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NUCLEAR REGULATORY COMMISSION

Title: Florida Power and Light Company
Turkey Point Units 6 and 7

Docket Number: 52-040-COL and 52-041-COL

ASLBP Number 10-903-02-COL-BD01

Location: teleconference

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of:	:	Docket No.
FLORIDA POWER &	:	52-040-COL
LIGHT COMPANY	:	52-041-COL
(Turkey Point	:	ASLBP No.
Units 6 and 7)	:	10-903-02-COL-BD01

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Tuesday, June 20, 2017

Teleconference

BEFORE:

E. ROY HAWKINS, Chair

DR. MICHAEL F. KENNEDY, Administrative Judge

DR. WILLIAM C. BURNETT, Administrative Judge

1 APPEARANCES:

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4 Pinecrest, and the City of South Miami (Petitioners)

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P R O C E E D I N G S

(2:02 p.m.)

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3 JUDGE HAWKINS: All right, good afternoon.
4 We're conducting an oral argument in a case entitled
5 Florida Power and Light Company Turkey Point Units 6
6 and 7, Docket Nos. 52-040-COL and 52-041-COL.

7 My name is Roy Hawkins, I'm chairman of
8 this licensing board. I'm joined at NRC Headquarters
9 in Rockville, Maryland by Judge Mike Kennedy, who has
10 a doctorate in nuclear engineering. Our third board
11 member is Judge Bill Barnett, who has a doctorate in
12 environmental science, and Judge Barnett is
13 participating from his office in Florida.

14 This argument was scheduled in response to
15 an April 18 petition to intervene and file a new
16 contention from the City of Miami, the City of South
17 Miami, and the Village of Pinecrest. We'll be hearing
18 arguments from the parties on the admissibility of the
19 newly filed contention.

20 And the newly filed contention reads as
21 follows: quote, The final safety evaluation report is
22 deficient in concluding that Florida Power and Light
23 Company has demonstrated that it possesses or has
24 reasonable assurance of obtaining the funds necessary
25 to cover estimated construction costs and related fuel

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1 cycle costs, and FPL has failed to indicate sources of
2 funds to cover these costs, unquote.

3 Would counsel for the parties please
4 introduce themselves, starting with petitioners?

5 MS. McNULTY: This is Kerri McNulty for
6 the City of Miami.

7 MR. ALBAN: This is Xavier Alban for the
8 City of Miami.

9 JUDGE HAWKINS: Good afternoon, and for
10 purposes of this argument, you're representing not
11 only the City of Miami, but also the City of South
12 Miami and the Village of Pinecrest, is that correct?

13 MS. McNULTY: That is correct.

14 JUDGE HAWKINS: Thank you. Counsel for
15 FPL.

16 MR. LEPRE: Yes, this is Mike Lepre with
17 the law firm of Pillsbury, Winthrop, Shaw, Pittman for
18 FPL.

19 JUDGE HAWKINS: Good afternoon, Mr. Lepre.

20 MR. LEPRE: Afternoon.

21 JUDGE HAWKINS: NRC staff.

22 MS. SEGARNICK: This is Maxine Segarnick
23 as counsel for NRC staff.

24 JUDGE HAWKINS: Good afternoon again. As
25 the Board indicated in its order of June 8, 2017,

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1 petitioners have been allotted 60 minutes of argument
2 time and may reserve up to 20 minutes of time for
3 rebuttal.

4 FPL and the NRC staff each have been
5 allotted 30 minutes of argument time. We'll be
6 hearing first from petitioners. Ms. McNulty, how do
7 you and Mr. Alban plan to share your time, and do you
8 wish to reserve any time for rebuttal?

9 MS. McNULTY: We would like to reserve 20
10 minutes for rebuttal. Mr. Alban and I have split up
11 the argument by topic, so we were, I didn't know if
12 you guys wanted us to give introductions or not. If
13 you wanted us to give an introduction, I was going to
14 give an introduction.

15 And then we were going to respond to your
16 questions based on who has kind of just, who would
17 address the topic, if that is okay with your honor.

18 JUDGE HAWKINS: If that's how you want to
19 proceed, that's fine. What will your introduction
20 consist of, and about how long do you anticipate it'll
21 be?

22 MS. McNULTY: It's not very long, but if
23 you did not want an introduction, I do not need to
24 give one.

25 JUDGE HAWKINS: I'll leave that to you.

1 MS. McNULTY: It's fine. If you just
2 wanted us to address our questions, I'm perfectly okay
3 with that.

4 JUDGE HAWKINS: Why don't you proceed with
5 your introduction, and we will feel free to interrupt
6 any time the spirit moves us.

7 MS. McNULTY: I'm perfectly comfortable
8 with that. I'm used to appellate oral arguments, so.

9 JUDGE HAWKINS: All right, Ms. McNulty,
10 you may proceed.

11 MS. McNULTY: Okay, so the city's
12 contention is basically about whether or not FPL has
13 the financial requirements, is still sufficient based
14 on what they represented in their application. The
15 financial requirement is set forth in the code, that
16 they must give reasonable assurances of obtaining the
17 funds necessary to cover the cost of construction.

18 FPL represented in their application that
19 the cost of construction would be covered by advanced
20 nuclear cost recovery from the Public Service
21 Commission. They represented that, it's not something
22 that we've made up, they have been collecting under
23 that process all along. So far they've collected to
24 the tune something close to \$280 million.

25 They must establish before the Public

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1 Service Commission that a project is feasible, and
2 that the cost estimates that they have for the project
3 are reasonable. They have been relying on the
4 progress and cost of the other AP1000 reactors in
5 Georgia and South Carolina as benchmarks to prove that
6 the project is feasible, and that their cost estimates
7 are reasonable.

8 After the Westinghouse bankruptcy, and
9 just prior to that with the \$6 billion losses that
10 were revealed for those other projects, the
11 feasibility of the reactors that they're planning to
12 build and the cost estimates that they've been using
13 are essentially called into question.

14 FPL will not be obtaining advanced nuclear
15 cost recovery money anytime in the near future, per
16 their own filings with the PSC. Therefore, the
17 representation in their application as to how they're
18 going to cover the cost of construction is no longer
19 a reasonable assurance of such.

20 The city is of the opinion that this board
21 should do one of two things. If FPL would like to
22 continue relying on the representation in its
23 application that it's going to cover the cost of
24 construction through advanced nuclear cost recovery,
25 then the Board should take a similar pause to the

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1 pause that's being taken in those proceedings before
2 the state agency. So -- yes?

3 JUDGE HAWKINS: Where do you make that
4 argument in your opening petition?

5 MS. McNULTY: We didn't make it in our
6 opening petition. And I did that --

7 JUDGE HAWKINS: -- for us to consider it
8 at this point?

9 MS. McNULTY: I don't think so. I think
10 that basically it just makes sense in terms of what,
11 it just makes sense. But if you think that asking for
12 that relief is inappropriate at this point, then I
13 would defer to you. But I think that either way, the
14 representation in their application at this point
15 needs to be reexamined in terms of what relief you
16 think is appropriate.

17 If FPL wants to continue to rely on
18 advanced nuclear cost recovery, there's no way for
19 them to do so right now with the way the PSC
20 proceedings are going forward. So it will not be
21 something that they -- they will not be able to give
22 reasonable assurances of getting money from that
23 agency until they go back and actually get money from
24 them, until they file petition where they're asking
25 for money.

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1 So I don't know how they would be able to
2 do that until the pause is over. So I guess that's
3 kind of what we're saying on that point. I don't know
4 logistically how it would happen otherwise.

5 And the other thing is that if they wanted
6 to come forward and give reasonable assurances that
7 they're going to cover the cost of construction
8 another way, then they need to do so before the Board.
9 But they haven't done that in their application.

10 So then they need to be revisited in a way
11 that they come forward and say, This is the way we're
12 going to cover the cost, and show that to NRC staff
13 for NRC staff to evaluate.

14 JUDGE HAWKINS: Ms. McNulty, Judge Hawkins
15 again. Can you point to anywhere in the regulations
16 where FPL is required to show reasonable assurance it
17 will recover costs?

18 MS. McNULTY: I believe that is at 10 CFR
19 Section 50.33. It says, The applicant must
20 demonstrate that the applicant possesses or has
21 reasonable assurance of obtaining the funds necessary
22 to cover estimated construction costs and related dual
23 cycle costs.

24 JUDGE HAWKINS: Now, it seems to me
25 there's -- again Judge Hawkins here -- a distinction

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1 between having resources to cover the construction
2 costs versus recovering those construction costs.

3 Recovery of the construction costs seems
4 to go to the economic feasibility of the enterprise
5 itself, the entire project. Whereas, the regulations
6 are concerned simply with the resources necessary for
7 the initial construction costs themselves.

8 MS. McNULTY: Well, the FSER said the FPL
9 expects to recover the cost of constructing the
10 facility in accordance with Florida Statute 366.93.
11 So that was what was actually represented in the FSER.
12 But if you're saying that that was not something that
13 was necessary to be put in there, then I guess --

14 JUDGE HAWKINS: I think that's what FPL
15 and the NRC staff are saying. Don't you understand
16 them to be saying that, Ms. McNulty?

17 MS. McNULTY: Yes, yes, the NRC staff and
18 FPL said that. That was the representation in the
19 application and in the FSER. But you're saying that
20 that wasn't required by the code?

21 JUDGE HAWKINS: Well, I'm asking you to
22 show me where it's required.

23 MS. McNULTY: I understand. I guess my
24 understanding was the reason that they represented
25 that in the application was that it was required per

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1 that section of the code.

2 JUDGE HAWKINS: And are you suggesting
3 that your understanding may be incorrect?

4 MS. McNULTY: I guess I'm suggesting that
5 you're suggesting that.

6 JUDGE HAWKINS: Well, I'm not at this
7 point, but I am saying that both FPL and the NRC staff
8 take that position.

9 MS. McNULTY: I think, it's my position
10 that that section requires that they have to show that
11 they can cover the costs. And otherwise, why would
12 the staff analysis in the FSER and FPL's application
13 use that language? I don't think that they're in the
14 business of providing information or trying to prove
15 things that they don't have to prove.

16 JUDGE HAWKINS: Well, I agree with you
17 that they have to cover the cost. But again, don't
18 you see a distinction between covering the outlay for
19 construction versus recovering the outlay for
20 construction?

21 MS. McNULTY: I --

22 MR. ALBAN: If I may, your honor, this
23 Xavier Alban with the City of Miami, I can see
24 somewhat of a distinction there, but I think the issue
25 here is that there's supposed to be a reasonable

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1 assurance of financially covering it. One of their --
2 while recovering's different from covering, I believe
3 what they had or what FPL had asserted and what the
4 NRC staff said and accepted was that they would cover
5 that cost through cost recovery.

6 So basically what they're saying is that
7 their financial assurance, or reasonable assurance
8 that they would obtain the cost, would be through
9 their ratepayers.

10 They would do that through the nuclear
11 cost recovery clause, and then they have not shown
12 that they would get it any other way, or they have in
13 the general sense that we won't receive all these
14 funds or we have financial assurances elsewhere. But
15 what they're saying is, We will recover all our costs
16 through our ratepayers.

17 The only mechanism they have to do that is
18 through the nuclear cost recovery clause or FS 366.93.
19 And that's basically what they have done so far,
20 collected \$280 million. But they haven't shown that
21 they would do it any other way. That is how they have
22 demonstrated they will build these things, that's how
23 they demonstrated to move forward with these things.

