BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 24, 2011

Jefferson City, Missouri

Volume 21

_____

In the Matter Of the Application)
of Kansas City Power and Light)
Company for Approval to Make   )
Certain Changes in Its Charges)File No. ER-2010-0355
for Electric Service to Continue)
Implementation of Its Regulatory)
Plan   )

In the Matter of the Application)
of KCP&L Greater Missouri   )
Operations Company for Approval)File No. ER-2010-0356
to Make Certain Changes in Its)
Changes for Electric Service.   )

                    RONALD D. PRIDGIN, Presiding
                        SENIOR REGULATORY LAW JUDGE
                    TERRY M. JARRETT,
                    KEVIN GUNN,
                    ROBERT S. KENNEY,
                        COMMISSIONERS

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 1   JUDGE PRIDGIN: All right. Good morning.

 2 We are back on the record. If I recall correctly as

 3 we ended Friday, Mr. Downey was on the stand. And I

 4 see him on the witness stand and remind you, sir,

 5 you're still under oath. And I understand we're going

 6 to complete cross-examination of Mr. Downey and then

 7 if I'm not mistaken, move on to Mr. Drabinski.

 8   All right. Is there anything further

 9 from counsel before we go back to cross?

10   (KCP&L Exhibit No. 71 was marked for

11 identification.)

12   MR. FISCHER: Yes, Judge. I have placed

13 a copy of Exhibit 71, the quarterly reports that we

14 talked about during Mr. Giles's testimony on the desk

15 of the court reporter and I would move for admission

16 of those exhibits -- that exhibit.

17   JUDGE PRIDGIN: Okay. KCP&L 71 has

18 offered. Any objections? Hearing none --

19   MR. MILLS: Since I don't have an actual

20 copy of it, can I get clarification of exactly what it

21 is?

22   MR. FISCHER: Yes. Mr. Mills, it's

23 the -- the quarterly reports that were provided to the

24 signatory parties. We can distribute discs that have

25 copies of them to the parties. I believe that's

 1 happening as I speak.

 2   JUDGE PRIDGIN: Mr. Mills?

 3   MR. MILLS: We've already previously

 4 gotten all the quarterly reports, so assuming that's

 5 what it is, I have no objection.

 6   JUDGE PRIDGIN: Mr. Mills has perused the

 7 computer discs and sees no objections. 71 is admitted

 8 without objection.

 9   (KCP&L Exhibit No. 71 was received into

10 evidence.)

11   JUDGE PRIDGIN: Anything further?

12 Mr. Downey, you are still under oath. And,

13 Mr. Williams, I believe you are in the middle of

14 cross-examining; is that correct?

15   MR. WILLIAMS: Yes, Judge.

16   JUDGE PRIDGIN: When you're ready, sir.

17   MR. WILLIAMS: I have an exhibit I'd

18 like to have marked, but for the moment I only have

19 three copies. I believe this would be KCP&L Exhibit

20 No. 254.

21   JUDGE PRIDGIN: Let me verify that.

22 That's correct.

23   MR. WILLIAMS: And it's a risk and

24 opportunity analysis sheet that reflects a date of

25 July 3rd of 2008.

1   (KCP&L Exhibit No. 254-HC was marked for

2 identification.)

3   MR. WILLIAMS: May I approach the

4 witness?

5   JUDGE PRIDGIN: You may.

6 WILLIAM DOWNEY, having been previously sworn,

7 testified as follows:

8 CROSS-EXAMINATION BY MR. WILLIAMS:

9   Q.   Mr. Downey, I'm handing you what's been

10 marked as Exhibit No. KCP&L 254. Mr. Downey, have you

11 had an opportunity to review what's been marked for

12 identification as Exhibit No. KCP&L 254?

13   A.   I've had a chance to scan it.

14   Q.   Do you recognize it?

15   A.   Yes.

16   Q.   And what is it?

17   A.   It's an R&O analysis sheet for work

18 around a -- an incident that occurred in 2008 and a

19 soil stabilization project that we undertook

20 subsequent to that incident.

21   Q.   And is that incident involving the JLG

22 crane?

23   A.   Yes, sir.

24   Q.   And didn't you testify last Friday that

25 when you signed the settlement agreement with Alstom

1 for the JLG and soil stabilization settlements, that

2 Kansas City Power and Light had a basis for believing

3 that it was at fault?

4   A.   I think what I indicated was that we were

5 concerned about the safety on the site and that this

6 issue extended to a broader issue. We had a very

7 significant number of lift pieces of equipment onsite

8 and this incident raised questions around the site

9 with regard to safety with those pieces of lift

10 equipment. And for that and other reasons, we settled

11 this claim and proceeded to do additional work for

12 the -- the mat, the construction mat, at the site.

13   Q.   Does Exhibit No. KCP&L 254 reflect an

14 analysis by Kansas City Power and Light Company as to

15 its fault for soil compaction issues?

16   A.   Are you referring to -- to the Alstom

17 document --

18   Q.   You're talking --

19   A.   -- that's attached to the R&O?

20   Q.   Yes.

21   A.   This document I'm not as familiar with.

22 This -- this is an Alstom document. I'm not

23 familiar -- as familiar with it. It appears to

24 outline the -- the work that was going to be done.

25   Q.   Would you turn to the last few pages of

1 Exhibit 254. There's one marked page No. 64.

2   A.   Yes, I've read page 64.

3   Q.   And does it reflect an opinion by Kansas

4 City Power and Light Company regarding its liability

5 exposure?

6   A.   It does.

7   Q.   And then on page 66 do those -- does it

8 also express an opinion of Kansas City Power and Light

9 Company about its liability exposure?

10   A.   Yes, it does.

11   Q.   And are both of those opinions pertinent

12 to the Alstom settlement?

13   A.   To -- to the specifics of it, yes.

14   Q.   Yes.

15   A.   Yes.

16   Q.   And I believe this is an Exhibit --

17 KCP&L 254 is a highly confidential document, is it

18 not?

19   A.   Yes.

20   MR. WILLIAMS: I move for the admission

21 of Exhibit KCP&L 254.

22   JUDGE PRIDGIN: 254 is offered. Any

23 objections? Hearing none, 254 is admitted. And

24 that's 254-HC.

25   (KCP&L Exhibit No. 254-HC was received

 1 into evidence.)

 2   COMMISSIONER KENNEY: Is 254 the document

 3 that Mr. Downey has right now?

 4   MR. WILLIAMS: Yes.

 5   COMMISSIONER KENNEY: Okay.

 6   MR. WILLIAMS: We'll provide more

 7 copies. I just don't have them at the moment.

 8 BY MR. WILLIAMS:

 9   Q.   So is it your testimony that there were

10 reasons other than Kansas City Power and Light

11 Company's analysis of its fault regarding the claims

12 in the Alstom -- Alstom settlement that caused it to

13 enter into that settlement? Is that what you meant

14 when you said the company was at fault?

15   MR. HATFIELD: I'm going to object it

16 assumes facts not in evidence. What he just said was

17 that 254 is KCPL's full analysis. And that's not in

18 evidence at all.

19   JUDGE PRIDGIN: Mr. Williams?

20   MR. WILLIAMS: I'm not sure I understand

21 the objection.

22   JUDGE PRIDGIN: I think it's assuming

23 facts not in evidence.

24   MR. HATFIELD: Right. Judge, he just

25 characterized it as if Exhibit 254 is the full

 1 analysis. The question is -- related to your analysis

 2 referred to 254. He hasn't established that 254 was

 3 the complete analysis done by KCP&L.

 4   MR. WILLIAMS: I'll ask that.

 5 BY MR. WILLIAMS:

 6   Q.   Mr. Downey, do you know if Kansas City

 7 Power and Light Company did any analysis that's not

 8 reflected in Exhibit No. KCP&L 245 regarding the JLG

 9 incident?

10   A.   This analysis related specifically to the

11 facts around the JLG incident. This settlement and

12 agreement with Alstom, however, was part of a larger

13 set of discussions and negotiations that were going on

14 at the time. It was a particularly contentious time

15 between us and Alstom. There were many things

16 occurring.

17   And this ultimately -- this was the start

18 of a larger negotiation where we were working on a

19 number of things that were very important to the

20 project and to moving schedule and costs along. So

21 this became an initial settlement that became part of

22 a broader package and agreement with Alstom that I

23 think helped us move the unit 1 project along and the

24 unit 2 project.

25   Q.   So are you saying that the Alstom

 1 settlement reg-- Kansas City Power and Light Company's

 2 settlement with Alstom regarding the JLG incident

 3 doesn't stand alone?

 4   A.   That's correct.

 5   Q.   Mr. Downey, didn't you also testify last

 6 Friday that you and your wife took trips to Pebble

 7 Beach, California and New-- Newport, Rhode Island for

 8 which Alstom paid all your expenses except airfare?

 9   A.   Yes.

10   Q.   How many days were you in Pebble Beach,

11 California?

12   A.   Two or three. I don't recall.

13   MR. WILLIAMS: May I approach?

14   JUDGE PRIDGIN: You may.

15 BY MR. WILLIAMS:

16   Q.   Mr. Downey, I'm handing you what appears

17 to be an expense report that appears to have your

18 signature on it and the date of December 4th of 2006.

19 Would you take a look at the daily expense summary

20 explanation on that -- the document?

21   A.   Yes.

22   Q.   Is it still your testimony that you were

23 in Pebble Beach two to three days or does that

24 document refresh your memory?

25   A.   It says that I had reservations on 10/2

1 and came back on 10/05, yes.

2   Q.   Does that mean you would have been out

3 there -- would two days have been travel and the

4 remainder of the time you were in Pebble Beach?

5   A.   Yes.

6   Q.   What was the Kansas City Power and Light

7 Company business purpose for that trip, if any?

8   A.   We had just completed the contract

9 negotiations with Alstom. I had not been involved in

10 those. I was uninvolved in the negotiation. Our

11 purchase and legal groups were involved with it. So

12 with the successful completion and with the approval

13 of my boss, we accepted an invitation to meet with

14 the -- the management that would now run the project

15 and they had invited me out there.

16   I -- I got the necessary approval

17 internally and spent that time with the executive team

18 from Alstom who would be leading and managing this

19 project, which involved three segments of Alstom:

20 their boiler segment; their air quality control

21 division down in -- in Knoxville, Tennessee; and their

22 construction organization.

23   Q.   Did you do anything but meet with these

24 individuals from Alstom?

25   A.   Yes. We played golf.

1   Q.   And I believe you said "we." Was the

2 "we" your wife or were there other people from Kansas

3 City Power and Light Company that went to this

4 particular meeting?

5   A.   I don't believe my wife came with me to

6 the Pebble Beach meeting.

7   Q.   Whose name appears at the top of that

8 expense report?

9   A.   I -- I -- but I don't -- her name is --

10 is -- is on there. I don't know why. It says, Change

11 due to family emergency. I don't recall that she was

12 with me. I mean I could be wrong, but I think this

13 was just for me. This says -- it does say her name,

14 but I don't remember that she was with me. She was

15 with me in -- in the Newport trip, but I don't believe

16 she was on this one.

17   Q.   Well, turning to the Newport trip, how

18 many days were you -- were you in Newport, Rhode

19 Island?

20   A.   I think it was a weekend; Friday,

21 Saturday, Sunday.

22   Q.   What was the Kansas City Power and Light

23 Company business purpose of that trip?

24   A.   Alstom has an annual conference there. I

25 was among a number of utility executives who are

 1 | customers that they host. There's a formal meeting

 2 | and then there are dinners and other social events.

 3 | MR. WILLIAMS: Judge, may I approach to

 4 | take the document back?

 5 | JUDGE PRIDGIN: You may.

 6 | BY MR. WILLIAMS:

 7 | Q.   Thank you. Mr. Downey, is there any

 8 | relationship between the Kansas City Power and Light

 9 | Company settlements with Alstom on the JLG and soil

10 | compaction -- or soil stabilization issues and the

11 | all-expense, except airfare, trips you took to Pebble

12 | Beach and Newport, Rhode Island that Alstom provided

13 | to you and your wife?

14 | A.   No.

15 | Q.   Would you turn your -- do you have your

16 | direct testimony with you?

17 | A.   I do.

18 | Q.   Would you -- would you turn to page 4 of

19 | that testimony?

20 | MR. HATFIELD: We had a page number

21 | problem last week. Make sure we're right on the right

22 | page.

23 | THE WITNESS: I hope I have a correct one

24 | this week.

25 | BY MR. WILLIAMS:

1   Q.   We'll try to get that.

2   A.   I changed it out. I don't know which

3 version I'm currently holding.

4   Q.   At least on the version I have, on

5 lines 9 to 10 you refer to CEP, Comprehensive Energy

6 Plan, projects being under the control of the senior

7 vice president of supply, Stephen Easley, do you not?

8   A.   Yes.

9   Q.   Was the Iatan construction project under

10 Mr. Easley's control at any time?

11   A.   Yes. He was in charge at this point in

12 time. He did report to me, but he was in charge of

13 the project.

14   Q.   During what periods of time was he in

15 charge of the project, the Iatan project?

16   A.   From the beginning of the project through

17 till about mid-2008. I don't have exact time, but

18 somewhere in that mid-2008 time frame.

19   Q.   Mr. Downey, is a $26 million -- or would

20 a $26 million federal income tax credit be significant

21 to KCP&L Greater Missouri Operations Company?

22   A.   Yes, I would think so.

23   Q.   And last Friday you referred to Melissa

24 Hardesty as being the company witness on the issue of

25 the advanced coal tax credit, did you not?

1   A.   Yes.

2   Q.   Are you familiar with her testimony?

3   A.   No

4   MR. WILLIAMS: Judge, may I approach?

5   JUDGE PRIDGIN: You may.

6   BY MR. WILLIAMS:

7   Q.   Mr. Downey, I'm handing you what the

8   company's marked as GMO Exhibit 18, which is the

9   rebuttal testimony of Melissa K. Hardesty on behalf of

10   KCP&L Greater Missouri Operations Company. And direct

11   your attention to page -- page 8 where there's a

12   section that starts -- that has a title Advanced Coal

13   Credits and Other ITC that goes through page 12.

14   Would you take a look at that section of her

15   testimony, pleases?

16   A.   I've read through page 12.

17   Q.   Do you disagree with anything

18   Ms. Hardesty has said there?

19   A.   This is a complicated tax issue. I'm not

20   a tax expert so I will leave her testimony to stand on

21   its own.

22   Q.   So you don't know if you agree with it or

23   not?

24   A.   This is our company's position based on

25   our head of tax who will be testifying in the GMO case

1 on the question.

2   Q.   Does KCP&L Greater Missouri Operations

3 Company currently have any advanced coal tax credit

4 for Iatan 2?

5   A.   I don't believe so, but I'm not -- I'm

6 not certain.

7   Q.   And doesn't Ms. Hardesty say that the

8 reason the company had -- I guess KCP&L Greater

9 Missouri Operations Company has not sought to get an

10 allocation of the advanced coal tax credit because of

11 a concern that the benefits of the coal tax credit

12 will no longer be available?

13   MR. HATFIELD: Judge, I'm going to object

14 that we're covering cumulative evidence with that

15 specific question. Ms. Hardesty's testimony is in the

16 record. It's direct testimony. Going over it again

17 with Mr. Downey when he's not familiar with it is

18 cumulative.

19   I'd also add, this particular witness was

20 given to Staff for a deposition. They were allowed to

21 take the deposition of this witness. They only used

22 about half of the time that was allowed. And they

23 were also told that if they needed more time, they

24 could get more time.

25   So I think at this point when we're just

1 re-treading other witness's testimony, I'd like to ask

2 your Honor's intervention to move us along and not go

3 over the same testimony.

4   JUDGE PRIDGIN: I'll overrule.

5   And, Mr. Downey, obviously if you don't

6 know the answer to the question, you're most free to

7 say that you don't know.

8   THE WITNESS: I -- I don't know. I do

9 know that we -- we got this allocation in 2008. We

10 didn't acquire the GMO properties until the middle of

11 2008. So we would have probably applied for this

12 before GMO was part of KCPL and would have been

13 granted those.

14   And from Ms. Hardesty's testimony, it

15 appears that there were pretty strict IRS rules then

16 regarding reallocation which she can better answer

17 than I, but I believe we might have applied for this

18 prior to the acquisition of GMO.

19 BY MR. WILLIAMS:

20   Q.   Well, if KCP&L Greater Missouri

21 Operations Company has no benefit from the advanced

22 coal tax credit now, why wouldn't it seek that

23 benefit?

24   A.   I -- I believe Mrs. Hardesty suggests a

25 willingness to work with the Staff on this, but a

1 concern about Internal Revenue Service rulings.

2   MR. WILLIAMS: Judge, may I approach?

3   JUDGE PRIDGIN: You may.

4   MR. WILLIAMS: I'm done with that line of

5 questions. Thank you.

6   Judge, I think my next series of

7 questions need to be handled in camera.

8   JUDGE PRIDGIN: All right. Just a

9 moment, please. We'll go in-camera.

10   (REPORTER'S NOTE: At this point, an

11 in-camera session was held, which is contained in

12 Volume 22, pages 1284 to 1304 of the transcript.)

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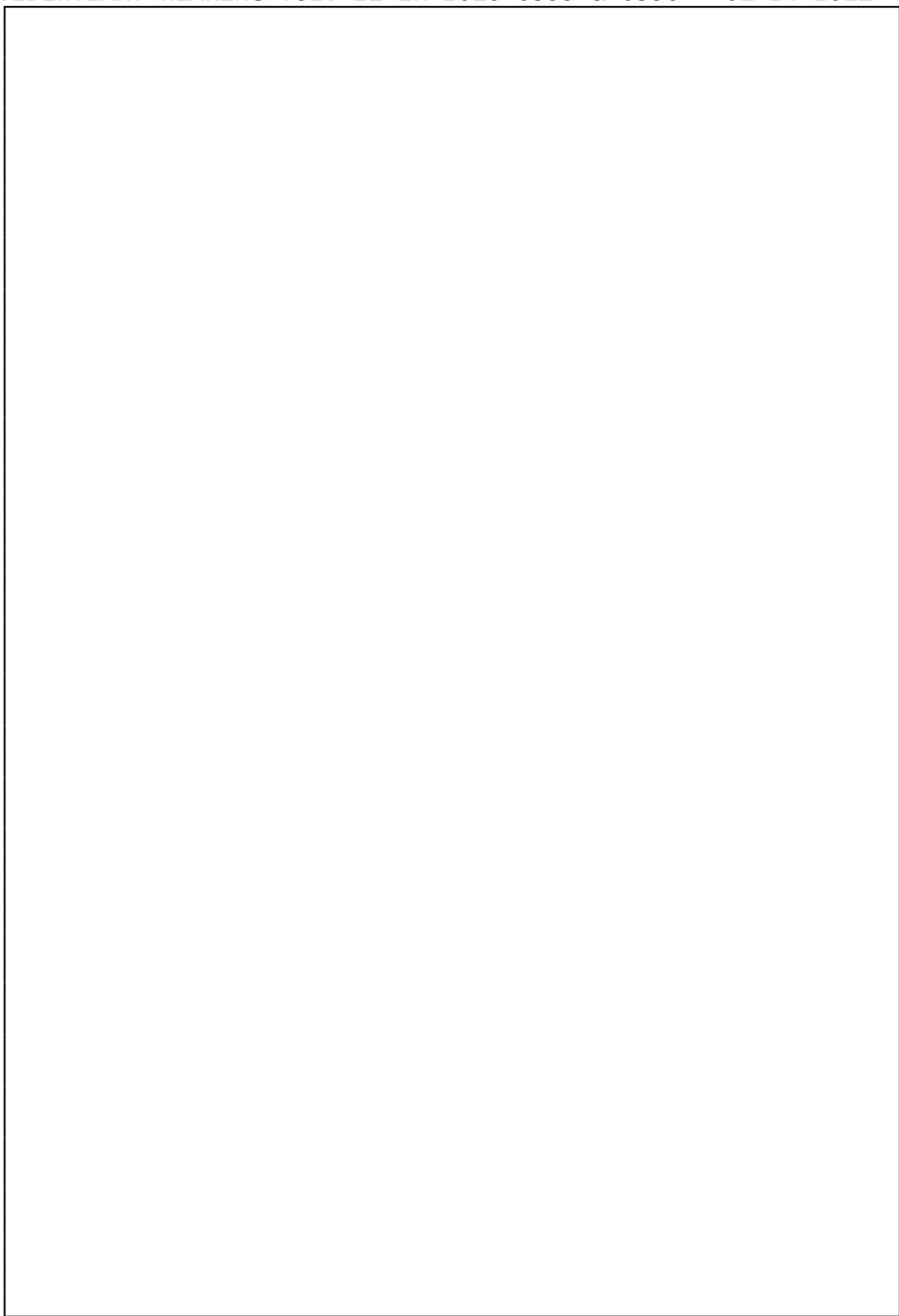
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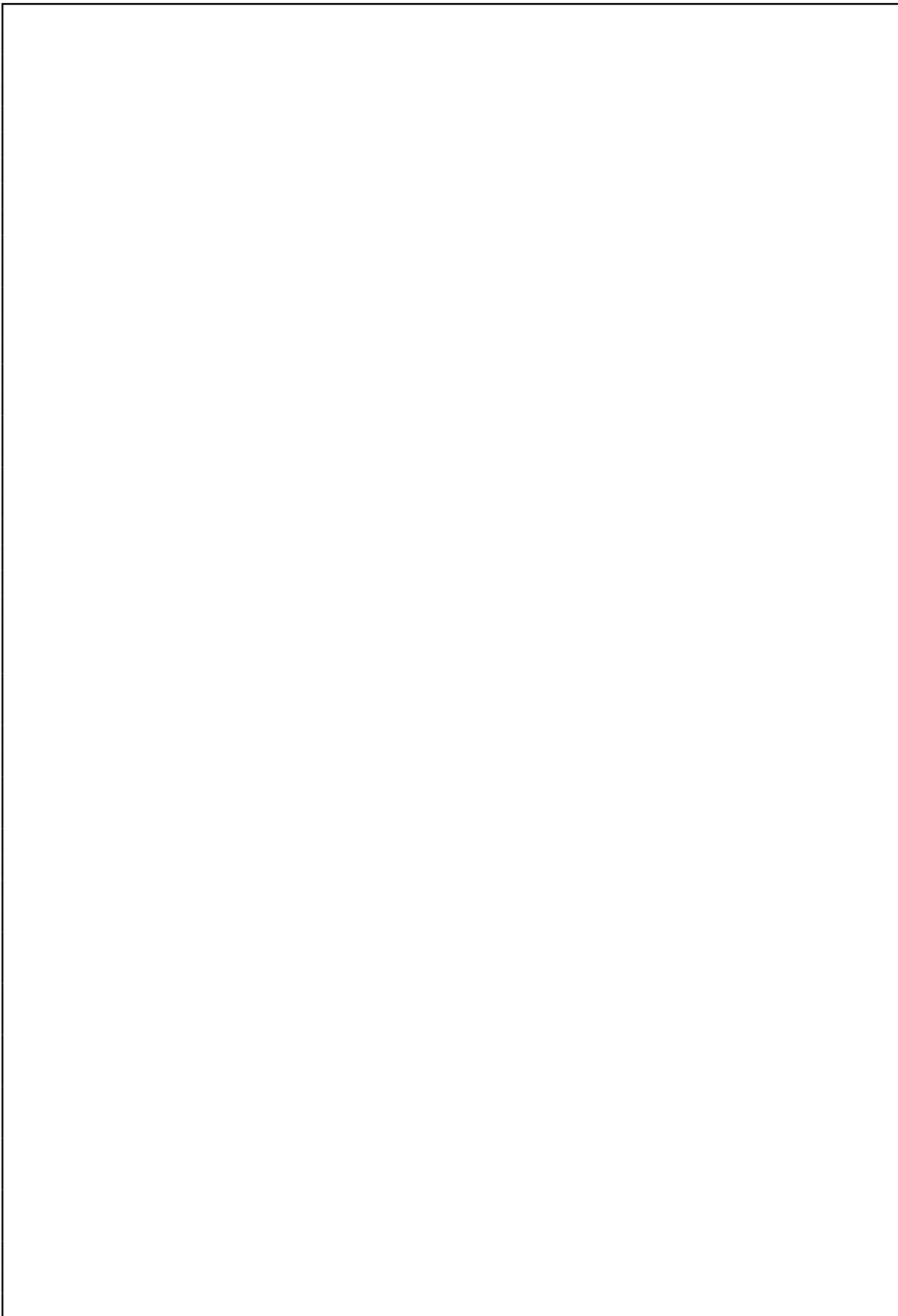
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1   JUDGE PRIDGIN: We are back in public

2 forum. Mr. Williams, when you're ready.

3   MR. WILLIAMS: Is the next Exhibit

4 No. 256?

5   JUDGE PRIDGIN: Yes, sir.

6   MR. WILLIAMS: This would be KCP&L 256.

7   (KCP&L Exhibit No. 256 was marked for

8 identification.)

9   MR. WILLIAMS: The next exhibit would be

10 then 257?

11   JUDGE PRIDGIN: Yes, sir.

12   (KCP&L Exhibit No. 257 was marked for

13 identification.)

14   MR. WILLIAMS: Then the next exhibit

15 would be 258.

16   (KCP&L Exhibit No. 258 was marked for

17 identification.)

18   MR. WILLIAMS: The next then would be

19 KCPL 259.

20   JUDGE PRIDGIN: Correct.

21   (KCP&L Exhibit No. 259 was marked for

22 identification.)

23   MR. WILLIAMS: And then KCP&L 260.

24   JUDGE PRIDGIN: Correct.

25   (KCP&L Exhibit No. 260 was marked for

1 identification.)

2 WILLIAM DOWNEY testified as follows:

3 BY MR. WILLIAMS:

4   Q.   Mr. Downey, I've provided you with what

5 have been marked for identification as Exhibit Nos.

6 KCP&L 256, 257, 258, 259 and 260. Would you turn to

7 what's been marked for identification as KCP&L 256?

8   A.   Yes.

9   Q.   Is Exhibit No. KCP&L 256 Staff's request

10 to Kansas City Power and Light Company for

11 documentation related to Iatan 1 and Kansas City Power

12 and Light Company's initial response to that request?

13   MR. HATFIELD: Object to a lack of

14 foundation. He hasn't even established that this

15 witness has seen any of these documents. And, Judge,

16 in advance, we have no problem admitting all of these

17 documents into evidence in their entirety.

18   JUDGE PRIDGIN: Mr. Williams?

19   MR. WILLIAMS: Well, with that, I'll go

20 ahead and offer Exhibits KCP&L 256 through KCP&L 260.

21   JUDGE PRIDGIN: Any objection?

22   MR. HATFIELD: No objection.

23   JUDGE PRIDGIN: Exhibits 256, 257, 258,

24 259 and 260 are all admitted. Are any of them HC?

25   MR. HATFIELD: They are not.

1   JUDGE PRIDGIN: All right. Thank you.

2   (KCP&L Exhibit Nos. 256, 257, 258, 259

3 and 260 were received into evidence.)

4   JUDGE PRIDGIN: Mr. Williams?

5   MR. WILLIAMS: Thank you.

6 BY MR. WILLIAMS:

7   Q.   Mr. Downey, have you seen what's been

8 marked as Exhibit No. KCP&L 256 before?

9   A.   No. There were thousands literally of

10 data requests over the years and Mr. Giles in the

11 regulatory department, subsequently Mr. Blanc managed

12 this process and so they would have been the focal

13 point of these.

14   Q.   Are you familiar with company responses

15 to Staff data requests?

16   A.   Yes, I would have seen some and been

17 involved in some.

18   Q.   Did you see the company's responses to

19 Staff's Data Request 490 which has been marked for

20 identification as KCP&L 256 before today?

21   A.   I -- I don't recall.

22   Q.   Have you had an opportunity to review

23 that data request and response?

24   A.   490?

25   Q.   Yes.

1   A.   Yes.

2   Q.   Do you disagree with anything that's said

3   in that response?

4   A.   I have no reason to.

5   Q.   Then turning to what's been marked for

6   identification as Exhibit No. KCP&L 257, have you had

7   an opportunity to review that question and response?

8   A.   Yes.

9   Q.   Do you disagree with that response at the

10   time it was made?

11   A.   I don't understand it or the context

12   within which it was given.

13   Q.   Do you know what Kansas City Power and

14   Light Company's last rate case before this Commission

15   was numbered?

16   A.   No, I don't keep track of the numbers.

17   Q.   Are you familiar with the dates whenever

18   the rate cases are ongoing?

19   A.   Yes. I believe I was here the last one.

20   Q.   And what response date is indicated on

21   this data request?

22   A.   Date of response was February 3rd, 2009.

23   Q.   Given that date and the question asked

24   and the response given, do you have any disagreement

25   with the response that was provided at -- on that

1 date?

2   A.   Even with those clues, I'm not sure that

3 I understand the context of this. I'm -- I'm -- I

4 just don't -- I don't.

5   Q.   Is there something confusing about the

6 question?

7   A.   Well, I'm -- I'm not sure. Would you

8 rephrase it for me?

9   Q.   The question I was referring to is the

10 data request or the request that's made. Do you find

11 that request confusing? Please provide copies of all

12 the documentation --

13   A.   What I said is I don't understand the

14 context of the objection. I -- I was not involved

15 with this.

16   Q.   So you're referring to the objection

17 itself?

18   A.   Well, Mr. Giles and Mr. Blanc would have

19 probably been better to have answered this question.

20   Q.   Turning your attention to what's been

21 marked for identification as Exhibit KCP&L 258, which

22 shows a later date of response of April 17th of 2009,

23 do you have any disagreement with that response that

24 was given at that date to that particular request?

25   A.   Well, it refers back to a response to

1 490. I have no reason to agree or disagree.

2   Q.   Turning to Exhibit No. KCP&L 259, what is

3 that exhibit?

4   A.   It says that it's a Revised Privilege Log

5 and it's labeled Missouri Public Service Commission.

6 So I'm assuming it is the document from the Missouri

7 Public Service Commission.

8   Q.   And what is that privilege log -- what

9 does that privilege log reflect for Data Request

10 No. 490?

11   A.   Could you be more specific about what --

12 what do you mean "reflect"?

13   Q.   There's a table that appears on that

14 page 1 of 5, is there not?

15   A.   Yes.

16   Q.   And are there a series of data request

17 numbers provided on the first column?

18   A.   Yes.

19   Q.   And are the first three rows with

20 information in them designated as Data Request

21 No. 490?

22   A.   Yes.

23   MR. HATFIELD: Judge, I'm going to try

24 again on cumulative evidence. The document's been

25 admitted. It's in evidence.

1   JUDGE PRIDGIN: It certainly has been

2 admitted. And, Mr. Williams?

3   MR. WILLIAMS: Mr. Downey has indicated

4 he doesn't have an understanding about the document,

5 so I'm just trying to find out if I can get a

6 clarification of his understanding and ask some

7 questions.

8   JUDGE PRIDGIN: All right. I'll

9 overrule.

10 BY MR. WILLIAMS:

11   Q.   What is your understanding of this

12 document?

13   A.   I have no idea. I mean it looks like a

14 log that is kept by the Commission Staff, I assume.

15 I -- I've never seen this before.

16   Q.   Do you know what Exhibit No. KCP&L 260

17 is?

18   A.   It's a -- it's labeled Confidential

19 Memorandum to Steve Easley from Kenneth Roberts and

20 Eric Gould regarding the summary of Iatan 2

21 contingency analysis.

22   Q.   Do you know if this document is the only

23 document that was provided to Staff by Kansas City

24 Power and Light Company in response to Staff Data

25 Request 490 and 491?

1   A.   I don't.

2   Q.   Who at Kansas City Power and Light

3 Company to -- decided to assert the attorney/client

4 privilege in response to Staff Data Request 490 and

5 491?

6   A.   I don't know. Mr. Giles would have been

7 the individual monitoring the data request process.

8   Q.   Do you know what documents, if any,

9 Kansas City Power and Light Company has provided the

10 Staff to support the development, review, analysis and

11 approval of the contingency and executive contingency

12 included in the control budget estimate for Iatan 2?

13   A.   No, I'm not specifically aware.

14   MR. WILLIAMS: Judge, I'd like to have

15 another exhibit.

16   JUDGE PRIDGIN: This should be 261.

17   MR. WILLIAMS: I believe -- I'll confirm

18 with the company, but I believe this will be HC.

19   JUDGE PRIDGIN: All right. This is HC?

20   MR. FISCHER: Yes.

21   JUDGE PRIDGIN: Thank you.

22   (KCP&L Exhibit No. 261-HC was marked for

23 identification.)

24 BY MR. WILLIAMS:

25   Q.   Mr. Downey, I've provided you with what's

1 been marked for identification as Exhibit KCP&L

2 261-HC. Have you seen that exhibit before?

3   A.   I'm sure I have.

4   Q.   Are these board of directors minutes?

5   A.   It looks like it would have been a part

6 of the minutes.

7   Q.   And what would have been the date of the

8 meeting that those minutes were for?

9   A.   It was a board of directors meeting so

10 that -- the title says Proposed Control Budget

11 Estimate, Iatan 2 Project, Board of Directors Meeting

12 December 4 and 5, 2006.

13   Q.   And do these particular minutes that are

14 in Exhibit KCP&L 261-HC, do they accurately reflect

15 the budget information and recommendation that the

16 board of directors approve a control budget estimate

17 for Iatan 2 of a base cost estimate of 1.465 billion,

18 a contingency of 220 million, and a total project

19 without AFUDC of 1.685 billion?

20   A.   Yes.

21   Q.   Is that control budget estimate based on

22 the more detailed Appendix 2, Summary of Project Cost

23 Estimates to Current Working Estimates that is the

24 last page of Exhibit KCP&L 261-HC?

25   A.   What was the question again?

 1   Q.   Is that control budget estimate based on

 2 the more detailed Appendix 2, Summary of Project Cost

 3 Estimates to Current Working Estimates that is the

 4 last page of Exhibit KCP&L 261-HC?

 5   A.   Yes.

 6   Q.   Did the board of directors approve that

 7 control budget estimate?

 8   A.   It did.

 9   Q.   Is that control budget estimate what

10 Kansas City Power and Light Company has identified as

11 the definitive estimate for Iatan 2 for its

12 experimental alternative regulatory plan?

13   A.   Yes.

14   MR. WILLIAMS: Judge, at this time I'd

15 like to offer Exhibit KCP&L 261-HC.

16   JUDGE PRIDGIN: Any objections?

17   MR. HATFIELD: No objection from the

18 company.

19   JUDGE PRIDGIN: 261 is admitted.

20   (KCP&L Exhibit No. 261-HC was received

21 into evidence.)

22 BY MR. WILLIAMS:

23   Q.   Would you turn to the last page of

24 Exhibit KCP&L 261-HC? Do you see the category on the

25 left column of that page that has Owner's Indirects as

1 a label?

2   A.   Yes.

3   Q.   And do you see a line under that label

4 for Owner's Indirects of Outside Management Oversight?

5   A.   Yes.

6   Q.   Do you know if the information on that

7 line to the right whether that's confidential or not

8 or proprietary information?

9   A.   I don't.

10   MR. FISCHER: Yes.

11   MR. WILLIAMS: We need to go in-camera

12 for a couple of questions then.

13   JUDGE PRIDGIN: Just a moment, please.

14   (REPORTER'S NOTE: At this point, an

15 in-camera session was held, which is contained in

16 volume 22, pages 1316 to 1321 of the transcript.)

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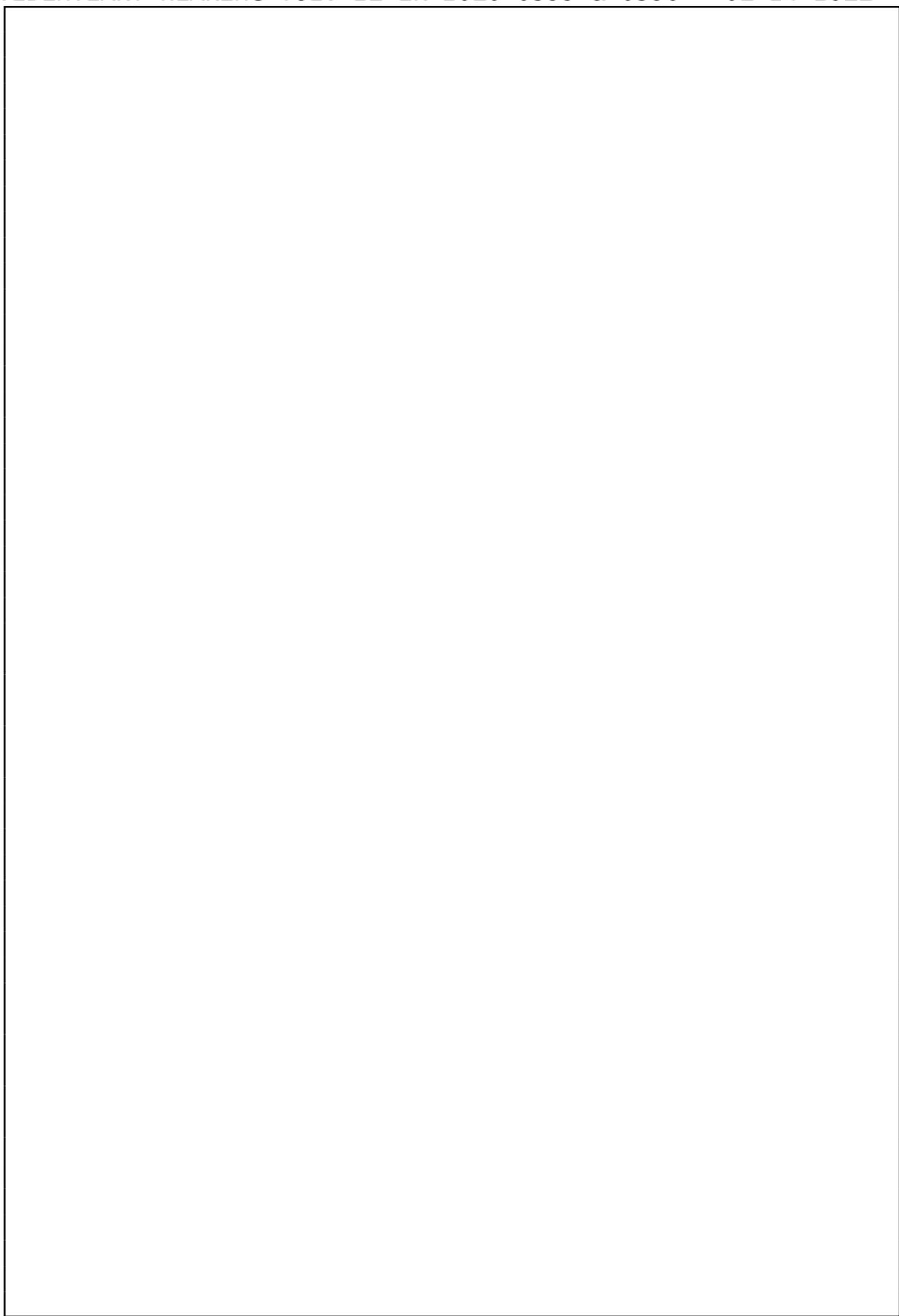
 1   JUDGE PRIDGIN: All right. We're back in

 2 public forum. I am getting some requests for a recess

 3 and I show 10:05. Anything from counsel before we go

 4 on break? All right. Let's resume at 10:20, please.

 5 Thank you. We're off the record.

 6   (A recess was taken.)

 7   JUDGE PRIDGIN: All right. We are back

 8 on the record. Anything from counsel before

 9 Mr. Williams resumes examining Mr. Downey?

10   All right. Mr. Williams, when you're

11 ready.

12   MR. WILLIAMS: Thank you, Judge.

13 BY MR. WILLIAMS:

14   Q.   Mr. Downey, how long have you known

15 Mr. Thomas J. Maiman?

16   A.   Probably back to the early '70s.

17   Q.   When did you first meet Mr. Maiman?

18   A.   Working at Commonwealth Edison Company in

19 Chicago.

20   Q.   What were you doing at that time?

21   A.   I was probably district manager of the

22 Elgin district.

23   Q.   And what was Mr. Maiman doing?

24   A.   He was the area manager of the Glen Bart

25 area. There were five areas in districts within this

1 division -- operating division of the company.

2   Q.   Then did you work under Mr. Maiman?

3   A.   Ultimately I did. Later on in our

4 career, we all rotated around a good bit into

5 different assignments.

6   Q.   Was Mr. Maiman head of Commonwealth

7 Edison's nuclear fleet at any time?

8   A.   Yes, he was.

9   Q.   Do you know what points in time?

10   A.   I don't recall the dates.

11   Q.   Any idea at all?

12   A.   I would just be guessing. I would say in

13 the '80s possibly. He was -- actually in the '80s he

14 was in charge of construction of the nuclear plants, I

15 think. And then later -- it would have been in the

16 '90s that he was perhaps -- but I'm guessing at this

17 point.

18   Q.   You reference Unicom Energy Services

19 Company in your direct testimony, do you not?

20   A.   I do.

21   Q.   And you were president of it?

22   A.   Yes.

23   Q.   Was it involved with nuclear generators

24 when you were president of it?

25   A.   No. Never was.

 1   Q.   Is -- or was Unicom Energy Services

 2 Company when you were president of it, a subsidiary of

 3 Commonwealth Edison?

 4   A.   Yes. Actually it was a subsidiary of our

 5 holding company. Not of Commonwealth Edison, but the

 6 holding company.

 7   Q.   So it was an affiliate of Commonwealth

 8 Edison?

 9   A.   Yes.

10   Q.   Did the NRC impose civil penalties on

11 Commonwealth Edison for violations of NRC regulations

12 when Mr. Maiman was head of Commonwealth Edison's

13 nuclear fleet?

14   A.   I don't know that for certain. It's

15 possible.

16   Q.   Did the NRC impose civil penalties on

17 Commonwealth Edison in 1996 that aggregated to

18 450,000?

19   A.   As I said, I -- I don't know.

20   Q.   Did the NRC impose civil penalties on

21 Commonwealth Edison for violations of NRC regulations

22 that aggregated 850,000 in the first quarter of 1997?

23   A.   I don't know.

24   Q.   Mr. Downey, in the 1990's when you were

25 at Commonwealth Edison, were you an officer at the

1 corporation?

2   A.   I was probably beginning around 1992.

3   Q.   And were you familiar with SEC filings

4 made by Commonwealth Edison while you were an officer

5 of the corporation?

6   A.   I would not have been involved in

7 preparing them or developing them. I might have read

8 them.

9   MR. WILLIAMS: Judge, may I approach?

10   JUDGE PRIDGIN: You may.

11 BY MR. WILLIAMS:

12   Q.   Mr. Downey, I've handed you what's -- is

13 indicated on it to be a Form 10-K for Commonwealth

14 Edison, portions of it for the period of December 31

15 of 1996. Would you turn to the second sheet which

16 shows a page number of 26 on it.

17   A.   Yes.

18   Q.   And does it show for Thomas J. Maiman,

19 positions he held at ComEd as an executive?

20   A.   Yes.

21   Q.   And would you take a look at the dates

22 and the -- the positions that are reflected in there?

