself includes -- included,
12 by date, certain [REDACTED].
13 [REDACTED].

14 All right. And so we did not want to revise
15 that set -- that set of information in the contract at
16 this time, so that's not where we focused.

17 So what this is essentially saying is that we
18 will need to readdress those specific [REDACTED]
19 [REDACTED] in the contract based on the new schedule.

20 Q So the last bullet point, [REDACTED]
21 [REDACTED], is
22 more specific relating to [REDACTED]
23 [REDACTED]; is that correct?

24 A That -- that's generally true, yes.

25 Q And then the broader statement of the objective

1 is to try to [REDACTED], I guess, [REDACTED]
2 [REDACTED]

3 A Yes, yes. Although -- that's correct.

4 [REDACTED]
[REDACTED]
[REDACTED]

7 They're in place and in force.

8 Q Okay. And the other point I wanted to cover
9 is, is you were asked a question about the process and
10 the statute, and I think you were asked about -- about
11 reevaluation of Levy. I assume that the project is
12 evaluated, at least on an annual basis, as you prepare
13 for these hearings, correct?

14 A We have very active -- we have very active
15 project management oversight and assessment at a number
16 of levels in the organization.

17 That includes John Elnitsky and his team
18 actively managing the project on a day-to-day basis. It
19 includes monthly project reviews. It includes quarterly
20 program performance review team sessions, and it
21 includes reports to the Senior Management Committee and
22 to the Board of Directors.

23 And so, you know, the way I characterize this,
24 Jon, is we are, in realtime, insuring that we have a
25 clear view of where the project is and where it's going.

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2

3

4 In Re: Nuclear Cost Recovery) Docket No. 100009-EI
5 Clause.)
6 _____) Filed: July 29, 2010

6

7

8

VOLUME I

9

10

11

12 The DEPOSITION of JON FRANKE was taken pursuant
13 to Notice of Taking Deposition, at PEF EOF Training
14 Center, 8202 West Venable Street, Conference Room
15 No. 136, Crystal River, Florida, on Tuesday, August
16 10, 2010, at 8:40 a.m., before Colleen DeLaney, Court
17 Reporter and Notary Public in and for the State of
18 Florida at Large.

19

20

21

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24

25

1 A. Yes.

2 Q. I fully don't expect you to read this
3 contract.

4 A. I'm familiar somewhat with it.

5 Q. But is there anything in here that you can
6 cite me to that addresses how AREVA would be
7 compensated for any effort to cooperate with the
8 expert panel?

9 A. Give me a few minutes, I think I'll be able
10 to find something.

11 Q. I don't mind if you confer with Mr. Walls.

12 A. Yeah, it is detailed here on page 4 of 91 for
13 work authorization 84 that there is an amount of
14 ██████████ for draft comment response.

15 Q. Okay. This is JF7?

16 A. That is correct, JF7.

17 Q. And I think you're talking about 8.28
18 revised?

19 A. Yes. Additionally, there are some 30 percent
20 review comments incorporated and 70 percent review
21 comments incorporated under note 3 there at the bottom
22 there also that would relate to comments received and
23 to, you know, for comment resolution.

24 Q. And the term draft comment response, it means
25 response to the company's questions about the draft?

1 A. Yes. Now, recognize that in each of these --
 2 now, that specific plan -- now recognize that this
 3 contract also recognizes time and material prices
 4 associated with work which is deemed to be outside
 5 this scope of this original document.

6 Q. Okay. Well, so that's really my question is
 7 was their work associated with AREVA's responsiveness
 8 to the expert panel's review that was assumed in this
 9 ██████████ amount, or would it be a time and materials
 10 thing?

11 A. The way the contract was written was for an
 12 assumed scope of work to meet a certain threshold that
 13 was devised prior to and in conjunction with this
 14 contract.

15 Q. This contract was executed, it looks like, in
 16 2007. I see --

17 A. Signature dates are 2007.

18 Q. Okay. And the expert review occurred
 19 sometime in the second quarter of 2009?

20 A. That's correct.

21 Q. Okay. And --

22 A. Second or third, I think.

23 Q. Okay. This completion date, the 6th one,
 24 2009, what does that refer to? This is 8.28 revised,
 25 deliverable section.

1 A. I'm not sure. What page are you on?

2 Q. I was just looking at the table here on page
3 4 of 91

4 A. Yeah. "Submit the LAR to the NRC." The
5 completion date was 2009.

6 Q. But above that draft comment response,
7 6/1/2009.

8 A. That's correct.

9 Q. You're saying, though, that [REDACTED] is
10 associated with the task of cooperating with the
11 company in responding to comments on the draft?

12 A. That's correct.

13 Q. Okay. And it says revised. There's an
14 8.28. And I'm looking on page 49 of 91 -- actually,
15 48 of 91. There's a section that says, [REDACTED]

16 [REDACTED] And it says,

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 A. Yes.

24 Q. Is that the work under the contract that
25 covers AREVA's obligation to cooperate with the expert

1 panel?

2 A. I'm not sure where you're going, Charles.

3 Q. Well, my question is, is the expert panel
4 work, is it contemplated in this part of the contract,
5 or would it be --

6 A. The contract recognized the company would
7 review the work. And to that extent to meet the
8 original scope of the contract, they would -- for that
9 original scope, work with us to achieve the contract.

10 Q. Okay.

11 A. Now, I don't think we wrote the word expert
12 panel in the contract, but they knew our engineering
13 staff would review each document and that they would
14 be working towards complying with the contractual
15 language.

16 For example, in this case, to meet a specific
17 template of RS-001 to meet the contract, original
18 scope of the contract.

19 Q. Okay. But on 4 of 91 of this exhibit, the
20 [REDACTED] that is referenced there, does that
21 include -- is that compensation to AREVA for their
22 work in responding to the company's inquiry through
23 the expert panel?

24 A. I would say it is a line item to reflect
25 their basis -- you remember that this was a fixed sole

1 source contract. So as part of our process, we wanted
 2 them to detail what the basis for all their prices
 3 were. And they could have thrown out a number of 50
 4 million, and we would not have had any reason to
 5 challenge -- or any option but to choose AREVA.

6 But using our alliances with AREVA, you know,
 7 we require that they provide the basis for their
 8 figures so that we could review them so that we would
 9 feel they are reasonable and prudent.

10 In this case, they believed, based on the
 11 original scope, that they would be spending about
 12 [REDACTED] worth of man hours in reviewing comments off
 13 of the original scoping document -- to comment
 14 resolution for the original scope described in this
 15 document.

16 So this was the basis for why this piece of a
 17 [REDACTED] dollars that is at the bottom of this table
 18 was provided.

19 Q. Okay.

20 A. Does that make sense?

21 Q. Yeah. So you're saying that AREVA may have
 22 billed more or less?

23 A. No. We agreed to a fixed price for a fixed
 24 scope.

25 Q. All right.

51534/52368 CFI – Certified Foundations
Uretex vs. CFI, Case 8:10-cv-01909

51534/52368 CFI – Certified Foundations
Uretex vs. CFI, Case 8:10-cv-01909
Pleadings – Vol. 1

51534/52368 CFI – Certified Foundations
Uretex vs. CFI, Case 8:10-cv-01909
Patents/Prior Art

51534/52368 CFI – Certified Foundations
Uretex vs. CFI, Case 8:10-cv-01909
Correspondence – Vol. 1

51534/52368 CFI – Certified Foundations
Uretex vs. CFI, Case 8:10-cv-01909
Notes and Memos

1 think it mentions the words expert panel.

2 Q. Regardless of whether it's expert panel or
3 company, the fact is you used the expert panel to do
4 your review of their draft?

5 A. A review. Maybe the process is clear to me
6 and that's why we're having a hard time coming to a
7 conclusion here.

8 Each of these 51 documents, that's a process
9 AREVA has, a 51 program, which is an engineering
10 program. Each of these 51 documents went through all
11 sorts of reviews. They would be submitted to the
12 company. It might go to a system engineering because
13 it might be dealing with a particular system
14 function. It might be reviewed by his supervisor. It
15 might be reviewed by licensing and then go back to
16 AREVA for conflict resolution. That is a review that
17 would be recognized in this document, and I believe is
18 likely the basis for that [REDACTED] line item.

19 It also might be subject to a self assessment
20 that we perform where we assess a certain area of the
21 licensing document to look for weaknesses. In this
22 case, we added an expert panel review to oversee the
23 entire project. So I guess my point is that there was
24 money in here to review these documents, whether there
25 was an expert panel or not, and it was [REDACTED]

1 Q. Okay.

2 A. Which was really a basis for their fixed
3 price. And remember that we had a fixed price for a
4 fixed scope. They provided us a basis for why it was
5 [REDACTED] dollars instead of [REDACTED]. And part of that
6 basis was they believed they needed about [REDACTED]
7 worth of man hours to resolve comments.

8 Q. And that would have included these comments
9 after the submission of the draft?

10 A. Yes, of each of the draft sections.

11 MR. REHWINKEL: Okay. It is almost noon, and
12 I have a significant amount left. Do you all
13 want to take a lunch break?

14 THE WITNESS: If you have a lot more, I'd
15 appreciate lunch at some point.

16 MR. REHWINKEL: Yeah. Why don't we take 45
17 minutes. Is that enough? Come back at 12:45.

18 (Whereupon, a lunch recess was taken.)

19

- - - -

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25

1 A. Yes.

2 Q. Okay. What this does is it takes the 20.016
3 million dollar balance from the prior year, and it
4 adds two months of actuals and 10 months of estimated
5 to get to the 21.607 million for 2010, right?

6 A. Yes.

7 Q. Are these dollars in here, are they company-
8 there's an increase of about 1.6 million. Are these
9 company dollars or are these AREVA --

10 A. My supposition is that it's both. I don't
11 know that.

12 Q. Could you turn to P-7?

13 A. P-7?

14 Q. Yeah, Schedule P-7.

15 A. Yes.

16 Q. Okay. On line 4 -- this is WA 93. This is
17 that Balance of Plant AREVA contract, right?

18 A. Yes.

19 Q. It says the original amount in column E, [REDACTED]
20 [REDACTED] Column F, amount expended as of prior year
21 end, 2010, [REDACTED]. And then column H, estimate
22 of final contract amount, [REDACTED].

23 Do you know why the final amount is less than
24 what it says was spent in 2010?

25 A. No, I don't.

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 100009-EI
FILED: JULY 29, 2010

IN RE: NUCLEAR COST RECOVERY CLAUSE. VOLUME I

PROCEEDING: DEPOSITION OF JOHN ELNITSKY

DATE: August 13, 2010

TIME: 9:33 a.m. - 5:51 p.m.

PLACE: Law Offices of Carlton Fields
4221 W. Boy Scout Boulevard, Suite 1000
Tampa, FL 33607

REPORTED BY: Stephanie A. Walters
Florida Professional Reporter
Notary Public, State of Florida

(PAGES 1 - 200)

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1 were requesting that they [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED], and the consortium has issued a
3 request for proposal to those suppliers.

4 When those proposals come back, we will start

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] sion will be executed.

8 So long answer to your question, but basically
9 we've marched through our process. We're now at the
10 point of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]

13 BY MR. REHWINKEL:

14 Q Okay. On -- I appreciate that very thorough
15 answer -- on the June 15th letter from Jeff Lyash to
16 yourself --

17 A Yep.

18 Q -- and the information that you have identified
19 is very sensitive commercial information --

20 A Yes.

21 Q -- because you are actively engaged in
22 negotiation with vendors?

23 A That is correct.

24 Q And -- and I want to be sensitive to that, and
25 I think, just for purposes of those on the deposition,

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1 that this is some of the most sensitive information that
2 we've been allowed to look at, because it is active and
3 ongoing.

4 A Yeah, we're in the middle of this process, that
5 is correct.

6 Q Okay. There is a total figure on 59-42 --

7 A Uh-huh.

8 Q -- in the page and date column. And are these
9 dollars relevant to the cost recovery docket, as far as
10 costs that you are seeking recovery for?

11 A You know, I -- let me answer the question this
12 way: I'm not certain, because this paid-to-date, I
13 think, was effective as of June 15th.

14 And I think the better way to answer that
15 question is Sue Hardison, who is our project controls
16 and project support, who will be able to more clearly
17 articulate what portions of this [REDACTED] are in the
18 project-to-date costs.

19 I -- I'm not sure when we did our filing where
20 exactly we were in terms of this [REDACTED] number --

21 Q Okay.

22 A -- so probably either Sue Hardison or Jeff
23 Foster, I think, could clearly spell that out for us.

24 Q Yeah, I was trying not to mention numbers,
25 but --

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1 A Yeah. Sorry.

2 Q That's okay.

3 Okay. The -- you have provided estimates of
4 long lead material purchase order disposition costs.
5 Would these dollars in this column be part of those
6 costs?

7 A No.

8 Q No?

9 A And the reason they're not is the -- the way
10 we -- as we evaluate the different alternatives for the
11 project, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 So most of these [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 So when we took action in April of 2009, to put
20 a partial suspension in place, most of those charges
21 stopped. [REDACTED]

22 [REDACTED]
23 [REDACTED]

24 So these numbers here represent the payment for
25 work that had continued or work that continued beyond

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1 into the partial suspension. The disposition costs are
2 specific to these activities here to establish the

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q Okay. Now, based on where you stand, as you've
8 described with where you are with the consortium and the
9 sub-vendors, if you will -- I don't know if that's the
10 right term --

11 A Yeah, that's fine.

12 Q -- have the disposition costs, for example,
13 that are shown in the 2010 column of your JEA (sic) -- I
14 mean, JE-6, is there any reason that they would have
15 changed, based on what has transpired as you've
16 described it?