24 And they have not shown any other way that
25 they would actually recover these costs, or that

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1 they've actually covered these costs without using
2 nuclear cost recovery.

3 JUDGE HAWKINS: So Judge Hawkins here,
4 just to be clear in my own mind, do you construe the
5 word of covering costs as including the recovery of
6 the costs?

7 MR. ALBAN: I believe so, because as I
8 mentioned, they wanted to cover the costs through
9 their ratepayers. They want to transfer those costs
10 through the ratepayers, and the only way you can do
11 that is through the nuclear cost recovery clause and
12 in front of the Florida Public Service Commission.

13 And in doing so then, the way they do that
14 is through cost recovery. So yes, I do, what I am
15 saying is that they tried to cover their costs through
16 a mechanism, through a statutory regulatory mechanism
17 called nuclear cost recovery.

18 JUDGE HAWKINS: If this board is
19 persuaded, if your interpretation is incorrect and
20 that there is material distinction between covering
21 costs and recovery of costs, is that the end of your
22 case?

23 MR. ALBAN: I don't believe so, because as
24 I have noted, the total cost so far that they have
25 expended in constructing or in moving forward with

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1 planning and licensing is \$280 million. That's how
2 much they've expended. They have recovered that full
3 amount through nuclear cost recovery.

4 And now, given the way the proceedings are
5 going, where FPL has not filed feasibility studies,
6 has not shown -- and given also with the bankruptcy.
7 So basically what happened with the bankruptcy was
8 that they have now chosen, we're going to take a long
9 pause. We're going to take a four-year pause in this
10 project.

11 But we're not going to file any
12 feasibility studies. What they're asking as well now
13 is that they're going to defer even asking or going
14 before the Public Service Commission forgetting
15 anything -- forget costs for four years, because they
16 don't, it no longer requires them to show the
17 feasibility of this project and their ability to
18 recover any costs expended here.

19 And as such, they have changed their
20 position completely. They have changed their
21 position, as in we will defer recovering any costs, to
22 now just we won't even recover any costs. We're just
23 going to move forward and hopefully in four years, we
24 can show this project is feasible and we'll be able to
25 recover costs.

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1 If they were financially, or if they
2 actually provided for a reasonable assurance that
3 they'd be financially qualified to move forward, they
4 wouldn't even need a pause. They would be able to get
5 those funds that they're saying they can get from
6 NextEra Equity, from NextEra Bonds, anything else
7 referenced there. They'd be able to do that and
8 continue moving forward with the project.

9 However, here, they are just simply
10 saying, No, we're just stopping even to move forward
11 with anything, we're going to stop everything. And
12 the one place where we have been receiving all our
13 funds, which is through ratepayer rates as the nuclear
14 cost recovery, we are done, and we're not going to
15 move forward any more.

16 JUDGE KENNEDY: Mr. Alban, this is Judge
17 Kennedy. The regs are pretty clear that they're
18 asking the applicant to provide information on their
19 sources of funding to construct and provide the first
20 core fuel loading. The application specifies internal
21 funding plus external funding, which appears to be
22 debt and capital equity.

23 I'm trying to reconcile that information
24 in the application with your view that the cost
25 recovery is a critical component of financial

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1 qualifications.

2 Are you suggesting that these external
3 sources of funding are only providing sufficient
4 monies to sort of pay as you go, and then cost
5 recovery'll keep them whole? So that they're not
6 looking, are they not looking for funding for the
7 entire project? Is that your view of what financial
8 qualification and assurance is all about?

9 The regs seem to be looking to provide the
10 sources of funding for the project. And what the
11 application has listed is internal and external
12 funding. It doesn't list, under sources of funding,
13 cost recovery.

14 I agree it's in the section on financial
15 qualifications, and we can get to that later. But in
16 terms of funding the project, the only thing that's
17 listed is internal and external funding. And then
18 they go on to specify what sources of external funding
19 there is. How would I reconcile that view with yours
20 in the importance of cost recovery?

21 MR. ALBAN: In the application as well,
22 FPL has stated that, and I quote from their
23 application, FPL will recover the cost of constructing
24 the facility in accordance with Florida Statute
25 3666.93, cost recovery for siting, design, licensing,

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1 and construction of nuclear and integrated
2 gasification combined cycle power plants, reference
3 one. And Florida Administrative Code Rule 25-6.0423,
4 nuclear or integrated gasification of combined cycle
5 power plant cost recovery.

6 The sources of long-term construction
7 funding for Units 6 and 7 will be a mixture of
8 internally generated cash and external funding. The
9 external funding will come from a mix of debts, and
10 that could be capital. FPL currently uses First
11 Mortgage bonds and equity contribution from NextEra
12 Energy and to finance long-term utility assets.

13 And then in response to that, and that is
14 a quote from all put together. That was all one
15 statement. And then in response to that, that's where
16 the FSE -- where the NRC staff looked at it, and the
17 FSER, they stated, According to the COR application,
18 FPL expects to recover the costs of constructing the
19 facility in accordance with the statutory scheme.

20 It's clear that that's how they came
21 forward. They came forward saying, Yes, we will get
22 it from external or internally generated cash funds.
23 But they also say before you're getting to that point,
24 that they would be using nuclear cost recovery dollars
25 to fund this project. The NRC staff acknowledged

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1 that, including that in its FSER.

2 And now it seems that FPL's kind of not
3 using that money. And then as we've been trying to
4 explain, in the Florida Public Service Commission, the
5 FPL shows how much it's, they've expended on this
6 project. And it's been clear that they've expended
7 \$280 million. And every single year, they have
8 recovered all these costs.

9 So it's clear this their mechanism that
10 they have used to fund this project, and that they
11 have shown that this is where their reasonable
12 assurance will come from to fund this project.

13 MS. McNULTY: But even if you were going
14 to say they're using internal and external sources of
15 funding, to the extent they're using the external
16 sources of funding, the bankruptcy would impact
17 whether they could get funding.

18 And the fact that the current reactors
19 that are being built are \$6 billion over budget would
20 impact whether they're going to be able to get
21 external funding to fund reactors if they don't know
22 how much they're going to cost. It's a big question
23 mark.

24 JUDGE KENNEDY: Well, they've provided a
25 cost estimate ranging from 12 billion to 20 billion.

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1 And as far as I can tell looking at the record,
2 there's nothing to exceed those estimates.

3 MS. McNULTY: That's because they haven't
4 put in a new estimate since the \$6 billion over budget
5 amount was revealed by Westinghouse.

6 JUDGE KENNEDY: Do you have anything in
7 the record that would point us to something that would
8 explain that we're going to exceed 20 billion?

9 MS. McNULTY: No, that's the point. They
10 won't file a new feasibility study because the
11 reactors came in so far over budget with that release
12 of information that they're now saying to the PSC,
13 Wait, we're not going to file anything. We're going
14 to take a pause.

15 JUDGE KENNEDY: But yet there's nothing in
16 the regs talking about financial qualifications that
17 speaks to the feasibility of the project.

18 MS. McNULTY: I guess that's where it's
19 getting a little muddled. It's, when you say
20 feasibility of the project, the feasibility study is
21 for them to say, This project is feasible and our cost
22 estimate is reasonable. And that's the main thing
23 that the PSC is looking at.

24 Because what they have to prove in that
25 feasibility study, part of what they have to prove is

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1 they have to do a comparison to a traditional, like
2 for example, a gas cycle reactor. And they have to
3 prove that building the nuclear reactor is reasonable
4 because it would be equal to or cost less in the long
5 run to operate and build that reactor.

6 Right now, their last few feasibility
7 studies were having it come in on the high end to
8 build the nuclear reactors, and so they haven't filed
9 a new feasibility study with the, once the way-over-
10 budget, \$6 billion overage came out on those other
11 reactors. Because those are, their cost estimates
12 were coming off of the costs of those reactors.

13 And so it's likely that if they filed a
14 feasibility study, it would show that it wouldn't cost
15 equal or less to build those reactors any more to a
16 more a traditional energy source.

17 JUDGE KENNEDY: But let's go back to what
18 Mr. Alban quoted from the application. This is Judge
19 Kennedy again. To me, he accurately quoted what's in
20 the application. To me there's something significant
21 about the fact that one part of it is in one paragraph
22 and another part is in another paragraph.

23 And the first part, which is where the
24 feasibility of the project could come in, is under
25 cost, what I would call cost recovery. And the other

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1 part, which clearly starts as the sources of long-term
2 construction funding, is really trying to, in my mind,
3 it's trying to speak to what the regulations are
4 asking for, is where are you getting the money to fund
5 this project.

6 And when the staff then goes into SER and
7 again, in that case, it's all in one paragraph. But
8 the language in the FSER says, FPL expects to finance
9 this project through a mixture of internally generated
10 cash and external funding.

11 So it seems to me that the one paragraph
12 in the application and the sentence in the FSER that
13 the staff is trying to draw as a conclusion speaks to
14 sources of funding, which is exactly what the regs in
15 my mind were asking the applicant to provide in their
16 application.

17 I don't know how much funding, but it
18 says, Sources of funding to finance this project,
19 which to me, somehow has to tie into the cost of the
20 project, at least at the point where the staff made
21 its evaluation for the reasonable assurance that they
22 can get this funding.

23 I mean, I hear you on this cost recovery.
24 It is tied in here, at least in language. I like the
25 application in the sense that it puts it in separate

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1 paragraphs and tries to make them at least separate
2 thoughts, concepts, topics. When we come to the SER,
3 it starts to merge together.

4 But they certainly, the staff, certainly
5 outlines that FPL is looking to internal and external
6 sources of funding to finance the project. Not, you
7 know, the month-to-month cost. But they're looking to
8 finance the project. So that's where I keep getting
9 stuck behind this argument.

10 And I'm looking for sort of the petitioner
11 to try to help point the judges in the direction that
12 would get us off that. I'm mean, I'm hearing you, I
13 understand the Florida State Public Service Commission
14 and all those kinds of arguments.

15 I just am having trouble seeing the
16 relevance in the NRC's regulations. I mean, again,
17 we're talking about financial qualification and not
18 how you recover costs for the project. But with that,
19 I've interrupted you. Go forward. That's where I'm
20 coming from.

21 MS. McNULTY: No, I understand. I just
22 think that even if you were to take out the nuclear
23 cost recovery, and even if you were just to focus on
24 the mixture of internally generated cash and external
25 funding, that it says in the application that it's

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1 going to use bonds and equity contributions from
2 NextEra Energy to finance a long-term utility asset.

3 But the bankruptcy still calls these
4 sources of funding into question, because the ability
5 of FPL to obtain external funding will be greatly
6 diminished. There's a lot of uncertainty associated
7 with building an AP1000 reactor at this point. Right
8 now, they have no companies to construct the reactor.
9 There'd be unknown time frames. There's an unknown
10 cost overage.

11 Right now, the AP1000 reactors that are
12 being built in Georgia and South Carolina, they still
13 aren't even done. Right now, that \$6 billion overage
14 is just the overage as of right now. They still
15 aren't complete.

16 And then to the extent that they were
17 planning on relying on their parent company for
18 funding, I mean, they would need to get, the
19 shareholders would have to approve funding, given all
20 of those risks. And I don't, you know, I know it's
21 their parent company, so I guess it would be easier to
22 get it from them than from a private source of
23 external funding, so to speak.