23 And do those appear correct to you?

24   A.   Yes.

25   Q.   And what positions and dates are

 1 reflected there that Mr. Maiman held at ComEd?

 2   A.   Executive vice president of ComEd

 3 beginning January 1997. Senior vice president of

 4 ComEd from 1992 to January of '97. And vice president

 5 of Commonwealth Edison 1992.

 6   Q.   And do you know what, if any of those

 7 positions -- while Mr. Maiman was in any of those

 8 positions, he would have been head of the nuclear

 9 positions of ComEd?

10   A.   I just can't recall.

11   Q.   Then toward the bottom of that page it

12 lists you, does it not?

13   A.   Yes, it does.

14   Q.   And does it accurately reflect your

15 positions at ComEd and the dates you held them?

16   A.   Yes.

17   Q.   And what does it show there?

18   A.   Vice president of ComEd since 1992 and

19 manager of marketing and customer services of ComEd

20 1992.

21   Q.   And were those the positions you held at

22 the time this 10-K was filed, which would have been I

23 believe March of 1997?

24   A.   Yes.

25   Q.   Then turning to the last page on what

1 I've handed you which shows it to be page No. 15, do

2 you see towards the bottom of the page a header

3 Environmental?

4   A.   Yes.

5   Q.   And then do you see two paragraphs above

6 that header that starts off, During the year 1996?

7   A.   Yes.

8   Q.   Would you read that paragraph, please?

9   MR. HATFIELD: Judge, I'm going to object

10 to having the witness read hearsay into the record.

11   MR. WILLIAMS: I just asked him to read

12 it. I haven't asked him to read it aloud.

13   MR. HATFIELD: Oh, sorry. I didn't know

14 he meant read it to himself.

15   JUDGE PRIDGIN: Thank you.

16   MR. HATFIELD: Withdrawn.

17   JUDGE PRIDGIN: Thank you.

18   THE WITNESS: Yes.

19 BY MR. WILLIAMS:

20   Q.   Do you know if the statements in that

21 paragraph are accurate?

22   A.   Well, it's their 10-K, so I'm assuming

23 it's accurate.

24   Q.   And what do those statements say?

25   A.   During the year --

1   MR. HATFIELD: Object to having the

2 witness read hearsay into the record.

3   JUDGE PRIDGIN: Mr. Williams?

4   MR. WILLIAMS: All right. I'll withdraw

5 the question.

6 BY MR. WILLIAMS:

7   Q.   Mr. Downey, do you agree with the

8 statements in that paragraph?

9   A.   I'm assuming they're a matter of fact.

10   Q.   And why are you assuming they're a matter

11 of fact?

12   A.   They're in their 10-K. It's not a good

13 thing to lie in a 10-K.

14   Q.   And why do you believe they're in the

15 company's 10-K?

16   A.   They were -- they rose to a level of

17 significance to be reported.

18   Q.   Does that paragraph refresh your

19 recollection about whether or not the NRC imposed any

20 civil penalties on ComEd in 1996 or 1997?

21   A.   It says here that they did.

22   Q.   And did they?

23   A.   I don't recall specifically.

24   Q.   Mr. Downey, was Mr. Maiman your mentor at

25 Commonwealth Edison?

1   A.   I would not call him my mentor. I would

2 call him a peer and then ultimately a -- my boss. We

3 spent about 30 years together working sometimes

4 together, sometimes in different locations. We were

5 part of a management development process and we each

6 had many different jobs.

7   Q.   How long was he your boss?

8   A.   Probably several years he was my direct

9 boss.

10   Q.   When you say "several years," can you --

11   A.   In the --

12   Q.   -- quantify --

13   A.   -- late '90s he was a head of all

14 division operations for a period of time and that was

15 the area that I was in and -- and reported to him.

16   Q.   So are we talking more than five years?

17   A.   No. I think it was less than that.

18   Q.   More than two?

19   A.   Somewhere around that number.

20   Q.   And when is it that Mr. Maiman left

21 Commonwealth Edison?

22   A.   I don't remember the exact year he

23 retired.

24   Q.   Do you know approximately when it was he

25 left?

 1   A.   I honestly don't. It was -- I don't.

 2 He's been retired for a while.

 3   Q.   Well, apparently he was still there in

 4 the 1990's?

 5   A.   Yes.

 6   Q.   Do you know if he was there after 2000?

 7   A.   I just can't remember. I think he was.

 8   Q.   Did Kansas City Power and Light Company

 9 seek Mr. Maiman's services for the Iatan construction

10 project or its Comprehensive Energy Plan?

11   A.   I did.

12   Q.   And what services did you seek from

13 Mr. Maiman?

14   A.   Consultation and advice. Mr. Maiman had

15 an enormous amount of experience on large construction

16 projects. He had been through it all and -- and I

17 wanted and sought his advice and counsel as we were

18 setting up our projects and -- and beginning this

19 five-year journey through major construction.

20   Q.   When did you begin seeking Mr. Maiman's

21 consultation and advice?

22   A.   It would have been in the 2005 time

23 frame. We periodically talked, in any event. We had

24 maintained a relationship and talked about business

25 matters and other things.

1   Q.   Was Mr. Maiman compensated for the

2 consultation and advice that you're referring to?

3   A.   I mean ultimately he was. Ultimately I

4 asked that he be part of consulting team.

5   Q.   And when was it that you asked that he

6 become part of the consulting team?

7   A.   Would have been probably either late 2005

8 or 2006.

9   Q.   Was he directly employed by Kansas City

10 Power and Light Company?

11   A.   No.

12   Q.   Then how was he -- how was it that he

13 came to be compensated for his consultation and

14 advice?

15   A.   I asked that he be part of the team that

16 we were assembling through Schiff Hardin.

17   Q.   So did you request Schiff Hardin to have

18 Mr. Maiman provide services?

19   A.   Yeah. He became part of the -- the

20 construction consulting part of -- of that

21 organization.

22   Q.   Was that done at your request?

23   A.   Yes.

24   Q.   Didn't Mr. Maiman recommend Schiff Hardin

25 to you for the Iatan construction project?

1   A.   Yes.

2   Q.   And did you solicit his recommendation?

3   A.   I think it occurred in -- in the process

4   of one of our conversations about the project. When

5   he -- when we announced that we were going to be

6   engaging in this effort, we were having one of our

7   periodic conversations and he gave me some of his

8   experience and made some recommendations.

9   He had been working I believe

10 independently at this Ontario project separate and

11 apart from Schiff, but they were working together

12 there and so he'd had that experience and he had

13 walked me through it.

14   Q.   I believe the other day in the context of

15 Terry Murphy, the project in Ontario came up. Was

16 Mr. Murphy working on the same project as Mr. Maiman

17 in Ontario?

18   A.   Yes. That's my understanding.

19   Q.   And Schiff Hardin worked on that project

20 as well?

21   A.   They did.

22   Q.   How often do you speak with -- or let's

23 break it up by time period. Prior to 2005, how often

24 did you speak with Mr. Maiman after you left

25 employment with Commonwealth Edison?

1   A.   We would talk periodically. We'd

2 become -- beside business peers and co-workers, we'd

3 become good friends. We periodically would see

4 them -- he and his wife socially. And so it was, you

5 know, on a periodic basis.

6   Q.   Roughly once a month, once a week?

7   A.   Probably more once a month.

8   Q.   And after 2005, how often did you

9 socialize with Mr. Maiman?

10   A.   I don't think it changed any.

11   Q.   Why did you solicit Mr. Maiman's

12 recommendation that ultimately caused you to retain

13 Schiff Hardin for the Iatan construction project?

14   A.   Mr. Maiman and I were talking about it.

15 He had enormous experience, he knew some of the

16 challenges of embarking on a mega project like

17 Iatan 2, he had been through it himself. And we

18 talked about the -- the issues that arise in the

19 course of those. And he was impressed with the kind

20 of things that Schiff Hardin was doing.

21   I was intrigued with the thought that we

22 would anticipate problem and solve them up front as

23 opposed to wait for problems to arise and -- and deal

24 with them later. Classic example, Wisconsin Electric

25 Power in their last big construction project were

 1 presented with a half billion dollar change order by

 2 one of their contractors at the end of the project,

 3 which ultimately became a major mediation and I think

 4 they settled for something just under $100 million. I

 5 wanted to avoid that on this project, if I could.

 6   And I believe we have. In fact, I know

 7 we have. That's been one of the significant

 8 accomplishments of the project.

 9   Q.   Do I understand you correctly that you

10 informally consulted with Mr. Maiman before he was

11 ever retained to provide any consulting services?

12   A.   Yes.

13   Q.   And what were the natures of the

14 disclosures you made to Mr. Maiman regarding Kansas

15 City Power and Light Company and its Iatan

16 construction project that were done in those informal

17 discussions?

18   A.   I don't think I disclosed anything

19 significant at all other than having conversation

20 about projects like this in a generic sense. We were

21 in the very, very early stages and we were talking

22 about ideas on structure and management and issues

23 that would come up. But I certainly wasn't talking to

24 him about any confidential information in the company.

25   Q.   Did Mr. Maiman tell you why he

1 recommended Schiff Hardin for the Iatan construction

2 project?

3   A.   Well, he -- he raised the kinds of things

4 that they do and why they might be beneficial. That

5 was something we obviously internally in the company

6 vetted ourselves. But I don't think it's unusual --

7 certainly I don't believe it's unusual at my level

8 to -- to rely on people who have long experience in

9 the industry, who know the issues and -- and to talk

10 to about advice and -- and input.

11   I certainly make my own decisions, our

12 own company makes their own decisions, but his advice

13 comes from many years of experience and I thought it

14 was very valuable.

15   Q.   You said that he told you about things

16 Schiff does. What things did he tell you about what

17 Schiff does?

18   A.   Well, as I mentioned, the whole issue of

19 understanding what contractors are doing,

20 understanding what your own project teams are doing.

21 When you realize that we have about 3,000 people at

22 KCP&L and we were about to embark on a project that by

23 itself would have 3- to 4,000 people onsite for most

24 of the construction period.

25   You are getting into a very, very

 1 significant kind of issue in terms of management and

 2 the management processes. And all the processes you

 3 put in place for your ongoing business, somehow with

 4 some of these big projects, they become an island onto

 5 themselves. And so the whole issue was how do we

 6 manage to stay in touch with what's going on --

 7   MR. WILLIAMS: Judge, would you direct

 8 the witness to answer the question?

 9   JUDGE PRIDGIN: Did you want to re-ask

10 the question, Mr. Williams?

11 BY MR. WILLIAMS:

12   Q.   The question was, what things did Schiff

13 does -- did Mr. Ma-- what was it Mr. Maiman told you

14 were the things that Schiff does?

15   A.   I thought that's what I was doing. I was

16 talking about the kind of project oversight, the --

17 the commercial issues that arise in these projects,

18 the need for transparency in reporting what's

19 occurring and the importance of having independent

20 checks and balances on a very large organizations

21 that's basically temporary. It exists for a five-year

22 life and it didn't exist before and -- and it closes

23 down when it's over.

24   So how do you manage all that and what

25 kinds of things do you need and what kind of

1 skill-sets do you need and how do you want to approach

2 it? And those are the kinds of things that attracted

3 me to the Schiff proposal and ultimately attracted our

4 senior leadership team to it.

5   MR. WILLIAMS: Judge, I believe he still

6 hasn't answered the question as to what it was the

7 things -- the things that Mr. Maiman told him that

8 Schiff does.

9   JUDGE PRIDGIN: Mr. Downey, if you

10 want -- apparently Mr. Williams is not satisfied with

11 your answer. I don't know if you could be more direct

12 in what it is Mr. Maiman told you.

13   THE WITNESS: I thought I answered it,

14 but I -- I'll give it another try.

15 BY MR. WILLIAMS:

16   Q.   Well, what is it that Mr. Maiman told you

17 that Schiff does?

18   A.   They provide oversight, they -- they

19 provide knowledge of the contractors we were going to

20 be getting involved with. This is a very small group

21 of -- of firms who do this kind of work and

22 understanding who they are, what their business

23 strategies are.

24   Schiff, in particular its senior

25 leadership, work every day with these companies in

1 multiple settings around the country and so they bring

2 valuable input there, they bring knowledge about

3 project controls and project reporting. They advise

4 not only senior leadership, but boards of directors

5 with regard to large complex construction projects.

6   They have people on the ground, they have

7 a unique set of skills -- not only lawyers, but -- but

8 people knowledgeable in construction. And they live

9 and breathe on the site every day through it

10 documenting all of the technical things that are going

11 on that have commercial implications and you

12 ultimately wind up battling and negotiating and

13 fighting. Those were things that I perceived as very

14 valuable and unique and not in existence in our own

15 company.

16   Q.   And all of those are things that

17 Mr. Maiman told you that Schiff does?

18   A.   I don't recall the specifics. Some of

19 those he may have mentioned and some of those I may

20 have acquired over time from working with them for

21 five years.

22   Q.   And the question was specifically limited

23 to the things that Mr. Maiman told you that Schiff

24 does.

25   A.   Is -- I -- I thought I answered that.

1   JUDGE PRIDGIN: Do you recall what

2 Mr. Maiman told you?

3   THE WITNESS: I don't have specific

4 memory of conversation back in 2005, no. We talked

5 about all these issues as general issues, as problems

6 that I was going to face, that he had faced. We were

7 sharing common experiences.

8 BY MR. WILLIAMS:

9   Q.   Mr. Downey, did you testify in your

10 deposition that you believe that both Mr. Maiman

11 independently and Schiff Hardin were hired by the

12 Canadian government in connection with the restart of

13 some nuclear units that had been mothballed?

14   A.   Yes.

15   Q.   Had you ever heard of Schiff Hardin

16 before Mr. Maiman made his recommendation to you to

17 retain them?

18   A.   Yes.

19   Q.   Where did you hear of them?

20   A.   I lived in Chicago for 30 years. They're

21 a very well known law firm.

22   Q.   And how did you hear of them?

23   A.   They did some work for Commonwealth

24 Edison. Nothing that I was directly involved in, but

25 I've -- I think they've done forensic analyses of

1 commercial issues for ComEd.

2   Q.   Do you know if Mr. Maiman, Schiff Hardin

3 and Terry Murphy worked on the Ontario Power

4 Generation, Inc. Nuc-- Incorporated Nuclear unit

5 restart at the same time?

6   A.   I believe they did.

7   Q.   Did you solicit any input from Terry

8 Murphy regarding Schiff Hardin?

9   A.   No.

10   Q.   Why not?

11   A.   I didn't know him until we hired him.

12   Q.   How did it come about that Kansas City

13 Power and Light Company hire Terry Murphy?

14   A.   Tom Maiman was onsite talking with

15 Mr. Easley, with Mr. Grimwade. I don't know exactly

16 how that came about, but I'm sure there was a

17 connection.

18   Q.   Are you saying it's your understanding

19 that Mr. Maiman recommended Mr. Murphy?

20   A.   In all probability, that occurred.

21   Q.   Did you solicit any recommendation from

22 Mr. Murphy for outside management oversight of the

23 Iatan construction project?

24   A.   No.

25   Q.   Why not?

1   A.   I didn't know him at the time.

2   Q.   Mr. Downey, Kansas City Power and Light

3 Company did not hire Schiff Hardin to work on the

4 Iatan construction project as a result of a

5 competitive bid process, did it?

6   A.   No.

7   Q.   And Mr. Maiman has worked on the Iatan

8 construction project through Schiff Hardin, has he

9 not?

10   A.   Yes.

11   Q.   Did Kansas City Power and Light Company

12 retain Schiff Hardin to provide management oversight

13 services to Kansas City Power and Light Company for

14 the Iatan construction project?

15   A.   Yes.

16   Q.   Did Kansas City Power and Light Company

17 also retain Schiff Hardin to provide legal services to

18 Kansas City Power and Light Company for the Iatan

19 construction project?

20   A.   Yes.

21   Q.   Did Kansas City Power and Light Company

22 retain Schiff Hardin to provide any other services to

23 Kansas City Power and Light Company for the Iatan

24 construction project?

25   A.   Yes. They -- as I've said before, they

1 had a unique bundle of skills, so project controls was

2 also an important issue. Also, the -- the -- the

3 onsite eyes and ears and documentation of construction

4 issues that ultimately can lead to either disputes or

5 lawsuits, their day-to-day documentation of the field

6 work as it relates to commercial -- subsequent

7 commercial issues is -- is huge. And it was -- having

8 that relative strength in dealing with these big

9 companies like Alstom, like Kiewit was very important

10 to our company.

11   We hadn't been in the game for 25 years.

12 When you get into this, it's a small world. These big

13 jobs are complex. The contract for Alstom was

14 1,800 pages and 6 volumes. Interpreting that in the

15 day-to-day world in the field is a -- certainly a

16 challenge. And they brought all those things and

17 those were the things that caused us to hire them.

18   Q.   Excluding expense reimbursement, do you

19 know if Schiff Hardin's billings to Kansas City Power

20 and Light Company to date for legal services exceed

21 one half of its total billings to Kansas City Power

22 and Light Company?

23   A.   I'm sorry. Would you repeat that

24 question?

25   Q.   Excluding expense reimbursements, do you

 1 know if Schiff Hardin's billings to Kansas City Power

 2 and Light Company to date for legal services exceed

 3 one half of its total billings to Kansas City Power

 4 and Light Company?

 5   A.   I don't know. I'm not sure I even

 6 understand your question.

 7   Q.   Do you know what percentage of Schiff --

 8 excluding expense reimbursements, do you know what

 9 percent of Schiff Hardin's billings to Kansas City

10 Power and Light Company to date have been for legal

11 services?

12   A.   I would say 65 to 70 percent.

13   Q.   And excluding expense reimbursements, do

14 you know what percentage of Schiff Hardin's billings

15 to Kansas City Power and Light Company for management

16 oversight have been in comparison to its total

17 billings?

18   A.   I don't -- I don't know that we have a

19 category -- or that we've organized a category called

20 management oversight.

21   Q.   Not all of the individuals providing

22 services for which Schiff Hardin has billed Kansas

23 City Power and Light Company on the Iatan construction

24 project are attorneys or attorney support Staff, are

25 they?

1   A.   No.

2   Q.   Mr. Jim Alberts has worked on the Iatan

3 construction project under contract to Schiff Hardin,

4 has he not?

5   A.   Jim Wilson I think is -- Mr. Wilson's --

6 Mr. Wilson is a project controls expert who cut his

7 teeth at the original Iatan unit back in the '70s when

8 we were building it. And he -- he and his team are --

9 are probably the dominant component of the project

10 controls charges to the company and they're not

11 lawyers. They're -- they're construction guys and

12 scheduling guys.

13   Q.   Thank you for the correction, by the way.

14 I think Jim Wilson is who I was trying to refer to as

15 opposed to Jim Alberts.

16   A.   Jim Alberts is our customer service vice

17 president.

18   Q.   Mr. Daniel F. Meyer has worked on the

19 Iatan construction project under contract to Schiff

20 Hardin, has he not?

21   A.   Yes.

22   Q.   Mr. Meyer is not an attorney, is he?

23   A.   No. Not at all. He -- he's a

24 construction expert going back 50 years.

25   Q.   Mr. Steve Jones is working on the Iatan

 1 construction project under contract to Schiff Hardin,

 2 has he not?

 3   A.   He has worked under contract with Schiff

 4 Hardin, yes.

 5   Q.   Do you know if he's still working under

 6 contract for Schiff Hardin?

 7   A.   I don't believe so, except in this

 8 instance here.

 9   Q.   Mr. Jones is not an attorney, is he?

10   A.   No. He's a purchasing expert.

11   Q.   Were you interviewed by Pegasus

12 Consulting?

13   A.   Yes.

14   Q.   Do you know a Dr. Nielsen?

15   A.   I do.

16   Q.   How do you know Dr. Nielsen?

17   A.   Through this engagement. Our legal

18 counsel retained his firm separately to assess our

19 projects.

20   Q.   When you say "this engagement," are

21 you -- what are you referring to?

22   A.   Our legal department engaged Pegasus for

23 purposes of reviewing the prudence of the actions

24 we've taken on this project and unit 1.

25   Q.   On page 40 of his rebuttal testimony in

1 this case, Mr. Nielsen lists a series of interviews

2 that include one with Bill Downey, KCP&L president and

3 CEO and GPE president and COO. Are you the Bill

4 Downey referenced there?

5 　　　　A.　　Yes.

6 　　　　Q.　　Were you the president and CEO of Kansas

7 City Power and Light Company when you were interviewed

8 by Pegasus Global Holdings, Inc.?

9 　　　　A.　　Did you say president and COO?

10 　　　　Q.　　President and CEO.

11 　　　　A.　　Could have been after the title change

12 that I interviewed. Are you talking unit 2 or unit 1?

13 　　　　Q.　　I'm talking about -- you were interviewed

14 by Mr. Nielsen and he identified you as KCP&L

15 president and CEO and GPE president and COO.

16 　　　　A.　　Well, he -- yes, we had probably had a

17 change from the first time he interviewed me on unit 1

18 versus the second time on unit 2. And his testimony

19 here is with regard to unit 2 so it should say

20 president and COO.

21 　　　　Q.　　So you were interviewed twice by

22 Mr. Nielsen?

23 　　　　A.　　Yes.

24 　　　　Q.　　And the first interview was regarding

25 Iatan 1?

1   A.   Yes.

2   Q.   And the second interview was regarding

3   Iatan 2?

4   A.   Yes.

5   Q.   When were you interviewed by Mr. Nielsen

6   regarding unit 2?

7   A.   Sometime last year. I absolutely have no

8   recollection of the date.

9   Q.   And when were you interviewed by

10 Mr. Nielsen regarding unit 1?

11   A.   My memory's even more stressed on that

12 question. I don't remember.

13   Q.   Was it before you were interviewed

14 regarding unit 2?

15   A.   Yes.

16   Q.   Substantially before?

17   A.   Yes.

18   Q.   Years?

19   A.   Probably a year, at least.

20   Q.   Were the -- was the interview regarding

21 Iatan 1 with Mr. Nielsen conducted in person?

22   A.   Yes.

23   Q.   And was the interview regarding unit 1

24 with Mr. Nielsen also conducted in person?

25   A.   I believe so. I'm having trouble

1 recalling the specifics of that meeting. He -- in the

2 unit 2 one he also had his president and chief

3 operating officer with him.

4   Q.   Well, turning to the unit 2 interview,

5 where was that conducted?

6   A.   In our offices.

7   Q.   When you say "in our offices," are you

8 talking about the headquarters of Kansas City Power

9 and Light Company?

10   A.   Yes.

11   Q.   And how long was that interview?

12   A.   Something over an hour.

13   Q.   And I believe you indicated Mr. Nielsen

14 conducted that interview?

15   A.   Yes.

16   Q.   Did anyone else for Pegasus Global

17 Holdings, Inc. participate in that interview?

18   A.   Yes. Patricia -- I want to say

19 Gallagher. I think I've got that right. As president

20 and chief operating officer.

21   Q.   Did she ask you questions too?

22   A.   Yes.

23   Q.   What preparation did -- preparations did

24 you make for the interview before you were

25 interviewed? And I'm referring to the Iatan 2

1 interview.

2   A.   I don't know that I made any specific

3 preparations.

4   Q.   Did you speak with anyone in preparation

5 for the interview?

6   A.   No.

7   Q.   Was anyone else besides Mr. Nielsen -- I

8 think you said Patricia Gallagher --

9   A.   Uh-huh. Gallagher.

10   Q.   -- Gallagher and yourself were present at

11 the interview.

12   A.   I think Mr. Riggins was there. Perhaps

13 some of the regulatory people. I'm not sure.

14   Q.   When you say "regulatory people," you're

15 speaking of?

16   A.   Could have been Mr. Blanc or Mr. Rush. I

17 don't -- I don't recall specifically, but I'm thinking

18 that there might have been some regulatory people in

19 the room.

20   Q.   But whenever you refer to "regulatory

21 people," you're talking about employees of --

22   A.   My own -- our own company.

23   MR. WILLIAMS: Judge, would you instruct

24 him to let me finish the question before he answers?

25   JUDGE PRIDGIN: All right. Mr. Downey,

 1 if you'll let Mr. Williams finish his question.

 2 BY MR. WILLIAMS:

 3   Q.   You did anticipate my question, by the

 4 way. The "regulatory people" you're referring to are

 5 regulatory -- employees of Kansas City Power and Light

 6 Company?

 7   A.   Yes.

 8   Q.   Did anyone instruct you as to the level

 9 of your cooperation during the interview in advance of

10 it?

11   A.   No. I don't think that was a question.

12   Q.   Did you have any legal representation at

13 the interview?

14   A.   No.

15   Q.   What was the purpose of Mr. Riggins being

16 there?

17   A.   Mr. Riggins had retained them and this

18 was an independent assessment that was going on of the

19 operating organization.

20   Q.   And what was Mr. Riggins' position with

21 the company at the time?

22   A.   General counsel.

23   Q.   Did you bring any documents with you to

24 the interview you had with Mr. Nielsen regarding

25 Iatan 2?

1   A.   No.

2   Q.   Did Mr. Nielsen or anyone else show you

3   any documents at that interview?

4   A.   No.

5   Q.   Do you know if anyone took notes at your

6   interview?

7   A.   Not that I'm aware of.

8   Q.   And how was the interview conducted? Was

9   it informal?

10   A.   Yes. It was a conversation about

11   management processes and structure and they asked a

12   variety of questions.

13   Q.   Do you know if the interview was recorded

14   or transcribed?

15   A.   I don't believe so.

16   Q.   And what was it you discussed at the

17   interview?

18   A.   As I said, the general management

19   processes and procedures, state of the project, my

20   views on -- for any of the issues.

21   Q.   Your views on what sorts of issues?

22   A.   How the project was going, what the

23   strengths were, what -- what issues might have been in

24   the discussion. I think they probed for decision

25   making and the reporting structure, the work of the

1 oversight committee, how information flowed, how we

2 made decisions.

3   Q.   Were there discussions by others at the

4 interview?

5   A.   As I said, chief operating officer asked

6 questions. I don't -- I don't have that recall of the

7 entire conversation piece by piece.

8   Q.   Well, was anyone speaking besides

9 yourself and the people from Pegasus in terms of

10 participating in the interview?

11   A.   No. I don't think so.

12   Q.   Did you have any follow-up discussions

13 with Pegasus Global Holdings, Inc. after the

14 interview?

15   A.   No.

16   Q.   Did you have any follow-up discussions

17 regarding the interview with anyone else?

18   A.   No. They were conducting a number of

19 interviews of people throughout the -- and they were

20 giving an independent assessment.

21   Q.   You've testified earlier that William G.

22 Riggins was chief legal counsel I believe at Kansas

23 City Power and Light Company, have you not?

24   A.   Yes.

25   Q.   And he's no longer employed at the

1 company. Correct?

2   A.   That's correct.

3   Q.   Do you know when it is that he left the

4 company?

5   A.   It was in the fourth quarter of last

6 year.

7   Q.   Do you know why he left? Did he retire

8 or resign or something else?

9   A.   No. He didn't -- he didn't retire. He

10 resigned of his own volition.

11   Q.   And what offices and positions did he

12 have at Kansas City Power and Light Company at the

13 time he resigned?

14   A.   Senior vice president and general counsel

15 and he also had responsibility for our environmental

16 affairs group.

17   Q.   Do you know how long he was senior vice

18 president?

19   A.   I actually don't. Somewhere in

20 between -- we -- that letter that you had me look at

21 back in 2005 and -- and last year he'd become senior

22 vice president. Probably -- probably had been senior

23 vice president two or three years.

24   Q.   And do you know how long he was general

25 counsel of Kansas City Power and Light Company?

 1   A.   Back before I joined the company. So

 2 it's over ten years.

 3   Q.   You also said he had responsibility I

 4 believe for environmental affairs. Do you know how

 5 long he had those responsibilities?

 6   A.   He acquired those somewhere probably in

 7 the last five years -- five or six years.

 8   Q.   Do you know what the nature of

 9 Mr. Riggins' job duties were immediately before he

10 resigned from Kansas City Power and Light Company?

11   A.   The same ones that I just mentioned,

12 senior vice president, general counsel and head of

13 environmental affairs.

14   Q.   Well, what was he doing as senior vice

15 president?

16   A.   He headed up our legal function.

17   Q.   And as general counsel, was he the person

18 who made ultimate legal decisions if there was any

19 disagreement?

20   A.   Yes. He was not only general counsel,

21 but a member of our senior leadership team.

22   Q.   You referenced Kansas City Power and

23 Light Company having a line organization. Was

24 Mr. Riggins a direct report to you when he resigned

25 from the company?

1   A.   No.

2   Q.   who did he direct report to?

3   A.   Our chairman.

4   Q.   Did Mr. Riggins at any time while he was

5   employed by Kansas City Power and Light Company ever

6   directly report to you?

7   A.   No.

8   Q.   Do you know if Mr. Riggins was Kansas

9   City Power and Light Company's chief attorney when

10 this Commission approved Kansas City Power and Light

11 Company's experimental alternative regulatory plan in

12 Case No. EO-2005-0329?

13   A.   Yes.

14   Q.   Was he?

15   A.   Yes, he was.

16   Q.   And during his employment at Kansas City

17 Power and Light Company, did Mr. Riggins actively

18 practice law?

19   A.   Sounds like a term of art, actively

20 practicing law. If -- he was our general counsel.

21 Was he in the courtroom? No.

22   Q.   Well, did he give legal advice to the

23 company?

24   A.   Yes.

25   Q.   And did he make decisions on legal

1 matters for the company?

2   A.   Yes.

3   MR. WILLIAMS: Judge, I'm going to turn

4 to an exhibit that's already been marked and I believe

5 is in evidence, Exhibit 251.

6   JUDGE PRIDGIN: All right.

7   MR. WILLIAMS: May I approach the

8 witness?

9   JUDGE PRIDGIN: You may.

10 BY MR. WILLIAMS:

11   Q.   Mr. Downey, I'm handing you what's been

12 marked as Exhibit No. 251-HC. Do you recognize that

13 exhibit?

14   A.   Yes, I do.

15   Q.   And what is it?

16   A.   It's the Iatan Construction Project

17 Execution Plan issued June 2007.

18   Q.   And isn't that exhibit highly

19 confidential?

20   A.   Yes.

21   Q.   Does the cover page of that exhibit show

22 how Kansas City Power and Light Company expected the

23 Iatan station to look after the Iatan project is

24 completed with only one chimney?

25   MR. HATFIELD: Judge, I just want to

1 object on this chimney stuff, that it's completely

2 irrelevant. There's no disallowance recommended by

3 anyone related to chimneys.

4   JUDGE PRIDGIN: Mr. Williams?

5   MR. WILLIAMS: Well, it is not irrelevant

6 in that the original -- I believe it was the

7 definitive estimate included costs for demolition of

8 the existing chimney.

9   JUDGE PRIDGIN: I'll overrule.

10 BY MR. WILLIAMS:

11   Q.   Mr. Downey?

12   A.   I've been advised that -- that the

13 project budget didn't have demolition costs in it for

14 the chimney, but this is a one stack and there are two

15 stacks at the site.

16   Q.   And turning to page 1, is there a diagram

17 there that provides a little better representation of

18 how the site actually appears?

19   A.   1.0 page? Yes.

20   Q.   Did the executive oversight committee

21 approve Exhibit KCP&L 251?

22   A.   Approve the -- approve the Project

23 Execution Plan?

24   Q.   Yes.

25   A.   We would have reviewed it with -- with --

1 and acknowledged it as -- yes.

2   Q.   Would you turn to page 2 and the 1.2

3 purpose of the plan section of Exhibit KCP&L 251, in

4 particular the last paragraph?

5   A.   Yes.

6   Q.   Does that paragraph indicate that the

7 Project Execution Plan will be changed as of when

8 appropriate to accommodate the evolving stages of the

9 project?

10   A.   Yes, it does.

11   Q.   Was the Iatan construction project not

12 large enough that Kansas City Power and Light Company

13 required its Project Execution Plan to be kept updated

14 and current?

15   A.   I believe that the way this document

16 lived going forward was through processes and

17 procedures established in individual departments.

18   Q.   Are you testifying that the Project

19 Execution Plan was kept updated and current by

20 policies and procedures in departments?

21   A.   What I was saying is that this was a

22 broad outline of responsibilities and then a lot of

23 these were flushed out in individual departments and

24 within the project.

25   Q.   Is it correct then that if a basic plan

 1 or strategy is not included in Exhibit 251 or changes

 2 to Exhibit 251, then that plan or strategy was not

 3 executed?

 4   A.   No.

 5   Q.   So there could have been basic plan or

 6 strategy changes that are not reflected in Exhibit 251

 7 or changes to it?

 8   A.   I'm sure that's possible.

 9   Q.   Turning to page 3 in the second paragraph

10 of Exhibit 251, isn't there a statement there that the

11 PEP is a control document and will be reviewed and

12 revised periodically in accordance with the management

13 of change, MOC, process?

14   A.   Yes.

15   Q.   Was that done?

16   A.   I'm not aware if it was or wasn't.

17   Q.   Turning to the fourth page of Exhibit

18 KCP&L 251, the third paragraph there --

19   A.   Can you -- I'm having trouble with the

20 page. What -- what -- what section are you on?

21   MR. WILLIAMS: May I approach?

22   JUDGE PRIDGIN: You may.

23 BY MR. WILLIAMS:

24   Q.   Let me see if I can get you there. We

25 have pagination issues.

1   A.   Right.

2   Q.   Right here (indicating).

3   A.   Okay.

4   Q.   Direct your attention to that. On that

5   page in the third paragraph which we're talking about

6   following the index would be page No. 4 --

7   A.   Okay.

8   Q.   -- in the third paragraph. Isn't the

9   role of Schiff Hardin described in the Project

10 Execution Plan to be Schiff Hardin, LLP with its

11 consultants, Thomas J. Maiman, Jay Wilson and

12 Associates, Inc. and Meyer Construction Consulting,

13 Inc., collectively Schiff, will provide independent

14 oversight and project controls, advice to KCP&L

15 throughout the course of CEP projects, including the

16 Iatan construction project?

17   A.   That's what it says.

18   Q.   And is that what Schiff Hardin did?

19   A.   It -- it is. And then they obviously

20 provided additional legal advice. I think that that

21 paragraph goes on to elaborate a little bit more than

22 that specific statement.

23   Q.   Well, turning to the last paragraph on

24 that same page, isn't there a statement, Schiff's

25 primary functions will be, one, report on -- report

1 the Iatan construction project's progress to KCP&L

2 senior management; and two, identifying ways in which

3 KCP&L may improve its execution of various phases of

4 the Iatan work.

5   Schiff will prepare reports of the Iatan

6 construction project's progress which will identify

7 critical aspects of the project's progress on the

8 basis of industry standard metrics. To that end,

9 Schiff will work with KCP&L to develop appropriate

10 project metrics that will identify the critical

11 aspects of each of the project's progress.

12   A.   Yes.

13   Q.   And did Schiff do what's stated there?

14   A.   Yes. I think they did it and did it very

15 well.

16   Q.   Do you know how many reports Schiff

17 provided KCP&L -- or Kansas City Power and Light

18 Company in 2006 and 2007?

19   A.   No. I don't recall the specific number,

20 but those would have been -- that would have been

21 early in the project and there would have been many of

22 them. I think that as we moved through the project,

23 the need for those written reports declined, but early

24 on -- those two years would have been very busy years.

25 Maybe as many as 12 or more reports.

1   Q.   When you say "12 or more," are you

2   talking about between the two years or each year?

3   A.   Each year.

4   Q.   And do you know how many reports Kansas

5   City Power and Light Company received from Schiff

6   after 2007?

7   A.   There would have been very significantly

8   fewer. Maybe a half a dozen or more, maybe a half a

9   dozen to nine. I don't remember the exact.

10   Q.   Was the Iatan construction project a

11   success?

12   A.   I think it was an enormous success, both

13   in terms of cost and schedule. We -- we built this

14   plant through the worst inflation era construction

15   period in this industry and through a great recession

16   and during a period when we were closed out of the

17   capital markets for over a year and a half. The

18   stresses during this period were great.

19   I think the project came in very well and

20   the plant is running well. It's met the environmental

21   commitments that we made to our communities. It was

22   probably the single largest construction project in

23   this state during that five-year period. So all in

24   all, I'd say it was a huge success.

25   Q.   Does the Project Execution Plan set out

 1 success criteria in Section 5.1.2?

 2   MR. FISCHER: Counsel, do you have a page

 3 number?

 4   THE WITNESS: There aren't pages numbered

 5 here, are there?

 6   MR. HATFIELD: Yeah, they are in the --

 7   THE WITNESS: I haven't found them if

 8 they are.

 9   MR. MILLS: Little circle in the bottom.

10   THE WITNESS: Oh, there they are. Thank

11 you. I've been struggling to find them. It is

12 page 15.

13   MR. MILLS: Fifteen.

14   MR. FISCHER: Thank you.

15 BY MR. WILLIAMS:

16   Q.   I'm also hampered by having provided my

17 copy to Mr. Downey so --

18   A.   Yes. There are success criteria that

19 there.

20   Q.   And based upon those success -- or on

21 those criteria, was the project a success?

22   A.   I would say yes.

23   Q.   In Section 5.1.2 what is the first safety

24 criteria?

25   A.   The first bullet under safety?

1   Q.   Yes.

2   A.   Everyone goes home at the end of the day.

3   Q.   Did everyone go home at the end of the

4 day each day of the Iatan construction project?

5   A.   No. We had two fatalities during the

6 course of the construction.

7   Q.   Do you know the names of the individuals

8 who died?

9   A.   I can't recall their names.

10   Q.   In terms of safety then, was the Iatan

11 construction project a success?

12   A.   It was in the sense that its accident

13 rate is -- was -- a metrics we use was better than the

14 average on these large construction projects. We

15 obviously do everything we can to avoid fatalities and

16 two contractor employees died in two separate

17 incidents during the course of this project. But we

18 work very hard every day on safety issues and -- and I

19 think in total, the -- the effort was a strong one.

20   Q.   What is the first criterion listed for

21 schedule success?

22   A.   Meet or better the Iatan 1 and 2

23 provisional acceptance dates.

24   Q.   Did Iatan 1 meet or better the

25 provisional acceptance date of December 15th of 2008?

1   A.   No, it didn't.

2   Q.   Did Iatan 2 meet or better the

3 provisional acceptance date of June 1st, 2010?

4   A.   No, it came in slightly later.

5   Q.   How much later?

6   A.   August 26th.

7   Q.   In terms of schedule then, was the Iatan

8 construction project a success?

9   A.   When you look at these projects over a

10 five-year period, yeah, I would say that this plant

11 was a tremendous success. That June 1 date was a

12 commercial date, which we targeted and challenged all

13 off our contractors to. We promised this plant in the

14 summer of 2010. It came. We didn't hit provisional

15 acceptance, but the plant was up and running and

16 producing megawatt hours through July and August,

17 through the summer peak and -- and met our -- our

18 promise to our customers to have this plant in service

19 in the summer of 2010.

20   Q.   What was the purpose of Exhibit 251, the

21 Project Execution Plan?

22   A.   To provide a high-level guideline and set

23 of directions with regard to organizational structure

24 and focus on the project, project direction.

25   Q.   Were there any consequences attached to

 1 failing -- failure to meet any of the guidelines set

 2 out in the Project Execution Plan?

 3   A.   Can you be a little more specific on

 4 consequences? What are you referring to?

 5   Q.   Failure to meet some criterion result in

 6 some adverse consequence -- or some consequence,

 7 presumably adverse?

 8   A.   Well, this is a directional document, not

 9 a -- not a -- a -- this is a directional document.

10 I'm not sure -- I'm still not sure what you mean.

11   Q.   By "directional" you mean it's guidance,

12 it's not mandatory?

13   A.   No, I didn't say that it wasn't

14 mandatory. This provides the direction which people

15 expect to follow.

16   Q.   Under the Project Execution Plan, what is

17 the first criterion for cost success?

18   A.   Are you referring to a specific page?

19   Q.   I believe it's on the following page.

20   A.   Which is 16?

21   Q.   I believe.

22   MR. FISCHER: Yes.

23   THE WITNESS: Well, that was the

24 challenge. Obviously we didn't meet that number and I

25 gave you earlier some of the reasons why.

 1| BY MR. WILLIAMS:

 2| Q.   Well, what is that criterion?

 3| A.   Complete the Iatan 1 and 2 projects

 4| within the control budget.

 5| Q.   Did Kansas City Power and Light Company

 6| complete Iatan 1 within the control budget?

 7| A.   No.

 8| Q.   Did Kansas City Power and Light Company

 9| complete Iatan 2 within the control budget?

10| A.   No. But I believe what we did do given

11| the circumstances at the time was a success.

12| Q.   What is the third criterion for cost

13| success?

14| A.   Leave CEP oversight committee contingency

15| in the bank while meeting other success criteria.

16| Q.   Was the CEP oversight committee

17| contingency left in the bank?

18| A.   No.

19| Q.   And above that, what is the second

20| criterion for cost success?

21| A.   Effectively manage the project

22| contingency through the change control process.

23| Q.   Was the Iatan construction project a

24| success in terms of cost?

25| A.   Given the conditions and circumstances of

1 the time and in comparison to other plants built in a

2 similar period, I would say yes.

3   Q.   Was your Project Execution Plan overly

4 ambitious then?

5   A.   I don't believe it was overly ambitious.

6 I believe it was challenging.

7   Q.   And did Kansas City Power and Light

8 Company meet that challenge?

9   A.   I believe we did. I believe we have a

10 team that worked very hard. I think we were

11 incredibly transparent. We had a lot audiences, a lot

12 of people we were accountable to and I believe that we

13 were successful in meeting those accountabilities.

14   Q.   Has any Kansas City Power and Light

15 Company employee received a bonus based on Iatan

16 construction project results?

17   A.   The -- our -- our variable compensation

18 plan for both officers and non-officers had elements

19 of compensation in it for this project for -- for

20 specific people.

21   Q.   And do you know if anyone has received or

22 is eligible for that -- under your variable

23 compensation plan, for a bonus based on the Iatan

24 construction project results?

25   A.   Yes.

1   Q.   Are these bonuses included in the cost of

2   the Iatan construction project?

3   A.   Certainly a number of them are.

4   Q.   And those that are included in the cost

5   of the Iatan construction project, are they included

6   in the cost you're seeking to include in your rates in

7   this case?

8   A.   Yes.

9   Q.   Is Kansas City Power and Light Company

10 planning to pay any bonuses to any of its employees

11 based on the results of the Iatan construction project

12 results?

13   A.   Would you repeat that?

14   Q.   Is Kansas City Power and Light Company

15 planning to pay any bonuses to any of its employees

16 based on the results of the Iatan construction

17 project?

18   A.   Yes.

19   Q.   Will these bonuses be included in the

20 cost of the Iatan construction project?

21   A.   Yes.

22   Q.   Will these bonuses be included in the

23 cost you are seeking to include in your rates in this

24 case?

25   A.   Yes.

1   Q.   Has any vendor received bonus payments

2 for performance?

3   A.   Not bonus payments, no.

4   Q.   Could any vendor have received bonus

5 payments for performance?