17 A Okay. Let me go back to JE-6, which is --
18 okay. And which -- which --

19 Q And I'm looking at a 2010 column?

20 A 2010. Okay, and disposition costs.

21 Q Yes.

22 A That number there, yes, I would expect that
23 number to change.

24 Q Okay. And which direction and to what
25 magnitude would you estimate?

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1 A I would estimate -- and, again, we're early in
2 negotiations, so let me clarify that response, because
3 all the numbers that you see on the document from Jeff
4 Lyash, that was an estimation. Everything you saw in
5 these alternative analyses are our best estimates of
6 what these costs are going to be, and we're still in
7 negotiation.

8 So you were right, when you started out here
9 saying this is very sensitive, because we're in the
10 middle of sort of defining what those numbers actually
11 will be.

12 However, this number, as it appeared in the --
13 I think this actually originally comes from the
14 February 15th presentation that's an attachment to
15 Mr. Lyash's testimony -- but this number was [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED].

19 In fact, as we have proceeded from that point
20 until today, [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 A And let me, if I can, just one additional
2 clarification to that.

3 Q Yeah.

4 A If you look at this JE-6 document, just so
5 we're not missing any of the nuances here, you will
6 notice that there is two lines, long lead payments and
7 WEC support, long lead purchase order disposition costs.

8 Both of those lines include part of the cost
9 during this 1011 and '12 period that would be associated
10 with changing the plan, basically, for long lead
11 material.

12 It also includes some of the ongoing WEC
13 support during impartial suspension, but, in fact, that
14 first line, where it says long lead payments and WEC
15 support, also included what, at the time, [REDACTED]

16 [REDACTED]

17 So there is a -- if you combine those two
18 lines, that number more accurately compares to what's
19 now in this estimated spending column --

20 Q Okay.

21 A -- it -- subtracting out the WEC support cost,
22 which, unfortunately, I don't have right in front of me,
23 but --

24 Q Okay. Is that a discernable number, the W --
25 WEC is W-E-C, all caps --

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1 A Yeah. Sorry.

2 It's -- it's small compared to the total long
3 lead material disposition costs, and, again, I don't
4 want to guess off the top of my head. I could probably
5 go find that here in the documentation, but --

6 Q Okay. Well -- so just to close the loop on
7 this comparison that I was trying to do, on the
8 June 15th memo from Jeff Lyash to yourself, and the
9 estimated spend, 2010 to 2012, the total amount that's
10 at the bottom of that column is roughly comparable to
11 the two LLM line items on JE-6 and the -- and the
12 three-year-total column; is that correct?

13 A That is correct.

14 Q And it's roughly because it would be less the
15 WEC support component?

16 A Yeah. And let me -- yes, because I think the
17 number I quote in my testimony -- and let me -- I'm
18 trying to find -- I think I talked to [REDACTED], which was
19 what our original estimate was. I think that's probably
20 the best way to draw the direct comparison. Let me just
21 find it for a moment, if I can, sir.

22 Q Okay. And that memo is from you to Lyash; not
23 the other way around.

24 A Yeah, I'm sorry, from me to Lyash. I think I
25 may have said that wrong and incorrect at the beginning.

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1 [REDACTED] [REDACTED] with the suppliers that are on this
2 memo that you see [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 For the items that are [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 Q Okay.

8 A So if you look through the list of suppliers,
9 those are the ones that we will [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 Q So there are [REDACTED] suppliers that are --

12 A Well, actually, it's -- [REDACTED] of them are
13 internal to Westinghouse. As you can see there, those
14 are the same.

15 Q Oh, okay. Yeah.

16 A [REDACTED] of them are [REDACTED] [REDACTED] [REDACTED] which
17 is the [REDACTED] [REDACTED] [REDACTED] [REDACTED], and then [REDACTED]
18 which is the -- so those are the groups that [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED]

20 Q Okay.

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
22 because -- well, that wasn't a direct question, I guess.

23 Q Well, I was -- Toshiba is a parent of
24 Westinghouse; is that right?

25 A Toshiba is a parent of Westinghouse, and

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q So -- and [REDACTED] is --

5 A [REDACTED] is [REDACTED].

6 Q And that's a [REDACTED] supplier?

7 A Yeah.

8 Q Okay. And the -- so you have [REDACTED] from them,

9 [REDACTED] and [REDACTED], outside of the Westinghouse
10 family?

11 A Yes.

12 Q All right. Now, once those responses to the
13 RFP come back to Westinghouse, [REDACTED] --

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] --

17 A That's correct.

18 [REDACTED]

19 A Yeah, that's correct, and allow me to explain
20 that, too. Because the way the contract is structured,

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 We have been successful in being [REDACTED]

25 [REDACTED] especially with regards to this

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1 negotiation, [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q Okay. And if this requires you to speculate
5 beyond where you're comfortable speculating, I will
6 understand: Is it your belief that their [REDACTED]

7 [REDACTED]
8 [REDACTED]

9 MR. WALLS: I'll object to speculation, but you
10 can go ahead.

11 THE WITNESS: If you -- well, I would ask the
12 question differently. You've already objected,
13 though, so process wise --

14 MR. REHWINKEL: You can answer the question.

15 MR. WALLS: Yeah, you can answer the
16 question --

17 THE WITNESS: Okay. I'm sorry.

18 MR. WALLS: -- unless I tell you not to answer.

19 THE WITNESS: Okay. Yeah, I'm sorry. I just
20 didn't understand the process. Sorry. I'm learning
21 the drill here.

22 MR. WALLS: That's okay.

23 THE WITNESS: It is hard to tell why [REDACTED]
24 [REDACTED], but what I do know, as a
25 facts, [REDACTED]

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1 So in [REDACTED], specifically -- and this
 2 is very sensitive -- [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]

12 BY MR. REHWINKEL:

13 Q Okay. But their -- whatever has occurred, it's
 14 not even just with [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]

19 MR. WALLS: Object. Speculation.

20 Go ahead.

21 THE WITNESS: Yes, but allow me to explain.

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 And that is primarily driven by two factors:
2 One, a reasonable and prudent decision that, in some
3 of the cases, it was in the best interest of the
4 project and the customers to [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 BY MR. REHWINKEL:

11 Q Okay. That brings me to a question that --
12 that is suggested by your testimony, that when comparing
13 the various alternatives, the three options that the
14 company narrowed down to and then made a decision from,
15 and then, if you will, the fourth scenario that
16 Dr. Jacobs forms, that when comparing those, you note
17 that there is -- that the comparisons are not
18 necessarily that mathematical, because there is
19 potential salvage value to this equipment; is that
20 correct?

21 A If your question is, is there salvage value for
22 some of this equipment --

23 Q Yes.

24 A -- in the event that the project, for whatever
25 reason, had to stop, yes, there is potential salvage

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1 value.

2 Q Okay. And I guess in that regard, the
3 equipment that is listed on the June 15th memo, [REDACTED]

4 [REDACTED]

5 A Yeah. Let me make sure I understand your
6 question. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q And -- and that would be in any project that
14 [REDACTED]; is that correct?

15 A That is correct.

16 Q Okay. And if for some reason --

17 A Well, let me --

18 Q Yes. Go ahead.

19 A -- if I can. I'm sorry. Let me -- let me
20 clarify that, because it -- [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 So where our reactor plants are a 60-hertz

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 So there is one -- [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q So the [REDACTED] --
10 [REDACTED]
11 [REDACTED] --
12 [REDACTED]

13 Q Okay. [REDACTED]
14 [REDACTED]

15 A Well, actually, [REDACTED]
16 [REDACTED] --

17 Q But other than that --
18 [REDACTED]
19 [REDACTED].

20 Q Okay. And when salvage value is mentioned,
21 would a potential purchaser of these components -- let's
22 hypothesize. Let me step back and hypothesize for a
23 minute with this question, is that the project -- if the
24 Levy project was ultimately decided to terminate and you
25 had these components, either stored or in a partial

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1 fabrication mode, would a potential supplier look at
2 these components as being anything other than new, a
3 potential purchaser of a different AP1000 American
4 project?

5 MR. WALLS: Object. Calls for speculation and
6 opinion testimony, but go ahead.

7 THE WITNESS: Well, let me break your question
8 in a couple of parts.

9 BY MR. REHWINKEL:

10 Q Okay.

11 A So, first, let's start with the hypothesis,
12 that I don't necessarily agree that's where we're trying
13 to go.

14 Q I understand.

15 A I mean, our intention is to continue the
16 project. However, if for some reason the project does
17 have to stop, are these components -- if I think what
18 you're asking, are these components of like quality to
19 something that a purchaser might go out and ask for new,

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 Q Is the storage criteria or the storage
4 conditions criteria for these components, are they
5 established in any way, such that they would insure
6 quality assurance under NRC standards?

7 A There -- let my make sure I understand your
8 question. Are there a set of standards and procedures
9 for how nuclear components are stored? Yes.

10 Are those in alignment with the requirements of
11 the inner city? Yes. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] So in
15 those cases, [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q So the turbine generator, for example, would --

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q Okay. And I fully understand if you have no

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1 expertise or knowledge about this, but would -- would
2 these components be depreciated for tax purposes while
3 they're being stored?

4 A I --

5 MR. WALLS: Object.

6 THE WITNESS: I -- I really don't know. I
7 can't answer that. That question probably would be
8 better answered by Mr. Foster, in terms of -- or Mr.
9 Garrett, in terms of how accounting practices would
10 be applied to those.

11 BY MR. REHWINKEL:

12 Q Okay. And I guess one last question in this
13 area, has there been any what-if scenario run within the
14 company, to your knowledge, about making these
15 components that are on the June 15th, 2010 memo
16 available for a potential Harris nuclear plant or
17 nuclear project, if the Levy nuclear project, for
18 whatever reason, does not go forward?

19 A I would say -- well, I'm going to say no.
20 Certainly, during the course of evaluating how we would
21 disposition each of these purchase orders, we looked
22 at -- and you'll see on the spreadsheets that were
23 associated with each item -- [REDACTED]

24 [REDACTED]

25 So to your earlier question [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 Q Okay. On 19 of your rebuttal testimony, Page
6 19, line 17 --

7 A Okay. Page 19?

8 Q Yes, line 17.

9 A Yes, sir.

10 Q The [REDACTED] [REDACTED] number, you say, is an
11 estimated cost to cancel the project; is that correct?

12 A Let me just read this --

13 Q Yes.

14 A -- so I get the context of what we were talking
15 about here.

16 And so in answer to your question, sir --

17 Q Yes.

18 A -- on line 17, this paragraph, as I recall, is
19 referring to -- and this question is about a comparison
20 of the option that Dr. Jacobs recommended we consider,
21 or suggested that we should have considered -- the [REDACTED]
22 [REDACTED] that is referenced here is in -- is the same
23 number that's in the cancellation option that was part
24 of the February 15th brief that's an attachment to --

25 Q Okay.

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1 A -- Mr. Lyash's testimony.

2 Q I guess my question about that [REDACTED] is that --
3 is that the cost to cancel the contract or would that be
4 cost to exit the project? Do you understand my
5 question?

6 A Yes, I understand the question, and I think the
7 best way to answer that, if I can refer to the brief
8 that was given on 15 February that's in Mr. Lyash's
9 testimony.

10 Q Okay.

11 A I'd like to open that up just for a minute, and
12 I just want to make sure I'm looking at the right
13 numbers.

14 So if I can refer you in -- on Page -- well,
15 let me see. How do I -- it's probably easiest just to
16 go to Lyash's testimony and go to Page 19. So if you go
17 to Mr. Lyash's testimony -- which attachment is that --
18 JL-6, Page 19, we evaluated one of the alternatives,
19 which was project cancellation.

20 And to your question, the [REDACTED]
21 estimate was, at that time in February of 2009, our
22 estimate at the total cancellation of the project.

23 So that would include everything from purchase
24 order cancellations, through stopping of the COLA and
25 the other activities that are required. So it was the

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1 overall project, not just the contract.

2 Q Okay. Do you know if that number is -- has
3 changed in any way since February of 2010, as far as
4 your -- your, Progress Energy's, calculation or
5 estimation of that number?

6 A I'm just looking over the line items here that
7 were included in that. Let me answer the question this
8 way: I don't think we have -- we have not redone this
9 estimate for this particular alternative.

10 Are there elements in here that may have
11 changed since this was originally done? I think the
12 biggest thing in there that would likely be a factor is
13 what ultimately are the [REDACTED]
14 [REDACTED] and that goes back to the
15 conversation we had a minute ago.

16 So this was based on the best information we
17 had available at the time in February, which was very
18 early in the process of engaging with any of the
19 suppliers around what would be a logical path. So would
20 these numbers potentially change based on that work as
21 it goes forward? Yes.

22 Q So the figure that was in the 2010 to 2012
23 column of the February 15th memo from yourself to Jeff
24 Lyash is -- is the delta, if you will -- [REDACTED]

25 [REDACTED]

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1 [REDACTED] that are the [REDACTED] estimate; is that fair?

2 A No.

3 Q It's not. Okay.

4 A And here's why it's not: The memo -- the memo
5 from me to Mr. Lyash, in terms of the estimated spend
6 between 2010 and 2012, is predicated on an approach that
7 includes [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]

11 Q Okay.

12 A So this estimate was clear, looking at the
13 alternative that says is it the right thing to do to
14 just stop the entire project.

15 Q So what one would have to do would be to say at
16 what point in time -- based on where you are in the
17 procurement process, at what point in time you were to
18 cancel and then see what your -- your long lead material
19 disposition costs were at that particular time or for
20 that particular year?

21 A I'm not sure I understand your question.

22 Q Okay. How -- how can you estimate how the long
23 lead material disposition cost that is assumed in the
24 [REDACTED], how can you determine what -- how that number has
25 changed, based on what you know now, as of the June 15th

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1 memo?

2 A Well, I don't think you really can. I mean,
3 the problem is this alternative -- or the issue is, this
4 alternative was evaluated at a date and time with said
5 knowledge that we knew at the time and was part of -- I
6 mean, I think if your point here is if it was part of a
7 reasonable and prudent decision to continue the project,
8 to go back now and say, well, knowing what you know now
9 about [REDACTED]
10 [REDACTED], and to go back and recalculate those numbers
11 or re -- you know, second guess that decision as it was
12 made at that point in time, I don't think it's
13 appropriate.