24 But, you know, the company still isn't
25 going to want to, you know, necessarily risk putting

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1 billions and billions of extra dollars into a project,
2 even just to construct the reactor, where they don't
3 know how long it's going to take, how much money it's
4 going to be to build them.

5 And I think, I guess the point to be made
6 here is that, the question is, okay, even if at the
7 time they put in the application, and at the time that
8 the NRC staff assessed that sentence, We're going to
9 use a mixture of internal and external sources to fund
10 these reactors.

11 The question is, is that, the time they
12 made that assessment, is the financial landscape and
13 is the landscape for building and financing these
14 reactors, is it any different now than it was then?
15 And I think if the answer to that question is yes,
16 then this financial qualification requirement is a
17 rubber stamp.

18 Because there's no way the financial
19 landscape is the same right now as it was back when
20 they filed the application.

21 MS. McNULTY: Ms. McNulty, this is Judge
22 Kennedy again. It seems to me, and I can buy your
23 logic argument, so it's sort of a logical follow-on to
24 sort of what the news of the day is telling us. But
25 I struggle with what's in the record that really

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1 raises this to a genuine dispute.

2 I mean, I think we can all weave a tale
3 based on current events. The problem is, at least
4 what I see in the record, is very little factual
5 information that really draws into question FPL's
6 financial qualifications. And maybe if you could
7 speak to that a little bit.

8 I get the logical question. And I don't
9 know if anybody would disagree that that is something
10 that you could ponder. The problem I see is at this
11 point, we don't have, or I don't see in the record,
12 any hard evidence that would really generate a genuine
13 dispute here.

14 MS. McNULTY: I mean, the hard evidence is
15 that the other two reactors that are being built,
16 which is the same type of reactor that they've been
17 basing their cost estimates on, are \$6 billion over
18 budget.

19 JUDGE KENNEDY: But I would contend still
20 within the cost estimate that FPL has in their
21 application. And again, I think the other problem we
22 have here is that there's a significant time delay
23 between the ongoing project and when the Turkey Point
24 project will actually occur. And how that sorts out,
25 we can all speculate. I think it's just hard to get

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1 there from here.

2 MR. ALBAN: Well, I believe one of the
3 other things which I mentioned earlier, and I think we
4 have mentioned in our pleading, is that although they
5 say they have, whether they're financially qualified
6 to get it through, you know, a mixture of internally
7 generated cash and external construction funding, or
8 external funding.

9 They have not moved forward with that.
10 They, in the PSC, and if need be, we are happy to
11 amend if necessary, because this is an ongoing
12 situation. To be honest with you, we will find out
13 what the PSC wants to say by September. But what
14 we're trying to tell you is that with this bankruptcy,
15 FPL has basically shifted course.

16 They've halted with what they're doing.
17 They've halted moving forward to nuclear cost
18 recovery. And then instead of using what they claim
19 to have, which is internally generated cash and
20 external funding, to move forward with the project,
21 they're just saying, No, we're not going to do this
22 because we cannot get cost recovery.

23 So even assuming that they are -- you're
24 saying that they are financially qualified, or that
25 they're saying they are financially qualified.

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1 They're not using those funds that they're
2 claiming to have to be able to build these projects
3 within their application, or that the NRC staff has
4 stated show that they have financial assurances of
5 building or financing this project. They are not
6 using that right now.

7 And they have just basically halted
8 everything, and said, You know what, we're not going
9 to do this because we can't receive any money or any
10 recovery from the nuclear cost recovery clause,
11 because that's where they've been doing everything.
12 That's where they've been financing, and that's how
13 they have financed this.

14 JUDGE KENNEDY: I guess, Mr. Alban, I'm
15 getting confused again. I'm not sure what -- they
16 terminated the cost recovery? Or are you suggesting
17 they've terminated any access to external sources of
18 funding for the project?

19 MR. ALBAN: What I'm trying to explain is
20 that they have terminated any cost recovery. But also
21 they have halted any movement forward on the project.
22 They're just saying, you know, although they're saying
23 that we are financially qualified to move forward with
24 this project without cost recovery, they're saying,
25 No, we're stopping cost recovery and we're not even

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1 going to move forward with what is known as
2 preconstruction.

3 They're just saying, We're going to stop
4 completely, we're going to pause, and we're not going
5 to move forward with this project. And a lot of that
6 is done because of this bankruptcy. This bankruptcy
7 has probably, and has affected external funding
8 ability.

9 JUDGE KENNEDY: And there's something in
10 the record that shows that?

11 MS. McNULTY: The filing with the PSC.
12 Their petition before the PSC this year says that. It
13 says they're not going to do anything going forward,
14 that they're taking a pause.

15 JUDGE KENNEDY: I get that. But again,
16 we're either talking about cost recovery or a pause in
17 the process, neither of which speaks to financial
18 qualifications. Again, this is Judge Kennedy.

19 I guess that I keep getting, I'm trying to
20 make that distinction. And I think we're getting
21 muddled in Public Service Commission filings. Which
22 I understand, I mean, it's the place to be. But it
23 has a different perspective than financial
24 qualifications in NRC regulatory space. So I'm really
25 trying to keep that line bright. I'm looking for

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1 help.

2 MS. McNULTY: No, I understand. I guess
3 what we were trying to say is that, we're not trying
4 to say that it's -- what we're trying to say is that
5 the PSC petition shows that they're not moving forward
6 with the project. Not that they're not moving forward
7 to collect as the PSC.

8 JUDGE KENNEDY: Understand.

9 MS. McNULTY: And so what we were saying
10 is that even though they're saying, Oh, we're
11 qualified, we can get money this way and that way.
12 We're just trying to point out that they're not using
13 other sources of funding and moving forward with the
14 project. They're just saying they're not going to do
15 anything if they can't get the money from the PSC.

16 JUDGE HAWKINS: And this is Judge Hawkins.
17 You infer from that that they don't have sufficient
18 sources of external funding or internal funding to go
19 forward?

20 MS. McNULTY: Well, if they have it,
21 they're not using it.

22 MR. ALBAN: I mean, having demonstrated
23 that they're, that, well, I mean the fact that they
24 haven't used it can also, you know, lead to a
25 demonstration that they don't have it.

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1 JUDGE HAWKINS: It could, but we don't, I
2 don't see a link.

3 MS. McNULTY: I guess what we're saying
4 is, you're saying that because that because they had
5 a sentence in their application saying, We're going to
6 use internal and external sources, that was good
7 enough for you to determine that they had internal and
8 external sources.

9 And I guess what we're saying is maybe
10 that should be reexamined, given the fact that the
11 company that they were supposed to be buying the
12 products from has gone belly-up, and the product that
13 they are currently installing and constructing, the
14 same product for two other companies, is massively
15 over budget. Maybe it should be reexamined. I guess
16 that's our argument.

17 So I guess if you're saying that just them
18 saying we have internal and external sources is
19 enough, if it's just their say-so, then there's
20 nothing really, then there's no there there. If their
21 say-so is enough. Just because they're a financially
22 sound company. We're not trying to say they're not a
23 financially sound company.

24 JUDGE KENNEDY: Yeah, and I think that's
25 where we're stuck, that the regulations are looking

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1 for assurance that FPL can acquire the financial
2 resources to fund the project. And we're looking for
3 that linkage between all these events and the
4 reduction or the lack of assurance that FPL can assure
5 this funding, either in cash or externally.

6 MS. McNULTY: Well, I guess whose burden
7 is it to provide the assurance? It's ours to provide
8 the, it's not like we can go out, I mean -- all right,
9 I see what you're saying.

10 JUDGE HAWKINS: Do you have more for your
11 presentation, either Ms. McNulty or Mr. Alban?

12 MR. ALBAN: We're just briefly reviewing
13 our notes right now to see what else we can raise
14 right now. If you don't mind giving us a brief 30
15 seconds.

16 JUDGE HAWKINS: Take the time you need.

17 MS. McNULTY: I think unless you have any
18 other questions, then we'll let the respondents
19 proceed.

20 JUDGE HAWKINS: All right, thank you, Ms.
21 McNulty, thank you, Mr. Alban. We'll hear from you
22 again later in rebuttal. Let's hear now from FPL, Mr.
23 Lepre.

24 MR. LEPRE: Thank you. Judge Hawkins,
25 Judge Kennedy, Judge Burnett, thanks again for the

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1 opportunity to address you today.

2 After listening to the argument so far,
3 I'd just like to start by emphasizing that the
4 question at issue here is whether the petitioners have
5 pled an admissible content under 10 CFR 2.309 F. As
6 the Board knows, we're not here to debate the merits
7 of the contention or discuss issues not properly
8 raised by the contention.

9 And the petitioners just raised many
10 issues that are outside the scope of the contention
11 and outside the scope of the proceedings.

12 As FPL stated in its answer, the
13 petitioner has failed to meet the Commission's
14 standards for contention admissibility.

15 JUDGE HAWKINS: Mr. Lepre?

16 MR. LEPRE: Yes?

17 JUDGE HAWKINS: Judge Hawkins here.
18 Before you go into the contention admissibility
19 standards --

20 MR. LEPRE: Sure.

21 JUDGE HAWKINS: Do you want to discuss
22 good cause?

23 MR. LEPRE: Well, yes, I would like to.
24 Yes, I would, thank you. Yes, we believe that their
25 petition is untimely because they haven't demonstrated

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1 good cause for failing to raise these arguments
2 earlier. Their argument really goes to the issue of,
3 the way the contention was phrased goes to the issue
4 of, they claim that because there's no construction
5 agreement, they say because there's no longer a
6 construction agreement in place due to Westinghouse's
7 bankruptcy, that therefore there is not reasonable
8 assurance of obtaining funding.

9 And they could have made the argument that
10 there was no construction contract many years ago,
11 because FPL has never had a construction agreement.
12 And so --

13 JUDGE HAWKINS: Judge Hawkins here. They
14 couldn't have made the argument, or they couldn't have
15 pointed out that Westinghouse had filed for bankruptcy
16 before March, could they?

17 MR. LEPRE: That's true. The Westinghouse
18 bankruptcy is a new event. But it's not a material
19 new event, it's not material to the contention.
20 Because Westinghouse's bankruptcy --

21 JUDGE HAWKINS: That's correct. But
22 aren't you confusing the standard in contention
23 admissibility 20.309 F1 with the good cause standard
24 in C1? Simply requires new information that's
25 materially different from previously available

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1 information.

2 And the fact that one part of March
3 Westinghouse appeared to be financially solvent, and
4 the latter part of March, Westinghouse filed for
5 bankruptcy seems to me to be a materially different
6 set of circumstances.

7 MR. LEPRE: Well, it's a different set of
8 circumstances, and the way I've used, and the way FPL
9 has used, the material difference, it has to have some
10 relation to the contention. Just because some new
11 event occurred, it doesn't automatically mean they can
12 find that they are timely.

13 When they file a contention, it has to
14 have some relation to the contention. And we don't
15 believe that this event has any relation to a
16 contention that there is no longer a construction
17 agreement. And they've not provided any evidence to
18 show that the bankruptcy had any impact on the
19 existence or non-existence of a construction
20 agreement.

21 So that's why we believe that although it
22 was a new event, that it's not material to the
23 substance of the contention.

24 JUDGE HAWKINS: I agree with you, it may
25 not be material to the substance of the contention.

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1 But there's a Licensing Board case which the NRC
2 sided, do you recall which that is, which tried to set
3 up a difference between the materiality requirements
4 in C1 and F1?