6   A.   I -- I don't believe so.

7   Q.   Do you know -- sorry. Are any Kansas

8 City Power and Light Company's -- Company employees

9 eligible for bonuses based on the outcome of this

10 case?

11   A.   No.

12   Q.   Are you familiar with Kansas City Power

13 and Light Company's code of conduct?

14   A.   Yes.

15   Q.   Does Kansas City Power and Light

16 Company's code of conduct apply to employees at the

17 Iatan construction project?

18   A.   Yes.

19   Q.   Do you know when Kansas City Power and

20 Light Company's code of conduct was issued to

21 employees at the Iatan construction project?

22   A.   I don't. It's generally available to

23 everybody.

24   Q.   Do you know if it was specifically

25 distributed?

1   A.   I don't.

2   Q.   Do you know who David Price is?

3   A.   I do.

4   Q.   Who is he?

5   A.   He was vice president of construction,

6 2007 to 2008 time frame.

7   Q.   Was he vice president of construction --

8 or what were his duties as vice president of

9 construction between 2007 and 2008?

10   A.   His responsible for our Comprehensive

11 Energy Plan construction, specifically at that point

12 focused on the Iatan units.

13   Q.   Before he became vice president of

14 construction, was he an employee of Kansas City Power

15 and Light Company?

16   A.   No.

17   Q.   And did he leave the company in 2008?

18   A.   Yes.

19   Q.   Do you know why he left the company?

20   A.   He was recruited back by his previous

21 employer who was building two 800-megawatt coal units

22 in southern Illinois.

23   Q.   When he was vice president of

24 construction, did he direct report to you?

25   A.   Yes, he did

1   MR. WILLIAMS: Judge, what's the next

2 exhibit number?

3   JUDGE PRIDGIN: I would have 262.

4   MR. WILLIAMS: Thank you.

5   (KCP&L Exhibit No. 262 was marked for

6 identification.)

7   Judge, may I approach?

8   JUDGE PRIDGIN: You may.

9 BY MR. WILLIAMS:

10   Q.   Mr. Downey, I'm handing you what's

11 been -- Mr. Downey, I'm handing you what's been marked

12 for identification as Exhibit No. KCP&L 262.

13   A.   Yes.

14   Q.   Do you recognize what's been marked as

15 Exhibit No. KCP&L 262?

16   A.   Yes. I -- our code of conduct. And then

17 a e-mail from Dave Price to his -- what looks like

18 his -- well, to his leadership team. And a previous

19 e-mail from Brad Lutz to Bob Schallenberg about the

20 code of compliance response.

21   Q.   Does Exhibit No. KCP&L 262 indicate that

22 Kansas City Power and Light Company provided its code

23 of conduct and related documents to the construction

24 management team for the Iatan construction project on

25 Monday, September 24th, 2007?

1   A.   Yes.

2   Q.   Do you know if, in fact, those documents

3   were distributed on that date?

4   A.   I don't know.

5   Q.   Does the Exhibit 262 also indicate that

6   all Kansas City Power and Light Company employees at

7   Iatan were to meet to review those documents by the

8   end of that week?

9   A.   Yes.

10   Q.   Do you know if those meet-- that meeting

11   occurred?

12   A.   I don't.

13   Q.   Does Exhibit 262 also indicate that the

14   code of conduct documents were provided to

15   Mr. Schallenberg of the Commission Staff on

16   September 17th of 2007?

17   A.   Yes.

18   Q.   Do you know if, in fact, those documents

19   were provided to Mr. Schallenberg on that date?

20   A.   I don't.

21   Q.   Is the code of conduct materials included

22   in Exhibit 262 relevant to the Iatan construction

23   project?

24   A.   Yes. It's relevant to all of our

25   employees.

1   Q.   Would you turn to page 5 of the

2   July 25th, 2006 code of business conduct in ethics?

3   A.   Yes.

4   Q.   And do you see on the left of that page,

5   I believe it's towards the bottom, the word "gifts" in

6   bold?

7   A.   Yes.

8   Q.   Would you read the first three paragraphs

9   next to that bolded word?

10   A.   We and members of our immediate family

11 will not directly or indirectly request, take, accept

12 or receive any gift or gratuity from any person or

13 entity with which the company does business or is

14 likely to do business if the acceptance or the

15 prospect of future gifts or gratuities might limit us

16 or be perceived as limiting us from acting solely in

17 the best interest of the company.

18   We and members of our immediately family

19 will not directly or indirectly offer or provide any

20 gift or gratuity to any person or entity with which

21 the company does business or is likely to do business

22 if the acceptance would limit or be perceived as

23 limiting those persons or entities from acting solely

24 in their best interests.

25   Gifts or gratuities include cash,

1 bonuses, trips, fees, commissions, services, private

2 or personal discounts including discounted loans,

3 entertainment or any similar form of consideration of

4 other than nominal or insignificant value.

5   Do you want me continue on the next page?

6 Did you want me to -- or should I stop there?

7   Q.   I don't know. Have you completed the

8 first three paragraphs?

9   A.   I did.

10   Q.   Would you go ahead and read the fourth?

11   A.   The occasional giving and receiving of

12 modest gifts, meals, services or entertainment is an

13 accepted practice of promoting goodwill and building

14 and maintaining business relationships; however, they

15 should be infrequent reasonable, customary, legal and

16 of modest value.

17   Acceptable forms of entertainment include

18 infrequent, moderate hospitality such as meals,

19 charity events, sporting events, holiday gatherings or

20 other celebrations, plays, concerts or other cultural

21 events.

22   It is inappropriate to accept meals,

23 refreshments or entertainment on a regular basis or

24 without returning the hospitality at business-related

25 functions. Invitations to functions that involve

1 travel or overnight stays that are in the best

2 interest of the company will either be paid for by the

3 company or be approved in advance by the president of

4 the applicable company.

5   Q.   Now, is what you read regarding gifts in

6 the code of business conduct and ethics applicable to

7 Kansas City Power and Light Company employees?

8   A.   Yes.

9   Q.   And do you know how long that particular

10 provision has applied to Kansas City Power and Light

11 Company employees?

12   A.   It's been there for quite some time. We

13 reviewed it in 2008, compared and contrasted it to

14 other similar policies for corporations in Kansas City

15 and that are in our industry and so it was reviewed

16 and affirmed in 2008. But it's been in place for

17 quite a while.

18   Q.   Do you know how much in advance of 2008

19 it's been in place?

20   A.   I don't.

21   Q.   Was it in place at the beginning of the

22 Iatan construction project?

23   A.   I believe it was.

24   Q.   Do employees at Kansas City Power and

25 Light Company comply with this code of conduct

1 regarding gifts?

2   A.   I believe they do. We make every effort

3 to communicate it and to make sure that our employees

4 understand the importance of this in the conduct of

5 their business.

6   Q.   Do you comply with it?

7   A.   I believe I do.

8   Q.   Would you explain how the gift provisions

9 of the code of conduct permit you to accept from

10 Alstom trips for you and your wife to Pebble Beach and

11 Newport, Rhode Island at the same time that Kansas

12 City Power and Light Company had a major construction

13 contract with Alstom?

14   A.   First of all, as I said, my wife did not

15 go to Pebble Beach with me on that trip. I was there.

16 I was there at the urging of our chairman to establish

17 business relationships with what was going to be our

18 largest contractor on this project for five years and

19 to begin building relationships with their leadership

20 team, which -- and to get to know them.

21   We had a consortium at Alstom that had

22 three different heads of three different organizations

23 who had to work together, proved to be quite a

24 challenge for them. So getting to know that

25 organization and their people on a social level as

1 well as on a business level was critical to engaging

2 them as we went forward.

3   I met people on that -- those initial

4 visits who became people that I had to sit across the

5 table with and negotiate with and bargain with in some

6 very challenging and intense environments. So getting

7 to know them was a fundamental part of our business

8 and I did it with approval and clear knowledge of my

9 supervisor. And it was every bit appropriate in terms

10 of the business context in which we were operating.

11   Q.   Thank you for the explanation about why

12 you did it, but what I was asking is how it comports

13 with the code of conduct regarding gifts.

14   A.   I don't believe --

15   MR. HATFIELD: I believe that's what he's

16 answered, Judge. Asked and answered.

17   JUDGE PRIDGIN: I'll overrule.

18   THE WITNESS: I believe it comports and

19 in no way did it affect my business judgment relative

20 to Alstom or the management of them and the

21 implementation of their contract.

22 BY MR. WILLIAMS:

23   Q.   What about the perception concern that's

24 stated in the code of business conduct?

25   A.   As I said, I had approval, it was done

1 openly with approval of my boss -- actually with the

2 urging of my boss. And it -- it was an expected and I

3 think normal course of business function.

4   Q.   When you say it was an expected normal

5 course of business function, who had that expectation?

6   A.   I -- I believe that if you read our

7 policy, you see that we encourage the interaction.

8 Obviously it's got to be such that it does not impact

9 our ability to represent our company. And I believe

10 that I represent our company very strongly and -- and

11 so I believe it's -- I believe it's appropriate.

12   MR. WILLIAMS: Judge, I'd like to have

13 another exhibit marked.

14   JUDGE PRIDGIN: This would be 263.

15   MR. WILLIAMS: May I approach?

16   JUDGE PRIDGIN: You may.

17   (KCP&L Exhibit No. 263 was marked for

18 identification.)

19 BY MR. WILLIAMS:

20   Q.   Mr. Downey, I'm handing you what's been

21 marked for identification as Exhibit No. KCP&L

22 No. 263. Mr. Downey, do you recognize Exhibit 263?

23   A.   Yes.

24   Q.   What is it?

25   A.   It's a memo -- two memos actually. One

1 from Dave Price with some of the Alstom management

2 and -- and then a second memo from Dave Price to me

3 about a dilemma he thought he had with regard to some

4 jackets that Alstom had purchased for the site to give

5 to the field folks to wear.

6   Q.   Did you approve the distribution of

7 winter jackets from ALSTOM to Kansas City Power and

8 Light Company employees for which ALSTOM paid about

9 $150 a piece?

10   A.   You know, I can't recall. I probably

11 did. Do you have something that confirms it? If you

12 do, then maybe I did.

13   Q.   I do, but I don't have it handy.

14   MR. WILLIAMS: Judge, may I approach?

15   JUDGE PRIDGIN: You may.

16   MR. WILLIAMS: I don't want to get

17 duplicative.

18   MR. HATFIELD: What was the exhibit

19 number on that last one?

20   MR. WILLIAMS: The last one was 263.

21   MR. HATFIELD: 26--

22   MR. WILLIAMS: 3. Judge, I'd like to

23 mark another exhibit.

24   JUDGE PRIDGIN: Okay.

25   (KCP&L Exhibit No. 264 was marked for

 1 identification.)

 2 BY MR. WILLIAMS:

 3   Q.   Mr. Downey, I've handed you what's been

 4 marked for identification as KCP&L 264. Do you

 5 recognize that exhibit?

 6   A.   I never would have remembered it, but I

 7 do recognize it.

 8   Q.   Doesn't it include a statement by you in

 9 it?

10   A.   Yes.

11   Q.   And what's that statement regarding?

12   A.   It's regarding partial answer to -- well,

13 it answers one of the questions in Mr. Price's memo

14 and then it says to go ahead with regard to the jacket

15 distribution.

16   MR. WILLIAMS: Judge, I'd like to offer

17 Exhibit KCP&L 264 at this time.

18   JUDGE PRIDGIN: 264 -- KCP&L 264 is

19 offered. Any objections?

20   MR. HATFIELD: No objection.

21   JUDGE PRIDGIN: 264 is admitted.

22   (KCP&L Exhibit No. 264 was received into

23 evidence.)

24   MR. WILLIAMS: And I'd also like at this

25 time to offer Exhibit KCP&L 263.

1   JUDGE PRIDGIN: Any objections?

2   MR. HATFIELD: That's the earlier

3 e-mails. Right?

4   MR. WILLIAMS: Yes.

5   MR. HATFIELD: No objection.

6   JUDGE PRIDGIN: 263 is admitted.

7   (KCP&L Exhibit No. 263 was received into

8 evidence.)

9 BY MR. WILLIAMS:

10   Q.   Mr. Downey, do you know if the winter

11 jackets were distributed to Kansas City Power and

12 Light Company employees?

13   A.   I assume they were.

14   Q.   And what's the basis for your assumption?

15   A.   These memos.

16   Q.   Going back to the gift policy and the

17 business code of conduct for -- that you said applies

18 to Kansas City Power and Light Company, where in that

19 code does it permit Kansas City Power and Light

20 Company to accept the winter jackets?

21   A.   I -- Kansas City Power and Light -- these

22 were distributed to individuals who were working at

23 the construction site. And it -- I think it fits

24 within the general statement in the policy. It's hard

25 to find a construction worker on a site like that that

1 doesn't have something with somebody's name on it.

2   Q.   Well, do you know what the value of those

3 winter jackets were or -- what those winter jackets

4 were valued at?

5   A.   It says here in the memo $150 each.

6   Q.   Do you have any reason to dispute that

7 valuation?

8   A.   No. I have no knowledge of it.

9   Q.   And was that your understanding of the

10 value at the time that you authorized their being

11 distributed?

12   A.   Yes.

13   Q.   Do you believe Alstom provided those

14 winter jackets with no expectation of any quid pro

15 quo?

16   A.   I -- I think it's probably pretty typical

17 on construction projects. It was probably -- let's

18 see, it was November so it's going into the winter. I

19 think they -- they distributed them as part of an

20 effort to build teamwork and camaraderie between their

21 group and ours. There was enough tension onsite with

22 the daily back and forth. I'm sure they viewed it as

23 a positive step in the field level.

24   Q.   Don't the winter jackets create an

25 impression that the concessions Kansas City Power and

 1 Light Company made to Alstom were influenced by the

 2 gifts of the winter jackets?

 3   A.   I think that those are so far apart and

 4 so not connected, that -- as to -- I have trouble with

 5 that question.

 6   Q.   I think it calls for a yes or no.

 7   A.   No.

 8   Q.   And you said you think they're so far

 9 apart that there's little, if any, connection, I

10 believe. What do you mean by little, if any,

11 connection?

12   A.   The field workers who got these jackets

13 had -- had no knowledge or engagement in the

14 settlement agreements you refer to.

15   Q.   Do you know if anyone in the Iatan

16 construction project procurement or contract

17 administration area received winter jackets?

18   A.   I don't.

19   MR. WILLIAMS: Judge, I'd like to have

20 another exhibit marked.

21   JUDGE PRIDGIN: This will be 265.

22   (KCP&L Exhibit No. 265 was marked for

23 identification.)

24   MR. WILLIAMS: Judge, may I approach?

25   JUDGE PRIDGIN: You may.

1 BY MR. WILLIAMS:

2   Q.   Mr. Downey, I'm handing you what's been

3 marked for identification as KCP&L 265. Have you seen

4 Exhibit 265 before?

5   A.   No.

6   Q.   Is the subject of Exhibit 265 a Kiewit

7 offer of a golf outing?

8   MR. HATFIELD: Judge, I'm going to

9 object. There's no foundation. He's never seen the

10 document before.

11   JUDGE PRIDGIN: Mr. Williams?

12   MR. WILLIAMS: I just asked him if the

13 subject of the document is a Kiewit golf outing. He

14 can say yes or no certainly.

15   JUDGE PRIDGIN: I'll overrule.

16   THE WITNESS: It says the subject is a

17 golf invite flyer.

18 BY MR. WILLIAMS:

19   Q.   Do you know if Kiewit offered a golf

20 outing to members of the Iatan project team?

21   A.   I wouldn't have other than seeing this

22 e-mail.

23   Q.   Well, did you see that e-mail?

24   A.   I did.

25   Q.   When did you see that e-mail first?

1   A.   When you handed it to me.

2   Q.   But you're unaware of any golf outing

3   offer before then?

4   A.   No. Not surprised that they occur, but I

5   wasn't aware. I don't think I ever saw this before

6   you handed it to me.

7   Q.   Do you know if Kiewit ever offered golf

8   outings independent of seeing that exhibit?

9   A.   I don't know. They could have. I'm not

10 sure.

11   Q.   Did any contractor at the Iatan

12 construction site offer to you a golf outing?

13   A.   I -- I may have attended a golf outing or

14 two. I don't recall any specifically, but yeah, I

15 probably was offered outings; some of which I might

16 have accepted, some of which I might not have.

17   Q.   Was accepting offers of golf outings from

18 contractors viewed to be inappropriate at the Iatan

19 construction site?

20   A.   Not -- not in total. I mean I would -- I

21 see what he says in this e-mail, but I don't know that

22 it's inappropriate.

23   Q.   When would it be inappropriate?

24   A.   I think that's a judgment to be made.

25 Dave Price obviously made a judgment on this one for

1 some reason. I have no knowledge of it. I don't know

2 why -- why he felt that this was sensitive.

3   Q.   At the time the winter jackets were

4 distributed to Kansas City Power and Light Company

5 employees, did Alstom have change order requests

6 pending?

7   A.   I don't know. I mean there were always

8 change orders. I have no idea.

9   Q.   Do you still have an Exhibit No. KCP&L

10 262 before you?

11   A.   Yes, I do.

12   Q.   Would you turn to the -- I believe it's

13 the last two pages of that exhibit. Are those -- the

14 last two pages an annual letter to vendors?

15   A.   Yes.

16   Q.   Do you know when the annual letter to

17 vendors was sent to Iatan project vendors?

18   A.   I don't.

19   Q.   And over whose signature is that annual

20 letter to vendors indicated it's to be sent?

21   A.   Lora Cheatum.

22   Q.   Did Ms. Cheatum report directly to you at

23 that point in time? And that would be September 23rd

24 of '07?

25   A.   I believe so.

 1   Q.   Does Kansas City Power and Light Company

 2   provide the information or the annual letter to

 3   vendors to the vendors when they sign significant

 4   contracts with Kansas City Power and Light Company?

 5   A.   I don't recall if it's a part of the

 6   attachment.

 7   Q.   Do you know if Kiewit had received a

 8   vendor letter before the golf outing flyer was

 9   received?

10   A.   I don't know.

11   Q.   Had Burns and McDonnell done business

12   with Kansas City Power and Light Company before the

13   Iatan construction project?

14   A.   Yes.

15   Q.   Do you know if Burns and McDonnell was

16   aware of Kansas City Power and Light Company's code of

17   conduct from its business dealings with Kansas City

18   Power and Light Company before the Iatan construction

19   project?

20   A.   I assume they did.

21   Q.   Do you know if Burns and McDonnell

22   invited any Kansas City Power and Light Company

23   employees to any Kansas City Chiefs games?

24   A.   I'm not aware of any specific invitations

25   other than invitations I might have received. I know

1 I've been invited probably a number of times. I don't

2 know that I've ever accepted. Not because I thought

3 it was inappropriate but just didn't meet my schedule.

4   Q.   So you believe attending a football -- or

5 Kansas City Chiefs football game that Burns and

6 McDonnell pays for complies with Kansas City Power and

7 Light Company's code of business conduct?

8   MR. HATFIELD: Judge, I just want to for

9 the record launch a relevance objection. If -- if the

10 test for relevance is the balance between probative

11 value and prejudicial effect of having someone on the

12 stand for hours and hours, I was waiting because I

13 thought maybe they had something but a $150 jacket, a

14 Kansas City Chiefs game, an occasional golf outing, we

15 are so far beyond relevance here that I'd like to ask

16 your Honor to order Staff counsel to either move along

17 with something that is relevant or abandon this line

18 of questioning.

19   JUDGE PRIDGIN: Mr. Williams?

20   MR. WILLIAMS: Well, I think the giving

21 of gifts certainly is relevant to the issues of

22 prudency and the conduct of management and the conduct

23 of the control systems at the Iatan project.

24   COMMISSIONER GUNN: Can I ask a question,

25 Mr. Williams? Let's assume that a gift was given.

1 Can -- if -- if an independent inquiry determines that

2 the -- or without the gift, we still make the

3 determination that -- that whatever was done was

4 prudent, what relevance does that have?

5   MR. WILLIAMS: The gift is certainly a

6 factor the Commission can take into consideration as

7 determination of prudence.

8   COMMISSIONER GUNN: That wasn't my

9 question. My question was, if we make the

10 determination that it's prudent regardless of the

11 gift, what relevance does the gift have?

12   MR. WILLIAMS: I'm sorry. I

13 misunderstood your question. I thought you said

14 without knowing about the gift. I don't think it

15 would be relevant anymore at that point because a

16 determination would have already been made. We're

17 not -- I hope we're not at that stage yet.

18   COMMISSIONER GUNN: No. I don't think

19 so, but I mean we might be getting there. This is

20 going on a really, really long time and I know we both

21 have other questions to ask too. So I -- I understand

22 if this particular objection is not overruled, but I

23 would appreciate it if we could move the ball a little

24 bit farther down the field.

25   We've already spent half day -- almost a

1 full day on Mr. Downey. And I know there's going to

2 be a lot of questions and direct. I'm not trying to

3 tell you how to make your case, but I think you've

4 made your point and while this particular objection

5 the judge can rule on, I would prefer if we sped this

6 up a little bit. Thank you.

7   MR. FISCHER: Judge, I would note that a

8 very similar issue came up in the context of the

9 acquisition of Aquila case. In that case, the

10 Commission ruled that gifts and gratuities were a

11 wholly irrelevant issue and excluded it, didn't even

12 allow an offer of proof.

13   JUDGE PRIDGIN: Mr. Fischer, thank you.

14   MR. MILLS: And just to chime in a little

15 further on that, that question is now pending before

16 the Supreme Court as to whether they properly ruled.

17   JUDGE PRIDGIN: Duly noted. It's

18 overruled. Mr. Williams.

19   COMMISSIONER GUNN: And let me be fair.

20 I'm not trying to stop this line of inquiry. I'm just

21 saying I think we need to -- we've got -- we are now

22 in the Monday of the second week of hearings, we still

23 have a lot of other things to get to. So if we could

24 try to just move this quickly, that would be helpful

25 to all of us. We still have another -- I mean how

1 many witnesses have we gotten through, Judge?

2   JUDGE PRIDGIN: I believe this is number

3 five.

4   COMMISSIONER GUNN: We've been through

5 five witnesses in however many days of testimony. So

6 we don't have the time to spend another six hours

7 talking to this one witness. So I would like to move

8 it along.

9   MR. WILLIAMS: I understand,

10 Commissioner. I'll see what I can do to speed things

11 up.

12   COMMISSIONER KENNEY: I can maybe offer a

13 suggestion how this might become helpful to us. My

14 mic on? Sorry.

15   I'd like to know the timing of the

16 specific gifts that we're talking about as it pertains

17 to the Alstom and Kiewit settlements specifically.

18 And then another line of inquiry -- and I think this

19 might help move things along -- is if the golf

20 outings -- are there examples of gifts that would, in

21 fact, violate the internal prohibition on accepting

22 gifts?

23   And again, I don't -- I'm like

24 Commissioner Gunn. I don't want to tell you how to

25 prosecute your case, but I'm trying to focus the

1 questions to things that may be helpful to the issues

2 that are at issue in the case. Because we're not

3 making I think the kind of progress we need to be

4 making in terms of the witnesses that we need to get

5 through.

6   So I'm not asking the questions, but I'm

7 just giving you some ideas of what might be of benefit

8 to those of us on the bench here.

9 BY MR. WILLIAMS:

10   Q.   I think the question pertained to how

11 receiving -- or accepting offers of going to Kansas

12 City Chiefs football games comports with the Kansas

13 City Power and Light Company code of business conduct?

14   A.   I think if it's an occasional and not a

15 consistent, it would be appropriate. As I've said,

16 I've had invitations. I don't believe I've ever gone

17 to a Kansas City Chief game at the invitation of Burns

18 and McDonnell.

19   The two outings that you refer to with

20 Alstom occurred at the very beginning of the project,

21 probably several years before we ever got into the

22 battles on commercial issues and it was at the very

23 outset trying to get to know who the people were on

24 the other side of the table.

25   COMMISSIONER KENNEY: Was it before or

1 after the contract was awarded?

2   THE WITNESS: After the contract was

3 awarded, in which I played no role in the negotiation.

4 And this -- in fact, the group that I was meeting with

5 did not play a role in the negotiation. These were

6 the people who were going to do the work as opposed to

7 the people who negotiated the contract.

8   JUDGE PRIDGIN: And Mr. Williams, if I

9 can inquire briefly, do you have an idea about how

10 much more cross-examination you have of this witness?

11   MR. WILLIAMS: I'm going to guess half an

12 hour. I'm going to try to move it along as quickly as

13 I can certainly.

14   JUDGE PRIDGIN: All right. Because we've

15 been going for, you know, two hours or so and I do

16 want to give Mr. Downey a break and give the court

17 reporter a break. And I hate to interrupt in the

18 middle, but it is about 12:15. Let us reconvene at

19 1:15. Is there anything further from counsel before

20 we go off the record?

21   All right. Hearing nothing, we will

22 stand in recess until 1:15.

23   (A recess was taken.)

24   JUDGE PRIDGIN: All right. We are back

25 on record. Before we resume examining Mr. Downey,

1 just to try to give the parties as much notice as

2 possible, we will be going this evening fairly late.

3 We are considerably behind schedule and I don't know

4 if we have much of a chance to make it up, but I at

5 least want to stop falling further behind.

6   Mr. Fischer?

7   MR. FISCHER: Yes, Judge. Can I inquire

8 how you'd like to structure the evening? Do you

9 intend to take an evening meal break --

10   JUDGE PRIDGIN: Yes, sir

11   MR. FISCHER: -- or just go through?

12   JUDGE PRIDGIN: No. I would want to take

13 an evening meal break, probably roughly an hour or so.

14 You know, my plans right now are to take a break the

15 middle of the afternoon, take another break -- you

16 know, a dinner break roughly around 6:00, somewhere in

17 there. And it may be 15, 30 minutes one way or the

18 other, but -- and then come back until -- you know,

19 take another break in the evening and then I'm

20 thinking somewhere around 9:00 or 10:00, call it a

21 night.

22   Anything further before we resume with

23 Mr. Downey? All right. Mr. Williams, when you're

24 ready. Mr. Downey, you're still under oath, sir.

25   THE WITNESS: Yes, sir.

1   MR. WILLIAMS: Thank you, Judge.

2   JUDGE PRIDGIN: You're welcome.

3 BY MR. WILLIAMS:

4   Q.   Mr. Downey, is Burns and McDonnell the

5 owner's engineer on Kansas City Power and Light

6 Company's upcoming La Cygne environmental project?

7   A.   No.

8   Q.   Who is?

9   A.   Black and Veatch.

10   Q.   Was Burns and McDonnell considered for

11 that opportunity to be an owner's engineer on that

12 project?

13   A.   Yes.

14   Q.   Was it -- Burns and McDonnell's

15 performance on the Iatan construction project a factor

16 in why it is not the owner's engineer for the upcoming

17 La Cygne environmental project?

18   A.   No.

19   Q.   Mr. Downey, did David Price directly

20 report to you?

21   A.   Yes, he did.

22   MR. WILLIAMS: Judge, I need to have

23 another exhibit marked.

24   JUDGE PRIDGIN: Excuse me. I show 266.

25 Does that comport with others -- other records?

1| That's what I have.

2| MR. WILLIAMS: I'm not sure about 265,

3| but I'll take it.

4| JUDGE PRIDGIN: I had 265 and then -- but

5| didn't have anything written down. Perhaps we didn't

6| get to 265.

7| MR. WILLIAMS: We can make this 266.

8| JUDGE PRIDGIN: That would be safer.

9| (KCP&L Exhibit No. 266 was marked for

10| identification.)

11| MR. WILLIAMS: May I approach?

12| JUDGE PRIDGIN: You may.

13| BY MR. WILLIAMS:

14| Q.   Mr. Downey, I'm handing you what's been

15| marked for identification as KCP&L 266. Do you

16| recognize it?

17| A.   Yes.

18| Q.   What is it?

19| A.   It's a short memo from Dave Price to me.

20| Q.   And did you receive that memo?

21| A.   I -- I -- I may have. I don't remember.

22| Q.   Well, what was the time frame which that

23| document indicates the memo was sent to you?

24| A.   October 18th, 2007.

25| Q.   And what was Mr. Price saying to you in

1 that memo?

2   A.   Says, I have now finalized my long-term

3 plans for the management of Iatan and La Cygne. I do

4 not need to talk to or meet with Roberts and Maiman.

5 I will talk to you later.

6   Q.   Do you know why Mr. Price stated that he

7 did not need to meet or talk with Mr. Roberts or

8 Mr. Maiman?

9   A.   No, I don't.

10   Q.   Were you making any requirements on him

11 at that time to talk or meet with Schiff Hardin?

12   A.   Schiff was onsite every day of the week.

13 I don't -- I'm not sure that I -- I don't know what --

14 whether he'd already done it or what. I'm not sure

15 what -- what this meant.

16   Q.   Was Schiff Hardin hired to provide senior

17 management with a second opinion on the Iatan

18 construction project?

19   A.   Yes. That was a part of their

20 assignment, the oversight and independent

21 verification.

22   Q.   And why was that second opinion needed in

23 Kansas City Power and Light Company's view?

24   A.   Well, as I explained before, in -- in our

25 normal day-to-day organization, you have a matrix of

1 people and -- and on the day-to-day functions, there

2 are check and balances set up. When you create a very

3 large singular project like this, the challenge is to

4 have checks and balances on such a project. Huge

5 decisions are being made.

6   So the oversight committee was set up so

7 we got more input then -- and reporting to the broader

8 management team, this third-party independent

9 verification was set up. We enhanced our internal

10 audit function with E and Y.

11   We did a series of things that were about

12 governance and about making sure that -- that this

13 project and the flow of information from it didn't get

14 too narrow and that we had many inputs and many points

15 of view on -- on the big decisions and the big

16 expenditures that were going to take place.

17   So that's also not an easy thing to do.

18 It's not an easy thing to manage. And certainly for

19 the people on site at the project, it's a challenge

20 because they're -- of the scrutiny that they're under,

21 but that's the reality of these very big projects.

22   Q.   Why was there a need to go to someone

23 external as opposed to developing that internally?

24   A.   For the very reason that they were

25 external and they represented a very different point

1 of view and they brought a very rich background in

2 this particular framework of building large

3 construction projects in this industry.

4   They -- they were experts. They had many

5 experiences in this arena, they had seen it and done

6 it. They had brought experience with the vendors,

7 they had brought experience with managements and with

8 boards of director wrestling with the same thing.

9 They brought great insight and wisdom to the project.

10 And it's not without its challenges to manage this

11 successfully.

12   MR. WILLIAMS: Judge, may I have another

13 exhibit marked, please?

14   JUDGE PRIDGIN: You may.

15   MR. WILLIAMS: This will be 267.

16   JUDGE PRIDGIN: Yes, sir.

17   MR. WILLIAMS: And while I'm at it, I'd

18 like to have another exhibit marked as well, which I

19 believe will be 268.

20   JUDGE PRIDGIN: Yes, sir.

21   (KCP&L Exhibit Nos. 267 and 268 were

22 marked for identification.)

23   MR. WILLIAMS: Judge, may I approach?

24   JUDGE PRIDGIN: You may.

25 BY MR. WILLIAMS:

1   Q.   Mr. Downey, I'm handing you what's been

2 labeled as KCP&L 267 and separately KCP&L 268. Would

3 you please take a look at 267? Do you recognize KCP&L

4 267?

5   A.   I see it.

6   Q.   Do you recognize it?

7   A.   I -- I -- I can remember the issues

8 around it. I don't -- you know.

9   Q.   And what were the issues around it?

10   A.   Well, Dave -- Dave -- this was -- so this

11 was October of 2007 and Dave had come in in May of

12 that year. And we were moving into the heavy duty

13 part of the unit 1 work, the retrofit work. And he

14 was expressing concern.

15   I don't remember the specific meeting,

16 but obviously I had challenged some of the planning

17 and issues and he was getting back and answering

18 whatever the -- the problems or the issues were at the

19 time.

20   Q.   Well, what is his statement about the

21 Iatan 1 planning issues you're talking about?

22   A.   Said that he would be getting personally

23 involved in the unit 1 management plan starting with a

24 meeting that day.

25   Q.   And didn't he also say that someone at

 1 the meeting was not as prepared as he had hoped they

 2 would be?

 3   A.   He said, We were not as prepared,

 4 meaning -- he was accepting responsibility for his

 5 team for -- for whatever questions we were asking them

 6 and they obviously weren't prepared to answer.

 7   Q.   And --

 8   A.   These were pretty grueling meetings.

 9   Q.   -- what's the date of that e-mail?

10   A.   October 4th, 2007.

11   Q.   Would that e-mail be referring to an

12 executive oversight committee meeting?

13   A.   It -- it could have been.

14   Q.   Would you take a look at -- I believe

15 it's been marked as Exhibit KCP&L 268?

16   A.   Looks like that's it.

17   Q.   And what is Exhibit 268?

18   A.   It is a -- an agenda from the oversight

19 meeting that was held October 3rd.

20   Q.   And who are the individuals that were

21 listed in those minutes as being responsible for the

22 Iatan 1 presentation?

23   A.   Brent Davis and John Forristal.

24   Q.   And do you have any disagreement with

25 that it was Brent Davis and John Forristal who

 1 presented the Iatan 1 presentation at those EOC --

 2 that EOC meeting?

 3   A.   Well, that's what it says here that they

 4 were the ones. I have no reason to doubt that that's

 5 who presented it.

 6   Q.   And is it your opinion that that

 7 presentation was inadequate at that executive

 8 oversight committee meeting?

 9   A.   I -- I -- I -- I -- I don't remember the

10 specifics of the presentation.

11   Q.   Well, you indicated earlier that

12 Mr. Price had sent the e-mail to you because you had

13 some view that the presentation was inadequate, did

14 you not?

15   A.   That's what it says. And as I say, I --

16 I don't remember the specifics of the October 3rd,

17 2007 discussion.

18   Q.   And did Mr. Price indicate what action

19 he'd taken with regard to the Iatan 1 project in terms

20 of management?

21   A.   Would you ask that again? I'm sorry.

22   Q.   Did Mr. Price relay to you what he

23 planned to do regarding management of the Iatan 1

24 project?

25   A.   He said he was going to get personally

1 involved in the management plan and was going to have

2 a meeting. That there was -- there was obviously some

3 issue at that point around the buyer side of this and

4 that he was doing to have Steve Jones -- have the

5 unit 1 buyers reporting directly to him. I'm not sure

6 that I understand exactly what was going on here.

7   Q.   Let me try it this way. Did he say that

8 prior to that presentation that was inadequate, that

9 he had stayed out of management of Iatan 1 for

10 30 days?

11   A.   He -- he says that he stayed out of the

12 management to see if -- if his challenge to a couple

13 of my guys would be met. I don't know what that

14 meant. I don't recall what that means.

15   Q.   Did he confer with you before he took

16 that course of action?

17   A.   He was in charge and he was letting me

18 know the action he was taking so -- and I -- I

19 would -- he was in charge. I would not have

20 challenged him on that.

21   Q.   The question is did he -- well, let me

22 ask it this way: Did he consult with you before he

23 took that course of action?

24   A.   He's telling me here what he's about to

25 do. He's letting me know. I don't remember whether I

1 called him and followed up or we had another

2 discussion, but I -- I -- my sense is that I would

3 have said he was in charge and -- and -- I don't

4 remember the specific issues around -- that we were

5 talking about in the meeting is my problem.

6   Q.   So you're saying it's your understanding

7 that he was letting you know that he was planning to

8 stay out of management of Iatan 1 for 30 days as

9 opposed to that he'd already done so?

10   A.   He'd already done so is what he was

11 saying in the memo, I think.

12   Q.   And what I'm asking, and you may not know

13 or recall, was whether or not he conferred with you

14 about taking that course of action before he did it?

15   A.   Well, I doubt that he -- he was in charge

16 at the site. I wasn't out at the site.

17   Q.   How long was Mr. Price in charge of

18 Iatan 1?

19   A.   He -- he came on board in May of 2007 and

20 he left in February of 2008.

21   Q.   And I believe you testified earlier that

22 he left to pursue an opportunity with a former

23 employer?

24   A.   Yeah. I think we've shared with the

25 Staff the whole documentation --

 1   Q.   Yes or no?

 2   A.   -- on -- yes.

 3   MR. WILLIAMS: May I have another exhibit

 4 marked, Judge?

 5   JUDGE PRIDGIN: You may. 269.

 6   (KCP&L Exhibit No. 269 was marked for

 7 identification.)

 8   MR. WILLIAMS: May I approach?

 9   JUDGE PRIDGIN: You may.

10 BY MR. WILLIAMS:

11   Q.   Mr. Downey, I'm handing you what's been

12 marked for identification as KCP&L 269.

13   A.   Yes.

14   Q.   Can you identify that exhibit?

15   A.   I've never seen it before.

16   Q.   That consists of two e-mails does it not?

17   A.   Yes. An e-mail from Dave Price to his

18 team with directions on preparing a presentation and

19 then the second memo with a man named Doug Lafleur

20 back and forth. I'm having a hard time understanding

21 what it's about. I don't really understand a lot of

22 the references.

23   Q.   Did you and Mr. Chesser talk to Mr. Price

24 after Mr. Price informed you that he was resigning

25 from Kansas City Power and Light Company?

 1   A.   It was probably mostly me. I made an

 2   effort to retain Dave. He had been approached by

 3   headhunters for his previous employer and they made a

 4   significant offer to him. And I countered, but he --

 5   he had made up his mind that he was moving back to

 6   this project.

 7   Q.   What was the time frame of the offer to

 8   Mr. Price and your counteroffer?

 9   A.   So he left in February. It would have

10   been -- I think it was right after the first of the

11   year that he -- he first told me that he was leaving.

12   Came to my office and --

13   Q.   I'm sorry?

14   A.   He came into my office and said he was

15   leaving.

16   Q.   And in the e-mail between Mr. Price and

17   Mr. Lafleur, does it contain a reference to that

18   talk?

19   MR. HATFIELD: Judge, I think it calls

20   for speculation. Mr. Lafleur -- I mean, we can voir

21   dire the witness if we want -- is not even a Kansas

22   City Power and Light employee. So I think the --

23   asking the witness to comment on an e-mail between a

24   guy he doesn't know and Mr. Price is calling for

25   speculation.

1   JUDGE PRIDGIN: Mr. Williams?

2   MR. WILLIAMS: I believe the e-mail just

3 reflects a time whenever the talk supposedly occurred

4 and I'm just asking if that was when it did occur.

5   MR. HATFIELD: Well, that's a little

6 different question. I don't object to that question,

7 Judge, sorry.

8   JUDGE PRIDGIN: That's all right.

9   THE WITNESS: Could you ask that question

10 again?

11 BY MR. WILLIAMS:

12   Q.   Let's just ask it that way: When did you

13 have a talk with Mr. Price regarding his resignation?

14   A.   I don't recall the exact days and I have

15 no idea who Doug Lafleur is. It would have been in

16 this time frame. He would have come in my office, I

17 told him that I wanted to see if we could retain him,

18 we had some back and forth, but he was intent on

19 departing. He had -- obviously had had talks.

20   He had left this project which was twice

21 the size of ours because financing had fallen apart,

22 he thought the project was going under. So we were

23 able to recruit him in that venue. That project got

24 refinanced, they got reinvigorated and they had a

25 headhunter come back and recruit him back to the same

1 project. So it was something he was comfortable with,

2 he knew and I was unable to convince him to stay.

3   Q.   And was that discussion in January of

4 2008?

5   A.   It was somewhere in that framework. I

6 don't remember the specific days.

7   Q.   Well, he left in February?

8   A.   February. Yeah. It was -- it was -- I

9 think I got about three weeks notice.

10   Q.   So December to January?

11   A.   Yeah.

12   Q.   And do you recall the discussion you had

13 with Mr. Price? When you said -- you made a

14 counteroffer?

15   A.   Yes. And I think we've documented that

16 with material to the Staff. I think the Staff has

17 seen some back and forth. I can't remember the

18 specifics of it, but I know in the last case we went

19 through this.

20   Q.   Did you discuss anything else with him

21 such as his reasons for wanting to leave?

22   A.   He was -- you know, he was very

23 professional. I couldn't get underneath other than

24 the fact that he had this offer and he thought it was

25 better for him to be there.

1   Q.   Did he tell you he would not entertain

2 any offers from Kansas City Power and Light Company

3 because of working conditions there?

4   A.   No.

5   Q.   Do you know if Kansas City Power and

6 Light Company ever sought to hire Mr. Lafleur?

7   A.   As I say, I don't -- I can't say we

8 didn't, but I don't remember who Mr. Lafleur is.

9   Q.   So as far as you know right now, no?

10   A.   I -- I don't know. I don't know who he

11 is.

12   MR. WILLIAMS: Judge, may I approach?

13   JUDGE PRIDGIN: You may. You may

14 approach.

15   MR. WILLIAMS: Thank you.

16 BY MR. WILLIAMS:

17   Q.   Mr. Downey, I'm handing you a document.

18 Would you take a look at it?

19   A.   Yes.

20   Q.   Do you recognize that document?

21   A.   Yes.

22   Q.   What is it?

23   A.   It's a -- an agenda for the December 17,

24 2010 CEP oversight committee meeting along with the --

25 and then minutes for that meeting.

1   Q.   Could you turn to the first sentence of

2 the third paragraph under the heading Iatan Unit 2

3 Update?

4   A.   Uh-huh.

5   Q.   And do you see that there's a statement,

6 Iatan 2 will be fully dispatchable as of December 31,

7 2010?

8   A.   Yes.

9   Q.   What does that mean?

10   A.   I believe it probably -- I'm -- I'm -- I

11 guess I'm guessing a little bit. I think it has to do

12 with the commercial resolution of all the final

13 testing that Alstom was required to do. I think we're

14 done-done with commercial testing.

15   MR. WILLIAMS: Judge, I'd like to have

16 another exhibit marked, please.

17   JUDGE PRIDGIN: By my notes, it would be

18 270.

19   (KCP&L Exhibit No. 270 was marked for

20 identification.)

21   MR. HATFIELD: It's okay, we can mark it

22 again as far as I'm concerned. It may be duplicative

23 of another exhibit we already have.

24   MR. WILLIAMS: I don't know.

25   JUDGE PRIDGIN: I see no harm. If it's

 1 marked more than once, I see no harm.

 2   MR. WILLIAMS: May I approach?

 3   JUDGE PRIDGIN: You may.

 4 BY MR. WILLIAMS:

 5   Q.   Mr. Downey, I'm handing you what's been

 6 marked for identification as KCP&L Exhibit 270.

 7   A.   Yes.

 8   Q.   Have you seen that letter before?

 9   A.   Yes.

10   Q.   And are you familiar with that letter?

11   A.   Yes.

12   Q.   And what's included with that letter?

13   A.   A redacted memo to me from Ken Roberts

14 dated December 7, 2005 concerning a budget proposal

15 for their work for the Comprehensive Energy Plan.

16   Q.   Well, the copy you have is redacted, is

17 it not?

18   A.   Yes.

19   Q.   Are you familiar with that memorandum?

20   A.   Yes.

21   Q.   Have you had an opportunity to read the

22 first paragraph of that memorandum?