14 Q Yeah, I was not asking to second guess it. I
15 understand that -- that those numbers went into a
16 decision that was made in the first quarter of this
17 year; is that -- that correct?

18 A That's true.

19 Q Okay. If one were to decide what the exit
20 costs were today, based on, you know, the criteria that
21 you would have to look at, what would that number be?

22 A Again, I don't have that number because we
23 haven't done that calculation today.

24 Q Yeah.

25 A We did these evaluations here. What we did do,

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1 A -- I'd say the answer is no.

2 Q Okay.

3 A And the reason is, you would still have to go
4 through and do a comparison of an option where you
5 cancel the project and the costs associated with that as
6 opposed to the option which we ultimately selected,
7 which is the longer term partial suspension.

8 Have we continued to work on the dispositional
9 long lead material during the intervening months, yes.
10 But that number and what's in our assumptions today, or
11 what it's going to take to continue the project and do
12 the right thing in terms of long lead material is based
13 on a totally different set of assumptions than what went
14 into this alternative analysis.

15 Q Yeah, my question is not for any comparative
16 purposes of various scenarios. I'm just wondering
17 what -- what the exit costs would be if you were to
18 decide to exit, say, by the end of this year?

19 Is there a way to estimate that based on the
20 analysis of the [REDACTED] [REDACTED]? And not for comparative
21 purposes, because I understand that that -- it's not
22 relevant to me, and it's not a fair comparison anyway.

23 A I would say yes, there is a calculation that
24 could potentially be done, but without sitting down and
25 walking through what you would have to do in terms of

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1 assumptions, I can't say definitively you can come to
2 that --

3 Q Okay.

4 A -- that point today.

5 Q Was it something that the company could
6 calculate internally, without having to go to the
7 consortium and ask questions? I mean, is it something
8 you have the knowledge to do, the facts?

9 A I would say yes, but... And the problem will
10 be, in order to effectually analyze a cancellation
11 option today would require the gathering of data from
12 the supply chain that is not currently available.

13 And allow me to explain. When we performed our
14 analysis in February of this year, it was based on a [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 at that point.

18 Recognize, the [REDACTED] [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], dependent on what
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED], and in the case of subseries
21 suppliers, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

22 So I don't think we could do that calculation
23 today without going back to the current set of
24 suppliers, which, by the way, we're in the middle of now
25 negotiating with, and saying, "What would it cost to

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1 cancel today," because [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q I understand.

5 A So it's very hard to get to that. So, you
6 know, you can't -- you know, I guess the problem is
7 you're -- you know, we'd be in sort of different -- we'd
8 be talking out of two sides of our mouth at the same
9 time --

10 Q I understand.

11 A -- is the best way to describe it.

12 Q Yeah, and the reason I was -- I just was
13 exploring how that would be done, and I understand that
14 there are some practical issues, as well as some
15 sensitive negotiation issues, that you could send,
16 certainly, the wrong signal about what your intents
17 were.

18 A Well, and I'm thinking if your point is, you
19 know, should there be an ongoing evaluation, I mean,
20 certainly we're going to do that, in terms of
21 feasibility and the viability of the project going
22 forward.

23 But, you know, can we continue to go out and
24 say, you know, what does a cancellation charge date look
25 like while, at the same time, pursuing the decision that

1 circumstances that exist at that time.

2 So the best thing I think you can do in prudent
3 project management is to understand the conditions that
4 exist for the project at the time that you make your
5 reasonable and prudent decision.

6 Q Let me ask it this way: If I asked you --

7 MR. REHWINKEL: And, Mike, feel free to -- to
8 opine --

9 BY MR. REHWINKEL:

10 Q -- if I asked you one of two things, either for
11 a late-filed deposition exhibit, to give your best
12 estimate of what the cancellation costs would be as of
13 August 1st or September 1st -- pick a date -- or if I
14 asked you at the hearing what would the number be, would
15 you be able to do that, give a -- give me a reasonable
16 estimate?

17 A Yes, we would be able to do that. I would
18 predicate that, though, with we'd have to look again at
19 what assumptions would we have to make to come to some
20 reasonable number, and then what do we consider then the
21 validity of that, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED]

24 Q And my question would definitely based on

25 [REDACTED] [REDACTED]

1 A Yeah.

2 Q [REDACTED].

3 A So short of that, I think it would be possible
4 to make such an estimate --

5 Q Okay.

6 A -- with the right assumptions.

7 MR. REHWINKEL: I would like to know that
8 number, and I'm -- I'm indifferent as to whether
9 it's a late-filed deposition exhibit, or if it's
10 something I ask him at the hearing and that he's
11 just prepared to give.

12 MR. MOYLE: It would be easier, on a
13 confidential basis, to have it in a written format
14 than asking him what it is at the hearing.

15 MR. REHWINKEL: Yeah. Okay.

16 MR. WALLS: Well, John --

17 MR. REHWINKEL: Late file?

18 MR. WALLS: -- we could do a late file, which
19 would probably be the easiest way to handle it
20 rather than have a number spoken at the hearing.

21 MR. REHWINKEL: Okay.

22 MR. WALLS: That way we have a document.

23 MR. REHWINKEL: Okay.

24 MR. WALLS: Of course, with all of the
25 qualifications that the witness has identified.

1 MR. REHWINKEL: Yes, I -- you know, one thing
2 we can do is, let me identify this as a Late-Filed
3 Deposition Exhibit No. 1, and it would be, just as a
4 short title, "Update to Project Termination Costs."

5 (WHEREUPON, Elnitsky Late-Filed Deposition
6 Exhibit 1 is identified for the record.)

7 BY MR. REHWINKEL:

8 Q And what I would be looking for is, is an
9 update based on the most recent time that you decide is
10 reasonable, and only internal company information and
11 any other assumptions that you think are reasonable for
12 purposes of -- well, for any other assumptions that you
13 think are reasonable based on the information, you know,
14 without going outside the company. Does that help you
15 understand what I'm looking for?

16 A Yes, it does. Again, you know, my big
17 qualification here is, a lot of this -- any kind of
18 calculation like that is going to depend on a -- how you
19 make your assumptions and what those set of assumptions
20 are going to be. So, I mean, that's the part that I'm
21 not yet clear on how we go about doing that.

22 So I've got to -- you know, that's something
23 I've got to go back and talk with our folks that are
24 involved in our supply chain efforts, to say, [REDACTED]
25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], based on

1 the fact that we've made a decision on how to go forward
2 with the project, what does that then mean in terms of
3 the estimates associated with some of those supply chain
4 activities?"

5 I'm just not sure -- again, I'm not trying to
6 be cagey; I'm just trying to -- I'm just trying to be
7 very clear. I'm not exactly sure if we can make cogent
8 and reasonable estimates today, [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 Q Okay.

11 A [REDACTED] [REDACTED] [REDACTED], to get to, "This is what
12 it looks like when you cancel."

13 Q Well, this will definitely be a confidential
14 document; and even understanding that it would be
15 confidential, I would certainly not ask you to put
16 anything in writing in your document that would have any
17 impact on vendor discussions, or looking at an L -- a
18 long lead material disposition cost line item and
19 nothing else, with whatever assumptions or caveats that
20 you want.

21 One thing I would suggest that we do is -- I've
22 made my request -- when we take a break, we can talk
23 about it further, and if there is further clarification
24 that we need to do, to put it on the record. We can do
25 that.

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1 Commission Bates stamp here --

2 10PMA-DR4LEVY-3S1-000001; and the 2005 -- or 2008

3 IPP is 09NC-OPCPOD-1-47-018709.

4 BY MR. REHWINKEL:

5 Q Okay. On Page 17 of 71 of the 2008 IPP, there
6 is table 4.3, and it's entitled, "Total Levy nuclear
7 project recoverable cost estimate"; is that correct?

8 A That's correct.

9 Q Now, is this table the comparable table to the
10 cost update on Pages 9 and 10 of the 2010 IPP?

11 A Yes, I think it is.

12 Q Okay. Now, the \$17.2 billion --
13 \$17,246,000,000 million number on the 2008 IPP has an
14 AFUDC estimate; is that correct?

15 A That is correct.

16 Q And then it has two contingency items of
17 overall project contingency -- actually, three, overall
18 project contingency of [REDACTED]; transmission
19 contingency of [REDACTED]; and nuclear of [REDACTED];
20 is that right?

21 A That is correct; that is what this document
22 says.

23 Q Okay. Now, is fuel included in the
24 \$17.2 billion number on the 2008? Is that the initial
25 reactor core number?

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1 A Yes, that would be the initial reactor core
2 number, would be the estimate at that time for initial
3 fuel.

4 Q Okay. So the -- on the 2010 estimate of
5 \$17.6 billion number, it does not include AFUDC; is that
6 right?

7 A That is correct. That does not include the
8 carrying charges or the AFUDC.

9 Q It includes fuel of [REDACTED] [REDACTED]. Does it
10 include all of the comparable contingency -- does it --
11 does the 2010 number include the corresponding
12 contingency amounts?

13 A It includes the applicable contingency amounts
14 for this estimate.

15 Q Okay.

16 A And if I could maybe jump ahead a little bit?

17 Q Sure.

18 A Just because I -- I'm not going to try to
19 presume where you're going, but there may be an easier
20 way to do this.

21 There is a production of documents document
22 that we provided that is the cost estimate, that
23 provides a little clearer comparison between the
24 original need filing estimate and the current estimate
25 today.

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1 And certainly -- I mean, we can go between
2 these two documents; it's just -- it's a little harder,
3 because the language is a little different sometimes, so
4 just to be very transparent, in our production of
5 documents, when we provided -- when asked on our
6 estimate, we actually showed the comparison side by side
7 to the previous estimates, so if that's an easier way to
8 do it for you.

9 Q Yeah, I was -- I really don't have much more on
10 that. On Page 11 of the 2010 IPP, there is a schedule
11 that shows major areas of change from IPP to current
12 estimate --

13 A Yes, sir.

14 Q -- do you see that? And that shows the
15 [REDACTED] [REDACTED] delta, with some major items from '08 to
16 2010; is that right?

17 A Yes, sir.

18 Q My question back on the 2008 estimate is, is
19 there -- remembering that -- well, is -- I'm sorry. Let
20 me do it this way: Going back to the 2010 estimate,
21 under those key assumptions that are on Page 10 of the
22 2010 estimate, the first one says, "Class 5," slash,
23 "Class 4 estimating according to Association for the
24 Advancement of Cost Estimating International,"
25 parenthesis, "AACEI," closed parenthesis, "Guidelines."

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1 for the first unit in '21 and then the subsequent unit
2 in '22, consistent with how this assumption is worded.

3 Q Okay. And item three, general terms of the
4 existing EPC contract [REDACTED]. Now, is that a
5 specific reference to [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 A That is correct. What that is in reference to
8 is that in the execution of Amendment 3 to the EPC
9 contract, we were able to [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED], and maintain the [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 So we used that information in detail as we
16 went through each line item in the estimate. That's a
17 piece of information that was not finalized and
18 available in the time the 2008 estimate was performed.

19 Q Okay. And item four excludes AFUDC, and that's
20 not because AFUDC is not a cost; it's because it's a
21 cost that's dependent on material purchases at a future
22 point in time; is that right?

23 A No, I don't exactly agree. It's -- AFUDC was
24 not included in this estimate, because the project's
25 responsibility was to clearly identify what we call

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1 project costs.

2 Q Okay.

3 A The financial view of the project was the
4 responsibility of Jeff Foster's organization, and then
5 take the cash flows that were established for this
6 estimate, and then work those through his analytics and
7 equations to determine the applicable carrying charges
8 that would be part of the project.

9 Q Is there an estimate of AFUDC that would apply
10 to the 17.6 -- 36 billion-dollar number?

11 A Yes, there is. The details of those were
12 Mr. Foster's. I understand that that estimate brings
13 this number to approximately 22.5 billion with AFUDC.

14 Q Okay.

15 A And, again, that -- and, again, allow me to
16 clarify that, too, because that, again, is predicated on
17 a set of assumptions, just like we talked about earlier
18 with long lead material or how you build an estimate.

19 Those assumptions are based on the timing and
20 the cash flow, and [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q Okay. And item five estimate includes
24 estimated escalation dollars through in-service dates.
25 Is that assumption -- any changes to that assumption?

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1 A No changes to that assumption. And, again,
2 what that is referring to is a couple of things. First
3 off, the [REDACTED] [REDACTED] that were defined in the
4 contract that were [REDACTED] [REDACTED] [REDACTED], as well
5 as assumptions regarding things like the [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED]

8 Q And if I turn to Page 11 on the next page, and
9 the -- there is major areas of change from IPP to
10 current estimate, excluding AFUDC table. Do you see
11 that?

12 A Yes, sir.

13 Q And that rolls up to a [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]; is that correct?

15 A Yes, sir.

16 Q The escalation component, it says, "Escalation
17 increases," parenthesis, "schedule shift and other,
18 [REDACTED] [REDACTED] [REDACTED]," and then under the notes it
19 just says "schedule shift." Do you see that?

20 A Yes, sir.

21 Q What is meant by "schedule shift and other"?

22 A Okay. The -- let me make sure I understand
23 your question. So you're looking at the line that says
24 "escalation increases," and it says, "schedule shift and
25 other" in parenthesis behind it?

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1 Q Yes.

2 A So that line is to capture the main driver of
3 really the cost change, and that is specifically the
4 application of the [REDACTED] [REDACTED] [REDACTED] in the
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], any
6 duration of the project, as well as some updates that we
7 made based on known changes and things like the

8 [REDACTED] [REDACTED]

9 So the original estimates were based on how --
10 what -- well, let me go back. The estimate is based, in
11 part, on the first portions of the contract that are

12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

13 And those assumptions and the reality of what
14 [REDACTED] [REDACTED] [REDACTED] was doing and the go-forward
15 forecast for that had changed since the 2008 estimate
16 was prepared. So that's the other piece of escalation
17 and other.