5 MR. LEPRE: Yes, I'm familiar with that
6 case, and it is a Licensing Board decision. And I
7 think that I would not, I don't believe that the
8 regulation should be stretched that far to say that
9 just because there's some new event that occurred, you
10 know, a significant new event occurred, does that
11 automatically allow you to file a new contention.

12 I believe there has to be some tie between
13 the new event and the basis of the contention in order
14 for a contention to be filed late. Their contention
15 is that there's no, their contention, at least as
16 originally pled, was that there's no construction
17 agreement, no longer a construction agreement because
18 of the bankruptcy. It's just not accurate, so the
19 bankruptcy should not be used to allow them to file a
20 late contention.

21 JUDGE HAWKINS: All right, thank you.

22 MR. LEPRE: Now, regarding the
23 admissibility standards. As we argued in our answer,
24 because the contention fails to raise a genuine
25 dispute with the application on a material issue, it

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1 also lacks adequate support, and it raises matters
2 that are outside the scope of the proceeding and the
3 Commission's jurisdiction.

4 And I just also want to get another point
5 of important background, and it was touched on a
6 little bit in the argument before. But the standard,
7 which is important, the standard that FPL needs to
8 meet to satisfy the regulation at issue here is that
9 under 10 CFR 50.33 F, FPL must provide reasonable
10 assurance, not certainty or near-certainty, that it
11 can obtain funds to cover its estimated construction
12 costs.

13 Now, the regulations go on to add that the
14 Commission will require, and I quote, The minimum
15 amount of information necessary for that purpose.
16 That's in 10 CFR Part 50, Appendix C. And that the
17 applicant should include, and I'll quote again, A
18 brief statement of the applicant's general financial
19 plan for financing the cost of the facility. That's
20 also in 10 CFR Part 50 Appendix C.

21 So I think we'll put this in perspective.
22 This is not a detailed showing, or it's not a very
23 high hurdle that has to be met. And FPL has certainly
24 met that hurdle.

25 Focusing on the contention at issue, the

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1 basis for the contention as it was originally pled by
2 the petitioners was that FPL's reservation agreement
3 with Westinghouse allegedly terminated upon
4 Westinghouse's bankruptcy. And therefore, FPL no
5 longer has a guarantee of construction. And
6 therefore, FPL no longer has adequate assurance of
7 cost recovery under the State of Florida's nuclear
8 cost recovery statute.

9 The petition states on page ten, Without
10 any agreement for the construction of Turkey Point
11 Units 6 and 7, FPL will be unable to recover any costs
12 for the construction of these nuclear units. And that
13 contention doesn't raise a material dispute with the
14 application or the FSER.

15 The petitioner does not put forth any
16 support to believe that the lack of a construction
17 contract, the lack of a reservation agreement, or
18 Westinghouse's bankruptcy has any impact on FPL's
19 financial qualification to safely build the plant.

20 While the petitioner has alleged that FPL
21 will be unable to recover the cost under the Florida
22 statute due to Westinghouse's bankruptcy, they
23 provided no support for that assertion, which is
24 critical at the contention admissibility stage.

25 Nor have they shown any connection whatsoever

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1 between the bankruptcy and whether FPL can ultimately
2 recover its costs when it seeks to do so years from
3 now.

4 The lack of a construction contract and
5 Westinghouse's bankruptcy are in way related to FPL's
6 demonstration in the application that it's financial
7 qualified to safely build the plants. Nothing in the
8 application relied in the existence of a construction
9 contract with Westinghouse, much less a reservation
10 agreement to show FPL's financial qualifications
11 because no such contract has ever existed.

12 Nor did FPL's financial qualifications
13 showing depend on Westinghouse being solvent.
14 Likewise, the FSER didn't rely on the existence of a
15 construction agreement with Westinghouse, or
16 Westinghouse's solvency when it found that FPL is
17 financially qualified to build the plant. It relied
18 on FPL's statement regarding internal and external
19 funding sources.

20 And nothing in the Commission's
21 regulations require a construction agreement to be in
22 place to satisfy the financial qualification
23 requirement. Indeed, the NRC, as we noted in footnote
24 62 of our answer, the NRC recently issued COL to the
25 Levy Plant in Florida after the applicant had

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1 terminated its construction contract with
2 Westinghouse.

3 To the extend the contention derives on
4 Westinghouse's bankruptcy or the lack of a
5 construction contract, it doesn't raise a material
6 dispute with the application or FSER, and therefore
7 it's not admissible under 10 CFR 20.309 F6.

8 JUDGE HAWKINS: Mr. Lepre, Judge Hawkins
9 here. How do you respond to Petitioner's argument
10 that if your financial qualifications were not
11 impaired, you would not have sought a pause before the
12 FPSC?

13 MR. LEPRE: There's no, well, there's no
14 evidence in the record that the reason that the pause
15 was sought before the FPSC had anything to do with
16 financial qualification to build the plant. So
17 there's nothing in the record to show that. And of
18 course, the contention and admissibility stage would
19 have to have something in the record to show that.

20 FPL just requested a pause because at this
21 point, it's not moving forward aggressively with the
22 project. They just sought a pause. They're
23 continuing, obviously, with the licensing. So it has
24 not terminated the project, as I believe the
25 petitioner said or implied. It's not a termination of

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1 the project, it's just a pause in proceeding with
2 construction.

3 So we're proceeding with licensing
4 obviously. And the fact that FPL is not seeking to
5 recover construction costs now doesn't have anything
6 to do with whether they will seek to do so in the
7 future when FPL decides to initiate preconstruction
8 activity. So there's no basis for tying the pause in
9 construction to a lack of ability to finance the
10 project.

11 JUDGE HAWKINS: How far could FPL go
12 forward in financing the construction of the project
13 without seeking recovery of funds from FPSC?

14 MR. LEPRE: That's the question that I
15 can't answer, how far they could go. The cost
16 recovery statute is optional. The language in the
17 statute says that FPL may use the cost recovery
18 statute if it wants to. Theoretically, it's not
19 required to. But the question of how far they could
20 go is not something that I can really answer.

21 JUDGE HAWKINS: Well, let me re-ask that
22 question, because it seems critical to me. If the NRC
23 correctly found that you had adequate financial
24 qualifications, doesn't that in and of itself
25 indicate that you have the resources necessary to

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1 complete the construction without recovering any
2 costs?

3 MR. LEPRE: Yes, it does.

4 JUDGE HAWKINS: So going back to my
5 initial question, how far in that construction process
6 could FPL go without seeking recovery?

7 MR. LEPRE: I'm not, I can't at this point
8 say how far FPL could go. But the fact is that FPL
9 does have the financial resources to complete, to
10 construct the project.

11 JUDGE HAWKINS: All right, that was my
12 question. Okay.

13 MR. LEPRE: Yes.

14 JUDGE KENNEDY: Mr. Lepre, this is Judge
15 Kennedy. Could you provide some enlightenment to us
16 as to why cost recovery is discussed under the section
17 under financial qualifications in the application?

18 MR. LEPRE: Sure. Sure, absolutely. As
19 you pointed out, it is in a separate paragraph from
20 the funding paragraph. And it's really, this is
21 another reason, and it's sort of a, for lack better
22 phrase, sort of a defense-in-depth, an additional
23 reason why we're financially qualified.

24 We have access to the funds, internal and
25 external funding, and we have this statute in place

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1 that allows us to recover the cost. So it's an
2 additional reason why we're financially qualified, but
3 it's not a source of funding, and it's not dependent
4 on that.

5 JUDGE KENNEDY: Did you just say that
6 there's sufficient financial qualifications without
7 cost recovery?

8 MR. LEPRE: Yes.

9 JUDGE KENNEDY: Or is that going too far?
10 Again, Judge Kennedy.

11 MR. LEPRE: Yes, yes. The funding does
12 not depend on cost recovery.

13 JUDGE KENNEDY: Okay.

14 JUDGE HAWKINS: Mr. Lepre, this is Judge
15 Hawkins again. How do you respond to the petitioner's
16 argument that it can be inferred, based on the
17 bankruptcy of Westinghouse, that your external sources
18 of funding will be impaired?

19 MR. LEPRE: Again, I don't see anywhere
20 else -- the contention admissibility standpoint, and
21 there's nothing in the record to support that
22 conclusion. There's --

23 JUDGE HAWKINS: Well, Mr. Lepre, why is it
24 not a logical inference, a logical factual inference?

25 MR. LEPRE: Sure, well, because

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1 bankruptcy, the petitioners would have us believe that
2 when somebody goes into bankruptcy, that means that
3 the entity goes away or is unable to perform, you
4 know, at any point in time these activities. Well,
5 Westinghouse is filing for bankruptcy under Chapter
6 11, it's a reorganization.

7 Westinghouse could emerge from the
8 bankruptcy even healthier, and could build the plant
9 more efficiently. Potentially could build the plant
10 cheaper. Westinghouse could sell off its construction
11 arm, somebody could take over that business and be
12 better at constructing the project. FPL could build
13 the project on its own.

14 So there's no logical inference between
15 the fact that Westinghouse is bankrupt -- Westinghouse
16 has declared bankruptcy and ultimately down the road,
17 the projects will be harder to finance or more
18 expensive. There's just, there's not a connection
19 there. The bankruptcy sort of gives you a redo, if
20 you will, in some respects. And they could emerge
21 stronger.

22 And I will point out that there does need
23 to be more support in the record besides a couple
24 lines in a pleading in order to satisfy the Commission
25 admissibility standards. And it's clearly lacking,

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1 they clearly lack that support.

2 JUDGE BURNETT: Mr. Lepre, this is Judge
3 Burnett. Has Florida Power and Light talked about the
4 possibility of using other vendors, now that
5 Westinghouse is out of the story? And in fact, are
6 there other vendors who could construct this type of
7 reactor?

8 MR. LEPRE: Again, we're getting into the
9 factual issues, and they've not shown any, there's not
10 been any evidence that there couldn't be other
11 vendors. But to answer your question directly, the
12 Summer and Vogtle plants are proceeding right now.

13 And Fluor is meant to be working on
14 building, constructing those plants right now.
15 Bechtel just completed construction of a TVA plant.
16 So there certainly are other entities out there that
17 could build the plant.

18 I also just want to emphasize that, you
19 know, there's no requirement in the Commission's
20 regulations, financial qualifications regulations that
21 you have to demonstrate that there's somebody who can
22 construct the contract, or that there's a -- sorry,
23 that could construct the plant, or that there's a
24 construction agreement in place.

25 COLs have been issued by the Commission,

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1 as I pointed out, to the Levy Plant. Also did other
2 plants without construction agreements in place. So
3 it's certainly not a prerequisite to the financial
4 qualification requirement. But to answer your
5 question directly, there are other entities such as
6 Fluor and Bechtel, others, AREVA, that could build a
7 AP1000 nuclear plant, and currently are.

8 JUDGE BURNETT: Thank you. I also
9 wondered with the pause that's been requested with
10 the, you know, Public Service Commission, are you
11 going to use this, is Florida Power and Light going to
12 use this time to study what went wrong, what went
13 right, if anything, in Georgia and South Carolina
14 reactor buildings?