23   A.   The memorandum from Mr. Roberts?

24   Q.   Yes.

25   A.   Yes.

1   Q.   Who is Ticktacks, Inc.?

2   A.   I don't know.

3   Q.   Do you know if Ticktacks, Inc. performed

4 any work on the Iatan construction project?

5   A.   They never surfaced in my vision in the

6 five years. I don't know who they are.

7   Q.   And what is the memorandum regarding?

8   A.   I believe it was Schiff's estimate --

9 effort at the time to identify the possible costs of

10 their services over the five-year period.

11   Q.   And is it not true that -- according to

12 the letter that is -- this memorandum is attached to

13 the information and that memorandum was not provided

14 due to the assertion of attorney/client privilege?

15   A.   That's what it says.

16   Q.   Do you know why Kansas City Power and

17 Light Company decided to assert the attorney/client

18 privilege and not provide that information?

19   A.   Apparently our attorneys felt that it was

20 within the bounds of attorney/client privilege. I

21 actually don't -- I'm not even certain what the

22 outcome of this was and whether Judge Stearley ruled

23 on this or not.

24   Q.   It wasn't a decision you made though?

25   A.   No.

1   Q.   Do you know if this memorandum covers the

2 entirety of Schiff's budget for project oversight at

3 the time it was issued?

4   A.   It was -- it was their proposal. I don't

5 know that it was their -- our budget. It was probably

6 their proposal. I doubt that it was our budget.

7   Q.   Well, doesn't it say immediately

8 preceding the redacted portion, In preparing this

9 budget?

10   A.   Well, that -- that's the word he used,

11 but it's -- it's their proposal. It's not our budget.

12   Q.   Well, is it a proposal that Kansas City

13 Power and Light Company accepted?

14   A.   Probably not in total.

15   Q.   And do you know if this memorandum was

16 only for Iatan construction project oversight or if it

17 was broader than that?

18   A.   By "broader" do you mean the full range

19 of things we've talked about?

20   Q.   Yes. That it might include legal

21 services or something --

22   A.   Yes. Yes.

23   Q.   Is there a distinction between project

24 oversight and legal services?

25   A.   Well, I -- I would probably make a

1 distinction, but in any event, it's lawyers who are --

2 who are doing it.

3   Q.   Are you a member of Kansas City Power and

4 Light Company's board of directors?

5   A.   Yes, I am.

6   MR. WILLIAMS: Judge, at this time I'd

7 like to offer KC-- or Exhibit KCP&L 270.

8   JUDGE PRIDGIN: KCP&L 270 has been

9 offered. Any objections?

10   MR. HATFIELD: No objection.

11   JUDGE PRIDGIN: 270 is admitted.

12   (KCP&L Exhibit No. 270 was received into

13 evidence.)

14   MR. WILLIAMS: Judge, at this time I'd

15 also like to offer Exhibit No. KCP&L 262.

16   JUDGE PRIDGIN: KCPL 262 is offered. Any

17 objections?

18   MR. HATFIELD: Wait. What was 262 again?

19 The code of conduct, no objection.

20   JUDGE PRIDGIN: 262 is admitted.

21   (KCP&L Exhibit No. 262 was received into

22 evidence.)

23   MR. WILLIAMS: I'd also like to offer at

24 this time Exhibit No. KCP&L 261-HC.

25   JUDGE PRIDGIN: I show that 261-HC has

1 been offered and admitted, but I'll -- I could be

2 wrong. Let me ask the parties if they have any

3 objections?

4   MR. HATFIELD: Yeah, we have no objection

5 on that.

6   JUDGE PRIDGIN: 261-HC is admitted.

7   (KCP&L Exhibit No. 261-HC was received

8 into evidence.)

9   MR. WILLIAMS: Judge, do you show whether

10 or not KCP&L 255-HC has been admitted?

11   JUDGE PRIDGIN: I do not show it has been

12 offered or admitted.

13   MR. WILLIAMS: At this time I'd like to

14 offer KCP&L 255-HC.

15   JUDGE PRIDGIN: KCP&L 255-HC is offered.

16 Any objection?

17   MR. HATFIELD: That is the DR response

18 from Mr. Riggins and Mr. Schallenberg?

19   MR. WILLIAMS: The informal request.

20   MR. HATFIELD: Informal request. Yeah,

21 no objection.

22   JUDGE PRIDGIN: 255-HC is admitted.

23   (KCP&L Exhibit No. 255-HC was received

24 into evidence.)

25   MR. WILLIAMS: I'd also like to offer at

1 this time Exhibit KCP&L 266.

2   JUDGE PRIDGIN: Any objections? Hearing

3 none, KCP&L 266 is admitted.

4   (KCP&L Exhibit No. 266 was received into

5 evidence.)

6   MR. WILLIAMS: I'd like to offer at this

7 time KCP&L Exhibit 267.

8   JUDGE PRIDGIN: Objections?

9   MR. HATFIELD: Is 267 the e-mail with

10 Mister -- the guy the witness doesn't know who he is?

11 That's Price e-mail. No objection.

12   JUDGE PRIDGIN: 267 -- excuse me, KCP&L

13 267 is admitted.

14   (KCP&L Exhibit No. 267 was received into

15 evidence.)

16   MR. WILLIAMS: I'd also like to offer at

17 this time Exhibit No. KCP&L 268.

18   JUDGE PRIDGIN: Any objections?

19   MR. HATFIELD: Is that the oversight

20 committee minutes?

21   JUDGE PRIDGIN: Yes.

22   MR. HATFIELD: No objection.

23   JUDGE PRIDGIN: KCP&L 268 is admitted.

24   (KCP&L Exhibit No. 268 was received into

25 evidence.)

1   MR. WILLIAMS: And I don't recall what

2 KCP&L 265 is, but I don't show it offered or admitted.

3   JUDGE PRIDGIN: I think we may have

4 skipped that one. I don't show anything for 265.

5   MR. WILLIAMS: Well, all right. I'm not

6 going to offer KCP&L 269 so I believe I'm done with

7 this witness at this time, Judge.

8   JUDGE PRIDGIN: Mr. Williams, thank you.

9 Let me see if we have bench questions. Commissioner

10 Jarrett?

11   COMMISSIONER JARRETT: Yes. Good

12 afternoon, Mr. Downey.

13   THE WITNESS: Good afternoon,

14 Commissioner.

15   COMMISSIONER JARRETT: I think I have one

16 or two questions regarding 255-HC so I think we need

17 to go in-camera.

18   JUDGE PRIDGIN: We'll go in-camera. And

19 let me verify from counsel. Is there anyone in the

20 room who needs to leave before we go into HC?

21   (REPORTER'S NOTE: At this point, an

22 in-camera session was held, which is contained in

23 volume 22, pages 1419 to 1423 of the transcript.)

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1   JUDGE PRIDGIN: All right. We are back

2 in public forum.

3 WILLIAM DOWNEY testified as follows:

4 BY COMMISSIONER JARRETT:

5   Q.   All right. Mr. Downey, I want to ask a

6 couple of questions about the issue of KCP&L deciding

7 to go with the multi-prime method versus an EPC

8 method. Can you summarize for me HOW KCP&L looked

9 at -- looked at these two options?

10   A.   We would have gone at that time with any

11 option that guaranteed us the best path to success.

12 We brought Burns and McDonnell and Black and Veatch in

13 and had them do significant presentations. We also

14 had involved both of them in engineering work with

15 regard to the project.

16   So Burns and Mac, you know, was -- was

17 doing things, but Black and Veatch was also designing

18 the specs on the boiler and the air quality control

19 equipment and we got the both of them engaged so we

20 had some competition. In 2005, I told our board that

21 we were open to any -- any form.

22   When we -- we listened to both of them,

23 Burns and McDonnell advocated a multi-prime approach

24 and had a path forward to meet the June 2010 date,

25 which was important to us and our partners. I mean,

1 we were building this plant based on load forecasts

2 and we're -- where our load would be in 2010 given

3 what we knew at that point in time. And so this was a

4 base load plant. Our partners needed and required it

5 in 2010 at that time based on their planning

6 requirements. We all did. And it was an important

7 resource for the region. So 2010 was important to all

8 of us.

9   Burn -- Black and Veatch came in and they

10 were very much more in the camp of an EPC, but the way

11 they described it at that time given the market

12 conditions at the time, they said, well, you'd have to

13 select us, we don't know what it will cost. It will

14 probably be at least a year before we could tell you

15 that and we'd have to do a lot of the major purchasing

16 if -- if we indeed could do a fixed price.

17   They'd had some challenges on fixed price

18 EPCs and we were headed into a very heated market

19 where risk was growing. And they wanted us to hire

20 them up front without a guarantee on, you know, any

21 price estimate without -- and they wanted us to commit

22 to them, but we wouldn't know schedule, and we

23 wouldn't have a cost estimate for at least a year.

24   And that to me, was sort of talking

25 around it. And an EPC doesn't mean you get a

1 guaranteed price necessarily. It just means you've

2 got a single entity involved, but -- you know, often

3 it does mean a guaranteed price. So there's was a

4 very squishy offer without any commitment to the

5 dates. And I -- I wouldn't know a price for another

6 year. And that we found unacceptable.

7   And it's consistent with what you've

8 heard other witnesses say where that -- the market was

9 heating up, people were beginning to jump into the

10 ordering of coal plants and it was -- and big vendors

11 and contractors and engineers were only going to work

12 for people they'd already done business for. It was a

13 very tough market to -- it was a seller's market at

14 the time.

15   And so we evaluated all of those things

16 and made the commitment to the multi-prime because at

17 the time given the conditions and given the proposals

18 we were hearing, that made the most sense in terms of

19 meeting the objectives that we -- we -- we had.

20   Q.   So at that point when you were -- when

21 you were trying to decide between an EPC approach or a

22 multi-prime approach, did you feel like the only

23 option -- viable option you had was the multi-prime

24 approach?

25   A.   Yes. We had big vendors saying that they

1 were only going to work with the people they were

2 currently working with. We pulsed them, there was a

3 singular lack of interest in a fixed price.

4   As -- as I think one of our previous

5 witnesses said, our -- our negotiation with Alstom in

6 getting that fixed price on the $700-plus million

7 boiler AQ -- that was an EPC. That was probably the

8 last one done in the industry at that point in time.

9 And it was a very challenging negotiation and there

10 was a lot of risk in it for them.

11   Q.   All right. Mr. Downey, I don't have any

12 further questions. Thank you for your testimony.

13 Appreciate it.

14   A.   Thank you.

15   JUDGE PRIDGIN: Commissioner Jarrett,

16 thank you. Commissioner Gunn?

17 QUESTIONS BY COMMISSIONER GUNN:

18   Q.   Yeah. I only have about six or seven

19 hours so it shouldn't be that bad. I want to start

20 off with the EOC. Was the EOC a new creation

21 specifically for this project?

22   A.   Yes, it was.

23   Q.   Had you used an EOC at any point in the

24 past or anything like it in the past?

25   A.   Not that I'm familiar with. I joined the

1 company in 2000 and I had not seen it before. And we

2 did create it because of what I said before, you know,

3 we have 3,000 in regular employees. Now we've got

4 this project that's going to have 3- to 4,000 people

5 working on it kind of as an independent offshoot. How

6 do you stay engaged as a management team -- upper

7 level management team in that kind of effort?

8   I've witnessed and seen many large

9 projects like this where the project organization

10 begins to feel like it's its own separate company and

11 they go off and do things and make decisions and it's

12 only later that senior management finds out some very

13 bad thing has happened. So we wanted to create a

14 structure that -- that insisted on transparency and

15 disclosure and gave senior management a window into

16 what was going on on a regular basis.

17   Q.   Who -- who set the agenda for the EOC

18 meetings?

19   A.   Once we established the charter, we asked

20 the leadership of the project leadership team to set

21 that agenda. They would -- the head of the project,

22 whether it was Dave Price or Brent, would typically

23 give me a draft of the agenda half the time and, you

24 know, anything else you would like in it or -- that or

25 during the meetings, the oversight committee would

1 suggest future topics for the agenda if they were

2 interested in a particular area. But generally it was

3 the leadership team that drafted the agenda.

4   Q.   And then you could add or subtract --

5   A.   Yes.

6   Q.   -- based on that?

7   A.   Right.

8   Q.   Did you do that on a frequent basis or

9 was the draft agenda generally accepted as -- as the

10 agenda of the EOC?

11   A.   No. I think we had back and forth and

12 there would be things added or subtracted depending

13 on -- you know, as the project flowed, different

14 things came into view and they would be the -- the hot

15 topics of the period.

16   Q.   And at what point -- just to go back,

17 what point was the EOC fully implemented? What -- do

18 you remember the date?

19   A.   It's in my -- well, we chartered

20 following E and Y's recommendation. We had been

21 meeting since late 2005.

22   Q.   As --

23   A.   Informally.

24   Q.   Informally?

25   A.   And then when E and Y came in, in my

1 testimony I have the charter -- and I should know.

2 It's right here.

3   Q.   If it's in there, I can -- I can find it.

4   A.   I'm right there. So we officially

5 chartered it February 2nd, 2007 but we had been

6 meeting. And it was -- you know, we hadn't really

7 thought about the formalization of it, but we were

8 meeting weekly initially and then moved to monthly.

9   MR. HATFIELD: Judge, if I might, the

10 charter is Schedule WHD2010-1 to Mr. Downey's

11 testimony.

12   JUDGE PRIDGIN: Mr. Hatfield, thank you.

13   COMMISSIONER GUNN: Thank you.

14 BY COMMISSIONER GUNN:

15   Q.   Was the issue of the cost control system

16 brought up at the EOC meeting?

17   A.   Yes. Because the cost control system

18 really got set up in 2006. Early on it was one of

19 the -- the primal documents that we needed in

20 structure and process because we were -- soon we were

21 going to start contracting and spending money and

22 making commitments so we needed to have that in place.

23 And -- and we were -- needed that to track to the

24 control budget estimate that we had set up and -- in

25 December of 2006.

1   Q.   So on an informal basis, cost control

2 system was post the EEOC, but it was probably

3 pre-formal charter if you were talking about it in

4 2006?

5   A.   I'm trying to remember my dates. I -- I

6 would -- we started providing the Commission

7 April 15th, 2006 with information. So the cost

8 control system would have been ahead of that. Would

9 have -- we would have been getting it in line in early

10 2006.

11   Q.   All right. I want to -- thank you.

12   A.   Here -- I'm sorry. 7/11. So July 11th,

13 2006 we formally present the cost control system to

14 the Missouri Public Service Commission Staff. But

15 we -- we were creating it earlier in that year.

16   Q.   But that -- but that 2006 date still

17 predated the formal chartering of the EOC?

18   A.   Yes. Yes.

19   Q.   But did not predate the informal

20 meetings --

21   A.   No.

22   Q.   -- that took place?

23   A.   Absolutely not.

24   Q.   And was part of that EOC developed

25 through an informal EOC process?

1   A.   We -- we actually had created it and were

2   meeting, but we hadn't papered it.

3   Q.   Okay. You're talking about the EOC?

4   A.   The EOC.

5   Q.   Well, let me ask you -- the question I

6   wanted to focus on was the cost control system. So

7   did -- did that informal EOC process -- is that what

8   led to the development of the cost control system or

9   was it developed separately, brought to the EOC and

10 essentially approved and signed off by this group on

11 an informal basis and then implemented?

12   A.   I believe Steve Jones talked about the

13 development of that. He was heavily involved in it.

14 And it was the early procurement process then

15 following the December 2006 control budget estimate.

16 It was to track to that. So it was in place. And we

17 were -- we were hearing monthly numbers. It's just

18 that we had not formalized the EOC in terms of

19 paperwork, but we were meeting.

20   Q.   Thank you. I'm going to move onto -- to

21 some discussions about Schiff Hardin.

22   A.   Uh-huh.

23   Q.   At what -- whose idea was it or where did

24 the idea come from that you needed this independent

25 administrator, if you will, both from a legal

1 standpoint and from a project management standpoint,

2 that that was necessary for the project?

3   A.   I will tell you -- and I feel badly about

4 the way this has been laid out and we could have -- we

5 could have done a better job of documenting this one

6 and I take personal responsibility for that.

7   But I had a lot to do with it. I'd been

8 involved in -- Commonwealth Edison built eight

9 1,000-megawatt nuclear units during the '70s and I was

10 personally involved. I wasn't in a leadership role,

11 but I had that indelibly fixed in my brain.

12   And when we were going to build this big

13 project, I had some of the concerns I talked about.

14 And they probably gelled in some of those

15 conversations I had with Mr. Maiman who himself had

16 enough scars from previous large construction projects

17 to understand that I had a great deal of respect for

18 his capabilities and experience.

19   So I think, you know, you go to and

20 listen to people you learn over 30 or 40 years know

21 what they're talking about. And so the idea came

22 there. And what particularly intrigued me -- because

23 I'd seen the big lawsuits and fights -- commercial

24 fights that emanate from these big projects -- was the

25 concept of trying to be proactive and to get on top of

1 those and be prepared for them. We were going into

2 this -- we hadn't built anything in 25 years.

3   This game is pretty sophisticated. Big

4 construction contract disputes get incredibly messy.

5 And if you don't have the fact base to make the

6 arguments, you're -- you're behind the eight ball.

7 And so I looked at this initially primarily as a

8 commercial strategy for us vis-a-vis these big

9 contractors.

10   Q.   What year -- what year would that have

11 been in that you made the determination --

12   A.   2005.

13   Q.   Okay.

14   A.   And I will tell you that with our

15 operating people, this was not terribly popular. I

16 mean our industry's replete with project's gone astray

17 and senior management saying, gee, we didn't know

18 anything that was happening and then firing the

19 executive in charge, you know, because they didn't pay

20 attention to it.

21   That's what I was trying to avoid when

22 we -- when we were doing this. And I wanted to have

23 the documentation, know what was going on in the

24 field, track it to the commercial strategy. And

25 Schiff had often been brought in around the country at

1 the end when it was ugly and had defended, you know,

2 and been involved in claims with contractors. What

3 they proposed to us was to come in up front to get a

4 very transparent system to be able to anticipate these

5 issues and solve them up front.

6   Q.   I'm going to get to that in a second, so

7 let's -- let's -- let's go back though. So in 2005

8 you made the determination that some independent

9 entity needed to come in to modify this pro-- project.

10 Correct?

11   A.   Yes.

12   Q.   And then you have -- and that cu-- came

13 out of conversations with Mr. Maiman?

14   A.   Yes.

15   Q.   And did Mr. Maiman have a pre-existing

16 relationship with Schiff that he had -- he had used

17 them before, he had retained them before?

18   A.   They had been used at Commonwealth Edison

19 in some commercial battles previously. He had

20 independently been hired by OPG, at least that's my

21 understanding of it, and was working up there and

22 parallel with Schiff. They knew each other from the

23 industry.

24   Q.   Right.

25   A.   But were separate at that point. And

 1 Schiff's original proposal did not include Mr. Maiman.

 2 It was -- it was at my insistence that --

 3   Q.   I'll get to that. I'm just trying to get

 4 the time line correct.

 5   A.   Right.

 6   Q.   So did -- did -- had Mr. Maiman worked

 7 with Mr. Roberts previously directly?

 8   A.   For him? Or --

 9   Q.   In any capacity?

10   A.   I believe they had worked together, but I

11 don't -- I don't know specifically.

12   Q.   All right. In your conversation -- so --

13 so was -- when you had your discussions with

14 Mr. Maiman, was there agreement that Schiff would be

15 the one person you would go to or were there

16 conversations and said, We need to have an independent

17 person, let's try to find that right -- the right

18 person? Or was it more, Schiff is -- is -- is the

19 guys, we've worked with them, we know them, they're

20 really the guys we need to go out and hire?

21   A.   No. It -- there was no pre-agreement.

22 These were general discussions and the concept. He --

23 he obviously knew and recommended Schiff, but there

24 was no mandate of anything. And, in fact, the Schiff

25 discussions started without any role from Mr. Maiman.

1   Q.   So you went -- you went to other folks to

2 talk about who to hire and then Schiff came up --

3   A.   Yes.

4   Q.   -- as a potential?

5   A.   Yes.

6   Q.   In your discussions with Mr. Maiman, did

7 he ever suggest -- you know, did he ever say something

8 like, you know, I've worked with these guys but you

9 should do your own research about them or --

10   A.   Oh, yes. Absolutely. Mr. Maiman is an

11 individual of the highest integrity. He's a straight

12 arrow engineer and he's -- he just -- he was giving me

13 the advice from a long friendship.

14   But there was no mandate, there was no --

15 he suggested the idea and the concept, he said, You

16 ought to meet these guys. And it wasn't just me. It

17 was senior leadership team, it was our chairman, it

18 was our CFO, it was our head of generation. I mean we

19 all -- I don't -- I didn't do this independently and

20 unilaterally. I mean we -- we got together.

21   And as you pointed out, they're

22 expensive. And I can tell you that that was always in

23 our mind. And there wasn't a year that went by --

24 maybe even a month early on -- that we didn't

25 challenge our own assumption about that. We

1 probably -- we didn't accept -- we didn't internalize

2 in our minds probably the total cost of this back in

3 2005. We probably thought we could do with less.

4   As things emerged, as disputes arose, as

5 commercial issues grew, you know their work grew. The

6 scope didn't change, but the amount that went on went

7 on. But we --

8   Q.   Would you --

9   A.   -- we vetted this with them, their value

10 regularly.

11   Q.   What -- what did you think you were going

12 to have to ch-- spend on this -- whoever entity would

13 be at the time you made the decision that you needed

14 to have somebody?

15   A.   I suspect we didn't really have a -- a

16 good clear picture. They gave us a number that

17 probably was closer to where we are today than I might

18 have thought or we might have thought. We might have

19 said, you know, we think we can do it for less.

20   Q.   I understand. I want to -- and you're

21 talking specifically about Schiff. I want -- I want

22 to kind of move back a little bit because I'm trying

23 to figure out -- I'm trying to figure out why there

24 wasn't a competitive process. I'm trying to figure

25 out why there didn't appear to be a negotiation on --

1 on rates.

2   So let me -- what I'm trying to figure

3 out is you -- so when you made this decision to hire

4 an outside person, you had to have said, Okay, we

5 think it's going to cost us X amount of money in order

6 to hire an outside person, whoever that may be. Did

7 you ever have that generic discussion or was it just,

8 Schiff is telling us that it's going to cost this

9 much, that's an acceptable figure to us?

10   A.   They presented numbers and our general

11 counsel explored and -- and looked around a good bit.

12 We looked at comparable firms. In fact, at one point

13 down the road I know Mr. Riggins and our assistant

14 general counsel, Mr. Reynolds, who sat with the Schiff

15 people from day one up at the site, their offices were

16 right next to each other, the three of us went up to

17 Chicago to interview with Duane Morris that was

18 somewhere in some of Staff documents. They purported

19 to have similar skills.

20   And -- and as we vetted them, they had

21 attorneys, yes, who would work from a distance and on

22 contractual issues, but they didn't have the -- the

23 robust mixture that -- that Schiff offered that had --

24 had them on the ground watching and documenting the

25 commercial issues and the way we were doing it. And

 1 it's a very -- I think it's a very small subset of

 2 attorneys that do this kind of stuff.

 3   Q.   So you didn't have a formal RFP process,

 4 but you did have dog and pony shows --

 5   A.   Yes.

 6   Q.   -- essentially?

 7   A.   Yes.

 8   Q.   That's what we always refer to them as.

 9   A.   Yes.

10   Q.   So -- and -- and did you have -- how many

11 dog and pony shows did you have? Did you just have

12 the two?

13   A.   We did --

14   Q.   Or did you have more than that?

15   A.   It was a small number, but I mean it

16 isn't that we didn't think about, for example, Kansas

17 City firms. Okay, they have construction law

18 practices. What do those look like? What are the

19 skill-sets in there? And -- and we -- we did that at

20 the beginning, but we did it kind of regularly over

21 the course of the project.

22   And as I say, understanding these firms,

23 understanding how these commercial -- these firms are

24 pretty litigious. They go into these contracts

25 expecting to do legal battle down the road.

1   Q.   Right.

2   A.   And we had negotiated a very tough price

3   with Alstom. They -- they're licking their wounds yet

4   from this project. And so we were fully prepared that

5   we were going to have to defend ourselves in this.

6   And, in fact, with the help of

7   Mr. Roberts, we built a mediation strategy that we got

8   them to agree to using Jonathan Marks, who's world

9   renowned as a large complex construction mediator.

10 And -- and as a result, these big settlements that we

11 did cleared all previous claims. I have one claim

12 left right now for about a couple million dollars and

13 that's it in this entire project.

14   Q.   So -- so -- and I -- and I -- I

15 understand that you think that the value at the end of

16 the day was -- was right. But I still am a little

17 bit -- so -- so you did the dog and pony shows and

18 then you were -- you decided that Schiff were --

19 were -- was the place to go ultimately. And -- and --

20 and you bring up an interesting point about how you

21 negotiated a really tough -- tough deal with this

22 other vendor. To the extent --

23   A.   Using Schiff.

24   Q.   Using Schiff. But to the extent that you

25 can tell me that doesn't violate privilege, were you

1 involved in the negotiation with the contract with

2 Schiff or did you leave that to Mr. Riggins?

3   A.   I left it to Mr. Riggins.

4   Q.   Did you give -- to the extent that you

5 can give me that doesn't violate any privilege, did

6 you give Mr. Riggins any direction on what to do to

7 negotiate that?

8   A.   No, I did not.

9   Q.   So you never said to him, you know,

10 Let's -- let's try to get volume discounts, let's try

11 to -- let's try to get Kansas City rates instead of

12 Chicago rates, let's be really tight on -- that we use

13 lower-year attorneys and -- and paralegals for the

14 stuff that can be done that way and let's -- let's do

15 that? You never did any of that stuff to Mr. Riggins?

16   A.   I -- I didn't do that with Mr. Riggins.

17 And I -- I'm under the impression and I've checked

18 with some colleagues who use these guys similarly in

19 the industry who are on my side of the fence and they

20 may be unique, but they -- they don't seem to have to

21 negotiate rates in the unique niche that they've --

22 they've got.

23   And -- and yet we did things -- for

24 example, they don't travel on us. I know you said a

25 half an hour at the airport, but we have a lot of

1 travel back and forth with these guys. We -- we -- we

2 do not pay them for their travel, which I think is

3 unique. And we have frozen their rates since the

4 beginning of 2009.

5   And, you know, I mean I understand what

6 you're saying and we've had them managed -- they do

7 not run wild. As I said, we had our assistant general

8 counsel --

9   Q.   Well --

10   A.   -- seated with them.

11   Q.   -- you didn't have a single time entry,

12 from what I can tell, requested to be written down

13 from the company out of the $20 million. So you

14 obviously thought they were doing a good job.

15   A.   Well --

16   Q.   I'm not saying that's inappropriate. I'm

17 just saying you obviously thought what they were doing

18 was value -- value based.

19   A.   I -- I will tell you that -- and I'm sure

20 Mr. Roberts can speak for himself. I'm sure he'll

21 look forward to talking with you. But there was a

22 pretty rigorous line-by-line review of their work.

23 And while we may not have pushed something out, I

24 think -- I think there's a -- a reasonable amount of

25 money that was not paid through either his review or

1 ours in a detailed discussion that -- that occurred

2 every -- every time they dropped the bill on us.

3   Q.   Well, maybe that was based on

4 Mr. Roberts' review because so far the testimony

5 hasn't -- hasn't --

6   A.   No.

7   Q.   -- demonstrated that the company did

8 anything. And -- and, you know, look. I'm -- there's

9 no zealot like the converted. I've spent some time in

10 some big law firms and have had calls from general

11 counsels and had some -- those strict bill reviews.

12 So I just -- that's why I'm asking the question and

13 figuring out.

14   And if that is the case -- and

15 Mr. Roberts can certainly testify to that and -- and

16 you didn't -- did you review any invoices yourself?

17   A.   I would see them, but I would rely on a

18 team to review these. I mean --

19   Q.   You would get the recommendation and

20 basically sign off on the recommendation?

21   A.   Right.

22   Q.   Okay.

23   A.   And actually Mr. Riggins signed off on

24 the bills, but I did see them and we would talk about

25 them.

1   Q.   Okay. All right. Now, this -- I don't

2   know what this was -- this is -- was marked. This is

3   the -- the last one I think that you got, which is the

4   redacted budget. And I'm only using it for purposes

5   of the date. Did -- did -- when Mr. Milne was -- when

6   you requested, as you testified earlier, that he join

7   the Schiff team --

8   A.   Maiman.

9   Q.   Maiman. Sorry. Did he -- had he left

10   Commonwealth Edison already or was he essentially

11   hired away to join the team?

12   A.   He was retired and was doing consulting

13   work in the industry.

14   Q.   Okay.

15   A.   And that's how he got up to OPG and --

16   and wound up in parallel with Schiff.

17   Q.   Great. Okay. That was just a factual

18   issue that -- that I wanted to know.

19   Was one of the factors for hiring a law

20   firm like this that would also do project manager --

21   management that you would be able to at some point

22   assert attorney/client privilege?

23   A.   No. That was -- you know, that's not --

24   not an unintelligent thing to do, but as I said to you

25   before, my primary focus was on the commercial

1 strategy here where the big dollars were.

2   As it turned out, the documentation that

3 we had to do commercially serves us very well in the

4 regulatory framework. Because I mean, you've heard

5 criticism about Wolf Creek and there wasn't a record

6 anywhere. We had made a major commitment with the

7 Comprehensive Energy Plan with this Commission and the

8 Kansas Commission and we had partners who -- who

9 became our partners because of this regulatory

10 process. We were getting plenty of scrutiny and I

11 wanted to make sure that we were on the table and that

12 we documented what we did.

13   And I think we've done a job like nobody

14 else has done in this state with regard to

15 documentation. It turned out to be very valuable to

16 us in this process because over five years, memories

17 become short and lots of things happen. And -- and

18 that documentation that helped us commercially be

19 powerful I think is also the -- the same -- exact same

20 material we've been reporting on monthly to the

21 Commission Staffs and we've brought forth in these

22 proceedings.

23   Q.   This is again a factual question and you

24 may not know the answer. I don't want anyone to read

25 into it. Is the cost of the Pegasus assessment being

1 requested to be recovered through -- through the rate

2 case or a portion?

3   A.   I don't -- I don't know. I don't know.

4   Q.   Okay. Fair enough. I didn't know either

5 so that's why --

6   A.   I'm not sure.

7   Q.   I'm sure someone --

8   A.   I think someone -- I'm sure Mr. Blanc can

9 answer that.

10   Q.   With -- with the potential of stealing

11 some of Commissioner Kenney's thunder, I want to speak

12 about this line of inquiry on the gifts. What was the

13 Newport trip?

14   A.   They -- Alstom for its clients and

15 potential clients annually has a -- they hold a

16 conference up there. And for some reason, that's

17 their thing. It's -- you know, it's old mansions and

18 sailboats and -- but they have it in that environment

19 and -- but they bring everybody in and have -- it's

20 for a weekend, it's a Friday, Saturday, Sunday.

21   And -- and you come in and there's a day

22 of meetings and then there's a dinner and one day of,

23 you know, sailing and -- and it's an interaction

24 thing. They do it with clients regularly. And that

25 was one of two in the last five years that I've done.

1 You've heard them both brought out here.

2   Q.   Did KCP&L -- KCPL send you on conferences

3 occasionally? If you saw something you wanted to go

4 to if you were speaking, would they pay for you to

5 attend --

6   A.   Sure.

7   Q.   -- other things?

8   A.   And they do.

9   Q.   So that's -- that's a common practice

10 that if you're doing somewhere that has a business

11 reason or if you're an invited speaker, they pick

12 up -- pick up that expense?

13   A.   Yes.

14   Q.   Okay. So you have a gift policy which

15 basically says, you know, you really shouldn't accept

16 gifts from vendors because of the appearance of

17 impropriety. And yet it seemed that that happened on

18 a regular basis. And most of these things were done

19 under a de minimis exception, kind of like that's not

20 really that big of a deal so we're going to let it go

21 by on the gift policy. I mean, isn't -- that's

22 basically what I've heard today. I'll give you a

23 chance to --

24   A.   When you say -- I'm a little -- you said

25 they were happening on a regular basis.

1   Q.   Well, I should take that back. Gifts --

2 during the pendency of this project, some gifts were

3 accepted from vendors to employees of KCP&L. We heard

4 testimony --

5   A.   You're talking about the coats, the

6 jackets?

7   Q.   Actually I'm not. I'm talking about --

8 because the coats went mostly to the construction

9 contract employees. Correct? I mean that's what --

10   A.   Yeah.

11   Q.   -- from what I got, the coats went to --

12   A.   Yes, yes.

13   Q.   -- the workers --

14   A.   Right.

15   Q.   -- were not executive folks.

16   But tickets to Chiefs games and Royals

17 games and -- and obviously the Pebble Beach and the

18 Newport, Rhode Island trip.

19   A.   Well, I --in the first place, we would

20 reciprocate. I mean we would -- this was -- we were

21 living with these people for five years. And it's one

22 thing to just go in and, you know, assert the contract

23 and it's another to live with these people and to

24 understand how they tick. So it was mutual.

25   I mean if Tim Curran, who was the head of

 1 Alstom, if we would get together for dinner, one time

 2 he'd pay, the next time I'd pay.

 3   Q.   But I don't --

 4   A.   We'd have them to play golf or they'd

 5 have us.

 6   Q.   I understand. But Alstom -- I don't know

 7 what Alstom's policy is in terms of gifts. You

 8 have -- KCP&L has a gift policy that says not to

 9 accept because it may create an appearance of

10 impropriety.

11   A.   Well, and as I said, these are unusual.

12 Two -- two in the five-year period, both approved by

13 my boss for business reasons.

14   Q.   I understand. I understand. If they

15 were for business reasons, why didn't KCP&L pay for

16 them? When you have the gift ban, why -- in order to

17 avoid the appearance of impropriety, why didn't KCPL,

18 Power and Light, pay you to go develop that business

19 relationship with Alstom or pay for you to go to that

20 conference?

21   A.   Well, we paid for the airfare, obviously

22 that was a part of the thing. And we -- we didn't

23 feel that we were doing anything inappropriate. It

24 certainly didn't affect our negotiations or the way we

25 managed our projects with them. I think it -- I don't

1 think it's an unusual process, at least in our

2 industry.

3   Q.   Now, and I think the timing of it just --

4 so I heard the Pebble Beach timing. The Pebble Beach

5 timing was essentially a -- right after the signing of

6 the contract. Right?

7   A.   Yes.

8   Q.   So it was at the very beginning of the

9 relationship?

10   A.   Yes.

11   Q.   The contract had already been signed,

12 already been negotiated. When was the Newport trip,

13 do you remember?

14   A.   It was probably -- probably the next

15 year.

16   Q.   Were the disputes that ultimately were

17 the subject of the settlement happening at the time --

18   A.   No.

19   Q.   -- at the second trip?

20   A.   I think this was ahead of them. I think

21 this was ahead of that. And this is a regular event

22 that they put on. And, you know, I got to meet other

23 people that were doing business with them and -- you

24 know, as well as their own team.

25   Q.   I just want to figure out the timing.

 1 | But that's actually an important point. It wasn't a

 2 | one-on-one?

 3 | A.   Oh, no.

 4 | Q.   It was -- it was a general conference

 5 | that they have --

 6 | A.   Thirty or forty other executives from

 7 | around -- from different companies.

 8 | Q.   Okay. And your testimony is, is that

 9 | that trip predated any disputes that arose with them?

10 | A.   Yes.

11 | Q.   And did -- and was not during the

12 | pendency of any negotiation for potential resolution

13 | of those claims?

14 | A.   No.

15 | COMMISSIONER GUNN: Okay. All right. I

16 | just have one quick -- one other quick question and I

17 | -- I don't know if -- it's probably safer because it's

18 | about some of the things that are included in this

19 | KCP&L exhibit, the one that -- I don't know where it

20 | was -- 255, 256, something like that. So it may not

21 | be, but I think it's probably just safer to go

22 | in-camera.

23 | JUDGE PRIDGIN: Bear with me just a

24 | moment. We'll go in-camera.

25 | COMMISSIONER GUNN: It should be for like

1 five minutes.

2   (REPORTER'S NOTE: At this point, an

3 in-camera session was held, which is contained in

4 volume 22, pages 1454 to 1455 of the transcript.)

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 1   COMMISSIONER GUNN: That is all -- oh,

 2 wait.

 3   JUDGE PRIDGIN: We're back

 4   COMMISSIONER GUNN: We're back. Okay.

 5 That's all I have for right now. I don't know whether

 6 Commissioner Kenney is going to have more or not, but

 7 I'm sure there will be plenty of recross and redirect

 8 so --

 9   JUDGE PRIDGIN: I was going to say, I

10 think Commissioner Kenney will be rejoining us shortly

11 so he may have questions, but in the interest of

12 moving things along, let me see if we have any recross

13 or redirect and then I'll give Commissioner Kenney an

14 opportunity. Mr. Schwarz, recross?

15   MR. SCHWARZ: Yes, I have a bit.

16 WILLIAM DOWNEY testified as follows:

17 RECROSS-EXAMINATION BY MR. SCHWARZ:

18   Q.   You engaged with Commissioner Jarrett for

19 a bit about the EPC versus multi-prime. You recall

20 that?

21   A.   Yes.

22   Q.   And you -- you mentioned that Black and

23 Veatch had -- had made a presentation; is that --

24   A.   Yes.

25   Q.   Did you contact Fluor at that time to --

1 feel them out about -- about an EPC contract?

2   A.   I think we had talked to S&L. I don't

3 recall talking to Fluor at the time.

4   Q.   Bechtel?

5   A.   They were not interested.

6   Q.   Washington -- Washington?

7   A.   I think they were not interested as well.

8   Q.   But you don't have any -- any records of

9 that?

10   A.   No. Because they were -- you know, the

11 message we were getting was they -- they had clients

12 they were working with regularly and that's where they

13 were going to be.

14   Q.   Do you still have copies of KCP&L 261 and

15 270?

16   A.   I'm not sure that I do.

17   Q.   All right.

18   A.   Oh, here's 261. I do have 261. And 270.

19   Q.   Yes. It's the --

20   A.   Yes, I have both.

21   Q.   Okay. Good. Would you take a look at

22 the second page of 270.

23   A.   Yes.

24   Q.   Are you with me?

25   A.   Yes.

1   Q.   The date on that is December 7th of 2005?

2   A.   Yes.

3   Q.   And it purports to be a -- is any of this

4   HC? It purports to be a budget proposal for comp--

5   Comprehensive Energy Plan project from Schiff Hardin?

6   A.   Yes.

7   Q.   And if you look at -- toward the end of

8   the first paragraph it says that this proposal

9   includes the services of Tom Maiman?

10   A.   Yes.

11   Q.   And Meyer Construction Consulting?

12   A.   Right.

13   Q.   And J. Wilson and Associates?

14   A.   Uh-huh.

15   Q.   Okay. And, of course, their -- those --

16 the last three that I mentioned -- and Ticktacks, you

17 were here for Mr. Jones's testimony?

18   A.   I was.

19   Q.   Do you recall he said that he had been

20 working through Ticktacks at that stage?

21   A.   I -- I didn't.

22   Q.   That's fine. The transcript --

23   A.   I just didn't remember the name.

24   Q.   The transcript will reflect it.

25   So those would all be for consulting

1 services, would they not?

2   A.   Yes.

3   Q.   They're not providing any legal services?

4   A.   No.

5   Q.   No. So that's -- never mind. Strike

6 that.

7   Would you look at the last page of

8 Exhibit 261? Is the CBE highly confidential? I

9 thought that we went through it the other day in open

10 session.

11   MR. FISCHER: 2006 CBE?

12   MR. SCHWARZ: Yeah.

13   MR. FISCHER: The details are not.

14   MR. SCHWARZ: Are HC?

15   MR. FISCHER: Not the aggregate.

16   MR. SCHWARZ: Okay. I think we need to

17 go HC if we might.

18   JUDGE PRIDGIN: Just a moment. We'll go

19 in-camera.

20   (REPORTER'S NOTE: At this point, an

21 in-camera session was held, which is contained in

22 volume 22, pages 1460 to 1464 of the transcript.)

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1   JUDGE PRIDGIN: All right. Commissioner

2 Kenney, let me see if you have any questions?

3   COMMISSIONER KENNEY: I do.

4 WILLIAM DOWNEY testified as follows:

5 QUESTIONS BY COMMISSIONER KENNEY:

6   Q.   And I'm sorry that I had to step out for

7 another meeting, so I apologize. And I'm not going to

8 ask questions that have already been asked hopefully

9 and if I do, I apologize. And if I ask something that

10 was asked while I was gone, just tell me so because I

11 don't want to drag this on any longer than it's

12 already gone.

13   So let me ask first about the settlement

14 with Alstom. And there was testimony that KCP&L would

15 not have been able to -- and I don't know if this is

16 HC or not so you guys -- I'll trust you to tell me if

17 I start to go down some road that's highly

18 confidential.

19   MR. HATFIELD: And, Commissioner, I might

20 just say, Alstom I think we've talked about is an

21 ongoing --

22   COMMISSIONER KENNEY: So maybe any

23 discussion of settlement with the Alstom might in and

24 of itself be HC?

25   MR. HATFIELD: Well, it could be. I

1 guess I'm just alerting you to the circumstances. I'm

2 not sure what you're going to ask.

3   COMMISSIONER KENNEY: I'm not going to

4 ask about a document specifically. I'm going to ask

5 about a provision in the agreement with Alstom in the

6 first place. It was a liquidated damages provision.

7   MR. HATFIELD: And I think as long as we

8 stay away from numbers, specific figures, we're okay

9 to stay in public.

10 BY COMMISSIONER KENNEY:

11   Q.   Well, there was testimony about whether

12 Kansas City Power and Light would have been able to

13 enforce the liquidated damage provision against

14 Alstom. I think that was on Friday. Do you remember

15 that testimony?

16   A.   Yes, I do.

17   Q.   What was the basis for that advice?

18 Well, let me ask who gave that advice, first of all,

19 about whether or not KCP&L would have been able to

20 enforce the liquidated damages provision against

21 Alstom?

22   A.   We certainly talked about it with Schiff

23 and with our internal team. But probably more

24 importantly, as I had mentioned while you were out,

25 one of the things -- one of the strategies we deployed

1 early on was to identify and agree upon a mediator who

2 would work with us when we were getting into disputes.

3 And I will tell you that this was a very heated

4 argument with Alstom around these issues.

5   Q.   Okay.

6   A.   And there were things that we needed,

7 there were things they wanted and were -- felt that

8 they had been agreed. Jonathan Marks was the mediator

9 who we brought this in front of. And, you know,

10 Alstom had a pretty big claim. We knew a couple of

11 things. We knew that we, for a variety of reasons,

12 had to extend the schedule for the outage of the --

13 the unit. This was the unit 1 settlement.

14   Q.   Okay.

15   A.   And it was going to affect their time

16 line and -- and their issues. And they had a date

17 certain without any interim time lines. They were

18 going to claim delays. And we needed to move on, but

19 we felt pretty strongly that, you know, they had

20 some -- some claims.