18 Q Okay. All right. And then item six is,
19 "Assumed partial suspension through COL24200" -- 2012."
20 Do you see that?

21 A Yes, I do.

22 Q All right. Is there any change to that
23 assumption?

24 A Any change since this was written?

25 Q Yes. Yes, sir.

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1 A No, not today. That's still our best estimate,
2 is that we will receive our combined operating license
3 somewhere between mid-2012 to late 2012.

4 So, again, this estimate, as it's indicated in
5 this book, is based on being able to then execute the
6 terms of Amendment 3 to the contract that provides █████
7 █████ after receipt of the COLA to issue a notice to
8 proceed, and then the schedule is predicated on moving
9 from that point forward. So that all then drives the
10 estimate cost.

11 Q Okay. Now, yesterday, Jeff Lyash testified
12 that it may even be January 2013 that the COL is issued.
13 If that -- if that's the case, would that materially
14 affect the estimate based on this assumption?

15 A No, it would not.

16 Q And then, finally, the item seven of the key
17 assumptions is, "Allowances were estimated for
18 incremental costs associated with partial suspension."
19 Do you see that?

20 A Yes, sir.

21 Q Now, what does that -- how is that different
22 from item five? Well, first of all, what does that mean
23 and how is that different from item five?

24 MR. WALLS: Objection. Compound, but I assume
25 you want him to answer the last question.

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1 that are not -- costs that are -- that come out of the
2 EPC?

3 A I don't understand your question.

4 Q Well, let me just -- let me strike that
5 question and just ask you, can you give me an example of
6 something that would be a cost that would be -- that
7 item seven would apply to, assumption seven?

8 A Yes, item seven, which is allowances for
9 incremental cost, so an example of an incremental cost
10 would be the [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 That was not contemplated in the original
15 contract as part of the schedule. It's a new set of
16 activity.

17 We have written a change order to the
18 consortium to do that work, and, in fact, all work that
19 is performed during the partial suspension period is [REDACTED]
20 [REDACTED]
21 [REDACTED], so it's any
22 of that type of activity.

23 Q Okay. Now, we had a discussion earlier today
24 about procurement related to long lead materials. Do
25 you recall that?

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1 A Paragraph -- you mean paragraph 10?

2 Q Yes, yes, Page 4, and I'm referring
3 specifically to the page that is 10PMA-LEVY, L-E-V-Y --
4 EPC-000538. Do you have that?

5 A Yes, I do.

6 Q Okay. And I want to understand your
7 understanding of this paragraph, and number 10 says,

8 [REDACTED]

9 [REDACTED]

10 lengthy paragraph underneath that.

11 I hate to ask you to do this, but would you
12 mind reading that paragraph into the record after you've
13 had a chance to read it to yourself?

14 A Yes, so the paragraph you're referring to is
15 paragraph 10 of Amendment 3 to the contract, which
16 reads, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q Thank you. Can you give me your understanding
14 of how this amended subsection affects the pricing of
15 the EPC?

16 A Yes. And let me go back and explain a little
17 bit how this particular subparagraph was added to the
18 Amendment, and why it was added, because I think that
19 explains maybe why the language is what it is.

20 As we -- when we executed the partial
21 suspension in April 2009, what effectively happened was

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 However, since we were in this partial
6 suspension, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q Okay. And is that a sole reason for that
5 provision in the contract?

6 A Yes.

7 Q Okay. And it's your testimony that this is a
8 provision that Progress insisted upon?

9 A Yeah, we pursued that.

10 Q Okay. The first sentence in here, where it
11 says, [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 And it's your testimony that the impacts there
17 refers to that scenario that you just laid out in our
18 answer to me?

19 A Yes, it is. And, in fact, to clarify, you
20 know, you have to be careful, because you can't take a
21 sentence at a time. The rest of that paragraph is very
22 specific to what that first sentence is talking about.

23 Q Okay. So when it says [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 A You'll have to ask your question again. I
3 mean, I'm not sure what you're trying to say there.

4 Q Okay. Yeah, let me ask it again. What I'm
5 trying to figure out is -- let me give you an example,
6 and I want to ask you kind of how this scenario might
7 interplay with this paragraph, if at all.

8 If -- [REDACTED], is that a
9 component or a material that you would -- that would be
10 procured under the EPC?

11 A Yes, by the -- by the consortium.

12 Q Okay. And that wouldn't be a long lead
13 material item?

14 A No.

15 Q And the [REDACTED] would be
16 something that the consortium would -- would procure,
17 and would it be based on -- well, how would the
18 [REDACTED] be priced if -- well, let me
19 step back and ask it this way: If you get to January of
20 2013 and the COL is issued, that triggers a [REDACTED]
21 period that you have to engage in discussions with the
22 consortium about whether and how to resume work.

23 I guess you would issue -- and if you were to
24 resume work, you would -- you would issue a notice to
25 resume to the consortium?

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1 MR. WALLS: Objection. Assumes facts not in
2 evidence, but go ahead.

3 THE WITNESS: Let me go back to your premise,
4 because you started with sort of a sentence there
5 that's not exactly true.

6 BY MR. REHWINKEL:

7 Q Okay.

8 A So the way the Amendment is structured, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Q Okay. Is it your intent that if you -- I think
4 you said if it's -- if it appears that the COL is on
5 track and the enterprise risks are where the company
6 feels they need to be here to proceed with the project,
7 that you would enter into discussions? You would have
8 the ability to enter into discussions with a -- the
9 consortium about presuming work?

10 A No, that's not exactly what I said. What I
11 said was the contract [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 My intention and the company's intention would
17 be we would start those engagements at the right time in
18 the schedule, so as to get that schedule for moving
19 forward with the project and to get that notice to
20 proceed executed within the time from the COLA to that
21 [REDACTED]

22 Q Were there discussions about, like, a 30-day
23 window prior to the anticipated COL date that the
24 parties would get together?

25 A Were there -- I guess I still don't understand

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1 your question. Were there discussions by whom?

2 Q Well, between the -- between Progress and the
3 consortium about -- were there discussions about the
4 parties reengaging in project acceleration discussions
5 at minimum 30 days before the expected receipt of the
6 COL?

7 A That was -- [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 We did not want this to be a -- you know, we're
15 going to put a long-term partial suspension in place and
16 then wait until we get the license. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q Okay. So if you were at a point, as Progress
21 is at a point, where you believe that the COL is on
22 track to be issued, and enterprise risks are at a level
23 that are acceptable to the corporation to proceed with
24 the project, you would anticipate engaging in
25 discussions with the consortium about putting the

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1 project back on track?

2 A Well, let me -- I don't agree with that, no.
3 I'll try it a different way. The project has a
4 schedule. The project continues. The project and the
5 estimates that we talked about a minute ago are all
6 predicated upon receipt of a license in late 2012, a
7 grace -- a period between that receipt of [REDACTED] [REDACTED] to
8 allow the adequate time to issue the notice to proceed.

9 My point is, that does not have to start -- or
10 you don't have to wait to engage with the consortium
11 around that to get the license.

12 My anticipation is -- as a matter of fact, we
13 told the staff auditors, I think, this during their
14 engagement, that those -- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED]

19 Q Okay. Now --

20 MR. MOYLE: Charles, if I can just jump in
21 briefly. I'm going to go ahead, per our
22 conversation, and break. I'll be back at 1:30, at
23 the latest. Thank you for accommodating me.

24 MR. REHWINKEL: Okay. Thank you.

25 (WHEREUPON, Mr. Moyle disconnected.)

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1 BY MR. REHWINKEL:

2 Q Under no circumstance would you issue a notice
3 to proceed prior to receipt of the COL; is that right,
4 notice to resume?

5 A The -- let me answer the question this way:
6 Our schedule is built upon an assumption that a notice
7 to proceed would be issued sometime in the 2013
8 timeframe.

9 Are there potential scenarios where that could
10 be accelerated, depending on how the external
11 environment changes over the next three years? Yes.
12 However, again, our selection and our project schedule
13 is as we have described it.

14 Q Okay. All right. So I appreciate that. That
15 was a little bit of a detour. I was trying to
16 understand the mechanics of that process.

17 So let's go back to [REDACTED] [REDACTED] [REDACTED]
18 Assuming that -- that you were to issue the notice to
19 resume -- is that the technical term?

20 A It's actually -- yeah, notice to resume, yes.

21 Q Okay. Then the consortium would -- well, let
22 me step back and ask it this way: Assuming you made no
23 other changes to the contract, negotiating no further
24 amendments to the contract, if you issued a notice to
25 resume to the consortium, that would authorize them to

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1 resume activities in order to meet the schedule that you
2 had agreed to? Is that an accurate --

3 A Let me make sure I heard your question right.
4 I think you said assuming we made no further amendments
5 or changes to the contract, the consortium would execute
6 our schedule as we agreed to?

7 Q Yes.

8 A No, we have to actually issue, as defined in
9 the Amendment, a notice to resume, which effectively
10 ends the period of the long-term partial suspension.

11 So they need that action from us in order to
12 continue any work beyond what we've directed them to do
13 during the partial suspension.

14 Q Okay. So will you have to give them further
15 instruction as far as what you want them to do once you
16 issue the notice to resume, as far as procurement of
17 materials and commencement of work?

18 A Yes, but let me qualify that. I mean, during
19 the course of the execution of the project, there is
20 going to be periods of time where there will be

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 the Amendment.

4 We retain the favorable terms and conditions of
5 how this project would be executed. The specific

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q Okay. So in a scenario with the [REDACTED]
10 [REDACTED] that I was mentioning awhile back,
11 what -- is that something that the consortium would
12 procure in order to meet the milestones of the contract?

13 A Yes, the consortium, as part of their
14 responsibilities under the execution of the contract,

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q Okay. Now, I would assume that -- unless some
19 kind of acceleration event occurred, as you mentioned
20 earlier, that everything that the consortium would have
21 done under the December -- well, let me not say
22 everything -- well, most of the things that the
23 consortium would have done under the December 31,
24 2008 -- the assumptions in place on December 31, 2008,
25 they would roughly be five years delayed if you resume

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1 under the scenario of Amendment 3; is that fair?

2 MR. WALLS: Object. Mischaracterizes and
3 assumes facts not in evidence.

4 THE WITNESS: I think what you may be trying to
5 ask -- let me try it this way: Are there factors
6 such as the price of steel --

7 BY MR. REHWINKEL:

8 Q Yes.

9 A -- that may change during the course of the
10 long-term partial suspension?

11 Q That's exactly right, yes.

12 A Yes, there are. There are factors. Now, part
13 of our responsibility and part of the basis for our cost
14 estimate was to assess, to the best of our ability,
15 given the information that we have today, what are the
16 forecasts for those indices that are set as part of the
17 exist -- as part of the base EPC contract.

18 So if you look to the base contract, you'll see
19 there are various [REDACTED] items that have
20 [REDACTED] There are [REDACTED] prices for other portions
21 of the work.

22 Where [REDACTED] [REDACTED] [REDACTED] [REDACTED] at the time of
23 starting the actual work on the site is dependent on how
24 the market's moving that -- during that timeframe.

25 So we've tried to make some allowance for

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1 those. And, you know, the classic example, I think, is
2 the items in the contract that are specifically [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] and where that will go over this duration,
6 and then what will be the consortium's [REDACTED]
7 [REDACTED] when they get into actual on-site
8 fabrication.

9 Q Well, in the [REDACTED]
10 example, is it your opinion that if there is a material
11 change in the price -- let's say an increase in the
12 price of that steel, the particular steel that would be
13 used in that fabrication -- if there is a material
14 upward change in that price, is that delta covered by
15 the terms and conditions in the contract as amended by
16 Amendment 3, or is that something that would be subject
17 to further negotiation between the parties?

18 A For that particular commodity, which I think --
19 I'd have to doublecheck the specific list in the
20 contract, but for that particular commodity, which [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]. What
25 the Amendment -- and if I think where you're trying to

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1 go here is -- what the amendment did, effectively, was

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 So all those favorable terms [REDACTED].

9 What the Amendment did was [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 So at [REDACTED] to the

13 project, we were able to place the project in a

14 condition and be able to proceed on its modified

15 schedule.

16 Q So is there -- is there -- could you -- would

17 you be able to check on -- I just want to understand the

18 [REDACTED] example and how that would be

19 affected.

20 Because you would agree, would you not, that

21 the price of [REDACTED] to the

22 consortium is something that would be affected by the

23 partial suspension; is that -- is that true? It could

24 be affected?

25 MR. WALLS: I'm going to object as to vague and

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1 ambiguous.

2 THE WITNESS: Yes, it's two questions in one,
3 so let me -- if the question is, are there -- would
4 steel, as one example of a commodity that you would
5 have to purchase for construction -- like cement or
6 others -- will those change as a result of the
7 change in schedule of the project? It depends.

8 They will change according to what [REDACTED]
9 [REDACTED] I'm reasonably
10 confident that [REDACTED] is one of those examples that
11 is tied to [REDACTED]

12 The only reason I'm not certain on [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 That would be something I'd have to verify, but
16 I'm pretty confident that that is specifically [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 buy in support of the construction project.

20 BY MR. REHWINKEL:

21 Q Okay.

22 A Now, which way they will move between now and
23 then depends on factors that we had to do our best
24 estimating, based on what the experts in the industry
25 told us about their [REDACTED]

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1 Q Okay. So [REDACTED] -- let's say [REDACTED]
2 [REDACTED] [REDACTED], you think that it is identified in that
3 lengthy schedule at -- is it at f? I forget what the --

4 MR. WALLS: It's right there.

5 BY MR. REHWINKEL:

6 Q That -- and you say it would be subject to a
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9 A Yes, but, again, I'd like to verify that
10 against the contract, but, in general, there are items
11 like that --

12 Q Okay.

13 A -- that are [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED]

19 Q And so it's your testimony that there is, under
20 this item 10, paragraph m in the Amendment 3, that this
21 example that we went through about [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1 A Would you ask that question again, because I
2 want to make sure I follow exactly what you're trying to
3 say?