15 MR. LEPRE: To study it in what sense,
16 your honor?

17 JUDGE BURNETT: Sorry?

18 MR. LEPRE: To study it, to study what
19 went wrong in what sense? I'm not sure I understand
20 the question.

21 JUDGE BURNETT: In terms of the financial
22 overspending, I guess related to the \$6 billion. So
23 those are still under construction, if I understand
24 it. And I would think that Florida Power and Light
25 would want to pay attention to what's gone on there to

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1 learn lessons about how not to spend more than
2 necessary.

3 MR. LEPRE: Thank you, now I understand
4 the question. Yes, absolutely, that's something that
5 FPL will be considering as it undergoes the pause and
6 when it decides to move forward.

7 JUDGE BURNETT: Thank you.

8 JUDGE KENNEDY: Mr. Lepre, this is Judge
9 Kennedy. I'm just curious. Nowhere in here is
10 specified a target value for the amount of funding
11 that we're trying to, FPL is trying to provide
12 reasonable assurance of being able to obtain.

13 Do you have a sense of what is viewed as
14 the target value of funding that needs to be at least
15 secured in some manner so that you have reasonable
16 assurance of completing the project? Is it the terms
17 of the project, does the cost estimate come in here
18 anywhere?

19 MR. LEPRE: No, yeah, I mean the cost
20 estimate that was set forth in the application which
21 in the COL, which has been revised, which the NRC
22 staff found in the FSER in November of 2016 was
23 accurate and it fairly reflected costs for AP1000
24 plants.

25 I mean, that's the cost estimate on which

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1 the funding assurances are based. And that's the
2 current cost estimate, and that's the amount that has
3 to ultimately be funded.

4 JUDGE KENNEDY: Would that include,
5 there's a range, I guess, at least a minimum and a
6 maximum, or?

7 MR. LEPRE: Correct.

8 JUDGE KENNEDY: Is this up to the maximum
9 that's in the cost estimate?

10 MR. LEPRE: Yes, except the \$20 billion
11 was the maximum cost estimate, and that's what's in
12 the application as amended. You know, the application
13 has been amended over time to revise the cost
14 estimate. And the last cost estimate was in October
15 of 2016.

16 I also would like to point out just that
17 the cost estimate is not something that was challenged
18 in the original contention. And so any challenge to
19 -- if this is viewed as some kind of challenge to the
20 cost estimate, it's outside the scope of the
21 contention.

22 JUDGE KENNEDY: Mr. Lepre, this is Judge
23 Kennedy again. Are there any external sources of
24 funding that are, I don't know, I guess, it's outside
25 the family here? Is it all NextEra or FPL money or

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1 equity or debt? Or is there a third party here
2 somewhere?

3 MR. LEPRE: The financial qualifications
4 statement talked about internal and external funding.
5 So the thought is it could be any combination, I don't
6 know the exact word, a mixture, a combination of
7 internal and external funding. As the specifics as to
8 what percentage is internal or external is something
9 that we've not determined, nor is that something that
10 needs to be determined to satisfy the regulations.

11 JUDGE KENNEDY: I think the petitioner was
12 raising a question about potential nervousness on the
13 part of funding partners. And I guess I'm curious,
14 the way I read the application, it seems like it's,
15 all the funding comes either internally, so FPL, or
16 from the parent company, NextEra.

17 I guess I'm wondering if that's actually
18 true, or if I read it correctly or if I understood it
19 correctly.

20 MR. LEPRE: I don't believe that's a
21 correct reading, your honor. Turning to the
22 application in section 1.3, where it says, The sources
23 of long-term construction funding will a mixture of
24 internally generated cash and external funding. The
25 external funding will come from a mix of debt and

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1 equity capital.

2 JUDGE KENNEDY: It also goes on to say,
3 From NextEra Energy.

4 MR. LEPRE: The second sentence says, FPL
5 currently uses --

6 JUDGE KENNEDY: Okay.

7 MR. LEPRE: First Mortgage bonds and
8 equity contributions from NextEra Energy, Inc. to
9 finance long-term utility assets. But I don't read
10 that as saying that all of the funding for the plant
11 will come internally from NextEra.

12 JUDGE KENNEDY: So petitioners were fair
13 to point out that there could be yet a third party
14 here that may be more nervous than NextEra would be.

15 MR. LEPRE: You're correct to point out
16 there may be a third party that could be providing
17 some funding.

18 MR. LEPRE: Okay.

19 JUDGE KENNEDY: I'm not sure about whether
20 they're nervous, the level of their nervousness, but
21 there could be a third party.

22 JUDGE KENNEDY: I get you, that's fair.

23 JUDGE HAWKINS: Do you have anything else
24 at this point, Mr. Lepre?

25 MR. LEPRE: Your Honor, there may be two

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1 small points that I could point out as well. One
2 argument that the Petitioners have made is, you know,
3 they have raised some concerns about the feasibility
4 of the project.

5 Their feasibility arguments are not
6 supported. They raise issues outside the scope of the
7 proceeding. It's clear from Commission precedent that
8 the purpose of a financial qualification regulation is
9 to protect the public health and safety.

10 And if they're concerned about the
11 feasibility of the project, they obviously have a
12 forum where they can raise that which is at the state
13 level. Feasibility of the project is not an issue
14 within the scope of the commission's jurisdiction
15 here.

16 And I would just like to point out that to
17 the extent that the financial qualification
18 determination was dependent on cost recovered in the
19 Florida statute, there's no support for the claim that
20 FPL's ability to recover costs has vanished due to
21 Westinghouse's bankruptcy as they argue in their
22 petition.

23 There's no support for any claim that
24 Westinghouse's bankruptcy had any impact on whether
25 costs are recoverable through Florida's cost recovery

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1 mechanism.

2 Now until FPL applies to the state to
3 recover those costs, nobody, not the FPSC, the NRC, or
4 the Petitioners can know whether the Commission will
5 find them prudent. And the Petitioners have offered
6 no support for their claim that the FPSC will at some
7 point find imprudent costs that FPL has not yet even
8 incurred.

9 Trying to judge the prudence of the FPL's
10 potential future costs at this point are not only
11 impossible, but beyond the NRC's health and safety
12 jurisdiction, and therefore outside the scope of this
13 proceeding.

14 I would also like to reiterate our motion
15 to strike the Crisp affidavit and some of the other
16 exhibits that are filed and the replies outside the
17 scope of the proper reply. And that's all I have,
18 Your Honor.

19 JUDGE HAWKINS: All right, thank you, Mr.
20 Lepre. Ms. Segarnick, are you ready?

21 MS. SEGARNICK: Yes, Your Honor.

22 JUDGE HAWKINS: Good, you may proceed.

23 MS. SEGARNICK: Thank you. The NRC staff
24 position is that the contention does not meet the
25 2.309 standard in 10 CFR because the contention fails

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1 to raise a genuine dispute with FPL on a material
2 issue of fact or of law, and the contention does not
3 raise issues that are material to staff findings.

4 So before I proceed, I would like to
5 address a few of the issues that the Petitioners
6 brought up. So --

7 JUDGE HAWKINS: Ms. Segarnick, before you
8 do, could you address timeliness, please?

9 MS. SEGARNICK: Yes, I would be happy to
10 do so, Your Honor. The NRC staff did not contest
11 timeliness to the extent that the petition was based
12 on the Westinghouse bankruptcy.

13 As we are seeing, the other issues that
14 the Petitioners are raising and have raised in the
15 reply and in the oral arguments today, those are not
16 timely issues. But the NRC staff decided, sorry,
17 excuse me. The NRC staff determined that the other
18 issues were dispositive, and for that reason did not
19 argue that all the other aspects were not timely.

20 JUDGE HAWKINS: Do you disagree with FPL,
21 the materiality requirement of 2.309(c)(1) goes toward
22 the contention admissibility, materiality and standard
23 as well? I think you do based on what you said in
24 your brief and your reliance on that LBP decision.

25 MS. SEGARNICK: Yes, Your Honor. Relying

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1 on what we, what the NRC staff indicated in the brief,
2 there is a distinction between materiality and the
3 context of 2.309(c) which relates to material
4 difference from previously available information and
5 materiality in 2.309(f) (1) which relates to the impact
6 of the information and in the proceeding on hand.

7 But to that extent, yes the NRC staff's
8 position on the interpretation is different from what
9 FPL has provided.

10 JUDGE HAWKINS: All right, thank you.

11 MS. SEGARNICK: So to continue, the
12 petition essentially was based on cost recovery. That
13 was the heart of the petition. And staff's position
14 did not turn, or staff's finding did not turn on the,
15 on whether or not FPL can actually obtain cost
16 recovery.

17 Staff, so it is clear that cost recovery
18 was included in the combined license application which
19 staff considered and assessed the fact that cost
20 recovery is available by statute.

21 But again, staff's finding was not
22 dependent on whether or not FPL actually recovered
23 construction costs through the cost recovery mechanism
24 in Florida, or how hard it would actually be to obtain
25 cost recovery.

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1 Cost recovery was an additional feature,
2 and is not required in statute or in the regulation,
3 or in guidance. And so that goes against what
4 Petitioners have just stated in their oral arguments
5 indicating that cost recovery is actually part of the
6 regulation. The regulations do not in any place list
7 cost recovery, and neither does the guidance in
8 Appendix C to Part 50.

9 And further, the staff standard review
10 plan that provides instruction on reviewing financial
11 qualification material also does not list cost
12 recovery as an aspect that the applicant must provide
13 in demonstrating a financial qualification, and thus
14 whether or not the applicant can meet the 50.33
15 reasonable assurance standard of obtaining funds
16 necessary to cover costs for construction.

17 JUDGE HAWKINS: Ms. Segarnick, Judge
18 Hawkins here. On Page 17 of your answer you say the
19 staff's financial assurance finding is not based
20 solely on the availability of cost recovery. That
21 sentence leads me to believe that it's based partially
22 on the availability of cost recovery. Can you address
23 that?

24 MS. SEGARNICK: Yes, one moment. Can you
25 please repeat the page number that you indicated?

1 JUDGE HAWKINS: Page 17. It's the last
2 paragraph, and it's the first sentence in the last
3 paragraph.

4 MS. SEGARNICK: Thank you. Yes, so the
5 Petitioners argue that cost recovery is the only
6 available cost to, I'm sorry, the only available
7 source of funding. Cost recovery was considered by
8 staff. So to that extent it was something, well it
9 was looked at but it wasn't something that was
10 determinative of the outcome for financial
11 qualification.

12 JUDGE HAWKINS: When you say it was not
13 determinative, what role did it play?

14 MS. SEGARNICK: It was a more over
15 statement. It was something that was in addition to,
16 and not required for the outcome. Cost recovery
17 simply provides additional supporting information that
18 the findings, the financial qualification finding does
19 not rely on cost recovery.

20 JUDGE HAWKINS: So FPL need not have
21 addressed cost recovery in its application, is that
22 correct?

23 MS. SEGARNICK: Yes, Your Honor.

24 JUDGE HAWKINS: And you still, under the
25 regulations, could have found that they satisfied the

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1 financial qualification requirement without addressing
2 cost recovery?

3 MS. SEGARNICK: Yes, that is correct, Your
4 Honor.

5 JUDGE KENNEDY: This is Judge Kennedy. I
6 guess we keep going around this topic. I can
7 understand why the application includes cost recovery.
8 It's just an abundance of information. What troubles
9 me is why the staff repeated it in their SER.