21   They had to be convinced that we had some

22 important things that we needed. And we actually came

23 out of that mediation without any agreement, but we

24 had a lot of good documentation on our own about what

25 was -- what was going on on their end, what they were

1 doing wrong.

2   And Marks had to go in -- the mediator

3 had to go in and push back on them considerably. So

4 it was -- it was -- still a good bit of time passed

5 following the face-to-face mediations. But we ul--

6 ultimately got them to agree to mutual turnover dates

7 and key dates with that.

8   Subsequently, as we get into the outage,

9 we open the plant up, we discover a major physical

10 problem with a piece of equipment called an

11 economizer, which then took us additional time to do.

12   And then subsequent to that -- and by the

13 way, that was a concurrent delay with their work. We

14 were in the way. We had -- also had put a lot of

15 additional work into the unit that wasn't there when

16 we originally contemplated the agreement with -- with

17 Alstom.

18   So what we got to agree to was a

19 reconfiguration of the dates. And we -- we realigned

20 the LDs to -- to be consistent with the new dates that

21 were also consistent with our own delays that we

22 caused. So we kept the value -- pretty much I think

23 the value was around (Highly Confidential) in LDs. We

24 kept those values --

25   Q.   You guys need to go --

 1   MR. HATFIELD: You might want to avoid

 2 specific numbers.

 3   COMMISSIONER KENNEY: Trying to help you

 4 guys out here.

 5   THE WITNESS: Thank you. I've lost --

 6   COMMISSIONER KENNEY: Do you want to go

 7 in-camera?

 8   MR. HATFIELD: If he'll agree not to say

 9 any more specific numbers, we don't need to.

10   COMMISSIONER KENNEY: I don't want it to

11 be because of questions I'm asking. I mean this

12 particular piece -- I'm going to have more questions

13 about this as a result --

14   MR. HATFIELD: I think it might be

15 easier, but if somebody objects -- it might be easier

16 just to go in-camera so we can discuss HC.

17   JUDGE PRIDGIN: I'm hearing no

18 objections, so we'll go HC.

19   (REPORTER'S NOTE: At this point, an

20 in-camera session was held, which is contained in

21 volume 22, pages 1470 to 1488 of the transcript.)

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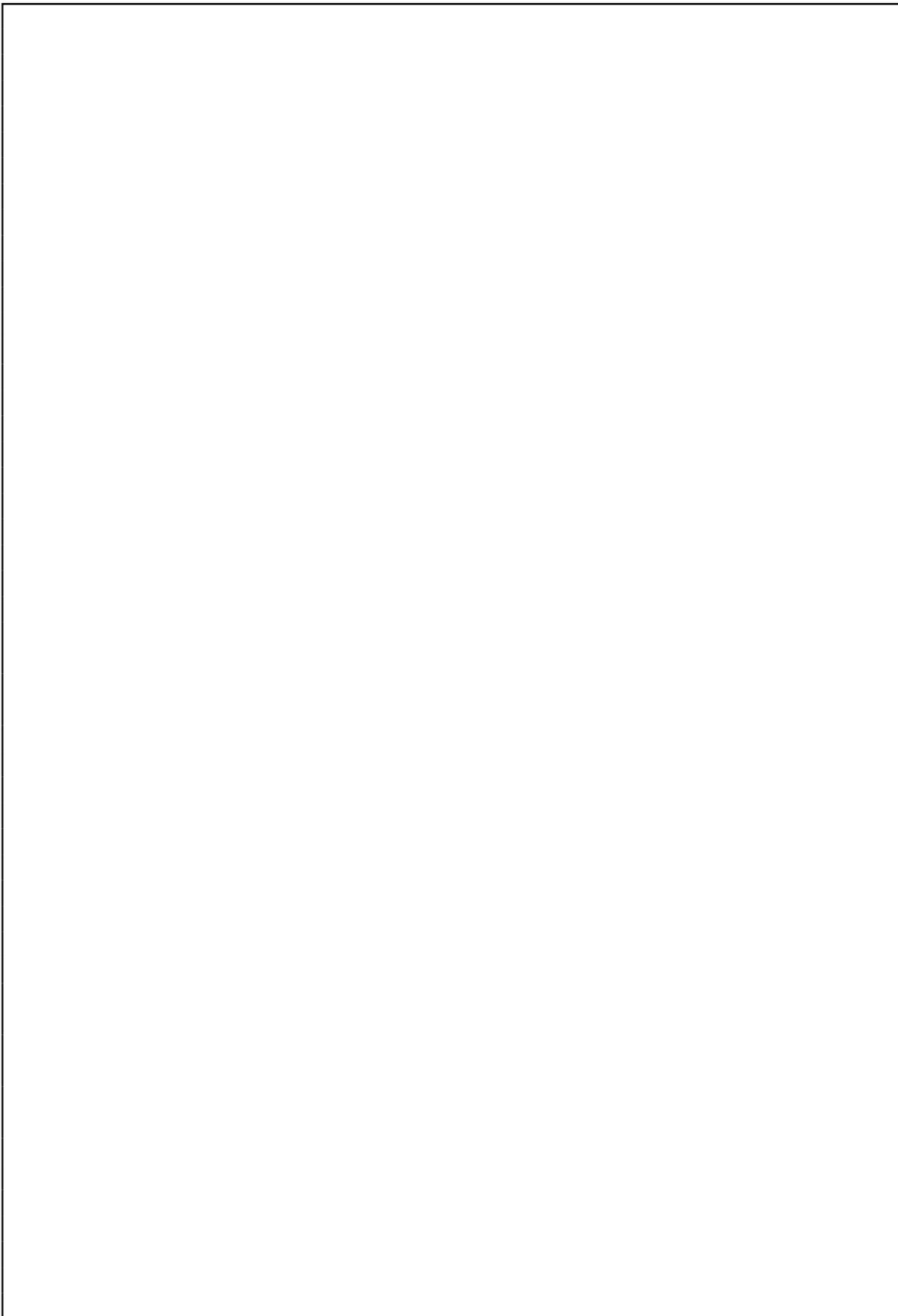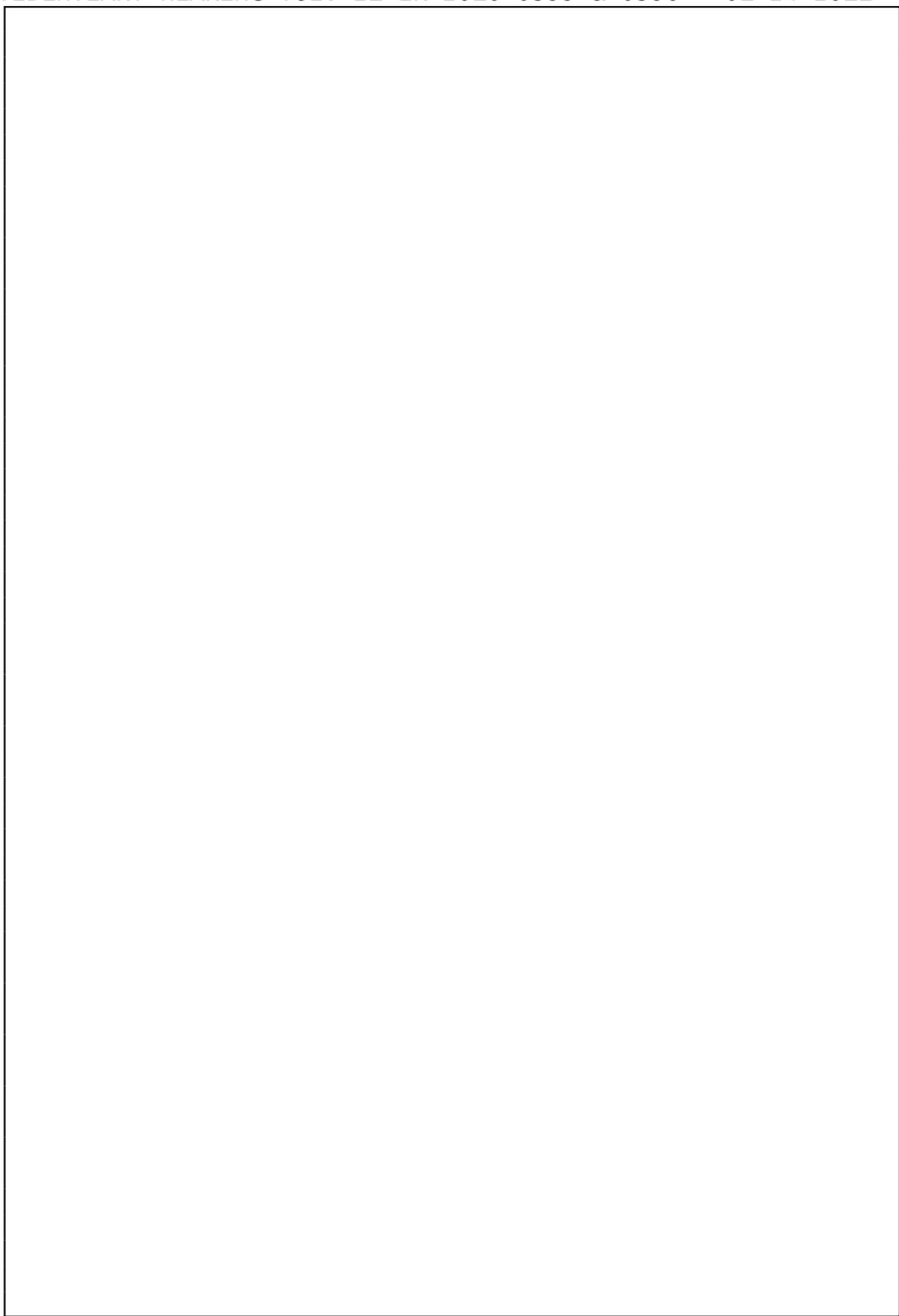
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1 WILLIAM DOWNEY testified as follows:

2 BY COMMISSIONER KENNEY:

3   Q.   Oh, one more question. And this is not

4 HC. You said your ethics policy was redrafted in 2008

5 and compared to other utilities in the industry.

6 Is -- is the redrafted version the same as what

7 Mr. Williamson provided to you earlier?

8   A.   It was reviewed and I think it was found

9 to be pretty much in line. If there were any changes,

10 they were minor. I don't think -- in fact, I don't

11 recall that there were. We confirmed our -- there

12 might have been -- I don't recall if there -- it was

13 insignificant in terms of the changes.

14   Q.   So it's virtually identical --

15   A.   Yes.

16   Q.   -- if not exactly the same?

17   A.   Yes.

18   COMMISSIONER KENNEY: Okay. Thank you.

19   JUDGE PRIDGIN: All right. Thank you.

20 Before we proceed to more recross, let me kind of get

21 an idea how much time. Mr. Schwarz, do you want more

22 recross? Mr. Mills, do you want recross?

23   MR. MILLS: Just a handful OF questions.

24   JUDGE PRIDGIN: Let's take Mr. Mills's

25 recross. And then Mr. Williams, you'll have recross?

1   MR. WILLIAMS: Yes. But not very many

2 questions.

3   JUDGE PRIDGIN: Okay. Depending on the

4 length of Mr. Williams' recross, we may break in the

5 middle or we may proceed until we get to redirect.

6 We've been going for a couple hours. I'm looking for

7 a natural break, so Mr. Mills.

8   MR. MILLS: Okay. Let me confer with

9 KCPL about confidentiality.

10   JUDGE PRIDGIN: Certainly.

11 RECROSS-EXAMINATION BY MR. MILLS:

12   Q.   Commissioner Kenney was just asking you

13 some questions about that -- the Pebble Beach trip and

14 the Newport trip. Is it correct that when you were

15 planning the Pebble Beach trip, your wife was planning

16 to attend and for whatever reason ultimately did not

17 go?

18   A.   I believe she was invited, but I think

19 we -- in fact, in the -- I didn't remember. The

20 expense report says family medical issue and I don't

21 remember it was either her mother or my mother or

22 father, one of the two or three.

23   Q.   So her -- whether or not she was planning

24 to go or not go had nothing to do with the decision

25 for KCP&L to pay your airfare rather than Alstom?

1   A.   No.

2   Q.   Okay. And let me -- I think Commissioner

3 Kenney was sort of leading up to this so let me just

4 ask it directly. If you had not paid for your own

5 airfare, would that trip have violated KCPL's gift

6 policy?

7   Q.   Not necessarily, although I think we

8 discourage that kind of stuff. There was a unique

9 reason for these trips and it was related to the

10 launching of these projects. We don't, as a matter of

11 course, approve these. And you have to get approval

12 in order to do them.

13   Q.   So the -- the reason for the trip plays

14 into how much recompense you can accept for a trip

15 like that. Is that part of the policy?

16   A.   That's probably a fair statement.

17   Q.   Now, with respect to the -- to the

18 Newport trip, when did that happen? That was later

19 than the Pebble Beach trip?

20   A.   It followed that. It was probably the

21 next year.

22   Q.   Okay. The -- the Pebble Beach trip was

23 tied to signing the EPC contract. Was the Newport

24 trip tied to any particular event?

25   A.   It was just getting to meet -- they have

1 this outing annually for the industry, for their

2 customers. And so it was a regularly scheduled event

3 for them and it was a way to meet more of their team

4 and other customers.

5   Q.   So going back to your -- your earlier

6 answer about the purpose of the trip playing into

7 what's allowed and what's not allowed, doesn't that

8 make it difficult for the average employee to evaluate

9 whether a gift is appropriate or not?

10   A.   I'm not sure that I understand.

11   Q.   Well, I think one of the reasons that you

12 said it was okay to go to -- to have Alstom pay for

13 the Pebble Beach trip minus the airfare was because of

14 the purpose of the trip.

15   A.   Yes.

16   Q.   So if the -- well, let me ask it this

17 way: If the purpose of the trip had simply been for

18 them to give you a golf outing and they promise never

19 to talk any business the entire time, would that trip

20 have been an appropriate gift for you to accept?

21   A.   No. Absolutely not.

22   Q.   Okay. So --

23   A.   The only reason to go would be to talk

24 business.

25   Q.   So if that kind of analysis plays into

1 the question of whether a gift violates KCPL's policy,

2 how -- how does the average employee evaluate whether

3 the purpose behind a gift is acceptable and so the

4 gift itself is acceptable?

5   A.   Well, in this case if there were any

6 concern, as I did, I went and sat with my boss and

7 reviewed the purpose of the trip, the reason and its

8 appropriateness and fully disclosed what was going on

9 there. And we had that discussion and -- and made a

10 business decision about it.

11   Q.   Your boss is the CEO?

12   A.   Yes.

13   Q.   Doesn't get any higher than that. A

14 lower level employee -- employee going to his

15 supervisor, would the supervisor be able to make that

16 same kind of call?

17   A.   Absolutely. That's exactly what we

18 encourage.

19   MR. MILLS: That's all the questions I

20 have.

21   JUDGE PRIDGIN: Mr. Mills, thank you.

22 Mr. Williams, do you have an idea of how long?

23 Instead of interrupting you, I'd like to either let

24 you go --

25   MR. WILLIAMS: I believe I won't have

1 more than half a dozen questions.

2   JUDGE PRIDGIN: Okay. When you're ready,

3 sir.

4 RECROSS-EXAMINATION BY MR. WILLIAMS:

5   Q.   Mr. Downey, you remember whenever you

6 were asked -- answering questions posed by

7 Commissioner Jarrett, there was discussion about

8 filing the definitive estimate. Do you recall that?

9   A.   Yes.

10   Q.   When did Kansas City Power and Light

11 Company file the definitive estimate?

12   A.   When you say "filed," filed where?

13   Q.   Well, that was my next question, with

14 whom did you file it? What -- what's your

15 understanding of filing the definitive estimate to be?

16   A.   Well, our -- our board approved the

17 definitive estimate in its December 2006 board

18 meeting. And I'm trying to remember dates.

19   Q.   Was --

20   A.   As to when we would have publicly -- I

21 don't know whether we filed an 8-K or -- I don't

22 recall what we did on that. I -- I'm looking at my

23 little cheat sheet for dates.

24   Q.   Well, was that what the board approved in

25 December of -- I believe it was '06 -- described as a

1 definitive estimate or was it described as a control

2 budget estimate?

3   A.   It would have been described as the

4 control budget estimate.

5   Q.   When was the control budget estimate

6 first described by Kansas City Power and Light Company

7 as the definitive estimate?

8   A.   I think the confusion on -- on that

9 wording began way back in the regulatory negotiations

10 and continued on for quite a while. Whatever you

11 called it, it was the -- it was the number against

12 which we were going to be tracking the project and --

13 and it was a number that the Staff knew we were going

14 to bring in in December.

15   And -- and I -- you know, the back and

16 forth, Chris Giles probably went through that better

17 than I could and the back and forth on the language.

18 But whatever it was, both sides knew what we were

19 talking about. It was the -- the number that we were

20 going to track against for regulatory purposes for the

21 life of the project.

22   Q.   Whenever the -- you had the discussions

23 or the testimony with Commissioner Jarrett on the

24 questions regarding filing the definitive estimate,

25 were you referring to -- did you mean by that or

1 understand that to mean the SEC filings for the

2 control budget estimate?

3   A.   I'm sorry. I was looking at the piece of

4 paper trying to find the date.

5   Q.   I'm actually trying to get some

6 clarification. Whenever you were testifying in

7 response to Commissioner Jarrett's questions, there

8 was -- the terminology "filed definitive estimate"

9 came up. Whenever you heard that terminology and you

10 were responding, did you understand it and mean it in

11 your response to refer to the filing of SEC -- or SEC

12 filings where the control budget estimate was

13 disclosed?

14   A.   I don't remember when I said -- if I said

15 filing, I don't remember what I was referring to, but

16 it would have been the control budget estimate and its

17 public disclosure following -- our board approved it

18 on December 5th. We presented that -- that estimate,

19 whether we call it the definitive estimate or the

20 control budget estimate, we -- we got board approval

21 on December 5th.

22   I know January 22nd, we formally came

23 over here and presented the control budget estimate to

24 the Staff. I -- after that board approval, we would

25 have had to make some sort of official filing I think,

 1 but I don't recall it specifically.

 2   Q.   And the filing you're referring to is an

 3 SEC filing?

 4   A.   Would be public disclosure, yeah, from

 5 the board decision.

 6   Q.   I was just trying to clarify.

 7   A.   Yeah. And I just can't remember.

 8   Q.   Do you remember when Commissioner Gunn

 9 was asking you about how many dog and pony shows you

10 had whenever you were looking at attorneys who might

11 do the work that you ultimately hired Schiff Hardin to

12 do? Do you recall that?

13   A.   Yes.

14   Q.   And how many dog and pony shows did you

15 have?

16   A.   I don't -- as I said, I don't have a

17 specific number. Mr. Riggins had been looking and

18 talking. You know, we know the firms in Kansas City,

19 many of them work for us. He would have explored

20 their ability to do these things. We've -- we've

21 looked that periodically over time. He was looking

22 outside of the Schiff Hardin firm, so they -- I don't

23 remember any specific number.

24   Q.   Well, you mentioned Duane Morris and you

25 mentioned Schiff Hardin. Do you recall any others?

1   A.   I think we looked at the construction

2 expertise of several firms in Kansas City. I don't --

3 I don't remember exactly which ones.

4   Q.   And hopefully one last question. You

5 recall in response to Commissioner Kenney you talked

6 about building relationships in response to his

7 questions regarding your trip to Pebble Beach and

8 Rhode Island?

9   A.   Yes.

10   Q.   How would you characterize Kansas City

11 Power and Light Company's relationship with the Staff

12 of the Missouri Public Service Commission?

13   A.   I -- I would say professional and -- and

14 workman-like. Not without its tensions. We've had a

15 lot of issues in front of this Commission and its

16 Staff over the last five years.

17   Q.   And how would you characterize Kansas

18 City Power and Light Company's relationship with its

19 partners in Iatan 2?

20   A.   Generally good and reasonable.

21   MR. WILLIAMS: No further questions.

22   JUDGE PRIDGIN: All right. Mr. Williams,

23 thank you. I assume Mr. Fischer or Mr. Hatfield,

24 you'll have quite a bit of redirect?

25   MR. HATFIELD: A little bit.

1   JUDGE PRIDGIN: A little bit. All right.

2 That looks to be a good clue this would be a good time

3 to take a break. Let's reconvene at about ten till

4 4:00. Thank you. We're off the record.

5   (A recess was taken.)

6   JUDGE PRIDGIN: All right. We are back

7 on the record. Mr. Hatfield, before you begin

8 redirect, I think Mr. Mills had asked during the

9 break. I just wanted to be sure -- try to keep

10 everybody apprised of what's going on. I plan

11 on going till roughly about 6:00 or so, taking an

12 evening break for dinner, reconvening at roughly

13 around 7:00 and then going till somewhere in the

14 nine to ten o'clock range. I really don't foresee

15 going any later than 10:00.

16   So anything further from counsel? Any

17 questions or anything further before Mr. Hatfield

18 begins? All right. When you're ready, sir.

19   MR. HATFIELD: Thank you, Judge.

20 REDIRECT EXAMINATION BY MR. HATFIELD:

21   Q.   Mr. Downey, we've covered a lot of

22 different testimony here and so I may jump around just

23 a bit, but we had several pieces of discussion

24 concerning what were sometimes referred to as the

25 Alstom settlements. Do you recall that?

1   A.   Yes.

2   Q.   Now, you covered that, as I understand

3 it, in your pre-filed rebuttal testimony; is that

4 right?

5   A.   Yes. That's correct.

6   Q.   And if you wouldn't mind turning to

7 page 14 of your rebuttal testimony.

8   A.   Yes.

9   Q.   Now, is that a discussion of what was

10 referred to earlier as the crane accident settlement?

11   A.   Yes, it is.

12   Q.   And if the Commission wanted to learn

13 more about that, does that discussion occur on

14 pages 14 through -- well, you tell me. I guess it's

15 about 24 maybe?

16   A.   That's correct.

17   Q.   And related to that, does your testimony

18 identify other witnesses who have information about

19 the crane accident settlement?

20   A.   Yes. I believe Mr. Roberts has

21 additional testimony.

22   Q.   And Mr. Roberts has not yet testified; is

23 that right?

24   A.   That's correct.

25   Q.   And let me direct your attention as well

 1 to pages 24 through 39 -- or let's start with 24.

 2 There on 24 is there a -- did you include a heading in

 3 your testimony?

 4   A.   Yes.

 5   Q.   On line 9 what does that read?

 6   A.   July 18, 2008 Alstom Unit 1 Settlement

 7 Agreement.

 8   Q.   And if the Commission wanted to

 9 understand more of the details about that settlement

10 agreement, would they refer to pages 24 through 39 of

11 your rebuttal testimony?

12   A.   Yes, that's correct.

13   Q.   And then on 39 you've included another

14 heading on line 4 and what does that say?

15   A.   Unit 2 Alstom Settlement.

16   Q.   And if the Commission wanted to

17 understand more about the details of that settlement,

18 would they refer to page 39 through 47?

19   A.   That's correct.

20   Q.   Now, you also attached some schedules, I

21 notice. And could you turn in your direct testimony

22 to Schedule WHD2010-6? I'm on your rebuttal still.

23   A.   The R&O opportunity analysis sheet?

24   Q.   Yes. And -- now, you saw some of these

25 in your direct testimony. And I believe there was

 1| Exhibit 254 that was shown to you by Mr. Williams,

 2| which is also entitled a Risk and Opportunity, R&O

 3| Item No. 360. Do you recall that?

 4| A.   Yes.

 5| Q.   Do you have Exhibit 254 there in front of

 6| you?

 7| A.   25-- 254?

 8| Q.   I think I've got that right. It's also

 9| the document that you and Commissioner Kenney went

10| through that contains the PowerPoint presentation.

11| Might be right here. How about right there

12| (indicating)?

13| A.   Thank you.

14| Q.   I guess now you do have it in front of

15| you?

16| A.   I do.

17| Q.   All right. So first of all, we sort of

18| talked about this. Can you just explain, so the

19| Commission understands what we're looking at in these

20| exhibits, what are these risk and opportunity analysis

21| sheets?

22| A.   Well, they are just that. They're an

23| assessment of a situation that ultimately might wind

24| up as a cost to the project in which there's an

25| analysis made of it ahead of time to assess potential

1 cost impacts on the project.

2   Q.   Okay. So the risk and opportunity

3 analysis sheets, Exhibits 254 and several schedules,

4 how do those risk and opportunity analysis

5 spreadsheets relate to Kansas City Power and Light's

6 commitment to identify and explain any cost overruns,

7 if at all?

8   A.   Well, they -- they do. They're an early

9 signal of a potential claim and ultimately -- or a

10 potential cost. And ultimately we can see through

11 change orders and purchase orders and -- and such to

12 the extent to which these become realized. They are

13 an early warning and a trail and a track that

14 ultimately you can follow through to see what

15 occurred.

16   Q.   All right. So just to make sure we

17 understand that, Exhibit 254, you were going through

18 with Commissioner Kenney that has the PowerPoint, et

19 cetera?

20   A.   Right.

21   Q.   Up at the top it says, R&O Item No. 360.

22 Now, you've seen this document before. I think we

23 covered that.

24   A.   Yes.

25   Q.   And it says, Reforecasted costs, 3 point

1 something. I got to take my own advice and not start

2 saying numbers out loud. Sorry about that.

3   There's a reforecasted cost up there. Is

4 it your understanding that is the expected cost over

5 and above the control budget estimate?

6   A.   Yes.

7   Q.   All right. So from that we can

8 identify -- you tell me. Can we identify how much the

9 JLG incident is going to cost over and above the

10 control budget estimate also sometimes referred to as

11 the definitive estimate from that number there,

12 reforecasted cost?

13   A.   Well, this -- this suggests that

14 initiating event that -- the JLG. And this would be a

15 potential cost for some work that's attendant to that

16 incident.

17   Q.   Right. So this is the potential cost

18 over and above?

19   A.   Right.

20   Q.   Okay. Thank you for that clarification.

21 I should have said it better.

22   And then it has these reasons down here.

23 And I remember the other day when you were talking to

24 Mr. Mills about possible reasons for cost overruns.

25 Are these similar to the reasons that you discussed

1 with Mr. Mills? You see where I am; price, permit,

2 regulatory, design maturation?

3   A.   Yes.

4   Q.   All right. And then there's a section

5 called Analysis on these. And what -- how does the

6 analysis relate to the company's commitment to

7 identify and explain cost overruns?

8   A.   Well, I think it very clearly explains

9 the -- the event that initiated this risk, the

10 circumstances, efforts that were going to be

11 undertaken and why and projects then up above what it

12 might cost. So this is the analysis of the reason

13 and -- and steps that have to be taken.

14   Q.   All right. And you -- you refer to

15 "projects." So these -- these risk and opportunities

16 are what would we -- a looking-forward analysis of

17 potential costs; is that right?

18   A.   That's correct.

19   Q.   Okay. Let's look at Exhibit 254 a little

20 bit more. I think you mentioned to Commissioner

21 Kenney that it explains -- or that it includes both

22 Alstom's position and KCP&L's position; is that right?

23   A.   Yes.

24   Q.   If you can kind of flip back into the

25 PowerPoint presentation just a few pages, do you see

1 some pieces of the PowerPoint that say Alstom at the

2 bottom?

3   A.   Yes.

4   Q.   And then if you keep flipping through,

5 are there other parts of the PowerPoint that do not

6 say Alstom at the bottom?

7   A.   Yes.

8   Q.   So are -- are some of those Alstom's

9 position and some of those Kansas City Power and

10 Light's position?

11   A.   That's correct. They're attached in a

12 funny way, but yes, that's --

13   Q.   Kind of upside down, aren't they?

14   A.   Upside down and backward.

15   Q.   All right. So -- and these again were

16 prepared for what -- did you say prepared in

17 settlement?

18   A.   Settlement discussions between Alstom and

19 Kansas City Power and Light.

20   Q.   And I notice Alstom's are not -- here

21 they are -- or not -- oh, yeah, up at the top it says

22 for settlement purpose and then on KCP&L's is there

23 also a designation that it's for settlement purposes?

24 Maybe at the bottom.

25   A.   Yes. On both cases.

 1   Q.   All right. So if you would turn to the

 2   Alstom portion -- of course, they helpfully did not

 3   number theirs -- oh, no, it is. It's over on the left

 4   side, I guess. You see where I am? It says

 5   December 10, 2007 bottom left and then it will have a

 6   page number.

 7   A.   Mine are, unfortunately, stapled on the

 8   bottom left.

 9   Q.   Well, some are, some aren't. Well,

10   there's a page 2.

11   A.   What does it say at the top of page 2?

12   Q.   Soil Stabilization Project Overview.

13   A.   I'm there, yes. I'm there.

14   Q.   So is it -- is this reflecting that

15   Alstom claimed that they had been delayed by

16   25 calendar days?

17   A.   Yes.

18   Q.   And are there other documents if we were

19   to go through this, which I'd rather not do, that lay

20   out Alstom's claim that they were delayed?

21   A.   Yes.

22   Q.   And then if you will go to -- at some

23   point the page numbering changes and we're into the

24   KCPL part. There's one that has a picture of

25   conceptualization of the plant with only one chimney

1 and then you get to page 2, table of contents. Are

2 you with me? Here's what we'll do.

3   COMMISSIONER KENNEY: This is very

4 confusing.

5 BY MR. HATFIELD:

6   Q.   There's a page labeled Alstom Claims

7 Assertions.

8   A.   Hold on.

9   Q.   If you can see behind you. It's got

10 three things that Alstom's claiming.

11   A.   Wait a minute. Is this -- I'm having

12 trouble finding it.

13   Q.   It's written on --

14   MR. WILLIAMS: Are you referring to

15 page 3?

16 BY MR. HATFIELD:

17   Q.   Page 3.

18   A.   Page 3 of the KCPL or the Alstom?

19   Q.   Yeah. It has an Iatan symbol up at the

20 top, upper right-hand corner. It's not organized very

21 well, is it?

22   MR. WILLIAMS: Do you want to borrow

23 this?

24   MR. HATFIELD: Thank you, Nathan.

25 BY MR. HATFIELD:

1   Q.   Here, let me just hand you. We'll get to

2   the right page. Nathan's helpfully -- just take that.

3   A.   Jeez.

4   Q.   All right. So on this page, page 3 of

5   the -- is this a summary of what Alstom's claiming --

6   or was claiming at the time, I should have said?

7   A.   Yes.

8   Q.   And so does this accurately summarize

9   that at the time you were having these settlement

10 discussions, Alstom was asserting that Kansas City

11 Power and Light was responsible for the incident and

12 should pay for half of the costs to repair the crane?

13   A.   That's correct.

14   Q.   And that the schedule was negatively

15 impacted and that KCPL is solely responsible for this

16 delay?

17   A.   Yes.

18   Q.   And that the erection schedule was

19 negatively impacted and KCPL is solely responsible for

20 this delay?

21   A.   That's correct.

22   Q.   So they said you were responsible and you

23 said, no, we're not. Right?

24   A.   That's correct.

25   Q.   And that's how you went into mediation?

1   A.   Yes.

2   Q.   And that's what these documents reflect

3 as the positions as you went into mediation?

4   A.   That's correct.

5   Q.   All right. Thank you. Now, if we could

6 look at this other -- these other R&Os on your

7 testimony. Put that one away. I got you confused

8 enough about page numbers, I think. Now, you had some

9 discussions with both Mr. Williams I think -- could be

10 wrong and with Commissioner Kenney about the ALSTOM

11 settlements. And again just to be clear on this, is

12 there another witness we haven't heard from yet who

13 was also involved in the Alstom settlement

14 discussions?

15   A.   Well, Mr. Roberts would have been

16 involved in the settlement discussions.

17   Q.   All right. Now, as relates to your

18 rebuttal testimony -- oh, I know what we need to do.

19 Earlier when we were talking through these, you

20 referred to needing to look at your cheat sheet. Do

21 you recall that?

22   A.   I did.

23   Q.   And what is it that you needed to refer

24 to?

25   A.   Well, there are so many dates over the

1 five years, that I asked that a time line of key

2 events and decisions be put together and -- and that's

3 what I was referring to.

4   MR. HATFIELD: Judge, may we mark an

5 exhibit?

6   JUDGE PRIDGIN: You may. I believe I

7 would be up to 74 for KCP&L.

8   (KCP&L Exhibit No. 74 was marked for

9 identification.)

10   MR. HATFIELD: Judge, it might help to

11 have for the Commissioners.

12 BY MR. HATFIELD:

13   Q.   So, Mr. Downey, you started to explain,

14 but what -- what is it you were trying to accomplish

15 by constructing Exhibit 74 to be created?

16   A.   Sort of the life of the project, which

17 goes back into 2004. There have been many events that

18 have occurred and I have a bit of difficulty keeping

19 them all straight. So this at least gives me a

20 document to try to follow key dates and when things

21 happened and helps me at least keep -- keep the right

22 order of things.

23   Q.   And so have you had an opportunity to

24 review Exhibit 6-- 74?

25   JUDGE PRIDGIN: Yes.

1 BY MR. HATFIELD:

2   Q.   74?

3   A.   Yes.

4   Q.   And does it accurately reflect key dates

5 that are relevant to the testimony you provided to the

6 Commission?

7   A.   I believe it does.

8   Q.   All right. So if you need to refer to

9 this document, I'm going to ask you a couple

10 questions. Feel free to just go ahead and refer and

11 tell us that you're doing so. Because one thing I

12 wanted to make sure we understood was the -- in

13 discussing the Alstom settlements, is it correct to

14 say there's more than one?

15   A.   Yes. There were several major ones.

16   Q.   All right. And -- and I want to make

17 sure we kind of get them into some sort of context.

18 The Alstom -- the crane collapse that we've all

19 discussed occurred when? We're on page 2 of

20 Exhibit 74.

21   A.   We are. It occurred on May 23rd of 2008.

22   Q.   And then there was a -- what we sometimes

23 call the Alstom unit 1 settlement was when?

24   A.   July 15th, 2008.

25   Q.   And then quite some time until we got to

1 a next -- what we sometimes call the unit 2

2 settlement. Right?

3   A.   That's correct.

4   Q.   And do you recall approximately when that

5 was or precisely when that was?

6   A.   As soon as I can find it, I will. On

7 November 17th of 2009 we reached agreement with Alstom

8 on the term sheet for the settlement on unit 2.

9   Q.   All right. So different -- different

10 settlement agreements we were talking about earlier.

11 There's more than one, in other words?

12   A.   Yes.

13   Q.   And -- and you've -- now, back to your

14 direct testimony, you've included testimony on all of

15 the Alstom settlements and -- and delineated it out

16 separately in your direct testimony?

17   A.   Yes. The unit 1 settlement and the

18 unit 2 settlement.

19   Q.   All right. And then Schedule william --

20 WHD2010-6 is an R&O. Correct?

21   A.   Yes.

22   Q.   And that has to do with a delay claim; is

23 that right?

24   A.   That's correct.

25   Q.   And then Schedule WHD2010-6 has to do

1 somewhat with a liquidated damages claim; is that

2 right?

3   A.   The same -- you're referring to the same

4 R&O? No, a different one.

5   Q.   I said 6. There's actually two different

6 ones that both have 6 on them. So there's 367A -- an

7 R&O labeled 367A and then another R&O labeled 367B and

8 they're all part of Exhibit 6 apparently.

9   A.   There might even be one labeled C.

10   Q.   I believe there is. Let's talk about B

11 for just a minute if you can get it.

12   A.   I've got it.

13   Q.   All right. So 367B -- we talked about

14 before what an R&O is. Right?

15   A.   Yes.

16   Q.   And so this an analysis of a potential

17 cost to the project. Right?

18   A.   Yes.

19   Q.   And by the way, Mr. Schwarz isn't sure

20 what LDs are, so you might explain that.

21   A.   Liquidated damages. These are actual

22 cash payments for failure to meet certain key --

23   Q.   And in fairness to him, I think he knows

24 what a liquidated damages are. He just didn't know --

25 sorry, Tim. He wasn't sure what an LD was, so I just

1 wanted to make sure for the record when you say LDs,

2 you're referring to liquidated --

3   A.   Liquidated damages.

4   Q.   -- damages; is that right?

5   A.   Yes.

6   Q.   Yes. All right. So let's talk about

7 this. You talked with Commissioner Kenney about the

8 liquidated damages issue a little bit. In the

9 analysis section there, which I think we talked about

10 is an attempt to explain the potential cost impact,

11 there's a two with a parenthesis next to it. Is that

12 discussing liquidated damages?

13   A.   Yes.

14   Q.   And it -- I'm going to stop at the right

15 place. It says, Potential liquidated damages in the

16 range of -- and then it gives a range -- are believed

17 due KCPL if Alstom continues to fall further behind

18 rather than comply with the Tiger Team 1 schedule.

19   Do you see where that is?

20   A.   Yes, I do.

21   Q.   Now, have you read the Staff's

22 construction audit and prudence report in this case?

23   A.   I have.

24   Q.   And they indicate that KCPL should not

25 have waived or foregone those liquidated damages. And

 1 they rely in part on this risk and opportunities

 2 sheet. Is that your understanding?

 3   A.   Yes.

 4   Q.   And so when it says that if Alstom

 5 continues to fall farther behind the Tiger Team 1

 6 schedule you might be entitled to liquidated damages,

 7 did Alstom, in fact, continue to fall behind the Tiger

 8 Team 1 schedule?

 9   A.   No, they did not. In fact, they met the

10 milestones in the Tiger Team schedule.

11   Q.   So based just on this analysis, since

12 they did not fall behind the Tiger Team 1 schedule,

13 you weren't entitled to liquidated damages; is that

14 right?

15   MR. WILLIAMS: Judge, I'm going to object

16 at this point. I think he's going beyond the cross of

17 scope and Commissioner questions with this line.

18   JUDGE PRIDGIN: Mr. Hatfield?

19   MR. HATFIELD: I think he and

20 Commissioner Kenney actually talked at some length and

21 there was some cross about why did you agree to forego

22 the LDs. Commissioner Kenney asked him why did you

23 not collect the LDs or the liq-- liquidated damages.

24   JUDGE PRIDGIN: That's my recollection so

25 I'll overrule.

1 BY MR. HATFIELD:

2   Q.   So under this analysis here, you weren't

3 entitled to liquidated damages because they did, in

4 fact, meet the Tiger Team 1 schedule; is that correct?

5   A.   That's correct.

6   Q.   All right. Now, okay. Now, on these --

7 let me just finish up on these R&Os briefly, these

8 risk and opportunity analysis. You -- you -- I think

9 you were correcting me when I was discussing what they

10 would be used for. Why were R&Os -- maybe you already

11 said. Why were R&Os prepared?

12   A.   They were prepared as -- as indicators to

13 the project team and management team that there were

14 risks out there that were not -- were above and beyond

15 what we had contemplated in the control budget.

16   Q.   All right. And now how did you use R&Os

17 in your management -- in your role in managing the

18 project?

19   A.   Well, they -- they identified risks to

20 the project and -- which we looked for mitigation

21 to -- to minimize those risks or to eliminate them, if

22 we could. They also gave us signals with regard to

23 cost reforecasts that we would do periodically through

24 the course of the project. So they were early warning

25 signs around costs and schedule for that matter.

1   Q.   All right. And let's talk about the

2 reforecast for a minute. I'm going to take you way

3 back now, three, four days ago when we started your

4 questioning. Mr. Mills I think got us all started

5 with a discussion about the cost overruns and -- and

6 through some calculations brought you to a number of I

7 think it was 500 million in cost overruns.

8   A.   Right.

9   Q.   Do you recall all of that?

10   A.   I do.

11   Q.   And he asked you if you could explain

12 that and you gave him some general categories; is that

13 right?

14   A.   I did.

15   Q.   Now, at the time you were managing this

16 project back three years ago, two years ago, et

17 cetera, what were you using to understand where cost

18 overruns were occurring and why?

19   A.   Well, the cost control system and the

20 K-Report, the monthly report. I mean we would sit --

21 I was up there every week we would go through in

22 detail. But then at the end of the month, we would go

23 through the K-Report and where we stood. From my

24 point of view, I didn't need to know everything in

25 between, but I needed to know the bottom line on where

1 we were heading.

2   And then when the team began to assemble

3 these risk and opportunity analysis statements, it

4 took you from looking at what happened last month and

5 where you were relative to the budget to projecting

6 forward as to things that might occur, which would

7 later be confirmed in the -- in the monthly budget

8 review processes.

9   Q.   Okay. So once that control budget

10 estimate, definitive estimate you and Mr. Mills talked

11 about was established, who needed to approve any

12 expenses over and above that estimate?

13   A.   Well, you can see signature pages on

14 these. And depending on the dollar value, that

15 approval would -- would grow from department heads to

16 Brent to the vice president, to me.

17   Q.   All right. And -- and you talked about

18 the reforecast. At some point did you look at all the

19 R&Os in a reforecast format?

20   A.   Yes, we did. I mean, 2008 was the

21 initial cost reforecast. And it was triggered by the

22 fact that we were at a -- at a 70 percent engineered

23 level, but also by these kind of signals from the

24 project leadership team.

25   Q.   Okay. And so in the reforecast then

1 did -- did -- did you take some action with respect to

2 the reforecast yourself?

3   A.   Well, I personally -- that was about the

4 time we had -- Mr. Price left and we had an interim of

5 about three or four months before Mr. Churchman came

6 on board. And I asked Mr. Easley to take over

7 day-to-day authority for day-to-day operations in the

8 construction site. And I personally took

9 responsibility for making sure this initial reforecast

10 was appropriate and -- and fully vetted where we were

11 and what we were going to do.

12   Q.   And then did the board at some point

13 approve reforecast?

14   A.   Yes, they did. They -- we -- this

15 reforecast was done by our own staff. It was vetted

16 by Schiff Hardin through Dan Meyer who can talk about

17 these reforecasts in great detail when he's up. We

18 did our own independent reforecast, Schiff did theirs,

19 we compared them, we presented them to the oversight

20 committee, we presented them to senior -- all the

21 senior management, ultimately to the board in the form

22 of a single cost estimate, new -- new projected cost

23 at completion for the --

24   Q.   Right. I want to talk about that because

25 I want to make sure that -- that we let the Commission

1 understand what you were doing as senior management to

2 understand the budgets. So there was a control budget

3 estimate approved by the board?

4   A.   That's correct.

5   Q.   And then in order for expenses to exceed

6 that estimate, you had to establish a new budget.

7 Correct?

8   A.   That's correct.

9   Q.   And that was the reforecast process; is

10 that right?

11   A.   Yes.

12   Q.   And there were formal documents created

13 to establish the reforecast budget. Right?

14   A.   That's correct.

15   Q.   And are those attached to witness Forrest

16 Archibald's testimony?

17   A.   I believe so.

18   Q.   And I think we've looked at these once

19 before, but just to make sure, Iatan 1 and 2 cost

20 reforecast dated April 25th, 2008. Is that generally

21 what you've referred to?

22   A.   Yes.

23   Q.   And now Mr. Mills asked you a little bit

24 about what led to those -- what led to those overruns

25 and I think you discussed -- you discussed some of the

1 things that drove those. Did you -- at the time you

2 were making the decisions, did you have documents in

3 front of you that identified the drivers for any

4 expenses over and above the controlled budget

5 estimate?