4 Q Yes. My question is, [REDACTED]
5 [REDACTED] which is my example, is not something -- I'm
6 asking you this based on your understanding or what
7 you're testifying to -- is that [REDACTED]
8 [REDACTED] is not something that Progress and the consortium
9 would, prior to the issuance of owner -- by the owner of
10 any notice to resume suspended work under section 221 --

11 22.1(f), [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 Q Okay. What is your understanding of the
2 concept of the base price with respect to the EPC? Is
3 there a base price?

4 A Yes, there is.

5 Q And the base price is essentially what's
6 outlined in the EPC, [REDACTED] any applicable [REDACTED], is
7 what you would -- you would -- payment would be based
8 on; is that right?

9 A No, I think that's too simple of an
10 explanation. The base price of the contract is based on

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 In each of those components -- and if you give
16 me a minute, I can pull out the specific percentages --
17 but each of those components is part of what [REDACTED]
18 [REDACTED] up that base price of the contract.

19 But that base price is ultimately affected by
20 the -- [REDACTED]
21 [REDACTED]

22 Q Okay. So the -- the -- back in the [REDACTED]
23 [REDACTED] example, there is a base price associated
24 with [REDACTED] is that right?

25 A There is a base price for [REDACTED]

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1 [REDACTED] that was part of the base price of the contract as
2 priced, yes.

3 Q Okay. And is the base price [REDACTED] only subject
4 to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED]

9 A No, but let me explain that also. So the base
10 price of the contract is based on -- you know, it was
11 the negotiations between us, obviously, and the
12 consortium, but the base price of the contract is based
13 on their assumptions by the consortium of what the [REDACTED]
14 [REDACTED] would be.

15 So -- and let me go back to your question. Is
16 the only change in [REDACTED] prices that could occur the
17 result of [REDACTED] Again, I'd say no, because there
18 could be other things that happen that [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 Now, that would [REDACTED] [REDACTED] [REDACTED] to
22 the project, which would -- but it may be necessitated,
23 for whatever reason, regulatory or otherwise.

24 There could be change in scope to the project
25 that causes the [REDACTED] [REDACTED] that needs to be used

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1 to build the project to change. That could also cause a
2 change in the price -- the base price associated with

3

4 Q Okay.

5 A So there are other factors that may occur
6 during the course of the project execution that could
7 draw a change.

8 Q But if we assume for purposes of my question
9 that there are no scope changes with respect to what the
10 [REDACTED] input to the project would be, then is it true
11 that the payment for [REDACTED] -- the [REDACTED] commodity would
12 only be -- would be based on the base price [REDACTED]

13

14 A Yes, it is true that -- assuming that the scope
15 stays constant and the [REDACTED] [REDACTED] that's required
16 is constant, that you would then take however that was
17 priced into the base price of the contract that the

18

19 Q Okay. And just so I understand, for the
20 record, is it your testimony that Amendment 3 provides

21

22

23

24 A Other than the way it's provided for -- yes,
25 the EPC contract -- the Amendment 3 to the contract

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1 [REDACTED] the [REDACTED] [REDACTED] of the [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]

5 Q All right. So if I could get you to look at,
6 because this is F -- Appendix F -- and for the purposes
7 of this question, I'm looking at 10PM-LEVY, L-E-V-Y,
8 EPC-000283; is that right?

9 A Yes.

10 Q Okay. And this is Page 9 of 42 of Appendix --
11 is this Appendix F? Is that what it's called?

12 MR. WALLS: Exhibit.

13 BY MR. REHWINKEL:

14 Q Exhibit F-1, in the column here, it says, [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 A That's correct.

18 Q Does Amendment 3 allow for any changes to the

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED]

21 A [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 Q Okay. I apologize for that.

23 A Yeah, and I'm just -- you know, I want to be
24 clear, because there is -- like you say, there's two
25 different -- there's [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1

2

MR. REHWINKEL: Any idea if lunch is here?

3

MR. WALLS: No, I don't.

4

MR. REHWINKEL: What I need to do is at least

5

take a break and see get that phone call made,

6

that's bothering me now.

7

So let's take a break. We're going to check on

8

our lunch; and if our lunch is here, we'll probably

9

take a 30-minute break; if not, I'll come back and

10

sort that out. So I'm going to put you on mute.

11

(WHEREUPON, a brief lunch recess was taken.)

12

MR. REHWINKEL: So we're back on the record.

13

BY MR. REHWINKEL:

14

Q Mr. Elnitsky, I would like to return, if we

15

can, to -- as of that little detour about Amendment 3,

16

I'd like to turn back to the April 10, 2 -- or the

17

April 2010 IPP.

18

A Okay. Let me just get back there. And what

19

page are you on, sir?

20

Q I am on Page 10.

21

A Okay.

22

Q And to return to this, this assumption

23

regarding the estimate, the Class 5/Class 4 estimate.

24

A Okay.

25

Q Now, can you tell me how this estimate was done

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1 according to the Association for Advancement of Cost
2 Estimating International Guidelines?

3 A Yes.

4 Q Okay.

5 A And, again, I'm going to also refer to the more
6 detailed estimate document that was provided in
7 production of documents, and I think I quoted that here
8 a minute ago --

9 Q Yes.

10 A -- in here. I've got to get that out again. I
11 think it's 13 in here.

12 So the way this estimate was prepared, we used
13 the information that was available as a result of the
14 consortium's analysis of scenarios.

15 That's the first big element our insight and
16 understanding of the contract and the execution schedule
17 and plan of the contract was based on, and our
18 evaluation of various external factors among [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 And we basically did a -- what's referred to as
25 a bottoms-up estimate. We worked line by line through

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1 the various aspects of the project, starting with a
2 Level 1 schedule, and then working through each of the
3 components of the estimate.

4 And the approach was to -- for each element, so
5 whether it's the transmission lines, or a component
6 price or a set of construction activities, to take that
7 activity and price it out based on all those factors I
8 just mentioned that we were -- and we built a range
9 around each one of them.

10 So if you were to look at the details on the
11 cost estimate sheet, you'll see that some things where
12 the price was [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 To come to a final number then, we basically
21 aggregate all of that work together into a final number,
22 and we talked about that this morning. That's the basis
23 of that, what I would call the central point of the
24 band, which is this 17.636 billion number, including
25 fuel and without AFUDC, as we discussed this morning.

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1 That band worked out to be about [REDACTED]
2 [REDACTED] [REDACTED] from that midpoint to plus [REDACTED] percent
3 from that midpoint.

4 You could argue that that begins to sound
5 something like a Class 3 estimate in the AACE
6 guidelines, but as I worked with our estimators and we
7 looked at some of the variability associated with the
8 different line items, we concluded that we really were
9 more closely aligned with the Class 4 type
10 qualifications.

11 Now, why does that matter -- and I think maybe
12 that's -- if I can, Mr. Rehwinkel, I think that's maybe
13 a distinction here.

14 What we wanted to do with this estimate was be
15 sure that we provided our management with the best
16 insight into the band that would be required that would
17 encapsulate as many of the potential future paths that
18 this project may go on.

19 In terms of cost, where, for example, what is
20 the variability maybe associated with a [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] What is the variability associated
22 potentially with what ultimately labor costs will be.

23 And we wanted to make sure that that band that
24 was provided was consistent with where we were with the
25 project. We do these types of estimates for all of our

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1 major projects, specifically our major construction
2 projects or major transmission or upgrade projects, and
3 we use a very similar process.

4 And at this early stage of a project where the
5 [REDACTED], the ultimate detailed
6 construction scheduled are still being completed, we
7 would normally be in this same range, where we set a
8 Class 4 or Class 5 type range.

9 Why do we do that? Because we want to be sure
10 that that range covers the potential ultimate pass that
11 that project may get, as the design gets more finalized,
12 as the actual, what are called bulk quantities gets
13 finalized, as all those pieces come together, so at the
14 end of the day, as we get further into the project cycle
15 and the design is finished, and we're well into
16 construction, we can lock in then on a fixed point with
17 an amount of contingency that's commensurate with the
18 risks associated with the project.

19 So for this stage, where we were in April of
20 2008, knowing what we knew about the project, a Class 4,
21 type Class 5 estimate, in our assessment, provided the
22 best coverage of those potential outcomes in the -- and
23 the best coverage of where ultimately the total project
24 price could go.

25 Q Something you said is you do this for all major

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1 purpose of this process, but we wanted to make sure, you
2 know, sort of that we had something we could point at as
3 a process and a procedure that was repeatable for how we
4 did this type of estimate.

5 Q Okay. So the \$17.6 billion number, based on
6 the methodology that you use and application of the AACE
7 guidelines, you yielded a range of, it could be
8 [REDACTED] percent too high or [REDACTED] percent too low; is that a
9 fair --

10 A Yes, it -- the actual band that's, again, on
11 this production of documents is, I'm going to say it's
12 [REDACTED] to [REDACTED], basically, which if you -- with the most
13 likely or estimated midpoint -- it's not really called a
14 midpoint, but the most likely number at 17.6.

15 Q Okay.

16 A And, again, the intent of that band is to give
17 reasonable probability that the potential different
18 paths of certain aspects of the estimate or
19 uncertainties associated with the estimate may take the
20 ultimate costs are covered by the cost estimate.

21 Q Now, the way those numbers turned out, the --
22 the potential variability is -- appears to be greater,
23 that the number would be lower than higher; is that --
24 can you draw that conclusion from the way these
25 numbers are --

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1 Q -- is that right?

2 A -- that is what the document says, yes, sir.

3 Q Okay. And for a Class 4 estimate on Page 4 of
4 9, the expected accuracy range indicates that a typical
5 accuracy range for a Class 4 estimate -- typical
6 accuracy ranges for Class 4 estimates are minus
7 15 percent to minus 30 percent on the low side and plus
8 20 percent to 50 percent on the high side; is that
9 right?

10 A That's correct. That's what the document says.

11 Q And then for a Class 3 estimate in the expected
12 accuracy range, it says typical accuracy ranges for
13 Class 3 estimates are minus 10 percent to minus 20
14 percent on the low side and plus 10 percent to plus 30
15 percent on the high side?

16 A That's correct.

17 Q So when you said to me earlier that one could
18 argue that the estimate that you produce for the
19 April 2010 IPP was more of a Class 3 estimate, is that
20 what you were referring to, was where were those ranges
21 fall in --

22 A I was referring to where the ranges were, and
23 specifically a lot of the sub-elements of this estimate,
24 because we had some very distinct clarity around the
25 costs, [REDACTED]

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1 [REDACTED] we were able to draw a much tighter band.

2 So we did not start and say where are we in the
3 project; what class of estimate should we do. We,
4 instead, started and said let's work our way bottoms up
5 through each line item.

6 Let's fully understand what we expect the
7 variability to be on that line item. Let's then sum
8 those items to come to a conclusion, and based on our
9 understanding of the quality of each of those subitems
10 and what we were able to calculate, assign a value to
11 this -- not exactly right term -- assign a
12 classification to this estimate that our management will
13 understand and is consistent with how we typically
14 portray an estimate.

15 Q Okay. So for the Class 3 estimates -- if we
16 can go back to that one on Page 4 -- it says,
17 "Estimating method" -- under the heading "Estimating
18 methods used," it says, "Class 3 estimates usually
19 involve more deterministic estimating methods than
20 stochastic" -- that's s-t-o-c-h-a-s-t-i-c, if I
21 pronounced it right -- "methods that usually involve a
22 high degree of unit cost line items," and that would be
23 what you referred to with respect to, you had some
24 clarity in the ones that you --

25 A Some items that you could very clearly

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1 identify, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 Q "Although, these may be at an assembly level of
4 detail rather than individual components." Is that
5 applicable to what you looked at?

6 A Yes, in a way, and let me explain that. You
7 know, assembly level detail, again, this guidance is for
8 a very broad set of applications. So from our
9 assessment, there were certain things that we knew based
10 on [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

12 We said, you know, we have an understanding of
13 what it's going to cost, for example, for, you know, our

14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 So some things we were able to do that; some
17 things we were not. We didn't have that level of
18 specificity. For example, some of the bulk items maybe
19 that have yet -- that are not yet defined.

20 Q Would that be, like, concrete?

21 A Potentially total concrete, so it will be
22 required and how that factors into the total costs.

23 Q Okay. Do you know what "stochastic" means,
24 "stochastic methods"?

25 A Yes, stochastic method -- oh, geez.

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1 Q Well, did you --

2 A No, let me -- I know what they're referring to,
3 but I'm not exactly sure of the definition anymore,
4 scocastic, and so I'd have to go back and look at it.

5 Q Okay. Well, when it says, "Factoring in other
6 scocastic methods may be used to estimate less
7 significant areas of the project," is that what -- is
8 that what you did?

9 A Ask your question again.

10 Q The last sentence of that "Estimating Methods"
11 section says, "Factoring and other scocastic methods may
12 be used to estimate less significant areas of the
13 project." Is that -- does that describe --

14 A That describes a lot of what we did for --
15 well, in some cases we had to make assumptions based on
16 where would a given [REDACTED] [REDACTED] or what was our
17 understanding based on projects that were already
18 underway about what some of the actual costs were
19 associated with certain elements of the project.

20 Q Okay. Now, the IPP itself describes the
21 assumptions of the estimate, is that this is a Class 5,
22 slash, Class 4 estimate, correct?

23 A That's correct.

24 Q So my question to you is if -- is while you say
25 that it could be argued that this is a Class 3 estimate,

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1 you describe is as a Class 4 and Class 5 estimate -- or
2 Class 5, slash, Class 4 estimate. For what reason,
3 contrasted to the --

4 A Well -- and let me clarify, because you can
5 argue that the overall is a Class 3. I didn't mean to
6 imply that.

7 What I meant was -- or what I think I said was
8 certain elements of this estimate are at that level of
9 refinement to fall into a Class 3. So what we did,
10 again, to go back is say let's start and do a bottoms-up
11 line by line to the best of our ability, where we can
12 apply a [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] method, do
14 that. Don't -- you know, don't provide a real broad
15 band if we know, with some definition, that this is
16 where the cost is going to end.