10 And I think it leaves open the question
11 the role of cost recovery in this, the whole concept
12 of financial qualification. And I'm hoping you can
13 enlighten us a bit. And again, I think it's the same
14 questions Judge Hawkins is asking.

15 It's the one piece I keep struggling with.
16 I get it in the application, I don't get it when the
17 staff repeats it in the SER. It just leads me to
18 believe that somehow it was a factor in financial
19 qualifications.

20 MS. SEGARNICK: It was not a factor in the
21 financial qualification. The way the paragraph is
22 written, the staff conclusion with the information
23 that provided a basis for the financial qualification
24 finding, and that included the internal regenerated
25 and external funding sources.

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1 And then there is a pause in that sentence
2 which really breaks the sentence. And the second part
3 that discusses cost recovery and the availability of
4 it was the additional two feature and was not part of
5 the prior sentence that actually provides the
6 conclusion. It was a moreover. And moreover, a
7 semicolon in this context can grammatically be read as
8 a period.

9 JUDGE KENNEDY: You're speaking to the SER
10 or the application?

11 MS. SEGARNICK: I apologize. The SER,
12 staff conclusion in the SER. My understanding of your
13 question --

14 JUDGE KENNEDY: Yes, that's correct.

15 MS. SEGARNICK: My understanding is that
16 Your Honor was confused, was questioning why cost
17 recovery made it into the SER.

18 JUDGE KENNEDY: I am. And could you give
19 us a page number that you're reading from or quoting
20 from?

21 MS. SEGARNICK: Yes. In the SER, in Part
22 1-39, or Page 1-39.

23 JUDGE KENNEDY: Okay.

24 MS. SEGARNICK: The section of this is in
25 the financial qualification section. It's under 1.5,

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1 additional regulatory considerations. And then if
2 Your Honor looks at Page 1/39.

3 JUDGE KENNEDY: Yes.

4 MS. SEGARNICK: That is where staff's
5 conclusion based on staff analysis is articulated.
6 And the first part of the sentence contains staff
7 conclusion, or rather -- yes. The first part is staff
8 conclusion which is based on internal and external
9 funding sources.

10 And then you see at the pause where staff
11 considered that cost recovery is available by statute.
12 But again, this was additional supporting information,
13 and the financial qualification finding does not rely
14 on cost recovery.

15 JUDGE KENNEDY: You know, I guess I'm
16 tracking you. But if I'm up in the sources of
17 construction funds, that's where that discussion seems
18 to occur and not in the conclusionary part. So now
19 you're making it be more confused because the sources
20 of construction funds talk about internal/external
21 financing and cost recovery.

22 And then when you come over on Page 139 to
23 discuss financial qualifications, I don't see any
24 discussion there of cost recovery.

25 MS. SEGARNICK: Oh, I see where you are.

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1 I was actually on Page 1-39.

2 JUDGE KENNEDY: Okay.

3 MS. SEGARNICK: I wasn't looking at 138.
4 But you are correct, actually cost recovery is
5 discussed in both locations, on both pages. The first
6 page is the general discussion of what the sources
7 are, and the second page on 39 is the conclusion.

8 And at the end of that sentence which is
9 the first paragraph on that page, you'll see a
10 semicolon where it says, "and will recover the cost of
11 constructing the facility."

12 JUDGE KENNEDY: Okay, I'm tracking you
13 now. I got confused. I thought the conclusionary
14 sentence was under financial qualifications. But I'm
15 reading, I see where you're pointing. It's under
16 sources of construction fund.

17 MS. SEGARNICK: Yes.

18 JUDGE KENNEDY: Okay, got you. Okay, I'm
19 with you. Thank you.

20 MS. SEGARNICK: Thank you. So in staff
21 analysis, staff relied on the procedure set forth in
22 its standard review plan which is based on 10 CFR
23 50.33 as well as the appendix, I'm sorry, yes Appendix
24 C which lists the sources of funding that should be
25 considered.

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1 And again, cost recovery is not part of
2 and should not be read into the regulations short of
3 requiring a rulemaking with the NRC.

4 Moreover, the argument that Petitioners
5 make that the PSC will reject cost recovery is
6 speculative and is not part of NRC's proceedings, and
7 is not a determination for the NRC to make. And for
8 that reason, the asserted unavailability of cost
9 recovery does not raise a genuine dispute with FPL's
10 application on a material issue of fact or law.

11 And then assuming this cost recovery were
12 not available, although again staff does not report to
13 make that speculation, cost recovery is not essential
14 to the financial qualification requirements.

15 The Petitioners also discuss the
16 importance of a construction contract. And the NRC
17 staff would like to point out that there's no
18 requirements to add their construction contract with
19 Westinghouse or any other entity, nor was there ever
20 a requirement for this.

21 There was never a construction agreement
22 with Westinghouse, nor are there any ties between
23 Westinghouse and Florida Power and Light. So there is
24 no requirement to contract with Westinghouse to build
25 the AP1000. And we see, for example, Levy and Lee

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1 that were granted NRC combined licenses and did not
2 have construction contracts in place.

3 So the Turkey Point project falls within
4 the range of sure, on one hand you have entity, you
5 have Vogtle and Summer that had a construction
6 contract, but that was a business determination to
7 begin construction as soon as possible, whereas Levy
8 and Lee were granted the combined license but had no
9 construction contract in place.

10 But again, there is no requirement for
11 construction contract, and the availability or lack
12 thereof of one is not determinative of a financial
13 qualification finding.

14 Another point that's important here is the
15 feasibility study, or the purpose of feasibility in
16 general. The Petitioners discuss feasibility and the
17 lack thereof, and it's important to note that
18 feasibility is a part of the Florida statute. It's a
19 determination that the Florida Public Service
20 Commission has to make in part of issuing its
21 determination for cost recovery, and has no part in
22 the NRC's proceedings or finding at this time.

23 A feasibility study is a barrier to entry
24 for cost recovery. But the lack or the failure to
25 file a feasibility study does not in any way prove

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1 that the project is not feasible. So feasibility does
2 not have anything to do with financial qualifications,
3 nor is it appropriate to speculate as to the project's
4 feasibility at this time.

5 And looking at the Florida statute, it is
6 also important to note that cost recovery for
7 construction costs are not available until the utility
8 has obtained a combined operating license. And so
9 recovery of construction costs is something that is
10 not relevant to consider at this stage.

11 JUDGE KENNEDY: Is it relevant at any
12 stage?

13 MS. SEGARNICK: No. Not in our
14 proceeding.

15 JUDGE KENNEDY: Oh, okay. I'm getting
16 confused again. Judge Kennedy is.

17 MS. SEGARNICK: I apologize. I'm happy to
18 answer any other questions that the Board may have.

19 JUDGE KENNEDY: Ms. Segarnick, we've
20 talked a lot here about financial qualifications and
21 reasonable assurance. I'm still not very clear on A,
22 how the staff makes a determination that there's
23 reasonable assurance of financial qualification, what
24 the basis for that test is, what criteria is used,
25 what level of funding needs to be assured. Do you

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1 have the ability to speak to that at all? Help us
2 out?

3 MS. SEGARNICK: Yes, Your Honor, I do.
4 And if I need to pause to consult with staff, I may
5 ask for leave to do so.

6 JUDGE KENNEDY: Okay.

7 MS. SEGARNICK: NRC staff bases its review
8 on the regulations found in 10 CFR 50.33. And its
9 analysis utilizes a standard review plan which is
10 NUREG document 1577. And in that document it sets
11 forth the steps and the criteria, for lack of a better
12 word, that the staff looks at in reviewing an
13 application for a combined license.

14 Reading from the standard review plan, or
15 rather summarizing the standard review plan in NUREG
16 1577, staff considers, or rather should confirm that
17 the applicant has provided three specific things.
18 First, an estimate of the construction cost. Second,
19 the sources of funding which include financing plans
20 describing internal and external sources of funds.

21 And third, the latest published annual
22 financial reports, for example the Security Exchange
23 Commission filings. So those are the three items that
24 the staff looks at in its review. And in that review,
25 staff determined that there was reasonable assurance

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1 here.

2 Does that answer --

3 JUDGE KENNEDY: Right, reasonable
4 assurance for what?

5 MS. SEGARNICK: Reasonable assurance of
6 obtaining the funds necessary to cover the estimated
7 construction costs and related fuel cycle costs.

8 JUDGE KENNEDY: Okay, thank you. That's
9 what I was looking for. In doing this determination
10 you pointed out related financial reports. Is there
11 something, is there, I guess what beyond what's in the
12 application does the staff look at to make their
13 determination?

14 Is there, I mean, other than related
15 financial reports and I remember seeing some citations
16 to websites and stuff from somebody, is there anything
17 else that is looked at by the staff other than the
18 cost estimate? The list of financial sources, or
19 sources of funding and related financial reports?

20 MS. SEGARNICK: If it's all right, you
21 know, I would like to pause momentarily to consult
22 with NRC staff.

23 JUDGE KENNEDY: Sure.

24 MS. SEGARNICK: Thank you. Okay. Thank
25 you for the pause, Your Honor.

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1 JUDGE KENNEDY: Go ahead.

2 MS. SEGARNICK: Staff's review relating to
3 reports and filings was limited to the information
4 contained in the application, which was filed, or
5 provided under oath and affirmation. And the
6 application does include Security and Exchange
7 Commission filings. And those are the ones referenced
8 that are linked in the combined license application.

9 JUDGE KENNEDY: Okay, thank you. And
10 again, the source of funding that needs to be assured
11 is based on the cost estimate? Which I guess has a
12 range of costs, is that what I heard you say?

13 MS. SEGARNICK: Yes, that is correct.

14 JUDGE HAWKINS: And can you refresh my
15 memory on the estimate of the construction costs in
16 this case?

17 MS. SEGARNICK: The range was between
18 \$13.7 billion and \$19.9 billion for two units. That
19 includes Units 6 and 7.

20 JUDGE HAWKINS: Ms. Segarnick, to your
21 knowledge, has the NRC ever encountered a situation
22 where the prime, potential prime contractor for an
23 applicant for a new reactor license has gone into
24 bankruptcy?

25 MS. SEGARNICK: No, Your Honor. The NRC

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1 staff is not aware of such a situation. But may I
2 pause for one moment for additional consultation?

3 JUDGE HAWKINS: Yes.

4 MS. SEGARNICK: Thank you. Your Honor,
5 would you please clarify that your question was
6 limited to a Part 52 application?

7 JUDGE HAWKINS: Well, it included that,
8 but I would be interested in any other situation which
9 may have some, any kind of similarity where a prime
10 contractor for a licensed applicant has filed for
11 bankruptcy.

12 MS. SEGARNICK: I'm going to pause one
13 more time momentarily if that is okay, Your Honor.

14 JUDGE HAWKINS: Thank you.

15 MS. SEGARNICK: Thank you. Thank you,
16 Your Honor. The NRC staff is not aware of any
17 situation where under these rules for these
18 regulations, a prime contractor has filed for
19 bankruptcy.

20 NRC staff is aware of a bankruptcy with
21 the utility in Seabrook in the 1970s, but would be
22 happy to do additional research into the history of
23 bankruptcy if that is something Your Honor is
24 interested in.

25 JUDGE HAWKINS: No, that is not necessary.

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1 Thank you.