6   A.   Yes.

7   Q.   And at the time did you have documents in

8 front of you that included specific risk and

9 opportunity items by dollar amounts that would show

10 you how -- the amount of additional cost that needed

11 to be incurred over and above the control budget

12 estimate?

13   A.   That's correct.

14   Q.   And it showed you by category such as

15 indirects or fuel and test run energy. Right?

16   A.   That's correct.

17   Q.   And at the time did you have in front of

18 you documents that gave you by percentages where the

19 cost overruns were occurring?

20   A.   Yes.

21   Q.   And so at the time you made the decision

22 to authorize expenses above the control budget

23 estimate back in 2008, did you know what percentage of

24 those costs were being caused by, for example, design

25 maturation?

1   A.   Yes. We spent a good bit of time

2 defining these categories and understanding them.

3   Q.   And did you also have in front of you

4 detailed information about contingency logs and

5 contingency commitments?

6   A.   Yes. These were decisions made

7 discretely every day by the cost control group and

8 then ultimately summarized and are part of the whole

9 story on cost increases.

10   Q.   And then attached to those -- that

11 reforecast you had -- did you have these risk and

12 opportunity sheets we've been going through?

13   A.   Yes.

14   Q.   And so the board would see each and every

15 risk and opportunity sheet?

16   A.   At a high level, yes.

17   Q.   Well, and that's a good question. So was

18 every risk and opportunity sheet that was prepared

19 submitted to the board?

20   A.   No.

21   Q.   And why was that?

22   A.   Well, dollar level, extent of importance

23 to the overall impact on the project.

24   Q.   And were some risk and opportunities

25 rejected at a level below the board?

1   A.   Yes. Yes. Some of these risks never --

2 the risks never materialized in terms of a cost or --

3 or, you know, it could go either direction.

4   Q.   Okay. And so is it -- is the

5 reforecast -- well, were there -- was there another

6 reforecast at some point in the project?

7   A.   Yes. There was one done in 2009 when we

8 were 90 percent engineered.

9   Q.   And so once you were going to exceed that

10 control budget estimate, just so I understand this,

11 the board would authorize a new budget and then

12 expenses would occur within that new budget. Right?

13   A.   That's correct.

14   Q.   And then you couldn't go over that new

15 budget unless another budget was authorized; is that

16 right?

17   A.   That's correct.

18   Q.   So every expense that was made on the

19 project was approved on a go-forward basis by category

20 by the board of directors; is that right?

21   A.   Well, it was approved in total. The

22 categories were explained to them, but it was approved

23 in total.

24   Q.   Well, that's a good point. So not just

25 by category, but -- or wait. What were you --

1   A.   Well, you said the board approved by

2   category.

3   Q.   Right. They saw it by category?

4   A.   They saw it by category, they approved

5   the total number.

6   Q.   Exactly. They approved the gross amount,

7   if you will of the budget?

8   A.   Right.

9   Q.   We've looked at some numbers here --

10   A.   Right.

11   Q.   -- the overall budget amount?

12   A.   Right.

13   Q.   But they had these risk and opportunity

14 sheets as part of the presentation. I guess that's

15 what I was getting at.

16   A.   Well, they -- they might not have this

17 specific sheet, but they would understand the risks.

18 We would present the risks.

19   Q.   And if we need more detail -- if the

20 Commission wants more detail about the reforecast

21 process and how the -- how the board authorized

22 expenses over the CBE, which witness would that be?

23   A.   Mr. Archibald, Mr. Meyer. This document

24 you've had up on the screen is I'm sure the very same

25 document that we would have also then brought over and

1 presented to the Staff.

2   Q.   And I think we might have covered it,

3 but -- so just -- if you don't have anything to add,

4 tell me, but Commissioner Jarrett asked you some

5 questions about your K filings and -- and I think

6 there was some discussions about your disclosure, that

7 the estimates may differ materially. Do you recall

8 that?

9   A.   The SEC disclosures?

10   Q.   SEC disclosures.

11   A.   Yes.

12   Q.   And I guess just generally related to

13 that, tell us how much management used the control

14 budget estimate to manage the project.

15   A.   Well, I mean every month we were looking

16 at this. These -- these are stakes in the ground to

17 which you try to manage to. You set goals, whether

18 they're financial or otherwise, and you manage to

19 them. So we would -- we met weekly for the morning on

20 the project to look at schedule, to look at the

21 drivers. And then monthly we would get a look at the

22 K-Report and -- and update that.

23   And then when we got into those cost

24 reforecasts and in 8 and 9, those were major events

25 and it gave us a total backward look and forward look

1 and -- and would -- would further reinforce whether we

2 were on budget or not and where the costs were going

3 and what was driving them. So that it -- it was the

4 daily and the weekly and monthly run-up and management

5 process by which we managed the costs on the project.

6   Q.   Okay. Now, you just -- just to make sure

7 we're on the same page, you just mentioned the

8 K-Reports. I'm going to show you Forrest Archibald

9 Exhibit 1. This is a pretty small copy so I'm going

10 to zoom in a little bit here. This is Forrest

11 Archibald Exhibit 1. So is this the document you were

12 just referring to?

13   A.   It is.

14   Q.   And it's going to be hard for me to --

15 generally what -- what did this document tell you as

16 you were managing the process?

17   A.   Well, it -- it broke down by significant

18 categories the spend. This column (indicating) is

19 actually the control -- the original control budget

20 estimate going back to December 2006.

21   Q.   Labeled up at the top it's referring to

22 column A?

23   A.   It says Control Budget.

24   Q.   Let's see if I can do this. Look at

25 this. So Column A is the original control budget of

1 2006?

2   A.   And then the next two columns show

3 adjustments, corporate budget change, internal budget

4 transfers, bringing us to the current budget which

5 would be the reforecasted budget so --

6   Q.   So without even getting into what the

7 lines are, so on that line 1 there, the control

8 budget, your current -- your reforecast actually

9 dropped that -- that number below the 2006; is that

10 right?

11   A.   This -- are you talking about this number

12 (indicating)?

13   Q.   Yes.

14   A.   Well, and it's a category. It's only one

15 line item of cost.

16   Q.   Right. Let me make sure we can look at

17 this here.

18   A.   So -- so that's in the procurement area

19 and it's mechanical systems and that happens to be the

20 ash handling system.

21   Q.   Well, and actually let's talk about all

22 of those. So there we've got -- I don't know if we

23 can read that.

24   MR. HATFIELD: But again, Commissioners,

25 it's Exhibit 1 to the Forrest Archibald testimony if

1 you want to look at this later as you're reading.

2 BY MR. HATFIELD:

3   Q.   We see there an ash handler, a balance of

4 plant piping and economizer. Right? And then

5 permanent aux boiler?

6   A.   Yes.

7   Q.   Are we in the same spot?

8   A.   Uh-huh.

9   Q.   So can you tell by looking at that which

10 of those items was in the original control budget

11 estimate and which were not?

12   A.   Yes.

13   Q.   Which ones of -- just in the procurement

14 section, were not included in the control budget?

15   A.   The ash handling system and the balance

16 of plant piping were in the original budget, and the

17 economizer and the permanent aux boiler were not.

18   Q.   I think it's obvious, but how can you

19 tell that?

20   A.   Well, these two have numbers and these

21 don't (indicating).

22   Q.   All right. So then you can tell that --

23 can you tell that at some point those items were

24 authorized?

25   A.   Well, this would indicate corporate

1 budget changes on the economizer, for example

2 (indicating).

3   Q.   Okay.

4   A.   And it would relate to the date on the

5 monthly budget.

6   Q.   So if a cost overrun is a cost in excess

7 of the control budget estimate, can you tell -- can

8 you identify by looking at this where a cost overrun

9 occurs?

10   A.   Yes. You can identify it pretty much by

11 systems and -- you have to then go to the detail to

12 get to the R&O, the analysis sheets and the change

13 orders and work orders. But this is a road map to any

14 costs in excess of the original control budget

15 estimate.

16   Q.   And -- and so in identifying it there,

17 can you -- can you go all the way down through and --

18 I'm not asking you to do it right now, but is it

19 possible to go all the way down through and identify

20 from this one sheet, the K-1 Report where cost

21 overruns were occurring?

22   A.   Absolutely.

23   Q.   And how often did you get this document?

24   A.   Monthly.

25   Q.   All right. And then for -- I think you

1 said it, but for the explanation of why those cost

2 overruns were occurring, where would you look?

3   A.   You would -- you would have to go and --

4 you'd have to go into the -- the change orders,

5 purchase orders, the contingency log where we

6 allocated contingency if we -- we overran.

7   And then you could go to the -- the

8 original R&Os or subsequent to the first reforecast,

9 we then developed a more extensive system called --

10 which we call cost portfolios where you could look at

11 those in detail as we did the reforecasts. And they

12 would track these categories in more detail and look

13 forward again too.

14   Q.   So as the president and COO, I assume you

15 weren't going through every change order. What --

16 what document did you use to explain a cost overrun?

17   A.   Well, this document. And we would vet

18 this with the -- the Staff and -- in the weekly

19 meetings, but we would bring it forward to the

20 executive oversight committee as well monthly.

21   Q.   And did you require the project team to

22 explain cost overruns to you?

23   A.   Absolutely.

24   Q.   And -- and how did you require them to do

25 that? What process did you use?

1   A.   Well, we used those reporting meetings,

2   either the weekly ones or -- and then we would ask for

3   major explanations in the executive oversight. We

4   wouldn't try to go through every -- every one of them,

5   but we'd look at the big picture.

6   Q.   And did they document their explanations

7   in those meetings?

8   A.   They -- we knew the source documents for

9   these, yes. I mean it was -- this was a systematic

10   process that we set up so that we would, first of all,

11   have the right process in place, and then use it and

12   do the analysis which led to actions and decisions.

13   I mean, it was -- there was -- this was a very

14   rigorous process set up at the very beginning.

15   And then, of course, we were reporting

16   not only to ourselves and to our board, but to all of

17   the external audiences; our partners, the Commission

18   Staff. This information was provided I believe

19   month-- I think the K-Reports were provided monthly

20   and certainly then this was summarized at a high level

21   in the quarterly reports.

22   Q.   So last question on this. So then as the

23   president of Kansas City Power and Light, were you

24   able to identify and explain the cost overruns on the

25   Iatan projects?

1   A.   Yes.

2   Q.   Now, let me ask you just a couple of

3 clean-up questions. Commissioner Jarrett also asked

4 you a little bit about the decision to use multi-prime

5 versus EPC. Do you recall that?

6   A.   I do.

7   Q.   And if Commissioner Jarrett wanted to

8 learn more about that process, is that explained in

9 your direct testimony?

10   A.   Yes.

11   Q.   Would you turn to page 55 of your

12 rebuttal testimony, please. Beginning with a question

13 I believe on line 14 there, do you discuss the

14 decision to use multi-prime approach as --

15   A.   You said rebuttal. You meant direct

16 testimony?

17   Q.   No, I think I meant rebuttal. Page 55,

18 line 14, Mr. Drabinski appears to be saying.

19   A.   Yes.

20   Q.   Yes.

21   A.   Okay.

22   Q.   So beginning on line 14 there, do you

23 discuss the decision to use a multi-prime rather than

24 contracting with a single vendor for EPC?

25   A.   Yes.

1   Q.   And does that discussion go on through

2   page 61 of your direct testimony?

3   MR. WILLIAMS: That would be rebuttal,

4   wouldn't it?

5   BY MR. HATFIELD:

6   Q.   Rebuttal. See you got me doing it. Your

7   rebuttal testimony?

8   A.   Yes.

9   Q.   Thank you. And is there another -- I may

10 have already asked you this. Is there another witness

11 coming up who could also discuss the decision to use

12 multi-prime?

13   A.   Mr. Roberts.

14   Q.   All right. And also attached to your --

15 you also had a discussion I think maybe with

16 Commissioner Gunn, but I can't recall, about -- how do

17 we say it -- what I'm going to call pulsing the market

18 or looking around to see if there were EPC contractors

19 available. Do you recall that?

20   A.   I do.

21   Q.   Might have been with Mr. Schwarz

22 actually. Can you look at Schedule 10 of your

23 rebuttal testimony. And it's only one page so don't

24 miss it.

25   A.   That's correct. I've got it.

1   Q.   Okay. Can you explain for the Commission

2 a little bit what the purpose of Schedule 10 is?

3   A.   Well, this reflects a memo from Steve

4 Jones who was heading purchasing at the time. It's

5 dated May 24th, 2006. And it discusses a phone

6 conversation he had with the head of marketing for The

7 Washington Group, one of the large vendors; in fact, I

8 believe as was mentioned.

9   And it was the basis for some of the

10 comments that I made that said basically it was a

11 heated market and The Washington Group was doing

12 business with their close allies and relationships

13 that already existed and that we were going to be

14 challenged trying to find interest for the balance of

15 plant construction for Iatan 2 given the overheated

16 market.

17   Q.   Okay. And when was this memo prepared?

18   A.   Well, it's dated May 24th, 2006. They

19 declined interest in -- in -- in this conversation and

20 we were asking them if they would be interested in

21 working with us.

22   Q.   Well, and now I've got something just --

23 I don't remember what the context is exactly, but you

24 had a discussion about the board minutes that

25 contained the control budget estimate for 2006. And I

1 think you said perhaps to Mr. Schwarz that you had

2 some -- I wrote down trouble with the number for

3 Schiff Hardin?

4   A.   Yes.

5   Q.   And is there another witness still

6 scheduled to testify who could provide some more

7 detail about the control budget estimate for Schiff

8 Hardin?

9   A.   Yes. Forrest Archibald, who's in charge

10 of our cost area, who's -- will be a witness and who

11 had similar trouble with that number.

12   Q.   There's a pen up here somebody got from a

13 vendor that doesn't work. So I don't know if that's a

14 violation of policy or -- I just want to disclose, put

15 it right there.

16   Okay. I guess -- other detail -- you and

17 Mr. Williams had a discussion about the filing of the

18 control budget estimate or the definitive estimate and

19 I don't recall whether you said filing or not, but

20 whether you did, I want to be clear on something. Was

21 there ever a filing -- formal filing with the Missouri

22 Public Service Commission where you said --

23   A.   No.

24   Q.   -- we're filing our budget?

25   A.   If I used filing, it certainly wasn't in

1 a regulatory sense. I did say that we presented the

2 control budget estimate to the Staff Jan-- in

3 January -- January 22nd of 2007.

4   Q.   All right. But there was no formal

5 filing --

6   A.   Not that I'm --

7   Q.   -- in the sense of a regulatory filing

8 with the Commission?

9   A.   Not that I'm aware of.

10   Q.   Okay. All right. I know you want to

11 spend some more time talking about gift policy and

12 Schiff Hardin so -- somebody, I believe it was

13 Commissioner Gunn, asked you about coming up with the

14 idea to hire Schiff. Do you -- who came up with that

15 idea and you explained that.

16   A.   Yes.

17   Q.   Do you -- were you here the other day

18 when Mr. Giles testified?

19   A.   Yes.

20   Q.   And I'm paraphrasing. I remember

21 Mr. Giles saying that in the old days, you said to the

22 construction guys, Go build a project. And whatever

23 it came back at, that's what it was and you hoped you

24 could recover your cost. Is that your understanding

25 of how the industry used to work?

1   A.   Pretty much.

2   Q.   And I remember him saying, Mr. Downey

3 didn't want that to happen. He wanted to manage the

4 process actively.

5   A.   That's correct.

6   Q.   And is that -- have you already explained

7 to the Commission that -- that that was the purpose of

8 having independent oversight?

9   A.   I -- I made that attempt to explain that.

10   Q.   Well, we won't have you do it again. But

11 in some of the -- you used the word "independent" a

12 couple of times "independent entity." And I think

13 Commissioner Gunn used it as well. I notice that in

14 some of Staff's testimony, maybe it's in Mr. Hyneman's

15 testimony, he has concerns with the use of the word

16 "independent."

17   So just to be clear -- and I think we've

18 done it, but can you explain for us what you mean when

19 you say Schiff provided independent analysis?

20   A.   Well, they -- they -- they clearly still

21 work for the company, but they have a separate track

22 and separate voice up to senior management. If you're

23 a part of the line organization, which I've referred

24 to and you report up through the project executives,

25 you are not independent -- you do not have an

1 independent track of reporting to senior management.

2 You report up through your corporate vice president.

3   In the case of Schiff, we specifically

4 provided for an independent reporting track up to

5 senior management so that we could hear from multiple

6 voices and multiple views of how the project was

7 progressing, different point of views on issues that

8 were under discussion or debate.

9   When we got into very difficult

10 decisions, management is making decisions in the face

11 of uncertainty and the more information you can

12 provide and the more points of view you can get on --

13 on an issue, the more probability you have of reducing

14 the uncertainty when you do have to make decisions.

15   Q.   So was Schiff independent of the project

16 team then?

17   A.   They had the ability to report separately

18 from the project team. They worked very closely with

19 the project team. They were an ally, they were on the

20 ground every day, but they did have the ability to go

21 around the senior project executives to senior

22 management of the company. That's not an easy thing

23 to manage, it's quite challenging, but very essential

24 and I think fairly common in business today.

25   Q.   And so did you set it up that way on

1 purpose?

2   A.   Yes. Absolutely.

3   Q.   All right. Now, Commissioner Gunn I also

4 believe asked you a little bit about competitive

5 process, rate negotiation, et cetera. Did -- Schiff

6 Hardin had a written contract; isn't that right?

7   A.   They did. They had an initial letter of

8 engagement, but then in 2007 I think beginning of the

9 year we had a written contract.

10   Q.   And I believe the -- there's a copy of a

11 contract at least attached to Staff Witness Hyneman's

12 testimony. Do you recall that?

13   A.   I believe so.

14   Q.   And that document indicates that Schiff

15 was agreeing to charge only its regularly -- regular

16 hourly rates. Was that your understanding of what you

17 were charged?

18   A.   Yes.

19   Q.   Make sure I don't have any more on that.

20 All right. Okay. Let's talk briefly about -- we're

21 almost done, believe it or not -- about the gift

22 policy or the code of conduct. And I want to -- I

23 want to try to clarify something. Luckily for me,

24 Commissioner Gunn's not in the room. Commissioner

25 Gunn said there's an outright ban on gifts. That's a

1 line he used. Is that true?

2   A.   No, it's not true. And I didn't quite

3 have the policy in total memory and it was refreshed

4 for me. No, there -- gifts are contemplated, nominal

5 value. And when you talk about sports events, there's

6 a particular carve-out that allows those events to

7 occur. And an encouragement of reciprocity. And in

8 the case of travel, as we talked about in the events,

9 it -- it is either we pay our own way or we have the

10 approval of the president of the company or higher.

11   Q.   So does -- talk about reciprocity for a

12 minute. I -- I had a little trouble understanding

13 that. So does Kansas City Power and Light have events

14 where it invites vendors?

15   A.   Yes.

16   Q.   And you pay for those?

17   A.   That's correct.

18   Q.   All right. And -- so we've got the

19 policy I think in evidence, but just to make sure, you

20 were saying that sporting events are acceptable under

21 the policy?

22   A.   Yes.

23   Q.   And then let me -- let me read you a

24 portion here that I think is related to the discussion

25 we had about your personal travel. The policy, as I

1 understand it, says, Invitations to functions that

2 involve travel or overnight stays that are in the best

3 interest of the company will either be paid for by the

4 company or be approved in advance by the president of

5 the applicable company.

6   And is that the section you were saying

7 you believe you did comply with?

8   A.   Yes.

9   Q.   And you did that by obtaining approval of

10 the president of the applicable company?

11   A.   Our chairman.

12   Q.   All right.

13   A.   I would approve people below me, but he

14 and I are the only two that can approve those trips.

15   Q.   Now, kind of going backwards here, but --

16 early in the discussion I think it may have been with

17 Mr. Schwarz, you were asked about personnel analysis

18 or a year-end review. Do you recall that?

19   A.   I do.

20   Q.   And just to give that context, can you

21 tell the Commission, was that a regular process at

22 Kansas City Power and Light to do reviews of

23 management employees?

24   A.   Yes. It is a regular process for all of

25 our management employees. We do a mid-year and then a

1 year-end review for all management employees.

2   Q.   And why do you do that?

3   A.   It's a very proactive way to deal with

4 our people. We set goals, we have expectations and

5 we -- of our management people and we follow up in a

6 regular consistent way to talk with them about their

7 performance, to talk about areas of -- of -- that --

8 where they're doing well and areas for improvement.

9 When we have challenges with people, we set up action

10 plans which they have to develop themselves for

11 self-improvement. And it -- it's just a regular

12 systematic way in which we manage our people --

13   Q.   Okay.

14   A.   -- and grow them.

15   Q.   Thank you. And do you -- okay. I think

16 the document we looked at was marked as 73-HC. I

17 don't guess you have that there. It's an evaluation

18 of Mr. Grimwade.

19   A.   I don't believe I have it.

20   Q.   Okay. Now, I think you went through that

21 with Mr. Williams perhaps and you read some sections

22 of it. How many years of -- of evaluations of

23 Mr. Grimwade does that document actually contain?

24   A.   This is one year from January 1 of 2006

25 to December 31st of 2006.

1   Q.   And let's stay with that one, but if you

2   go on back, I think there's some other documents I

3   want to ask you about.

4   MR. HATFIELD: Yeah, I guess I do have a

5   specific question we need to go in-camera for.

6   JUDGE PRIDGIN: All right. Just a

7   moment, please.

8   (REPORTER'S NOTE: At this point, an

9   in-camera session was held, which is contained in

10 volume 22, pages 1545 to 1548 of the transcript.)

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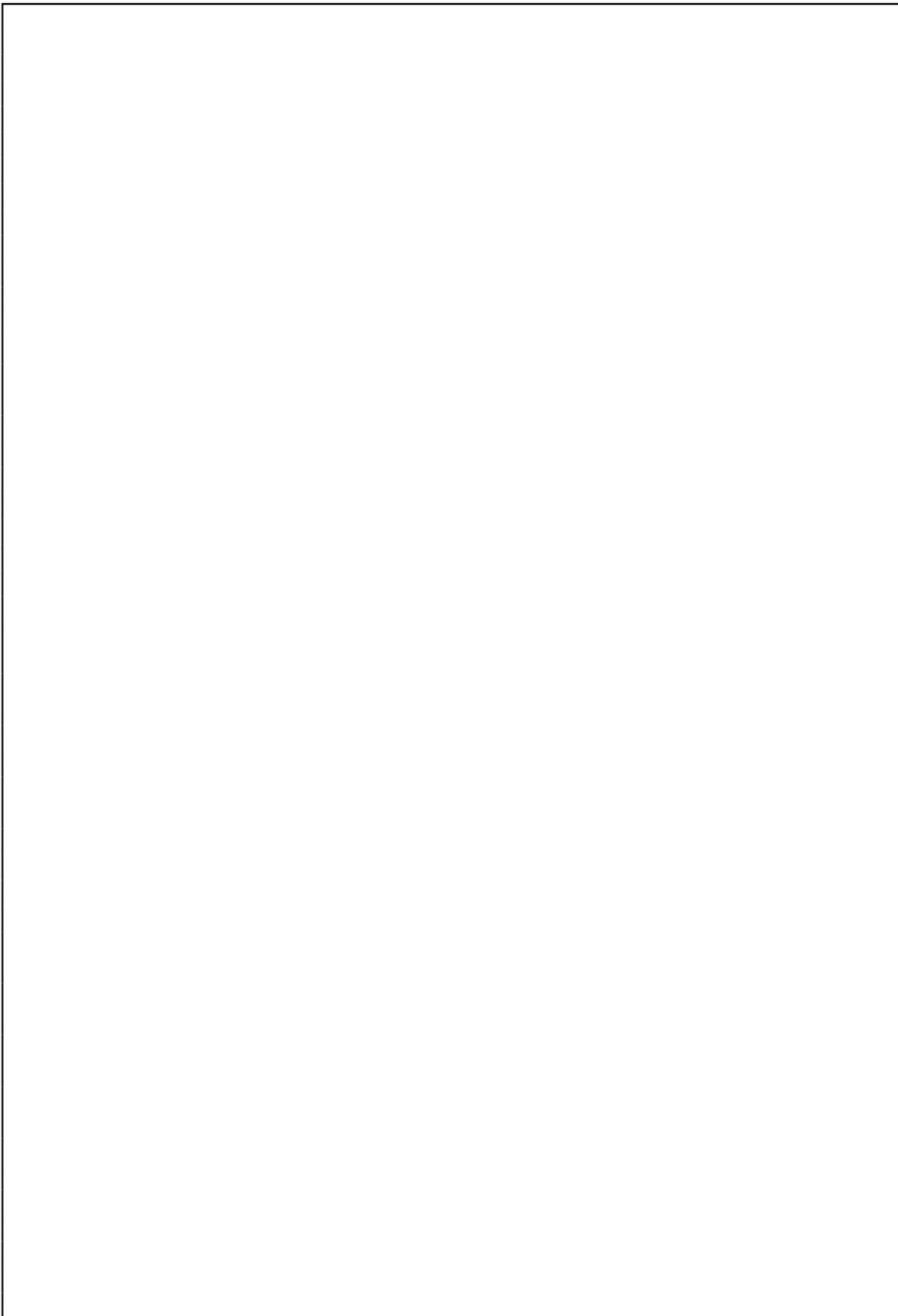
25

1   JUDGE PRIDGIN: You're welcome. We are

2 back in public forum.

3 WILLIAM DOWNEY testified as follows:

4 BY MR. HATFIELD:

5   Q.   So now again, trying to revert back into

6 next week -- next week -- last week, you were asked

7 some questions about the PEP -- actually maybe that

8 was this morning. Seems like last week. About the

9 PEP and the criteria for success in the PEP. Do you

10 recall that?

11   A.   I do.

12   Q.   And do you have a copy of the PEP still

13 up there in front of you?

14   A.   I don't think so.

15   Q.   All right. I believe it's Exhibit 251.

16   A.   Wait. I think I do.

17   Q.   And this is the one that has page numbers

18 down at the bottom.

19   A.   Right.

20   Q.   They're sort of in a -- right. So we

21 were talking about -- well, first of all, this

22 document was created when?

23   A.   Well, this was issued June of 2007.

24   Q.   And do we have that on -- is that on your

25 time line? We -- I don't know that it is.

1   A.   No. I --

2   Q.   But it would come in on page 2 somewhere

3 there?

4   A.   Right.

5   Q.   Where you're --

6   A.   Right.

7   Q.   Okay. And -- and you had some questions,

8 I believe -- yes, from Mr. Williams it was this

9 morning -- about page 15 and 16 regarding success

10 criteria. Would you turn to page 17, please?

11   A.   Yes.

12   Q.   And tell us what page 17 is.

13   A.   This is a -- a risk matrix that talks

14 about the threats to the project, the risks involved

15 as a result of those threats and then mitigation steps

16 that can be taken around those threats and risks.

17   Q.   And so what's the point of preparing a

18 threat risk mitigation matrix before you even start

19 the project?

20   A.   To identify areas that have probable risk

21 and to establish plans and -- and programs and

22 initiatives to mitigate them.

23   Q.   And so does the mitigation over there

24 then explain things you can do to attempt to minimize

25 threats to success? Is that fair to say?

1   A.   Yes, it is.

2   Q.   And did Kansas City Power and Light

3 follow the mitigation plans there?

4   A.   We did.

5   MR. HATFIELD: I have no further

6 questions, Judge.

7   JUDGE PRIDGIN: All right. Thank you

8 very much. Mr. Downey, thank you, sir. You may step

9 down.

10   Anything further from counsel before we

11 go on to Mr. Drabinski?

12   MR. FISCHER: Judge, could I request

13 about a five-minute break to change out counsel table

14 here and move some documents?

15   MR. SCHWARZ: I need to move some

16 documents too.

17   JUDGE PRIDGIN: That will be fine. Let's

18 go off the record. We'll take about ten minutes

19 actually. We'll come back after 10 after 5:00.

20   (A recess was taken.)

21   JUDGE PRIDGIN: All right. We're back on

22 the record. All right. Mr. Drabinski has taken the

23 stand. I need to administer an oath. Is there

24 anything further from counsel before I swear him in?

25   MR. FISCHER: Yes, Judge. Before we go

1 into the next the witness, I failed to ask if

2 Mr. Downey could be excused from the hearing.

3   JUDGE PRIDGIN: Any objection from

4 counsel? All right. He is released. Thank you.

5   (KCP&L Exhibit Nos. 2601-NP, 2601-HC,

6 2602-NP and 2602-HC were marked for identification.)

7   JUDGE PRIDGIN: All right.

8 Mr. Drabinski, if you'll raise your right hand to be

9 sworn, please, sir.

10   (Witness sworn.)

11   JUDGE PRIDGIN: Thank you, very much,

12 sir. Mr. Schwarz, when you're ready.

13   MR. SCHWARZ: Thank you, Judge.

14 WALTER P. DRABINSKI, having been sworn, testified as

15 follows:

16 DIRECT EXAMINATION BY MR. SCHWARZ:

17   Q.   Would you state your name for the record,

18 please.

19   A.   My name is Walter Patrick Drabinski.

20   Q.   By whom are you employed, sir?

21   A.   Vantage Energy Consulting, LLC.

22   Q.   Thank you. Are you the same Walter

23 Drabinski who caused to be filed in this case what has

24 been marked Exhibit KCP&L 2601 direct testimony and

25 KCP&L 2602 surrebuttal testimony?

1   A.   Yes.

2   Q.   Do you have any corrections to that

3 testimony?

4   A.   I've got two corrections, but they occur

5 in a couple of places. In the direct testimony on

6 page 60 in the table I -- the employment duration for

7 Mr. Price needs to be corrected from May 2007 to

8 February 2008. And that same correction needs to be

9 made on page 34 in my surrebuttal testimony.

10   Q.   And that's for Mr. Price?

11   A.   That's correct.

12   Q.   In the -- did you also make corrections

13 between what was filed I think today -- after the

14 company has made its redaction advice to us, did you

15 change tables on pages 205 and 208 of your direct

16 testimony?

17   A.   Yes, I did. And they were submitted

18 previously, I believe.

19   Q.   Yes. Yes. So as -- as filed, they're

20 correct?

21   A.   Correct. And I do have some other

22 changes in the text.

23   Q.   Okay.

24   A.   On page 73, line 8 where it says

25 "February 2005 Schiff Hardin." That should be "the

1 KCP&L management."

2   Q.   So strike "Schiff Hardin" and insert

3 "KCP&L management"?

4   A.   Correct. The same change is made on

5 page 82, line 9. "Schiff Hardin" should be struck and

6 "KCP&L management" should be included.

7   Q.   Hang --

8   A.   Inserted --

9   Q.   Hang on just a minute, if you would,

10 please. Okay.

11   A.   On page 73 again -- or page 82 again,

12 line 13, once again delete "Schiff Hardin" and replace

13 with "KCP&L management." And on page 85, line 19

14 replace "Schiff Hardin" with "KCP&L management."

15 That's it for changes.

16   Q.   If I asked you the same questions that

17 were set forth in your direct and surrebuttal

18 testimony, would your answers today be the same?

19   A.   Yes.

20   Q.   And are those answers true and correct to

21 the best of your information, knowledge and belief?

22   A.   Yes.

23   Q.   Thank you.

24   MR. SCHWARZ: I would offer Exhibits 2601

25 and 2602 and tender the witness for cross.

1   JUDGE PRIDGIN: Excuse me. 2601 and

2 2602 --

3   MR. SCHWARZ: HC and NP.

4   JUDGE PRIDGIN: -- are offered. They're

5 both NC -- excuse me, they're both NP and HC; is that

6 correct, Mr. Schwarz?

7   MR. SCHWARZ: Yes.

8   JUDGE PRIDGIN: All right. Any

9 objections? Hearing none, 2601-NP and HC is admitted

10 2602-NP and HC is admitted.

11   (KCP&L Exhibit Nos. 2601-NP, 2601-HC,

12 2602-NP and 2602-HC were received into evidence.)

13   JUDGE PRIDGIN: All right.

14 Cross-examination, Mr. Mills?

15   MR. MILLS: No questions.

16   JUDGE PRIDGIN: Ms. Kliethermes?

17   MS. KLIETHERMES: Yes. Just very

18 quickly.

19 CROSS-EXAMINATION BY MS. KLIETHERMES:

20   Q.   Good afternoon, Mr. Drabinski. It's my

21 understanding that last week a Commissioner asked

22 KCP&L witness Giles about your experience regarding

23 discovery with KCP&L. Were you aware of that?

24   A.   I believe I was able to see a portion of

25 that at least, the non-confidential portion.

1   Q.   What was your experience in obtaining

2 discovery from KCP&L in your engagement for the Kansas

3 Corporation Staff?

4   A.   In general, we had a very cordial

5 relationship. There were a couple times when I

6 don't -- do not believe we received the information we

7 were looking for and it was only after multiple

8 requests that we did receive that additional

9 information.

10   Q.   And what was your experience in this

11 case?

12   A.   I don't believe I asked for any

13 incremental information in this case so there were no

14 conflicts to address.

15   Q.   In your direct testimony, I believe it's

16 pages 6 through 13, do you list projects that you were

17 engaged in in other regulatory jurisdictions related

18 to Iatan?

19   A.   Yes.

20   Q.   What was your KCP&L experience with

21 discovery compared to the experience you had with

22 other utility companies in a regulatory setting?

23   A.   Well, the experience tends to vary

24 oftentimes dependent on the size of the pot that's --

25 the case has to deal with. With KCP&L I found that I

1 had to be very careful in my questions. If I didn't

2 get what I wanted, I had to go back and request --

3 request a clarification.

4   I've been in cases where that's not

5 uncommon so as a consultant with 25 years experience,

6 I'm used to first trying to be definitive in the

7 question I ask and then making sure I follow up. You

8 never know what information you didn't receive unless

9 it's discovered elsewhere and there were a couple

10 cases like that in this case.

11   There were some interviews, despite what

12 Mr. Giles said, that we requested and were not allowed

13 to do, particularly with Burns and Mac.

14   MR. SCHWARZ: Excuse me. For purposes of

15 clarification, Burns and Mac is Burns and McDonnell?

16   THE WITNESS: Burns and Mc-- I'm sorry,

17 Burns and McDonnell.

18 BY MS. KLIETHERMES:

19   Q.   And did you develop your case findings,

20 conclusions and recommendations independent in the --

21 independent of the Missouri Public Service Commission

22 Staff?

23   A.   That's correct.

24   Q.   And did the Missouri Public Service

25 Commission Staff attempt to influence you in any way?

1   A.   None whatsoever.

2   MS. KLIETHERMES: That's all. Thank you.

3   JUDGE PRIDGIN: Thank you. Mr. Fischer?

4 I'm sorry?

5   MR. FISCHER: Ms. Cafer will do cross.

6   JUDGE PRIDGIN: When you're ready ma'am.

7 CROSS-EXAMINATION BY MS. CAFER:

8   Q.   Mr. Drabinski, my name is Glenda Cafer.

9 I represent Kansas City Power and Light in this

10 matter. How are you?

11   A.   I'm doing just fine.

12   Q.   On the -- on the discovery questions you

13 were just asked, were there motions to compel filed at

14 the KCC in the cases you worked on?

15   A.   Not related to any questions that I had

16 asked.

17   Q.   You indicated that sometimes you had to

18 ask a few times. Was that because the company refused

19 to give it to you or because they maybe gave you what

20 they thought you were asking for and you had to come

21 back and clarify to get it?

22   A.   I'm not sure what the reason was.

23   Q.   Ultimately you got everything you asked

24 for?

25   A.   I got what I got and I hope it's

1 everything that answered the question.

2   Q.   You filed direct testimony in this case,

3 surrebuttal and then I also took your deposition on

4 January 11th, 2011. Correct?

5   A.   Yes.

6   Q.   If I refer today to your deposition, can

7 we just say that's the one I'm talking about and I

8 won't have to identify it each time?

9   A.   That's fine.

10   Q.   Okay. You also provided testimony in

11 the -- on behalf of the Kansas Corporation Commission

12 Staff in the 2009 and 2010 KCP&L rate cases. Correct?

13   A.   Yes.

14   Q.   And was that testimony to present your

15 prudence audit that you did on behalf of the Staff of

16 Iatan?

17   A.   It was to present our recommendations and

18 analysis supporting any disallowances or conclusions

19 regarding prudence.

20   Q.   And do you intentionally avoid my use of

21 the word "prudence audit" in your answer?

22   A.   I'm trying to be careful because when you

23 use the term "audit," it has a very definitive

24 meaning -- meaning and I'm not sure I was talking

25 about a formal audit or exact context that you're

1 talking about an audit in.

2   Q.   Does an audit require more perhaps than

3 what you actually did in -- on Iatan?

4   A.   I don't believe so.

5   Q.   Weren't you hired to do a prudence audit

6 by the KCC Staff?

7   A.   I was hired initially to do an assessment

8 of the project to determine whether there were

9 potential issues of management costs and schedule so

10 that the KCC Staff could make a decision whether they

11 needed to do additional work and retain a expert. We

12 did that within the context of a performance audit and

13 I prepared a report within the format of a performance

14 audit under Generally Accepted Government Auditing

15 Standards.

16   Once that was accepted, we then were

17 asked to prepare -- to do analysis to monitor the

18 project and ultimately to prepare testimony. And

19 that's why I'm trying to be careful because we did not

20 provide a audit report on the entire project.

21 Instead, our analysis became testimony.

22   Q.   I'm referring to your deposition where on

23 page 31, line -- beginning on line 19 I had asked you

24 about what you'd done and you said, We were asked

25 initially to do a prudence audit of the project. We

1 prepared a report which was attached to my Kansas

2 testimony for unit 1. That was a prudence review.

3   So you see a difference between the

4 review and an audit?

5   A.   The first document we prepared was an

6 audit. It was a formal document that had all of the

7 context required for an audit report. I guess it

8 wasn't -- if I said it was a prudence audit, I may

9 have misspoke. It was an audit detailing whether

10 there was issues on the project that warranted further

11 investigation.

12   I don't mean to quibble over the terms

13 except that there are very well-defined differences

14 between types of audits and I don't want to be

15 mischaracterized in the work I did.

16   Q.   Okay. And I'm not trying to quibble

17 either, but I'm trying to figure out what you did.

18 And so it's not a prudence audit that you did on

19 Iatan; is that correct?

20   A.   We had four assignments. The first

21 assignment was to come in --

22   MS. CAFER: Your Honor, could he answer

23 my question? Because if we're going to go through

24 four assignments, all I'm asking is did you do a

25 prudence audit? Because he's indicated that that has

1 some very distinguishing characteristics to it so I'd

2 like to know is that what you did. And if he didn't,

3 the answer is fine if it's just no.

4   JUDGE PRIDGIN: Yeah. And I'll sustain.

5 I think that's a yes or no question.

6   THE WITNESS: That's fine. The answer is

7 no.

8 BY MS. CAFER:

9   Q.   And in this case on your surrebuttal on

10 page 5, line 21, you say you did a prudency analysis.

11 And that then is what you did in Kansas. Correct?

12   A.   I did a prudency analysis for unit 1 and

13 for unit 2.

14   Q.   And that's what you're using here. You

15 did not do an additional investigation or -- or review

16 in anticipation of the Missouri case? You didn't go

17 out to the site anymore? You didn't interview people

18 anymore?

19   A.   I did not go out to the site anymore nor

20 did I interview more people. However, I examined

21 additional documents that came about through my

22 involvement in the process of the hearings last spring

23 and summer. So I would not say that there was no

24 additional work done. There was simply no additional

25 interviews or site visits.

1   Q.   What areas are you an expert in?

2   A.   I'll try to answer in a general manner

3   since that's relatively broad. I'm an engineer,

4   electrical engineer, my background's in power. My

5   area of expertise relative to that is in utilities,

6   operations, maintenance, transmission and

7   distribution.

8   I have specific expertise in power

9   generation based on having built, worked on the

10 construction of two 850-megawatt power plants, the

11 conversion of four 100 power plants from coal to oil,

12 analysis assistance in economics, engineering and

13 design on perhaps a dozen other power plants. I've

14 done financial analysis regarding utility operations,

15 finance, affiliate controls.

16   In the prudence area I've worked on

17 various levels of involvement on five or six nuclear

18 plants, some that were multiple-year assignments. One

19 which I did the complete cost reconciliation of the

20 $4.5 billion project, others that were much more

21 limited. I do a great deal of work on plant

22 efficiency, design, fuel procurement, efficiency

23 improvement.

24   In the last few years I've been doing a

25 great deal of work on the energy markets on energy

1 procurement in states that have competitive

2 environments and supplier of last resort auctions. I

3 think that gives a general.

4   Q.   Are -- are you a construction management

5 expert?

6   A.   I've worked in construction management.

7 I've done oversight in construction management. I'm a

8 licensed contractor in Florida and I have managed my

9 own projects. I've worked on two large projects where

10 I was part of the construction management team. I'll

11 leave it for others to decide whether that makes me an

12 expert or not.

13   Q.   In this case you had to convert your

14 opinion or your testimony over from the Kansas

15 prudence standard to the Missouri prudence standard;

16 is that correct?

17   A.   Well, we ultimately learned that Kansas

18 doesn't really have a prudence standard but rather

19 12 factors that need to be fully addressed where

20 Missouri has, in fact, a prudence standard.

21   Q.   And what is that standard that you

22 applied in this case?

23   A.   Well, it's -- the standard -- I could

24 read it from my testimony which is probably the most

25 accurate, but -- may I do that?

1   Q.   Okay.

2   A.   If you can give me a second to find it.

3 Page 29 is what my indices says -- index. And I have

4 a question that says, Discuss the prudent factors as

5 applied in Missouri and indicate how you have applied

6 them in your testimony.

7   And I go on and I'll just paraphrase, but

8 it says, I have determined that the prudence standard

9 I typically use in my prudency evaluations is

10 appropriate. I attempt to judge the reasonableness of

11 the company's actions, slash, decisions based on the

12 circumstances present at the time the action, slash,

13 decision was taken.

14   In order to do this, I review the

15 reasonableness of the information and assumptions that

16 the utility used to arrive at its conclusions as well

17 as the process used. The information and assumptions

18 must be considered in the context at the time the

19 decision was made. This is accomplished by examining

20 the source of the information used, reviewing the

21 process used to make a decision as well as comparing

22 the information and assumptions uses by the utility

23 relative to that used by other utilities making

24 similar decisions during the same time frame.

25   The decisions and actions of the utility

1 can be judged prudent if the utility relied on

2 reasonable, credible information and assumptions to

3 make its decisions; if the utility utilized a robust

4 process that incorporated the best information and

5 most knowledgeable personnel to make timely decisions,

6 if the information, assumptions and processes used by

7 the utility compared favorably to that used by other

8 utilities in making similar decisions in the same time

9 frame.

10   Q.   That doesn't allow for a hindsight review

11 of whether a decision or act by a utility was prudent

12 at a previous time?

13   A.   That's correct.

14   Q.   It does not?

15   A.   No.

16   Q.   So in this case, you had to go back and

17 look at what happened. What time -- you started in

18 May of 2008. Correct? That was when you started your

19 audit --

20   A.   Yes.

21   Q.   -- your review?

22   And so for events that had happened prior

23 to that, how did you analyze the prudence of the

24 decisions or the acts that were taken?