17 At the end of the day, though, when we got the
18 whole estimate built, given the fact that we're still,
19 you know, a couple of years way from the point of being
20 on the ground doing actual work, that there's still a
21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] -- that we talked
22 about this morning -- that can move in different
23 directions.

24 It did not seem reasonable to us to classify
25 the overall estimate as -- for our management -- as

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1 better than a Class 4, because we still think there is a
2 certain amount of variability. And as we described, our
3 band ended up being in about that ■ to ■ percent
4 range, up and down.

5 Q Okay. So the band -- the numbers on your high
6 and your low side of your band fall within the Class 3
7 expected accuracy ranges, right?

8 A That is correct.

9 Q And the low side estimate for -- falls in the
10 Class 4 --

11 A It's a little bit.

12 Q Yeah.

13 A It's in a Class 4, just barely.

14 Q Okay. And then neither of them falls -- well,
15 neither the low nor the high falls within the Class 5 --

16 A Yeah.

17 Q -- range.

18 Okay. So I guess what I'm trying to understand
19 is, what is it about the estimate that makes you say
20 Class 5, slash, Class 4?

21 A We were unwilling, at this point, to not think
22 it reasonable and prudent to say we could classify it at
23 that level of fidelity.

24 Normally, for our company, at that point of a
25 project, we would be able to say this estimate is now at

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1 a Class 3 level. We define a price point for the
2 overall project and a set of contingencies around it.

3 We were concerned, because there are still some
4 things that we will have to do ultimately to get to a
5 final price.

6 We have to define as part of that process of
7 concluding the long-term partial suspension. We have to
8 define the schedule ultimately. We have to define the
9 [REDACTED] [REDACTED] [REDACTED] that goes along with that and the

10 [REDACTED] [REDACTED] [REDACTED]

11 So, again, our qualitative assessment at this
12 point was to say, at this point, we would consider this
13 in that Class 4/Class 5 category, even though we
14 recognized certain elements of this have a tighter
15 degree around their bands for their actual costs.

16 Q Okay. So if I go to Page 2 of 9 of the AACE
17 guideline --

18 A Okay.

19 Q -- this is table that's under a heading that
20 says, "Cost estimate classification matrix for the
21 process industries." And there are two major headings
22 of this table, "Primary Characteristic" and "Secondary
23 Characteristic." Do you see that?

24 A Yes.

25 Q Okay. And under the primary characteristic

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1 descriptions to describe the type of estimate that we
2 completed.

3 Q You said something. There is portions of the
4 project that you just don't know, as far as kind of
5 where those costs may end up. Is that what you've
6 contended?

7 A Yes, what I said is there are portions of the
8 project, from an estimating perspective, that you just
9 don't know, you know, definitively where they're going
10 to end up.

11 And it goes back to what we talked about
12 before. What ultimately will be the [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] You don't know that down to the dollar, so
15 you have to put a band around that to comply with good
16 estimating practice.

17 Q Okay. There are some alternate names and
18 synonyms description in this Class 5 estimate table.
19 There are terms "ratio," "ballpark," "blue sky," "seat
20 of pants," "ROM," which I think means rough order of
21 magnitude.

22 A Yes, I think it does.

23 Q "Idea study," "prospect estimate," "concession
24 license estimate," "guestimate," "rule of thumb." Of
25 these terms, I have seen "ROM" in the IPP. Is this a

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1 actually incorporates additional conservatives around
2 the high end of this estimate.

3 Q The band in --

4 A The band in -- that's used as part of the
5 feasibility analysis. If you look at the capital bands,
6 I think they go up to a plus 20 percent number.

7 Q I think that's all I have on the estimation
8 issue. I'd like to ask you to turn to -- well, at least
9 with the AACE document -- turn to Page 15 of the
10 April 28th IPP. Okay. The -- I guess this section here
11 is part of the risk matrix; is that right?

12 A Let me just look to make sure. Yeah, this is
13 Section 5 of the IPP document, which is the risk matrix,
14 and what follows on Page 15 is a description of some of
15 the individual risk items as they were evaluated at the
16 time for this IPP.

17 Q Okay. And one of the items in here on --
18 that's listed on Page 15 is, "Material and labor
19 [REDACTED] [REDACTED] estimated numbers." Do you see that?

20 A Yes.

21 Q Okay. And there is a description here of the
22 risk of the number in your estimate, changing one
23 direction or the other, correct?

24 A Uh-huh.

25 Q And then you list some mitigation strategies.

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1 Number one, is that you "entered into an EPC contract in
2 which [REDACTED]
3 [REDACTED] -

4 [REDACTED] Do you see that?

5 A Yes.

6 Q All right. And that's what we discussed in the
7 very beginning of the deposition, kind of the process
8 that you're going through to get those [REDACTED]

9 A If your question is, are the long lead
10 materials [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q Okay. And -- and I guess it's fair to say that
15 what you're doing in addition to -- well, what you're
16 doing in that regard is part of an overall mitigation
17 strategy for that risk; is that right?

18 A Yes, it is fair to say that there are, you
19 know, several things that we continue to do on the
20 project to try to be insure that we're being good
21 stewards of the rate-payers' dollars here in terms of
22 lowering the costs of the project, where possible, and
23 making sure that we're managing items that have the
24 potential to increase the cost.

25 Q Now, the second item of mitigation, it says,

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1 "An independent third party provided long range forecast
2 for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Do you see that?

4 A Yes, I do.

5 Q Now, is that what you mentioned earlier when
6 you talked about how you developed your estimate, is
7 that you went to an outside party?

8 A Yes, we -- and let me explain. We went to an
9 outside party. Specifically, we used a company by the
10 name of Power Advocate, who has expertise in indices
11 associated with the various commodities associated with
12 complex construction projects.

13 So where things would be done, for example, on
14 a time and material basis, it's important to understand
15 what the estimates are for what those materials will
16 cost at some time in the future.

17 So we used any -- we used all information that
18 was available to us, and we used Power Advocates as one
19 of those sources for some of their indices around these
20 items.

21 Q Okay. Now, is -- did you use Power Advocate
22 because you used them before, or they had specific
23 expertise with respect to EPC -- nuclear EPC contracts?

24 A We used -- to answer your question, we used
25 Power Advocate because we had had experience with them

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1 on other construction projects, had had good success
2 with using their materials, and thought it was a prudent
3 thing to do in light of building this more detailed
4 bottoms-up estimate, to add that additional level of
5 fidelity.

6 Q Do you know if they work for any other utility
7 that are engaged in building AP1000 projects?

8 A I -- I don't know for sure. I know they're
9 engaged in working with several different utilities. I
10 don't know specifically if they're involved with AP1000
11 efforts anywhere else.

12 And to some extent, that is not really germane,
13 because the issue here is not are you building a reactor
14 plant; are you building a steam turbine.

15 It's really do you understand what -- you know,
16 back to your earlier question, what the [REDACTED] for the
17 [REDACTED] [REDACTED] is really going to cost when you
18 need to procure it and have it available for your
19 construction project.

20 Q Okay. And item three, "The estimate allows for
21 adequate contingency for moderate changes in escalation.
22 Would you -- would it be accurate to say that the range
23 that's in the estimate represents that contingency, or
24 is it the contingency that's in the estimate itself, the
25 [REDACTED] [REDACTED] -- is it [REDACTED], you know, the escalation, the

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1 contingency item that's under the other owner
2 contingency? [REDACTED]

3 A Let me make sure, because --

4 MR. WALLS: I'm going to object, because I
5 think you had a couple of things going on there.

6 MR. REHWINKEL: I did.

7 THE WITNESS: Let me answer what I think is
8 your question.

9 BY MR. REHWINKEL:

10 Q Yeah.

11 A If the question is, does the range provided by
12 the estimate and the uncertainty inherent in that range
13 cover potential uncertainties in estimate values, the
14 answer is yes.

15 The use of the term "contingency" in this
16 sentence is to refer to the band of the estimate; it's
17 not meant to refer back to specific contingency items in
18 the estimate where that contingency is more specific to
19 potential needs for change in the scope of the project.
20 This is about, given a fixed scope, are there things
21 that may change, and that's part of the reason that the
22 estimate was set at the band that it was.

23 Q Okay. On Page 17 of the IPP, it starts,
24 "Section 5.1.2, enterprise risks." Do you see that?

25 A Yes, sir.

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1 it says, "It says none of the staff or any of the
2 witnesses identify any specific projected 2011 costs
3 that they claim is unreasonable.

4 "As I previously explained, OPC witness Jacobs
5 says he was asked by OPC to conduct a review of the
6 evaluation and PU requests per authority to collect
7 projected costs associated with LNP. Jacobs does not
8 identify any specific projected LNP costs that he claims
9 is unreasonable."

10 So although I understand his request to
11 evaluate or thinks that we should have evaluated this
12 other alternative, I contend -- and we contend -- that
13 we did that as part of the process we went through to
14 evaluate alternatives, and I don't think that that has
15 any bearing on his commentary about our actual projected
16 costs.

17 Q Okay. Well, is it the company's position
18 that -- if I go to your -- well, if I go to your JE-6
19 exhibit in your -- and the confidential exhibit --

20 A Okay.

21 Q -- the total costs under the option that
22 Dr. Jacobs described in his testimony you calculate at
23 [REDACTED]; is that right?

24 A That -- well, yes, let me, though, explain.
25 What we have portrayed in this attachment in JE-6 is an

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1 evaluation of the option that Dr. Jacobs describes in
2 terms of what might a cancellation look like at some
3 time in the future.

4 You will see from looking at these numbers --
5 and if you go back and look at option one and option two
6 in the original presentation -- so it's really just
7 taking those cancellation costs and saying if that was
8 to happen at some time in the future.

9 We certainly evaluated that as part of our
10 overall process. We put this attachment together, just
11 to provide clarity to how that would fit together, so it
12 was easier to discuss it.

13 Q Okay. But this -- this [REDACTED] [REDACTED] number,
14 is it your contention that -- that we could have
15 calculated that number based on the information that we
16 had?

17 A I don't understand your question, that you
18 could have calculated it.

19 Q Yes. Was the information there that would
20 allow us to determine [REDACTED] [REDACTED] was the amount
21 associated with option four, what is --

22 A No, but let me explain. What -- what I am
23 testifying is that this option, as depicted here, that
24 adds [REDACTED] total incremental costs to a cancellation
25 approach, post-COLA, is information that was embedded in

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1 the other three options that were evaluated and
2 discussed as part of the decision process that brought
3 us to the point to continue.

4 So there is no, what I would call new
5 information here that wasn't in the original set of
6 alternatives; and, certainly, this was a scenario that
7 was discussed as we evaluated each of those scenarios,
8 because that information was already embedded in those
9 presentations.

10 Q Okay. But you would agree, would you not, that
11 it would not -- although it was embedded, it was not
12 identified as a discreet scenario with a dollar amount
13 associated with it, that was like this [REDACTED] [REDACTED]?

14 A I would agree that it was not identified as a
15 discreet scenario, but, again, I don't think that is
16 necessarily germane to the options that were evaluated.

17 It was part of that process, the alternative or
18 the possible scenario, that said what if, for some
19 reason, the project does have to be stopped after
20 receipt of COLA, and it really was evaluated in the
21 context of if the project needs to be canceled, and if
22 our assessment today, with the information that we have
23 today, is that we may need to cancel the project at some
24 time in the future, you would cancel it today. You
25 would not wait and do that at some time in the future.

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1 Q So what I'm getting at is Dr. Jacobs described
2 a scenario that would yield a definable dollar amount,
3 and that's in his testimony and with respect to option
4 four, and that's what this [REDACTED] [REDACTED] represents,
5 correct?

6 A What this number represents is a set of
7 assumptions that says all other things being equal, if
8 we move forward to the point of receipt of the COLA
9 sometime in 2012, and we assume -- and there is, just as
10 we discussed this morning around long lead material,
11 there is a lot of assumptions that have to go into
12 this -- but if we assume, basically, things stay the
13 same, what would that potentially look like at some time
14 in the future.

15 And, again, we evaluated that as part of the
16 set of decisions that we made today, based on what we
17 knew at the time.

18 Q It may even be a misnomer to refer to it as an
19 option; it's maybe more a scenario, because it's not --
20 you wouldn't select an option to go forward and spend a
21 [REDACTED] [REDACTED] dollars -- million extra dollars knowing you
22 were going to cancel, correct?

23 A Yes, I think that's exactly right, in some
24 regards. Although, I think -- I don't remember if
25 Mr. Jacobs described it as an option in his testimony.

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1 But, really, what this is describing is, is
2 there a scenario where this course of events may unfold,
3 and, if so, then what might those costs look like.

4 Q Okay. And in that regard, it might be a
5 semantics issue. I don't know that the Office of Public
6 Counsel is contending that that would be an option that
7 you would realistically do; it's a scenario that you
8 would evaluate. Would you concur with that approach as
9 far as how you would describe this?

10 A Yes, but let me clarify again. It is a
11 possible scenario. It was, however, evaluated as part
12 of the evaluation of the three alternatives that we --
13 that we went through as part of the February 15th
14 discussion, and was considered in those deliberations
15 when we made the decision to proceed with the project.

16 Q Okay. And so putting that, perhaps semantics,
17 behind, you would agree, would you not, that the
18 [REDACTED] [REDACTED] includes dollars that are in both 2010
19 and 2011, that are subject to cost recovery requests in
20 this round of the docket?

21 A I would agree that the [REDACTED] [REDACTED] that is
22 on JE-6 of my testimony is calculated by taking the
23 option three incremental costs for 1011 and '12, and
24 adding to that the potential costs that might be implied
25 by a scenario where cancellation was then necessary --

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1 Q Okay. Whatever version they ultimately end up
2 on -- those -- the uncertainty surrounding those would
3 not be something that would cause you to either stop the
4 project or not start it after a delay, such as the LWA
5 delay; is that correct?