2 MS. SEGARNICK: That was the Public
3 Service of New Hampshire, Your Honor.

4 JUDGE HAWKINS: All right, thank you.

5 JUDGE KENNEDY: Ms. Segarnick, this is
6 Judge Kennedy. It's a question I asked FP&L. In
7 listening to the Petitioner in their opening remarks,
8 they're following a logical I guess progression from,
9 you know, sort of the state of the news to really ask
10 a question about the funding sources and whether they
11 are, logically it seems like a question that they
12 could be drawn into some disarray by all these
13 activities.

14 I'm just curious, do you feel that it's a
15 logical question to be asked. I mean, the Petitioners
16 to me seem to be asking a logical question. Do you
17 hold a similar view?

18 MS. SEGARNICK: No, Your Honor. There is
19 no connection between Westinghouse and FPL. And for
20 that reason, it's not a logical connection to make for
21 the facts at hand here.

22 JUDGE KENNEDY: Okay. So it wouldn't even
23 rise to a genuine dispute, it's not even a logical
24 question?

25 MS. SEGARNICK: That's correct, Your

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1 Honor. There are no ties between Westinghouse and the
2 Florida Power and Light, and for that reason, that
3 issue fails to raise genuine dispute.

4 JUDGE KENNEDY: But there are significant
5 ties between Westinghouse and this project.

6 MS. SEGARNICK: To the extent that the
7 design for this plant is an AP1000, the AP1000 design
8 is a commission rule, and is a certified design. And
9 there lies a connection that it's the AP1000 which is
10 a Westinghouse design. But that is the extent of any
11 connection between Westinghouse and Florida Power and
12 Light.

13 JUDGE KENNEDY: And I guess what
14 Petitioners are really asking is if that logical
15 connection is being shaken. Does it also shake the
16 sources of external funding?

17 MS. SEGARNICK: No, it does not because
18 there's no requirement for Florida Power and Light to
19 contract with Westinghouse to build the AP1000.

20 JUDGE KENNEDY: But we've just heard from
21 Mr. Lepre that there's third party external sources of
22 funding here. I mean, if I was putting up \$20
23 billion, it just seems logical that I would start
24 getting nervous. And I guess I'm buying into the fact
25 that it's a logical question, and I'm really trying to

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1 find out does it really rise to a dispute here.

2 MS. SEGARNICK: It does not rise to a
3 dispute here because those are external circumstances
4 that don't relate to the financial qualification
5 finding that staff made. Staff reviewed the
6 internally generated operating cash flows and the debt
7 and equity capital and determined that those sources
8 of funding are sufficient to meet the 50/33 standard
9 for FPL in this proceeding.

10 JUDGE HAWKINS: This is Judge Hawkins. If
11 I could follow up on Judge Kennedy's question. He was
12 saying that it can be logically concluded that with
13 Westinghouse declaring bankruptcy, the external
14 sources of funding may be apprehensive.

15 Now at the time the application was
16 submitted and the time you, NRC staff conducted its
17 review, it was different circumstances. Westinghouse
18 had not declared bankruptcy, so the external sources
19 of funding had no reason for apprehension.

20 Why doesn't Westinghouse's declaration of
21 bankruptcy give rise to a logical inference that
22 external sources of funding could have their
23 confidence shaken, and why doesn't that give rise to
24 a genuine dispute?

25 MS. SEGARNICK: Well, the bankruptcy does

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1 not mean that Westinghouse is going away. As the
2 Applicant stated, it could reorganize. And in
3 general, Westinghouse could reorganize and return
4 which means that the market won't necessarily respond
5 to and the staff cannot predict the response of a
6 financial market for that equity capital based on this
7 interim situation with Westinghouse that is external
8 again to the NRC and external financially and
9 contractually to the applicant.

10 And for that reason, again, does not raise
11 a genuine dispute with this application.

12 JUDGE HAWKINS: This is Judge Hawkins and
13 I want to make sure I understand your answer. Are you
14 saying that it's not a necessarily logical conclusion
15 that external sources of funding would become
16 apprehensive. Rather, it's speculative to come to
17 that conclusion?

18 MS. SEGARNICK: Yes, Your Honor, it is
19 speculative.

20 JUDGE HAWKINS: Okay, thank you.

21 JUDGE KENNEDY: Just one last question,
22 Ms. Segarnick. Given where the licensing process is
23 on Turkey Point 6 and 7, can you envision a scenario
24 that would trigger a reassessment of the financial
25 qualifications of Florida Power and Light, if any is

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1 even possible?

2 MS. SEGARNICK: Your Honor, those are not
3 the facts here, and so I'm not prepared to speculate.

4 JUDGE KENNEDY: There are lots of facts
5 here. There's lots of things going on.

6 JUDGE HAWKINS: This is Judge Hawkins, and
7 let me ask a question and maybe you can answer without
8 speculating. What might trigger a reassessment of a
9 financial qualification determination? I'm not asking
10 you to come up with very close factual situations, but
11 what in your mind would, on behalf of the NRC staff,
12 would clearly require a reassessment of financial
13 qualifications?

14 MS. SEGARNICK: Well, for example, looking
15 at North Anna, the applicant changed their design.
16 That is a time that staff redid its SER. And again,
17 that is not the case here, and there's no new
18 information that the Petitioners have raised stemming
19 from the Westinghouse bankruptcy that undermines staff
20 determination and warrants revising the SER.

21 JUDGE HAWKINS: This question may require
22 you to get offline for a moment. But to your
23 knowledge, other than that situation you just cited,
24 are there any other circumstances within the last 15
25 years where the NRC has reassessed a financial

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1 qualification determination?

2 MS. SEGARNICK: No, Your Honor.

3 JUDGE HAWKINS: Thank you. Do you have
4 anything else. Ms. Segarnick?

5 MS. SEGARNICK: Your Honor, we've raised
6 all of the points that we hoped to make. And again,
7 the NRC staff respectfully requests that the Board
8 deny the petition. Thank you.

9 JUDGE HAWKINS: Thank you very much.
10 Before you go, I want to give Judge Burnett an
11 opportunity if he has any additional questions. He's,
12 as I mentioned, participating remotely. Judge
13 Burnett, any further questions for the NRC?

14 JUDGE BURNETT: No, that's fine. I've
15 been following everything closely and everything is
16 quite clear. Thanks.

17 JUDGE HAWKINS: All right, thank you.
18 Petitioners Ms. McNulty and Mr. Alban, you may proceed
19 with your rebuttal. I believe you have about 27
20 minutes of rebuttal time available to you, although
21 you need not take all of it.

22 MS. McNULTY: Thank you, Your Honor. A
23 couple of points that were raised during the
24 Respondent's presentation. To start, I guess NRC
25 staff was raising the point about whether Westinghouse

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1 is linked to the project or not linked to the project.

2 First they're saying Westinghouse has
3 nothing to do with this project, then they're saying
4 there's no evidence that Westinghouse is not going to
5 build the reactors because they may emerge from the
6 bankruptcy unscathed -- is saying the bankruptcy can
7 be a re-do and they can come out of it emerged and
8 build the reactors for cheaper. So I'm a little
9 confused as to what the Respondent's position is as to
10 what Westinghouse's role in this is.

11 The truth of the matter is that
12 Westinghouse licensed the AP1000 design with
13 reservation agreements with a number of power
14 companies with the understanding that they were going
15 to license these designs, that the design for the
16 AP1000, it was going to be the start of a nuclear
17 renaissance in the United States and the world where
18 these companies were then going to agree with
19 Westinghouse licensing the reactor first and
20 undergoing that expense to then pay Westinghouse to
21 construct the reactor for them.

22 So Westinghouse is getting all this
23 business from these companies with the understanding
24 that they were first going to go through the process
25 and the inconvenience of going ahead and licensing the

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1 reactor first for them.

2 So that's what they did. They got the
3 design certified ahead of time, and now the companies
4 are supposed to be going forward and getting their
5 licenses to construct, which is what this proceeding
6 is one of those proceedings.

7 So the idea that Westinghouse is not
8 linked to this proceeding at all is sort of laughable.
9 And the idea that the reservation agreement had
10 nothing to do with Westinghouse or that they have
11 nothing to do with these new reactors, I don't
12 understand what's going on here.

13 But the idea that they are no longer
14 linked to the proceeding potentially because the
15 reservation agreement was cancelled with the
16 bankruptcy, that's true because the language in the
17 reservation agreement says it was cancelled.

18 The idea that they could potentially get
19 someone else to build them is true. I think that, but
20 the truth of the matter is that were they to do so,
21 they would have to pay Westinghouse to use their
22 design because Westinghouse owns the design, and they
23 would have to pay someone else to construct them.

24 They would have to find someone else to
25 construct them or construct them themselves. And it's

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1 unclear what the cost of that would be. That is an
2 uncertainty. The idea that the FSER was not, and that
3 the staff did not rely on --

4 (Simultaneous speaking.)

5 MS. McNULTY: Sorry, go ahead.

6 JUDGE HAWKINS: Judge Hawkins here. There
7 is some uncertainty here. But when does that
8 uncertainty rise to a genuine dispute of material
9 fact?

10 MS. McNULTY: I guess, okay so the
11 question here is whether or not they provided
12 reasonable assurances that they have financial
13 qualifications to cover the cost of construction. And
14 I guess we're getting a little lost in semantics in my
15 mind because I guess when we first spoke, you were
16 saying that it wasn't about recovering the cost, it's
17 about covering the cost.

18 And in my mind, the FSER is saying that
19 they're going to use advanced nuclear cost recovery
20 per the Florida statute. But what they're saying is
21 that they're using that as a source of construction
22 funds. So in other words, they're using advanced
23 nuclear cost recovery to cover the cost of
24 construction.

25 And so what that, the whole point of all

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1 these things is that it's creating uncertainty as to
2 whether they are providing reasonable assurances that
3 they can cover the cost of construction. That's the
4 argument that we're making, that the Westinghouse
5 bankruptcy is creating an uncertainty as to whether
6 they can cover the cost of construction.

7 And so I understand that the nuclear cost
8 recovery is, and it's kind of you know, you have to
9 kind of like build on the argument and it's using the
10 recovery process as part of the argument. And it's
11 not asking the Nuclear Regulatory Commission to really
12 do the analysis of the PSC.

13 But what it's saying is that look, the
14 FSER, it states in it that FPL expects to recover the
15 cost of constructing the facility in accordance with
16 Florida Statute 366.93. That is under a heading
17 called sources of construction fund.

18 And so what we're saying is the PSC, as of
19 right now, they are saying they are not asking for any
20 money from the PSC. We're not saying they can never
21 get money from the PSC in the future, although that is
22 questionable. But as of right now they're saying to
23 the PSC we're not even going to ask you for it this
24 year.

25 And in truth, last year when they asked

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1 for a deferral, the PSC said to them, ordered them
2 that this year they had to file the feasibility study.
3 And this year they still didn't do it. So they're
4 technically in violation of that order.

5 But as of right now they're asking for a
6 cause. And so that will all get resolved at the PSC.
7 But that's not for you to determine, that's for the
8 PSC to determine. But as of right now, they're not
9 getting any money from the PSC. So the source of
10 construction funds as identified in the FSER is not
11 providing a source of funds right now.

12 JUDGE HAWKINS: Can you read that portion
13 of the SER again to me?

14 MS. McNULTY: Yes. So it says, "According
15 to the COL application, FPL expects to recover the
16 cost of constructing the facility in accordance with
17 Florida Statute 366.93, 'cost recovery for siting,
18 design, licensing, and construction of nuclear and
19 integrated gasification combined cycle power plants,'
20 and Florida Administrative Code R25-6.0423, 'nuclear
21 integrated gasification combined cycle power plant
22 cost recovery.'"