25   A.   We started with a series of interviews of

1 then project personnel. The purpose of which was to

2 identify documents and sources of info-- information

3 that were historical in nature, would provide us

4 details on actions, decisions and issues of the -- the

5 previous period of time.

6   We then collected that information in

7 those was various reports, schedules, studies,

8 contracts and we used that information then to prepare

9 an assessment of what was occurring during the 2003 to

10 2008 period.

11   Q.   Looked back to 2003?

12   A.   Some of the documents in the early

13 development of the PDR go back to 2003.

14   Q.   So when you say that your review was

15 contemporaneous once you started in May of '08, that's

16 because you were there onsite then looking at the

17 decisions that were being made at the time?

18   A.   It was contemporaneous in the sense that

19 we visited the site almost every month or every other

20 month for anywheres from one to three days. We had

21 access to the project personnel each time we visited

22 to get an update. We had access to the documents that

23 were being issued. We attended either in person or by

24 phone the quarterly presentations made to the Kansas

25 Corporation Commission regarding the quarterly CEP

1 updates.

2   Q.   The documents you looked at -- that were

3 created prior to you beginning your review, those were

4 like the weekly team -- Iatan team project management

5 meeting summaries or minutes I think sometimes they're

6 referred to?

7   A.   Vendor summaries, Schiff Hardin reports.

8   Q.   Internal audits that were done, you

9 looked at those reports?

10   A.   Internal audits, external studies --

11   Q.   And you --

12   A.   -- contracts.

13   Q.   You pulled a lot of quotes and comments

14 out of those documents that you've relied on in this

15 case to support your conclusion that KCPL behaved

16 imprudently during the period prior to May 2008,

17 haven't you?

18   A.   Well, I would not characterize it exactly

19 like that. We used the entire document as it was

20 fully developed and communicated to the degree that we

21 wanted to provide summaries. So that the

22 Commissioners could get a sense of the issues

23 impacting the project, we took out portions of it and

24 put it into summaries. But our conclusions are not

25 based simply on the summaries. They're based on the

1 entire context of studies, reports, meeting notes and

2 documents of that type.

3   Q.   Those documents created prior to

4 May of 2008, did you go back and interview anybody who

5 was involved first hand in whatever event that

6 document was memorializing?

7   A.   Well, we met with many of the people who

8 were the authors of the report in that period of time.

9 I would certainly not ask them whether what they said

10 then is what they meant now because that would be

11 hindsight.

12   Q.   But if you looked at a report and you saw

13 somewhere in the report -- you've included here in

14 your surrebuttal testimony a chart that goes on for

15 pages and pages. I think it's got about 183 of

16 these -- what KCP&L's called snippets that you've

17 pulled out of these various documents that they've

18 created for the project, to control the project.

19   And my question is, when you pulled these

20 out or when you saw these in a report, did you go back

21 to somebody who was involved at the meeting and say,

22 what does this mean? Why -- why was this included in

23 the report or in the minutes? Why was it relevant?

24   A.   I don't think it would be proper to do

25 that. You then invite hindsight on the part of the

1 individual who may have two years previously written a

2 report that expressed his opinion at the time. And

3 asking that same person whether they meant the same

4 thing today would have brought doubt on the validity

5 of what you're reading.

6   Q.   Don't you invite error if you just assume

7 you know what it meant and you put it in your report?

8   MR. SCHWARZ: Objection as to form. It's

9 argumentative.

10   MS. CAFER: I disagree. What I'm doing

11 is pointing out that he's failed to take a fundamental

12 step in his review of the documents that he's

13 presented and he's because of that, presented these

14 documents or parts of these documents with erroneous

15 information and conclusions. And those conclusions

16 were reached erroneously because he relied on his own

17 interpretation of them rather than asking the people

18 who were actually involved.

19   JUDGE PRIDGIN: I'll overrule.

20 BY MS. CAFER:

21   Q.   Do you not end up with some erroneous

22 assumptions about what those statements in those

23 documents meant?

24   A.   Let's make it clear. In most cases it

25 wasn't a single document, other than the audits. In

1 many cases there was a series of documents that

2 repeated the same concerns over and over.

3   As an auditor, I have to assume that if

4 KCP&L, either through its own internal resources or

5 external resources, is receiving information on a

6 regular basis that repeats the same types of issues,

7 that it has to be accurate, otherwise, there would be

8 documentation that it was corrected.

9   Q.   I'm not saying --

10   A.   Now --

11   Q.   -- that the documents or any comments in

12 them were incorrect. I'm saying that how you read

13 them and interpreted them and then used them to

14 support your conclusions were erroneous because you

15 didn't interview anybody.

16   A.   The reason --

17   MR. SCHWARZ: Objection again. If --

18   MS. CAFER: I'll withdraw that -- that

19 question. I'll restate it.

20 BY MS. CAFER:

21   Q.   You've got 183 of these snippets here

22 that begin on page 6 of your surrebuttal. And aren't

23 these the comments from these documents that you

24 really have relied on throughout all of your testimony

25 to claim that KCPL was imprudent?

1   A.   No.

2   Q.   You've relied on other things?

3   A.   I relied on the entire document, both the

4   ones that I included there as well as the documents

5   and the portions of the documents that said positive

6   things. Now, I probably could have put in boxes of

7   paper --

8   Q.   Well, let's turn to -- to --

9   MR. SCHWARZ: Judge, I'd ask that the

10   witness be allowed to finish his answer.

11   MS. CAFER: My apologies. I thought he

12   was done.

13   JUDGE PRIDGIN: All right.

14   BY MS. CAFER:

15   Q.   Go ahead, Mr. Drabinski.

16   A.   The attempt in the case here is to prove

17   the portion of the $1.9 plus billion that I feel is

18   imprudent and should be disallowed and support that.

19   To do so, I'm providing those portions -- or

20   referencing those portions of documents for the

21   enumeration of the Commissioners.

22   In my own analysis, I do not interpret

23   any documents. I assume the documents say exactly

24   what they say. In the cases of audits where the audit

25   conclusions were challenged, we look to see what the

1 company's challenges were and how it was addressed.

2 We never interpret or try to redefine or come up with

3 our own conclusions.

4   Now, it's correct that we're showing the

5 snippets that show problems because it's the problems

6 that support the 90 -- or the 10 percent of the

7 project that we believe was imprudently incurred. I

8 wasn't hired to support the 90 percent of the project

9 that was prudently incurred.

10   Q.   Let's turn to your surrebuttal on --

11 beginning page 6 here where you've got your -- your

12 chart with the snippets here. And the line 10 before

13 the chart begins, you say that these statements that

14 you're going to list, the 183 statements coming up,

15 present a body of evidence that support your

16 conclusion of imprudent management by KCP&L. Correct?

17   A.   I read that, yes.

18   Q.   And let's look at No. 45, which I've got

19 on page 12 here. Let me ask you first, just because

20 in -- these documents that you cited to here, the

21 Schiff Hardin status reports, the KCPL weekly team

22 meet-- meeting -- leadership meetings, the audits,

23 Strategic Talent, Ernst and Young, those were tools

24 that the company used to manage this project.

25 Correct?

1   A.   Some were tools used to manage the

2 project, some were tools used to correct project

3 deviations and get the project back on track.

4   Q.   That was project management. Correct?

5   A.   It's part of project management, but it's

6 a -- it's not a standard regular project management,

7 but one that's -- that addresses specific problems

8 when they occur.

9   Q.   So we want the company doing internal

10 audits, keeping minutes and notes, written minutes and

11 notes of what's going on on the project on a

12 contemporary -- contemporaneous basis, don't we?

13   A.   Absolutely.

14   Q.   Now, number 45 here, if -- if -- one more

15 question before I go to 45. If a concern or problem

16 is expressed in one of these documents, does that mean

17 that something imprudent's happened?

18   A.   Not necessarily.

19   Q.   In fact, it may be warning management of

20 a concern so they can correct it or mitigate it before

21 it does happen. Right?

22   A.   That could be true.

23   Q.   So number 45 now. I'll go back for the

24 third time.

25   JUDGE PRIDGIN: Ms. Cafer, I'm sorry. I

 1| hate to interrupt. Just want you to know I'll

 2| probably take a break around 6:00. I'll hate to

 3| interrupt, but just to give you a warning, I'm

 4| probably looking at -- I may just have to interrupt so

 5| we can have a dinner break and go on.

 6| MS. CAFER: That's perfectly okay. And I

 7| won't notice, so just interrupt me. I won't keep

 8| track of the time.

 9| MR. SCHWARZ: Is this HC? It's HC

10| material.

11| MS. CAFER: I don't believe this

12| question.

13| MR. SCHWARZ: Okay.

14| MS. CAFER: I think I'm okay, but thank

15| you.

16| BY MS. CAFER:

17| Q.   Number 45 says, There are concerns -- in

18| a weekly leadership team meeting report February 1st,

19| 2007. There are concerns associated with trying to

20| attract qualified workers.

21| Now, why does this indicate to you that

22| there was potential imprudence or this somehow

23| supports imprudence?

24| A.   I'm not suggesting that that individual

25| statement or even the information in that report

1 suggests imprudence. What I'm suggesting is that

2 there's a warning out there that the company is being

3 asked to heed.

4   This came to fruition -- and this is

5 perhaps a good example when Alstom got into a problem

6 doing repairs on the T23 and the quality of their

7 welders was inappropriate and KCP&L stepped in and

8 forced them to hire an outside specialty welding firm.

9 KCP&L paid for that separately. We believe that that

10 was an imprudent payment, that Alstom should have had

11 qualified welders.

12   There had been previous warnings that

13 there was a lack of qualified welders. And Alstom, as

14 the EPC contractor for the boiler, had the

15 responsibility to do what was necessary to have

16 qualified welders. So this statement here goes to the

17 support of our finding of an imprudent expenditure

18 when KCP&L paid -- was WTI the welding company?

19   Q.   WSI.

20   A.   WSI. Separate and apart from the fact

21 that it was Alstom's contract to provide experienced

22 welders.

23   Q.   So this type of statement you said -- are

24 you saying that this was a red flag to you that there

25 were problems on the project that were being expressed

1 at this meeting?

2   A.   We saw problems being expressed, we saw

3 an issue arise where the quality welding was brought

4 into question. We saw KCP&L intervene, perhaps

5 appropriately, and bring WSI in to ensure that the

6 welding was done in a quality manner.

7   However, instead of then requiring that

8 Alstom pay for WSI since it was part of their

9 contract, KC&L -- KCP&L paid. And we believe that was

10 an imprudent expenditure because they were paying

11 twice essentially.

12   Q.   Okay. And I'm not asking you about that

13 one because KC-- the independent auditor that was

14 hired by KCP&L, Pegasus, they found that allegedly

15 imprudent decision that was made. Correct?

16   A.   I agree with that portion of their

17 testimony.

18   Q.   I'm asking you about entry 45 here from

19 the February 1st, 2007 weekly leadership team meeting.

20 Why is something like that listed in your testimony as

21 support or evidence for your ultimate conclusion that

22 the company was imprudent?

23   A.   Because it's a warning that if they don't

24 have adequate qualified competent welders, problems

25 could occur. That, in fact, happened on this case.

 1 It led to excess costs that I think most of the

 2 independent experts deemed to be imprudent.

 3   Q.   Well, I went back and looked at the

 4 February 1st, 2007 Iatan leadership team meeting. And

 5 this -- this is -- this comment is referring to

 6 someone who was reporting on something that they heard

 7 at the utility's conference.

 8   MR. SCHWARZ: Objection -- objection to

 9 the questions. There's no foundation for the

10 statement.

11   JUDGE PRIDGIN: Ms. Cafer?

12   MS. CAFER: I'll go ahead and have it

13 marked. We'll have to go into confidential if I have

14 to actually put it into the record, but I was hoping

15 Mr. Drabinski would just remember that part, that it

16 was from a utility conference and not from the actual

17 Iatan project.

18   JUDGE PRIDGIN: Do we need to go

19 in-camera?

20 BY MS. CAFER:

21   Q.   Do you need to see --

22   A.   I would need to look at the document.

23 It's probably two years since I reviewed these.

24   JUDGE PRIDGIN: Okay. We'll go

25 in-camera.

1   (REPORTER'S NOTE: At this point, an

2   in-camera session was held, which is contained in

3   volume 22, pages 1580 to 1581 of the transcript.)

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 1   JUDGE PRIDGIN: And we're back in public

 2 forum.

 3 WALTER DRABINSKI testified as follows:

 4 BY MS. CAFER:

 5   Q.   Stay on the same page there. Item No. 43

 6 here you said Alstom --

 7   MS. CAFER: I do not have to go into HC

 8 here.

 9 BY MS. CAFER:

10   Q.   This No. 43 says, Alstom does not

11 contribute to the project's scheduling system. And

12 again you cite a weekly leadership team meeting

13 report. Correct?

14   A.   Yes.

15   Q.   And that was January 14th, 2007. And

16 I -- I didn't find a report dated that day. Do you

17 have --

18   A.   I don't have the date there. I can --

19   Q.   Did you bring those documents where maybe

20 during a break we could get it?

21   A.   I would have needed a wheelbarrow to

22 bring them with us, but I may have them on my computer

23 and I can look to see if I have that.

24   Q.   Okay. So when you see something like

25 that in one of these reports, you're telling me that

1 you didn't go back and ask somebody who was involved

2 what that meant, was Alstom supposed to be

3 contributing?

4   A.   Well, the premise of the question was

5 that Alstom at that point in time, which was about

6 eight months after it had been awarded a contract,

7 five or six months after construction had started on

8 the site, is not contributing to the project

9 scheduling system.

10   Later, there were additional documents --

11 and this has taken -- it's a sing-- a snippet. There

12 are other documents that talk later on about Alstom

13 and I believe issues they have with multiple

14 scheduling systems and the inability of those systems

15 to mesh and the difficulty that was going to cause.

16   So I mean I'm sure you can point to a

17 half a dozen of these that taken independently may

18 look vague, but this was -- this list was in rebuttal

19 to company witnesses simply saying that I took

20 snippets out of context. Most of these were done as

21 part of a broader evaluation with significant support.

22   Q.   Well, I didn't see the broader evaluation

23 or significant support in your testimony. Where is

24 that?

25   A.   There's 230 pages. And I would contend

1 that there are entire sections that address these

2 issues.

3   Q.   I need to clear one thing up before I

4 move off of what you said. You said something

5 about -- when you were using your example, of Alstom

6 being responsible for the welders. And I think you

7 said that KCPL paid double for those welders because

8 they paid Alstom and then they went out and hired WSI.

9 Is that your understanding?

10   A.   Well, Alstom has an EPC contract with the

11 responsibility to build and install the boiler. When

12 the problem arose and KCP&L became concerned that the

13 quality of welding was part of the problem, they

14 retained WSI and paid WSI, which meant that, in fact,

15 Alstom got paid their full amount for doing the

16 project and WSI got paid. So, in effect, KCP&L paid

17 twice for the same services.

18   Q.   You're aware that Alstom's contract says

19 that they have the ability to choose their own

20 subcontractors and they had gone and chosen their own

21 subcontractor to do the welding?

22   A.   Can you point me to where that says that

23 in the contract?

24   Q.   I don't have it right here. If -- do you

25 know whether KCP&L actually paid Alstom and then paid

1 WSI double or did they -- KCP&L just have to pay a

2 premium to have WSI be hired by Alstom to do the

3 welding?

4   A.   I'd have to look at the specifics of that

5 purchase order. It may have been that they paid the

6 differential for bringing WSI on.

7   Q.   On -- in your direct on page 43, line 19,

8 you say, In retrospect, it's clear that the EPC

9 approach would reduce risk and eventual cost.

10   Now, doesn't that violate what you've

11 just told me earlier, that you can't look at things in

12 retrospect and see how they came out to see whether a

13 decision earlier was --

14   A.   Well, you know what? I'll strike that

15 sentence out of my testimony. And I think you pointed

16 out one other sentence in my testimony that could be

17 construed as hindsight. I don't remember where it is

18 and I would be willing to strike that as well.

19   Q.   Okay. When you were out doing your

20 review at al-- or at Iatan, did you gather and use the

21 documentation from KCPL's cost control system?

22   A.   We typically didn't gather any

23 information. We would ask for certain types of data

24 analysis, support documents and they would be given to

25 us. We did not have direct access to the coast

1 control system.

2   Q.   But those were the documents that were

3 created as part of the cost control system that you

4 would be given then?

5   A.   Well, I've never been fully confident

6 with what the cost control system consisted of. I'm

7 aware of a number of systems and a number of ways that

8 costs are monitored and records are kept. And I

9 sometimes have a question as to what is cost

10 monitoring and reporting versus cost control, because

11 control is an active term that suggests that it's

12 actually driving the cost where monitoring and

13 recording is more reactive and historical.

14   Q.   And what are you saying was not in

15 their -- in KCPL's cost control system?

16   A.   Well, your question asked -- asked me

17 whether I used a cost control system. And until we

18 got into the hearings and I learned that there was a

19 cost control system there, I never -- in fact, even

20 after I read the cost control system report, I still

21 don't understand exactly what it is constitute of.

22   Q.   Maybe I asked the question wrong. Did

23 you use the documentation that was created by KCPL's

24 cost control system, the change orders, the --

25   A.   We used -- we had access to change

1 orders, we had access to purchase orders, we had

2 access to the R&O analysis, we had access to

3 contracts, we had access to invoices, we had access to

4 the K-Reports, we had access to the performance data.

5 Almost everything that I'm reciting is historical

6 reporting information.

7   Q.   Okay. And you -- do you agree that you

8 could use that documentation to track costs for the

9 project?

10   A.   I could use that information to look at

11 the cost -- changes in costs, the justifications for

12 the changes in cost, and in the case of the R&Os, the

13 potential changes in cost that were as yet undefined.

14   Q.   And that's what you did? You'd go in and

15 you'd look at the supporting documentation to

16 determine why there may have been a cost increase from

17 the control budget estimate; is that correct?

18   A.   Yes.

19   JUDGE PRIDGIN: Ms. Cafer, I hate to

20 interrupt, but it is about six o'clock. Do you need a

21 moment to kind of get your place so you know where you

22 need to pick up?

23   MS. CAFER: Yes. I'll just pick up right

24 there where I was.

25   JUDGE PRIDGIN: Anything else from

1 counsel before we take an evening break? I'm going to

2 give you a little extra time. Let's reconvene at

3 7:15. We will stand in recess until 7:15. Thank you.

4 We're off the record.

5   (A recess was taken.)

6   JUDGE PRIDGIN: All right. Good evening.

7 We are back on the record. Anything from counsel

8 before Ms. Cafer resumes cross-examining

9 Mr. Drabinski? All right. Ms. Cafer, when you're

10 ready, ma'am.

11 BY MS. CAFER:

12   Q.   Before we -- come on there. Before we

13 took the break, Mr. Drabinski, we were talking about

14 the cost control system and the documentation that you

15 had had available to you to do your audit. Do you

16 remember that?

17   A.   Yes.

18   Q.   And did that documentation that you were

19 given show you what was being identified as changes in

20 the cost of the project, the actual versus the

21 estimated cost?

22   A.   It reported the -- the various documents

23 reported the actual costs. When you went over time

24 obviously with change orders, revised estimates, it

25 showed you the changes over time as they were

 1 reported.

 2   Q.   So you could see from those documents

 3 where the overruns were occurring if they were

 4 occurring?

 5   A.   I could see the changes in the categories

 6 for individual components. To see exactly what was

 7 occurring and why, you needed to drill down into the

 8 individual purchase orders and change orders.

 9   Q.   And that's what you'd do then if -- if --

10 I think we call it the level one schedule, if you'd

11 look at that and you'd see -- I'm sorry. Is that the

12 K-Report? If you looked at the report and it showed

13 you that you had one of those items that was

14 increasing, then you would go in and get purchase

15 orders, change orders and the other documents that

16 were produced in the system to explain that to you?

17   A.   As I saw it, the K-Report was a project

18 reporting tool that showed and -- application. We had

19 the regulators on a quarterly basis or on a monthly

20 basis if we happened to look at the updates at what

21 occurred -- what changes had occurred in the various

22 cost categories.

23   Q.   And then you could get additional

24 information that was more detailed to figure out the

25 root cause of those changes?

1   A.   In order to identify exactly what had

2 happened, you would have to drill down into additional

3 detail to find out whether it was -- original

4 estimates changed or whether there were change orders

5 that increased, whether in some cases certain

6 components got moved to other lines.

7   Q.   And you did that in your audit?

8   A.   To some degree, yes.

9   Q.   Do you believe that the results of your

10 audit, at least you believe, are accurate?

11   A.   Well, I wasn't being asked to evaluate

12 changes in the -- the reporting. I was asked to

13 identify imprudent, unreasonable management actions

14 and those results. So I used those documents, but I

15 didn't try to do a -- an analysis from one estimate or

16 one K-Report to another as to exactly what occurred.

17 So I'm -- I'm maybe quibbling on what your question

18 was, but I want to be accurate.

19   Q.   Okay. Well, my question maybe is -- is

20 not coming across. All I'm trying to ascertain is

21 what you did to come up with your conclusions in your

22 audit regarding prudence, you did that by taking the

23 information that KCP&L gave you when you asked for it

24 and you did an analysis of it. Correct?

25   A.   Correct.

1   Q.   And did you work with Forrest Archibald

2   at KC-- at Iatan?

3   A.   Mr. Archibald was available to us when we

4   had questions or if we needed detailed information.

5   Q.   And was he cooperative?

6   A.   Yes.

7   Q.   And he deals with the costs on the

8   project? He's the cost engineer is what I've heard

9   him called. Is that correct?

10   A.   I'll take that as a -- that's his -- I

11 would assume he is.

12   Q.   When you worked with him, did you believe

13 that he was qualified to do the work that he was doing

14 on this project based on the information, the answers

15 he gave you?

16   A.   I didn't specifically try to determine

17 whether he was qualified, but I never saw any reason

18 to suggest he couldn't answer the questions or was not

19 providing information in a proper manner.

20   Q.   When I asked you in your deposition that

21 similar question, you said, He seems to be

22 knowledgeable?

23   A.   That's probably a fair way to put it.

24   Q.   Before I leave the snippet chart here,

25 there was -- do you still have that up there in front

1 of you?

2   A.   I've got it here somewheres, yes.

3   Q.   Okay. It's on page 13 and it was

4 Item 48. And this is a clarification because in the

5 Kansas case you agreed that the project was not

6 185 days behind schedule. Right?

7   A.   No. That was a statement and -- I

8 probably should have edited out of here since it -- we

9 weren't trying to portray anything that was incorrect.

10 The statement was incorrect in the report.

11   And now just additionally, the weekly

12 reports I do not have electronically. I have somebody

13 looking to see if we can correct the date on the one

14 report you asked for clarification on.

15   Q.   I'd like to -- I'd like to be more

16 organized.

17   MR. MILLS: Wouldn't we all.

18 BY MS. CAFER:

19   Q.   Your -- I'm hopefully going to be able to

20 cut out some questions with you by confirming this

21 with you. Because your counsel in opening statements

22 told us all that there were some things that were red

23 herrings in this proceeding and this time he used the

24 term. And that they were not relevant and -- and I'd

25 like to confirm that you agree that these things are

1 not relevant to your disallowance recommendation.

2   And where I'm going is to the transcript

3 of proceedings from January 18th, 2011, this

4 proceeding. And it's Mr. Schwarz's opening statement

5 on page 206 and he talks about red herrings. And he

6 said, For example, the fact that this was fast

7 tracked, this project was fast tracked, that that's a

8 red herring, it's not an issue in this case. Nobody's

9 proposed an adjustment based on fast tracking.

10   Do you agree with that?

11   A.   I don't believe I proposed any adjustment

12 due to fast tracking.

13   Q.   Fast tracking's a pretty common process

14 that's used in this industry, especially building a

15 large construction project?

16   A.   Power plants in particular, yes.

17   Q.   And he also said that the issue of KCP&L

18 initially going multi-prime, not -- not going EPC,

19 that no one's proposing an adjustment based on the

20 fact that they chose to proceed on a multi-prime

21 basis.

22   Do you confirm that as well?

23   A.   That's correct.

24   Q.   Then he said, The budget levels, we've

25 had a lot of talk here about indicative estimates and

1 definitive estimates. And although he acknowledged

2 that those may have some import in the regulatory

3 arena, that as far as the disallowance, they're not an

4 issue?

5   A.   That's correct.

6   Q.   Okay. Now, we have asked you -- when

7 you -- how many times about did you and your team go

8 out to the Iatan project to audit?

9   A.   I think we collectively agreed it was

10 around 17 times, although there's -- there's a chart

11 that somebody provided that apparently noted when we

12 were actually on the site.

13   Q.   When you were out there, you'd look at

14 documents, but you also talked to people, interviewed

15 people, asked them questions. Right?

16   A.   We had a typical process we followed.

17 We'd come in, we'd meet with some of the project team,

18 Brent Davis, Carl Churchman if he was available,

19 perhaps some of the other cost and schedule people and

20 get an overall assessment. Sometimes we would meet

21 with the Schiff Hardin people and they would go

22 through the performance, discuss whatever the issues

23 were.

24   Q.   And in discovery I asked you for a copy

25 of the notes that you took while you were working on

1 the Iatan project and you do not have any written

2 notes. Correct?

3   A.   Yeah. My style apparently is different

4 than yours. I tend to take a few cryptic notes and

5 then when I go back, I type up whatever I learned and

6 then that sort of gets rolled into the analysis

7 itself.

8   Q.   And then you destroy the notes?

9   A.   Well, they're just -- it's not something

10 I particularly save so a year or two down the road

11 they're generally not available, certainly not in a

12 comprehensive set.

13   Q.   Well, you didn't produce any to me -- to

14 KCPL when we asked for them so can we assume they've

15 been destroyed or lost?

16   A.   That's correct. I went through and

17 looked through all the records I had in my office and

18 I didn't find any handwritten notes.

19   Q.   Okay. Let's talk about your

20 disallowance. Now, you -- you've given a -- or you've

21 provided testimony where you've talked about why you

22 believe that during the initial stages of the project

23 the company did things that you believed were

24 imprudent the way it managed the project. Is that a

25 fair general statement?

1   A.   I think to the degree that mismanagement

2   leads to imprudence, that's a correct statement.

3   Q.   And was that prior to -- those things

4   that -- when I read your testimony, it appears you're

5   saying that those things occurred prior to May of

6   2008, which is when you began your audit?

7   A.   Well, in about May of 2008 is when we saw

8   a particular change in the direction of the project.

9   And that really had to do with Carl Churchman coming

10   on board and taking the project and moving it in a new

11   direction.

12   Q.   So the things that you're claiming that

13   the company did that was imprudent are things they

14   did -- decisions they made prior to that time?

15   A.   And let's be clear. They were decisions

16   or lack of decisions, inactions, improper actions that

17   led to problems and costs that may have -- costs may

18   have occurred in 2008 or 2009 or 2010, but what we're

19   seeing is the root cause was in the period prior to

20   2-- mid-2008.

21   Q.   And then what you do in your testimony is

22   you give this Commission four different analysis to

23   put a number to your disallowance, what you say was

24   caused by those imprudent decisions; is that correct?

25   A.   Well, I give one analysis that is a

1 bottom's up analysis that goes to the 231 million. I

2 provide additional analysis, some of which came from

3 the requirements in Kansas but which I believe

4 illustrate why I think my conclusions are correct.

5   And I provide them to give the

6 Commissioners a more thorough understanding of why and

7 how costs were out of line with what they should have

8 been, whether it be from early estimates or by

9 comparison to the industry.

10   Q.   So it's the $231 million analysis that

11 you're recommending to this Commission as your

12 disallowance?

13   A.   That's the only number, yes.

14   Q.   That's the only number. It's not the

15 other three?

16   A.   That's correct.

17   Q.   Let's look at the 231 then. Why don't we

18 go to page -- your direct, 208. Are you there?

19   A.   Yes.

20   Q.   There's a chart here that has the

21 contractors listed and then the second column there is

22 unit 2. And am I correct those are total dollar

23 amounts?

24   A.   That's correct.

25   MS. CAFER: I'm still okay. I don't have

 1 to go confidential.

 2   JUDGE PRIDGIN: Thank you.

 3 BY MS. CAFER:

 4   Q.   Okay. Unit 2, the first column, your

 5 project total there is 1.988 billion. Correct?

 6   A.   That's correct.

 7   Q.   Okay. And your -- your last column, the

 8 imprudent amount is the 231 million you've

 9 recommended?

10   A.   Yes.

11   Q.   So the 231 million is tied to the

12 $1.988 billion estimate?

13   A.   No, it's not. They're two independent

14 columns.

15   Q.   Okay. And you need to explain that.

16   A.   The 1.988 was the budget estimate last

17 spring when this was prepared. I went through and I

18 did analysis on a number of major contracts and major

19 contractors and that's the -- down to R.F. Fischer

20 were the ones where I have individual contractors with

21 individual amounts.

22   And those amounts -- and I'm not going to

23 go through any of the numbers, but those amounts were

24 the dollars that I was able to identify in purchase

25 orders and change orders as of essentially the end of

1 2009. So that would have been money expended through

2 that period of time.

3   The next row down is Professional

4 Support. Then there was some other miscellaneous POs

5 from the data because what I did find is a -- there's

6 a -- in the information I've given, there's a subset

7 called miscellaneous that totals $80 million. And

8 it's a group of small consultants, accountants, Schiff

9 Hardin, other little things, but it adds up to

10 80 million.

11   And then the last row is Other Purchase

12 Orders, Indirects and Uncommitted. That's essentially

13 a plug number. It takes the difference between all of

14 the other numbers and makes it add up to 1.988

15 billion.

16   The last column, which adds up to

17 231 million, are discrete calculations each associated

18 with a individual contractor. And regardless of

19 whatever this number is -- let's, for the sake of

20 argument, say that the final cost is 1.95 billion,

21 then the plug number for other POs, indirects would

22 come down by $38 million because those are either

23 contractors where I saw no issue with or they were so

24 small that we didn't analyze them in any detail.

25   Q.   Okay. The 684 is a -- million is a plug

 1 number?

 2   A.   That's correct. And could I just --

 3 we're using the original table here. This is one that

 4 was corrected and sent out to address some of the

 5 mistakes you and I discussed during the deposition.

 6 Mr. Schwarz mentioned it earlier.

 7   Q.   Okay. Well, let's stay with this one.

 8 We know what number you corrected. But is the 44.9 in

 9 the Imprudent Amount column, is that a plug number?

10   A.   No. Those are specific purchase orders

11 that are identified.

12   Q.   So the project's not coming in at 1.988.

13 And what you're telling me is that if that number goes

14 down by 30 million, that doesn't mean that your

15 imprudent goes down by 30 million. It means that your

16 plug number goes down by 30 million?

17   A.   That's correct. The 44 million are

18 associated with actual purchase orders and change

19 orders that have been expended.

20   Q.   Well, what if the reason it goes down

21 30 million is that the amount for Alstom comes in less

22 than is included in the unit 2 column here?

23   A.   I don't expect it would change because

24 the Alstom imprudent amount, Kiewit imprudent amount,

25 all of the ones -- virtually all of the ones

1 identified here are tied to specific change orders or

2 purchase orders for dollars that have already been

3 expended and paid. So because another part of their

4 work comes in at a lower amount doesn't change the

5 fact that some other piece of work was imprudently

6 expended.

7   Q.   So these imprudent amounts, because

8 they're based on specific change orders or purchase

9 orders that you have analyzed and determined were

10 imprudent, they stay the same no matter what?

11   A.   That's correct.

12   Q.   Well, then let's look at those. On the

13 next page -- let's see. I'm going to start -- I'm

14 going to start with Burns and Mac over here on

15 page 210 of your testimony, line 4. I'm not going to

16 use the number so I don't have to worry about

17 confidentiality. But essentially on Burns and Mac,

18 this amount that you've recommended for disallowance

19 is just 100 percent of whatever the amount of the

20 contract cost was in excess of the original contract.

21 Right?

22   A.   That's correct. That's the exception to

23 all of the others where we simply --

24   Q.   Okay.

25   A.   -- took the contract amount as opposed to

1 the specific purchase orders.

2   Q.   So you didn't go in and look at purchase

3 orders that Burns and Mac or invoices or anything that

4 they might submit and say, Well, that one was

5 imprudent and that one was and it totals 5.8 million.

6 You didn't do that. You just disallowed all of it no

7 matter what the reason was for that additional amount?

8   A.   That -- that -- that's correct to say

9 that, yes.

10   Q.   Okay. Then let's look at Alstom. Your

11 imprudent amount there is $37.2 million?

12   A.   If you want to say that, yes.

13   Q.   He told me I could.

14   A.   Okay.

15   Q.   That's what -- that's the amount that you

16 are recommending disallowance?

17   A.   That's correct.

18   Q.   And then over here on page 209, you

19 explain that you got that based upon your analysis

20 earlier in the report?

21   A.   That's correct.

22   Q.   And that was on --

23   A.   Page 116 to 123.

24   Q.   I'm sorry. What did you say?

25   A.   I said 116 to 123. I think that's

 1 incorrect. That might have been --

 2   Q.   How about 145?

 3   A.   That's correct. That's correct.

 4   Q.   Are you there?

 5   A.   Yes.

 6   Q.   All right. Now, go over to 147. At the

 7 end of your chart, you have a total number there. Do

 8 you see it? Total and then your number?

 9   A.   That's correct.

10   Q.   And that number is $780 million. And

11 then what you say you've done is you have calculated

12 the -- the initial Alstom contract amount increased by

13 $67 million. Right?

14   A.   Yes.

15   Q.   And then from that 67 million -- and --

16 and that's how you're going to compute your

17 disallowance for Alstom now. So you take the

18 67 million and then you say you got to take 22 out of

19 that -- too late now -- because that represents the

20 Alstom settlement on unit 1?

21   A.   Correct.

22   Q.   So you don't want to count it twice?

23   A.   Yes.

24   Q.   And then you took out the tax and

25 interest changes because you're just not providing an

1 opinion on those, so you didn't want to recommend a

2 disallowance on those?

3   A.   That's correct.

4   Q.   And then everything else besides what I

5 just talked about, everything else that was an

6 increase on the Alstom contract you're saying should

7 be disallowed for imprudence?

8   A.   That's correct.

9   Q.   And that results in $37.2 million back

10 here on page 208 and 209 of your testimony?

11   A.   Yes.

12   Q.   The -- will you look at -- on page 146,

13 will you look at entry number eight, the Alstom change

14 order? Do you have that? Now, let's keep your finger

15 on that. Go to 212 of your direct testimony. You've

16 got another chart here and this time you've listed out

17 specific items that fall under your -- your

18 $44 million other POs, indirects and uncommitted.

19 Right?

20   A.   That's correct.

21   Q.   On 212 look at the very first one, AP --

22 that's -- that PO/CO means purchase order/change order

23 number. Right?

24   A.   That's correct.

25   Q.   So the change -- the change order number

1 here is AP, which tells us it's Alstom. And then the

2 number is 01757. And you can look at the amount.

3 It's a fairly large amount?

4   A.   Yeah. And I -- and I -- now that I see

5 it, I think I can cut off your next question and agree

6 that it was double counted. So $10,616,000 should be

7 deducted from my proposed disallowance.

8   Q.   And then the same thing on your

9 settlement agreements. And in your chart on page 145,

10 146 entries -- like entry six is the settlement

11 agreement JLG. And isn't that -- on 212, isn't that

12 the second line item here?

13   A.   I'm not sure because one is 3.9 and the

14 other's 2.3 million so I don't -- I can't tell whether

15 it's the exact same amount, but I would certainly

16 agree that if they constitute the same dollars, that

17 the correction would be appropriate.

18   Q.   Do you know whether that second line for

19 the JLG might have been part of the $22 million?

20   A.   I can't tell you right now.

21   Q.   You can't tell us if that's double

22 counted also?

23   A.   Not right -- as I'm sitting here tonight.

24   Q.   All right. And then there's a group of

25 Kiewit ones. That's the KW on -- I'm back on 212.

 1 It's Item 6, 7, 8, 9, 10 and 11. Can you tell me if

 2 those were double counted?

 3   A.   I can't right now.

 4   Q.   Where -- where for -- and this -- so we

 5 may have a different amount than 37.2. We know at

 6 least one of them you said needs to be adjusted.

 7   A.   Either the 37 gets adjusted or the

 8 44 million.

 9   Q.   All right. Well, then let's leave it at

10 the 37.2. Where are the change orders for that and

11 the analysis that tells us that that 37 million is

12 imprudent?

13   A.   They're all referred to in this -- in the

14 tables beginning on page 148. Every one of them has a

15 change order number or purchase order number

16 associated with it.

17   Q.   But where's the analysis that tells me

18 why, for example, the coal conveyer steel support

19 tower, Item 2 on page 145, how can this Commission

20 look at that and say, yeah, I agree with him, that was

21 imprudent?

22   A.   That's -- that's a real good question and

23 let me explain. The Alstom contract was a fixed price

24 EPC contract, was bid out to multiple vendors. Alstom

25 was selected as the low bidder with the expectation

1 that they were going to provide an all-in boiler and

2 AQCS system for unit 1 and unit 2. As has been stated

3 many times, the contract with addendums goes to some

4 1,800 pages with all of the detail.

5   It's my contention that if Alstom bid at

6 a price and KCP&L selected them for that price, then

7 that should be the price that they pay for the

8 product. Coming back and saying we need stairways and

9 railings and platforms and that wasn't anticipated or

10 suggesting that acid washing or the disposal of the

11 acid washing aren't part of our contract is I don't

12 think appropriate. That should have been included in

13 their --

14   Q.   Well, that's what's missing. What you're

15 just saying, you're now throwing out some examples,

16 but that's not in here. You're not telling us

17 anywhere your testimony --

18   A.   Well, I didn't think that it was going to

19 be necessary to add hundreds of pages. Because keep

20 in mind, we did not -- had not have -- we had access

21 to all these change orders onsite. So when we went

22 through and we did the analysis and made our

23 decisions, we then have to go back and write up the

24 testimony without having the documentation in front of

25 us.

1   So I did the analysis, we had a team of

2 four people working on all the purchase orders. We

3 went through hundreds of them. There were -- and I

4 think you may have been there at times when the table

5 was just filled with boxes of paper. And we went

6 through those papers, we reached our conclusions, we

7 filled in our databases and that's what we used.

8   We did not have and did not ever intend

9 to include the actual purchase orders in the

10 testimony. And in all of the cases I've ever worked

11 on, I -- I have never done it any differently than

12 that.

13   Q.   The -- a fixed price contract like

14 Alstom's, there can be legitimate prudent change

15 orders to such a contract, can't there?

16   A.   I can see some. Mostly if somebody wants

17 an operational design change, then you get into

18 wishing creek.

19   Q.   Okay. So just because it's a fixed price

20 contract doesn't mean that any increases, change

21 orders above that were imprudent. You need to explain

22 why?

23   A.   And we went through these -- keep in mind

24 we had access to settlement documents. We did

25 analysis on unit 1, we did not deduct the entire

1 22 million on unit 1. We deducted about -- well, I

2 forget, it was not quite 50 percent.

3   On the unit 2 ones we felt that that --

4 because it was a clean, brand-new unit, that the

5 expectation -- particularly since they were the low

6 bidder and KCP&L championed what a great deal it was,

7 that the price they bid should be the price they were

8 paid. And if KCP&L decides to pay them more,

9 ratepayers shouldn't be responsible for that.

10   Q.   But the 37 million is just for Iatan 2?

11   A.   That's correct.

12   Q.   And when you talk about settlements, that

13 was Iatan 1 that you disallowed in your chart there

14 for the 22 million?

15   A.   Part of the 22 million.

16   Q.   Is -- I asked you here about Item 2 on

17 page 145 the change order for the coal conveyer steel

18 support tower. Was that part of the scope of the

19 contract that Alstom was initially contracted for?

20   A.   I don't know that that was defined in the

21 1,700 pages. I did not look to find it in the 1,700

22 pages.

23   Q.   Well, let's assume that that job was

24 initially contracted to another company called ASI and

25 as the project went on, it became clear that it was

1 more efficient to have Alstom do it. If KCPL made the

2 decision to shift that work to Alstom, would that be a

3 prudent expense that shouldn't be disallowed?

4   A.   If ASI's purchase order was reduced by

5 the same amount.

6   Q.   But as for Alstom, it would be? You

7 wouldn't disallow it from Alstom, you'd just make sure

8 that it wasn't collected from -- it wasn't double

9 counted or double charged?

10   A.   I hadn't seen that analysis. My approach

11 was that all of the items that were deducted were

12 items that should have been included as part of the

13 original contract.

14   Q.   Another thing that you said about Burns

15 and Mac was that they had a conflict of interest when

16 they gave advice to Kansas City Power and Light about

17 whether they should use the multi-prime or the EPC

18 contracting methodology. Do you remember that?

19   A.   I said they had a potential conflict of

20 interest, yes.

21   Q.   And that's because you felt that Burns

22 and Mac would get more work out -- on the project if

23 KCP&L chose multi-prime?

24   A.   Essentially, yes.

25   Q.   Do you have any evidence that Burns and

1 | Mac gave KCPL tainted advice on that issue just so

2 | they could get more business?

3 | A.   I'm not sure that there's evidence.

4 | Obviously our concern there was shared by Schiff

5 | Hardin. And Schiff Hardin in an e-mail suggested

6 | that -- I don't have the e-mail in front of me, but it

7 | would be suggested that K-- Burns and Mac could be

8 | perceived to have a conflict of interest because of

9 | that very reason.

10 | Q.   Schiff Hardin began protecting the

11 | interest of KCP&L -- I know what e-mail you're talking

12 | about -- and was saying maybe we shouldn't have Burns

13 | and Mac and the other contractors in while we're

14 | talking about something. Right? That's the e-mail?

15 | A.   I think it actually said that we should

16 | not let Schiff Hardin -- we should not let Burns

17 | McDonnell do that presentation as they got it laid

18 | out. We should do it for them or something. The

19 | document which is I believe an exhibit in testimony is

20 | pretty explicit in what it says.

21 | Q.   It's in your testimony?

22 | A.   I thought it was one of my exhibits.

23 | Q.   I thought it was too. You -- you didn't

24 | have -- just a minute. And was that it? That the

25 | only document or information you have other than your

1 speculation that Burns and Mac had a conflict?

2   A.   Common sense says that you don't want to

3 put a company in the position where if they're asking

4 them for their opinion and their opinion if they say

5 one thing will provide them with $70 million in

6 revenue and if they say the other thing, they may get

7 nothing. And it's not even a question of whether they

8 would be unethical. It's a difficult position to put

9 any professional organization in.

10   Q.   Well, aren't you in that position when

11 you're asked to come in and do a prudence review? If

12 you come in and say everything's great, there's no

13 more work; but if you find problems, you get paid by

14 the hour to go to the hearing. Do you have an

15 inherent conflict that makes you unable to carry out

16 that obligation?

17   A.   But I -- the answer there is the work

18 that I present to my client ultimately has to convince

19 them that it's worth me going forward. I can't just

20 say to them, Let's have a prudence hearing and I want

21 to bill some additional money. There has to be a

22 basis for it in fact.