6 If those were the only major enterprise risks
7 that you face, you would not stop the project or not
8 proceed with the project based on them, because those
9 are risks that you know going into the project you're
10 going to face, correct?

11 A I'm not sure I agree with your contention, but
12 maybe I'm not fully understanding the question, so let
13 me try to --

14 Q Here's what I'm asking you about, is you know
15 going into the process of going to get a determination
16 need from the Commission, to go through the process of
17 acquiring ██████████-plus dollars of land and engaging
18 all of the -- and doing a contract with the -- the
19 consortium, concluding the letter of intent that
20 obligated you on the long lead materials, you would not
21 go all through all of that just because there was a risk
22 associated with the DCD and the COL? You would not do
23 all of that stuff just because there was risk, correct?

24 A Yes, and let me explain, so I make sure I'm
25 answering your question. The risks associated with the

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1 that we have certain minimal costs to terminate the
2 project. We know that [REDACTED] [REDACTED] is what it would
3 cost to exit the project.

4 If we take the next step and go -- we -- we
5 continue the partial suspension with the Amendment 3
6 terms, can we proceed to get the COL and the other
7 strategic land acquisitions and licensing activities
8 that's going to cost us another X-hundred-million
9 dollars?

10 And I think that's characterized -- well, and
11 we're in an advanced recovery state, whereas long as
12 we're proceeding with the project we can spend money and
13 have it recovered from the customers, that it's worth it
14 for us to spend another 1 or \$200 million, just so we
15 have the option when we get to the COL point.

16 That's a very convoluted question, and I know
17 it's complex, but I'm trying to figure out if that kind
18 of analysis occurred. Do you understand what I asked?

19 A I understand your question, but let me repeat
20 it back to you and break it into pieces, because there
21 is parts I don't agree with the contention, so I'm going
22 to start with the last piece and work my way back up, I
23 think, to the top.

24 So your last comment was along the lines of,
25 well, because you're in an advanced recovery state, did

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1 benefit versus what we saw as a risk and made the
2 decision that it was in the best interest of the
3 customers to continue to move forward with the project,
4 utilizing the eliminative partial suspension.

5 Q Okay. When the company was making its decision
6 about the options that were before it and, I guess I
7 should say, the embedded fourth scenario that Dr. Jacobs
8 asked you to consider, is it fair to say that you were
9 aware that the fourth scenario could, in fact, occur?

10 A Yes, I would say it is fair to say that an
11 integral part of the discussions was the ultimate
12 eventuality that the project may need to be canceled at
13 some time in the future.

14 That was embedded in the discussions, certainly
15 the numbers associated with cancellation were clear, and
16 they were linked to that conversation.

17 Q Okay. So the decision-making -- the
18 decision-making is -- in your testimony was this, that
19 [REDACTED] [REDACTED] number that's on line 3 of Page 20, your
20 testimony --

21 A Okay.

22 Q -- was a number that Senior Management was
23 aware of; is that correct?

24 A That is a number that Senior Manager --
25 Management was familiar with, based on the fact that we

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1 had shown them the cancellation costs today, as part of
2 the -- that option to cancel, and we had shown them the
3 incremental costs that would be incurred during the
4 period 2012 -- excuse me -- 2010 through 2012.

5 It was clear to them that cancellation after
6 that point would incur many of those same costs that we
7 were going to incur with cancellation today.

8 Q So with where you find yourself, or found
9 yourself, in early 2010, when this decision-making was
10 going on, with the project in an extended partial
11 suspension, is that a fair characterization?

12 A When this decision-making was going on, the
13 project was actually in a partial suspension in
14 accordance with the terms and conditions of the
15 contract.

16 We exercised that favorable term and condition
17 that we had negotiated originally in the contract to
18 deal with the uncertainty or potential that we might
19 have to suspend.

20 It wasn't until after we had negotiated and
21 executed the Amendment [REDACTED]

22 [REDACTED]

23 Q Okay. But looking at those options ahead and
24 recommending to Senior Management the extended partial
25 suspension scenario, your testimony is that you were

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1 aware of the fourth scenario could occur, and if it did
2 occur, then [REDACTED] [REDACTED] of customer funds would be
3 wasted, from the customer's standpoint?

4 MR. WALLS: Object to the characterization.

5 THE WITNESS: Yeah, I don't agree with the
6 characterization that the funds would be wasted. I
7 will agree that that was part of the analysis. It
8 was part of the discussions, the -- as we've already
9 discussed, the eventuality that the project may need
10 to be canceled at some time in the future. That had
11 to be weighed against what were -- what we saw as
12 the long-term benefits of the project for the
13 customers.

14 So I would not agree, though, with the
15 characterization that in either case those funds
16 would be wasted. That's not what we do.

17 BY MR. REHWINKEL:

18 Q Would you agree that with respect to this
19 project, the Levy nuclear project, that in some
20 objective sense that the greater -- well, let me say
21 this -- let me start over again.

22 Would you agree that with respect to the LNP,
23 that in an objective sense, that the greater the
24 likelihood that the project is ultimately never going to
25 generate electricity and, thus, be canceled, the more

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1 called the base case, proceeding as quickly as possible
2 or full speed ahead; and then continuation with a longer
3 term partial suspension.

4 Q Okay. Did it -- did you provide to Senior
5 Management any cost comparisons, other than that
6 three-year period? Did you do a five-year look, for
7 example?

8 A In terms of the options for costs being
9 incurred during the partial extension period, we focused
10 on 2010 to 2012, and the reason for that is our
11 assessment at this point in time that the likely timing
12 of receipt of our combined operating license was in the
13 mid- to late 2012 timeframe.

14 The reason that we focused that decision in
15 that manner is that we had proceeded to the point of
16 negotiations of Amendment 3 to the contract, that was
17 going to provide for the extension of the partial
18 suspension period out through [REDACTED] [REDACTED] beyond receipt of
19 the COLA.

20 So our assessment was evaluation of the 2010
21 through the 2012 period would cover that duration of
22 partial suspension.

23 Q I understand. Thank you. But my question is
24 whether or not additional analyses for other timeframes
25 were also provided.

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1 A There -- there would have been -- it would have
2 been inconsistent with the approach we were taking with
3 the Amendment to the contract, to evaluate -- if your
4 question is longer term partial suspension beyond the
5 three years, no, because that would not have been
6 consistent with the contracting strategy that was in
7 alignment with these option evaluations.

8 Q Okay. On at the bottom of Page 26 and the top
9 of Page 27, there is a -- your answer discusses the
10 project cancellation option. Do you see that?

11 A Yes, sir.

12 Q And on the top of Page 27, you talk about some
13 items that would have to be completed, including some
14 long lead time procurements?

15 A Yes, sir.

16 Q And I think you may have discussed this a
17 little bit with Mr. Rehwinkel before, but I wasn't clear
18 so I thought ask it again.

19 Do the cost of purchase order dispositions,
20 that are described in your testimony, include any
21 salvage estimates for reselling long lead time equipment
22 that may be procured?

23 A Just to make sure -- yeah, just to make sure
24 I've got your question correct, so the cost of purchase
25 order disposition estimated at [REDACTED] [REDACTED] on line 4 of

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1 my direct testimony was our assessment in February of
2 2010 as to what it would take to basically cancel,
3 and/or dispose, or stop work basically on purchase
4 orders.

5 It did not take any credit for the possible
6 resale of any items that were in a stage that could be
7 resold. We had not proceeded far enough along the
8 discussions with the vendors at that point to draw any
9 reasonable conclusions about potential resale. I --

10 Q Have you subsequently had all discussions along
11 those lines?

12 A [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q Okay. On Page 29 of your direct, the question,
19 "Why did you make this recommendation to Management?"
20 Do you see that?

21 A Yes, sir.

22 Q The answer begins with, "This option best met
23 the company's objectives, given the minimum schedule
24 shift and enterprise risks the company faced on the
25 LNP."

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1 had earlier with Mr. Rehwinkel between the two cost
2 estimates.

3 Q Given your background and experience, is that a
4 surprise to you that the cost of increase by over
5 \$5 billion from the 2008 number is a number that you
6 just gave me today?

7 A Sir, I would say that given my -- to phrase
8 your question, given my experience and background, is
9 that a surprise, no, given the change in the schedule of
10 the project, that cost change is primarily driven by
11 changes in escalation associated with the assumptions of
12 the estimate and changes in the AFUDC calculations that
13 are associated with the change in time.

14 To my understanding -- and I'm not the expert
15 in the AFUDC calculations -- but from an estimating
16 perspective, about [REDACTED] [REDACTED] of that change
17 is purely as a result of the [REDACTED] [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED] as the project moves forward in time,
19 and about one-and-a-half billion or so is associated
20 with the changes in the AFUDC rates associated with the
21 later cash flows for the project.

22 I'm not -- I would say I'm not surprised by
23 that. I understand, based on my insight into the
24 calculations, why those numbers are what they are, and I
25 would say that it, in general, is consistent with any

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1 time -- that you look at a project later in time, it
2 tends to be more expensive than earlier.

3 Q You had indicated, you said, I think, you had
4 about [REDACTED] [REDACTED] of that delta difference was
5 associated with the [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 documents; is that right?

7 A That's correct, and that is documented in our
8 cost estimate that was provided as a production of
9 documents as one of the major areas of change from the
10 IPP to the current estimate, specifically, we indicated
11 there, [REDACTED] [REDACTED] [REDACTED] [REDACTED] associated
12 with the change in schedule.

13 Q And you spent a lot of time talking about
14 renegotiation and contract documents. Have the -- have
15 the [REDACTED] [REDACTED] that have prompted this
16 [REDACTED] [REDACTED] [REDACTED], have they changed in the
17 contract documents, as we sit here today?

18 A No, sir, the [REDACTED] [REDACTED] were
19 established by the base contract as part of [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 The Amendment that we executed to the contract,
22 that allowed us to [REDACTED] [REDACTED] [REDACTED] of the
23 contract while extending the duration of the partial
24 suspension with [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1 [REDACTED]
2 I will add, however, though, that certainly as
3 we move forward with a Notice to Resume work and
4 negotiate the [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q All right. And, again, these are kind of, you
10 know, broad questions based on what I'm hearing from
11 you, but if the difference between 2008 and 2010, you
12 know, is north of [REDACTED] and [REDACTED] of that is
13 escalation, it's fair to assume that the costs solely
14 related to [REDACTED]
15 documents is in excess of over a billion dollars a year,
16 correct?

17 MR. WALLS: Objection. Mischaracterization.
18 Assumes facts not in evidence.

19 THE WITNESS: Sir, I don't think that's an
20 accurate representation. What I've said here is,
21 per our cost estimate, we estimate approximately
22 [REDACTED] in [REDACTED]
23 [REDACTED] that were based on a 2016
24 in-service.

25 So if you want to try to get it at what's that

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1 forward and the best path forward for both our customers
2 and the company.

3 Q Okay. Thank you. In conversation previously,
4 I believe with Mr. Rehwinkel, you were being asked
5 questions about the delta or differential, and the
6 incremental costs between a decision to cancel now as
7 compared to a decision to cancel after you obtained the
8 COL.

9 And I read your testimony to say that that
10 number is -- the incremental number is a [REDACTED],
11 but I heard you answer a question that he posed with a
12 [REDACTED]. I was hoping that you could clarify
13 which number is the incremental difference.

14 A I've got the answer, but I want to go to my
15 rebuttal testimony, because that's the easiest way to
16 describe it.

17 If you go to my rebuttal testimony, Exhibit
18 JE-6, I think when Mr. Rehwinkel and I were discussing
19 this previously, I addressed the fact that to analyze a
20 scenario or, as we describe in this attachment, an
21 option that would consider project cancellation after
22 receipt of the COLA, you would have to take the
23 option -- or continuation option, a long-term partial
24 suspension path that we have chosen, and the costs
25 incurred between now and receipt of the COLA, and then

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1 add to them the cancellation costs that we had evaluated
2 as part of the cancelation option that we assessed back
3 in February. That's the basis of the [REDACTED]-dollar
4 number.

5 If you go to my actual rebuttal testimony, we
6 then take the difference between the total cancellation
7 costs, as they might exist in 2013, versus the
8 cancellation option today that was evaluated.

9 And let me just find that in my testimony. On
10 Page 20, we talk about -- it begins at line 2, "The
11 difference between cancellation of the project after
12 obtaining the COL and cancellation in 2010 is, at most,
13 an estimated [REDACTED]."

14 So that is comparing the option as described in
15 JE-6 as option four and the cancellation today option,
16 and that's where that difference of [REDACTED] comes from.

17 Q Okay. Thank you.

18 Okay. You were asked a lot of questions about
19 cancellation, and I followed, I believe, that -- the
20 discussion, but I guess you would agree, to the extent
21 that cancellation was going to be done, it would be
22 better to cancel it today as compared to canceling the
23 project at some future point in time, correct?

24 A Yes, if your question is it better to cancel a
25 project of this scope now as opposed to cancel it at

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1 negotiations and been involved in them, correct?

2 A Yes, sir.

3 Q Would you just give me, from your perspective,
4 the -- I understand the benefits that Progress received
5 in these negotiations; you've laid them out in terms of
6 keeping the benefits of some of the [REDACTED] [REDACTED]

7 What -- again, negotiations are always about
8 give and take. What did the Shaw-Westinghouse people
9 receive out of the negotiations, from your perspective?

10 A Well, sir, I think that's a very -- pretty
11 straightforward issue, and when we began the
12 negotiations, we made it very clear to the consortium
13 that our alternative was [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q Were you involved in the negotiations of the
5 original contract that was signed, I think, on
6 December 31st -- I forget the year.