23 JUDGE HAWKINS: And how does that help
24 your position?

25 MS. McNULTY: So, and that's under the

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1 heading sources of construction funds. So in the
2 FSER, one of the sources of construction funds
3 identified is the advanced nuclear cost recovery.

4 JUDGE HAWKINS: That also could be read a
5 different way I believe, Ms. McNulty, where that's an
6 introduction. That first sentence is an introduction
7 then to what the true sources are because the next --

8 MS. McNULTY: The next thing says FPL
9 expects to finance this project.

10 JUDGE HAWKINS: Correct.

11 MS. McNULTY: Okay.

12 MR. ALBAN: I mean, I apologize that I'm
13 interrupting here.

14 JUDGE HAWKINS: No, Mr. Alban, go ahead.

15 MR. ALBAN: I think one thing that should
16 be noted too is that it's being brought up here, but
17 the nuclear cost recovery clause is a financing
18 mechanism for FPL, for any utility company you use.

19 It's a mechanism, it's basically a zero
20 interest rate mechanism they're allowed to use
21 annually to apply for and to fund projects moving
22 forward. That's basically what they have done.

23 And I think that's why it's clear that
24 this is a source construction fund, or just a source
25 of funds, period, because it is financing.

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1 JUDGE HAWKINS: So Mr. Alban, how do you
2 respond to the NRC staff's statement that FPL need not
3 have even addressed recovery of costs from the FPSE,
4 and they still could have found that they were
5 financially qualified under the regulations?

6 MR. ALBAN: I mean, while they didn't have
7 to, they did. And not only did FPL, and aside from
8 FPL using it, it is, it did play a part in the actual
9 FSER determination of financial qualification. It
10 played a part.

11 It played a huge role. And as noted,
12 they, the NRC staff is focusing on basically that
13 there are no, you know, there is no contract and
14 they're trying to say that oh, well they can't even
15 get construction costs assuming they applied for
16 construction.

17 But they've still been getting their
18 costs. They've still been financing it through the
19 licensing and planning. They can move forward with
20 pre-construction and then go into construction.

21 They're talking about a further portion of
22 the statute, but there are portions of the statute
23 that have been used, that are currently being used,
24 and that was included in the facts analysis of FPL's
25 financial qualification.

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1 So it's kind of, it's strange to say now
2 looking back at it we didn't take it into account when
3 that is something that's taken into account. And to
4 be clear, the 10 CFR section 50.33 discusses many
5 things, but it also discusses that basically, you
6 know, an application for combined operating license,
7 the applicant shall submit among other items
8 information that demonstrates the applicant possesses
9 or has reasonable assurance of obtaining the funds
10 necessary for building these things, or for moving
11 forward with this project.

12 And this is how they've been obtaining
13 these funds through the NRC, or through their cost
14 recovery clause.

15 JUDGE KENNEDY: Thank you. Ms. McNulty,
16 Mr. Alban, do you have anything more?

17 MS. McNULTY: I guess just to point out
18 that, you know, Counsel's representation that they
19 have sufficient money to cover the costs of
20 construction without nuclear cost recovery, obviously
21 there's, you know, that's also not record evidence.
22 But --

23 MR. ALBAN: But I believe, just to be
24 clear, the reg does state that they must show that
25 they have the ability of obtaining the funds

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1 necessary. So it's not just covering costs, but being
2 able to obtain the funds and this is how they've been
3 obtaining the funds thus far and they no longer can
4 because of the bankruptcy proceeding.

5 And to the point where as Ms. McNulty
6 eluded to, they have violated a Public Service
7 Commission order where they have reason to file a
8 feasibility study and have not filed a feasibility
9 study because they know they cannot prove feasibility.

10 And the Public Service Commission, we're
11 not asking you to make that finding, but they can do
12 it and therefore their requirement which is a actual
13 requirement that they must file a feasibility study
14 under the rules to get nuclear cost recovery.

15 They no longer can get nuclear cost
16 recovery for failing to do so, and they have lost a
17 source of construction fund, or the ability to obtain
18 these construction costs.

19 JUDGE KENNEDY: Mr. Alban, this is Judge
20 Kennedy. It seems to me that FP&L is putting the
21 money up first, doing the activity. So they have a
22 source of funding somewhere, either internal or
23 external that allows them to fund the forward movement
24 of the project and then they file for cost recovery to
25 recoup the funds that they've expended.

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1 So I mean, I guess I'm trying to figure
2 out how this really works. I'm trying to really buy
3 into the argument that you keep presenting, that cost
4 recovery is a source of construction funding. But I
5 keep seeing it as a source of cost recovery.

6 MR. ALBAN: Well one, it's identifying a
7 source of construction funds. And two, I believe one
8 thing that was telling was that when you asked FPL
9 Counsel how long can they, or when it was asked of
10 FPL how long can they construct these things with
11 those fees, they weren't able to tell you exactly how
12 long it is. And this is actually advanced nuclear
13 cost recovery.

14 JUDGE HAWKINS: Mr. Alban?

15 MR. ALBAN: Yes.

16 JUDGE HAWKINS: This is Judge Hawkins
17 here. I believe his answer thought was that they
18 clearly have enough, even with without going again to
19 the FPSC for recovery of funds, they have enough to
20 complete the construction.

21 MS. McNULTY: No, also it sounded like to
22 me like the question was the way that advanced nuclear
23 cost recovery works is not that they put up the money
24 and then go ask for it back. The way that it works is
25 that they ask for it in advance and then they charge

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1 it to the rate payer the year after they ask for it.

2 And then they get the money from the year
3 after. And then when they go back, they just justify
4 that they spent it to the money that they recovered.

5 JUDGE HAWKINS: I understand what you just
6 said, and I think because of the confusion that's
7 arisen here, when we're done with here, with your
8 rebuttal I may have to go back to Mr. Lepre to get
9 some clarification. But go ahead.

10 MS. McNULTY: But I just wanted to explain
11 that it's not, it's not recovering money they spent.
12 They're getting money in advance of spending it, just
13 to be clear. That's why it's called advanced nuclear
14 cost recovery.

15 MR. ALBAN: And my apologies I did not
16 explain that correctly. Yes, there are several
17 filings that may be filed by FPL whenever they seek
18 advanced cost recovery. They file what is known as a
19 true up showing what they spent the year before,
20 actual funds, and then they'll determine whether it
21 was an over recovery or an under recovery from the
22 previous year of advanced cost recovery.

23 And then in that same year, they'll apply
24 for what they believe they will spend in the following
25 year, in the coming year. And then once they get that

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1 approval, they implement it in their rates and that's
2 how they recover the funds to pay for the work moving
3 forward.

4 JUDGE HAWKINS: All right, thank you.

5 MS. McNULTY: So unless you have any other
6 questions, that's all we have.

7 JUDGE HAWKINS: No, I do not have any
8 questions at this time. Judge Burnett, do you have
9 any additional questions for Petitioners?

10 JUDGE BURNETT: No, I do not. Thanks.

11 JUDGE HAWKINS: All right, Mr. Lepre, can
12 I ask you to come to the podium for a quick question?

13 MR. LEPRE: Yes, Your Honor.

14 (Simultaneous speaking.)

15 JUDGE HAWKINS: I'm sorry.

16 MS. McNULTY: Thank you for the
17 opportunity.

18 JUDGE HAWKINS: Oh, thank you, Ms. McNulty
19 and Mr. Alban. Mr. Lepre, I want to revisit the
20 question I raised earlier, and that is does FPL have
21 adequate resources to complete the construction and
22 the first fuel loading of Units 6 and 7 without
23 returning to FPSC for either advanced cost recovery,
24 or cost recovery in any event?

25 MR. LEPRE: In theory, FPL does, Your

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1 Honor. I would just like to point out that I
2 understand the importance of this issue, but I would
3 also like to point out that even if the availability
4 of cost recovery was a factor in the determination,
5 there's no showing in this case that cost recovery is
6 no longer available.

7 JUDGE HAWKINS: No, I do understand that.
8 And if you can go back, when you say in theory, yes I
9 don't understand that qualifier.

10 MR. LEPRE: Well, FPL is not saying that's
11 what they would do.

12 JUDGE HAWKINS: I understand that.

13 MR. LEPRE: That's what I meant by that.

14 JUDGE HAWKINS: You're representing that
15 they would have the resources under the present
16 circumstances to complete construction and the first
17 fuel loading? Without going to FPSC?

18 MR. LEPRE: I can't say if FPL has
19 actually analyzed that issue because they've been
20 planning to recovery from the FPSC through the
21 statute.

22 JUDGE HAWKINS: I'm afraid this is getting
23 murkier because I thought that at least as the NRC
24 staff represented, cost recovery was not a source and
25 was not material to the determination of financial

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1 qualifications.

2 MR. LEPRE: Yes, in theory FPL has the
3 funding to do that, but I'm not at liberty to
4 represent that's what FPL would do.

5 JUDGE HAWKINS: I understand you're not at
6 liberty to represent that's what FPL would do. But
7 can you represent without the qualifier of in theory,
8 can you represent that they do have the resources
9 necessary to complete the project?

10 MR. LEPRE: I don't know, Your Honor, that
11 I can do that.

12 JUDGE HAWKINS: All right, thank you.

13 MR. LEPRE: Well, I would just like to
14 point out again, however, that cost recovery is still
15 available to FPL and there's been no showing
16 whatsoever and there's no record to support for any
17 showing that we could not recover costs when we decide
18 to reinitiate the cost recovery process.

19 So it's a relevant point. But in the end,
20 even if cost recovery was critical, there's been no
21 showing that there's any genuine issue, any dispute
22 over whether we could actually recover the costs under
23 the statute.

24 JUDGE HAWKINS: Judge Burnett, any
25 questions?

1 JUDGE BURNETT: Yes. Mr. Lepre,
2 concerning the advanced cost recovery, isn't it
3 correct that Florida Power and Light has already
4 received a large sum through that mechanism?

5 MR. LEPRE: They have already recovered
6 costs for the licensing of the project. They have not
7 recovered costs for pre-construction or construction
8 because we're not about to incur them because we don't
9 have a license. But to answer your question, since
10 2008 I believe, FPL has been recovering costs for
11 licensing.

12 (Simultaneous speaking.)

13 JUDGE BURNETT: -- cost recovery mechanism
14 has already been used.

15 MR. LEPRE: Correct, correct. Since 2008,
16 for costs through 2016, licensing related costs.

17 JUDGE BURNETT: Do you happen to know what
18 that figure is offhand?

19 MR. LEPRE: I don't know, Your Honor.

20 JUDGE BURNETT: Okay, thanks.

21 MR. LEPRE: Certainly in the tens of
22 millions, if not more.

23 JUDGE HAWKINS: Anything else, Judge
24 Burnett?

25 JUDGE BURNETT: No, that's all. Thanks.

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1 JUDGE HAWKINS: All right, Ms. McNulty,
2 Mr. Alban, Mr. Lepre, and Ms. Segarnick, I want to
3 thank you for the arguments that you've provided
4 today. They will help us in resolving the
5 admissibility of the contention that is pending before
6 us. With that, your case is submitted and we are
7 adjourned.

8 (Whereupon, the above-entitled matter went
9 off the record at 3:58 p.m.)

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