23   Q.   All right. Let's get back to your list

24 of change orders and purchase orders, your

25 $231 million disallowance. The Kiewit, the second

1 line, you got $112 million disallowance for imprudence

2 for Kiewit. Now, you're not saying that Kiewit didn't

3 perform its obligations under the contract as a -- you

4 know, the work that it did was bad in any way, are

5 you, or substandard work? They did a good job on the

6 project, didn't they?

7   A.   What I'm suggesting for the Commissioners

8 is that the imprudent decisions and mismanagement by

9 KCP&L early in the project forced them by the end of

10 2006, early 2007 to find the solution for installing

11 the balance of plant. Their concept of doing it as a

12 multi-prime wherein they would themselves manage a

13 dozen contractors clearly wasn't going to work. The

14 estimates for balance of plant were --

15   MS. CAFER: Your Honor, my question was

16 just did Kiewit do a good job on this project and the

17 construction of this project.

18   JUDGE PRIDGIN: All right. Are you able

19 to answer that question?

20   THE WITNESS: I can -- I have no problem

21 with the quality of Kiewit's work.

22 BY MS. CAFER:

23   Q.   And you agreed on page 155 of your direct

24 testimony that KCPL's decision -- decision to shift

25 from a multi-prime strategy to a fixed price

1 contract -- Kiewit is what you're talking about -- was

2 the most effective and least cost approach to support

3 the balance of plant work. So you didn't -- you don't

4 take issue with the fact that they shifted to Kiewit

5 the balance of plant?

6   A.   Things were so screwed up at that point,

7 they didn't have an alternative.

8   Q.   And that's not in your testimony with --

9 I mean, are we just supposed to take your word that it

10 was so screwed up that they had to go do something

11 else? They couldn't handle this project at this point

12 in time?

13   MR. SCHWARZ: Objection as to form. It's

14 argumentative.

15   MS. CAFER: It's -- I was repeating what

16 he said

17   JUDGE PRIDGIN: Overruled.

18   THE WITNESS: I think that I spent --

19 BY MS. CAFER:

20   Q.   Go ahead.

21   A.   I think I spent 100-plus pages going

22 through the problems that KCP&L had managing the

23 problem -- project, getting proper project management

24 team put together, getting a cogent functional project

25 team. And that ultimately they realized this project

1 wasn't going to get built if they didn't bring in an

2 outside professional organization. They paid the

3 price for that and that's why the balance of plant

4 went up from 350 million to a billion dollars on this

5 project.

6   Q.   Do you -- where do you show us the change

7 orders that make up your $112 million disallowance?

8   A.   112 came out of the settlement

9 agreements.

10   Q.   So even though this 112 -- you -- you

11 said Burns and Mac wasn't really a change order, so

12 this is an exception also. The Kiewit is not a change

13 order analysis either?

14   A.   Well, as you know, settlement is an

15 agreement without specific definition as to how

16 individual purchase orders, claims from all the

17 parties are handled. So there's no real way to go

18 back and attach dollars to specific change orders

19 because you're ultimately reaching a settlement. You

20 know, the analysis that was used for compression

21 showed a broad range, potential values and ultimately

22 numbers were reached that were based on mediation.

23   Q.   So you say on page 209 of your direct

24 it's your opinion that $20 million of the first group

25 of change orders was imprudent?

1   A.   That's correct.

2   Q.   And what you're talking about is you

3   refer back here to your chart on page 158?

4   A.   Which shows all the amendments.

5   Q.   And you've disallowed every amendment to

6   the Kiewit contract except for 20 million of the

7   initial change orders. After that, you disallowed

8   100 percent?

9   A.   And the 20 million I believe was for a

10   balance of quantity changes.

11   Q.   And on page 159 here you say that the

12   initial bid -- it -- it was a good idea to go with

13   Kiewit, transfer the balance of plant to Kiewit and

14   let them handle it, it's what they do. And the

15   initial amount that they bid was 357 million. I'm

16   sorry, it was 500 -- do you have it in here? You've

17   got the 540 million. Right?

18   A.   You know, I actually pulled these numbers

19   out of Mr. Downey's testimony because he goes through

20   a complete scenario. But the original bid came in and

21   maybe it was 502 or -- it was on the order of

22   500 million. And that number would have gone way

23   beyond what was available even with all of the

24   contingency in the project.

25   They recognized some part of that and

1 they said it was for materials that are -- had already

2 been purchased and some part was because they thought

3 Kiewit's -- some of their pricing was out of line.

4 They asked Kiewit to come back and I think that's when

5 they came back with the price of 398 million. And

6 then they did the job and they ended up getting paid

7 the 512 when it was all said and down.

8   Q.   All right. And here you say that -- this

9 is confidential.

10   MS. CAFER: I have to go into

11 confidential.

12   JUDGE PRIDGIN: Just a moment, please.

13   (REPORTER'S NOTE: At this point, an

14 in-camera session was held, which is contained in

15 volume 22, pages 1618 to 1630 of the transcript.)

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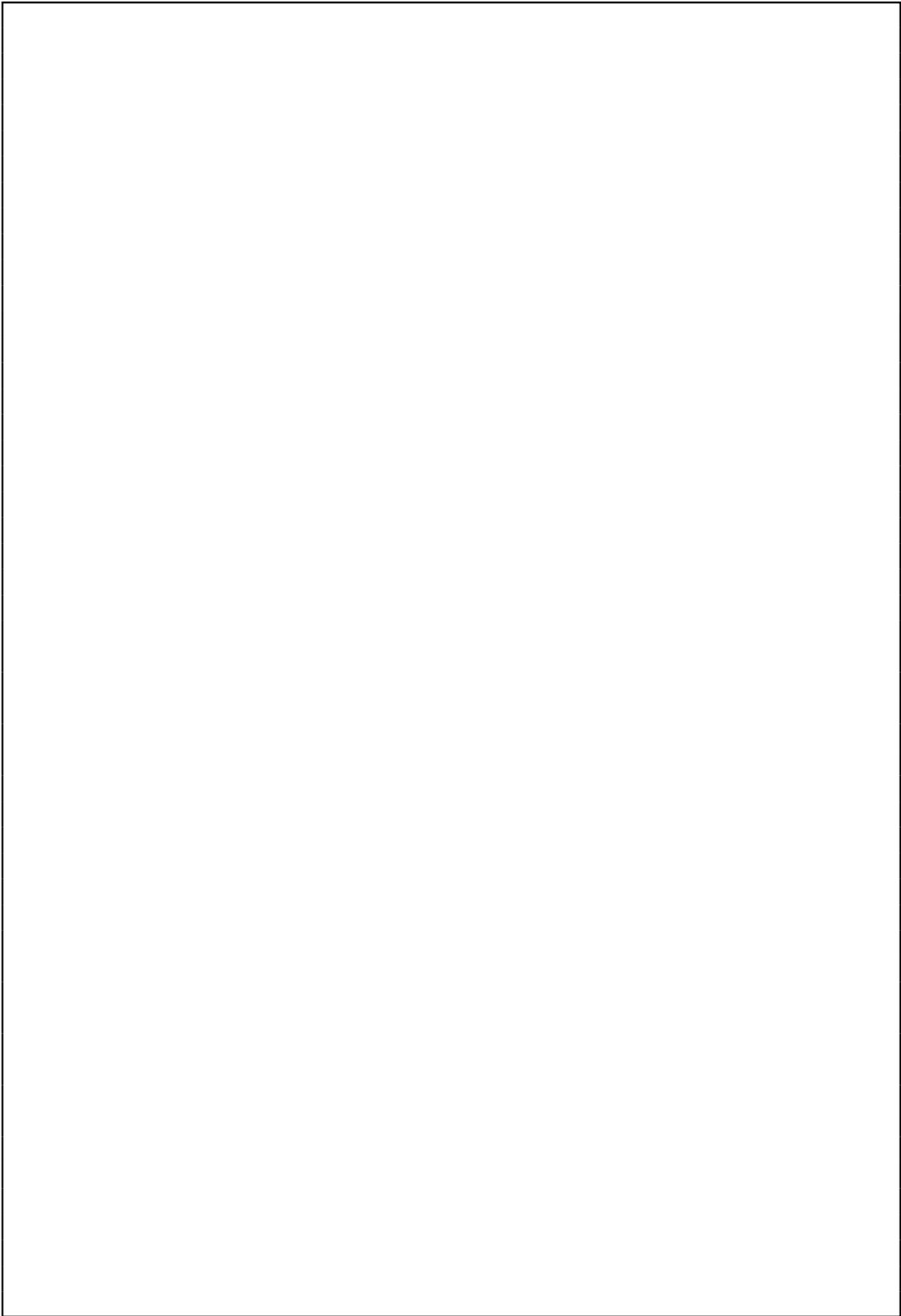16

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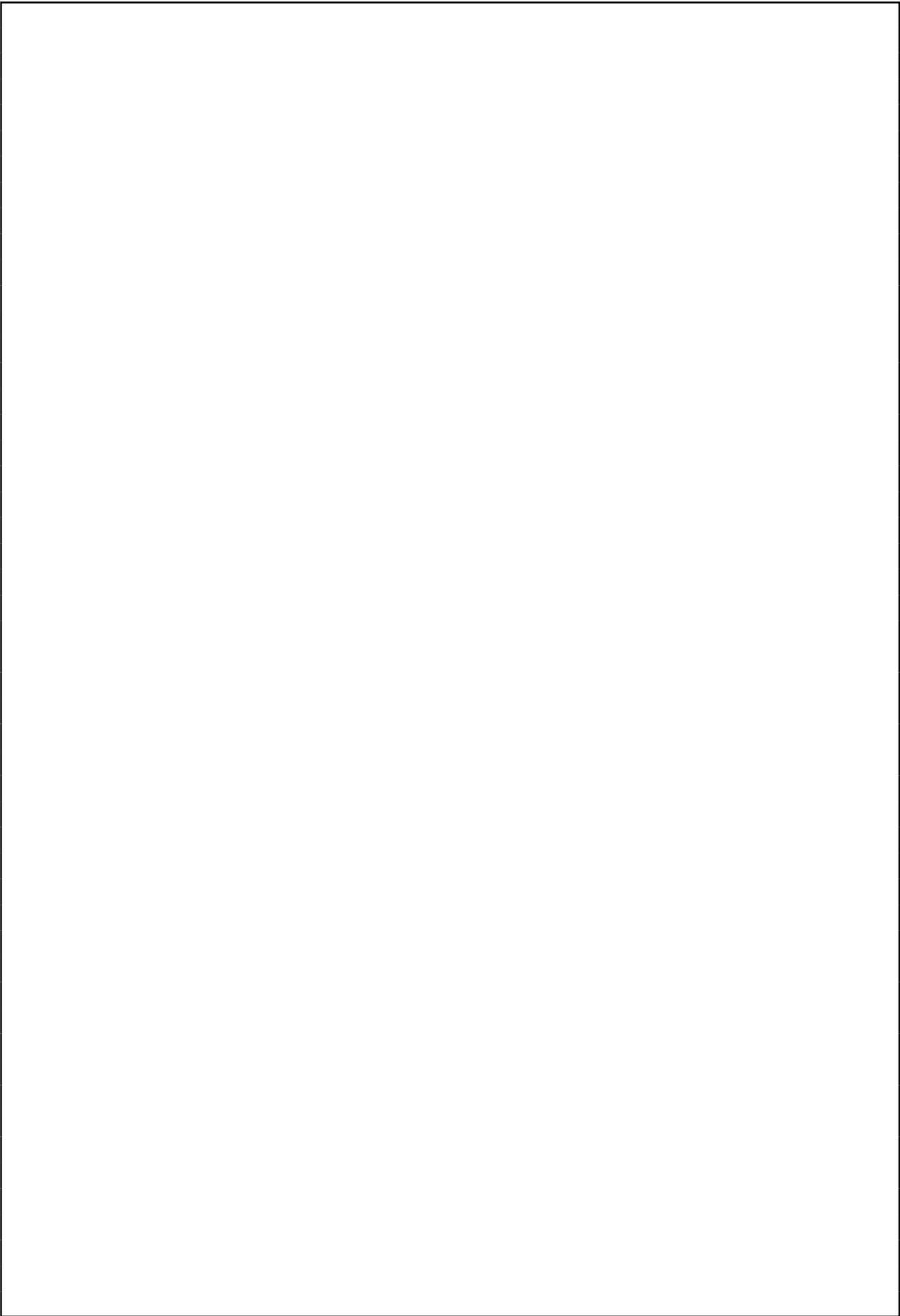
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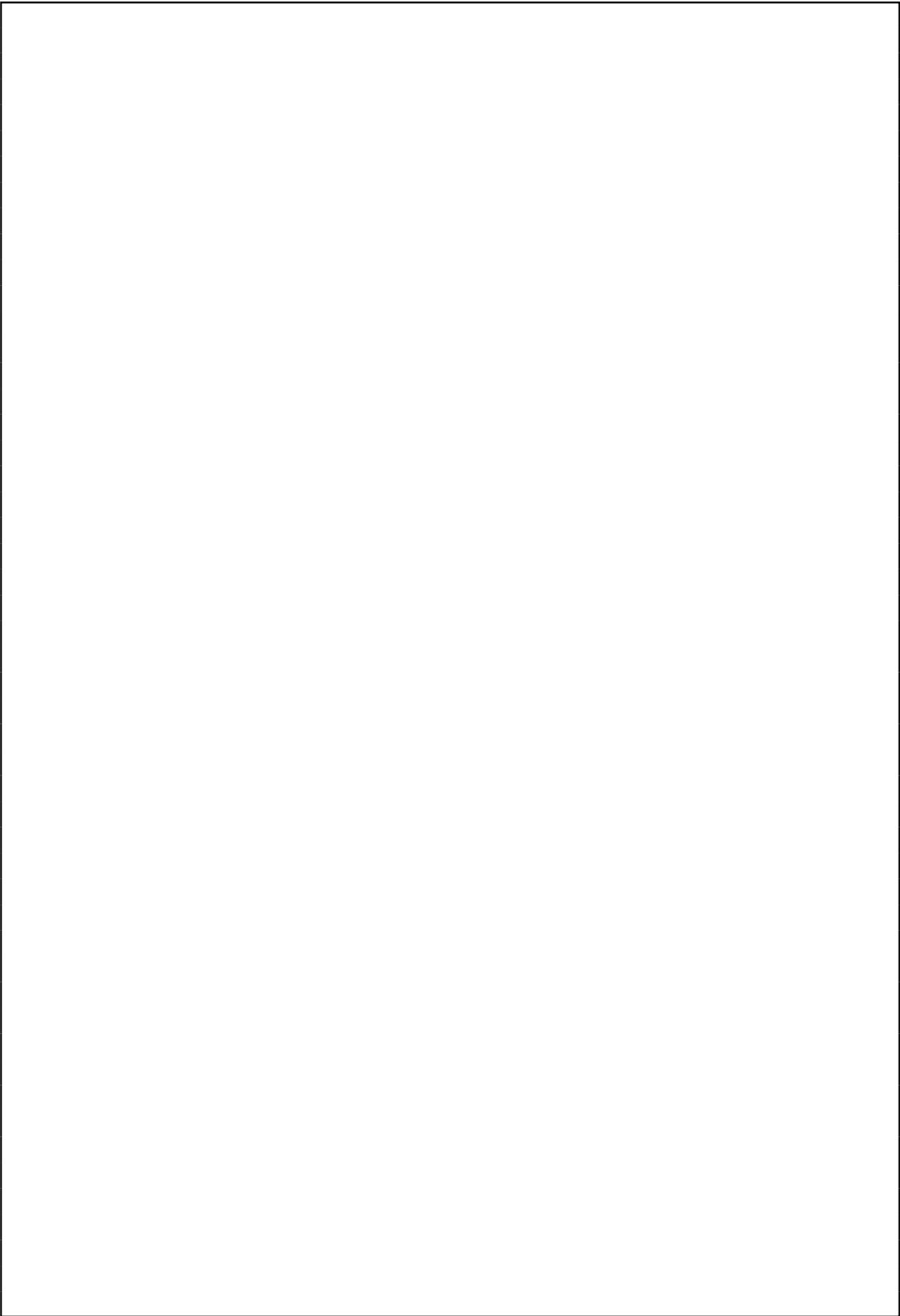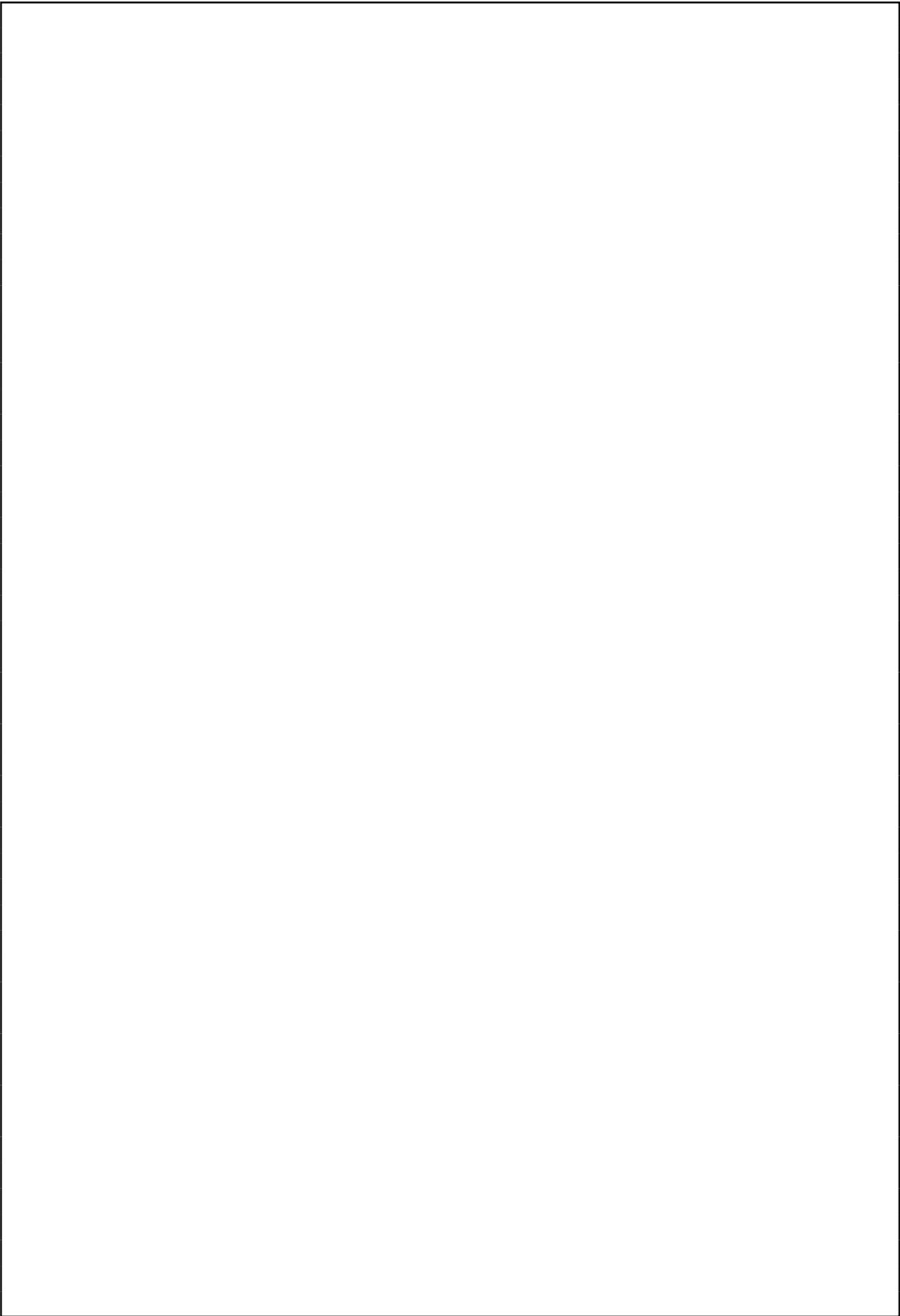2

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 1   JUDGE PRIDGIN: All right. Thank you.

 2 We're back in public forum.

 3 WALTER DRABINSKI testified as follows:

 4 BY MS. CAFER:

 5   Q.   Do you know what the final value of the

 6 Kiewit contract was?

 7   A.   Not the final value. I think at the time

 8 we were looking at doing our analysis it was up over

 9 500 million.

10   Q.   You wouldn't agree that it was actually

11 398 million for both units?

12   A.   That doesn't seem to comport with the

13 numbers I've seen.

14   Q.   How do you know what -- I mean how is

15 this Commission going to know what went into these

16 settlement -- you just disallowed it if there was an

17 expense that was a settlement agreement, is that --

18 for Kiewit?

19   A.   I go through some 150 pages before

20 that --

21   Q.   Yeah. I know you've given us the general

22 perspective and the holistic approach and all that,

23 but I'm trying to be more specific.

24   A.   I'm not sure where the holistic approach

25 comes from. That's not a word I've ever used.

1   Q.   Kansas.

2   A.   That was Mr. Nielsen's term, not mine.

3   Q.   His term about your analysis?

4   A.   That's correct. Nowhere's in my

5 analysis, my testimony or my cross-examination do I

6 ever use the word "holistic."

7   Q.   Did your audit or your prudence review

8 follow generally accepted auditing standards?

9   A.   Yes.

10   Q.   So you don't know whether -- whether the

11 settlement agreements with Kiewit may have included

12 some legitimate scope additions?

13   A.   We looked at that and that's why I

14 allowed $20 million for scope changes.

15   Q.   Was all engineering completed at the time

16 that KCPL gave Kiewit its notice to proceed?

17   A.   The notice to proceed was in May or June,

18 I believe, 2007. The contract was signed in November

19 2007. They've now been engineering for close to two

20 years.

21   Q.   Was engineering complete at that time?

22   A.   I don't recall offhand what the

23 percentage of complete was after two years of

24 engineering.

25   Q.   On page 209 of your testimony, line 9 you

1 say, The ultimate amounts of materials would not be

2 known until all engineering was completed. And so

3 as -- as engineering continued to be completed, the

4 unknowns became less. Is that what you're saying?

5   A.   Right. And as an example, Kiewit's major

6 responsibility was to turbine building and turbine

7 construction. We know from the discussion of the

8 turbine building bust, that they knew the quantities

9 for materials by October 2006 which was a year before

10 the Kiewit contract was signed. So if the turbine

11 building size dimensions and quantities were known,

12 you would expect a year later that there would be some

13 definition in the contract.

14   MS. CAFER: I'd like to move for the

15 admission of KCPL Exhibits 75 and 76.

16   JUDGE PRIDGIN: 75-HC, 76-HC are offered.

17 Any objections? Hearing none, 75 and 76 are admitted.

18   (KCP&L Exhibit Nos. 75-HC and 76-HC were

19 received into evidence.)

20 BY MS. CAFER:

21   Q.   Okay. Well, let's go now to -- back to

22 page 208 of your direct. And you have -- you have --

23 for Kissick on the third line you've got a

24 disallowance of about 2.8 million -- 2.79 million.

25 And Kissick you talk about over here on page 209

1 beginning on line 15, Vantage analyzed purchase orders

2 and change orders, identifying the seven that we

3 believe should not be included in approved costs for

4 Kissick.

5   Where have you explained why each of

6 these -- individually these seven change orders or

7 purchase orders were imprudent? Not generally, but

8 each one specifically?

9   A.   I don't have a definitive description for

10 each of those. These were purchase orders we were

11 allowed to look at onsite. Our group went through

12 them individually, identified details in their -- them

13 that made us believe that they were not legitimate

14 expenses to be born by the ratepayers. We put them in

15 a table and summarized them. We did not have a chance

16 to take the purchase orders home so --

17   Q.   I understand you couldn't take them home,

18 but could you have taken notes or something to explain

19 in a few sentences why you picked these seven and what

20 was -- what was imprudent about them?

21   A.   It was -- it was done through a

22 discussion of four of us, a couple accountants and

23 myself and another engineer. And we identified them,

24 we put them in there. We put the -- the two- or

25 three-word description that came on the purchase order

1 summary, but in retrospect, we could have probably

2 written two or three pages for every one of them.

3   Again, in 14 or 15 prudence audits, I've

4 never done that and it's never been questioned.

5   Q.   Okay. The next one on your chart on 208

6 is Aerotek and Nextsource. You've got $16.5 million

7 disallowance for them. And then over on page 210, the

8 only explanation you have is that these two

9 contractors provided supplemental resources for the

10 project that were required to manage the out of

11 control level of staffing.

12   Where do you get -- what do you base that

13 on, that there was -- the level of staffing was out of

14 control?

15   A.   Early in my testimony I show what the

16 original projections were for staffing. That -- those

17 projections were modified. Ultimate staffing for

18 project management almost tripled. They found

19 themselves in a position that in order to manage the

20 almost 3,500 contract employees onsite, that they had

21 to add trailers, support and so on.

22   And all of this was done because of the

23 inefficiency of the contractors and the need to try to

24 force the schedule and force production and

25 construction late in the project. So these two

1 contractors were hired basically to provide various

2 types of support.

3   Q.   Well, what -- what did you look at for

4 documentation to understand what these two companies

5 were doing?

6   A.   We looked at all of the purchase orders

7 and all the change orders for that group. We sampled

8 a number of them to see what they accounted for,

9 determined that they were basically support for the

10 project. That went way -- way beyond what the

11 original estimates were and that was due essentially

12 to the need to try to recover schedule and the high

13 levels of support towards the end of the project.

14   Q.   And where did you get your 50 percent

15 reduction?

16   A.   We have to come up with some percentage

17 of it. The individual purchase orders and change

18 orders don't give you any detail. There's no detail

19 that says this was due to the imprudent activities of

20 management. So at some point you make a judgment as

21 to what portion should be reasonably included in

22 rate-base and what portion should be excluded given

23 the excessive cost increase.

24   Q.   And I know -- I know the purchase orders

25 don't say this was a result of imprudence, but they do

1 explain to you what the contractor did and you can ask

2 people what -- what they did, why they did it and make

3 a determination as to --

4   A.   That's correct.

5   Q.   -- whether that was needed. And that's

6 not in here. And this dis-- the 50 percent you just

7 pulled out of the air?

8   A.   Well, I didn't pull it out of the air.

9   Q.   It's half?

10   A.   If you look at what some of the estimates

11 were for original staffing, it pretty much doubled.

12   Q.   And that's -- that's -- that's a

13 $16.5 million disallowance that merited four lines of

14 explanation in your testimony?

15   A.   Well, I had an exhibit that's attached

16 that had a lot more detail as well.

17   Q.   Where's that?

18   A.   It's one of my exhibits. One of the

19 40 exhibits in my testimony

20   MR. SCHWARZ: Schedules?

21 BY MS. CAFER:

22   Q.   That addresses -- that explains why --

23   A.   It shows and describes the purchase

24 orders and change orders.

25   Q.   Okay. So that's your Exhibit 36 that

1 just -- that's just a list of purchase orders and

2 change orders from the project. Right?

3   A.   Well, it -- part of it's a list of the

4 purchase orders and change orders. Part of it's a

5 breakdown by type of work, by consultant. In some

6 cases, we identified the specific purchase orders.

7 This is a case where we looked at the totals, we

8 looked at when they occurred and tried to decide how

9 you'd go about making an adjustment there and decided

10 50 percent was a reasonable adjustment.

11   Q.   So if the Commissioners want to figure

12 out whether they agree that -- that some of this was

13 imprudent, you're telling them to go look at your

14 Exhibit 36?

15   A.   Well, no. What I'm telling the

16 Commissioners -- and this is part of what occurred in

17 Kansas as you recall, the argument as to whether there

18 has to be a direct link between imprudent management

19 action and costs. And while KCP&R -- KCP&L argues

20 that you have to have a nexus between the actual

21 decision and some purchase order, KC-- even the KCC

22 said that that's not true.

23   How you come up with the allocation of

24 imprudent costs is not based on a specific purchase

25 order, but based on the overall testimony that shows

1 that imprudent mismanagement took place, costs rose

2 beyond expectations and reasonable levels and,

3 therefore, certain areas warrant adjustment.

4   In the case of this last one, what we

5 know is that the amount of resources required to

6 support a construction management team that grew by

7 almost 300 percent -- or 200 percent required a lot of

8 additional help, trailers and other things.

9   Q.   When you say it grew by 200 percent, you

10 mean over the project it -- it ramped up and ramped

11 back down or are you saying --

12   A.   No.

13   Q.   I mean where do you explain?

14   A.   I've got a chart early in the report that

15 shows what the original budget was for staffing for

16 construction management. That was revised and almost

17 doubled and then it was revised again and it went up

18 another 50 percent.

19   Q.   And why was that imprudent? Or why was

20 that not just evolution, things were moving along, we

21 identified more people? Why was that not prudent?

22 I'm not saying it wasn't. I'm just saying where did

23 you explain so that they could make a decision?

24   A.   Here's the point. You're hitting on the

25 exact point. When KCP&L decided to go with the

1 multi-prime approach, they were told and they

2 acknowledged and their witnesses acknowledge that the

3 responsibility was theirs to properly manage the

4 project.

5   They had a budget that had -- called for

6 like 30 or 40 construction management people at the

7 peak throughout the project. When they were done, I

8 think the number ended up being 140. They totally

9 misunderestimated the level of effort the project was

10 going to take. They were constantly behind. They

11 were unable to properly manage and track the

12 contractors and this is what led to the large increase

13 in cost.

14   Q.   Okay. Well, let's -- let's then look at

15 your professional support. This disallowance is

16 explained on page 211 of your direct testimony.

17 You're disallowing the Ernst & Young cost for audit

18 services; is that correct? Why would you not allow

19 the company -- you've -- you've indicated that they

20 need to do -- they should have done earlier audits,

21 you took issue with how they timed them. Why would

22 you then disallow the costs they incurred to do those?

23 Why is that imprudent?

24   A.   I don't think I disallowed the Ernst &

25 Young. What I did is I said that if you were to look

1 at the early amounts, the level of changes, the --

2 some of the -- if you were to take the original

3 estimate for audit, Schiff Hardin, legal, it would

4 have amounted to probably 5 or 6 million dollars.

5   Ultimately as of -- this was as of last

6 fall, over 23 million had been expended. A large part

7 of the 23 million had been expended to correct

8 problems that resulted from the mismanagement of

9 KCP&L's project team.

10   Q.   Well, I'm just asking you now about Ernst

11 & Young. They did audits. They helped GP's internal

12 audit report do audits that are a management tool that

13 are prudent for management to do. And I'm asking you

14 why you then would disallow that cost?

15   A.   I don't see I disallowed that cost. I

16 say I disallowed 50 percent of the total. Now, let's

17 take the Ernst & Young. The Ernst & Young's original

18 contract I think was for less than a couple hundred

19 thousand dollars. I remember reviewing the contract

20 and was surprised at how little it was. And

21 ultimately it grew to 1.4 million.

22   The Schiff Hardin, as we saw, was

23 6 million, it went down to 1.7 million and ultimately

24 ended up over 20 million.

25   Q.   Well, what I'm looking at shows Ernst &

 1| Young was 1.7 million.

 2| A.   That was for both unit 1 and unit 2.

 3| Q.   Okay. The unit 2 was 1.394.

 4| A.   That's what they said.

 5| Q.   And you're disallowing all of that?

 6| A.   Where do you see that?

 7| Q.   What am I --

 8| A.   I disallowed 50 percent of the

 9| 23 million. I took the total. I didn't say I'm

10| disallowing 1.3 -- 1.4 million from Ernst & Young.

11| I'm saying 2-- almost $23 million was spent on

12| professional support, over 1 percent of the cost of

13| the project.

14| Q.   All right. And of that 23 million,

15| 1.394 was for Ernst & Young.

16| A.   That's correct.

17| Q.   Am I not reading this chart correct?

18| A.   You said that I deducted the 1.394.

19| Q.   What I'm saying is that you totaled these

20| professional expenses that the company incurred, and

21| they were $23 million, and you disallowed half of

22| that. Right?

23| A.   That's correct.

24| Q.   But you're saying you didn't disallow

25| half of the individual amounts, you just decided the

1 total amount should be disallowed half of it?

2   A.   Well, first of all, you said I disallowed

3 all of Ernst & Young and I was trying to point out

4 that that wasn't true. Secondly, I took a

5 disallowance of 50 percent of the total.

6   This -- this group is made up of -- you

7 can see just the Schiff Hardin, there's purchase

8 orders, there's revisions, they got moved here and

9 there. There's not a clean definition of all the

10 dollars other than knowing that for Schiff Hardin just

11 for unit 2 as of last fall, they had expended

12 16 million and for both units it was almost

13 20 million.

14   Q.   What's the owner's legal counsel

15 represent on your chart here on page 211?

16   A.   It's a line in the -- this all came out

17 of a small subset of costs called miscellaneous that

18 totaled $80 million.

19   Q.   You're disallowing a portion of the

20 50 percent of it. Do you know what it even was for?

21   A.   I know that the original budget for this

22 stuff was about 5 or 6 million dollars. I know that

23 much of the work that was done by Schiff Hardin, much

24 of the work that Ernst & Young was required to do

25 resulted from imprudent management of KCP&L.

1   The question for this Commission, I think

2 it's a legitimate question for them to be asked, is

3 whether the ratepayers should be required to pay for

4 the mistakes of management. These consultants,

5 lawyers, auditors were hired to help recover and make

6 up for management's mistakes. And it's my belief that

7 they shouldn't receive full recovery.

8   If they think it should be 75 percent

9 deducted or 25 percent, I think that's theirs. My

10 professional judgment that was -- is that a 50 percent

11 reduction was a reasonable reduction for that

12 category.

13   Q.   Do you believe that Schiff Hardin is a

14 qualified company to serve as a construction

15 consultant on a project like this?

16   A.   Yes.

17   Q.   Did they give good advice to KCP&L?

18   A.   I found less problem with the advice they

19 gave than in some cases KCP&L's willingness to accept

20 it.

21   Q.   You've indicated on page 199 of your

22 direct testimony, the very first box on the top left,

23 you say there were poorly written contracts. Have you

24 provided any explanation of what contract language was

25 poorly written?

1   A.   I don't recall whether I got into the

2 contracts. The Alstom contract is probably a good

3 example.

4   Q.   What -- what -- where in your testimony

5 though have you explained what contracts were poorly

6 written and why?

7   A.   I'm not -- I don't recall whether I put

8 the analysis of the individual contracts in my

9 testimony.

10   Q.   I don't think you did.

11   A.   The basis for the poorly written

12 contracts was the fact that every time a problem

13 arose, rather than being able to use the contract to

14 resolve it, they went to a settlement.

15   Q.   And problems arise on a major complicated

16 project like this, don't they?

17   A.   Depends on how well run -- run it is.

18   Q.   There's some like this that would go

19 along and not have one problem arise?

20   A.   Well, the range of problems can be from

21 small, well defined and easily resolved to problems

22 that put you at risk of the project not being able to

23 move forward.

24   Q.   Let me -- you seem to have two major

25 criticisms of KCP&L in what you call these early

1 phases of the project. One was that they didn't have

2 the right people and qualified people in place at the

3 right times. Is that one of them?

4   A.   Yes.

5   Q.   And then that they didn't have the

6 appropriate systems in place; is that correct?

7   A.   That's two. I probably could add more

8 specific problems to that.

9   Q.   That wouldn't fall under one of those

10 categories?

11   A.   Well, I think they did not have the right

12 senior management team in place. I say senior man--

13 construction manager, directors, project manager,

14 however you want to classify them.

15   Q.   Okay.

16   A.   They also sorely underestimated what

17 were -- what was required in the way of construction

18 management, field personnel to manage the project.

19 They were late getting those people, late -- they

20 poorly estimated what they would need and they were

21 always behind in getting the right number of people on

22 board.

23   Q.   And this was at the beginning of the

24 project? You were okay with it after it got to 2008,

25 spring of 2008?

1   A.   Well, spring of 2008 they took all the

2 actions they could and threw all the people they could

3 at it, fired people, reorganized, read the riot act to

4 Kiewit and Alstom as far as performance and they --

5   Q.   Okay. My question's just this was the

6 early part, the beginning of the project that you

7 thought these problems existed?

8   A.   Correct.

9   Q.   And -- and when do you consider the

10 beginning of the project to be?

11   A.   Mr. Downey testified at one point that

12 the beginning of the project was immediately after

13 approval in August 2005 when I guess Black and Veatch

14 was hired to do the specifications for the boiler and

15 the turbine and Schiff Hardin was hired to help with

16 the selection of methodology and engineer.

17   Q.   And Alstom -- but in managing the

18 project, that you've been critical of their management

19 of the project, Alstom didn't start working at the

20 site until the late -- late -- in the fourth quarter

21 of 2006?

22   A.   That's correct.

23   Q.   And at that point it was pretty minimal

24 work, wasn't it?

25   A.   Well, the -- let's not confuse working at

1 the site with properly manage the project. The first

2 thing that Alstom had to do was interface with Burns

3 and Mac to get the drawings from -- drawings have to

4 go back and forth. Burns and Mac needed to do design

5 for the footers and foundations. Alstom needed those

6 before they could design some of their structural

7 stuff.

8   Q.   The engineering was on the critical path?

9   A.   Engineering was on the critical path,

10 particularly structure owns and civil.

11   Q.   And isn't it true that KCP&L had a

12 schedule in place to support the critical path of

13 engineering and procurement within a few weeks of

14 Schiff Hardin's April 2006 report where they said you

15 needed to get that done?

16   A.   That's correct.

17   Q.   And the critical path in the spring of

18 2006 was the engineering?

19   A.   That's what -- the first four or five

20 months, yes.

21   Q.   And the critical path engineering that

22 needed to be done was to support procurement --

23 procurement. Right?

24   A.   Well, originally it was supporting

25 procurement. And I'm not sure how you define

1 procurement. Once the decision -- once the

2 procurement of -- and the Alstom contract and the

3 Toshiba contract were signed, you are now getting into

4 the site layout, foundations, work of that type.

5   Q.   The critical path engineering though

6 during the -- the early 2006, that was to develop the

7 technical specifications to support KCPL putting

8 out -- their procurement department putting out the

9 requests for proposals, wasn't it?

10   A.   Right. Black and Veatch was doing that

11 work.

12   Q.   It was the engineering that was needed to

13 purchase the major equipment?

14   A.   Correct.

15   Q.   And KCPL was doing that during that time?

16   A.   In fact, the specifications were started

17 in August -- or I guess Black and Veatch was hired in

18 August and I believe specifications went out to

19 bidders in January or February and they pretty much

20 had the selection done by April, May.

21   Q.   And once they had the Alstom contract and

22 the Toshiba contract complete, then the engineering

23 critical path work also included designing the

24 foundations for the boiler, the AQCS and the turbine

25 generator pedestal?

1   A.   That's correct.

2   Q.   And you couldn't start design of those

3 things until you knew how big the equipment was going

4 to be?

5   A.   Yes.

6   Q.   So you had to procure them?

7   A.   Well, you had to procure them, you had to

8 lock in the specifications of their size, design

9 constraints. And once you had that procured and got

10 the specifications back, your civil and structural

11 engineers could go to work.

12   Q.   And do you agree that on August 14th of

13 2007, KCPL and Burns and McDonnell met their critical

14 path dates for turnover of the boiler foundations to

15 Alstom?

16   A.   I believe that was correct, yes.

17   Q.   And do you also agree that KCPL met the

18 foundation completion date for the turbine generator

19 pedestal?

20   A.   The engineering was -- requirements were

21 ultimately achieved.

22   Q.   Do you agree that the purchases that KCPL

23 made in 2006 were timely?

24   A.   Yes.

25   Q.   Mr. Jones is an expert in procurement.

1 Right? Steve Jones, he testified.

2   A.   I believe he is.

3   Q.   And he told us that he started at KCPL in

4 March of 2006. Do you disagree with that for any

5 reason?

6   A.   No.

7   Q.   Did you interview Mr. Jones when you did

8 your audit?

9   A.   A number of times.

10   Q.   He -- he testified that he and Schiff

11 Hardin developed a schedule right after he'd started

12 on the project for the procurement effort, including

13 Burns and Mac engineering. And that schedule was

14 followed, wasn't it?

15   A.   Well, I believe sometime in mid-2006,

16 late spring is when that procurement schedule

17 development began. And I don't think there was a real

18 problem -- I don't really take exception with the

19 procurement. In fact, as we've stated, by

20 December 2006, over a billion dollars in procurement

21 had taken place and been locked in.

22   Q.   Would you agree that having a schedule

23 that allows the project to pursue its critical path is

24 one of the most important controls that a project of

25 this nature can have?

1   A.   Repeat that. I --

2   Q.   A schedule -- meeting in place a schedule

3 that allows the project to pursue its critical path.

4 We talked about the engineering was the critical path

5 during this initial phase, the schedule allowed them

6 to pursue and meet that critical path. Correct?

7   A.   Well, a schedule doesn't allow anything.

8 A schedule is nothing but an estimate of what you

9 believe you can achieve certain things in.

10 Procurement -- the procurement schedule is one of the

11 schedules, but that's -- procurement is not where the

12 cost spiraling occurred. So I guess I would agree

13 with you that the procurement schedule was done and

14 procurement took place appropriately.

15   Q.   All right. When I asked you in your

16 deposition, we were talking about once KCPL had

17 decided that it didn't have an EPC option available to

18 it, I asked you if they went out and they got the

19 boiler then committed. They moved forward at that

20 time. Correct?

21   A.   Yes.

22   Q.   And did they get a good price on that?

23   A.   They got a great price on the boiler.

24   Q.   And that was done by the early stages of

25 this project?

1   A.   That's correct.

2   MS. CAFER: Are we -- did I hear you say

3 we were going to break at nine o'clock or do you want

4 me to continue?

5   JUDGE PRIDGIN: Do you have an idea,

6 Ms. Cafer, how much --

7   MS. CAFER: I think a half hour, maybe an

8 hour.

9   JUDGE PRIDGIN: Well, since -- since it's

10 about nine o'clock and we're taking a pause -- you

11 know, I don't know that another hour would be that

12 productive because I would want to take a break and

13 then just go for probably not that much longer and

14 then probably call it a night. So I'm inclined to

15 wrap it up for the night unless counsel want to keep

16 going.

17   MS. CAFER: Not necessarily. My back's

18 hurting.

19   MR. SCHWARZ: Chuck does.

20   JUDGE PRIDGIN: All right. Anything

21 further from counsel before we adjourn for the

22 evening?

23   All right. All right. We will stand in

24 recess. Mr. Drabinski will be back on the stand for

25 cross from KCP&L. If there's nothing further, we will

1 stand in recess until 8:30 a.m. Thank you. We are

2 off the record.

3   (WHEREUPON, the hearing was adjourned

4 until 8:30 a.m. January 25, 2011.)

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2 KCP&L'S EVIDENCE:

11 MAR'S EVIDENCE:

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14 E-mail dated 10/4/07   1400   1417

15 KCP&L Exhibit No. 268
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18 KCP&L Exhibit No. 270
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20 MAR'S EXHIBITS:

21 KCP&L Exhibit No. 2601-NP
   Direct Testimony of Walter Drabinski,
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23 KCP&L Exhibit No. 2601-HC
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