7 A 2008, but, no, sir, I was not involved in the
8 initial negotiations.

9 Q So the chief -- the chief benefit for the
10 consortium was [REDACTED]
11 [REDACTED]

12 A I don't think I would characterize it just that
13 simple. The chief benefit for the consortium was to be
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q You use the term "status package" for
19 engineering work. What's a "status package"?

20 A Could you show me where I use that term, just
21 to be sure I'm clear.

22 Q Page 5.

23 A I'm not finding where it talks about status
24 package, sir. Are you in Page 5 of my direct or --

25 Q Yeah, that's what I had on my notes. I may not

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1 have had that -- I may have misquoted the --

2 A Yeah, I'm not sure what the reference is to. I
3 mean, there are engineering packages that are part of
4 the process, and one of the things that we did do in
5 conjunction with the long-term partial suspension was to
6 insure that those engineering packages were completed to
7 a logical stopping point, and then placed in a condition
8 that we'll be able to pick them up with no loss of
9 efficiency to resume work. I don't know if that's what
10 you were talking about, though.

11 Q Okay. That's on line 12 of Page 6. I'm sorry.

12 A Okay. Yes, and that's what I was just
13 describing. We -- you know, what we did during the
14 partial suspension was issue specific change orders for
15 work that we wanted to continue.

16 One of those was, there was a series of
17 engineering work that had begun, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 We did not -- and it was [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 Q Mr. Rehwinkel asked you some questions about
4 the Operational Readiness Group.

5 A Yes, sir.

6 Q What is the name of the group that has been
7 formed by all of the companies that are developing
8 nuclear projects at this point?

9 A If your question is what is the name of the
10 group that is performing AP1000 projects, that's known
11 as the AP1000 Owners Group, or the acronym is APOG,
12 A-P-O-G. I'm not sure that's what you're talking about.
13 There are other groups.

14 Q I'm confused with the Readiness Group. But the
15 Owners Group, what is the purpose of that group?

16 A The AP1000 Owners Group was formed to take
17 advantage of the fact that several utilities were
18 pursuing AP1000 projects, and we recognized that there
19 was benefit in not repeating certain aspects of
20 development, work specific, to things like operator
21 training programs, operator training, various
22 engineering programs associated with the construction,
23 operation and maintenance of an AP1000 plant,
24 consolidated activities around licensing amendments,
25 construction oversight.

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1 that would have equal applicability to all of the
2 projects that are being planned and moving forward?

3 A Yes, but let me explain. The -- because
4 there's a difference here between what's done under the
5 scope of the AP1000 Owners Group, if you're still
6 referring to that.

7 Engineering work that is being done to finalize
8 the design of the AP1000, that is overseen by a group
9 known as New Start, which was formed by all the reactor
10 builders with partnership of the Department of Energy,
11 to fund the activities necessary to get to the first
12 reference COLA, and to get that initial AP1000, as well
13 as some other reactor technologies, initial
14 certifications complete.

15 So engineering work, in general, is being paid
16 for through the New Start effort, and is also part for
17 those entities that have signed an engineering and
18 procurement contract specific for the AP1000, [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED]

21 I don't know if that gets at what you were
22 asking or not; I apologize if I did not.

23 Q I think that helps. Is Florida Power and Light
24 an investor of New Start, do you know?

25 A Yes, they are.

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1 a different level of scrutiny to the project. I think
2 it is our responsibility, and I think the company's
3 opinion, that is our responsibility to do that type of
4 analysis on a continuing basis, and that's exactly what
5 we do.

6 Q Why was -- why did you attach significance to
7 the ability to achieve [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] after receipt of the
9 COL?

10 A Could you say that question again, sir? I
11 didn't catch the first part of it.

12 Q Why -- why was it important to you, you being
13 the company, to be able to [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] after receipt of the
15 COL?

16 A For two reasons, the first of which is
17 specifically to why did we [REDACTED] [REDACTED] [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], of note, [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 We were adamant and successful in negotiating,

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q And it's also true that that [REDACTED] gives
16 you additional time to evaluate the project; isn't that
17 correct?

18 A The -- well, yes, it gives you additional time,
19 but I think you have to keep that in context of we'll
20 continue to evaluate the project on an ongoing basis,
21 and continue to evaluate the feasibility and the benefit
22 of the project moving forward through the duration of
23 the partial suspension.

24 Certainly, that [REDACTED]
25 provides time to continue to evaluate, but it's really

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1 in the context of that will be the period when we would
2 complete the negotiations associated with the Notice to
3 Resume.

4 Q The -- you talk about the additional [REDACTED]
5 on Page 32, line 14.

6 A Okay.

7 Q And the sentence says, quote, this provides the
8 company additional time to evaluate the status of the
9 project after the COL is obtained, [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] Do you see that?

12 A Yes, sir.

13 Q Okay. So I was reading this as saying --
14 saying, in effect, well, this is important because --
15 because we'll have some time we can possibly catch our
16 breath. We don't have to make a decision immediately
17 whether to go forward with the project. That's fair,
18 isn't it?

19 A Yes, sir, that's fair, but I would clarify the
20 real focus of this statement and the context here, is,
21 you know, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] the extended partial
23 suspension.

24 We wanted to [REDACTED] [REDACTED] [REDACTED] onto the
25 consortium, for getting us to that date rather than

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1 being [REDACTED], and we also
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] Notice to
5 Resume.

6 It's certainly also, as you indicated, and I
7 would agree, provides time for continued evaluation, but
8 we will continue to do that during the remainder of the
9 partial suspension.

10 Q All right. And I understand the answer you
11 give me to say, well, it also gives us time to negotiate
12 other things.

13 I guess that helps you. That's not necessarily
14 referenced in your testimony as I see it, but -- but you
15 would agree that that's a benefit to the company?

16 A I guess I don't understand what you mean by
17 "negotiate other things."

18 Q In response to a previous question, you
19 indicated that the [REDACTED]
20 [REDACTED] allowed you to negotiate other
21 components of the construction, maybe benchmarks and
22 construction schedules, things of that nature; is that
23 right?

24 A No, that's not exactly right. What I said --
25 and if I wasn't clear, I apologize -- what I said was we

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1 will need to renegotiate the schedule for the project,
2 and that includes things like what will be the actual
3 construction plan.

4 We will need to negotiate the [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] and we will need to do that in order
7 to be able to issue a Notice to Resume.

8 We did not, in the negotiation of the extended
9 partial suspension, [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

13 Q There was a bit of a discussion yesterday with
14 Mr. Lyash about Class 4 and Class 5 estimates. You use
15 the term "Class 4 and Class 5 estimates" on Page 35 of
16 your testimony, line 12.

17 A Yes, sir.

18 Q Do you have understandings of the difference
19 between the various level of classes, I guess, in terms
20 of order of magnitude?

21 A Yes, sir, but let me clarify. I do have
22 understanding of the basic principles of the
23 classification estimates as outlined in the reference,
24 Association for the Advancement of Cost of Engineering,
25 that we discussed this morning.

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1 Q What's your understanding?

2 A What do you mean by that, sir, what's my
3 understanding?

4 Q Well, what's the difference between a Class 4
5 and Class 5 estimate? Do you have an understanding of
6 that?

7 A Yes, sir.

8 Q What is it?

9 A A -- Class 4 and Class 5 estimates basically
10 were referred to the band of -- or range associated with
11 an estimate. They are consistent with and applied to
12 the various stages of a project.

13 So in this case -- and maybe if I can assume
14 where you're going with this and get right to the
15 point -- the real question in my mind -- or in our mind
16 was, what is a reasonable classification of the estimate
17 we completed when we went through the exercise described
18 earlier of doing a bottoms-up estimate on each of the
19 line items associated with the schedule and the
20 materials associated with the EPC contract.

21 There were certain things in that effort that
22 were very clear and were [REDACTED] There were other things
23 in that effort that were [REDACTED] [REDACTED] [REDACTED]
24 that were not -- that were not certain, and it had to be
25 estimated based on our best judgment or the advice of

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1 outside organizations that are experts in those types of
2 assessments.

3 At the end of the day, we completed that
4 line-by-line development and developed an estimate, that
5 I described before, had a band of minus -- about minus
6 [REDACTED] percent to plus [REDACTED] percent.

7 And our evaluation of that is we looked, in an
8 aggregate, across the various line elements, was that it
9 most closely approximated a Class 4 to Class 5 type
10 estimate, because our SMC was familiar with that
11 classification for this stage of the project, and
12 recognized that we were not in a position to move
13 forward and define a single-point estimate for project
14 costs.

15 We did not think that would be reasonable and
16 prudent, so we provided this band cost range to our
17 feasibility analyst and our resource planning group, to
18 use as part of their feasibility analysis moving forward
19 in their evaluation, that ultimately led us to conclude
20 that the project remained feasible, even based on that
21 new cost -- well, not even, but based on that new cost
22 estimate.

23 Q You're familiar with a Phase 1 Environmental
24 and a Phase 2 Environmental?

25 A In terms of COL scheduling?

1 project through cancellation, was to work with the
2 consortium to see whether we could negotiate a long-term
3 partial suspension at no additional cost to the
4 customer, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 So the very action of putting that long-term
7 partial suspension in place was focused at being able to
8 recognize the fact that you don't know exactly which way
9 all these risks were going to move, and put us in a
10 position to be best situated to move forward with the
11 project, and react and respond to those risks as they
12 develop.

13 Q And in your opinion, [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]

15 A [REDACTED] [REDACTED] [REDACTED]

16 Q Now, I think at one point as well he was asking
17 you about the option four that was identified in your
18 rebuttal -- it was under JE-6 -- and the question was
19 whether we -- meaning OBC -- could calculate it, and I
20 believe you had indicated no, but the information was
21 embedded in the analysis. Do you recall that?

22 A Yes, I do.

23 Q Okay. What I wanted to do was show you from
24 Mr. Lyash's JE-6 -- or, I'm sorry -- JL-6, the
25 February 15th presentation.

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1 A Uh-huh.

2 Q And if you look at that with your JE-6 option
3 four.

4 A Yes.

5 Q And if we look at the option three, project
6 continuation with EPC Amendment, the [REDACTED] that's
7 identified here in JE-6, correct?

8 MR. REHWINKEL: What page were you on? The
9 February 15?

10 MR. WALLS: Yes, the February 15, Page 2.

11 MR. REHWINKEL: Okay. Thank you.

12 THE WITNESS: Yes, that is correct. The top --
13 the top portion of JE-6, where it talks about option
14 three, continue with partial suspension, that is
15 basically a lift in pace from the February 15th
16 presentation on Page 22.

17 BY MR. WALLS:

18 Q Okay. And then on Page 19 of the February 15
19 presentation of JL-6, option two, project cancellation,
20 it had [REDACTED], right?

21 A That's correct.

22 Q If you add [REDACTED] and [REDACTED] do you get [REDACTED] -- I'm
23 sorry -- [REDACTED]

24 A That's correct.

25 Q All right. And if we look at the option two on

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1 Page 19, compared to option three on Page 23, they both
2 address the LL need disposition cost, right? They were
3 line items in both areas, right?

4 A That's correct.

5 Q So if you pursued option three, you obviously
6 wouldn't have spent double the amounts on -- for that
7 line item, right?

8 A That's correct.

9 Q So -- and, in fact, that's what you reflect
10 here, the [REDACTED] [REDACTED] in your incremental costs to
11 option three to get to option four, is the difference
12 between --

13 A It's the [REDACTED] minus the [REDACTED] that's already
14 included up in the top under the option three, so you
15 don't want to count that twice, yes.

16 Q And so if we take these two numbers, [REDACTED] plus
17 [REDACTED] in options three and two and add them together, we
18 get [REDACTED] and if we subtract the [REDACTED] [REDACTED] we get
19 [REDACTED], correct?

20 A That's correct.

21 Q And what is the number you came up with in
22 option four?

23 A [REDACTED], which is basically around in that area.
24 And if I can, in response to that question, I think, as
25 you described what he asked me, is could you calculate

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1 Q Okay. And to move on to one final subject, you
2 were asked about Amendment 3 in the Notice to Proceed
3 and the Notice to Resume, various questions by
4 Mr. Rehwinkel about that. Do recall that?

5 A Yes, I do.

6 Q And one thing I want to be clear and ask you
7 is, does that mean that there are no activities going on
8 the project right now, the fact that you have to issue a
9 Notice to Resume under that Amendment 3?

10 A No, it does not. There are, in fact, several
11 activities ongoing, which have been directed by the --
12 by Progress Energy as the owner to continue to preserve
13 the schedule and the path of the project.

14 Q Okay. And do you consider you have an active
15 project?

16 A I most certainly do.

17 MR. WALLS: No further questions.

18 MR. REHWINKEL: I have one further recross.

19 **REDIRECT EXAMINATION**

20 BY MR. REHWINKEL:

21 Q Mr. Elnitsky, Mr. Walls referred you to JE-6
22 and Mr. Lyash's February 15th document, and got you
23 close to calculating the [REDACTED] [REDACTED] number in the
24 JE-6. Do you recall that?

25 A Yes, sir.

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1 suspension cancel post-COLA." Do you see that?

2 A Yes, sir.

3 Q The [REDACTED] [REDACTED] [REDACTED], is that an item that
4 is -- that we could determine -- from the documents that
5 Mr. Walls asked you about, is that the -- the -- is
6 the -- well, on Page 19 of the February 15th
7 presentation, is the [REDACTED] [REDACTED] in column 2010, is that
8 the sum of the [REDACTED] [REDACTED] [REDACTED] that are underneath
9 option four?

10 A Let me just look. On Page 19 of JL-6, the
11 cancellation cost and fees that are referenced there in
12 the February 15th presentation are specific to the
13 agreement [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 MR. REHWINKEL: Okay. That's all the questions
18 I have.

19 MR. WALLS: No further questions.

20 We'll read.

21 MR. REHWINKEL: All right. Thank you, Mr.
22 Elnitsky.

23 Is there anyone on the phone still?

24 MR. MOYLE: Yes.

25 MR. REHWINKEL: Are you going to order a copy?